

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
March 27, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:09 a.m. on Wednesday, March 27, 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, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Jeff Dixon, Nevada State Director, The Humane Society of the United States
Sarah K. Hawkins, Chief Deputy Public Defender, Office of the Public Defender,
Clark County
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Jamie Rodriguez, Washoe County
Alex Ortiz, Assistant Director, Administrative Services, Clark County
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender,
Washoe County
John T. Jones, Jr., Nevada District Attorneys Association

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Vinson Guthreau, Deputy Director, Nevada Association of Counties
Mary C. Walker, Lyon County
Miranda Hoover, Nevada Humane Society
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Brian O'Callaghan, Las Vegas Metropolitan Police Department
Corey Solferino, Washoe County Sheriff's Office
Michael Ramirez, Las Vegas Police Protective Association; Law Enforcement
Coalition of Nevada
Kimberly Mull, Kimberly Mull Advocacy and Consulting

CHAIR CANNIZZARO:

We will open the hearing on Senate Bill (S.B.) 342.

SENATE BILL 342: Revises provisions relating to animals. (BDR 14-748)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

When a person is arrested, his or her animal is often impounded and sent to a county animal shelter or a nonprofit with which the county contracts. The animal can be with the person at the time of the arrest or left behind at home. Once the county takes possession of the animal, the cost of its care is borne by the county: veterinary bills, food, housing. Counties have different processes to unite animals with their owners.

Senate Bill No. 371 of the 79th Session required inmates to consent to animal impoundment plans devised by local shelters. For example, if an arrestee's dog was impounded and the shelter wanted to house it with a foster agency while the person was in custody, the county would have to get permission from the owner. Some jurisdictions were having problems getting people in custody to agree to arrangements. This resulted in some animals languishing in shelters for extended periods instead of in foster homes or with rescue agencies.

We brought together representatives from county animal control agencies and the criminal justice community to develop a timeline of 15 days for people to arrange for the care of their animals. This is the period during which someone's preliminary hearing must be held and about when animals begin showing severe stress in shelters.

Senate Bill 342 was originally written with a strict 15-day timeline for every county. That timeline may be too long for some counties that are more proactive

in holding animals. Our proposed conceptual amendment will direct each county to develop an ordinance to address the problem and design a system whereby an animal can be removed from a shelter and sent to a fostering agency or rehomed with the permission of its owner. The 15-day limit would be retained if the shelter takes no action.

Every jurisdiction has agreed to post notices in correctional facilities as to where animals have been taken for impoundment after arrests. If a county chooses to not try and place an animal, an incarcerated person will have 15 days to contact a family member or attorney to arrange for the animal's care.

If a county wants a more proactive ordinance, the time frame may be reduced to seven days. For example, in some jurisdictions staff go to the detention center, take the names and phone numbers of detainees, and then return to the shelter and contact animal owners. If staff work that diligently to find a new home for the animal, they may take seven days, after providing proper notice to detainees.

Section 7 of S.B. 342 addresses what happens to animals after they are seized as part of animal cruelty investigations. We are trying to provide an expedited way for courts to determine that people arrested for cruelty investigations will not regain possession of the animals. Section 7 also provides a way for those animals to be immediately rehomed.

People arrested under *Nevada Revised Statutes* (NRS) 574.100 must have a court hearing to get back their victimized animals. The burden of proof for denial would be a preponderance of evidence that the animals were the victims of the crime. As an example, in an animal hoarding situation, if 15 animals go to a shelter and the owner wants them back, the owner must go before a magistrate or judge and demonstrate why.

The criminal case notwithstanding, he or she would be likely to regain possession of the animals in a process that would be the same for anyone else to find a temporary home for the animals or retrieve them from a shelter. Regardless of the outcome of the criminal case, if the judge or magistrate finds the animals are malnourished or improperly cared for, the person will never get them back. A judge can make that determination in the person's first few days in incarceration and then the process of rehabilitating or rehoming the animals may begin.

JEFF DIXON (Nevada State Director, The Humane Society of the United States): You have my letter of support ([Exhibit C](#)) for S.B. 342. Through no fault of their own, animals in this situation find themselves in shelters and away from their loving homes. The Nevada chapter of the Humane Society of the United States supports the proposed conceptual amendment to S.B. 342 after talking to Washoe County representatives. We support giving localities the ability to tailor solutions to determine if they have the time and resources to give notice to detainees about animals' whereabouts. The 15-day cap before animals are rehomed is necessary because that can take 3 to 4 weeks. That is burdensome for shelters of all sizes. Smaller facilities have limited space, which may lead to animals being euthanized when they are healthy and treatable. The bill could help alleviate that tragic outcome.

For victimized animals, usually due to cruelty or being used for fights, if owners could have prevented the abuse or even caused it, S.B. 342 will give detainees the right to explain to judges or magistrates why animals should be returned to them. If animals are not returned, the Humane Society has an expedited process to get them treated and rehomed. That does not apply to fighting cocks because they cannot be returned.

SENATOR PICKARD:

If counties can develop their own plans for sheltering detainees' animals, how is S.B. 342 functionally different from what we are now doing? Counties are currently required to shelter detainees' animals. Animal control personnel in my district want to get animals out of shelters and rehomed. The bill seeks to make the process consistent throughout the State, right?

SENATOR SCHEIBLE:

There is nothing in NRS that requires detainees to receive notice of their animals' whereabouts. That is often outside the control of the impounding agency. Requiring detention centers to provide notice removes the burden on agencies to find detainees and inform them their animals are in shelters.

Nevada Revised Statutes provides animal control agencies must receive permission from detainees, which is a direct cause of animals remaining in shelters for extended periods. The law does not allow counties to give detainees deadlines by which they must tell shelters of what should be done with animals. Counties do not have the authority to move, rehome or put animals into foster care within

a time frame. Putting a 15-day time frame into NRS will allow counties to create their own policies to start moving animals.

SENATOR PICKARD:

Will the bill allow counties to set their own impoundment permission timelines?

SENATOR SCHEIBLE:

Yes, within parameters; we do not want timelines to exceed 15 days. Certain counties are justified in reducing the timeline to 7 days, which means something between 7 and 15 days would be acceptable. The goal is to make 15 days the limit if a county is not proactively trying to rehome animals. Language in the conceptual amendment will determine how counties will indicate or prove they should have a shorter timeline.

SENATOR PICKARD:

The notice requirement is important, given the requirements for hearings for detainees who want their animals back. How would S.B. 342 change that hearing process? Are the courts on board with the bill?

SENATOR SCHEIBLE:

We reached out to the Eighth Judicial District Court but have not yet heard back. Our inclination is the District is on board with S.B. 342. The reunification hearings would only apply to cruelty cases. We are not requiring every defendant to prove he or she should regain custody of animals.

This will reduce the caseload because prosecutors and judges who review cases of animal abuse, neglect and hoarding tell us the disposition of the victims can be more important than the disposition of the criminal cases. People undergo long and complex hearings to regain possession of animals or the State tries to gain custody of animals. These are more ad hoc hearings, like property forfeiture or motions to return property.

The bill clearly delineates that the case is criminal with one hearing in one time frame to determine custody of the animal. If the animal is not going back to the defendant, that cannot be relitigated over the course of the criminal case. Theoretically, if a defendant is allowed to regain custody of the animal, that could change pursuant to the outcome of his or her criminal case. The goal is to streamline the process and reduce hearings.

SENATOR PICKARD:

That makes sense. Since S.B. 342 involves disposition of animals after people are arrested for any reason, how do arrests and impoundments for cruelty cases compare with all other cases? The bill will streamline cruelty cases, but how will it affect other cases?

SENATOR SCHEIBLE:

That is different in each jurisdiction. In some, the majority of seized animals are part of criminal investigations. If the animal is not part of a cruelty investigation, there is no hearing. Senate Bill 342 will give shelters the right to rehome animals after 15 days and give detainees the right make arrangements for animals' disposition within that time frame. Detainees will no longer tell courts, "Hey, my dog was seized, and I didn't have time to call my mom to pick her up. Now I want her back." Now counties will have to abide by the notice process and wait 15 days before returning animals.

SENATOR OHRENSCHALL:

I never know when my clients will be reunited with seized pets. Mr. Dixon, is there data as to how many detainees are reunited with impounded pets in any county? If the pet is malnourished or not current on vaccinations, would that be an impediment to reunification? Would that be up to the local jurisdiction?

MR. DIXON:

I have a lot of data from Clark and Washoe Counties and Carson City about how many animals were impounded and the average hold time after S.B. No. 371 of the 79th Session was enacted. I do not know how many animals were returned. Malnourishment or lack of licensing would not preclude reunification. Licensing issues are not a reason for seizure.

SARAH K. HAWKINS (Chief Deputy Public Defender, Office of the Public Defender, Clark County):

The Office of the Public Defender, Clark County, supports S.B. 342. I have had clients tell me after their arrests, "My dog [or cat] was seized at the time of arrest," or "My dog [or cat] was in my house when I was arrested. I need help to get in touch with someone to feed him." That is a sad situation because many of our animal-owning clients are homeless or indigent. They will buy food for the pets before they buy it for themselves. When you are unstable, have limited funds or are homeless and living on the street, pets represent different things than they

do to more affluent people with homes. They symbolize security, loyalty, a connection to something when owners are alienated from family or community.

When an arrestee is separated from his or her pet after it is impounded without notice, that can be an incredibly traumatic experience. My Office would like to see a reunification process in NRS, such as S.B. 342 will provide. Due process requires notice and a hearing not just for animal cruelty cases. Detainees must be notified as to their animals' whereabouts and how to reclaim them. We do not normally think of pets as property, but under NRS and basic procedural due process, deprivation of property requires notice and a hearing.

Senate Bill 342 has the potential to get animals out of shelters more quickly because detainees' family members will be identified sooner. When detainees are indigent, families may be in a better financial position to care for the animals if owners are incarcerated beyond 15 days.

Justice courts only have authority conferred by NRS. Given the 15-day deadline, these animal reunification cases will be heard by justice court judges or justices of the peace. I recommend an amendment to S.B. 342 that explicitly gives justice courts the authority to preside over those hearings. In section 1, subsection 1, paragraph (b), if no provisions for detainees' animals are made within 15 days, if the person is homeless, county will provide free care for up to 30 days. My Office would like that to include indigent detainees since many of our clients are indigent but not homeless. That addition would not overly expand the scope of the bill.

Section 1, subsection 1 mentions people "lawfully arrested and detained." Not everyone is arrested that way, which leads to suppression issues. We do not want to excise that portion of the population. The bill does not address indigent detainees' inability to access telephones and postage materials to reclaim pets. Access to phones and mail is often controlled by correctional staff. The notification process animal control agencies will be required to perform to reunify homeless and indigent detainees with pets is a win-win situation that does not present an undue burden on counties or courts.

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

The Office of the Public Defender, Clark County, supports S.B. 342.

JAMIE RODRIGUEZ (Washoe County):

Washoe County appreciates that S.B. 342 will allow proactive counties to reduce animal holding times. Our County personnel goes to our jail to meet with detainees to ascertain if someone can pick up pets and discuss reunification options so animals are not in the shelter for a long time.

If an arrangement is not reached within a set time frame, the County will rehome the animals. That may not be the ideal solution, but since the implementation of S.B. No. 371 of the 79th Session, we held a dog for 118 days. It was reunited with its owner and then 18 months later, the County seized the dog again for 93 days. While it is a financial burden for the County, it is not in animals' best interest that we house them for so long. Almost all of our animals are reunited with detainees within seven days. If the County could not reach a reunification agreement with an owner, we had to hold the animal.

As far as animal cruelty cases, we like the removal of counties from their role as boarding facilities. Washoe County works with many rescue groups and strives to get pets out of shelters and into forever homes.

ALEX ORTIZ (Assistant Director, Administrative Services, Clark County):

The Clark County Administrative Services supports the time frame reduction in section 1, subsection 1 of S.B. 342. We have concerns about the cruelty provisions in section 7 but will work with Senator Scheible to resolve them.

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

This is an important issue for the clients of the Office of the Public Defender, Washoe County. When I worked dependency cases and children were placed in foster care when their parents were in detention, the youngsters were extremely traumatized when they did not know where their pets were. I had foster parents who were willing take in children's pets; however, there was no process by which we knew who to contact and which agency was handling those pets.

We appreciate the noticing requirement. I recently had a homeless client whose German shepherd was his life. He was homeless because his landlord told him he could no longer have a dog in his apartment. My client decided he could not get rid of his dog, so he lived on the streets. When he was arrested, I assume he was told the dog's whereabouts, but when you are traumatized, you tend not to take

in all information. When I met with him, he had no idea where the dog was, and I did not have anyone to contact to find out.

JOHN T. JONES, JR. (Nevada District Attorneys Association):

The Nevada District Attorneys Association supports S.B. 342 and its pending conceptual amendment.

VINSON GUTHREAU (Deputy Director, Nevada Association of Counties):

The Nevada Association of Counties (NACO) supports the conceptual amendment to S.B. 342 for the same reasons as the representatives from Clark and Washoe Counties.

SENATOR HANSEN:

I represent rural counties that are struggling financially. The bill will pose an unfunded mandate. Have you met with representatives from Pershing, Mineral and Esmeralda Counties about its fiscal implications?

MR. GUTHREAU:

We polled some NACO members but did not hear any significant concerns about S.B. 342 and its conceptual amendment.

MARY C. WALKER (Lyon County):

Rural Lyon County is comprised of more than 2,000 square miles with a population of 55,000. We only have three animal control officers. We support the conceptual amendment to S.B. 342 because each county will be able to decide general parameters to implement it.

MIRANDA HOOVER (Nevada Humane Society):

Senate Bill 342 is a comprehensive, humane revision of S.B. No. 371 of the 79th Session. The bill will not negatively impact humane agencies fiscally.

CHAIR CANNIZZARO:

We will close the hearing on S.B. 342 and open the hearing on S.B. 383.

SENATE BILL 383: Revises provisions relating to sexual conduct between a law enforcement officer and a person in his or her custody. (BDR 3-113)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

Senate Bill 383 provides that when a law enforcement officer has sexual contact with someone in custody in a civil case, there is a rebuttable presumption the contact is unwelcome and nonconsensual. In a defense of having assaulted, harassed or otherwise acted in a sexual way toward someone in his or her custody, an officer cannot maintain the contact was consensual.

SENATOR PICKARD:

Is this not already in NRS? We hear about this type of contact in the media. Are we taking an existing internal policy and adding it to NRS?

SENATOR SCHEIBLE:

No. In a civil case, an officer can assert the person he or she assaulted assented to sexual conduct, and he or she is not responsible for that conduct.

CHAIR CANNIZZARO:

The bill makes it clear in NRS that contact between people in custody and officers is not presumed consensual given the power dynamic between them. While this falls within the definition of whether someone should have known the detainee was unable to give consent, S.B. 383 further clarifies that someone in custody cannot give consent.

SENATOR SCHEIBLE:

That is correct. From the perspective of someone who had been in custody and was assaulted or harassed, the person will not be required to explain to a court how or why the power dynamic forced him or her to engage in the conduct. The assumption will be he or she did not want to participate because of the circumstances.

SENATOR DONDERO LOOP:

Section 2, subsection 4, paragraph (a) of S.B. 383 states, " 'Lawful custody or confinement' does not include being in the custody of the Division of Parole and Probation" (P&P). Would you explain "does not"?

SENATOR SCHEIBLE:

Anyone on probation is considered to be in the custody of P&P. We do not want to make it such that probationers pursuant to sentencing are always considered in custody of every Department of Public Safety (DPS) officer.

SENATOR DONDERO LOOP:

Are you not always in custody if a law enforcement officer stops and arrests you?
I am struggling with the word "custody."

SENATOR SCHEIBLE:

Say I were on probation and ran into a DPS employee in a division completely separate from P&P. Without section 1, subsection 4, paragraph (a), we would not assume I am in the employee's custody simply because I have a probation officer, whereas there are other DPS officers with whom I have never interacted.

CHAIR CANNIZZARO:

The definition of being in custody of a "law enforcement officer" in section 2, subsection 2 of S.B. 383 is in NRS. That has been moved to section 2, subsection 4, paragraph (a) to provide clarity to the definition of "custody."

SENATOR SCHEIBLE:

Correct.

SENATOR HAMMOND:

If you were a detainee's parole officer, would you be included in the bill's definition of custody? If you tried to have sexual contact, would it be assumed it was not consensual?

SENATOR SCHEIBLE:

Correct.

SENATOR HAMMOND:

This is spelled out in the bill's section 2, subsections 3 and 4. Is that the way you tried to phrase it?

SENATOR SCHEIBLE:

Yes. *Nevada Revised Statutes* 209.4886 and NRS 209.4888 clarify the situations we are discussing. We are not trying to be overly inclusive of people who have some contact with law enforcement and other contacts with DPS employees.

SENATOR HARRIS:

Are you aware of any other scenarios in which NRS removes the ability to consent because of a power dynamic? We do that with children but not with adults, instead letting that argument play out in the courts.

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SENATOR SCHEIBLE:
I do not know.

SENATOR HAMMOND:
Legislators did something about that 2 or 3 Sessions ago, deeming that public school teachers are not allowed to have sexual contact with students under the age of 18.

CHAIR CANNIZZARO:
Senator Hammond is right. Generally speaking, NRS states children cannot consent to sexual conduct. In those situations, a recognizable power dynamic does not provide for proper consent.

SENATOR HAMMOND:
The same goes for students and college professors.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):
The Nevada Sheriffs' and Chiefs' Association supports S.B. 383. In reference to Senator Harris's question, the power dynamic is similar to that addressed in the Prison Rape Elimination Act of 2003 (PREA). In state custodial facilities, officers cannot have sex with inmates, which is analogous to having sex with someone in the back seat of a patrol car.

SENATOR HAMMOND:
We discussed being a parole officer and not having direct contact with someone. However, in discussing all of the other instances, would the Association still support parole officers not having sexual contact with anyone on probation?

MR. SPRATLEY:
I understand that section of NRS and agree with the premise of your question. However, P&P is a large department, and if folks are out together on a Friday night and sexual contact happens with a parolee or probationer, the bill will create a penalty.

Custody is undeniable in the back of a patrol car with someone in handcuffs or if someone is told to sit on the curb while an investigation is conducted. If a sexual act or harassment happens, that is the obvious conduct S.B. 383 trying to prevent. A suspect will not say to the officer, "By the way, I'm on parole. Are you a parole officer?"

SENATOR HANSEN:

Is that not already in NRS? Can officers sexually fool around with a handcuffed suspect? Do we need to remedy a loophole in NRS?

MR. SPRATLEY:

What you are describing is just a policy violation, not against the law per se. The bill will make it specific to people in custody.

BRIAN O'CALLAGHAN (Las Vegas Metropolitan Police Department):

The Las Vegas Metropolitan Police Department supports S.B. 383. We follow PREA regulations; however, the bill covers the civil side of the violation.

COREY SOLFERINO (Washoe County Sheriff's Office):

The Washoe County Sheriff's Office supports S.B. 383. Custody is clearly defined in a place of detention. The bill will bridge the gap between the field and detention facilities. Law enforcers should be held to a higher standard because nonconsensual sex acts violate the public trust.

MR. JONES:

Senate Bill 383 deals with the civil side, but Assembly Bill 349 makes the sexual content criminal. The two bills work in tandem.

ASSEMBLY BILL 349: Prohibits sexual conduct between a law enforcement officer and a person whom the law enforcement officer has detained or arrested. (BDR 15-1003)

MICHAEL RAMIREZ (Las Vegas Police Protective Association; Law Enforcement Coalition of Nevada):

The Las Vegas Police Protective Association and Law Enforcement Coalition of Nevada support S.B. 383 for all of the reasons stated.

KIMBERLY MULL (Kimberly Mull Advocacy and Consulting):

As a victim advocate, I support S.B. 383. In my work with sex-trafficked and prostituted women, I know sexual contact with officers is happening on a more regular basis than we would like to talk about. Girls are being picked up and told, "If you take care of me, I'll take care of you and make sure you do not go into custody." Sometimes, after the sex act, girls are still taken into custody. The bill could give girls recourse under NRS to come forward, which they are now reluctant to do.

SENATOR SCHEIBLE:

I want to again clarify that S.B. 383 addresses the civil side of these situations by creating a rebuttable presumption of nonconsent. Nothing in it provides that every time an officer has sexual contact with a detainee, the consequences are the same. The bill shifts the burden to an officer brought into court under a civil proceeding—particularly pursuant to an attempt to terminate his or her employment—rather than the victim having to prove he or she did not consent to the contact. The assumption will be that it was not consensual, unless the officer can prove otherwise.

That is the reason for the provision concerning DPS and P&P employees. It is not that such conduct becomes allowable or there is no recourse for victims of DPS staff; it shifts the burden of proof back to the same situation with any law enforcement officer or prominent community member who wields power improperly.

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CHAIR CANNIZZARO:

We will close the hearing on S.B. 383. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 9:11 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	4		Attendance Roster
S.B. 342	C	1	Jeff Dixon / Nevada chapter, The Humane Society of the United States	Letter of Support