MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
May 12, 2005

The Committee on Judiciary was called to order at 8:21 a.m., on Thursday, May 12, 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
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Ms. Barbara Buckley (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County
Senator Steven Horsford, Clark County Senatorial District No. 4

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel
Allison Combs, Committee Policy Analyst
Jane Oliver, Committee Attaché

OTHERS PRESENT:

David Smith, Management Analyst, Board of Parole Commissioners, Division of Parole and Probation, Department of Public Safety, State of Nevada
Lieutenant Bill Bainter, Nevada Highway Patrol, Department of Public Safety, State of Nevada
Mark Teska, Administrative Services Officer, Division of Parole and Probation, Department of Public Safety, State of Nevada
Lieutenant Stan Olsen, Executive Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada; and Legislative Advocate, representing Nevada Sheriffs' and Chiefs' Association
Jim Wadhams, Legislative Advocate, representing the Nevada Association of Insurance and Financial Advisors
Philip Goldstein, Attorney at Law, Las Vegas, Nevada
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
Jon Sasser, Legislative Advocate, representing the Washoe County Senior Law Project
William Uffelman, President and Chief Executive Officer, Nevada Bankers Association

Chairman Anderson:
[Meeting called to order and roll called.] Let's open the hearing on S.B. 423.

Senate Bill 423: Revises provisions relating to certain meetings and hearings concerning prisoners and persons on parole and probation. (BDR 19-242)

David Smith, Management Analyst, Board of Parole Commissioners, Division of Parole and Probation, Department of Public Safety, State of Nevada:
[Mr. Smith read from prepared testimony, Exhibit B, which is incorporated herein.]

Chairman Anderson:
This is always a troublesome question for me because of the personal nature of it. A person was convicted of murder for hire of one of our family members. The person who hired the executioner to carry out the murder was put in prison and would come up for parole on a regular basis. The family would generate letters about why the parole should not be considered. It was a traumatic time in the family when those letters had to be prepared.

The victims of crime, generally speaking, are not aware that parole hearings come up as a part of law, giving the person who's in prison an opportunity to have his case reviewed to see if there are extenuating circumstances that might give him additional leniency and let him out. The State, in its view, thinks that's a good idea, because it helps manage the prison population.

By changing the Open Meeting Law, are we depriving the individual—who has been found guilty and is in prison for a wrongful deed—of the full knowledge of what's going to be considered, in terms of his actions while he was in prison that might be detrimental to his case, so that he can change his behavior?

One reason for the correctional system, besides providing safety for the public from people who would do them harm and punishment for what they've done, is to change their behavior. If they're not informed about the behavior that is keeping them inside, how are we going to effect a change in behavior?

David Smith:
I have had several conversations with administrators at the Department of Corrections (NDOC), and I'm not certain if they've implemented a formal program that identifies their needs and makes programming suggestions to them. In some institutions, I don't know if it's NDOC-wide. They have regular classification meetings and make suggestions for programming, so they don't engage themselves in negative disciplinary conduct. I don't think changing the law would have an effect on that. With regard to notification or the Open Meeting Law, we're currently operating in this fashion under the advice of the Attorney General's Office. The term in NRS [*Nevada Revised Statutes*] 213 that talks about parole hearings being open to the public states that parole hearings must be open to the public, just like court must be open to the public. There is a problem with the terms "open and public" and "open to the public."

We want to make it very clear that parole hearings aren't quasi-judicial, and the notification of a parole hearing to the inmate by certified mail or hand-delivered notice wouldn't be required. That's a requirement in the Open Meeting Law if you're going to consider somebody's conduct or character.

Chairman Anderson:
It would be nice for the inmate to know that his conduct is being considered, and I'm sure he anticipates that it is. The formal notice is a problem.

David Smith:
There's no formal notice provided now. The Open Meeting Law requires that if a board is going to consider somebody's character, they have to provide certified mail 20 or 21 working days before taking action or hand-deliver it 5 working days before taking action.

Currently, when they become eligible for parole, they will appear on a list. The list is usually provided six weeks before the hearing will take place. The caseworker sits down with the inmate and prepares a report to the Board, so the inmate knows six to eight weeks before the hearing that he's going to have a hearing.

Chairman Anderson:
Is that a guarantee?

David Smith:
No. Sometimes, if an inmate gets moved after they've been scheduled, he or she would not have a hearing.

Chairman Anderson:
If the Department of Corrections decides to move the inmate, that obviously could change when the hearing will take place?

David Smith:
Yes.

Chairman Anderson:
I thought the five-day hand delivery was something the Department of Corrections utilized in trying to meet the Open Meeting Law requirement, so you wouldn't have to move away from the Open Meeting Law requirements.

The victim of the crime is going to be notified, by statute. However, there are other interested parties who fit under the Open Meeting Law who are not notified, specifically because they're not the victim of the crime, but want to be there for emotional support of the victim or for a number of other reasons. I'm concerned about the ramifications on the inmate and the people who have an actual interest in the disposition of the penalty phase of the crime.

David Smith:
This is the way we are conducting business now, based on the advice of the Attorney General. This is a way to make it abundantly clear that this is the way it's meant to be. If the Legislature would like to change that and impose certain notification requirements on the Board, that is certainly your discretion, because parole is created by the Legislature.

Chairman Anderson:
The fear is that the next Attorney General won't say that this is the way you should be doing business, and that's why you want us to put it statutorily in place.

David Smith:
At this point, based on the analysis the Attorney General's Office has done on parole hearings, I don't see that happening, but cases have gone to court, and somebody could rule that they are subject to the full provisions of NRS 241. If that happens, we're not adequately staffed to comply with all of those provisions.

Assemblyman Horne:
I am always concerned when people come before us and say, "We don't mind people knowing; we just don't want to have to tell them." We have the five-day hand delivery, which seems to be a good compromise for the procedures you said were "staggering," if you had to comply with them. Why is that portion staggering? It doesn't make sense to say, "We don't mind if you come to the meeting, but there are no procedures to let you know when it is."

David Smith:
The concern seems to be the notification to the inmate with regard to the hearing. The Board conducts several types of parole hearings. We hold parole violation hearings, which are due process hearings where the attorneys represent the inmates. Parole and Probation coordinates the hearing directly with the attorneys.

Regular parole hearings are conducted at the institution with the inmate present, or via videoconference from our office into an institution for *in absentia*, which means the inmate is not present. We conduct about 2,500 hearings a year *in absentia*. These are inmates housed in minimum-custody locations, so they're not coming to the Board and presenting a case. When the prison prepares the report, they provide certificates and a proposed plan at that time, or they write in.

[David Smith, continued.] I've heard one or two times that an inmate complained they weren't notified of a parole hearing by the institution, but that is rare. They know their eligibility date and when they're going to be seen, because parole hearings are very important to them.

Assemblyman Horne:
We can't look at notification to an inmate in a vacuum, because notification of an inmate could involve family members, et cetera, who may choose to assist that inmate in a successful hearing. If we eliminate that completely, it will make it hard on families who want to participate in the process.

What types of records do inmates generally want to keep confidential in these parole hearings, and which records does the Board think should be confidential and used as consideration for granting parole?

David Smith:
This section came out of discussions with the Department of Corrections after they asked whether or not they could release mental health information to the Board without the inmates' consent. If this information was kept secret in cases that involved mental health, there could be serious problems within the community, if a person went out having a mental health issue and it was not addressed with supervision. The Board typically requires them to participate in an evaluation to determine their needs in the community.

Assemblyman Horne:
Couldn't that be prejudicial to the inmate's release?

David Smith:
It depends on how that information is evaluated. You're dealing with conditional release, and whatever information is available regarding the person's potential conduct while on parole is very important. It could be prejudicial. The Board could deny somebody if they had a specific mental health issue that they felt couldn't be addressed and they would be a danger if they were released. It could work either way.

Assemblyman Mortenson:
Could you differentiate between "open to public" and "public hearing"? You said it could be one way and not the other.

David Smith:
In conversations with the Attorney General's Office, the statutory language in NRS 213 states that parole hearings must be "open to the public." The language in NRS 241 states that public meetings must be "open and public." I

believe that implies public participation in the meeting. Since Parole Board hearings are quasi-judicial, they're not subject to that type of public participation.

Assemblyman Mortenson:
You said the problem with making the meetings open is administrative. Everybody has administrative problems dealing with the public meeting laws, so that doesn't seem to be a very good excuse. I feel strongly that everything government does, if possible, should be open to public view. Can you elaborate a little bit?

David Smith:
I'd like to point out that we're not asking that the meetings be closed. They will continue to be open, and the public can attend. We invite anybody to write in if they have a position for or against a person being released on parole. The law wouldn't change; we would still have to notify every law enforcement agency and give them the list. We post our agendas on the Internet, and we mail them to people who are interested in receiving that notification.

We want to make it clear that if somebody came in tomorrow and said, "Parole Board, you need to conduct your hearings according to the Open Meeting Law," since we hold about 600 hearings a month, we would have to notify the inmates specifically. We don't take public comment at panel hearings of the Parole Board. Typically, family members want the inmate to get out, so we would ask them to put that in writing.

The Parole Board delegates hearings to panels of the Board, yet it takes four members to ratify any order to release or deny somebody. If two members are conducting a hearing and somebody wants to speak, only two members are hearing their input. Victims have the right to speak at a hearing, and they're the only ones who have that right. When they speak, we ask them to put their opinion or request in writing, because other members are going to review the file based on the recommendation. Everything should be in writing. If it was open for people to speak, the full voting board would not get the benefit.

Assemblyman Mortenson:
The public response part of an Open Meeting Law would be inappropriate.

David Smith:
This would not exempt the Parole Board when they conduct their regular meetings regarding administrative actions. Those hearings would be required to comply with the full provisions of the Open Meeting Law.

Assemblyman Carpenter:
Are the victims the only ones who get to testify or give their opinion?

David Smith:
At a parole hearing, inmates are not represented. They don't have an attorney unless it's a parole violation hearing, which is a due process hearing. If the hearing is held with the inmate, the inmate has the right to present his case to the Board. In the statute, the only person that has the right to testify at a parole hearing is the victim of the crime.

Assemblyman Carpenter:
If you conduct the hearing under the provisions of the Open Meeting Law, would you have to let other people speak?

David Smith:
The Open Meeting Law doesn't require that a person be able to testify on each item. I don't know if that will change this session or not. It requires a public comment section at the end, and that would give everybody the opportunity to speak, whether the item was on the agenda or not.

Imagine a courtroom where the public could wait until the court was done with its business, and then have the opportunity to comment to the judge on every case, including matters that weren't on the agenda. It wouldn't be appropriate in a parole hearing unless the full Board was present and it was a matter that the full board was going to take up.

With regard to their input in support of an inmate, that information should be in writing so that the members who will vote on the case would have access to that, not just the panel.

Assemblyman Carpenter:
Do you record these hearings, or have a court reporter, like they do in the Open Meeting Law?

David Smith:
They are not recorded, and we do not have a court reporter.

Assemblyman Carpenter:
There is no record kept?

David Smith:
We keep a worksheet indicating that the inmate was seen. It may not include everything that was discussed. There is no checklist of what they go over.

There are certain things that they typically go over at each parole hearing, like the recommendation of the panel and the final vote.

Assemblyman Carpenter:
If the hearing was conducted under the Open Meeting Law, would you have to record it all?

David Smith:
We would have to comply with all those provisions.

Chairman Anderson:
We posted the agenda for today's meeting—or at least we try—according to a five-day rule. The agenda is also posted on the Internet. We hear only the bills on the agenda. We allow anyone to come in and speak before the Committee. They sign in and tell us whether they will speak for or against a piece of legislation. We encourage dialogue.

There are people who monitor what's happening in Parole and Probation. There's a woman we see regularly who's terribly concerned about the sexual-impact and psych panels. She wants evaluations done on a regular basis. There are public watchdogs that take on issues because of a family member who has been harmed. Will this bill preclude those activities from taking place, because notification will go down?

David Smith:
This won't have a negative impact on the operation currently in place. We have concerned citizens who come to our regular administrative board meetings. They speak on matters and provide their input. This bill will not change that.

Advocates provide input on inmates' parole hearing processes, and that won't change. I don't know how to give you a comfort level. We're not trying to get out of doing anything; we're trying to make it clear that this is the way it is. If the Legislature would like to set the program up differently, we'd be happy to discuss that.

Currently, the Parole Board is exempt from deliberating in public. They don't have to hold a meeting to give their final response, and that's in statute now. We're not trying to hide anything. We want to make sure that the decisions we make going forward are made under clear law and authority, and that we don't run into a problem down the road and are prepared to handle it.

Assemblyman Carpenter:
I'm looking at paragraph 7 on page 4, where it says, "A prisoner may not bring a cause of action against the State for disclosure..." What's the reason for that, and how would it work?

David Smith:
Because parole hearings are open to the public, the public would be able to hear anything that's discussed. Information that we keep confidential—for example, inmate disciplinary infractions—will be discussed at those parole hearings, but if somebody called the Parole Board and said, "Tell us how many disciplinaries this inmate has," we wouldn't provide that information. It's a confidential matter related to an inmate.

If the Board was talking about someone's mental health, which is a private matter to a patient, or a medical issue gets discussed, this is to protect the Board from an inmate who sues because that information was disclosed at a public hearing.

Assemblyman Carpenter:
I thought you said many of these things aren't discussed in the open meeting.

David Smith:
During the hearing, the Board will talk to the inmate about what he's been doing in prison. They may discuss the details of the crime, participation in certain programs, and disciplinary problems. The Board gets a report that indicates whether an inmate is on psychotropic medication. They would typically ask why the person is under that type of treatment. As far as their deliberations go, after they've conducted the hearing, the inmate leaves, and the panel weighs the information to decide whether to grant or deny parole.

Assemblyman Carpenter:
Are those deliberations in secret?

David Smith:
Yes, those are in private.

Assemblyman Carpenter:
It also says, "Disclosure of information, confidential or otherwise." That would mean it wasn't confidential because they couldn't get it either?

David Smith:
The reason that was put in there is because there is information that is confidential that the Board discusses, or may discuss, at a hearing. If the

confidential information is disclosed during the hearing, the inmate could not bring a cause of action against the Board for discussing it in public.

Chairman Anderson:
What happens when information is brought before the Board because of our change here, and the inmate doesn't know about it? The inmate believes the information exchanged was erroneous, but has not had an opportunity to address it or it's still under appeal, and yet it's discussed as part of the process of parole.

David Smith:
The Board looks at the PSI [presentence investigation] report—the progress report provided by the Department of Corrections, which includes program and disciplinary conduct—and observations. We have situations where the inmate disagrees with information provided to the Board by the Department of Corrections. At the time of the hearing, they will provide their view of the report. If a disciplinary hearing is pending, the Board will be made aware of it and will wait until they know the outcome of the disciplinary hearing to make a decision.

We receive numerous letters every week from inmates who have been denied parole, and they've written because they believe there was something that wasn't considered. The Board considers those arguments and sometimes changes their mind.

Chairman Anderson:
Did you take part in the presentation of this bill in the other House?

David Smith:
Yes.

Chairman Anderson:
Was anyone in opposition to the bill at the original hearing?

David Smith:
No.

Assemblyman Carpenter:
Is there a procedure for the family or friends of an inmate to give information or testimony to the Board?

David Smith:
We get calls every day from families asking to provide their input, and we ask them to put it in writing. It's placed in the file, and the Board considers that information. Many family members come to the hearing and provide the letters at that time.

We have budget approval for a position to handle victim and family services, because it has created an increased demand on our operation. We've thought about providing pamphlets. We have a pamphlet for victims, but we don't have a pamphlet on the parole process for inmates and their families. This pamphlet will make it easier for the people affected by parole hearings to understand the hearing process and what they can do to participate.

Assemblyman Carpenter:
Are the families or friends of the inmate only allowed to testify in writing?

David Smith:
The Board may ask them questions, but they won't set a specific time for them to talk.

Chairman Anderson:
Let's close the hearing on S.B. 423 and move to S.B. 443.

Senate Bill 443 (1st Reprint): Makes various changes to provisions relating to Department of Public Safety. (BDR 16-405)

Lieutenant Bill Bainter, Nevada Highway Patrol, Department of Public Safety, State of Nevada:
The Department of Public Safety is a sponsor of S.B. 443, which requests the repeal of NRS 480.200, NRS 480.210, and NRS 480.220. We consider this to be a housecleaning bill. These statutes enact the creation of a Public Safety Telecommunications Operators Committee, whose purpose is to identify training needs and minimum standards for dispatchers statewide.

This bill was passed in the early 1990s, and no committee has ever been established. The Division believes that the agency and dispatch centers can determine the training needs, minimum requirements, and standards for their specific dispatch centers.

Mark Teska, Administrative Services Officer, Division of Parole and Probation, Department of Public Safety, Nevada:
I'm here to testify on the portion of S.B. 443 that proposes to remove a provision in NRS 213.1092 that requires the principal office of the chief of Parole and Probation be in Carson City.

This legislation provides cleanup language. The provision in the existing statute dates back to when Parole and Probation was its own department and the Chief was a cabinet-level position. In 1995, Parole and Probation moved under the Department of Motor Vehicles and Public Safety.

At that time, presumably, this language should have been addressed, but for whatever reason, it was not. This legislation would make Parole and Probation consistent with the other divisions within the Department of Public Safety, where there are no requirements or restrictions regarding the principal office of the chief of those divisions.

Chairman Anderson:
There are offices in the southern part of the state, so you're not going to have to do any additional building or worry about the claw next door reaching over and grabbing this because of money?

Mark Teska:
This doesn't relate to any facilities need. That's the CIP [capital improvement project] consideration for the campus building, but that is a separate issue.

Chairman Anderson:
I want to go back to you, Lieutenant. You'd almost laugh about the radio communication with the Highway Patrol, if it weren't so tragic. The members of this Committee are tired of hearing me talk about railroads, but when the front end of the train moving down the track has better communication with the Highway Patrol than the Highway Patrol officer does with central dispatch, it bothers me.

I thought that was the purpose of this Telecommunications Committee, which the Governor has not utilized. Now, we're asking to do away with it, and we still do not have a radio system that's working. Have we straightened out any of those problems, and do we know why the Committee wasn't in place?

Bill Bainter:
The bill we're requesting to repeal is specifically for telecommunication dispatch operators. Senate Bill 443 has nothing to do with the inoperability or function of

the infrastructure and radio system itself. This has to do with dispatch centers and the training of the employees who work in those facilities.

Chairman Anderson:
The purpose is to make sure there is uniformity among the people of the different dispatch centers, so they understand the limitations of your system and the problems of the multiple agencies you're dealing with—not just the Highway Patrol, but also the local agencies.

Bill Bainter:
This bill is about uniformity in training and a committee that's going to establish and look at the training needed for dispatchers and minimum qualifications. Issues concerning inoperability, multiple agencies, and communications during critical incidences would not be a part of what this committee would be doing. The Department of Information Technology and NDOT [Nevada Department of Transportation] are involved in committees working with inoperability and multi-agency use of the system.

Chairman Anderson:
I use the radio problem to pick on the Highway Patrol about not solving one of their major issues. I thought the whole purpose of this was to try to establish uniformity, so there isn't a turf question about who does their training, and so we have a uniform training system. If we remove this, how are we going to do that?

Mr. Olsen, how do we get all of you to utilize the same training methodology, so we don't have dispatchers who don't know the codes for the Highway Patrol out there on the Strip in Las Vegas?

Lieutenant Stan Olsen, Executive Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department (Metro), Las Vegas, Nevada; and Legislative Advocate, representing Nevada Sheriffs' and Chiefs' Association:
I was involved in this when it was set up a number of years ago. The intent was to set up standardized training. Initially, they wanted to create dispatch center training at Western Nevada Community College. We didn't agree with that.

Since then, a group called NENA [National Emergency Number Association] has operated throughout the state of Nevada. NENA is made up of emergency number operators and dispatchers, and they set many of the standards. They have picked up the ball where it was dropped. They started setting standards, taking into consideration the needs of the different communities. Codes, for example, are not one of the issues discussed, because very few agencies have

matching codes at this point. Metro, for example, has done away with the 10-code. We do a lot of plain speak on the radio. We have a 400-code referring to the specific type of event, but it's for speed on the radio, not secrecy.

[Stan Olsen, continued.] NENA is connected with the national group, and tries to set standards that are closely related to the way things are done. As we get closer and closer to interoperability, it will become more critical for the NENA group to continue doing that.

Chairman Anderson:
The tragedy of 9/11 [September 11, 2001] demonstrated the need for common language and radio parlance between the various member agencies, which didn't seem to take place. It remains a public policy concern. The Governor, in this particular case, chose not to appoint this Committee to save money, although the cost would come out of each member agency's pocket. How are we going to get the police, firefighters, and other emergency providers to speak to each other in a common language, unless we give them a nudge from the Legislature? That's what this bill that we're going to repeal is about. It's the repealed section that I'm concerned about, Mr. Olsen. You are doing it on a voluntary basis, even if the Governor chose not to have you do it in a formalized way. How are these things going to be taken care of?

Stan Olsen:
NENA cooperates and has regular meetings with each other. They are slowly moving toward uniformity. We should start moving toward a common speak. That is one of the reasons southern Nevada law enforcement has done away with half of the code—the 10-code—and are using common speak.

The 400-code—402 is a fire, 403 is a prowler, et cetera—can vary between agencies, but within Clark County, it is very close because of the patch radio system that we have. This system is our version of interoperability, and it's been around for about 30 years.

It is moving in that direction, but it's not moving fast. We support eliminating this if it's not going to do anything. If the committee is going to be formed and start bringing the various law enforcement agencies to the same sheet of music, then it's a good thing. Otherwise, it's just a waste of paper at this point.

May I suggest that the Committee consider a letter to the Nevada Sheriffs' and Chiefs' Association, of which the Nevada Highway Patrol is a member, as well as all the agencies in the state of Nevada, about moving towards a common code language, and let the Nevada Sheriffs' and Chiefs' move that direction through their dispatch operations?

Chairman Anderson:
This part of the repealed section came into existence in what year?

Stan Olsen:
I think it was 1995 when we did this.

Assemblyman Carpenter:
They need to be trained on how to use a cell phone, because that's about the only communication they have now. The communications system in this state, between the law enforcement agencies, is nonexistent.

Chairman Anderson:
It remains a constant concern. The personnel in Parole and Probation, and some of the other agencies, are in dire straits with their communication process.

Stan Olsen:
In Metro, we have an elaborate communications system. The federal government ordered us to turn down the wattage on our portables to about 2 watts, instead of the normal 5 or 6 they were broadcasting. We cannot broadcast out of a tower building in Las Vegas unless we're standing near a window. We were crossing over into a radio and television channel.

Chairman Anderson:
The issue of crossing federal channel lines and causing other problems is like the radio system the Highway Patrol was on for a while, which seemed to be occupied by the railroad simultaneously.

I think we understand the bill. I don't have a problem with the first part of the bill, but I'm having a little trouble with removing that section. Let's close the hearing on S.B. 443.

Senate Bill 432 (1st Reprint): Revises exemption from execution of certain money, benefits, privileges or immunities accruing or growing out of life insurance. (BDR 2-1316)

Jim Wadhams, Legislative Advocate, representing the Nevada Association of Insurance and Financial Advisors:
This Committee has seen this statute before. There are a couple of other bills dealing with other parts of this statute. The most common one is the one dealing with the homestead exemption.

[Jim Wadhams, continued.] The section I'm addressing today in S.B. 432 is on page 2, line 39. As far as I can recall, and I've been watching the Nevada Legislature since 1975, I don't think this subsection has ever been amended.

We're addressing, and support, the first reprint. We're attempting to exempt from execution—not a formula based on the annual premium—the buildup of value in a life insurance policy, subject to the two provisions you see on page 3 that says, "Anything within one year of bankruptcy, or with the intent to defraud a creditor." We offered that amendment in the Senate because the original was a flat exemption, including all the benefits that could be built up inside of an insurance policy.

It's not the intent of this bill to get in the way of creditors' rights. Generally, that occurs within one year of the bankruptcy. We asked that this be amended in the Senate to do that.

Today, very few people buy whole life insurance, where you have cash values and they build up inside of a policy. Most of us end up buying term life insurance, because it's substantially cheaper, and you can buy more at a lower price.

When someone borrows against a whole life insurance policy, it simply becomes, in virtually every circumstance, a deduction from the benefits that are paid, to use the life insurance expression, to the widows and orphans.

We think it's time to address this issue and allow those buildups—as long as it wasn't done with the intent to defraud a creditor, or within one year of bankruptcy—to be exempt from execution.

Assemblyman Horne:
It seems like we're setting up the possibility of sheltering large sums of money. That cap was there for a reason. If we were to amend this and remove it, I could pay $500 a month into a whole life insurance policy, or $6,000 a year. Over a period of a few years, the money that accrues in that life insurance policy would all be protected. Is that correct?

Jim Wadhams:
The phrase that generally applies to the funds you're describing is the "cash value." There are two kinds of life insurance. There is term insurance, which has no cash value. You're renting the protection for a period of time, per year. The only place where a buildup occurs, typically, is in a whole life insurance policy. The $1,000 annual premium has been in the statute since 1975. The annual premium hasn't changed over time to reflect economic change.

[Jim Wadhams, continued.] Your question is, should the built-up value be a public policy issue, and should it be protected? That's the legitimate policy question. Individuals don't usually buy this unless they have loved ones. It's usually a family circumstance in the first place. The policy behind the exemption in the first place was that the built-up value should remain for the protection of that family, despite what creditors may have access to, because it is a relatively nominal sum in the scheme of what the debt is. With the amendment we put on in the Senate, it cannot be done to defraud the creditor, or within one year of bankruptcy, which would be a presumptive preference of creditors.

We're trying to preserve the policy of the responsible act of buying insurance for the benefit of your loved ones. The cash value should not be taken by the creditor. As a practical matter, Mr. Horne, that would eliminate the insurance protection upon death for the widows and orphans.

Assemblyman Horne:
I understand the policy portion of protecting the cash value in the whole life policy. The $1,000 is there to protect the cash value and to keep people from throwing tons of money into these premiums. It should be a legitimate whole life insurance premium for the benefit of your family in the future. However, that gets distorted if we start allowing people to put as much money into their premium as they want to, and then exempt that out.

If the $1,000 cap hasn't changed since you started looking at the statutes in the 1970s, maybe we should increase that number, but to eliminate it altogether would be another issue.

Jim Wadhams:
That is a legitimate alternative to this, but we are suggesting the slightly more expansive policy of protecting this particular asset. I had a chance to look at some of the things we've decided in the past to protect against execution, and some of them seem odd in today's environment, but nonetheless, they are there.

This is an opportunity to encourage that aspect of responsibility for the protection of one's family and hold that as exempt from creditors. If a person begins three years before they think they're going to flush out their school loans, that is with the intent to defraud their creditors. We have provided that exception. We haven't addressed it as precisely as your question is raising, but we have to try to address it so that a person couldn't dump whatever assets they have into a single premium cash-value life insurance policy the day before they file bankruptcy.

[Jim Wadhams, continued.] We stopped the obvious stunt, "I'm going to sell everything I have and put it into a life insurance policy," in the subsection 1 exemption. There's another exemption in subsection 2 that says, over any period of time, if it can be demonstrated that it was done to defraud or deprive a creditor, which becomes an argument that lawyers get paid to have. From a policy standpoint, we have tried to take into account the obvious opportunity for defrauding a creditor, as well as the more subtle opportunity.

Chairman Anderson:
Would term life insurance be a bet against yourself, because you're saying, "I'm paying these premiums for term life insurance, and I don't think I'm going to die this year, but if I want my family to have the benefit at the end of that year, I have to renew"? There's no cash value accrued.

Whole life insurance policies have an assessed value, and a percentage of it goes to your family if you die. In addition to that, it accrues cash value, which becomes an asset to your estate?

Jim Wadhams:
That's close. All life insurance is a bet against yourself. You're betting that you may outlive your ability to earn. If I have kids going to college—actually, I have one starting next year—and I die today in front of this Committee, I have purchased insurance to pay that tuition into the future. That's generally why we buy the insurance.

The difference between term and whole life insurance is that one year of term insurance has to be renewed each year, subject to your qualification. Typically, your insurance agent will recommend how long you need this. You say, "Well, I think I'm going to be free and clear in five years," so they will sell you a five-year term that's guaranteed renewable each year. In that case, what you're betting against is some health condition that may disqualify you for life insurance in years two, three, four, and five. You can buy term insurance for longer segments of time, but the risk is a little higher, and the premium is a little higher. Most of us will buy five years or less, which is fairly common.

Whole life insurance guarantees your insurability for the rest of your life. You don't have to worry about guessing wrong and needing insurance in year six. If you bought whole life, and you're building up cash value, you will pay more in the early years, but a lot less in the later years. If something happens to you, the policy will continue. With a five-year term, if you now have a heart condition, you won't get new insurance. Term insurance has no cash value, and whole insurance does.

Chairman Anderson:
That was the point I was trying to make; one has cash value and the other one doesn't.

Assemblyman Carpenter:
You pay your premiums and build up this cash value, or savings, and this bill protects against executions?

Assemblyman Mabey:
Could you explain the part that's deleted, lines 40 through 45?

Jim Wadhams:
In the original law, it was the amount of cash value that might build up over an indeterminate period of time, based upon an annual premium not exceeding $1,000. If my annual premium was $2,000, and it was a policy that people buy on their kids when they're 18 years old, and now I'm 48 years old and there is cash value, the remaining part of that says you have to prorate the cash value as if my $2,000 premium were a $1,000 premium. Let's assume that after 20 years, the cash value is built up to $20,000. Ten thousand dollars of it would be exempt. If I had a $5,000 annual premium, the cash value would be prorated back to $1,000, and the balance would be exposed to execution. The prorated part would be based upon $1,000.

That's what this language was trying to do. It recognized that the annual premium may be more than $1,000, but they were exempting only the cash value that would build up.

This doesn't make sense, because if I bought a policy when I was 18 years old, the risk factors of people of my birth year when I was 18 years old are a lot different. They were higher. My mortality was expected to be sooner when I bought the insurance than it was 15 years later. The cash values would be different on a $1,000 premium, depending on the year you bought your insurance. It doesn't seem to be fair and equitable.

The better policy is to allow the buildup to occur. It's fair to characterize it as a savings account, but usually, when a person dies, the cash value converts into more insurance for my survivors. Technically, I could get it, but it's not really a liquid asset.

Assemblyman Mabey:
Are there differences between the federal law and the state law?

Jim Wadhams:
I would defer to a federal bankruptcy law expert, but I am told by those who practice in that area that Nevada has opted to adopt its own schedule of exemptions, and the federal law allows that. That's why we have this entire list, and I suspect you've had a homestead exemption bill or two come through. That's because we have exercised the right some years ago to set our own schedules. There's no conflict with the federal law.

Chairman Anderson:
Is our statute out of line with other states that choose to follow a separate code, or are we so unique that we stand by ourselves?

Jim Wadhams:
I apologize for not having those statistics in front of me, but I can obtain them and submit them in writing. There is a range across the Unites States. This is the more common approach. Some states have done multipliers of the numerical annual, and other states have completely exempted them entirely. This falls into the consensus.

Chairman Anderson:
If we were to move with the exemption, we would not have to revisit this in the future unless we chose to set a limit.

Jim Wadhams:
I suspect it would remain fixed in time for at least the next 30 years.

Chairman Anderson:
[Closed the hearing on S.B. 432.]

Philip Goldstein, Attorney at Law, Las Vegas, Nevada:
I'm planning to speak on S.B. 173, but as a bankruptcy practitioner, I might be able to shed some light on the questions raised on this bill.

Chairman Anderson:
Do you have negative information to give, or to raise our level of awareness?

Philip Goldstein:
I'm familiar with the exemptions, as well as the laws. I didn't have a position on it, but I think you'd like to know about the pending bankruptcy bill, which may make your deliberations easier.

Chairman Anderson:
[Opened the hearing on S.B. 432.]

Philip Goldstein:
The new bankruptcy bill [Bankruptcy Abuse Prevention and Consumer Protection Act of 2005] that has been passed by Congress, and signed by the President, has up to a ten-year lookback period for transfers, deposits, and movement of all funds. If you pass Mr. Wadhams' bill, which gives a new definition for protected or exempted assets within an insurance policy, the bankruptcy trustees, the judges, and creditors can undo up to ten years of trying to hide assets.

By lifting the $1,000 cap, you're not going to be giving carte blanche to those people who are trying to defraud creditors. My understanding of the new bankruptcy bill is that, with this new ten-year lookback period, regardless of where the funds are placed, the creditors will still have their day in court and the opportunity to recover funds.

Currently, bankruptcy trustees have a two-year lookback period to undo transfers and deposits. They have the power to undo deposits into an IRA [individual retirement account]. There are enough safeguards at the federal bankruptcy level to deal with people trying to defraud creditors.

Obviously, under state law, we have a four-year fraudulent conveyance statute, which a creditor can use to go back after the funds of someone who is doing something wrong.

I don't see how this bill will protect, so to speak, savings accounts. People who are looking to develop whole life accounts should be able to do that without threat of worrying about what's going to happen. If they're good people, they're not going to be harmed. If they're evildoers, so to speak, then there are tools out there right now that will get them.

Chairman Anderson:
Let's close the hearing again on S.B. 432. We're not going to put a cap on the exemption amount.

Senate Bill 445: Revises various provisions related to State Board of Pardons Commissioners. (BDR 16-659)

David Smith, Management Analyst, Board of Parole Commissioners, Department of Parole and Probation, Nevada:
[Mr. Smith read testimony from Exhibit C, pages 1 and 2, which is incorporated herein.]

[David Smith, continued.] A couple of questions were brought to my attention and are there with the opinion that I passed out to you (Exhibit C). On page 22 of the opinion, it talks about the right to bear arms, because there was concern about giving the right to bear arms back to people once they are pardoned.

The current statute, NRS [*Nevada Revised Statutes*] 202.360, which is cited on this page (Exhibit C), bars a convicted felon's right to bear arms unless he has received a pardon, and the pardon does not restrict his right to bear arms. Anybody who receives a pardon, where the pardon does not say that the right to bear arms is not restored, would have their right to bear arms restored.

Assemblyman Horne:
When you talk about the Second Amendment right to bear arms if they've received a pardon, the Board is going to have the discretion, in certain cases, to restore that right?

David Smith:
Yes. The Pardons Board has the power to restore the right to bear arms only if they've received a pardon. If you have a felony conviction in Nevada, and your right to bear arms is taken by way of conviction, the only way to get your right to bear arms back is to receive a pardon.

Assemblyman Horne:
I'm confused. It sounded like you just said that some are going to receive pardons, but they won't have that right restored unless the pardon specifically states that.

David Smith:
The pardon would specifically state that the right is not restored.

Assemblyman Horne:
Could you give me an example of a situation where someone would be pardoned, but their liberty is not going to be restored?

David Smith:
Earlier this year, the Pardons Board granted pardons to 28 community cases. In three of the cases, they didn't restore the right to bear arms. One case was a drug trafficker who was convicted of drug trafficking in Nevada and had come to the United States from another country. The conviction barred his ability to get permanent resident status. About 15 years had passed, and he applied for a pardon and did not request the right to bear arms back, but it was not something that he needed to get his permanent resident status. In that case, the Pardons Board granted the pardon without the right to bear arms.

Assemblyman Horne:
What was the rationale for that?

David Smith:
He was a drug trafficker, and I believe he had arms on him at the time of the commission of the offense.

Assemblyman Horne:
But, he was pardoned for ...

David Smith:
The trafficking offense.

Assemblyman Horne:
He was pardoned for drug trafficking, and you denied his right to bear arms because he was convicted of a crime that you just pardoned him for.

David Smith:
When a person applies, they can indicate whether or not the right to bear arms is important to them. In this case, he did not indicate that was important. He did not need the right to bear arms in order to get his permanent residency status. Also, we get recommendations from the district attorney and sentencing judge. We get recommendations on community cases from the Chief of Parole and Probation. In this case, everybody was okay with granting the pardon without the right to bear arms.

Assemblyman Horne:
That seems backwards to me. It's a Second Amendment right and you've been pardoned, so it doesn't seem like you have to indicate that you want that right back. It should be inviolate, and if the agency doesn't want to give it back, they should petition to deny it. The person shouldn't have to request to have it back.

David Smith:
I agree. We've had people indicate that they did not require the right to bear arms, or request it, and the opposite occurred and they fully restored them. Each situation is looked at on a case-by-case basis.

In another case, a drug dealer pulled a weapon on an officer. This case occurred in the 1970s, and although a certain period of time had passed, they still felt his case did not warrant restoring that particular right. He had three drug convictions during a six-year period.

Assemblyman Carpenter:
When you testified before on the Parole Board, you said that you had too many notes to send out and that was hard for you to do. Here, you say you have very few, and it's still a hardship. I don't understand why it's a hardship if you only have a few to send.

David Smith:
The Pardons Board is separate from the Parole Board. The Pardons Board consists of the Governor, the Attorney General, and the Supreme Court justices. Their role in the criminal justice system is completely different from the Parole Board.

We receive about 1,500 applications a year from inmates requesting that their sentences be commuted, as well as community case people who have spent a long period of time since release from prison, parole, or probation, and they would like their rights restored. They usually apply around the time they would qualify for a record sealing, but the record sealing doesn't restore their right to bear arms.

There are specific notification requirements when a person is going to go before the Pardons Board. The current statutory language requires that a person applying to the Pardons Board make notice to the district attorney. The district attorney must then provide a written statement of facts to the Pardons Board. In this case, only a very small fraction of those applications ever come to the Pardons Board. If they were required to respond to every application that an inmate sends to them, when they're not going to be seen, it's unnecessarily burdensome on their operation.

With this bill, once people are selected to go before the Board, the executive secretary would make notice to the judge and district attorney. At that time, they would have to provide a written statement of facts.

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:
We're here to testify in support of S.B. 445, and we want to propose an amendment (Exhibit D). I talked with the Executive Director of the Pardons Board yesterday, and she knows that we are suggesting this proposed amendment.

Many of you know that for the past five years, I have promoted legislation for ex-felon rights. This Body has been very supportive of the restitution of those rights. Last session, we made a change to make it automatic, which parallels 37 other states in the United States.

[Assemblywoman Giunchigliani, continued.] Unfortunately, a game was played at the end of session by the Senate and the bill died, but then it was revived and put into another bill that was introduced by this Committee, A.B. 55 of the 72nd Legislative Session. Some of the language was inadvertently changed in some cases, which made it difficult for law enforcement, Parole and Probation, and the ex-felon who was attempting to get their rights back.

The proposed amendment is a mechanism to clarify some things. The official documentation didn't exist, and we didn't know it didn't exist. They are creating that now in the discussion of S.B. 445. If a person is pardoned, they at least get a pardon notice. We didn't realize that when you were released from prison, there was no paperwork given. It put the clerks in the awkward position of saying, "Where's your paperwork?" People didn't have paperwork unless they had recently been paroled, finished probation, or completed their sentence as of the enactment of that bill. That's when we started the paperwork. We wanted to remove some of that inequity.

In addition to that, there was the issue of dishonorable parole or probation versus honorable. This amendment is an attempt to clarify that. In some cases a person should be dishonorably discharged, but there are those who have an economic hardship and were not able to do it, and that was never intended to keep them from getting their voting rights back.

Senator Steven Horsford, Clark County Senatorial District No. 4:
The amendment before you includes the provisions that were proposed in S.B. 360 this session. First, it does not require documentation in order to vote other than the request by a registrar to show a driver's license, as is the case for any eligible voter. Based upon a lot of research, we found out that there is a process that registrars and law enforcement use in order to dump those individuals who are ineligible to vote, including ex-felons.

The provisions that were passed in A.B. 55 of the 72nd Legislative Session said that after July 1, 2003, you have a form that says you have your right to vote back. People who were discharged before July 1, 2003, who didn't have any documentation, were still required to do so when they showed up at the polls. There was an issue with that during the last election cycle.

The proposed amendment (Exhibit D) creates an amnesty program for individuals who were dishonorably discharged because of nonpayment of restitution, or nonpayment of their supervisory fees, to come forward and make their victim whole by making a good effort to pay that restitution, and then apply to have their discharge converted from dishonorable to honorable.

Vice Chairman Horne:
Which section is the amnesty portion of the amendment?

Senator Horsford:
The amnesty portion is in Section 11 of the mockup (Exhibit D). The provision of Section 11 states that until July 1, 2008, individuals who were dishonorably discharged can voluntarily come forward to Parole and Probation and have their individual case file pulled to determine how much they owed, or still owe, and if there were any other factors that contributed to their dishonorable discharge. At that time, they would be told what they need to do to correct those areas. By doing so, they would be able to petition to have that converted to an honorable discharge. According to existing law, they would immediately have their right to vote restored, and after a certain period of time, they would be eligible to run for office and serve on juries.

The bill specifically states that there are three conditions by which a person who was dishonorably discharged would not be eligible to come forward and petition for an honorable discharge. In Section 11, paragraph 2(a), "If the person committed a new crime since their parole or probation"; paragraph 2(b), "If the person was discharged, in part, because their whereabouts were unknown, or they absconded"; and paragraph 2(c), "If the person was involved in the commission of a violent act or a threat to public safety," they would not be eligible.

The intent is to get at the ex-offenders who have come out, are law-abiding citizens, and are doing what we've asked them to do, which is to go back into society and be productive. They can then come forward and be eligible for these provisions.

Vice Chairman Horne:
In provision 2(a) in Section 11 (Exhibit D), would that be any new crime, such as a traffic ticket or shoplifting? Is the intent of the amendment to be so broad?

Senator Horsford:
That is the way we wrote the provisions of the bill. If, with the wisdom of this Committee, we can tighten certain provisions, I'm open to making this as tight a process, based upon the intent, that we can.

Section 8 of the mockup (Exhibit D) changes, in two categories, the period of time that a person can petition to have their records sealed. As this Committee is aware, for Category A or B felonies, it's 15 years, and that is maintained. For Category C and D felonies, it's 12 years, and that is also being maintained in the proposed amendment. For a Category E felony, it is currently 10 years, and

we're proposing to reduce that to 7, in order to make it consistent with the gross misdemeanor provisions, which are also 7 years. Finally, it reduces the misdemeanor from 3 years to 2 years.

[Senator Horsford, continued.] These provisions, as well as the other provisions in the amendment, have been negotiated with the Nevada District Attorneys Association and law enforcement. The proposed provisions are agreeable to those parties. I also submitted some information from the Division of Parole and Probation (Exhibit E), which demonstrates why I think this bill is a step in the right direction.

There is approximately $45 million of outstanding restitution owed to victims since fiscal year 2001. It's about $10 million per year. This is for three categories of offenders. The first category consists of individuals who are in prison and have served their entire sentence, but don't go out on probation. When they are released, after completing their full sentence, they are automatically restored their right to vote—that's a provision in the law—but they are not necessarily required to pay their full restitution.

The next category is honorably discharged individuals who made a good effort while on probation or parole to pay, but by the time their probation or parole was up, they still owed money. Based upon their consistency, they received an honorable discharge.

The final category is dishonorably discharged individuals. They represent the largest segment of individuals who, for whatever reason, did not pay their restitution.

Why aren't people paying their restitution? I've learned that information sharing is a problem, and there are inconsistencies in the counseling and management of the offenders. We're working to improve that. There are several measures that this Body and Legislature have already supported in order to make that happen.

There are people who do not have the means to pay, but they don't understand that they can petition to have the economic hardship clause provided to them, which would allow them to get an honorable discharge and have their rights restored.

Because of the inconsistencies over the past few years, we feel that the provisions in Section 11, which would allow people to voluntarily come forward and make their victims whole by paying their restitution and being accountable

to get their rights back, is a good balance between the interested parties on this issue.

Assemblywoman Giunchigliani:
In Section 11, subsection 5, there is a very key piece to this. We have been asked many times if studies have been done or if anyone is tracking this. This will help us do some form of longitudinal study of who applied and how we petitioned them, who qualified, and how much was paid. When Senator Horsford and I worked with Chief Amy Wright to research this, we didn't really know. The Progressive Leadership Alliance is going to try to help do a longitudinal study as well. We want to know which ex-felons are able to get employment and which ones are able to vote.

Some of this debt, unfortunately, is tied to legislation that we pass, which requires them to pay fines. In reality, they are not capable of doing these things. It isn't just because they came out as ex-offenders, but because we have barriers on the jobs they can get. We have a double whammy there.

Let's figure out, at least through the amnesty process, how to get victims their rights and collect money from those who can pay restitution. Many people have a $5-an-hour job and would like to get the honorable discharge. Hopefully, this works to the benefit of both parties.

Vice Chairman Horne:
Restitution is a key component. They served their debt to society and we've released them, but the process is not finished.

Assemblyman Conklin:
What's missing in subsection 5 on page 14 (Exhibit D) is a real study on the condition these people are in when they get off of parole or probation. The average offender has $15,000 of debt, is most likely making $7 an hour, and has to live in Reno or Las Vegas. What is a good-faith effort for somebody who can barely make enough money to survive? When you ask them to give up that money, you're putting them in the position of having to commit another crime to survive. I'd like to see something in the bill that requires a study of who's being released, how much they owe, the conditions they have been released into, and then ask if it is reasonable to think that they could make restitution.

Sometimes, we make the problem worse by not allowing them an opportunity to be successful. There are some who are not going to be successful, and we recognize that, too.

Assemblywoman Giunchigliani:
Section 11, subsection 5, paragraphs (d) and (e) (Exhibit D) would allow the Division to be able to add additional information. They are just as concerned about the impact because it affects their caseload. We wanted to leave it vague so we didn't wind up with a fiscal note.

Assemblyman Anderson's bill on transitional housing will be a key component for ex-felons. We still give them $21, no clothing, no ID, and we dump them on the street. What do we expect them to do? This is a big issue we need to look at.

Assemblyman Parks has a study that was originally written as Parole and Probation, but it's not just Parole and Probation. We should be looking at the Department of Corrections and its sister agencies, and what the impact is on them. The study could be a component of that in the Elections, Procedures, Ethics, and Constitutional Amendments Committee, which you're the vice chair of, Mr. Conklin.

Assemblyman Carpenter:
In Section 11, it says that they can apply until July 1, 2008. Does that mean this is going to sunset?

Senator Horsford:
It provides for a specific sunset, but if you look at page 14, Section 11, subsection 5, paragraph (d), at lines 19 and 20 (Exhibit D), "Any recommendations and conclusions concerning the desirability of extending the application of the provisions of this section ..." The reason for that is we want to see how many people come forward and take advantage of paying their restitution to be converted. We want to know how many approvals and denials there are to determine whether or not this should be continued. Rather than making it permanent, I thought that was a good first step.

Assemblyman Carpenter:
It also says in Section 11, subsection 5 (Exhibit D) that the Division shall make this report before January 1, 2008. Does that give them enough time to find out what's going on and whether this is working or not? Some of the provisions apply until July 1, 2008, but the report has to be made January 1, 2008. The dates may be messed up.

Senator Horsford:
You caught the technical amendment I failed to catch when I asked for this mockup. We have changed the due date of the report to January 1, 2009.

Assemblyman Carpenter:
So, you have an amendment to the amendment?

Senator Horsford:
I will accept your friendly amendment.

Assemblywoman Ohrenschall:
I want to commend Senator Horsford and Assemblywoman Giunchigliani for the hard work they've done and for opening the discussion up to a meaningful level.

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada:
We have worked with Senator Horsford and Assemblywoman Giunchigliani regarding the restoration of voting rights for ex-felons. During the interim, we assisted ex-offenders in getting their voting rights reinstated. We did outreach, billboards, and talk radio to put the word out that we were there to assist people with this complicated process.

The ex-offender had to have the documentation. We discovered that some of them couldn't get the documentation. We worked with the county clerks and Clark County to put our name on their brochure regarding voting rights for ex-offenders, so people were contacting us to assist them.

We helped over 400 people begin the process. We did not register them to vote; we gave them the voter registration forms. We also gave them form letters they could send to Parole and Probation to get their documentation. Unfortunately, we weren't able to track all 400 of them to see if they followed through. We asked them to contact us so we could find out if the process worked. We got calls from 25 percent of them, and they were pleased that they were able to get their rights reinstated.

During the interim, with the assistance of Senator Horsford and Assemblywoman Giunchigliani, we held town hall meetings with groups in the Clark County community to find out what the obstacles were and what needed to be changed, because we knew the law was not complete.

The recommendations presented to you today are those recommendations. One of our interns prepared the document that I passed out (Exhibit F), which researched what other states do in regard to documentation, whether voting rights were automatically restored or not.

[Jan Gilbert, continued.] We found out that 38 states automatically restore voting rights. Nevada is the only one that discriminates between honorable and dishonorable discharges. Only 8 states require documentation.

I hope that will help you make the decision to support this bill. We think it's a very important change to the law. I am pleased that the Pardons Board saw this error that we made last session and limited rights of people who are pardoned, because in every other state, I believe, pardons mean you get your rights restored, and that is all of them. It's a difficult process. I had people call me during the interim who wanted to get their civil rights restored. Some of them would ask about their right to bear arms, and I would tell them that they had to get a pardon in order to do that.

Civil rights only mean the right to vote, the right to run for office, and the right to serve on a jury, and it's in the law that way. We put it in the statute because there was concern about that. I urge your support of these amendments.

Assemblyman Carpenter:
Has anyone done a study on the people who get their voting rights back to determine how many of them exercise that right again?

Jan Gilbert:
No. We are the only group who got involved in registering ex-felons to vote. The only thing we can do is ask them to contact us; we can't do anything more. The ones who contacted us did vote because they were enthusiastic people. We received letters of appreciation for the work we are doing. I hope we can do more during the next interim period to see if they voted. It requires a lot of legwork, and we're limited in our staff.

Assemblyman Anderson:
We've heard in previous testimony that people who have their voting rights restored, after going through the penal system, feel that it was a step back into society.

Vice Chairman Horne:
I'll close the hearing on S.B. 445. In work session we'll address the issue of the Second Amendment right, the pardon, and having to request that the right be restored.

David Smith:
It's not a requirement that they request the right to bear arms, but if the Pardons Board didn't have the authority to exclude that, giving them a pardon without the right to bear arms is better than denying their application. It's an

alternative to not being able to be pardoned. I don't know if that makes you feel any better on that subject.

Vice Chairman Horne:
I'll have to think about it.

Assemblyman Anderson:
I'm sure Mr. Smith would be happy to put that in writing to Ms. Allison Combs, so that we can look at it in work session.

[Vice Chairman Horne handed the Committee back to Chairman Anderson.]

Chairman Anderson:
Let's move our attention to S.B. 173.

Senate Bill 173 (1st Reprint): Increases amount of homestead exemption and makes various changes relating to property which is exempt from execution by creditors. (BDR 10-616

Philip Goldstein, Attorney at Law, Las Vegas, Nevada:
The purpose of S.B. 173 is to get people back on track. The goal is not to defend against creditors when creditors have rights to assets, but to get people through their financial difficulties and put them back on their feet, so that they can remain productive members of society.

Currently, there are things in the statute that are not exempted that you would have thought by now would be. For example, a child's computer for school and the instrument they may for the band are not exempt (Exhibit G). The first sections of NRS [*Nevada Revised Statutes*] 21.090, paragraphs (a) and (b), are to redefine the household items, the computers, the electronics, and the basic necessities.

The second item we're looking at is NRS 21.090, paragraph (d), where we're looking at someone with a small business that's going through financial difficulties. The tools of their trade are protected, but other things they need are not. A typical example would be the seamstress who runs a business out of her home. Her sewing machine is protected, but her ribbons and material are not protected.

Another example would be an Avon lady who has a couple of suitcases filled with samples, which are not protected. We're looking to expand the definition

of those tools of the trade to allow people to get through the hardships, litigation, lawsuits, and bankruptcies, and resume making an income and taking care of their expenses.

[Philip Goldstein, continued.] I have done creditor work and debtor work here in Las Vegas. I find myself doing a little bit more bankruptcy practice than creditor work.

The third item, NRS 21.090, paragraph (g) (Exhibit G), is to redefine income. We know that 75 percent of a person's paycheck is protected from garnishment or execution. The problem is, we have a lot of people in the state of Nevada that don't receive ordinary income. They could be receiving tips or commissions, or they could be a real estate or mortgage broker who receives money out of escrow every time a sale closes. Those funds are not presently protected under the law. Someone who does not receive an ordinary paycheck on a weekly or biweekly basis has no protection for their income. They may find themselves at risk of not being able to pay the rent, mortgage, or car payment. We're not looking to protect anything greater than what is currently protected, but we want to include those people who are not receiving a salary.

The next item, NRS 21.090, paragraph (q), subsection 6 (Exhibit G), is to include the Roth IRA [individual retirement account] as an exempt asset, along with other IRA and pension accounts. We're following and updating federal rules that say the things meant to be protected for retirement purposes remain protected. We're looking at funds for educational purposes, which help people get back on their feet and keep them as protected members of society.

The next item is the homestead exemption. We've all seen the rapid increase in the value of homes and residences. I'd like to give you an example of a situation where this becomes serious. I had a client, a senior couple in their 60s, who over the years had paid off their mortgage. After being faced with a lot of medical bills—about $80,000 worth of medical bills—they needed to file bankruptcy. Even though they had never had a great source of income and had never saved a lot, they found themselves owning a home that had $200,000 in value.

In bankruptcy, the trustee and judge said those values are higher, so we should sell the home and give them back their money. Even though they had never put any money into that equity and had never put money in to avoid creditors, the increase in value of the home put them at a disadvantage. There are attorneys who have had their clients do bankruptcy and find that their homes were sold. We were fortunate, because after appraisals and comps, the house was valued at $198,000. There was no mortgage, so the equity was protected. We were

running up against a limitation, and that's why we're seeking to increase the exemption to $300,000. For the record, in an article the Board of Realtors identified the average home price in Las Vegas as $354,000. We're still at a fair number.

[Philip Goldstein, continued.] When this bill was first introduced in the Senate, it had the addition of a new exemption, which I refer to as the "wild card" exemption. After it left the Senate Judiciary and was passed by the Senate, it became apparent that, without a formal written amendment, the last section was removed.

I have provided a page (Exhibit H) that explains the purpose of the wild card exemption, which is an innocuous small section. In the United States, 25 or 26 states have this exemption. This is the catch-all exemption. You can think of it as protecting the cash on hand.

If someone is holding some cash because they plan to make a payment on their mortgage or car, that cash is not protected. In bankruptcy, the trustee has the right to seize that money. You may think that the Social Security check and paycheck are exempt in some way or another, but the bankruptcy trustees and judges have determined that once those funds hit the bank account, they convert to cash and are not longer protected.

My biggest concern is when someone is accumulating money to pay for medical or dental bills, or needs to take care of the next mortgage payment. I don't think we should have a system that's going to penalize them for having a hardship. Many of my clients talk about their medical bills, lost income, health issues, divorce, and separation. It is important to put this wild card exemption into the bill, which says that the small amount of cash you have on hand is safe. You can pay your bills, get through your financial difficulties, and get back on track.

I have had clients whose money was taken by creditors or bankruptcy trustees, and they were unable to make their next mortgage payment. Suddenly, we've started a cascade of problems. The creditors are aggressive these days and don't like to work with people. We need to give people a small, safe harbor for the tax refund, the $400 child credit, and the monies they have on hand, so they can take care of next month's obligations.

I see a lot of people living check-to-check these days. I think we need to help them get through their financial problems. If their insurance isn't covering their medical bills, we have to get them back on their feet.

Chairman Anderson:
The wild card exemption is not currently in the bill. You want us to add it back in?

Philip Goldstein:
Yes.

Chairman Anderson:
One of the nuances of the Bankruptcy Reform Act of 2005, which I haven't read, is that Nevada is in a unique situation. Currently, we do not allow the stacking of homestead exemptions. If we were to allow stacking, and this bill moves forward, we would exempt someone who was married up to $600,000 of their assets.

Philip Goldstein:
I disagree with you. We're not changing any language in the homestead, except to state that it will be exempted at a higher level.

Chairman Anderson:
In Nevada, we currently do not allow stacking.

Philip Goldstein:
Correct.

Chairman Anderson:
If we put stacking in with new legislation, we would still continue to allow a single individual who owns a home or a piece of property, $300,000. If we allowed stacking for joint-custody homeowners, they could each exempt $300,000. Is that correct?

Philip Goldstein:
We are not looking to stack homesteads. We are not changing anything in how homesteads are applied.

Chairman Anderson:
What if we did? Not the way it's written, but if we added it?

Philip Goldstein:
Are you asking me if I'd be in favor of it or not?

Chairman Anderson:
No, I'm asking you if that conclusion is correct.

Philip Goldstein:
What the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 does to change Nevada law is state that before you apply for your Nevada exemption, you have to live in the state for at least two years, and you have to own your home for 40 months. If you do not have possession of your home for that length of time, you would have a federal homestead exemption of $125,000. The Nevada exemption simply states, if you have been here long enough, you can take advantage of the Nevada exemption scheme. The stacking issue is unaffected. Presently, you can stack exemptions for everything except the homestead.

Chairman Anderson:
Why do we exclude stacking for a homestead?

Philip Goldstein:
The bankruptcy judges have ruled that the language, as written, allows for one homestead exemption, while the other exemption subsections all refer to "per judgment debtor," which allows the husband and wife to each claim their cars and their assets.

Chairman Anderson:
Was the wild card exemption in the original piece of legislation?

Philip Goldstein:
Yes.

Chairman Anderson:
And then removed?

Philip Goldstein:
Yes. In the original print of S.B. 173, issued on March 9, 2005 for the Senate Judiciary Committee, it was in there as subsection (w) or (x).

Chairman Anderson:
Was it removed by an individual member of the Senate?

Philip Goldstein:
My understanding is it was a verbal removal by one member.

Chairman Anderson:
There's no such thing as a verbal removal. Either the person put an amendment in or they didn't, but it was by a single individual rather than by the Committee?

Philip Goldstein:
Yes.

Chairman Anderson:
Was it a Committee suggestion during work session, and then a Committee amendment removed it?

Philip Goldstein:
My understanding is the only amendment entered on the bill from that work session was to lower the exemption on the homestead from $500,000 to $300,000. There are no other amendments that I could find online, but in dealing with different Legislative staff, they said someone had done it on their own, and that's how it went to the Senate Floor.

Chairman Anderson:
It had to come out of Committee, because it was included in the Committee amendment.

Jon Sasser, Legislative Advocate, representing the Washoe County Senior Law Project:
The Washoe County Senior Law Project sees low-income seniors at the Washoe County Senior Services Center. One of the problems seniors face is trying to protect their life savings when they get into financial trouble later in life. For that reason, we are in support of the increase in the homestead exemption. The change concerning the Roth IRA would be very helpful to our clients.

I support the return of the wild card exemption. The Committee may have gotten an email from Ernie Nielson saying how pleased he was it was in there. He overlooked the fact that it came out at the last minute. I sent a correction to the Committee later. It is an important provision for seniors who would like to have a small savings account.

We have a proposed amendment to S.B. 173. Mr. Nielson proposed it in the Senate, but it was not adopted, and that is to look at the wages in the law that are exempt from garnishment. Mr. Goldstein said 75 percent of your wages are exempt, unless you're a very low-income worker, and then it's 30 times the minimum wage.

As we all know from A.B. 87, the minimum wage is out of date and has not been updated to keep up with the cost of living. Thirty times $5.15 an hour is $154.50 a week, or only $7,800 per year. That is less than half the poverty level for a family of 3, which, at the present time, is $16,090 a year.

Mr. Nielson asked that you consider updating the protection for the lowest income worker to 60 times the minimum wage, or 45 times the minimum wage. Forty-five times the minimum wage would be $231.75 per week, and 60 times the minimum wage would be $309 per week, which is less than the current poverty level for a family of 3.

Chairman Anderson:
I don't have Mr. Nielson's email. If we're going to proceed, it would be helpful if we had it in writing for the Work Session Document.

William Uffelman, President and Chief Executive Officer, Nevada Bankers Association:
This is the third homestead bill we've testified on, and I think $300,000 is appropriate. On page 10 of S.B. 173 at line 38 it says, "$500,000." I believe it should be $300,000, which is the amount in the rest of the bill.

Chairman Anderson:
Could you point that out again?

Bill Uffelman:
The first reprint of the bill, page 10, line 38. At the end, the $200,000 is stricken, which would be the old level, and $500,000 is added in. When this bill started out it was a $500,000 bill, and for some reason, this was overlooked when they were making the other $300,000 changes.

Chairman Anderson:
Ms. Ohrenschall, your bill has a higher number than $300,000.

Assembly Ohrenschall:
That's correct, Mr. Chairman—$400,000. At the moment, my bill is in Senate Judiciary and will be in a work session shortly. They were looking at the issue of people who have not owned the property long enough or who haven't been in the state long enough. They are not anticipating major changes to it. The bill and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 tend to work well, because there is a provision in the new bankruptcy statute—as there had been before—that if a state decides to preempt the area of certain exemptions, such as homestead, then state law takes precedence.

Chairman Anderson:
Mr. Goldstein, I noticed that you presented the handout (Exhibit H) relative to exemptions for household items and broadening the exemption for work-related tools and paychecks. Are all of these included in the amendment you're putting forward about the wild card exemption?

Philip Goldstein:
Yes.

Chairman Anderson:
Is that the supporting document for the amendment (Exhibit H)?

Philip Goldstein:
Yes.

Chairman Anderson:
We will make this part of the record for the day (Exhibit H). I'm going to ask Legal to try to review my questions and concerns about stacking and what the advantages would be for those folks who have not been here for a long period of time, and who have not been living in their home for more than 4 years.

Philip Goldstein:
The requirement is to be a resident for 24 months and a homeowner for 40 months. The federal law will preempt our concerns about someone coming into Nevada and dumping money.

Chairman Anderson:
I'll ask Legal to do that. We'll ask Legal to look at the length of ownership of a home and the length of residence in the state.

Mr. Goldstein, you talked a little bit about personal injury exemptions. Is there something that you wanted to bring up relative to that question?

Philip Goldstein:
The personal injury exemption is another statute that is not functional. The exemption provides for the first $16,000 to be exempt, as long as it's not a pecuniary loss or a pain and suffering loss. People come out of the settlements with their personal injury cases with a letter that says, "We're X insurance company. Here's $10,000, and we admit nothing."

In talking to personal injury attorneys, I found that they have a hard time in distinguishing the components of the settlement. We tried to have a personal injury exemption that provided a 50 percent—from dollar one—exemption. In other words, if you had a $10,000 recovery, $5,000 would be protected, and $5,000 would go to your creditors. If you had a $1 million personal injury recovery, $500,000 would go to your creditors, and the remaining half would go to you. This would happen after all medical bills, legal fees, and expenses have been paid.

[Philip Goldstein, continued.] I initially proposed a personal injury exemption; I don't know whether it's too late to add that on to this.

Chairman Anderson:
This would be the time. We'll make sure that proposal is added. Send a copy to Ms. Combs so that we can put it into our Work Session Document.

Assemblyman Mortenson:
Perhaps the Committee would consider moving the homestead exemption to $400,000 during the work session, since Ms. Ohrenschall bill was $400,000, and this bill was originally $500,000, reduced to $300,000.

Chairman Anderson:
That will be part of the discussion. Let's close the hearing on S.B. 173 and put it to a work session next week.

[Adjourned the meeting at 10:58 a.m.]

RESPECTFULLY SUBMITTED:

_____
Jane Oliver
Committee Attaché

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 12, 2005 Time of Meeting: 8:21 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Meeting Agenda
S.B. 423	B	David Smith, Management Analyst, Board of Parole Commissioners, Department of Parole and Probation, Nevada	Letter to Judiciary Committee members introducing S.B. 423
S.B. 445	C	David Smith, Management Analyst, Board of Parole Commissioners, Department of Parole and Probation, Nevada	Letter to Judiciary Committee members from David Smith and an Opinion from the Attorney General
S.B. 445	D	Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County	Proposed amendment to S.B. 445
S.B. 445	E	Senator Steven Horsford, Clark County Senatorial District No. 4	Chart: Amount of Outstanding Restitution from Discharged Offenders
S.B. 445	F	Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada	Chart: Ex-Felon Voting Rights By State
S.B. 173	G	Philip Goldstein, Attorney at Law, Las Vegas, Nevada	Proposed changes to existing state exemption statutes
S.B. 173	H	Philip Goldstein, Attorney at Law, Las Vegas, Nevada	Proposed amendment to S.B. 173