

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session
February 21, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:31 p.m. on Tuesday, February 21, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Becky Harris

COMMITTEE MEMBERS ABSENT:

Senator Michael Roberson (Excused)

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senatorial District No. 7
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Eileen Church, Committee Secretary

OTHERS PRESENT:

Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department
of Public Safety

Senate Committee on Judiciary
February 21, 2017
Page 2

David M. Smith, Parole Hearings Examiner II, State Board of Parole
Commissioners, Department of Public Safety
Holly Welborn, American Civil Liberties Union of Nevada
John J. Piro, Deputy Public Defender, Clark County
Sean B. Sullivan, Deputy Public Defender, Washoe County
Cesar O. Melgarejo, Director of Military and Veterans Policy, Office of the
Governor
Kevin Burns, United Veterans Legislative Council
Rocky Finseth, Nevada Association of Realtors; Nevada Land Title Association
Samuel P. McMullen, Nevada Bankers Association

CHAIR SEGERBLOM:

I will open the hearing on the Senate Committee on Judiciary with Senate Joint Resolution (S.J.R.) 1.

SENATE JOINT RESOLUTION 1: Proposes to amend the Nevada Constitution to replace the State Board of Pardons Commissioners with the Clemency Board and requires the Legislature to provide for the organization and duties of the Clemency Board. (BDR C-567)

SENATOR DAVID R. PARKS (Senatorial District No. 7):

Senate Joint Resolution 1 proposes to amend the *Constitution of the State of Nevada* to replace the State Board of Pardons Commissioners with a Clemency Board and to require the Legislature to provide for the organization and duties of the Clemency Board through enabling legislation. I have submitted my written testimony ([Exhibit C](#)).

The State Board of Pardons Commissioners is established under Article V, section 14, paragraph 1 of the *Constitution of the State of Nevada*. *Nevada Revised Statutes* (NRS) 213 governs its operation. Under section 14 of Article V of the Nevada Constitution, the Pardons Board consists of the Governor, the Justices of the Nevada Supreme Court and the Attorney General. The authority of the Pardons Board is to grant pardons after convictions, to commute punishments, to address and remit fines and forfeitures, and other actions relating to pardons. There is an exception with the sentence of death or a sentence of life imprisonment without the possibility of parole. Those sentences cannot be commuted to parole. The Clemency Board, as proposed in S.J.R. 1, would consist of nine members. Three members would be appointed by the Governor, three would be appointed by the Chief Justice of the Supreme Court,

and three would be appointed by the Attorney General. The Legislature would be directed to provide for the duties of the Board and its members. If the resolution passes the Legislature in identical form in 2017 and 2019, it will be presented to the voters for approval or disapproval in the 2020 general election.

Senate Joint Resolution 1 was heard in its current form in the 75th Session. The vote in both Houses of the Legislature was unanimous. Unfortunately, S.J.R. 1 was not heard in the 76th Session, failed to get a hearing and died. I believe bringing S.J.R. 1 back for reconsideration is merited.

The Pardons Board only meets twice a year, and the preparation that is required for a Board hearing is substantial. The difficulty for the Pardons Board and the State is that this Board is composed of the Governor, the Attorney General and the seven Justices of the Supreme Court. These individuals are undoubtedly among the busiest and hardest-working Executive and Judicial Branch officers in the State of Nevada.

Most people believe that pardons are only granted by the Governor, and this is true in a small number of states. Most states are involved in reviewing individuals for pardon consideration. In general, there are four structural or organizational models with variations for the exercise of pardon responsibility. I have provided a one-page summary of these various models ([Exhibit D](#)). Nevada is midway down the left column. Only three other states have a structural or organizational configuration similar to Nevada.

I am sure you have read that the State is once again facing a prison overcrowding situation. Nevada could reduce its incarcerated population dramatically by allowing for the creation of a Clemency Board composed of professionals and lay people who deal with the criminal justice system and meet on a more frequent schedule. They would have the expertise and time to make evaluations regarding the appropriateness of pardon actions.

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):

Senate Joint Resolution 1 is a recommendation from the Advisory Commission on the Administration of Justice. It was presented to the Legislature in the 75th Session. The director of the Nevada Department of Corrections (NDOC) spoke to the Assembly Committee on Corrections, Parole, and Probation about the rising prison population in Nevada.

If approved by this Legislature and the next Legislature and by the voters, S.J.R. 1 would allow for the creation of a Clemency Board instead of the Pardons Board. The Clemency Board would have more freedom to meet. The current Pardons Board is made up of our Supreme Court Justices, the Attorney General and the Governor. The courts are overburdened and the Constitutional Officers who serve on the Pardons Board have very demanding schedules. The language in S.J.R. 1 requires that at least five of the members of this Board have expertise in criminal justice and be able to look at these cases more frequently than the current Pardons Board.

SENATOR FORD:

Criminal justice reform has become a bipartisan issue, and I support this resolution.

ASSEMBLYMAN OHRENSCHALL:

The Clemency Board can grant the traditional pardon and sentence commutations. Many inmates were given heavy consecutive sentences in the 1980s under a different sentencing structure. Now, we would probably have some of those sentences run concurrently.

Senator Parks spoke about community cases. Community cases are persons who are no longer in custody, have paid their debt to society, have turned their lives around and are hoping to have a conviction removed from their record. The Clemency Board would be able to evaluate these cases and help people move on with their lives.

CHAIR SEGERBLOM:

If the Clemency Board can provide different relief than the Pardons Board, can this be done by statute instead of waiting five years?

ASSEMBLYMAN OHRENSCHALL:

Changing the configuration of the Pardons Board so that it can meet more frequently and be more nimble has to be done through a constitutional amendment.

CHAIR SEGERBLOM:

What about creating a commutation board in the interim?

Senate Committee on Judiciary
February 21, 2017
Page 5

ASSEMBLYMAN OHRENSCHALL:
I will defer to our attorneys.

CHAIR SEGERBLOM:
Mr. Anthony, could you look into that?

NICK ANTHONY (Counsel):
There might be constitutional concerns given that the makeup of the Pardons Board is established by the Nevada Constitution.

CHAIR SEGERBLOM:
Can the Pardons Board do a commutation?

MR. ANTHONY:
It can under the Nevada Constitution.

CHAIR SEGERBLOM:
Could this be done by statute?

MR. ANTHONY:
No. Because the Pardons Board is established in the Constitution. Any change would require a constitutional amendment.

CONNIE S. BISBEE (Chairman, State Board of Parole Commissioners, Department of Public Safety):
The State Board of Parole Commissioners provides administrative support for the Pardons Board. We may be able to answer some of your questions. The Parole Board is neutral on S.J.R. 1.

DAVID M. SMITH (Parole Hearings Examiner II, State Board of Parole Commissioners, Department of Public Safety):
I was the Executive Secretary of the Pardons Board for five years. I am familiar with its processes.

In 2011 during the 76th Session, the Legislature made changes regarding how the Pardons Board handles cases. The changes permitted the Pardons Board to grant pardons to and restore the rights to community cases that met a certain criteria.

There is no statutory provision that permits the Pardons Board to commute any sentence without a meeting. This Committee could explore expanding the criteria, allowing the commutation of certain cases without a meeting.

CHAIR SEGERBLOM:

How many pardons are granted a year?

Ms. BISBEE:

It varies. A Nevada Supreme Court Justice retired this year, so there was no November Pardons Board meeting. The Pardons Board usually meets in November and again in the spring. On average, the Pardons Board hears between 25 to 30 community cases and from 2 to 15 inmate cases. Inmate cases do not have as high a grant rate as the community cases. The Pardons Board grants around 10 pardons per year to inmates and more than 50 pardons in absentia to community cases.

CHAIR SEGERBLOM:

Since marijuana is now legal, does the law permit a mass commutation of marijuana offenses? Is a mass commutation a process you can use, or does each case have to be heard individually?

MR. SMITH:

The Parole Board contacted NDOC to find out how many people were in prison strictly for marijuana convictions. It is a small number. Only one inmate was eligible for a parole hearing.

CHAIR SEGERBLOM:

I was more focused on community cases such as people who are already out of prison but have a conviction on their record.

MR. SMITH:

California recently approved recreational marijuana and included a provision allowing people to apply for a pardon depending on the level of their involvement with marijuana and how many plants they possessed. These individuals, if they satisfy the criteria, automatically have their cases overturned and dismissed. This is done through the courts. Nevada may consider a court process as opposed to the Pardons Board. It would probably be more expeditious.

Senate Committee on Judiciary
February 21, 2017
Page 7

HOLLY WELBORN (American Civil Liberties Union of Nevada):

I am here to testify in support of S.J.R. 1 to replace the Pardons Board with the Clemency Board.

The ACLU supports this bill due to the effects it will have on mass incarcerations in Nevada's prisons and on reinstating the rights of the community pardons applicants. The Director of NDOC has testified before several committees this Session that if the prison population continues to grow at its current rate, Nevada is going to have to build a new facility.

During the 2015-2016 Interim, the Advisory Commission on the Administration of Justice studied sentencing schemes in Nevada. Nevada's mass incarceration problems are caused in large part by a system that attaches sentences to crimes in an arbitrary manner, affecting the proportionality of the sentences and leading to punishment and unnecessarily long prison terms.

Many individuals serving time in the NDOC are there for nonviolent offenses and probation violations. Many individuals have served their time, repaid their debt to society and may be candidates for release and rights restoration.

The ACLU receives dozens of requests annually from individuals who do not understand the pardons system. The most common question is, "Why am I only eligible for a pardon twice a year?" The proposed Clemency Board would meet quarterly, allowing for more thorough and frequent individualized review of pardon requests, thus helping to decrease Nevada's prison population and reinstating individuals' rights.

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

We echo the sentiments of the ACLU and support this bill.

SEAN B. SULLIVAN (Deputy Public Defender, Washoe County):

We also echo the sentiments of the ACLU and support this bill.

CHAIR SEGERBLOM:

I will close the hearing on S.J.R. 1 and open the hearing on S.B. 33.

SENATE BILL 33: Prohibits the foreclosure of real property owned by certain military personnel or their dependents in certain circumstances. (BDR 3-164)

CESAR O. MELGAREJO (Director of Military and Veterans Policy, Office of the Governor):

My testimony ([Exhibit E](#)) relates that Senate Bill 33 is a Governor's Office bill pursuing the Governor's goal of making Nevada the most military- and veteran-friendly state in the Nation. The proposed changes would establish state protections similar to the Servicemembers Civil Relief Act of 2003 (SCRA) by providing mortgage foreclosure protection for deployed active duty and Nevada National Guard and Reserve servicemembers, and establishing penalties on lenders that knowingly foreclose on a servicemember's real property while the member is on active duty status.

The Servicemembers Civil Relief Act of 2003 amended and replaced the Soldiers' and Sailors' Civil Relief Act of 1940 and is codified at 50 USC Section 3901 et seq. The 2003 Act protects members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard and the National Guard as they enter active duty service. The purpose of SCRA is to strengthen national defense by giving servicemembers certain protections in civil actions by providing for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect servicemembers during their military service. Some of the benefits accorded to servicemembers by SCRA also extend to the servicemembers' spouses and dependents.

The origins of SCRA can be traced as far back as the Civil War when Congress passed a total moratorium on civil actions brought against Union soldiers and sailors. This meant any legal action involving a civil matter was placed on hold until the soldier or sailor returned from war. During World War I and World War II, similar acts were passed by Congress to protect the rights of servicemembers while they were at war.

The intent in passing these protections was to protect both the national interests and those of its servicemembers. Congress wanted servicemembers to be able to fight the war without having to worry about problems that might arise at home. Senate Bill 33 demonstrates the Governor's intent is no different.

Many believe that war is drawing down, yet last year we witnessed more than 600 Nevada National Guard soldiers deploy to remote parts of the Middle East and Africa. These are servicemembers who continue to be pulled away from their everyday jobs and lives to serve whenever they are called upon.

Section 1, subsection 1 of S.B. 33 proposes to codify a portion of SCRA by establishing that a foreclosure shall not be conducted without a court order during the period the servicemember is on active duty or deployment or for a period of one year following the end of such active duty or deployment.

In 2012, SCRA was amended due to thousands of servicemembers and their families being evicted from their homes. Under SCRA, the period of time that banks were prohibited from foreclosure/eviction of servicemembers due to late payments was extended from nine months to one year after military service or deployment. The first 1-year extension expired on December 31, 2015, and this provision returned to a 9-month period.

In 2016, the Foreclosure Relief and Extension for Servicemembers Act of 2015 was passed extending the 1-year period through 2017. Effective January 1, 2018, the 1-year protection period reverts back to a 9-month period. S.B. 33 does not have an expiration time frame. The one-year postactive military service allows servicemembers and their family members sufficient time to get on their feet and avoid the stress of potentially losing their homes as the servicemembers transition from active duty and deployment.

Section 1, subsections 2 and 3 of S.B. 33 establish the procedures for a court proceeding for the foreclosure of real property owned by a servicemember. A foreclosure could proceed if the court determines the member's ability to comply with the obligations is not materially affected because of the member's military service or deployment.

Section 1, subsections 4 and 5 of S.B. 33 clarify that these provisions only apply to a residential mortgage loan that was secured before the period of active duty service or deployment. These provisions are also extended to a dependent of a servicemember if the ability to meet the obligations is materially affected because of the member's military service or deployment.

Section 1, subsection 6 of S.B. 33 outlines the penalties for a person who knowingly conducts a foreclosure sale in violation of this section. Subsection 7

and the following sections 2 through 5 of S.B. 33 clarify terms used and make conforming changes.

The Governor's Office has submitted an amendment ([Exhibit F](#)), which has been developed with the help of the Nevada Association of Realtors and the Nevada Land Title Association. The amendment adds a citation to section 1, subsection 2, citing *Nevada Revised Statutes* 116, referring to Common-Interest Ownership, and adds "or HOA lien" to subsections 2, 3 and 5. Subsection 6 is also amended by striking "person" and adding "beneficiary" as well as excluding trustees from the criminal and civil liability. Paragraphs (i) and (j) are added to define a "beneficiary" and "trustee."

SENATOR HARRIS:

I support the bill, but I have one concern regarding section 1, subsection 2, paragraph (b). The applicable relief to the servicemember would be to stay the proceedings in an action for one year, but in paragraph (b) the court is also able to issue another order that is equitable to conserve the interests of the parties. That language is broad, and I have no idea what equitable interests are to the parties. I do not know if displacing a servicemember's family from their home, in the alternative from staying the foreclosure, would necessarily result in an equitable outcome.

MR. MELGAREJO:

Most of S.B. 33 was taken from SCRA. I do believe that this is verbatim.

SENATOR HARRIS:

I am not really sure that equitable is an adequate descriptor in terms of relief in light of what homeowners in Nevada have gone through over the last seven years in terms of trying to preserve homeowner rights. I would like to see a little more clarity.

KEVIN BURNS (United Veterans Legislative Council):

The United Veterans Legislative Council (UVLC) is an umbrella group over all veterans' service organizations in Nevada. The UVLC strongly supports S.B. 33 in its amended form as presented by Mr. Melgarejo. This affects active servicemembers, National Guard and reservists.

Many of us packed our gear, deployed and dumped everything back on our spouses, leaving them to handle everything, including a full-time job, raising children and taking care of all the bills.

I am the Coordinator of the Veterans Resource Center for Western Nevada College. I not only deal with student veterans, but the guardsmen and reservists. The U.S. Department of Veterans Affairs and the U.S. Department of Defense make mistakes, and many times people do not get paid. Last week, I took \$750 from my personal rainy day fund to give a guardswoman so she would not be evicted from her apartment. This is an example of the types of issues this bill would take care of.

When a member of our military deploys to foreign lands or war zones, constant vigilance is required from the time that person steps foot in country. There is no such thing as an eight-to-five day. Focus at the task at hand and situational awareness are critical not only to mission completion but also to survival.

The fear of foreclosure or loss of real property leaves servicemembers who are in country not focusing on the task at hand. They become a liability to their unit and to themselves.

We in the veteran community feel the passage of S.B. 33 is crucial but do not ask for debts to be forgiven. We are asking to stay any foreclosures or eviction actions until the servicemembers come home and can present a defense.

ROCKY FINSETH (Nevada Association of Realtors; Nevada Land Title Association):
We support S.B. 33.

CHAIR SEGERBLOM:
Do you approve the amendments to this bill?

MR. FINSETH:
Yes.

SAMUEL P. MCMULLEN (Nevada Bankers Association):
We support S.B. 33. We also support the amendment.

CHAIR SEGERBLOM:

Seeing no more people wanting to testify, I will close the hearing on S.B. 33. Nick Anthony will now provide a presentation on the Nevada Supreme Court.

MR. ANTHONY:

The Legal Division of the Legislative Counsel Bureau reviewed all the Nevada Supreme Court cases, federal cases and U.S. Supreme Court cases since the conclusion of the 78th Session. There are three Nevada Supreme Court cases and one U.S. Supreme Court case that may be of interest ([Exhibit G](#)).

The three Nevada Supreme Court cases clarify ambiguities in the law. The Court has invited the Legislature to act.

The first case is *Schofield v. State of Nevada*, 132 Nev. Adv. Op. 26, 372 P.3d 488 (2016), which deals with a defendant who physically took his child, placed him in a headlock and put him in a car against the child's will. The defendant was charged, among other things, with child abuse and first-degree kidnapping. The Supreme Court reviewed NRS 200.310, subsection 1, which states that first-degree kidnapping is any person who takes away or detains any minor with the intent to keep. The Supreme Court found the language "intent to keep" ambiguous. The Court reviewed the legislative history and did not find anything on point. The Court noted there were two ways to look at "intent to keep." It could be just for a short period or it could be to possess for a longer period. The Court determined "intent to keep" was for a longer period of time. If the Legislature concurs with the Court, then it can leave NRS 200.310 as is. The Legislature could amend NRS 200.310 to clarify how long the period of time needs to be in order to fit the definition of kidnapping.

CHAIR SEGERBLOM:

Even though the kidnapping involved a father and a son, the concept applies to any kind of kidnapping?

MR. ANTHONY:

It does. The case involved a child custody issue, questioning whether it was the father's turn to have custody of the child. The father took the child against the child's will and against the court order. The Court found "intent to keep" language means a longer period of time. Kidnapping can include kidnapping your own child if it is in violation of a court order.

The second case is *McNeill v. State of Nevada*, 132 Nev. Adv. Op. 54, 375 P.3d 1022 (2016), which deals with Nevada's lifetime supervision law under NRS 213.1243. In the facts of this case, Appellant McNeill was on lifetime supervision for committing a sex offense. During his lifetime supervision, Mr. McNeill was required to submit to urinalysis, cooperate with his supervising officer, obtain residence approval and abide by a number of other conditions placed on him by the Division of Parole and Probation.

The Appellant charged that Nevada's current statutory scheme in NRS 213.1243 does not provide for these specific conditions. The Court agreed with the Appellant. *Nevada Revised Statutes* 213.1243 is silent as to additional conditions. The Nevada Supreme Court found that Parole and Probation did not have the authority to impose these conditions on the sex offender.

The Legislature may choose to let the current caselaw govern and leave the statute unchanged, or the Legislature could amend NRS 213.1243 to provide for additional conditions for lifetime supervision such as urinalysis, resident requirements, etc. The Legislature could authorize Parole and Probation to further impose conditions — if narrowly tailored, not carte blanche — in giving its authority to legislate to the Parole and Probation.

The last Nevada Supreme Court case is *Kaplan v. Chapter 7 Trustee*, 132 Nev. Adv. Op. 80, 384 P.3d 491 (2016). This case arose out of a bankruptcy proceeding under NRS 21.090, which provides specific items that are exempt in a bankruptcy proceeding. At issue was NRS 21.090, subsection 1, paragraph (u), which is an exception in the amount of \$16,150 for personal injury settlements. The question before the Court was whether the \$16,150 was a total aggregate amount or if it was per claim. In this case, the person had two different claims in the amount of \$16,150. The Court reasoned that the statute was ambiguous given a split of authority under federal law whether it should be an aggregate or a per claim amount. The Court found it to be \$16,150 per claim. The Legislature could either let the Nevada Supreme Court caselaw govern or amend NRS 21.090, subsection 1, paragraph (u) to provide clarification.

The U.S. Supreme Court case is in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). This is a case dealing with same-sex marriage. It arose out of similar facts to the Court of Appeals for the Ninth Circuit opinion that decided a couple of years ago. Nevada has a constitutional provision and a statutory provision

that only marriage between a male and female shall be recognized. Other states have similar constitutional and statutory provisions.

During the course of litigation, the circuit courts were split and the U.S. Supreme Court took up the issue in *Obergefell*. The case arose out of Michigan, Kentucky, Ohio and Tennessee, which all had constitutional provisions and statutory provisions similar to Nevada. The Court found that any statutory provision that does not allow same-sex marriage is unconstitutional under the Fourteenth Amendment due process and equal protection provisions. It is up to this Legislature to change current NRS 122.020 to authorize marriage between persons of the same sex. The Legislature could also make the policy choice to make those changes throughout the NRS. The constitutional provision would require a constitutional amendment voted on by the people.

CHAIR SEGERBLOM:

Does anyone have a bill to amend the statute?

MR. ANTHONY:

There are some bills this Session that are looking at that issue.

Senate Committee on Judiciary
February 21, 2017
Page 15

CHAIR SEGERBLOM:

Having no further business on the agenda, I adjourn this Committee meeting at 2:15 p.m.

RESPECTFULLY SUBMITTED:

Eileen Church,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
S.J.R. 1	C	3	Senator David R. Parks	Written Testimony
S.J.R. 1	D	1	Senator David R. Parks	50-State Comparison Models for Administration of the Pardon Power
S.B. 33	E	3	Cesar Melgarejo	Testimony for Senate Bill 33 : Prohibits the foreclosure of real property owned by certain military personnel or their dependents in certain circumstances.
S.B. 33	F	2	Cesar Melgarejo	Amendment to Senate Bill 33 : Prohibits the foreclosure of real property owned by certain military personnel or their dependents in certain circumstances.
	G	9	Nick Anthony	Summary of Court Decisions of Importance to Senate Judiciary