

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

**Seventy-Third Session
April 7, 2005**

The Committee on Judiciary was called to order at 8:29 a.m., on Thursday, April 7, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 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
Jane Oliver, Committee Attaché

OTHERS PRESENT:

Gerald Gardner, Chief Deputy Attorney General, Nevada
Department of Justice
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'
Association
Gary Wolff, Business Agent, Local No. 14, Teamsters Union, Las
Vegas, Nevada
Ron Cuzze, President, Nevada State Peace Officers' Council
Fritz Schlottman, Administrator, Division of Offender Management,
Nevada Department of Corrections
Don Henderson, Director, Nevada Department of Agriculture
Jennifer Bartlett, Program Officer, Medical Marijuana Program,
Nevada Department of Agriculture
John O'Connor, Private Citizen, Churchill County, Nevada
Marilyn O'Connor, Private Citizen, Churchill County, Nevada

Chairman Anderson:

[Called the meeting to order and roll called.]

Assembly Bill 465: Prohibits person from allowing child to be present within
certain distance of any conveyance or premises wherein certain crimes
involving controlled substances other than marijuana are committed.
(BDR 40-112)

Gerald Gardner, Chief Deputy Attorney General, Nevada Department of Justice:
I'm here on behalf of Attorney General, Brian Sandoval, to testify in support of
A.B. 465 and A.B. 531, a related bill.

Chairman Anderson:

I'm handing out a bill explanation ([Exhibit B](#)).

Gerald Gardner:

I prepared written testimony which I ask to be made part of the record
([Exhibit C](#)). I prepared a letter in support of both bills because of their
interrelation and how they came about.

[Gerald Gardner, continued.] Both bills came at about the same time and for similar reasons. We were asked to participate in a national study relating to methamphetamines and whether our state and other states had enhancements to help protect first responders, law enforcement, firefighters, and others.

[Read from [Exhibit C](#).] In meeting with law enforcement agents, although they were very supportive of the bill, we found that law enforcement and fire fighters were more concerned with legislation relating to protecting children. Assembly Bill 465 came about because of the expressions from firefighters and police officers at the state and local level who were telling us stories of their encounters with methamphetamine labs, in particular, where there were almost always children present, or very often children present.

This was the real concern that our public safety officers had. At the prompting of our colleagues in public safety, we began to look into national data relating to children, and the impact on children of drugs, drug labs, and particularly methamphetamine labs. We learned, by meeting with members of National Alliance for Drug Endangered Children and other organizations that in California a trailer fire caused the death of three children when a methamphetamine lab exploded. The children's mother, who was the methamphetamine cook, was able to escape unharmed.

In Oklahoma, a mother was arrested after her 7-year-old son drank a bottle of lye that was used by his mother in manufacturing methamphetamine, which she kept in the refrigerator next to a bottle of Pepsi.

In a recent study, where a methamphetamine lab was found operating in a motel, authorities discovered that residual contaminants from the methamphetamine were found up to 6 rooms away from the source of the methamphetamine lab itself.

The Colorado Alliance for Drug Endangered Children reports that 30 to 35 percent of seized methamphetamine labs exist in homes where children are present.

An Arizona study revealed that one-third of all children discovered present on the premises of a methamphetamine lab tested positive for methamphetamine in their systems.

[Gerald Gardner, continued.] We examined Nevada law and discovered that under the current law as with most states, we could only punish a person who knowingly exposed a child to the dangers of drugs and drug labs if we could prove that the person willfully caused, or allowed this child to suffer physical or mental harm, as a result of abuse or neglect of a nonaccidental nature. As a result of these restrictions, in our discussions with the prosecutors, with District Attorney David Roger, and former Chief Deputy District Attorney Doug Herndon, who is now a district court judge, they were prosecuting virtually no cases where children were found present in drug labs.

Under the proposed legislation, severe penalties would apply to any person who knowingly exposes a child to drugs being used, sold, or given away. There would be more severe penalties for exposing children to the manufacturing of drugs, and yet even more severe penalties when the child is injured or killed.

An added concern under current law is that there is no punishment for the long-term harm and effects as proven by numerous medical studies. There are long-term effects to vital organs and brain function in children who are exposed to methamphetamine and other drugs. We shouldn't have to wait until a child manifests long-term harm, and we shouldn't have to wait until the child suffers an acute, severe injury, before we can prosecute people for exposing kids to drugs.

These drug labs are time bombs waiting to go off, putting everyone around them in danger, particularly our children and our first responders. We ask for this legislation to address the seriousness of the problem, and to deter and punish those who so recklessly put our children and first responders in such grave danger.

Chairman Anderson:

I can see the link between the two pieces of legislation and why you came up with them. I have questions about the unintended consequences. What if you're living in an area for some time and you are married to a police officer, and the house next door goes up for sale and somebody buys it. The new neighbors move in and you notice they are nice people and have children just like you, and everything looks fine. Your spouse notices that there seems to be a lot of vehicular traffic at the place next door. Based upon the unusual time of day, evening or morning hours that this vehicular traffic takes place, your spouse

believes from her police experience that this might be out of the ordinary, and does a background check.

[Chairman Anderson, continued.] She finds out that this person is a former felon and has a history of selling and manufacturing drugs. She now fits into the category of "knowingly." You're living in a house that you've owned for sometime and you like the house and the neighborhood, but you don't like your next door neighbor now. How are we going to deal with a situation like that? You've got an investment but your next door neighbor is a "druggie," and in all probability, you've informed the other members in the police department where you work.

Gerald Gardner:

As I'm sure you know, the proposed legislation is intended to target those who are involved in the drug trade, but you point out a scenario where an innocent party may be implicated in protecting their children, and not exposing their children. I think we would have a high burden, as the legislation is written, of proving that the person intentionally allowed a child to be present, and should have known about the drug activity. I think we would have a very high burden in proving that persons' knowledge of the activity. In almost every case that I can imagine it would be where that person was involved either in drug sales or drug manufacturing.

You point out a scenario where that might not be the case, and that needs to be addressed. It is a scenario that would not be intended under this proposed legislation. It is not for innocent neighbors or innocent parties who just happen to be near, to have a burden of removing their children from their home, as you point out. That's a very good point. The burden on the State would be to prove the knowing exposure of the child, and, as we intended, that is only going to really be provable in cases where the perpetrator is the one involved in the sale, manufacture, or compounding of the drugs.

Chairman Anderson:

Would you have an added burden, if I decide to sell my house, to inform the next buyer of the proximity of drugs being sold in the area? That's going to bring down its marketability.

Gerald Gardner:

I'm not sure what the rules of disclosure are in home sales. One of the concerns is that the effects of manufacturing methamphetamine carry well beyond the immediate presence of the house. I'm afraid to stay in a motel now after hearing some of these statistics, knowing that the residue can be on walls and floors. Parents with young children who crawl on these floors are picking up this

residue, so that's another reason why we're trying to deter and severely punish the reckless behavior of these people who are operating methamphetamine labs in apartments, homes, and motels.

Chairman Anderson:

Last session we heard a complaint from a lady from North Las Vegas whose child had been harmed from crawling around on the rug in a house that was being shown to her that had been a former methamphetamine lab. Her child was burned from crawling around on the rug. Last session we established part of the penalties, as a result of that. She brought it to our attention, not the Attorney General or the district attorney.

Assemblyman Horne:

I question whether or not it would be a tough burden to find "intentionally," the way this bill is drafted. I'm thinking, this is the neighborhood I grew up in and my parents grew up in, and it's a bad neighborhood. We know where the drug dealers are, and we've always known. Everybody knows, but we have no where else to go, what am I going to do. My kids play with their kids and it's a known fact. You can't get around that. Arguably, you would say, I knowingly allowed my child to be within 1,000 feet of this because I let my child play with their child, and they ran into the house and he was injured, and then I could fall under this. That's a very easy scenario to find.

Wouldn't it be easier to draft it to say if you partake in the manufacturing or selling of a drug while having a child in your home, or car, or wherever, and where you've taken deliberate actions to have the child in the presence of the activity? That would clarify the problem you're trying to get at.

Gerald Gardner:

That is a scenario we don't want to see arise, where truly innocent people, by virtue of where they happen to live, are punished because their children are exposed. As I said before, the real target is those who are involved. We would have no objection to further tailoring the bill to address that problem.

Assemblyman Horne:

On page 2 of the bill, Section 1, subsection 2 (a) (1), I have questions on the penalties for the offenses. It says, "If the violation does not proximately cause substantial bodily harm or death to the child, is guilty of a Category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 3 years, and a maximum term of not more than 15 years." If you cause substantial bodily harm other than death it's still a Category B, just a bump in the sentence from 6 to 20 years. Category B seems kind of stiff, especially, for the first part of not causing substantial bodily harm.

[Assemblyman Horne, continued.] Further down on page 2 of the bill, Section 1, subsection 2(b)(1), lines 24 through 29 calls for, if you don't cause substantial bodily harm and it's a violation of paragraph (b) of subsection 1, it is a Category B with imprisonment from 5 to 20 years. But if you do cause substantial bodily harm that jumps to a Category A. It doesn't seem consistent at all.

Third, if it causes death and you're guilty of murder, and, generally, felony murders are if you conduct an act where you should have known that conduct would cause, or is likely to cause that outcome—like robbing a bank where I shoot at a teller and hit the guy across the street. I didn't intend to kill the guy across the street—that's felony murder.

In this bill if a child or a first responder dies and it's murder, the illegal intent that's outside of the bank robbery scenario isn't present, so that seems high.

Gerald Gardner:

With respect to the inconsistency of the penalties or the harshness of the penalties for violations relating to Section 1 regarding sales or use, we felt that was an appropriate penalty system given the seriousness and long-term effects of exposing children to drug sales or drug culture as a general matter. These aren't mandatory imprisonment crimes in subsection 2.

As far as Section 1, subsection 2(b), which relates to the proposed legislation having to do with manufacturing or compounding, essentially the drug lab, what we're finding is that the dangers of methamphetamine labs are so acute that they are much more dangerous than your average bank robbery. I think one in four methamphetamine labs result in fire or explosion. There are members of law enforcement here who will provide some of that testimony with respect to A.B. 531.

Assemblyman Horne:

My first bill signed into law my freshman session was a sentence enhancement for manufacturing methamphetamine labs.

Gerald Gardner:

I remember that and I was going to discuss that with respect to the other bill. That legislation has really proven how legislation can have a positive impact on crime deterrents. Methamphetamine labs have actually gone down in Clark County, and we believe it's attributed to that legislation, and also the categorizing of D-Pseudoephedrine in the proper category of drugs. It really has worked.

[Gerald Gardner, continued.] What we are seeing is that the penalties for manufacturing drugs, although they are good, appropriate, severe, and had an effect, they don't address the additional danger when children are present, or first responders, who are seriously injured, and suffer the long-term effects of brain damage and loss of sensory functions. We think these things warrant the severe penalties that are proposed here.

Assemblyman Carpenter:

The Chairman and Vice Chairman have expressed my concerns on the bill. The 1,000 feet spoken about in this bill, in a trailer park, takes in many homes. I think there needs to be some work or amendments done on it.

Chairman Anderson:

I'll ask Legal to take a look at it to see what would happen if we remove the 1,000-foot distance on page 1, Section 1, line 4, so that it actually took place on the property. That might solve the Attorney General's problem. Is there some magic thing about the distance? I think that's where our stress comes from. I'm not sure that's the only place, but I think, in part, it is. I think the penalty questions are a separate thing.

Gerald Gardner:

I don't believe there is a problem about the 1,000 feet. There is legislation now relating to 500 feet within schools and parks. We are open to working with counsel to try to tailor that language to address the issues.

Chairman Anderson:

Have you seen any other amendments that are necessary to the bill?

Gerald Gardner:

No. Those are probably the issues that should be worked on.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We're speaking in favor of A.B. 465. This was a bill brought by Las Vegas Metropolitan Police Department to the Attorney General's Office, but I can tell you that all of the police agencies I'm familiar with would support this.

I was a criminal investigator and a narcotics officer and supervisor for many years. The closest time I ever came to shooting someone was a situation in Winnemucca where we were doing a drug deal. The gentleman was selling some cocaine and he came out of the vehicle and drew a weapon out of a shoulder holster. Next to him in that vehicle was a 3-year-old child. I came very close to having to kill that individual. I'm glad I didn't have to do that.

[Frank Adams, continued.] On the search warrants that I've served on drug cases, many times we find children in those situations. I have worked many clandestine methamphetamine laboratories and it's scary what these things can do to you. As a result of some of the cases I've worked, I've actually lost some smell capability and have seen many other officers injured. I support this bill wholeheartedly.

Gary Wolff, Business Agent, Local No. 14, Teamsters Union:

On behalf of our law enforcement officers we also rise in support of A.B. 465. It's ironic what you brought up, Mr. Chairman, because this morning, when I was scanning through my computer reading this bill again, I also had the concern of a neighbor living next to a drug house. I wrote a little note here and maybe you can take this for consideration to the Attorney General that the bill simply say, "A person engaged in the use or sale would be responsible for making sure that a child was not within the distance," unless you're going to eliminate the distance. I thought it was a quick fix and puts the onus back on the individual that creates the problem, not on the neighbors who are trying to live a law-abiding life.

Chairman Anderson:

[Closed the hearing on Assembly Bill 465.]

Assembly Bill 531: Provides additional or alternative penalty if first responder suffers substantial bodily harm or death during discovery or cleanup of premises wherein certain controlled substances were unlawfully manufactured or compounded. (BDR 40-105)

Gerald Gardner, Chief Deputy Attorney General, Nevada Department of Justice:

[Read from prepared testimony Exhibit C.] These two bills came together because of a request from another state to participate in a national inquiry into laws regarding whether there's additional punishment for drug lab operators whose actions caused serious injury or death to first responders—police officers, firefighters, paramedics, parole and probation officers, and Child Protective Services' officers.

We discovered that Nevada, like most other states, did not have specific legislation. A person, who operates a dangerous methamphetamine lab which involves risk of fire or explosion, emits caustic, toxic gases, and causes chemicals burn, which are all of the same things that we discussed with respect to A.B. 465,

faces no greater punishment for his crime even if somebody is severely injured or killed.

[Gerald Gardner, continued.] The dangers are very real. Under current law, we would probably be restricted to a form of manslaughter, because we would not be able to prove the intent that would allow us to prosecute appropriately and impose an appropriate punishment for the death of a first responder involved in a methamphetamine lab.

We met with these public safety officers who told us first hand of their encounters with dangerous drug labs, as Mr. Adams just recounted. They encounter methamphetamine labs in houses, apartments, and even trunks of cars. The danger of neutralizing them is so severe that by today's standards they have to don full hazardous materials equipment, and even that doesn't fully protect them from what we are now discovering.

These dangers are known by the criminals; they are known by the operators, and so we need additional deterrents or punishment for these criminals who put our public safety professionals in such deadly harm.

As I mentioned before, we believe legislation has worked. Assemblyman Horne's legislation regarding punishments for manufacturing drugs, in our view, has worked to decrease the number of methamphetamine lab operations in southern Nevada. They are down about 50 percent from 2002. This kind of legislation has the potential to seriously deter and impact what is by far the most disturbing and dangerous drug trend in the United States, as well as Nevada, which are methamphetamine labs.

Chairman Anderson:

This enhanced penalty, in this particular case, gives the district attorneys an opportunity to add or remove penalties on the initial filing, when you're working out your deal with them to plead guilty to a lesser charge. Is that all that's going to happen here?

Gerald Gardner:

I don't believe so. Enhancements such as deadly weapon, gang or victim over 60 years-of-age are regularly added to a charge. Sometimes they are pleaded down, but I don't believe there's anything to indicate that they are used only as

bargaining chips. I think they are very real. In cases of deadly weapons, they are very rarely bargained away. In cases of a victim over 60, they are very rarely bargained away. I believe it would be a very real enhancement that would be used by prosecutors.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We would like to go on the record as being in support of A.B. 531. The dangers can't be expressed highly enough of the labs that we've worked.

We would be in support of this. It's a very dangerous business out there and anyone that does this knows the dangers of it.

Gary Wolff, Business Agent, Local No. 14, Teamsters Union, Las Vegas, Nevada:

On behalf of the State offices that are members we want to support this bill. I support this bill. Our first responders have a hard enough job without being further jeopardized by the criminals that do this.

Chairman Anderson:

I'll put two documents into the record for A.B. 531 and A.B. 465. For A.B. 465, JoNell Thomas submitted a letter regarding her concerns about the 1,000-foot difference ([Exhibit D](#)).

In addition, there is a letter in support of both A.B. 465 and A.B. 531 from Brett Kandt, Executive Director of the Advisory Council for Prosecuting Attorneys ([Exhibit E](#)). His letter, I believe, has been distributed to all of you.

Ron Cuzze, President, Nevada State Peace Officers' Council:

I had the privilege of working with the Attorney General's Office to get the language in A.B. 531 written. We believe it is very important. We have more parole and probation officers, NDI [Nevada Division of Investigation] investigators, and people of that nature that oftentimes go into a lab that they don't even expect to be there, and it's very dangerous.

The one thing I would like to say about the penalties, both in this bill and in A.B. 465, is I have to agree with the Attorney General. I believe that the law enforcement agency would probably insist that the prosecuting attorney use these enhancements if one of their officers is injured. I have a lot of faith in our police departments and our law enforcement agencies, as well as the district attorneys. As you were discussing with A.B. 465, I would hope that they would use common sense in bringing charges against people of a secondary nature, like Mr. Horne was explaining. I understand that it has to have some language changes, but I would still strongly support both bills.

Fritz Schlottman, Administrator, Division of Offender Management, Nevada Department of Corrections:

We'll take A.B. 465 first. A search within Nevada Department of Corrections database of drug offenders didn't find anything that would indicate that death or substantial bodily harm had occurred in the commission of any offenses involving a methamphetamine lab. So far, we haven't had any officers blown up going into these things that we know of.

Chairman Anderson:

Of the current prison population, we haven't had anyone charged with an enhanced penalty because there's no enhanced penalty. Do we know that no first responder was harmed?

Fritz Schlottman:

We look into the commission of the offense itself. Usually, parole and probation and the Department of Corrections will make notes as to the actual commission of the offense. If there was substantial bodily harm to an officer we want to know that, so later we can determine qualifications for camp and other programs. A search of the database didn't indicate that any first responders had been harmed. I'm not anticipating a large fiscal impact on that bill. It doesn't preclude, in the future, first responders being harmed, but the actual number of occurrences cannot be estimated because we have no data to make an estimate from, and it's simply a matter of probability and statistics at that point.

Depending on the interpretation of A.B. 531, the judicial branch will use it in prosecuting people who knowingly have children within 1,000 feet. This one could get really expensive.

The comments of the Committee demonstrated the breadth of this legislation when we're talking about homeowners and people who rent hotel rooms, and other people who may potentially, knowingly, put their children at risk. This is somewhat mitigated by NRS [*Nevada Revised Statutes*] 453.3351 which provides an additional penalty if you're within 500 feet of a methamphetamine lab. A search of the Nevada database indicated that we had roughly 2,400 criminals already in the system that may have qualified for this additional penalty, if they had committed their crimes after the enactment of the proposed law.

That would not indicate those people that currently were not committing crimes, but were, as you said, in a bad neighborhood, and they either knowingly or unknowingly, simply for the fact that they're in a bad neighborhood, put their children at risk. Let's take them out of the equation for a moment because it's very difficult to estimate those numbers because you'd have to know the

population density around a particular crime. If you're simply working with the 2,400 number a year, at an incarceration figure cost of \$14,000, it gets you to an extra \$100,000 a year, and then it gets ugly after that. That's \$100,000 a year of incarceration, and you're probably looking at somewhere in the several million dollar range.

Chairman Anderson:

We have to be concerned about the financial implications of what we're doing, in terms of the overall structure. The additional cost is determined, in part, based upon the question of who we're going to broaden into the circle. The enhanced penalty is not going to have any substantial dollar cost.

Fritz Schlottman:

Because the penalty is an enhancement, and is served after the sentence for the first crime has been completed, therefore, it will have a tremendous impact because it will be served consecutively not concurrently.

Chairman Anderson:

Have you already prepared the fiscal note?

Fritz Schlottman:

No, I have not. I wanted to hear the testimony before the Committee because I had questions as to the number of occurrences.

Chairman Anderson:

[Closed the hearing on A.B. 531.] I think A.B. 531 has a good life expectancy. We're going to have to do a little bit of work on Assembly Bill 465, in terms of trying to figure out the distance question. While I know that we're supposed to trust law enforcement officers, and district attorneys are going to do the right thing, occasionally that doesn't always happen. Our concern is to make sure the law is drawn tightly enough so there won't be any ambiguities.

Assembly Bill 519: Requires State Department of Agriculture to, in certain circumstances, revoke registry identification cards issued to participants in medical marijuana program. (BDR 40-273)

Don Henderson, Director, Nevada Department of Agriculture:

We're here to introduce A.B. 519, which provides the Department the ability to revoke current registrations to the Nevada Medical Marijuana Program under certain circumstances, and to answer any questions you may have on this bill.

[Don Henderson, continued.] This bill has been in place since the Seventy-First Legislative Session. We have 4 years under our belt of implementing this law, and this is an effort to tighten it up and close up a few loopholes that we've discovered over the past 4 years.

Under the current statutes governing this program, the Department does not have the authority to revoke a current program registration. The authority is limited to denying an annual application into the program.

Ms. Jennifer Bartlett will provide a brief background and status report on this State program and then summarize the program revisions contained in A.B. 519. With the Legislative deadlines looming, I would like to request that you give this bill proper consideration and if it's possible, pass it out of Committee today.

Jennifer Bartlett, Program Officer, Medical Marijuana Program, Nevada Department of Agriculture:

I've been with the program since its inception and I'd like to give you some history and demographics about the program. Our median age is 43-years-old, predominantly male, and the majority of people in the program reside in Clark County. Since the last legislative period we've been charging fees, and that's been going very well. We are collecting fees more rapidly than we had projected.

We want to have the authority to revoke a license if we find out after they've been in the program that they have knowingly been convicted of selling a controlled substance, or they have falsified information. Past instances have led us to introducing this bill to you. For example, there was an individual out of Clark County who had gotten into some trouble with Las Vegas Metropolitan Police Department (Metro). He had 37 plants and they were investigating him for selling. Metro did a background check and it came back that he had been convicted of selling a controlled substance on the East Coast. The WIN [Western Identification Network] system that we use through NHP [Nevada Highway Patrol] criminal records did not pick this up. When Metro ran their FBI check, it came back. At that time, we had no authority to revoke his license so we had a seller in our program.

We want to be able to revoke a license for falsifying information. We've come across several instances where people will say they live somewhere, and then we'll get a complaint that their neighbor smells smoke coming from the house, so they'll call in law enforcement. We have no record of that person being at that place because they have not given us correct information.

[Jennifer Bartlett, continued.] It doesn't allow us to run as clean of a program as we would like to do. We want to clean up this program and stay with the original intent of keeping convicted sellers out of the program, and to let us be aware of where our participants are at.

Chairman Anderson:

It looks like most of this is clean-up language to try to make the system move and work more efficiently. This is for people who have a medical problem. So, here I have a prescription, or I've been identified as somebody who has a cancer need and marijuana is among the things that I've been prescribed, correct?

Jennifer Bartlett:

It's not a prescription. Nevada is a grow-your-own program and you're responsible for growing 7 plants: 3 mature, which are budding and flowering, and 4 immature plants, and you are allowed to be in possession of up to an ounce of smokable marijuana.

A physician does not give you a prescription. A physician signs a statement saying that you have a qualifying condition, such as cancer.

Chairman Anderson:

I have a medical condition that gives me the qualifying entry, and as far as I'm concerned, that makes it a prescription. You're medically qualified to receive this. The person providing this to me has a criminal record and I don't know that. Am I going to lose my opportunity to have a card and will it be revoked?

Don Henderson:

In that instance you're speaking of a caregiver. If a caregiver assigned to a patient has a registry with the department for that service, if we find out that they falsified their records, and if they knowingly have sold a controlled substance, the way I interpret this legislation is that we would cancel the caregiver's registry. We would not necessarily cancel the patient registry unless the patient has specifically falsified information or has been convicted of selling a controlled substance. I don't believe it will affect the patient or the original person that is participating in the program. If a caregiver falsified the records, I would say, yes, this legislation would allow the revocation of the caregiver's registration.

Chairman Anderson:

Even though the doctor had identified this as a part of the program for medication that would be beneficial to them?

Don Henderson:

The patient's registry would not be affected and they could reapply for another caregiver if they so desired and needed one. Most of our patients, and Ms. Bartlett can correct me if I'm wrong, do not have caregivers. Most of them grow their own medical marijuana and take care of it themselves.

We do have a few that have caregivers and I would say that it's less than 20 percent.

Jennifer Bartlett:

Out of the 600 registered participants in the program, only 64 of them are caregivers.

Chairman Anderson:

I may have an existing condition and it has been a problem for some time. If I've been using marijuana in the past, I may have developed a criminal record. I was arrested for having in my possession a plant, a leaf, or a seed here in Nevada. Now, all of the sudden my circumstances have changed. Before, I may have been using it for recreational purposes, but what happens to me now? Is this going to be precluded for me? If I disclose to you that I have had this record, but I have this medical condition identified by the doctor and I qualify under the medical question, then do you get to supercede the medical recommendation of the doctor?

Jennifer Bartlett:

According to NRS [*Nevada Revised Statutes*] 453A, yes. If you have ever knowingly sold a controlled substance it excludes you from this program.

Don Henderson:

That's very specific in the legislation. If you've been convicted of knowingly selling a controlled substance, that would prohibit you from being in our program. That's immediate grounds for not processing the application. This bill clarifies that if we discover somebody who's in our program has been convicted in that manner, we can revoke that registry card at that point.

Assemblyman Mabey:

If I have a patient that I feel would benefit from medical marijuana, what's the process for someone like me to help them?

Jennifer Bartlett:

They receive a packet from our department. In this packet there is a physician's statement. On the physician's statement it asks the physician to declare that they have one of the 7 conditions to be in this program. It states that you have

counseled them about the pros and cons of marijuana use, and that this is not a prescription. It falls on the doctor, if they believe this is a path of medicine they want their patients to take. Out of the thousands of physicians licensed in Nevada, only 190 have ever signed a physician's statement. The Department does not counsel at all, it's between a physician and their patient, if this is an avenue of medicine they want to take.

Don Henderson:

I'd like to outline the steps of the application process. First, you would contact Ms. Bartlett. There's a \$50 fee for the first-time application, and once that's paid, we would give the application to the applicant. In the packet there is a wealth of information. The applicant would fill that out and would designate a caregiver if they desired one. They would have a physician's statement as Ms. Bartlett indicated that says they've been counseled, and it's signed by a physician. The packet comes back to us with a \$150 application fee.

At that point, Ms. Bartlett sends a fingerprint card that comes in with the packet to NHP [Nevada Highway Patrol] Records. They check for criminal records. She sends the physician's statement to either the Board of Medical Examiners and/or the State Board of Osteopathic Medicine. We ask the two governing boards of these physicians if the physician is licensed and current under their law. That information comes back to us, and if it's affirmative in one case or negative in the other, then we issue notification to the patient that they've been accepted to the Medical Marijuana Program.

At the same time, we send a notification to Nevada Department of Motor Vehicles (DMV) saying that this person can get a medical marijuana identification card. That person is directed to go to the DMV office, and get an ID card that looks very much like a driver's license. They then pay DMV the fee for the identification card. That card is good for a year. This is an annual application. They have to get a physician's statement each time they reapply for the program. The one thing they do not have to hand in on a yearly basis is the fingerprint card.

Assemblyman Mabey:

And then they start growing their plants?

Don Henderson:

Yes.

Assemblyman Manendo:

I have a question about the falsifying of information. You made the comment about how the neighbor of the person smelled smoke, and that person wasn't

there. What if that person just moved into that house? I don't understand the program that well. How does the tracking work? Is there a certain timeframe? Is there a penalty if the person moved out and another person moved into that home 3 days ago, or a day ago?

Jennifer Bartlett:

By statute, NRS 453A, they have 7 days to notify the Department of any changes: name change, address changes, any changes that they have.

Assemblyman Manendo:

Do they have to call you? Do they submit a letter? Is it certified? Do they have to come down?

Jennifer Bartlett:

It's in writing, but the majority of them call and so we mark it down with their call, and then ask them to send in a letter. Everything that leaves the Department is certified.

Chairman Anderson:

What would happen if it gave the Department discretionary powers on revoking the registration card of the person, and make it a "may" instead of a "shall," but retain your ability to revoke the registration identification card of the caregiver. The caregiver is an absolute, but you have discretion with the person who has the medical problem. Is it a big problem for you to have discretionary powers in this area rather than a requirement?

Don Henderson:

That's a good question. I don't see a distinction, or a need to be distinct, between the two types of registration cards; the caregiver versus the patient. Under this bill, if enacted, your card would be revoked or we would not renew a permit or accept an application if you were convicted for knowingly selling a controlled substance, or if you falsified your information. For instance, you did not give us the right address for where you were growing the product, or where you live. They can grow it someplace other than where they live.

The reason that information is critical is because the statute allows one caregiver per patient, and no more than two people can be growing medical marijuana in one location. Anytime you have a program, there are people who try to take advantage of that program. I'm sure there are instances in our program where people don't need this for medical purposes, but they have the permission. One of the intents of this is to tighten this law up and allow the Department to act in a timelier manner if we come upon information, whether it's the patient or the caregiver.

Chairman Anderson:

If we give you discretionary power with the patient, and put the absolute on the person who is the primary caregiver, the "shall" question, that gives you discretion to make the determination as to whether you think there may be extenuating circumstances. Even though there are bad actors there are also those who absolutely need it, or their physician thinks it would be helpful for them to have marijuana. That's the reason the program exists. I just think the Department might want some discretion.

Don Henderson:

We're not opposed to the discretion or the suggestion that you're offering. Our existing statutes make it clear that when we make a decision relative to an application, or in the case of a revocation, that's the final judicial review. That's broad authority. Relative to giving us discretion, I think it opens up the door a little bit wider than I feel comfortable with. This is a very extensive law.

The cleaner we can make this, the better and more comfortable I am with this final judicial review, but I'm not opposed to flexibility. I think we have good people in this program and we make good decisions. We are not overreacting when we deal with these situations as they develop.

Jennifer Bartlett:

In regard to the 7 days that we give them, I have never kicked somebody out of this program because they did not get me their address within 7 days. I'm more than happy to work with them. I realize some of them are on assisted living and they may not be able to find a new place to live in 7 days. As long as they're honest with me, we work with them to the extent that we can.

Chairman Anderson:

Once we put it into black and white we have a tendency to believe that everybody plays by our rules, even though we know the judges sometimes don't, and it causes us great distress.

Jennifer Bartlett:

As long as I get that phone call, even though I don't have that letter within 7 days, I have a phone call that is marked and dated. As many stereotypes as this program has, there are a lot of good people in this program that are efficient with what they do, and they keep on top of what they're doing.

Assemblyman Carpenter:

Is there any penalty if they don't return this card to you?

Don Henderson:

I don't believe there is; there's just the requirement that they need to return it to us within 7 days. Upon application renewal, I don't believe there are any grounds for us to penalize them. You bring up an interesting point. It's not something we've run into significantly in this program as Ms. Bartlett has indicated. We work with people, and most of them are very responsive and keep us up-to-date.

Chairman Anderson:

You have to get a new card every year and it's probably a high priority.

Assemblyman Horne:

Were you able to address the potential of the caretaker violation? We actually take away the registered card of the patient. I'm concerned if that was addressed, and, if so, how?

Don Henderson:

We did speak of that earlier and our interpretation of this proposed revision. We would have the flexibility to cancel the registry card for the caregiver but not necessarily the patient.

Assemblyman Horne:

I see, "shall." "Department shall immediately revoke."

Chairman Anderson:

On page 2, I suggested to Mr. Henderson that possibly at line 9 the first "shall" be changed to a "may revoke the registry identification card to that person." The one that says "shall immediately" would remain in place for the primary caregiver. And then change line 20, "The Department shall immediately" to "may revoke the registry identification card to that person." The "shall" remains for the caregiver, and then the other requirements is, as I suggested, to give the Department some clear flexibility. Is that the concern you're raising again?

Assemblyman Horne:

I'm trying to think of the circumstances, in which the person receiving the care, where "may" would be in there. In what instance would you have it, other than they participated in the first place, and then they should tell you.

Don Henderson:

Our primary focus with this program is on the patient. The patient has an option of designating a caregiver to assist them in administration of their medical marijuana. If the patient is found to have falsified records or has been convicted

of selling a controlled substance, in that instance, the way I interpret this, both the patient and the caregiver would lose their registration card.

[Don Henderson, continued.] This is the scenario we discussed earlier about a patient who is well within this law, but their caregiver has in the past been convicted of selling a controlled substance. Our intent is not to penalize a patient if it's their caregiver that is actually not qualified for the program. If the suggestion of inserting a "may" as opposed to a "shall" is a proper way to address this, then I would be more than happy to welcome that amendment.

Assemblyman Horne:

If I can clarify, my concern is primarily in Section 1, subsection 2, lines 21 through 23 on page 2, because that part deals with the violations of the caregiver.

I think even changing that to a "may" doesn't solve that particular dilemma. I don't think there should be even a chance that the patient should lose their registration card because of the acts of another. Eliminating that may solve that problem.

Jennifer Bartlett:

The way that I understand it is that this is referring to the patient who does not pass the criminal background check, and then his card is revoked. Because of that, we don't just have caregivers out there without patients, and so then we would revoke the caregiver's card at that time also because his patient didn't pass the criminal check. I think that's what this is trying to spell out that if the patient doesn't pass the background check, there's no need for that caregiver at that point.

Chairman Anderson:

Let me ask Legal.

René Yeckley:

Just to backtrack a little bit, it looks like subsection 1 of this bill does deal with the acts where the patient is providing false information or has been convicted of knowingly or intentionally selling a controlled substance. Then the penalties there would be that the Department is required to revoke the cards of both the caregiver and of the patient.

Subsection 2 deals with where the caregiver has been convicted of knowingly or intentionally selling a controlled substance, and as Mr. Horne says, on lines 19 through 23, again, the Department would be required to revoke the cards of the caregiver and of the patient.

Chairman Anderson:

Mr. Horne's suggestion is that we delete the ability of the Department to revoke the patient's card. Is that what you're concerned about?

Assemblyman Horne:

Yes.

Don Henderson:

I think if you just strike the wording in line 21 after "to," so then it would read, "The Department shall immediately revoke the registry identification card issued to the person for whom he acts as a designated primary caregiver."

Assemblyman Mabey:

Could a caregiver have 2 patients?

Jennifer Bartlett:

No, one caregiver to one patient.

John O'Connor, Private Citizen, Fallon, Nevada:

I propose this amendment ([Exhibit F](#)) on behalf of my father. He's been on the Medical Marijuana Program for about 3 years. Two years of it was in Nevada and one year in Arizona.

Three plants are not enough. My father smokes marijuana and eats it. You should increase it to what other states have done like California: to 10 mature plants, 10 immature plants, and that he be able to possess up to 1 pound 8 ounces. He goes through about an ounce a month, when it's available and he can get it. As far as the bill itself, I support it, but there needs to be better protection for us as caretakers, because while I was in this program with my father, I had an informant hit me up about 6 times.

Chairman Anderson:

What you're telling me is that by increasing the number of plants that you're able to hold that your father and other people who have a legitimate medical need would better be able to meet their needs.

John O'Connor:

Right now, the way the law is written, it's so expensive to grow it at home that it's cheaper to buy it out on the streets, because of the cost of electricity and equipment.

Marilyn O'Connor, Private Citizen:

I'm John O'Connor's mother. It's hard for him to talk about this because he had a friend who he didn't realize was an undercover narcotics agent. She realized that he was on this Medical Marijuana Program and so, apparently, she told the police.

She called him several times and came over to the house trying to get him to sell her some marijuana, and he refused. There was a phone conversation and she said, "John, this is real important, my brother-in-law has been on the Medical Marijuana Program and he's in a lot of pain, but he can't get any, would you do it for me just this one time?" He said, "Yes, just this one time."

She came over and the whole thing was tape recorded. She even tried afterwards to get him to sell her some marijuana, and he refused. Normally, they have to have 3 sales before they arrest somebody. She asked how much it would be and he didn't tell her. It's more or less an entrapment thing, and then he said \$80 because he had to replace his father's. His father has been paying for this supply.

Chairman Anderson:

Your husband is a medical patient?

Marilyn O'Connor:

My ex-husband.

Chairman Anderson:

Your son is not, but he is the care provider?

Marilyn O'Connor:

He was the care provider but he's not doing it anymore because they are leaving these charges hanging over his head and refused to plea bargain. He was arrested back in August and so it's up in the air right now.

Chairman Anderson:

The concern that your son has is that next year when his father, and your ex-husband, makes an application, this bill could endanger his ability to get the material that he needs. And, of course, your son is necessary for this process because he probably is the grower.

Marilyn O'Connor:

That, plus this could hurt the Medical Marijuana Program, and he doesn't want that to happen. The police don't like it. It's in the law that they're not supposed to target somebody. It's not in NRS 453A, but it's in another part of the

medical marijuana legislation; it might be under NRS 453. It says they're not supposed to target somebody, but there's no penalty for them when they do. At the very least they should have to pay attorney's fees if somebody is found not guilty. You've got to discourage this somehow.

Chairman Anderson:

Mr. O'Connor, we have your document here in front of us ([Exhibit F](#)), and I'll have it submitted as part of the record for the day. You want to increase 1 ounce of useable marijuana to 1 pound 8 ounces of useable marijuana, 3 mature plants to 10 mature plants, and 4 immature marijuana plants to 10 immature marijuana plants. What is the reason for the increase in your amendment ([Exhibit F](#))?

John O'Connor:

Yes. The reason is that it's very expensive to grow. It would be nice to be able to do everything he needs in about a six-month period, instead of having to grow it year round and constantly have a \$250 power bill. That doesn't include the cost and the wear and tear on the equipment if you grow it hydroponically in water. It would be financially more affordable.

Assemblyman Mabey:

Currently, he gets enough marijuana, but it requires growing it all season, which is more expensive than you can afford.

John O'Connor:

It's not really so much that, but it's that you can't get enough off of 3 plants to even take care of him for a month or two months. He needs to have at least a pound. He goes through about 3 1/2 pounds a year. He uses just a little over an ounce a week in his brownies, cookies, and muffins.

Assemblyman Conklin:

The difference between a mature plant and an immature plant; what's the time to cultivate that?

John O'Connor:

For one plant to become totally mature it takes about 6 months. It takes about 3 months to grow it to the height, and about 3 months more to flower. You're looking at about 6 1/2 months from start to finish, depending on the strain and the height of the plant. Some plants only produce about an ounce, and some plants will produce 3 or 4 ounces. Each strain varies in different cannabinoids. Some strains work better than others. In eating it, he likes a stronger strain like an Indica. During the day, when he's running around, he likes a strain called

Sativa, so everything is different. It's a strange thing but it works and he loves it, and he's been doing it for 3 years now.

Marilyn O'Connor:

And he's not mean like he used to be.

Assemblyman Conklin:

You lead me to believe, at bare minimum, that you're using those 3 mature plants every 3 months, so you're looking at about one a month.

John O'Connor:

Like I said, it depends on the strain. Some strains like the Indica strain take about 6 months just to produce that plant, so it will produce about one ounce. That one ounce will last him about a week and a half.

Chairman Anderson:

Ms. Yeckley, let's turn our attention to A.B. 519 because there are some suggestions, and you might be able to help us with the bill and the question of who we're going to take the identification cards away from at line 22 on page 2 of the bill. Do you have some suggested language?

René Yeckley:

Yes. There was a suggestion to delete the language on lines 21 through 23 starting on line 21, "And shall immediately revoke the registry identification card issued to the person for whom he acts as designated primary caregiver." The effect of that deletion would be that in the instance where the primary caregiver has been found to have a conviction of knowingly or intentionally selling a controlled substance, the Department would be required to immediately revoke the registry card of the primary caregiver, but not the patient.

Chairman Anderson:

We can put it over to a work session or we can do it now.

Assemblyman Mabey:

I'm ready.

Chairman Anderson:

Ms. Yeckley, do you think we're okay?

René Yeckley:

Yes, I do.

Chairman Anderson:

The Chair will entertain an amend and do pass motion on Assembly Bill 519.

Assemblywoman Angle:

I just want to clarify that the amendments we're speaking of are just those that were brought by the Department of Agriculture and not anything additional that we've discussed here this morning.

ASSEMBLYMAN MABEY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 519 WITH THE REMOVAL OF "AND SHALL
IMMEDIATELY REVOKE THE REGISTRY IDENTIFICATION CARD
ISSUED TO THE PERSON FOR WHOM HE ACTS AS DESIGNATED
PRIMARY CAREGIVER."

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Buckley, Mr. Mortenson, and
Mr. Manendo were not present for the vote.)

Assemblyman Conklin:

I'd like to reserve my right to change my vote on the Floor. I'd like to take up the issue of the proposed amendment.

Chairman Anderson:

Let's turn our attention to the work session document ([Exhibit G](#)).

Assembly Bill 118: Revises provisions governing smoking of tobacco in certain places. (BDR 15-807)

Assemblywoman Ohrenschall:

Because I am a member of the board of directors of a couple of corporations that deal in tobacco products, to avoid any appearance of impropriety, I will not be voting on this bill, or participating.

Allison Combs:

[Referred to work session document ([Exhibit G](#)).] Assembly Bill 118 prohibits smoking in video arcades, and it also revises the existing prohibition on smoking in child care facilities by redefining what a child care facility is. The measure redefines the facility, which is currently defined for the purpose of this prohibition on smoking, as a licensed establishment caring for 13 or more children.

[Allison Combs, continued.] The bill, as is reflected on page 2 ([Exhibit G](#)) in the middle, proposes to redefine child care facility as one that's operated and maintained to furnish care, essentially, to 5 or more children. There is an exclusion from that term for the home a natural person who provides child care.

There were some concerns raised subsequent to the hearing about the complete exclusion for child care provided in the home, therefore, I set forth in the document the definition currently of a child care facility under NRS 432A, that's the licensing statute. The language there under 1(a) is similar to the language that was used for the new definition under A.B. 118.

There was also a suggestion that if the Committee were to amend the prohibition on smoking in the home that there may be a consideration to allow designated smoking areas in the homes. The bill does delete the ability of a child care facility to designate a smoking area.

Chairman Anderson:

The question is one that we've dealt with off and on for some time. In a smaller community, or even a large community, where someone may be taking care of children, would they be allowed to smoke where the children are, or in any other designated area of the home? The concern may be that this is the inexpensive way for child care, and we would be taking away that ability for some people to even offer this service, because the spouse was a smoker.

I think this amendment will clarify that particular issue. I don't want to hold the bill up. We've held it up for some time and I think it's time we moved it forward to the other House.

Assemblywoman Buckley:

I've become so much more aware of the problems with second-hand smoke, especially on people with asthma and respiratory problems. I have some concerns about smoking in grocery stores and convenience stores. Bars are different, you don't have to go into a bar. You really do have to go to a grocery store or a convenience store when you need a quart of milk, and if you have a child with asthma, it's very difficult to go into some of these stores. You come out smelling like a chimney. I think it's time this state started doing something about it.

This is Assemblywoman McClain's bill. As I understand it, she lost it last time. She didn't care to have it amended, although it's our province to be able to do that. I don't want to jeopardize her bill that she lost last time in the Senate, so I'm not going to offer any amendments, but I hope the Committee and the Legislature can work on these issues, especially with the dueling ballot

initiatives that don't do that. As Assemblyman Mabey said very well, "One went too far and one didn't go far enough."

Assemblyman Mabey:

I agree with what Assemblywoman Buckley said. It's disappointing to me when you go in a facility and there's so much smoke, because you know your clothes are going to smell when you leave. I don't feel it's appropriate at this time to try to amend it just because of the initiative petitions that are coming up. A business may have to do something now and then change in 2 years, and so I look forward to visiting this again in a couple of years.

Assemblywoman Angle:

This has been something that I have championed for the last three sessions; getting smoking out of the casino areas and the grocery stores. I think this bill is a good step in the right direction. Sometimes we have to take small steps in order to get where we really want to go. I won't press for an amendment either. I'll just say that I would support anything that keeps second-hand smoke from affecting children, the innocents, and senior citizens.

Assemblyman Carpenter:

On the proposed amendments, does that take the ability away of a person to care for other children, other than their own?

Chairman Anderson:

I'm of the opinion that this gives them the ability to take care of children in their home where there are 5 or less children. If we had not put this amendment in, there would have been a question about whether you could have done that at all. That's the purpose of this amendment, to provide that kind of exclusion.

Assemblyman Carpenter:

If the amendment does that then I am definitely in favor of it.

Chairman Anderson:

Ms. Yeckley, is that what this amendment does?

René Yeckley:

I think I need some clarification on exactly what you would like to have done to this provision. It looks like there are two proposals on the work session document. One is to replace child care facility, as its being amended in the bill, to just simply refer to the definition in NRS 432A.024. The other is to provide some exceptions for those who care and receive compensation for 5 or more children in their home; to allow them to designate certain smoking areas.

Chairman Anderson:

With this amendment, if I'm a natural person and I'm providing child care, I would be able to take care of this, and you're saying we have to choose between one and two?

René Yeckley:

I think Ms. Combs just clarified for me that what you're looking at doing is deleting the language on lines 36 and 37 of page 3 that reads, "The term does not include the home of a natural person who provides child care," and therefore, those homes would be included in the prohibition.

Chairman Anderson:

So, you would be able to designate smoking in those homes with number 2 ([Exhibit G](#))? Option number 2 is what we're suggesting here, "Allow designated smoking areas in homes" that provide this kind of child care for 5 or fewer children. Is that correct?

Allison Combs:

If the definition of the facility is amended to take out the language excluding homes of natural persons, then smoking would be prohibited within the home if you're caring and compensated for 5 or more children. But number 2 would allow those homes to designate smoking areas. If you're caring for fewer than 5 children, the provisions would not apply at all.

Assemblyman Carpenter:

I just want to make sure that they can take care of children in their home whether they smoke or not, because in my area child care is a much greater problem.

Chairman Anderson:

I think they're going to be able to do that even if we don't amend the bill.

Allison Combs:

That's correct. If you do nothing to amend the bill, then the prohibition on smoking would not apply in any home in which children are cared for. So, if you're caring for a child you can smoke in the home if the bill is not amended. What is set forth here is that if you're caring for 5 or more children in the home, then smoking is prohibited, but you could designate a smoking area in those circumstances.

René Yeckley:

I'm looking at this issue and I think if that's the Committee's intent, we might just leave the bill the way it's written.

Chairman Anderson:

If that is the intent, from Legal's point of view the correct motion would just be a do pass motion. If I have 5 children or less in my home, I can still smoke.

René Yeckley:

Mr. Chairman, if you have less than 5.

Assemblyman Carpenter:

This doesn't restrict anyone that can go outside and smoke.

Assemblywoman Buckley:

As I understand it, if we're talking about the original bill, page 3, lines 31 through 37, the definition of child care facility is being amended. It says, "Five or more children under 18, if compensation is received, the term does not include the home of a natural person." What we're discussing is that it would apply to the home of a natural person if they had more than 5, and so I thought we still needed an amendment. That was my reading of it. I'll defer to Legal.

René Yeckley:

My reading of this is that the prohibition is against smoking in child care facilities as defined here as, "An establishment with 5 or more." What is exempted from that definition is a home of a natural person who provides child care. To correct what I said earlier, I think that would mean that it's exempting out a person who has 5 or more children in their home.

Assemblywoman Buckley:

I'm happy to go with the original do pass. I think we want to move this issue forward. I recognize that it's very difficult for government to be able to say what a person does in their own home. You're balancing that, though they're using it more for a business with children there. It's a difficult issue. If we want to move the issue along to begin our steps with the arcades and the other areas, I would certainly be happy to substitute it with a straight do pass.

Chairman Anderson:

We'll allow Ms. Buckley to withdraw her amend and do pass motion on A.B. 118.

ASSEMBLYWOMAN BUCKLEY MOVED TO DO PASS
ASSEMBLY BILL 118.

ASSEMBLYWOMAN ANGLE SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Ohrenschall abstained from the vote.
Mr. Mortenson was not present for the vote.)

Assembly Bill 383: Creates right of redemption for owner of property in common-interest community in certain instances of nonjudicial foreclosure. (BDR 10-1242)

Allison Combs:

[Referred to the work session document ([Exhibit G](#)).] The bill creates a right of redemption for an owner in a common-interest community when the unit has been foreclosed upon.

There was a letter that suggested revising the bill completely to create these additional notice requirements and that's on page 12 ([Exhibit G](#)). There were no amendments proposed to the text of the bill itself.

Assemblyman Horne:

I'd only add that the proposed amendment made by Kathryn Pauley ([Exhibit G](#)) asks for an intent to lien letter. I like that, and I don't think that would be bad thing to have them be required to do. The second part, I don't think it's necessary.

Assemblywoman Buckley:

Instead of the bill, or in addition?

Assemblyman Horne:

I know she wanted to gut the whole bill but could it be included with the bill?

Chairman Anderson:

Mr. Manendo, having heard the testimony and the fact that she'd like us to kill this outright, she's concerned about drafting questions. With Mr. Horne's addition, do you think this meets your requirement?

Assemblyman Manendo:

I think it would be the will of the Committee, but I don't have a problem with that. At the hearing, you gave direction that Ms. Pauley work with me on the bill and she did not leave a card or contact me. The handout that she provided to the Committee did not have an address or a phone number. I had no way of finding out who this person was. She came to the Committee that day and I had never seen her before, so I figured she went away, until I saw this document two minutes ago.

Assemblywoman Buckley:

I missed the hearing on this bill but I think it's a great bill. In the interim we got a pro bono lawyer to help this woman who was living with her daughter. Her daughter threw away the notices because she was the one who didn't make the payment. The woman lost her house. Fortunately, the trustee doing the sale, when we called and explained what had happened, were willing for a premium to resell the house back to the woman. We were able to negotiate a lower premium. I see this as being a good consumer protection measure. No one is getting a free ride. They just have a chance to keep their house, and they have to pay something for the inconvenience. So, I think it's a really good bill and I think we could add that section or not, in light of the amendments being so backed up. Either way, I think it's a good bill.

Assemblyman Mabey:

I have to disagree with the Majority Leader. I had some deep concerns about this bill. I understand the concern but let's say somebody bought this house and six months later they had to sell it back. It seems like there were too many questions so I couldn't support A.B. 383. I'm not sure what this intent to lien letter means either. I don't know if it's every time there is a lien put on a piece of property, or when the house is up on foreclosure. I couldn't support A.B. 383, and I don't even know if I can support this intent to lien letter either.

Assemblywoman Angle:

I'm in agreement with my colleague that I couldn't support this either because of the detriment that it may have to the unsuspecting buyer that has moved into this home and then all of the sudden he's told, "I'm sorry we're going to give the original owner an opportunity to buy this back." I have serious questions about this and I'll be voting no.

Chairman Anderson:

I would point out that the purchaser would be reimbursed their money plus a percentage, but of course it's the availability of property and the good deal that they got when they bought a condemned piece of property, which they bought for \$10,000 and now it's worth \$100,000. That was the testimony we heard when we listened to the bill.

Assemblyman Carpenter:

I have real concerns about it because of the person that purchased it in good faith, and then if he has to sell it back, I don't think that's a very good situation. In this situation, the person in good faith bought that property and then six months later they're going to have to sell it again, and that might put them in a real bind.

Assemblyman Holcomb:

I agree with Ms. Buckley, and I think it is a good bill. I think when a person buys a house for \$10,000 that is worth \$400,000, he should be on notice that there might be a problem. This corrects the problem that he is on notice, so I do support this bill.

Assemblywoman Buckley:

I didn't have a chance to mention this to the sponsor of the bill but one of the things you could do, and this only applies to NRS 116, so it's just where an association repossesses it; it's not where you didn't pay your mortgage. You could make the time period a little shorter if you were trying to get consensus. Or, you could do it before the purchase by an innocent in good faith—a BFP [bona fide purchaser]—so at least if the association just has title, and then the person has the money and is able to figure it out and rectify it, let them get their house back. You're talking about someone's home. This is a big deal.

Assemblyman Horne:

I don't think this subsequent purchaser comes in completely blind in this. It's very narrow. It's not like they purchased it and then later on they're told that this other person has the right to redemption. They will know this on the front end, if they choose to partake in this.

Chairman Anderson:

Part of that is excluded there, or to exercise the right of redemption as set forth in Section 1, line 2, page 6.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS
ASSEMBLY BILL 383

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION CARRIED WITH ASSEMBLYWOMAN ANGLE,
ASSEMBLYMEN CARPENTER, AND ASSEMBLYMAN MABEY
VOTING NO. (Mr. Mortenson was not present for the vote.)

Assembly Bill 221: Revises provisions relating to sale and disposition of
intoxicating liquor. (BDR 20-270)

Allison Combs:

The next bill is A.B. 221 on page 3 of the work session document ([Exhibit G](#)). It's a measure revising provisions relating to the sale and disposition of intoxicating liquor.

The bill would create a statewide requirement for employees of establishments to complete an alcoholic beverage awareness program that's similar to one currently in existence in Clark County.

There were a couple of proposed conceptual amendments during the hearing and then after the hearing as well. The first one was with regard to the definition of "establishment," which currently excludes resort hotels. The proposal would be to remove that exclusion so that resort hotels are within the definition of an establishment.

The second one, "Time to Complete the Program," would allow a grace period to allow an employee 30 days after the date of hire to complete the certified program, and that was suggested by the Las Vegas Metropolitan Police Department (Metro).

The third one, with regard to fines by the Department of Taxation would allow the Department to charge a fine for violations of the requirements. The proposal would be to change the "may" to a "shall," and is also proposed by Metro.

The fourth one relates to the role of the Department of Taxation. At the hearing there was testimony from the Department suggesting some clarity for their administration, in order to specify who would inform the department if there were a violation, and then to specify the fund into which the imposed fines would go. The Department mentions the State General Fund, or anywhere else the Committee may wish.

The fifth one relates to the curriculum requirements on page 4 of the bill. To delete the required hours from 4 hours to 2 hours, which was also proposed by Metro.

Chairman Anderson:

Mr. Ocegüera, did you have an opportunity to review the amendments?

Assemblyman Ocegüera:

Yes, I did. I would consider them all friendly. In reviewing the bill, I was looking at page 5, Section 10, subsection 3(a) and 3(b). I believe the people that are providing the classes in Las Vegas are private organizations, and I don't believe

this bill allows for private organizations, so I would think that an amendment for that would need to be included.

Chairman Anderson:

You wish to expand it to private? You don't think it's covered in, "or private postsecondary educational institution," at lines 6 and 7 of Section 10, subsection 3(b)?

Assemblyman Ocegüera:

I'm not sure, so I wanted to make it certain. Is that a private college? We could ask Legal if they think that covers it.

Chairman Anderson:

The private postsecondary educational institution question is whether that would include those groups that are apparently not affiliated with an accredited college, community college, or other institution.

René Yeckley:

I think that private postsecondary educational institution language would cover it, if the entity were, in fact, a postsecondary educational institution. What I'm wondering is whether paragraph (c) of subsection 3 might cover Mr. Ocegüera's concern where, "The administrator can certify programs if the program meets the curricular requirements set forth in subsection 2, and the persons who will serve as instructors for the program are competent and qualified to provide instruction in the curriculum of the program."

Assemblyman Ocegüera:

It might, Mr. Chairman, I'm not sure. The intent was that anybody could go and certify through the postsecondary education, but they didn't necessarily have to be affiliated with a university or community college like you said.

Assemblyman Conklin:

I was going to suggest if Ms. Yeckley is correct and paragraph (c) gets at the heart of the matter, why have (a) and (b) at all, and just have (c)?

Chairman Anderson:

Since we're going to break the rule here and amend this bill anyway, Ms. Yeckley, what would be the net effect of removing paragraphs (a) and (b)?

René Yeckley:

If you take out paragraphs (a) and (b) you would be left with this "catch all" and the administrator of the commission would be responsible for determining whether or not you're qualified, and whether your curricular requirements have

been met. For example, in (a) it says that they may certify this program if it's conducted by a governmental entity and nonprofit organization, or a private postsecondary educational institution.

Chairman Anderson:

Are you of the opinion that we need paragraphs (b) and (c)?

René Yeckley:

No, I'd be of opinion that you could leave it as written, or you could take out paragraphs (a) and (b) and you'll be left with the administrator determining, on a case by case basis, whether the program meets the curricular requirements, and that the instructors are qualified.

Chairman Anderson:

Does anybody have a problem with following the suggestion to remove the exception for resort hotels, number 1 on page 3 of the work session document, as proposed by Mr. Ocegüera, so that it applies to all institutions, which relates to page 4, line 2 of the A.B. 221?

Assemblyman Carpenter:

My concern is that it's going to have to be conducted by a private organization in the rurals, because in some of those areas there is no college. I don't think it hurts to give some direction in the bill that it can be conducted by those private organizations that are already doing it because, hopefully, they're ready to go.

Chairman Anderson:

If we go with paragraph (c) on page 5, Section 10, subsection 3 of the bill, I think we're okay because the administrator of the commission recognizes these programs currently. The suggestion is do we amend page 4, line 2 of the bill to add the grace period, as suggested on page 4, Section 9 of the bill. We change the requirement so that the department "shall" on page 4, line 17 "require the Department to impose the fine on owners or operators of establishments who violate the requirement."

We are still left with the problem of the Department of Taxation on page 4, lines 17 through 23 of the bill, now that we've required them to impose on owners or operators who violate any provisions, within a 24-month period, a \$500 fine. Mr. Dino DiCianno was concerned about how they were going to find out about it, and where the money was going to go. We need to address these issues.

Allison Combs:

One option is to have the licensing boards provide notification to the Department of Taxation, or a law enforcement agency if they are aware of a

violation they could be required to report. Certainly, other folks wouldn't be precluded from making those reports to the Department of Taxation as well. If those two entities were aware of a violation they would report it to the Department of Taxation.

Chairman Anderson:

The money that is derived from these fines goes into the General Fund but not into drug treatment programs or drug education programs where it might do some good. Isn't that what the purpose of this is?

Mr. Ocegüera, I can think of three places that you might want to send a dollar: victims of DUI [driving under the influence], drug treatment programs, or an education fund to be drawn upon by people who put together these training programs, or we can put it in the General Fund.

Assemblyman Ocegüera:

I'm fine either way. I don't know if we want to specify people who provide these programs because that would be giving the money back to a private entity, which would be tricky. I was fine with the General Fund, but if you want to put it into some kind of education fund, that's fine with me as well.

Chairman Anderson:

I don't want to pick somebody out and then offend somebody else. There are many worthy groups that could conceivably benefit from this that are under-funded relative to their treatment programs. We don't even know what the cash size of this is going to be. Why don't we put it in the General Fund for right now and designate the money to victims of crime, which would include DUI. Let's do that.

Reduce the curriculum requirement from 4 to 2 hours. We have the 5 suggestions here on the work session document ([Exhibit G](#)). Strike out paragraphs (a) and (b) of subsection 3 on page 5, in its entirety. As a conceptual idea, we're going to see a clean up from Legal so that the administrator shall determine programs to meet the curricular requirements, and that the people who will serve as instructors are competent and qualified.

Assemblyman Carpenter:

This is going to directly apply to my establishment, and I don't have a problem with doing this. The waiting time takes care of some of my concerns, but I don't know who is going to enforce this unless it's our local sheriff or police. I don't think the Tax Commission has people out there doing this. There has to be somebody to enforce this and make sure the clerks, waitresses, and bartenders

have this education. I don't think we've taken care of that problem. Maybe we have, but I don't see it in the bill.

Chairman Anderson:

I see them establishing the commission, cooperation with state and local law enforcement agencies, and the development of a curriculum.

Assemblyman Ocegüera:

Local law enforcement takes care of it in Clark County. In the bill it says that they have to report to the Department of Taxation to tell them that there's been a violation, so they can impose the fine.

René Yeckley:

I agree with Mr. Ocegüera. If you look at NRS 369.540, there's a provision in there saying that the sheriffs, within their counties, and all other police officers of the state of Nevada are charged with the duty of assisting in the enforcement of Chapter 369 of *Nevada Revised Statutes*, which we're amending to include this program.

Chairman Anderson:

Apparently, it's taken care of. The Chair will entertain an amend and do pass motion for A.B. 221. The amendments being those specified on page 3 of the work session document ([Exhibit G](#)), 1, 2, 3, 4, and 5. In addition, the reconfiguration of Section 10, subsection 3 of the bill on page 5, and lines 3 through 13 to be deleted, and fix up the language so it all fits consistently.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 221 WITH THE AMENDMENTS ON PAGE 3 OF
THE WORK SESSION DOCUMENTS AS FOLLOWS:

- DEFINITION OF ESTABLISHMENT
- TIME TO COMPLETE THE PROGRAM
- FINES BY THE DEPARTMENT OF TAXATION
- ROLE OF THE DEPARTMENT OF TAXATION
- CURRICULUM REQUIREMENTS
- RECONFIGURATION OF PAGE 5, SECTION 10, SUBSECTION 3.
- DELETE LINES 3 THROUGH 13 ON PAGE 5 OF THE BILL.
- FINES COLLECTED WILL GO INTO THE GENERAL FUND DESIGNATED TO VICTIMS OF CRIME UNDER NRS 217.260.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Mortenson was not present for the vote.)

Assembly Bill 237: Revises jurisdiction of certain justices' courts. (BDR 1-1239)

Allison Combs:

Assembly Bill 237 is on page 4 of the work session document ([Exhibit G](#)). This bill revises the jurisdiction of justice courts with regard to issuing temporary or extended orders.

Currently, justice courts have jurisdiction to issue these orders throughout the state except in a county with the population of 100,000 or more. The bill would revise the jurisdiction to remove the reference to the counties, and instead provide that such actions are excluded only in cities or townships with a population of 100,000 or more. In other words, in those with the larger populations of 100,000 or more, the justice courts would not be the ones issuing the orders.

There were some amendments to try to ensure which areas would be affected by the bill. There is township data included here on page 4A of the work session document ([Exhibit G](#)), which indicates that there are 5 townships that are over the 100,000 mark, and those are: 3 in Clark County, Henderson, Las Vegas, and North Las Vegas; and 2 in Washoe County, Reno and Sparks. If townships do not match up with the city populations, they are calculated differently.

The proposal from the sponsor of the bill, Assemblyman Hardy, for clarification, is to delete the word "city," and specify that it's just in the townships that are 100,000 or more. In those townships the authority to issue these orders would then go to the district court or the family court in those areas.

The second proposed amendment was to clarify that if the actions have already commenced in the family court, then the action involving the domestic order would also have to go to the family court, and the justice court wouldn't handle those in those circumstances.

Chairman Anderson:

Would the justice courts and the townships courts, in populated areas of over 100,000, then be precluded from giving these out in their entirety?

[Chairman Anderson, continued.] Judges have been doing it even though the law says they're not supposed to. This will take care of a problem that was identified by the judges. The reason why they brought this to the attention of Assemblyman Hardy is that the township population is a cleaner way for us to proceed, because those are the courts that we're actually talking about, rather than a municipal judge. It looks like a good piece of legislation.

It clarifies further that the family court has jurisdiction here, even though it's more probable that the computer system in Clark County is going to be working efficiently before that of Washoe County.

The Chair will entertain an amend and do pass motion for Assembly Bill 237.

ASSEMBLYMAN MABEY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 237 WITH THE AMENDMENTS AS PROPOSED IN
THE WORK SESSION DOCUMENT AS FOLLOWS:

- LIMIT EXCLUSION TO LARGE TOWNSHIPS
- ADDRESS ACTIONS ALREADY COMMENCED

ASSEMBLYWOMAN ANGLE SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Mortenson was not present for the vote.)

Assembly Bill 274: Makes various changes concerning sex offenders and offenders convicted of crimes against children. (BDR 14-706)

Allison Combs:

Assembly Bill 274 is on page 5 of the work session document ([Exhibit G](#)). This bill makes various changes involving sex offenders, and, in particular, the website for notification of the public.

There are several proposed amendments on pages 13 through 24 of the work session document ([Exhibit G](#)), and I'll run through them. They are from the original people who submitted them at the hearing.

With regard to the revised registration requirements in the bill, the Nevada Sheriffs' and Chiefs' Association suggests deleting all of those throughout the bill, so multiple sections would be impacted and they are listed there.

[Allison Combs, continued.] The second one relates to the disclosure of information on the website with regard to eliminating the general physical description of the victim from the information that we disclose, but that relates to a subsequent amendment.

For the penalty of failing to register, the Nevada Sheriffs' and Chiefs' Association is suggesting a subsequent penalty for failure to register as a sex offender. Failing to register would be a Category C felony with probation prohibited and it would be within a 7-year period. It also clarifies that for crimes against children, it keeps the existing penalty, which is a Category B felony.

The fourth amendment came from the Administrative Office of the Courts as a clarification on when the judges would actually be responsible for providing certain notifications to the Central Records Repository. Currently, the law requires them to do that before imposing sentence, and the documentation indicated that was impractical for them because of timing, so they suggest changing that. There are two sections set out there to make it following the imposition of the sentence.

Finally, the majority of the changes involve the proposed website. The bill proposes to put the website under the responsibility of the Office of the Attorney General. The proposal from the Office of the Attorney General was to keep it within the Department of Public Safety as a community notification website and label it as a community notification website.

Expand the notification currently required to include Tier 2 offenders. That was proposed by the Nevada Sheriffs' and Chiefs' Association listed under 5(b) on page 6 of the work session document ([Exhibit G](#)). It would replace the existing information that's provided to someone under current law with the requirements that are proposed under the bill, and specify that the Repository is prohibited from releasing any other information.

The remaining deletion under 5(c) is the prohibition on the offender accessing the program. Delete Section 6 of the bill.

The remaining changes accommodate the revision under the bill to place it back in the Department of Public Safety, make some related changes, and amend an existing section law that takes care of (d) through (h) on page 6 of the work session document ([Exhibit G](#)).

Following the hearing, Chairman Anderson left the record open for people to submit information. There was a handout provided with the work session document today from Pat Hines ([Exhibit H](#)), who had several recommendations

with regard to A.B. 274. On the 3 pages, there were some suggestions about providing and collecting additional statistical information relating to the use of the money, defining terms, the issue of vigilantism, prosecuting that with some language suggested from the regulations that govern this process, and a suggestion not to include the complete address of the offender on the website, which is proposed under the bill.

[Allison Combs, continued.] There is some information there to clarify what Ms. Hines suggests are some misconceptions. The bill also specified which offenders would automatically be classified as Tier 3, and she suggests deleting that language as well.

Finally, Mr. Chairman, you raised an issue of whether the Attorney General should be required, or should still have the discretion, to prosecute vigilantism under the bill as proposed. There was some information received from the Attorney General's office that there are multiple statutes that authorize this prosecution currently.

Chairman Anderson:

Apparently, it's rarely used. It's a tough issue. If you'd like we can put it off until the April 13 work session document, if you feel that it's going to take up a longer period of time in our discussion.

Assemblyman Carpenter:

Is there any way to get the amendments put in the bill so we can see them? It's complicated to follow.

Chairman Anderson:

Let me ask that we hold this over to April 13 to see what documents can be prepared, so that the Committee has a comfort level with the suggestions being made here in the document. I would like a little bit more clarification on the suggestions made by Ms. Hines in her document ([Exhibit H](#)).

Assembly Bill 537: Revises provisions concerning submittal of certain questions and disputes to State Contractors' Board. (BDR 3-294)

Assemblyman Ocegueda:

I thought we heard testimony on this bill that there was going to be a meeting of the State Contractor's Board tomorrow, Friday, and that maybe the intent was to see if they would do anything.

Chairman Anderson:

I think they're anticipating that we're going to do something. That we're going to make it very clear that the word is "or," not "and."

Assemblyman Ocegueda:

That would be fine but with the amendments that are proposed ([Exhibit G](#)) you would be doing a lot more.

Chairman Anderson:

I wasn't thinking of taking any amendments.

Assemblyman Conklin:

In light of the Speaker's comments on this particular bill, I wonder if it wouldn't be worth it to put a sunset clause in the bill for next session.

Chairman Anderson:

What you're suggesting is that we amend the Speaker's Bill, A.B. 537, to put a sunset on the existence of the Contractor's Board, and determine where the licensing of contractors would go to and how we would determine the licensing of contractors?

Assemblyman Conklin:

The message we'd be sending is either fix this problem or in the next session we are going to take care of it. I wouldn't sunset it before the end of next session.

Chairman Anderson:

We can hold A.B. 537 over, at the suggestion of Mr. Ocegüera, to see what the Board does on Friday.

[Adjourned the meeting at 11:44 a.m.]

RESPECTFULLY SUBMITTED:

Jane Oliver
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 7, 2005

Time of Meeting: 8:29 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Meeting Agenda
<u>A.B. 465</u>	B	Chairman Anderson	Summary of <u>A.B. 465</u>
<u>A.B. 465</u> <u>A.B. 531</u>	C	Gerald Gardner, Chief Deputy Attorney General, Nevada Department of Justice	Prepared testimony in support of <u>A.B. 465</u> and <u>A.B. 531</u>
<u>A.B. 465</u>	D	JoNell Thomas, Private Citizen, Las Vegas, Nevada	Email with concerns about 1,000 foot distance in <u>A.B. 465</u>
<u>A.B. 465</u> <u>A.B. 531</u>	E	Brett Kandt, Executive Director, State of Nevada Advisory Council for Prosecuting Attorneys	Letter asking the Committee's favorable consideration of <u>A.B. 465</u> and <u>A.B. 531</u>
<u>A.B. 519</u>	F	John O'Connor, Private Citizen, Fallon, Nevada	Amendments to <u>A.B. 519</u>
<u>A.B. 118</u> <u>A.B. 221</u> <u>A.B. 237</u> <u>A.B. 274</u> <u>A.B. 290</u> <u>A.B. 383</u> <u>A.B. 537</u>	G	Allison Combs, Committee Policy Analyst	Work Session Document
<u>A.B. 274</u>	H	Pat Hines, Legislative Representative for Criminal Justice	Amendments to <u>A.B. 274</u>