

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session
February 27, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:30 p.m. on Monday, February 27, 2017, 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 Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

GUEST LEGISLATORS PRESENT:

Senator Joseph P. Hardy, Senatorial District No. 12

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Kate Ely, Committee Secretary

OTHERS PRESENT:

Kimberly M. Surratt, Nevada Justice Association
Melissa L. Exline, Nevada Justice Association
Shawn Murphy
Jon Dalton
James Ringel
David Tristan, Deputy Director, Programs, Nevada Department of Corrections

Senate Committee on Judiciary
February 27, 2017
Page 2

Jennifer Noble, Deputy District Attorney, Washoe County District Attorney's Office; Nevada District Attorneys Association
Sean B. Sullivan, Office of the Public Defender, Washoe County
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Laurel Stadler, Rural Coordinator, Northern Nevada DUI Task Force
Chuck Callaway, Las Vegas Metropolitan Police Department

CHAIR SEGERBLOM:

I am going to rerefer Senate Bill (S.B.) 181 to the Committee on Health and Human Services. I will take a motion.

SENATE BILL 181: Revises provisions governing certain alcohol and drug abuse programs. (BDR 16-513)

SENATOR FORD MOVED TO REREFER S.B. 181 TO THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:

I am going to introduce Bill Draft Request (BDR) 2-512. I will take a motion.

BILL DRAFT REQUEST 2-512: Revises provisions relating to civil actions. (Later introduced as Senate Bill 230.)

SENATOR CANNIZZARO MOVED TO INTRODUCE BDR 2-512.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:

We will open the hearing on Senate Bill 133.

SENATE BILL 133: Revises the Uniform Deployed Parents Custody and Visitation Act. (BDR 11-571)

SENATOR BECKY HARRIS (Senatorial District 9):

Senate Bill 133 will apply to civilian employees of the United States Department of Defense (DOD). Department of Defense employees deploy and aid the military in overseas actions and have seen increased activity. Civilian employees will receive the same protections as military service members in proceedings related to custodial responsibility. These protections for deployed parents exist in the Uniform Deployed Parents Custody and Visitation Act. The proposed changes carve out a separate definition for civilian employees, but gives them the same protections in a pending custody action.

KIMBERLY M. SURRATT (Nevada Justice Association):

There has been good input from members of the Family Law Section of the State Bar of Nevada regarding these provisions for families in military circumstances.

MELISSA L. EXLINE (Nevada Justice Association):

A civilian employee of the DOD deploys and performs the same duties as a military service member. It was discovered that a civilian employee did not fall squarely within the statutory definitions that would convey to a civilian employee certain protections for deployed military service members in custody matters. It made sense to grant the same protections a deployed military service member has in child custody matters to civilian employees. A civilian employee fundamentally performs the same duties as a military service member as illustrated in the following witness testimony.

SENATOR GUSTAVSON:

Has the Uniform Deployed Parents Act been adopted in all states?

Ms. SURRATT:

The goal of uniform acts is for adoption by all states, but states do not have to adopt a uniform act. Some states will modify the language of a uniform act through their legislative process. Nevada's language may be different.

SENATOR GUSTAVSON:

This is a good bill and I support it.

SHAWN MURPHY:

After 20 years in the Marine Corps, I continued to serve with the DOD as a civilian employee. When marriage difficulties emerged as a result of continued deployments, I learned that I did not have the same protections as a military service member with respect to child custody and responsibility issues in a divorce matter.

Whether individuals are military personnel, or civilians, they are fighting for their Country side by side. I support this bill and believe civilian employees should have the same protections as military service members because they are doing the same job when they are deployed.

JON DALTON:

The following statements are personal in nature and are not those of the DOD or the Department of the U.S. Navy.

I am a 22-year active duty Navy Seal stationed at Fallon. I have been deployed several times throughout my military career and have served side by side with civilian employees. Civilian employees, when they are deployed, face the same deployment challenges as active duty personnel while deployed. They serve in similar military environments as active duty personnel, including a forward operating base. These are bases that can be high risk environments. Both active duty and DOD civilians face grave danger on an almost daily basis. In these settings, if there is communication, it can be limited. Deployments can be anywhere from 6 to 12 months, 7 days a week and sometimes for 12 to 18 hours a day. Department of Defense civilian employees are a critical component to the military while deployed, and they are a critical element to functionality. I support the bill and believe civilian employees should have the same protections as military service personnel.

MS. EXLINE:

This is a fair and measured approach. We are adding civilians under this definition to ensure they have the same rights if they are deployed and are in an environment where they cannot participate in a divorce or child custody action.

CHAIR SEGERBLOM:

Do the civilians have documents that say they are being deployed?

MS. EXLINE:

Yes. They are issued orders.

CHAIR SEGERBLOM:

We will close the hearing on S.B. 133 and open the hearing on S.B. 140.

SENATE BILL 140: Authorizes the residential confinement or other appropriate supervision of certain older offenders. (BDR 16-798)

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):

In an incarceration environment, it is to either punish, protect and sometimes rehabilitate. This is the premise from which S.B. 140 emanates.

JAMES RINGEL:

Statute allows the Director of the Nevada Department of Corrections (DOC) to grant residential confinement for inmates who are in extremely poor health or who are in ill health and expected to pass within 12 months. Senate Bill 140 would allow the Director to grant residential confinement or other appropriate supervision of inmates who are 65 years or older, have not been convicted of violent crimes and have served at least a majority of the maximum terms of their sentences.

If this bill is passed, one advantage would be fiscal savings. Some estimates from different groups place the cost of medical care for inmates 55 and over at 2 to 3 times the cost for younger inmates. In a study done by the U.S. Office of the Inspector General, it was found that elderly inmates, on average, cost approximately 8 percent more to incarcerate per year. In fiscal year (FY) 2012-2013, prisons with the highest percentage of aging inmates spent an average of \$10,000 per inmate, per year on medical costs, while prisons with the lowest percentage spent an average of \$2,000 per inmate per year. In Nevada, the State spent approximately \$3,300 per inmate per year for medical purposes.

According to the DOC's budget statistics, it costs approximately \$20,700 to house each inmate every year.

The U.S. Office of the Inspector General also found that elderly convicts had a recidivism rate of 15 percent while younger parolees had a recidivism rate near 50 percent. Several studies have shown older inmates who are released are

unlikely to reoffend. In one study, prisoners over the age of 50 who were released had a recidivism rate of 10 percent and those over the age of 55 years had a recidivism rate of 2 percent.

CHAIR SEGERBLOM:

Can we go below 65 years of age? Is there a reason for 65?

SENATOR HARDY:

If you look at the linearity of recidivism, the older an individual becomes the less likely that individual will go back to prison. This applies to the age of 65 years, but looking at individuals aged 62 years, 60 years, the older they get the safer they are. There are 495 inmates between the age of 65 years and 90 years, and of those, 132 are in the appropriate age group cohort without violent offenses. Of the inmates who would actually be eligible under this law, there would be two inmates that would satisfy all the requirements. If the age were lowered, there would be more inmates who would qualify.

CHAIR SEGERBLOM:

There are only two eligible inmates?

SENATOR HARDY:

Yes.

SENATOR FORD:

It is concerning that only two inmates would benefit from this bill.

SENATOR HARDY:

Yes. I am amenable to a proposal and would consider a lower age.

SENATOR GUSTAVSON:

Does the Director of the Department of Corrections have this authority?

MR. RINGEL:

The statute only allows for the Director to grant residential confinements and required supervision to inmates that are either very ill or ill with a type of condition that is fatal and death may occur within 12 months. They are not allowed to grant residential confinement simply because of age or type of the offense.

SENATOR CANNIZZARO:

Is there any information with respect to inmates younger than 65 years? If so, how many people would fall within that age qualification? Are there statistics in that regard?

SENATOR HARDY:

There is information available from the Department of Justice, and statistics for a lower age could be produced. The request was specifically for 65 years.

CHAIR SEGERBLOM:

Are inmates eligible for Medicare when they turn 65 years?

SENATOR HARDY:

When an individual is incarcerated and becomes eligible, the inmate can apply for Medicaid. If the inmate is released, the Medicaid benefits are in place. By the same token, if an inmate qualifies for Medicare, an inmate is eligible to apply for Medicare when released.

DAVID TRISTAN (Deputy Director, Programs, Nevada Department of Corrections):
The Nevada Department of Corrections is neutral.

JENNIFER NOBLE (Deputy District Attorney, Washoe County District Attorney's Office; Nevada District Attorneys Association):

In the Nevada District Attorneys Association friendly amendment ([Exhibit C](#)) to this bill, section 1, subsection 1, paragraph (c) provides that persons who had been convicted of sex offenses are not included in the persons eligible for residential confinement. Unlike many other violent offenses, individuals who have committed sex offenses may continue to prey upon children even if they are infirm to some degree. Children are likely to trust elderly individuals and may become victims.

SENATOR FORD:

Are all sex offenses considered crimes of violence?

MS. NOBLE:

I believe they are not.

CHAIR SEGERBLOM:

My concern is that we may be lumping everything together. Many people are incarcerated with multiple convictions on their records which could be minor sex offenses which would not be threats to a community. The blanket use of sex offense is my concern.

SEAN B. SULLIVAN (Office of the Public Defender, Washoe County):

We support the bill. We are willing to continue working with Senator Hardy and with the district attorneys to address any concerns the Committee might have.

CHAIR SEGERBLOM:

Are there degrees, or severity, of sex offenses?

MR. SULLIVAN:

Yes. An example would be indecent exposure. Someone may engage in indecent exposure as a college prank. This would not be considered a crime of violence.

CHAIR SEGERBLOM:

Can there be language crafted that would specifically state sex offenses that qualify as crimes of violence and those that are less severe like the indecent exposure example you provided?

MR. SULLIVAN:

Yes, we could work with the district attorneys on this point.

MS. NOBLE:

We can review those offenses outlined in *Nevada Revised Statutes* (NRS) 179D in preparing the amendment. These are individuals who are required to register as sex offenders. We are willing to continue working toward a solution that could benefit everyone.

SENATOR CANNIZZARO:

Section 1, subsection 1, paragraph (b) and the proposed paragraph (c) of the bill would have to apply to the sentences that inmates are currently serving, not the entirety of their criminal history as a whole. Does that require additional language?

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):

We have concerns with section 1, subsection 1, paragraph (b). We did not want people to be excluded for a misdemeanor battery committed 20 years ago and are serving a sentence for a different offense. We would not want that to preclude them to getting out. We support the bill in its current form and are willing to continue working with Senator Hardy and the district attorneys to make changes.

SENATOR CANNIZZARO:

Does eligibility focus on the sentences inmates are currently serving?

SENATOR HARDY:

In section 1, subsection 1, paragraph (c), lines 12 and 13 state: "Has served at least a majority of the maximum term or maximum aggregate term, as applicable, of his or her sentence."

SENATOR GUSTAVSON:

How many of these minor sex offenders are actually serving time for a minor offense?

SENATOR HARDY:

Your concern is valid. The language should be clarified.

SENATOR DENIS:

Was the research based on age and not so much the amount of time served?

SENATOR HARDY:

Two issues were analyzed. One is the age factor, and it is critical. As individuals age, they are less inclined to do a lot of things, including committing wrongdoing. With regard to the crime committed, that is another issue. If you were given 20 years in prison and 10 years were served and now you are 65, what are you going to do with that? Is another 10 years of incarceration going to protect the public, or is it going to punish an individual more than he or she has already been punished? If the majority of a judicially determined term has passed and the individual is over the age of 65, that individual is not a bad risk. There are longitudinal studies focused on the why we are keeping these people in prison.

SENATOR DENIS:

Why is 65 years the magic number?

SENATOR HARDY:

It was a magic number that would pass because it would be hard to argue about.

LAUREL STADLER (Rural Coordinator, Northern Nevada DUI Task Force):

The concept of residential confinement was first addressed in 1991 and was specifically for DUI offenders. It was a successful program for DUI offenders because it had strict criteria that was enforced. A DUI offender could be remanded back to prison if the offender did not follow the residential confinement conditions. It was very narrow, just for DUI offenders, but it expanded to other offenders, and now compassionate leave has been created for those inmates who are very ill. The concept acknowledges an inmate's need to die and be comfortable at home. However, victims of drunk driving did not get to choose where they died.

Another concern relates to popular phrases such as "65 is the new 45," meaning 65 is just not that old anymore. Many individuals aged 65 have energy and are still active.

A DUI offense that results in death or substantial bodily harm has not been considered a crime of violence. In section 2, subsection 9 of the bill, the language does not specifically refer to a DUI offense, such as vehicular homicide. We are seeking consideration for language to that effect be included.

SENATOR GUSTAVSON:

If language of that nature were included, would you support the bill?

Ms. STADLER:

Yes.

SENATOR ROBERSON:

I agree that a DUI which causes death or substantial bodily harm to others should be considered a violent crime.

MR. TRISTAN:

The Nevada Department of Corrections is neutral on this amendment.

CHAIR SEGERBLOM:

Are there only two inmates that would be eligible for this?

MR. TRISTAN:

Yes. When you combine the element of a violent offense and the time served criteria, it really reduces the number of individuals who would be eligible for release.

CHAIR SEGERBLOM:

Considering the majority of maximum terms or aggregate terms, are you saying the time served criteria makes it difficult?

MR. TRISTAN:

Yes, with the current population.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

On one hand, the bill as written would impact a small number of inmates. We are seeing a rise in violent crime in juvenile offenders. I know that this bill does not address violent criminals. Allowing people early release based solely on their age would be opening a can of worms if we consider reducing the age qualification. Early release based solely on someone's age is a proper thing in the criminal justice system. The current statute addresses illnesses or an inmate's age category, and the Director already has that discretion to release inmates who are eligible.

I do support language for an amendment that would specifically include certain sex crimes. We should not consider age alone, but the criminal history, repeat offenders, multiple arrests in the past and time served.

I do agree with concerns raised by the opposition regarding DUI victims.

I support the concept Senator Hardy raises, although I struggle with some of the facts that surround it.

MR. RINGEL:

The concerns regarding DUI and sexual offenses are important. We are open to further discussions with respect to language.

SENATOR ROBERSON:

What about raising the age qualification to 90?

SENATOR HARDY:

There is a need to allow a victim to have closure. There is obviously a need that somebody has been appropriately punished. I struggle with at what point that is necessarily done in the way of punishment or protection and certainly rehabilitation.

With respect to DUI offenses, it is an addiction process and it does not take too much to see there is violence in this situation. The trauma is not limited to just the victim; it extends to the family and trauma experienced by future generations.

Moving from the age of 65, we may not be able to see the effects of the bill. If we keep it at 65 we will have two opportunities to see how it works.

SENATOR ROBERSON:

For white collar offenders such as Bernie Madoff, the crime was not a violent crime, but it created real harm to many people. I do not think a Bernie Madoff should get out early for his prison sentence simply because of his age.

SENATOR HARDY:

I do not think Mr. Madoff's sentence was a short one.

SENATOR ROBERSON:

Let us say it was a 40-year sentence, and he served 20 years. I do not think the general public would want to see someone released when half of his sentence is served. I am concerned that we are taking this prerogative away from the Judicial Branch and making these decisions on a case-by-case basis.

SENATOR FORD:

The Division of Parole and Probation has the discretion and the statutory language that says "may" assign an offender. There is no requirement or dictate that the two people currently eligible will be allowed on residential confinement.

CHAIR SEGERBLOOM:

It costs \$25,000 a year to keep somebody in prison. What benefit is there to waste those resources on people who we really know are not going to commit

Senate Committee on Judiciary
February 27, 2017
Page 13

any crimes in the future? Half their sentences are served, they have been punished enough, but at this point we are punishing ourselves.

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Senate Committee on Judiciary
February 27, 2017
Page 14

CHAIR SEGERBLOM:
The hearing is closed at 2:41 p.m.

RESPECTFULLY SUBMITTED:

Kate Ely,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

| EXHIBIT SUMMARY | | | | |
|-----------------|-------------------------|---|---------------------------------------|--------------------|
| Bill | Exhibit / # of pages | | Witness / Entity | Description |
| | A | 1 | | Agenda |
| | B | 3 | | Attendance Roster |
| S.B. 140 | C | 2 | Nevada District Attorneys Association | Proposed Amendment |