

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session  
February 25, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:02 a.m. on Monday, February 25, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Mark Hutchison

**COMMITTEE MEMBERS ABSENT:**

Senator Scott Hammond (Excused)

**GUEST LEGISLATORS PRESENT:**

Senator Ben Kieckhefer, Senatorial District No. 16

**STAFF MEMBERS PRESENT:**

Mindy Martini, Policy Analyst  
Nick Anthony, Counsel  
Linda Hiller, Committee Secretary

**OTHERS PRESENT:**

John T. Jones, Jr., Nevada District Attorneys Association  
Eric Spratley, Washoe County Sheriff's Office

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General;  
Advisory Council for Prosecuting Attorneys  
Chuck Callaway, Las Vegas Metropolitan Police Department  
Steve Yeager, Clark County Public Defender's Office  
Vanessa Spinazola, American Civil Liberties Union of Nevada  
Wesley Goetz  
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities  
Megan N. Salcido, Office of the City Manager, City of Reno  
Kristina L. Swallow, P.E., Engineering Program Manager, City Engineer Division,  
Department of Public Works, City of Las Vegas  
Terry Graves  
Craig Madole, Senior Associate, Nevada Chapter of The Associated General  
Contractors of America, Inc.  
Warren B. Hardy II, City of Mesquite; Associated Builders and Contractors  
Nevada Chapter; SA Recycling LLC

**Chair Segerblom:**

I want to open the hearing of the Senate Committee on Judiciary. We begin with Senator Ben Kieckhefer and Senate Bill (S.B.) 103.

**SENATE BILL 103**: Removes the period of limitation for crimes relating to the sexual abuse of a child. (BDR 14-177)

**Senator Ben Kieckhefer (Senatorial District No. 16):**

I started exploring the subject matter of this bill after what happened at Pennsylvania State University with the assistant football coach Jerry Sandusky and his 2012 conviction as a serial child molester. I began to look into what recourse a victim of sexual abuse would have in Nevada. I found information on the statute of limitations on child sexual assault and learned that when the statute of limitations begins is something that ultimately can be adjudicated based on an individual's knowledge of the event.

In a scenario where an individual was a victim of sexual assault as a youth and was aware of the memory but decided not to file a complaint, the statute of limitations would be running. In a scenario where a person would ultimately be revealed as a serial predator and was not a perpetrator in an isolated incident, then the person who had been victimized and not filed a complaint could come forward when he or she realized he or she was not alone in being victimized by

this perpetrator. However, if the clock was already running on the statute of limitations, the victim might not have cause to prosecute.

Senate Bill 103 removes the statute of limitations from child sexual assault by adding section 1, subsection 3 to *Nevada Revised Statutes* (NRS) 171.080. The list of crimes for which there is no statute of limitations is short but significant: murder, an act of terrorism and sexual assault of a child as defined by NRS 432B.100.

Section 2 adds the NRS 171.080 reference to NRS 171.090. Section 3 gets to NRS 171.095 where the statute of limitations exists, strikes it, and defines the new statute of limitations by when the victim discovers, or should reasonably have known, that he or she was a victim of the crime. That question can be adjudicated and would unnecessarily restrict someone who wanted to press his or her case at a later date. I understand why there are statutes of limitations and that these limitations are in place for a reason.

I also believe we are more likely in coming years to find evidence in a sexual assault case—photographic or video evidence, due to widespread use of cell phones and modern technology. It would be less likely to be a matter of one person's testimony against another's, given today's technology. This bill could be presented as a solution in search of a problem. I have talked to the prosecutor's office in Washoe County, and prosecutors said they rarely come up against statute of limitations in the prosecution of a crime.

**Senator Hutchison:**

I want to address the limiting nature of this bill. It just deals with criminal prosecution, not the civil side of statute of limitations.

**Senator Kieckhefer:**

Yes, it is limited to the criminal side. There is a separate civil limitation, but I was more interested in holding the individual accountable from a legal standpoint. If the Committee wants to take up the civil side, I am willing to address that.

**Senator Ford:**

Do any other states have statutes of this sort with no statute of limitations?

**Senator Kieckhefer:**

I do not know.

**Senator Ford:**

I understand this issue and what you are trying to do. I have a visceral concern with this but cannot figure out exactly what it is. It may be inappropriate in certain circumstances. I will reserve judgment on the bill. When I look at the wording in the bill as murder being No. 1, terrorism being No. 2, I wonder if you are saying that sexual abuse of a child is tantamount or comparable to murder or terrorism?

**Senator Kieckhefer:**

I think terrorism stands on its own as an offense against our society. My stomach is turned more when I hear stories of sexual assault of a child than I do about a case of murder.

