

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

**Seventy-Fifth Session
February 20, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:06 a.m. on Friday, February 20, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Sean McDonald, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

Keith Munro, First Assistant Attorney General, Office of the Attorney General
Heather Procter, Deputy Attorney General, Office of the Attorney General
Dale Liebherr, Deputy Chief Investigator, Office of the Attorney General
Kerry Benson, Deputy Attorney General, Office of the Attorney General
P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety
Rebecca Gasca, Public Advocate, representing American Civil Liberties Union of Nevada, Reno, Nevada
Robert Johnson, representing the Gun Owners of Nevada, Las Vegas, Nevada
Ben Graham, representing the Administrative Office of the Courts, Carson City, Nevada
Harold Cook, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services
Elizabeth Neighbors, Director, Lakes Crossing Center, Reno, Nevada
Ronald Dreher, Government Affairs Director, Nevada Peace Officers Research Association of Nevada, Reno, Nevada

Chairman Anderson:

[Roll called. Opening remarks on protocol on testifying before the Committee.]

Before we turn to the regular items of business, today is the 20th of February, and it is the last opportunity for a committee to request legislation to be drafted on behalf of the committee for introduction and hearing in this legislative session. Today, we have a handout, "Assembly Committee on Judiciary Bill Draft Requests" ([Exhibit C](#)).

These are my recommendations and the ideas and concepts that have been put in front of me in the last two years that either I requested before we got here or still remain. I was hopeful that there would be pieces of legislation that we could possibly put them into. [Read from p.1 of ([Exhibit C](#)).] I would suggest that we ask for the first bill draft request (BDR) listed on the handout.

I am thinking about a second BDR, although there is a piece of legislation that is in front of us today that we could possibly put this issue in. I am suggesting that we should start a piece of legislation from the Committee on the subject of "fugitives from justice," based upon *Gallegos v. State*, 123 Nev. Adv. Op. 31, 163 P.3d 456 (2007). At the Committee's first meeting, you will recall that Mr. Anthony summarized recent court decisions relating to judicial topics. It is the practice of the Committee to review any statutes deemed unconstitutional, and several of the cases discussed by Mr. Anthony are the subject of bill drafts this session; the rest are potential bill drafts. "Fugitives from justice," of course, clearly falls under this Committee.

In the first decision, the Nevada Supreme Court found a portion of *Nevada Revised Statutes* (NRS) 202.360 unconstitutionally vague. The statute does not define the term "fugitive from justice." We need to take up that issue, and I would suggest that we draft a bill to have that issue stand by itself, so as not to endanger the Attorney General's piece of legislation that her office is suggesting.

The third general suggestion that I am going to make deals with the termination of parental rights in sexual assault cases. This comes from an attorney, Eric Stovall, in Reno. It was added in by Mr. Horne. The recommendation seeks to provide solutions that are in the best interest of the child in cases of sexual assault that resulted in the birth of the child. They are delineated [in the handout] there for you. [Read from p.2 of ([Exhibit C](#)).] We need to address this issue in some meaningful fashion; therefore, I put it as a high priority.

The fourth suggestion is by Ms. Baumgartner on behalf of Families Against Mandatory Minimums. It is part of the question about judicial discretion to impose alternate sentencing or to sentence below the statutory minimum under certain circumstances. It is one of the issues that the advocates of judicial discretion—judges and others—have brought forth several times. It seems to me that we needed to do that.

Fifth is discovery in preparation for preliminary hearings. Members of the defense bar want to require the prosecution to provide discovery to the defense in a timely manner. That is clearly one of the questions that we should take up

for discussion. There seems to be some confusion between the defense bar and the prosecutors relative to what is a "timely" disclosure.

The sixth request is mechanic's liens. [Read from p.3 of ([Exhibit C](#)).] This is one of the continuing questions that come forward, and there seems to be a need for clarity in that particular area. Given the difficulty of economic times, it would be important for us to ensure there is no ambiguity in that area of the law.

Equally important—and we will continue to look for ways of taking care of this one if you decide to use those six BDRs that would be available to us—would be the archival of court records. There is a little blip in the way that we mandate that district court records be given over to the state for the preservation of access and sealing of court records. I served on a committee with the Supreme Court, and this issue is one that has come forward. This would require that court records be sent to the state archives for preservation regardless of whether they come from the justice court level or the district court. We may be able to take care of it in some other statute. We are looking for that, and there is a possibility that that could take place.

Question number 8 is the grandparent visitation issue that was presented by Ms. Farley, an advocate of victims' rights. She serves on the Advisory Commission on the Administration of Justice and she and I spoke several times about this issue. Grandparent visitations, for those of us who have heard this issue before, is a very difficult topic. These are grandparents where there has been no criminal or court activity, where the child is not in danger, or there is no standing for grandparents. Ms. Farley has some very fair questions that she would like to see a resolution to. I am very sympathetic to the issues that she raises; I just do not think that we have the opportunity to include them in this particular go-around.

The ninth recommendation was that of sealing of court records in divorce proceedings. Although the *Gibbons v. Gibbons*, DV08-00843 (Second Jud. Dist. Ct. 2008), case did present, as you may recall from Mr. Anthony's presentation, some unusual criteria for us, the uniqueness of that case and the timeliness of it would make that issue one I would suggest that we do not get into.

Also from Mr. Anthony's presentation is discussion of conflicts between federal district court and the Nevada Supreme Court regarding brothel advertising. Brothel advertising, of course, in Nevada is always one of those things that people have a difficult time trying to understand. However, since the state Supreme Court has upheld the statute, the Legislature may decide to leave the

current statute, as written, and wait to see what happens down the road. I think we can avoid this particular question, although I am sure many of you would like the discussion.

Finally, equally important as that, is the suggestion by Mr. Gustavson. He has suggested: (1) that the requirement for a mandatory 12-hour hold on removal in domestic violence cases, where the arrest is made weeks or even months after the time of the incident, may not be necessary, and, (2) that we should statutorily clear up that ambiguity in the law because there is no threat. I am sympathetic to the issue. I think Mr. Gustavson's point is well taken, and we can look possibly at taking care of that issue when we deal with some of the other domestic violence issues.

ASSEMBLYMAN CARPENTER MOVED TO REQUEST BILL DRAFTS
ON THE FIRST SIX ITEMS MENTIONED IN THE HANDOUT
([Exhibit C](#)).

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN DONDERO LOOP
WAS ABSENT FOR THE VOTE.)

Chairman Anderson:

Let us turn to the first bill of the day. This is on behalf of the Attorney General.

Assembly Bill 27: Clarifies requirements and procedures for obtaining a Nevada identity theft passport. (BDR 15-264)

Keith Munro, First Assistant Attorney General, Office of the Attorney General:

Identity theft has become a serious issue nationwide, creating havoc for an individual's financial situation. Recovering from identity theft can take time, money, and patience. This body of the Legislature has taken steps to assist Nevadans with the creation of the Identity Theft Passport Program. Our office administers that program. The Nevada Identity Theft Program provides victims of identity theft with a method of demonstrating to law enforcement and creditors that their identity has been stolen. It helps in rehabilitating a victim's credit history and identifying any fraudulent criminal activity done in the victim's name.

