

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
May 16, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:51 a.m. on Thursday, May 16, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblywoman Michele Fiore, Assembly District No. 4
Assemblyman Jason Frierson, Assembly District No. 8

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Ilena Madraso, Committee Secretary

OTHERS PRESENT:

Regan Comis, M + R Strategic Services
Amber Howell, Administrator, Division of Child and Family Services, Department
of Health and Human Services

Chair Segerblom:

I will open the hearing with Assembly Bill (A.B.) 395.

ASSEMBLY BILL 395 (1st Reprint): Revises provisions regarding common-interest communities. (BDR 10-1013)

Assemblywoman Michele Fiore (Assembly District No. 4):

I worked with Senator Justin C. Jones to ensure harassment acts committed under this legislation remain punishable as misdemeanors.

Mindy Martini (Policy Analyst):

The Committee has received a work session document ([Exhibit C](#)) that includes three amendments. Proposed Amendment 8906 from Senator Jones would remove the language in *Nevada Revised Statute* (NRS) 202.470 concerning consideration of certain behavior as creating a public nuisance. It would maintain statute providing a person demonstrating this behavior is guilty of a misdemeanor.

Jonathan Friedrich proposed an amendment to exempt certain comments made by persons at certain times from the provisions of this bill. For example, comments made during an executive board meeting's owner-comment period would be exempted. In addition, before a referral could be made, this proposed amendment would require a person having a complaint to complete a form and file it with the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, to determine if there is probable cause.

The third amendment from Robert E. Frank proposes deleting certain entities in the common-interest community from the provisions of this bill.

Chair Segerblom:

Are the amendments proposed by Mr. Friedrich and Mr. Frank friendly amendments?

Assemblywoman Fiore:

Yes, but I am afraid their implementation would create chaos from other parties.

Senator Brower:

Is there a need for this legislation in Clark County? This bill would define a new type of crime that is punishable as a misdemeanor if a homeowner or member

of a common-interest community feels a member of the homeowners' association (HOA) board is treating him or her poorly. Is that correct?

Assemblywoman Fiore:

It does not define a new crime. The crime already exists. Many of my constituents feel bullied and harassed by their HOAs. If a person belongs to a community with an HOA, he or she cannot report certain behaviors without going through the Real Estate Division. This bill proposes to allow homeowners to notify their local police department instead. The members of the HOA and the homeowners must learn to work cooperatively together.

Senator Brower:

Is the conduct addressed by this bill now considered a crime?

Assemblywoman Fiore:

Yes. I believe it is.

Senator Brower:

It appears this bill adds a new section to chapter 116 of NRS.

Assemblywoman Fiore:

The language in A.B. 395 mirrors that found in chapter 118B of NRS relating to manufactured homes.

Senator Brower:

Is the conduct the bill purports to address now a crime?

Assemblywoman Fiore:

Yes, it is now a crime, but homeowners are not now allowed to address it as a crime through their HOA. They have to work through the Real Estate Division.

Nick Anthony (Counsel):

Disciplinary proceedings through chapter 116 of NRS are enforced by the Real Estate Division. This bill proposes to have certain actions designated as crimes that could be punishable as misdemeanors. It would additionally exempt these actions from the disciplinary proceedings now in effect.

Senator Brower:

That does not make sense to me. It is not necessary to identify certain types of conduct between an HOA board member and a homeowner as new crimes. These types of conduct should already be identified as crimes. This Committee often hears testimony about conflicts occurring in HOAs in Clark County. Now we are being asked to create a new crime relating to these conflicts. I need to review this bill further.

Senator Ford:

The Committee received an email from Rana Goodman yesterday including a link to a recent television story detailing HOA activities. This video demonstrates the situations this bill proposes to prevent. These activities occur on a regular basis, and we should address them. The legal remedies we have will suffice in many cases.

Chair Segerblom:

Would you please send the link to Senator Brower so he can review the program? I will close the work session on A.B. 395. I will open the work session on A.B. 202.

ASSEMBLY BILL 202 (2nd Reprint): Revises various provisions relating to juveniles charged as adults for committing certain crimes. (BDR 5-64)

Ms. Martini:

The Committee has received a work session document (Exhibit D). Two amendments have been proposed to this bill. A verbal amendment to add one member to the task force who is a chief probation officer or a director of one of the judicial districts was proposed by Carey Stewart, Director, Washoe County Juvenile Services.

