

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session  
March 28, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:11 a.m. on Thursday, March 28, 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  
Jeanne Mortimer, Committee Secretary

**OTHERS PRESENT:**

Randy Hawkes, Clark County Deputy Marshals' Association  
Adam Levine, Clark County Deputy Marshals' Association  
Andres Moses, Eighth Judicial District Court  
Alex Ortiz, Clark County  
Linda Bell, Chief Judge, Department 7, Eighth Judicial District Court  
Melissa Saragosa, Justice of the Peace, Las Vegas Township Justice Court,  
Department 4, Clark County  
Natalie Tyrell, Justice of the Peace, North Las Vegas Township Justice Court,  
Department 2, Clark County

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David S. Gibson, Sr., Justice of the Peace, Henderson Township Justice Court,  
Department 3, Clark County  
Jeff Wells, Assistant County Manager, Clark County  
Bruce Snyder, Commissioner, Local Government Employee-Management  
Relations Board  
Melissa Clement, Nevada Right to Life  
John J. Piro, Office of the Public Defender, Clark County

VICE CHAIR HARRIS:

The meeting is called to order and the hearing on Senate Bill (S.B.) 391 is now open.

**SENATE BILL 391**: Revises provisions relating to deputy marshals in certain courts. (BDR 1-69)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

Senate Bill 391 revises the means by which bailiffs and deputy marshals are selected, appointed and employed in our courts. Senate Bill 391 attempts to resolve the issue of separation of powers between the Legislative, Executive and Judicial Branches of government with regard to bailiffs and deputy marshals. The Nevada Supreme Court has issued rulings on this matter since 2013. This bill addresses whether a bailiff or a deputy marshal is an at-will employee. In Nevada, an at-will employee can be terminated from his or her employment at any time for any reason, with or without cause, so long as the reason for the termination does not violate public policy. This bill brings clarity to the employment status of bailiffs and deputy marshals.

Section 1 clarifies that in counties that poll 4,500 or more votes, a district court may appoint a bailiff. In counties polling less than 4,500 votes, the court may appoint a bailiff but in consultation with the sheriff. In both instances, the bailiff serves at the will of the judge who appointed him or her. In section 1, there are provisions requiring that in a county with a population of 700,000 or more, which is only Clark County, district court judges must appoint a deputy marshal rather than a bailiff. Before making an appointment, a judge must consider whether any qualified county employees are available to fill the position.

Regardless of whether the ultimate appointee is a county employee, once appointed, he or she will be considered a county employee. The first consideration is that the deputy marshal serves at the judge's will. The

second consideration is that the rules that apply to other county employees do not apply to the deputy marshal unless so specified by the judge. The third consideration is that if the judge terminates the marshal's service to the court, the former marshal may no longer serve in that district court but will remain a county employee subject to the rules and policies of the county.

The remainder of section 1 makes conforming changes regarding larger judicial districts. Section 2 makes changes regarding appointment of deputy marshals by justices of the peace for each justice court. Section 3 provides that the bill is not subject to statutory funding provisions that apply when the Legislature directs a local government to start a program that requires additional funds. Section 4 stipulates that this bill does not apply to any employment action taken prior to its enactment. Section 5 makes the bill effective upon passage and approval.

RANDY HAWKES (Clark County Deputy Marshals' Association):

We will submit amendments on which entity employs the bailiffs. This bill will solidify that deputy marshals are peace officers and not considered just regular county employees. The language of "shall appoint" was not an amendment we proposed. Judges should have the deputy marshal of their choosing from an available pool of qualified applicants. We do not believe judges can take away employment rights from marshals. There are changes that need to be addressed.

Section 1, subsection 5 of the bill lists bond requirements. We would like this language stricken from the bill.

Section 1, subsection 4 of S.B. 391 identifies job duties of the deputy marshals. As deputy marshals, we are required to act under law, and we want to identify a list of our in-depth duties. We are category I peace officers. The Legislature is correct in that the judiciary does not investigate and prosecute crimes—the deputy marshals do. All rules and policies that govern deputy marshals should apply equally and not just to the administratively assigned marshals.

ADAM LEVINE (Clark County Deputy Marshals' Association):

In 2007, it was determined that the sheriff in each county was no longer required to provide bailiffs to the district court. The law changed to allow the appointment of a deputy marshal to court, a category I peace officer, by the judge. Since that time, the issue has been whether the deputy marshals were county employees or court employees. The deputy marshals are not court

employees and allowing such would violate the Nevada Constitution. The Nevada Constitution, Article 3, section 1, adopts strict separation of powers. The court cannot employ law enforcement officers—deputy marshals are law enforcement officers. It would violate the separation of powers to allow the courts to employ deputy marshals.

Senate Bill 391 clarifies the separation of powers issue and allows the deputy marshals to serve the court consistent with the Nevada Constitution. The bill fixes an identified issue addressed by the Local Government Employee-Management Relations Board (EMRB). There has been tension between the courts and the county as to who is the employer; the EMRB addressed the issue of the right to collectively bargain. The EMRB issued an opinion in January 2014, Item No. 793, that stated the Legislature needed to address and fix this problem. This bill will fix the collective bargaining issue. We want to address amendments in a work session.

We recommend that section 1, subsection 2, paragraph (c) be amended to confirm that deputy marshals are entitled to have the same collective bargaining rights as other category I peace officers. Our deputy marshals are law enforcement officers and should not be treated like second-class law enforcement officers.

SENATOR PICKARD:

With regard to section 1, subsection 2, paragraph (a), the judge will appoint the deputy marshal, even if he or she is not a county employee. In section 1, subsection 2, paragraph (c), the deputy marshal serves at the pleasure of the judge, and once that service is over, the deputy marshal becomes a county employee. Will this section include collective bargaining? This seems to be a judicial appointment to a county position instead of a county hire for a county position. In *City of Sparks v. Sparks Mun. Court*, 129 Nev. 328, 362-66 (2013), the court addressed this issue. The court expressly precluded this type of intrusion—how do we get the order and the intent to coincide?

MR. LEVINE:

As the law stands, if a judge does not appoint a deputy marshal for the courtroom, the county commission has the authority to. This authority is derived from the *Nevada Revised Statutes* (NRS) 3.310 and NRS 4.353. This bill clarifies that the judge shall first consider qualified available county employees. In *City of Sparks*, footnote 5, the Nevada Supreme Court expressly declined to

pass upon whether employees of the court have rights under NRS 288. This is an unsettled issue because the Nevada Supreme Court declined to consider the issue. Senate Bill 391 clarifies that the judge is to determine whether there are any county employees who can fill the position before making an appointment. A judge may appoint an individual to county service under this bill.

SENATOR PICKARD:

Please clarify. I understand that judges select from a pool of qualified county employees. This gives the judge the ability to hire someone outside of that pool, allowing the person to automatically become an employee of the county. Incidentally, that judge has hired a county employee outside of the process that the county has. I have never heard of a judicial officer hiring an employee for another branch; this seems to run afoul of the principles in *City of Sparks*.

MR. HAWKES:

Since 2007, the judges have selected deputy marshals from a pool of qualified applicants who have gone through the county hiring process. If a deputy marshal does not go to a judiciary appointment, that new hire goes to the administrative pool. We also want further clarification in the bill; it does not have to be a specific deputy marshal, and we want it to be any deputy marshal. The language needs to be clear.

SENATOR PICKARD:

That addresses my confusion as to whether the judge should appoint the deputy marshal from a qualified pool of county employees. How does this bill impact deputy marshals who work directly for the court versus those who work in an administrative capacity? We have deputy marshals who work for the judges, and we have judges who work in the building. This bill only addresses part of the situation. How does the interplay work, especially if the judge is hiring from outside of that pool?

MR. LEVINE:

Section 1, subsection 2, paragraph (c) provides that the deputy marshal serves the judge during the period that the judge wishes to have that deputy marshal provide service. Upon termination of that service, the deputy marshal would go back to the administrative pool and be subject to the rules and policies of county employees in the administrative pool.

The bill attempts to balance the right of the judge to have the deputy marshal he or she wishes to employ with the rights of the deputy marshals, and once that service ends, the marshal would go back to general law enforcement capacity. The law enforcement duties of the marshals is comprehensive. The Regional Justice Center is comprised of more than the Eighth Judicial District Court. County buildings house many county offices, such as the Office of the District Attorney. Under section 1, subsection 2, if a judge wishes to end the service of a particular deputy marshal, the employee would go back to being regular county law enforcement.

MR. HAWKES:

The deputy marshals who are judicially assigned complete administrative duties as well.

SENATOR PICKARD:

How does the interplay work between the two situations? Does the new hire come in as an existing employee with seniority and rank, or does the new hire start at the bottom? When a marshal does not go through the normal hiring process, how does the new hire fit in with the others?

SENATOR CANNIZZARO:

The language in section 1, subsection 2, paragraph (b) reads that before a deputy marshal is appointed, the judge must first look to the qualified county pool of employees. The bill is structured to address the issue of whether the deputy marshals are hired by the county and go through the hiring process and have been determined to be a qualified person. The deputy marshals are qualified law enforcement officers.

SENATOR PICKARD:

I am referencing *Halverson v. Hardcastle*, 123 Nev. 245, 163 P.3d 428 (Nev. 2007) and how the judge appointed a new hire who was outside of the pool entirely. I am sure this bill has its roots in that case. Employee treatment may lead to disputes, and I have a concern about this.

SENATOR SCHEIBLE:

With regard to the hiring of qualified county employees, could there be a situation where a judge starts in one court, moves to a different court and hires the same deputy marshal?

MR. HAWKES:

The deputy marshal would be disallowed from going with the judge if the deputy marshal did not meet the qualifications. The judge can only appoint a deputy marshal if the marshal meets the standard. The marshal would have to undergo the same hiring process.

MR. LEVINE:

The language in section 1, subsection 2, paragraph (b) reads that the judge needs to first consider qualified county employees who must be category I peace officers. This is important because deputy marshals must be category I peace officers. A judge cannot appoint a friend, a convicted felon or someone who otherwise would not be available to serve as a category I peace officer.

SENATOR SCHEIBLE:

Your answer was helpful in interpreting the statute.

VICE CHAIR HARRIS:

With regard to section 1, subsection 2, paragraph (a) requires that a judge of a district court appoint a deputy marshal for the court instead of a bailiff. Does every district court have a deputy marshal, or would this bill require some district courts that do not have a deputy marshal to appoint one?

MR. LEVINE:

The statute provides that deputy marshals only exist and are employed in Clark County. Clark County is the only county in Nevada that has a population of more than 700,000.

VICE CHAIR HARRIS:

Are there courts that do not have either a bailiff or a deputy marshal? Under this bill, would a district court that does not have a deputy marshal be required to appoint a deputy marshal?

MR. HAWKES:

All district courts in Clark County have deputy marshals.

SENATOR DONDERO LOOP:

If the new hire is a category I peace officer, would that person already be an employee of either the city, county, State or governmental entity? What is the issue regarding the current hiring practice?

MR. LEVINE:

The tension is between the county and the court. The issue is whether the deputy marshals are county employees or court employees. In NRS 3.100, it reads that the counties shall provide certain services and items for the public. It has always been my position that everybody who provides assistance to the district judges is a county employee.

SENATOR DONDERO LOOP:

Are deputy marshals county employees?

MR. LEVINE:

Under NRS 3.100, yes, that is correct. The law reads that the county shall provide the attendants to allow the district court to conduct its business, and it states that if the county does not do so, the district judge may utilize the sheriff of the county to procure the attendants.

SENATOR DONDERO LOOP:

Are the deputy marshals considered at-will employees?

MR. LEVINE:

The bill addresses that question and provides that when a judge releases the deputy marshal from service, the deputy marshal is subject to the same rules and regulations as other county employees. For example, Clark County has a merit personnel system that changes at-will status; county employees have the right to collectively bargain to change their at-will status. This bill addresses this issue and affords the same protections to the deputy marshals that other county employees have.

SENATOR DONDERO LOOP:

Are deputy marshals already county employees with those levels of protection in place with regard to employment?

MR. LEVINE:

It is my position that marshals have been and currently are county employees; however, there is confusion dating back to when the sheriff was relieved of the responsibility of providing a bailiff to the court in 2007. The issue is whether the deputy marshals are county employees. One of the purposes of this bill is to clarify that the deputy marshals are county employees.



MR. HAWKES:

In 2007, the sheriff was relieved of the duty to manage the bailiff on a daily basis. The deputy marshals were not relieved of their duties, and they remained county employees. This issue has been attempted to be addressed then. Clark County was not relieved of being an employer. Deputy marshals employed prior to 2007 were county employees.

MR. LEVINE:

In 2007, bailiffs were considered county employees.

MR. HAWKES:

This bill only constitutes a name change.

SENATOR PICKARD:

Would it make more sense to retain the county employment process and authorize collective bargaining rights? Senate Bill 391 makes the situation more complicated than it already is. This issue has been litigated. Does it not make sense to have judges appoint nonemployees to a county employment process?

SENATOR CANNIZZARO:

Senate Bill 391 does not authorize an individual to become an eligible marshal without first undergoing the regular employment process. This bill clarifies the rights of employees. An issue arises when a marshal is relieved from duty by a judge and where that marshal will end up. The language in this bill will not disallow the judge from appointing a marshal.

SENATOR PICKARD:

With regard to section 1, subsection 2, paragraph (b), the language of the amendment is unclear. I am trying to resolve the intrusion into the county process from the Judicial and Executive Branches.

MR. LEVINE:

Compliance with separation of powers is a key component of this bill and to clarify that when a judge appoints a marshal, that marshal is being appointed to county service. A judge cannot employ a peace officer consistent with Article 3, section 1 of the Nevada Constitution. Law enforcement is exclusively an Executive Branch function. This bill allows a judge to have a marshal serve him or her; however, the judge does not employ the employee as a court employee.

MR. HAWKES:

This bill attempts to clarify the language. In section 1, subsection 2, paragraph (b), if we removed the language "shall first consider," it will alleviate some of the problems. The judges have always appointed a deputy marshal from this qualified pool and have not gone outside the pool since 2007. Deputy marshals have previously worked out a memorandum of understanding (MOU) with the judges that expressed the guidelines each party wanted. In *City of Sparks*, in footnote 5, the court declined to take up the issue. This bill clarifies the language and intent.

SENATOR PICKARD:

That answers my question.

SENATOR DONDERO LOOP:

What is the Senate bill number from 2007?

MR. LEVINE:

Assembly Bill No. 139 of the 74th Session.

SENATOR HANSEN:

Is there a law that prevents the court from hiring its own security? I am a nonlawyer, and my question is directed at Legal Counsel.

NICHOLAS ANTHONY (Committee Counsel):

There is no statute under separation of powers and the Nevada Constitution.

SENATOR HANSEN:

There seems to be contention on that issue. If that is not the case, then it seems that the Judicial Branch would have flexibility on these issues.

MR. LEVINE:

If it were limited to the issue of security, the current statute requires that deputy marshals must be category I peace officers, which is an unrestricted peace officer.

SENATOR HANSEN:

I understand the statute exists; however, under the separation of powers, is there a prohibition from allowing the Judicial Branch to hire court bailiffs?

MR. LEVINE:

I would agree if the law pertains to law enforcement.

SENATOR DONDERO LOOP:

In A.B. No. 139 of the 74th Session, section 5 requires each deputy marshal to be certified as a category I peace officer within 18 months after appointment. That means a person could be appointed who is not a category I peace officer, and that person would have to go through that training within 18 months. Is that correct? A qualified pool to me, a nonlawyer, would say that the person would already have the category I peace officer certification.

MR. LEVINE:

The qualified pool is something that developed after the passage of A.B. No. 139 of the 74th Session. The law requires the person obtain category I peace officer certification within 18 months. There are limits, and there are persons who cannot obtain Nevada Peace Officers' Standards and Training (POST) certification. A convicted felon would not be able to obtain a category I peace officer certification. The person has 18 months to achieve the certification; however, there are certain people who could not be hired because he or she would not be able to obtain that certification.

MR. HAWKES:

We have not put deputy marshals in courtrooms who were not POST-certified since 2007. Everyone who has been hired already has a minimum category II peace officer certification. That provision was placed in job announcements so that certain people would be able to become employed and sent to the POST academy.

ANDRES MOSES (Eighth Judicial District Court of Nevada):

We oppose S.B. 391. The relevant statutes need to be read in concert with the NRS. The counties are obligated to fund the courts—the county sets the budget and provides the courts the funds, and the court hires and manages employees. We do have an interlocal agreement with Clark County. The agreement allows the court to share administrative services with the county and benefits our taxpayers. The lines are clear—these are employees of the court, not the county. The marshals are a division of the court.

This issue has been litigated in *Knickmeyer v. State ex rel.* Eighth Judicial District Court, 133 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (2017)—(Adv. Op. 84), which makes

clear that deputy marshals are not a law enforcement agency and are a division of the court. The issue was raised about the constitutionality of whether the court can hire peace officers or marshals—the Nevada Supreme Court has marshals who work for them. The claims about the separation of powers that the courts cannot hire peace officers is not true, and claims such as this have been rejected by the court.

Pursuant to NRS 289.470, the bailiffs of the justice courts and district courts are category II peace officers. There is a requirement in NRS 3 for a deputy marshal who is appointed by a judge to earn a category I peace officer certification within 18 months. Just because a deputy marshal has a category I peace officer certification does not make deputy marshals a category I organization. Deputy marshals are defined as category II under NRS 289. There is no tension between the court and the county. We are in agreement that the marshals are the employees of the court.

ALEX ORTIZ (Clark County):  
We oppose S.B. 391.

LINDA BELL (Chief Judge, Department 7, Eighth Judicial District Court):  
Senate Bill 391 seeks to challenge the employer of the deputy marshals from the district court over to Clark County. This is problematic because the district court is the proper and appropriate employer of deputy marshals. The work performed by the deputy marshals is for the benefit of the court and not for any other branch of government. Judicial marshals are assigned to judicial departments and are tasked with enforcing courtroom rules and procedures, assisting the judge with managing their calendars, maintaining decorum inside the courtroom, providing security for jurors and assisting with handling evidence. Not all judges have decided to appoint a deputy marshal.

A number of judges have administrative marshals assigned to them regularly, but the assigning judge has not accepted a regular judicial marshal. The marshal who is assigned to court administration is tasked with securing four facilities. The administrative marshals manage the screening areas and fill in for the judicial marshals when necessary. The court has to have the free and independent control of the employment of marshals. While the Legislature has delegated the funding of the court to the county, overseeing the operations of the court lies with the chief judge. None of the court employees are currently

considered county employees and are not hired by the county. The court manages all court employees.

Shifting the responsibility of employing the deputy marshals to the county creates a confusing structure. No person can serve two masters. Senate Bill 391 creates a situation where the deputy marshals are deemed employees of the county while simultaneously working at the pleasure of the judges. This is contrary to well-organized structure of the Judicial Branch. What happens when there is a conflict? Who controls the terms of employment when an issue arises? Who has the authority to hire, fire and discipline—the court or county management?

Senate Bill 391 would violate the separation of powers and impinge on the court's inherent constitutional authorities. In *City of Sparks*, that decision is the leading case on separation of powers as it relates to the relationship between local governments and the courts in Nevada. That case centered on a dispute between the City of Sparks and the municipal court on who controls the terms and conditions of employment of municipal employees. The court concluded in its opinion that the City was prohibited from interfering with the municipal court's management of its employees and enforcing or ensuring ability to enter into collective bargaining agreements on behalf of the municipal court's employees. As such, any statutory framework that would deem an employee group of the court as employees of a separate branch of government would run afoul of the constitutional framework outlined in the *City of Sparks* decision.

MELISSA SARAGOSA (Justice of the Peace, Las Vegas Township Justice Court, Department 4, Clark County):

We oppose S.B. 391. We have 15 judges and pro tempore judges. We currently employ 15 judicial marshals and 6 administrative marshals. On occasions, deputy marshals engage in law enforcement functions when writing reports. For instance, when there are threats against a judge, marshals are permitted to make arrests working in conjunction with Las Vegas Metropolitan Police Department. There is an interlocal agreement, and there is no tension between the courts and the county.

The court in the county uses the county administrative resources, such as personnel resources. The deputy marshals gain their county benefits through the interlocal agreement. There are circumstances where the judges go outside the administrative pool to hire a deputy marshal. Our judges should be able to do so

under the separation of powers and should not be unnecessarily restricted in that fashion. Nevada judges are not hiring convicted felons. Deputy marshals can come from federal service, out of state and the Department of Corrections, and they can be former law enforcement officers and others who are well-qualified applicants. When you have an at-will employee relieved of his or her job who becomes part of the pool—what if there is no position available in the administrative marshal pool? We have a large number of justice courts within Clark County, and not every court has hearings every day. In these courts, oftentimes the court will hire a part-time bailiff.

SENATOR PICKARD:

The testimony we heard today is that marshals are county employees. Your testimony is that the marshals are not county employees. Are deputy marshals county employees?

JUDGE SARAGOSA:

Deputy marshals are court employees and not county employees. Marshals have county benefits through our interlocal agreement. The county and court are very clear that deputy marshals are court employees.

SENATOR PICKARD:

Is that true of the district courts?

JUDGE BELL:

Yes. All employees who work in the court are considered court employees. The employees are supervised and managed by the court.

NATALIE TYRELL (Justice of the Peace, North Las Vegas Township Justice Court, Department 2, Clark County):

We oppose S.B. 391, and we concur with the testimony of Judge Bell and Judge Saragosa. Senate Bill 391 is in direct violation of separation of powers and judicial independence. This issue was settled with *City of Sparks*. How can the courts be put in the position of hiring an employee but not being allowed to discharge or discipline that employee? With the *City of Sparks* decision, the North Las Vegas Township Justice Court entered into a MOU with Clark County for purposes of utilizing the county's human resource department. The court handles all interviewing and hiring decisions. Deputy marshals are hired as court employees, not as county employees.

DAVID S. GIBSON, SR. (Justice of the Peace, Henderson Township Justice Court, Department 3, Clark County):

There are issues with the language with regard to separation of powers. In Henderson, we do not have deputy marshals assigned to a particular judge. We have five marshals who are cross-trained. Deputy marshals are present in the courtroom. We do not have a large pool of qualified applicants. If there was a reason a deputy marshal could not serve the court, judges need the ability to discipline the deputy marshal as an employer. We have an agreement with the county to use its human resources. Our qualified pool has applicants who have diverse work histories. I find the language of "shall appoint" to be difficult to put into practice—this could lead to an abuse of hiring practices. We ensure the marshal knows that he or she is a court employee. This bill violates the separation of powers.

SENATOR PICKARD:

Do you hire category I or category II peace officers for deputy marshals in your court?

JUDGE GIBSON:

The Henderson Township Justice Court hires category I peace officers. In the past, we have hired category II peace officers who achieved category I peace officer certifications within the required amount of time. We enjoy the fact that we can hire qualified people from the pool or elsewhere.

SENATOR PICKARD:

Earlier we heard that all the deputy marshals were category I peace officers. Based on additional testimony, the courts are actually hiring category II peace officers also.

JEFF WELLS (Assistant County Manager, Clark County):

There will be tension, but the hiring practice of deputy marshals is not an area where there is tension. The County currently considers the deputy marshals to be court employees—not County employees. Clark County provides human resource services, and this saves taxpayer money. This is a part of the interlocal agreement—it is not because the County thinks of the deputy marshals as County employees. Our County has 1 district court and 11 justice courts. In the smaller justice courts, the court hires part-time bailiffs. The provision in section 1, subsection 2, paragraph (a) requiring that a judge shall appoint a deputy

marshal will work a hardship on the smaller communities because there may not be a category I peace officer in the community.

The County has a budgetary concern with S.B. 391. The premise is that all our courts have this pool of administrative marshals. In a situation where there is no administrative pool, there will be no place to put that person. Even in Las Vegas Justice Court where there is a pool of six qualified persons and the judge does not choose out of the pool, the judge has to increase the budget to accommodate more people. From a fiscal concern, we have a problem.

We emphasize that these deputy marshals are court employees. Previously, the clerk's office was a function of the County. The clerks completed County functions and court functions. The clerks were moved under the direct supervision of the court and became court employees. Court clerks are strictly court employees. The County funds the positions. The County does not manage the employees—we understand that the personnel function is that of the court.

BRUCE SNYDER (Commissioner, Local Government Employee-Management Relations Board):

We are neutral on S.B. 391. Our Board is tasked with administering and interpreting NRS 288. What happened with our Board, the Clark County Deputy Marshals' Association attempted to collectively bargain with Clark County. Clark County refused to bargain. The Association filed a prohibited practices complaint with the EMRB claiming a breach of the duty to bargain. Clark County asserted that the County had no requirement to bargain because the deputy marshals are not Clark County employees but instead are court employees.

Under NRS 288, the definition of local government does not include the courts. The Association asserted that deputy marshals were county employees, and that deputy marshals were both county employees and court employees; and collective bargaining should be allowed. The EMRB held that such employees are court employees, and the county did not commit bad-faith bargaining because the county had no duty to do so. The case was appealed to the Nevada Supreme Court and was dismissed due to technicalities. There is no duty for the county to bargain with court employees.

SENATOR CANNIZZARO:

Senate Bill 391 has presented difficult issues of separation of powers and how deputy marshals who serve our court need to be treated as employees. The



hiring and human resource decisions are made through the county, but the employee is technically a court employee. When it comes to certain disciplinary actions, the court is in charge. When there are other human resource decisions—the county is in charge. The conflicts are present, and this is an issue the Committee needs to address. Deputy marshals do deserve clarity in who their employer is and what policies control their employment. I would like to make this bill work. The separation of powers is a complex issue. As Legislators, we owe it to our deputy marshals to bring clarity to the issue. My door remains open so that we can address concerns of the bill, so that we can bring clarity to the language.

VICE CHAIR HARRIS:

The hearing on S.B. 391 is closed. The hearing on S.B. 328 is open.

**SENATE BILL 328**: Prohibits certain communications that are obscene, threatening or annoying. (BDR 15-70)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

I am here to present S.B. 328 which prohibits certain communications that are considered to be obscene, threatening or annoying. The bill addresses NRS 201.255, which makes it a misdemeanor crime to use a telephone call that harasses or threatens someone. Senate Bill 328 updates the language to include communications through any electronic communication device. The impetus of this bill is from a difficult situation that a constituent of mine experienced. An individual had been convicted of sex offenses, came to Nevada and was under probation supervision. The interstate compact disallowed certain provisions of his probation and were unenforceable while he was in Nevada. Other electronic means were being used to harass his neighbors. This bill modernizes the language of the statute. It is important to address this type of issue, and there must be recourse for people who have been harassed.

SENATOR PICKARD:

I agree with S.B. 328. Would this bill make someone who posts something annoying on social media subject to criminal charges? With regard to section 1, subsection 2, the intent is to annoy. This is a specific intent. Would this bill open us up to widespread allegations of annoying communications?

SENATOR CANNIZZARO:

There is a specific intent element. *Nevada Revised Statutes* 201.255 relates to telephonic communications. In my experience, I have not seen this crime prosecuted in high volumes. The statute is intended to punish the offender for the specific intent of annoying and harassing behavior.

MELISSA CLEMENT (Nevada Right to Life):

We are opposed to S.B. 328. We understand the intent of the bill; however, the word "annoying" is not clear. In instances of political speech, this bill could have the intent of chilling political speech on social media platforms. Political speech, by its own nature, is often annoying. For example, if someone sends another person a social media post about a certain political platform, this could be considered annoying. This point should be evaluated so that the bill protects political speech.

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

We oppose S.B. 328. Adding electronic communication devices is a logical extension of the law. The language is too broad. The criminal code should not be used as a human civility code. This statute should be taken out of the NRS altogether. My concern is that a text message could be considered annoying. Sometimes, people say things that they regret, and criminal penalties should not attach for those particular instances.

VICE CHAIR HARRIS:

Is your opposition to the current state of the law? Or is your opposition to the bill regarding the new language that includes all electronic communication devices?

MR. PIRO:

My opposition is to both.

SENATOR HANSEN:

Are you aware of any prosecutions under this statute? Free speech is a major issue. I do not believe regular communication would fall under this. Where does this law fit under NRS as far as prosecution goes, and when has it been used?

MR. PIRO:

I have never seen a prosecution with this. Adding text messages and social media would potentially increase prosecution. Prosecuting under this statute would be rare; however, it is a possibility.

SENATOR CANNIZZARO:

A number of statutes on the books deal with speech. The First Amendment controls, and in law school, we are taught that people have freedom of speech. To what extent does freedom of speech extend? A person cannot go into a crowded theater and yell "fire"! The First Amendment does not protect that type of speech. Senate Bill 328 is specific, and the intent must be clear. The particular utilization of an electronic communication device is being used for the specific purpose of harassing or annoying a person. This would not prohibit text messages of disagreement. This bill addresses the intent of harming someone through an electronic communication device. This bill is not intended to impede First Amendment protected speech.

VICE CHAIR HARRIS:

If someone was harassing me through text messages upwards of 50 times per day, would I have any recourse?

SENATOR CANNIZZARO:

It depends on whether elements were met in the statute. There are different elements in each statute.

VICE CHAIR HARRIS:

Have we updated stalking to include electronic devices?

SENATOR CANNIZZARO:

The crime of stalking includes electronic devices.

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VICE CHAIR HARRIS:

The hearing on S.B. 328 is now closed. The meeting is adjourned at 9:49 a.m.

RESPECTFULLY SUBMITTED:

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Jeanne Mortimer,  
Committee Secretary

APPROVED BY:

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Senator Nicole J. Cannizzaro, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster