

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Eighty-first Session
May 28, 2021**

The Senate Committee on Government Affairs was called to order by Chair Marilyn Dondero Loop at 3:34 p.m. on Friday, May 28, 2021, Online and in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Marilyn Dondero Loop, Chair
Senator James Ohrenschall, Vice Chair
Senator Dina Neal
Senator Pete Goicoechea
Senator Ira Hansen

GUEST LEGISLATORS PRESENT:

Assemblyman Jason Frierson, Assembly District No. 8
Assemblyman P.K. O'Neill, Assembly District No. 40

STAFF MEMBERS PRESENT:

Alysa Keller, Policy Analyst
Heidi Chlarson, Counsel
Janae Johnson, Committee Secretary

OTHERS PRESENT:

Major General Ondra Berry, Adjutant General of Nevada, Office of the Military
David Fogerson, Chief, Division of Emergency Management, Office of Homeland
Security, Department of Public Safety
George Togliatti, Director, Department of Public Safety
Chuck Callaway, Las Vegas Metropolitan Police Department
Christine Saunders, Progressive Leadership Alliance of Nevada
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Jim Hoffman, Nevada Attorneys for Criminal Justice
Corey Solferino, Washoe County Sheriff's Office

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Stacey Montooth, Executive Director, Nevada Indian Commission
Maurice White, Vice President, Nevada State Prison Preservation Society
Marla McDade Williams, Reno Sparks Indian Colony
Ernie Adler, Pyramid Lake Paiute Tribe
Charlie Donohue, Administrator, Division of State Lands, State Department of Conservation and Natural Resources

CHAIR DONDERO LOOP:

We will open the hearing with Assembly Bill (A.B.) 485.

ASSEMBLY BILL 485: Amends provisions related to emergency management.
(BDR 18-1103)

MAJOR GENERAL ONDRA BERRY (Adjutant General of Nevada, Office of the Military):

Assembly Bill 485 will transfer the Division of Emergency Management (DEM) to the Office of the Military as referenced from my presentation ([Exhibit B](#)).

SENATOR NEAL:

Can you discuss section 7?

DAVID FOGERSON (Chief, Division of Emergency Management, Office of Homeland Security, Department of Public Safety):

When writing the bill, we took any duties, responsibilities and authority vested in the Division of Emergency Management under the Department of Public Safety (DPS) and moved them to the Office of the Military. The chief's position is listed as a peace officer under DPS statutes, and we decided to move it rather than leave it out. One advantage is the position is not POST-certified and does not carry a gun, but it does retain peace officer status so the chief can share sensitive law enforcement information. When I came into this position in late October with a security clearance, I was immediately able to receive a secret brief on elections and anything going on during the pandemic. Someone without a security clearance would have not been able to receive this information. We left this in the bill so future holders of the position would be able to get sensitive law enforcement information.

SENATOR NEAL:

The insertion into *Nevada Revised Statutes* (NRS) 289 is broad. What is the scope? How limited are you?

MR. FOGERSON:

These are the same powers the DPS position holds right now. No one has ever utilized the peace officer powers as the chief of DEM. However, this was left in the bill as the existing powers within the chief's position. There is no intent to expand it. We wanted to ensure that the responsibilities and authorities are moved over without leaving anything out.

MAJOR GENERAL BERRY:

This is customary with agencies around the Country. Where DEM comes under the Office of the Military, it is a customary practice for the language and responsibilities to be carried with it.

SENATOR NEAL:

Section 18 of the bill has to do with schools, which surprised me. What is the relationship between section 18 and NRS 388.262?

MR. FOGERSON:

The DEM is embedded in many sections of NRS, looking at a whole community approach to bringing people together. This is existing language giving DEM authority that is being moved to the Office of the Military.

We are part of the school safety task forces and serve as the secure repository for school emergency plans. We work on safety with the Nevada System of Higher Education and the Superintendent of Public Instruction. We look at safety from the aspect of law enforcement, behavioral health, fire, emergency medical services and the whole range of emergency management plans, including sheltering and evacuation in those environments. There are various sections for public, charter and private schools. This authority has been there from last Session, and we have been working on this process.

SENATOR NEAL:

What would your role be in case of suicide, which is discussed in section 20 of the bill? This is the section dealing with development committees regarding crisis, emergency and suicide.

MR. FOGERSON:

The development committee will have a name change this Session. Originally, this statute was about school safety plans related to suicide. Last Session, this was expanded to include school safety. Emergency Management does not have

a lot of authority, but we have a lot of friends. We can help write up plans so the plan is not focused on law enforcement, fire or behavioral health alone. Rather, we figure out how to get all of those people together to work collaboratively on an issue.

CHAIR DONDERO LOOP:

Section 18, subsection 3, subparagraph (b) of A.B. 485 states, "If the county has not designated a full-time employee to serve as an emergency manager and does not have school police officers" Do you go through that list before you get to the Office of the Military, or are they partners and you all get together at once?

MR. FOGERSON:

It depends on what the community wants; sometimes we are all at the table. I have an employee who is on the School Safety Task Force and works closely with the State Superintendent's Office and school communities. We do an annual safety conference with them. Sometimes they reach out to us for advice, and at other times they work with local governments. In the end, we are the repository for their plans.

SENATOR OHRENSCHALL:

Has the relationship with the Federal Emergency Management Agency (FEMA) been collaborative? If problems arise, is FEMA willing to help?

MR. FOGERSON:

The Agency has been a wonderful partner. It is federally supported, State-led and locally executed, since every disaster is local, just as all politics are local. We have 175 FEMA employees still in the State helping us with the Covid-19 pandemic. Before the pandemic started, FEMA deployed a FEMA Incident Team member who has been here to help guide the chief through the process of the federal and State interactions. The State Emergency Operations Center has seven FEMA employees. We consider them good friends, and we have a collaborative relationship. There is a new FEMA administrator who just started, and we will meet her next month to discuss how to do things in the future and how to move forward.

CHAIR DONDERO LOOP:

Section 24 states, "The Chief of the Division of Emergency Management serves at the pleasure of the Adjutant General and maintains the powers and duties set

forth in NRS 414.020 to 414.340, inclusive." Is this because the person changes or can be appointed?

MR. FOGERSON:

The position is appointed by the director of DPS. We moved all the authorities the DPS director had to the Adjutant General.

MAJOR GENERAL BERRY:

That language will remain the same.

GEORGE TOGLIATTI (Director, Department of Public Safety):

The relationship with the Nevada National Guard has been good over the past couple of years, especially with Covid-19. The Guard has done a terrific job and made us aware of all the dangers we faced on the medical front, as well as helping with natural disasters such as wildfires and floods. The Emergency Management team would be better served under the Office of the Military, and they are even located on the same campus with the National Guard. This bill is a win-win for us, and that working relationship will help us a lot.

I would also like to point out that the bill has a homeland security piece. Emergency Management is involved with FEMA and the federal government, and a lot of the funding goes through them. They also set up our Homeland Security Commission. The Governor chairs that Commission, and resources are made available by the federal government. The Governor names the Homeland Security Advisor. It is and will continue to be a close relationship with DPS. If we had a disaster that involved something criminal, we would have this relationship to fall back on with the National Guard as well as the DEM. We make a good team.

I am comfortable with this transition. This is a model I looked at in Arizona, and when Covid-19 hit, it made a lot of sense. The National Guard has resources that serve Nevada.

SENATOR NEAL:

In section 49 of the bill, how does this payment structure work now that the DEM has been merged under the Office of the Military? What would normally be distributed to you?

MR. FOGERSON:

This is one part we looked at with our legal counsel because we could not figure out what it meant. We all know the money has to go to the State Treasurer; the money is State money. The Deputy Attorney General said, "It doesn't make sense to have this provision in here anymore. If we cross this out, the money will still go to the State, and it will be fine there." This was our justification for crossing this language out, since our counsel could not figure out what this sentence was intended to do.

MAJOR GENERAL BERRY:

In closing, I strongly believe we have a best practice in place. As Mr. Togliatti said, this bill will be a win-win. This comes under the direction of Governor Steve Sisolak. We have had an outstanding working relationship with the DEM and its leadership. The biggest reason we were successful during the pandemic is the partnership, collaboration and willingness to work together. The Nevada National Guard is always ready and always there.

CHAIR DONDERO LOOP:

We will close the hearing on A.B. 485.

SENATOR OHRENSCHALL MOVED TO DO PASS A.B. 485.

SENATOR NEAL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR DONDERO LOOP:

We will open the hearing on A.B. 220.

ASSEMBLY BILL 220 (1st Reprint): Establishes provisions relating to the use of mobile devices by peace officers. (BDR 23-924)

ASSEMBLYMAN JASON FRIERSON (Assembly District No. 8):

Assembly Bill 220 prohibits peace officers from using mobile applications that encrypt communications on official and publicly issued cell phones. This bill is only applicable to work phones. It does nothing to prohibit or control how peace officers use their personal phones. This bill is about transparency. If peace

officers use encrypted communication on work phones, those communications, which normally would be discoverable, inherently become hidden from the public and the legal process.

Discovery is the formal process of exchanging information between parties concerning witnesses and evidence to be presented in court. Discovery methods include depositions, written interrogatories, subpoenas of books, records and other documents for inspection, physical exams and submittal of documents for examination to determine if they are genuine. Typically, email, texts and other forms of electronic communication are discoverable, as long as they are not covered by attorney-client privilege or covered by the work-product exemption, such as internal reports and documents for the prosecution or the defense.

A peace officer could be involved in discovery several ways: as a witness to a crime, as a criminal defendant, or as a party or witness in a civil case. In these situations, statements, papers, documents and tangible objects in their possession, including emails and texts, would likely be subject to discovery. As technology advances, it is imperative that we update our standards to ensure we do not lose sight of transparency and fairness in the process.

Section 1, subsection 1 of A.B. 220 requires law enforcement agencies to develop a written policy that sets forth standards of conduct for using publicly issued and official mobile devices.

Section 1, subsection 2, paragraph (a) requires written policies regarding mobile applications that are approved for use on official mobile devices.

Section 1, subsection 2, paragraph (b) prohibits the use of mobile applications that are not expressly approved.

Section 1, subsection 3 prohibits the use of mobile applications that use end-to-end encryption with the intent to avoid the creation, retention or lawful discovery of records or data relating to the communications of a peace officer. Note that intent is an important factor in this provision.

This bill serves as a reasonable measure to protect public trust in law enforcement agencies and ensure technology does not prohibit transparency and accountability. The bill is a result of working with the law enforcement community for the last year. We have to come together; we have to advance

policies that allow law enforcement to do its job effectively, and we do not get that kind of result unless we work together. We also wanted to make sure we were not getting in the way of certain encrypted technology officers use to do their job. Rather, we are simply providing that they are not allowed to use this type of technology with the intent to hide information or evidence.

SENATOR NEAL:

There was an incident where a police officer used music to keep a conversation from being recorded or overheard. Would this bill address this kind of incident?

ASSEMBLYMAN FRIERSON:

I do not believe A.B. 220 addresses that situation, no. That would be an evidentiary matter in, for example, a criminal case about spoiling evidence. This bill is intended to address new applications. Signal is the application that started the problem. You can set it up so a text conversation disappears in 30 seconds, and once it disappears, it is gone. If an application is not approved to be on a work cell phone, officers should not be putting it on their work cell phones. What they do on personal cell phones is their business.

We originally prohibited any encryption to be used at all, but then we found out that law enforcement uses encryption for valid purposes. When it is used for valid purposes, they have policies that dictate how they use it. This bill is intended to ensure they comply with those policies and do not use this type of application to hide evidence.

SENATOR NEAL:

If an officer uses encryption for an invalid purpose, what is the penalty?

ASSEMBLYMAN FRIERSON:

The consequence in NRS 289 is not set forth in the language of the bill. The consequence would be the same consequence of any conduct that violates NRS 289. There would be a civil consequence. I do not know if there are any possible criminal penalties.

SENATOR HANSEN:

What is the current policy on the use of phones?

ASSEMBLYMAN FRIERSON:

There are policies in place, and of course, no law enforcement agency would encourage using a phone to hide evidence. This bill is not intended to suggest that they are. However, this is new technology, and folks are getting more comfortable with this type of technology. It is fine for personal use but should not be used to hide evidence in a law enforcement context. In my discussions with the law enforcement community, there was no opposition to requiring the policy to be developed and not allowing officers to violate this policy.

CHAIR DONDERO LOOP:

Do police departments pay for cell phones for every officer?

ASSEMBLYMAN FRIERSON:

Different agencies operate differently. Not all law enforcement agencies even have cell phones new enough to have this kind of technology.

CHAIR DONDERO LOOP:

If officers are not given cell phones and use their personal phones for official purposes, how does the bill address that scenario?

ASSEMBLYMAN FRIERSON:

This bill expressly addresses equipment issued by the department for official use.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

We support A.B. 220. We share the same concerns as Assemblyman Frierson and appreciate his working with us to ensure the bill does not have a negative impact on certain police operations that require end-to-end encryption. Our information technology (IT) section tells me that end-to-end encryption protects a message from point A to point B from hackers and other people who should not be able to see it. In cases where sensitive law enforcement information is being relayed from one officer to another officer via a mobile device, it is important to have encryption. We do not support officers using encryption to try to bypass the Public Records Act or lawful discovery. This bill meets that criteria and that balance.

Regarding the question about current law regarding phones, the current body camera law has a section prohibiting an officer from tampering with or interfering with body camera footage. I am not a lawyer, but I believe if an

officer did something to intentionally mess up a video, such as covering the lens or playing music, that would be covered in this statute.

Regarding the question about providing phones, the Las Vegas Metropolitan Police Department (LVMPD) has a detailed policy on this. At this time, only supervisors, detectives and certain officers in special assignments are issued a cell phone. We are working to have every officer in LVMPD be issued a cell phone because officers need to communicate. The policy does have strict criteria on what apps are allowed to be on the phone. We are concerned about hackers, cybercrime and identity theft. A lot of major law enforcement agencies have been targeted for cyberattack. Our IT section has strict protocols for officers to only use authorized applications so we do not risk getting our system infected through a cyberattack.

In addition, there was a case a year ago in which a county commissioner was sending work-related messages using a private phone, and the court said a public records request could be done when a private phone is used to do work-related business.

CHAIR DONDERO LOOP:
Does LVMPD provide phones to their officers?

MR. CALLAWAY:
Yes, some of them. Supervisors, detectives and officers on certain special assignments are issued a cell phone. We are working toward issuing cell phones to all officers in the future.

SENATOR HANSEN:
You and Mr. Spratley originally testified against the bill. Has it changed since then?

MR. CALLAWAY:
Yes. We had some concerns with the initial draft of the bill, but the current language addresses our concerns.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
This bill will help with transparency, which is essential for community trust. We support A.B. 220.

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ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):
We support A.B. 220.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
We support A.B. 220. Public business should be as transparent as possible. Especially in the context of criminal prosecution, thorough records are necessary to have a fair trial where the jury hears all relevant evidence. This is why we have public records laws and a discovery obligation, which balance the need for transparency with the need for the police to have secrecy in some of their investigations. But the use of secret messaging apps creates a loophole that can be used to evade these legal obligations without any policy justification. We do not believe this practice serves any legitimate purpose. Assembly Bill 220 is a good step towards closing this loophole.

COREY SOLFERINO (Washoe County Sheriff's Office):
We support A.B. 220.

ASSEMBLYMAN FRIERSON:
I want to thank the law enforcement community. Collaborating early on in the process is a good way to make sure we do not have any unintended consequences. As we adapt to newer technology, A.B. 220 will ensure the justice system works properly. This bill is part of that effort.

CHAIR DONDERO LOOP:
I will close the hearing on A.B. 220.

SENATOR OHRENSCHALL MOVED TO DO PASS A.B. 220.

SENATOR NEAL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR DONDERO LOOP:
We will open the hearing on A.B. 270.

ASSEMBLY BILL 270 (1st Reprint): Revises provisions governing the preservation of the Nevada State Prison and the Stewart Indian School. (BDR 18-646)

ASSEMBLYMAN P.K. O'NEILL (Assembly District No. 40):

This is an exciting bill for Carson City. Assembly Bill 270 seeks to enhance preservation efforts for the Nevada State Prison (NSP) and the Stewart Indian School.

Both the NSP and the Stewart Indian School are located in Carson City and were created in the 1800s, around the time Nevada gained statehood. Both places are unique and tell the rich history of the State in its early days. For 150 years, the NSP played an important role in the State of Nevada, protecting its citizens, influencing architecture, providing employment and amassing an impressive list of historically significant events. After the NSP was decommissioned in 2012, the Nevada State Prison Preservation Society was formed as a nonprofit group with the goal of preserving, interpreting and developing this important site for education for present and future generations. The Preservation Society is hard at work trying to get the prison museum up and running.

For 90 years, the Stewart Indian School fulfilled a federal commitment to pursue Native American education in Nevada. That education was not always the best, but they thought they had good intentions at the time. The school opened in 1890 with 37 students from local Washoe, Paiute, and Shoshone tribes and 3 teachers. Over the years, hundreds of Native American children attended the boarding school. The school closed in 1980 due to federal budget cuts and earthquake safety issues. The State acquired the campus through several transactions in the 1990s. The facility is now used by the State for classes, training and an agency office, including the Nevada Indian Commission, which is located in the former superintendent's home.

Today, the Stewart Indian School is listed on the National Register Of Historic Places. The Stewart Indian School Cultural Center and Museum is located in the former administration building. The school grounds are often used for pow wows and other events to celebrate the rich history of Nevada's indigenous people.

Let me give you a brief walkthrough of A.B. 270. Sections 2 and 2.5 require the fees charged for use of the buildings and grounds of the former Stewart Indian School to be credited to the Nevada Indian Commission's Gift Fund. This Fund will carry out programs to preserve and maintain the building grounds of the former Stewart Indian School. Section 3 revises the allocation of money in the Silver State Industries Endowment Fund for the maintenance of the modern structures, buildings and other properties of the prison, and administration costs. It eliminates the prohibition on spending and transferring the reserve principal of the Fund.

Section 4 creates an exemption in current law that prohibits the sale of alcohol within one-half mile of any Department of Corrections facility that houses 125 or more inmates. This provision will allow the sale or consumption of beer and wine in the Nevada State Prison for special events. The alcohol will be brought in for the event and removed when the event is over. It will be served in red plastic cups or some other type of container so it cannot be hidden or secreted anywhere in the building. The Preservation Society is committed to doing their own cleanups without trustees. We have added these protections so alcohol cannot be smuggled back into the facility, since it is next door to the Warm Springs Correctional Center.

Section 6 will allow for the transfer of the reserve principal of the Endowment Fund for the Historic Preservation of the Nevada State Prison.

Section 7 ensures any funding generated by a nonprofit corporation contracted to operate the prison as a museum belongs solely to the corporation.

Sections 8 and 9 eliminate the trust fund for further study and development of the Nevada State Prison. It requires money remaining in the fund on July 1, 2021, be deposited into the Endowment Fund for the Historic Preservation of the Nevada State Prison.

SENATOR OHRENSCHALL:

I appreciate this bill for the preservation of the NSP and the Stewart Indian School.

ASSEMBLYMAN O'NEILL:

I am excited about this bill, both from an economic standpoint and also for the historic part of what it offers to visitors to Carson City.

CHAIR DONDERO LOOP:

The Stewart Indian School is an important piece of Nevada's history.

SENATOR HANSEN:

I like this bill and recall playing basketball against the Stewart Indian School's team.

STACEY MONTTOOTH (Executive Director, Nevada Indian Commission):

I am excited about A.B. 270. Creating a revenue stream for the Stewart Indian School Cultural Center and the Nevada Indian Commission will be monumental. There are two people in this room who have a direct connection to the Stewart Indian School: my grandmother, Margaret Oceguera, and former Speaker John Oceguera. In fact, my grandmother was raised at the Stewart Indian School.

MAURICE WHITE (Vice President, Nevada State Prison Preservation Society):

We feel A.B. 270 will allow us to bring the final piece of the puzzle to create tourism in Carson City. With the historical, educational and cultural opportunities at the NSP, this is an opportunity not just for Carson City tourism but for the State as well. This will be a worldwide attraction for Carson City. The realignment of the financial part of this bill does not remove any oversight that the Preservation Society endorses and supports. It would simply allow us to operate in an easier manner and bring this facility to its fullest potential in a more timely way.

MARLA MCDADE WILLIAMS (Reno Sparks Indian Colony):

We support A.B. 270. There was a similar bill last Session, and we thank Assemblyman O'Neill for adding provisions from that bill to A.B. 270.

ERNIE ADLER (Pyramid Lake Paiute Tribe):

The Pyramid Lake Paiute Tribe proudly supports A.B. 270. The Stewart Indian School has a rich history and was part of Native American life in Nevada for many years. When I first became an attorney, I worked for Nevada Indian Legal Services, and the office was at the Stewart Indian School. I got to experience it firsthand, and it is a wonderful place. It is good to preserve it. When I worked there in the 1970s, some of the staff houses were used for fire practice for the Carson City Fire Department and the State Fire Marshal. It is horrible that those buildings were not preserved. It is imperative the school is preserved.

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The NSP also has a rich history, and I have many stories about this property from when I was a chief criminal deputy.

CHARLIE DONOHUE (Administrator, Division of State Lands, State Department of Conservation and Natural Resources):

The Division is neutral on A.B. 270. Amendment No. 173 clarified which structures and grounds would be subject to special use permits under section 2.5. This is a critical element of the bill, as the legislation authorizes the Museum Director to issue these special use permits for events to generate revenues for various programming, as well as to preserve the facility and the cultural integrity of the former Stewart Indian School. It is nice to have this process more clearly defined.

ASSEMBLYMAN O'NEILL:

I need to give credit to Marla McDade Williams for her work on A.B. 270.

CHAIR DONDERO LOOP:

I will close the hearing on A.B. 270.

SENATOR OHRENSCHALL MOVED TO DO PASS A.B. 270.

SENATOR HANSEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR DONDERO LOOP:

Is there any public comment? Seeing none, I will adjourn this meeting at 4:41 p.m.

RESPECTFULLY SUBMITTED:

Janae Johnson,
Committee Secretary

APPROVED BY:

Senator Marilyn Dondero Loop, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
A.B. 485	B	1	Ondra Berry / Office of the Military	Presentation