Assembly Bill 27 is an effort to make some refinements to the program. We have some history now with the program, and this bill is an effort to make the program more efficient and, therefore, more effective for Nevada. With me are Heather Procter, Deputy Attorney General, and Dale Leibherr, Deputy Chief with

our investigations division. They are the individuals responsible within our office for getting this program off the ground and making it work for Nevada. Deputy Attorney General Procter will go through the sections of the bill.

Heather Procter, Deputy Attorney General, Office of the Attorney General:

I would like to briefly outline the program adopted by the Attorney General's Office for the Identity Theft Passport Program. To initiate the application process, a victim of identity theft must file a police report with a local law enforcement agency. The agency will then provide the victim with a pamphlet, which includes instructions on how to apply for the identity theft passport. We have provided each of you with a sample of these pamphlets in both English and Spanish versions ([Exhibit D](#)). The pamphlet also provides a list of the documents we request the victim to provide at the time they apply for the passport in order to prove their identity. Victims living in Carson City and in the counties of Churchill, Clark, Douglas, Lyon, Storey, and Washoe apply for a passport at the local attorney general's office. Victims in the remaining counties apply at their local sheriff's department.

To complete the application, the victim provides personal information, and two forms of identification, including a Social Security card, and the victim's photograph, thumbprint, and signature are taken. The photograph, thumbprint, and signature appear later on the completed passport. We have included a paper copy of what a passport looks like in your handout ([Exhibit D](#)). Due to the confidential and secure nature of these cards, we have only provided you with a copy. We do have actual cards with us if you would like to look at them.

As to A.B. 27, the bill has only one section, containing various revisions to NRS 205.4651, the statute adopting the Identity Theft Passport Program. My references will be only to the numbered subsections of the statute which are revised in the bill.

[Read from ([Exhibit E](#)).]

We have worked closely with the Nevada Sheriffs' and Chiefs' Association in implementing this program. We would like to thank them for their help. The association has indicated their full support of this bill. This concludes our summary of the changes requested in A.B. 27, and, unless there are any questions, this concludes our testimony.

Assemblyman Carpenter:

My question is not on your changes, but in the statute as it now stands. On page 3, line 6 of the bill, it says "except as provided in this section, must be given a reasonable opportunity to prove to a law enforcement agency, creditor

or other lawfully interested person...that he is the victim and not the perpetrator." How do you go about doing that? I thought that was the purpose of these cards, so that you could present them to someone and that would be proof enough that you did have identity theft.

Keith Munro:

While we have not had it happen yet, there is some possibility that some perpetrators may try to get a card.

Assemblyman Carpenter:

Where you have your thumbprint, would they have to run that through an agency somewhere, or how would you do that?

Dale Liebherr, Deputy Chief Investigator, Office of the Attorney General:

Right now, we do not have the ability to run that fingerprint. We are looking into that ability, but at this point, we do not have the capability of doing it.

Chairman Anderson:

I think the nature of Mr. Carpenter's question deals with, now that we have the card, is it serving its purpose? And, how are the agencies following up to make sure I do not have to walk around with a ton of paperwork everywhere I go?

Keith Munro:

I think we have issued 335 cards so far, and we have not had any complaints. We feel that it is serving its purpose. It has been in effect for a little over a year now, so we are starting to pick up and making this process work. If you factored that out, that would be about three or four a month that we are handling.

Assemblyman Cobb:

How long are these cards in effect, and have you run into any problems—obviously, it has been more than a year, so you probably have not run into problems yet—but do you foresee any problems with the amount of time that you allow these individuals to have these cards?

Keith Munro:

We have not had any problems with the cards after they have been issued. They are in effect for three years. So with respect to people who are being issued cards now, and over the past year, over the next couple years we will start to gather some history.

Assemblyman Hambrick:

This is a question from left field, but I noticed in the packet that you gave us we had both English and Spanish. Are other languages available or only just the two? I am asking primarily because in Clark County there is a very large Pacific Rim population growing. It is one of the largest. Are there other things available if they have a problem in reporting a situation?

Keith Munro:

We started this program on a shoestring. We did not get any allocation to get it off and running. My understanding is the money for the Spanish language was donated. We are accepting all donations.

Chairman Anderson:

Three hundred thirty-five? So then are you going to contact these 335 cardholders and tell them we have a new card, or are you going to wait for the cards to expire and then tell them when they come up for renewal?

Keith Munro:

We will contact them.

Chairman Anderson:

Anybody wishing to speak in support of A.B. 27? Anyone wishing to speak in opposition to A.B. 27? Neutral on A.B. 27?

Close the hearing on A.B. 27.

Assembly Bill 46 deals with the issue of firearms.

Assembly Bill 46: Makes various changes concerning the right of certain persons to purchase or possess a firearm. (BDR 14-271)

Keith Munro, First Assistant Attorney General, Office of the Attorney General:

As you know, the Office of the Attorney General serves as the state's chief law enforcement agency. One of the duties of this office is to monitor changes in federal law that potentially affect the laws and statutes of Nevada, and notify this body of those changes. We also think it is our duty to present you with a possible solution when a change in federal law has occurred. One such proposal we bring forth today is in A.B. 46.

Assembly Bill 46 responds to the National Instant Criminal Background Check System (NICS) Improvement Act, which was passed by Congress after the last legislative session. The NICS Improvement Act encourages states to maintain a database of records related to mental health adjudication for the purpose of

making a determination of whether a person is disqualified from possessing or receiving a firearm under federal law.

There are important policy considerations for you to consider in determining if Nevada wishes to seek compliance with the NICS Improvement Act. The Nevada Legislature has already decided that someone who is adjudicated mentally ill cannot own or possess a firearm. That issue is not before you today.

Existing Nevada law, *Nevada Revised Statutes* (NRS) 202.360, which has been provided to you, prevents a person from owning or possessing a firearm if he or she has been adjudicated as mentally ill or has been committed to any mental health facility. While we have a mechanism for placing domestic violence convictions into the state criminal history repository, there is no mechanism under Nevada law for placing mental health adjudications into NICS. Therefore, for example, if someone is involuntarily committed, guilty of a crime but mentally ill, incompetent to stand trial for a criminal trial, there is no mechanism to place or transfer that information into our state criminal history repository.

In the NICS Improvement Act, Congress found that millions of needed records were missing from the NICS system. Congress has offered to provide grants for states working toward maintaining a database of records relating to persons who have been adjudicated mentally ill or have been adjudicated to a mental health facility. Noncompliance with the NICS Improvement Act could result in withholding of federal funds under the Omnibus Crime Control and Safe Streets Act. However, the U.S. Attorney General may waive noncompliance penalties if a state is determined to make good faith compliance with meeting the requirements. To begin the good faith effort of compliance, the Office of the Nevada Attorney General has worked with state law enforcement officials, both sheriffs and chiefs, the Administrative Office of the Courts, and the state criminal history repository of the Department of Public Safety. Assembly Bill 46 is a result of this collaborative effort. With me is Deputy Attorney General Kerry Benson. She is the most knowledgeable person in our office regarding the NICS Improvement Act. She will provide some testimony regarding the events which caused Congress to pass the NICS Improvement Act, and most importantly, she will cover the proposed bill section by section.

Chairman Anderson:

Let me indicate, I had requested, on behalf of the Committee, a bill draft dealing with this issue. However, after seeing the Attorney General's prefiled bill, it seemed to me that it was no longer necessary for the Judiciary Committee to pursue this issue on its own. Thus, I withdrew that bill draft. This, to me, is one of those questions that was left dangling from the previous legislative

session, where we did deal with some of the mental health and gun carry legislation. We chose not to address this issue in its entirety because we did not want to slow that piece of legislation down. Therefore, I think this is an important factor, and we would want you to explain in great detail why it is important.

Kerry Benson, Deputy Attorney General, Office of the Attorney General:

To back up a little bit and give you a little more background on this bill, both federal and state law, as Mr. Munro explained, already prohibit individuals who have been committed to a mental health institution, have been adjudicated mentally ill, or—to use the not-very-flattering phrase in the federal framework—have been adjudicated as a mental defective. That has been in the federal law since the Gun Control Act of 1968. That is not a new requirement, that is not what we are addressing here ([Exhibit F](#)).

The "Brady Bill," if you remember, which was passed in the mid-1990s, created, among other things, the National Instant Criminal Background Check System, or NICS. That is a nationwide electronic database that licensed firearms dealers can check, before selling a firearm to a person, to make sure that that person is not prohibited under state or federal law from possessing a firearm.

The issue with NICS is that it is very dependent on states actually reporting the relevant records to it, the relevant records being of persons who are prohibited from possessing a firearm. This problem, as you remember, was highlighted in the Virginia Tech mass shooting. The gunman in that case purchased two handguns from two different firearms dealers and passed two background checks. Neither of the background checks revealed that he had previously been found by a court to pose a danger to himself or others and ordered to obtain outpatient psychiatric treatment.

In response to that, Congress passed the NICS Improvement Amendments Act of 2007. That act requires states to begin transmitting these records, and to make at least a reasonable attempt at compliance, within three years of the passage of the act, in order to remain eligible to receive certain federal funds. If states do not come into compliance, or at least make a reasonable effort at compliance with the federal law, then they also risk losing certain federal funds. That is what we are here to do today with A.B. 46: to create a process by which the records of these types of adjudications actually get sent to the NICS database. That is the purpose of A.B. 46.

I can go through the bill section by section and explain what each does. Sections 1-4 state that, as the result of that type of adjudication, the court

must send a record to the Nevada Central Repository for Records of Criminal History, which is our point of contact for the NICS database. The first section deals with people who are found to be guilty but mentally ill in a criminal proceeding. The second is if a jury finds a person guilty but mentally ill. The third is if a jury acquits a person by reason of insanity. The fourth is if a person is found incompetent to stand trial.

Section 5 clarifies that these amendments will be added to Chapter 179A of *Nevada Revised Statutes*. Section 6 defines NICS.

Section 7 is an important section. What it does is it provides for what is called a "relief from disabilities program." A little bit of background here: under federal law, if you have ever been committed to a mental institution or adjudicated as a mental defective, your right to possess a firearm was forever taken away. There was no way for you to regain that right. If you were convicted of a felony, you could go and get your records sealed, and, at that point, your right to own a firearm would be restored. However, for these mental health-related adjudications, that was not the case. It was a lifetime prohibition.

Recognizing that is unfair and that is an issue, Congress, when passing the NICS Improvement Act, implemented a federal relief from disabilities program. It also required that states, in order to be eligible for grant money and to prevent loss of federal money, implement a relief from disabilities program. What that means is just a process by which somebody can petition to have their right to own a firearm restored. That is the main portion of section 7, implementation of such a program in Nevada. How our bill contemplates that working is for somebody to, basically, petition a court, and the court can hold a hearing and determine (1) whether the basis for the disqualification still exists; (2) if it does not exist, whether the person nevertheless poses a danger to the public safety; and (3) whether it is in the public interest to restore that person's rights. The court can then enter an order relieving the person from the prohibition against owning a firearm. That order gets sent to the records repository to update the NICS database accordingly, that is, to take the record out of NICS.

Chairman Anderson:

I presume, if one of five Bernard J. Anderson, Jr.'s who exist in the telephone book were somehow placed in the system, if I made application and I was turned down based upon name, that this would be an avenue that I could have to correct the error?

Kerry Benson:

No, this is not an avenue under my understanding. Perhaps Captain O'Neill can speak to this more directly. My understanding is that if there is an error in the

record, that it is not the same person in the situation that you proposed, there is an administrative process to have that corrected. This is a formal court proceeding to determine whether or not somebody who already has actually been prohibited, under either state or federal law, from owning a firearm may have that right formally restored.

Chairman Anderson:

That is the reason I asked my question. I wanted to make sure we were not dealing with that.

Kerry Benson:

Section 8 states that the records sent to the records repository are not public records and they are not to be used for any purpose other than to update the NICS database. The purpose is that these records are not creating any new databases. They are for this very limited purpose, only. They are not public records because they are designed to also protect people's privacy. We want to protect the public safety by making sure these records get into NICS, but we are not creating any new databases or anything else that would compromise people's privacy.

The other thing that section 8 does is to provide that no action may be brought for failure, delay, or errors in transmitting any records as required by this bill. A person may still be able to, if necessary, bring an action for injunctive relief to require an agency to follow the law if, for whatever reason, it is not. This does not preclude that kind of injunctive relief. What we are talking about here is actions for damages would be prohibited under section 8.

Assemblyman Ohrenschall:

I have a quick question about section 7, and maybe I am misunderstanding it. If someone has been found mentally defective in a jurisdiction outside of Nevada, then they are cured, would they have to go to that court outside of Nevada to petition to have their rights restored?

Kerry Benson:

Yes, sir. This is only for people whose adjudication has originated in Nevada.

Section 9 is a technical section. It just expands the definition to include the new definitions that are created by this bill.

Section 10 provides that a person petitioning for appointment of a guardian may request the court to make a finding that the proposed ward is a person with a mental defect as defined under federal law. We do have some amendments that we are proposing to this bill, and one of the amendments addresses this

section. When I am finished here, I would like to discuss those amendments, and I will talk about that in much more detail.

Section 11 provides that a court, if it appoints a guardian or makes a finding that a ward is a person with a mental defect, shall send that record. Again, this is something that we are looking at amending, and I will get to that a little bit later.

Section 12 clarifies that it is not unlawful to sell a firearm to somebody who has had their rights restored under the process outlined in section 7.

Section 13 requires that a record be sent for inclusion in NICS if the court involuntarily commits a person. We have a process in Chapter 433A of NRS for involuntary, court-ordered commitments. That is a prohibiting event, disqualifying a person from owning a firearm. This clarifies that is also an event where a record needs to be sent to NICS. This does not address voluntary admissions, and it does not address emergency admissions, either. It is only involuntary, court-ordered commitments.

Section 14 addresses NRS 354.599, which is a provision that requires the Legislature to specify a source of revenue if a bill increases expenses of a local government by more than \$5,000. This section makes that inapplicable to the requirements of this bill.

Chairman Anderson:

Could you explain why there is a feeling that this is inapplicable here? You do not think it is going to cost us \$5,000.

Kerry Benson:

We do not know at this point what the cost will be.

Keith Munro:

I am not sure that we put that in our bill draft request. That might have come out of your drafting. We want to work with the court system to make sure that, if there are any increased expenses for them, we are attentive to those.

Chairman Anderson:

I know the court is facing several economic challenges and has made some suggestions to the legislative body as to the means of solving these challenges and identifying potential sources of dollars. I do not want to see utilizing another piece of legislation to escalate that question so that it stands by itself. I am somewhat concerned. Let me ask Mr. Anthony if he has an opinion about the bill drafting of section 14.

Nick Anthony, Committee Counsel:

Yes, I believe that that section was inserted in bill drafting just to clarify that we are not pushing that burden on to the local governments.

Keith Munro:

The court system currently has a process in place where domestic violence convictions are sent to Captain O'Neill's shop—warrants, et cetera. This would be another form of an adjudication that needs to go there.

Chairman Anderson:

So, this is not a precedent-setting process relative to the central history repository, and we will get Captain O'Neill on record indicating that here, directly.

Kerry Benson:

I would like, if I may, to speak about the amendments.

Chairman Anderson:

You have not introduced it yet. Mr. Munro, I believe in the packet of material you presented to us, which we will make as part of the official record of the day, there are suggested amendments that you would like us to consider, and we will take those up formally. The reason for these amendments is as a result of...?

Keith Munro:

We have been working with the Administrative Office of the Courts. We have received input from the National Rifle Association about some potential changes that may make the bill better, and we have adopted those. We thought they were good suggestions. We would ask that this Committee consider those, as well.

I would ask Ms. Benson to go through the amendment.

Kerry Benson:

The first amendment ([Exhibit G](#)) is to clarify, as was asked before, that the petition for the relief from disabilities is filed in the court that originally issued the disqualifying order. The other thing it does is to require that the petition be served on the district attorney in whichever county that happens to be. Especially, we are concerned with the adjudications that are related to the criminal justice system, such as, incompetent to stand trial, guilty but mentally ill, et cetera, just so that the district attorney has notice and has an opportunity to oppose if he deems necessary.

The second amendment also deals with the relief from disabilities program. It would require a five-year wait from the time that the adjudication is originally made before a petition for restoration of rights could be made. It would also prohibit a person from filing, again, for two years after a petition has been denied. That is, of course, designed to prevent a person from continuously filing multiple petitions that are continuously denied, which would clog the court system, and so forth.

Amendment 3 is to amend sections 1 through 4 to state that the record will be sent on a form prescribed by the Department of Public Safety. As Mr. Munro mentioned, there is already a process in place for sending over convictions of domestic violence, and so forth. We contemplate that this will be a very similar process, a very similar form. Again, that is something to add efficiency to the process.

Amendment 4 is designed to avoid a potential conflict with NRS 433A.715. That statute requires that records regarding admissions to a mental institution be sealed. This clarifies that regardless of whether those records are sealed, they may still be sent to NICS. It resolves a potential conflict, there. Also, it adds in the language about the form.

Chairman Anderson:

Let me clarify here for myself. The judge has ordered a sealed record, there is a level of expectation from the individual who is involved that that record is going to be sealed—possibly because they are a juvenile or for any number of reasons—now, all of the sudden, we are going to have that in the criminal history repository, which records no one would have had access to in the past?

Kerry Benson:

What NRS 433A.715 does is automatically seal records. This is not an order made by the court. This is a new statute that was passed in the last session. It automatically seals all of these records. It does, presently, contain an exception, but the exception says that the adjudication is deemed never to have occurred except in connection with the transfer of a firearm. That is not the precise statutory language, I am paraphrasing it. What this does is to clarify, for certain, that it is deemed never to have occurred except for transferring of a firearm, including sending this record to NICS to get that into the database. In the existing law, there is already an exception; we are trying to make it absolutely clear that that exception not only would permit a person to write "no" on the form, that they have never been adjudicated to have a mental defect, but it would also permit us to send the record. We are just trying to make that very clear. Does that answer your question?

Chairman Anderson:

It does answer my question; I do not think it alleviates my concern.

Captain O'Neill, I think we are concerned. First of all, I presume that this bill, in its entirety, has been reviewed by your office and by the Department of Public Safety, and it conforms with your ability to carry out the functions at no additional cost.

P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety:

Within the Records and Technology Division sits the criminal history repository and the firearms point of sales unit, which is normally referred to as the "Brady" unit. We have actually worked very closely with the Attorney General's Office in authoring this bill. We appreciate their support. It does have our full acceptance. We will be developing what we plan on just a one-page form that can be electronically submitted by the courts to the Brady unit for inclusion within our records, and strictly within the Brady unit's records—only being able to be accessed by them—and then on to the national database for firearm sales. The information developed through the NICS background check is restricted to just those transactions. Even law enforcement does not have open access nor can it obtain information from there.

Chairman Anderson:

And, of course, you consider this to be an essential part of your overall link with the other states so that you can take full advantage of background checks from state to state and be on a par with other criminal repository units throughout the nation.

P.K. O'Neill:

Yes.

Chairman Anderson:

So, therefore, this keeps the validity of our agency on a par with those of other states in terms of common practice?

P.K. O'Neill:

Yes, sir.

Chairman Anderson:

All right. Thank you. Mr. Munro, did that help?

Keith Munro:

I could not have said it any better.

Kerry Benson:

I will try and finish up the remaining amendments, quickly. Amendment 5 alters the way the bill addresses guardianships. Currently, the way the bill is written, a person petitioning for guardianship would have to request that the court make a specific finding that the proposed ward is a person with a mental defect, as that is defined in federal law. And only if the court makes that specific finding would the record be sent to NICS. Our proposed amendments change that so that anytime a court appoints a guardian of the person, that would result in a record being sent to NICS. The purpose for that change is that the federal definition of a person with a mental defect is so broad that, by requiring our courts to make a specific finding, we risk putting a person in a position where they are actually prohibited from owning a firearm under federal law, but our state court has essentially told them otherwise. In that case, they could theoretically be prosecuted for a federal felony. They would say, "Well, the Nevada court said that this did not prohibit me from owning a firearm because they did not make the specific finding." I highly doubt that that would prevent or stop a federal prosecution. What we have done, instead, is adjust it to apply only to all guardianships of the person. We exclude guardianships of the estate, which is over a person's finances, and special guardians, who are appointed for persons of limited capacity who have some capacity to manage some of their affairs but not all. We are going to limit it only to guardianships of the person.

Chairman Anderson:

So, this will increase the responsibility of the guardian of the person to include this particular warning to his ward. Thus, the guardian of the person is going to have to understand this additional part of the law, which was not a requirement for them in the past?

Kerry Benson:

It was not a requirement of the guardian in the past. It will be part of the court order, itself, that the wards be clearly notified that this prohibits them from owning a firearm. The intention behind requiring the guardian to give notice is to try to make sure that the ward understands.

Chairman Anderson:

Both the court and the guardian have dual responsibility here?

Kerry Benson:

Yes, sir. Now, the final amendment changes the section 8 provisions regarding immunity from suits for damages. It clarifies that there is immunity in suits for damages, that it does not prohibit injunctive relief. It also adds government entities. Generally, "person" is not defined to include government entities, so it was necessary to include that in here.

Assemblywoman Parnell:

Just to simplify something, I just want to clarify in my mind: On page 10 in the bill, all of the new language from lines 26-34 will be deleted by virtue of your amendment, is that correct?

Kerry Benson:

That is correct.

Assemblywoman Parnell:

I had a question on Amendment 2 ([Exhibit F](#)). The language, "if a petition brought pursuant...is denied, a person may petition a rehearing not sooner than 2 years." Is there an example in current law with that same kind of time limit for anything else?

Kerry Benson:

Yes, there is. Under the criminal statutes that relate to sealing of criminal records, there is a prohibition of two years on refile, and so that language is borrowed largely from that statute.

Assemblyman Carpenter:

I just want to say I think your amendments make the bill a lot more palatable. Is there anything in these amendments which could be retroactive?

Keith Munro:

This is intended to be prospective. If you wish to make it retroactive, you could. One of the things that we really considered, strongly, was the burden on the court system and how it may affect people. This is a new federal requirement and the intent of this bill is that it is moving forward.

Assemblyman Carpenter:

I do not want to see it retroactive.

Rebecca Gasca, Public Advocate, representing American Civil Liberties Union of Nevada, Reno, Nevada:

We are here to express our opposition to the latter portion of this bill. The Supreme Court has ruled, as you very well may know, that the right to own a gun is a constitutionally protected individual right, and Nevada's own constitution cannot really be any more clear. In the *Nevada Constitution*, Article I, Section 11, it states that "every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes."

While the full contours of this right have not been fully fleshed out by federal courts, we believe it is important to maintain full due process rights any time that a constitutional right is being taken away. This bill, however, does not take that into consideration. This is why we have serious concerns about this bill, both particular sections and language used throughout. We will oppose it, even with the amendments offered by the Attorney General's Office.

We take no issue with the first portions of the bill, particularly because NRS 202.360 covers that portion of the language, and we do not oppose the addition of forced commitment. But we do think that existing law covers the important pieces and that forced commitment can be added in without creating the guardianship issues that this bill further creates.

The inclusion of all guardianship orders, even if it is restricted to the person, is overbroad and includes people who have no mental defect. There should not be an automatic inclusion in the NICS, but rather a tailored report only when someone's adjudication genuinely involves a condition that would directly impact their right to own a gun. However, guardianship of the person, as Ms. Benson mentioned, is a very broad category that includes temporary and permanent guardianships, guardians *ad litem*, which is for kids, and may be in response to various needs, including medical needs, but no specific finding of mental incapacity is actually required. And, for the record, that is shown under NRS 159.0487 through NRS 159.055. Most troubling, unlike with court findings or civil commitment for guardianships, no notice or even presence at the hearing where guardianship is granted is even required. Essentially, a temporary guardianship could be granted without notice or presence of the supposed "incompetent" person, and such a record could be transmitted, under this bill, before that person could even have the opportunity to appeal.

In fact, this has happened in Nevada in *Smolen v. Smolen*, 114 Nev. 342 (1998). A wife put her husband with a brain tumor into temporary guardianship without his knowledge and forced him into a convalescent home against his will. His nephew hired an attorney for him who got the court to find him competent in his presence and revoke his wife's power. If this bill had been in place at that time, he would have had to fight with the feds, literally—most likely unsuccessfully—for his right to purchase a handgun to protect himself at home, once he finally gets the opportunity to be back there. In fact, he would have had a huge uphill battle in the State of Nevada, particularly because there is an even higher evidentiary bar for those individuals who are found incompetent, under Chapter 159 of NRS, to apply for a court order reversing that finding, as opposed to, those found guilty but mentally ill. See page 7, lines 26-31 of the bill.

In addition to the due process concerns about linking the guardianship system automatically to a loss of gun rights, we have concerns about the aftermath of such a record, as well. It is extremely difficult to ever have a NICS record removed. Although this bill requires the transmission of any order depriving someone of a gun—see page 3, lines 31-36; page 4, lines 13-19; page 5, lines 13-19; page 6, lines 29-35; and page 7, lines 1-4 of the bill—there is actually not such a requirement for transmitting an order. You will see on page 7, lines 5-25, that that is indeed the case. There is not a requirement for transmitting an order restoring those rights to NICS, only to the Nevada Repository. It only requires a good faith effort to remove the original record from NICS. That is on page 7, lines 32-40.

First and foremost, it is really important that Nevada can never guarantee that the federal database actually will correct or remove a record. This bill notes that any court may enter an order that the information reported in the record must be removed from the NICS background system. It is our understanding that the State of Nevada has no jurisdiction to actually order that something be removed from the federal database. And it is important to know that each and every order submitted under this bill could end up in a lifelong gun ban by the feds, regardless of an individual's situation. That is why it is so crucial not to cause the transmission of such a record without very good cause.

Second, because of the broad and absolute immunity in section 8 of this bill, this bill does not really require that Nevada authorities even make a good faith effort, because no individual could enforce that requirement that such efforts be made to correct the NICS system. There is an absolute and total immunity from lawsuit for any action or inaction concerning these records. See page 8, lines 1-14 of the bill. Section 8 is not a good part of this bill. It removes all government incentive to ensure that records affecting a fundamental right are handled fairly and professionally.

This bill presents a stacked deck against Nevadans and their constitutional rights. It makes it very easy for someone's constitutional rights to be taken away without full due process. They do not even have to be there, and it makes it very difficult for their rights to be restored.

Chairman Anderson:

I presume that the ACLU is not suggesting that the State of Nevada, through its criminal history repository, should have the ability to change the actions of the federal government, so that the state was controlling the federal government in the hierarchy of rights. It was my impression that we have a long-standing tradition that the *United States Constitution* supersedes the *Nevada Constitution*, and, therefore, a federal statute supersedes Nevada's; by

constitutional Supreme Court rule this would be the case. Since we are utilizing a national linking system, by which we choose to—we could have a stand-alone system that only talked to people in Nevada that we control—reach beyond the State of Nevada, you are not suggesting, are you, that merely because we use a national linking system that that gives us the authority to clean up what happens with the feds? Is that what your concern is predominantly about?

Rebecca Gasca:

For the record, I am not an attorney. Our attorneys did look into this in great detail. I certainly do not mean to imply that the State of Nevada is able to overreach its authority when it comes to federal standards, but our state does have a long history of questioning overarching federal rules and taking a wary eye and being very careful in considering the individual rights protected, not only by the federal *Constitution* but also our state's *Constitution*.

Chairman Anderson:

I appreciate that. I think we all recognize that. I think that the ACLU is rightly concerned about the issue, but I was listening to some of the rhetoric and it sounded to me like the traditional argument about making sure that states' rights are being upheld versus the feds, and we are not going to get into that argument.

Rebecca Gasca:

Mr. Chairman, there is one federal Supreme Court case that has dealt with the Second Amendment and the individual right to bear arms. The litmus test for this area has not been clear. There is no standard set forth, and we really urge that this body keep a wary eye on this, particularly because of the lack of case law. I know that there are several cases pending in federal court regarding the Second Amendment right and the individual's right. We simply feel that this bill does not, in any way, protect the individual right.

Chairman Anderson:

Recognizing the recent problems that the U.S. Supreme Court had with the District of Columbia and the precedent of the City of Washington within that federal district, and recognizing that unusual change in long-standing practice, makes all of this a little bit worrisome whenever we come to the question of gun ownership. However, I do not think that Nevada is going to change its attitude about the Second Amendment in any way, shape, or form. I think we are all very sensitive to the issue that if you are mentally ill, we want to make sure—and I speak only for myself—that your opportunity to own a gun can be restricted within the confines of the statute, because of the safety of the citizens of our state. That is a state right to make sure that gun ownership is restricted by age, by type of weapon, and those other restrictions that protect

the public safety, while utilizing the central repository, which belongs to the state. Its linkage is part of its general services, and, thus, is an important function. We would not want sex offenders, for example, from other states to arrive here without our knowing the fact that they are sex offenders. We want to make sure that the central repository has the necessary information to carry out its functions.

Assemblyman Cobb:

I agree with the ACLU. Specifically, I agree with the points that you made regarding guardians and how there is a chance of being overly broad if we make a presumption of a guardianship. I also agree with your concerns on section 8 of this bill. Has the ACLU prepared any proposed amendments to help clean up that language in a way that would be acceptable?

Rebecca Gasca:

We have not prepared any amendments simply because the ACLU does not exist to help create law that will limit an individual's right. As I said, we think that this bill is a bad one that limits rights in a way that we are not ready to contribute to, in any manner. To make that answer short: no, we have not.

Chairman Anderson:

Anything else you need to get into the record?

Rebecca Gasca:

I would like to just leave the Committee with the reminder that the guardianship of the person can be in response to various medical needs but not necessarily a specific finding of mental incapacity. That is not required.

Chairman Anderson:

If you have material in writing, give it to the secretary. I am sure he would appreciate it. I would like to have a copy of the remarks for Ms. Chisel, Mr. Anthony, and myself. It will be a part of the record of the day, especially with references to the lines, sections, and chapters ([Exhibit H](#)).

Robert Johnson, representing the Gun Owners of Nevada, Las Vegas, Nevada:

I will have to echo much of what Rebecca had to say. I have a problem primarily with sections 7 and 8. I am going to address them in that order.

Section 7 says, in part: "...the person who is the subject of the record may petition the court for an order declaring that: (a) The basis for the adjudication reported in the record no longer exists," or whatever all of those other reasons are. I am concerned with the wording "upon receiving a record of an order transmitted pursuant to subsection 5, the Central Repository shall take

reasonable steps to ensure that the information concerning the adjudication made pursuant to [statutes] is removed from the National Instant Criminal Background Check System." I do not know if anyone is familiar with just how hard it is to get off that system, but it is nearly impossible, even if you are erroneously on that. I was told that there might be an amendment that would look at this. If there is, I have not seen it yet, or I could have overlooked it. I just received these amendments [holding up amendment packet]. If it is not in there, something needs to be clarified on that, preferably sections 7 and 8. A lot of that just needs to get removed. The section I just read to you is one of them, if it is not changed and modified somewhat. I do not have anything on that, that I specifically did, as I was led to believe that there may be some other people who have done that.

Section 8(2)(a)-(d), the portion that says "no cause of action may be brought against the person for: (d) Transmitting or reporting an inaccurate or incomplete version of the record or taking any other required action concerning an inaccurate or incomplete version of the record." It does seem to, as Rebecca mentioned, take away some accountability if the government is not held in some way responsible, especially for erroneously putting someone on this. I do not have any specific examples for this state, but if you were on the NICS system and you were not allowed to protect yourself by going and getting a gun, it is an arduous process, and it is possible you may never get off that. That system is very hard to get off of. The language suggesting that there is no accountability, as well as the ease of which someone could get on there erroneously, is a concern. So both of those two areas need to be addressed. Again, if I have overlooked, because I just got the amendments, something that has fixed that, great. I will be looking at them, and I would love to see that that has been fixed. Otherwise, those two sections do need a remedy.

Chairman Anderson:

I also have a letter, which I believe that most of you have, directed to me as Chairman of the Committee, dated February 2, 2009, for the National Rifle Association, signed by Carolyn Herbertson, the Nevada State Liaison from the National Rifle Association. They have concerns with the original draft of the bill. Some of these concerns, according to the Attorney General's Office, have been addressed. However, I want to make the letter itself a part of the record ([Exhibit I](#)).

Ben Graham, representing the Administrative Office of the Courts, Carson City, Nevada:

We have done a little background checking and worked with Captain O'Neill and others. The court is a little bit concerned about the transfer of records to the repository, but we are only looking at about two or three a day that would be

transferred. It is anticipated that we could probably absorb that within our system, and that would be statewide. We are willing to do whatever...

Chairman Anderson:

Two or three a day?

Ben Graham:

Yes.

Chairman Anderson:

Very good. So you feel that it would be possible for the court. At least you would be able to financially, and the process is not any different from those of domestic violence, at least as it would be put forward, and Captain O'Neill has provided assurance that there is a form that will be coming forward from his office to facilitate the process to do it.

Ben Graham:

That is correct. And the effective date is out a ways, so we can put that together...

Chairman Anderson:

This bill would not happen until January 1, 2010. Regarding the concerns raised by ACLU and others relative to *ad litem* and other guardians who might be affected, has the Administrative Office of the Courts (AOC) taken a position relative to that question, or have they contemplated the issue?

Ben Graham:

If that record is to be transmitted, that is something that can be done with a form put together by Captain O'Neill, but AOC has no position regarding that issue.

Chairman Anderson:

Let me close the hearing on A.B. 46.

[The Committee stood in recess at 9:45 a.m., and was called back to order at 9:56 a.m.]

I want to reopen the hearing on A.B. 46 for just a moment. I want to get something on the record that transpired during the short break. We were having a conversation, and I wanted to bring clarity to one of the questions that was raised. I was under the impression that the ACLU was still going to be here.

I have reopened the hearing on A.B. 46, the purpose of which is to hear a response from Captain O'Neill relative to one of the concerns that you raised, and I wanted to get it officially on the record from Captain O'Neill.

One of the questions that is always of concern to us is that issue that was raised by Ms. Gasca on behalf of the ACLU relative to how information goes into the system and then has a tendency to remain in the system for an indefinite period of time. I realize that this is an area of changing technology, but there was a clarification that I felt was important to get on the record. If I could ask you to clarify that for the members of the Committee, I think it would be helpful, since some of the issues that we are going to be dealing with are those that your department has to deal with.

P.K. O'Neill:

I will try to address this very quickly. First, I will say that the comments made that records are very difficult to maintain may be somewhat of an argument of semantics. I would like to explain how the records are maintained and destroyed regularly and routinely by requirements of statute for the Brady Bill to act appropriately, and how they have been enacted in law originally.

First, every day we handle anywhere from 2 up to as many as 900 calls per day, of which approximately 95 plus percent are immediately processed. Those records, all of the information that is related to that transaction or that check, are destroyed. It may not be maintained by the Brady unit; it is not available to anybody else. So they are immediately destroyed. For those that are delayed, that information must be destroyed within 24 hours of resolution. For those that are permanently deferred, or have a deferred issue, that information is permanently kept in file and is transmitted forward to the national Criminal Justice Information System (CJIS)—their Brady unit—for record maintenance and then availability to the 49 other states. If an individual has been erroneously, or feels that they have been erroneously denied access to a firearm, they may go to our website where we have procedures there for them to file an immediate correction to that action. As a matter of fact, at times we have actually done it within moments. They have been in the local area and have stopped by our office. We will meet with them face-to-face to fill out the forms and proceed with the corrective actions. We deal with those as quickly as possible, and when I say as quickly as possible, I really stress that we are a customer service oriented division, and I feel that we should immediately—and I say immediately—obtain that resolution for them. If they have been erroneously placed into the database, or been denied, and we have forwarded that information already to the national database, every night we will transmit redactions to CJIS. It is required by the federal law that we send them the information in a nightly batch and they must then also redact from their

database within very short time limits. We do not have control over what the federal government does, but even in their statutes, they are required to remove that information from their database and restrict any further access to it. Hopefully, that will explain it a little bit. I do not see it as an exceedingly difficult process. We actually do the majority of the work, once the person has identified what they feel is erroneous, in trying to locate the information and see if it is or is not the correct individual.

Chairman Anderson:

Let me close the hearing again on A.B. 46 and turn our attention to Assembly Bill 61.

Assembly Bill 61: Requires notification of certain victims of crime of the discharge, conditional release or escape of certain persons from the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services. (BDR 14-339)

Harold Cook, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services:

Assembly Bill 61 requires notification of certain victims of a crime of the discharge, conditional release, or escape of certain persons from the custody of the Administrator—myself. It is a narrowly tailored bill to mental health forensic services, and Dr. Neighbors will provide you with the details of the bill.

Elizabeth Neighbors, Director, Lakes Crossing Center, Reno, Nevada:

We are here in support of A.B. 61 because we believe this bill provides a necessary service to the community. Assembly Bill 61 provides that the victims of alleged crimes committed by individuals who have been acquitted not guilty by reason of insanity, or committed to a forensic facility as incompetent and dangerous, under *Nevada Revised Statutes* (NRS) 178.461, be notified when such clients are released to the community on conditional release or are discharged outright.

This notification would include, also, situations where individuals escape from the facility, although I would like to note that such an event has not occurred in over 25 years. The notification of these individuals would only occur at the victim's request, and it would follow the same procedures for victim notification that currently exist in the state.

There is a bit of language clarification that we would like to propose, so we would like to request that the language in subsection 3 of section 1 be clarified as follows: "A person described in subsection 1 must not be discharged or

released from commitment, temporary or otherwise, for any purpose unless notification of the discharge or release," delete the remainder of subsection 3 and substitute "has been sent to the last available address of every victim of the person who has requested notification pursuant to subsection 1" ([Exhibit J](#)).

We believe this change is necessary so as not to preclude the appropriate release of individuals due to the unavailability of an accurate address for notification of victims.

In summary, we believe this authorization will allow citizens who are victims of such crimes to provide appropriate input at the time of release and also allow for reassurance that they will not be placed in a position of an unexpected encounter in the community. I would be happy to answer any questions that you have regarding the bill and also regarding conditional release.

Chairman Anderson:

So, this statute is merely doing what we currently do for the victims of crime of people who are in prison. If we are going to release somebody from a mental health institute, those victims are notified in a similar fashion. Is that really the essence of what we are trying to achieve, here?

Elizabeth Neighbors:

Yes, that is exactly what we are trying to achieve.

Ronald Dreher, Government Affairs Director, Nevada Peace Officers Research Association of Nevada, Reno, Nevada:

In my last life, I was a homicide detective for the Reno Police Department. I am retired from that. I ask for your support of A.B. 61 for the reason that this is extremely crucial if someone has been a victim of a violent crime. If a person who has been a victim of a crime requests notification of a release of an individual, it is very important that they know when a person who has victimized them is going to be released, in this case from the institution that is listed in A.B. 61. It is very crucial, including the amendment that she has just suggested. The only thing I would say in relation to that is when an individual requests notification of a release they should always provide an updated address, or at least they should be notified that they should provide their last known address, because it does happen. I have a case that is over 20 years old. The individual is due to be released right now, and he committed a violent murder back in 1988 in Reno. That person is now subject to parole and release. Obviously, people move and get new addresses. I think it is important that victims be notified in the beginning to provide their updated address. Besides that, though, this is an awesome bill, and I would appreciate your passage of it.

Chairman Anderson:

Captain O'Neill, is this going to create a burden on records? None at all? Okay.

Assemblyman Mortenson:

Is there a time frame on the notification? In other words, if a guy is going to be released today, when does the message go out? Did it have to go out a month, or a week ahead of time? Maybe somebody wants to move out of town if something like that happens.

Elizabeth Neighbors:

When there is a hearing for conditional release or discharge, there has to be a petition filed for that purpose, and then a hearing is calendared. In that time frame, I believe, the individuals who are victims would be notified so they would know of the hearing and the potential for discharge. The person would not be discharged until that was accomplished.

Assemblyman Mortenson:

So, they are notified that there is a hearing coming up. Are they also notified when the hearing is over, that the person has been released, or are they just notified of the proceedings?

Elizabeth Neighbors:

In both instances, I believe, they would be notified of the results.

Assemblyman Mortenson:

You believe, but you are not sure.

Elizabeth Neighbors:

Well, it follows the same procedure that Captain O'Neill was referring to. When individuals are paroled, then those victims are notified.

Chairman Anderson:

The difficulty with this particular piece of legislation, in terms of answering that question with a definitive answer—yes or no—is, in part, the fact that you could be dealing with some people who could have escaped. Therefore, you want the victim to know that that event has happened. This is in addition to the other kinds of events that you may know of ahead of time. The timing of victim notification would be the same in this particular instance as the current practice is for people in prison or other kinds of people on parole or probation, if I am to understand the bill correctly.

Elizabeth Neighbors:

That is how I understand it.

Ronald Dreher:

It is my understanding that there is no time frame listed in the current language where one would do that. I know from a homicide detective's perspective, when I interviewed victims and when we went through the process, I would always tell them, "You know, if you want to know when this person is being released, you must notify the Department of Parole and Probation and the like, and they would let us know." I was just asking Captain O'Neill if, to his knowledge, there was a time frame, so it is a very good point. I do not believe there is a time frame. There is really no notice to them other than us saying to them, "If you want to know when this person is released, you need to notify these agencies." And now, we want to add a different agency to the process. It may be good to put some kind of time frame in there.

Chairman Anderson:

Mr. Mortenson, are you suggesting, if we were to proceed with the bill, that one of the necessary amendments might include a time frame, or you want us to explore that question?

Assemblyman Mortenson:

Yes, Mr. Chairman. I would like to suggest that an amendment might be a good thing because when things are indefinite sometimes they do not happen or maybe they happen at the wrong time after something bad has happened. An amendment might be appropriate.

Chairman Anderson:

I will ask Ms. Chisel, on behalf of Mr. Mortenson, to examine other state statutes to suggest a potential amendment to the Committee to clarify the question of time and notification. I would anticipate that there may be some difficulty in mandating a state agency, the prison system, Parole and Probation, the district attorney, or the other responsible agencies involved that they have to perform a service within a particular time period, because it would require staff allocation in order to make sure that it was done, such that if it was Friday afternoon, you could not put it off until Monday. While I think it is important that the victim be given a timely notification, I think we have to be realistic about whether we are going to be creating an unfunded mandate on an agency here. But we will look at it.

I will close the hearing on A.B. 61.

The Chair will entertain a motion on the first bill that we heard this morning, A.B. 27. I do not want to rush the Committee, but some of us, including myself, have difficulty with the whole new change in federal identification requirements in order to travel about the country. I think this, however, is a

service to those people who are victims of crime, to provide them with identity theft protections. I think this is okay.

Assemblywoman Parnell:

I would move to do pass A.B. 27.

ASSEMBLYWOMAN PARNELL MOVED TO DO PASS
ASSEMBLY BILL 27.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

Assemblyman Gustavson:

I thought this was going to a work session. I just want a better explanation of why this is needed, what the real purpose of this ID card is. It was not real clear in my mind. If you have your identity stolen, and then you get this card, what is this card going to do for you? I am not quite sure exactly how it works.

Chairman Anderson:

The Attorney General's Office is not here to answer that question. One of the committees I served on for some time dealt with cybercrime, and the identity theft problem was one that we have often addressed in the past. In the last session, we passed this piece of legislation to allow these cards to come into existence. Now, having had them in effect for a year, the fact that we are using the word "passport" on it instead of "identification" created confusion in the public mind, particularly in the minds of those who might be seeing it. You make application for this identification card because you are a victim of identity theft in order to clarify that you are not somebody else. So, if you are a victim, that is what this is about. That is the reason for it. This bill clarifies the issue by taking the word "passport" off.

Assemblyman Gustavson:

I realize what we are doing in this bill. Since I was not here last session, I just was not familiar with why it was passed and, originally, why it was needed. I think I understand that it is not being used as an ID card. I just wondered who accepts this for ID? I was just not quite sure how well it was working.

Chairman Anderson:

I could not tell you how well it works. I think, again, it is always going to be a problem. Captain O'Neill and the central repository can talk about thumbprints, electronic transfer of identification, and other kinds of new technologies that are available in terms of identifying who you are. I think we are doing okay because we are providing a service to help those people who legitimately are

who they are, so they are not being challenged at every turn because their identity has been stolen.

Assemblyman Gustavson:

Okay, thank you. I may abstain right now until I get better clarification.

Chairman Anderson:

Although we have a motion before the Committee, if the Committee is uncomfortable, we can delay the bill.

Assemblyman McArthur:

I would like some more time to look at this one. I understand what the intent of the bill is, and I am all for it. There are a couple of things that I would like to clear up. I find one of them kind of odd. The only reason we have Spanish on one of the applications is because the agency got some money. I do not think we should be making laws because someone donated money to us. There are a couple of other things I would like to read on these bills, so I would like to hold this over until we have a chance to look at this during the work session.

Chairman Anderson:

The fact that the packet has a Spanish brochure in it is not because of a mandate of state law, but rather because of somebody's generosity. I believe Mr. Hambrick raised a question about the Asian community in southern Nevada. I think that the response that he received was that we left the agency on a shoestring to implement that bill, and we have not provided them with additional dollars. The only reason that a brochure was printed in Spanish was because of the generosity of some individuals in southern Nevada. If you want us to delay this, I can understand your concerns.

Mr. McArthur has indicated a desire to hold on the bill. Ms. Parnell has left the room, and thus I am without a maker of the motion.

The Chair withdraws the motion with the permission of the seconder, as a courtesy to Mr. McArthur.

Ms. Chisel, I think we were dealing with Thursday's work session. I am intending to potentially put up A.B. 27, A.B. 63, A.B. 93, A.B. 104, and A.B. 88.

Ms. Parnell, I withdrew your motion based upon the request of Mr. McArthur.

Assemblywoman Parnell:

Thank you, and just for the record, I was getting ready to do that.

Chairman Anderson:

Please recognize that there are other issues which we will have already heard which could potentially come forward in the work session. In theory, any bill we have heard from this point forward could come forward. But those are the ones I am anticipating.

We are adjourned [at 10:38 a.m.].

RESPECTFULLY SUBMITTED:

Sean McDonald
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 20, 2009

Time of Meeting: 8:06 a.m.

| Bill | Exhibit | Witness / Agency | Description |
|----------------|----------------|---|---|
| | A | | Agenda |
| | B | | Guest list |
| | C | Jennifer Chisel, Committee Policy Analyst | Committee Bill Draft Requests |
| <u>A.B. 27</u> | D | Heather Procter, Deputy Attorney General | Sample brochures and identity theft passport card |
| <u>A.B. 27</u> | E | Heather Procter, Deputy Attorney General | Letter on bill |
| <u>A.B. 46</u> | F | Kerry Benson, Deputy Attorney General | Letter and other materials |
| <u>A.B. 46</u> | G | Kerry Benson, Deputy Attorney General | Proposed amendments to bill |
| <u>A.B. 46</u> | H | Rebecca Gasca, ACLU of Nevada | Written testimony in opposition to bill |
| <u>A.B. 46</u> | I | Carolyn Herbertson, National Rifle Association | Letter of concern on bill |
| <u>A.B. 61</u> | J | Harold Cook, Division of Mental Health and Developmental Services | Suggested amendment |