MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fourth Session
April 18, 2007

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:15 a.m. on Wednesday, April 18, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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

GUEST LEGISLATORS PRESENT:

Assemblyman William Horne, Assembly District No. 34
Assemblyman John Oceguera, Assembly District No. 16

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Dan Silverstein, Nevada Attorneys for Criminal Justice
Scott Coffee, Nevada Attorneys for Criminal Justice
Cotter C. Conway, Office of the Washoe County Public Defender
Jason M. Frierson, Clark County Public Defender's Office
Joseph A. Turco, American Civil Liberties Union of Nevada

Lisa Rasmussen, Nevada Attorneys for Criminal Justice
David K. Neidert, Office of the Attorney General
Kristin L. Erickson, Nevada District Attorneys Association
Tammy M. Riggs, Deputy District Attorney, Criminal Division, Washoe County District Attorney
Ronald P. Dreher, Peace Officers Research Association of Nevada
R. Ben Graham, Office of the Clark County District Attorney; Nevada District Attorneys Association
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Joshua Martinez, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Christina Conti, Program Coordinator, Victim Witness Assistance Center, Washoe County District Attorney
Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys
Raymond J. Flynn, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Thomas J. Ray, General Counsel, University of Nevada School of Medicine
Peter I. Breen, Senior District Judge, Administrative Office of the Courts, Nevada Supreme Court

CHAIR AMODEI:
We will open the hearing on Assembly Bill (A.B.) 364.

ASSEMBLY BILL 364: Revises certain provisions relating to the use of a grand jury. (BDR 14-1303)

ASSEMBLYMAN WILLIAM HORNE (Assembly District No. 34):
Assembly Bill 364 changes the procedure in which a district attorney may take a criminal case to the grand jury. I will walk you through the procedure in the criminal arena for gross misdemeanors and felonies.

A defendant is served with a complaint and a preliminary hearing is set; the justice court has jurisdiction for preliminary hearings; at the preliminary hearing, the district attorney has a low burden of proof to show there is sufficient evidence to bind the case to district court. Because the burden is so slight, the district attorneys are successful approximately 98 percent of the time. It is futile for a defense attorney to put on a witness or evidence in the preliminary hearing, and I have heard of only one who has done so.

In the 2 percent of cases in which the judge determines the prosecution has failed to meet the burden of proof, the district attorney presents to the defense attorney a Marcum notice, which notifies the defendant that the district attorney will go to the grand jury to seek an indictment. When they go to the grand jury comprised of a panel of laypersons, no defense attorney is present. The prosecutor presents the same evidence he presented at the preliminary hearing and gets an indictment to district court. The grand jury then binds the case to district court and the burden rests with the defense attorney to express to the district court judge that the district attorney lacked sufficient evidence to take the case to the grand jury in the first place.

Under this scenario, district attorneys are able to take multiple bites at the apple. They test the waters at the preliminary hearing. When they lose, they take the same evidence to the grand jury. The grand jury does not know the matter was heard before a judge in justice court; they are not permitted to know.

This bill proposes that you must take substantially new evidence before a grand jury if a judge has determined in a preliminary hearing that your evidence is insufficient for indictment. This will not impede prosecutions. Most high-profile cases go straight to the grand jury without a preliminary hearing. The district attorneys always have that option.

You may wonder about a little girl who is molested by her stepfather and afraid to testify at the preliminary hearing because he is sitting at the defense table staring her down. If a district attorney anticipates a problem, he always has the option to go straight to the grand jury. Additionally, the case is ongoing; the district attorney is still investigating the case and can bring new evidence to the grand jury.

I will give this Committee a scenario of a smaller, lower-profile case. My client was a codefendant in a possession-of-stolen-vehicle case. A witness identified him as being in the passenger seat of the car, with the tinted windows rolled up, slouching down. The judge found there was not sufficient evidence to bind my client over. The district attorney immediately gave me a Marcum notice.

This is not efficient use of judicial time, grand jury time or district court time. This time could be better used for legitimate cases. Assembly Bill 364 does not take anything away from the district attorneys; it simply requires that the

district attorneys present new evidence to a grand jury should they not be successful in a preliminary stage.

