MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
February 16, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:15 a.m. on Wednesday, February 16, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care

COMMITTEE MEMBERS ABSENT:

Senator Steven Horsford (Excused)

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Kelly Lee, Committee Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Mark Gibbons, Associate Justice, Nevada Supreme Court
Robert R. Loux, Executive Director, Agency for Nuclear Projects, Office of the Governor
Clark C. Whitney
Dean Kirsch

Joseph Guild, Manufactured Home Community Owners
Robert W. McLellan, Deputy Administrator, Division of Child and Family Services, Department of Human Resources
Linda Bowmer, Unit Manager, Youth Parole Bureau, Division of Child and Family Services, Department of Human Resources
Stan Olsen, Las Vegas Metropolitan Police Department
Michelle Youngs, Washoe County Sheriff's Office
R. Ben Graham, Clark County District Attorney
Frederick Schlottman, Administrator, Offender Management Division, Department of Corrections

CHAIR AMODEI:
The hearing is open on Senate Bill (S.B.) 27.

SENATE BILL 27: Revises provisions governing selection of alternate jurors in criminal and civil trials. (BDR 14-851)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):
I was prompted to bring S.B. 27 forward due to a conversation with Justice Gibbons and observation of some premier trials that took place over the past several years. As a communications professional and one who shares messages with others, I believe it is important to participate at the highest level possible in a communication. There may be no greater need for that participation than in a jury trial with high stakes. It is important for those who participate as jurors to listen and participate at the highest level, as well as for those who share their message with juries.

Senate Bill 27 provides new language that would require all jurors to participate as jurors until just prior to deliberation. I would like to offer amending language to change the word "shall" to "may" wherever it appears; and add language in section 4 of S.B. 27 to indicate it would be a random selection of jurors and alternates just prior to deliberation in the presence of the parties, their counsel and the jury. This would keep the jury selection process open, public and equitable.

MARK GIBBONS (Associate Justice, Nevada Supreme Court):
I am present in my individual capacity, not on behalf of any court organization. I concur with Senator Wiener's amendments and believe the method of

selecting alternate jurors should be cumulative, not replacing existing methods which are discretionary with the court.

I have presided over 120 jury trials, in both civil and criminal cases, as a district court judge in Clark County and utilized this method to select alternate jurors. I asked the attorneys to stipulate to this method because this particular mechanism is not in the *Nevada Revised Statutes* (NRS). All the attorneys stipulated to it with the exception of one case which involved Jessica Williams, a woman who was accused of running down and killing six teenagers who were working on a road crew on Interstate 15. The trial was quite involved, and the jurors were sequestered. I asked the attorneys to stipulate to the alternate process and Ms. Williams' attorney refused; therefore, the statutory method was used and alternates were identified at the beginning of the case during jury selection.

At trial conclusions, I have asked the opinion of many juries about the method of selecting alternate jurors. I talked to alternate jurors and asked them whether or not they felt involved with the case. In discussing the different ways in which alternate jurors can be selected, the juries unanimously preferred this method. Juries are told up front there are alternate jurors; therefore, in a criminal case 13 jurors are qualified, 12 regular and 1 alternate. They are told at the beginning of a trial that one of them will be an alternate, but they are also told the alternate juror will not be chosen until the end of the case. I have observed some resentment when people are identified as alternates at the beginning of a trial. They are reticent to fully listen and participate in the process, even though they do a good job overall.

In S.B. 27, alternate jurors are selected after closing arguments are concluded and before the jury goes into deliberation. In front of the parties, attorneys and jury, jurors' numbers 1 through 13 are put into a hat and the court clerk pulls out a number. One of the jurors is then informed that he or she was randomly selected as the alternate juror. The jurors witness the selection in open court. It is a good method.

There are cases in which alternate jurors need to be identified at the beginning of the trial. The court may determine it, and the attorneys may require it. This method may not work in every case, but it would work in the majority. The courts should have some discretion in how it is done.

SENATOR CARE:
Are you saying nobody would know the identity of the alternate juror until after closing arguments?

JUDGE GIBBONS:
That is correct.

SENATOR CARE:
Is there discretionary language in the amendment?

SENATOR WIENER:
To make the selection permissive and not a mandate, the language would change each "shall" to "may." In the vast majority of cases, the selection method would be appropriate. However, it would be up to the discretion of the court. Judge Gibbons has historically offered the method, or strongly suggested it.

The amendment in section 4 of S.B. 27 could spell out the random selection of jurors and alternates in the presence of the parties, their counsel and the jury.

SENATOR CARE:
Are there studies that indicate alternate jurors are not as focused on the proceedings?

