

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

**Seventy-Third Session  
February 16, 2005**

The Committee on Judiciary was called to order at 8:25 a.m., on Wednesday, February 16, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Allison Combs, Committee Policy Analyst

René Yeckley, Committee Counsel  
Carole Snider, Committee Attaché

**OTHERS PRESENT:**

Joe Ward, Chief, Division of Public Safety and Transportation, Nevada  
Attorney General's Office  
Dorothy Nash Holmes, Administrator, Correctional Programs Division,  
Nevada Department of Corrections  
Pat Hines, Advocate for Criminal Justice Reform  
Dr. Michael R. Freda, Representative, Coalition for Grandparents  
Visitation Rights, Reno, Nevada  
Karen Goodwill-Freda, M.A., Representative, Coalition for Grandparents  
Visitation Rights, Reno, Nevada  
Dr. Newsom B. Maples, Representative, Visitation Rights, Storey County,  
Nevada  
Keith Lyons, Attorney-at-Law, Nevada Trial Lawyers Association  
Larry D. Struve, Legislative Advocate, representing Grandparents Raising  
Grandchildren

**Chairman Anderson:**

[Meeting called to order and roll called.] On behalf of the Legislative Committee on Child, Youth and Family, it is a Judiciary Committee introduction of a bill requiring the Nevada Supreme Court to review the manner in which district courts receive and decide petitions to open files and records of the courts in adoption proceedings and report the findings to the Legislature. It is listed as Bill Draft Request 883, but it is my recommendation that the Committee take it as a jurisdictional question as it properly belongs in this Committee. The Chair will entertain a motion for introduction of BDR 883.

- BDR 883: Urges district courts to ensure that the courts gather sufficient information during adoption proceedings to facilitate the future exchange of medical information as it becomes available. (Assembly Concurrent Resolution 2)

ASSEMBLYMAN CONKLIN MOVED FOR COMMITTEE  
INTRODUCTION OF BDR 883.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chairman Anderson:**

The other day we heard a statement from Mr. [Dennis] Neilander [Chairman, Nevada Gaming Control Board] relative to a potential type of gaming issue that could be affecting us. It would be an act authorizing the Nevada Gaming Commission to take up off-track pari-mutuel wagering. Mr. Neilander also discussed mobile gaming devices where you could be sitting in one part of the casino operation and be able to utilize a handheld computer to track other kind of gaming issues. Presumably, you could be playing the slots while sitting next to the swimming pool. It is a new piece of technology and Mr. Neilander made reference to it. If I have permission of the Committee, I would like to ask for that such a piece of legislation be drafted.

ASSEMBLYWOMAN BUCKLEY MOVED TO REQUEST A BILL DRAFT TO CHANGE CHAPTER 463 OF THE NEVADA REVISED STATUTES TO ADD MOBILE GAMING AND TO ADDRESS THE QUESTION OF OFF-TRACK PARI-MUTUEL WAGERING.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION WAS PASSED UNANIMOUSLY.

**Chairman Anderson:**

Let's turn to Assembly Bill 30 which expands the list of sexual offenses for which certification by a panel is required before persons convicted of such offenses may be released on parole.

**Assembly Bill 30:** Expands list of sexual offenses for which certification by panel is required before prisoner convicted of such offense may be released on parole. (BDR 16-572)

**Joe Ward, Chief, Division of Public Safety and Transportation, Nevada Attorney General's Office:**

I am here to talk briefly about the bill introduced by the Attorney General's Office, which is Assembly Bill 30. It changes the definition of "sex offenders" under *Nevada Revised Statutes* (NRS) 213.1214, which defines the psychological review panel in Nevada, which is an arm of the sentencing court. It is designed and is a creature of the 1997 Legislature, to observe sex offenders while incarcerated and make a determination whether or not if they continue to pose a risk as a sex offender. This broadens the definition of sex

offender to include under Section 1[(5)](o): "An offense that is determined to be sexually motivated pursuant to NRS 175.547."

[Joe Ward, continued] It was brought to my attention that we should also include a violation of NRS 179D.550. This is the registration statute and makes it a class D felony to violate the statute, pertinent to appropriately registering as a sex offender in this state. Also, I did not get a chance to send in to the committee manager an addition of subsection 5(q), an amendment which would include sexual predators under NRS 213.1243, subsection 3. Subsection 5(q) would read: "A violation of NRS 213.1243, subsection 3..."

**Chairman Anderson:**

You want to add to Assembly Bill 30?

**Joe Ward:**

What we want amended in NRS 213.1214 is in Section 1, under the subsection 5(o), which is bold and placed in italics. We also want to add a subsection (p) in NRS 213.1214 that would simply read "a violation of NRS 179D.550."

**Chairman Anderson:**

You're referring to page 3 of the bill at line 12? Section 1 of the bill, subsection 5(o), is where you want your amendment to be submitted?

**Joe Ward:**

That is correct, Mr. Chairman. It would be subsection 5(p).

**Chairman Anderson:**

So you wish the bill drafter to consider the language that would meet your requirement?

**Dorothy Nash Holmes, Administrator, Correctional Programs Division, Nevada Department of Corrections:**

This was brought up as a "plug the gap" in the psych panel statute when we first discovered that subsection 5(o) had been left out of the list of situations in which an offender should go before the psych panel. Since that time, and after we asked the Attorney General's Office to propose this legislation, two more situations came up that showed us the need to plug in two more gaps. That is what I have provided to you. I have provided copies of all three statutes that we are referring to ([Exhibit B](#)). The first one is listed as item subsection 5(o) in that bill draft. Subsection (p) would refer to failure to register as a sex offender. The one at the bottom is actually a failure of conditions of lifetime supervision. Quite frankly, I did not realize—and I was a prosecutor for 20-plus years—that

buried within that lifetime supervision section is a Category B felony of its own that refers to sex offenses. These are basically proposed to plug in gaps in the psych panel statute.

[Dorothy Nash Holmes, continued.] How we discovered this was a situation, it comes up sometimes in prosecution, where the district attorney will plea bargain a case and have the defendant plead to the heavier penalty charge, for example, kidnapping rather than a rape charge. It is a heavier penalty and more heinous. There was a statute created, NRS 175.547, which allows for a hearing to see if that crime was sexually motivated. There is nothing that connects the result of that hearing with the requirement to go to psych panel. We have a list in the psych panel statute of all the crimes and if an offender is convicted of one of them, you have to go before the psych panel before you're eligible for parole so they can determine if you are a risk to re-offend. There is a statute that says if it is sexually motivated, they should have a hearing about it, but there is nothing that says what happens after you have the hearing and the findings, so this is why we propose the change in subsection 5(o).

**Chairman Anderson:**

You did not provide specific language for consideration for the workshop, Mr. Ward?

**Joe Ward:**

I did with respect to subsection 5(p), which would be under line 12 of page 3 of the bill. I did not with respect to what would be subsection 5(q). That would be a violation of NRS 213.1214.

**Chairman Anderson:**

The choice whether to list NRS 175.547, NRS 179D.550, and NRS 213.1243 is up to the bill drafter.

**Joe Ward:**

This is almost a housekeeping measure that fills in some holes that need to be filled in. Right now, the psychological review panel is an arm of the sentencing court. It takes a look at the sex offenders and determines if the offender, while under their observation, will continue to pose risk to the health, safety, and welfare of Nevada's citizens. It is made up of the Administrator of the Division of Mental Health and Developmental Services or his or her designee, the Director of the Department of Corrections or her designee, and a psychiatrist or psychologist who is licensed to practice in the state of Nevada. This panel reviews sex offenders when they become eligible for parole and makes a determination whether or not that person can be considered for parole or release. These additional measures are necessary, as they will allow the

psychological panel to look at, for example, an offender who is a person under lifetime supervision and commits a Category B felony by violating subsection 3 of NRS 213.1243.

[Joe Ward, continued.] It will also allow the psychological review panel in Nevada to take a look at a person who comes to this state from another state and is confined for violating Nevada's registration laws privy to sex offenders. For one reason or another, the offender is placed in prison pursuant to a plea bargain and pleads to a felony, failure to register as a sex offender. The psychological review panel cannot take a look at that person. They should be allowed to look at that person who is a sex offender to determine if that person proposes a risk.

**Chairman Anderson:**

The addition of NRS 175.547 makes the offender subject to the requirements of reporting to this panel that the offender does not pose the high risk. So we are reaching down to a lower risk group to put them in front of a psych panel?

**Dorothy Nash Holmes:**

That is not necessarily the case. In fact, how this issue arose to us was a situation where an offender kidnapped a woman, took her in the bushes and viciously raped her. The district attorney pled the guy out for kidnapping first degree but dismissed the other charges. That person is not required to go before the psych panel because he was charged with kidnapping and they did not hold a hearing on whether the kidnapping was sexually motivated or not. We are finding, in a lot of the cases, the judges and the prosecution are not necessarily holding the hearing under these other charges. When they charge murder, kidnapping, false imprisonment, burglary, or home invasion, which all are sexually motivated, they plead them to that charge, but they do necessarily take the next step which is to hold the hearing. If they hold the hearing, there is nothing that says once they held the hearing that person has to go to psych panel. It just says if they hold the hearing that person is subject to reporting and lifetime supervision.

A second situation came up recently. A pedophile came from California to live in Nevada. He was under parole supervision by Interstate Compact but not because of any crimes committed here. He got involved with a woman and molested her two- or three-year-old child who was too young to testify. All they could convict him on was failing to register as a sex offender in Nevada. That person went to prison because of the circumstances. There is nothing that requires that person to go before the psych panel in Nevada, because all he did was fail to register as a sex offender, and that is not listed on the psych panel statutes.

The last one is lifetime supervision. If an individual is subject to lifetime supervision as a sexual predator and he violates then returns to prison, that should be one of the situations that the violator is required to appear before the psych panel.

**Assemblywoman Buckley:**

I understand what you are trying to do with the bill and the reason for it. I want to ask a broader question with regard to the psych panel, whether you have any research data on whether they work. I always was under the belief that rapists and pedophiles should just have longer sentences and not be paroled in the first place, rather than have another human being, however well trained, try to predict future behavior. It is very difficult to figure out if someone is going to offend or not, except with regard to pedophiles and certain types of rapists, in which case we should not be letting them out at all. I just wonder, in the past two years since we last discussed this topic, whether there was any new research data in this area.

**Dorothy Nash Holmes:**

No, there isn't. Two sessions ago our Department brought up a BDR to define the psych panel process better and say who is in charge of it and would have included some studies. That didn't go anywhere. It died from lack of interest. At that time, Director [Jackie] Crawford said, "Fine, our Department will simply continue to organize the process." That is why it is in my division, and we simply set up the hearings. The members now are one psychiatrist that is appointed by Carlos Brandenburg from Lake's Crossing Center, one licensed psychologist from our staff, who is one of my chief psychologists, and another psychologist who does sex offender treatment.

So right now they are all in-house dealing with this issue. There is no money to appoint outside individuals or other people. We have about 477 hearings a year. There are 35 to 45 a month. They make a finding based on three psychological instruments. They are actually tests that they give to the individual. One basically looks at the facts of the case. It is a static one, as it doesn't show a lot of changes. The other two look at changes in the individual. They score either low, moderate, or high risk to reoffend. That is the information we give to the board. There has been no study or follow-up to determine whether that finding is accurate or whether those people come back. It is a process that Nevada put together, thinking some additional step had to be made before these people come before the parole board.

There is a recent study I was reading last week about sex offender treatment whether or not it is effective. Actually, there is a very low rate of reoffense for certain types of sex offenders. Incest and some family situations have actually

less than 30 percent reoffense rate. The studies show there was virtually no difference between those that receive intensive treatment and those receive no treatment. They were both in the 25 to 28 percent reoffense rate.

[Dorothy Nash Holmes, continued.] We have a comprehensive treatment program in our system now. It is 48 weeks long. It addresses four very specific modules that have been found to have an effect on people: emotions management, relapse prevention, victim empathy, and I can't remember the name of the last one. It is based on best practices. We are doing it because we have to do something. Whether or not any of this works, we are not in a position to say.

**Assemblywoman Buckley:**

Last session we passed a bill to give longer sentences to repeat sex offenders. I think it was Assemblyman McCleary's bill on sexually oriented crimes. This Committee tried several times and finally it was passed last session. Have you done any analysis whether you think your psych panel hearings for future offenses will go down as a result of this legislation?

**Dorothy Nash Holmes:**

Not yet. We really haven't had enough to know yet. It will be something in the future. Quite frankly, when we get our new computer system, we will be able to do some of this analysis, as our current system is not programmed to do a lot of demographics and studies. In the future we will be able to get this information.

**Assemblyman Mortenson:**

If we have two individuals who commit crimes, let's say murder. One commits murder, but it is not sexually inspired. The second one commits a murder and gets sexual gratification from it. They both serve a term and go on probation. Is it your position that the first one does not receive lifetime supervision but the second one does? If that is the case, what is the difference and why do you believe that?

**Dorothy Nash Holmes:**

Actually, murder is one of the crimes for which there is lifetime supervision by parole in the state of Nevada. The difference for a sexually-motivated murder is a lifetime supervision as a sex offender as well, which is a more intensive level of supervision. There is registration requirements and, in addition, a tier system where they evaluate the type of dangerousness of that particular type of sex offender. So they might get the same penalty, but additional administrative and reporting requirements happen with the sex offender because of the sexual nature of the charge that does not happen with the murderer.



**Assemblyman Mortenson:**

So the murderer gets lifetime supervision also?

**Dorothy Nash Holmes:**

In Nevada, yes.

**Chairman Anderson:**

Ms. Holmes, I have asked that the Committee receive a briefing document to make sure we have a clear picture of this ([Exhibit C](#)). This briefing document contains information regarding the psychological evaluation required prior to release on probation or suspension and some of the other terms regarding sexual violent predators. The other is a statistical table for specific requirements of convicted adult sexual offenders under Nevada law ([Exhibit D](#)). Please make sure Ms. Holmes and Mr. Ward have a copy of this information.

**Dorothy Nash Holmes:**

Somebody addressed lifetime supervision of all sex offenders. There isn't lifetime supervision for all sex offenders. I actually had a discussion with Parole and Probation about this a few months ago because of some of these issues. I am not sure why. I don't know if it is because of a lack of funding by the sentencing court, but not all sex offenders are getting lifetime supervision. There are some that are left out of the process. That might be something Parole and Probation can address regarding the type of sentence the court has made. As a former prosecutor, I thought all sex offenders always got lifetime supervision. Somehow there is a gap and it isn't happening.

**Chairman Anderson:**

I think my perspective is a little different. We had not asked for that, as Parole and Probation would not have kept that statistic regarding the number of personnel required to do that. What we are more concerned about are the ones most likely to reoffend. We want to make sure they are closely supervised. We had the Central History Repository in front of us yesterday and that is one of the big issues, whether we have to continue to do it by ZIP code or can we bring it down to a smaller area. I know that the newspapers in the north are able to report it down to the street and block but our Central History Repository does not. So part of the requirements under federal laws, like Megan's Law [The Sex Offender Registration Act of 1996] and others that relate to this, the reporting requirements are different, so we were concerned when we set up these statutes initially as to what was going to be there.

**Assemblyman Carpenter:**

Have you had any conversations or feedback from the Parole Board whether they find this psych panel evaluation to be of benefit or not?

**Dorothy Nash Holmes:**

I believe that they do. In fact, sometimes they will see a case of another individual and, by the facts of the case, they see that this person has a history of sex offenses in another state, and they will refer that person for an evaluation. I think they find the information helpful. There are very rare occasions when someone will come in for revocation and the parole board is undecided whether to release him or not. They will send him to the psych panel for a hearing just in case, and that very much influences their decision. I think the fact that these are licensed psychiatrists and psychologists with some knowledge of the field has an influence on that.

**Joe Ward:**

I would like to add to that as former counsel to the Parole Board and working with the parole board, they do defer tremendously to the input from the psychological review panel, pertinent to sex offenders because of the expertise. In one case, it was the expertise of this panel that the 1997 Legislature decided to use to help the parole board make these tough decisions regarding sex offenders.

**Assemblyman Horne:**

Ms. Holmes, how many of these inmates would be required to go before the panel who haven't reoffended? I am going by your analogy of the out-of-state person who came here, doesn't register, and is convicted of robbery. Under this change, he did not reoffend and his new crime had nothing to do with a sexual nature. Would he go before the panel? How many of these inmates would be required to go before that panel?

**Dorothy Nash Holmes:**

Each of these situations that we are addressing in our amendment request came up because of a particular case. But each case was a very egregious one. We don't think there would be that many more. We just think that when they come up, it's a doozy. We had 477 hearings last year. We don't know until the person goes before the Parole Board for a hearing on an armed robbery charge, and the Parole Board gets access to all kinds of historical information. They look at this and think, this person is here for an armed robbery, but you have had three rape convictions in another state. Have you been before the sex offender panel? That is usually how we discover these situations. We don't know how many others are out there that we don't know about. This will fix it so when they come in the door under any of these convictions or statutes cited in their

case, we will definitely tag them for a psych panel hearing. I don't know there will be that many more, but like I said, when there are, they're big ones.

**Assemblyman Horne:**

So if I understand your answer correctly, even if this person had registered, either way, if they have any type of sexual history, regardless of the time they are serving for, you will want to send them before a psych panel?

**Dorothy Nash Holmes:**

The result would be all of the statutes listed under the current psych panel bill plus these three. Occasionally, when those cases of only armed robbery have gone before the parole board, they will not consider them unless they receive this additional information. We can only be bound by the statute, quite frankly, and it would add three more situations.

**Chairman Anderson:**

I think the concern here is with NRS 179D.550, relative to providing false or misleading information to the Central Repository or local law enforcement or otherwise provide some provision of NRS 179D.350 to NRS 179D.550 so that if they broke their parole in some other area, the judge or probation officer may decide that someone needs a gentle reminder that they need to go to jail for a short period of time or prison because they forget what it's all about. While they are out on parole, they really are finishing their sentence.

In three and four of NRS 179D.550, false and misleading information to the Central Repository, that could be a computer error. With sex offenders, it is the more egregious cases that capture the public's attention because they make good headlines, whereas the number of sex offenders who are going about their day-to-day life and are behaving well, obviously the public does not want to hear about because they are doing well.

**Dorothy Nash Holmes:**

I don't think that would really be a problem, because it would require a new conviction under NRS 179D.550 for failing to register as a sex offender in one of these ways. For the most part, Nevada's sex offenders are subject to this requirement. There already will have been a statute finding them guilty of a sex offense. However, when the issue has arisen, it is an out-of-state sex offender who hasn't been found guilty of a Nevada sex offense then comes here, and the only crime they can get is failure to register. He's a huge sex offender, but not a Nevada sex offender, so basically, out-of-state sex offenders are given a free ride.

**Chairman Anderson:**

In other states, they have a different threshold. We have gross misdemeanors in Nevada and many states do not have gross misdemeanors. The District Attorney's Office is not here today and I think they would have an interest in this.

**Dorothy Nash Holmes:**

They told me they did not have any opposition to this.

**Chairman Anderson:**

My concern is that they will plea bargain that case down from a felony to a gross misdemeanor and now, all of a sudden, we will have psych panels potentially looking at them.

**Dorothy Nash Holmes:**

This is a felony for failure to register. I guess the issue could be addressed the same way by saying that any person convicted in another state of a sex offense and comes under Nevada jurisdiction could be required to go before the psych panel if they go back to prison. That is the essence of the question here. An out-of-state sex offender convicted there and registered there, moved here, offended here in a way they couldn't prove—for example, the two-year-old victim—they could get them on this one. So if we get a very bad sex offender from another state in our system and he is not required to be identified as a sex offender or go through any of the requirements that we would normally go through. It's a tough question.

**Chairman Anderson:**

It is a tough question, and I want the Committee to understand that the out-of-state folks who are coming here create a huge problem for us because we have become a very easy place to come to. One of the spots I get to sit in as a result of being Chair of this Committee is on the committee dealing with out-of-state folks that come in and try to set that policy up. We are part of a consortium that states accept and inform each other of who is coming in and how that is happening. We just had the lady who is head of doing this for Parole and Probation in front of this committee last week. If you will recall, she has been dealing with policy between states on how we do this so that we have a better picture of the person coming in, which creates a huge problem for us. These are not all pedophiles, of course. What percentage of folks go before offender panels as pedophiles, as compared to other sexual offenders?

**Dorothy Nash Holmes:**

We have no figures on that. We could probably try and find out in our computer system. We have not kept that information before. We have

everything from statutory sexual seduction, the 21-year-old with the 14-year-old girlfriend, to the far extreme the other way. We could break this down into types of categories, if you wanted us to get that information.

**Chairman Anderson:**

Are you familiar with a report by Steven Ing of Ing Associates which deals with unincarcerated sex offenders among us dealing with 106 known offenders? It is a northern Nevada study. Have you had an opportunity to review this document in the prison system?

**Dorothy Nash Holmes:**

No, I have not read it but I have heard about it. Mr. Ing is a very well respected treatment therapist in the community.

**Chairman Anderson:**

These are nonincarcerated individuals, not formerly incarcerated. Did any members of the Committee receive this besides myself? Apparently the Committee members have received it. I would appreciate it, Ms. Combs, if you would read it and provide some analysis of it. We are not going to be moving on this piece of legislation very quickly, because I want to make sure that all of our questions and concerns are answered. This is a difficult area to deal with emotionally. There is a public perception about sex offenders. They are all seen as pedophiles and not able to be rehabilitated back into society. Of course, in Nevada we tier them and determine what type of offender they are and the chance of recidivism.

**Pat Hines, Advocate for Criminal Justice:**

I have provided a handout ([Exhibit E](#)) today, not so much for discussion today because I really don't have a lot to discuss. I hope you will keep it in your file as a reference from another perspective on Assembly Bill 30. My proposal to you today is twofold. In the first paragraph, I say I would appreciate your consideration of a request to postpone your decision on this bill until it can be viewed and researched further. I am suggesting an interim study be proposed to review and revise issues regarding sexual assault offenders from their presentencing to parole. We have a very fragmented disjointed criminal way of doing these things.

I would like to go through some of the issues with you. *The Legislative Digest*, page 1, line 3, refers to a panel of certified specialists. I'm afraid I cannot agree that all these people are certified specialists. The panel has one licensed psychologist and one licensed psychiatrist. This is really a step forward from what we have had in the past. Dorothy Nash Holmes and I have discussed this many times, but we don't agree on everything.

[Pat Hines, continued.] One of the things I don't agree on is in the second paragraph of *The Legislative Digest*. It would be nice if people knew what the standard of assessment was. Dorothy referred to three different assessments that they use. I think it would behoove the Nevada Department of Corrections (NDOC), if they use these assessments, to let the inmate know the results and give them copy. I am a firm advocate. I don't care whether you are in prison, in your doctor's office, or your tax return, you have the right to anything you sign or that relates to your well-being. These standardized tests should be standardized on something besides three men's subjective viewpoint.

Those of you who are teachers or are in the medical profession know the M.A.S.T. [Measurable, Achievable, Specific and Time-Oriented] principle that I relate to in this paragraph as being measurable, achievable, specific, and time bound. I would like to see the psych panel more in line with that. Like Dorothy says, statistics are hard to come by here. Some of us are trying because there is an unwarranted, unwritten code by this psych panel that if you do not plead guilty or you have litigation pending, they do not pass you. I don't think this is the intent of the Legislature for this to be one of their duties. I can find no place in the law that says it but it certainly is an unwritten code. We are trying to collect a list of inmates who have been affected by this.

In the last paragraph on that page regarding observation that is required by law, I mentioned that the only time that this panel has with these individuals when they are incarcerated is anywhere from 15 to 30 minutes on the day they have held their Notice of Public Meeting Psychological Review Panel Meetings. They post these notices monthly, which is excellent, as many families don't get the Internet. I receive calls wanting to know if their son's or daughter's name is on the psych panel. In this length of time, if the inmate has been incarcerated for two to five years on a sexual offense, maybe the psych panel doesn't see them except for once in five years. I sometimes feel that there is not enough input from the Nevada Department of Corrections to the psych panel to make a fair decision.

One of the things that I discussed with Dorothy Nash Holmes is, if you look in the NDOC budget, the money allocated for the psych panel is \$2.20. I really resent them not asking for the money they need. They are using people that are already in the departments of Mental Health and NDOC. Why not ask for the money for a job that the public wants done?

How can you say in the beginning of A.B. 30 that whatever is in that bill and whatever is in the bills that are affected by A.B. 30 aren't going to affect local and state government? It is going to be costly. There are going to be more psych panels. There are going to be more court hearings. This all costs money.

I think the legislators and the community need to realize this and plan to pay for what you want.

[Pat Hines, continued.] In the second paragraph on page 2, where it says the Parole Board has the final decision-making power in all other criminal classes to make a release decision the Parole Board does not have the authority to override a psych panel decision.

**Chairman Anderson:**

I appreciate you putting together a document for us to look at, and I would indicate to the members of the Committee that this would be a good reference point for developing some questions that we want to make sure the agencies respond to. If some of these questions still remain an issue for you, they can be taken up in a work session which will occur in two to three weeks. Ms. Hines has been here for several sessions for these kinds of issues. We do not take public testimony at a work session, so the importance of being here at this point in time is extremely important, and that is why I encouraged you to be here today.

I know oftentimes these issues are not addressed from your point of view. I want to make sure I understand the issues that you are concerned about are the psych panel itself and its makeup, regarding the people who are serving on such a psych panel are qualified to do it. Also, people who are convicted sex offenders have an opportunity to be reviewed by psychological testing that is adequate, fair, and not arbitrary, capricious, or prejudicial in some aspect. Further, any documentation being presented on behalf of those people who have been found guilty as sex offenders be presented to them so they know the outcome. In addition, how much time is actually spent by the psych panel observing the felons who have committed these crimes.

**Pat Hines:**

I would like the Criminal Repository to be included.

**Chairman Anderson:**

The Criminal Repository is a technological question not relative to the psych panel makeup and construction of the prison industry.

**Pat Hines:**

I just wonder how many people in this room know who does the two levels for community notification. Yesterday there were two legislators that I spoke with that did not know who does the tier levels for community notification. This is where the Assembly Bill 30 opinion might come in, when people get out and they have to have a tier level for community notification.

**Chairman Anderson:**

The guidelines for assessment for community notification of sex offenders are established by the Nevada Attorney General's Office. It requires a risk assessment conducted by managers of the Central Repository or its designee to develop the appropriate tier level. Nevada is somewhat unique to the tier-leveling system. If I also understand, you feel the need for guidelines for sentencing to be reestablished.

**Pat Hines:**

I don't feel Nevada is unique to the tier levels, as it is all over the country.

**Chairman Anderson:**

That currently is the statutory question. So you'd like to see the people who have been found guilty of sex crimes going to the psych panel and given fair testing, and also, that the Criminal Repository is doing its job.

**Pat Hines:**

Thank you.

**Chairman Anderson:**

Does anybody else wish to testify on A.B. 30? Does anybody have any further questions?

**Assemblywoman Buckley:**

I don't know if there are any Assembly bills on this topic, but I know we will eventually get some regarding community notification. One concern I had from several sessions ago was to make sure that each level, whether it was registration, psych panel, or community notification, we make sure we are engaging the toughest sanctions for the toughest crimes. I worry about statutory sexual seduction having an 18-year-old and a 15-year-old become a felon for life and have to register for life. I want to make sure that the sanctions make sense, and we are treating predators tough but not ruining somebody's life for something that does not rise to the same level.

**Chairman Anderson:**

This is not an issue that is going to go away from the Committee. The question has always bothered me as a high school teacher seeing young people end up getting involved in different statutory situations because of their age. They end up with an unusual criminal history. The line between juvenile law and adult law has become a thin veil where it used to be a rock hard one.



[Chairman Anderson, continued.] With that we will close the hearing on Assembly Bill 30.

**Assembly Bill 45: Makes various changes to provisions governing granting of right to visit child to certain persons other than parents of child. (BDR 11-295)**

**Chairman Anderson:**

Assembly Bill 45 is an issue that I requested on behalf of the Committee as a pre-filed bill, because I felt so strongly about the opportunity for rehearing on this particular issue. I don't want us to have to go through the process that we went through this morning in taking a bill and sending it back. This particular issue on grandparents' rights has come up several times over the last several sessions. I wanted us to re-enjoy this particular part. The reason I say "re-enjoy" is because it requires us to look at a very difficult and heart-wrenching issue that we need to keep in front of us, in terms of domestic relations.

In preparation for this bill, I have asked for some documents to be prepared for you in advance ([Exhibit F](#) and [Exhibit G](#)). The *Troxel v. Granville* [530 U.S. 57, 120 S.Ct. 2054 (2000)] decision by the United States Supreme Court, relative to a Washington State decision in 2000, generated this issue in 2001. The action of the 2001 Legislative Session, relative to this question, was Senate Bill 25 of the 71st Legislative Session, which ultimately provided that a party may seek a reasonable right to visit a child during his minority only if the parent of the child has denied a reasonable, restricted visit with the child and there is a rebuttable presumption. In the 2005 Legislature, we have expanded the circumstances under which a court may grant visitation and put in the "clear and convincing evidence" standard. In addition, there is a document here which I asked Legal to prepare for us, relative to the burden of proof. Assembly Bill 45 provides the differences between preponderance of evidence and clear and convincing circumstances. So these three documents, prepared by Legal, are there for your understanding. It is also noted that a document has been provided entitled "Supporting Documentation for the Passage of Grandparent Visitation Rights with Intact Families" ([Exhibit H](#)), which should be part of the permanent record.

**Dr. Michael Freda, Representative, Coalition for Grandparents' Visitation Rights, Reno, Nevada:**

I am here today to speak on A.B. 45. The difference between *Nevada Revised Statutes* (NRS) 125C.050 and A.B. 45 is that it also includes intact families,

which was left out of the original statute. This is important for several different reasons. First, when you are dealing with child abuse, especially when the grandparent is a mandated reporter—mandated reporters are mental health professionals, medical personnel, educators, law enforcement and officers of the court. So if you have a grandchild being physically abused and you report that, you run the risk of not being able to see your grandchildren again. If you don't report that, then you also run the risk of losing your license which is your livelihood, as well as some criminal charges can be brought against you.

[Michael Freda, continued.] Also, manipulation. Parents can use the grandchildren to manipulate in order to gain control of the grandparents. If you report inappropriate behavior, then we will not allow you to see the grandchildren. Or, if you don't give me money to buy drugs, alcohol, or to keep your mouth shut about criminal activities that they are doing, then you will not be allowed to see the grandchildren.

Also, domestic violence. When we are talking about domestic violence, the perpetrator wants control over another individual. Ninety-three percent of victims in domestic violence situations are female. Of that, about 90 percent, their batterers were male so the victim fears for her safety. Because of this, women are more likely to abuse their children when they are in a domestic violence household than women who are not. The average victim will leave their perpetrator and go back on the average of seven times before they finally leave. What happens to the children in the meantime? Each time that they go back, the perpetrator gains more control and more power over their partner. The children are affected by that as well.

The other issue is the constitutionality of this bill. Chairman Anderson was discussing the *Troxel* case and there is an analysis included in your packet from the Senior Lawyers Division of the American Bar Association (pages 30-38 of [Exhibit H](#)). The two issues that the U.S. Supreme Court had with *Troxel* were that it was too broad. It allowed for anybody who had any type of relationship with the children to seek visitation rights through the court system. So not only grandparents, but great-grandparents, stepbrothers, stepsisters, aunts, uncles, or the person down the street could seek visitation rights through the court system. It was too broad.

The other issue the Supreme Court had with the grandparents' visitation rights law from Washington State is that it did not include a presumption that the parents are making a decision that is in the best interests of the children. We most certainly do not agree with this. Generally, parents do make good decisions for their children. However, we also have to include that, sometimes, parents do not make good decisions for the children. We see that with our child

abuse laws. We see that with the establishment of child protective services. If that was an absolute that parents make good decision regarding their children in their best interests, then we wouldn't have that agency and we wouldn't have those laws. By virtue of us having those laws and that agency, we are saying that there are times when the parents do not make the best decisions in the best interest of the children. When that happens, there needs to be some recourse where the grandparents can protect the grandchildren.

[Michael Freda, continued.] While A.B. 45 does include those issues, it narrows it to grandparents and great-grandparents who are able to petition the court. It also addresses the presumption that the parents do know what is in the best interests of the children. Therefore, anybody petitioning the court to get visitation rights would have to rebut that presumption, and there are certain criteria that are already established in the current statute that the petitions must follow in order to rebut that presumption.

One of the cases attorneys typically use to defend against a petitioner for grandparents' visitation is *Steward v. Steward* [111 Nev. 295, 890 P.2d 777 (1995)] which came out of southern Nevada in 1995. In looking at the facts of this case, if that individual were doing it today with the current law and, most certainly, with the bill that is being proposed, they would not be able to rebut that presumption. So they would not be able to get grandparents' visiting rights.

Finally, there are 43 states that do have grandparents' visitation rights in this country. Seventeen of them include an intact family provision. As a matter of fact, if you look at statute by the Utah legislature in 2002, it looks almost exactly word for word with A.B. 45. So it is important that we address the issue of intact families with regard to grandparents' visitation rights. So what are we trying to do? We are trying to protect the children and trying to give them a continued relationship with individuals that they have had a loving, caring, trusting relationship with. Thank you.

**Chairman Anderson:**

Doctor, I might mention that this legislative Body was among the first legislative bodies in the United States to address the *Troxel* question plus our piece of legislation became a model for many state statutes. We have a very strong legal staff who tries to make sure that we address the central issues of the time. In fact, we have already looked at the new Supreme Court decisions that could effect us legislatively again, because there will always be new changes.

Seventeen of the states, you contend, have an intact family legislation. What we are concerned about here is a family relationship where the parents and the

grandparents have become estranged for whatever reason. The issue that you bring forth in your particular example, and the part I found so compelling, was relative to the fact that you are a potential mandatory reporter. I am a mandatory reporter because of my teaching license. Our professional licenses are at stake if we do not report any of these potential child abuse situations.

**Karen Goodwill-Freda, Representative, Coalition for Grandparents' Visitation Rights, Reno, Nevada:**

As you can see by the pages of our grandsons' photo album ([Exhibit H](#)) our grandchildren are really important to us but we're important to them also. We have played a vital role in their life. We have seen them at least twice a week and have taken care of them in our home and at the office during those times. In the last 15 months that has all changed.

I can show you a picture that my grandson drew to show you how important we are to him. He made this picture when he was four. He said it represented all the things that we did with him. The little circles represent the swimming pools, the lakes, and the ponds that we go swimming in. The squiggly lines represent all the little trails that we go on when we explore and the creeks that we find. The white part represents the mountain where we go sledding and play in the snow. I think that is what a grandparent/grandchild relationship should be. You should be able to spend wonderful, quality time with them, teaching them about the world while they have fun. The best way for kids to learn is when they are having fun. That is what we would like to do, whether it is playing on the floor or playing hide and seek.

When our grandson received bruises and we were unable to see him to make sure he was okay, we felt so hopeless with despair. The grief is beyond belief, so we tried to turn that grief into something positive. That is why we realized we should not get automatic visitation rights. That is something that we don't want to happen. We just want an opportunity to present our case to a court and let them decide. It is imperative to have the legal standing; otherwise, we have nothing, and we have no right to see these little people who you saw being born.

Each case should be decided on its own merits by a family court judge. Ultimately, the laws that protect each person's rights, whether it's parents, grandparents or children, lead to a resolution of conflicts. We see this happening in our practice: when each member of the family is respected, then everybody starts to respect everybody else. That is something that needs to happen. We have cried a lot of tears over this, but the most painful ones are when we get packages back marked "refused" for their birthdays and

Christmas. Especially on those holidays, those children need to know their grandma and papa love him and miss him very much.

**Chairman Anderson:**

Basically, what you are asking us to do is to examine A.B. 45 where one of 17 states do allow grandparents to have an opportunity to go to court. The question of burden of an intact family requires a presumption that granting visitation rights is not in the best interest of the child. To overcome this presumption, the party seeking visitation must prove by clear and convincing evidence that the child will suffer from emotional harm. By changing this statute, we will be addressing this in part. In looking at the bill in Section 1, grandparents may receive visitation even when parents are married and not separated, so there is an expansion for not just the married families, but also for where a paternity right established. Language has been separated into subsections so we know the difference between one and the other, so there is new language in subsection 1 and subsection 3 on line 27 of the bill. Standardization of proof for awarding visitation is raised for all parties seeking visitation on page 3. On page 4, the grandparent is only required to show that visitation has been denied or restricted. That is at lines 27 through 32 of the bill. For groups other than grandparents, they have additional requirements.

**Michael Freda:**

Although there are a couple of concerns regarding the language, what is really important is that we do address the issue of intact families within this law, to allow people like us to go to court and present our evidence to a judge and let a judge decide. If we cannot rebut the presumption that the parents are acting in the best interest of the children, then we should not get visitation rights. So the burden is on us.

**Chairman Anderson:**

So if I were from a family group where someone might have a drug addiction problem or some other kinds of problems, the court would, in all probability, have to say the parents have every right to exclude you. If I were meddlesome, the parents have the right to say, "This is not in the best interest of the child." This expands it not just for you folks but for everybody who falls into this category. Please note that there are several letters of support and a photo album and I want to make sure that they are specifically included ([Exhibit H](#)). Is there anything else you feel we need to consider?

**Michael Freda:**

Not at this time.

**Assemblyman Horne:**

I missed the reason why you have been denied visitation with your grandchildren.

**Michael Freda:**

The reason why we were denied visitation with our grandchildren is my step-daughter and her husband called us over to the house to let us know he had put a bruise on the 2 1/2-year-old as a result of beating him with a belt, because the boy had been misbehaving. He was very remorseful and they asked for advice on how to handle him. At times, a 2 1/2-year-old grandson can be difficult to deal with. So we gave him some advice. We had stayed away from doing this because of what we do for a living. We vowed when our children started having children that we would not interfere. We would allow them to make their own mistakes, just like we did. We wanted to make sure that we stayed away from that. So when they asked for advice, it was the first time that we had given them any advice about raising their children. We then thought that was the end of it.

Then a month later, another bruise appeared as a result of hitting him with a ruler this time. So we argued back and forth many times over the next couple of months trying to get them to understand that this was not okay. Damage was being done to the child, not only physically but psychological and emotional damage. We also discussed what it was doing to us, as it was putting us in a very difficult position.

Finally, his comment was that nobody was going to tell him how to raise his children. I said if this happened one more time, I would not hesitate to contact child protective services and file a complaint. He then said we could not see the children any more. That was Halloween 2003, and since then, we have not seen them. So we don't know if the child is being protected and safe or not.

**Chairman Anderson:**

Let me indicate to members of the Committee who may not be aware that people who have licensing requirements, such as school teachers and others who deal with children, have a reporting requirement when they see or believe there is child abuse taking place. They have a reporting requirement to report to child protective services. The investigation is conducted by child protective services. As licensed therapists, they have a reporting requirement which is a higher standard than for people who are not in day-to-day contact with children. I presume that it does not apply in your professional responsibility in terms of your counseling.

**Michael Freda:**

That is not true. One thing our clients have to sign is a disclosure statement before we can begin counseling. They have to understand that if they disclose to us child abuse or neglect, elder abuse or neglect, or intend to harm themselves or others, we must report that within 24 hours to the appropriate agencies.

**Chairman Anderson:**

So clearly there is a reporting requirement in your case. Every adult is supposed to make such a report, but most people don't know the requirement of the law.

**Assemblyman Horne:**

I have a problem with the intact family. How would you define mental harm in this statute? Physical harm we can see, but how do you define mental harm?

**Michael Freda:**

You are absolutely right to define mental harm is a difficult process. Like you said, physical harm is obvious, and you take a picture of the bruise. There is nothing more to be said. For emotional harm, it takes a professional to evaluate the child to see what type of effects are happening with the child and what types of effects will happen later on when they are older.

**Karen Goodwill-Freda:**

A lot of times when the child isn't being allowed to see somebody, it becomes isolation. Keeping them from people who are important to them will interfere with their ability to trust. In this situation, it will probably affect the kids' ability to trust in relationships, because we had a really close relationship and then it was severed. There will probably be some tendencies to wonder why.

**Chairman Anderson:**

I would remind you that is the very point that would have to come before the court to decide the question. That is the reason why family courts are such emotional places.

**Assemblyman Carpenter:**

Say A.B. 45 does pass and you ask for a hearing before the family court to look into your situation. What kind of contact with the children are you going to ask for that you believe will help them continue to love you and make them better citizens? What would you say to the judge?

**Michael Freda:**

That is an excellent question, and yes, we have thought about that. Prior to all this happening, we were seeing the kids on a regular basis. At least twice a

week they would come over to the office, and we would take them exploring and do all sorts of things with them. Often, at least two times a month, the whole family would come over to the house for dinner on the weekend. On holidays, we would gather either at their house or our house, so we were very much in contact. So in thinking about this, of course we would like to have as much as we could, but most certainly one weekend a month or just one day a month. We have also taken both boys on a vacation for a week to McCall, Idaho to attend my wife's family reunion. One week a year for vacation would be requested also.

**Chairman Anderson:**

I guess the answer, in part, would depend upon what the court decided in that particular case.

**Assemblyman Carpenter:**

Because of this situation, there have to be some feelings between you and your son-in-law and daughter. Do you think going to court and having this in a judicial situation is going to make this relationship worse, or do you think it could cause a split between you and your son-in-law and daughter?

**Michael Freda:**

I am glad you asked that. This is most certainly not the first step that we have done. We have been to mediation with them. We have spoken with their pastor. We have also tried many, many times to talk to them for resolution and so far, there has been none. Could it get any worse? I don't think it could get any worse than it is right now as we are not allowed any contact with them whatsoever. Hopefully, what it would do is what my wife said earlier. Once people realize that other people have rights and they start recognizing those rights, then it helps people back off of their rigid and inflexible position and allow things to start to heal and be resolved.

**Chairman Anderson:**

I share Mr. Carpenter's concern, if it reached the court system, whether you are really going to be able to heal the damage done in the family as a result of having to go to court over family issues. That is a real concern.

**Assemblywoman Ohrenschall:**

Can it get worse? It can get a lot worse. As the child becomes aware that he is the battleground between two sets of adults, this will confuse the child. It is possible as bad feelings escalate, you might either deliberately or accidentally be bad-mouthed to the child so that his mind might be further affected. I guess, basically, the problem that I have is the breadth of this bill. It allows a court to come in and overturn parents' decisions in an intact family where the parents



are married, there is no custody dispute, and there is no existing accusation of any criminal wrongdoing. The court can come in and change parental decision.

[Ms. Ohrenschall, continued.] I have a problem with that both jurisdictionally and constitutionally, but also in terms of the human relations. I don't think it is good for a child to be aware that he is being a valuable prize, so to speak, between adults. I think that is something, perhaps, you should consider when looking at your bill and see if you can narrow it in some way. I don't doubt, in your case, that you have tried everything possible. You perceive what appears to you to be a situation of danger to your grandchild, but I can see where this could easily be abused by other people. So you might want to look at the wording and see if you can tighten it up, or consider if you really want to go forward at all.

**Chairman Anderson:**

Ms. Ohrenschall, let me point out to you that the Fredas did not draft the language nor pick the language. I asked bill drafting to do that in terms of their concerns. They are not attorneys, nor do they want to be attorneys.

**Assemblywoman Ohrenschall:**

What I meant was, simply, if they had thought in terms of some areas where they might be willing to think of exceptions for other people who might not be as well-read and have investigated the situation as they have. It might help the Committee.

**Chairman Anderson:**

I would point out to members of the Committee who will be having an opportunity to be hearing this and from people who are concerned about this issue, there may be some suggestions we want to take up.

**Assemblyman Mabey:**

So if I understand correctly, you have tried to resolve this with them. You say this has been passed in other states. What has been the experience in other states? Has it worked well? Do you have any experience you can help me with?

**Michael Freda:**

No, we don't have any experience, but in the research I have done, there are two cases that have been brought to bear where they found in favor of the grandparents for visitation rights. They are listed in the packet ([Exhibit H](#)). Generally, the language in those other states do include the intact family clause and allow them to bring this forward. Again, all we want is just the opportunity to present our case and leave it up to the judge to make a decision. The

parents don't have to prove anything. They already have the proof walking through the door that they are making the decisions in the best interest of the child. We, as the petitioners, would have to overcome that. If we cannot overcome that, then we should not get any type of visitation whatsoever.

**Assemblyman Mortenson:**

Do you feel that your daughter and son-in-law are doing a bad job of raising their children? Do you think if they were able to continue exactly the way they are raising them that the children would turn out poorly or with some psychological problems? Were you concerned that you had to report the injuries you saw or if you didn't report it, you would lose your licenses?

**Karen Goodwill-Freda:**

We thought my daughter and son-in-law were doing a really good job of raising their children. They were giving them some wonderful tools. I think they went through a time of a lot of stress. They had a new baby. They bought a new house and moved. All of that happened when Trevor was two, and he is a handful. I think all of this combined was more than they could handle. Then Dad starts using more and more force to get his son to behave. That doesn't always work and when it produces bruising, that is not okay. It is abuse.

**Chairman Anderson:**

That is not the issue that we are dealing with. What we are dealing with here is the visitation and details pertinent to your case.

**Assemblyman Mortenson:**

Clearly, the reason they denied visitation because of your threat to expose them for the bruises. Is corporal punishment law in this state? If a parent feels that they need to spank a child, is that against the law?

**Chairman Anderson:**

We have discussed corporal punishment in several different cases but specifically not in grandparent right questions. When we are dealing with child abuse statutes, it is usually discussed. We have had a couple major pieces of legislation both in the Education Committee and this Committee, as to what constitutes corporal punishment. Generally, it comes up with the statutes on bullying. Thank you for posing the question, and we will have the research done for you.

**Michael Freda:**

I just want to reemphasize we do not want to infringe on the parents' rights. All we want is an opportunity to present what is going on.

**Dr. Newsom Maples, Representative for Visitation Rights, Storey County, Nevada:**

[Dr. Maples read from [Exhibit I.](#)]

Dear Assembly Judiciary Committee Members, as a parent, grandparent and professional educator for the past 43 years, I wish to share a few thoughts with you in regards to the issue at hand. Whereas I can accept and respect the rights of parents to make decisions and initiate actions which they perceive as being in the best interest of their children, I am caused to reflect upon several occasions when I feel such rights have been abused, causing a breakdown in family relations due to a loss of clarity of reason and the injection of the parents' personal prejudices. I have observed this as disregard for the short-term and long-time effects upon the children involved in the relationship. The intervention of grandparents and great-grandparents in such situations often prove to be the deciding factor in the future success of that family union. So mine is a more general view of the benefits of this bill from the emotional, social, economic, and psychological perspective therein, providing a great benefit to the children.

What human being does not respond with more favorable overall growth and development when more people are concerned with and actively involved in their lives? Many programs have been established to augment and, thus, enhance the traditional family, church, and school settings. Such programs: Big Brothers, Big Sisters, Substitute Grandparents, and buddy programs throughout the schools, have been established in order to provide more hands, more hearts, and more minds for children, regardless of their level of need. This point is cogently brought to the fore in Hillary Clinton's book *It Takes a Village*.

**Chairman Anderson:**

Thank you, Doctor. Since you have submitted this information in writing, we will have it submitted for the record.

**Keith Lyons, Attorney-at-Law, Nevada Trial Lawyers Association:**

I have read the bill and it is a laudable goal. I would encourage all grandparents to be involved in their children's lives. I think everybody would want to encourage that. The problem is, as in the *Troxel* case as you have noted, that the Supreme Court ruled that, basically, they have recognized the fundamental rights of parents to make decisions concerning the care, custody, and control of their children. That is a fundamental right under our *U.S. Constitution*. That fundamental right derives directly to the parents, not the grandparents to come

in and say, "We also have a right." Another key issue that is important in the *Troxel* case was one of the facts that the court said was, so long as the parent adequately cares for his or her children—they are fit—there will normally be no reason for the state to interject itself into the private realm of the family, or to further question the ability of that parent to make the best decisions regarding the rearing of the parents' children. That is the problem in this case, when you have grandparents that have an issue, but by their own testimony the parents were fit parents. Now that the parents do not want their children to associate with the grandparents, you have the grandparents invading what is a fundamental right. We believe this statute as it relates to intact families is unconstitutional as set forth in the *Troxel* case.

[Keith Lyons, continued.] The other issue, which was briefly noted, is the definition that was added in what would be the revised section 5 on page 3, lines 8 through 9, where it was noted by several of the Committee members—how do you define something like emotional harm? Physical harm is something we can all see when it happens, but there is a problem with what factors courts must use to establish what testimony can be used. A further problem with this type of litigation is that you are probably going to cause additional harm to the children as they go through the court system. These parents right now are apparently not in the court system. If this type of litigation is allowed, they will also be drawn into the court system and have to litigate and spend a significant amount of money, which would be better used for their children.

**Chairman Anderson:**

If we are to deal with this particular issue, I would presume that the Nevada Trial Lawyers Association, since you are neutral on this position and are showing concern of how the process might operate within the reality of the court, would make your good offices available to help with some of the drafting of language that might be necessary.

**Keith Lyons:**

We have no objection to helping with the language.

**Allison Combs, Committee Policy Analyst:**

As far as the issue on corporal punishment, *Nevada Revised Statutes* (NRS) 432B.260, dealing with child abuse and neglect, specifies an investigation is not warranted if the agency determines that the alleged abuse or neglect involved corporal punishment and it was not excessive as to constitute abuse or neglect. If the agency makes that determination, then the agency is required to take no further action and expunge all references to the matter from its records.

**Chairman Anderson:**

Mr. Mortenson, I am sure Ms. Combs will make a copy of that statute for you and any other members that wish one. The Chair will also submit a note from Lucille Lusk of Nevada Concerned Citizens ([Exhibit J](#)). Her concerns deal with the effect the bill is extending grandparents' rights to overturn parents' decisions, even when the parents are married, not in a custody dispute, and not accused of any crime or wrongdoing found on page 2, lines 3 through 8, which she felt were inappropriate. However, she felt that the provisions on page 3, lines 3 through 10, strengthen them through the defined criteria that must be proven in order for a judge to grant a petition for siblings or grandparent visitation. She also supports such provisions as applied to cases where the law currently allows a petition to come to the court, because it further defines the issue in question. I will have this submitted for the record and make sure a copy is provided to all members of the Committee, so they can include it in their folders.

**Larry Struve, Legislative Advocate representing Grandparents Raising Grandchildren:**

You have identified all the issues that we would be concerned with. Dr. Freda and his wife made a presentation to the Grandparents Raising Grandchildren group in Washoe County. As you work through the bill, if you process it, in those situations where you don't have intact families and where the grandparents are providing the safety net for the children at risk, you don't want to write this bill in such a way that it is going to foreclose grandparents of going into court to get what orders they need in order to do their job. Their language on page 3, lines 8 and 9, which you have heard people praise, could actually be a bar to those grandparents who you would want to be involved with grandchildren. If they cannot show by clear and convincing evidence that the child will suffer physical or emotional harm, what we are doing now in Grandparents Raising Grandchildren is primarily focusing on what is in the best interest of the children.

Oftentimes, children get parked with grandparents. We need that opportunity to open the door to the courthouse to get whatever protection we, as grandparents, need to do the job you want us to go with the grandchildren. I would close by saying, Mr. Chairman, if you are going to process the bill, we would like an opportunity to be involved with that, because for the non-intact families that are in all those categories that you processed last time, we would like to make sure you are not tightening it so much that it makes it harder for us to do the job that we are all doing.

**Chairman Anderson:**

Mr. Struve, you bring forth the point that the danger of any piece of legislation is the law of unintended consequences. So we will be mindful of the language, and how this bill is processed is one in which you and other concerned individuals have an opportunity to have input. The hearing on Assembly Bill 45 is closed. This bill is not scheduled until the next work session. I will not bring this bill forward until I have all the amendments from the various groups so there will be no unintended consequences. [The meeting was adjourned at 10:58 a.m.]

RESPECTFULLY SUBMITTED:

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Carole Snider  
Committee Attaché

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

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

## EXHIBITS

**Committee Name:** Judiciary

**Date:** February 16, 2005

**Time of Meeting:** 8:25 a.m.

Bill #	Exhibit ID	Witness	Dept.	Description
	A			Agenda
AB 30	B	Dorothy Nash Holmes, Correctional Programs Administrator	Dept. of Corrections	Suggested language for AB 30.
	C	Research Division	LCB	Required Evaluations for Certain Adult Sex Offenders
	D	Research Division	LCB	Special Requirements for Convicted Adult Sex Offenders under Nevada Law.
	E	Patricia Hines	Criminal Justice Reform	Letter to Assembly Judiciary Committee dated 2-16-05.
AB 45	F	Research Division	LCB	Burdens of Proof Referenced in Assembly Bill No. 45
	G	Research Division	LCB	Summary of <i>Troxel v. Granville</i> and Questions Concerning Visitation Rights in Nevada.
	H	Dr. Michael Freda, Karen Goodwill-Freda	Coalition for Grand-Parents	Supporting Documentation for the Passage of Grandparent Visitation Rights with Intact Families.
	I	Dr. Newsom B. Maples		Letter to Judiciary Committee dated 2-15-05.
	J	Lucille Lusk	Nevada Concerned Citizens	E-mail to Assemblyman Bernie Anderson.