DAN SILVERSTEIN (Nevada Attorneys for Criminal Justice):
I am an attorney at the Clark County Public Defender's Office. The grand jury process was originally designed to protect citizens from government abuses of power. That is why it is so disturbing that the grand jury process is being used in Nevada to perpetrate governmental abuses of power. Prosecutors have been using the grand jury process as an escape hatch to avoid unfavorable rulings from our elected and appointed justice court judges.

I will give you two personal examples. We proceeded to a preliminary hearing in a homicide case in which there was clearly probable cause to support a charge of first degree murder. The prosecutors were not satisfied and wanted to add a felony murder theory that the crime was committed in the course of a sexual assault. The victim was married, there was semen inside her and the deoxyribonucleic acid (DNA) was not matched to my client. After hearing the evidence, the judge found probable cause for the murder charge but dismissed the sexual assault theory.

The prosecutors proceeded to the grand jury. As Assemblyman Horne has pointed out, the grand jury hearing is one-sided; there is no one there to protect the client's rights. Now my client is facing the sexual assault allegation, even though a neutral magistrate found no evidence to support it.

In another homicide case in which there was clear evidence to support a first-degree murder charge, the prosecutors wanted to add a deadly weapon enhancement. The judge did not find evidence to support the enhancement, so the prosecutors went to the grand jury and obtained their deadly weapon enhancement.

These two examples show a perversion of our grand jury system. The system was never intended as an appellate process for prosecutors to try to overturn judicial rulings. By asking grand juries to resurrect charges that have already been dismissed by the courts, prosecutors are thumbing their noses at our justice court judges and showing a disregard for the rule of law. As Assemblyman Horne pointed out, the grand jurors are kept in the dark about the prior justice court ruling.

Passing A.B. 364 will be a step forward in providing relief to our severely overburdened court system; it will demonstrate respect to the judges of our justice courts and affirm their power to make rulings; it will restore the integrity of the grand jury process as a protection against governmental abuses and not as a tool to assist in their commission. In a March 27 article in the *Las Vegas Review-Journal,* Clark County District Attorney David Roger was quoted as saying, "We don't want to flood the system with cases we can't take to trial." I ask you to take David Roger at his word. A case dismissed for lack of probable cause in justice court has no business being taken to trial and should not be the subject of a grand jury indictment.

SCOTT COFFEE (Nevada Attorneys for Criminal Justice):
I am an attorney with the Clark County Public Defender's Office. I have been practicing law in Clark County for the past ten years. This bill prevents lazy prosecution that wastes the court's time and the time of defendants who are wrongly accused.

A district attorney does not have to be concerned about preparation for a preliminary hearing because he has the safety hatch of the grand jury. There have been concerns about how to proceed if a justice court makes a mistake, but the district attorneys have an adequate remedy. Numerous provisions allow them to appeal a decision of the justice of the peace. The right to appeal a decision from a justice court is protected by *Nevada Revised Statute* (NRS) 177.015. A district court judge looks at the rulings made by the justice of the peace. Prosecutors do not use it very often because it requires more work. Instead, they go to a grand jury, where they can do what they want to do without much supervision. They do not want a contested hearing when things go wrong.

SENATOR CARE:
How many cases have there been in Clark County during the past couple of years in which a justice court judge dismissed a case and the district attorney has taken it to the grand jury?

MR. COFFEE:
I do not have exact numbers. It happens often enough. Our office has about 100 attorneys, and I hear about it on a weekly or biweekly basis.

MR. SILVERSTEIN:
I do not have exact numbers, but the two examples I provided to you are about 10 percent of my caseload. It happens when the justice of the peace issues a ruling with which the prosecutors disagree. It is not often.

SENATOR CARE:
Are you aware of cases where the justice court judge issued a ruling with which the district attorney was unhappy, then that district attorney presented the case to the grand jury and the grand jury did not issue an indictment?

MR. SILVERSTEIN:
I am not aware of any.

MR. COFFEE:
I have heard of it happening once or twice, but it is seldom. What happens is that somebody will attack the grand jury proceedings for either a failure to present exculpatory evidence or for some other legal defect that traces back to the justice court proceedings. That happens often.

COTTER C. CONWAY (Office of the Washoe County Public Defender):
We stand in support of A.B. 364. I would like to talk about other procedural safeguards that exist. Opponents of this bill will argue that use of the grand jury is necessary for those rare cases in which something goes wrong during the preliminary hearing. Many procedural things are overlooked, and I want to make sure this Committee is aware of them.

Nevada Revised Statute 171.196 allows a prosecutor to request a continuance for good cause. It can be established through the testimony of the prosecutor. It used to be that an affidavit was required. Now, the prosecutor can ask for a continuance on the spot, pursuant to *Bustos v. Sheriff*, 87 Nev. 622, 491 P.2d 1279 (1971). They use it all the time. We see continuances frequently because things go wrong: witnesses do not show up or evidence is not available. The prosecutor is not forced to go to a preliminary hearing.

The district attorneys also have available, through NRS 174.085, the ability to dismiss a criminal complaint before the preliminary hearing and refile the matter at a later date. That can happen up until the moment of the preliminary hearing. A case cited in the annotations to NRS 174.085 deals with an incident in which the prosecutor's request for a continuance was denied, so he dismissed the

case. The prosecutors have these tools available. I do not want this Committee to overlook that.

The district attorneys will tell you they have only 15 days in which to prepare for the preliminary hearing. First, it is 15 days from when the criminal complaint is filed. Often, much investigating has taken place before the complaint is filed. The prosecution controls the pace of the case.

This bill provides another safeguard: If the prosecutor finds additional evidence after the preliminary hearing, he can still go to the grand jury.

I had a case involving a trafficking charge. I pointed out to the prosecutors that they had not gotten test results and did not have the evidence they needed. I offered to deal and agreed to a continuance, but they wanted to go forward using the officer's testimony. They lost at the preliminary hearing and immediately went to the grand jury. This is a waste of resources at their disposal. They could have gotten a continuance or dismissed the case and refiled. The irony is that they ultimately accepted a plea of straight possession, which is what I had offered at the beginning.

The point of this piece of legislation is that it is a good use of resources. It tells the prosecutors to have their case prepared if they choose the preliminary hearing route to the district court. If the case is not prepared, they can use the other tools available, but they should not go to the magistrate unprepared and take a second bite at the apple with the same evidence before the grand jury.

SENATOR CARE:
Are you aware of other jurisdictions that have a law similar to what is being proposed?

MR. CONWAY:
I am not aware of any. I do know that some rural counties in Nevada do not have the grand jury system available to them.

JASON M. FRIERSON (Clark County Public Defender's Office):
Many points have been touched on with which I agree. I would like to back up and discuss the development of the grand jury process. The grand jury process historically dealt with corruption-type cases. It was a secret proceeding to keep outside influence from determining whether a charge would be filed. The

process has been broadened over the years in many states to deal with any criminal case. However, some states still use the process only for those public-type offenses. Arizona has a straightforward grand jury process that deals with public offenses such as corruption, tax fraud and other fraud cases. It also deals with gambling, prostitution, drug-related offenses that cross county lines and organized crime. Some states use the grand jury process only for those types of crimes.

Approximately half the states have an option similar to what would be allowable if A.B. 364 passed. There is a commonly used phrase, "You can indict a ham sandwich." It reflects the reality that most grand jury cases result in indictments because there is no cross-examination; it is the state's presentation of its case to lay people. In my experience, a Marcum notice is issued at every preliminary hearing; in the event something goes bad for the prosecutor, the Marcum notice is served and the prosecutor prepares to go to the grand jury. That is not, historically, the purpose of a grand jury.

Pursuant to NRS 174.085, the prosecutor can dismiss before a preliminary hearing. That does not mean before a preliminary hearing commences; it means before a preliminary hearing ends. If something goes bad in the middle of a preliminary hearing, the prosecutor can voluntarily dismiss the case.

SENATOR CARE:
You have a judge in justice court; a grand jury is just folks. A 1910 case goes to the question I am going to ask. *Knight v. Seventh Judicial District Court*, 32 Nev. 346, 108 Pac. 358 (1910), contains a certain philosophy in the annotation: "No matter what the outcome of the preliminary examination, a grand jury cannot be divested of the power to investigate a case and indict." In other words, these are two separate mechanisms. Do you look at it that way? Do you see the grand jury as something separate and apart from the courts?

MR. FRIERSON:
I agree that they are two separate processes; in most instances, it is one or the other. However, it is being used as both. That is our concern. It is when they become part of a continuum that there is a problem.

JOSEPH A. TURCO (American Civil Liberties Union of Nevada):
The American Civil Liberties Union supports this bill. I would echo what my colleagues have said. A couple of weeks ago, several judges were in this

building desperate about the condition of the courts. This waste of resources is one of the reasons.

The grand jury process is very one-sided. The prosecutor paces back and forth and has The Great Seal of the State of Nevada there and all the trappings of government and authority that government bestows upon him, and there sits the defendant with nary a word in his support. There are district attorneys who do not properly prepare, then use their power to bully defense attorneys. That is the main complaint we get about the morphing of this process to an appellate level that was never intended.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):
I am the president of Nevada Attorneys for Criminal Justice. I do not have anything new to add, but I support the comments from my brethren.

DAVID K. NEIDERT (Office of the Attorney General):
I am here on behalf of the Attorney General, who opposes this legislation. I would like to mention a case that is part of the 2 percent Assemblyman Horne mentioned.

Prior to joining the Attorney General's Office, I was a deputy district attorney in Pershing County, a county that is too small to have a grand jury. In the 1990s, I had a criminal defendant who was in jail. That gave him the right to a preliminary hearing within 15 days. He was in the country illegally and had been living with a family where he allegedly sexually abused an eight-year-old child. I had interviewed the child and she seemed like a great witness. She was articulate, she knew what this man had done to her and she was willing to testify. When we walked into the small justice courtroom in Lovelock, she took one look at the defendant sitting 15 feet away and screamed. All she could do was scream. Unfortunately, screaming is not evidence. We took a recess and tried to calm her down, but we could not.

We could not proceed in this case because we did not have a grand jury in our small county. The best thing that could happen to the defendant, who I truly believe had violated the child, was get him convicted of a gross misdemeanor and deported. This is part of the 2 percent and, although the supporters of this bill want to gloss over it, it is a real concern.

KRISTIN L. ERICKSON (Nevada District Attorneys Association):
This piece of legislation has unintended consequences for public safety, victims and especially that segment of society that needs protection most, children. If A.B. 364 passes, the state will have no recourse for appeal if the case is dismissed at the preliminary hearing. Under the current system, we can go to the grand jury. There are ample remedies to protect the defendant's rights in district court. The defendant can file a writ of habeas corpus to attack the sufficiency of the evidence; they can attack jurisdiction; they can attack the case on procedural grounds; they can move to dismiss based on the prosecutor's indifference to the defendant's rights.

TAMMY M. RIGGS (Deputy District Attorney, Criminal Division, Washoe County District Attorney):
I am a member of the domestic violence and sexual prosecutions units in the Washoe County District Attorney's Office. I would like to answer some of Senator Care's questions. Between January 2005 and March 2007, approximately 1.8 percent of all of our prosecutions on felonies and gross misdemeanors proceeded by indictment through the grand jury process. Fewer than ten of those cases proceeded to the grand jury after a failure to bind over at the preliminary hearing. None was the result of prosecutorial misconduct. What was construed as "most" of these cases going to the grand jury after failure to bind over is actually a minuscule number of cases.

Regarding Senator Care's question on other jurisdictions, no other jurisdiction in the country has a double-jeopardy requirement at the preliminary phase. You heard about two bites at the apple, but we have double-jeopardy protections under the U.S. Constitution and the Nevada Constitution at trial. Nobody has it at the preliminary stage of the process. This state would be the first, if you pass this legislation.

The phrase about indicting a ham sandwich is used to criticize the grand jury process at the federal level. At the federal level, and in most states, hearsay evidence can be presented. It is not allowed in Nevada. In Nevada, the rules of evidence apply at a grand jury proceeding and hearsay is barred.

An earlier speaker misstated NRS 174.085. Once the preliminary hearing goes forward, there is no dismissal. Any dismissal has to happen before the preliminary hearing; if something goes wrong during the preliminary hearing, we are out of luck. Article 1, section 8 of the Nevada Constitution provides for

specifically separate processes. The grand jury does not depend on a preliminary hearing and vice versa. We are required to arrive at the district court with an indictment or an information; one is not based on the other.

This legislation is a solution in search of a problem. If passed, it will make it difficult to bring child sexual offenders to trial. It will result in dangerous offenders being released early. If we have to go to grand jury, we must dismiss the criminal complaint and allow the offender to be released until we can go to the grand jury.

The legislation will impede prosecutions. You were told that high profile cases almost always go to grand jury. That is not so. In sexual abuse cases against children, we prefer to have the preliminary hearing testimony because we can use it if the child later becomes unavailable at trial. We cannot use grand jury testimony at trial because it has not been cross-examined.

I want this Committee to be aware that Nevada law provides more protections at the preliminary stage than most states do. Most states have preliminary hearings that take a few minutes because hearsay is admissible; they put an officer on the stand who testifies to what was probable cause for arrest, and the case is bound over. In Nevada, we have to bring all the witnesses and present evidence according to the rules of evidence. Other states allow you to gather more evidence and try again if you are not able to bind over the first time. That is specifically excluded in Nevada by NRS 178.562. Defendants in Nevada enjoy multiple protections at the preliminary hearing phase. As Ms. Erickson stated, if the defendant believes the prosecutor has engaged in misconduct in getting the grand jury indictment after the preliminary hearing, the indictment is challengeable by writ of habeas corpus. If the defendant does not like the district court's decision, he can appeal it to the Nevada Supreme Court.

The law already covers what the proponents are trying to accomplish with this bill. Additionally, this legislation is flawed; you will need more legislation to enforce it. How does a defendant challenge whether substantial new evidence not available at the time of the preliminary hearing has been discovered? Who makes that determination? It cannot be challenged on writ of habeas corpus because there is no record. What is "substantial evidence"?

SENATOR CARE:
Sometimes, prosecutors do not prepare properly for the preliminary examinations and do not worry about it because they have the other avenue available. You stated that sometimes things go wrong. What does go wrong?

MS. RIGGS:
There are many things. For example, we may not have corroborating evidence. Children may give a fair, accurate and cooperative statement to the police or to the prosecutor just prior to the preliminary hearing. However, when we walk through the door, a child can lock up or change their story based on the signal the defendant is giving them. The DNA evidence now takes six months to process. It may be the only corroborating evidence we have if the child is unable to testify. We have nothing else to present at the preliminary hearing.

Often, we need bank records, drug, alcohol or other laboratory analysis. We have 15 days in which to gather this evidence. We have witnesses to locate. Not all witnesses are cooperative. Myriad things can go wrong.

SENATOR CARE:
Would all that not come under "substantial evidence that was not available at the time of preliminary hearing"?

MS. RIGGS:
Here are examples: The child's testimony is available, but something prevents us from presenting it, or a witness we expect does not appear. I cannot make a Hill-Bustos motion. For the Committee's edification, this motion requires me to swear that no other witness can testify to what the absent witness would have. If I have a witness who can testify but will not, I cannot make that motion and get the continuance I need.

Many things can go wrong. It happens in a small portion of cases, but this bill will have a devastating impact. Why would any defense attorney cooperate with us to get continuances if they can kill the case at the preliminary hearing? Defendants have an incentive to cooperate with us if they know it will go to the grand jury. If they can rush the case to preliminary hearing and get it killed in the beginning, that is what will happen. No other state allows this.

This Legislature has placed major emphasis on keeping Nevada's children safe from sex offenders, and this bill will make it difficult for us to bring those cases to trial.

