

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session  
March 13, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:03 p.m. on Friday, March 13, 2015, in Room 2134 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 Greg Brower, Chair  
Senator Becky Harris, Vice Chair  
Senator Michael Roberson  
Senator Scott Hammond  
Senator Ruben J. Kihuen  
Senator Aaron D. Ford

**COMMITTEE MEMBERS ABSENT:**

Senator Tick Segerblom (Excused)

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nick Anthony, Counsel  
Lynette Jones, Committee Secretary

**Chair Brower:**

I will open the work session on Senate Bill (S.B.) 40.

[SENATE BILL 40](#): Prohibits certain acts relating to wagering. (BDR 41-353)

**Patrick Guinan (Policy Analyst):**

I will read from the work session document on S.B. 40 ([Exhibit C](#)). The Committee voted to amend the bill on February 20. The amendment clarifies the activity described in the bill is related to race books and sports pools, illegal

bookmaking and those who facilitate illegal bookmaking. The second part of the amendment revises the bill to match the intent of *Nevada Revised Statute* (NRS) 465.088 concerning Category B felony penalty provisions.

There is a new amendment for the Committee to consider. The amendment was submitted by the Nevada Resort Association with the support of Chair Brower. The proposed amendment adds section 1, subsection 3, which clarifies the provisions do not apply to a licensee who unknowingly accepts a wager from winnings or pays winnings to a person whose actions are unlawful under the bill's provisions.

A Committee member who previously voted on the bill must first make a motion to reconsider the previous action. The Committee will make another motion to amend and do pass the bill to include the previous amendment and the new amendment.

SENATOR FORD MOVED TO RECONSIDER THE ACTION WHEREBY  
S.B. 40 WAS AMENDED AND DO PASSED.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 40 WITH THE ORIGINAL AMENDMENT FROM THE GAMING  
CONTROL BOARD CLARIFYING THE ACTIVITY DESCRIBED IN THE BILL  
AND REVISING THE BILL TO MATCH THE INTENT OF NRS 465.088 AND  
THE AMENDMENT FROM THE NEVADA RESORT ASSOCIATION ADDING  
SECTION 1, SUBSECTION 3 TO THE BILL.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 52.

**SENATE BILL 52**: Revises provisions governing search warrants. (BDR 14-159)

**Mr. Guinan:**

I will read from the work session document on S.B. 52 ([Exhibit D](#)).

**Chair Brower:**

This bill was presented to the Committee on February 9. There are no proposed amendments or concerns regarding the bill.

SENATOR ROBERSON MOVED TO DO PASS S.B. 52.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 53.

**SENATE BILL 53**: Revises provisions relating to certain postconviction petitions for writs of habeas corpus. (BDR 3-156)

**Mr. Guinan:**

I will read from the work session document on S.B. 53 ([Exhibit E](#)). A proposed amendment was received after the creation of the work session document. The amendment was submitted by Brett Kandt, Special Assistant Attorney General, Office of the Attorney General. The amendment revises chapter 209 of NRS by adding a new section to read,

The Director shall adopt regulations to provide for an expedited inmate grievance process when an inmate, within six (6) months of the projected discharge date from his or her final sentence, alleges that the Department has miscalculated the offender's time credits such that he or she should have an earlier projected discharge date.

The Department of Corrections does expedite the grievance process on rare occasions when an inmate challenges the computation of time credits and the discharge date is approaching. To avoid potential liability stemming from the unlawful detention of the inmate past the discharge date, the Office of the Attorney General supports formalizing the practice.

**Chair Brower:**

The Committee had concerns regarding this issue during the hearing. Senator Ford had conversations with the interested parties, and this amendment is the product of those discussions.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 53 WITH THE AMENDMENT FROM THE OFFICE OF THE ATTORNEY  
GENERAL AMENDING CHAPTER 209 OF NRS.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 54.

[SENATE BILL 54](#): Revises provisions governing the commitment and release of incompetent criminal defendants. (BDR 14-334)

**Mr. Guinan:**

I will read from the work session document on S.B. 54 ([Exhibit F](#)). There is a proposed amendment by the Division of Public and Behavioral Health, Department of Health and Human Services, which is supported by Chair Brower. The amendment replaces the list of crimes stricken from the original bill for which a prosecuting attorney may request a hearing.

The amendment states if a comprehensive risk assessment conducted by the Division indicates the person does not need the level of security provided by a forensic facility, the motion shall be dismissed for all Category A felonies, except murder or sexual assault, and for all Category B felonies listed in section 1, subsection 6.

I have a statement from the Division of Public and Behavioral Health that explains the reasoning behind the amendment. The Division states the amendment allows for flexibility in the level of charges that may continue to be considered for commitment of incompetent clients under NRS 178.461.

The amendment restores the original set of charges in statute but with the structure of making all charges, except murder and sexual assault, contingent on the outcome of the clinical risk assessment. This allows the law to be applied for serious offenses and ensures the commitment of individuals to a maximum security forensic facility if they cannot be maintained safely in a less restrictive environment.

**Chair Brower:**

This late amendment is extensive. Is the Committee comfortable with the purpose of the amendment and the specific language?

**Mr. Guinan:**

There is a mock-up of the changes provided by the Division of Public and Behavioral Health. The mock-up is clean, and the explanation is more complicated than the actual changes to the bill. I recommend the Committee review the mock-up provided.

SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 54 WITH THE PROPOSED AMENDMENT FROM THE DIVISION OF  
PUBLIC AND BEHAVIORAL HEALTH, DEPARTMENT OF HEALTH AND  
HUMAN SERVICES.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 55.

**SENATE BILL 55**: Revises provisions governing waiver of the right of a criminal defendant to be present during sentencing proceedings. (BDR 14-432)

**Mr. Guinan:**

I will read from the work session document on S.B. 55 ([Exhibit G](#)). There are no amendments.

**Chair Brower:**

This bill is a cleanup measure and it makes sense.

SENATOR HARRIS MOVED TO DO PASS S.B. 55.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 59.

**SENATE BILL 59**: Revises provisions relating to the state business portal.  
(BDR 7-448)

**Mr. Guinan:**

I will read from the work session document on S.B. 59 ([Exhibit H](#)). We have a proposed amendment on the bill from the Office of the Secretary of State, supported by Chair Brower.

The amendment makes several changes. It removes the mandating language of "shall" and replaces it with the permissive "may" as it relates to the participation of State and local agencies and health districts in the State business portal. The amendment allows for the approval of participation by a local governing board, and it clarifies that the provisions of section 4, subsection 3 do not require a local agency or health district to upgrade its systems to accommodate any requirement to participate.

**Chair Brower:**

The amendment is the product of a good faith effort by the Secretary of State's Office to understand and be sensitive to the concerns of local governments. The proposed amendment has satisfied those concerns.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 59 WITH THE AMENDMENT FROM THE OFFICE OF THE  
SECRETARY OF STATE.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 175.

**SENATE BILL 175**: Makes various changes relating to public safety.  
(BDR 15-515)

**Mr. Guinan:**

I will read from the work session document on S.B. 175 ([Exhibit I](#)).  
Senators Roberson and Brower submitted Proposed Amendment 9766.

**Chair Brower:**

This bill had a full hearing on February 25. The proposed amendment makes significant changes. The Committee was included in discussions about changes.

**Mr. Guinan:**

Proposed Amendment 9766 clarifies in sections 1 and 2 that the bill's provisions apply to occupied habitations and motor vehicles, adds a new definition of "crime of violence," and clarifies language concerning the "rebuttable presumption" created when a person takes defensive action.

Sections 4 and 4.5 of the bill are amended to provide that the Department of Public Safety will determine each year which states require a person to complete training, a class or a program prior to issuing a permit to carry a concealed firearm, and the Department will publish a list of those states. Persons who possess a permit to carry a concealed firearm in states included in the list may carry a concealed firearm in Nevada.

Section 12.5 requires any gun registration records maintained by a political subdivision of the State be destroyed within 1 year of the effective date.

**Chair Brower:**

Senator Roberson, do you support the proposed amendment as the bill sponsor?

**Senator Roberson:**

The process we undertook when considering this bill has been good. We addressed the concerns certain individuals had with the bill. This is a good example of bipartisanship and mutual cooperation.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 175 WITH PROPOSED AMENDMENT 9766.

SENATOR KIHUEN SECONDED THE MOTION.

**Senator Ford:**

There were serious concerns about certain aspects of the bill, specifically the justifiable homicide provisions. The public is dependent upon us to make good decisions. With the proposed amendments, the public can rest assured that we deliberated and came up with a good solution that does not overly endanger the lives of people from any particular race or ethnicity. I will be confident when I vote in support of this bill.

**Chair Brower:**

I agree that the Committee worked well together to make the final language in the bill acceptable.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 192.

**SENATE BILL 192:** Revises provisions relating to sexual conduct between certain persons. (BDR 14-731)

**Mr. Guinan:**

I will read from the work session document on S.B. 192 ([Exhibit J](#)). There is a proposed amendment on the bill from Senator Harris.



**Chair Brower:**

Senator Harris, would you provide a summary of the amendment to the Committee?

**Senator Harris:**

The proposed amendment was not drafted until immediately before today's Committee meeting. I will have Mr. Guinan present the amendment.

**Mr. Guinan:**

Senator Harris proposes to amend the bill in several ways. They are:

- Delete section 7 of the bill regarding a Tier 2 offense.
- Delete section 9 by removing these crimes as an enhancement for a subsequent mandatory sentence of life without the possibility of parole for a sexual assault against a child.
- Revise language in section 10 to clarify these provisions do not apply to sexual conduct between two students.
- Revise language in section 11 to clarify the provisions in this section apply only to students who are attending a college but who are still working toward a high school degree or its equivalent.
- For the purpose of this measure, add clarifying language to the bill that defines a child as anyone under 18 years of age or a student who is 18 years of age and is working to attain a high school degree or its equivalent.

The proposed amendments are in conceptual form, and we do not have a mock-up. The Legal Division, Senator Harris and I have discussed the language, and we are confident the proposed amendment will be drafted as Senator Harris intended.

**Chair Brower:**

The Committee will confirm the final language meets Senator Harris's expectations.

**Senator Harris:**

We are being careful to ensure we do not include 18-year-old college students in this category of offense. The intent is to provide protection for students who are enrolled in high school or attending a cocurriculum program. It is bad policy to protect one class of students and not extend those protections to students who turn 18 before they graduate from high school.

I want a safe and secure environment for all students from kindergarten through high school graduation. This is the complexity of the amendment we are developing. We need to define the language for those we truly intend to protect.

**Senator Ford:**

Senator Harris has a good point, and I support that concept. I would prefer to see the mock-up, but I will support the bill based on the concept presented today. I reserve the right to change my mind once the proposed amendment is finalized.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 192 WITH THE CONCEPTUAL AMENDMENT FROM  
SENATOR HARRIS.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Brower:**

I will open the work session on S.B. 197.

**SENATE BILL 197**: Prohibits the filing of false or fraudulent liens or encumbrances against certain persons. (BDR 15-653)

**Mr. Guinan:**

I will read from the work session document on S.B. 197 ([Exhibit K](#)). Senator Brower proposes to amend the bill. The amendments are in conceptual form rather than a mock-up, but they are specific in the way they are written.

The first part of the proposed amendment deletes subsection 7, paragraphs (e) and (f) to ensure the provisions of the bill apply to members of the judiciary under the definition of public officer and public employee.

The second part of the amendment will revise the penalty provisions on page 3, lines 1 through 4 to read,

For a second or subsequent offense, a Category B felony shall be punished by imprisonment in the State prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years, or by a fine of not more than \$50,000, or by fine and imprisonment.

In regard to a pattern of committing such violations, page 3, lines 8 through 11 will be amended to read,

For a first offense, a Category B felony shall be punished by imprisonment in the State prison for a minimum term of not less than 3 years and a maximum term of not more than 20 years, or by a fine of not more than \$100,000, or by fine and imprisonment.

Page 3, lines 12 through 15 will be amended to read,

For a second or subsequent offense, a Category B felony shall be punished by imprisonment in the State prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, or by a fine of not more than \$150,000, or by fine and imprisonment.

**Chair Brower:**

I will clarify how these proposed amendments came about. The first part of the amendment, with respect to making sure the judiciary is included, came from the judiciary. We want to make sure that judges are included along with other types of public officials.

The second part of the amendment, with respect to the changes in the penalty provisions, was proposed by public defenders from Clark and Washoe Counties who expressed reservations about the bill as originally drafted. Their proposed change to the penalty provisions was considered and agreed to by law

enforcement officers and department representatives who testified in support of the bill. Despite the apparent minimum terms that exist in the penalty provisions, a person convicted of this crime would be eligible for probation if the judge presiding over the case deemed probation to be the right sentence. A minimum term can appear to be required, but it is not if the judge determines probation to be the better alternative.

**Senator Harris:**

During the hearing, there was discussion to include mediators in the list of protected classes.

**Chair Brower:**

We need to add the word "mediator" or the appropriate language in the bill as part of the proposed amendment.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 197 WITH THE CONCEPTUAL AMENDMENT FROM SENATOR  
BROWER AND INCLUDING MEDIATORS IN THE LIST OF PROTECTED  
CLASSES.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Brower:**

I will close the work session. The hearing of the Senate Committee on Judiciary is adjourned at 1:39 p.m.

RESPECTFULLY SUBMITTED:

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Lynette Jones,  
Committee Secretary

APPROVED BY:

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Senator Greg Brower, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness or Agency</b>	<b>Description</b>
	A	2		Agenda
	B	4		Attendance Roster
S.B. 40	C	2	Patrick Guinan	Work Session Document
S.B. 52	D	1	Patrick Guinan	Work Session Document
S.B. 53	E	1	Patrick Guinan	Work Session Document
S.B. 54	F	6	Patrick Guinan	Work Session Document
S.B. 55	G	1	Patrick Guinan	Work Session Document
S.B. 59	H	5	Patrick Guinan	Work Session Document
S.B. 175	I	6	Patrick Guinan	Work Session Document
S.B. 192	J	2	Patrick Guinan	Work Session Document
S.B. 197	K	2	Patrick Guinan	Work Session Document