SENATOR WIENER:
I am unaware of any studies. I have found in my professional life as a communications coach, consultant, expert and author, when people do not have a solid investment at that level, the tendency is not to listen at the same level. In addition, I have heard from attorneys that they do not make their arguments to the jury the same way when they know the alternate jurors have already been selected.

CHAIR AMODEI:
Seeing no further questions, the hearing is closed on S.B. 27. Senator Wiener, your two friendly amendments are to change the language from "shall" to "may." What was the other amendment?

SENATOR WIENER:
The other amendment is in section 4 of S.B. 27, wherever appropriate, "the random selection of jurors and alternates in the presence of the parties, their counsel and the jury," and we could also add "open court" if that would clarify the situation.

CHAIR AMODEI:
In keeping with Judge Gibbons' testimony, this is just another tool to utilize if it is appropriate with the case.

SENATOR WIENER:
It would be discretionary. Should they choose to use that method, they would have to select the alternate juror as spelled out in section 4 of S.B. 27. It would protect the rights of everyone and keep the procedure open and public.

CHAIR AMODEI:
Is there any objection to requesting Kelly Lee, Committee Counsel, work with Senator Wiener to generate the amendment? The amendment will be brought back to the Committee before going to the Senate. Unless there is an objection, it is my intention to take a motion to amend and do pass S.B. 27, subject to the Committee reviewing the amendment.

> SENATOR McGINNESS MOVED TO AMEND AND DO PASS S.B. 27, SUBJECT TO COMMITTEE APPROVAL OF THE AMENDMENT.
>
> SENATOR WIENER SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATORS HORSFORD AND WASHINGTON WERE ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:
The hearing is now reconvened for informational purposes on the Yucca Mountain litigation.

ROBERT R. LOUX (Executive Director, Agency for Nuclear Projects, Office of the Governor):

It is interesting to note the top executives in the nuclear industry would come to Nevada, and this Committee, to essentially tell you any further litigation by the State is pointless or futile. That is the message I read in the communication of Michael A. Bauser, Associate General Counsel of the Nuclear Energy Institute, Inc. If it was futile, why would he fly across the country to tell you? Why would he care? If the State was essentially neutered, as he suggested, I am unsure why he would come here. The real answer is his concern about future litigation on the Yucca Mountain issue. That is the reason he was here in tandem with a former governor of Nevada, who attaches the inevitability of the repository with the need to move forward with negotiation.

There were a number of factual errors in Mr. Bauser's presentation. The State won more in court cases last July than he indicated. The State won the ability to continue prosecuting claims against the U.S. Department of Energy's Environmental Impact Statement (EIS). In addition, Mr. Bauser did not mention the U.S. Nuclear Regulatory Commission (NRC) regulations were struck down by the court insofar as they related to the period of performance. I do not want to quibble with some of the other comments, but he seemed to leave the impression we are powerless.

I call your attention to the second paragraph on the first page of a *Los Angeles Times* article entitled, "Nevada's Clout Evident in Waste Site Battle" (Exhibit C):

> The state has stunned federal officials with its tenacity, legal skill and evolving political acumen, scoring key victories in federal court and in Congress that have repeatedly stalled the project 90 miles northwest of Las Vegas.

The impression in other places, as well as the nuclear industry, is Nevada has considerable clout. There will be numerous opportunities in the future to suggest the program cannot be affected by any further litigation, which is not true.

There are three major obstacles the U.S. Department of Energy (DOE) must overcome before filing a license application. First, the DOE must file electronic documents with the NRC, which they failed to do a year ago June, and will probably have a difficult time doing in the future. The State will have an

opportunity to challenge the certification, which will further set the project back.

Second, should the DOE overcome that hurdle, there is a new promulgated U.S. Environmental Protection Agency (EPA) standard in the works. What we heard from the EPA is significantly different than what Mr. Bauser represented to you. The EPA suggested to us it might be years before a standard is accomplished, and the State would have a channel there as well.

Third, the NRC must conform its new licensing regulations to the EPA standard, which will provide the State another opportunity. Obviously, anything occurring in the licensing proceeding objected to by the State will be an opportunity to challenge, either during the proceeding or subsequent to it. There are many opportunities.

MR. LOUX:
Mr. Bauser's view the project is going well is overly optimistic. The February 15, 2005, editorial section of the *Nevada Appeal* indicated President George W. Bush cut funding for the Yucca Mountain Project in half. The letter of resignation of the chief DOE project manager, from the National Commission on Energy Policy, reportedly called for interim aboveground storage sites. Members of that organization want to de-link the construction of future nuclear power plants from Yucca Mountain.

At one point, it was considered an advantage when the DOE cited it would not build other nuclear plants until Yucca Mountain was finished. However, with a desire now to de-link, it seems they are making tacit acknowledgment the project is in trouble. That is altogether our view.

Senator Nolan brought up the issue of benefits. The last three Governors, Attorneys General and the congressional delegation had policies against negotiation. The reasons are clear once you understand many of the legal and regulatory problems with negotiation, as well as the DOE's track record of virtually never honoring any agreement. The people in leadership who know a great deal about this issue have come out strongly against it. An attorney general opinion is: when the process of negotiation is begun, the legal rights to object to a project in the future are negated. That is probably the key issue.

The second issue is the DOE's track record. The DOE has agreements with approximately 14 or 15 other states, not one of which has been honored in any other section. Consequently, the DOE must be sued to be made to obey the law. The idea of enforcing an agreement seems reasonably remote.

I provided the Committee a handout entitled, "Yucca Mountain—Why Nevada Will Not Negotiate" (Exhibit D), which provides an overview of negotiation and experiences in the state of New Mexico.

In conclusion, anyone advocating negotiation does not fundamentally understand the issue or is working for the nuclear power industry, such as former Governor Robert List and Mr. Bauser.

SENATOR CARE:
How much money have the taxpayers of Nevada spent on the Yucca Mountain issue to either prosecute or defend litigation? How much more money may they be asked to extend?

Mr. Bauser indicated all causes of action must be filed in the U.S. Court of Appeals for the District of Columbia Circuit. I have read of actions that were filed in State court, as well as district and federal courts.

MR. LOUX:
Mr. Bauser was accurate when he indicated the statute requires the origination to occur in the U.S. Court of Appeals; however, the State has the option of either filing in its own district, the U.S. Court of Appeals for the Ninth Circuit in San Francisco, or the District of Columbia. Most of our litigation has occurred in the District of Columbia because that court is more familiar with nuclear issues and has heard more cases than any other court in the country. Due to that experience, we found it more attractive to file there.

I estimate the State has spent approximately $4 million on this issue. The Attorney General has requested another $1 million each year over the upcoming biennium, which is believed sufficient for any further litigation during that time period. The funding would cover the challenge of the DOE's administrative record filing, a new EPA standard and a new NRC licensing rule to the extent it is believed defective.

As it relates to the proceeding, Nevada's participation and the challenge to the Yucca Mountain EIS would occur within the NRC proceeding. Nevada's Agency for Nuclear Projects indicated, in the years before licensing began, that approximately $5 million per year would be required. This money has not come from Nevada taxpayers, but from the Nuclear Waste Fund received by the State of Nevada in annual allocations. The Agency for Nuclear Projects has requested supplementation from the State in order to reach $5 million. Federal law allows the State to use the Nuclear Waste Fund to participate in licensing proceedings. Technically, it is called administrative litigation. In real litigation, a challenge in the courtroom falls into the bailiwick of the Attorney General and is prosecuted with money coming from State funds.

SENATOR NOLAN:
We laud you and the congressional delegation. You have exceeded all expectations. The Committee does not fully understand the negotiation process and the need not to show a chink anywhere in the armor. I also understand you are the troops in the trenches in this day-to-day battle, and we take a 30,000-foot overlook of what is going on through your briefings and information received from the Legislative Counsel Bureau (LCB).

I attended both the National Conference of State Legislatures and American Legislative Exchange Council forums, on the transportation committees, and we forwarded resolutions to Congress to proceed with this issue.

At some point in time, there will be a decisive answer. I do not want Nevada to be the state, in the last scene of *The Last Samurai*, where the poor guy is surrounded by his enemies and his only option is to commit hari-kari. You have legislative support, and we are watching closely. We are not only looking at alternatives, but are also doing what is required to protect the citizens of Nevada.

MR. LOUX:
I appreciate your comments. We will see steady erosion when the nuclear industry begins to realize it would be cheaper and easier to have long-term reactor storage. There will continue to be less confidence in the Yucca Mountain Project, which will translate into congressional loss of confidence as well. They will question whether or not to continue to fund this project if it is not making progress, and decide to, perhaps, revisit the issue. It is difficult for major projects to regain momentum after such erosion.

CHAIR AMODEI:
The informational hearing is closed and the hearing is open on S.B. 41.

SENATE BILL 41: Revises provisions governing priority of certain liens. (BDR 9-133)

SENATOR MAURICE E. WASHINGTON (Washoe County Senatorial District No. 2):
Senate Bill 41 raises first and second liens from $1,000 to $2,000.

CLARK C. WHITNEY (General Manager, Quality Towing):
Dean Kirsch and I have worked together for many years. In that time, we experienced problems with this law because it was used against us by some finance companies. I will give you a little history of the problem.

When a car impounded by the police, or a private-property impound, is in our possession, by law we are required to begin the notification process five days after it arrives in our yard. We must complete the notification within 15 days or we are unable to charge a storage fee. We contact the Department of Motor Vehicles to ascertain the legal and registered owner and send a registered letter within five or ten days informing them the car has been impounded. On late model cars, with loans against them, it usually takes about 90 days to complete the notification process.

A few years ago, our storage fees were in the $10 to $15 range, but currently it is $18.50 per day. I also represent SST Towing who charges $25 per day. Using simple mathematics: a tow is approximately $100, the lien fee which helps with the notification process is $130, storage is $25 per day times 90 days, which totals $2,000. After 90 days, the finance company can pay $1,000, which is all the law requires, and the car is repossessed for half the charges. It seems to me the finance company takes a long time to repossess a car, and it usually takes place immediately before the car is auctioned.

Mr. Kirsch and I brought this matter to Senator Washington, and asked him to support a bill to increase the lien amounts to make it more equitable for the towing companies and finance companies as well.

DEAN KIRSCH (Milne Tow & Transport):
I would like to relate my most recent horror story. We had a car in our possession, and within 15 days the lien holder was notified. Within three or four

days, the owner sent his first agent to look at the car. Over the next 90 to 100 days, he brought 3 wholesalers to look at the vehicle and found a buyer. By that time, the bill was $2,700. The owner then invoked this law and took the car out for $1,000. It was abuse. As Mr. Whitney indicated, the owner came two days before the auction and sold the car. It is unfair. The lien limit was set when storage costs were lower. Due to inflation and the cost of real estate, our storage is now $25 per day and next year it will be more. I think S.B. 41 is necessary to keep us solvent.

MR. WHITNEY:
The increase of lien costs from $1,000 to $2,000 refers to liens required pursuant to NRS 108.315, which is basically registering automobiles, motorcycles and so forth. In reference to section 1, subsection 2, of S.B. 41, "The lien of a landlord may not exceed $2,000 or the total amount due and unpaid for rentals and utilities, whichever is the lesser," there is a bill in the Assembly to change the lien of a landlord from $2,000 to $5,000.

SENATOR CARE:
What year did the $1,000 figure become effective?

MR. WHITNEY:
I guess it was six to eight years ago.

SENATOR CARE:
If you adjusted the figure, $1,000, for inflation at that time, what would it be today? How do you determine daily storage rates?

MR. WHITNEY:
Our storage rates are scrutinized by the Transportation Services Authority (TSA). A tariff is filed with them, and they determine whether or not the storage rates are reasonable according to the geographical area. I determine my rates by the cost of my property. I have been seeking another ten acres in the Las Vegas area over the last year and a half. A couple of years ago, I wanted to buy 100,000 to 125,000 acres of property. At the present time, the cost is no less than $250 an acre on up to $400,000 to $700,000 an acre; consequently, the property is leased at a tremendous cost. I am contemplating adding 10 to 20 acres and facing a cost of $40,000 to $50,000 per month. An acre can store approximately 500 cars.

SENATOR CARE:
Does car storage mean the car is stored on open space with, perhaps, barbed wire around the area?

MR. WHITNEY:
Mr. Kirsch suggested tying the fee to so many days of storage; however, the LCB indicated S.B. 41 was the simplest way to accomplish the goal.

MR. KIRSCH:
We are required to keep cars 90 days and should be able to cover the cost incurred by statute. As you are aware, the cost of real estate in Reno has gone crazy. The more business we do, the more land we must control.

JOSEPH GUILD (Manufactured Home Community Owners):
Answering Senator Care's question, NRS 108.290 was amended in 1997 to increase from $750 to $1,000 the lien discussed by Messrs. Whitney and Kirsch. The landlord lien for mobile homes was increased from $750 to $2,000 in either 1981, the 61st Legislative Session, or 1983, the 62nd Legislative Session.

There is an Assembly bill, created by a consensus process, that proposes to increase the landlord lien to $5,000. Both bills are first-priority liens created under NRS 108.270, and the same process is followed under NRS 108.315, which is referenced in S.B. 41. It is an extra judicial lien and is absolute right of possession on the part of the lien holder once the lien is attached. The lien actually follows the property wherever it may end up. Therefore, if an automobile has a lien against it and ends up in Utah, the lien would follow it. It is a unique and interesting part of the statute.

For the same rationale stated by Messrs. Whitney and Kirsch, an Assembly bill was created from input from Assemblywoman Buckley, representatives of mobile home park tenants, the Manufactured Housing Division and landlords. At some point, the Assembly bill and S.B. 41 will cross and there will have to be reconciliation.

SENATOR WASHINGTON:
Are you saying the amount should be raised from $2,000 to $5,000?

MR. GUILD:
I suggested Messrs. Whitney and Kirsch use the figure of $5,000, rather than $2,000, to avoid asking the Legislature for another increase in a few years. I also told them I would help get their bill passed.

MR. KIRSCH:
That would be great unless the larger amount would kill the bill.

SENATOR WASHINGTON:
I do not think a similar bill coming from the Assembly will kill this one.

MR. GUILD:
The bill coming out of the Assembly is a consensus bill, but anything can happen in the legislative process. I would hope any negative impact on the Assembly bill would not mess up S.B. 41.

SENATOR WASHINGTON:
We will not mess it up. We will watch both bills.

MR. GUILD:
If the bill came out of the Assembly with an increase from $2,000 to $3,500 or $4,000, we could live with it. The Assembly bill will probably come to this Senate Committee on Judiciary; therefore, another discussion will take place.

SENATOR WASHINGTON:
If you want to amend S.B. 41 to $5,000, it will be done.

MR. WHITNEY:
There are two amounts here; the mobile home lien is presently $2,000 and proposed to be raised to $5,000; our lien is presently $1,000 and proposed to be raised to $2,500 or $3,000. I propose a friendly amendment to change the lien from $2,000 to $3,000.

SENATOR CARE:
I have reservations. I assume $1,000 was the correct figure in 1997. There were discussions in 2003, during the 72nd Legislative Session and two special sessions, regarding certain increases in alcohol and tobacco taxes. The Governor proposed an 89-percent increase in the alcohol tax because 1981 was the last time it had been raised. Therefore, when adjusted for inflation two years

ago, 89 percent was the correct figure. On that basis, I would agree an increase from $2,000 to $5,000 is correct for the landlord's lien. However, I would not think from 1997 to 2005 it would be correct to exceed a $1,000 increase, which may not sound like a lot of difference. Although I appreciate your intentions, I must tell you, if the presumption is to simply have these increases as inflation adjustments, anything in excess of $1,000 to $2,000 would be excessive.

MR. KIRSCH:
Last Sunday's newspaper indicated real estate in Reno went up 31 percent last year and is expected to go up 24 percent this year. Real estate is the prime motivator for this legislation. I am unsure of the population growth in the Reno area, but I know growth in Las Vegas is incredible. We expect an increase in business and the demand for land. We appreciate your comments on inflation and ask you to consider what is happening with real estate.

CHAIR AMODEI:
Are the rates you are allowed for storage set by the TSA?

MR. WHITNEY:
The rates are proposed by us and approved by the TSA.

CHAIR AMODEI:
You cannot set your rates without the approval of the TSA?

MR. WHITNEY:
It is kind of a rubber stamp at 10 percent a year, but if it becomes excessive, we are called on it.

CHAIR AMODEI:
There being no further testimony, the hearing is closed on S.B. 41. I have no objection to moving S.B. 41 today insofar as the amounts for the motor vehicle storage. This bill does not address mobile homes. It is not my intention to reach beyond Senator Washington's intent. What is the sense of the Committee insofar as $2,000 or $2,500?

SENATOR WASHINGTON:
Although I appreciate Senator Care's comments, I also understand the concerns of Messrs. Whitney and Kirsch regarding the price of real estate. I am prepared

to raise the amount to $3,000. However, if it would cause the bill to fail, I could settle on $2,500 or $2,000. It is up to the two gentlemen.

> SENATOR WASHINGTON MOVED TO AMEND AND DO PASS S.B. 41 WITH THE AMENDMENT CHANGING THE PROPOSED LIEN THRESHOLD FROM $2,000 TO $3,000.
>
> SENATOR McGINNESS SECONDED THE MOTION.

SENATOR McGINNESS:
While I share Senator Care's concerns, Mr. Whitney indicated they must justify their rates to the TSA. I will, therefore, support it.

> THE MOTION CARRIED. (SENATOR CARE VOTED NO. SENATOR HORSFORD WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:
The hearing is closed on S.B. 41 and opened on S.B. 43.

SENATE BILL 43: Adopts revised Interstate Compact for Juveniles. (BDR 5-81)

SENATOR WASHINGTON:
Senate Bill 43 is basically a rewrite, remix, duplicate, here-we-are-again, in-your-face, let-us-get-it-done kind of bill. Twenty-one other states have already passed it. It is a companion bill for adult supervision. It is the juvenile supervision bill for interstate compacts. The adult supervision is working well, and the articles and provisions are the same. It passed in the 72nd Legislative Session out of the Senate Judiciary Committee and was re-referred to the Senate Committee on Finance with a fiscal note. It became stuck in the Senate Committee on Finance where it was buried. We want to resurrect it and ensure it lives longer than three days.

