MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
May 3, 2007

The Committee on Judiciary was called to order by Vice Chairman William Horne at 8:06 a.m., on Thursday, May 3, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman John Oceguera

GUEST LEGISLATORS PRESENT:

Senator Joseph Heck, Clark County Senatorial District No. 5
Senator Valerie Wiener, Clark County Senatorial District No. 3
Senator Dina Titus, Clark County Senatorial District No. 7
Senator Maurice Washington, Washoe County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Kaci Kerfeld, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Jason Frierson, Public Defender, Clark County Public Defender's Office
John R. Johansen, Representative, Office of Traffic Safety, Department of Public Safety
Kathy Bartosz, Statewide Coordinator, Enforcing Underage Drinking Laws Project for the State of Nevada
Graham Galloway, Attorney, Nevada Trial Lawyers Association
Sandy Heverly, Executive Director and Victim Advocate, Stop Driving Under the Influence
Alysia Peters, Intern, representing Senator Dina Titus, Clark County Senatorial District No. 7
Madelyn Shipman, representing the Tahoe-Pyramid Bikeway Project
Janet R. Phillips, President and Founder, Tahoe-Pyramid Bikeway Project
Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence

Vice Chairman Horne:
[Meeting called to order and roll called.]

Let me open the hearing on Senate Bill 6 (1st Reprint).

Senate Bill 6 (1st Reprint): Includes marijuana in the provision which prohibits persons from intentionally allowing children to be present at certain locations where certain crimes involving controlled substances are committed. (BDR 40-223)

Senator Joseph Heck, Clark County Senatorial District No. 5:
During the 2005 Legislative Session, the Legislature passed Assembly Bill No. 465 of the 73rd Session which made it unlawful for a person, who in violation of the provisions of *Nevada Revised Statutes* (NRS) 453, allows a child to be present in any conveyance or upon any premises wherein a controlled substance is being used, sold, exchanged, bartered, supplied, prescribed, dispensed, given away, administered, manufactured, or compounded. Assembly Bill 465 stated that you could not use, sell, or manufacture an illicit substance in the presence of a child. Interestingly, A.B. 465 encompassed all controlled substances, including those which are prescription medications, with the specific exception of marijuana.

Senate Bill 6 (1st Reprint) would include marijuana in the list of controlled substances that is subjected to the provisions of the prior legislation as it pertains to selling and manufacturing in the presence of a child, but does not include the increased penalties associated with the use of the substance in the presence of a child. The bill does not increase penalties for the use of marijuana. According to the 2005 National Survey on Drug Users and Health, the number of marijuana users in 2005 was approximately 25.4 million people. More than half, 52.7 percent, of users who bought their marijuana purchased it from inside a residence. There was also a total of almost 1.9 million state and local arrests for drug abuse violations in the United States during that same year. Of those, roughly 5 percent, about 90,000 arrests, were for marijuana sale or manufacturing. That means that in 2005, about 13.4 million users, obtained their marijuana from a seller inside a residence, the very place where children are likely to be found. It is well documented that there is an increased likelihood of violence associated with drug dealing, regardless of the actual drug, whether it be methamphetamine, a prescription pain killer, or marijuana. I can personally attest to this fact from my 15 years of experience supporting tactical law enforcement operations in which children were frequently present in the premises where a warrant is served. Even if we were to discount the potential for physical injury, what are the psychological and emotional injuries that result from seeing a parent taken away in handcuffs?

In conclusion, I ask this Committee to clear up an inconsistency in public policy that increased penalties on somebody who sells a single pill in the presence of a child, but not for somebody who is selling marijuana in the presence of a child. In addition, if you take into consideration the physical, psychological, and emotional dangers associated with drug dealing and manufacturing, irregardless of the drug, children need to be protected. Therefore, marijuana should be included among the controlled substances where there are increased penalties for selling or manufacturing a substance in the presence of a child.

[Chairman Anderson arrived.]

Chairman Anderson:
This is very similar to what was attempted last session with a few minor changes relative to the quantity of materials. Unfortunately, marijuana is a common drug of choice in our society. My concern is that it does not fall into the same view as other kinds of drugs and that there are quite a few people who believe it is a recreational product. How do you see this enhancing behavioral change?

Senator Heck:
The issue this bill tries to address is not the dangers associated with using illicit material in front of the child, but the danger that is associated with the illicit activity of selling or manufacturing it in the presence of a child. Ecstasy is considered by many to be a recreational drug as well. The idea of ecstasy being sold, compounded, or manufactured in the presence of a child is the issue. This has nothing to do with individual users and what they are using in the presence of a child. That is a moral decision that they can make. This is aimed strictly at the illicit activity of manufacturing or selling in the presence of children. In the week before this bill was presented in the Senate, there was a drug bust in Pahrump with 750 marijuana plants found in one single location. It would be my opinion that if there had been a child present in that location, that person should be held to a higher penalty, just as if somebody who was putting together bags of Lortab would have been held.

Assemblyman Horne:
Do our current child neglect and endangerment laws not protect children in these environments?

Senator Heck:
They can be utilized as one of the tools when trying to bring increased penalties to those individuals. I am trying to clear up an inconsistency because in a previous bill we included all controlled substances. The child neglect laws would have applied there as well and singled out one controlled substance. There are controlled substances included that are less harmful according to the Federal Drug Administration (FDA) schedules that are already included in this law which was passed last session. It is inconsistent to single out one controlled substance when it is the activity of selling and manufacturing we are dealing with.

Assemblyman Horne:
I believe the reason these laws started coming out about the presence of children during drug sales was the inherent danger and violence which

accompanies drug sales. It started with cocaine sales and crack sales. The collateral was the danger of children having access to these drugs. In my experience with the defendants I have been assigned to, I have not seen the type of violence we see in other types of drug sales in marijuana sales. Also, children can accidentally ingest cocaine or methamphetamine, but they do not accidentally smoke marijuana. Those are the differences that I see.

Senator Heck:
I agree that there are differences. Drugs are categorized by schedules, each of which has different toxicities and different impacts. I agree that the goal was to address the violence associated with the activity. It is a violent activity when a door is kicked in by a SWAT team serving a drug warrant, regardless of whether they are going in on a drug bust for cocaine or marijuana. There is a level of violence associated with illicit drug activity, irrespective of the drug. You are right that children do not smoke marijuana by accident. Even if they were to get a hold of a plant that was growing and chew on it, it is unlikely that there would be any physical effect. The concern is that the person who is growing it in large amounts is not growing it for personal use, but for resale, thereby bringing in the issue of violence associated with the illicit sale of the drug.

Chairman Anderson:
Is there something in the manufacturing of marijuana that has other kinds of chemicals that would be dangerous? One of the reasons this was first brought up was because of the methamphetamine epidemic. We saw that the rugs had to be reshampooed and cleaned because of the chemicals. There was a case in Clark County about a woman who had brought her child to look at an apartment and her child was burned because she put him down on the rug. The house had been used as a crack house, and as a result, her child was burned and severely harmed. That is where the emphasis about the environmental question of drug production came to be. Up until that time, it was mostly about the sale and manufacturing of drugs. How does marijuana fit into that type of category?

Senator Heck:
Oftentimes, toxic fertilizers are utilized as the marijuana is processed for resale. It is often coated or cut with other materials that are toxic to the environment as well as to anybody who may come in contact with them. It is certainly not to the degree of somebody who is mixing a batch of methamphetamine in their bathtub. Again, the bill tries to address violence and the dangers associated with the illicit sale in the presence of a child.

Assemblyman Mortenson:
Is the growing of the plant considered manufacturing?

Senator Heck:
Yes, within the certain amounts that are listed in the bill.

Assemblyman Mortenson:
In California, the law allows people who have a prescription to grow marijuana. Is that correct?

Senator Heck:
There are medical marijuana laws in California as there are in Nevada. This bill in no way impacts the medical marijuana laws. It is in a separate section of the statute and does not have any cross-impact into that statute.

Assemblyman Mortenson:
If somebody is growing it and they have permission of a doctor, then it is not considered manufacturing?

Senator Heck:
That is correct; they would not be affected by this law.

Assemblywoman Allen:
The first line in Section 1 (d) refers to more than one ounce of marijuana being produced. I do not know grams or ounces. I am thinking about a measuring cup used in cooking. One ounce is not very much, is that correct?

Senator Heck:
The difference would be dry weight versus liquid weight. One ounce in a measuring cup is not the same of one ounce of dry weight. One ounce would be a Ziplock sandwich bag about half full.

Assemblywoman Allen:
One ounce seems like a small amount which someone could be using for personal use. You might have a mom or dad who uses marijuana without any intent to sell it, and that would be a category C felony which will impact their lives very dramatically. Have you thought about that situation occurring?

Senator Heck:
It was difficult to try to find an amount. That section of the bill is a cut-and-paste from the medical marijuana statute, which is one ounce plus three mature plants and four immature plants. That is what the presumptive defense is in the medical marijuana chapter. If you have more than that, you cannot claim that you are using it for medical marijuana, even if you have a doctor's note. On the opposite end was the amount in the trafficking statutes, which is thousands of pounds of marijuana required. I opted to use what was in the

medical marijuana statute and what the Legislature has already decided with what is consistent with personal use.

Assemblyman Goedhart:
You said that medical marijuana was limited to one ounce, three mature plants, and four immature plants. Section 1 (d) says that it is any one of those three—one ounce, three mature plants, or four immature plants—that would constitute a category C felony. Is that correct?

Senator Heck:
That may be a drafting error because it was supposed to be the exact wording that came out of the medical marijuana statute.

Assemblyman Goedhart:
It also says in Section 1 (d) that "marijuana is being or has been produced any one time." It seems that if you had grown three plants the year before, even though you did not currently have them, you could still be found guilty.

Senator Heck:
I would have to defer to Legal and the drafters who came up with that language, but that is not the intent. If you are found with that amount, then you would be liable for the increased penalties.

Risa Lang, Committee Counsel:
It says "has been produced at any one time" and down below it says "or more than three plants are being or have been planted, cultivated, grown or harvested at any one time."

Assemblyman Goedhart:
Would that go towards historical as well?

Chairman Anderson:
Will you please look into that for us to see if it does mirror the current statutes with medical marijuana?

Risa Lang:
Yes.

Chairman Anderson:
Is there anyone else who wishes to speak in support of S.B. 6 (R1)? [There were none.] Let me now turn to those in opposition.

Jason Frierson, Public Defender, Clark County Public Defender's Office:
We are in opposition to S.B. 6 (R1). We originally opposed this bill based on our belief that this statute was originally drafted and is used to deal with methamphetamine activities, such as the manufacturing of things that had a tendency to explode and leave chemicals and burns even after activity has stopped, leaving the residual of that type of production in homes. We believe that type of activity deserved a harsher treatment. That is why it was appropriate when this statute was drafted to take marijuana out of that statute and avoid it being applied to casual users. In discussions about this bill, Senator Heck pointed out that there were other drugs that were also included, such as prescription drugs, and it does not just cover methamphetamine. That is a valid point. However, in my everyday practice and from what we see in court, it is almost always methamphetamine production that causes problems. That is when we see explosions happen and see homes taped off and quarantined. It was our belief that even though it is broad and covers other types of drugs, this statute is primarily in practice as something that is targeting the manufacturing of methamphetamine around children. We also had an issue with the amounts. Originally there was no amount. We discussed with Senator Heck the trafficking amounts and the medical use statutes. It is our belief that even with the medical-use provisions this is still going to end up targeting primarily casual users.

I believe it was pointed out earlier that we have child abuse and neglect statutes that can be used if this type of activity is conducted around children. We believe that is the appropriate place for this to take place to avoid complicating our jail and prison populations with nonviolent issues, particularly when there is another avenue to protect our children. We understand what Senator Heck is trying to do with respect to protecting children, but we believe that there are measures in place in other statutes that allow for the protection of children without complicating our jail and prison populations with people who are not violent and who are not posing the same type of danger to children that the production of methamphetamine does. That was primarily the basis of our objections to the Senate. Similarly, we have a concern that this is going to be applied primarily to casual users. The use of marijuana is clearly against the law, but we think that methamphetamine production and sale is worthy of an increased penalty.

[Chairman Anderson left the room. Vice Chairman Horne took over as Chair.]

Assemblyman Carpenter:
How many ounces will three mature marijuana plants produce?

Jason Frierson:
I have no idea.

Assemblyman Ohrenschall:
Senator Heck said that he did not think any confusion would arise with this statute regarding a medical user with a prescription who is lawfully using marijuana. Do you agree with that or do you think it would be better to have a provision in the statute specifically excluding the medical users so that there is no confusion?

Jason Frierson:
I understand that was his intent, but this is vague. The way this bill is drafted it will conflict, and it would be something for a judge to have to determine. With the existence of a medical marijuana statute in it, I would have a hard time seeing someone be convicted if they had otherwise lawful authority to have it. As drafted, this would create a somewhat vagueness with respect to that issue.

Assemblyman Ohrenschall:
Could you foresee potential prosecution of a medical user who happened to have a child in the house?

Jason Frierson:
It is possible. A court would probably interpret the existence of some lawful authority as trumping this. I do not believe, based on what Senator Heck testified to, that was his intent. If it needed to be clarified, I do not think that would change his intent with this bill at all. I do not think that is the issue with respect to the pros and cons, and it could be clarified fairly easily.

Assemblywoman Allen:
We heard Senator Heck earlier articulate why he chose these minimums of one ounce, three mature plants, and four immature plants. If those minimums were higher, would you have more comfort with the bill?

Jason Frierson:
I would be more comfortable with that, and I had that discussion with Senator Heck. We discussed existing law that we could choose in proposing the trafficking amounts. Based on what his intent was, that probably would not have served his purposes. The only levels that we had in existence in statute that we discussed were trafficking and medical marijuana. A different amount that would try to avoid the casual user would certainly make us somewhat more comfortable. We did propose to Senator Heck to use the trafficking amounts, which would have made us much more comfortable.

Assemblyman Segerblom:
What happens if it is the reverse situation and a person under 18 is growing the marijuana and the adult is in the house but does not know about it?

Jason Frierson:
I believe there are intent requirements. It is possible for that parent to be charged, and it will be a fact-finding issue with the justice court and district court. It would be possible, but technically there would have to be an intent element, and that is something that would be subject to either a judge or a jury.

Vice Chairman Horne:
Is there anyone else wishing to testify in opposition of S.B. 6 (R1)? [There were none.]

Let me close the hearing on S.B. 6 (R1).

Let me open the hearing on Senate Bill 7 (1st Reprint).

Senate Bill 7 (1st Reprint): Establishes civil liability for certain acts involving the use of controlled substances and the consumption of alcoholic beverages. (BDR 3-53)

[Chairman Anderson returned to room.]

Senator Valerie Wiener, Clark County Senatorial District No. 3:
[Read from prepared testimony (Exhibit C) and submitted memorandum (Exhibit D).]

Chairman Anderson:
I come from a background where my parents would have thought it unsociable for children not to have alcohol when it is served as part of a family dinner. My mother would have thought it offensive to not offer alcohol to someone who came to the house because she came from Europe and had a different tradition. There are some religions that have alcohol as part of their communion services, but it is a very small consumption of alcohol. If you are at a dinner party or wedding and alcohol is being served and the child takes some and then leaves the party and is involved in an accident, would that put the host at risk?

Senator Wiener:
This bill is used if an inebriated behavior causes damage to person or property. There is a provision about the person who owns or is responsible for the premises providing alcohol. Based on the facts of the case and evidentiary findings, attorneys would present the facts. If the person knowingly had control

of the premises and knowingly provided alcohol, there would probably be a civil cause of action.

Assemblyman Carpenter:
What about the situation of punitive damages? Is that necessary to be included?

Senator Wiener:
It would be part of the case that is developed. It may be appropriate if this is a recurring behavior. We have situations in southern Nevada where law enforcement is repeatedly called to households where parties are hosted by adults and children are constantly provided with alcoholic beverages. Law enforcement is involved and yet those scenarios continue to occur. That may be where they would bring it for punitive damages because it is a recurring behavior.

Assemblyman Horne:
I am in support of this bill. I appreciate Senator Wiener's hard work and the changes she has made to the bill. I have heard parents saying "at least I know they are doing it at home where they are safe." But if they leave and cause damage or hurt somebody else, it is not unreasonable that the parent should be held liable. If they allow that practice and allow their children's friends to come over and drink as well, then they should be liable for any actions resulting from that.

Assemblyman Mabey:
I have concerns about vendors. From your handout, it looks like most states have a law against venders that would knowingly sell alcohol to a minor. This bill would exclude that.

Senator Wiener:
The major distinction with this bill was to address the social hosting component where someone is engaged with an underage drinker. The venders are selling to people who are of legal age. I am not addressing that part of it because it is already illegal to provide alcohol to them. This addressed when damage occurs because somebody should be held accountable for that. They were already doing something illegal. This only addresses when damage is caused by an underage drinker who was provided the alcohol by someone who knew better.

Assemblyman Mabey:
Let us say that there is a club who knowingly serves alcohol to someone who is underage. Would they be held liable under this bill?

Senator Wiener:
No, not under this bill, but they would certainly be liable under other laws in the State of Nevada.

Chairman Anderson:
I understand that a vendor could be charged for serving an underage drinker, but would he be held liable for the damages that were caused by that underage drinker if he were involved in an accident?

Senator Wiener:
My attempt was to address the social setting where we see an epidemic of this happening. I wanted to address this piece of it because we have had established Dram Shop law for quite a long time.

Assemblyman Ohrenschall:
Do most of the states that have the social hosting law provide any kind of religious exemption for the Friday night service where wine is part of the religious observation?

Senator Wiener:
This law does not create liability for that situation unless there is damage that results because of an inebriated state. This does not capture anything about what happens until there is damage. It is not aimed toward the participation in the religious experience or the celebration; it is the inebriated underage drinker causing harm to person or property.

Assemblyman Ohrenschall:
You do not foresee this proposed statute keeping an observant Jewish family from letting their children have wine on Sabbath or during mass?

Senator Wiener:
Coming from that background, no, I do not.

Assemblyman Goedhart:
I realize the intent of the bill is to go for the social hosting, and I applaud that attempt. But the last sentence in Section 2, subsection 3 seems to set out an exclusion from any negligence in a civil action if you are a vendor. Why did we have to go to that degree to exclude them from negligence?

Senator Wiener:
That is current law. The attempt is towards the social hosting component because it is gaping, and we are having more and more occurrences.

Assemblyman Segerblom:
I support this bill. Have you looked to see whether the injured party could go after the homeowner's policy for the social host and would this bill help or hurt that aspect?

Senator Wiener:
There are insurance representatives who will address that. The "knowingly" standard was something that also addressed their concerns because it does raise the bar much higher. That was a response to what your concerns were last session in this Committee and concerns from the insurance industry.

Assemblyman Segerblom:
Personally, I would prefer to have the homeowner's policy available, which would be a less-than-knowingly standard.

Senator Wiener:
There are those who do not like the "knowingly" standard, so it was a compromise.

Assemblyman Mabey:
If a person bought some liquor and next night some of his friends came over and got drunk and went out driving, would that be qualified as "knowingly"?

Senator Wiener:
I was hoping that using "knowingly" would raise the bar higher, but I would defer to counsel about that.

Risa Lang, Committee Counsel:
Adding "knowingly" was to have it be more of an intentional act, so that it would have to be proven in court that there was some intent by leaving the drink there, expecting the person would take it and drink it.

Assemblyman Carpenter:
It says that you would be liable for the damage resulting from the consumption of alcohol. Would there be a test to confirm that they were inebriated? Somebody could have a drink and not be impaired and get into an accident.

Senator Wiener:
I would agree with that. There is a reference to inebriated, so evidence would have to be shown to determine that piece of the case. A civil case is different than a criminal case, but they still have to make their case to prove inebriation. Then it would go back to who caused the inebriated state or provided the

alcohol which caused the inebriated state. That would be a piece of evidence that would have to be presented.

Assemblyman Manendo:
I have concerns about the furnishing of alcohol in the scenario that Assemblyman Mabey raised. The parents know they have alcohol in the house. Even if they do not serve it, they knowingly furnish it because it is there. I am wondering if we may need to tighten that up.

Senator Wiener:
With the intent language of "knowingly," it raises the standard much higher. "Furnish" was used in the bill last session, but based off of your past concerns, "knowingly" was used to raise the bar much higher.

John R. Johansen, Representative, Office of Traffic Safety, Department of Public Safety:
I will take you through the handout I submitted (Exhibit E). It is very difficult for us to capture fatalities and injuries in the official database as a direct result of a social hosting situation. There is a national survey of accountability and judgments which is a national survey of over 7,000 people that used vignettes, such as if a person who knowingly served teens is good or bad compared to a bar knowingly serving teens, et cetera.

The next is a national survey of attitudes on substance abuse. The disconnection between the adults and the teenagers is large. What adults believe and what teens are telling us is very interesting. In all cases, bars are considered more liable than social hosts. We expect more of a bar because they are licensed and trained to do the right thing in the service of alcohol. However, both social hosts and bars are more accountable when teens are involved. Interestingly, parents who knowingly serve teens are held equally accountable, except for a bar who has repeated violations of service to teens. As a parent, I believe certain things that my children do or do not do or experience. As a teen, they tell us something differently. Eighty percent of parents say alcohol and marijuana are not available at teen parties. The teens say it is easily available in at least half of the parties they attend. Ninety-eight percent of parents say they are present during teen parties at their house. The teens say that one out of three times parents are not present. Ninety-nine percent of parents say they are not willing to serve alcohol to teens, but 28 percent of the time the teens say they are.

Several criminal and administrative regulations were also effective in reducing heavy episodic drinking and drunk driving. The imposition of tort liability

represents a useful addition to the arsenal of tools to reduce both teenage drinking and teenage drinking and driving and other harmful behaviors.

There is a specific distinction between Dram Shop laws and the social host laws. There are only eight states that do not have any type of liability laws such as Dram Shop or social hosting. Nevada is one of those states. There were at total of 144 teen car accidents from 2003 to 2005. Of those, 20, or 13.9 percent, involved alcohol. Of those 20, 14 times, or 70 percent of the time, the teen was above the legal limit for an adult, which is .08 blood alcohol content (BAC). When teens drink, they have a tendency to drink a lot. At age 16, there is not much of a problem with alcohol because it is the first year of driving. However, at age 17, 18, and 19 alcohol becomes a serious problem for our teen drivers. That is also the age where we are beginning to host parties for teens. There are not a lot of parties who serve alcohol to 16-year-olds, but there are many who will serve to 17-, 18-, or 19-year-olds.

Chairman Anderson:
Ms. Bartosz, I see you have handed out information (Exhibit F) and the "Stand Tall Don't Fall" brochure (Exhibit G).

Kathy Bartosz, Statewide Coordinator, Enforcing Underage Drinking Laws Project for the State of Nevada:
In response to a congressional request, the Institute of Medicine and the National Research Counsel of the National Academy of Science formed a committee to develop a strategy to reduce and prevent underage drinking. In the final report to Congress by the committee, they identified three broad things that are now driving activities in many of the states across the country: reduction of the availability of alcohol, reducing the occasion and the opportunity, and reducing the demand for alcohol among young people.

Demand reduction usually focuses on the youth themselves with knowledge-and skill-based instruction with minimal emphasis on the environment. However, holding youth solely responsible for preventing underage drinking is somewhat like holding a canary responsible for dying in a poisoned mine shaft. His death is simply an indication that there is a problem within the environment. Based on the National Academy's report, environmental strategies are critical in addition to continuing our ongoing knowledge- and skill-based education for children.

An example of an environmental strategy includes limiting business and social access to alcohol. In the blue brochure (Exhibit G), you will see some examples and environmental strategies that are currently being funded with the Enforcing Underage Drinking Laws grant to the State. As you will see, many of them emphasize law enforcement operations, compliance checks in stores to ensure

that they are not selling to underage patrons, insuring that people are not going into the stores attempting to purchase for the young person waiting for them in the parking lo,t and other activities, as well as looking at the number of fake identification cards we have circulating within the State that are easily accessible off of 31,000 websites.

We are encouraged by what we see in the environmental strategies with the compliance checks which we started in 1999. Fifty-two percent of businesses were selling to underage decoys. At the beginning of this year, we saw the statewide compliance rates were in the 77 to 78 percentage range, which includes new liquor licensees coming in and new clerks coming on board. In most instances when clerks sell to a minor, the fine is from $300 to $600 for that clerk. That is quite an incentive to be checking identification and not selling to anyone who looks younger than their grandmother. It has been quite effective.

Please look at the high school table I handed out. Although we are still very concerned with the number of youth engaging these types of high-risk behaviors, we are really encouraged by the downward trend in some of the engagement in those activities. One that is particularly encouraging is the amount of youth that believe they are causing themselves harm by having five or more drinks. We are seeing a downward trend of 16 percent from 2001. As you will notice, the two circumstances that have actually gone up are those that deal with the home environment. The numbers have gone up 4 percent for those teens who drink alcohol getting their alcoholic beverage from home. There was a minimal increase of 1.6 percent who think that parents or guardians would approve or not care. It is interesting that those trends are actually going up when all of the other ones seem to be going down. We believe it has to do with the restriction of access through businesses and outside sources.

The statistic that is particularly disturbing to me is the middle school chart. We are seeing little if any significant change among our middle school youth in terms of response to the education they have been receiving or any significant changes in the home or community environment around underage drinking. Teen parties constitute one of the highest settings for youth alcohol problems. Young people report their heaviest drinking at large parties with peers. Almost all of them are underage and usually in someone else's residence. The teen parties frequently lack adequate adult supervision and can lead to serious health and safety problems beyond drunk driving. There have been incidences of violence, rape, sexual violence, alcohol poisoning, and other drug abuse. The parties also provide a venue for introducing young teens to a heavier drinking culture. In one study, we had older teens, age 17, 18, and 19, report breaking

in younger teens, age 14, 15, and 16, at teen parties by encouraging them to become very intoxicated with drinking games. The most popular one we are now seeing is called "beer pong."

Communities report that many parents have a high tolerance for teen parties and allow them to occur on their property with their knowledge, but often without any supervision. This tolerance apparently stems from their misconceptions or beliefs that alcohol is a relatively harmless drug compared to illegal drugs, and that alcohol consumption is part of the passage into adulthood. I never care for the term "gateway drug" when we talk about alcohol, but that is how it is perceived. Common misconceptions are that permitting consumption in a residential setting is safer than having it appear in open areas where there is a higher risk for problems, and that teenage drinking is inevitable. Unfortunately, these misconceptions do not take into consideration the difference in teen drinking between when the parents were teens and what the young people are doing now.

One major difference is the size of the alcohol container. When many of the parents were teenagers, the average drink was 12 ounces; now there are 40-ounce big mouths. The types of alcohol have also changed. We are now seeing alcohol pops like Smirnoff lemonade. Also, energy drinks are packaged the same as regular energy drinks that athletes like to use, but they now have an alcohol content of 8 percent or better. We have "spikes" that just came out right before prom and high school graduation parties, which is a very small container designed to put into another drink to enhance the alcohol content. In New York, they are now seeing ice cream with 5 percent alcohol content.

Kids have more money, cars, and technology communication systems now. If I were to throw a party in my youth, I would have had to get on the phone and call everybody, which would have taken quite a while. Now, youth can text message 100 people at one time.

In closing, I would like to call your attention to the copy of the adult survey that was also included in the packet. We see tolerance by some of the parents of youth, but the community tolerance is certainly opposite. Question 6 inquired if the alcohol policy should be more concerned with people who give or sell alcohol to teenagers, and less with teenagers who drink, and two out of three parents agreed. The Academy's report, in closing, stated:

> State and local regulations, laws, ordinances, and policies form the framework of any effort to reduce underage drinking. The right regulations well crafted can minimize the opportunity for

young people to use alcohol and maximize opportunities for effective and efficient enforcement.

Assemblyman Carpenter:
Bud Light and Coors spend millions of dollars on advertising. I do not think this problem will be solved as long as they are advertising. They make it seem that you cannot do anything unless you have a Bud Light in your hand. How are you going to be able to contradict that?

Kathy Bartosz:
Within the National Academy of Sciences report, they had a significant number of pages that addressed how alcohol is portrayed in advertisements by the industry and the media. There are already standards for the alcohol beverage industry that they are not to use any advertising that blatantly targets young people. If you talk to the advertisers, they say they are strictly adhering to that and that those incredibly young-looking people that they use in their advertisements are over the age of 21.

Chairman Anderson:
When I was a teacher, I taught my students about the subliminal messages in cigarette and alcohol adds in magazines as indicators of subliminal messaging and how that seemed to create a socially acceptable atmosphere. That is clearly one of the problems we are trying to address. We will obviously change the attitude people have towards drinking and driving significantly.

Graham Galloway, Attorney, Nevada Trial Lawyers Association:
We believe this bill is good social policy, and we support it. While it may not eliminate the issues or problems that have plagued our society and it may not be the perfect piece of legislation, it is good legislation and it should be passed.

Assemblyman Segerblom:
Do you not believe that under current law, a victim of a drunken driving accident involving a teenager could fall back on the homeowners insurance?

Graham Galloway:
In my mind, I believe that you can hold a social host liable. I am not the final say in this matter, but an argument could be made to hold people who furnish alcohol as a social host liable. I would be much more comfortable having this legislation so that it would be clearly in the law. I

am not aware of any Supreme Court decisions that say you cannot hold a social host liable, but that is an ambiguity that this provision would take care of.

Assemblyman Segerblom:
This bill requires willful behavior. Would that negate going after the homeowner's policy?

Graham Galloway:
In my mind, "knowingly" almost equates to intentional. With semantics involved, there is a slight difference. If it is determined that "knowingly" equates to intentional—insurance policies exclude intentional behavior—you would then have problems and difficulties pursuing the homeowner's insurance. Instead you would then be pursuing people individually, which is always a tough road.

Sandy Heverly, Executive Director and Victim Advocate, Stop Driving Under the Influence:
I have been involved in the anti-driving under the influence (DUI) movement for the last 24 years. During that time, I have worked with thousands of innocent victims in Nevada and across the nation. A number of those victims, including my family of seven, became victims because of the very issue described in S.B. 7 (R1). Stop DUI believes that because this bill provides for civil liability and accountability, it will help create a conscience for those who have no compunction about providing or allowing alcohol or other drugs to be available and consumed by minors. Senate Bill 7 (1st Reprint) will also help diffuse the myth that the consumption of alcohol by minors is an acceptable right of passage. The social drinking norms in society today do not view underage alcohol consumption as a right of passage or a socially acceptable behavior. In fact, a national survey showed 83 percent of adults are in favor of laws that impose fines on adults who provide alcohol to minors. Stop DUI concurs with that survey and supports passage of S.B. 7 (R1).

Chairman Anderson:
Is there anyone else wishing to get on record in support of S.B. 7 (R1)? [There were none.] Is there anyone wishing to be on record in opposition? [There were none.]

Let me close the hearing on S.B. 7 (R1).

Let us turn our attention to Senate Bill 132.

Senate Bill 132: Makes various changes concerning the liability of trailbuilding organizations and landowners, lessees and occupants of land to persons using premises for recreational activities. (BDR 3-212)

Alysia Peters, Intern, representing Senator Dina Titus, Clark County Senatorial District No. 7:
[Read from prepared testimony (Exhibit H).]

Chairman Anderson:
Did you make the presentation for the Senator on the Senate side also?

Alysia Peters:
No, I did not.

Chairman Anderson:
I presume that the Senator is hoping that the proposed amendments are going to solve some of the potential problems.

Assemblyman Mortenson:
I served on that committee. It did do important work, and I whole-heartedly support this bill.

Assemblyman Mabey:
In Section 2, if the person has no duty to keep the premises or is not liable, then why would we even have a Section 3? There should not be any action brought against the person. If the landowner has no liability, then why does Section 3 say that if it does happen, they are going to be responsible for payment?

Alysia Peters:
I do not have the answer to that question, but I would be happy to get that information for you.

Senator Dina Titus, Clark County Senatorial District No. 7:
An amendment has been worked out, as I understand it. We jointly presented to the proponents of the trail and to the trial lawyers, so we are supportive of that amendment.

Madelyn Shipman, representing the Tahoe-Pyramid Bikeway Project:
In the Senate Judiciary Committee, there was opposition to this bill from the Trial Lawyers Association, which is why you are being presented this amendment (Exhibit I). The implication was that in the absence of an amendment, the bill would not process much further. We came up with

language that is presented to you in the letter form that we submitted, which essentially guts the bill, except for the section that makes it clear that bicycling is a recreational activity to be covered under the recreational use immunities. The Senate Judiciary Committee voted out the entire bill; no one knows why. It is here before you, and we are asking that you implement the proposed amendment, which would remove all of the language except for Section 1, paragraph 6(a).

Janet R. Phillips, President and Founder, Tahoe-Pyramid Bikeway Project:
I have given you a brochure (Exhibit J) about the project explaining what it is. We are a nonprofit group trying to implement this huge project. The purpose of this legislation was to help us with liability concerns that have come up talking with property owners. We were not able to reach agreement with the Trial Lawyers Association on most of that. We have signed off on this amendment that you have before you. We will continue working on the trail, and I think the remaining piece of the legislation reflected in Section 6(a) is important.

Chairman Anderson:
Are you still having problems with the area from Truckee to Verdi because of California law since there is no trail there?

Janet R. Phillips:
The section from Truckee to Verdi has topographic difficulties, so nobody has ever tried to get a trail there before. One of the tragedies with the Truckee River is that you only see it at 70 miles per hour from the freeway. It is a beautiful river; it is historic, scenic, and environmentally sensitive. We are trying to create an alternative where you can see the river from slower speed. There are two sections in the brochure that are indicated in red; one is in California, and one is in Nevada. They both share the difficulty of being in a narrow canyon with very constrained land realities and also mostly private property ownership. That makes it difficult to put the trail through.

Chairman Anderson:
Will we be keeping the language in Section 6 which defines "recreational activity" and says that "recreational trail" means any linear corridor and any adjacent?

Madelyn Shipman:
No, you will not be keeping subsection (b) or subsection (c). This will only keep Section 6(a) with the new language.

Chairman Anderson:
To clarify, we will keep the additional language for cross-country skiing, snowshoeing, and the amended language for riding in vehicles or riding a road or mountain bicycle.

Madelyn Shipman:
Yes, that is correct. All of Section 6(a) as proposed in the original bill would be kept. Everything else would be deleted.

Chairman Anderson:
Has the chief sponsor agreed to this?

Madelyn Shipman:
Yes, Senator Titus is aware of the agreement.

Graham Galloway, Attorney, National Trial Lawyers Association:
After negotiation on the amendment, we can support the bill based on the amendment that has been proposed and presented to you.

Chairman Anderson:
I think it may remove some of our concerns. I would hesitate to think that we would be giving immunity to someone who sees a known hazard in front of them and does not take the time to make others aware of it.

Graham Galloway:
This puts biking, snowshoeing, and cross-country skiing into the recreational use statute. If you look at the terminology used there, it does not limit responsibility for willful or malicious failure to guard against a known hazard. If someone sets up a spring gun in their backyard where people are riding through, they are going to be responsible. The concern was that the original language was broad. It is now back to the plain language set forth in the recreational use statute.

Assemblyman Mabey:
Would you be in support of setting up some type of fund that the State would support? That way if the trails were built and a homeowner was sued, the State would provide for his legal defense and any damages that were brought against him.

Graham Galloway:
I would have concerns that if by bringing the State in, you bring in the governmental immunity statute. The principle idea that you are proposing is great, but it would have to be thought out. If that would not cause problems

with the governmental immunity statutes, then it would make sense. It would encourage individuals because as I understand it the trail builders are having problems with some of the private individuals giving up land or access to their land. That would go a long way to aid in solving their problems in convincing some of the private land owners to relinquish some rights. In principle, I think it is a good idea.

Chairman Anderson:
Is there anyone else wishing to be heard on S.B. 132? [There were none.]
Let me close the hearing on S.B. 132.

Let me open the hearing on Senate Bill 202 (1st Reprint).

Senate Bill 202 (1st Reprint): Makes various changes relating to domestic relations. (BDR 11-215)

Senator Maurice Washington, Washoe County Senatorial District No. 2:
This is familiar because Assemblyman Carpenter sponsored this same bill. Unfortunately, we never had a chance to converse when we both asked the bill to be introduced and drafted. Consequently, his bill was started in this Committee, and my bill was started in the Senate Judiciary Committee. They have both passed, so we have the opportunity to hear this bill again. Most of the provisions are the same as in Assemblyman Carpenter's bill. It deals with domestic relationships and codifies what is certainly a common practice in law. It has indicators, such as financial conditions of the parties; the nature and value of the respected properties; the combination of each party's property held and both parties as tenants to the agreements; the duration of the marriage; the income; the earning capacity of each party; et cetera. This is based off of the case *Buchanan v. Buchanan* [90 Nev. 209, 215 (1974)]. It also requires that the Director of the Department of Public Safety (DPS) prescribe the information and forward those reports to the Central Repository. It also requires the Director of the DPS to submit a written report to the Legislative Counsel Bureau (LCB) concerning the number of temporary or extended protection orders against domestic violence to be reported to the Director of LCB.

Chairman Anderson:
We had added the Director of the DPS reporting requirement to our bill, and I see that those things have been amended into your bill also. There are some differences between the two bills. Section 5, subsections 4 and 5 say that the information from the report that is required to be forwarded, and the Director of the DPS shall prescribe the form. That is a little different than what was in ours. Is this a further clarification that was suggested by the DPS or is it for some other purpose?

Senator Washington:
It was prescribed by the DPS. They requested that the language be written as such.

Chairman Anderson:
If we are going to proceed with the bill, would you have an objection with us submitting Assemblyman Carpenter's name into your bill?

Senator Washington:
No, I would be honored.

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence:
We are in support of this bill, as we were with Assembly Bill 52. I want to speak to the Section of this bill that is different than A.B. 52. That section refers to reports that law enforcement officers are mandated to complete at the conclusion of each investigation of an act that constitutes domestic violence. For many years, this information has been aggregated at the state level with reports issued on an annual basis, which is one of the few sources of any kind of data on domestic violence available. For the past two years, those reports have been suspended due to technical problems. Our understanding is that this amendment will enable the DPS to resume the collection and reporting on this data by clarifying what and how it is to be reported. We want to make sure that this amendment in no way changes the required reporting element contained within the statute or the duty of DPS to report this data, and that it will merely help them in compiling the data by not having too much extraneous data coming to them. That is our only concern. Otherwise, we support both of the bills and would like to see more data collected on domestic violence.

Chairman Anderson:
Ms. Lang, looking at page 6, Section 6, subsection 4 where it says, "On or before February 15 of each year, the Director of the Department shall submit to the Director of the Legislative Counsel Bureau a written report concerning all temporary and extended orders..." Would the amendment that had been placed in the Senate limit the ability of Section 6, subsection 4 in any way?

Risa Lang, Committee Counsel:
I do not think it will. Ms. Meuschke's concern with Section 5 is with language about the copy of the report having to be forwarded. It is still required; it is just that now it will be limited to the information that they have established needs to be forwarded. It is okay as long as you are okay with just that information being forwarded, instead of the entire report.

Chairman Anderson:
Will the report that is coming from the Central History Repository still contain the outlined information as set forth in Section 6, subsection 4?

Risa Lang:
The information in Section 6 remains the same. The report that comes out of Section 6 would include all of that information.

Chairman Anderson:
It is the intent that the reporting requirement be reflective of those specific pieces of information that we are looking for. This does not lessen the report or the reporting requirement to the Legislature to be gathered by the DPS. Ms. Meuschke, does that solve your dilemma?

Susan Meuschke:
If this piece of legislation does not lessen the reporting requirements in either section, then we do support the bill.

Assemblyman Carpenter:
Where it says, "The Director of the Department of Public Safety shall prescribe...," does that give him leeway to send what he wants to the Central Repository?

Chairman Anderson:
We took the Supreme Court out of this and turned it over to them in A.B. 52. Captain O'Neill accepted that responsibility.

Risa Lang:
My understanding was that this was something the Central Repository was interested in so they could get only the information they needed instead of getting the entire report. If you need clarification so that we can specify the type of information that is forwarded, that would be fine as well. This would leave it to the Department to prescribe the information from the report that would be forwarded.

Chairman Anderson:
That is where our confusion lies. We would want clarification from the Department to make sure that Ms. Meuschke's concerns are reflected adequately in the report, and we are getting information that we desire so that we can have at least one place that we can go to and find what we need to know rather than to depend upon anecdotal information which can be misleading.

Chairman Anderson:
Are you aware if that provision had been amended into A.B. 52?

Susan Meuschke:
I do not believe that it has. It was in work session yesterday, but I do not believe anything was finalized.

Assemblyman Manendo:
In the laundry list of items in the bill, would your organization be okay with adding language to consider acts of domestic violence?

Susan Meuschke:
My understanding is that there was an effort to do that in the Senate, and it was defeated. Because of the complications around what spousal support is and the fact that we are a no-fault state, I am not sure that if you add domestic violence into that list you conflict with the whole idea of no-fault. We would love to not have people paying spousal support to batterers. If we can do that in a way that does not violate any other kinds of issues, we would be happy with that.

Chairman Anderson:
We are concerned about the number of temporary protection orders (TPO) during the calendar year granted to women or to men that included custody of children that are vacated or expired, and were served on the adverse party. Those are the things that we are looking at.

Susan Meuschke:
We want to collect that information with the protection order. Section 5 responds to the criminal side and to arrests for domestic violence. Many years ago there was a requirement for law enforcement to report certain information at the conclusion of each investigation. That information includes whether or not an arrest was made and if the primary aggressor determination was made. It also includes information on if the decision to arrest a primary aggressor was made and they did not make an arrest, why they did not do so. That information had been collected by the repository or someone within the DPS. They would do annual reports that would show breakdowns by law enforcement agencies in terms of the number of arrests that were made, and if an arrest was not made what the mitigating circumstance was, et cetera. Apparently a machine broke in the DPS which allowed them to collect this data in some way, shape, or form and now they need clarity with law enforcement agencies about how they are now going to send the information. My concern is that the data required by statute currently continues to be compiled on a statewide basis so that we have some continuity of information about what law

enforcement is doing. The language now says that the Director of the Department will prescribe what information is sent and how it is sent.

Chairman Anderson:
Let me close the hearing on S.B. 202 (R1).

Meeting adjourned [at 10:42 a.m.].

RESPECTFULLY SUBMITTED:

Kaci Kerfeld
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 3, 2007 **Time of Meeting: 8:06 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster
S.B. 7 (R1)	C	Senator Valerie Wiener	Prepared testimony
S.B. 7 (R1)	D	Senator Valerie Wiener	Memorandum
S.B. 7 (R1)	E	John Johansen	Information from Nevada Department of Public Safety
S.B. 7 (R1)	F	Kathy Bartosz	Information handout
S.B. 7 (R1)	G	Kathy Bartosz	Stand Tall Don't Fall pamphlet
S.B. 132	H	Alysia Peters	Prepared testimony
S.B. 132	I	Madelyn Shipman	Proposed amendment
S.B. 132	J	Janet R. Phillips	Brochure