MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
April 4, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:08 a.m. on Monday, April 4, 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 Mike McGinness
Senator Valerie Wiener
Senator Terry Care

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington, Vice Chair (Excused)
Senator Dennis Nolan (Excused)
Senator Steven Horsford (Excused)

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

John Tatro, Judge, Justice Court II, Justice and Municipal Court, Carson City; Nevada Judges Association
David F. Sarnowski, General Counsel and Executive Director, Commission on Judicial Discipline
Ron Titus, Court Administrator and Director of the Administrative Office of the Courts, Nevada Supreme Court; Secretary, Judicial Council of the State of Nevada
Richard L. Siegel, President, American Civil Liberties Union of Nevada

Mike Ebright, Acting Deputy Chief, Division of Parole and Probation, Department of Public Safety
Robert Wideman, Major, Central Repository for Nevada Records of Criminal History, Department of Public Safety
David M. Smith, Executive Secretary, State Board of Pardons Commissioners, Department of Public Safety
Ronald P. Dreher, Peace Officers Research Association of Nevada
David Della, Detective Sergeant, Northern Nevada Repeat Offender Program, Reno Police Department
Kristin L. Erickson, Chief Deputy District Attorney, Criminal Division, District Attorney, Washoe County
Michelle Youngs, Deputy, Sheriff, Washoe County
Fred Haas, Las Vegas Metropolitan Police Department
Robert E. Armstrong, Attorney
John P. Sande III, Nevada Bankers Association

CHAIR AMODEI:
The hearing is opened on Senate Bill (S.B.) 442.

SENATE BILL 442: Makes various changes relating to Commission on Judicial Discipline. (BDR 1-218)

JOHN TATRO (Judge, Justice Court II, Justice and Municipal Court, Carson City; Nevada Judges Association):
Senate Bill 442 is a fairness bill which amends *Nevada Revised Statute* (NRS) 1.440 to require two justices of the peace and two municipal judges on the Commission on Judicial Discipline for a judicial discipline formal proceeding at a public hearing. Currently, one district court judge and one lower court judge are required; S.B. 442 would require two lower court judges in a proceeding involving a lower court judge.

The wording in section 1, subsection 2, of S.B. 442 will be changed from "may" to "shall" in regard to appointing two justices of the peace. Although not shown on the bill, in section 1, subsection 2, after the words "to sit on the Commission for," we would like to add the words "formal public;" therefore, it would read, "... formal public proceedings against a justice of the peace or a municipal judge ... ."

We have agreed to delete the sentence "The investigator shall complete the investigation within 180 days after it is assigned" from section 2, subsection 4, of S.B. 442.

David Sarnowski, Executive Director of the Judicial Discipline Commission, and Ron Titus, Director of the Administrative Office of the Courts, are present. We plan to work with Mr. Sarnowski between now and the next Legislative Session. We are cognizant that completing the investigation within 180 days may require a fiscal note, which is not desired.

SENATOR CARE:
Section 1, subsection 2, of S.B. 442 says, "The Supreme Court shall appoint two justices of the peace or two municipal judges." Does it mean two of one or two of the other?

JUDGE TATRO:
It means two of one or two of the other.

SENATOR MCGINNESS:
You expressed a desire to eliminate the proposed amendment in section 2, subsection 4 of S.B. 442; however, will the remainder of the wording regarding the investigator preparing a written report still apply?

JUDGE TATRO:
Yes, that wording will still apply.

DAVID F. SARNOWSKI (General Counsel and Executive Director, Commission on Judicial Discipline):
Steve Chappell, Chairman of the Commission on Judicial Discipline, was scheduled to be present in support of the measures addressed by Judge Tatro; however, Mr. Chappell is ill and unable to attend the hearing.

I provided the Committee a handout entitled "Nevada Judges by Type" (Exhibit C), which indicates since fiscal years 2001 through 2004, approximately one-third of complaints received were in regard to judges from limited jurisdiction courts. Since 1995, of public formal hearings held, a little more than half pertain to judges from that area of the bench.

We think S.B. 442 is a fair provision. The Commission's present rules provide for a respondent judge from those courts to elect to have his or her peers, but S.B. 442 would make it mandatory by statute. It is also my understanding the bill requires two municipal court judges or two justices of the peace. The Nevada Supreme Court sometimes appoints judges who wear both hats. Should S.B. 442 be passed, appointment of the proper individuals will be ensured.

We also support the deletion of the language in section 2, subsection 4 of S.B. 442.

RON TITUS (Court Administrator and Director of the Administrative Office of the Courts, Nevada Supreme Court; Secretary, Judicial Council of the State of Nevada):
The Judicial Council of the State of Nevada supports S.B. 442.

RICHARD L. SIEGEL (President, American Civil Liberties Union of Nevada):
The American Civil Liberties Union of Nevada (ACLUN) takes no position on S.B. 442; however, I would like to comment on the timing issue. We advise civilians and attorneys taking cases to the Commission on Judicial Discipline that, currently, there is a gag order, and people cannot speak publicly about their cases. This creates a period of time, well over 180 days, in which people do not receive justice. Senate Bill 442 is a bill in which judges are looking for fairness. Civilians also want fairness, as well as a speedy hearing, resolution of their complaint and a release of the gag order. Should the gag order be accepted, it cannot go on indefinitely.

We strongly endorse the 180 days initially proposed in S.B. 442. Although we understand the reason the sponsors want to delete the 180-day proposal, the ACLUN would rather it remain.

CHAIR AMODEI:
You might consider creating a bill draft request and working with Mr. Sarnowski on that issue for the next Legislative Session.

MR. SIEGEL:
We want it as soon as possible; however, if it is two years from now, so be it.

CHAIR AMODEI:
What is the Committee's disposition on S.B. 442?

SENATOR CARE MOVED TO AMEND AND DO PASS S.B. 442.

SENATOR McGINNESS SECONDED THE MOTION.

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

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CHAIR AMODEI:
The hearing is opened on S.B. 443.

SENATE BILL 443: Eliminates provision requiring principal office of Chief Parole and Probation Officer to be in Carson City. (BDR 16-405)

MIKE EBRIGHT (Acting Deputy Chief, Division of Parole and Probation, Department of Public Safety):
Senate Bill 443 was submitted to remove some archaic language from statutes in place at the time the Division of Parole and Probation was the Department of Parole and Probation, and the chief was a member of the Governor's cabinet. The language should have been removed in 1995, when the Department fell under the Department of Motor Vehicles and Public Safety. It should be removed to keep up with modern times and the availability of communication improved through technology. The chief is now in Las Vegas, and the language is no longer needed.

ROBERT WIDEMAN (Major, Central Repository for Nevada Records of Criminal History, Department of Public Safety):
In the spirit of cleanup offered in S.B. 443, the Department of Public Safety discovered additional sections appropriate to be removed. We offer an amendment to repeal three particular sections in NRS 480.200, NRS 480.210 and NRS 480.220 (Exhibit D) pertaining to public safety telecommunication operators. Those sections were enacted in 2001 to create a committee of multi-jurisdictional personnel, the purpose of which was to encourage and adopt standards for training of telecommunication operators. Since that time, although personnel were appointed and reappointed in 2003, the committee has never held a meeting, a chairman was never elected, nor was any funding allocated to administer the committee. At this point, we are unable to discern any effect of the existence of the committee.

CHAIR AMODEI:
Mr. Ebright, have you a problem with the amendment being added to S.B. 443?

MR. EBRIGHT:
I have no problem with it.

SENATOR WIENER MOVED TO AMEND AND DO PASS S.B. 443.

SENATOR CARE SECONDED THE MOTION.

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

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CHAIR AMODEI:
The hearing is opened on S.B. 445.

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

DAVID M. SMITH (Executive Secretary, State Board of Pardons Commissioners, Department of Public Safety):
The Committee received a handout (Exhibit E, original is on file at the Research Library) which includes my prepared testimony, as well as an opinion by the Attorney General. I will read my prepared testimony in support of S.B. 445 regarding the procedures by which a person applies to the State Board of Pardons Commissioners (Pardons Board) and the effect of a pardon with regard to the restoration of civil rights.

SENATOR WIENER:
Please explain the distinction between 1,500 applications received and the 50 to 60 applicants who appear before the Pardons Board.

MR. SMITH:
The Pardons Board consists of the Governor, the Attorney General and members of the Nevada Supreme Court. They meet twice a year to consider commutation of sentences applied for by inmates, who represent the bulk of applications received.

Other applicants considered have completed their sentences, are living in the community, have passed a period of time since they got off parole and probation, or were discharged from prison. Although there are no specific criteria, many applicants do not fit the model brought before the Pardons Board. When the Pardons Board considers commuting sentences or issuing pardons, they want to be comfortable the action is reasonable, based upon the facts and circumstances. The Pardons Board only meets twice a year; consequently, they cannot possibly consider 1,500 applicants. Therefore, only 50 to 60 applicants can come before the Pardons Board to be considered for commutation or pardon.

SENATOR WIENER:
It is driven by two considerations. One, the applicant does not meet a comfortable criterion; and two, the Pardons Board only meets twice a year and can only accomplish so much. If they met four times a year, they might be able to consider twice as many applications and, perhaps, the criteria might be satisfied.

Please explain some of the common deficiencies. It appears there is a pecking order as to which 50 or 60 applications are considered. Perhaps another 50 or 60 might qualify, but cannot fit into two meetings a year. Would more meetings accommodate the leftover applications?

MR. SMITH:
A hearing can take 15 minutes to 3 hours, depending upon the type of case being considered. Typically, cases considered for commutation are quite lengthy. The Pardons Board has never been staffed with a dedicated person; my primary function is management analysis to the State Board of Parole Commissioners. This Legislative Session, a full-time person dedicated to this endeavor has been requested in anticipation of doing a better job of managing applications. There were three Pardons Board hearings last year.

In regard to the number of individuals whose cases are within suitable criteria for the community, the first requirement is passage of an appropriate amount of time since the individual finished his or her sentence, or got off parole or probation. The Pardons Board determines whether or not the individual demonstrates a commitment toward rehabilitation and not committing new crimes. Applications are received from people who just got off probation or out of prison; however, that is not the appropriate time to come before the Pardons

Board to be forgiven for their crimes or have their rights to bear arms restored. Many applicants in the community have most of their rights restored, but typically do not have the right to bear arms, which requires a pardon. Many applicants apply around the time they are qualified for sealing of their records; therefore, they can be pardoned and have their right to bear arms restored and their records sealed, at which point, they can get on with their lives.

Inmate cases and community cases differ. There may be cases in which an inmate with multiple, consecutive sentences has served 10 or 15 years with no hope of discharge, yet has demonstrated in prison that his or her life has completely changed. A person coming from the Department of Corrections, if not placed by a member of the Board, typically has the support of the Director of Corrections. Wardens and caseworkers identify individuals whose sentences do not fit them today and recommend pardons.

The Pardons Board would like to consider more cases, but there is never enough time. With a dedicated person, the processing of more applications could be facilitated.

SENATOR CARE:
Under current law, civil rights are considered the right to vote and serve as a juror, and there is a scheme as to when they could serve, depending on whether it is a criminal or civil trial. Under S.B. 445, could the Pardons Board restore the right to hold public office?

MR. SMITH:
The *Constitution of the State of Nevada* does not restrict the Pardon Board's ability, except in commuting sentences of death or life without parole, to a sentence that would allow for parole. Therefore, once a person receives a pardon, unless a certain right is restricted, the Pardons Board could restore the right to hold office.

SENATOR CARE:
Discussions took place during the last two Legislative Sessions as to what civil rights should be restored. I think the Legislature said the right to vote and serve on a jury would be restored, depending upon whether a person's offense was civil or criminal, and the person must wait for a number of years. In the discussion, the right to hold office and serve in the Legislature, either explicitly or implied, was denied. Would S.B. 445 substantively alter the decision made

by the Legislature in the past two Legislative Sessions regarding discretion to restore the right to run for office?

MR. SMITH:
It is my understanding the Pardons Board has constitutional authority to restore the right to run for office. Included in Exhibit E is an opinion of the Attorney General which addresses that analysis. When changes were made in prior Legislative Sessions, the language was put into statute under the Pardons Board. I am unsure whether or not there was specific discussion relating to the Pardons Board. We did not consider it until after receiving the opinion that the restrictions the Legislature put into place did not apply because the Pardons Board is a constitutional body and derives its authority from the Constitution.

SENATOR CARE:
Is existing law substantively changed with S.B. 445?

MR. SMITH:
Senate Bill 445 would change current law in statute; however, technically, since the Pardons Board's authority comes from the Constitution, it would not change its power.

SENATOR CARE:
Are considerations by the Pardons Board open hearings?

MR. SMITH:
Yes.

SENATOR CARE:
Are victims given notice of the hearings?

MR. SMITH:
Yes. There is another bill regarding the Open Meeting Law with regard to pardons.

Nevada Revised Statute 213 contains specific notification requirements. With regard to pardons, a victim must be notified 15 days prior to the date of the hearing, which is the minimum requirement. The district attorney and judge must be notified within 30 days of the hearing, and the victim is usually notified at that time, as well.

CHAIR AMODEI:
To allow Senator Care to become more comfortable with S.B. 445, the Committee will place the bill into a work session within the next 48 hours. The hearing is closed on S.B. 445 and opened on S.B. 449.

SENATE BILL 449: Revises provisions governing crime of burglary. (BDR 15-1357)

RONALD P. DREHER (Peace Officers Research Association of Nevada):
We are present to request your support for S.B. 449 and appreciate the Chair bringing it forward as a Senate Judiciary Committee bill.

DAVID DELLA (Detective Sergeant, Northern Nevada Repeat Offender Program, Reno Police Department):
I will present my prepared testimony in support of S.B. 449 (Exhibit F).

SENATOR CARE:
Is there a Nevada Supreme Court case that made you realize a statute was needed in regard to this offense, or was there a specific case that drove you to introduce this bill?

SERGEANT DELLA:
There is no specific case. I have been with the Northern Nevada Repeat Offender Program as a supervisor for almost six years; before that I was a detective with the program for two years, working with career criminals. We are seeing more cases in which offenders dig through trash cans outside The Home Depot, Inc., Stores, Lowes or other such places, find high-total receipts, go in and ask for and receive refunds. If the person stole the item, he could be charged with burglary; however, since he received a full refund for the item and walked out, it is considered a misdemeanor. Nothing drove me, personally, or through the Nevada Supreme Court, to submit S.B. 449.

SENATOR CARE:
Is it a misdemeanor, based on an amount?

SERGEANT DELLA:
That is correct.

SENATOR CARE:
Is the amount above $250?

SERGEANT DELLA:
It is $250 or more to be considered grand larceny, or a felony obtaining money under false pretenses. Under the current burglary statute, if a person enters a building with intent to commit a felony, it is considered burglary.

SENATOR CARE:
The effect of S.B. 449 would be to charge the defendant with two crimes, as opposed to one. Is that correct?

SERGEANT DELLA:
The offender could receive a more severe penalty with the charge being a felony as opposed to a misdemeanor. Misdemeanor petty larceny is covered under the current burglary statute, whereas misdemeanor obtaining is not. It would only be a misdemeanor if they did the refund, but a felony if they took the item and left.

SENATOR CARE:
I am not suggesting there is anything wrong with S.B. 449; however, it would give a prosecutor an additional vehicle to, perhaps, obtain a plea agreement.

KRISTIN L. ERICKSON (Chief Deputy District Attorney, Criminal Division, District Attorney, Washoe County):
The Washoe County District Attorney supports S.B. 449. Responding to Senator Care's question, S.B. 449 would not add an additional charge, only to charge burglary. If a person were to obtain more than $250 worth of property or money under false pretenses, he or she could be charged with both obtaining and burglary. If the amount is under $250, which is the situation addressed here, it would only be one charge of burglary and a misdemeanor obtaining. Charges could not be stacked.

MICHELLE YOUNGS (Deputy, Sheriff, Washoe County):
The Washoe County Sheriff's Office supports S.B. 449.

FRED HAAS (Las Vegas Metropolitan Police Department):
The Las Vegas Metropolitan Police Department supports S.B. 449.

CHAIR AMODEI:
What is the appetite of the Committee in regard to S.B. 449?

SENATOR WIENER MOVED TO DO PASS S.B. 449.

SENATOR McGINNESS SECONDED THE MOTION.

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

CHAIR AMODEI:
The hearing is opened on S.B. 382.

SENATE BILL 382: Makes various changes relating to trusts. (BDR 13-727)

ROBERT E. ARMSTRONG (Attorney):
I would like to enter into the record an article entitled "Where to Entrust Your Trust" from *Business Week* (Exhibit G).

Nevada is currently a popular jurisdiction to locate significant private trusts. It is important to continue the ability to attract these trusts to the State due to their fiscal impact. Section 1 of S.B. 382 allows for a preexisting long-term trust to form limited-liability companies and other entities that will allow them to hold property. Trusts drafted prior to this time may not have contained this provision. By allowing statutory authority, trusts will be allowed to form entities and hold real estate and other assets that have potential for liability exposure.

Section 1, subsection 2 of S.B. 382 allows a trust to form an entity to succeed the trustees in the administration of the trust. This is important due to an emerging trend among large private trusts with concentrated assets that are not able to appoint successor trustees. Senate Bill 382 would allow creation of a trust company that would succeed the trustees as the administrator or trustee of the trust. It would be valuable for families in need of succession planning for long-term trusts with concentrated asset positions, such as stocks, publicly traded companies and such.

Section 2 of S.B. 382 is an extension of the spendthrift provisions to distributions from spendthrift trusts. I would like to point out that passage of

section 1 of S.B. 382 is important to the continued view of being a favorable trust jurisdiction.

JOHN P. SANDE III (Nevada Bankers Association):
I surmise the language of the spendthrift trust emanated from the State of Alaska. Senate Bill 382 would allow creation of a spendthrift trust, and distributions from it would be protected from creditors. It is my understanding an Alaskan spendthrift trust would require an Alaskan trustee; therefore, a person in Alaska could make money off the transaction. Senate Bill 382 does not require a trustee in the State; however, section 4 authorizes the trustee of a non-Nevada domicile trust to transfer the domicile to Nevada.

Senate Bill 382 is also anti-creditor from the following standpoint. Should assets obtained from the trust be contested, a $25,000 bond must be posted with the court for attorney fees. If the attempt to obtain assets does not prevail, it must be shown by clear and convincing evidence the person creating the spendthrift trust was doing so for the purpose of defrauding creditors. Attorney fees are awarded if a defendant prevails in any action by a plaintiff. In my opinion, it is extreme. There are only a couple of states with that type of protection, which is an attempt to urge people to convey their assets to those states and make money off the transactions.

CHAIR AMODEI:
Who is the proponent in regard to the provisions in section 3 of S.B. 382?

MR. SANDE:
I do not know.

SENATOR CARE:
I have reservations regarding the $25,000 security bond, the clear and convincing standard and the burden of proof on the plaintiff. Does S.B. 382 impact the Uniform Prudent Investor Act enacted during the last Legislative Session?

MR. SANDE:
Senate Bill 382 would not impact the Uniform Prudent Investor Act. It would allow a person to create a spendthrift trust and then make distributions to a person, who may even be the creator of the trust. The person could live off the distributions as long as a separate account was set up within a certain time

period. Creditors could not go after those assets unless it could be shown the spendthrift trust was created to defraud creditors. The creditor would have to post a $25,000 bond to go after the assets and show by clear and convincing evidence the creator of the trust did so to avoid liabilities. It would be difficult to do in a court of law. Should his case be unsuccessful, the creditor would be responsible for the attorney fees of the creator or beneficiary of the trust, which could be the creator.

SENATOR CARE:
In the case of a corporation which, potentially, has an indefinite entity, how does S.B. 382 read in tandem with the ruling of perpetuities? Does Nevada have a constitutional prohibition?

MR. SANDE:
I supported it, and it was twice passed; however, the proponent lawyers did not spend time with the editorial boards or put up any money. The boards did not understand some editorials came out against it. At the present time, there is a rule against perpetuities, with the exception of those for charitable purposes in the State of Nevada. I think an exemption was put into the Nevada statutory Constitution, which gives a certain number of years.

SENATOR WIENER:
What would prompt a situation in which the creator of a spendthrift trust would collect the distributions, and what is the time period in which creditors could not go after the assets?

MR. SANDE:
Section 3 of S.B. 382 addresses various types of distributions. Specifically, section 3, subsection 2, of S.B. 382 says:

> A person may not bring an action against a distribution of income or principal made from a spendthrift trust and to or for the benefit of a beneficiary of the spendthrift trust if the beneficiary is the settlor, or against any income, growth or other proceeds, accumulations or any replacement properties from any sales, exchanges or other transfers of property arising from the distribution, if and to the extent ...

Then, the requirements are set up. For example, a separate account must be set up within 60 days. The creator of the trust can get all income from the trust and up to 15 percent of the trust principal under certain circumstances. Any type of liability to creditors could be avoided unless the creditor could prove the trust was created to defraud creditors. The burden would be on the creditor, who would be required to put up the $25,000 bond.

SENATOR WIENER:
How would this apply in the real world?

MR. SANDE:
It would apply to a person in a situation with potential exposure, such as malpractice, a large amount of money or a large loan they cannot repay. A person may set up a spendthrift trust, put all their assets in it, allow a loan to go into default, and take the position no money is owed.

CHAIR AMODEI:
It is my understanding Messrs. Armstrong and Sande support section 1 of S.B. 382, as well as the deletion of sections 2 through 10.

MR. ARMSTRONG:
I support that proposition.

CHAIR AMODEI:
Is it the appetite of the Committee to amend and do pass S.B. 382, with an amendment to delete sections 2 through 10?

SENATOR CARE MOVED TO AMEND AND DO PASS S.B. 382.

SENATOR McGINNESS SECONDED THE MOTION.

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

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

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: