

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-second Session
March 13, 2023**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:04 p.m. on Monday, March 13, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Jeff Stone

COMMITTEE MEMBERS ABSENT:

Senator Lisa Krasner (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Erica Roth, Washoe County Public Defender's Office
John J. Piro, Clark County Public Defender's Office
Annette Magnus, Executive Director, Battle Born Progress
Andres Moses, Eighth Judicial District Court, Clark County
John Carlos
John Jones Jr., Nevada District Attorneys Association

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Marc Schifalacqua, Senior Assistant City Attorney, City of Henderson Attorney's
Office

CHAIR SCHEIBLE:

We will open the hearing on Senate Bill (S.B.) 222.

SENATE BILL 222: Revises provisions relating to juries. (BDR 1-192)

SENATOR DALLAS HARRIS (Senatorial District 11):

Senate Bill 222 is designed to increase the diversification of State juror pools. You cannot have a jury that represents the community if you do not have a jury pool that represents the community.

The bill adds a new list to those jury commissioners pull from in creating juror pools. It also increases jurors' daily pay from \$40 to \$65. The last time the pay rate was touched was in 2003 when it went from \$10 to \$40. The \$65 figure in the bill is the consumer price index adjusted number from 2003. This is a small, reasonable step to make it a little bit easier for people to participate in the civic process.

Senate Bill 222 also creates equity between civil and criminal cases with respect to the restoration of rights. Under current law, an ex-felon can serve on a civil jury immediately after release but must wait six years to serve on a criminal court case. Most states do not differentiate between when those rights are restored.

The proposed amendment ([Exhibit C](#)) does two things. Just because you are eligible to serve on a jury does not guarantee your right to serve. If you have implicit or actual bias, both sides should be able to be able to argue that bias. The amendment also clarifies parties can inquire into the criminal history of a potential juror and nothing in the bill further limits any of the parties' preemptory challenges.

The proposed amendment, [Exhibit C](#), also delays the bill's effective date to give the courts and the Nevada Department of Health and Human Services sufficient time to establish a process for transmittal of the juror list they have to pull from.

SENATOR NGUYEN:

We do not pay jurors who are initially summoned. Are there provisions to compensate those individuals? Or are we still not compensating until people are in fact impaneled on a jury?

SENATOR HARRIS:

That is a great idea, Senator Nguyen. Nothing in this bill changes when we begin payments to jurors. I am trying to take a small step. I do not even know if \$65 is enough; compared to other states, it is still low. If the Committee supported something like that, I would be willing to look at it.

SENATOR HANSEN:

In a preemptory challenge, are attorneys allowed to question potential jurors about their criminal history?

SENATOR HARRIS:

The bill would ensure lawyers are allowed to do that.

SENATOR HANSEN:

Ideally, to arrive at a fair judgment when selecting a jury, attorneys want to ensure they know as much as possible about everyone.

ERICA ROTH (Washoe County Public Defender's Office):

The Washoe County Public Defender's Office supports S.B. 222. Thomas Jefferson said, "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." Jury duty is an important part of our Country, the backbone of our Constitution. Ensuring we have a fair set of jurors to judge our clients is supremely important.

JOHN J. PIRO (Clark County Public Defender's Office):

The Clark County Public Defender's Office strongly supports S.B. 222. Senator Hansen, we are always allowed to ask potential jurors about their criminal history. The prosecution will ask, and people will have to go into the full details of their criminal past in front of a panel of strangers. Jury duty is a rather uncomfortable service.

Senate Bill 222 is good in large measure because it provides higher pay, especially for people who may not be able to practically do jury duty. If you work at a

convenience store and the franchise owner does not pay you to show up for jury duty, you are taking a substantial pay cut for that lost time—and you do not even get paid for the first two days. You can be there the whole time, not get picked for the jury and lose out on two days' of pay.

The bill will not stop the prosecution from asking needed questions to find a fair cross section of the community to judge a case. We have been moving in the right direction with jury diversity for quite some time with the help of the Legislature. This bill will even bring us closer to that.

ANNETTE MAGNUS (Executive Director, Battle Born Progress):

Battle Born Progress supports S.B. 222 because we need to ensure our juries are representative of their communities. A jury is meant to be a group of someone's peers. The bill helps us move in that direction by diversifying jury pools.