RONALD P. DREHER (Peace Officers Research Association of Nevada):
We urge you to oppose A.B. 364. As a former homicide detective dealing with this type of issue over the years, I would like to add a couple of comments.

I had a case of a transient murder on the river in Reno. All our witnesses were transients. We had to go to the preliminary hearing in order to preserve testimony for cross-examination purposes. Just seconds before the preliminary hearing, the witnesses decided they did not want to testify because they were in fear for their lives. We were able to persuade them, but that might not have happened. This bill would prevent us from going forward. I would appreciate your not taking away the tools prosecutors currently have. This is a tool for us and for the victims.

R. BEN GRAHAM (Office of the Clark County District Attorney; Nevada District Attorneys Association):
You heard the scenario described in Washoe County which deals in 15,000 to 17,000 felony cases a year. Clark County deals with 37,000 cases. We have two grand juries and only about 300 presentations to them a year. The number that would go from preliminary hearing to the grand jury is minor, but the reasons are compelling. The system is constitutionally mandated, and we do not feel that it is broken. We urge you not to move this bill.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):
We would ask that you not support this bill.

JOSHUA MARTINEZ (Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):
We are in opposition to this bill. The examples presented by the district attorney from Washoe County can be applied to domestic violence cases. People involved in domestic violence cases are also traumatized and may not come forward and present the facts given voluntarily.

CHRISTINA CONTI (Program Coordinator, Victim Witness Assistance Center, Washoe County District Attorney):
I am here in my capacity as the chairwoman for a community committee called The Alliance for Victims' Rights. We oppose A.B. 364. As a victim service provider, I agree with what the previous opponents of the bill have said and have provided you with a printed copy of my testimony (Exhibit C).

BRETT KANDT (Executive Director, Advisory Council for Prosecuting Attorneys):
The Prosecution Advisory Council opposes this bill in its entirety.

CHAIR AMODEI:
We will close the hearing on A.B. 364 and open the hearing on A.B. 137.

ASSEMBLY BILL 137: Revises provisions concerning acts of terrorism. (BDR 15-934)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
Assembly Bill 137 was brought forward to expand upon legislation passed in 2003 after the tragedy of the September 11, 2001, terrorist attacks. We have to deal with real terrorist threats; we also have to deal with false threats, which can cause just as much intimidation and panic as a real threat. Assembly Bill 137 criminalizes false threats of terrorism in the same manner as provided in law for other terrorism threats. A hoax substance is defined in the bill as any item that could be perceived by a reasonable person as a weapon of mass destruction, biological agent, radioactive agent or other lethal agent, any toxin or any delivery system for use as a weapon. It is a Category B felony, even if the intended injury, intimidation, panic or fear does not occur.

The bill increases the penalty provided in NRS 202.448 to a 2-year minimum and a 20-year maximum in state prison. From my personal experience working in emergency services, I see a number of agencies called out and many dollars wasted on this kind of event, with risk of physical damage and monetary devastation to our infrastructure, facilities and businesses.

RAYMOND J. FLYNN (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):
We are in support of this bill. Clark County handles 10 to 15 of these hoaxes a year. It ties up valuable resources and causes a high degree of anxiety. We

know terrorist groups test emergency responders by planting hoax devices. This legislation will help us combat terrorism.

CHAIR AMODEI:
We will close the hearing on A.B. 137 and open the hearing on A.B. 18.

ASSEMBLY BILL 18: Expands the confidentiality provisions pertaining to certain review committees to include certain committees of institutions of the Nevada System of Higher Education. (BDR 4-276)

THOMAS J. RAY (General Counsel, University of Nevada School of Medicine):
Nevada Revised Statutes 49.117-49.123 are sections of the evidence code which relate to privileges. Common privileges are attorney/client and doctor/patient and cannot be used in evidence. Another privilege afforded by the statutes is to providers of medical care. A provider can establish a review committee whose purpose is to evaluate efforts in improving the quality of care rendered by the health care provider. Those proceedings and records before the review committee are deemed not admissible into evidence and need not be disclosed.

The statute was adopted in 1995 and applies to every provider of medical care, including hospitals, ambulatory surgery centers, health maintenance organizations, emergency medical services such as ambulance companies and firefighting associations, obstetrical centers, surgical centers, nursing homes, hospice care, psychiatric hospitals and so on.

Virtually every provider of medical care may have a review committee evaluate its treatment and keep the matters out of a court proceeding. We are asking for an amendment to NRS 49.117 to include the clinical practices of the School of Medicine in the list of those providers. The School of Medicine employs, through its teaching physicians and residence physicians, approximately 400 physicians in its clinics in the hospitals in our state. In the course of providing that care, we perform the important function of training residents and medical students.

It is critical that the School of Medicine be allowed this privilege as the school expands and provides these services.

CHAIR AMODEI:
I would like the record to reflect that Mr. Ray and I were members of the same law firm.

I will accept a motion from the Committee.

SENATOR CARE:
Is there a peer review committee subject to disclosure of communications? Do you want to establish a peer review committee but wait until this bill becomes statute?

MR. RAY:
We have a procedure where teaching physicians discuss particular patient outcomes with resident physicians. We do not have a committee. We have put out a proposal and have a consultant to evaluate our processes. We are waiting for that, pending the outcome of this legislation.

SENATOR CARE:
Would it be a committee with members? We are not going to have faxes going back and forth between clinics, are we? They would have to meet as a committee, and it is the communications exchange during the committee meeting that would be privileged. Is that correct?

MR. RAY:
That is correct. It would be a formal committee with established proceedings.

SENATOR McGINNESS MOVED TO DO PASS A.B. 18.

THE MOTION WAS SECONDED BY SENATOR NOLAN.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR AMODEI:
We will close the hearing on A.B. 18 and open the hearing on A.B. 152.

ASSEMBLY BILL 152: Exempts tests and examinations requested by a court pursuant to a program of treatment and rehabilitation from certain restrictions. (BDR 54-894)

PETER I. BREEN (Senior District Judge, Administrative Office of the Courts, Nevada Supreme Court):
Senior District Judge Archie E. Blake and I preside over some 2,000 people in all of the adult criminal specialty courts in western Nevada. Chapter 652 of the NRS is the medical laboratory chapter. It is an all-inclusive chapter which requires that any human tissue, blood, secretions or excretions must be taken and handled under the auspices of this chapter. It is a necessary chapter designed for the health and welfare of our state.

In 1993, law enforcement, which is not directly in the business of the health and welfare of the people, sought and obtained an exemption from complying with this chapter. The purpose of A.B. 152 is to seek an exemption for courts that are part of, or in addition to, a program of treatment and rehabilitation pursuant to NRS 453.580. *Nevada Revised Statute* 453.580 is one of the statutes enabling the establishment of the drug courts and mental health courts in our state.

In our drug courts, we take tissue, urine and saliva tests from our subjects for therapeutic purposes. They are not and cannot be used in a court of law to enhance the punishment for the defendants or as a basis for criminal activity. Anything said or done in drug courts cannot be used in the criminal courts. We use it strictly to help us break down the denial that all addicts and alcoholics have in connection with their disease. We do not invite the public in to use our system of taking tests. I want that understood by the Committee.

The reason we are seeking the benefit of this bill is that there is new technology coming in perhaps six months by a major supplier of drug-testing equipment. We will be able to purchase or obtain a small machine to test our clients who are in our specialty courts. Currently, a panel of tests costs $5 and $15. We believe we can secure some of these machines and reduce the costs of tests down to $3 or $4 a panel. We want to make sure we are not in violation of this NRS chapter when we do that. We eliminate the middle man and protect the integrity of our testing.

SENATOR WIENER MOVED TO DO PASS A.B. 152.

SENATOR McGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

The meeting of the Senate Committee on Judiciary is adjourned at 10:36 a.m.

RESPECTFULLY SUBMITTED:

_____
Carolyn Allfree,
Committee Secretary

APPROVED BY:

_____
Senator Mark E. Amodei, Chair

DATE:_____