

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fifth Session
April 30, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:25 a.m. on Thursday, April 30, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was video conferenced 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/75th2009/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 Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Karyn Werner, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Scott Anderson, Deputy for Commercial Recordings, Office of the
Secretary of State
Brian O'Callaghan, Officer, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada
Samuel G. Bateman, representing the Nevada District Attorney's
Association, Las Vegas, Nevada
Lora Myles, Reno, Nevada, representing the Carson and Rural Elder Law
Program, Carson City, Nevada

Chairman Anderson:

[Roll called. The Chairman reminded Committee members, witnesses, and
members of the audience of Committee rules and protocol.]

Let us start the work session with Senate Bill 14 (1st Reprint).

Senate Bill 14 (1st Reprint): Makes various changes to fees relating to a
marriage license that fund the Account for Aid for Victims of Domestic
Violence. (BDR 11-117)

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 14 (1st Reprint) provides fee increases for marriage licenses and
certified copies of marriage licenses, which are to be deposited in the
Account for Aid for Victims of Domestic Violence. This bill was presented by
Senator Mathews and was heard by the Committee on April 24, 2009.
George Flint and Margaret Flint, along with Senator Washington, presented
amendments for the Committee's consideration, which are described in the
work session document ([Exhibit C](#)) and are attached for your review.

The first amendment would delete section 1 of the bill, which would eliminate the \$5 fee increase for a marriage license. By accepting this amendment, we would retain the existing statutory marriage license fee of \$20.

The second amendment increases the fee collected by the commissioner of civil marriages in Clark and Washoe Counties when a marriage is solemnized. This increases the fee from \$5 to \$20, which would be deposited in the Account for Aid for Victims of Domestic Violence Victim Fund.

The third amendment provides the commissioner of civil marriages the discretion to collect an additional \$10 fee when a marriage is solemnized. This additional fee would be deposited in the county general fund for the county's use.

As you can see from the note on the bottom of the work session document, the fee increases that are in the second and third amendments were in the original version of Assembly Bill 262. Those fee increases were removed by amendment when this Committee voted on A.B. 262 at the April 10, 2009, work session.

Assemblyman Carpenter:

I believe we should vote this bill out as it came from the Senate. I think the people who work with victims of domestic violence have a tough time trying to do their job. There are a lot of people who volunteer on these programs, and I would like to see them funded more than they have been.

Chairman Anderson:

The Chair will entertain a motion of Do Pass.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS
SENATE BILL 14 (1st REPRINT).

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN COBB, GUSTAVSON,
HAMBRICK, AND MCARTHUR VOTED NO.)

Let us turn our attention to Senate Bill 45 (1st Reprint).

Senate Bill 45 (1st Reprint): Revises provisions relating to certain criminal cases involving older persons and vulnerable persons. (BDR 14-262)

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 45 (1st Reprint) was presented by Brett Kandt, with the Attorney General's Office, and Karl Hall, Chief Deputy District Attorney in Washoe County ([Exhibit D](#)). The bill authorizes vulnerable adults and persons who are at least 70 years old to provide testimony by deposition if good cause is shown. The bill also adds certain crimes that are subject to civil penalties if committed against an older person.

During the hearing, Mr. Kandt requested that the Committee amend the bill to remove section 2 entirely. This would retain existing law regarding crimes that are subject to civil penalties, instead of expanding that list as the bill had proposed.

Chairman Anderson:

Mr. Cobb has suggested a motion. The amendment is to remove section 2 of the bill.

ASSEMBLYMAN COBB MOVED TO AMEND AND DO PASS
SENATE BILL 45 (1st REPRINT).

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will now look at Senate Bill 55 (1st Reprint).

[Senate Bill 55 \(1st Reprint\)](#): Makes various changes concerning commercial recordings. (BDR 7-413)

Jennifer Chisel, Committee Policy Analyst:

Senate Bill 55 (1st Reprint) was presented by the Office of the Secretary of State and makes changes to Nevada's commercial recording laws ([Exhibit E](#)). During the hearing, Scott Scherer, on behalf of the Nevada Registered Agent Association (NRAA), offered proposed amendments in an updated document for the Committee's discussion and consideration. This document is attached with explanation boxes next to the particular amendment.

Amendment 1 relates to the provisions that authorize the courts to charge a stockholder's stock with payment of an unsatisfied judgment, also known as the "charging order" provisions. Section 1(a) provides a definition for "rights of an assignee." Section 1(b) increases the maximum number of stockholders in a subchapter S corporation from 75 to 100, consistent with the Internal Revenue Service (IRS) code. Section 1(c) clarifies that the articles and

bylaws of a corporation cannot be superseded by a private agreement of a stockholder.

Amendment 2 relates to domesticating an entity in Nevada. Section 2(a) authorizes a corporation created in another state to domesticate in Nevada. Section 2(b) expands the authorization for domestication to limited-liability companies. Section 2(c) responds to a question raised by Assemblyman Horne and requires a corporation, seeking to domesticate in Nevada, to file a certificate of good standing from the previous jurisdiction. Section 2(d) specifies that the filing fee for articles of domestication is the same as for articles of incorporation.

Chairman Anderson:

Mr. Anderson, have you had an opportunity to review the amendment? I would like to have you on the record.

Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:

I have reviewed this amendment, it appears that all changes that were discussed in the hearing and with the Registered Agent Association have been made, and we have no opposition to the amendment.

Chairman Anderson:

I will entertain a motion to Amend and Do Pass. The amendments will be those in the proposed document.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
SENATE BILL 55 (1st REPRINT).

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN COBB, GUSTAVSON,
HAMBRICK, AND MCARTHUR VOTED NO. ASSEMBLYMAN
SEGERBLOM WAS ABSENT FOR THE VOTE.)

The bill has been passed and will be moved in an amend-and-do-pass form to the floor.

Let me indicate to the Secretary of State's Office that we are going to move by Senate Bill 101 (1st Reprint).

There are some questions on the subpoena powers that still need to be answered. I was hopeful that we would have some resolution to that, but it is not quite ready.

Let us look at Senate Bill 106 (1st Reprint).

Senate Bill 106 (1st Reprint): Revises provisions governing the purchase of a home or lot that is adjacent to open range. (BDR 10-497)

Jennifer M. Chisel:

Senate Bill 106 (1st Reprint) provides additional disclosure requirements regarding potential rights-of-way on land adjacent to open range ([Exhibit F](#)). Senator Rhoads and Assemblyman Goicoechea presented the bill to the Committee on Monday, and there are no amendments proposed for this measure.

Chairman Anderson:

We probably should have taken care of it Monday. We will entertain a motion.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS
SENATE BILL 106 (1st REPRINT).

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN SEGERBLOM WAS
ABSENT FOR THE VOTE.)

Let us turn our attention to Senate Bill 141.

Senate Bill 141: Enacts the Uniform International Wills Act. (BDR 12-673)

Jennifer M. Chisel:

Senate Bill 141 enacts the Uniform International Wills Act ([Exhibit G](#)). This was presented by Senator Care on April 15, 2009, and there are no amendments on this measure.

Chairman Anderson:

We will entertain a motion.

ASSEMBLYMAN HORNE MOVED TO DO PASS SENATE BILL 141.

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN SEGERBLOM WAS ABSENT FOR THE VOTE.)

Let us turn our attention to Senate Bill 142.

Senate Bill 142: Establishes the crime of criminal gang recruitment.
(BDR 15-723)

Jennifer M. Chisel:

Senate Bill 142 establishes the crime of criminal gang recruitment ([Exhibit H](#)). This measure was presented by Senator McGinness and was heard on April 17, 2009. During the hearing two amendments were proposed by Committee members. The first amendment, proposed by Assemblyman Carpenter, is to expand the crime of gang recruitment to include monetary or other inducements in addition to threats of violence.

The second amendment, suggested by Assemblywoman Parnell, reduces the crime of gang recruitment to a category E felony instead of a category D to be consistent with the criminal gang enhancement penalty that is in Assembly Bill 335, which this Committee heard.

Chairman Anderson:

I think the gang questions are always difficult to deal with for a wide variety of reasons. Children want to belong; they want to join groups. In one of the bills that we heard testimony on, there was a young lady, a former gang member, who has been able to turn her life around. Even if we draw it very broadly, we are still going to label someone as a gang member, when in reality he is only a wannabe, and that is often the case.

Assemblyman Carpenter:

I like my amendment, but in order to get the bill through, I think I had better drop it.

Chairman Anderson:

Ms. Parnell, I think your amendment clearly fits the intent of the Committee. We are going to have problems with the bill regardless. It is one of those problematic areas.

Assemblyman Horne:

My concern with the bill is that gang recruitment really does not use coercion, threats, et cetera, to get new members into the gang if they do not want to be there. They may have shown an interest or have been hanging out with gang members doing various activities with them anyway. I do not know if passage of this bill is really going to accomplish much. What is going to happen is that the adult leaders of the gangs are going to have the members who are 17 years of age and under do it. This law is not going to apply to the minor members, and they are more than capable of threatening and coercing. You do not have to be over 18 years of age to do that.

As for Mr. Carpenter's amendment, I think it is problematic because you are going to catch individuals who may give money or benefits to someone who is hanging out with their gang to take home to his family since his family is broke. It has been known to happen.

I do not mind Ms. Parnell's amendment changing the category D to E, too much. I do not think the bill is going to do much.

Assemblyman Hambrick:

With all due respect, I like Mr. Carpenter's amendment, and I think it should stay in. Keeping in mind that it is aimed at adults who are trying to recruit, and considering the remarks from my colleague, if this legislation does get to the floor and it passes, it is just another tool for the district attorney and law enforcement to have at their disposal. Every grain of support that we can give them to combat gang activity in our communities is worth the effort. The goal is to protect these kids and stop gang recruitment.

Amendment number one is aimed at the adult who is doing the recruiting, not at the child who may receive the benefit. I understand that it is routine, but it gives another tool to law enforcement and the district attorney to fight the problem of gang activities in our communities.

Assemblyman Horne:

I constantly hear about "another tool, another tool." If you are trying to put a nail in a coffin, and you give a screwdriver to someone who needs a hammer, that tool is not going to do any good. You need the right tools to get the job done. Sometimes the tools they are asking for are not necessarily the tools that will get the job done. I do not think anyone on this Committee or in this Legislature would be opposed to giving law enforcement and prosecutors the appropriate tools, but you do not give them just any tool.

Assemblyman Mortenson:

I do not recall hearing any testimony on this subject, but how do you determine that a club is a gang? Instead of a gang, it could be a hiking club, a social club, the Lions Club, or whatever else. Appearances are one thing, but legally, how does one say this is a gang club and that is a hiking club?

Chairman Anderson:

Maybe someone from our Legal Division could answer that.

Nicolas Anthony, Committee Counsel:

Yes. The bill references *Nevada Revised Statutes* (NRS) 193.168 for a definition of criminal gang. In that particular provision, criminal gang is defined as "...any combination of persons, organized formally or informally...which has a common name or identifying symbol;...has particular conduct, status, and customs;...and has as one of its common activities engaging in criminal activity punishable as a felony...."

Assemblyman Mortenson:

That sounds like a great description, but I do not think any clubs put in their charter that "we will organize for criminal activity," so how do you determine if they are a gang? It seems to me it is going to be difficult to categorize a particular club or organization as a gang versus a social club of some sort. I will not push it, but I do not understand.

**Brian O'Callaghan, Officer, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada:**

I have not worked in the gang area. I have worked in the area that deals with gangs, since I have been a street officer. To identify gangs, as the NRS states, typically it is by their criminal activity. We have approximately 500 to 600 identified gangs, and every one is involved in criminal activities. They do crimes to enhance their gangs. They are identified as such, not as the Masons club or other social or service clubs.

**Samuel G. Bateman, representing the Nevada District Attorney's Association,
Las Vegas, Nevada:**

In addition to the definition in statute, case law tells us how to prove up a gang enhancement in any criminal trial. I believe that same case law would apply to the crimes described in the bill to identify that someone was involved in a gang. We actually do that through a gang expert, who testifies to his knowledge about this particular gang, the gang's background, who is involved in the gang, whether they use particular colors or signs, and whether they engage in particular felony crimes. Our experts have to be knowledgeable about those specific felony crimes in which a gang would be engaged. When you consider

the totality of what we have to prove, it would be hard to prove that a social club is actually a gang.

Chairman Anderson:

Whether this additional charge could be made by the district attorney's office would depend on law enforcement having seen the individual on a frequent basis and recognizing the relationship between him as an adult and another younger member who may be there.

Samuel G. Bateman:

That is correct. I do not see this charge ever being brought by law enforcement, initially, unless it is brought by our gang division with the Las Vegas Metropolitan Police Department. They are the ones who would be so intimately involved with these individuals that they would know who the adult is and who the juvenile is, and whether the adult was in a position to actually coerce the juvenile into the gang.

Assemblywoman Parnell:

What we need to keep in mind is there can be gang activity that is not criminal. My sons hung around with kids during their high school years, but the key word is "criminal." Any group of people who begin to organize for the purpose of criminal activity, that is when the defining line is created.

Chairman Anderson:

Mr. Hambrick likes Mr. Carpenter's amendment to the bill, but I am concerned whether the expansion of language would be to our advantage in getting the bill through. I think Ms. Parnell's suggestion of changing the crime from a category D to a category E will make it easier on the money committee that will probably hear this bill.

The Chair will entertain an Amend and Do Pass motion, and I would suggest that we do Amendment 2, but not Amendment 1.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
SENATE BILL 142.

ASSEMBLYMAN MCARTHUR SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will now turn to Senate Bill 194 (1st Reprint).

Senate Bill 194 (1st Reprint): Revises provisions governing the appointment and duties of public administrators and guardians. (BDR 20-181)

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 194 (1st Reprint) was presented to the Committee by Senator Mathews last Wednesday. This bill makes changes to the appointment and duties of public administrators and guardians. The final compromise amendment is included in your work session document ([Exhibit I](#)). There were a couple of changes: one in section 11 and the other in the last sentence in the new section.

Chairman Anderson:

Please describe your amendment to section 11.

Lora Myles, Reno, Nevada, representing the Carson and Rural Elder Law Program, Carson City, Nevada:

The public guardian can serve as the guardian of the person even if they are not guardian of the estate. If they are unable to find any source to pay for the ward's care, they can resign as guardian of the estate but still remain guardian of the person, ensuring that the ward receives appropriate care.

Chairman Anderson:

How is that clarified here?

Lora Myles:

Under the new section, it states that the court may, at any time, terminate the appointment of the guardian of the person or of the estate. The court then has the ability to say, "You are no longer guardian of the estate, but we want you to remain as guardian of the person."

Chairman Anderson:

If the court makes such an appointment, you have that obligation even though you are not going to receive compensation?

Lora Myles:

Yes. Public guardians do not receive any compensation from the ward's estate. Any money or fees that they receive from the ward's estate goes back to the county. The public guardians are county employees and receive their compensation from the county.

Chairman Anderson:

The Chair will entertain a motion of Amend and Do Pass on S.B. 194 (R1). The amendments are those suggested in Ms. Myles' document dated April 22, 2009.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
SENATE BILL 194 (1st REPRINT).

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN CARPENTER WAS ABSENT
FOR THE VOTE.)

We are adjourned [at 9:17 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 30, 2009

Time of Meeting: 8:25 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 14 (R1)	C	Jennifer Chisel	Work session document.
S.B. 45 (R1)	D	Jennifer Chisel	Work session document.
S.B. 55 (R1)	E	Jennifer Chisel	Work session document.
S.B. 106 (R1)	F	Jennifer Chisel	Work session document.
S.B. 141	G	Jennifer Chisel	Work session document and Uniform International Wills Act.
S.B. 142	H	Jennifer Chisel	Work session document.
S.B. 194 (R1)	I	Jennifer Chisel	Work session document