Chair Segerblom:

I will temporarily close the work session on A.B. 202 and open the work session on A.B. 415.

ASSEMBLY BILL 415 (1st Reprint): Revises various provisions relating to criminal justice. (BDR 15-804)

Ms. Martini:

The Committee has received a work session document (Exhibit E).

Three amendments have been proposed for this bill. Proposed Amendment 8722 submitted by Chair Segerblom is included in the work session document, [Exhibit E](#). The amendment proposes adding paragraph (a) to section 1, subsection 5 in A.B. 415 to remove the provision requiring the two or more previous convictions for committing petit larceny in a commercial establishment during business hours. It also proposes adding a paragraph (b) to subsection 5 of section 1 of A.B. 415 to include the category “of a felony” in the type of convictions considered as comprising the previous two convictions.

The second amendment submitted by the Nevada District Attorneys Association is included in the work session document, [Exhibit E](#). Similar to the amendment proposed by Chair Segerblom, it proposes to remove the words “during business hours” from section 1, subsection 5 of A.B. 415. It maintains language regarding entering a commercial establishment. It does not include the felony provision.

The third amendment submitted by Chair Segerblom and Assemblyman Jason Frierson is included in the work session document, [Exhibit E](#). It proposes to amend NRS 207.030 to provide law enforcement an additional tool to remove squatters from abandoned properties.

Chair Segerblom:

Do you agree with proposed Amendment 8722 regarding deletion of the language of two previous convictions for committing petit larceny occurring “in a commercial establishment during business hours”?

Assemblyman Jason Frierson (Assembly District No. 8):

Yes, I do.

Chair Segerblom:

Is the amendment proposed by the District Attorneys Association subsumed into proposed Amendment 8722?

Mr. Anthony:

Yes, it is.

Chair Segerblom:

Please explain the third proposed amendment.

Assemblyman Frierson:

This amendment relates to people who squat in empty properties and cause damage to them. Law enforcement personnel have expressed frustration about how to deal with this problem effectively. This amendment proposes language to assist law enforcement personnel in using existing statutes to resolve problems of vagrancy.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 415 WITH PROPOSED AMENDMENT 8722 AND THE CONCEPTUAL AMENDMENT PROPOSED BY SENATOR SEGERBLOM AND ASSEMBLYMAN FRIERSON.

SENATOR FORD SECONDED THE MOTION.

Senator Jones:

Senator Hammond indicated he wanted to move to indefinitely postpone this bill. I do not support that action.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

We will reopen the work session on A.B. 202.

Ms. Martini:

The first amendment to A.B. 202 suggested by Carey Stewart proposes to add one member, who is a chief probation officer or a director of one of the judicial districts, to the task force.

The second amendment ([Exhibit F](#)) suggested by Regan Comis representing M+R Strategic Services proposes an addition to section 11 of A.B. 202 stating an effective date for section 1 of October 1, 2014.

Section 1, subsection 3, paragraph (a) clarifies jurisdiction in murder or attempted murder cases involving juveniles. Under this bill, murder and attempted murder are excluded from the jurisdiction of the juvenile court only if the offense was committed by a child who was 14 years of age or older when he or she committed the offense.

Regan Comis (M + R Strategic Services):

The Division of Child and Family Services raised concerns because they do not have programming for the population addressed by this bill. Delaying the effective date to October 1, 2014, will allow the Division time to create the programming and structures required to work with this population.

Chair Segerblom:

Please tell the Committee about the Summit View facility.

Ms. Comis:

Summit View Juvenile Correction Center will be a maximum-security facility in North Las Vegas. A request for proposal has been disseminated and a vendor selected. Negotiations are now in progress for construction of the facility.

Chair Segerblom:

Will that facility be open by October 1, 2014?

Ms. Comis:

Yes, it should be open by then.

Senator Ford:

How many children would this amendment impact?

Ms. Comis:

It is my understanding that in the past 3 years, one 13-year-old child fits into this category. It is a very small percentage of our population.

Senator Ford:

You are presenting an amendment to your own bill to allow an entity to prepare for one juvenile offender. Is that true?

Ms. Comis:

That is true. This delay would, however, also reduce the fiscal note.

Senator Hammond:

For many years I have struggled with the question of why we incarcerate anyone. As a society, what is our responsibility? Are we required to rehabilitate offenders and provide them a second chance, or just keep them away from society at large? The conclusion our society reached is to give people

a second chance. If we incarcerate the group of juvenile offenders addressed by this bill, where should we place them? An adult prison is not the facility for a 13- or 14-year-old child—that invites problems. We want them to reenter society and be productive adults. Placing these offenders with adult inmates is not productive; they learn too many things we do not want them to learn. The recidivism rate increases considerably. On the other hand, if we place them with teens who have not committed the same sort of crimes, we also face challenges. We do not want youths who have committed lesser crimes to be exposed to those who have committed more violent crimes.

What will be done with a facility like Summit View when we do not have a population that fits the description addressed in A.B. 202? How will it be used? Will juveniles from other facilities be moved to this facility? If so, how will they be kept from commingling with the serious offenders placed under this bill?

Ms. Comis:

Summit View is for the violent and most challenging youths in our system. Youths convicted of lesser crimes will not be sent to this facility.

Senator Hammond:

This facility has 50 to 100 beds. You stated one offender in the last 3 years fits the description of who would be placed under A.B. 202. We cannot leave this facility empty. What will be done with it?

Ms. Comis:

The facility is not being opened to only house the population addressed by A.B. 202. A need exists for this type of facility in the State. It will be opening at half of its capacity with 46 available beds.

Senator Hammond:

What type of juvenile offenders will be transferred into this facility?

Ms. Comis:

Youths from the Nevada Youth Training Center (NYTC) will be transferred into Summit View. These are our most challenging youth offenders. They require higher levels of rehabilitative services before they can be sent back to their communities.

Senator Hammond:

Are these youths convicted of attempting murder or committing murder?

Ms. Comis:

No. Youths in those categories are now placed in adult facilities in Nevada.

Senator Ford:

Do we want to place the one young offender who has committed murder in with his peers, or do we want to place him with adults and let that population influence him? He may have an effect on the 45 other offenders in the Summit View facility, but we are still talking about a child who is more malleable than an adult. It is appropriate to support a bill that provides a second chance for a youth to turn his or her life around and become an active and productive member of society.

Senator Hammond:

I support the concept of this bill. My concern is whether the facility will be ready and whether it will be used optimally. Will we be able to keep the juvenile offenders who have committed or attempted to commit murder away from their peers? If we pass this bill and the facility is not open, have we made a mistake? Where will the youth impacted by this bill go if that happens?

Senator Ford:

Nevada can find an appropriate facility to house one person and provide him or her the mental and other services required. I do not support extending the effective date by a year when we are discussing a population of one. That population will not dramatically increase between now and when Summit View opens. Even if this facility is not open, the State should be able to identify an appropriate facility for any young person falling under this legislation instead of sending him or her to an adult prison.

Senator Hammond:

I would love to vote in favor of A.B. 202, but I want to be sure I know where these offenders are being placed.

Chair Segerblom:

Remember, we are only discussing youths who are 11 and 12 years old.

Amber Howell (Administrator, Division of Child and Family Services, Department of Health and Human Services):

The evaluation committee has selected an intent to award a contract to a vendor for the Summit View facility. Many contract negotiations must be completed. The facility is scheduled to open on October 1; if the negotiations go well, it will open on time. Funds have been budgeted for 50 beds for this facility. The vendor would recruit beds from out of state to place into the facility, bringing the total to 96.

Senator Ford:

You predict Summit View will open this October. Why does this amendment propose waiting an additional year to send the one child who qualifies under this bill to that facility and provide protection for him or her from the adult system?

Ms. Howell:

The Commission on Statewide Juvenile Justice Reform identified the need for 50 beds, which we used to create our budget. The Commission felt 50 children currently in the system would benefit from this placement. We need to develop procedures for placement should we identify more than 50 children who qualify for the facility. We would like time to do this correctly. Our population requires a safe and secure setting. We want to provide this correctly from the beginning. We would like to review what is being done in other states. This will require additional time.

Senator Ford:

Do you think this process requires an entire year? Could you do it in 6 months or 3 months? We are not talking about a large number of children who qualify under this legislation—two or three at the most. It should not require a year to do this work. The longer a juvenile offender remains in the adult system, the higher his or her chance of recidivism.

Ms. Howell:

Because the facility is not now open, a year gives us the time we need to do this correctly. Many placements and other decisions need to be made before that can occur. The extra time would allow us to work with the Department of Corrections in budgeting for the next biennium concerning the children impacted by this bill.

Senator Hammond:

You are budgeting for 50 beds, which you intend to fill with inmates from NYTC. Is that facility overcrowded? Do these beds need to be filled immediately?

Ms. Howell:

A consultant reviewed the NYTC and determined the majority of children in that facility required a setting with a higher level of security. This would be the reason for their transfer to Summit View. This new environment would be more appropriate for their needs.

Senator Hammond:

If Summit View is opened in October, it is inevitable some children will leave in the course of the year. If you receive one or more offenders as identified in A.B. 202, would you be able to place them in the facility? Would you need to send children from the Summit View facility to another facility to make room for these high-priority placements? Would you be able to keep these children separate from the general population at the facility?

Ms. Howell:

If a child falls into this high-priority category, the most appropriate placement would be Summit View. It could require moving children in residence to another facility to make room for a child in the A.B. 202 placement category.

Each wing of the Summit View facility is split into 24 beds. We need to consider whether children falling under the A.B. 202 placement category would be placed into a separate wing. This is part of the analysis we need to do. We would like to find out what other states are doing; do they commingle all their children, or do they have a separate unit for those in a high-priority category? What do their facilities look like? We do not know these answers today.

Senator Hammond:

I hope they would be separated. We have been saying we do not want the high-priority population together with the population that does not require a higher level of scrutiny and security.

Ms. Howell:

They might live in a separate housing wing, but there are still considerations to be made about lunchroom, yard and school contact. It would be difficult to keep children separate at all times.

Senator Ford:

Do high security inmates go to lunch with general population inmates in the adult system? I think your department is intelligent enough to reach the correct decisions in handling these concerns.

Chair Segerblom:

Was there an amendment to lower the age addressed by this bill from 14 years old to 12 years old?

Senator Hutchison:

Law enforcement and district attorneys (DAs) are adamant that we place the age at 12 years old. If there is not an amendment to lower the age, we need to vote on what is in the bill.

Senator Ford:

I support raising the age to 16 years of age, so setting it at 14 years old is a happy medium.

Senator Hutchison:

The DAs provided a persuasive argument that gangs often recruit younger children—those who are 13 and 14 years old—to commit the crimes they know have harsh sentences. These children serve short sentences for crimes that, if committed by older youths, would require lengthy prison sentences. For this reason, the DAs would like to have the age set lower than 14 years old. That is why I would like to see the language amended to lower the age to 12 years old.

Senator Brower:

We are discussing murder or attempted murder, crimes the DA considers can be proven. Common law traditionally sets the age of responsibility at 7 years old which is too young. I have examples from personal experience to justify consideration of 12 years old as the age of responsibility for prosecution as murder. The practical consequences of incarceration make this more difficult, but 12 years of age is the right answer. I cannot support this bill in its current form.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED A.B. 202 WITH THE AMENDMENTS FROM CAREY STEWART AND REGAN COMIS.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS BROWER AND HUTCHISON VOTED NO.)

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Chair Segerblom:

I will open the work session on A.B. 212.

ASSEMBLY BILL 212 (1st Reprint): Prohibits the possession of portable telecommunications devices by certain prisoners. (BDR 16-639)

Ms. Martini:

The Committee has received a work session document ([Exhibit G](#)).

An amendment proposed by Senator Ford is attached to the work session document, [Exhibit G](#). It proposes a reduced penalty on a telecommunications device offense if the underlying conviction is reduced or if the charge is declined or dismissed. It also proposes to clarify that no person has a right to modification of sentence and that granting of denial or petition does not establish a basis for any cause of action against certain entities including the State.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED A.B. 212 WITH HIS CONCEPTUAL AMENDMENT.

SENATOR JONES SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

We will conclude the work session with A.B. 358.

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ASSEMBLY BILL 358 (2nd Reprint): Enacts the Uniform Deployed Parents
Custody and Visitation Act. (BDR 11-171)

Ms. Martini:

I will read from the work session document ([Exhibit H](#)).

SENATOR JONES MOVED TO DO PASS A.B. 358.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

Seeing no further business, the meeting is adjourned at 11:39 a.m.

RESPECTFULLY SUBMITTED:

Diana Jones,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	2		Agenda
	B	3		Attendance Roster
A.B. 395	C	6	Mindy Martini	Work Session Document
A.B. 202	D	1	Mindy Martini	Work Session Document
A.B. 415	E	8	Mindy Martini	Work Session Document
A.B. 202	F	1	Regan Comis	Proposed Amendment
A.B. 212	G	2	Mindy Martini	Work Session Document
A.B. 358	H	1	Mindy Martini	Work Session Document