MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
May 18, 2005

The Committee on Judiciary was called to order at 8:12 a.m., on Wednesday, May 18, 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 Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel

Allison Combs, Committee Policy Analyst
Judy Maddock, Committee Manager

OTHERS PRESENT:

George Togliatti, Director, Department of Public Safety, State of Nevada
Amy Wright, Chief, Division of Parole and Probation, Department of Public Safety, State of Nevada
Major Bob Wideman, Chief of Records and Technology, Central Repository for Nevada Records of Criminal History, Department of Public Safety, State of Nevada
Donna Coleman, President, Children's Advocacy Alliance, Las Vegas, Nevada
Lieutenant Stan Olsen, Executive Director, Office of Intergovernmental Services, Las Vegas Police Department, Las Vegas, Nevada; and Legislative Advocate, representing Nevada Sheriffs' and Chiefs' Association
Sergeant Michelle Youngs, Public Information Officer, Washoe County Sheriff's Office, Reno, Nevada; and Legislative Advocate, representing the Nevada Sheriffs' and Chiefs' Association
Detective Sergeant Dave Della, Northern Nevada Repeat Offender Program, Reno Police Department, Reno, Nevada
Don Dinardi, Private Citizen, Las Vegas, Nevada
Terri Miller, Board President, Stop Educator Sexual Abuse Misconduct and Exploitation, Inc.
Pat Hines, Private Citizen, Yerington, Nevada
Fritz Schlottman, Administrator, Offender Management Division, Department of Corrections, State of Nevada
Ben Graham, Legislative Advocate, representing the Nevada District Attorneys Association
Kristin Erickson, Legislative Advocate, representing the Nevada District Attorneys Association
Jim Nadeau, Government Affairs Director, Nevada Association of Realtors, Reno, Nevada
Buffy Dreiling, Legal Counsel, Nevada Association of Realtors, Reno, Nevada
John Fowler, Member, Executive Committee, Business Law Section, State Bar of Nevada
Richard Peel, Legislative Advocate, representing the Mechanical Contractors Association of Nevada, National Electrical Contractors Association of Southern Nevada, and the Sheet Metal Air Conditioning Contractors' National Association

Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter
Renny Ashleman, Legislative Advocate, representing the Southern Nevada Home Builders Association

Chairman Anderson:
[Meeting called to order and roll called.] We have one item on the agenda, S.B. 341. The chief sponsor of the legislation is Senator Titus.

Senate Bill 341 (2nd Reprint): Makes various changes concerning sex offenders and offenders convicted of crimes against children. (BDR 14-678)

George Togliatti, Director, Nevada Department of Public Safety, State of Nevada:
Less than a year ago I met with the Governor and his staff, at his request, to look into the situation within the state of Nevada regarding sex offenders. Having done so, we decided to get together with working groups and come up with proposals for legislation.

We met with advocacy groups, as well as with Parole and Probation (P&P), local law enforcement, and with our Criminal History Repository. We then presented our information to Senators Titus, Raggio, Nolan, Wiener, and Mathews; Assemblywoman Gansert; and Assemblyman Parks. The result is in front of you this morning.

From a law enforcement point of view, I think there's a misconception by most people in the state of Nevada that we have knowledge of where all sex offenders are. A few articles in the paper clearly give that impression. In fact, we have people who have committed violations within the state of Nevada who are presently being supervised by Parole and Probation. We have others who committed their crimes in other states and have transferred to this state through an interstate compact, or agreement, because they have family and jobs here. Officially, they're within the state. We have others who come into Nevada and we have no way of knowing they're here.

Again, that's the misconception, where they say, "Gee, what's law enforcement doing about these folks? You don't even know where they are." Look at our sex offender website—particularly the ZIP code 89101, which is downtown Las Vegas—and look at the number of people who originally

registered as a sex offender. You realize that they have not followed up, and there's a little red warning. That says that we don't know where they are.

[George Togliatti, continued.] Within this bill, there are provisions that assist us within Public Safety, as well as state and local law enforcement, particularly the part that refers to a one-year driver's license, with the cooperation of the Department of Motor Vehicles, and also the registration involving the gaming license. We have four provisions that directly affect Parole and Probation. The first is to allow us to do searches on probationers—we have provisions for parolees, but not probationers—and clean up language on lifetime supervision for interstate compacts. We would also ensure that we don't have diversions in crimes involving children, which would be the third piece.

Within lifetime supervision, presently we have ratios that are mandated, where we will have Parole and Probation officers at a ratio of 45 to 1. This continues year to year as we get more offenders on record, which has a great impact on our other Parole and Probation officers, whose caseloads could go in excess of 100. We're also dealing with people who are involved, in some cases, in violent crime. You can see the disparity in the caseload between the people on lifetime supervision and not. We have a provision that says to look at these offenders after some period of time, 10 to 15 years. Health care professionals make that determination, through the recommendation of P&P, whether these people should continue on lifetime supervision.

That's our main concern. There are other areas which I think other people will be available to testify on, such as when we talk about the additions or corrections to the tiers. There is also our involvement with the Central Repository for Nevada Records of Criminal History and the information that is contained on our website. Presently, you can search by name and by ZIP code. This legislation adds more information, as far as a specific residential address and a block address of an employer. It also continues to insist on a photograph. We're hoping that with the new driver's license, we'll be able to maintain more accurate information on this website, so it can be used by people within our community.

There's another provision to allow not-for-profit groups, such as Little League and soccer groups, to obtain information more readily and inexpensively for their background investigations on people who are involved with our children.

Chairman Anderson:
Mr. Togliatti, this is a topic that I'm sensitive to, not merely because of the sex offenders, but more because the Central Repository is one of the key elements—if not the key element—in this regard. Many of the responsibilities

that I'm concerned about seem to flow through the Central Repository, and while this one seems to be catching the attention of the public, the Central Repository has multiple responsibilities. I don't want it to become focused on this single particular issue and divert the limited resources it has to solve a single problem.

[Chairman Anderson, continued.] There are multiple problems of people on parole and on probation. There are the needs of the court and the needs of police officers in the field to protect the public from bad guys that are out there on the streets every day. The sex offenders are only one small segment of the overall bad guys who are out there. I'm always concerned about the Repository in this regard. Maybe Ms. [Amy] Wright will be more specific to help with this, but when the person moves to lifetime supervision, we know for that person, lifetime means lifetime.

Some people who end up coming out through the system, particularly those people coming in from other states, may be zeroing out their time. We are informed that they are sex offenders in our state, and then they disappear into the ninth-largest state in the United States in terms of geographical area. They can go to any of several small communities, and no one is ever going to see them.

Amy Wright, Chief, Division of Parole and Probation, Department of Public Safety, State of Nevada:

Mr. Chairman, Nevada is one of the states that has a provision for lifetime supervision for sex offenders. That law was enacted in 1995. Other states do not have that provision. Once offenders complete their term of probation, parole, or incarceration and are under no further jurisdiction from any appointing authority, they are allowed, like any other citizen, to relocate. Their responsibility will be, because all states have registration requirements, just to comply with the registration requirements in the state of Nevada.

If they are not under any jurisdiction within their state of residence, or if they transfer or move to another state, we do not have the authority to supervise them in Nevada. Again, they're only required to comply with the registration laws of the State of Nevada. There is no oversight for that unless they do register. The State of Nevada would not have any knowledge of that sex offender moving into this state, because they are not under the supervision of an appointing authority in the state that they're moving from. The Nevada Division of Parole and Probation has not been asked to supervise them, because there is no legal authority to do so.

Chairman Anderson:
Is our case management load level enough to handle the responsibility of the job? Why are we attracting so many sex offenders to move into our state? Is it because of the ratio of officers to people who have to be supervised?

Amy Wright:
Because they're not under supervision in another state or under the court supervision of Parole and Probation. Our ratios would not have anything to do about it. Since they are not under supervision in the other state, they are not obligated to be under supervision in Nevada. There is no legal authority for the Division of Parole and Probation to supervise them. Our caseload sizes have nothing to do with it. We are mandated by our staffing ratios, and our sex offender caseloads are 45 to 1.

Those we supervise have been sentenced in the state of Nevada on an offense that qualifies as a sex offense. We also supervise interstate compact probationers and parolees from other states who are required to be under the supervision of Parole and Probation authorities, and that state has requested it of the State of Nevada. We are then bound to supervise them through the interstate compact. However, if offenders have no obligation to probation or parole and have finished their incarcerations, and if their state has no legal authority to supervise them, they have completed their sentences and are free to move.

Others here can probably speak more to what other states do and how we may be able to capture them. A portion of this bill does require that anyone moving into this state who gets an ID card or driver's license would then be run. We would notice that he was a sex offender, and we would be able to register him and keep track of him that way. However, if they don't have any legal authority, then we cannot supervise them.

Assemblyman Carpenter:
I was wondering about this situation where they have to submit to a search and seizure in their home at any time without a warrant. Did you say there's another place in the statutes where it says that can be done?

Amy Wright:
We currently have provisions for all probationers and parolees to have a special condition of a search clause. In the sex offender mandatory special conditions on probationers, that search clause is already there. This is cleanup language that was inadvertently left out of the mandatory special conditions under parolees. The Division of Parole and Probation does have the ability to legally conduct searches, without warrant, on those we supervise when we believe

there is a violation of their probation or parole. That has been upheld by the courts.

Chairman Anderson:
We're going to come up with a different treatment in this bill regarding Tier 2 offenders. They're going to be reporting at a different level than they have been in the past. Did that create new, additional burdens for the Central Repository?

Major Bob Wideman, Chief of Records and Technology, Central Repository for Nevada Records of Criminal History, Department of Public Safety, State of Nevada:
The provisions of this bill as they relate to the Criminal History Records Repository are generally automation-intensive, rather than staff-intensive. The primary provisions related to Tier 2, in this particular case, clean up the issue of which offenders will appear on the public website. That's strictly an automation process, and we're prepared to go forward with that. We believe the timing of this bill, making those provisions effective in 2006, will give us ample time to get the contracts done so that this process happens in an automated way. It really doesn't change the staff process of assigning the tier assessments.

Chairman Anderson:
Section 12 of the bill talks about where the Central Repository cannot charge a fee to nonprofit organizations that are exempt from the bill. It authorizes the Director of the Department of Public Safety to request money from the contingency fund to cover the cost. That's a change. In the past, charitable organizations could request this information but were not required to get it. As I understand, the way that it was operating, we were trying to encourage these groups to make sure they were doing background checks on the people they were employing. How will this law change the way we're currently operating and to what extent?

George Togliatti:
In the past there was a fund that Senator Nolan had established. I just found out that it's empty. I received a number of phone calls, particularly from Little League and youth soccer, about getting some relief. It gets a little pricey for each one of their coaches or adults that have to get a background check.

Our thought was to see what we could do to keep the costs down, at least from the State's perspective. We had originally requested and estimated approximately $75,000. I believe it's now down to $25,000. Still, they would have to incur the cost for the federal government. The FBI [Federal Bureau of Investigation] would not waive their fees, but we felt it was important to give

the community a break on the cost of the background investigations. It will not affect the quality and the efficiency of our background operations.

Chairman Anderson:
The reason I'm concerned is that when we enacted those pieces of legislation several sessions ago, one of the questions was that of cost. We were assured that there was going to be sufficient money from voluntary groups concerned about this issue. With that assurance, we moved forward with the legislation. I have an ongoing concern that the folks in the Central Repository have a tendency to salute and say "yes, sir," and then go into the topic without the financial resources to carry out the full extent of the program. The need is clearly there, and I don't think that any of us disagree with that. However, we were assured that there were going to be dollars there. All of a sudden, it's going to come back as a bullet to the contingency fund of the State.

George Togliatti:
When we first began this initiative, I wasn't even aware that we had this fund and that it was dependent on charitable contributions. When it was initiated, the contributions went in the fund, but there was never an ongoing fundraising effort, so the money dried up rather quickly. I have asked Major Wideman to take a realistic look at how much we believe this will cost. I don't know how many requests will be made for background investigations, but I would think that once the word gets out, we would encourage people within the communities to use this service.

Bob Wideman:
At the beginning of this fiscal year, the amount of donated money that was in that fund was less than $2,000. Within the last four weeks, that money has been depleted. Two thousand dollars doesn't buy very many background checks at the rate of $18 that we have to submit to the FBI for each particular check. We don't know whether or not we have so few requests because there's no money, because there's no faith that there's any money, or because there's no interest. Nonetheless, we thought we would try to find a way to make the checks more readily available and see how the demand for that goes.

Last week, at our budget closing session with the Joint Subcommittee, $25,000 of General Fund money was approved to be deposited in that account, with the authority to carry the balance forward to the next fiscal year if it's not used and with the authority to return for more money from the contingency fund if the program is successful. We really don't have any idea at this point how many requests there will be.

Chairman Anderson:
It would appear, in Section 12, that there's a prohibition against charging anything to groups that may be requesting these background checks. Though I absolutely believe it's necessary to protect children and the public from sex offenders, which is the purpose of this bill, it's not just children that we're concerned about with the legislation. However, Section 12 seems to be focused on that particular age group. We're not getting the opportunity to ask for $1, $2, or even $5 a person to cut back in the actual cost that they could pass on to volunteers. We want to get people to volunteer. Why did you not come up with a reasonable standard for their participation, at least a token?

George Togliatti:
In looking at the fund established with contributions, we knew it wasn't working. As a state, we felt that we could offer this service to our communities. We had the FBI charging $18; they could pick up the $18, or the State could pick up the $18. Our thought was that we would try to give some relief, which would encourage those folks. That was the intent of the original law. We just ran out of money in the contribution fund.

Assemblyman Mabey:
In Section 3 of the bill, you talk about how, when they're released, they have to be examined by a professional qualified to conduct a psychosexual evaluation. My question is, what do we do now? Are there professionals in this state who do this?

Amy Wright:
Currently, the offender who is placed on lifetime supervision—and he has entered into his lifetime supervision phase of supervision—has this provision in the law to be able to petition the court to be removed from lifetime supervision. As the law currently stands, all he has to do is petition the court. There is no provision that he has been medically examined or examined by a person who can conduct psychosexual evaluations to determine if he is a threat. The individual can get an attorney, petition the court, and say, "I've been on for so long, and I want to be removed."

This provision is a public safety issue, and it increases the comfort level of the court or Parole Board and the Division. I would hope, for the community, that this person has been certified—by a person trained in psychosexual behavior—that he is not a threat. Yes, there are therapists and psychologists out there in the community that conduct psychosexual evaluations. All sex offenders are required by law, at the time of sentencing, to have a psychosexual evaluation completed.

Assemblyman Carpenter:
I see that a lot of the penalties have been increased, and some have been decreased. Is there any pattern to what you've done here? What was wrong with the ones that were already there?

George Togliatti:
This work before you was an effort from advocate groups, Senator Titus, Senator Raggio, and others. We felt, when we initiated this, that Nevada was not doing enough. We looked at where we rank among states and how we respond.

This became another issue. What's Nevada doing about sex offenders, and what are we going to do to make it more difficult on offenders and get a message out that, as these people come to Nevada, this is not going to be a walk in the park? That's part of it. Part of it was to review all this and toughen it up.

Chairman Anderson:
Can someone take us through Section 25 of the bill, where you determine how this increases the statutes relative to Tier 3 offenders?

George Togliatti:
A lot of that work was based on input from advocate groups. Presently, the tier system is an evaluation process under Attorney General guidelines, and it has been set by health care professionals. We have Tiers 0 through 3, and 2 and 3 are on our website. The intent of all the groups involved in the decision making was to make it more stringent on the offender.

Chairman Anderson:
Most of them deal with at least one sexual event that is violent in nature. I'm concerned how an early event that was non-violent, and a subsequent non-violent event, and then a third, which may be violent over a long period of time, may end up putting somebody into Tier 3. It's a violent event and clearly deserves to be treated seriously, but whether they need to be in Tier 3 is another question. I'm not sure that's in the best interest of the state.

George Togliatti:
When we were reviewing this, there were two major concerns with sex offenders: one, any act of violence; and two, any repeated acts, whether they be violent or not. It has to be some sort of combination. The degree of violence involved in the crime, the age of the victim, and so on, is a formula that we could continue to debate. When we went forward with this, it was to send a

message to sex offenders. Our concern would be any act of violence and any repeat offense.

Assemblyman Horne:
I want a point of clarification. In Section 25, subsection 3(f)—"Convicted of one sexually violent offense and one nonsexually violent offense"—at the end, "a nonsexually violent offense or associated offense." Later in part 5, subsection 5, it defines "associated offense." In that list, it has any offense related to burglary or invasion of a home. I want to make sure we're talking about burglary in connection with a sexual offense, not just any burglary. Burglary in our state is very broadly defined everywhere.

Bob Wideman:
Burglary is a crime that includes the definition of entering a structure with the intent to commit any felony. I'm not sure that I could tell you the intent. That's not a circumstance that we in the Department of Public Safety are advocating or opposing. In our role as the Central Repository, we see it as our job to administer public policy as set forth through the Attorney General's guidelines and the statutes. We're not advocating necessarily how stringently or leniently any of these sex offenders should be treated.

Assemblyman Horne:
I'm going to have Legal check. I think it's any structure with the intent to commit a crime, and I don't think it has to be a felony for a burglary now. If a person entered K-Mart with the intent to shoplift, that's a burglary. We're going to stack that onto a sexual offense; one doesn't have to do with the other.

Chairman Anderson:
The Senator is here. I know she wants to get on the record and answer some of the questions. Mr. Carpenter brought forth the issue about how we came about increasing [sentences]. For example, in Section 28, where we before had a definite term of 25 years—minimum of 10—now we've gone to a life sentence without the possibility of parole. Again, in Section 29, we've changed all those. If I'm to understand, overall, that gives you the opportunity to follow them. That's the reason we're doing that—not necessarily to hold them, but to put them under your supervision, Ms. Wright?

