

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-third Session  
April 20, 2005**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:07 a.m. on Wednesday, April 20, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark E. Amodei, Chair  
Senator Maurice E. Washington, Vice Chair  
Senator Mike McGinness  
Senator Dennis Nolan  
Senator Valerie Wiener  
Senator Terry Care  
Senator Steven Horsford

**GUEST LEGISLATORS PRESENT:**

Assemblyman Pete Goicoechea, Assembly District No. 35  
Assemblyman Mark A. Manendo, Assembly District No. 18  
Assemblywoman Genie Ohrenschall, Assembly District No. 12

**STAFF MEMBERS PRESENT:**

Nicolas Anthony, Committee Policy Analyst  
Bradley Wilkinson, Committee Counsel  
Johnnie Lorraine Willis, Committee Secretary

**OTHERS PRESENT:**

John Warner  
Victor-Hugo Schulze, II, Deputy Attorney General—Crime Victim Advocacy,  
Office of the Attorney General; President, Community Coalition for  
Victims' Rights

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Bryan Nix, Senior Appeals Officer, Victims of Crime Coordinator, Department of Administration

Patricia Lynch, City Attorney, City of Reno; Nevada Domestic Violence Prevention Council

Michael Sprinkle, Firefighter and Paramedic; Nevada Domestic Violence Prevention Council

Paula Berkley, Nevada Network Against Domestic Violence

Kristin L. Erickson, Chief Deputy District Attorney, Criminal Division, District Attorney, Washoe County; Nevada District Attorney's Association

Steve Morris, Attorney

Chair Amodei opened the hearing on Assembly Bill (A.B.) 6.

ASSEMBLY BILL 6: Prohibits imposition of sentence of death upon person for crime committed while person was under age of 18 years. (BDR 14-124)

Chair Amodei explained that in view of the Supreme Court case, *Roper v. Simmons* (03-633) 112 S.W. 3d 397, affirmed (2005) (Exhibit C original is on file at the Research Library), and its impact on what was proposed in A.B. 6 in Nevada. The Senator suggested the Committee pass the bill with no recommendation and said, since the U.S. Supreme Court decided an offender must be at least 18 years of age when committing a crime to be sentenced to the death penalty, he expected the bill would have no trouble passing on the Senate floor, and he wanted to save the Committee from having to go through a lot of hearing time.

Chair Amodei said there was also a letter from the Religious Alliance in Nevada (Exhibit D) regarding A.B. 6 that should be made part of the record.

SENATOR CARE MOVED TO DO PASS A.B. 6 WITHOUT RECOMMENDATION.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HORSFORD, NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

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Chair Amodei closed the hearing on A.B. 6 and opened the hearing on A.B. 88.

**ASSEMBLY BILL 88**: Allows possession of certain rifles or shotguns that have been determined to be collector's items, curios or relics pursuant to federal law. (BDR 15-983)

Assemblyman Pete Goicoechea, Assembly District No. 35, explained A.B. 88 allowed for the possession of rifles and shotguns determined as collector's items or relics under federal law. He said this bill brings the *Nevada Revised Statute* (NRS) 202.275 into compliance with the U.S. Code (USC) regulations: 18 USC chapter 44 and 26 USC chapter 53, the National Firearms Act. He said the U.S. Code clearly allowed possession of these kinds of collector's items under federal law. Assemblyman Goicoechea asserted the Gun Control Act of 1988 required all rifles must have a barrel of at least 16 inches and all shotguns, at least 18 inches.

Assemblyman Goicoechea said that in 1972, the federal government recognized the need to register firearms that had shorter barrels. He said there were thousands of them sold, and most people started out shooting a .22 caliber, a carbine or a .410-bore shotgun that did not fit the requirements. The Assemblyman continued reading his written testimony ([Exhibit E](#)).

Senator Care asked, when talking about a collector's item, curio or relic, how that status was determined. Assemblyman Goicoechea responded those are determined by the serial numbers or age. He added the federal government had published a Firearms Curios or Relics List.

Senator Care asked if there were any constraints on the time and place of the possession, and whether those firearms, curios or relics had to remain at home in a cabinet or other display place. Senator Goicoechea said he did not believe so.

John Warner of Fallon explained he would like to put everything in perspective and maybe answer most of the questions through a brief history. He said the Gun Control Act of 1968 classified rifles with barrels less than 16 inches long, among other things, and required them to be registered under the National Firearms Act of the 1930s, which was designed, basically, to register machine guns and other similar firearms. He asserted the bill was not particularly well thought out before being passed, and a short time later, there

was realization of the error in the bill. He said what happened was the gun "that started it all" ([Exhibit F](#)) was confiscated by a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) agent. Mr. Warner added the agent raided a firearms collector who collected youth rifles and had them displayed on a wall. He said the agent shut down the man's business and hauled him off to jail. The judge who heard the case said, "Hell, I had one of those when I was a kid." Mr. Warner recited the judge, then dismissed all charges and directed the ATF to draw up a list of nonconforming firearms, which were not likely to be used for committing crimes. He explained the judge said those firearms on the list were exempt from registration under the National Firearms Act.

Mr. Warner said the ATF drew up the list of exempted guns that was first published in 1972 as section 3 of the Firearms Curios or Relics List. He said the list started off by saying the Bureau determined a firearm "by reason of the date of its manufacture, value, design, and other characteristics," as "primarily a collector's item and is not likely to be used as a weapon." Therefore, such guns were excluded from the provisions of the National Firearms Act.

Mr. Warner explained these guns were now federally legal to possess. He said that in most every state in the Union, there was no federal requirement for registration; these guns were treated like any other firearm. Mr. Warner stated the problem was that the NRS has not kept up. He said the NRS allowed possession of short-barreled rifles and shotguns by civilians, as long as they were federally registered. The problem, he stated, was that the federal government did not register them and had not since 1972. Mr. Warner said [A.B. 88](#) brought Nevada's statutes in line with the rest of the world regarding these curios or relics.

SENATOR CARE MOVED TO DO PASS [A.B. 88](#).

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HORSFORD AND NOLAN WERE ABSENT FOR THE VOTE.)

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Chair Amodei closed the hearing on [A.B. 88](#) and opened the hearing on [A.B. 205](#).

**ASSEMBLY BILL 205**: Revises provisions governing compensation for victims of crime. (BDR 16-1114)

Assemblyman Mark A. Manendo, Assembly District No. 18, said A.B. 205 authorized a compensation officer to obtain investigative and police reports relating to a juvenile from a court of law or enforcement agency without a court order when that officer was in the process of a victims of crime investigation. He said the bill specified any such reports, obtained by a compensation officer concerning a juvenile, were confidential and must not be disclosed unless by a court order. He explained existing law required compensation officers to conduct an investigation to determine the eligibility of an applicant for aid from the fund that may include obtaining and reviewing reports of peace officers. He said currently, compensation officers sought court orders to obtain police and investigative reports concerning a juvenile, which was a lengthy and unnecessary process because the orders were routinely granted.

Victor-Hugo Schulze, II, Deputy Attorney General—Crime Victim Advocacy, Office of the Attorney General; President, Community Coalition for Victims' Rights, said the reason A.B. 205 was drafted was to make state government more efficient, less expensive and more responsive to victims of crime. He continued, reading his written testimony, "Memorandum in Support of Assembly Bill 205" ([Exhibit G](#)).

Mr. Schulze explained when drafting this bill, he tried to tighten up the confidentiality requirement for juvenile information within the state systems. He said although the bill allowed the Victims of Crime agency to get the reports without a court order, it kept those reports confidential, so the program under NRS 217 could not release the information without a court order. He explained, the bill essentially moved the court-order process from the front of the workings to the back of the workings, and it maintained the confidentiality policy while allowing the program officer to get the information needed. He said that under chapter 217 of NRS, the program officers were required, as a matter of law, to engage in the investigation in order to determine eligibility for compensation.

Bryan Nix, Senior Appeals Officer, Victims of Crime Coordinator, Department of Administration, said his agency had two separate classes of victims who applied for benefits. He said those victims who were injured by an adult could have their case processed in a timely manner. However, he said, those victims injured

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as a result of a juvenile, someone under the age of 18, had their cases postponed for two or three months in order to go through this process.

Mr. Nix stated A.B. 205 would speed up the process, maintain confidentiality and help serve victims in the State of Nevada.

SENATOR WIENER MOVED TO DO PASS A.B. 205.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HORSFORD WAS ABSENT FOR THE VOTE.)

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Chair Amodei closed the hearing on A.B. 205 and opened the hearing on A.B. 219.

**ASSEMBLY BILL 219**: Creates Nevada Council for the Prevention of Domestic Violence. (BDR 18-1012)

Assemblywoman Genie Ohrenschall, Assembly District No. 12, said as primary sponsor of A.B. 219, she wanted to provide the Committee with a brief introduction to the bill. She continued her testimony, reading "Assembly Committee on Judiciary Opening Remarks Regarding Assembly Bill 219" ([Exhibit H](#)).

Chair Amodei said the Committee had received correspondence from Washoe County District Attorney Richard Gammick ([Exhibit I](#)), with the handout, "Assembly Bill 219 Comparison of the Existing Committee and Office of the Ombudsman Concerning Domestic Violence and the Nevada Council for the Prevention of Domestic Violence" ([Exhibit J](#)); letters from Attorney General Brian Sandoval ([Exhibit K](#)) and Joni A. Kaiser, Executive Director, Committee to Aid Abused Women ([Exhibit L](#)). He stated all of the information would be included as part of the record.

Patricia Lynch, City Attorney, City of Reno; Nevada Domestic Violence Prevention Council, said she was one of the original members of the Council and also served on the Committee on Domestic Violence. She said she had provided

the Committee with written testimony ([Exhibit M](#)), but wanted to say from working in this area, this body was important. Ms. Lynch said working on domestic-violence cases in the old days was like reinventing the wheel constantly, the work was fragmentary. She explained one person did something and then found out someone else had already done that, and had done a better job. She stated the Nevada Council for the Prevention of Domestic Violence allowed everyone statewide to come together and work towards doing a better job in providing a coordinated, community response, which was the best response.

Ms. Lynch said that in 1985, the Legislature authorized seed money of \$20,000 for the Council to seek federal grants and get set up. She stated that seed money was parlayed into many grants that were awarded through the Attorney General's Office and through other entities in the State.

Ms. Lynch affirmed she just wanted to mention a few of the projects. She said an early one was a campaign with the Advertising Council and the Family Violence Prevention Fund, which was a media campaign conducted nationally on the theme that there was no excuse for domestic violence. She pointed out that everyone had probably seen the bumper stickers and posters that have become standard symbols. Ms. Lynch informed the Committee the Nevada Domestic Violence Prevention Council managed to get the ad out early in the State in order to raise awareness of the problem.

Ms Lynch specified the Council worked on the Full Faith and Credit Project to help with enforcement of protection orders across state lines and between State and tribal jurisdictions. She said the Council sponsored conferences on battered immigrant victims and discussed how to get better services to underserved victims.

Ms. Lynch continued to point out references from her written testimony. She added that she included a list of activities in [Exhibit M](#) the Council documented to accomplish in 1985, and there were still things on the list to be done. She urged the Committee to support A.B. 219 institutionalizing the Nevada Council for the Prevention of Domestic Violence.

Senator McGinness asked how Ms. Lynch envisioned serving the counties he called "on the frontier," such as Esmeralda County. Ms. Lynch replied there were rural representatives on the Council.

Senator McGinness asked where those persons were from who served on the Council. Ms. Lynch replied there was a person from Elko, and the makeup of the Council changed over time. Assemblywoman Ohrenschall responded one of the members was from Fallon, and she knew there had been people on the Council from other rural areas because the Council membership rotated. Senator McGinness said his concern was at least two members of the Council had to be residents of a county with a population of less than 100,000. He expressed it was his inclination to go lower than the 100,000 in order to make sure the very rural areas were represented. He said even Fallon was not all that rural when compared to some of the areas where his constituents lived, such as Austin, Battle Mountain and other outlying places. Senator McGinness asserted the challenges were tenfold, and he hoped the composition of the Council recognized his concerns. He said if the Council had two rural persons with one from Carson City and one from Douglas County, he did not believe the Council had done its job. Ms. Lynch replied the Senator made some good points, and she would pass them on to the nominating committee for the Council, which considers how to bring in more representatives. She pointed out that the Council had done a rural tour, held town hall hearings and was considering doing it again.

Senator McGinness asked how the Council certified programs for those who committed domestic-violence crimes and whether it constituted a new duty for the Council. Ms. Lynch responded she wore two hats, and the Nevada Council for the Prevention of Domestic Violence would not certify the programs. Those programs would continue to be certified by the Committee on Domestic Violence, which was separate.

Senator Wiener explained a few Sessions ago, she sponsored a bill that expanded the definition of "victim" to include children who were not direct victims but, victimized by domestic violence. She asked whether any work was done in that area, as these children may carry those traits into their lives as adults and become perpetrators. Assemblywoman Ohrenschall replied there had been special emphasis on cultures in which it took a lot more domestic violence before someone felt he or she was a victim of domestic violence. She said in some of these cultures, there might be a fight where the wife got beaten, but the thought was, "my gosh, that happens to wives all the time, it is the husband's duty as lord of the house, and so forth and so on."



Ms. Lynch said, in her office, if children were in the household, they always asked the victims and perpetrators to take parenting classes in addition to the other programs needed to change these behaviors. She explained her office was aware that even though the children might not be the direct victims, they were still victims of this crime. She said her office worked closely with the Children's Cabinet in those areas.

Senator Wiener said the cycle would be broken with the children. She said in order to change these behaviors, the Council would need to get in front of it, not behind, and changing domestic-violence behavior patterns had to be done with the children. Senator Wiener explained it was her hope to make these children aware that hitting or harming another person was not the normal way of dealing with anger or frustration. Ms. Lynch replied, in her office, which was a new build, they had a children's room with a two-way mirror next to the interview room, so victims came there and felt safe, knowing their children were safe while the parent was interviewed.

Michael Sprinkle, Firefighter and Paramedic; Nevada Domestic Violence Prevention Council, said he supported A.B. 219. He said he wanted to address Senator McGinness's concerns. He explained he was a member of the Council's nominating subcommittee, and they identified the fact that the Council did not have many representatives from the rural areas. He said the subcommittee had a meeting coming up soon, and this issue was one of the areas it would address. Mr. Sprinkle said the Council was also about five members short, and the subcommittee was putting together an advertising campaign to recruit new members.

Mr. Sprinkle said as a Council, they were moving forward. He said the Council considered specific issues, as well as addressing training with the people who provided services to batterers and other perpetrators. He affirmed, as a paramedic, he saw situations that needed to be addressed as to how professionals treated these people when they went out on a call relating to domestic violence. He said the Council dealt with police officers all of the time, and training was an important part of what the Council did. Mr. Sprinkle told the Committee the Council was also considering the issue of training on health and education in the schools to help break the cycle. He stated these were things the Council was examining and felt were important. He affirmed it was important the Council became a permanent council in the State of Nevada for these specific reasons.

Mr. Sprinkle declared that although there were many individuals who conducted domestic-violence intervention for a long time, there were also newer members of the Council who considered making this a lifelong pursuit. He said this Council was good for Nevada and should be for many years to come.

Paula Berkley, Nevada Network Against Domestic Violence, said she thought most of the points in favor of the legislation were already made, and the Network definitely supported A.B. 219. She said the Network had been active members in the Council since its inception.

Chair Amodei said the letter from Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence ([Exhibit N](#)) would be made a part of the permanent record.

Kristin L. Erickson, Chief Deputy District Attorney, Criminal Division, District Attorney, Washoe County; Nevada District Attorney's Association, expressed support for creating the Nevada Council for the Prevention of Domestic Violence.

Chair Amodei closed the hearing on A.B. 219. He said he wanted to explain why the Committee was going to work session this bill instead of passing it out. He explained the Senate recently passed the last of a series of bills that were the result of the interim Advisory Committee concerning Criminal Justice System in Rural Nevada that dealt with frontier issues regarding this subject. He commented it was not the interim Committee's intent to offend anyone, but the Committee had to identify areas unique to the frontier districts in dealing with domestic violence and other issues. He explained the interim Committee said those frontier areas had specific issues on processing domestic violence and performing counseling as required by the law in these cases. He said there were people who took the interim Committee's findings as an affront on this issue, and clearly, it was not the intent of the interim Committee. Chair Amodei said he supported A.B. 219 and expected to process it, and he wanted it on the record that the only reason the Senate Committee on Judiciary was holding the bill was in the hope constructive views would be taken on those bills when processed by the Assembly. He said if there were things that could make the bills better, he hoped the Assembly would do that. However, if the bills were summarily killed thereby repudiating the work of the interim Committee, the Chair intended to fashion an amendment to A.B. 219 to specifically deal with the issues found in frontier Nevada by the interim study.

Chair Amodei, addressing Mr. Sprinkle, suggested he bring those bills to the attention of the Council at the upcoming meeting and share the Senator's comments with them. He said no one was trying to disrespect or do anything to anyone else; however, this was an area the interim Committee worked hard on and he hoped the Council took a good look at those issues, and made constructive suggestions to the Legislature so that it could, in turn, do something. He stated it did not matter whose jacket it was in, as long as these specific concerns were addressed and a solution was formulated.

Chair Amodei, continuing to speak to the Council members, said he hoped their meeting was productive and they specifically looked at those bills. He said if someone had a better idea and wanted to coordinate with the people who were trying to administer the justice system out there, the Senate encouraged them to do that. He said he wanted to make sure the work of that interim Committee and Assemblyman Bernie Anderson of Assembly District No. 31, was given due credit. Chair Amodei reiterated he believed A.B. 219 would be passed by the Judiciary Committee and the Senate as a whole, but the only question, at the moment, was whether or not the Judiciary Committee had to amend the bill to address the problems in the frontier areas.

Chair Amodei commented he did not want anyone to leave the hearing fearing A.B. 219 was in danger of dying. However, he said everyone should realize the issues identified by the interim Committee were of grave concern to some of the members of the Senate and Assembly Committees on Judiciary.

Assemblywoman Ohrenschall asked to which bills Chair Amodei was referring. Chair Amodei replied they were Senate Bill (S.B.) 75, S.B. 76 and S.B. 77. He said if someone had a better mousetrap the Senate Committee on Judiciary would love to hear it.

**SENATE BILL 75**: Allows use of audiovisual technology under certain circumstances for counseling and evaluations required for certain offenses. (BDR 5-188)

**SENATE BILL 76 (1st Reprint)**: Revises provisions pertaining to evaluations of juveniles who commit certain unlawful acts involving alcohol or controlled substances. (BDR 5-186)

**SENATE BILL 77 (1st Reprint)**: Revises provisions pertaining to counseling required for person convicted of battery which constitutes domestic violence. (BDR 15-185)

Chair Amodei closed the hearing on A.B. 219 and opened the information hearing on S.B. 266.

**SENATE BILL 266**: Revises provisions governing statutes of repose and statutes of limitation in actions relating to deficiencies in construction of improvements to real property (BDR 2-732)

Senator Care said he wanted to delete S.B. 266 in its entirety and substitute what constituted a repeal of subsection 5 of NRS 11.500, which was also section 5 of A.B. No. 40 of the 72nd Session.

Senator Care said that during the interim, Mr. Morris called attention to a constitutional problem with the language in section 5 of A.B. No. 40 of the 72nd Session. Basically, if a federal court was found to not have jurisdiction over a matter and a plaintiff recommenced the action in State court within the 90 days after it was dismissed, the State court should not be bound by anything that happened in the federal court, which never had jurisdiction. He said the language was originally intended to save plaintiffs and defendants' time and effort put into the case; it was not intended to tie a judge's hands and bind him to decisions made by a court that had no jurisdiction. Senator Care said Mr. Morris would give the Committee points to consider when S.B. 266 comes up for the second reading on the Senate Floor.

Steve Morris, Attorney, said he was speaking in support of repealing subsection 5 of NRS 11.500. He said he felt only one issue of the statute needed to be repealed because NRS 11.500 provided welcome relief to plaintiffs who mistakenly chose the wrong forum to try their claims. He said he wanted to address the consequences that follow in State court when it was discovered the federal court had no jurisdiction.

Mr. Morris explained NRS 11.500 provided, in subsections 1, 2, 3, and 4, that if a mistake was made in filing a case in the wrong court, the time taken for that filing was not counted toward the statute of limitations for filing such a claim if the case was refiled in the correct court after dismissal in the wrong court. However, he noted subsection 5, said when refiled in State court that was dismissed in federal court, any findings of fact and conclusions of law entered by the court that had no jurisdiction were binding on the district court and, therefore, on the Nevada Supreme Court when the action was refiled in State court. He said that meant a judgment or verdict directed in the Nevada district court from a federal court had no jurisdiction over the matter. He said that could have serious consequences because if it were determined federal court had no jurisdiction, that court usually did not get to the merits of the case. Mr. Morris said the federal court usually knew whether the district court was mistaken or correct in its assessment of the case; it just said that court had no authority to hear the case, and the case was dismissed. Mr. Morris explained, as the statute was currently written, the findings of a court that did not have jurisdiction would be binding on Nevada State court judges, both in the Nevada Supreme Court and the Nevada District Courts. He said that deprived the opposing party of his or her right to trial by jury, the court of its function to decide judicial controversy and the Nevada Supreme Court the exercise of its authority to review proceedings and judgments of the district courts.

Mr. Morris stated for those reasons subsection 5 of NRS 11.500 was constitutionally doubtful and should be repealed. He said if that subsection was repealed, it would not deprive anyone of their day in court because they filed in the wrong court. The statute would simply say the trial would start anew without regard to whether the case had been in the wrong court. He said with respect to discovery and those things determined in the court without jurisdiction, heard under oath, were probably usable in State court. However, he said the fact-finding process and the application of law in the State court would take place under Nevada law, as originally intended.

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Senator Care said he had discussed the issue with the Assistant Majority Leader of the Assembly, John Ocegüera, Assembly District No. 16. He said A.B. No. 40 of the 72nd Session was Mr. Ocegüera's bill and the Assemblyman was aware of the issue and fine with the change.

Chair Amodei closed the hearing on S.B. 266 and adjourned the meeting at 9:53 a.m.

RESPECTFULLY SUBMITTED:

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Johnnie Lorraine Willis,  
Committee Secretary

APPROVED BY:

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Senator Mark E. Amodei, Chair

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