

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
February 11, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:06 a.m. on Monday, February 11, 2019, in Room 2135 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 Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Committee Counsel
Jeanne Mortimer, Committee Secretary

OTHERS PRESENT:

Aaron Ford, Attorney General
Jessica Adair, Chief of Staff, Office of the Attorney General
Heather Procter, Chief Deputy Attorney General, Office of the Attorney General
Jennifer Noble, Washoe County District Attorney's Office; Nevada District Attorneys Association
John J. Piro, Office of the Public Defender, Clark County
Kendra Bertschy, Office of the Public Defender, Washoe County
Kristina Wildeveld, Nevada Attorneys for Criminal Justice
Holly Welborn, American Civil Liberties Union of Nevada

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CHAIR CANNIZZARO:

The meeting will begin with a presentation from the Office of the Attorney General.

AARON FORD (Attorney General):

I have provided written testimony to the Committee ([Exhibit C](#) and [Exhibit D](#)).

SENATOR HANSEN:

I hear common complaints about violations of the public records law. I have more people frustrated with this law and the perceived failure of government agencies. Can you please address how your office will handle these complaints?

ATTORNEY GENERAL FORD:

The Attorney General is responsible for advising Nevada agencies on the public records law. My office has the intention and focus of being as transparent as possible. We advise our clients to be as transparent as possible. There are issues that can be addressed to me directly.

SENATOR HANSEN:

For example, Humboldt General Hospital had an employee who was not permitted access to certain public records. I got the impression that the previous Attorney General did not pay much attention to smaller issues. I had quite a few complaints with different agencies over the course of my five terms as a State Legislator. Where does the consumer advocate position fit into this process? The agencies are represented by attorneys who are paid for by taxpayers; private citizens are forced to hire their own attorneys. Is there a consumer protection advocate who can act as a liaison to avoid forcing a private citizen from having to hire his or her own attorney for minor agency issues?

ATTORNEY GENERAL FORD:

The consumer advocate's job is in the consumer advocate arena. The job is not to represent private citizens.

SENATOR HANSEN:

I know this was not a part of your presentation; however, I want us to come up with a mechanism to avoid some of these problems. We need legal protection for ordinary folks who have issues with Nevada agencies.

ATTORNEY GENERAL FORD:

My philosophy is that our job is justice. My office will be advising clients from a justice perspective. If we have an opportunity in advisement to do something differently that results in a better outcome, we will go in that direction. Our citizens will be protected by interactions with government. I will ensure that our government is interacting with citizens in a fair manner.

SENATOR HANSEN:

I represent 130,000 people. I want them to know I have asked this question of the Attorney General.

JESSICA ADAIR (Chief of Staff, Office of the Attorney General):

There is a unit dedicated to constituent services that receives complaints online, by mail, walk-in or phone call. In 2018, my office fielded over 20,000 complaints. If any of your constituents need to contact my office, there is a process to receive complaints. These complaints are referred to the investigation team. If the complaint is outside the jurisdiction of what the office is allowed to address, we forward it to the proper agency or a local jurisdiction.

SENATOR OHRENSCHALL:

Can you make a statement on the plutonium shipped to Nevada by the federal government last month? I understand that some information may still be confidential. I know Nevada filed an injunction in court. What do you see your role as in terms of federal and State relations?

ATTORNEY GENERAL FORD:

This issue will be litigated in court. My office will vigorously object to the shipment of plutonium sent by the federal government to Nevada. Nevada did not prevail in the U.S. District Court for the District of Nevada on the motion for preliminary injunction that was filed in November 2018. I believe Nevada did not prevail on that motion because the plutonium had already been shipped.

The Office of the Attorney General subsequently filed a motion for stay from the denial of preliminary injunction in the U.S. Court of Appeals for the Ninth Circuit to prevent future plutonium from being shipped to Nevada. My office wants to bring a unified front against the federal government on this particular issue. The Office of the Attorney General will not stand for Nevada to be the dumping ground of nuclear waste for the rest of the Country.

SENATOR PICKARD:

Can you please explain the sovereign citizen movement that you described as a domestic terroristic threat?

ATTORNEY GENERAL FORD:

The definition of a sovereign citizen is a person who considers oneself sovereign and believes he or she is not subject to state or federal laws. Sovereign citizens have their own tribunals and use illegal court systems. This group issues death warrants against police officers. We must be cautious when interacting with members of this group and ensure that resources are available to defend against domestic terrorists. Recently, the Attorney General accepted guilty pleas from a husband and wife who were self-proclaimed sovereigns who engaged in illegal activities.

SENATOR PICKARD:

Do you know how many people are in the sovereign citizen movement group?

ATTORNEY GENERAL FORD:

I do not have an exact number.

CHAIR CANNIZZARO:

The hearing for Senate Bill (S.B.) 3 is now open.

SENATE BILL 3: Revises provisions governing postconviction petitions for a writ of habeas corpus that challenge the computation of time served in incarceration by an offender. (BDR 3-411)

HEATHER PROCTER (Chief Deputy Attorney General, Office of the Attorney General):

I have provided written testimony to the Committee ([Exhibit E](#)).

Previously, section 4 of S.B. No. 11 of the 79th Session passed the Senate Judiciary Committee and the Assembly Judiciary Committee. It was then amended and sent to Conference Committee; the Senate adopted the conference report, but the Assembly was unable to act prior to an established deadline. Administrative remedies do exist and are in place. We are not asking for additional remedies, only that the inmates complete a grievance process under the system already established.

Section 4 regards administrative regulations. There has been confusion how to apply the 180-day timeline on release date from the inmate's sentence expiring as opposed to when the inmate is parole-released.

There are inmates physically located outside of the State who have filed petitions in Nevada district courts in regard to section 2 of the bill. Consequently, out-of-state inmates do not have a proper venue to file a petition. Carson City District Court was decided as the venue for out-of-state petitions merely because it is the State Capital. Out-of-state inmates have filed petitions in Carson City District Court. If a petition is filed in the wrong court, the court will forward the petition to the correct court through an order changing venue.

Another option would be to amend the bill so the proper venue would be the inmate's last place of incarceration in Nevada. The issue with that solution is that the court would have to determine whether venue is proper; however, the court does not have access to records to verify that inmate's last place of incarceration. To eliminate confusion, Carson City District Court should serve as the proper venue for out-of-state inmate petitions.

SENATOR SCHEIBLE:

With regard to petitions filed before the exhaustion of administrative remedies, is the expectation that the courts will make that determination and summarily deny or dismiss the petitions? Or is the expectation that the agency on which the petition is served has to respond and argue to the court that it has not exhausted its administrative remedies?

MS. PROCTER:

The expectation is that there would be an order to respond filed unless the inmate has indicated to the court that he or she has not exhausted the remedies. A response would still be required.

SENATOR SCHEIBLE:

Under law, district attorneys do not have access to inmate records of that nature. How would a district attorney be able to accurately respond as to whether an inmate has exhausted his or her administrative remedies?

MS. PROCTER:

This applies to petitions that do not challenge the validity of a conviction or sentence. Those petitions are filed in the county of incarceration and where the

district attorneys respond to those petitions. Petitions regarding the computation of time are addressed by the Attorney General. The Attorney General does have access to Nevada Department of Corrections (NDOC) records and is able to provide the information to the court. If the petition was filed in a county where the district attorney is expected to respond, a change of venue to the correct location would occur. Otherwise, the district attorney could still contact the NDOC to verify exhaustion and obtain those records. The Attorney General would be able to assist the district attorney in obtaining those records

SENATOR PICKARD:

With regard to the Carson City District Court being the place where out-of-state inmates file these petitions, how many petitions are being filed per year? Have we talked to the Carson City District Court to see if it can handle the additional cases?

MS. PROCTER:

My office has not spoken to Carson City District Court yet. Approximately 6 cases were filed in 2018 and had been filed in Clark County District Court, the location of the last place of incarceration. There is not a high volume of petitions, and we are open to having the venue in any district that is reasonable. We would like to see a venue available for these inmates, which is not available at this time.

SENATOR OHRENSCHALL:

Then-Senator Aaron Ford raised questions on S.B. No. 11 of the 79th Session about granted dismissals and whether it would be with or without prejudice. I do not believe that question was answered. The bill did not move forward last Session. In your opinion, would these rulings be ordered with or without prejudice? Is this something you would be willing to work on?

MS. PROCTER:

Yes, that was a previous issue. My understanding had been that the previous legal counsel would render an opinion on the matter. We are certainly not opposed to an amendment of the bill to clarify it would be without prejudice.

JENNIFER NOBLE (Washoe County District Attorney's Office):

I have concerns about petitions routed to Carson City District Attorney's Office. Washoe County District Attorney's Office and Clark County District Attorney's Office are the only offices in the State that have their own appellate division.

Carson City District Attorney's Office would not have resources to handle additional petitions. We support petitions being handled by the Attorney General, and we support an amendment providing for that.

CHAIR CANNIZZARO:

For the proposed amendment, we ask that you reach out to the Attorney General to work on that language.

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

My office will work with the Attorney General to amend portions of this bill. We are here in limited opposition to the bill. We would like to see the language "without prejudice" added to section 3, subsection 4. We are in support of exhaustion of administrative remedies.

In section 2, subsection 1, paragraph (b), Carson City District Court is the mandatory venue for out-of-state inmates. We recommend that the bill be amended to require that petitions shall be filed in the jurisdiction where the judgment of conviction was entered. Data collection is not very accurate, and some jurisdictions do not keep inmate data and do not coordinate with other counties. Keeping the petitions limited to where the judgment of conviction was entered into would provide clarity.

KENDRA BERTSCHY (Office of the Public Defender, Washoe County):

We agree with Clark County Office of the Public Defender that the process needs to be streamlined, and the petitions should be filed where the judgment of conviction was entered into. For out-of-state inmates, we want the process to be clear. For the court system, we also want to ensure that judicial resources are spent wisely. We are requesting the language "without prejudice" be added to the amendment on section 3, subsection 4.

Administrative remedies should be a clear process for inmates. An issue we have identified is the language in section 2, subsection 1, paragraph (b), in which Carson City District Court is the proper venue for out-of-state inmates. We propose the venue is where the conviction occurred. This would be very clear for the inmate.

SENATOR PICKARD:

If petitions transfer to where the judgment of conviction was ordered, small counties may not be equipped to handle these types of cases.

MR. PIRO:

We have to discuss if the Attorney General or district attorney from that jurisdiction will handle the cases. The district attorney who handled the conviction will handle his or her own appeal as well. I believe Ms. Noble was referring to Carson City District Court not being able to process and handle the appeals as well.

CHAIR CANNIZZARO:

Statute states that the computation of time is within the jurisdiction of the Attorney General. The issue is whether the local district attorney or Attorney General would handle these cases. The other issue is where the petition would be filed.

KRISTINA WILDEVELD (Nevada Attorneys for Criminal Justice):

We have provided written amendments and testimony ([Exhibit F](#)).

I am an attorney, and I am testifying now on my own behalf. I work on computation of time and work with Nevada Department of Corrections (NDOC). I have limited opposition of the bill. I worked on S.B. No. 184 of the 79th session with State Senator David Parks, the NDOC and the State Board of Parole Commissioners regarding aggregation of time. We tried to resolve these issues, and the problem has not been fixed. Since 2015, I have written letters on behalf of clients that are still not resolved. We ask that the petitions be filed where the judgment of conviction occurred because it is easiest.

I agree that all administrative remedies must be exhausted before filing a petition in any district court. I ask that there be time limits on the administrative remedies. I have outstanding cases dating back to 2015. Some of my clients are serving 40 years in prison and have added 10 years because of the aggregation issue. According to NDOC, they are not released until 50 years has been served. We figured out that consecutive time gets served, expired and added to their time at NDOC. We ask for specific time limits.

HOLLY WELBORN (American Civil Liberties Union):

We are neutral on S.B. 3. We have not had the opportunity to discuss this with the Attorney General. The vast majority of our clients have already gone through a grievance process through NDOC; oftentimes, they are filing numerous grievances in order to have their needs met. This process is important. We believe the intent of this bill is to fix this process with

clarification. If there is an immediate process where someone can go to the Attorney General, the inmate would not need to file another complaint to have an expedited resolution to this complex process. It is difficult for offenders to understand the computation of time. If this bill can provide clarity, we support it; however, the statute needs to delineate that.

We agree that appeals should occur in the jurisdiction where the judgment of conviction occurred. We do see valuable intent if an intermediary process can be implemented for the inmates. We are testifying in neutral at this time.

CHAIR CANNIZZARO:

The hearing on S.B. 3 is closed. The hearing on S.B. 4 is now open.

SENATE BILL 4: Revises provisions governing remittiturs. (BDR 3-412)

MS. PROCTER:

We have provided written testimony ([Exhibit G](#)).

This bill was previously introduced as S.B. No. 61 of the 79th Session. There were no questions or votes held on that bill. We intend that the bill would be prospective application only. In addition, a proposed amendment will be discussed to create a rebuttable presumption that the petitioner was served with the remittitur when sent to the petitioner by the court. We do not oppose that amendment.

JENNIFER NOBLE (Nevada District Attorneys Association):

On behalf of the Nevada District Attorneys Association, we feel it is critical to have prospective application for this bill. If we do not include this, there is a danger an influx of untimely, successive petitions would cite the new rule to excuse the mandatory procedural bar. This is a problem because it creates a volume issue for our office. This is an issue because we have less time to identify meritorious claims and petitions that are timely and deserve a hearing. Prospective application is critical to help curb the high volume of petitions.

The rebuttable presumption of service that the petitioner was served is also critical. The district attorneys of this State do not have access to prison mail logs. If a prison inmate wanted to show he or she had been served, the mail log would reflect that. I would like to work with the Attorney General to make these amendments.

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CHAIR CANNIZZARO:

The hearing on S.B. 4 is closed. Any proposed amendments should be worked on with the bill sponsor as well as the Office of the Attorney General. This meeting is adjourned.

RESPECTFULLY SUBMITTED:

Jeanne Mortimer,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
	C	10	Attorney General Aaron Ford	Presentation Overview of Attorney General Staff
	D	3	Attorney General Aaron Ford	Management Staff Bios – Office of the Attorney General
S.B. 3	E	3	Heather Procter, Office of the Attorney General	Written Testimony
S.B. 3	F	2	Nevada Attorneys for Criminal Justice	Proposed Amendments
S.B. 4	G	1	Heather Procter, Office of the Attorney General	Written Testimony