

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
March 21, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:07 a.m. on Thursday, March 21, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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 Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

COMMITTEE MEMBERS ABSENT:

Senator James Ohrenschall

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Pat Devereux, Committee Secretary

OTHERS PRESENT:

John T. Jones, Jr., Chief Deputy, Office of the District Attorney, Clark County;
Nevada District Attorneys Association
John Giordani, Chief Deputy, Office of the District Attorney, Clark County
A.J. Delap, Las Vegas Metropolitan Police Department

CHAIR CANNIZZARO:

We will open the hearing on Senate Bill (S.B.) 274.

SENATE BILL 274: Revises provisions relating to crimes. (BDR 15-1076)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

Nevada Revised Statutes (NRS) 202.285 addresses the crime of discharging a firearm at or into a structure or vehicle. It is punishable as a Category B felony with a sentence of one to six years. *Nevada Revised Statutes* 202.287 addresses the crime of discharging a firearm from or within a structure or vehicle. It is also a Category B felony but is punishable by 2 to 15 years in prison, more than twice the sentence in NRS 202.285.

If someone standing in a doorway fires into a structure, the sentence is 2 to 15 years. If he or she fires the gun in the opposite direction toward the street, the sentence is only one to six years. The crimes are substantially the same, but the punishments are not. Senate Bill 274 will make both crimes punishable by 1 to 10 years in prison, bringing them into alignment. I can find no reason why the sentencing discrepancy developed.

JOHN T. JONES, JR. (Chief Deputy, Office of the District Attorney, Clark County; Nevada District Attorneys Association):

Senate Bill 274 will provide some consistency between 2 similar crimes. In California and Arizona, both crimes carry the same sentence. In California, the sentence is state prison for 3, 5 or 7 years; in Arizona, both are Class 2 felonies.

JOHN GIORDANI (Chief Deputy, Office of the District Attorney, Clark County):

I am part of the Criminal Division's Major Violators Unit gun crimes team. Senate Bill 274 is commonsense legislation. The crime addressed in NRS 202.285 is a Category B felony with a sentence of 1 to 6 years for shooting into a structure where a baby could be sleeping upstairs. That penalty is woefully inadequate; increasing it from one to ten years is appropriate. It also makes common sense that the two crimes are similarly situated. Having one foot in a home or one foot outside of it makes a major difference as NRS now stands.

SENATOR HARRIS:

Is the argument that it is less dangerous to shoot into an enclosed space than to shoot in an outdoor space, so those crimes should be punished similarly?

SENATOR SCHEIBLE:

Essentially yes. We are not talking about someone shooting for no particular reason or in no particular direction. We are talking about people shooting at each other. Whether they are shooting through a doorway or not dictates their sentence. The crime is not just shooting from structures; it is also shooting from vehicles, aircraft, watercraft, trains or trailers.

More often, the crime is committed from vehicles. Shooting may start from a vehicle and then if the shooter steps out, he or she is facing different penalties from the new shots, even though common sense tells us the actions are not that different.

MR. GIORDANI:

Shooting into an occupied structure or vehicle should be treated differently than shooting into an area where people may be endangered. The latter is a gross misdemeanor. Investigators must prove the structure or vehicle is occupied. It makes sense that firing into an enclosed space or into a street where people are driving is inherently more dangerous than, say, shooting into the air in a park. Ergo, the penalty should be more severe.

SENATOR SCHEIBLE:

Senate Bill 274 does not address all firearm-discharging crimes in NRS. Discharging where a person may be endangered is simply a gross misdemeanor. Another NRS addresses discharging into an unoccupied building or vehicle, and separate statutes address discharging into a person's body.

SENATOR HARRIS:

I do not necessarily agree that shooting out from within a structure is the same as shooting within a structure.

MR. JONES:

Nevada Revised Statutes 202.287 addresses shooters inside vehicles or structures, which covers drive-by shootings. Perhaps one of the reasons behind the increased penalty is the shooter is mobile and can easily escape. In Clark County, the 2 crimes in S.B. 274 are the same in terms of the range of punishment that may be applied by judges or prosecutors.

SENATOR HAMMOND:

Would the bill change the penalty for someone walking outside and shooting trees in his or her yard?

MR. JONES:

There are other statutes that could apply to that. In a populated area, that is a gross misdemeanor. If people nearby feel threatened, the charge might be assault with a deadly weapon. The analysis of that crime is fact-driven.

SENATOR HAMMOND:

Are you talking specifically about purposeful shooting?

MR. JONES:

Yes.

SENATOR DONDERO LOOP:

How does an investigator prove a shot was fired at a building with a baby sleeping within it? How do you prove someone was shooting at another person, but someone grabbed the shooter's arm or he or she did not shoot accurately?

SENATOR SCHEIBLE:

That designation is also fact-specific. Generally, multiple people are present at a shooting event. If someone fires in a certain direction, bystanders note that, and investigators later find a bullet hole or casing indicating the trajectory.

MR. GIORDANI:

Each scenario has different facts. Investigators consider witness testimony and forensics. If shots are fired from or within a structure or vehicle there is a shell casing or witness testimony like, "Defendant X drove by. I saw a gun pointed. A shot went off and the vehicle drove off." When shots are fired at or into a structure or vehicle—including my example of a home with a sleeping baby upstairs—there is a bullet hole and witness testimony.

The elements include willful and malicious discharge of a firearm, which has to be proven beyond reasonable doubt. It also must be proven the home was occupied and an occupant must say, "Yes, we were home sleeping and a bullet came through our window, narrowly missing our 5-year-old."

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A.J. DELAP (Las Vegas Metropolitan Police Department):
The Las Vegas Metropolitan Police Department supports S.B. 274.

CHAIR CANNIZZARO:

We will close the hearing on S.B. 274. Seeing no more business before the Senate Committee on Judiciary, we are adjourned at 8:23 a.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	3		Attendance Roster