MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
March 22, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:04 a.m. on Tuesday, March 22, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, 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
Senator Steven Horsford

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Kelly Lee, Committee Counsel
Ellie West, Committee Secretary

OTHERS PRESENT:

Lisa Leatham, Safe Embrace
Rita McGary, Safe Embrace
Garret L. Idle, Nevadans for Equal Parenting
Lisa Lynn Chapman
Mark Bryant
Randal Dock
Ray Oster
Jeff May
Bobbie Gang, Nevada Women's Lobby; National Association of Social Workers, Nevada Chapter

Giamarie Sinopoli
Brandi Brown
Dr. Stephen G. Kerr, Certified Management Accountant (Canada) Ph.D.

Chair Amodei stated public testimony would be limited to ten minutes per speaker so the hearing could be concluded today on Senate Bill (S.B.) 109.

SENATE BILL 109: Revises provisions concerning presumption that joint custody is in best interest of minor child. (BDR 11-620)

Lisa Leatham, Safe Embrace, said she was a social work student at the University of Nevada, Reno, and had interned at Safe Embrace, a family violence intervention program and shelter, for three months. Ms. Leatham said she had first-hand knowledge of the fear and sense of helplessness the victims, including women and children, suffered from their batterers. Senate Bill 109 did not address unreported cases of domestic violence and only helped those victims of offenders who had been identified. Ms. Leatham said S.B. 109 needed to be defined more narrowly. Children's social, emotional and cognitive developments were affected by underlying factors related to their emotional responses to the violence, particularly, intense terror and fear of death. Ms. Leatham said children often harbored feelings of guilt, rage and a sense of responsibility for the violence. Children who witnessed acts of domestic violence felt helpless and saw the world as unpredictable, hostile and threatening, she said. She asked that this matter be left to the discretion of the courts. She read one of two letters from two victims in the Safe Embrace shelter (Exhibit C) and (Exhibit D). Chair Amodei reminded testifiers to confine their remarks to a perspective not already heard, since the Committee had a good grasp of the issues already. He invited testifiers to guide their input accordingly and to keep testimony to ten minutes.

Rita McGary, Safe Embrace, said she was a social worker licensed in Nevada who worked with Ms. Leatham at Safe Embrace. She read from her written remarks (Exhibit E). She opposed S.B. 109, citing two troubling incidents she witnessed in the public schools. She stated she was not against fathers. She said her sources for her testimony included: Law Professor Margaret Martin Berry's review on the joint custody presumption of the District of Columbia; "Family Law: A Canadian Perspective," an article from *Domestic Violence, Action and Resource Magazine*, December 2001, Domestic Violence Resource

Centre, South Brisbane, Australia; and excerpts from the writings of several professionals from the judicial and social science fields. Joint custody was being promoted mostly by fathers' rights groups, which had taken over the reform of family law in many parts of the country, Ms. McGary said. She described the development of the movement, stating it began because men paid child support and hence deserved access to their children. Eventually, joint custody became a means to reduce or eliminate child support payments, which she said was wrong. The politics of adult rights should not be injected as a competing consideration with the interests of the child, she said. Ms. McGary noted her research revealed minimal references to the well-being of children and always denigrated the rights of women. Joint custody was interesting in theory, but over time was unrealistic. Historically and currently, women were primary care givers and a court order would not change this highly complicated and emotional condition, she stated. Behaviors did not change because of a court order and without much work on the parts of all involved, she said. Many had been lured into believing joint custody would work because of "feel-good propaganda that it would benefit the children." The joint custody presumption of the District of Columbia review showed this approach sought to reconstruct the "Ozzie and Harriet" ideal of the nuclear family from failed relationships, which was unreasonable and unsupported by social science.

Ms. McGary continued to elaborate on reasons joint custody would not work, citing the United States Commission on Child and Family Welfare rejected the arguments in favor of joint custody in 1996, and there was serious potential for harm to women and children, Exhibit E. She concluded with some recommendations including, child custody be determined according to the circumstances of each individual case. She noted the best custody arrangement was when both parents agreed the children lived in one home and worked together for the benefit of their children, setting aside their own personal grievances.

Garret L. Idle, Nevadans for Equal Parenting, referred to his written testimony (Exhibit F) in favor of S.B. 109. He said he had been involved with the family court system for over ten years and had a case pending. He stated the current court system drove families apart and drained them financially, depriving children monetarily. He said he believed gang activity, drug abuse and teen pregnancy were a direct result of the breakdown of the family, where two parents were needed. He concluded current laws encouraged endless conflict

between parents, which caused children to suffer. He reminded the Senators that children are the future of a society.

Lisa Lynn Chapman, a student at the Boyd School of Law at the University of Nevada, Las Vegas, read from her written testimony (Exhibit G), and stated she currently performed public policy research on children's and family issues for a research institute. She said she opposed the changes S.B. 109 would make. She pointed out that during custody hearings, the courts became the voice of the child in the divorce. For this reason, the standard for custody decisions should remain in the best interests of the child, she said.

Ms. Chapman presented three reasons for opposing S.B. 109. She stated the proposed language changes were vague and did not indicate if the presumption was joint legal custody or joint physical custody. She referred to *Black's Law Dictionary* and explained the differences. She continued, even if the Committee amended the legislation for clarity, there were certain presumptions to joint legal and joint physical custody that were not clearly supported by empirical data. The first presumption, she said, was that parents could put aside their differences for the best interests of their child. Secondly, it was presumed the benefits the child received, due to increased access to both parents, would outweigh any harm to the child caused by continual parental conflict. Thirdly, the judge's ability to pursue other custody agreements would be reduced. Always, the best interests of the child should be the focus of custody hearings, she stated, and someone must advocate for the child's interests, which currently was the courts. She concluded, "If the presumption is altered, who will advocate for the children?"

Mark Bryant stated he was a high school teacher and coach at an inner-city school in Las Vegas and had become a father figure to thousands of students from single-parent homes. He stated he was the father of four boys and had experienced a joint physical custody arrangement for four years before a new judge changed that. He said his boys wanted to continue the joint physical custody or to live with him. The judge rejected the older boy's wishes because an attorney convinced him that both boys had been coached on what to say. He said he was now on a supervised visitation schedule. His 18-year-old son moved to Las Vegas and lived near him to make up for the time he was denied. He admitted there was competition between himself and his former wife for time with the boys when they shared joint physical custody. Under the new

arrangement, he had been prevented from attending the boys' events; but now that he was not able to compete with her for the boys' time, she did not go.

Mr. Bryant said the boys had no parental support, and it was parental alienation in its worst form. He had filed a lawsuit in district court for abuse of process against his former wife's attorney, Matthew L. Johnson. The case was before the Nevada Supreme Court. He referred to a letter from Matthew L. Johnson of Lavelle & Johnson, P.C., to John Paglini, Psy.D., stating he would agree to remove the supervised visitation if Mr. Bryant would agree to dismiss all litigation with prejudice (Exhibit H, original is on file at the Research Library). Mr. Bryant said it was extortion. He maintained the children were involved in more sports and music when they were in joint physical custody and were now only involved in baseball. The children's self-esteem had suffered as a result of him being placed on supervised visitation. He emphasized he was put on supervised visitation due to too much litigation during the time of joint physical custody. He stated he remarried and admitted blended families were difficult because when the children fight, the parents fight. He said telephone calls were recorded and used as evidence to place him on supervised visitation. The judge had ordered a copy of the transcribed telephone conversations be given to him and he never received it. He asked if S.B. 109 would result in more or less litigation. He concluded his remarks saying the children needed to be heard.

Randal Dock testified in support of S.B. 109 and said he was excluded over the past 2 1/2 years from being a part of his daughter's life. His former wife had returned to her former spouse, a convicted domestic violence offender whom she formerly prosecuted in criminal court. He said she admitted, in Mr. Dock's case, she filed a false protective order and was given primary custody anyway at the same time she was charged with contempt of court for violating the orders of the court. He referred to page 11 of the Domestic Court Minutes regarding *Randal Dock* v. *Melinda Young*, dated September 30, 2004 (Exhibit I). He quoted for the record:

> Continuing, it is worth noting that historically the Defendant and her current spouse have not been entirely candid with the Court and have admittedly misled the Court on prior occasions in order to achieve desired results. In this case, the Court finds ... the Plaintiff, Randal Dock, to be the more credible of the parties hereto.

Mr. Dock explained his former wife's desired result, in this instance, was a primary custody decision in her favor. This was a motion to prevent the defendant from relocating their daughter out of state to Georgia. Her motion, as well as the testimony under oath for the evidentiary hearing, was all perjurious. He said he was an out-of-wedlock father, but has fought to be in his child's life since birth. The courts ordered visitation rights to start the bonding process, he said. Mr. Dock said he favored S.B. 109 because it allowed fathers to be part of the decision-making process in their children's lives. Otherwise, he felt discarded because he was an out-of-wedlock father. Mr. Dock concluded his testimony saying he wanted equal rights for both parents and he favored S.B. 109 because the joint custody arrangement prevented one parent from violating the other parent's rights in a court of law.

Ray Oster, an attorney specializing in family law in Reno, Nevada, who also served as an executive council member of the Family Law Section of the State Bar of Nevada, testified on his own behalf in opposition to S.B. 109. Mr. Oster referred to joint custody as an area of Nevada law that had not been defined clearly and, hence, was confusing. He referred to a child custody document he had prepared (Exhibit J) and said he gave it to clients asking for a divorce consultation. There was no definition of legal custody versus physical custody, Mr. Oster said. Regardless of the differences between primary physical, joint physical and sole physical custodies, case law and practice of the courts tried to patchwork these things together, and regardless of whether S.B. 109 passes, 99 percent of the cases would be joint legal custody cases. Sole physical custody was rarely granted, except when egregious facts presented to the court made the argument. Joint legal custody had to do with making legal decisions regarding children. Regardless of the physical custody situation, both parents retained rights regarding decisions affecting their children and were valued in the court system and by Nevada law, he said. Those rights were defined and could be enforced through the court systems.

Mr. Oster opposed S.B. 109 because in the majority of cases, the underlying assumption was the children's best interests were served by having equal time with both parents. He said it was or was not true and was so fact-specific it needed to be on a case-by-case basis. He cited two cases that changed a primary physical-custody situation to a joint-custody situation, and it did not work. The children returned to where they were originally. Ultimately, children needed to have a residence and had to go to school once they were six years old. Often, the parents lived in two different school districts and argued which

district was the best. He said the most important aspect of joint custody's success was communication between the parents. Consistency was paramount. Children suffered when situations become adversarial between parents. Also, geographical logistics could render joint physical custody difficult. He addressed the effect this bill would have on the cost of litigation and said litigation was never really over until emancipation of the child, and S.B. 109 would do nothing to change that situation. Mr. Oster stated there was one situation where litigation could raise costs. It occurred when it was in the child's best interest to be with one parent. That parent would have to spend more money to overcome the joint-custody presumption, showing why it was in the child's best interest to be with him or her.

Regarding standards in the law, he said very good presumptions existed, but not in the area of joint physical custody in the best interest of the child. Mr. Oster concluded the Judicial Branch of the government should be entrusted to make decisions regarding the best interest of the child.

Senator Care asked Mr. Oster if the way the bill was drafted, was there a presumption of joint custody. He referred to S.B. 109, section 1, subsection 2, and said there was nothing that prohibited the court from ordering an investigation. He asked if Mr. Oster interpreted it that way. Mr. Oster said he agreed. Senator Care asked if the court could do that on its own without a motion. Mr. Oster again agreed.

Vice Chair Washington asked Mr. Oster what his law firm's fee was to represent a client in a divorce. Mr. Oster said it depended on the nature of the case. Vice Chair Washington said he just wanted to know the average cost, and Mr. Oster said a contested divorce action would cost $10,000 for a retainer. Vice Chair Washington asked if that was just the retainer. Mr. Oster responded he was correct. Vice Chair Washington wanted to know what the average length of time was to go to court to get or be denied custody. Mr. Oster asked if he was talking about getting the divorce or about post-divorce. Vice Chair Washington said he was asking about both situations. Mr. Oster explained a pre-divorce, meaning getting a divorce and custody as part of the divorce proceedings, would take about six to nine months. A post-divorce action would take less time; he estimated it would take about six months, depending upon the court's calendar. Vice Chair Washington summarized, "So, it could be 18 months, a year and one-half or two years." Mr. Oster said his experience had been with absent business evaluations or complex property-division cases that

were finished within one year in Washoe County. Vice Chair Washington asked what the costs were after the $10,000 retainer. Mr. Oster stated his fee agreement was once the retainer was exhausted, another $10,000 was required to keep the case going. Vice Chair Washington asked if that was $20,000. Mr. Oster answered, "Correct." Mr. Oster said he really did not know how much it would cost because of all the variables with the other attorney's client. If the clients cooperated, the cost could be minimal he said, but if they argued about everything, then it was much more expensive because of all the time involved. He concluded the average litigation cost was roughly $15,000 all the way through trial. Vice Chair Washington asked what the cost would be if the judge ordered a psychological evaluation. Mr. Oster replied there was a wide range between no expense to thousands of dollars, depending on who was hired, and said the high end would be about $2,500 more. He said if a full-blown custody evaluation was ordered, it could cost $5,000 or more. Vice Chair Washington added up all the costs and estimated them at approximately $25,000 to $30,000, "just to get closure regarding custody and visitation." Mr. Oster said that was not unlikely.

Senator Horsford inquired about the language contained in the first section of S.B. 109, section 1, subsections 1 and 2. He asked how the deletion of those two paragraphs would affect State law. Mr. Oster replied that the first provision, where the parties agreed, caused very little effect. He said the second provision would not make much difference, ultimately, because of the court's authority to make these determinations. He said legal custody and physical custody were not defined in Nevada law, and he believed they should be defined to enable lawyers to better advise their clients. The only real distinction between legal and physical custodies was the court's determination of what the meaning would be regarding each individual case. Senator Horsford summarized in S.B. 109, there was a presumption affecting the burden of proof, where joint custody was in the best interest of a minor child, in the language of the first subsection. He asked, if the law passed, what Mr. Oster would have to do to get primary physical custody for his client to avoid that presumption. Mr. Oster responded he would have to show, factually, why it was not in the child's best interest and he would have the burden of proof, so it would be difficult to overcome the presumption without extraordinary circumstances. Litigation costs would rise exponentially for a person attempting to obtain primary physical custody, and it would put the children in the middle of the litigation—testifying more and seeing the psychologists and psychiatrists to whom Vice Chair Washington previously alluded.

Jeff May stated he was here to speak from the heart. He said he supported S.B. 109 and had two children, ages 4 and 9. He said this country and State were freedom-based, and he asked for fairness regarding the children. He said he met his daughter in Lovelock, the halfway point, for visitation. He said his 9-year-old daughter was distraught over returning to her mom after visitation, since she only visited her dad every other weekend, one-half of the holidays and one-half of the summer. He stated his daughter said she wanted to be with her daddy one-half of the time and mommy one-half of the time. He became emotional, choked up and said he felt the time with his children, if divided equally with his former wife, would be fair. He said he had the children's best interest at heart and only wanted half of the time with them, even if the courts awarded him primary custody. He and his former wife had cooperated because they wanted what was best for their children. He said it would be great if the courts had the ability to work out joint custody. He said it had been status quo for 40 years regarding visitation, so the courts had just continued that tradition. He said domestic violence cases needed to be addressed separately and should have no influence regarding normal custody situations. Senate Bill 109 would provide a positive change for the children, he concluded.

Senator Nolan asked Mr. May how he would manage school if he had shared time. Mr. May said his daughter would remain in school at her mom's house for the school year, and he would like more visitation on weekends and during the summer, since that would be best for his daughter and he did not want to disrupt her schooling. Senator Horsford asked if this law would change him for the better as a father. Mr. May said, no, he was always a good father, regardless. The law would, however, provide more opportunity for him to have added time to share his knowledge and heritage with his children.

Senator Horsford said the court set visitation minimums, but it had discretion to increase them. Senator Horsford also stated his children missed him when he was gone, too. He asked if this law would really enable him to be a better father and said, based on his testimony, he thought he would be a good father regardless of the passage of S.B. 109. Mr. May said he was correct in that assumption, but he felt it would help other fathers whose children were used as pawns in the courts. Senator Horsford asked if one of the parents used a child as a pawn, or in other inappropriate ways, how the child would benefit if he had to spend 50 percent of his time with that parent. This law presumed it was in the child's best interest to spend 50 percent of his time with each parent, even

if it was not in his best interest, Mr. May explained. Mr. May restated how he parented his children would not change, but he hoped S.B. 109 would help the courts realize there were other good parents. He said he would like the courts to have the discretion to offer more time to those other good parents for visitation.

Bobbie Gang, Nevada Women's Lobby; National Association of Social Workers, Nevada Chapter, testified both organizations were opposed to S.B. 109 because the change in the law would remove the focus from the best interests of the child. She read from her written testimony (Exhibit K), and said it was important for judges to retain the discretion to make decisions in the best interest of the child, and the current system of laws worked toward that goal.

Giamarie Sinopoli testified she was a member of PRO Child, Protecting Rights of Children, and read from her written testimony (Exhibit L), supporting S.B. 109. She said judges should not be allowed to use discretion and should uphold the laws that already existed, being held accountable when they did not; otherwise, "all of our collective work is futile." She spoke of her own circumstances, and said her 11 1/2-year-old son was forced by the courts and a psychologist, who put him on Xanax, to fly back to North Carolina to live with his sexually abusive father. She said she saw him once for 15 minutes of supervised visitation since he left a year ago. She said she got to talk to her son three times a week for ten minutes on a recorded phone. Her former husband Ms. Sinopoli said, had admitted openly in court that he molested and physically assaulted their son, and she feared, since the conversations she had with her son were heard by his father, he was unable to tell his mother what his current situation was. She said her son had never accused her of sexual of physical assault and she should get joint physical custody, at the least. She became emotional and said she had spent over $45,000 during the past 1 1/2 years in an effort to rescue her son. She said her son had been alienated over the past year from the family and her. She said her son was living in a nightmare because, despite his efforts to come forward, he was ignored and given to a man he only knew as his abuser.

Brandi Brown, a master's candidate in social work at the University of Nevada, Reno, testified she opposed S.B. 109. She read from her written testimony (Exhibit M) and touched upon some of the highlights. She researched whether obtaining a restraining order affected the outcome of custody in divorces. She had heard restraining orders had been used to obtain an advantage in custody decisions and concluded from her research that they did not. The research concluded judges did everything possible to grant joint legal custody in a

majority of cases and also supported the fact, regardless of alleged abuse, that both parents were maintaining access to their children. She stated more services were needed to help keep children safe, rather than focusing on parents' rights. There was a consensus in prior research that joint physical custody was inappropriate for high-conflict couples and couples with domestic violence issues. Keeping the best-interests-of-the-child presumption would ensure the focus remained on the children and not on the parents, she concluded. Senator Horsford asked if her research found any information supporting a certain percentage of time was more beneficial than another, regarding the best interests of the child. Senator Horsford said he thought it was difficult to place a number in law that stated the amount of time required to be a good parent. Ms. Brown said she had not found a specific percentage.

Chair Amodei said he had the statement of a University of Nevada, Reno, professor, Dr. Stephen G. Kerr, Certified Management Accountant (Canada), Ph.D. (Exhibit N). The Committee was familiar with the first page and also Dr. Kerr's personal situation, so Chair Amodei asked Dr. Kerr to concentrate on his three conclusions and his specific recommendations, based on his background. Dr. Kerr said he had no professional expertise regarding the merits of S.B. 109, but had a great deal of personal experience. He said parenting required considerable interpersonal skill, and divorce was an indicator that one or both parents were weak in that area. His experience demonstrated the system carefully considered the needs of the child; we had to trust someone to make a decision, and the judge was best equipped to do it. He said he did not believe it was possible to modify the principle of the best interest of the child with a joint-custody clause. Stripping the family courts of discretion regarding joint custody was not prudent. If the family courts' discretion were diminished, things would become worse for many children, he said. Dr. Kerr opposed S.B. 109, and urged the Committee to redirect its efforts toward providing the family court system with adequate resources to fulfill its obligations in a timely and thorough manner.

Mr. Bryant responded to a question regarding what makes a better father. He quoted a commercial: "How do you spell love? T-I-M-E." He said that commercial summed up custody issues. Mr. Bryant further stated since there were 185 school days in a 365-day year, a judge could be creative in equalizing custody time.

Chair Amodei closed the hearing on S.B. 109 and left the record open on this bill for another week to allow the submission of any other written materials or data pertinent to its consideration. He said it was possible S.B. 109 would have several work sessions to determine Committee decisions regarding changes, if any, since the issue did not lend itself to a quick and simple solution.

Chair Amodei introduced Bill Draft Requests (BDR) 16-577, BDR 15-321 and BDR 10-581.

BILL DRAFT REQUEST 16-577: Makes various changes concerning participants in program to assist victims of certain crime in maintaining confidential addresses. (Later introduced as Senate Bill 271.)

BILL DRAFT REQUEST 15-321: Revises provisions governing confiscation and disposition of certain weapons. (Later introduced as Senate Bill 272.)

BILL DRAFT REQUEST 10-581: Revises provisions governing unclaimed property. (Later introduced as Senate Bill 270.)

SENATOR CARE MOVED TO INTRODUCE BDR 16-577.

SENATOR WIENER SECONDED THE MOTION.

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

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SENATOR CARE MOVED TO INTRODUCE BDR 15-321.

SENATOR WIENER SECONDED THE MOTION.

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

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SENATOR CARE MOVED TO INTRODUCE BDR 10-581.

SENATOR WIENER SECONDED THE MOTION.

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

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Chair Amodei adjourned the meeting at 10:46 a.m.

RESPECTFULLY SUBMITTED:

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Ellie West,
Committee Secretary

APPROVED BY:

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Senator Mark E. Amodei, Chair

DATE:_____