Amy Wright:
Those penalties indicate that they would be on a life parole, and they would be under our supervision for that term. The Division is neutral on these penalties.

Assemblyman Mabey:
A related question: I know Florida changed their law, and they're applying GPS [global positioning system] ankle bracelets. Could I have a comment from you?

George Togliatti:
It can be very effective. It can be very expensive, and it can be manpower-intensive. It depends on how much you want to invest. It's one great way of doing it, but you pay.

Senator Dina Titus, Clark County Senatorial District No. 7:
Thank you very much for hearing this. I've left it to the experts, and I apologize for being late.

I'd like to give you a few words of general advocacy for the bill and tell you how it came about, in answer to some of your questions. As you recall, the original sex offender registration, also known as Megan's Law, was named for 7-year-old Megan Kanka of New Jersey, who was raped and killed in 1994 by a known child molester who moved into her neighborhood and lived across the street, without her family's knowledge. Following this horrible event, states around the country enacted sexual offender registration laws, beginning in California. Nevada was one of the states that followed suit. These laws allowed offenders to be tracked after prison, because they often offend again and their crimes are so horrendous.

Over the years, however, it's become clear that some state registration laws were tougher than others, and some states had more resources and inclination than others to enforce laws that were put on the books. A six-month investigation conducted last year by the *Reno Gazette-Journal* turned up some shocking facts. Apparently, sex offenders are flocking to Nevada from neighboring states because it's easy to blend in here. They know our authorities lack resources to track them down. They know our law is weaker than others, and because of our transient population, they can go for a long period of time undetected. The statistics are frightening. Thirty-nine percent of sex offenders in the state have failed to register, and if you rank us against other states in the country, we are the fifth-worst in the nation when it comes to sex offenders who fail to obey the law.

I don't believe this situation should be tolerated. We can't become a haven for sex offenders. Every time you hear some story on TV about some weird person, terrorist, or bomber, they always seem to have a connection to Nevada. That's not a good thing for our state or for our citizens. Sex offenses cause a great deal of personal suffering and community outrage, and they can also cost the

State a lot of money. That's why I thought we needed to tighten up the law, and that's what's before you today.

[Senator Titus, continued.] Some of the general reforms in the bill include having addresses posted—as opposed to ZIP codes, which is what used to be; a ZIP code is a very large area—putting the tiers in place, so you can see what kind of sex offense occurred or how serious it was; and requiring sex offenders to consent to warrantless searches as a condition for parole and probation. Yes, Florida did put in place a law for ankle bracelets, and I think we should do that, but it is expensive. On the other hand, if we can afford to track Martha Stewart, why shouldn't we track sex offenders? These people are real threats to our children and our communities.

We had input from child advocate groups. We had input from the State agencies that enforce the registration, as well as from law enforcement—there are some here today—who looked at Nevada's registration and penalty laws. They tried to bring us up to par with our neighboring states, so we can stop being a haven for perverts.

Donna Coleman, President, Children's Advocacy Alliance, Las Vegas, Nevada:
I'm here to ask you to vote for S.B. 341 and to make two very important amendments to the bill (Exhibit B). I'm here to tell you why.

When a sex offender is released from prison, they are required to register as a sex offender annually to be in compliance with the law. However, Nevada has a problem with sex offenders complying with this registration, as you've heard. Our non-compliant rate is a staggering 39 percent. To put this into perspective, Arizona's is 5 percent. What is Arizona doing that we are not doing? First of all, they are requiring sex offenders to be compliant before they receive the privilege of a driver's license. That driver's license must be renewed annually.

Senate Bill 341 requires all sex offenders to be in total compliance with the law in order to have a driver's license. That license will only be good for one year, just as Arizona is doing with very much success. Secondly, S.B. 341 also makes failure to register a Class C felony, raised from a Class D felony. What that actually means is we're going from 1 to 4 years in prison and a $5,000 fine, to 1 to 5 years in prison with a $10,000 fine. These felons who do not comply are dangerous people. They clearly have no regard for the law, and we support this tougher felony classification.

Third, S.B. 341 includes addresses of offenders. This is very important; let me give you an example. In Sparks, there is a Tier 3 offender who is registered and on the Internet, living somewhere in the ZIP code of 89431. This offender raped

a 7-year-old boy in a restroom in a casino in 1979, while the boy's parents were eating in a restaurant next to the restrooms. He was convicted again in 1983, which means he did less than 4 years in prison. He was convicted again in 1986, and again in 2000. He is a parent's worst nightmare. We do not know where he lives.

[Donna Coleman, continued.] Senate Bill 341 will add the addresses and tighten the sentencing laws, so this type of offender will not get out of prison in 2 to 4 years for such a heinous act. I'm asking you to amend S.B. 341 in two ways. First, the current law says that any offender who does not re-offend within 10 years of being released from prison may be removed from the Internet. S.B. 341 should add that the offender must also be in compliance for the entire 10 years. Should they fail to register, they lose the privilege of being taken off the Internet. Not registering is a felony, and we should not be rewarding these individuals with the removal of their picture from the website because they have eluded compliance.

There is a carrot and a stick here. Any Tier 2 and Tier 3 offender has a chance to be taken off the Internet by obeying the entire law. The second amendment is to differentiate between Tier 2 and Tier 3 offenders on the Internet, and here is why. The Nevada Sex Offender Registry has four possible tier levels: 0, 1, 2, and 3. Sex offenders are classified when released from prison through a point system developed by the Criminal Repository. Multiple crimes and crimes of violence usually result in Tier 2 or Tier 3 classifications. The public wants to know the difference, considering that Tier 3 is of a more violent nature.

What we want is a balanced sex offender law that is tough enough to help control the sex offender population, but not lax enough to turn Nevada into a haven for these offenders. Please remember that the U.S. Supreme Court ruled in March of 2003 that knowing where sex offenders live is a public safety issue. You should also understand that having a sex offender placed on a public Internet is part of the punishment, not additional punishment.

Chairman Anderson:
It seems to me that you appeared on this bill two years ago, relative to the Criminal History Repository and its ability to stand financially to meet the needs of the Central History Repository. We all hoped that was going to be a true statement, yet we just heard from Mr. Togliatti and the current head of the Central History Repository that there was not the kind of money there for this need. Are we backing away from the obligation of monies from outside sources?

Donna Coleman:
The money that we gave the Criminal Repository was to set up the website. We paid for about 80 percent, and there was a federal grant that paid the balance. I was told that the federal grant money would continue help out the Repository. I would have to ask someone at the Repository if that federal grant is still a viable option.

Chairman Anderson:
Thank you, Ms. Coleman, and we hope that your advocacy for this issue and your other meetings today go well. We appreciate it.

Assemblywoman Buckley:
I wanted to comment that I support the community notification system and that portion of the bill. On the example of the parent's worst nightmare, which I agree on, we passed a measure last session to try to end that. It was the bill that we worked on in conference; I think it was Assemblyman McCleary's bill. What's better than notification is to never have them leave prison in the first place. That's what we tried to do with that measure last session, and we need to work on those who are already getting out under the laws before we amended them. We did do that work, and it came from this Committee. I think we had tried it three times previously, only to have it die in Ways and Means. I was very pleased that we were able to take these steps last session.

Chairman Anderson:
Ms. Coleman, you mentioned the fact that you had some amendments? We have not received any amendments from you. If you have some amendments, you need to get them to us, because we have two days to act on this bill. Because of its fiscal nature, it may get to Ways and Means.

Donna Coleman:
Senator Titus' office has my testimony. They were supposed to send that to you this morning. [Chairman Anderson indicated that she did not.] On the bottom, there are the two amendments.

Chairman Anderson:
It's not here.

Donna Coleman:
I'll follow up on that.

Lieutenant Stan Olsen, Executive Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada; and Legislative Advocate, representing the Nevada Sheriffs' and Chiefs' Association:
I'm here to offer support for the bill. We believe that these predators are among the worst felons that prey on our community, and we stand in support of the bill.

Chairman Anderson:
We have some amendments submitted from Ms. Youngs (Exhibit C) from the Washoe County Sheriff's Office.

Sergeant Michelle Youngs, Public Information Officer, Washoe County Sheriff's Office, Reno, Nevada; and Legislative Advocate, representing the Nevada Sheriffs' and Chiefs' Association:
We do have an amendment regarding this bill. We are very much in support of this legislation, and we would like to thank Senator Titus and those who have brought the bill forward, as well as the Department of Public Safety, for their work on it.

I can go through the amendments briefly. I also have with me Detective Sergeant Dave Della, who works with the repeat offender program in northern Nevada, and Detective Tony Moratti, a detective with the Sheriff's Office, who works in the sex offender unit. He will not be speaking unless there are technical questions.

The amendments that we have proposed are for Sections 23 and 24 and have to do with an increased penalty and no probation being granted to subsequent violations of failing to register. We feel this would be an important tool for compliance. I can turn this over to Detective Sergeant Della, who could explain it more.

Chairman Anderson:
This represents amendments from a bill that was sponsored by one of the members of our Committee?

Michelle Youngs:
Yes, sir. It is exactly the same as the amendments that were proposed and, I believe, adopted into A.B. 274.

Chairman Anderson:
Were these presented on the Senate side?

Michelle Youngs:
They were, sir. They were submitted in a group of amendments collected by the Department of Public Safety. I believe they were lost in the shuffle; they weren't rejected, though.

Detective Sergeant Dave Della, Northern Nevada Repeat Offender Program, Reno Police Department, Reno, Nevada:
I'm also a board member for the Peace Officers Research Association of Nevada [PORAN], and on behalf of PORAN and the Regional Sex Offender Notification Unit, I ask you to support this bill and the proposed amendments by Ms. Youngs.

Chairman Anderson:
I saw in the morning news that there is going to be a presentation at Sparks High School. I believe May 26 is the date.

Dave Della:
It's going to be May 24—Tuesday night—and this will be the first one we've ever done in the city of Sparks. They recently joined the Regional Sex Offender Unit with us.

Chairman Anderson:
I applaud the effort of the agency to try to make communities more aware of the problem.

Dave Della:
Mr. Chairman, the goal will be to move those around to different high schools, in different communities, to allow all the members to attend. They'll be held quarterly.

Chairman Anderson:
The amendments look like a pretty important part.

Assemblywoman Ohrenschall:
Mr. Chairman, I like everything that I'm hearing. I think it will help the cause of trying to protect our people from sex offenders, particularly our young children.

Dave Della:
The proposed amendment for the second and subsequent penalty within a 7-year period for the first conviction eliminates probation on the second offense, overseeing this 39 percent non-compliance rate. There are approximately 10,000 sex offenders in this state, which means about 3,900 are not in compliance. What we're seeing is probation granted on a frequent basis, even

though they don't register and they violate their probation. This will hopefully reduce that 39 percent; offenders will realize they have to register or they will go to prison.

Assemblyman Carpenter:
Without looking it up, what is the penalty for a Category C felony with no probation?

Chairman Anderson:
Category C is a minimum of 1 and a maximum of 5. A judge may impose any minimum or maximum sentence with 1 to 5, as long as the minimum does not exceed 40 percent of the maximum possible sentence. There is a $10,000 maximum fine, unless a greater fine is authorized by statute. D is a minimum of 1 and maximum of 20. The sentencing range usually is 1 to 6, and the fine is $5,000 to $10,000.

Dave Della:
It basically increases the maximum of one year. It still leaves the minimum of 12 months, but it goes from 4 to 5 years, and the difference between a C and D is that it doubles the fine.

Chairman Anderson:
The fine isn't one of the things we're concerned about; it's the amount of time for incarceration and the possible length of parole.

Don Dinardi, Private Citizen, Las Vegas, Nevada:
[Mr. Dinardi read from prepared testimony, Exhibit D, which is incorporated herein.]

Chairman Anderson:
As the father of two daughters, I understand the tragedy that's touched your life has not touched mine, so there's no way I can possibly tell you how you can feel. But I can understand your anger at the system.

Terri Miller, Board President, Stop Educator Sexual Abuse Misconduct and Exploitation (SESAME), Inc.:
I'm testifying in support of S.B. 341, with the following proposed amendments (Exhibit E). Throughout the 40 pages of S.B. 341, there are 29 references to statutes that define a sex offender and statutes that define crimes that constitute sex offenses. I won't go through the process of reading them, as they're in my testimony. Under those statutes, persons who commit sexual offenses as listed in the definitions are required to register as sex offenders.

[Terri Miller, continued.] Current statutes prohibit sexual abuse and exploitation by school employees or volunteers, corrections officers, and employees of mental health facilities. However, they are not required to register, because these offenses are not included in the definitions of sex offenses in the aforementioned statutes. I believe this discrepancy could be viewed as unconstitutional and, perhaps, a civil violation against those in the general public who are required to register, while authority figures and persons in positions of trust are not required to register. This may have been an oversight when these statutes were enacted, and therefore, it needs to be rectified without delay by adding these statutes to all sex-offense-defining statutes.

Persons in positions of trust and authority should be held to an even greater standard of ethics and penalty. In their professional capacity, they are trained to adhere to codes of conduct to ensure the well-being and success of those entrusted to them. They should not be afforded lenient sentencing by not requiring them to register as sex offenders. The statutes that prohibit teachers, corrections officers, and mental health employees from engaging in sexual abuse of the innocent and vulnerable are all felonies, ranging from a Class B to a Class D.

Our community and other communities are put at risk if employers are not made aware of their criminal history of sexual offending. Without supervision, as is required of a sex offender, they are more likely to offend again, and they do. These persons could easily slip under the radar and acquire jobs where they would have access to children, mentally ill patients, and prisoners. We cannot let that happen.

Since 1994, I have documented more than 50 teachers who have committed sexual offenses, in varying degrees, against students. Of those, approximately 16 have not been required to register, because they were only charged and convicted under the law that prohibits the sexual acts. Recently, I was contacted by a reporter in another state who discovered that the principal of a local high school was one such former Nevada teacher. Another teacher who was prosecuted in Nevada was able to obtain a license to teach in another state.

Data shows that 1 in 10 children will suffer sexual misconduct by a school staff member between kindergarten and twelfth grade. Only 3 percent of child sexual abusers are ever reported. Statistically, a teacher who sexually offends will have worked in a minimum of three jurisdictions before he or she is reported and punished. With the aid of school systems, these mobile molesters are allowed to prey on children for many years before being stopped.

We have a duty to protect our most vulnerable citizens and stop child sexual abusers by prosecuting and requiring them to register as sex offenders, to prevent the lifetime trauma of many more children. There was a recent case of a teacher in Clark County who had a four-year history of sexually abusing middle-school students. He was prosecuted for sexually abusing two 13- and 14-year-old girls in early 2004. He was charged with lewdness with a minor under 14, a Class A felony and a non-probationable offense that was amended in 2003.

Chairman Anderson:
Ms. Miller, did you have an opportunity to make this presentation on the Senate side in the original hearing on the bill?

Terri Miller:
Yes, sir, I did.

Chairman Anderson:
Why did the Senate reject this from the original proposal?

Terri Miller:
I was not given a definitive answer on that, sir. There were many amendments that were presented to them, and they chose others over this one. I think this is a very important one, and that's why I'm here again.

Chairman Anderson:
The issues you raise are valid, and being a former teacher, I have knowledge of where some of these issues come from. In some cases, teachers lose their license to practice—at least here in the state of Nevada—but are not charged with a felonious act. It's a violation of their professional standards. In your 50 number, are you including those who have lost their professional standing as a result, or those who have been criminally charged?

Terri Miller:
My data comes from cases that have been reported in the media and through my own searches of the district court documents.

Assemblyman Horne:
In your proposed amendments, you also include sexual contact between certain employees of colleges and universities and students. I'm sure you're speaking of students in the University System? Most of them are over the age of 18.

Terri Miller:
NRS 201.550 pertains to employees and school volunteers in college and university and prohibits sexual conduct of 16 and 17-year-old students. In our state, minors can take college courses at community colleges and at the university. This is to protect those minors.

Assemblyman Horne:
I don't have the statute right in front of me. I wanted to make sure we're keeping minors in the picture.

Chairman Anderson:
Ms. Miller, I note that you have several proposed changes. If we're going to move with the bill, we'll make sure they are included in the document and take it up as part of the discussion. Is there anyone else speaking in favor of S.B. 341? Is there anyone in opposition to S.B. 341?

Pat Hines, Private Citizen, Yerington, Nevada:
Although I've marked down to speak in opposition to the bill, I'm not really speaking in opposition to all of the bill. I do believe in registration and community notification to a certain degree. I think this bill goes grossly out of reason and far beyond what Megan's Law requests.

I did give my testimony on A.B. 274, so I'm not going to do that again today. There are three clarifications I would like to make. The first one is at the bottom of page 4, lines 43 and 44, and the next two lines on page 5, where it talks about when the person is released. They get an evaluation by a person qualified to conduct psychosexual evaluations. I feel that people need to look at that law and see what it says. It doesn't even mention psychosexual evaluations, but it does say that they have to be either a licensed psychologist or a psychiatrist. I think we need to put something in there about psychosexual. These people need to have training.

I know P&P [Parole and Probation] hasn't approved this for those coming out to have the mandatory counseling, but nobody seems to know what the criteria is for setting someone. There's one individual in the north who is a Ph.D. [doctor of philosophy] psychologist and, for some reason, isn't thought as well of as a marriage and family therapist who is at the master's level. That's an area I would like to see reviewed and expanded on, as to who can give psychosexual evaluations. While I'm on that, I would like some clarification from someone here in the agencies. I understand that the psychosexual evaluation is not for everyone before sentencing; it's only for those who are going to get probation or suspension. Can someone here clarify that for me? People who are going to prison are not getting that before sentencing. I don't think that is occurring right

now. Maybe you want to verify that for yourself. There is no definition anyplace in our NRS that defines violence and violent crime. "Sexually violent offender" is defined. I would like to see some of these definitions clarified.

[Pat Hines, continued.] Again, what's lacking here is that there is nothing on prevention or education. We need to educate our public. I'm so delighted about the meeting on May 24. I hope I get to attend.

The other misconception here is that all sex offenders are not predators. I appreciate your interest in the Criminal Repository. It is one of the best things in our criminal justice system, and your sentence that it's good for all the bad guys out there was very well appreciated by people in my situation. As far as 39 percent of the sex offenders not being registered, I would like clarification there. I thought it was that 39 percent of all sex offenders had once registered and failed to re-register. I'm not sure how you find out that 39 percent are out there when you say you don't know where they are.

I believe someone couldn't give the intent on Section 25, which you had asked about. I would like to suggest that, if there's something that someone can't give an intent on this bill, it be omitted and restudied.

Chairman Anderson:
Ms. Hines, I appreciate your ongoing effort to try to clean up this situation, advocating for fairness to people who are charged under this statute. Unfortunately, it is the part of the population that does not have a strong advocate or anyone with the courage to step forward and say they are a strong advocate. I know for you it takes a great deal of time to do this. I appreciate your courage in pointing out the issue to us on a regular basis and trying to keep us on track, that there has to be a fairness in terms of treatment of sexual offenders. I wanted to go on record one more time in saying how much I appreciate your concern.

Pat Hines:
We appreciate your consideration for both sides of the story. Justice will prevail.

Amy Wright, Chief, Division of Parole and Probation, Department of Public Safety, State of Nevada:
I can answer this question. Those who are convicted of sexual offenses are required to have a psychosexual evaluation done prior to sentencing. When the penalty is a mandatory prison sentence, courts may waive that psychosexual evaluation. If it's mandatory, there's no question about it; they have to go to prison. I know of instances where they have waived it, but prior to sentencing,

if the offense they are convicted of is probationable, there must be a psychosexual evaluation.

Chairman Anderson:
One of the ways that may be helpful to the system is to have a baseline psychosexual examination done for everybody who is going to fall under that. That increases the cost of the process at some point. On the other hand, if you have a psychosexual examination done prior to incarceration for a sexual offense, you have something to base your second psych panel against when it comes time to release.

Fritz Schlottman, Administrator, Offender Management Division, Department of Corrections, State of Nevada:
Sex offenders who come into the Department of Corrections will go through the psych panel and will receive a psychosexual evaluation as part of that process.

Chairman Anderson:
Is that done when you take them into the prison, even if there wasn't one done at the time of sentencing?

Fritz Schlottman:
No. As part of the sex offender panel process, they'll receive an evaluation as they are going through the system. It won't necessarily be a part of the intake process, but as part of their evaluation for release.

Chairman Anderson:
Would there be a cost benefit to have it as part of intake, rather than part of sentencing? You already have a psych panel, or people within the staff, to include that as part of the evaluation for those coming in the door.

Fritz Schlottman:
That may be beneficial. The Department of Corrections already does some psychological testing when they come through intake. We could add that component, as the staff already exists.

Chairman Anderson:
Ms. Wright, would that be helpful to your part of this program if we had those people undergoing treatment to have a psychological evaluation?

Amy Wright:
Information we have regarding any type of offender, and especially sex offenders, is very helpful for the Division and the treatment provider. When

they're going to be released into the community, [this helps] to be able to focus the treatment toward that individual.

Chairman Anderson:
Let me close the hearing on S.B. 341 and bring it back to Committee. We have several amendments. I would like to see if we could look at language relative to when people are incarcerated, that a psych evaluation be done within the prison system. Where would the best placement for that be? Are there any other adjustments or amendments, other than those we've already seen? The only ones that I see here are those suggested by Ms. Coleman from the Child Advocate Alliance and Ms. Miller, as well as Ms. Youngs' amendment from the Nevada Sheriffs' and Chiefs' Association, which brings about compliance.

Assemblyman Carpenter:
In regard to the amendments that were brought forth, it looks like, in Section 23 of the bill, they've already increased the penalty from a Class D to a Class B. With her amendment, she wanted to have a C. Maybe we could look at making that a B, rather than a C that was suggested. That's where the big problem is, when they fail to register after they've been registered the first time.

Chairman Anderson:
I don't want to endanger the bill. When we take it to work session, I think we can talk about what the penalties would be. Is there anything else members of the Committee want to examine here with the bill?

Let's move ourselves back to work session. We're not going to be dealing with the sex offender bill during this work session. We have six bills scheduled for work session today. Let me take up S.B. 444.

Senate Bill 444 (1st Reprint): Requires Nevada Gaming Commission to adopt regulations authorizing gaming licensee to charge fee for admission to area in which gaming is conducted under certain circumstances. (BDR 41-1295)

Allison Combs, Committee Policy Analyst:
This measure was heard on Friday, and it requires the Nevada Gaming Commission to adopt regulations that authorize a gaming licensee to charge a fee under certain conditions.

There were a couple of amendments proposed during the hearing. Those are set forth here (Exhibit F). They summarize the attachments that are included in this

tab and were presented as measures to clarify the intent of the bill. The first one would add two new sections, (a) and (b), to state that the gaming licensee who charges a fee under the first section of the bill, if the fee is charged for admission to an area in a non-restricted establishment, must post a sign of suitable size that provides notice for patrons that they do not need to pay an admission fee or cover charge to engage in gaming. I believe the testimony was that this is the current practice.

[Allison Combs, continued.] The second one states that the gaming licensee shall not be allowed to charge for admission to create a private gaming area. That's to clarify that this has to be consistent with the state's gaming policy. Related amendments clarify other provisions currently in the bill that apply to non-restricted establishments. The second amendment specifies that admission can't be restricted or prohibited based upon certain grounds. The proposal is to revise the language of the bill to mirror the state's existing law under NRS [*Nevada Revised Statutes*] 651, with regard to access to public locations.

Chairman Anderson:
The Gaming Control Board, under Mr. [Dennis] Neilander, indicated that these did not harm. In fact, they helped to clarify the statutes relative to intent. They would not be able to indiscriminately set up a process where there would be a closed or restricted gaming area. The two amendments that are effected by Mr. [Robert] Faiss are reflected here.

On the amendment to add the section to 2(c), line 39, to state the gaming license could charge the fee: Ms. Lang, by setting up the amendments as suggested here in the document, are we okay?

Risa Lang, Committee Counsel:
It looks fine, Mr. Anderson.

Assemblyman Carpenter:
Are the amendments that were suggested, 2(c) and 2(d), the same ones that Ms. Buckley had?

Chairman Anderson:
They are to relieve the concerns by one of the members, making sure that restricted gaming areas are not restricted in such a fashion that they're discriminatory.

> ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND AND DO PASS SENATE BILL 444.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

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

Chairman Anderson:
Let's turn our attention to S.B. 450.

Senate Bill 450 (1st Reprint): Makes various changes to provisions governing temporary and extended orders for protection against stalking, aggravated stalking, harassment and domestic violence and for protection of children. (BDR 15-1407)

Allison Combs, Committee Policy Analyst:
Senate Bill 450 is a measure that makes various changes relating to the temporary and extended orders for protection against stalking, aggravated stalking, harassment, domestic violence, and protection of children. There was testimony from the Las Vegas Justice Court that the bill was designed to streamline or make more uniform the statutes governing each of these different types of orders. At the time of the hearing, there was a question raised by one of the members of the Committee concerning the new language in Section 3, regarding violent physical acts. Subsequent to the hearing, and looking at some history of the bill, an amendment has come forward.

Last session, the Legislature passed A.B. 107 of the 72nd Legislative Session, which actually deleted the language that this bill proposes to put back in. These violations were not being prosecuted because, being misdemeanors, they couldn't prosecute them with felonies. The bill was passed to provide a higher penalty if these violations were accompanied by felony acts.

There is an amendment proposed by the Las Vegas Justice Court, along with the Nevada District Attorneys Association, that is provided here in the Work Session Document (Exhibit F). In summary, it would tailor the bill to the legislation passed last year, to delete both the new language concerning violent physical acts from Section 3 and language that was overlooked last time under Section 5 of the bill. It would add a new section that would amend NRS 193.166. If you look at the next page in the Work Session Document (Exhibit F), you'll see that statute added under A.B. 107 of the 72nd Legislative Session to provide for the heightened penalty option for these types of violations. It would add a reference to violations of protective orders obtained by parents for their children, in certain cases.

Chairman Anderson:
This is the section that was suggested by Judge [Nancy] Saitta. Mr. Graham, did you and Ms. Erickson want to speak, relative to the TPOs [temporary protection orders], to alleviate Mr. Carpenter's concerns?

Ben Graham, Legislative Advocate, representing the Nevada District Attorneys Association:
It was discovered that a portion that should have been deleted in 2003 was reinserted in a place where we had taken it out, with regard to these violations. If the Committee might recall, the reason we wanted to remove these was because they were confusing. We did not catch it on the Senate side, and I appreciate the courtesy of the Chair and its members allowing us to come in at this stage. Ms. Erickson could explain a little more clearly.

Kristin Erickson, Legislative Advocate, representing the Nevada District Attorneys Association:
Mr. Graham is correct. Originally, in A.B. 107 of the 72nd Legislative Session, a new statute was added—NRS 193.166—addressing the violent physical act language now being proposed in Section 3. That was removed last year to be consistent with the new NRS 193.166. Apparently what slipped by us is the second subsection where this very same language exists, which is now Section 5. We should have taken that out in A.B. 107 of the 72nd Legislative Session, as the language is identical and it puts it at odds with the new section. That is what we're requesting to do now—remove the new proposed language in Section 3 and remove the identical language in Section 5. It is to be consistent with the new statute.

Chairman Anderson:
Are there any questions from members of the Committee? The Chair will entertain a motion.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS SENATE BILL 450 WITH THE OFFERED AMENDMENTS.
>
> ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:
Ms. Buckley, if we could turn to S.B. 64, I believe you had some concerns about the bill initially.

Senate Bill 64 (1st Reprint): Makes various changes to provisions concerning conveyance of real property by deed which becomes effective upon death of grantor. (BDR 10-539)

Assemblywoman Buckley:
Yes—thank you, Mr. Chairman. It's about what would happen if the grantor conveyed the property and, even though it was originally held as sole and separate, there was some commingling and now it was community property. That portion of the bill was talking about the grantees, not the grantors, so my question was answered and my concern no longer exists.

Chairman Anderson:
Mr. Nadeau, we have an amendment in front of us (Exhibit F). I presume that you're here to answer questions about that.

Jim Nadeau, Government Affairs Director, Nevada Association of Realtors, Reno, Nevada:
The amendment we're proposing would be to page 5, Section 2, subsection 9, line 26. At the end of that line, we would add "or affinity" where it says "consanguinity." It would read "consanguinity or affinity." If you look at the amendment, I defined the two terms because I have difficulty in trying to do this. If husbands want to transfer property to in-laws, they can do that, but they are subject to the transfer fee. They end up having to transfer it to their wives, who in turn transfer it to the parents or in-laws of the wives. It requires two transfers, and it's very complicated.

Chairman Anderson:
In a joint tenancy state, when you transfer to the blood relative, you also are able to, in that single transfer, transfer it to the spouse if you so choose?

Jim Nadeau:
That's correct, but if you wish to transfer the property to an in-law, that requires transferring it to the spouse, who then can transfer it to their parent or someone of that nature. It requires two transfers. This makes it simpler and a better manner of doing this. This language was contained in other legislation that was passed, but it's probably having difficulties in other places. We thought this would be a nice opportunity to make sure that this was conducted.

Assemblyman Horne:
Mr. Nadeau, how many degrees down the line are we going to go with "affinity"? If it's a relationship by marriage, are we going to do straight in-laws? Am I going to be able to transfer to my sister-in-law? Consanguinity is easily

defined when we have some DNA [deoxyribonucleic acid] that's related. We're all related by marriage, whether or not they want to admit it.

Jim Nadeau:
We would view this as going to the mother-in-law and father-in-law but not deeper. That way, you're dealing with spouses' parents.

Assemblyman Horne:
How about spouses' parents and spouses' siblings?

Jim Nadeau:
That would make sense.

Assemblyman Horne:
What about my nieces and nephews on my wife's side? It gets crazy.

Jim Nadeau:
Understood. From our perspective, we're only looking at the spouses' parents and immediate family, at the first level of consanguinity.

Assemblyman Horne:
If we do this, Mr. Chairman, I think we need language in there to say "in-laws and siblings" and stop there, if we're going to do it at all.

Jim Nadeau:
We certainly would be comfortable with that, Mr. Chairman.

Chairman Anderson:
Is whether we want to deal with "affinity" a problem?

Assemblywoman Ohrenschall:
I think it's all been said. I was going to agree with Mr. Horne and expand on the wording of the amendment, but I think we have it taken care of.

Chairman Anderson:
This amendment was not suggested on the Senate side, Mr. Nadeau?

Jim Nadeau:
No, it was not. We didn't anticipate any issues. We thought it was already included in other legislation. By our definition, if I may refer to Section 9, it says "first degree of consanguinity or affinity," and I think we're staying in the first degree on affinity. From a legal perspective, that would limit that level.

Chairman Anderson:
In my little black book, "affinity" doesn't show up under legal definitions.

Buffy Dreiling, Legal Counsel, Nevada Association of Realtors, Reno, Nevada:
On the issue of the consanguinity or affinity, I agree with Mr. Nadeau. It's our intention that the first degree would apply to affinity. That term is defined, in the manner that we're using it, in *Black's Law Dictionary*. I did look this up previously, and it is recognized in a legal sense.

Chairman Anderson:
NRS 10.015, where applied to marriage relationships, signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other. We're talking about the first level of blood relatives of the other individual.

Buffy Dreiling:
To summarize Mr. Nadeau's concern for this, we're talking about transfer tax issues and the situation that's occurring now. If I want to convey property to my daughter and if she's married, she has to do a second transaction to convey it to her husband so they can hold it jointly. This eliminates that unnecessary step that does cause problems.

Chairman Anderson:
What is the pleasure of the Committee? Mr. Horne, are you satisfied with the first degree of affinity?

> ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS SENATE BILL 64, WITH THE ADDITION OF "OR AFFINITY" TO THE TRANSFER OF ASSESSMENTS OR CONVEYANCE OF REAL PROPERTY.
>
> ASSEMBLYMAN CARPENTER SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:
We will look at S.B. 338.

Senate Bill 338 (1st Reprint): Makes various changes concerning business associations. (BDR 7-728)

Allison Combs, Committee Policy Analyst:
Senate Bill 338 is the bill seen each session by the Judiciary Committee. It makes technical revisions to the business laws requested by the Business Law section of the State Bar of Nevada. There was a concern raised during the hearing with regard to recent news reports on LLCs [limited liability companies] and the lack of disclosure when those are involved in certain activities relating to government. An amendment was proposed by Assemblywoman Buckley (Exhibit F).

As presented in the document, it requires disclosure when conducting business with the government. It would provide that for business entities—including the LLCs—that buy land from state or local government, want to bid on a government project, apply for a zoning change, or otherwise transact business, the government entity must reveal all persons with a 1 percent or more ownership interest in the business entity. This information must be made available to the public. The suggestion is that this prohibition would be included in the governmental chapters of the NRS rather than Title 7, which governs the business entities.

The second related proposal is to require the business entities that donate to the campaign of someone running for public office to also disclose the same information. That disclosed information must be included in the campaign reports submitted to the Secretary of State. Finally, there is a proposal to delete Section 58 of the bill, which, as written, would remove from existing law the requirement that certain business entities qualify to do business in Nevada prior to filing a fictitious name certificate.

Chairman Anderson:
Could you explain to me the impact of the deletion of Section 58 of the bill? If we do away with the fictitious name requirement, is that to encourage businesses to come?

Assemblywoman Buckley:
This was a request of people who sent me emails following discussion on the initial hearing of the bill. This particular suggestion came from the Washoe County Clerk, who was concerned about paragraph 1 and the deletion language in there. This says that no person may adopt any fictitious name unless that person is a corporation. They were concerned about "organized or qualified to do business pursuant to the laws of the state." Her point was that people want to know who these folks are when there are transactions with the government.

Allison Combs:
Mr. Chairman, the concern was that under the proposed legislation, foreign entities would not be required to disclose their ownership at any level within the state of Nevada. By deleting this requirement that they qualify first, that would not provide the disclosure that currently exists under the law. It would provide for more secrecy.

Chairman Anderson:
I thought the purpose of Section 58 was that persons would not be able to use a fictitious name, as those listed in that section, unless they were those very things—a limited liability company, business trust, or professional corporation. If we eliminate the section in its entirety, it will take us back to the original law. Do we hurt the Secretary of State's intent with the bill?

Assemblywoman Buckley:
The suggestion is not to delete the language in paragraph 1 that is part of our existing law. The other paragraphs, which contain those clarifications, would be fine. Here's what she says, and maybe this is something that our Legal Division could confirm, and we could make this contingent: Section 58 amends NRS 602 to remove the requirement for foreign corporations, LLCs, and the like to qualify to do business in the state of Nevada prior to filing a fictitious name certificate.

Under the proposed legislation, foreign entities will not be required to disclose their ownership at any level within the state of Nevada. If we leave NRS 602 untouched, citizens could have a cross-check of the system to ensure that entities who should be qualifying to do business at the state level do so. If that is the legal import of the deletion of those sentences, we should reconsider and not pursue that change.

Chairman Anderson:
We don't have to take action on this today, if you'd like for us to hold it while you explore the question. I want to make sure that we're not encouraging businesses to come here [without knowing] who they are, and that somebody's not representing themselves to be a limited liability company. Are there other concerns from members of the Committee?

Assemblyman Mabey:
On the very last page, page 43, question 7, I don't understand what that means. "No natural person may adopt any fictitious name which appears to be the name of a natural person, unless the name includes an additional word or words which indicate that the fictitious name is not the name of a natural person."

Chairman Anderson:
Ms. Lang, do you want to explain the "no natural person may adopt a fictitious name"?

Risa Lang:
This is for the purpose of adopting a fictitious name through the Secretary of State's office. If you're filing a business under your name and you're adopting a name that's not your own, you would identify that.

John Fowler, Member, Executive Committee, Business Law Section, State Bar of Nevada:
To explain subsection 7 of Section 58 of the bill, the intent was the "Elvis impersonator" problem. Someone can't use NRS 602 for filing fictitious name statements at the clerk's office, to adopt another name than the natural given name, without going through the name changing process contained in another chapter of the NRS. Someone had done that, believe it or not, and it caused some confusion in a lawsuit. We inserted that so that someone could not adopt—for business or other purposes through Chapter 602—Elvis Presley, when their real name was John Smith.

Chairman Anderson:
Mr. Fowler, some of the questions that we raised relative to the need for Section 58 must be something that the Business Law Section was concerned about. Could you reacquaint us with your intent there?

John Fowler:
With respect to the first comment, the email from the Washoe County Clerk zeroed in on it. That is the removal from existing NRS 602.017, which is subsection 1 in the bill, moving the words "organized or qualified to do business pursuant to the laws of this state." If you're a corporation, you may wish to adopt a fictitious firm name, but there are lots of exemptions from qualifying to do business in this state contained in NRS Chapter 80. That's the chapter that requires foreign corporations doing business in the state to qualify to do business with the Secretary of State's Office, file, pay the fees, and all the rest.

There are lots of exemptions. If the language remains as it is, it's within the purview of the clerk's office to require a corporation that is exempt from qualifying to do business under NRS 80 to, notwithstanding that exemption, have to qualify in order to file a fictitious firm name statement. That was the intent of crossing out the language that you see in subsection 1. In other words, we have one set of rules on whether or not a foreign corporation must qualify to do business in this state.

[John Fowler, continued.] If you go to Chapter 80.015, you'll see a long list of exemptions. That list comes from the Revised Model Business Corporation Act, and the exemptions are rather common in the corporate laws of states. We wanted there to be one set of rules with respect to corporations being exempt from having to qualify to do business. The reasons the exemptions are there is to encourage corporations, for instance, to loan money secured by real property, which is one of the exemptions. If that's all you do—loan money secured by real property—you don't have to qualify to do business in the state of Nevada.

Even if you have to follow up—for instance, you foreclose, you come in to administer the property and then sell it off—you would not have to qualify to do business. That's to encourage lenders to loan money to borrowers in the state of Nevada secured by real property. That's just one of the examples of what those exemptions do, and this allows an entity to adopt a fictitious firm name without having to qualify, if all they're doing is lending secured by real property.

Assemblywoman Buckley:
Mr. Chairman, it doesn't just limit it to people who are coming in to loan money; it applies it to all. It hasn't stopped our business-friendly environment; business seems to be booming. We create more secrecy. This is starting to raise questions and concerns all over the state. When folks have a concern, they're going there to try and get the information. I don't understand why we can't be business-friendly and still know who we're dealing with.

John Fowler:
The crossing-out of language in subsection 1 is not central to the meaning of Section 58. The other provisions of Section 58 were put in there to prevent people from pretending to be a limited liability company when they're not. If you wanted to retain the language that's crossed out in subsection 1, that's not a major deal for the section. I think the other sections are far more important and further the goals you just described.

Chairman Anderson:
I'm still curious as to what we're going to save out of Section 58, and if we're only going to restore the language and keep the other subsections.

Assemblywoman Buckley:
That's correct, Mr. Chairman, along with the original amendment saying that the approach we take is to require disclosure when conducting business with government. It would be for buying land from government, winning a bid on a government project, transacting business with government, or zoning. Otherwise, the identity can still be confidential.

I think the rules should be different when people are dealing with government, whether it's campaign contributions or zoning. I think the experience in our state is showing that you can be business-friendly and still require those who do business with government to disclose their name.

Assemblyman Mabey:
Let's say a limited liability company donates to my campaign next go-around. How will I know what the makeup of that limited liability company is? I don't understand what I would have to report if this bill passes with this amendment.

Assemblywoman Buckley:
All a political person would have to do is to disclose the name of the LLC and the address. You are not required to do any investigation. If that LLC is going to contribute to campaigns, they have to disclose who they are.

Chairman Anderson:
Your requirement would be exactly the same as it currently is. The dollar amount would be the threshold, and full disclosure above that is what we would do. The proposed amendments would be those suggested by Ms. Buckley and the change in Section 58 to retain the languages at lines 29 and 30.

Assemblyman Carpenter:
I want to comment that this is really needed. A lot of these people are doing business with government and hiding behind these LLCs.

Chairman Anderson:
I think it will go a long way. The Chair will entertain a motion to amend and do pass S.B. 338.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS SENATE BILL 338 WITH THE AMENDMENTS IN WORK SESSION DOCUMENT AND AN AMENDMENT TO RETAIN THE EXISTING LANGUAGE, BUT REMOVING DELETED SECTIONS AT LINES 29 AND 30.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblywoman Buckley and Assemblyman Oceguera were not present for the vote.)

Chairman Anderson:
[Opened the hearing on S.B. 453.]

Senate Bill 453 (2nd Reprint): Makes various changes concerning business entities. (BDR 7-576)

Allison Comb, Committee Policy Analyst:
Senate Bill 453 is the second business-law-type bill that comes typically every year. This is from the Secretary of State's Office, and it provides housekeeping measures and standardizes certain processes. There are three amendments (Exhibit F). The first one on the notaries public was to add in some language discussed in the Committee, and it was proposed by Renee Parker with the Secretary of State's Office to address issues relating to fraud. The second proposed amendment, mentioned by Mr. [Pat] Cashill during the hearing, was to clarify the definition of "record" under Section 41, relating to the filing of forged documents.

The bill currently says that the record includes information filed pursuant to Title 7 of NRS or Article 9. There's a request to clarify that it would include any record filed with that office. Finally, there was the area of charging orders. There were concerns raised with regard to that new issue for Nevada law. There are no proposed amendments on that issue.

Chairman Anderson:
What is the pleasure of the Committee? On S.B. 453, number 1 and 2 of the section seem to be okay. I'm concerned about Sections 37 and 40. Regarding the notary public question, does anybody have a problem with Section 1, the proposed changes from the Secretary of State's Office?

Assemblyman Carpenter:
We need to make it part of the record that if it's a notary who has known someone for a long time, and if you're not in that presence and they notarize, they are not guilty of a gross misdemeanor. Ms. Parker stated that at the hearing, but I think it needs to be made part of the record so that does not happen. Very often you need to have something notarized, and maybe you can't be right there at the same time. If he or she has known you for a long time, it should be no problem.

Chairman Anderson:
I've never appeared in front of a notary; I've always done it in person. Whoever gets the assignment for this, Mr. Carpenter will make sure they get the opportunity to read this particular section when we do the statement on the Floor. Regarding the definition of "record," Ms. Combs, would you clarify Section 3 for me? On the suggested charging orders in Sections 1, 37 and 40, how should we proceed on that particular suggestion?

Allison Combs:
On the charging order issue, there was testimony that this is a new area for the state. Nevada will be the first state to do this. Subsequent to the hearing, there were a number of concerns raised with members of the Committee regarding these provisions and exactly what they mean, and whether or not this is the appropriate direction for Nevada to go at this time. The Nevada Resident Agents Association provided detailed information on their intent. There were questions subsequent to the hearing—with regard to Sections 1 and 37 to 40 of the bill—on the charging orders.

Chairman Anderson:
We're suggesting that we remove these? All right. If we're to move forward with the bill, we clarify the intent of the Secretary of State's Office that the definition of "record" means that the information that is filed with the Secretary of State, as suggested by the attorney, and we remove Sections 1, 37, and 40, which would be new ground for the Resident Agents Association.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS SENATE BILL 453 WITH AMENDMENTS PROVIDED.
>
> ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

Assemblyman Conklin:
Just clarifying that there's no amendment under the charging orders section here, just one and two. Right?

Chairman Anderson:
As I understand, we would remove Sections 1, 37, 38, 39 and 40 from the bill. Those issues dealing with the resident agents set us into a new area.

Assemblyman Conklin:
What were the issues with Sections 1 and 37 through 40? I understand they all go together, but I don't remember the issue.

Chairman Anderson:
In part, the question dealt with resident agents. In reviewing the statutes relative to resident agents, if we were to move into this particular area for resident agents, Nevada would be the only state in the United States doing that. They didn't feel there was sufficient information given to open up this new area in support for the legislation.

Allison Combs:
There were concerns raised afterwards with regard to the new provisions in the bill, and whether or not what was done was what was intended. If you want to wait, I can provide more information at a later time.

Chairman Anderson:
Mr. Conklin, there's no absolute necessity for us to move with this particular thing at this particular work session. We can put it in tomorrow's work session document.

Assemblyman Conklin:
Mr. Chairman, I might consider holding this. I read this to mean that you can't shirk your credit obligation just because you're a stockholder in a company. That stock becomes part of your credit obligation; that's the way that I read it. I'd like to see it in there. I need to get a better understanding of this particular piece, and I'd be more than willing to do so over the next 24 hours.

Chairman Anderson:
Mr. Carpenter, can I ask you to withdraw your motion? Ms. Ohrenschall, can I ask you to withdraw your second? [They both agreed.]

Ms. Combs, let me ask if you can put it in a work session document for tomorrow. That takes us back to S.B. 343 (Exhibit F).

Senate Bill 343 (1st Reprint): Makes various changes to provisions related to mechanics' and materialmen's liens. (BDR 9-787)

Chairman Anderson:
We are now into the third amendment to the first reprint, as this is the newest document that we have. Let me indicate to the members, distributed here is a letter (Exhibit G) that Mr. Peel asked to provide to Ms. Buckley, which we did, and which was presented to the members of the Committee. This is relative to the explanation of the original bill that you had done, prepared for her, and then sent a copy to me, dated May 14. I know it's an "Overview of First Reprint of Senate Bill 343"; it's dated and has all of your names on it.

Richard Peel, Legislative Advocate, representing Mechanical Contractors Association of Nevada, National Electrical Contractors Association of Southern Nevada, and the Sheet Metal Air Conditioning Contractors' Association:
Yes. There is a third amendment that we've presented (Exhibit H). The third amendment was a result of certain concerns that were raised by the NAIOP [National Association of Industrial and Office Properties] Group last Friday at the May 13 hearing. We've done our best to address their concerns.

Out of the four things that they raised in their May 12 letter, we have addressed three. The remaining item, an exemption for ground leases, we believe would diminish the security that's otherwise provided by the mechanic's lien law. We were not able to work out our concerns with respect to that particular request. The third amendment does set forth what we could agree to with respect to the other three requests in that May 12 letter.

Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter:
We have made our best effort. I'm going to read from a letter, dated May 16, that was sent to all members of this Committee by the National Association of Industrial and Office Parks. I'll read one paragraph: "In the two-hour meeting with Mr. Holloway and Mr. Peel in the morning of May 16, 2005, we did agree to all terms except the ground lease issue. The undersigned are prepared to continue to work with the AGC coalition in reaching an acceptable compromise."

The authors of this letter also say that "it was unfortunate that we were portrayed as being opposed to the bill, when in truth we are in support of the provisions, with that one significant objection." We do have the amendment, and we could have Mr. Peel walk you through.

Chairman Anderson:
We are under time restraints here. I wanted to make sure we had this for our work session tomorrow. Being distributed to the Committee is a letter that just arrived (Exhibit I), which concerns me, because we generally have an understanding that things come in ahead of time, usually by 3:00 p.m. the day before. If you want to take us through the amendment, that would be helpful.

We see that the purpose of S.B. 343 is to try to make sure that liens are protected, that the claimants are there, and that the contractor and subcontractor are protected, because they're going to be standing on the job. If the corporation doesn't put up a sufficient bond, we're concerned that they're not going to be able to meet the obligation if, for some reason, it all falls apart.

How this is going to protect contractors, subcontractors, and the public—who have an investment—if the business or contractor or the builder fails?

Richard Peel:
What the amendment attempts to do is make certain that mechanic's lien rights are preserved, as I think this Legislature has intended for over 100 years. A lessor of land has a couple of options. They can either waive the notice of non-responsibility requirement, which means that liens would attach to their fee, the land, and any improvements hereon. They could seek notice of non-responsibility protections by not contracting or causing a work of improvement to be constructed and having the lessee contract for and provide a mechanic's lien release bond, or they could establish a construction disbursement account to which any claims of lien would attach.

Now, the contractor's rights, with respect to a tenant improvement, are that if the lessee does not record a mechanic's lien release bond or establish a construction fund, then that contractor and its trades have the right to stop work. That's a permissive right; the statute says "may." It is a right that is given to the contractors and subcontractors to stop work if there is no bond posted, or there is no construction disbursement account established. If there are not adequate monies maintained in that account, that contractor over the trades would have the right to stop work.

With respect to the amendment (Exhibit H)—in particular, on page 3, item 16—at the top of the page, there is new language in blue that is intended to allow an owner to waive the notice of non-responsibility rights and relieves the lessee of its obligation to comply with Sections 4 and 5 of the bill. Essentially, the lessee would not be required, at that point in time to post a mechanic's lien release bond, nor would the lessee be required to establish a construction disbursement account. Instead, the owner's fee would be subject to mechanic's liens, meaning the land itself and any improvements thereon.

Section 5, item 3, on page 3 deals with a new subsection 2. It requires lessees to maintain sufficient funds in a construction disbursement account to cover costs to complete the project. Every project has changes, and as changes are made, it will increase the ultimate cost of the project. We want to know the monies are there to cover any claims of lien.

On page 4, item 12—at the top of the page—is a new subsection 6. It allows construction control to interplead monies if a claim of lien is made, both with respect to individual lien claims and multiple lien claims, if there are not sufficient monies available. On page 5, item 1 under Section 15, there is a new subsection 4; we revised subsection 4 in comparison to the prior amendment

that was presented to this Committee. That particular subsection 4 requires a lessor to serve a lessee and a prime contractor with a copy of the notice of non-responsibility. It goes on to require the prime contractor to serve it on the larger trades, so they know what the owner's position is in respect to the protection of that property.

[Richard Peel, continued.] On page 6, item 2 at the top of the page—still under Section 15—subsections 5 and 6 define who may qualify as a disinterested owner. A disinterested owner is an owner who may be entitled to protect their property from lien claims by timely recording a notice of non-responsibility and complying with the other requirements set forth in NRS 108.234. Section 24 on that same page, item 1, returns language to what currently exists in the statute. We're asking the LCB [Legislative Counsel Bureau] to leave that language alone, with the exception of adding references to new statutory provisions.

Section 25, item 1 on that page, cleans up language set forth in that particular section. Finally, on page 7, there is added language to the definition of "owner."

Chairman Anderson:
We're going to give the Committee an opportunity to read through your amendments, Mr. Holloway and Mr. Peel, we appreciate your hard work relative to this. We'll put it in front of us tomorrow. Mr. Peel, I understand that you're not going to be able to be here tomorrow. Is that right?

Richard Peel:
Mr. Chairman, I'll do what it takes to get this bill passed. It's very important to our groups.

Chairman Anderson:
Most of these issues have been agreed to. I know there are still folks who are agitated by what this is going to mean to them. You've tried to address their concerns; is that right, Mr. Holloway?

Steve Holloway:
Yes, sir, we have tried to address their concerns. We addressed all their concerns in that amendment except for the blanket exemption on ground leases. They do not want a lessee on a ground lease to either post a bond or do a construction control account. Our problem with that is twofold.

One, all that is left to lien is an illusory leasehold estate. Secondly, even though these are very reputable and solid developers, in order to do that, we would have to do that for everyone. We've had several instances lately where that has not worked at all, and our contractors have been left holding the bag.

Renny Ashleman, Legislative Advocate, representing the Southern Nevada Home Builders Association:
Their concern is that they're asking for an additional privilege. We've taken nothing away from them; in fact, we've given other powers and rights to these folks. They wish to end any negotiation they have to undertake with either a private party or local government as to whether or not there's a cost or not of putting up a bond or a cost of a construction control account. They want to force the owner of the property to automatically yield it as security, when there are other alternatives in the law. I say that's a matter for negotiation between the local parties, whether they are public or private.

Chairman Anderson:
It's not that they're losing anything currently in statute; they wish to gain something. They wish you had put in an amendment that took care of their problem, and we did not. Do you wish for additional time to review the amendment, or do you wish to take action? It's a complicated issue, and I don't want to force the Committee. We'll ask that you review the amendment (Exhibit H). We are adjourned [at 11:18 a.m.].

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

RESPECTFULLY SUBMITTED:

Victoria Thompson
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 18, 2005 Time of Meeting: 8:12 a.m.

Bill	Exhibit	Witness / Agency	Description
N/A	A	Judiciary Committee	Agenda for meeting
S.B. 341	B	Donna Coleman, Children's Advocacy Alliance	Testimony and proposed amendments
S.B. 341	C	Michelle Youngs, Washoe County Sheriff's Office	Proposed amendments
S.B. 341	D	Don Dinardi, Private Citizen	Testimony
S.B. 341	E	Terri Miller, SESAME Inc.	Testimony and proposed amendments
S.B. 64 S.B. 338 S.B. 343 S.B. 444 S.B. 450 S.B. 453	F	Allison Combs, LCB	Work session documents
S.B. 343	G	Richard Peel, Mechanical Contractors Assn. of NV; Nat'l Electrical Contractors Assn. of So. NV; and Sheet Metal Air Conditioning Contractors	Amendments; letters to Assemblywoman Buckley and Assemblyman Anderson
S.B. 343	H	Richard Peel	Amendment to S.B. 343
S.B. 343	I	Stephen Rice, NAIOP (National Association of Industrial and Office Properties)	Letter to Assemblyman Anderson