MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
April 4, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 7:43 a.m., on Wednesday, April 4, 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 John Oceguera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

GUEST LEGISLATORS PRESENT:

Assemblywoman Ellen Koivisto, Assembly District No. 14

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Janie Novi, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Jack Jeffrey, representing Sharon Skupa, Little Chapel on the Corner, Henderson
Tom Fronapfel, Administrator, Field Services Division, Department of Motor Vehicles
Lynda Foresta, representing Clark County Clerk's office
Nancy Parent, Chief Deputy Clerk, Washoe County
George Flint, representing Chapel of the Bells, Reno
Margaret Flint, representing Sharon Harvey of the Silver Bells Wedding Chapel, and Pat Simpson of the Arch of Reno Wedding Chapel, Reno
George Cotton, representing Shalimar Wedding Chapel, Las Vegas
The Honorable Gerald W. Hardcastle, Judge, Family Division, Eighth Judicial District Court, Clark County
Kathleen Baker, Deputy District Attorney, Child Welfare Unit, Washoe County
Mike Capello, Director, Department of Social Services, Washoe County
Cotter C. Conway, Deputy Public Defender, Washoe County
Cynthia Lu, Chief Deputy Public Defender, Washoe County
Ann Price-McCarthy, Nevada Trial Lawyers Association, Carson City
Amy Nastin-Jelinek, Deputy District Attorney, Child Welfare Unit, Clark County
Nancy Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services, Carson City
Robert Teuton, Assistant District Attorney, Clark County
Susan D. Hallahan, Chief Deputy District Attorney, Family Support Division, Washoe County

Chairman Anderson:
[Meeting called to order; roll was called.]

Let us begin with Assembly Bill 406.

Assembly Bill 406: Revises various provisions relating to marriage licenses. (BDR 11-523)

Assemblywoman Ellen Koivisto, Assembly District No. 19:
Assembly Bill 406 simply started out asking the county clerk in Clark County to open a satellite marriage license office in Henderson. Henderson is the second biggest city in the State, and it seemed time that the folks who want to get married in Henderson could get their marriage licenses in Henderson.

Section 2, subparagraph 1, states "an incorporated city whose population is 150,000 or more and less than 400,000," would qualify for a county clerk branch office. Although North Las Vegas would qualify under this rule, the intent of this bill is for Henderson. I am not sure what language can be used to ensure that this would be in Henderson. Also, you will be receiving copies of letters from Amy Harvey, Washoe County Clerk (Exhibit C) and Shirley Parraguirre, Clark County Clerk, (Exhibit D). Also, in Section 2, subparagraph 1, the word "shall" will be changed to "may" to make it permissive instead of mandatory.

Chairman Anderson:
Is that your desire?

Assemblywoman Koivisto:
Yes.

Chairman Anderson:
The purpose of the bill is to try to take care of a particular community due to its growth rather than challenge the question about where our county seat is.

Assemblywoman Koivisto:
That is correct.

Chairman Anderson:
What is the population of North Las Vegas?

Assemblywoman Koivisto:
I believe it is 176,000, according to the 2005 numbers.

Chairman Anderson:
Ms. Lang, by changing the "shall" to "may" does this allow the county clerk the latitude they need to open a branch office in Henderson or do we have to be more specific?

Risa Lang, Committee Counsel:
There is no problem changing the language to "may."

Chairman Anderson:
Does that guarantee that it is going to go to Henderson?

Risa Lang:
Henderson would be included in this population break, remembering that we do not use the regular population census. We use the last decennial census. The bill specifically states "whose population is 150,000 or more but less than 400,000" would include Henderson.

Chairman Anderson:
Would it include North Las Vegas?

Risa Lang:
I would have to check the populations. If the intention is to include North Las Vegas, we can certainly include that as well.

Assemblywoman Koivisto:
I do not think the intent is to include North Las Vegas. At this point in time, it is strictly directed at Henderson.

Risa Lang:
I think the way it is drafted right now, it is directed at Henderson.

Chairman Anderson:
In Section 1, you wish the "shall" at line 14 to be removed and changed to "may." Correct?

Assemblywoman Koivisto:
That is correct. Instead of "shall designate one branch office," it should say "may designate one branch office." That is on line 13.

Chairman Anderson:
You want the first "shall" to be changed. What about the other parts of the bill?

Assemblywoman Koivisto:
The other parts of the bill deal with identification. These parts were requested by the Department of Motor Vehicles (DMV). I believe they wanted to get a start on Real ID. The letters from Washoe County and from Clark County deal with that issue.

Chairman Anderson:
Is it your desire to have these letters submitted to the record at this time?

Assemblywoman Koivisto:
Yes.

Assemblyman Segerblom:
Do you mind changing it to eliminate the full name requirement?

Assemblywoman Koivisto:
No, I do not. The county clerks are the ones who have to deal with this at this time. I am willing to work with them to set it the way they want it.

Chairman Anderson:
Do the rural counties have a similar issue? I realize we have the two large counties that are concerned, but we also have some concerns about the Real ID Act.

Assemblywoman Koivisto:
I have not heard from the clerks in the other counties.

Jack Jeffrey, representing Sharon Skupa, Little Chapel on the Corner, Henderson:
Ms. Skupa has a problem with marriage licenses in Henderson. Most of the Committee is aware that Clark County and Henderson are experiencing a great amount of growth. This bill is really a matter of convenience and economic necessity. If a person goes to Las Vegas, even a Henderson resident, they have to go to the courthouse to get a marriage license. They usually get married in Las Vegas rather than the area of Henderson. It is pretty well centrally located between Lake Las Vegas and Anthem. I am here in support of the bill, and would be happy to answer any questions.

Chairman Anderson:
Are you concerned with the other part of the bill?

Jack Jeffrey:
No.

Tom Fronapfel, Administrator, Field Services Division, Department of Motor Vehicles:
With regard to A.B. 406, there are two simple questions to ask. The first is, "What is broken?" The second is, "What does this bill do to fix it?" The answers are simple as well. First, Chapter 122 of *Nevada Revised Statutes* (NRS) is "broken" as it relates to applications of marriage licenses and marriage certificates. The current law does not require an individual applying for a marriage license to show proof of identity and age unless the applicant is under

18 years of age. In addition, current law does not require an application for a marriage license and certificate of marriage to contain the person's full legal name. Also, it does not require a certificate of marriage to contain a person's date of birth. Under existing law, individuals can go to a county clerk claiming they have lost their identification. They can then be issued a marriage license after simply signing an affidavit stating, under penalty of perjury, that the information on the application is true and accurate. No proof of identity or age is required. Why is this a problem? Certificates of marriage are de facto proof of change of name. Once issued, they are presented to the DMV to obtain a new driver's license or identification card that reflects the person's change of name.

Section 1 of the bill establishes a definition of full legal name to be used on applications for marriage licenses and certificates. The statute, NRS 481.0515, passed in 2003, requires the use of full legal name on all DMV documents. Requiring the full legal name on applications for marriage licenses and marriage certificates will eliminate ongoing problems the Department encounters with change of name by marriage. It also allows for the establishment of a clean paper trail for those name changes. Subsection 2 of Section 2 provides the county clerks with the authority to require proof of a person's age and identity, and also provides a list of the documents that may be accepted as that proof. These are the same documents that the DMV currently accepts pursuant to NRS 483.290. Finally, Section 3 requires that the application for a marriage license show a person's full legal name, and Section 4 requires that the marriage certificate show a person's full legal name and date of birth.

Chairman Anderson:
It is my impression that people frequently come to Nevada get married. It is a thriving business here in this State. Is this going to make it more difficult for a person who comes here to get a marriage license?

Tom Fronapfel:
I do not believe that it will. We are simply requiring an individual applying for a marriage application to show proof of age and identity. The current law does not require an individual to show any form of identification to apply for that license.

Chairman Anderson:
Has that proven to be harmful to the industry and citizens of this State?

Tom Fronapfel:
I do not believe it would adversely affect the marriage industry. It may adversely affect the DMV. For example, we had a woman move to Las Vegas

from the state of Florida. She came to Nevada with a Florida driver's license, three marriage certificates, three divorce decrees, her son's birth certificate, and her birth certificate from the state of New York. There was no clean paper trail in any of those documents which showed what her legal name was. She presented her New York birth certificate which contained an initial for her middle name. Historically, she had been using her maiden name as her middle name which was not her legal middle name.

Chairman Anderson:
If we adapt this in Nevada, how would that situation be different?

Tom Fronapfel:
Individuals from out of state are required to present additional documentation over and above what a Nevada resident would have to present for a change of name. Generally, what we accept is the marriage certificate provided to the applicants upon getting married. They bring that to DMV, and if we do not have a clean paper trail or they are not in our system, we do not know if that person is in fact who they claim to be. This would give us some comfort level in that situation.

Assemblyman Carpenter:
What if a person does not have a middle name?

Tom Fronapfel:
There is no requirement that a person have a middle name. If they have a middle name and it is presented on the documents for the application for marriage license, that middle name would be used.

Assemblyman Carpenter:
If you have no middle name, they have to put "no middle name?"

Tom Fronapfel:
No, they just do not use anything.

Assemblyman Carpenter:
I see here that it says first name, middle name...

Tom Fronapfel:
If in fact they have a middle name, the middle name would go on the application. If not, the application would not contain a middle name.

Assemblyman Carpenter:
Are you going to go back to them and say that this law says that a legal name is a first name, a middle name, and a family name?

Tom Fronapfel:
That is correct. If the individual comes into the DMV with only a marriage certificate, that will not be sufficient documentation to show their identity. They would have to present additional documentation, whether it is an existing driver's license, an existing birth certificate, an existing passport, et cetera.

Assemblyman Carpenter:
It seems to me that you are making it pretty hard to get married.

Tom Fronapfel:
We are just trying to identify these people, just as we do at the DMV for a driver's license.

Assemblyman Segerblom:
Is this new requirement because people are getting married to defraud their creditors or because terrorists are changing their names? I do not see that this is a big issue. Why do we have to change what does not seem broken?

Tom Fronapfel:
The broken part is the lack of the requirement for someone to show their identity at the time they apply for a marriage license. In theory, someone could come and give a wrong name. There is the potential for fraud.

Assemblyman Segerblom:
There is the potential for fraud in a lot of places. Is this actually an existing issue?

Tom Fronapfel:
I believe it is an existing issue in this State as well as in other states.

Lynda Foresta, representing Clark County Clerk's Office:
We support Section 2 regarding the designation of one branch office of the county clerk's office being established to issue marriage licenses.

We also support the concept of requiring individuals to provide acceptable forms of identification in order to obtain a marriage license. However, we are concerned about the language in the bill requiring full legal name, as so many forms of identification that are acceptable under this bill contain initials rather than full middle names or even first names. We are concerned that if

identification requirements are too strict, county clerks will be forced to turn away many couples which could harm the tourist and wedding industries, in turn damaging our relationship with the community partners.

Chairman Anderson:
Conceptually, by giving the opportunity of "may" to the branch office, you would prefer only that part of the bill to move?

Lynda Foresta:
That is correct.

Chairman Anderson:
There is a concern about the Real ID Act. I know that we have already taken a position stating that the Real ID Act is not in the best interest of the citizens at this time.

Tom Fronapfel:
The only likening of this proposed legislation to the Real ID Act is the section recognizing the full legal name. The Real ID Act, as proposed, contains a similar definition of full legal name. The Real ID Act specifically prohibits the use of initials. I have a problem with this because we have seen birth certificates that contain just initials, which would be an individual's full legal name. There has been concern expressed by the clerks of both Washoe and Clark Counties regarding the use of initials in this interim period from now until the Real ID Act is fully implemented. The DMV is of the opinion that documents with initials should be allowed when presented for application of marriage licenses. The list of documents that is contained in the bill uses the same documents that the DMV currently requires, such as a driver's license, identification card, military identification, et cetera. Many of those documents may have an initial rather than a full name. That would be an acceptable form of identification.

Nancy Parent, Chief Deputy Clerk, Washoe County:
We are here in support of this bill in all of its respects, including the amendments suggested by Clark County. Washoe County currently has a branch office, but in the event that our population continues to increase, this will allow us to be more permissive and have more branch offices or to not have branch offices if the Board of County Commissioners chooses. We like the way that Ms. Parraguirre has suggested it be amended in the memo provided by Assemblywoman Koivisto.

On the Real ID, I think there is another side to the story. It is not our intention in supporting this legislation to make it harder for the chapels or the people who come here to get married. If we do not have a valid, official document that

people can rely on and is respected as a proper document, we really have done a disservice to these people.

There is one thing that nobody has talked about yet, and that is the amendment to add the date of birth to the marriage certificate. Social Security has recently changed the documents they need to establish benefits, marriages, and people's entitlement. They want more information on the marriage certificate than it currently provides. They have indicated that if it had the date of birth, that would suffice. Right now, people must get a copy of their marriage certificate to prove that a ceremony was performed, and then they have to get a copy of the application which gives all other details including specific birthdates that Social Security is looking for.

Chairman Anderson:
You feel that Section 7 of the bill is important. This says that the date of birth of each applicant be added. You feel that this is an essential part for Social Security benefits to be established and would help you.

Nancy Parent:
It does not make a difference to us. It is for the people. We actually make money when we sell the affidavit of application. It is for the customer.

George Flint, representing the Chapel of the Bells, Reno:
Mr. Fronapfel has told you that this will not negatively impact the marriage business. He has never talked to anyone in the wedding industry and we handle 70 percent of the weddings in this State. We are the ones who deal with the identification problem. We are the ones who make sure that the couple has the identification when they go to get their marriage license. The industry represents almost 15 percent of our entire tourist economy. Please look at the handout I brought (Exhibit E). Our present marriage business is shrinking. It has fallen in Washoe County from 38,000 weddings in 1978 to 16,000 this past year. In Clark County, it fell from 120,000 in 2005 to 112,000 last year. Implementation of this very restrictive identification requirement could cost us 25 percent of the marriages that come to this State. The reduction in licenses would mean a half million dollars lost for domestic violence, because their agencies receive $20 per license. Many weddings that take place in this State are between men and women of young ages such as 16. They often do not drive yet and you have a certified copy of their birth certificate, but this language would require photo identification along with that. Also, 25 percent of our business is Latino related. Some of these people have been living together for 45 years and the poor wives have been using their husbands name for 45 years. Often, they do not have anything legal that has their original name anymore. I have never known this to be a problem before. This could hurt our

industry. People come from all over to get married in Las Vegas, and they bring many friends who come for a few days to have a good time. If the couple did not bring the correct identification, the couple and all of their friends have to go home. Mr. Fronapfel has never considered the concerns of the private industry.

Altogether this is not a bad concept, and there is probably room to adopt some of this, but do not kill us in the adoption. The *United States Constitution* has always allowed the individual states to make their own decisions regarding domestic law. Let us leave it to the State to have some flexibility. If we adopt this, the clerk is not going to have any flexibility. All of the clients sitting in my chapel are going to be angry. On page 2 of my handout are pictures of the Park Wedding Chapel; it just closed after 50 years. Our marriage business is shrinking. I plead with this Committee not to let it happen any further.

Margaret Flint, representing Sharon Harvey of the Silver Bells Wedding Chapel, and Pat Simpson of the Arch of Reno Wedding Chapel, Reno:
Pat Simpson with Arch of Reno Wedding Chapel and Sharon Harvey with Silver Bells Wedding Chapel would like me to express to the Committee that they both believe this bill could be devastating to our business and industry. Consider this scenario: there are 40 guests in my chapel and a groom who has been pick pocketed at the airport. Under this bill, a faxed copy of his birth certificate would not be acceptable. How do I turn these people away? This is not a state where people plan three months in advance to come up here and purchase a marriage license. They cannot just hop a plane and go home to get more identification. We are different than the other states. This is part of our tourism.

George Cotton, representing Shalimar Wedding Chapel, Las Vegas:
This requirement will hurt our business. We do 80 percent of our weddings for out-of-state people. If the DMV needs more help with their identification efforts, why not just put that Nevada residents must provide this type of information rather than making everyone else abide by this standard?

Chairman Anderson:
I will now close the hearing on A.B. 406. Chair will take the question under advisement. It seems that we can move forward with Section 2 of the bill to add the phrase "shall designate one branch office of the county clerk" at line 13, as well as Section 4, which adds "must contain the full legal name of each applicant and the dates of birth" to obtain a marriage license. I want to make sure the legal counsel is consulted; we will put this bill to our next work session.

Let us turn our attention to Assembly Bill 353.

Assembly Bill 353: Makes various changes concerning the restoration of parental rights. (BDR 11-851)

Assemblywoman Susan Gerhardt, Assembly District No. 29:
I am asking for your consideration of A.B. 353 which would restore the parental rights of a natural parent or parents in certain circumstances. The termination of parental rights in Nevada is a final and conclusive act. Once made, the court has no power to change, modify, or set aside a termination order. The termination of parental rights means the child is declared free of the parents custody and control. At that point, the only way for a natural parent to regain custody is through the adoption process. Terminating a person's parental rights is never taken lightly by the courts or the parties involved. However, our life experiences tell us that circumstances can and do change over time. For example, there may have been reconciliation between a parent and child or the parent may now be in a better position to care for the child. A parent may have lost parental rights as a result of drug use, but may now be clean of drugs and able to care for the child. In some cases, it may be that the child is not likely to be adopted and would be better in the custody or control of his natural parent. Under any of these scenarios, it may be beneficial to all parties for parental rights to be restored. That is the intent of A.B. 353. The concept is not new. The bill is fashioned after a similar law in California. I ask that the Committee consider the mock-up before them (Exhibit F).

The proposed amendment to A.B. 353 completely replaces the original A.B. 353. Section 2 authorizes a child, the legal custodian of a child or the legal guardian of a child to petition for the restoration of parental rights. In order to petition, the natural parent for whom restoration of rights is sought must consent. The natural parent or parents cannot bring a petition on their own. You may hear later on that there is an amendment asking that the parents have the ability to do that, and I feel very strongly that we do not go down that road. I would hate to see circumstances in which a parent is in prison and sending petition after petition through the courts, trying to regain parental rights and disrupting the child's life.

Section 3 provides certain requirements regarding notice to be provided before a hearing is held. The following persons must be personally served with the notice: the natural parent or parents for whom parental rights are sought to be restored and the legal custodian and the legal guardian of the child who is the subject of the petition. If the parental rights of the natural parent or parents for whom parental rights are sought to be restored were terminated, the person or governmental entity that petitioned for the termination must serve notice. Each of those people would be provided an opportunity to present evidence and provide testimony during a hearing on the petition.

Section 4 provides for the court to hold a hearing when a valid petition is filed. In order to grant a petition, the court must find that the child consents to the restoration of parental rights if the child is over 14 years old and the natural parent has been informed of the consequences of the restoration of rights and they are willing and able to accept those consequences. The court must also find that the child is not likely to be adopted and that restoration of the parental rights is in the best interest of the child. When the order is entered, the natural parent becomes the legal guardian of that child as of that date with all rights and duties of a parent. I would suggest that the continuing needs of a child for proper physical, mental, and emotional growth and development are paramount in determining the status of parental rights. Circumstances change and in some cases parental rights that were terminated by a court should be restored by a court if it is in the best interest of the child. Nevada law currently does not allow this, but A.B. 353 would. I encourage your support to allow the courts this important discretion.

The Honorable Gerald W. Hardcastle, Judge, Family Division, Eighth Judicial Clark County:

This is the product of a lot of negotiation. I have been blessed to be the juvenile court judge for Clark County for 12 of the 15 years that I have been on the bench. I have handled a great number of termination of parental rights cases. Termination of parental rights is a precondition to adoption. In the absence of the possibility of an adoption, there is no valid reason for terminating a child's rights to parents. To legally remove a child's parents when there is no substituted parent is mean and meaningless. In anticipation of adoption, a termination of parental rights proceeding is the way we determine whether or not we can allow strangers to legally take care of children and take them from their own parents. The impact is that every termination comes with an implied condition that there will be new, better parents found for the child. Assembly Bill 353 addresses what occurs when the rights are terminated but no adoption is found. It puts the child back into the position that the child was in before by restoring the parental rights. There have always been children whose parent's rights have been terminated but who have not been adopted, but the numbers are dramatically increasing. In 1997, the federal government passed the Adoption and Safe Families Act. This Act required that the states, under threat of their Title IVA funding, emphasize the speedy movement of children through foster care, and it shortened the time the parents had to reunify with their children.

There were some myths contained in the Adoption and Safe Families Act. The first one was that we had children languishing in foster care because of repeated efforts to reunify with parents. The second myth was there were a huge number of childless adults waiting to adopt children whose parents' rights

were terminated. These myths were and remain untrue. Since the Adoption and Safe Families Act was passed, there have been more than 117,000 children nationally whose parents' rights have been terminated and have not been adopted. What we are experiencing in this country is a gradual increase in the number of adoptions, but a very sharp increase in the termination of parental rights. The average annual increase in adoptions is 54 percent. The average annual increase in the number of terminations of parental rights is 82 percent. In Nevada in 2004, agencies did 278 adoptions. In Clark County, we did 321 terminations alone. The number of children in Nevada waiting to be adopted, as of the year 2004, was 1,153. It is very clear that we are terminating parental rights at a much more accelerated rate than we are getting these children adopted. As a result, these children remain in foster care, they are not adopted, and they leave foster care in very sad shape without any parents whatsoever. There is a human side to this. It is clear that this is a major problem, and this bill will not solve all of it, merely a small part. If parents want to have a relationship with their child and the child wants the same, we can restore that. The issue of increasing adoptions is going to continue to be a problem.

These children remember their families and know that we have taken them away in hope of finding them another family. When we fail to do that, to sit back and allow them to wander out of the system without any family is an extremely unkind act. Please listen as I read from a case manager's report:

> John became of age on November 24, 2006. He had been in custody since May 1996. His parents' rights were terminated in March 1999. On or about November 24, 2006 the social worker received a call from John's mother Ann, who was residing in the state of Wisconsin. She was very emotional and stated that she had waited all of these years to contact her son. She had been in Las Vegas a couple of times and tried to locate John; however, her search was fruitless. No matter where she went, she was told that she had to wait until he was 18 years of age before she could locate him. She contacted Child Protective Services (CPS) on his birthday, and they provided her with this worker's name and telephone number. Ann called immediately and said that she could not take care of her son when she lost him because of his negative behaviors. She knew that her son had not been adopted because she would follow him on the Internet. Ann stated that she regretted what she had done, but knew that she could not get him back. The worker told her she would not be judged by her actions and that her son had wanted to be with her all of these years. He even sabotaged adoptive placements. Ann asked if she could

> contact John, and the worker told her that she needed to speak with John first. John was in disbelief and cried so hard he was speechless. He kept asking if this was a joke or was he dreaming. The worker provided him with his mother's telephone number; he called immediately. He came back to the worker and said, "My mother wants me, please may I go?" The next day, the worker received a call from John Sr., the boy's biological father, who arranged a visit as well. The boy wanted to be with his mother. The social worker is asking that the court terminate its custody of John and let him go to his mother where he has wanted to be all of these years.

What is important here is that this woman and this man are strangers to this child, according to the law. These children do not forget and may find value in their families when we might not. When no one else has stepped in to establish that parenting relationship, it is mean not to remove that legal barrier and restore that family at some point.

Chairman Anderson:
It is very difficult to discern what is in the best interest of a child. Do you believe that with the amendment and the mock-up legislation we are going to solve some of these parental problems?

Gerald W. Hardcastle:
I do not think we are going to solve them all, but it is a good place to start. Giving the family court the power to do this in the cases in which we can is a compassionate and appropriate thing to do. It is done in the state of California. This idea came to me not from watching other states, but by seeing these children leave with no family. We tell them that their lives are going to be better and that we will find an adoptive home for them, but when that does not happen, it is troublesome, especially in those situations where we could give a child a little piece of his life back by removing that barrier.

Assemblyman Carpenter:
The bill says, "child whose natural parent or parents who have had their parental rights terminated..." Who would be the parents if we are not talking about the natural parents?

Gerald W. Hardcastle:
There are adoptive parents and there are natural parents. We are saying is that this is not applying to adoptive parents who then have had a subsequent termination of natural parental rights. Who would then be the parents legally once we have relinquished their rights? There are none.

Chairman Anderson:
There is always the time period between when parental rights are relinquished, the child becomes the court or the State's responsibility, and the time when another family is established for that child.

Gerald W. Hardcastle:
That is correct. Unfortunately, sometimes it lasts for years.

Assemblywoman Gerhardt:
Sometimes there are step-parents who may have adopted the child, so it is not a natural, biological parent who has custody of a child. Ms. Lang may be able to help us clarify the language.

Risa Lang, Committee Counsel:
We used "natural parent or parents" to identify a child whose parents' rights have been terminated. Although they are not currently his parents, they were his natural, biological parents. It is just an identification.

Assemblyman Carpenter:
For clarification, would these be parents who adopted a child and had their rights terminated?

Gerald W. Hardcastle:
Under the terms of the bill, no. Adoptive parents whose rights have been terminated would not have the right to petition.

Assemblyman Carpenter:
I still do not understand what that term "parents" means in there.

Gerald W. Hardcastle:
I think it means more than one. It is parent or parents. It is simply the plural, not to identify another class of parent.

Chairman Anderson:
It is just saying both a father and a mother. There may be a situation where one parent is in trouble and the other parent does not have the ability to be a good parent.

Assemblyman Mabey:
Is it possible for a child who had been adopted to change his mind and say he wants to go back to his natural parents? I do not see where this bill would exclude that from happening.

Gerald W. Hardcastle:
No, the child could not have been adopted under the terms of this bill. If there is a language problem, we should clear that up. No, if the child has been adopted, this bill does not apply.

Assemblyman Mabey:
It might be a very rare case, but I do not see where it is explained. In Section 4, it says "if the child is not likely to be adopted." My concern is that you have a child who has been adopted and changes his mind.

Assemblyman Ohrenschall:
When there is a proceeding to terminate parental rights in Nevada, do the parents automatically get an attorney, if they cannot afford one?

Gerald W. Hardcastle:
There is a statute that allows the court to appoint attorneys for the parents. In Clark County, almost universally, parents are given attorneys in termination cases.

Assemblyman Ohrenschall:
Is it at the final stage, or when the process begins? I understand this is a protracted process.

Gerald W. Hardcastle:
The parents are given notice to a first appearance on the petition. This basically tells us whether or not they agree with the petition. If they show up at the hearing, they are then given an attorney at the first appearance. In Clark County, we have the ability to appoint attorneys in the juvenile cases earlier if we see the case is going to termination.

Assemblyman Ohrenschall:
How will the parents get through the hurdles of drafting the petition, and serving the proper parties? This concerns me.

Gerald W. Hardcastle:
We have the Children's Attorneys' Project as well as private pro-bono attorneys. We are capable of getting adequate representation for children who need it. There is a federal mandate that every child be represented. The one thing I worry about is smaller counties and whether or not they have the resources to give attorneys to children.

Assemblywoman Gerhardt:
Our intent is not to disrupt adoptions. If the Committee would like to change the mock-up on page 3, line 32 to say that the child has not been adopted and make that absolute, we have no problem with that.

Risa Lang:
That would be fine. We may want to put it in Section 2 that a child has not been adopted and whose natural parent or parents have had their rights terminated or relinquished. Then in Section 4, if they are not likely to be adopted, then the court can step in.

Chairman Anderson:
That would make me a little more comfortable if it were in the other section as well. We will take that into consideration.

Assemblyman Carpenter:
Section 4 subsection 2(a), it says "any child who is the subject of the petition is 14 years of age or older, the child consents to the restoration of parental rights." Down at lines 35-38, page 3 of the mock-up, it says "if the court restores the parental rights of the natural parent or parents of a child who is less than 12 years of age, the court shall specify in its order the factual basis for its findings that it is in the best interest of the child." What happens if the child is 12 or 13?

Gerald W. Hardcastle:
They are not left out. They are subject to different standards. There is a philosophy in child welfare law that children 14 years of age and older need to consent before we do things to them. If the child is under 12, we should still pursue adoption for the child unless there is a good reason.

Assemblyman Carpenter:
Would it be better to put 12 and 13 somewhere?

Chairman Anderson:
The reason 14 is there is because it is the age where we could potentially move you up to adult status for a crime. If someone is under the age of 12, we recognize that their cognitive ability for decision making is not as strong. The 13-year-olds have always fallen into this category.

Assemblyman Carpenter:
At 13, you are out in the cold. If they are 14, they must consent. At 12 years old, the judge has to make a specific finding. It seems 13 is a year that should be included somewhere.

Gerald W. Hardcastle:
To some degree, it is arbitrary. If you get a child younger than 12, you do not want to restore parental rights that have been terminated, and hopefully you can still find the child an adoptive home. Again, they are two different policies. Consent is a completely different issue. At what age do we think a child is capable of having direct input as to whether or not to restore parental rights? At 14, a child has the ability to make that decision. There is a distinction in my mind.

Assemblyman Carpenter:
What do you do with the kids who are 12 and 13?

Gerald W. Hardcastle:
At those points, you are not required to make the special findings. The court could restore parental rights without the child's consent. The court could also find that continuing the adoptive efforts is not in the best interest of the child.

Assemblyman Carpenter:
Would there be any reason not to specify why parental rights should not be restored for 12- or 13-year-olds?

Gerald W. Hardcastle:
I have no problem making the age for consent to the restoration of parental rights to 14, and making the age 13 and under for the special findings.

Assemblyman Carpenter:
It would help me.

Assemblywoman Gerhardt:
This does not exclude children who are 13. We can still restore rights if it is in the best interest of the child.

Assemblyman Carpenter:
It certainly does not hurt to have the court specify the factual basis for the children who are 12 and 13. Can we make it more uniform?

Gerald W. Hardcastle:
I have no objection to amending this bill to require those findings for any child 13 years of age and under.

Assemblywoman Gerhardt:
At line 36, we could say, "parents of a child who is less than 14." That would capture everybody below that age.

Chairman Anderson:
Do we need to draw this distinction?

Risa Lang:
It is strictly a policy choice of what age you want to set this at. If the intent is that they are not giving consent, which you specify in the order of the basis for the findings, we could do as Ms. Gerhardt said.

Chairman Anderson:
Are we arbitrarily drawing a line rather than leaving it open to the judge to determine whether the child is capable of making a consent decision?

Risa Lang:
The consent age is already stated as 14 or older. This applies whether or not the court restores the parental rights. The court has to make a specific finding.

Chairman Anderson:
Are we preventing a judge from asking a 13-year-old for his consent?

Risa Lang:
This wording change would just require the court to put certain information into the order.

Kathleen Baker, Deputy District Attorney, Child Welfare Unit, Washoe County:
We are in support of this bill as written. There are not many times we encounter the situations described by Assemblywoman Gerhardt and Judge Hardcastle. There are times when parental rights have been terminated and it is in the child's best interest to restore those. Currently we do not have the ability to do that.

Chairman Anderson:
You have looked at the amendments that are suggested in the mock-up, and that is what you are agreeing to, not the original bill.

Kathleen Baker:
Yes, that is accurate. We are in support of the bill as it has been amended.

Mike Capello, Director, Department of Social Services, Washoe County:
Being on the side of the system that requests the termination of parental rights, we were skeptical. We realized that there is potential for change in the natural parents circumstances. For example, we have many young fathers whose rights are terminated because their interest in the child is not what it might be a few years down the road. This may open potential permanency options for

children who normally would not have any options. The legal standard to terminate parental rights is very high and we only do it after very careful consideration. The option to reverse that in appropriate cases will be a good thing for our kids in the State of Nevada.

Chairman Anderson:
That gives me a certain level of comfort. I am always wary of this issue.

Cotter C. Conway, Deputy Public Defender, Washoe County:
Instead of hearing from me, I have brought Cynthia Lu. We are in support of the concept of this bill, but do have some concerns. Cynthia Lu will go into that more.

Cynthia Lu, Chief Deputy Public Defender, Washoe County:
We support the intent and spirit of this bill. We do believe it provides for a definite need that is lacking in the law and its current state. Chairman Anderson alluded to an issue in Washoe County. Unlike Clark County, Washoe County does not have attorneys for children as readily available. The only concern we have with the bill is the fact that this bill only allows children or their guardians, who would be the Child Welfare Services Agency, to petition. This bill does not allow the parents to petition themselves. It seems incongruous that a person having rights restored cannot ask for those rights themselves. The other concern is that in Washoe County, the children do not always have attorneys; these parents will not have the ability to access this bill through the child or the overburdened and busy social worker.

Chairman Anderson:
Did you consider the possibility that a person who has issues having lost their parental rights may suddenly be unhappy? They may then start to submit more paperwork to ask the question over and over again. The court then has to keep revisiting this issue.

Cynthia Lu:
I agree with your concern. However, I believe that would be a very rare case. I have found that the clients who often ask about their children call our office first and we advise them. If most parents are still having problems, this is not an avenue that they will be capable of pursuing. In the 13 years I have been working in this field, I have only had two cases that have fallen under this category. I have not had many calls from parents claiming their child has not been adopted and they want to restore their parental rights even though they are still using drugs or in prison, et cetera.

Chairman Anderson:
That would be because they did not have standing before. Recognizing that all of a sudden we are giving them the opportunity to restore their parental rights, you may find a different outcome.

Assemblywoman Gerhardt:
I need to go on the record that I do not consider this a friendly amendment at all. I would object strenuously to including the parents on the list of people who could petition.

Ann Price-McCarthy, Nevada Trial Lawyers Association, Carson City:
We are in enthusiastic support of this mock-up bill. This is constitutional and will cure many of the problems that Judge Hardcastle spoke about. I am also not in favor of giving standing to former parents who have lost their rights and allowing them to petition the courts for the privilege of having their rights restored. I understand Ms. Lu's concerns about children not having attorneys. In any given circumstance, a judge may ask that an attorney be appointed to represent a child throughout the system. I do not anticipate that this petition process, as envisioned by this bill, will be difficult or a problem for a minor child.

[Speaker Barbara E. Buckley arrives to observe.]

Amy Nastin-Jelinek, Deputy District Attorney, Child Welfare Unit, Clark County:
The district attorney's office of Clark County wants to go on record in support of the mock-up bill just discussed. The evolution of the bill has addressed all of the concerns the district attorney's office has with respect to this important issue. I also want to go on record on behalf of the district attorney's office that we would be in opposition to the parents having the right to petition. Since the parents' rights have been terminated, the presumption has to be that the parent must be unfit or unable to remedy their circumstance sufficiently to be reunified with the child. We have to assume that the person continues to be unfit or inappropriate. To give them an avenue to initiate unwelcome contact with a child would be unfortunate. To allow an inappropriate parent to initiate contact, the petition is much more likely a scenario than an appropriate parent not having the opportunity to initiate or petition for reinstatement of parental rights. We need to address the more common circumstance.

Chairman Anderson:
I will close the hearing on A.B. 353.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 353.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (ASSEMBLYMEN CONKLIN, HORNE, AND OCEGUERA WERE ABSENT FOR THE VOTE.)

I presume that Assemblywoman Gerhardt will take care of this on the Floor, and I will take care of the amendments.

[Speaker Buckley leaves.]

Ms. Gerhardt, let us try to get to Assembly Bill 536.

Assembly Bill 536: Transfers certain authority concerning enforcement of child support and related services from the district attorneys to the Division of Welfare and Supportive Services of the Department of Health and Human Services. (BDR 38-1405)

Assemblywoman Susan Gerhardt, Assembly District No. 29:
This bill was requested by the Committee in response to recommendations from the performance audit of Nevada's enforcement and collection of child support that was conducted by MAXIMUS (Exhibit G) and submitted in December of 2006. Many important recommendations concerning the operation and structure of Nevada's child support enforcement system are contained in that audit. Some of these recommendations are contained in other bills that are going to be heard before this Committee. Assembly Bill 536 addresses the structure of the system as a whole. Currently, enforcement of child support obligations is conducted through the district attorney's office throughout the State, in coordination with the State's Division of Welfare and Supportive Services. Assembly Bill 536 responds to the recommendation contained in the audit to increase efficiencies by restructuring the system to form regional offices in lieu of the separate operations under each district attorney. As drafted, Sections 1–4 of the bill, require the State to form three regional offices to administer the program and authorize the division's administrator to contract with the district attorneys to assist in the administering of the program. The remaining sections of the bill, with the exception of Section 290, contain statutory revisions to comply with this change and provide an effective date of 2011. While the creation of three regions contains great merit, I am proposing an amendment to the bill that would allow the State and local agencies a greater opportunity to review and in most cases implement the recommendations contained in the audit, which was not submitted again until just before the start of this session.

I have provided an amendment (Exhibit H) that focuses on Section 290 which is on page 182 of the bill. The amendment proposes to delete all of the sections of the bill except Section 290.

Chairman Anderson:
We are going to cut out most of this 184-page piece of legislation.

Assemblywoman Gerhardt:
We will cut everything except Section 290.

The amendments are going to propose modifications to strike the action and reporting requirements for the agencies during the interim. We are giving them a reprieve on putting together those different regions. Currently, under Section 290 at lines 14-30 on page 182, the Clark County district attorney must report back to the 2009 Legislature on the status of implementing the recommendations contained in the 2006 statewide audit, as well as the 2003 audit specific to Clark County.

All entities must report back in 2009. Looking at the amendment sheet at the subsection (a), we are expanding subsection 2 to require the Division of Welfare and Supportive Services and all district attorneys in Nevada to report back to the 2009 Legislature on the status of implementing the recommendations contained in the December 2006 performance audit conducted by MAXIMUS. We should retain the requirement under subsection 1 for the Clark County district attorney to also report back concerning the recommendations of the 2003 report specific to that county. Under item (b), the district attorney will work with the Division of Welfare and Support Services to issue a single report.

In the original bill, subsection 2 includes a list of specific recommendations on which to report. This list now includes the recommendation to measure the success of child support enforcement program and related services through performance measures, rather than policy adherence. I feel this point is one of the most important recommendations contained in the audit. The audit included this change in its top ten recommendations. Page 124 of Section D of the audit says,

> We recommend that the Division of Welfare and Support Services follow suit with the rest of the IV-D community, in focusing on performance outcomes rather than strict adherence to policy. We agree that policy is a tool and means to successful achievement of an outcome, but policy itself is not what leads to a successful outcome. In the end, the IV-D program is not measured and evaluated by its policies, but the fact that the

> established goals in each of the five performance measures are reached. That is determined by its outcomes. While adherence to policy is an important factor in child support enforcement it is more of a means to an end rather than an outcome. This issue relates to Nevada's poor collection rate of child support. As noted in the audit, Nevada ranks 49 of the 50 states with a collection rate of 45.68 percent, compared with the national average collection rate of 59.91percent.

The amendment will list the specific recommendations on items to report. First, (i) strategic planning, among the district attorneys and the Division for the future of the program, whether or not such progress results in a five-year strategic plan. At the (ii) point, plan options for collaboratively creating original structure in Nevada would enhance efficiencies and benefit the program and the agencies involved with this enforcement. We are asking the district attorneys and the child welfare people to examine the idea that was set forth in those first 180 pages of the bill and to come back to us with some recommendations. The child support community needs to find some consensus on this issue. Because our time is short and we did not receive the report until December, our time is not going to permit discussion. We are asking them to come back. Section (iii) concerns the implementation of training programs for experienced and new staff. Item (d) contains the issue of a deadline. The report must be submitted no later than September 1, 2008. We would like to have time to propose any needed legislation. This deadline should allow enough time for that. Finally, for future funding of the program, we would like to add an additional requirement for the Division and the district attorneys to undertake planning and forecasting of child support enforcement funding sources and future revenue shortfalls in anticipation of reduced federal reimbursement rates and generally declining Temporary Assistance to Needy Families (TANF) payments.

There are a couple of other recommendations referencing the other two bills that we are going to hear. Assembly Bill 498 creates a conclusive presumption concerning paternity in certain cases. That is another one of the MAXIMUS recommendations. Assembly Bill 520 also relates to paternity establishment as well as the authority of a master to order a parent who is responsible for child support to participate in certain programs to eliminate barriers to employment.

Chairman Anderson:
Have you had an opportunity to share the recommendations with the various agencies so that they understand what we are expecting?

Assemblywoman Gerhardt:
Some of the agencies were able to see it; however, we were drafting into the late afternoon yesterday.

Chairman Anderson:
I presume that with the September 1 deadline, we are not empowering this group with a certain number of bill drafts. They are going to report to the Legislative Commission regarding their solutions to their specific problems.

Assemblywoman Gerhardt:
That is correct. We would like to have ample opportunity to take a look at their findings and draft legislation if needed.

Chairman Anderson:
So the Legislative Commission will end up with that responsibility rather than a specific subcommittee of the Legislature.

Assemblywoman Gerhardt:
That is correct.

Assemblyman Carpenter:
Is there a child welfare committee?

Chairman Anderson:
Many topics go over to Health and Human Services, but this one has remained in judiciary. Maybe Ms. Lang knows.

Risa Lang, Committee Counsel:
There are some proposals to have some ongoing studies. I believe those are going through the Health and Human Services Committee currently.

Chairman Anderson:
This particular situation involves getting the district attorneys and various agencies to recognize the need for cooperation in trying to solve these particular audit recommendations. We were not anticipating this to be a legislative investigation, but rather the district attorneys trying to follow the recommendations of the audit in order to facilitate the act of improving collections.

Usually, the larger counties of a state have the resources to do this, but strangely enough, the smaller counties have a better collection rate. The larger counties have more people to account for.

Nancy Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services, Carson City:
I would like my written testimony to be part of the record (Exhibit I) although it is based upon the original bill as drafted. We concur with the changes brought forth by Assemblywoman Gerhardt and believe that is a more reasonable way to try to approach this. The recommendations from MAXIMUS were huge, and to rush into it too quickly would pose problems. I would like to point out that the State was criticized for doing policy adherence versus measuring outcomes and there was a real problem with definition between what MAXIMUS defined as policy adherence and what we defined as policy adherence. We concur whole-heartedly that measurement of outcomes is highly critical. Also, our budgets are due to the Department of Administration by September 1. We will have to put our budget together before that. Bill drafts that we might request are due around April 2008. We have a much shorter time frame than the Legislature has set. We would ask for funding for our transition planning effort to get a professional consultant to assist us with this study because we have very few resources at the state level. I would like to suggest an amendment to Section C of the proposed amendment, adding evaluation and study of the use of administrative hearing officers rather than hearing masters during this time period. That was another recommendation of the MAXIMUS audit that did not come through.

Chairman Anderson:
Did you say you want the use of an administrative hearing officer?

Nancy Ford:
Yes, we would like to use an administrative hearing officer as opposed to hearing masters which are currently used to determine that feasibility.

Chairman Anderson:
What would be the advantage of officer versus a master? The only two counties that have masters are Clark and Washoe.

Nancy Ford:
The program also pays for two hearing masters that circulate in the rural areas. We have masters in Reno, Las Vegas, and two out in the rural areas. The MAXIMUS audit did recommend that we convert to administrative hearing officers. We believe it would be a more expeditious manner of collecting and enforcing child support. If we can evaluate that in this interim period and determine the cost-benefit analysis of that, we can present it to the next legislative session.

Robert Teuton, Assistant District Attorney, Clark County:
I was in opposition to the original bill, and brought prepared testimony (Exhibit J). However, now that I have seen the amendments, I am testifying in support of the bill.

I would like to start my testimony by congratulating our child support case managers in Clark County. In Fiscal Year (FY) 2002, our office collected just shy of $72 million. We are projected to end our current fiscal year with collections of between $102 and $115 million. That is an increase during that five-year period of between 43 percent and 60 percent in child support collections. The percentage increase in collections occurred while our case load remained constant at approximately 80,000 cases.

I mentioned that the amount of cases remained constant so that no one thinks that the percentage increase in collections was due to the Hazen Effect. We are in support of the proposed amendment presented to the Committee this morning. We concur with Ms. Ford's recommendation to include a subsection to evaluate the use and effectiveness of administrative hearing officers. We would also add another subsection to report on the status of automation efforts in the child support enforcement program.

Chairman Anderson:
While I am cognizant of the Hazen Effect, others may not be aware of the importance of the tiny community. It is important to recognize that the collections have increased in Clark County and clearly the population numbers have not decreased. We still remain concerned relative to the percentage of collections. Churchill County has a fairly high percentage increase of collections as compared to many other counties in the State. We want to make sure that people get the money that they need to live. Families and children are dependent upon this money. Do you think we can accomplish all of the things needed with the amendments and recommendations?

Robert Teuton:
We will be able to live with the amended bill. I would be happy to report back at any time and sooner if required. We actually look forward to this process because we concur that it is collections of the money that is important. There will be a positive effect on the entire society, from the juvenile justice system to the public hospitals to the future of our community. This is a high priority. We think that the recommendations and the amendment will help us to plan our future and find the right path to go forward and achieve our goals.

Susan D. Hallahan, Chief Deputy District Attorney, Family Support Division, Washoe County:
I, too, have submitted testimony (Exhibit K) in opposition to the original bill. I am now in support of the amendments submitted by Assemblywoman Gerhardt. I am also in agreement with the amendment of adding the subsection to review the administrative process and the hearing officers, as well as the automation systems.

I want to note that I came before the Committee to testify in support of the study of the child support program. We look forward to making improvements.

Chairman Anderson:
Are you suggesting amendments?

Susan Hallahan:
No. I thought that Assemblywoman Allen had indicated there was a question about the telephone systems. This was not addressed in Section 290 or the amendments.

Assemblywoman Gerhardt:
My understanding was that under item 5—the status of the automation efforts— the phone system would have been included.

Chairman Anderson:
Are we still referring to the single sheet of paper?

Assemblywoman Gerhardt:
Yes, however, we have two further proposed amendments. Amendment 4 will report on the use of administrative hearing officers as opposed to hearing masters, and also, Amendment 5 to report on the status of the automation efforts.

Chairman Anderson:
Would that include Nevada Operations of Multi-Automated Data Systems (NOMADS)?

Assemblywoman Gerhardt:
Yes, absolutely.

Nancy Ford:
I appreciate that funding will be reviewed because the state program is funded with the state share of collections. That really hampers our ability to implement a lot of the recommendations in the MAXIMUS audit because we do not general

fund our program. We have to rely on our TANF collections and the state share of those to do anything.

Chairman Anderson:
I will close the hearing on A.B. 536.

> ASSEMBLYWOMAN GERHARDT MOVED TO AMEND AND DO PASS ASSEMBLY BILL 536.
>
> ASSEMBLYMAN CARPENTER SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY. (ASSEMBLYMEN CONKLIN AND OCEGUERA WERE ABSENT FOR THE VOTE.)

Let us now turn our attention to Assembly Bill 498.

Assembly Bill 498: Makes various changes to provisions concerning certain actions to determine paternity. (BDR 11-1403)

Nancy Ford, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services, Carson City:
[Read from prepared testimony (Exhibit L).]

Assemblyman Horne:
I have a question on the conclusive presumption. Currently, you have a rebuttable presumption. The alleged father would have to bring the proof that the test was inaccurate. Have you found a lot of these challenges when faced with 99 percent probability? Is that why we are seeking the conclusive presumption?

Nancy Ford:
It expedites the process, and maybe I should have Mr. Teuton or Ms. Hallahan answer. They actually deal with that. Right now, you still have to go to court and show the evidence, and then the alleged father can say that he thinks there are three other guys who could be the father too. It creates the opportunity for delaying the inevitable. If it is conclusive, then the process is quicker.

Assemblyman Horne:
Can I have one of the district attorneys come up? The way you explained it to me says the results would come in at 99 percent and then the father would be given notice and there would be no court proceedings. Currently, the man could say maybe the father is his twin brother and that is why he left her.

Susan D. Hallahan, Chief Deputy District Attorney, Family Support Division, Washoe County:
I have been in the child support division for 15 years and have never had a person contest the genetic test. The intent of MAXIMUS is the ability to change the information in the computer system. They want to be able to say that a child born out of wedlock has had paternity established. We will still be going to court to establish by a court order the parentage. We will also be establishing child support and medical insurance obligations. It will not necessarily free up the court time, but it will allow us to change the information in NOMADS, which will increase our paternity establishment percentage, statewide.

Assemblyman Horne:
You just said that in 15 years, you have never had a challenge made under the rebuttable presumption anyway.

Chairman Anderson:
A person shows up on the day of the birth and claims to be the father and signs the birth certificate. Subsequent to this, you are going to challenge it in some meaningful way in the courts? I am confused.

Susan Hallahan:
The father who goes in at the time of birth and signs an acknowledgement of paternity is placed on the affidavit. Paternity by statute is then acknowledged and it is no longer an issue. Only a court could order the genetic testing. The issue that we have is when a child has no father on the birth certificate; there are no presumptions or marriage. MAXIMUS wanted the ability to say if genetic testing comes back with 99 percent or greater we have paternity established without having to go to court. The reality is that we will still go to court to establish child support obligations.

Assemblyman Horne:
What if someone's identical twin brother could be the father? If we were to accept the conclusive presumption, that person cannot argue the paternity because the genetic test says he is the father.

Susan Hallahan:
I think your issue would be covered under Senate Bill 71, which is the passage of the Uniform Parentage Act. If you do have that hypothetical situation, they have the right to go in and get a second genetic test. There is enough leeway in S.B. 71 and there should not be an issue to its passage. If there is an identical twin brother, the test will come back showing both him and his brother as the father.

Assemblyman Horne:
Even though he has the option of obtaining a second test, you have already said it is conclusive that he is the father. Conclusive means he does not get to rebut. Now you are saying he does get to rebut because he has an opportunity to ask for a second test.

Susan Hallahan:
I know the intent of MAXIMUS. I think he would still have an opportunity to rebut the results if he has an identical twin brother. That would be the only scenario where two people will have identical genetic tests.

Assemblyman Horne:
Those outlandish scenarios do sometimes happen.

Robert Teuton:
In Clark County, we did have a situation where we had identical twin brothers who could have fathered a child. The court remedied the situation by ordering them both to pay child support until they worked out who actually had committed the act. It is rare, but it does happen.

Nancy Ford:
I want to point out that paternity establishment percentage is a performance standard of the federal government that we have to meet. We are supposed to be at 90 percent paternity establishment statewide in order to be out of penalty status. Currently, you have to make a 3 percent increase in paternity establishment percentage each year until you achieve 90 percent. We are currently at about 66 percent, going to 69 percent, and we are progressing. This helps us with that paternity establishment percentage. This will help with performance measures and help us stay out of penalty status. If you wish to make an amendment, you could say it is a conclusive presumption of paternity unless there is an identical twin brother. That would be a very rare circumstance.

Robert Teuton:
I am in support of the bill.

Chairman Anderson:
By moving away from the need for a declaration, are we encouraging people to say that they are the father? Does that leave us in a less secure state in terms of that paternity than if they had a notary affix a seal?

Nancy Ford:
I do not believe so. In order for the acknowledgement of paternity to be effective, it must be signed by both the mother and the father. They are informed of the consequences of signing.

Robert Teuton:
Basically, we have the mother there who is also signing and acknowledging that the person signing as father is in fact the father. The only additional value of a notary is that the notary is required to have independent evidence of the identity of the person. In this situation, the mother is providing the evidence of that identity.

Assemblyman Carpenter:
In regards to taking the specimens of genetic identification, you changed the language from "employee" to "representative." Would it be better to have both terms?

Nancy Ford:
That would be fine if you wanted to say both.

Chairman Anderson:
Is it necessary to draw that line? An employee is a representative of the institution they represent?

Risa Lang, Committee Counsel:
I have to take a look at that during drafting. It could be a person designated by the enforcing authority. I will come up with something.

Nancy Ford:
The various amendments go into Chapter 440 of NRS because that is where certificates are issued and that is where the acknowledgment of paternity is in the statutes.

Assemblyman Cobb:
I tend to agree with Assemblyman Horne that a conclusive presumption should be rare. It is saying that you are not allowed to present alternative evidence. However, I do not know how an amendment should be phrased.

Assemblyman Horne:
I understand that genetic testing comes back with a 99 percent rate of accuracy. I also understand that there have not been many challenges to that, but what if someone questioned the techniques of the tests? There is also the

concern of the identical twins. As Mr. Teuton described, both twins got stuck with child support in the earlier situation. I feel that people should be able to rebut under some circumstances.

Risa Lang:
The Section as it was previously written provided for an ordinary presumption. You could go back to the way it was, or you could carve out an exception. That exception could state that a person can bring forth and prove there is another person who may have his same genetic markers.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 498.
>
> ASSEMBLYMAN MABEY SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY. (ASSEMBLYMEN ALLEN AND CONKLIN WERE ABSENT FOR THE VOTE.)

We will now turn to the final bill of the day, Assembly Bill 520.

Assembly Bill 520: Makes various changes concerning paternity and child support. (BDR 38-1401)

Robert Teuton, Assistant District Attorney, Clark County:
There are two parts to this bill. The first part is contained in Section 1. That section specifically authorizes drug or mental health counseling in order for a hearing master to remove a barrier to employment. This is done so the noncustodial parent can become a wage earner and actually pay child support. This section of the bill recognizes a national movement in the area of child support. The enforcement mechanism is turning from a punitive custodial based type of program to being more of a helping noncustodial based program. We will get more money if we pay attention to the needs of a noncustodial parent. We remove those barriers to employment so that they can become employed. It is a national trend.

The second part of the bill contains the remaining sections. Essentially, the intent of the amendments is to expedite the process of collecting child support. Currently, when we take an enforcement action, the person has the right to contest it and delay enforcement action by requesting a court hearing. We want to require that individual to meet with us first. The only thing the court has the power to do is refer the individual back to the enforcement agency to work out a repayment agreement. We want to move the meeting with us to the

forefront before actually going to court, therefore expediting the repayment process and eliminating the need for the court hearing.

There are some objections to the area where we can seize somebody's property. The bill as written would add an additional 20-day delay before the person could have a court hearing. We do have some amendments to cure that. I can present a copy of the marked-up draft (Exhibit M) to the secretary or read them into the record. They are actually quite simple.

Chairman Anderson:
Did you say you have a mock-up of this?

Bob Teuton:
I have marked this draft. I will present it to the Chair or the secretary.

Chairman Anderson:
We need a copy of that. Ms. Ford, are the amendments outlined in your document?

Nancy Ford:
No, I originally came to express grave concern about delaying the process. Mr. Teuton and I got together and decided how we could make the process run concurrently rather than consecutively. I was concerned about delaying the process an extra 20 days, especially when we are holding a person's assets. The process of meeting with us should run concurrently before the hearing is held, but not be another 20-day period on top of it. With the amendments proposed by Mr. Teuton, I have no objections. It is not a very complicated change that we are proposing.

Chairman Anderson:
It is not our intention to delay child support. We feel 20 days is a sizeable amount of time.

I will close the hearing on A.B. 520. I also need to put a couple of documents into the record. One is a letter of support for A.B. 536 from Gary D. Woodbury, Elko County District Attorney (Exhibit N). Also, there is an email from Judge Dan L. Papez, District Judge, Ely who is in opposition of the same bill (Exhibit O).

Ms. Lang, would you like to review the language changes proposed by Mr. Teuton before we take action?

Risa Lang, Committee Counsel:
It looks fine, the only thing I would suggest is on the first correction, you make the language the same as the other sections. It will say "before a hearing may be held" rather than removing it. It is just a technical correction.

Chairman Anderson:
We will hold it over for the next work session just to make sure the language is consistent throughout and Mr. Teuton and Ms. Ford are comfortable.

Meeting adjourned [at 11:20 a.m.].

RESPECTFULLY SUBMITTED:

_____
Janie Novi
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary
Date: April 4, 2007 Time of Meeting: 7:43 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	The Committee on Judiciary	Agenda
	B	The Committee on Judiciary	Attendance Roster
A.B. 406	C	Amy Harvey, Washoe County Clerk's Office	Letter
A.B. 406	D	Shirley Parraguirre, Clark County Clerk's Office	Letter
A.B. 406	E	George Flint, Chapel of the Bells, Reno	Testimony/presentation
A.B. 353	F	Susan Gerhardt, Assembly District No. 29	Proposed Amendment Mock-up
A.B. 536	G	Susan Gerhardt, Assembly District No. 29	MAXIMUS information
A.B. 536	H	Susan Gerhardt, Assembly District No. 29	Amendment
A.B. 536	I	Nancy Ford, Division of Welfare and Supportive Services, State of Nevada Department of Health and Human Services, Carson City	Testimony
A.B. 536	J	Robert Teuton, Assistant District Attorney, Clark County	Testimony
A.B. 536	K	Susan Hallahan, Chief Deputy District Attorney, Family Support Division, Washoe County	Testimony
A.B. 498	L	Nancy Ford, Division of Welfare and Supportive Services, State of Nevada Department of Health and Human Services, Carson City	Testimony
A.B. 520	M	Robert Teuton, Assistant District Attorney, Clark County	Marked up bill with proposed amendments
A.B. 536	N	Gary Woodbury, Elko County District Attorney	Letter
A.B. 536	O	The Honorable Dan Papez, Seventh Judicial District , Ely	Email