We have restored people's right to vote if they are no longer incarcerated; we should do the same for people who wish to serve on juries. They should be fully able to participate in the democratic process by serving on a jury. Having everyone participate in our process makes the institutions better. The bill has other provisions to give our judicial system what it needs to be fairer and more balanced.

ANDRES MOSES (Eighth Judicial District Court, Clark County):

The Eighth Judicial District Court, Clark County, supports section 2 of S.B. 222, which increases the fee paid to jurors. This is long overdue.

The Eighth District is the busiest trial court in the State. We had more than 25,000 jurors come through our doors in 2022. I thank Senator Harris for working with us on the amendment, [Exhibit C](#), to change the effective date for section 9. That will give us time to work with the Department of Health and Human Services and implement the additional source list for our jury pool.

JOHN CARLOS:

I support S.B. 222, but I would like the pay to be more than \$65 per day because of how much tax money the State has. We need to figure out a way to give more money to jurors, especially if they must take time off work.

JOHN JONES JR. (Nevada District Attorneys Association):

The Nevada District Attorneys Association opposes S.B. 222. Nevada is not an outlier with respect to opportunities for individuals with felony convictions to

serve on a jury. People with felony convictions are eligible to serve six years after they complete their sentences.

Over the past few Sessions, district attorneys have supported efforts to help restore and reintegrate those with criminal histories into society. We worked with then-Majority Leader Senator Aaron Ford and then with then-Speaker of the House Jason Frierson in the Seventy-ninth Session and the Eightieth Session on rights-restoration bills reducing the time frame in which a person can apply for records sealing and on bills to allow formerly incarcerated persons to vote.

In 2017, Nevada went from a near-lifetime ban on felons serving on juries to the six-year ban on serving on juries in criminal cases. The Association supported that bill. It is important to note a majority of states have a ban on persons with felonies serving on juries unless their rights have been restored. Some states even extend that ban to misdemeanor crimes.

In states like Nevada with a jury duty restoration time period in statute, most are longer than ours. A ten-year ban is the average for states with a temporary ban on jury service after a conviction. In total, more than two-thirds of the states impose a greater time restriction on a person with a felony conviction performing jury service than does Nevada.

We believe Nevada strikes the right balance between understanding the inferred and implied bias an individual with a felony history has and the right of restoration that we all believe in. An individual with a felony conviction has, at a minimum, woefully disregarded and violated the very laws he or she would then be asked to apply and enforce as jurors, the laws on which our system depends.

Senate Bill 222 allows people with crimes of dishonesty, moral turpitude, sex offenses and serious crimes of violence to serve on juries after completion of their sentence. Not even California goes that far.

Senator Harris's amendment, [Exhibit C](#), alleviates some of our concerns. The Association supports efforts to increase the diversity of jury pools. We support sections 1 and 2 of S.B. 222, which add other avenues for jury commissioners to seek increased diversity and to increase the compensation jurors receive. However, with respect to ex-felons' jury service, Nevada strikes the right balance without a lifetime ban. We do not ban jury service for nearly as long as other states. The Nevada way is the right way.

SENATOR NGUYEN:

As a policy, the Legislature has removed archaic laws like restoring felons' civic rights to vote. A lot of those laws, much like jury restrictions, are rooted in antiquated notions, like only white male landowners could be jurors and women could not vote. With S.B. 222, we are moving away from that.

What is it about the six-year time period as opposed to, say, a ten-year, six-month or one-year ban?

MR. JONES:

Six years was in statute prior to adoption of a bill in the Seventy-ninth Session. Six years is consistent with how we treat individuals with felony convictions in other avenues. People with felonies are banned from possessing a firearm for life and from running for public office for four years. They can be impeached from office up to ten years after they have completed their sentence. The six-year ban is not inconsistent with the aforementioned restrictions.

SENATOR NGUYEN:

After four years, ex-felons can run for public office and conceivably sit on this dais to make decisions about laws they would not be entitled to enforce. You can vote immediately upon your release from serving your sentence. Are those things correct?

MR. JONES:

Yes. It is four years to run for public office, six years for jury service and you can vote immediately. I would argue there is a difference between those three rights.

SENATOR NGUYEN:

If S.B. 222 becomes law, prosecutors would still be able to question people about their criminal history. You mentioned something about how people close in time to their potential convictions or serving their sentences should be weeded out.

MR. JONES:

The way S.B. 222 is written, an argument could be made that the Legislature has taken someone with a criminal conviction out of the jury process. The amendment, Exhibit C, clarifies some of that, but it does not address all the Association's concerns.

SENATOR HANSEN:

I opposed the idea of allowing felons to vote unless an extended period of time had passed after their release. As Senator Nguyen pointed out, we may have swung too far in the other direction. We have all sorts of felony Categories: A, B, C and so forth. I cannot remember which felony categories child molesters and rapists fall under.

MR. JONES:

Certain sex offenses are Category A and others are Category B. Some states classify the ability to return to jury service by conviction level; in California, petty sex offenders are barred from serving on juries.

SENATOR HANSEN:

Some felonies are not as significant as others. That said, I am uncomfortable with the idea of allowing child molesters, people convicted of severe domestic violence, rapists, criminals of that nature to serve on a jury. Maybe there is some way we could break out the categories of felonies. For really rotten people who did exceptionally nasty stuff we could at least maintain the six-year window before they can serve on a jury.

The Legislature decided felons can never have their Second Amendment right restored, which is disturbing. We should look again at whether, after you have paid your dues, after a certain window of time has passed—even after a gun-crime conviction—you could have that civil right restored. The Second Amendment is a fundamental Bill of Rights guarantee.

CHAIR SCHEIBLE:

Mr. Jones, could you confirm the types of serious offenses you are talking about are generally going to result in life sentences? Even if a person is out of custody after serving 20 years to life, he or she would still be on parole. Technically, he or she would not have finished serving the sentence so would not be eligible to serve on a jury.

MR. JONES:

That is correct.

MARC SCHIFALACQUA (Senior Assistant City Attorney, City of Henderson Attorney's Office):

The City of Henderson Attorney's Office is neutral on S.B. 222. We are currently selecting jurors for a domestic battery trial in the Henderson Municipal Court. It is important to include the amendment, [Exhibit C](#). The point of jury selection is to determine whether prospective jurors harbor bias against one of the parties or the judicial system in general. That bias could be expressed by saying you cannot be fair, being implied by a witness or attorney on the case or if you are similarly situated to the victim or the defendant in the case.

The only way to effectively ascertain if bias exists is to ask people about their past life experiences. Without the amendment, [Exhibit C](#), there could be an interpretation by the Judicial Branch that parties may never inquire into somebody's criminal history or felony conviction and the circumstances surrounding it. That information could provide a valid basis to challenge someone for cause or use a peremptory challenge.

It is possible a prospective juror may be similarly situated to the defendant, which would be inferred bias, as recognized by the U.S. Supreme Court. Perhaps the felony conviction could show a version of violating the law like dissuading a witness from testifying or intimidating a public official. Attorneys need to bring those things up to challenge potential jurors.

The amendment, [Exhibit C](#), would preclude a rather unfortunate judicial interpretation that would limit the ability to inquire into criminal history and ask how it affected a prospective juror to determine whether there is a basis to challenge for cause or use a peremptory.

CHAIR SCHEIBLE:

I will close the hearing on S.B. 222.

MR. CARLOS:

I want to update the Committee by quoting a Bible verse from the Book of Mark, chapter 9, verse 42, in which Jesus said, "But whoso shall offend one of these little ones which believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea."

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The Committee should work on laws to reduce human trafficking in Las Vegas. What Jesus teaches in the Gospel of Mark is those pedophiles should be thrown into the sea.

The Bible teaches in the Old Testament how rapists should be punished, and many modern laws are based on those teachings. The U.S. Constitution is based in large part on the Bible. It says that if a man rapes a woman, he should die. Tax dollars should not be used to keep these men alive. We should save State tax money to reduce human trafficking.

Polk County, Florida, Sheriff Grady Judd conducted a two-year investigation into how Los Angeles International Airport is shipping fentanyl out of the airport. I would like the Committee to consider instituting border checkpoints, like Texas has. Because we allow so much car traffic into the State, drug importation is rampant.

CHAIR SCHEIBLE:

Seeing no more business before the Senate Committee on Judiciary, we are adjourned at 1:33 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 222	C	2	Senator Dallas Harris	Proposed Amendment