

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
March 29, 2005**

The Committee on Judiciary was called to order at 8:10 a.m., on Tuesday, March 29, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County
Assemblywoman Debbie Smith, Assembly District No. 30, Washoe County
Assemblyman Joe Hardy, Assembly District No. 20, Clark County

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel
Carole Snider, Committee Attaché

OTHERS PRESENT:

Ben Graham, Legislative Representative, Clark County District Attorney's Office and Nevada District Attorneys Association
Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office, Reno, Nevada
Ivory Endacott, Private Citizen, Sparks, Nevada
Susan Severt, Legislative Liaison, representing Sun Valley Safety Task Force, Sun Valley, Nevada
Kim Gervasoni, Private Citizen, Reno, Nevada
Dawn Blinder, Private Citizen, Las Vegas, Nevada
Erin Breen, Director, Safe Community Partnership Program, Las Vegas, Nevada
Sarah Stadler, Youth and Media Coordinator, Mothers Against Drunk Drivers (MADD), Lyon County Chapter
Michelle Youngs, Public Information Officer, Washoe County Sheriff's Office, Reno, Nevada
Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Martha Barnes, Administrator, Central Services and Records Division, Nevada Department of Motor Vehicles
Lt. Tony Almaraz, Nevada Highway Patrol, Nevada Department of Public Safety
Vicki Mayes, City Manager, City of Boulder City, Nevada
Michael Niggli, President, Sempra Generation, San Diego, California
Mark Nelson, Director, Governmental Affairs, Sempra Generation, San Diego, California
Steven Holloway, Executive Vice President, Associated General Contractors of Southern Nevada

Chairman Anderson:

[Meeting called to order and roll taken.] This morning we have three pieces of legislation. If you are here for Assembly Bill 256, Ms. Buckley's bill, I'm removing it from the agenda for the day. It will be reposted at a later time.

[Chairman Anderson, continued.] Before we begin, the Committee is still waiting for three pieces of legislation that have to be delivered today, so there is a possibility of us meeting behind the Bar after today's Committee meeting. Of the three we are waiting for, I have two in my possession. One is from our Committee, BDR 15-1371, that makes it a crime to intimidate or threaten public officials.

- BDR 15-1371—Revises provisions governing crime of threatening or intimidating public officers, public employees, jurors, referees and certain other similar persons. (Assembly Bill 528)

ASSEMBLYMAN CARPENTER MOVED FOR COMMITTEE INTRODUCTION OF BDR 15-1371.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I have BDR 14-455, which makes various changes concerning interception and recording of wire and oral communication in certain situations. This is requested by the Attorney General's Office.

- BDR 14-455—Revises the provisions prohibiting the recording of wire or oral transmissions to exclude certain situations involving hostages or barricaded criminals or accused criminals. (Assembly Bill 512)

ASSEMBLY MANENDO MOVED FOR COMMITTEE INTRODUCTION OF BDR 14-455.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:

Let's turn our attention to Assembly Bill 295.

Assembly Bill 295: Creates crime of vehicular manslaughter. (BDR 43-205)

Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County:

Assemblywoman [Debbie] Smith and I are here today with another misdemeanor manslaughter bill for one major reason. Our citizens continued to be killed by vehicles in alarming numbers. I believe that law enforcement

officials need this tool to make an appropriate charge to a driver whose carelessness results in a death. Because no matter how accidental the circumstances might have been, the consequence remains the same. Someone is killed.

[Assemblywoman Leslie, continued.] Just yesterday, it was disclosed that the person who ran into a bus stop a few weeks ago in Las Vegas, killing four innocent bystanders, will be charged with traffic violations because there was no intent. Family members are naturally outraged. This is not an isolated incident. Well over a year ago, when I was approached to sponsor this bill, it was because of a very tragic accident that occurred in Assemblywoman Smith's district. Since that time, it seems like every time I pick up a newspaper from anywhere across the state, there is an example of someone who was killed by an inattentive, neglectful driver, who receives a traffic ticket. It is not an isolated incident and this bill will provide an accurate charge without changing the criminal penalty. It will reflect the reality of the situation, misdemeanor manslaughter.

The bill does add one additional penalty in this situation, suspension of a person's driver's license for 12 months. There will be a friendly amendment presented to you from the Department of Motor Vehicles. Assemblywoman Smith and I have had a chance to look at the amendment and we are fine with it. It just clarifies this charge would be reflected on a person's driver's license and I will leave it to the Department of Motor Vehicles to explain that.

I hope that you will agree with me that the time has come for Nevada to join the many states that have a provision for misdemeanor manslaughter in their statutes. In doing so, we will raise public awareness about the consequences of inattentive driving and hopefully prevent more tragedies of his nature.

Finally, while I am the chief sponsor of this bill, I hope you will view Assemblyman Smith as an equal chief sponsor, given the tragedy that occurred in her district, which added impetus to this effort to renew the legislators' interest in creating a misdemeanor vehicle manslaughter bill.

Since the issue around this bill tends to be more of a legal explanation of criminal negligence versus simple negligence, with your permission, what we would like to do is listen to the district attorneys comments.

Chairman Anderson:

When did you see the amendment?

Assemblywoman Leslie:

It was last night.

Ben Graham, Legislative Representative, Clark County District Attorney's Office and Nevada District Attorneys Association:

In the beginning of this legislative session, we spoke about levels of criminal intent. The *mens rea* caused criminal prosecution if there was an act coupled with *mens rea* which is intentional, knowing, reckless and criminal negligence. This is basically where we are today. If the lowest level is criminal negligence and if we were to add the violation of running a stop sign at an excessive speed with great inattention along with alcohol added to it, you could raise that to the criminal negligence level and possibly result in a felony charge if a death were to occur.

This bill is saying that we see what is happening and deaths are occurring with simple negligence. Negligence is someone who goes through a stop sign or somehow inadvertently runs off the road into a bus stop. There is no evidence or significant evidence that we can prove of any intoxication, any speed or any other significant inattentiveness. The causation is connected with whatever conduct the driver had and a death occurred. Currently, there is no acknowledgement of this death factor. There is only the violation of the simple traffic offense.

What this legislation would hope to do would say there was simple negligence and there was proximate cause. The negligence, even though it was simple and there was no evil intent, caused a death and as such, you should be charged with misdemeanor manslaughter. The penalty could still be one day to six months in the county or municipal jail, but it would be acknowledged as a homicide as a result of the conduct and proximate causation. The driver's license could also be suspended, which normally is not the case in misdemeanor offenses, and that, of course, would require the filing of an SR-22, an insurance form, for a period of time so the collateral consequences are more significant.

The time has come. Historically, we have heard this issue from time to time. There was an editorial in on March 20, 2005, in the *Las Vegas Sun* stating this issue should be addressed in legislation. The important thing I want to emphasize is that there is a proximate cause of requirement. If it wasn't the cause, somebody truly darted out and it really wasn't the fault of the driver, then the charge would not be viable.

Chairman Anderson:

In using the *mens rea*, you are talking about the guilty mind that the act is predicated upon a guilty mind.

Ben Graham:

The guilty mind is pretty minimal in this situation.

Chairman Anderson:

The actions you are referring to are intentional, knowingly, reckless, and gross criminal negligence. We're looking for gross criminal negligence.

Ben Graham:

Actually, we are one level below that.

Chairman Anderson:

Actually one level before that, and we are going to raise it to this level, but there still has to be the proof of some guilty mindset.

Ben Graham:

That would be if a traffic violation occurred as a result of proximate cause and a death occurred. On page 1, the current status of the law deals with various penalties for violations calling for a 7-year suspension if there has been violations within a period of time. On page 2, Section 1, subsection 1(b)(1), we are changing any other manslaughter where there is more than just simple negligence. The current law only provides for punishment if there was some significant criminal negligence. We are adding this section for vehicle manslaughter, described in Section 2 of this act, resulting in the death from driving a motor vehicle would be included and then it sets forth duties to stop and aid that are current law.

On page 3, Section 2, subsection 1, we are amending to read, "A person who, while driving or in actual physical control of any vehicle, proximately causes the death of another person through an act or omission that constitutes simple negligence is guilty of vehicular manslaughter and shall be punished for a misdemeanor." There is still causation so a true, unavoidable accident situation would not apply. If you go through a stop sign and you are not speeding, it constitutes simple negligence. You would be guilty of vehicle manslaughter and be punished as a misdemeanor. A person who commits an offense may be subject to additional penalty if it occurs in the work zone situations. That happens every now and then in a construction area. The penalties are enhanced through federal mandate, which we enacted in the last session. The Department of Motor Vehicles would be notified and the entry of conviction would be made in the driving

record. I believe that is what the Department of Motor Vehicles will be testifying about. Also, insurance notification would go out.

[Ben Graham, continued.] On page 4, it sets forth what manslaughter is. Under traditional law, including the heat of passion, it emphasizes on line 42 that manslaughter does not include vehicular manslaughter. We are not bringing manslaughter into this particular violation. It is limited to a vehicular situation. On page 5, line 7, it emphasizes that this only applies to vehicular manslaughter and not the traditional manslaughter statutes that exist right now.

Chairman Anderson:

Are all those changes on page 5 for clarification purposes? The crime of voluntary manslaughter does not include vehicular manslaughter.

Ben Graham:

We are not expanding or limiting that.

Assemblyman Horne:

I have concerns with the definition of vehicular manslaughter. It basically says here that intent is gone. I'm concerned if there is room in this bill where a person is driving and he hears his child in the backseat choking on some crackers he is eating. Your first instinct is to turn around rapidly. At that moment, an accident could have been caused which could have been fatal to somebody. Do we want to give the parent who does that a criminal record? There was also an incident in Las Vegas where somebody was taking medication which was approved by the doctor to drive but had a seizure.

Ben Graham:

In both those situations, you would be subject to a misdemeanor citation. One would be for inattentiveness, even though you are rescuing your child. If you take a look at the statute relative to a minimal amount of controlled prescription substance in your system, that's a defense. But if you are actually under the influence and it causes an accident, you would be subject to this charge. Keep in mind, from a penalty standpoint, the penalty is no more severe except your license is suspended. It is an acknowledgment if it results in vehicular manslaughter.

Assemblyman Carpenter:

Is there a definition of simple negligence in the statutes?

Ben Graham:

I don't believe that there is, to my knowledge, on simple negligence. On page 3, lines 15 through 17, if you proximately cause the death of another person through an act or omission, it constitutes simple negligence. In effect, it acknowledges that simple negligence can cause disastrous results. If a death occurs, the punishment is fairly uniform with a misdemeanor traffic citation with the added penalty of suspension.

Assemblyman Carpenter:

If there is no definition, won't it make this situation more difficult to convict someone? Maybe it's too complicated to define simple negligence.

Ben Graham:

I think going through a stop sign, which is a common situation, without speed, drugs or some other element that raises your conduct above simple negligence, that's the concept of simple negligence. You didn't see the stop sign for whatever reason. You didn't intend not to stop. That's what simple negligence is. It's a violation. It's almost a strict liability situation. If you are guilty of simple negligence of a traffic violation where a death occurs, you're subject to being charged under this bill.

Ms. [Kristin] Erickson [Washoe County District Attorney's Office] pointed out to me that there may be a necessity defense which might apply to Mr. Horne's situation. I really don't think there is a need to define simple negligence. We have been operating for years with simple traffic offenses where we have not charged the higher offense.

Chairman Anderson:

This offers to the district attorneys the opportunity to charge somebody then prove the unreasonable risk question that has been created and should have been foreseen and avoided. I think that is what we are really doing here with this piece of legislation. I think we all remember the young man returning to a military base and a guy turned a truck across the road and blocked both lanes of the highway. He should have been charged but was not. That often occurs in these situations. What we are doing is adding the opportunity to provide the ability to charge someone in these types of situations.

Ben Graham:

You are correct. This is not new territory but we are adding a few things that are important.

Assemblyman Conklin:

This doesn't pertain so much to the law but Assemblywoman Leslie mentioned these types of laws exist in other states. One of the things I am concerned about here is that southern Nevada has an incredibly high rate of accidents. Many of these accidents are deadly. They put an enormous burden on the insurance system of the state. Private insurance costs a lot more money in the south than for the rest of the state. So I am curious if other states who have passed this legislation have experienced a reduction in the amount of accidents as a result.

Ben Graham:

We have not gone into that area.

Assemblyman Holcomb:

Under simple negligence, a person could have been held civilly liable because he doesn't measure up to the standard of a reasonable person. Using that "reasonable person" standard, a person could also be held for manslaughter. Is that correct?

Ben Graham:

You are exactly correct. Under civil liability, proximate cause is the issue. Of course, if there is simple negligence, proximate cause would also be the issue here. It would be this misdemeanor manslaughter charge.

Assemblyman Horne:

If this bill passes as is, can you tell me the district attorney has the discretion not to charge in these circumstances?

Ben Graham:

Very much so. Discretion still lies with the district attorney whether to charge or not. The real issue is proximate cause and it is not an insignificant burden. If proximate cause was an intervening cause, then we would not be charging it.

Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office, Reno, Nevada:

I support this bill.

Assemblywoman Debbie Smith, Assembly District No. 30, Washoe County:

I just want to remind you that A.B. 295 does one very important thing: It acknowledges that a death happened. Bills like this one are always very difficult because there are victims and there are families of those victims. I think it is important for the family members who are here today to have an

opportunity to talk about their experiences. As we have heard, there are increasing numbers of deaths occurring due to the cause we are discussing today. I think it is always shocking to family members when they find they can lose a loved one and nothing more than a traffic ticket occurs. There is no record of the death.

[Assemblywoman Smith, continued.] We have two family members who here to address you today. Ivory Endacott is a family member of Alexis Kiles, who was killed walking along Sun Valley Boulevard in Sun Valley, Nevada, from the swimming pool with her little brother. She was four houses away from home when the car left the road and struck her. Ivory is her cousin and has been a spokesperson for the family since that time almost two years ago. The family has been anxious to have this moment to be able to address this issue.

Also, Kim Gervasoni, whose husband was killed last year when a driver ran a red light and struck her husband's car. We also have Susan Severt, who is here from Sun Valley. Often when something tragic happens, a good thing comes about. In Sun Valley, a Safety Task Force was formed, and that task force has been addressing this issue and this bill as well as looking forward to having some road improvements along Sun Valley Boulevard where the tragedy happened with Alexis.

Ivory Endacott, Private Citizen, Sun Valley, Nevada:

I am speaking on behalf of my family. We are in support of A.B. 295. I would like to tell you about my eight- and-nine-year-old cousins, Dustin and Alexis. Dustin and Alexis were inseparable and were two beautiful, fun-loving kids. Alexis loved the color purple, rainbows, and riding dirt bikes with her dad. She wanted to be a vet when she grew up. She just wanted to help everyone and everything and she could always put a smile on your face. Dustin was the same way. He loved animals and he used to cuddle and show affection every chance he got. But now he has changed. I think he has a lot of built-up anger and I think he is lonely without his sister.

On July 30, 2003, Dustin and Alexis were walking home from the swimming pool when a careless driver hit them. Dustin survived with minor physical injuries, but Alexis was not so lucky. She died from the accident. Now Dustin has to live the rest of his life with the mental anguish from watching his sister die. Our family was in disbelief. This is the most devastating thing that will ever happen to us. The first week was the hardest for everybody, especially her father and her brothers. The pain will never go away, but as the months go on, we know she will live on in our hearts.

[Ivory Endacott, continued.] When the time came for Deborah Grant's court hearing, who is the woman who hit Alexis, the family did not know what we wanted, exactly. We just knew that we wanted justice—a ticket, her license revoked, or maybe she would have to complete some driving classes. We thought for sure it would be on her record. But justice was not served. This woman did not even get a slap on the hand for killing my innocent cousin, and we found out it wouldn't even be on her record. That was a slap in the face for the entire family. It felt like no one even acknowledged that the life of a nine-year-old little girl was taken or that it mattered to anybody. Deborah Grant freely drives around in the car she killed Alexis with.

People get in more trouble drinking and driving even though they don't cause harm to anyone. Please don't get me wrong, I do think drinking and driving is serious. But I think killing someone is serious also. If you get pulled over while drinking and driving, you get your license revoked, you have to go to classes, and it is on your record. People get in more trouble for jay walking. So if you drive after a few beers, it is with you for life. If you walk across the street wrong, it is with you for life. If you hit and kill someone, it is forgotten.

You don't have to think of it, remember it, or be reminded of it. But we do. We remember every day, every holiday, and every July 30. It still hurts to know that we will never see Alexis graduate, get married, or see the beautiful children she could have created. We will always remember and acknowledge the life she did have, even though neither the courts nor Deborah Grant acknowledged it.

Please let our family have justice. If this bill is passed, we know it won't change what has happened, but we will feel like justice was served, knowing that other family's loved ones' lives will be acknowledged, not just forgotten or disregarded.

Susan Severt, Legislative Liaison, Sun Valley Safety Task Force:

On a warm day in July, life changed for many in the valley as word spread of the tragic incident that injured Dustin and claimed the life of Alexis. Almost immediately there was an outcry of support from the community, which eventually turned to questions then frustration when it was realized that the death of this child would legally be forgotten. In Sun Valley, many of us vowed that Alexis would not be forgotten by forming this task force with the assistance and full support of Washoe County Commissioner Bonnie Weber, Sheriff Dennis Balaam, and District Attorney Richard Gammick. Over the past 16 months, the task force members have focused

on three objectives: to make Sun Valley Boulevard a safer roadway; to commit to making drivers and pedestrians aware of each other; and to never forget Alexis or the impact that her passing had on the community.

[Susan Severt, continued.] Today I ask this Committee to support A.B. 295 in hopes that this bill will close what many of us in Sun Valley and throughout the state of Nevada believe is a void in state law.

Kim Gervasoni, Private Citizen, Reno, Nevada:

I am very passionate about the laws changing in this state because of one reason. On October 21 of last year, my husband, Mike Gervasoni, was killed coming home from work. It has only been over five months, but each day feels like an eternity without him. I struggle every day to make sense of this tragedy. Why is my husband dead? I believe in God and I believe Mike is in heaven, but I don't believe it was his time as some people have said to make me feel better. He had so much of life ahead of him. I believe my husband is dead because of one reason only: Mr. Eric McGill, the man who killed Mike with his careless driving.

The facts of the case are these. It was approximately 5:51 p.m. on a Thursday evening. Mr. McGill was going south on Highway 395 and took the Moana exit. Mike was traveling east on Moana and was in the far left lane to go under the overpass and get onto Highway 395 north to come home. Mr. McGill was going to turn right on Moana and changed his mind at the last second. He decided to change lanes and go straight back onto the freeway. What he failed to notice was that the signal had turned red several seconds ago. Mike was in his Cadillac and he was the third car through the intersection. Mr. McGill hit Mike in the driver's door going approximately 43 to 47 miles per hour through a red light. Statements from witnesses say that Mr. McGill did not attempt to stop. No brake lights were seen from behind and there were no skid marks. Mike died instantly. The force of a 3,000-pound truck going approximately 45 m.p.h. was so great that his aorta ruptured, his back was broken, his liver and spleen were lacerated, and his face was shattered.

I couldn't see my husband one last time at the funeral home because he looked so bad. Because of Mr. McGill's careless driving, two sons will never see their father again. Three grandchildren will never see their grandfather again. Two siblings will never see their brother again, and a parent will never see their son again. Many people will never be able to spend time with their friend they loved dearly. Mike was a women's basketball coach at the University of Nevada, so many athletes will never benefit from Mike's tremendous knowledge and love for the game of

basketball. Mike believed there should be consequences for your actions. He believed in accountability and responsibility.

[Kim Gervasoni, continued.] I struggle with the justice system in the state of Nevada. The fact that Nevada is one of the few states that does not have more penalties than just a traffic ticket is very disturbing to me and my family. I don't believe the justice protects the people who live here. Personally, I don't feel safe living here now. A vehicle should be treated like a weapon, and if you misuse that weapon and kill somebody, you should be held accountable. The way our system is set up now, drivers know there are no major consequences if they kill someone driving. I've been told by the district attorney's office that the way to change the system is by passing bills through the Legislature. I am here to plead that you pass this misdemeanor manslaughter, A.B. 295. When you lose a loved one instantly the way I did, there are so many emotions you have. I feel so much anger that Mr. McGill was not more severely punished. He had a prior record of running a red light before running this red light, so this was his second running a red light. Basically, he can drive next month, run his third red light, kill someone, and not have any more punishment. It is hard for me to rationalize that in my mind. I don't understand.

It is very difficult to come here and speak about this, but it is so important. I want the public to feel protected. I don't want families to feel the frustration and helplessness that I feel. Nothing will bring back Mike but there should be more severe consequences. Our lives are worth more than that. This Body here can do something about it. Please help the public and help the innocent drivers in Nevada feel protected.

Chairman Anderson:

I think people who live here in the north are very aware of both these tragic accidents. Clearly, yours caught quite a bit of attention because of his contribution to the community. Also, the event in Sun Valley exemplified the problems of Sun Valley in terms of providing a safe walkway. I think Assemblywoman Smith, in particular, wanted this piece of legislation to be in front of us.

Dawn Blinder, Private Citizen, Las Vegas, Nevada:

[Read from [Exhibit B](#).] I wish today that I didn't have a personal reason for being here and speaking about the misdemeanor manslaughter law, A.B. 295, but I do have a strong reason and passion for being here today. It is my beautiful and precious daughter, Debbie. Our seven-year-old daughter, Debbie, was killed, and our four-year-old son, Steven, was seriously injured when a driver ran a stop sign and hit our car. Debbie

never had a chance as the Suburban hit our Toyota Avalon where Debbie sat in the backseat. Steven, on the other side of the car in his car seat, was seriously injured and was in the hospital for two weeks recovering.

[Dawn Blinder, continued.] The horror and pain that began September 23, 2004, was only compounded by the fact that the driver of the Suburban could not be charged with anything more than running a stop sign and failure of due care, which is slowing down when approaching a stop sign. These charges would be the same if she ran the stop sign on a deserted road. That is just not right. But there is no law to reflect what happened to my family. My husband and I could have lost both our children that day. My husband could have lost his entire family in this accident, and the charges against Sharon Rapstad would be merely running a stop sign and failure of due care.

My family suffers daily. The grief we carry daily cannot be put into words. Our whole lives changed forever that day. I will miss my daughter until the day I die. If I live to be 100, that is 64 years of suffering, which is a far more severe sentence than the driver of the Suburban has gotten or will ever get. Her driving record should reflect that a fatality occurred. People need to be held accountable when they get behind the wheel of a vehicle. When someone runs a stop sign or a red light because they are not paying attention and someone is seriously hurt or killed, they need to be held accountable for their actions. A traffic ticket is just merely not enough and anyone who thinks that it is enough, has not walked in my shoes or others who are in my position.

Judges will still have discretion in court of what the penalty should be but there will be a specific charge. When our accident occurred, we were waiting with many others to see what the charges would be. People became outraged when the charges were simple traffic tickets. My daughter was simply the best. She was smart, sweet and the best daughter I could have ever asked for. I will not share so many things with her. I will not be able to hug and kiss her anymore. We will not have any more mother/daughter days together. I will not see her get Bat Mitzvahed, go on a first date, shop for clothes, see movies, read together and just talk. My son misses his best friend. My husband's grief is just beyond words. There are second-grade children who are trying to desperately understand where their friend is.

This is the devastation that the driver in our accident has caused. A misdemeanor manslaughter law would fill the gap that exists in our state.

[Dawn Blinder, continued.] In growing cities in a growing state, car accidents are occurring at an alarming rate. It seems as if law enforcement's hands are tied when it comes to charging these negligent drivers with more than a traffic violation. Driving is a privilege. It should be treated as such. Human lives should be treated with extra care. When a driver gets behind a wheel, he or she accepts an immense responsibility. When an accident occurs and somebody dies, there needs to be consequences that go beyond a traffic ticket. People need to take driving seriously and the law needs to reflect that seriousness. Once again, running a stop sign when no one gets hurt and running a stop sign and somebody dies need to be treated differently. There is an immense difference. I, unfortunately, know that firsthand.

Chairman Anderson:

To say that we are sorry for your tragedy is a very hollow statement. There is nothing that any of us could ever say that would reflect your loss. Hopefully, the members of the Committee will be as touched by your statement as I have been.

Erin Breen, Director, Safe Community Partnership Program, Las Vegas, Nevada:

I would just like to add that we had a record number of fatalities in the state of Nevada last year, more than ever before. We would use this particular misdemeanor manslaughter bill as an education tool. That is all I would like to add to this testimony ([Exhibit C](#)).

Sarah Stadler, Youth and Media Coordinator, Mothers Against Drunk Driving (MADD), Lyon County, Nevada:

When we first went over this bill, we had the same question as Mr. Carpenter with the definition of simple negligence. We feel that it needs to be more clearly defined in this bill. We support this bill because it is a great idea to make sure that criminals are punished for the crimes they have committed, that crimes are acknowledged and on record. We feel this bill might be misused by prosecutors. What might happen is instead of someone being charged with a felony, they will plead to this misdemeanor and the prosecutor will get their conviction. Then you will have people who should be getting charged with felony crimes being charged with a misdemeanor instead because they will plead to that before they will plead to a felony.

Chairman Anderson:

Are you against this bill?

Sarah Stadler:

We support the idea of the bill, but we want you to think about the ramifications of what might happen if it is put into place. We do support victims getting their justice.

Michelle Youngs, Public Information Officer, Washoe County Sheriff's Office, Reno, Nevada:

The Alexis Kiles case was ours to investigate. It made a major impact with us and we are very much in support of this legislation.

Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

We also support A.B. 295.

Martha Barnes, Administrator, Central Services and Records Division, Nevada Department of Motor Vehicles:

The way we read this bill directs the Department of Motor Vehicles to notice the insurer of an individual's conviction history. We are unable to do this because insurance is tied to a vehicle, while convictions are tied to a driver. So the Department has met with the sponsors of the bill and would like to amend Section 2, subsection 4, by deleting paragraph (b) in its entirety where it states, "Give notice of the conviction to the motor vehicle liability insurer, if any, of the person so convicted."

The Department currently has a system in place to provide insurance companies with a driver history record so this language is not necessary ([Exhibit D](#)).

Chairman Anderson:

How would you get it put on the driver's license?

Martha Barnes:

We receive convictions from the courts. Those are something that we put on the driver's record and maintain that information.

Chairman Anderson:

So it is on the driver's record, but you are not going to tell the insurance company because the vehicle is insured but not the driver.

Martha Barnes:

What happens currently is the insurance companies access that information. They ask us for driver history records on insureds they are going to write policies on. We already have that in place and they receive that driver history information currently.

Chairman Anderson:

So somebody who is being convicted of this and is listed as an insured driver of that particular vehicle, the insurance company would know through his DMV record relative to his driver's license, not to the vehicle itself, so we are still covered.

Martha Barnes:

That is correct.

Lt. Tony Almaraz, Nevada Highway Patrol, Nevada Department of Public Safety:

I was directed to come here in a neutral position at this point and to answer any questions specifically regarding traffic accidents. Some of the issues we have encountered during traffic enforcement are ones we have witnessed like the stories we have heard today, which are certainly tragedies. It can be frustrating for a lot of people listening to the prosecution and the ones who committed the act of the crash. Our position here is more for advisory.

Chairman Anderson:

The hearing on A.B. 295 is closed. The only amendment I have seen so far is the deletion on page 3, lines 30 and 31, as suggested by the Department of Motor Vehicles to clarify the language there. I know Mr. Carpenter was looking for, as Mothers Against Drunk Drivers were, a tighter definition of the term "misdemeanor manslaughter." I think we are going to have to rely upon the integrity of the district attorney's office to properly charge, as that is their responsibility. We should recognize that responsibility, which I think they take with due diligence.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 295.

ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:

I have BDR 40-105, which provides enhanced penalties if a first responder sustains substantial bodily harm or death during the discovery or cleanup of the premises where certain controlled substances were unlawfully manufactured or compounded and providing other matters thereto.

- BDR 40-105—Provides enhanced penalties if a first responder is injured or killed during the discovery or clean-up of a clandestine drug lab. (Assembly Bill 531)

ASSEMBLYMAN OCEGUERA MOVED FOR COMMITTEE
INTRODUCTION OF BDR 40-105.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:

Let us turn our attention to Assembly Bill 238.

Assembly Bill 238: Revises type and amount of security required for certain construction contracts under certain circumstances. (BDR 9-1238)

Assemblyman Joe Hardy, Assembly District No. 20, Clark County:

As a former city councilman in the City of Boulder City, it behooves us to look at A.B. 238 in the unique way that Boulder City is. Boulder City has a slow growth ordinance, no gaming, has a desert tortoise preserve, has purchased land to preserve open space parks, mountain bike trails, and has the state veterans home as well as the state railroad museum. It has a commitment towards not only energy but green and renewable energy. It has had a project with Sempra Generation partnership, called El Dorado Energy, that has been involved in tree planting. Up to 15,000 trees have been planted in Boulder City with the advent of the El Dorado Energy Plant.

What we do in Boulder City is lease land so the funds that come from those leases can go through not only capital improvements but the bulk of which goes to the general fund augmentation. We have before us an opportunity to have the Copper Mountain Power Project, which will add the commitment to Boulder City to assuring adequate power generation, not only for Nevada, but for the entire West. Sempra Generation, which has been a partner with the El Dorado Energy, now is proposing the Copper Mountain Power Project. There is a surety bond language on page 2 of this

bill, line 40, that crosses out "not less than 1.5 times," thus assuring the surety bond company to bond the project at 100 percent instead of 150 percent.

We have with us people representing Sempra Generation as well as the City of Boulder City. Senator Warren Hardy sends his regards and recognizes his particular agenda will preclude him from testifying but is in favor the intent of A.B. 238. We will be happy to work with the potentially affected parties and ensure that the wording and concerns of all are addressed before your work session and remain at your pleasure to do whatever we can.

Chairman Anderson:

One observation I would make is that while we reduce this from 1.5 times on page 2, line 40, of the bill, we are opening up the question to an amount equal to the amount of the construction contract, thereby reducing the amount of the surety bond. We authorize the contractor and lessee to enter into an agreement that is going to stipulate what the size of the surety bond is going to be. On page 3, subsection 5, it clarifies the lessee who enters into such an agreement is not required to provide a surety bond as required in subsection 4. This is an unusual way of doing this.

Vicki Mayes, City Manager, City of Boulder City, Nevada:

Boulder City is approximately 200 square miles in size, and most of the property within the city limits is owned by the city as a result of the federal government turning all assets to the city upon its incorporation in 1959 and, as a result of the annexation, the El Dorado Valley Transfer Area in 1994. Because of these large land holdings and the philosophy of controlled growth, Boulder City's municipal government is highly regulated in the area of property management and disposition, both through its charter and through its local regulations and ordinances.

As Assemblyman Hardy alluded to, in an effort to protect our long-term assets, Boulder City, with few exceptions, does not offer "for sale" property for commercial development. Instead, it offers long-term lease of property. Thirteen percent, or \$2.5 million of the city's \$19.6 million general fund revenues, are derived from leases. It is the second largest source of revenue in the general fund, exceeded only by sales and use taxes. As a matter of comparison, only 7 percent, or \$1.2 million, of the city's fund is derived from property taxes.

To date, most of the \$2.5 million in lease revenue is a result of communication site leases, a lease for an upscale golf course, and

El Dorado Energy, a power plant lease. The city has two other leases which it anticipates in the near future, that of Sempra Generation's Copper Mountain Power Plant and Solargenics, a solar energy generation project. The Copper Mountain Power Plant project will generate over \$1 million in lease revenues and fees to the city. The Solargenics project will generate over \$500,000 in lease revenues to the city annually.

[Vickie Mayes, continued.] Both of these specific projects are very important to enhancing revenues to the city. Additionally, leases in general supplement the revenues of the city so it can maintain its service levels despite its slow growth and limited commercial development policies. The existing law requires any leasing of city property to provide a payment in completion bond from a licensed surety in an amount equal to but not less than 1.5 times the total construction contract. All of Boulder City's leases, except the individual communication site leases, are significant multi-million projects.

The existing law is so problematic that \$450 million in construction projects in Boulder City alone this year could literally disappear if this law is not changed. This is a problem not only for Boulder City but for our state, which desires a more diverse economy. The City of Boulder City supports A.B. 238, which reduces the required amount of the surety bond to an amount equal to the total amount of the construction contract. This bill further provides that the lessee would not be required to furnish a surety bond if the total amount of the construction contracts equals \$1 million and the contractor and the lessee agree that the lessee may provide a different type in amount of security.

Chairman Anderson:

Assemblyman Hardy, would you tell us how you came to the \$1 million figure and the nature of surety?

Assemblyman Hardy:

I have brought experts to explain this.

Chairman Anderson:

How many acres comprise Boulder City?

Vicki Mayes:

Two hundred square miles.

Chairman Anderson:

All commercial property is leased in the city?

Vicki Mayes:

We have a local ordinance that specifies that commercial property is leased. There are very few exceptions. There are small industrial lots in our industrial park that are offered for sale. But for the most part, all commercial development is done through lease.

Chairman Anderson:

Of course, the uniqueness of Boulder City comes about because of the building of the dam when this was the only place in the state where you couldn't gamble or conduct other kinds of activities because it had its own set of rules as it was on federal property. When that was done away with, the city became the base owner of all property, and therefore it is in a unique position in Nevada.

Vicki Mayes:

Very true.

Michael Niggli, President, Sempra Generation, San Diego, California:

Sempra is an energy company primarily involved in the production, transportation, and distribution of electricity and natural gas in both the wholesale and retail markets. We operate worldwide. We have over 12,000 employees. We have about \$8 billion in annual revenues and about \$22 billion in assets. Our primary subsidiaries are Southern California Gas Company, San Diego Gas and Electric, Sempra Generation, Sempra Commodities, and Sempra LMG.

My company, Sempra Generation, is involved in the development, construction, operation and/or maintenance of power plants in 11 states and the Republic of Mexico. Our first power plant was constructed in Boulder City as a joint venture with another firm. The El Dorado Energy facility is a 480-megawatt, state-of-the-art, natural-gas-fired power plant. This power plant was the cleanest and most efficient power plant in the state of Nevada. We operate on leased land from Boulder City and have a very cooperative relationship with the city. Based on this cooperative relationship and continuing need for new, clean energy sources, we permitted another power plant adjacent to the El Dorado facility. This proposed plant, known as Copper Mountain, is a \$400 million to \$500 million development. It is a 600-megawatt, state-of-the-art, natural-gas-fired facility. The plant will employ an average of about 300 to 400 construction workers during the multi-year construction process. It will have 25 full-time, well-paid technical operations personnel.

[Michael Niggli, continued.] Our proposed investment in Nevada with the Copper Mountain Power Plant is at serious risk because of the current law, *Nevada Revised Statutes* (NRS) 108.234. It requires the developer, on leased land, to post a surety bond equal to 150 percent of the cost of the construction contract. This requirement places a burden on the project that is infeasible and virtually impossible for us to meet.

Sempra has discussed this requirement with its surety agents and Travelers Corporation, who is the largest entity in the surety market. These entities have indicated that the requirement virtually cannot be met and indeed have never underwritten such a bond in the past. Also, we have noted that this bonding requirement does not exist in any of the states that we do business with and propose to put additional power facilities.

Simply stated, it appears our project cannot be constructed under current law. It is a show stopper. A.B. 238 proposes minor language, additions, and/or modifications that will allow the project to move forward when all of the commercial and legal requirements are met.

Assemblyman Holcomb:

Why was it established at 150 percent on the leased property? How did that ever come about?

Mark Nelson, Director, Governmental Affairs, Sempra Generation, San Diego, California:

We do not know the historical artifacts that resulted in this particular provision. It came about to us through detailed discussions with our colleagues at the city of Boulder City and in discussions with the contractor, Bechtel, who will be the selected contractor for the construction of this project.

Assemblyman Carpenter:

My question may be more to our Legal staff. As I understand it, the statute applies statewide. I was wondering if we could still leave in the amount of equal but not less than 1.5 times. With the other provision, would that make it so they could go ahead with their project? My only concern is on smaller projects, it should have 1.5 times.

Assemblyman Holcomb:

Why have 150 percent security?

Michael Niggli:

That's the question we have as well. We do not see this type of requirement anywhere in any of the states that we deal with. Essentially, the highest requirement we ever see is 100 percent and always with the opportunity for the companies to work out a security arrangement that does not require a bond necessarily. Oftentimes, it will require a corporate guarantee or some other type of security that can easily be met within the context of the commercial negotiations of the parties.

Chairman Anderson:

We passed this legislation in the last session. There was a grievous construction project in southern Nevada, which was a casino of substantial worth and size. It is still in litigation. Had this kind of surety bond been in place, it would have taken care of some of the contractors and others. I believe we will be hearing about that in a little while. The Legislature did perceive a need and we were, in part, warned of the difficulty in finding a surety carrier. I think that is why the fund is relatively low.

Steven Holloway, Executive Vice President, Associated General Contractors of Southern Nevada (AGC):

We are very sympathetic to Boulder City's dilemma. We do have some problems, however, with the way this proposed bill is written. The surety of 1.5 was set because that is the surety you must post to bond around liens in this state. That has been the amount for 150 years in this state. What happens is when a construction project goes on, everybody posts a lien just to let the owners know that they are out there on the construction project and they may file a lien against the property. They do that fairly frequently in this state, 10 to 15 percent of the projects or more. What the owner is allowed to do is bond around that lien and post a bond 1.5 times of all the liens. That is where the 1.5 came from.

This section that is proposed to be changed is primarily in the lien law to address disinterested owners in notices of non-responsibility which has been an area of contest and aggravation in the industry for years. Last session, as part of a massive change in the lien laws of the state, a provision was included that the lessee would have to post a bond. This would then prevent the contractors from filing liens against the property which was supposedly owned by a disinterested owner and avoid that court contest. It has not worked.

There are probably four other bills in the Senate right now including one proposed by the AGC to expand this provision and change it to give the lessee some alternatives besides surety. The surety market has essentially

dried up in this state. It is very difficult for a contractor or an owner to obtain a surety bond. Most sureties you have to go outside the state to a company that is not even licensed in this state to get your surety. As you know, contractors have to post bonds to get their licenses in this state.

[Steven Holloway, continued.] We are in the process of consolidating those four or five other bills in meetings with the sponsors and various segments of the industry. We hope to be able to do that within the next week or two at the outside. We are very sympathetic, however, to Boulder City. We see this as a unique problem. It is one of the unintended consequences when legislation is made. We are quite willing to sit down, try to work out a solution, and look at what the alternatives may be to address the unique problem the City of Boulder has in this case.

Assemblyman Horne:

I understand the history of 1.5 times amount. Wouldn't its concerns be addressed even if they had to provide 100 percent of the bond? Why the additional buffer?

Steven Holloway:

There are two reasons. One was history, which was why we set the 1.5 times for a lessee. The other is, you very seldom build something for what the contract price is. There are always changes and additions. Plus, if you do have to file against the bond, there are always attorney costs and court costs. This was intended to cover all that. I honestly see no real reason why, in this particular circumstance, where we are talking mostly about tentative improvements, that it couldn't be reduced to 1 times the initial bond. That's not our problem here. Even at 1 time, they are not going to want to bond a \$400 million project. It would be very expensive if they could even find the bond.

Chairman Anderson:

We will look for some questions relative to surety bonds and I'll ask staff to meet with you to make sure what your concerns are and whether there is another vehicle that we can utilize. I gather from your testimony that there is a hope that something is coming over from the other house that may solve some of the issues involved here. With that, you will be in a better position to know after April 4. Is that sufficient time?

Steven Holloway:

Yes, that would be sufficient time. We need to work something out because of the uniqueness of Boulder City.

Chairman Anderson:

The hearing on A.B. 238 is closed. We will hold the bill and put it in a future work session after April 4. [Meeting was adjourned at 9:54 a.m.]

RESPECTFULLY SUBMITTED:

Carole Snider
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 29, 2005

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	Agenda	
A.B. 295	B	Dawn Blinder, Private Citizen	Statement to Committee received 3-28-05 regarding vehicle manslaughter.
	C	Erin Breen, Director, Safe Community Partnership	Email to Committee dated 3-28-05.
	D	Martha Barnes, Administrator, Central Services and Records Division	Statement to Committee for new amended language.