ROBERT W. McLELLAN (Deputy Administrator, Division of Child and Family Services, Department of Human Resources):
I will read my prepared testimony regarding S.B. 43 and the Interstate Compact for Juveniles (ICJ) (Exhibit E). At present, most of the ICJ administration is still handled through the postal service in the mail.

As of February 2, 2005, 21 states have ratified the ICJ.

SENATOR WIENER:
Twenty-one have ratified, but how many are pending during this legislative period?

MR. MCLELLAN:
I believe 17 are pending.

LINDA BOWMER (Unit Manager, Youth Parole Bureau, Division of Child and Family Services, Department of Human Resources):
I would like to highlight a current case scenario that demonstrates the impact of not being able to enforce the ICJ in the State of Nevada. Chris, a 16-year-old youth from Florida with a sex-offending history, was in institutional care in that state. His parents were divorced, and he was sent through ICJ to Arizona to live with his mother. Before Arizona ICJ authorities could perform a home study, accept supervision and process the case, his mother allowed him to move to his father's home in Sparks, Nevada.

The Youth Parole Bureau and the ICJ did a home investigation and found the home was inappropriate for the young man, did not fit the needs of a child and could not take care of Chris's treatment requirements. Florida was contacted and informed that Nevada denied supervision and requested Florida to take the youth back and provide for his needs.

The state of Florida advised Nevada the case was closed and there was no further jurisdiction; therefore, the young man with a sex offender history was left in the State of Nevada, where he went on to sexually re-offend against a younger brother. He went after his father with a knife and was charged with assault with a deadly weapon. He came under this jurisdiction and was adjudicated as a delinquent in Washoe County.

The youth was sent for residential care out of state because Nevada was unable to provide for him in state. He was sent to Texas for residential long-term care. He failed that care, was returned to the State of Nevada and is looking forward to further court processing.

We now have a youth, almost 19 years of age, who is looking at a commitment to the State of Nevada under the juvenile court. He will need further residential

care and there will be large costs to the State, which have already been incurred in the state of Texas through Medicaid dollars.

This is a daily occurrence and a challenge to the ICJ. Florida should have assumed responsibility for this youth. When he was sent out of state, the responsibility to provide the money for treatment remained, as well as returning him if he was not accepted in other states. There is no way to enforce this responsibility on the state of Florida and the onus now rests on the State of Nevada.

The new ICJ would allow sanctions against other states for this kind of behavior.

SENATOR WIENER:
Since its creation in 1955, does any of the ICJ have validity today? Has any of the compact survived and functioned adequately?

MR. MCLELLAN:
The language in the ICJ still has validity today. It has become difficult to deal with disputes between the states, such as in this case study. The new ICJ would address dispute resolution when one state refuses to accept the return of an individual due to a mistake or an intentional mistake in the process of transferring a youth to another state. The existing ICJ is working, but not as well as it should or could.

SENATOR WIENER:
I would like you to provide the Committee a cost analysis of these types of problems over a period of time. Does the State of Nevada send youths out of state who are not returned? Was there a fiscal impact the last time this issue came forward?

SENATOR WASHINGTON:
Yes, there was a fiscal impact which sent the bill to the Senate Committee on Finance.

SENATOR WIENER:
It would help if we could demonstrate Nevada is losing money because there is ineffective language in the ICJ to recoup expenses.

MR. MCLELLAN:
We would be happy to project some of the caseload information and costs to the Committee. Additionally, I want to stand corrected on my prior testimony, there have been 10 states with pending legislation on the ICJ.

SENATOR WIENER:
The onus is not on the caseload; rather, it is on the example given regarding large amounts of money expended because other states will not bear their responsibilities. We must also factor in that Nevada is doing the same thing to other states.

MR. MCLELLAN:
My expectation would be we are playing by the rules and not sending these types of cases to other states.

SENATOR WIENER:
Please provide integrity to the numbers, factoring in the fact that one might slip through once in a while.

MR. MCLELLAN:
We will research it and provide financial information to the Committee.

CHAIR AMODEI:
After receiving the report from Mr. McLellan, the Committee will provide support for the bill, assuming there are enough votes.

> SENATOR CARE MOVED TO DO PASS AND REFER TO THE SENATE COMMITTEE ON FINANCE S.B. 43.
>
> SENATOR WASHINGTON SECONDED THE MOTION.

SENATOR WIENER:
I have done an extraordinary amount of work with juvenile justice and would be willing to testify on the need for S.B. 43.

CHAIR AMODEI:
Senator Wiener is assigned to represent the Committee before the Senate Committee on Finance.

THE MOTION CARRIED. (SENATOR HORSFORD WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:
The hearing is closed on S.B. 43 and opened on S.B. 28.

There was a request by the American Civil Liberties Union (ACLU) to keep the record open until Thursday, February 17, to allow them to submit written comments; therefore, no action will be taken on S.B. 28 today. However, we will take testimony.

SENATE BILL 28: Creates crimes of video voyeurism and distribution of product of video voyeurism. (BDR 15-8)

STAN OLSEN (Las Vegas Metropolitan Police Department):
This bill came up in the 72nd Legislative Session, and we supported it then as we do now. There is a gap in the statutes to address the type of things that have begun to develop over the past few years.

There was an incident wherein an individual, using a video camera, placed himself into the reservoir of an outhouse to photograph women using it. This is one of many examples. There was also an incident in Las Vegas, in the David Copperfield show, in which a stagehand hid a camera in the dressing room, inside a box, to photograph women entertainers changing costumes. Upon discovery, law enforcement was notified, but was unable to do anything about the situation.

There are concerns regarding violation of rights. The language of S.B. 28 reflects that when people have a reasonable expectation of privacy, they should feel comfortable they will not be photographed. There have been issues of people being photographed changing costumes, coming out of the shower at the gym or using an outhouse in a State park.

SENATOR WIENER:
Are there substantive changes in this bill over the one heard since last Session?

MR. OLSEN:
To my recollection, there are not. I met with press representative, Kent Lauer, and he did not observe any changes either.

MICHELLE YOUNGS (Washoe County Sheriff's Office):
We support S.B. 28, which would fill a gap in the NRS regarding our ability to appropriately charge offenders. There was a case wherein a business owner secretly videotaped women employees in a restroom, which is a place anyone would have an expectation of privacy, regardless of whether or not it is a public building. Many advances in technology are being misused. Where there is a will there is a way.

We are also looking over evidence in search warrants involving camera telephones to find inappropriate pictures being taken of victims in restrooms and in situations where privacy would be expected. There have been incidences of cameras being held under women's dresses as they walk by. Therefore, S.B. 28 would be well utilized by law enforcement.

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):
This bill passed both Houses in the 72nd Legislative Session, but was held up in conference committees at the end. Senate Bill 28 is virtually the same language.

I became involved with this bill because of a young girl who was videotaped under her skirt by a man with a camera on his shoe at the Rio Hotel & Casino in Las Vegas. The girl's parents realized what was happening, but, when reported, law enforcement was unable to do anything. It is not difficult to understand the parent's outrage at this incident and frustration of not being able to charge the individual. It is not our intention to infringe on the press or the rights of anyone else, but we believe there are areas in which a reasonable expectation of privacy should be addressed, and it is covered in S.B. 28.

SENATOR MCGINNESS:
Have there been any language changes since the 72nd Legislative Session?

SENATOR CEGAVSKE:
I do not think there were any language changes.

KELLY LEE (Committee Counsel):
Senate Bill 28 is the version introduced in the 72nd Legislative Session with an amendment; however, the amendment is not included this time.

SENATOR MCGINNESS:
I suggest camera telephones, which were not prevalent last time, be added.

SENATOR CEGAVSKE:
We will look into it.

SENATOR WIENER:
I would like to know about the amendment and why the bill got hung up in conference committees. If we process S.B. 28, we could address those issues.

SENATOR CEGAVSKE:
After two years, I do not remember the contents of the amendment nor who submitted it. The bill was put in again immediately after the 72nd Legislative Session, and the consensus of the people working on it was not to support the amendment.

SENATOR CARE:
I endorse the concept, but am concerned about certain parts of the language. Section 1, subsection 1, line 5, of S.B. 28 says, "The person knowingly photographs, videotapes, films, digitally records or through the use of any other visual technology secretly views or records the image of another person ..." which could mean photographing a photograph.

I have two comments. First, let us say, a photograph of a person in a position of compromise, not the live person, but the image of the photograph itself, is photographed.

Second, the statute says "reasonable expectation of privacy" would include a locker room. I am alluding to a locker room where after a game, reporters, often of the opposite sex, are allowed in to interview the players. What would happen if a police officer observed a drug deal taking place in a locker room? Could the defendant say he or she had an expectation of privacy in the locker room? I realize I am mixing apples and oranges, but I can foresee it.

R. BEN GRAHAM (Clark County District Attorney):
With regard to Senator Care's first issue, even though the picture was perhaps the photograph of a friend and it suddenly appeared on the Internet, S.B. 28 says "without the consent of the other person." That would apply even if you took somebody's Paris Hilton tapes and, without her permission, put them on the Internet.

Regarding Senator Care's second point, there are varying degrees of expectation of privacy. The most important constitutional area regarding expectation of privacy would be a person's bathroom in the middle of their house with no windows. There is less expectation of privacy and constitutional protection the further one gets away from that scenario.

A prime example is people who hang out in public restrooms at a public park engaging in illegal conduct. Court rulings indicate if a person is doing illegal things in a public park restroom, it is probably not as constitutionally protected, and it sometimes will depend upon whether or not there are doors on the stalls in the restroom.

A locker room situation presumes an expectation certain things will not take place, being photographed is one of them.

SENATOR CARE:
A statute exists regarding the court sealing the proceedings of a victim of sexual abuse. In the prosecution of a person charged with a Category D felony, photographs are admitted into evidence and the trial is open to the public. Perhaps, language should be added that in the event of a trial, the images would not be available to the public and the courtroom would be cleared.

MR. GRAHAM:
That is a factor, but not an area Senator Cegavske has explored. It may be an element addressed by the ACLU.

SENATOR CARE:
I would have no trouble sealing the records and clearing the courtroom, because I do not think the public needs to see the photographs. There is a comparable statute in the case of a victim of sexual abuse.

MR. GRAHAM:
If we do not want to disseminate it, and it becomes disseminated in the courtroom, it would defeat the purpose of the legislation. Closing the records might be something to address.

SENATOR CARE:
Finally, regarding section 1, subsection 2, of S.B. 28, there is always the case of a magazine received anonymously in the mail and printed. The concern of the ACLU is prior restraint in the First Amendment. Is there a distinction between a person who takes the photograph and disseminates it, as opposed to a magazine that contends they do not know from whence it came and prints it? I am not endorsing that position, just submitting it as a question because I know it will come up.

MR. GRAHAM:
From a prosecutorial standpoint, if we were to prosecute a person, we would have to show they knew, or should have known, it was authorized. It is a safety valve and would increase the level of proof the State would be required to submit before prosecuting a person for distribution under the statute.

CHAIR AMODEI:
I propose to peruse the language provided by the ACLU and work with Senator Cegavske to arrive at an acceptable agreement on S.B. 28.

FREDERICK SCHLOTTMAN (Administrator, Offender Management Division, Department of Corrections):
There is no fiscal impact to the present situation.

MR. GRAHAM:
I do not see this as a "flaming hair" issue.

CHAIR AMODEI:
Is there any more testimony on S.B. 28? Seeing none, the hearing is closed on S.B. 28, pending consideration.

The hearing is reopened on S.B. 27.

SENATE BILL 27: Revises provisions governing selection of alternate jurors in criminal and civil trials. (BDR 14-851)

MR. GRAHAM:
Section 1, line 2, of S.B. 27 says, "The court may direct that not more than four jurors in addition ..." be selected as alternates. I have heard from prosecutors doing serious cases who frequently stipulate to more than four, sometimes five or even six alternate jurors. We might want to change the number in the bill to not more than six to make it clearly available should it be questioned.

CHAIR AMODEI:
The proposal would be to change the Committee's action on the amendment in section 1, line 2, of S.B. 27, from four to six alternate jurors.

SENATOR WASHINGTON MOVED TO RESCIND THE PREVIOUS ACTION TAKEN ON S.B. 27.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HORSFORD WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:
Is there a motion to amend and do pass S.B. 27, including the prior amendment, as well as Mr. Graham's amendment regarding the number of alternate jurors?

SENATOR WIENER MOVED TO AMEND AND DO PASS S.B. 27.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HORSFORD WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:
Seeing no further business to come before the Committee, the hearing is recessed.

CHAIR AMODEI:
The hearing is reconvened with Chair Amodei and Senators Care, Washington and Wiener in attendance to introduce three bill draft requests (BDR). Senators Nolan, McGinness and Horsford are excused.

May we have a motion to introduce BDR 15-185, BDR 5-186 and BDR 15-188?

BILL DRAFT REQUEST 15-185: Revises the provisions pertaining to the counseling required for a person convicted of a battery which constitutes domestic violence. (Later introduced as Senate Bill 77.)

BILL DRAFT REQUEST 5-186: Revises the provisions pertaining to evaluations of children who commit certain acts involving alcohol or controlled substances. (Later introduced as Senate Bill 76.)

BILL DRAFT REQUEST 15-188: Allows use of video conferencing under certain circumstances for counseling and evaluations required for certain offenses. (Later introduced as Senate Bill 75.)

SENATOR WASHINGTON MOVED TO INTRODUCE BDR 15-185, BDR 5-186 AND BDR 15-188.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NOLAN, McGINNESS AND HORSFORD WERE ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:
There being no further business to come before the Committee, the hearing is adjourned at 9:55 a.m.

RESPECTFULLY SUBMITTED:

_____
Barbara Moss,
Committee Secretary

APPROVED BY:

_____
Senator Mark E. Amodei, Chair

DATE:_____