**Senator Ford:**

I agree that the sexual assault of a child is a bad thing. I just wonder if it is appropriate to go this route. I want to know what other states have thought about this and what they have done.

**Senator Kieckhefer:**

I will request that research and get back to you.

**John T. Jones, Jr. (Nevada District Attorneys Association):**

We support this bill. When dealing with children, there are situations where they withhold their disclosure for one reason or another. In this case, a prosecutor would have more discretion in determining whether it is appropriate to proceed to a criminal complaint or indictment.

**Chair Segerblom:**

Sexual abuse is a broad term. If you are including it with murder, it does not seem to rise to that level.

**Mr. Jones:**

As a society, we say this crime is so heinous, along with murder, that it warrants at least an extended period of time for a child to disclose. When we are looking at children, their situations are different. In many cases, the abuser is in the home and the child is dependent on that person. If victims point out

their abusers, it can upend their lives. In statute, victims now have until their 21st birthdays to disclose. From a prosecution point of view, the passage of time does not help the case. If a 40-year-old says he or she was abused at age 12, prosecutors will look at that situation differently than they would if it was a 25-year-old making the same disclosure.

**Senator Hutchison:**

Are there situations where, psychologically, there is suppression of memory, which could account for a passage of time before sexual abuse is reported or even remembered?

**Mr. Jones:**

There are many different reasons why a victim might not disclose when the sexual abuse occurs, especially for a child victim. What S.B. 103 allows is for prosecutors to prosecute cases where the victim has waited longer than the current statute allows.

**Senator Hutchison:**

Do you know if this suppression of memory happens? I have heard that in certain cases, especially with children, their defense mechanisms shut down their memories, or psychologically their brains deal with the abuse by suppressing the memories. Are you familiar with that concept in cases of child abuse?

**Mr. Jones:**

I am aware of the concept, and victims have said this has occurred.

**Senator Ford:**

Are you familiar with what other states are doing in this area?

**Mr. Jones:**

No, I have not researched this.

**Eric Spratley (Washoe County Sheriff's Office):**

With the unique circumstances surrounding child victims' abilities to report their abuse, we feel this legislation provides the necessary opportunity for this type of crime to be revealed when the victims are able to do so. It gives law enforcement the ability to move forward with an investigation. It is important that we look at the victims' perspectives because when they are innocent

children being manipulated by a perpetrator, they may stifle that memory well into their adult years. The ongoing manipulation of victims by perpetrators for many years after the events may stifle the ability to report and impede the potential for predators to be stopped. Our goal is not necessarily to catch isolated incidents; we are looking at things outlined in statute.

Sexual abuse is defined in NRS 432B.100, and includes incest, lewdness, sadomasochistic abuse and sexual assault, which includes penetration of a child. The definition also includes statutory sexual seduction, gross lewdness and genital mutilation. These are all horrible things that occur to children and greatly affect our society. We in law enforcement want the opportunity to move forward with an investigation when the victim feels it is right to do so. We support this bill.

**Chair Segerblom:**

If a child came forward today and said a perpetrator abused him or her yesterday, would it be admissible if other people came forward and said they, too, were abused by the same person 20 years ago? Under statute, that would not be a crime, but would it be admissible in prosecuting the more recent crime?

**Mr. Spratley:**

I am not an expert in the crimes against children realm or in the prosecution side of it.

**Chair Segerblom:**

One of our Committee members is a prosecutor. Senator Brower, what is your professional opinion?

**Senator Brower:**

My best answer is maybe, but it depends on the circumstances.

**Senator Ford:**

This is my running question for everyone testifying: what is happening in other states on this issue? Also, are there any constitutional challenges to statutes of this sort that have been enacted?

**Mr. Spratley:**

I do not know but will research the answer and get back to you.

**Senator Jones:**

I did look it up on the Internet, and it looks like in many other states, there are no statutes of limitations for sex crimes against children.

**Brett Kandt (Special Deputy Attorney General, Office of the Attorney General; Advisory Council for Prosecuting Attorneys):**

We also support this bill.

**Chair Segerblom:**

Since you are a prosecutor, do you have an opinion on my scenario where there is a current prosecution against an individual within the statute of limitations, and then someone comes forward to say the same thing happened to him or her 20 years ago? Would that second testimony be admissible under law? Would this bill change that?

**Mr. Kandt:**

Maybe. The defense would try to keep the new testimony out, the prosecution would try to get it in. If you are talking about a crime that was committed a year ago or 25 years ago, the prosecutor is still going to have to prove the case. We are dealing with hypotheticals, but I can think of many scenarios where evidence far down the line could still allow the prosecutor, provided there is not a statutory bar on the time period, to prove their case. The sexual assault could have been filmed, as in child pornography, which would allow the case to be proven. There could also be corroborating testimony if there were a series of sexual abuse victims. Every case is unique, but we think removing this bar would be helpful and serve justice.

**Chuck Callaway (Las Vegas Metropolitan Police Department):**

We support this bill.

**Steve Yeager (Clark County Public Defender's Office):**

We are against this bill. One of the reasons we have statutes of limitations is that over time a person's memories can fade, evidence can disappear and witnesses can go missing. As a result, if we have someone truly innocent of the charges, it would provide a difficult situation to defend. In these cases, we are usually dealing with the testimony of the victim versus the testimony of the perpetrator, and it can become a credibility match. The concern is that corroborating evidence might be lost over time.

Statute does make allowances for these types of cases. If the assault is done in secret, that tacks on an additional 4 years to the statute of limitations. There is a provision that if the child victims did not know about the abuse until they turned 21, they have an additional 7 years to report, taking them to age 28 to pursue a claim. We believe those statute protections are adequate and take into account the interests of the victim and the perpetrator.

**Senator Hutchison:**

Would those arguments you described also relate to crimes of murder and terrorist acts?

**Mr. Yeager:**

I think they would. There is always the concern that over time, particular evidence or witnesses can disappear. It is a policy decision as to which crimes we would exempt. I do not want to undermine the seriousness of child sexual abuse, but the issue in these cases is often the victim's testimony versus the alleged perpetrator saying, "I did not do it." In a murder case or terrorist case, we typically have physical evidence. Certainly, any prosecution that is delayed has potential issues with evidence or witnesses.

**Senator Hutchison:**

From your experience in the law and defending various individuals, why should child abuse crimes not rise to the same levels as the other two crimes—murder and acts of terrorism—already in statute?

**Mr. Yeager:**

Everyone would agree that murder is one of the most serious crimes, if not the most serious crimes on our books. Terrorism is serious too, but the type of evidence and preservation of evidence makes for a more legitimate and just prosecution in those cases. In child abuse cases, it has been my experience that sometimes we do not have a lot of evidence to go on. It comes down to the testimony of a couple individuals, and the jury is left to figure out who is telling the truth. It is hard to imagine a murder or terrorism prosecution that does not have some other evidence. Child sex abuse often happens in secret, so there are not as many witnesses. The concern is if we do not have physical evidence like videotapes, how will a jury sort out the case? For murder or terrorism, there should be no statute of limitations on prosecution, but in a sex abuse case, I would have concerns about a truly innocent individual being able to defend himself or herself years down the line.



**Senator Hutchison:**

If these child abuse cases usually happen in secret and the prosecution is often a swearing match of your word against mine, what prevents the burden of proof beyond a reasonable doubt from protecting the defendant?

**Mr. Yeager:**

If you are being charged with a crime that allegedly happened 30 years ago, and you have a witness on the stand saying, "Yes, this person abused me sexually," that kind of testimony is sympathetic for a jury. Especially in light of cases in our news recently, including the coach Jerry Sandusky case at Penn State. Those witnesses tend to be very sympathetic. My concern is that even if the defendant pleads innocent, and if they are truly innocent, it is a difficult situation for a jury to decide. In an ideal world, a jury listens to a case, weighs it and decides that reasonable doubt has not been met, so they acquit. However, the sympathy factor, especially if someone is a good witness, can sway a jury beyond reasonable doubt.

**Senator Ford:**

I have two questions. First, do you know what other states do in this regard? My colleague says many states, maybe half, have done this legislation. What do you think of that?

Second, I cannot help but think of my own children when I think about this type of crime and how the memory of an event this traumatic could be suppressed, or they might not choose to share the information with their mother or me. Ultimately, I would want that individual prosecuted when we found out about it. I understand the purpose of these types of statutes of limitations is to allow two things; No. 1, the perpetrator could proceed with his or her life, hopefully get rehabilitated without the fear of prosecution hanging over his or her head for something he or she did 20 years ago. And No. 2, there is a component of personal responsibility if someone knows that something was done to him or her. Victims have a personal responsibility to report the crime. What are the other rationales for the statute of limitations?

**Mr. Yeager:**

You are right with your two points. The other rationale behind statute of limitations is that as time goes by, it becomes more difficult to get to the truth because memories fade, evidence goes away and witnesses cannot be found. In criminal law, we want the system to get to the truth. The further away we get

from the event, the more difficult it becomes to get to the truth because we are relying on ineffective evidence or stale memories and old police work. My concern with this bill is that if someone is wrongfully accused and has limited means to defend himself or herself, coupled with the difficulties in evidence and witnesses and the emotional nature of the case itself, it would put an innocent person in a difficult situation.

**Senator Ford:**

I am not convinced this is a problem unique to this form of crime. If there are other rationales we should consider, I would like to know them.

**Vanessa Spinazola (American Civil Liberties Union of Nevada):**

There is one additional rationale for the statute of limitations, and that is closure for the victim. Not every victim wants to talk publicly about what happened to him or her. In some cases, there is a sense of relief when the statute of limitations passes because there is no more pressure on him or her to go public with the story.

Another difference between sexual abuse and the other two crimes is that in murder, the victim is dead; in an act of terrorism, the victim is either dead or there are numerous other people who witnessed the crime. Sexual abuse is a crime that relies on a victim's testimony, so it does become a swearing match, which is how it is different in prosecution from the other two crimes.

The Catholic Church has been the object of much publicity about young men and boys being victimized by priests and other clergy in authority. Many of the victims did go public and tell what happened to them. It was not an issue of statute of limitations. The same thing happened in cases involving the Boy Scouts of America. The issue in both cases involved an institutional cover-up. Extending the statute of limitations, which would create its own problems, may not be the best way to solve this problem. It is a greater problem than we can solve in this way.

**Senator Jones:**

You referenced the Catholic Church and the Boy Scouts, but people were coming forward and prosecuting civil cases, not criminal cases. I do not understand the logic of comparing the two.

**Ms. Spinazola:**

The logic is that people did come forward to talk to other members of the Church within the existing statute of limitations. Many were encouraged by people they trusted not to go to the police. The issue is that the statute of limitations could be endless and these individuals would still be encouraged not to go to the police.

**Senator Jones:**

But if those offenses would have occurred here in Nevada and the time period for prosecuting them had passed, would there be no criminal liability for those who perpetrated those offenses?

**Ms. Spinazola:**

Yes.

**Senator Jones:**

There is a different rationale between a civil case, where people come forward to expose the practice, and a criminal case, where people actually go to jail for committing serious offenses against children.

**Ms. Spinazola:**

That is correct.

**Chair Segerblom:**

Anyone who knows the crime took place would have to come forward by age 21. If this bill became statute, the person could wait until age 40 or 50 and then come forward.

**Wesley Goetz:**

I did a lot of research about sex offenders when I was in prison. Here is a passage of a letter I wrote in 2006 to an official:

Through all my research I found out that 60 to 80 percent of sex offenders were sexually abused on at least one occasion when they were children, and as many as 95 percent of sex offenders have been physically or emotionally abused or neglected. Would you not think you would want the best qualified psychologist, that is licensed by the State of Nevada, to work in a prison setting to professionally assist sex offenders who need help in guiding them

through their healing process to restore them to a state of normalcy or health with their psychological problems that started in their childhood? These sex offenders have probably not ever dealt with their childhood psychological problems and would need an expert who has the proper training, adequate education and experience to succeed in helping these sex offenders in their healing process, which can take years of psychotherapeutic services. Each sex offender would need a unique technique in an individual sex offender treatment plan to help them in healing their childhood psychological problems because each sex offender was unique in living through their dysfunctional family problems.

I read you this because many sex offenders in prison were themselves sexually abused. If they were abused by a friend or relative, they should be able to go to a district attorney and say, "This happened to me 20, 30, 40 years ago, I just dealt with it in treatment in prison." Can that district attorney then bring suit against the alleged perpetrator? Are you going to put that money into all the sex offenders who were sexually abused before they became abusers, since they were copying what they lived through? Do they get that constitutional right to report that so the perpetrator would also go to prison with them?

**Chair Segerblom:**

They would be able to present that evidence to the district attorney who could then prosecute.

**Mr. Goetz:**

Does that district attorney go to the prisons and listen to all the sex offenders?

**Chair Segerblom:**

I cannot answer that.

**Mr. Goetz:**

A U.S. Supreme Court case, *Turay v. Selig*, 108 F.Supp.2d 1148 (2000), applies to sex offenders. It says that lack of funds, staff or facilities cannot justify a state's failure to provide those confined with treatment necessary for rehabilitation.

I do not think we are putting enough funds into treating sex offenders while they are in prison so if they do get out, they could be living in normalcy.

**Chair Segerblom:**

I will close the hearing on S.B. 103 and open the hearing on S.B. 37.

**SENATE BILL 37**: Revises provisions relating to the destruction or theft of certain property. (BDR 15-261)

**Wes Henderson (Executive Director, Nevada League of Cities and Municipalities):**

I have submitted my written testimony ([Exhibit C](#)). This bill will help us prosecute people who remove or destroy property in the process of stealing scrap metal from utilities and municipalities. It is a growing problem for us. Clark County has an amendment ([Exhibit D](#)) for this bill that we consider a friendly amendment.

**Senator Hutchison:**

Why not include private parties in this bill? I know there is a lot of theft going on for municipalities and utilities, but would you have an issue with including private property?

**Mr. Henderson:**

No, we would have no problem with that.

**Mr. Jones:**

We support this bill with the friendly amendment. It just adds the word "or storm water and drainage facilities" to the bill to clarify that storm drain covers are included in this bill.

**Senator Hutchison:**

Do you have a problem including private property owners in this bill?

**Mr. Jones:**

No.

**Megan N. Salcido (Office of the City Manager, City of Reno):**

We support this bill. The City of Reno has had quite a problem with people stealing public property. In fiscal year 2011-2012, the loss to the City was \$103,000; and so far this year, we are down \$97,000 in stolen property. We also support the amendment from Clark County.

**Chair Segerblom:**

Have you had a hard time prosecuting individuals?

**Ms. Salcido:**

I am not aware of the specific issues with prosecution, just the costs to the City including staff time and supplies.

**Chair Segerblom:**

Do you have a problem expanding this to include private individuals?

**Ms. Salcido:**

No.

**Kristina L. Swallow, P.E. (Engineering Program Manager, City Engineer Division, Department of Public Works, City of Las Vegas):**

We support this bill. In 2011, we had more than \$191,00 in costs associated with this kind of theft. Through November 2012, we accumulated more than \$170,000. We did receive some federal funding to mitigate and prevent some of the theft, but we still incurred great losses.

**Terry Graves:**

I represent three scrap metal processors that are private entities. If there were provisions in S.B. 37 for private companies, we would enthusiastically support this bill. My clients are also victims of these crimes. I worked on A.B. No. 233 of the 75th Session when scrap metal theft became a real problem. At that time, scrap metal prices were high and utility companies and government agencies were suffering many problems with theft. One of the main things we did with that 2009 legislation was to add the provision that repairs for the damages caused when the theft occurred were included in the value of the scrap metal stolen. This way, the victims were reimbursed for the items lost as well as the damage incurred. Frequently, \$500 in scrap metal would be stolen and in the process, \$20,000 in damages would be done. That change raised the crime from a misdemeanor to a felony in some cases and was the most valuable part of that legislation.

We intend to bring another modification to statute. For the past year, a working group of scrap metal processors and representatives from the Las Vegas Metropolitan Police (Metro) have been working on legislation that would provide

for using technology to track thefts and enable Metro to catch more of the thieves while in the process of executing a crime.

**Craig Madole (Senior Associate, Nevada Chapter of The Associated General Contractors of America, Inc.):**

I represent more than 250 contractor, associate and professional members of the Nevada Chapter of The Associated General Contractors of America, Inc. We support this bill.

**Chair Segerblom:**

I would like to ask our Committee Counsel, Nick Anthony, to explain why he thinks this bill already covers private industry.

**Nick Anthony (Counsel):**

In section 2 of the bill, NRS 205.267 already covers private individuals under subsection 1: "A person who intentionally steals, takes and carries away scrap metal or utility property ...", so within that specific subsection we are already addressing anyone other than a utility property. By adding "utility property," we bring some of those governmental entities into section 2 of the bill.

**Senator Hutchison:**

Sounds persuasive to me, and I would never argue with the Committee's legal counsel.

**Warren B. Hardy II (City of Mesquite; Associated Builders and Contractors Nevada Chapter; SA Recycling LLC):**

We support this bill, especially with Mr. Anthony's clarification that this includes the private sector. We appreciate the focus on the penalty. We work with Metro and have monthly talks about these crimes and what we can do to prevent theft. The enhanced penalties associated with this bill will hopefully go a long way to curtail this activity.

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**Chair Segerblom:**

I will close the hearing on S.B. 37 and adjourn the meeting of Senate Judiciary at 9:51 a.m.

RESPECTFULLY SUBMITTED:

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Linda Hiller,  
Committee Secretary

APPROVED BY:

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Senator Tick Segerblom, Chair

DATE: \_\_\_\_\_



<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	4		Attendance Roster
S.B. 37	C	1	Wes Henderson	Testimony
S.B. 37	D	2	Wes Henderson	Proposed Amendment from Michael Murphy