MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
April 27, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:14 a.m. on Wednesday, April 27, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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
Bradley Wilkinson, Committee Counsel
Johnnie Lorraine Willis, Committee Secretary

OTHERS PRESENT:

Joseph Guild, Attorney, Motion Picture Association of America, Incorporated
Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Gerald Gardner, Chief Deputy Attorney General, Criminal Justice Division, Office of the Attorney General
R. Ben Graham, District Attorney, Clark County; Nevada District Attorney's Association
David Watts-Vial, Deputy District Attorney, District Attorney, Washoe County
Kristin L. Erickson, Nevada District Attorney's Association

Karen Van De Pol, Chief Deputy District Attorney, District Attorney, Clark County
Steve Jones, Deputy City Attorney, City Attorney, City of Las Vegas
James Wadhams, Blackjack Bonding, Incorporated

Chair Amodei opened the hearing on Assembly Bill (A.B.) 124.

ASSEMBLY BILL 124 (1st Reprint): Prohibits operation of audiovisual recording function of device in motion picture theater under certain circumstances. (BDR 15-644)

Joseph Guild, Attorney, Motion Picture Association of America, Incorporated, said the Association supported A.B. 124. He referred to his handout (Exhibit C, original is on file at the Research Library) which included a brief description of "Theatrical Camcorder Piracy," an article from Time, Incorporated, that appeared in *Time Magazine*, January 2004, titled "Hollywood Robbery" and a matrix documenting states that had passed legislation prohibiting the operation of recording devices in movie theaters. Mr. Guild stated around 14 states, including Nevada, were considering legislation prohibiting piracy of movies. He pointed out that camcorder piracy was an increasingly large problem for the movie industry.

Mr. Guild said that about four years ago, the Senate Committee on Judiciary heard a bill on counterfeiting and made it a crime in Nevada. He said the Committee spoke about the increasing problem of counterfeiting around the world of things such as Armani suits, Rolex watches, sound recordings and movies. He said the Legislature passed the bill about counterfeiting, but the other piece of the puzzle was the piracy piece. He said that was what A.B. 124 was addressing.

Mr. Guild noted that section 1, subsection 1 of the bill created the crime of operating an audiovisual recording device in a motion picture theater with the intent of recording the movie on the screen. He said section 1, subsection 2 created the penalties for pirating movies. He documented that for a first offense it would be a misdemeanor and a second offense would be a Category D felony. He said section 1, subsection 3 was the immunity section for the owner of a movie theater or designated agent of the owner who detained a person suspected of piracy.

Mr. Guild pointed out a presumption on line 23 of page 2 of A.B. 124. He said the bill presumes there was a violation of the law if the owner or his designated agent observed the person aiming the recording device at the screen. Mr. Guild said the immunity from prosecution for holding a person against his or her will section of the bill was only a limited immunity and was only if there were signs clearly stating that any recording of the movie was forbidden.

Mr. Guild continued to section 1, subsection 5 of the bill. He said that section of the bill did not prohibit law-enforcement officers from using recording devices in movie theaters if the officer was investigating a crime.

Mr. Guild said section 1, subsection 6 of A.B. 124 defined an audiovisual recording device. He said a member of the Legislature asked whether the bill would include cell phones that had camera functions. He said it was his belief the bill included those cell phone devices. Mr. Guild commented the bill also defined a motion picture theater.

Senator Care asked whether the crime in the bill was to knowingly operate a recording device in a theater, but not merely being in possession of a recording device, and the owner or his designated agent must observe the individual pointing the device at the movie screen. Mr. Guild responded, "Yes."

Senator Care asked what would happen if someone went to the owner and told him or her that someone else in the theater was aiming a recording device at the movie screen, but the owner never actually observed the infraction. Mr. Guild replied that would not be enough evidence for the owner or his designated agent to detain a person.

Senator Care asked whether the bill allowed the detention of a coconspirator who did not actually have the recording device, but was assisting someone else to record the movie in a theater. Mr. Guild responded that accessories to crimes were covered in a different part of the State's criminal code. Senator Care said he was just wondering whether the owner or his designated agent of a movie theater could also detain an accessory. Mr. Guild replied that he was not sure the owner or his designated agent could actually detain an accessory to the crime. He said the owner or his designated agent should be able to charge the accessory, but not detain him or her. Mr. Guild pointed out that the owner or his designated agent could always ask a police officer to detain or find an accessory to the crime.

Senator Care noted that the immunity language in A.B. 124 was very similar to the immunity language in the shoplifting law. He said in the shoplifting law, the notice must be prepared and copies supplied on demand by the superintendent of the State Printing Office, but in this legislation, the theater owner must provide and display the sign himself. Mr. Guild replied there was a lot of discussion in the Assembly about this subject. He said the bill was substantially amended in the Assembly before coming to the Senate. He explained the goal of the amendment was to match as closely as possible the shoplifting statutes. However, he said, the subject of the State Printing Office supplying the signs was never mentioned. He said perhaps one of the reasons it was not mentioned was because Assemblyman Bernie Anderson, Assembly District No. 31, Chair of the Assembly Committee on Judiciary, asked him to supply an example of the language used throughout the nation by theater owners. Mr. Guild reasoned that was probably because he had testified that the motion picture industry had come up with a model sign. He said with that information, the Assembly Committee on Judiciary never came around to the subject of the signs being supplied by the State Printing Office.

Senator Care asked how a Category D felony was attached to this crime for a second offense when ordinarily a second offense was petty larceny. Mr. Guild replied the reason was when drafting the legislation, everyone was attempting to model other such legislation throughout the nation.

Senator Horsford asked what was the justification for a Category D felony and not a Category E or some other category. Mr. Guild responded that he could be wrong, but believed that Category D was the entry-level felony after a misdemeanor. He stated such inclusions were the bill drafter's decision rather than his personal decision. Senator Horsford then asked Bradley Wilkinson, Committee Counsel, whether the category selection was consistent with other thresholds for similar offences. Mr. Wilkinson replied the threshold appears to be consistent with the state listings on Exhibit C. He said a Category E felony was the lowest felony allowable by law, and it had mandatory probation edicts. Mr. Wilkinson said when comparing the statutes of other states, the Legislative Counsel Bureau's Legal Division found this was the closest match. Senator Horsford asked if he could get that researched a little farther.

Senator Horsford wanted to know what the difference between "reason to believe" and "a reasonable doubt" would be. He pointed out that

Mr. Guild had stated there had to be something more than just hearsay, and asked if the current language was specific enough. Mr. Guild pointed out lines 25 and 26 of the bill, and said the owner or his designated agent could presume an infraction only if the owner or his designated agent had observed the person recording the movie. He said as a defense attorney, if he could ascertain through witness interviews that the owner or his designated agent was not in that theater at the time, then he would use that as a defense against this crime because the bill stated the owner or his designated agent must observe the recording device being used.

Mr. Guild commented there was an incident in Las Vegas where the owner detained a person recording a movie from the screen. He said when the officers arrived, they could not arrest that individual because there was no law against it in Nevada.

Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association, said they were in support of A.B. 124. He said he could verify that there was an incident in Las Vegas where officers did respond, and the only action that could be taken was for trespassing.

VICE CHAIR WASHINGTON MOVED TO DO PASS A.B. 124.

SENATOR McGINNESS SECONDED THE MOTION.

Chair Amodei said if the bill passed, he wanted to delay reporting the action so Senator Horsford could get further research on the areas he questioned.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Amodei closed the hearing on A.B. 124 and opened the hearing on A.B. 465.

ASSEMBLY BILL 465 (1st Reprint): Prohibits person from allowing child to be present in any conveyance or upon any premises wherein certain crimes involving controlled substances other than marijuana are committed. (BDR 40-112).

Gerald Gardner, Chief Deputy Attorney General, Criminal Justice Division, Office of the Attorney General, said he was appearing on behalf of Attorney General Brian Sandoval. He referred to his written testimony (Exhibit D). He said Nevada, as many other states in the Union, did not have laws to protect people, and especially children, from the hazards of such things as a methamphetamine lab. He said deputies from the Office of the Attorney General (OAG) met with many public leaders about the danger of dismantling such labs.

Mr. Gardner said one of the findings was public safety workers had to get into full hazardous materials disposal suits when neutralizing a lab. He explained the public safety workers were extremely concerned about the safety of children around locations of illegal drug labs and asked the OAG to address that issue.

Mr. Gardner conveyed at the prompting of the public safety officers, the OAG began to study national data about cases involving children and the impact of these drug labs on them. He explained one of the cases studied was a case in California where a trailer fire caused by a methamphetamine lab exploded, killing three children. He said the lab was run by the children's mother. He noted the children's mother and the methamphetamine cook escaped unharmed. He cited other cases from Exhibit D in which children were unprotected from such events through the negligence of the parent or caretaker.

Mr. Gardner testified he learned when speaking with Clark County District Attorney David Roger and the former Clark County chief deputy district attorney for the special victims unit, Judge Douglas Herndon of the Eighth Judicial District Court, that under current child-endangerment laws, they could not prosecute these cases. He explained the reason the cases could not be prosecuted was that the evidence requirement for willful harm or willful endangerment could not be met by the reckless, wanton behavior of methamphetamine operators. He stated as a result, there were almost no prosecutions against these adult offenders whose irresponsible behavior endangered children.

Mr. Gardner said under A.B. 465, which passed out of the Assembly unanimously, severe penalties would apply to any person who knowingly exposed a child to drugs being used, sold, or given away. He said there were harsher penalties for people manufacturing illegal drugs when children were

nearby, and the penalties were even harsher if a child was injured or killed as a result of that activity.
Mr. Gardner pointed out there was a copy of a *Las Vegas Review-Journal* article on the subject in Exhibit D.

R. Ben Graham, District Attorney, Clark County; Nevada District Attorney's Association, said that would be under the purview of Clark County and the County could handle any problems with that violation.

Mr. Gardner said several weeks ago Clark County discovered a methamphetamine lab in the garage of a home where a woman was operating a day-care center which had up to 15 children present on regular days. He commented the woman's son was arrested. He stated the man was exactly the kind of perpetrator A.B. 465 was designed to prosecute. He affirmed these methamphetamine labs were time bombs waiting to go off, and everyone within proximity of one of these labs was in danger.

Mr. Gardner explained the Assembly questioned the overly conclusiveness of the bill and, as a result, the bill had been amended. He said the person cited in such a crime had to knowingly engage in the criminal activity, be an aide or an accomplice, not just an innocent party who happened to be in that location at the time of the arrests.

Chair Amodei said the hearing on A.B. 465 would be left open until 5 p.m. on this legislative day, so Mr. Gardner and others could submit additional written comments or information for the record.

Vice Chair Washington asked, without this bill, whether Child Protective Services (CPS) would be able to file charges in cases such as these, where children were threatened, abused or neglected because of the use or manufacture of illegal drugs. Mr. Gardner replied that CPS should not have any additional responsibility because of A.B. 465; CPS would be brought into the case under any criminal circumstances that involved children.

Vice Chair Washington asked if the bill was aimed at perpetrators who endangered children as opposed to other individuals exposed to these illegal labs. Mr. Gardner conceded Vice Chair Washington was exactly right. He stated the bill was after anyone who knowingly engaged in illegal activities that endangered children.

Vice Chair Washington posed the question as to whether CPS would pick up the children and remand them to foster care. Mr. Gardner responded that would happen if the perpetrator was the caregiver of the child. He explained if the target of the crime was unrelated to the children, such as the case from Las Vegas in Exhibit D, then CPS would not get involved.

Senator Care asked what would happen if one of the perpetrators was a child himself, as in the case of the sniper in Virginia who had a juvenile with him. Mr. Graham replied that prosecutors would add this criminal charge to any other charges for illegal activities when the crime could possibly harm a child. Senator Care commented that it could happen that two 17-year-olds were involved, especially if one of the 17-year-olds did not inform the other 17-year-old that an illegal activity was taking place in their vicinity. Mr. Graham agreed that was a hypothetical situation that could occur. He said, generally, the situations have older people and young people involved. He commented he was unaware of any cases that involved only juveniles.

Senator Care said the Legislature continues to create laws that have Category B, Category D felonies, and then, some bill will instruct that the offenders be segregated from violent offenders during incarceration. He stated all of these directives cost money. He asked Mr. Graham how Clark County was doing on jail space and prison space as the Legislature continues to pass these kinds of bills. Mr. Graham replied that the bill may produce a slightly higher population in the prisons, but the cure was worth the expense in these cases. He said there were no current statistics, but methamphetamine labs seem to be an epidemic and hopefully, with emphasis on the penalties, the State's law-enforcement agencies could get a handle on the problem. He said if the Legislature passed the law, and law-enforcement agencies did a good job collecting evidence, then these criminals would be prosecuted and sent to prison.

Senator Horsford asked how the bill affected drug houses and whether the penalties under section 1, subsection 2 were consistent with how individuals were treated involved with drug trafficking and those kinds of environments. Mr. Gardner replied that manufacturing of drugs other than marijuana were all punished under the same statutory system, and this proposed legislation would also address any illegal drug manufacturing. He said those penalties were consistent. Mr. Gardner explained because of the fumes and possible burning,

scalding or explosion, these crimes were extremely dangerous to everyone around the area and A.B. 465 covered these crimes, if consistently applied.

Senator Wiener explained that in the past, she introduced a bill concerning an adult engaging juveniles in commissions of crimes. She said that bill doubled the penalties in the hope of discouraging adults from criminalizing children. She said any adult dragging a child into a criminal situation would immediately receive double the penalties; she added, this bill would complement the other law.

Mr. Gardner said he used that statute in a case where a mother was using her 12-year-old son to smuggle drugs into a state prison.

Senator Horsford asked in A.B. 465, under section 1, subsection 2, paragraph (a), if these penalties were equal to the penalties for other illegal drug activities. Mr. Gardner replied the penalties for the use, sale or manufacture of illegal drugs would be increased for situations where children were present. He said when children were not present, there would be no stacking of additional charges in these situations. He explained the reason for seeking to create this law was to add an additional penalty as a deterrent for having children anywhere near these dangerous substances.

Chair Amodei said as he read section 1, subsection 1, paragraph (a), the penalties in the bill would not apply to the possession of these illegal substances. He said the way he was reading the language, possession was the least culpable of all the activities involved with illegal drugs documented in the bill. He queried whether the bill said, if someone having children were investigated and arrested for possession of any of these drugs without the children being present, then the bill would not apply. He said a person would have to be caught using or creating these illegal drugs in the presence of children for the bill's provision to come into play. Mr. Gardner replied the Chair was correct in his summary that a perpetrator would have to be smoking, injecting or producing illegal substances.

Senator Horsford asked if there would be attached fines as well as increased penalties to a Category D felony for the use of illegal drugs in the presence of children. He said if the illegal activity caused the death of a child, the felony would become a Category A felony. Mr. Gardner responded Senator Horsford was correct.

Senator Horsford said everyone should take into account that some of these people were taking drugs out of addiction. He said while everyone wants to protect children, he did not want to impose penalties without treatment centers or care for perpetrators who were addicted and needed help. He explained he grew up in a family that had drug addicts, and he observed drug use as a child. Senator Horsford stated there were still a lot of people and children in that same situation. He said if this had been law when he was a child, his mother probably would not have been 12 years' clean, as she had obtained the help she needed. Senator Horsford reminded the Committee that obtaining help for these addicts was as important as punishing them. He said that issue should be addressed as well as added punishment for adults who were manufacturing in areas that put children at risk.

Mr. Graham expressed full sympathy with Senator Horsford. He said the Senator was blessed in that his parents were not prosecuted. However, he said the bill was designed to address situations that came glaringly to the attention of law enforcement. Mr. Graham explained almost everyone could imagine situations that would justify the use of the penalties set out in the bill. He agreed with Senator Horsford that A.B. 465 did not address the issue of addiction or the horrors that go with it. He commented that no matter how many cases were prosecuted, it would never even scratch the surface of addiction. Mr. Graham stated this bill would come into play when adults became involved with the police, that those officers would not be knocking on doors and looking for this infraction unless something else occurred to call the situation to their attention.

Chair Amodei asked if A.B. 465 had been sent to the Assembly Committee on Ways and Means, as there was a fiscal note on the bill. Mr. Gardner replied no, it had not been sent to that Committee.

VICE CHAIR WASHINGTON MOVED TO DO PASS A.B. 465.

SENATOR NOLAN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HORSFORD VOTED NO. SENATORS CARE AND McGINNESS WERE ABSENT FOR THE VOTE.)

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Chair Amodei closed the hearing on A.B. 465 and opened the hearing on A.B. 469.

ASSEMBLY BILL 469 (1st Reprint): Revises certain provisions governing forfeiture of bail. (BDR 14-909)

Mr. Graham explained what the Nevada District Attorney's Association was asking was for the Committee to return *Nevada Revised Statute* (NRS) 178.512 back to what it was before the 72nd Session. He said he had worked with the bail-bond industry for many years and posting a bail, by an individual or surety, was a promise that the defendant would come back to court. He said if the person did not return to court after a certain period of time, the bail should be forfeited, whether it be cash, a house, or a surety bond. Mr. Graham explained prior to passage of legislation in 2003, there had been extensions of time to allow a surety to bring someone back to answer charges made against him. He said as allowed by statute, there were different ways a surety bond company could show the court there was a decent reason the accused did not appear in court, such as they were dead, insane, or in another jail somewhere, then the court would generally grant leniency to the bail bondsman. Mr. Graham said in 2003, the statute changed, and the District Attorney's Association would like to have those changes withdrawn and the statute revert to its previous language. He said with the current language of the statute, the sureties and bail bondsmen had no incentive to pursue a fleeing defendant.

David Watts-Vial, Deputy District Attorney, District Attorney, Washoe County, said as part of his job, he had been performing bail-bond actions in Washoe County for the last seven years. He explained the purpose of the bill was to give bondsmen incentive to search for defendants, as well as providing additional court oversight of bondsmen to assure they were doing the things they needed to do.

Mr. Watts-Vial said in the last session, NRS 178.512 was amended, which resulted in removing one of the incentives the bondsmen had to attempt to chase down defendants. He identified another thing the changes did was to remove court oversight of the bondsmen in their efforts to locate and return escaping defendants.

Mr. Watts-Vial said prior to 2003, the bondsmen's incentive to begin an immediate search for defendants stemmed from the requirement that as time passed, it became more difficult for bondsmen to have their bail bond set aside in order to get their money back. He explained under the pre-2003 version of the statute, there was a two-tiered system that worked on the pretext that before 180 days, it was easier to get bond money back than it was after the 180 days.

Mr. Watts-Vial said under the current version of the statute, the bondsmen simply went to the court after 180 days and said the defendant had made an appearance, and they needed to be exonerated on their bond. He said the problem with that was it eliminated the two-tier system. He claimed the only incentive the bondsmen ever had to retrieve a defendant was the risk their bond might be forfeited. Mr. Watts-Vial pointed out under the current version of the statute, the bondsmen could get their bonds exonerated any time after the 180 days, whether or not they had anything to do with the defendants being returned to face the charges against them.

Chair Amodei said there was a one-page memo from Mr. Watts-Vial on A.B. 469 (Exhibit E) that should be part of the record.

Kristin L. Erickson, Nevada District Attorney's Association, said she simply wanted to add her support for the bill.

Karen Van De Pol, Chief Deputy District Attorney, District Attorney, Clark County, said the statute change of 2003 came through the Legislature attached to an insurance bill, and the district attorneys around the State had not been aware of it or its ramification. She explained prior to the 2003 change, there was a three-pronged test that had to be followed after a forfeiture was completed and the funds paid before a bonding company could set aside the forfeiture and get its money back. She said the bondsmen specifically had to show the defendant was ill, insane, had died, had been deported or was in custody somewhere before the funds could be returned.

Ms. Van De Pol said the legislative change to the statute in 2003 removed the second prong of the test. She said that part of the test was in place to ensure the bondsmen did not cause or contribute to the absence of the defendant. She explained the statute was changed by changing an "and" to an "or," which resulted in the three-pronged test becoming a two-pronged test.

Ms. Van De Pol explained with the change to the statute, the bondsmen or surety only had to show that they did not aid or cause a defendant's absence to have a forfeiture set aside.

Ms. Van De Pol spelled out what was happening now was that the State's law-enforcement officers continued to look for the defendant. She said when the defendant was finally located, if he or she needed to be extradited back to Nevada, then the State paid for it. She stated all of the endeavors and expense to bring back the defendant were performed and paid for by the State of Nevada, and the bond companies were getting their money back for doing nothing.

Ms. Van De Pol asserted there was a fiscal issue, but more importantly was the incentive issue. She said as the statute stood, the bond company did not have to do anything to retrieve the defendant to get its money back other than wait. She pointed out that it was very easy for a bond company to show it did not aid or cause the absence of the defendant.

Ms. Van De Pol explained she had a case in which the defendant had fled to England. She specified it was the Clark County District Attorney's Office that spent a large amount of time working internationally and initiating the international extradition process. She said the Clark County District Attorney's Office worked with Great Britain in order to have Great Britain deport the person. She outlined that the Federal Bureau of Investigation agents were waiting for the defendant as she arrived on the plane at Newark, New Jersey. Ms. Van De Pol asserted the State of Nevada paid for the defendant's return. She stated all this effort was put forth by the State, not by the bondsman, yet the bonding company filed to get its money back even though the bonding company contributed nothing to the capture of the defendant. Ms. Van De Pol remarked the bonding company received back $30,000 with no effort at all; there was no incentive for the bondsmen to go out and retrieve defendants because there was no cost to them.

Ms. Van De Pol cited the 2003 change to the statute undermined the incentive for bonding companies to seek absconded defendants. However, she said, she had successfully argued in some cases that it was unjust for the bonding company to get its money back. She pointed out in some instances, the bonding companies had claimed refunds for cases four or five years old.

Ms. Van De Pol said in those instances, she was successful in convincing the court that the State had put in all the effort and money to retrieve a defendant, then the bonding company would appeal, adding more cases to the docket. She said she was processing huge numbers of appeals to the Nevada Supreme Court and to the district courts. She stated one simple little change had created a huge volume of appeals for all the district attorney offices around the State. She said in almost every single appeal it was the State of Nevada and law-enforcement officers who had located the defendant, and it was the State of Nevada, through its extradition fund, that had returned the defendants to Nevada for prosecution. Ms. Van De Pol pointed out that in 2004, the State of Nevada's extradition costs were over $428,000. She iterated this money was the State of Nevada's taxpayers' money, not the bonding companies' money.

Ms. Van De Pol conveyed the State's district attorneys wanted to return the statute to its pre-2003 wording, which would reinstate the incentive for bonding companies to retrieve these runaway defendants. She acknowledged when the bonding companies did look for defendants, they were very effective. She said the State's district attorneys did not believe it was a good thing to undermine the bail-bonding industry's incentive to search for absconding defendants. She stated if the bonding companies had to do nothing and could still get their money back, then the incentive had been undermined.

Steve Jones, Deputy City Attorney, City Attorney, City of Las Vegas, said A.B. 469 was introduced to correct a mistake made in 2003. He said the change was not heard by the Senate and Assembly Committees on Judiciary, but came through the Senate and Assembly Committees on Commerce and Labor. He relayed that the change of one word or phrase could change the whole concept, and this small change laid the groundwork for judges who were sympathetic to bondsmen to set aside a forfeiture anytime a defendant showed up, no matter how much time had elapsed or whether the bondsman contributed to the defendant's return to custody or not.

Mr. Jones said A.B. 469 would return the language of the statute to its previous intent. He explained the previous wording allowed a judge to set aside a forfeiture if the defendant returned to court and had a justifiable excuse for not appearing when scheduled to do so.

Mr. Jones explained as the statute currently read, a defendant could come back to court three years later and claim he had forgotten or moved on to another job or place and could not be bothered to return for the case to be resolved. He pointed out that even under that kind of scenario, the district court could set aside the forfeiture and exonerate the bond because the defendant did show up, even if he was three years late.

Mr. Jones affirmed NRS chapter 158 was to provide equity, but with most of the equity being provided to the bondsmen, he suggested there should also be equity for the State, counties, courts and cities. Mr. Jones noted there was a common equitable adage that said “justice delayed was justice denied.” He stated the whole idea of bail was to provide security for the court to release an accused defendant with some confidence that the defendant would return for his court dates. Mr. Jones said if the defendant did not return, then there should be a motive for a bondsman to retrieve the defendant, and that motive would be the fact that the bondsman may have to forfeit the bond money he put up.

Mr. Jones pointed out the reason the bondsmen’s searching was so important was that the criminal justice system did not have enough manpower to chase down runaway defendants and arrest them more than once. He commented the law-enforcement officers were busy enough just trying to solve current cases without having to retrieve defendants of cases they had already solved. He said in most cases, evading defendants were returned to custody by being stopped on traffic violations. He stated it was more accident than design that defendants were caught.

Mr. Jones said bondsmen argue the justice system had its man, and that was all it was entitled to, but that was definitely not an equitable solution, especially when the bondsmen had not contributed to the return of the defendant.

Mr. Jones said 95 percent of the time when a bondsman posts a bond, the defendant does his honorable duty and returns for all of the required court dates and the bond is exonerated. He said the only effort the bondsman had to make was to ensure the defendant appeared for his court dates. He said for most of his cases, he did not believe the bondsmen even did that much. He commented the first awareness many bondsmen had that defendants did not show was when they received notices of forfeiture, which gave them 180 days to retrieve the defendants.

Mr. Jones, referring to the 95 percent, stated the bondsman was exonerated on the majority of his bonds and had many ways to get out of the other 5 percent of his obligation. He explained on a bail-bond contract, it said that the defendant would appear at all hearings and proceedings until the case was complete or until the defendant was sentenced. He said the bond company or the surety company, by underwriting the bond, says "Yes, that is what is going to happen, and we will pay this much money."

Mr. Graham said prior to the 2003 Session, the Nevada District Attorney's Association had worked carefully with the bondsmen over the years. He said sometimes that included extending the time limit beyond the 180-day provision. He stated after the change in the statute in 2003, there were many motions to exonerate bonds four or five years old. Mr. Graham said in most of those cases, the surety company made no effort whatsoever to bring in the defendant. He said for misdemeanors it cost local money, and for felonies, it cost state money to bring these people to justice. He said forfeited bail money went into a victims-of-crime fund. He pointed out those funds amounted to hundreds of thousands of dollars which went to one industry who had taken advantage of the change.

Mr. Graham said A.B. 469 was intended to offer incentive to bond providers to bring back people to custody. He noted district attorneys, as prosecutors, worked diligently with the bonding companies in many cases by awarding extensions beyond the 180 days.

Mr. Graham urged the Committee to return the language to the way it was before 2003 by passing A.B. 469.

James Wadhams, Blackjack Bonding, Incorporated, said the bail-bonding industry was opposed to A.B. 469. He explained there were some policy questions that transcended the inconvenience of the bail process.

Mr. Wadhams handed out a packet to the Committee (Exhibit F). The first document in Exhibit F was a copy of NRS 178.512 as it was currently written; the second document was a list titled, "Motions to Remit Filed Under Current Version of NRS 178.512." Mr. Wadhams said sometimes bills do not show the two sections being discussed. He drew the Committee's attention to NRS 178.509, subsection 1, paragraph (a), which was existing law. He expressed what the 2003 change did was to conform NRS 178.512 to the

policy expressed in NRS 178.509. Mr. Wadhams said the intent was so that pre-exoneration and post-exoneration standards would be the same. He said it was important the record show those two sections should be the same because the bill did not have both of those sections. He said the phrase that was added was not only to bring "or" into the language, but to add the phrase, "Satisfactory evidence that the surety did not in any way cause or aid the absence of the defendant."

Mr. Wadhams stated the change to the statute in 2003 was not a radical departure from the original intent of the statute, but merely a confirmation of existing policy.

Mr. Wadhams said the purpose of bail was to secure the appearance of the defendant. He pointed out those funds were not meant to be an additional punishment, nor a revenue source for local government. Mr. Wadhams explained within the first 180 days during the forfeiture, if law enforcement brought the defendant back, the bail would still be released. He said the principle was the "body or the money." He said if he had the body, then he should get back the money. He quoted the U.S. Supreme Court as saying "Its object is not to enrich the government or punish the defendant." He said bail was simply an alternative, either the "money or the man."

Mr. Wadhams explained that Blackjack Bonding had introduced 18 motions to have bail returned; 4 of them had been granted, and 11 were denied on the grounds of who returned the defendant to custody. He said the total money returned to Blackjack Bonding was $12,685. Mr. Wadhams said the change to the statute merely empowered the court to make a decision on what was fair. He said the ultimate test was equity, and equity was in the hands of the court, as it must be. He said Blackjack Bonding suggested A.B. 469 not be passed and that the conformity between NRS 178.509 and NRS 178.512 continue.

Senator Care noted in comparing the two statutes, the bottom line was a discretionary call by a judge. He said Mr. Jones made reference to judges who may be sympathetic to bail bondsmen, and asked what was wrong with simply saying the forfeiture would be set aside where justice requires, and the court must consider what attempts, if any, were made by the surety to return the defendant. Mr. Wadhams replied he thought the statute, in its current form, allowed what the courts had done. He said whether a judge was sympathetic to

the release of the bail was the discretion of the court. He said the court has to make those decisions every day on the equities that were presented.

Senator Care asked what about the case where the surety company made no attempt to retrieve the defendant, and the State did all the work and paid all the money to return the defendant. He said there was something inherently unfair about releasing the funds to the surety. Mr. Wadhams responded that in Exhibit F there were 18 motions filed under the current statute text and 11 of those were denied on the basis that law enforcement had produced the defendant not the bondsmen. Mr. Wadhams said it did not open the door for the transfer of huge amounts of funds without the effort of the bondsmen. He stated the current statute gives the discretion to the court. He said the evidence showed the courts were very judicious in granting remission of forfeited bail-bond funds. Mr. Wadhams said the courts had only granted the return of forfeited bail in those cases where the bondsmen produced the defendant.

Mr. Wadhams said the issue was whether the Legislature was going to eliminate that incentive. He said the suggestion of the prosecutors seemed to be that there was no time value in the money, and the bondsmen would just wait and the money would appear later. He stated that money was losing interest all the time it was out of the possession of the bondsman's hands.

Senator Care asked what provisions existed in the law to set aside the forfeiture of bail in the case where the State had to go all the way to England and pay all those bills. Mr. Wadhams said he was not sure there was provision for that circumstance, but there were times when the judge had set aside monies for the amount law enforcement claimed to have spent, and that was within the powers of the judge.

Chair Amodei asked how this change got into a Commerce and Labor Committee bill. Mr. Wadhams replied in the days he first began appearing before the Legislature, the director of the Legislative Counsel Bureau and first Legislative Counsel, the late Russell W. McDonald, had very rigid limitations on issues under the constitutional provision of single subject. He said over the course of time, that had expanded, so the issues became more inclusive rather than exclusive. He said the predominant effect, in this instance, was a broad insurance bill that had included bail agents and sureties, who were regulated by the insurance commissioner. He said under the practice of the time, there was no objection to that rider being included in the other bill.

Mr. Wadhams said in this day and age, he had to watch all the bills at the same time, and he said he understood the reason the district attorneys had not caught this one small change until after the fact.

Chair Amodei closed the hearing on A.B. 469 and directed Mr. Anthony to put the bill on the work session schedule for Thursday.

With no further business to come before the Senate Committee on Judiciary, Chair Amodei adjourned the meeting at 10:43 a.m.

RESPECTFULLY SUBMITTED:

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Johnnie Lorraine Willis,
Committee Secretary

APPROVED BY:

_____
Senator Mark E. Amodei, Chair

DATE: _____