

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
May 7, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 9:38 a.m. on Thursday, May 7, 2015, in Room 2149 of the Legislative Building, Carson City, 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 Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Michael Roberson (Excused)
Senator Tick Segerblom (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman P.K. O'Neill, Assembly District No. 40

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Julia Barker, Committee Secretary

OTHERS PRESENT:

Sally Ramm, Elder Rights Attorney, Aging and Disability Services Division,
Department of Health and Human Services
Brian O'Callaghan, Las Vegas Metropolitan Police Department
Kristin Erickson, Nevada District Attorneys Association
Barry Gold, AARP

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Julie Butler, Division Administrator, General Services Division, Department of Public Safety

Chair Brower:

I open the meeting of the Senate Committee on Judiciary with the hearing on Assembly Bill (A.B.) 223.

ASSEMBLY BILL 223 (1st Reprint): Revises provisions governing certain crimes against older persons and vulnerable persons. (BDR 15-566)

Assemblyman P.K. O'Neill (Assembly District No. 40):

Assembly Bill 223 clarifies law related to elder abuse for law enforcement, courts and the public by better defining elements of each crime associated with our elder population. According to the U.S. Census Bureau, the Nevada estimated population in 2013 was 2.8 million. Thirteen percent or 366,000 were over the age of 65. The FBI Uniform Crime Report—*Crime in the United States, 2013*—indicated over 6,500 crimes were committed against the elderly in Nevada. A friendly amendment was included in the first reprint of the bill. There is extreme interest in elderly abuse. Elder rights attorney Sally Ramm and I combined efforts to create this bill.

Sally Ramm (Elder Rights Attorney, Aging and Disability Services Division, Department of Health and Human Services):

Assembly Bill 223 adds elements to crimes of abuse, neglect and exploitation of older and vulnerable people. This gives the public more notice of what constitutes elder abuse and could increase the prosecutions of crimes against older and vulnerable persons.

This bill adds abandonment as a crime. This means desertion or withdrawal of care of an older or vulnerable person in an unsafe manner by a caretaker or other person with a legal duty of care. It adds infliction of psychological or emotional pain and nonconsensual sexual contact of an older or vulnerable person to the description of abuse. It clarifies the meaning of undue influence to include improper use of power or trust in a way that deprives a person of his or her free will, substituting objectives of another person. It includes permitting any of the acts of abuse or isolation in the description of those crimes. That is if someone stands by and permits the crime to happen.

It adds manager of a facility to the list of people who can be held responsible for neglect of an older or vulnerable person. It moves self-neglect out of the specific criminal statute of neglect, putting it into the description of protective services, because self-neglect is not actually a crime. This preserves the ability of Elder Protective Services of the Department of Health and Human Services to investigate self-neglect cases.

The bill allows the redaction of the name and any identifying information of a reporter of abuse, neglect, exploitation, isolation or abandonment of an older or vulnerable person when reports are made available. This allows confidential reports to be provided to certain individuals and entities.

This bill has the support of the district attorneys in Clark and Washoe Counties, public defenders in Clark and Washoe Counties, and law enforcement.

Senator Ford:

I have litigated cases protecting the elderly from abuse. It gives me goose bumps to think about what we are trying to do.

Brian O'Callaghan (Las Vegas Metropolitan Police Department):

I am speaking on behalf of Lieutenant Eric Spratley from the Sheriff's Office in Washoe County, Bob Roshak from the Nevada Sheriffs' and Chiefs' Association, and the Las Vegas Metropolitan Police Department. We support A.B. 223.

Kristin Erickson (Nevada District Attorneys Association):

The Nevada District Attorneys Association supports A.B. 223. It is an important bill to fill a gap in law.

Barry Gold (AARP):

I have submitted my testimony in support of A.B. 223 ([Exhibit C](#)).

Chair Brower:

I close the hearing on A.B. 223 and open the hearing on A.B. 224.

ASSEMBLY BILL 224 (1st Reprint): Revises provisions governing records of criminal history. (BDR 14-977)

Assemblyman P.K. O'Neill (Assembly District No. 40):

Assembly Bill 224 will take our criminal justice system into the twenty-first century by giving it access to the latest technologies and assisting various components of the criminal justice community.

Julie Butler (Division Administrator, General Services Division, Department of Public Safety):

The General Services Division of the Department of Public Safety houses the Central Repository for Nevada Records of Criminal History which maintains a statewide record of Nevada arrests and dispositions. I requested this bill be brought forward on behalf of the Repository and statewide law enforcement as a housekeeping measure. It will allow Nevada to keep up with evolving technologies for accurate identification of people.

This bill amends *Nevada Revised Statute* (NRS) 179A.075, authorizing the Division to submit one or more of a person's fingerprints to the FBI for purposes of mobile identification; a complete set of fingerprints for criminal arrest booking purposes, employment, contractual services or services related to occupational licensing; or other biometric identifiers of a person for the purposes of arrest or criminal investigation. The term "other biometric identifiers" is identified in section 1, subsection 9, paragraph (a) to include one or more fingerprints, palm prints, scars, bodily marks, tattoos, voiceprints, facial images, retina or iris images of a person.

The Division would adopt regulations governing collection and use of biometric identifiers, their safeguarding, storage, handling, retention and destruction and the methods by which an individual can remove his or her biometric identifiers.

Approximately 5 years ago, the FBI undertook aggressive modernization of the fingerprint identification system in recognition that the field of biometric identification is expanding and to offer improved identification tools to law enforcement agencies nationwide. This effort is known as Next Generation Identification (NGI) and offers exciting capabilities to improve identification of persons through fingerprints, palm prints, facial recognition, scars, bodily marks, tattoos and iris recognition in some cases.

I have provided a presentation detailing the NGI program ([Exhibit D](#)). The capabilities of NGI have been vetted by the FBI's Office of the General Counsel and developed in consultation with privacy advocates. The FBI prepared a

privacy impact assessment for its NGI program to ensure compliance with the Privacy Act of 1974. That Act established rules governing collection, maintenance, use and dissemination of information about individuals maintained in criminal history systems of federal agencies. The advantage of using a biometric—a physiological characteristic related to the shape of the body—is that such identification provides positive affirmation that an individual is who he or she claims to be. Biometric identification technologies are noninvasive, relying on computerized systems using complex mathematical algorithms to recognize shapes and patterns unique to individuals.

Name-based identification can provide false positives or negatives because names are not unique. If any of you have googled yourselves, chances are that more than one of you came up in the search. The challenge for law enforcement is to verify your identity: to make sure you are who you say you are. A biometric identification system solves that issue.

Assembly Bill 224 establishes authority for the Central Repository to use these expanded biometric capabilities. It does not create a mandate to participate in such technologies. Not all of these technologies are available. The FBI is still perfecting things like scars, bodily marks, tattoos and iris recognition. This bill aligns Nevada statutes with these initiatives so we can take advantage of the capabilities when they are operational and State systems are capable. For the immediate future, we know of at least two Nevada law enforcement agencies that would like to take advantage of mobile identification.

Mobile identification is part of the FBI's NGI program called Repository for Individuals of Special Concern (RISC). I have provided a handout describing RISC ([Exhibit E](#)). It is a subset of the FBI's criminal master file containing names and fingerprints of wanted individuals, sex offender registrants and known or appropriately suspected terrorists. It uses at least two fingerprints scanned by a mobile device approximately the size of a cell phone to help law enforcement determine the level of threat posed by an individual. The officer places the individual's fingers—usually the index finger—on the device and transmits the fingerprints to the FBI through the State Criminal History Repository.

The response returned is either green, yellow or red, based upon fingerprint identification. A green response means there is no match in the RISC repository, a yellow response indicates a possible match and a red response indicates a highly probable match. For yellow and red responses, the officer would take the

individual to the station for submission of a full set of fingerprints to confirm identity status as a wanted person, sex offender, or known or appropriately suspected terrorist.

Repository for Individuals of Special Concern searches submitted from a mobile device are not designed or expected to take the place of customary booking procedures utilizing submission of ten fingerprints. That is the reason for the language in section 1, subsection 6. Users are prohibited from relying only on the RISC response as an impetus for any law enforcement action. Repository for Individuals of Special Concern responses are not considered positive identifications and must be used in tandem with other investigative aids. The FBI requires RISC be accessed by authorized criminal justice personnel for authorized criminal justice purposes consistent with the use of all other data and systems from the FBI.

At present, 21 states and 1 federal agency are participating in RISC. Over 720 state and local agencies are participating. I submitted a map of the FBI's participation rates and projections for 2015 ([Exhibit F](#)). Although a state may be green on the map, not every law enforcement agency in that state has the necessary technology to participate. The green means the state has approval from the state criminal history repository chief to participate.

We were set to implement RISC in Nevada last year but learned statute did not allow it because language only allows for a complete set of fingerprints. This bill remedies that situation. I have provided a presentation of a high profile success story with RISC ([Exhibit G](#)). The North Las Vegas Police Department testified in support of A.B. 224 on the Assembly side and has been looking to implement RISC for several years.

Senator Ford:

Why did Assemblywoman Michelle Fiore, Assemblyman John Moore and Assemblywoman Shelly Shelton vote against this bill?

Assemblyman O'Neill:

I got the sense it was for more philosophical and personal reasons than practical. I would rather not speak for them.

Senator Ford:

I will ask them myself.

Mr. O'Callaghan:

I am also speaking on behalf of Lieutenant Eric Spratley from Washoe County Sheriff's Office, Bob Roshak from the Nevada Sheriffs' and Chiefs' Association, and the Las Vegas Metropolitan Police Department. We support A.B. 224 and expanding and keeping up with new technology.

Ms. Erickson:

The Nevada District Attorneys Association supports A.B. 224. Technology is advancing at a rapid rate, and we applaud this effort to keep up.

Assemblyman O'Neill:

The public defenders spoke in favor of A.B. 224.

Chair Brower:

We will hear from the public defenders if they have any concerns.

Ms. Butler:

We worked on the amendment incorporated in the first reprint with the ACLU of Nevada, and Nevada Eagle Forum and Nevada Families.

Chair Brower:

Let the record reflect [former] Senator Randolph Townsend is in the room. A recent Senate Hall of Fame inductee, it's great to have him here.

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Chair Brower:

I will close the hearing on A.B. 224 and adjourn the meeting of the Senate Committee on Judiciary at 9:58 a.m.

RESPECTFULLY SUBMITTED:

Julia Barker,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 223	C	1	Barry Gold / AARP	Written Testimony
A.B. 224	D	32	Julie Butler / Department of Public Safety	Next Generation Identification Presentation
A.B. 224	E	2	Julie Butler / Department of Public Safety	Repository for Individuals of Special Concern Handout
A.B. 224	F	1	Julie Butler / Department of Public Safety	RISC "Projections" Map
A.B. 224	G	2	Julie Butler / Department of Public Safety	RISC Response Success Story