

THE THIRTY-FIRST DAY

CARSON CITY (Wednesday), March 4, 2015

Senate called to order at 11:41 a.m.

President Hutchison presiding.

Roll called.

All present except Senators Segerblom and Smith, who were excused.

Prayer by the Chaplain, Pastor Nick Emery.

Father God, we seek You above all else this day. Thank You for Nevada and the people of Nevada. Thank You for Your love, for Your grace and for Your mercy, for they are new every morning, great is Your faithfulness.

As these leaders of our State move about this day, may they do so with You in mind. Filled by Your Holy Spirit, empowered by Your love, may they be renewed and restored this day. Give them this day, Lord, grace upon grace. Give them this day, Lord, energy and strength. And, bless this day, Lord, with restoration. As they pour themselves out in service to others, may You renew and restore them this day, we pray.

And, we speak these things in the mighty Name of Jesus Christ. God Bless and May God Bless America.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Finance, to which was re-referred Senate Bill No. 45, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

BEN KIECKHEFER, *Chair*

Mr. President:

Your Committee on Natural Resources, to which were referred Assembly Bill No. 35; Assembly Joint Resolution No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

DONALD G. GUSTAVSON, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, March 3, 2015

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bill No. 90; Assembly Bills Nos. 82, 154.

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

COMMUNICATIONS
CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

February 24, 2015

SENATOR MICHAEL ROBERSON, *Senate Majority Leader*, State of Nevada Senate, Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747

DEAR SENATOR ROBERSON:

As Representative in the United States Congress of the Fourth District of Nevada, I would like to request permission to address a joint session of the Nevada Legislature on Wednesday, April 8, 2015, at 5:00 p.m.

If you have any questions, concerns or would like to coordinate the details of my address, then please contact my district scheduler, Kelly Espinoza at (702) 912-1634 or email her at Kelly.espinoza@mail.house.gov.

Thank you for your time and for your consideration of my request. I look forward to hearing from you.

Sincerely,
CRESENT HARDY
Member of Congress

INTRODUCTION, FIRST READING AND REFERENCE

By Senators Harris, Hardy, Gustavson, Denis, Farley, Hammond and Settlemeyer:

Senate Bill No. 208—AN ACT relating to education; requiring the governing body of a new charter school to provide notice concerning the application and enrollment process to parents or legal guardians who live within a certain distance from the charter school; and providing other matters properly relating thereto.

Senator Harris moved that the bill be referred to the Committee on Education.

Motion carried.

By Senators Brower and Hardy:

Senate Bill No. 209—AN ACT relating to drivers' licenses; revising provisions governing the submission of documents required to declare veteran status when applying for or renewing an instruction permit or a driver's license; and providing other matters properly relating thereto.

Senator Brower moved that the bill be referred to the Committee on Transportation.

Motion carried.

By the Committee on Finance:

Senate Bill No. 210—AN ACT relating to public health; requiring the Division of Public and Behavioral Health of the Department of Health and Human Services to extend the period between periodic inspections under certain circumstances; requiring the Division to reduce certain fees for certain facilities and offices regulated by the Division; and providing other matters properly relating thereto.

Senator Kieckhefer moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

By Senators Segerblom, Parks, Harris; Assemblymen Joiner, Swank and Ohrenschall:

Senate Bill No. 211—AN ACT relating to education; requiring a school district to set the time for the commencement of a school day; requiring public high schools to provide a course of instruction in ethnic studies; requiring a pupil to pass such a course to graduate from high school; requiring the Council to Establish Academic Standards for Public Schools to prescribe standards of content and performance for such a course; and providing other matters properly relating thereto.

Senator Parks moved that the bill be referred to the Committee on Education.

Motion carried.

Assembly Bill No. 82.

Senator Kieckhefer moved that the bill be referred to the Committee on Natural Resources.

Motion carried.

Assembly Bill No. 154.

Senator Kieckhefer moved that the bill be referred to the Committee on Commerce, Labor and Energy.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 35.

Bill read second time and ordered to third reading.

Senate Bill No. 63.

Bill read second time and ordered to third reading.

Senate Bill No. 109.

Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 10.

Bill read third time.

The following amendment was proposed by Senators Ford and Hardy:

Amendment No. 74.

SUMMARY—Revises provisions relating to incompetent defendants.

(BDR 14-68)

AN ACT relating to criminal procedure; allowing the Division of Public and Behavioral Health of the Department of Health and Human Services to establish a program to provide certain services to a criminal defendant while

the criminal defendant is incarcerated; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows a court to order a psychiatric examination of a criminal defendant and requires the evaluation of criminal defendants found incompetent to stand trial at certain intervals to determine whether the defendant has attained competency. (NRS 178.415, 178.450, 178.455) Existing law also allows a court to order a defendant who is found incompetent, but not dangerous to himself or herself or society, to undergo outpatient treatment. (NRS 178.425, 178.460) This bill allows the Division of Public and Behavioral Health of the Department of Health and Human Services to establish a program to allow certain defendants declared incompetent to receive treatment to competency while incarcerated in jail or prison. If the program allows for the use of the forcible administration of medication, this bill requires certain determinations to be made and that appropriate access to a court be provided to allow for the challenge of such determinations. (See *Sell v. United States*, 539 U.S. 166 (2003).) In addition, this bill requires the Division to determine the appropriate staffing for a jail or prison to participate in the program. If such a program is established, this bill allows the Division to enter into a contract with a person, organization or agency to carry out or assist in carrying out the program.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 178.417 is hereby amended to read as follows:

178.417 1. A person may not provide a report or an evaluation concerning the competency of a defendant to stand trial or receive pronouncement of judgment pursuant to this section and NRS 178.400 to 178.460, inclusive, unless the person is certified by the Division for that purpose.

2. The Division shall adopt regulations to establish:

(a) Requirements for certification of a person who provides reports and evaluations concerning the competency of a defendant pursuant to this section and NRS 178.400 to 178.460, inclusive;

(b) Reasonable fees for issuing and renewing such certificates; and

(c) Requirements for continuing education for the renewal of a certificate.

3. The fees so collected must be used only to:

(a) Defray the cost of issuing and renewing certificates; and

(b) Pay any other expenses incurred by the Division in carrying out its duties pursuant to this section.

4. The Division shall establish and administer examinations to determine the eligibility of any person who applies for certification. An applicant is entitled to certification upon satisfaction of the requirements of the Division. The Division may enter into a contract with another person, organization or agency to carry out or assist in carrying out the provisions of this subsection.

5. *The Division may adopt regulations to establish a program that allows certain defendants who are determined to be incompetent to stand trial or receive pronouncement of judgment pursuant to NRS 178.400 to 178.460, inclusive, but who are determined not to be dangerous to themselves or to society to receive treatment to competency while incarcerated in jail or prison.*

6. If the Division establishes ~~such~~ a program ~~as~~ described in subsection 5, the Division must specify ~~the~~ in the regulations:

(a) The qualifications for participation in the program. ~~and the~~

(b) The type of treatment that may be provided to such defendants. If such treatment includes the forcible administration of medication, the regulations must require a determination to be made, and appropriate access to a court be provided to challenge the determination, that the medication is:

(1) Medically appropriate;

(2) Unlikely to have side effects that may undermine the fairness of trial; and

(3) Necessary to significantly further important governmental interests after taking into account other available alternatives.

(c) The required staffing that must be available at a jail or prison to participate in the program.

(d) That the program must be independently monitored and the manner in which the program will be monitored and held accountable.

7. The Division may enter into a contract with another person, organization or agency to carry out or assist in carrying out ~~the~~ a program ~~as~~ established pursuant to subsection 5.

Sec. 2. This act becomes effective upon passage and approval.

Senator Ford moved the adoption of the amendment.

Remarks by Senators Ford, Kieckhefer, Hardy and Settlemeyer.

SENATOR FORD:

I offer this amendment, approved by Senator Hardy, to strengthen Senate Bill No. 10, balancing government interests and individual rights and ensuring that jails that do choose to participate in this competency program are in line with Supreme Court jurisprudence. We are specifically looking to ensure that each defendant has access to the court for a determination as to whether a course of competency restoration is in line with the United States Supreme Court decision of *Sell v. United States*, 539 U.S. 166 (2003).

SENATOR KIECKHEFER:

I am not familiar with the Supreme Court ruling referred to by my colleague from District 11. I am concerned about the portions of this amendment related to forceful medication. Generally, if an individual is deemed incompetent to stand trial, he or she requires medication to be brought to competency. I believe this would be the majority of participants in the program. How would this work in a jail environment, where access to the court is not as readily available as it is in our existing psychiatric hospitals like Rawson-Neal? In these facilities, a court is actually held in the facility on a weekly basis, and there is also access to a judge on a weekly basis to determine if the proceedings should move forward.

SENATOR FORD:

The Supreme Court case to which I referred, requires that if medication is appropriate, unlikely to have side effects that undermine the fairness of the trial, necessary to further government interests and is considered after other available alternatives, it may be administered. My amendment lays out these factors, as stated in the *Sell* case, and requires the Division to adopt regulations outlining staffing ratios for jails that seek to administer competency programs. It also enables independent monitoring of these programs.

SENATOR HARDY:

The logistics of how this is done are unknown to me. There is always an option to allow an individual who needs to be restored to competency access to the court system. I do not know if where this process happens is addressed in the bill or in this amendment. Access is the critical component. We have discussed this with groups such as the ACLU who are interested in protecting the rights of individuals who have been incarcerated and need to be restored to competency in order to be adequately tried.

SENATOR KIECKHEFER:

My concern is whether or not the structures are in place within the jails. Did we consult with the sheriffs to make this determination? Is access to the courts readily available so these people have the opportunity for adjudication on motions pending before the court?

I also have a question about independently monitored programing within the jails. Is that currently in place? Is there a specific body that does this or is it open to anyone?

SENATOR SETTELMAYER:

Within the amendment, in section 1, subsection 6, paragraph c, it refers to required staffing that must be available at a jail or prison to participate in the program. Is there a standard that describes the correct level of staffing? How is the staffing level determined?

SENATOR HARDY:

The key is in section 1, subsection 5, line 21, where the third word is "may". This means regulations may be adopted, and these regulations would be included in the staffing that is necessary. Not only is the staffing necessary, but the place to do it is necessary. The regulations deal with the staffing—where it is done, how it is done and how the system is manipulated so it can be done. This all hinges on the word "may" in this section. It is an opportunity to avoid taking our prisoners, who may have a competency issue, from Clark County. This is done in shackles and involves taking the prisoner on an airplane, away from their family and their attorney, to a facility such as Lakes Crossing Center. They are then restored to competency, many times using medication. Many times they decompensate when returned back to jail and to a new environment again.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 131.

Bill read third time.

Remarks by Senator Brower.

Senate Bill No. 131 increases the compensation that must be paid to court reporters in State district courts for transcription and reporting services.

Roll call on Senate Bill No. 131:

YEAS—19.

NAYS—None.

EXCUSED—Segerblom, Smith—2.

Senate Bill No. 131 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 135.

Bill read third time.

Remarks by Senator Brower.

Senate Bill No. 135 is intended to fill a gap in our State statutes as was recently pointed out by a Nevada Supreme Court decision. It essentially allows a judge the discretion to determine whether the interests of justice entitle an adverse party access to a piece of writing that may otherwise be privileged and is used by a witness to refresh his or her memory prior to giving testimony. I urge your support.

Roll call on Senate Bill No. 135:

YEAS—19.

NAYS—None.

EXCUSED—Segerblom, Smith—2.

Senate Bill No. 135 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

REMARKS FROM THE FLOOR

Senator Woodhouse requested that her remarks be entered in the Journal.

We are pleased to have with us today, students, faculty and staff from Touro University Nevada, including CEO and Senior Provost Shelly Berkley, former Nevada Congresswoman and former member of the Assembly. I would be remiss if I did not also extend my appreciation and recognition of our colleague on the Floor who also is from Touro University and that is our colleague from District 12.

Touro University Nevada was established in 2004 to help address and serve the critical needs in medicine, health care and education in our State and is home to Nevada's largest medical school. Over the past ten years, Touro has become a leading educator of healthcare professionals and teachers in Nevada.

With a current enrollment of more than 1,400 students, Touro offers degree programs in osteopathic medicine, nursing, physical therapy, occupational therapy, physician assistant studies, medical health sciences and education. Many of these programs are the first and only programs of their kind in Nevada.

Touro University Nevada takes great pride in its commitment to addressing Nevada's needs related to physician, teacher and healthcare provider shortages. Touro graduates stay in our communities to work and live and are directly and positively impacting the citizens of our State.

At my desk today, I have two representatives of the student body at Touro University Nevada. First, I have Ori Devera. Ori has been a resident of Las Vegas since 1997. He is a graduate of University of Southern California. He is currently a fourth-year Osteopathic Medical Student at Touro University Nevada, and he will be beginning his family medicine residency at Valley Hospital this July.

Also with me is Annie Guiliano. Annie moved to Henderson over 20 years ago. She is a graduate of UNLV. Annie is an occupational therapy student at Touro University. Annie was attracted to occupational therapy because of its emphasis on treating clients holistically along with the versatility of the career. She looks forward to serving Nevada residents with quality occupational therapy upon graduation.

In our gallery, today, we have other students from Touro University and I would ask all of you to extend appreciation to them for all of the work they are doing in school as well as serving the needs of our community. Welcome. Thank you.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Brower, the privilege of the floor of the Senate Chamber for this day was extended to Kurt Mische and Tom Axtell.

On request of Senator Farley, the privilege of the floor of the Senate Chamber for this day was extended to former U.S. Senator Richard Bryan.

On request of Senator Kieckhefer, the privilege of the floor of the Senate Chamber for this day was extended to Connor Arnold, Mallory Abowd, Adam Avina, Thomas "Tommy" Callister, Claire Callister, Bea Campbell, Max Connors, Ava Coons, Thomas Cook, Jescinto "Jesse" Delgado, Morgan de la Torre, Melina Duarte, Spencer Fitzpatrick, Owen Hickenbottom, John "Jack" Gladys, Sabrina Jones, Gavin Green, Grace Kenney, Noah Hamilton, Lilyann Lee, Sophia Jones, Frine Lugo, Ella Lawson, Justin McCraw, Callie May Robinson, Emily Phillips, Gael Rosales-Lugo, Cole Pradere, Hailey Shirley, Maddie Roberts, Colby Simola, Brynn Russell, Hannah Weinreich, Madeline Silsby, Zane Woods, Christain Thackston, Josephine "Josie" Verive-Cain, Peyton Wagner and Hannah Young.

On request of Senator Woodhouse, the privilege of the floor of the Senate Chamber for this day was extended to Ori Devera and Annie Guiliano.

Senator Roberson moved that the Senate adjourn until Thursday, March 5, 2015, at 11:00 a.m.

Motion carried.

Senate adjourned at 12:07 p.m.

SENATE IN SESSION

Reconvened at 1:12 p.m. by order of Senate Majority Leader Roberson per Senate Standing Rule No. 10.2.

President Hutchison presiding.

Quorum present.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, March 4, 2015

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bill No. 207.

SUSAN FURLONG

Chief Clerk of the Assembly

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bill No. 207.

Senator Roberson moved that the Senate adjourn until Thursday, March 5, 2015, at 11:00 a.m.

Motion carried.

Senate adjourned at 1:13 p.m.

Approved:

MARK A. HUTCHISON
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate