MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fourth Session
March 28, 2007

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:16 a.m. on Wednesday, March 28, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Lora Nay, Committee Secretary

OTHERS PRESENT:

Hector R. Garcia, Chief of Police, Clark County School District Police Department
Ken Young, Lieutenant, Clark County School District Police Department
Timothy Kuzanek, Washoe County Sheriff's Office
Brian O'Callaghan, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Cotter C. Conway, Washoe County Public Defender
Douglas E. Smith, Las Vegas Township Justice Court, Department 2, Clark County
Robert Roshak, Las Vegas Metropolitan Police Department

Lee B. Rowland, American Civil Liberties Union of Nevada
Christopher J. Lalli, Clark County District Attorney's Office
Richard L. Siegel, Ph.D., President, American Civil Liberties Union of Nevada
Elizabeth Neighbors, Ph.D., Director, Lake's Crossing Center, Division of Mental Health and Developmental Services, Department of Health and Human Services
Scott Coffee, Clark County Public Defender's Office
Howard Skolnik, Director, Carson City, Department of Corrections
Robbin Trowbridge Benko

CHAIR AMODEI:
We will open the hearing on Senate Bill (S.B.) 354.

SENATE BILL 354: Makes various changes to provisions relating to the safety of children. (BDR 15-1062)

STEVEN A. HORSFORD, Clark County Senatorial District No. 4
I ask sections 4 through 6 of S.B. 354 dealing with prohibitions on where sex offenders can reside and the limitation of square feet be deleted because two other bills pertain to the same subject. I propose we increase the penalty for carrying a firearm on school property from a misdemeanor to a Category E felony. Based on the realities of our school environment today, we have far too many children bringing firearms onto school campuses. It is threatening the safety and security of children and teachers.

In section 3, juvenile courts have the ability to have an evaluation of a juvenile, but in an effort to improve the prevention side of this problem, we need to require juvenile courts to have a child who is found with a firearm undergo an evaluation by a qualified professional and take a drug test. We need to stop the problem with these kids on the front end and get them to change their behavior so we can hopefully not see them in more serious criminal activity.

Page 5, section 4, subsection 1, paragraph (b), subparagraph (3), says "If the residence is a facility that houses more than three persons who have been released from prison, the facility is a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS." We found out through the *Nevada Administrative Code* we had six unlicensed halfway houses in the North Las Vegas community housing more than three released offenders. In one case, there were 12 people living in an unlicensed house. They did it

because regulations say if it is only for residential purposes, they do not have to be licensed, but they can choose to be licensed if they so desire.

Based on the standards and requirements we have for licensed facilities, many choose not to become licensed. We need to close that loophole, and this language will achieve that.

SENATOR WIENER:
I recall from previous testimony there was reference to a loophole relating to a reference to a nonprofit. Will you explain that and is it something we need to address?

SENATOR HORSFORD:
Several unlicensed halfway houses were operating as nonprofits. There are statutes governing nonprofits. In this instance, they had to apply through the Secretary of State's Office and the city for a proper license; they did not have to go through the licensing process of the Bureau of Licensure and Certification, Health Division, Department of Health and Human Services, and Parole and Probation Division, Department of Public Safety.

If more than three people receive supportive services, they must be licensed. Neighbors deserve to know who is living next to them. Senate Bill 354 is for the protection of these offenders because when it is discovered they are living in a residence not properly licensed, there is a reaction from the community threatening the public safety for all people. The provision will close loopholes and address those issues.

SENATOR WIENER:
Has the standard of more than three already been established?

SENATOR HORSFORD:
I do not believe there is any standard on the number currently in *Nevada Revised Statutes* (NRS).

BRAD WILKINSON (Chief Deputy Legislative Counsel):
There is no current standard. Three was chosen as an appropriate number. If there are four or more residents, the facility ought to be licensed.

SENATOR HORSFORD:
There are state standards. A licensed halfway house must have insurance, bonding, fire sprinklers and must ensure a proper amount of square footage based on the number of residents. The six unlicensed halfway houses in North Las Vegas had not gone through a review so no standards were met putting offenders and the community at risk.

Section 8 of S.B. 354 concerns school safety. It gives increased authority to school police to issue traffic citations for violations on every public street adjacent to any public school in a school district. Currently, school police do not have that jurisdiction. If someone is speeding or double-parked on a public street adjacent to a school, school police do not have the ability to issue citations.

SENATOR WIENER:
Especially in older neighborhoods, many schools are the square design with streets running into the main street adjacent to the school. Technically, that entrance or exit point on the main street adjacent to the school would be considered adjacent as well. That could be a very long residential street; is that included in your adjacency concept?

MR. WILKINSON:
Adjacent in that statute would have its ordinary meaning, which is touching the property of the school.

SENATOR MCGINNESS:
We have heard stories like a youngster bringing his dad's World War II knife, or something he had captured in the war, to school for show-and-tell. The kid was a model student but had to be expelled. We created legislation giving principals some discretion. You have to understand, I am coming from a rural mind-set; I used to go to school with my shotgun in the back of the truck so I could hunt ducks after school, and I am not sure some of that still does not happen in rural Nevada. I understand things have changed, but we are making a huge leap from giving the principal discretion of what the intent of the student was to all of a sudden, he has a Category A felony.

SENATOR HORSFORD:
I am glad to know more of the history of the provision allowing principals the discretion and respect the fact some individuals may mistakenly or inadvisably bring a firearm to school. This bill exempts firearms related to the Reserve

Officers Training Corps and other authorized reasons, but in the instance of show-and-tell and trying to show off, we have got to be careful about the message we are sending to young people.

I can only speak from the perspective of my community and its issues. In one month, we had five instances where firearms were brought to schools, and one was an elementary school. I do not know in every instance why or how children even had access or their intentions, but the reality is many students feel threatened. It hurts me to think any child trying to get an education, have friends and socialize has to be afraid because of our environment today. We have kids with ulterior motives bringing weapons, and we have got to figure out another alternative. It is awkward for me to say I want increased penalties because that is not my position on most bills. But a misdemeanor is not enough when we are talking about the safety of children in Nevada. I understand and respect the fact there is history, and we need to be careful about our approach. What our children are dealing with today is completely different than the issues many of us dealt with growing up.

HECTOR R. GARCIA (Chief of Police, Clark County School District Police Department):
We are testifying on behalf of S.B. 354. We echo the concerns Senator Horsford presented regarding the proliferation of weapons on campus. There has been a significant increase in the amount of weapons available to children that have been stolen throughout the community. By enacting stricter and more advanced penalties, as a felony, we are trying to create a deterrent effect by discouraging children from bringing weapons on campus. Most who bring weapons on campus have desires not for scholarly efforts. They are looking to either intimidate or commit other crimes. A misdemeanor is a slap on the wrist. They are getting a citation and walking away. We have had many incidents where weapons have been involved between different factions, different students and innocent bystanders. Our sons, daughters and our own family members are put in the line of fire unnecessarily. We feel through this enhancement, we can reduce some of those incidents of gun violence.

KEN YOUNG (Lieutenant, Clark County School District Police Department):
Over the last 3 years, we have confiscated 100 firearms in schools in southern Nevada. This year to date, we have had 36. Some of those cases involved multiple weapons and some of them have been high-powered weapons. It concerns us that it is still considered a misdemeanor or gross misdemeanor

when we talk about these types of weapons on an educational facility. We wholeheartedly support this bill.

SENATOR NOLAN:
In your experience, do you have situations where older kids are bringing weapons to intimidate or maybe in middle schools, these are kids who find their parents' weapon? Even though it is against the rules to bring a gun, they do not comprehend the consequences of their actions. There are situations where little kids bring a firearm to school. In those cases, are we going to charge kids in elementary and middle school with a felony? We can charge a parent for being neglectful.

LT. YOUNG:
Each case has a totality of circumstances. We have taken into account cases where kids brought weapons that have been disabled. On cases where we take individuals into custody, the student or the adult brought the weapon onto campus with bad intentions. In those cases, we have gone with the full extent of the law. There have been a few cases, where we have gone for parental neglect for leaving their weapon available and accessible to their students. We echo your concerns. We are not trying to punish younger kids who have made a mistake.

SENATOR CARE:
Do we need to insert language saying a person shall not knowingly carry or possess? Are you familiar with any cases where a child or a student brought a weapon onto campus in a backpack and did not know it was there because another student thought it would be funny to put one in there?

LT. YOUNG:
Yes sir, we have had several cases where we find a backpack, or we find a weapon in a backpack, and the initial line is, "I didn't know it was there." Our officers are trained to investigate. In most cases we will immediately take the weapon for safekeeping.

TIMOTHY KUZANEK (Washoe County Sheriff's Office):
We are also in support of S.B. 354 for all the right reasons. It is time we take a serious stance towards this issue of guns in schools.

BRIAN O'CALLAGHAN (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):
We are also supportive of S.B. 354. Section 8 is a good idea to assist our department and relieve officers to work on other issues. We get called several times for parking violations on the public access adjacent to a school. The school district police are not allowed to issue citations. We get service requests through citizens for speeders in front of a school so we may set up radar and give citations. There are so many schools we cannot reach them all.

SENATOR CARE:
Should the school police have the authority to investigate a Class A felony? Given what you just said about section 8, what happens as you read the bill, if school district police stop somebody for a traffic infraction and it starts to lead to something larger? What is the role of the school district police at that point? Is there an obligation to contact Las Vegas Metropolitan Police Department (Metro) if it is something above and beyond the citation leading from the stop?

MR. O'CALLAGHAN:
They can handle some situations, but if you are looking at finding a body or sexual assault, then no, they would call us and we would take over.

SENATOR CARE:
What would happen if the driver stops, the officer walks up to issue the citation and there is an automatic weapon in plain view in the rear seat?

MR. O'CALLAGHAN:
School police can handle that portion.

SENATOR NOLAN:
Regarding the definition of a firearm, in section 1, subsection 5 of S.B. 354, they are talking about paintball guns. We have seen what kids can do with paintball guns; they can hurt and injure somebody. If a paintball gun is brought on campus, you have one intention. In the second definition underneath it, it says "any device from which a metallic projectile, including any ball bearing or pellet, may be expelled by means of spring, gas, air or other force." Kids now have little plastic translucent pellet guns and shoot each other. Does this definition include them or is it specifically with regard to only metal projectiles when it refers to pellets?

MR. KUZANEK:
That provision is only metallic projectiles.

SENATOR NOLAN:
We are talking about BB guns and pellet guns and those kinds of things and not these other guns that shoot plastic pellets, right?

MR. KUZANEK:
That is correct.

COTTER C. CONWAY (Washoe County Public Defender):
For the most part, we are in support of S.B. 354. We understand the problems on campuses in Washoe County. We dealt with an incident two years ago with a 14-year-old who brought a gun on campus and took a potshot at a couple students he did not like and ended up hitting a girl in the leg who had nothing to do with it.

I am concerned about the proposed definition of firearms. I provided Senator Horsford and this Committee a mock-up of a change leaving the paintball as the gross misdemeanor (Exhibit C). I am worried about felonizing a paintball gun. That is a friendly amendment.

CHIEF GARCIA:
Last year, we had 36 children struck in and about our school grounds in the adjacent areas of schools. We lost three of those children. The parents, staff and principals are frustrated with school police and ask us why do we stand idly by when vehicles are speeding and driving recklessly with total disregard for school zones. They do not stop for children in crosswalks. Our officers are already in the schools. We do the patrols and can lend a hand.

If a Category A felony occurs, our normal protocol and general order is to secure the scene, make it safe, contact the appropriate jurisdiction, take a step back and local law enforcement will take over that case.

CHAIR AMODEI:
We will close the hearing on S.B. 354 and open the hearing on S.B. 435.

SENATE BILL 435: Authorizes the appointment of masters in justice court under certain circumstances. (BDR 1-1356)

DOUGLAS E. SMITH (Las Vegas Township Justice Court, Department 2, Clark County):
I will read my written testimony in support of S.B. 435 (Exhibit D).

SENATOR CARE:
How many masters do you foresee under this bill that might be serving at any given time?

JUDGE SMITH:
We would start out slow. We have so many protective orders that it is time we have somebody focusing primarily on that issue and also someone to focus on traffic, so probably two. Right now, we have a full-time traffic referee.

CHAIR AMODEI:
We will close the hearing on S.B. 435 and open the hearing S.B. 438.

SENATE BILL 438: Authorizes a board of county commissioners to contract with a private entity for the detention of prisoners. (BDR 16-1354)

ROBERT ROSHAK (Las Vegas Metropolitan Police Department):
The Metro brings S.B. 438 to amend the NRS to allow the sheriff of a county the ability to contract with a private entity to house prisoners. Current NRS only allows us to use other city, county or state facilities.

SENATOR CARE:
Is there any particular entity in mind? If this bill becomes law, how soon after it is enacted do you foresee a private entity engaged for the detention of prisoners?

MR. ROSHAK:
We are not aware of anyone opening up a facility in the near future. What we are looking at is if that should come about. There are rumors the federal government may be contracting a private firm to manage a detention facility somewhere near Las Vegas. Should this become available, they have offered us the ability to house some of our prisoners. There is nothing on the immediate horizon.

SENATOR CARE:
What is S.B. 438 directed toward?

MR. ROSHAK:
This bill is directed toward anything that might open up. We are renting over 300 beds spread out between Henderson, North Las Vegas, City of Las Vegas and the Lincoln County jail to house a number of our prisoners. The concern is population growth. Those facilities will need the beds for their own uses. We are looking for options.

LEE B. ROWLAND (American Civil Liberties Union of Nevada):
We oppose S.B. 438 because it is bad policy to privatize prisons. Privatizing prisons provides perverse incentives that do not go beyond profit and loss. We are already experiencing grave problems throughout our local jails and state prison system. We are mindful of the challenges of overcrowding and not opposed to creative solutions.

Privatizing jails turns into problems of constitutional scope. The last time we had a private entity run a local prison was Corrections Corporation of America which ran the women's facility on Smiley Road. When the Department of Corrections took over that facility, there were rampant problems. Many medical files disappeared. There is less accountability and increased liability for state and local governments when private actors are not held accountable to the Legislature or the public who are entrusted with such a crucial task. We are mindful of the challenges; this is not the solution.

CHAIR AMODEI:
What is the solution?

MS. ROWLAND:
We have come to committees and spoken about implementing some of the suggestions made by James Austin regarding prison populations in terms of expelling low-risk offenders, dealing with immigration issues as well as reducing mandatory weapon enhancements. Too many people are arrested for quality-of-life, nonviolent misdemeanors and held overnight. I do homeless advocacy, and a great deal of homeless individuals are needlessly held overnight, sometimes for several days, in the local jail with no charges brought against them.

There are systemic ways to look at overcrowding issues. Who are we incarcerating and at what cost and price to society when there is no tangible public health or public safety benefit. Our approach should be more

comprehensive rather than allow everything to go out of control with no incentive to keep growth down and simply contract those duties to people who lack accountability

CHAIR AMODEI:
Is it your testimony this should not be one of the tools we deal with under any circumstance even though this is not the primary source for dealing with overcrowding? Are you saying this should not be an option for county commissioners even though it would be the subject of a local hearing where any of those issues could be addressed?

MS. ROWLAND:
That would be the position of the American Civil Liberties Union (ACLU); we are fundamentally against privatizing prison services.

SENATOR CARE:
Let me ask you about accountability. I think you would agree that if the bill is approved and used in southern Nevada, the private entity is still a state actor. The constitutional rights of the inmates do not evaporate. When you say lack of accountability, I am not sure what you are getting at because the standard is not lowered.

MS. ROWLAND:
The Constitution still applies; even if the state is contracting with private entities, they are going to abide by the rules. In practice, we frequently see less accountability because a number of their internal workings are not public documents. They are not open to scrutiny. They are not directly accountable to a state agency. The bill provides permission in a most skeletal form without providing safeguards or requirements of accountability. This bill is literally a blank check to rent out to anyone.

Constitutional rights are frequently more difficult to uphold. This bill does not provide oversight, accountability or guarantee the workings of a private prison are going to be open to the public. This bill is opening up a door with no checks or balances.

SENATOR CARE:
Senate Bill 123 was introduced as a public records bill. It specifically says the documents generated by a private entity performing a governmental function are

subject to the same statutes and regulations as to confidentiality and nonconfidentiality

SENATE BILL 123: Makes various changes to provisions relating to public records. (BDR 19-462)

MS. ROWLAND:
I will testify to that bill. As the law stands, the public records law does not clearly cover the kind of operations a private prison would be performing.

CHAIR AMODEI:
We will close the hearing on S.B. 438 and go back to S.B. 435.

SENATOR CARE MOVED TO DO PASS S.B. 435.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:
Is there anybody here to testify on S.B. 380?

SENATE BILL 380: Makes various changes concerning defendants in criminal actions. (BDR 14-279)

CHRISTOPHER J. LALLI (Clark County District Attorney's Office):
Senate Bill 380 is a bill on behalf of the Nevada District Attorneys Association. It is a comprehensive bill addressing insanity issues within the criminal justice system. It is a very large bill. The majority of the pages address housekeeping matters as a result of restoring the plea of guilty but mentally ill.

Senate Bill 380 restores the concept of guilty but mentally ill and statutorily defines and allows defendants to offer the defense of not guilty by reason of insanity (NGRI). The definition of not guilty by reason of insanity also includes a specific exclusion for voluntary intoxication. A person suffering a mental

condition as a result of voluntary intoxication is not entitled to a not guilty by reason of insanity defense.

On page 29, section 34, subsection 2, S.B. 380 provides for conditional release. It allows courts to retain jurisdiction in cases where the defendant has been found not guilty by reason of insanity. Once offenders have returned to the community, if they violate certain conditions set by a court, the court may return them to the division. It is a type of probation extended to the judiciary to supervise offenders as opposed to current law which releases them with no strings attached.

Another provision of S.B. 380 is for conditional release after a finding of incompetence. To put it in perspective, a verdict of not guilty by reason of insanity comes at the end of the judicial process. A finding of incompetency usually comes at the beginning of the judicial process. If a mentally ill person coming into the criminal justice system is adjudged incompetent, the remedy in Nevada law is dismissal of charges.

In the past year in Clark County, two murder cases were dismissed. One involved a six-week-old child who was stomped to death and the other involved a defendant who ran over a pedestrian and killed him after an altercation. I am not for one moment suggesting that the defendants did not suffer from a bona fide mental illness. My concern as a prosecutor is what to do with an incompetent person. Senate Bill 380 allows for a type of probation or conditional release where a court can monitor and keep strings attached to that individual to ensure they are not a danger to the community.

There are a number of different views on some of the finer points in this legislation. For instance, our friends at Lake's Crossing Center are concerned about the fiscal impact of some of the provisions and have suggested limiting some components of the conditional release. We look forward to working with the various stakeholders in getting this legislation passed in whatever form is acceptable to those who are involved and impacted. I view this as a starting point and am happy to work with those involved.

SENATOR CARE:
Please walk us through terms not contained in the bill. Tell us what is meant by insane, because it talks about the insanity defense; I do not see those words in the bill. Disease or defect of the mind, delusional state, mentally ill and then

much later in the bill when talking about release, they use the words "mental disorder." Those are not all the same things, but it might be helpful for the Committee to focus on what each one of those terms might mean.

MR. LALLI:
The definition we adopt is when the defendant is in a delusional state due to a disease or defect of the mind, and due to the delusional state, the defendant cannot know or understand the nature and capacity of his act and appreciate his conduct was wrong, meaning not authorized by law. The language is taken almost verbatim from the M'Naghten Rule in *Finger v. State*, 117 Nev, 548, 27 P.3d 66 (2001). To define insanity in M'Naghten, the court in the *Daniel M'Naghten Case* stated:

> To establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused as laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.

The Nevada Supreme Court adopted that same definition almost verbatim in *Finger*, which is the same definition we are seeking in S.B. 380. The Nevada Supreme Court stated:

> To qualify as being legally insane, a defendant must be in a delusional state such that he cannot know or understand the nature and capacity of his act, or his delusion must be such that he cannot appreciate the wrongfulness of his act, that is, that the act is not authorized by law.

That definition is taken from *M'Naghten* and *Finger*.

SENATOR CARE:
If you assert the insanity defense, which is to say you plead guilty but mentally ill, then you have to meet the elements of the M'Naghten Rule which includes delusional state due to a disease or defect of the mind. The language about mental disorder does not arise until after incarceration and has nothing to do with the proceedings at trial, correct?

MR. LALLI:
You are correct; the definition I articulated applies to a person who enters a plea of not guilty by reason of insanity. If a person pleads guilty but mentally ill, the court would go through a series of questions to determine whether that person was guilty but mentally ill. That can be done by plea or by a jury.

SENATOR CARE:
Section 4, subsection 8, line 40, says, "As used in this section a 'disease or defect of the mind' does not include a disease or defect which is caused by voluntary intoxication." Is there existing language that also contemplates something caused by drug use? Can we equate the two?

MR. LALLI:
The language you just read is specifically directed toward drug use. In the criminal justice system, we refer to those who ingest drugs as voluntary intoxication. If a person ingests acid and suffers a delusion such that in their delusion they kill somebody, the language you cited does not afford that person the right to use a defense of not guilty by reason of insanity. We are plagued by the use of methamphetamine throughout the state and particularly in Clark County. We see a number of individuals who are suffering from drug-induced psychosis. They are suffering from mental illness due to the use of methamphetamine.

MS. ROWLAND:
We are concerned about the mentally ill verdict. States using this verdict have provisions associated with the plea requiring some form of treatment and requiring the state to treat those offenders differently either by the terms of their confinement or by offering them mental health treatment. The language of S.B. 380 has none of the concomitant language requiring any kind of disparate treatment for those people. As a policy, that is immoral. It may also be a legal liability for the state. You are having an official finding that someone is dangerously, mentally ill and then is placed into a prison's general population. Any private attorney whose client had any violent incident with that type of inmate would have a field day with the fact the state found someone dangerously, mentally ill and made no provision for their care. It is immoral for the state not to provide additional services to someone genuinely insane and adjudged insane by the courts.

Nevada Attorneys for Criminal Justice (NACJ) submitted a proposed amendment which we support. Their amendment would change guilty but mentally ill to an available plea rather than a jury finding. It is appropriate for a defendant to choose whether that verdict is available to them and whether they want to be adjudged mentally ill and potentially use that as a way to get services. These are people who need help rather than simple incarceration.

We have a constitutional concern about the conditional release of those held who are not guilty by reason of insanity. If an institution like Lake's Crossing Center determines someone is no longer a danger to themselves or others, they lose constitutional jurisdiction to forcibly incarcerate that person or forcibly commit them. The law of insanity is based on civil law, not criminal. The only authority the state has to hold that person is under civil law which requires someone present a danger to society before being locked up.

Section 34 of S.B. 380 provides for conditional release after someone has proven they are not a danger to themselves or others based on a mental disorder. A person cannot be forcibly held if they have been found innocent under the criminal justice system. We are proposing a conditional release program that will not violate the constitution if it has mandatory recommitment based on a technical violation and does not require a danger to themselves or others. Mr. Lalli testified this would be a form of probation. Probation is not available under the civil law standards of commitment. We oppose S.B. 380 and also support the proposed amendment from NACJ.

SENATOR CARE:
Do you want something included requiring the state to extend treatment to defendants prior to any examination?

MS. ROWLAND:
Mental health experts are better able to answer the question of when treatment is appropriate for transitional purposes. Transitory programs are essential for people returning to society after living a life of confinement. However, if they are forcibly committed based on insanity, the rules are different. The state lacks the ability to hold someone if they are not a danger. Once someone improves and needs to start transitional programming or treatment and get a state hearing, there are few options. The state lacks the constitutionality to force someone to be recommitted if they are not a danger and are innocent. That could apply to any of us; the only difference is that person previously served

time in a mental institution. We do not oppose transitional programs to make sure people have a place and people to rely on; but conditional release is a form of probation, and it is not permissible for someone to be forcibly committed in that circumstance.

RICHARD L. SIEGEL, PH.D. (President, American Civil Liberties Union of Nevada):
The issue of conditional release was discussed in the Assembly Committee on Judiciary this morning. Under existing law, there is no place for conditional release. As a leader of the ACLU, we have not had a chance to fully consider it. Conditional release could have a positive role for those adjudicated not guilty by reason of insanity. We began a discussion about the safeguards that might be imposed. There are justifications for us to enter this new territory and find an appropriate middle ground.

ELIZABETH NEIGHBORS, PH.D. (Director, Lake's Crossing Center, Division of Mental Health and Developmental Services, Department of Health and Human Services):
I will present my written testimony (Exhibit E) offering several friendly amendments we have discussed with the district attorney's office.

SENATOR CARE:
At Lake's Crossing Center, do you actually work with patients? Are you a mental health practitioner?

DR. NEIGHBORS:
Yes, I am a forensic psychologist with about 20 percent of my time spent with patients. I stay close to the clinical procedures in the facility.

SENATOR CARE:
In section 4, there is a provision saying a plea of "guilty but mentally ill" may be entered. A defendant has the burden of establishing his mental illness by a preponderance of the evidence. In layman's terms, that usually is translated into more likely than not. It is not as high a standard as in criminal proceedings which is guilty beyond a reasonable doubt. The same standard is in section 34, where the discussion is eligibility for "discharge from commitment if the person establishes by a preponderance of the evidence"; same words, same standards that he would not be a danger as a result of any mental disorder. Have you ever had the opportunity to work with people who had to demonstrate by

a preponderance of the evidence they are no longer a danger to the community? Does that language mean anything to you?

DR. NEIGHBORS:
In terms of civil commitment, it is when individuals are not an eminent danger and have not demonstrated they were suicidal, homicidal or likely to be an eminent danger to the community. However, in this context, the risk assessment has a longer time frame in terms of considering the danger.

SENATOR CARE:
A longer time frame, like what? Is it a period of years or months?

DR. NEIGHBORS:
There are several standardized tools we use. It is a process, a type of actuarial as well as clinical judgment. We look at the person's history, the kinds of events occurring in their lives plus their illness. Evaluation is individualized for each person.

SENATOR CARE:
It does not use the word burden but says the person must establish by a preponderance of the evidence he is no longer a danger. I am trying to get a feel for how easy it is to do that. I do not want somebody satisfying the evaluator and then we learn upon his release that nothing has, in reality, changed.

DR. NEIGHBORS:
Evaluations are a complicated process. For the plea "guilty by reason of insanity," two evaluations have to be submitted to the court of the criminal venue. No decision is made without the judge. These due process hearings involve many individuals and a large body of information that is reviewed and provided before allowing a person to be released into a conditional treatment program subsequent to a finding of a NGRI.

SCOTT COFFEE (Clark County Public Defender's Office):
I am here on behalf of Nevada Attorneys for Criminal Justice and we agree with a number of the provisions in S.B. 380. We have some concerns. Section 4, subsection 5, paragraph (c) says, "If the facts of the offense, as believed by the defendant in his delusional state, were true, the facts would justify the commission of the offense." That language should be stricken. It was included

because of some dicta, meaning some extra language in the *Finger* decision, but subsection (c) would bring the test for reason of insanity set forth in S.B. 380 under scrutiny and might not meet the M'Naghten standard and the constitutional minimum standard set forth by the *Finger* case. It embraces additional requirements.

Section 4, subsection 5, paragraphs (a) and (b) are written in terms of the defendant being in a delusional state. Delusional state is a term of art used for clinicians, psychologists and psychiatrists. It is not a legal term used by lawyers. We suggest the language be changed from "delusional state" to "as a result of mental illness" or something akin to that. We are talking about somebody, as a result of their mental illness, who cannot understand the nature of their actions or that their actions were not authorized by law. There is a debate even among doctors concerning how long a fixed false belief must last for it to be considered a delusion.

HOWARD SKOLNIK (Director, Carson City, Department of Corrections):
We are concerned with section 18, subsection 2 on page 15. Approximately 20 percent of our inmate population demonstrates a history of some variety of mental illness. Five hundred of our inmates are receiving, at some level, either drug or personal treatment for mental illness. We have 54 beds for the acute mentally ill at the Carson Tahoe Regional Medical Center in Carson City. We anticipate that offenders coming to us under this provision would probably fall into that category.

ROBBIN TROWBRIDGE BENKO:
I am the mother of a murder victim, John Edward Trowbridge. He was stabbed to death October 21, 2001, by Michael Kane in Las Vegas who claimed he was acting under a paranoid delusion. Michael Kane was subsequently found not guilty by reason of insanity. There is a need to allow the plea and jury option of guilty but mentally ill. Juries in Nevada have three options: guilty, not guilty and not guilty by reason of insanity. The jury in my son's case had only the one option of not guilty by reason of insanity. They were told he would be sent to a facility where he would spend the majority of his—if not his entire—life because he was floridly psychotic.

No one wants to see anybody, including the mentally ill, placed where they do not belong. The mentally ill do not belong on the streets or in the general population of a prison. They belong in an institution where they would receive

assistance. If guilty but mentally ill is added, then the jury will have two options. M'Naghten is a difficult level to reach and is used in approximately 1 percent of cases throughout the county; in that percentage, only about 25 percent are successful. What about those who do not meet M'Naghten? What if they are not paranoid schizophrenia? What if they are psychotic or have another mental illness? Do you find them guilty and send them to prison? That would be all right to me as my concern is public safety, and they would be off the street.

If we want to be humane, we have to consider their mental state. If they are found guilty but mentally ill, they will receive treatment. It does not have to be in the prison, it could be in the psychiatric ward of the prison, Lake's Crossing Center or other facility. Once they are no longer considered mentally ill, then they will be held responsible for their actions. There is a difference between insane and mentally ill.

The jury in my son's case had only one option. It is not right to tie the jury's, court's or the state's hands. In S.B. 380, the jury, after reviewing the evidence, can find someone not guilty by reason of insanity, but they can also consider the mental illness aspect and the legalities and make a finding of guilty but mentally ill.

It is imperative the statutes spell out that voluntary intoxication is not a consideration whatsoever. Voluntary intoxication cannot be allowed to mitigate circumstances.

I agree with the testimony of Mr. Lalli as far as the verbiage on the definition of mentally ill. It is difficult to understand. An exorbitant amount of time should not be spent figuring out what is a mentally ill person as defined in the NRS and which causes a lot of confusion.

There has been discussion about the constitutionality by statute that a person found not guilty by reason of insanity can be held for a certain amount of time and go through a conditional release program. Michael Kane was not innocent. The people we are talking about are not innocent. Approximately six months after Michael Kane was found not guilty by reason of insanity, his lawyer—the

same one who argued to a jury that Mr. Kane was insane at the time of the killing and could require years in institutional treatment—petitioned the court for his release. I learned he was asking for release because Mr. Kane was determined to have a drug-induced psychosis and was not paranoid schizophrenic. Under Nevada law, if a person does not have any problems for 30 days, he can request release. This is totally, unbelievably, unacceptable.

It is important a conditional release program be afforded to those who are found not guilty by reason of insanity. To release them without any kind of support does not make sense. There is no need to take away anyone's liberties unnecessarily. I am asking for balance that the court's jurisdiction is maintained over individuals who break their conditions. We set them up for failure if they do not have assistance, and they will have to go through the process until they are successful. It is not parole. They are not going back to jail as they were never in jail in the first place. There is a lot to consider in S.B. 380.

Through all this, through all the legalities, the definitions, the statutes, the laws, the phone calls, I personally have one favor, one issue to present. When these statutes are changed, you are going to make progress and legislative history for Nevada. I do not want my son forgotten; he did not die for the state. He did not die for these laws. If you would be so kind as to consider my request that my son's name be recognized in this legislation. Formal recognition may be impossible; however, if an informal recognition is acceptable, I would be so honored. My son would be honored. I honor him every day, and this is something my family would like to see done. There is a lot of good coming out of what has happened. I would like that good to continue; it will if somewhere along the line, he is remembered throughout this great state and through this whole legislative process.

CHAIR AMODEI:
We will recess the hearing on S.B. 380, and this Committee is adjourned at 11:10 a.m.

RESPECTFULLY SUBMITTED:

Lora Nay,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: