

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
February 18, 2019**

The Senate Committee on Judiciary was called to order by Vice Chair Dallas Harris at 8:05 a.m. on Monday, February 18, 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:

John Jones, Nevada District Attorneys Association
Chuck Callaway, Las Vegas Metropolitan Police Department
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
John J. Piro, Office of the Public Defender, Clark County
Kendra Bertschy, Office of the Public Defender, Washoe County
Holly Welborn, American Civil Liberties Union of Nevada
Alanna Bondy, Nevada Attorneys for Criminal Justice

VICE CHAIR HARRIS:

The hearing on Senate Bill (S.B.) 137 is now open.

SENATE BILL 137: Revises the definition of the crime of robbery. (BDR 15-928)

SENATOR NICOLE J. CANNIZZARO (Senatorial District 6):

I requested S.B. 137 on behalf of the Senate Committee on Judiciary to address a decision from the U.S. Court of Appeals for the Ninth Circuit. The Court decided *U.S. v. Edling*, 895 F.3d 1153 (9th Cir. 2018), which was an appeal from the U.S. District Court for the District of Nevada ([Exhibit C](#)). The *Edling* decision did two things. First, it highlighted a flaw in Nevada's definition of robbery; and second, it made it impossible for federal prosecutors to use Nevada robbery convictions as qualifiers for federal prosecutions.

In order to fix outlined problems, the phrase "or ... property" needs to be removed from the statute. This is what S.B. 137 will accomplish. In section 1, subsection 1 of the bill, the current robbery statute includes the possibility "of force or violence or fear of injury" being committed on a person or on that person's property. The Court noted in its opinion, robbery, under Nevada law, may be accomplished by creating "fear of injury to property alone." The Court decided that a robbery conviction in Nevada could not be used in a federal prosecution because Nevada's definition included the threat to property alone. The federal definition of a crime of violence is narrow and allows for only a threat to the person, not property.

The Court found that Nevada's definition of robbery does not meet the federal standard for a categorical crime of violence or for a generic robbery. Robbery does not qualify as extortion under a list of enumerated offenses because the wrongful use of force, fear or threats must be directed against a person and not against property. The Court took many steps, concluding that Nevada's definition of robbery is overly broad and does not meet the standard required for prosecution under federal law.

The Court looked to the Rule of Lenity, which instructs the court when a statute is ambiguous. The Rule advises that courts should not interpret the statute so as to increase the penalty that it places on the defendant. The Rule is a judicial doctrine requiring that ambiguities in a criminal statute relating to the prohibition and penalties be resolved in favor of the defendant if it is not contrary to legislative intent.

In *Edling*, it meant that the Nevada statute of robbery did not meet federal standards and increasing the penalty permitted under federal law was not allowed. Removing this ambiguity in the *Nevada Revised Statutes* will improve the accuracy of the statute in relation to the crime it defines. Senate Bill 137 will align Nevada law more closely with federal law.

SENATOR HAMMOND:

Can you explain how a robbery occurs under the language of the statute—how can a person rob a car by threatening the car?

SENATOR CANNIZZARO:

In my experience, we would charge a defendant with robbery when a defendant is threatening a person and not a piece of property. Your question supports the idea that the current statute is not clear. Unclear language is the issue. There could be a scenario where a defendant may threaten use of force against a piece of property in order to take another piece of property. Perhaps the defendant threatens a person's dog in order to complete the taking of the person's car. Robbery is the use of force to take property from another person. The use of force is against the person, not necessarily against another independent piece of property. Senate Bill 137 brings clarity to the statute.

SENATOR PICKARD:

How does this bill prevent federal prosecution? Is it because federal law enforcement cannot use a robbery conviction as an enhancement, or is it because the robbery conviction impairs prosecution of the underlying charges?

SENATOR CANNIZZARO:

Under federal law there are sentencing guidelines. For certain criminal histories, a defendant could face a different sentence based on a criminal history. Robbery was considered a crime of violence until 2018. The plain notion of robbery is that it is a crime of violence. Under the federal sentencing guidelines, robbery is classified as a crime of violence and allows a different sentence enhancement.

However, the court in *Edling* looked at Nevada's statute and focused on the portion of the statute regarding the threat against a person's property. The language went through an analysis of generic law under the federal statute and whether it would qualify. Since that language is included in the statute, robbery does not qualify as a crime of violence under the federal sentencing guidelines. Senate Bill 137 will clarify the statute.

SENATOR SCHIEBLE:

I have had the same experience prosecuting these types of cases. I have never seen a case charged under the threat of property clause. Are you aware of any convictions that would have been affected by this change?

SENATOR CANNIZZARO:

With regard to federal prosecution since 2018, the decision would impact the enhancement and sentencing guidelines. I have not completed an analysis of defendants who have been convicted of robbery. With respect to Nevada's crime of robbery, in my experience, I have never seen a conviction for that. When we think of robbery, we think of a person threatening force or violence against a person in order to accomplish the taking of property.

JOHN JONES (Nevada District Attorneys Association):

We support S.B. 137. My office works closely with the U.S. Attorney's Office for the District of Nevada under the Project Safe Neighborhoods. The Project is a federal-state partnership that focuses on violent crimes and violent criminals. To the extent that this bill will help us go after violent criminals, this is an important bill.

The Nevada Attorneys for Criminal Justice (NACJ) have submitted proposed amendments to S.B. 137 ([Exhibit D](#)). In the first paragraph, NACJ supports the bill. But in the second paragraph, NACJ opposes the bill and wants to change the bill because it could lead to significantly more time served in prison for certain offenders. I want to point out that this bill was designed for offenders who commit violent acts and subsequently commit more violent acts, in which the federal government could become involved. We support S.B. 137.

SENATOR PICKARD:

In your experience, have you ever charged or sought conviction for a threat against property?

MR. JONES:

I have not. I asked senior attorneys and other colleagues who work on gang units, and they have not seen crimes charged in that nature either. Crimes are rarely charged under the property theory of robbery.

SENATOR PICKARD:

Are there other laws that capture a threat against property? We are not removing a means of punishing somebody for bad acts, correct?

MR. JONES:

Between extortion and malicious destruction of property, if the threat was actually carried out, there are alternative crimes that we could charge a defendant with. If a damage or threat to damage property was made to coerce somebody into committing an act, there are additional alternative charges also.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

We support S.B. 137. In my law enforcement career, I have never seen a case where we have arrested someone for robbery based on using property as a threat to obtain other properties.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):

We support S.B. 137.

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

We agree with the proposed amendment submitted by NACJ in [Exhibit D](#). We do not support S.B. 137. Robbery should always be treated as a violent crime. This bill seeks to allow the federal government to use enhanced penalties under the Armed Career Criminal Act. This Act applies to someone who has been federally prosecuted and convicted. Nevada's statute is too broad, and robbery cannot be used as a sentence enhancement. This bill is moving in a direction to punish violent criminals. We agree that violent criminals should face harsher penalties. In addition, we seek to move robbery from being a general intent crime to being classified as a specific intent crime.

The Nevada Supreme Court interpreted robbery as a specific intent crime. Without explanation, the Court now interprets robbery as a general intent crime. For lawyers, this is a major distinction. California, Washington, Florida and Georgia all list robbery as a specific intent crime. For example, a person gets into a fight with Mr. Deelap. Mr. Deelap drops his wallet during the fight. The intent was only to fight Mr. Deelap, but the person saw his wallet and picked it up. This act would be considered a robbery under statute. Specific intent would change the crime to allow for interpretation of intent. Changing robbery to being classified as a specific intent crime would disallow prosecutors from overusing robbery in charging defendants.

Our goal is to change robbery back to its common law definition of being considered a specific intent crime. Specific intent means that a defendant committed a robbery with use of force and with the specific intent to obtain somebody's property.

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

We agree with Mr. Piro's statements and the proposed amendment submitted by the NACJ in [Exhibit D](#). We believe the amendment will bring clarity to the law. We agree that robbery needs to be listed as a specific intent crime.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

We agree with the Office of Public Defender, Clark County, and Office of the Public Defender, Washoe County. We agree with the amendment submitted by NACJ in [Exhibit D](#). In the Interim Session, the Crime and Justice Institute reviewed theft offenses and burglary offenses. We do not support a law that will increase penalties in this State when we are looking at prison reduction.

ALANNA BONDY (Nevada Attorneys for Criminal Justice):

We support clarifying the language of the bill. We have concerns regarding federal enhancements. In attempts to better rationalize the robbery statute for use in federal enhancement, we propose changing robbery from a general intent crime to a specific intent crime. At common law, robbery was considered a specific intent crime. The majority of states consider robbery a specific intent crime. The Nevada Supreme Court also previously considered robbery a specific intent crime.

SENATOR PICKARD:

The proposed amendment by Nevada Attorneys for Criminal Justice in [Exhibit D](#) seeks to change the substance of the law. The amendment would aid in the interest of reducing our prison population. Do the majority of states consider robbery to be a specific intent crime?

MS. BONDY:

My research indicates that robbery is considered a specific intent crime in most states. I can provide my research to the Committee upon request.

SENATOR PICKARD:

Please provide a copy of your research to the Committee.

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SENATOR SCHEIBLE:

Does the NACJ amendment change the "unlawful taking" language to become a larceny instead?

Ms. BONDY:

Yes it does. This is an attempt to provide more clarification. We are not opposed to further amendments. However, we do support robbery as being listed as a specific intent crime.

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VICE CHAIR HARRIS:

The hearing on S.B. 137 is closed. The 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
S.B. 137	C	15	Senator Nicole Cannizzaro	<i>U.S. v. Hans Vincent Edling</i>
S.B. 137	D	2	Nevada Attorneys for Criminal Justice	Proposed Amendment