

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

**Seventy-Fifth Session
April 6, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:10 a.m. on Monday, April 6, 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
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Kyle McAfee, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada
Juana Jordan, Las Vegas, Nevada, representing the Delta Sigma Theta Sorority, Washington, D.C.
Michael Washington, Private Citizen, Las Vegas, Nevada
Josephine Washington, Private Citizen, Las Vegas, Nevada
Bill Bradley, Reno, Nevada, representing the Nevada Justice Association, Carson City, Nevada
Dennis Sieben, Private Citizen, Carson City, Nevada
Kevin Murray, Private Citizen, Reno, Nevada
Georgia Woodard, Private Citizen, Carson City, Nevada
Megan Gasper, Private Citizen, Las Vegas, Nevada
Angela Hopper, Private Citizen, Las Vegas, Nevada
Misheline Maheu, Private Citizen, Las Vegas, Nevada
Pauline Kennedy, Private Citizen, Las Vegas, Nevada
Jim Crockett, representing Nevada Justice Association, Las Vegas, Nevada
Marily Mora, Private Citizen, Reno, Nevada
Karen J. Johnson, Private Citizen, (City Unknown), Nevada
Holly Meader, Private Citizen, (City Unknown), Nevada
Dr. Rudy R. Manthei, Chairman, Keep Our Doctors in Nevada, Las Vegas, Nevada
Robert Byrd, Chairman, Independent Nevada Doctors Insurance Exchange, Las Vegas, Nevada
Dr. James Swift, Medical Director, Sunrise Children's Hospital, Las Vegas, Nevada
Tray Abney, representing the Reno/Sparks Chamber of Commerce, Reno, Nevada

Dr. John Nowins, Las Vegas, Nevada, representing the Clark County OBGYN Society, and Keep Our Doctors in Nevada
Dr. David A. Johnson, Minden, Nevada, representing the Nevada Academy of Family Physicians, Reno, Nevada
Dr. Paul Stumpf, Private Citizen, Reno, Nevada
Dr. Joseph Walls, Private Citizen, Carson City, Nevada
Dr. James G. Marx, Private Citizen, Las Vegas, Nevada
James L. Wadhams, Las Vegas, Nevada, representing the Nevada Hospital Association, Reno, Nevada
Dr. Sandra Koch, Private Citizen, Carson City, Nevada
P. K. O'Neill, Chief, Records and Technology Division, Department of Public Safety
Chuck Calloway, representing the Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada
Orrin Johnson, Washoe County Public Defender's Office, Reno, Nevada
Diane Crow, State Public Defender, Office of the State Public Defender
John McCormick, representing the Administrative Office of the Courts

Chairman Anderson:

[Roll call was taken. The Committee rules were stated to those present.]

The subcommittee that we created to hear the remaining bills dealing with issues of common-interest communities had seven pieces of legislation that are going to be reported on. As soon as we have that report ready we will have it distributed.

Let us open the hearing on Assembly Bill 481.

Assembly Bill 481: Revises provisions relating to certain crimes involving firearms, ammunition or explosives. (BDR 15-1155)

Nicolas Anthony, Committee Counsel:

This bill was requested by the Committee in order to address a Supreme Court case that I referenced earlier in the session. This bill is brought forth to clarify the *Gallegos v. State* case that came down in 2007 from the Nevada Supreme Court. I will go over the facts of the case and then explain what the bill does.

Mr. Gallegos was a fugitive from justice; he had a felony warrant out for his arrest in California. He was caught in Nevada while in possession of a firearm, and he was charged with a felony and convicted under *Nevada Revised Statutes* (NRS) 202.360. The Nevada Supreme Court struck down that conviction

because they found the term "fugitive from justice" to be vague and unconstitutional under the 14th amendment of the United States Constitution. In order to fix that problem, the court, in their opinion, stated that maybe the legislature might wish to clarify and further define exactly what a fugitive from justice is.

Before you is A.B. 481 in which we have attempted to clarify that definition. We are adding a new section to Chapter 202 of NRS so this definition will apply to that entire chapter. This definition will apply to possessing a firearm by a fugitive, NRS 202.360, to possession of a stun gun by a fugitive, NRS 202.357, sale of a firearm, NRS 202.362, and shipment or receipt of explosives by a fugitive, NRS 202.760. Largely, the definition is based upon federal law as well as case law in an attempt to make that language as tight as possible.

Assemblyman Horne:

I have a question on section 1, subsection 2: "Fleeing from another state to avoid giving testimony in any criminal proceeding." This would apply to any witness to a crime who chooses not to testify? Would we treat him as a fugitive?

Nicolas Anthony:

Yes. That is correct under the language of the bill.

Assemblyman Horne:

My second question is on section 1, subsection 1: "Being charged...with the commission of a crime...." It does not differentiate between charges from misdemeanors to felonies. If you are charged with shoplifting \$250 worth of merchandise and you left town, you would be a fugitive?

Nicolas Anthony:

Yes. That is correct. The language there is modeled after the federal law, and the federal law uses the definition of crime. It would apply to a misdemeanor, a gross misdemeanor, and a felony.

Assemblyman Horne:

If the Committee was so inclined, could those parameters be narrowed, or is that already covered in our current statute?

Nicolas Anthony:

Certainly, if it is the Committee's intent or wish we could narrow that language to apply only to the commission of felonies. Right now the bill applies to both misdemeanors and felonies.

Assemblyman Horne:

Misdemeanors, gross misdemeanors, and felonies?

Nicolas Anthony:

Correct.

Assemblyman Segerblom:

Currently, if someone is charged with a crime in another state, has a bench warrant out for his arrest, and is arrested in Nevada, we could detain that person and have him transported back to his original state?

Nicolas Anthony:

Yes. I believe that is the way the process works.

Assemblyman Segerblom:

Under this law we would actually be making their conduct in Nevada a crime so that we would have to incarcerate them in our prisons?

Nicolas Anthony:

This law only applies to certain possession statutes. You would have to be in possession of a firearm, a stun gun, or a shipment or receipt of explosives in order for this statute to apply.

Chairman Anderson:

Firearms, stun guns, and explosives are seen as a threat to the state. That is why we are putting ourselves in the position of arresting those people, which we currently do not do. Is that the reason behind the court ruling?

Nicolas Anthony:

We have statutes that make it a felony to be in possession of a firearm or explosives if you are an ex-felon. Those statutes also make it a crime if you are a fugitive from justice. This bill is merely intended to clarify what the intent of the legislature was by adding "fugitive to justice" in those particular statutes.

Assemblyman Carpenter:

If that person came into this state with a bunch of explosives and attempted to use them, could we charge him under our law, too?

Nicolas Anthony:

Yes. That is correct under this law. You could probably also charge him for other offenses. Certainly, if that conduct amounted to a terrorist act, you would charge him under the terrorism statutes. Under this particular statute, if he had a warrant or was charged in another state for another crime and came to

this state in the possession of certain items, including explosives, he could be charged under these particular statutes.

Assemblyman Gustavson:

I have some concerns about section 1 because it also includes misdemeanors. I think that is being too broad.

Also, in section 2, if a person is fleeing from testifying in another state regarding a crime he witnessed he may be in fear for his life and want a firearm for protection. I have concerns with that also.

Assemblyman Hambrick:

Is the intent aimed at felony arrest warrants? I understand that most states would not issue warrants for misdemeanor cases.

Nicolas Anthony:

Right now, the bill applies to any crime. I do not know whether a warrant is issued in a misdemeanor case, but if you have been charged with a misdemeanor and you chose to ignore it, you could be found guilty under this particular statute.

Assemblyman Hambrick:

We would have to be notified by the other state that there is an outstanding action of some type. The intelligence community would have to find that out. Normally, that is at a higher level of crime than a misdemeanor?

Nicolas Anthony:

I cannot speak for law enforcement and their intelligence operations. I do not know if that information can be pulled up in a squad car when somebody is pulled over: if their record from another state is readily available if they have a warrant out for their arrest. I am not sure how that works.

Assemblyman Horne:

I am looking for some clarification on Mr. Hambrick's question. Is he asking if the person needs to be notified that they have a warrant out for him? Typically, a warrant can be issued without the person's knowledge.

Assemblyman Hambrick:

If there is a want and warrant issued, normally it is for a felony. Police officers in almost any state, with the computers in their cars, can see wants and warrants. Routinely, that would not go into any system at a misdemeanor level; there is too much money involved. If a state wants a fugitive back, they have to pay for his return. That is why misdemeanors are not included.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada:

The way it works is that an agency will issue a warrant for the individual. If that jurisdiction wants that person to be extradited back to the state, that warrant would be placed in the National Crime Information Center (NCIC) with a notification of approval of extradition. If I picked somebody up on the street and ran them through the NCIC, it will tell me if that person is wanted and extradition is authorized. We would hold that person for an extradition hearing, and the judge will determine if there is enough probable cause to believe that person needs to be extradited back to the state. Normally, unless it is some very flagrant violation, only felony cases are approved for extradition. In especially troublesome cases, we can apply through the federal system for a fugitive from justice warrant that allows the Federal Bureau of Investigation (FBI) to help us locate that person. Those are for serious felonies.

Assemblyman Horne:

I actually have clients who have bench warrants for misdemeanors. That is how they sometimes end up in my office.

Assemblyman Carpenter:

I know that warrants are issued in Nevada for people who have speeding tickets and make no effort to pay them. Do other states do that also?

Frank Adams:

Other states can issue those warrants, but those states have to request, through the national system, an extradition on that warrant if that person is caught in another state. Normally on misdemeanor cases that warrant is issued for the local jurisdiction only. In Nevada if a misdemeanor speeding ticket is issued in Washoe County and we stop that person in Lyon County, we have to let him go because the other county will not come and pick him up. It is only a local issue for those misdemeanor warrants. It does not always happen. Sometimes I can catch a guy in Las Vegas, and they want him back in Reno. Most of the time it is local issue only for misdemeanor warrants.

Chairman Anderson:

The bill does not expand that practice with this additional language, Mr. Anthony?

Nicolas Anthony:

No. I do not believe it does. It merely clarifies existing language in the law.

Juana Jordan, Las Vegas, Nevada, representing the Delta Sigma Theta Sorority, Washington, D.C.:

I had some concerns with the bill because the simple misdemeanors are probably going to lead to overcrowding in our prison system. As you know, we need new prisons, buildings, and space, and we are under budgetary constraints. We are talking about money. If someone is stopped on a simple charge for a bench warrant or something in the locale, according to what I am reading, it is more like the federal system. I feel this should be sent back to the Judiciary Committee for further review and for the language to read differently.

Chairman Anderson:

I close the hearing on Assembly Bill 481.

Let me open Assembly Bill 495 for public testimony.

Assembly Bill 495: Makes various changes to provisions governing professional negligence. (BDR 3-978)

Michael Washington, Private Citizen, Las Vegas, Nevada:

I had to have a colon exam at the Shadow Lane endoscopy clinic in July 2007. After my endoscopy examination, the last part of September, I became very ill. My general practitioner took a blood test to find out what was going on. The blood test came back positive for hepatitis C and B. He sent out further samples to identify the genotype of this infection. Once it came back he explained to me that by law, as a doctor, he had to inform the health district of a new acute case of hepatitis. The health clinic called me in and asked various questions, and I answered them. Shortly after that, the Center for Disease Control (CDC) came from Georgia to question me and take more blood samples to further identify what was going on with the hepatitis.

They conducted an inspection at this endoscopy clinic. The source of the spread of the hepatitis was that the clinic was reusing syringes and medication that had come into contact with other peoples' body fluids. This is an unsafe practice. In the medical profession, to give medicine to a patient through an IV line is a sterile procedure. The problem was caused because this clinic decided to make a huge profit by not buying more syringes and medication, so they kept reusing them. As a result, people became infected.

When I became infected with this disease, I had a problem with two preexisting conditions. I have diabetes and glaucoma. Both were well controlled with medication. After this infection, everything went out of control. I have had to have two surgeries on my eyes, one on my left and one on my right. Next week I will find out if they are able to save my peripheral vision, and I will see if

my blood pressure is under control. For my diabetes, I take four injections of insulin every day because the oral medication does not control it.

I feel that I was mishandled. I was mishandled in order to make profits for that endoscopy clinic by their not ordering the proper materials to take care of me as a patient. I wish when you collect all of your evidence today, that you will show some consideration for the patient. As it is now the only ones who are profiting from the current law are bad medical practitioners and insurance companies. They walk into court and say, "Yes, we committed malpractice. We will pay the \$350,000; that is the end of it." What happens to our lives as patients? We will never come back to being normal again. We even have a high risk of losing our lives. Our livers can quit at anytime. At my age I do not need problems with my liver. I am still having problems that are being investigated. I wish that you would take the patient into consideration.

Also, the organizations that are doing the inspections need to release these reports so you can see them. The health district and the CDC stated what they found, but they have not released these records. Why?

When this law first came out its stated intent was to keep doctors in Las Vegas. I do not think the good doctors would leave Las Vegas as long as they had proper malpractice insurance. This law helped the bad doctors. It helped greedy doctors and greedy clinics to make profits. I hope you will give some consideration to the medical patient whose life has been changed drastically. I will never be normal again. All I can do is live with the conditions that I got from malpractice.

Josephine Washington, Private Citizen, Las Vegas, Nevada:

I am a retired registered nurse. The current malpractice law protects the bad physicians, nurses, drug companies, and insurance companies. The victims of malpractice become victims twice: first, with a debilitating incident or accident and second, when the compensation available to them is limited because of the \$350,000 malpractice cap. I noticed some nurses are standing outside and carrying signs stating, "Do not make my doctors leave." If your doctors are practicing good medicine, they are not going to leave. If they are good physicians and practicing good medicine, they should not be worried about a malpractice cap. Malpractice should be the least of their worries because they are doing what they are supposed to do under the law: protect the patient.

I find it very ironic that one of the physicians who performed the procedure on my husband when he became infected is also a shareholder of the insurance company that insures his endoscopy center. This malpractice cap benefits him and his staff and other doctors in many ways. I am asking all of you to help

make people in the health care system, the drug companies, and their accreditation agencies accountable for their actions.

**Bill Bradley, Reno, Nevada, representing the Nevada Justice Association,
Carson City, Nevada:**

I support and encourage you to pass the amendment to A.B. 495. You should have in front of you an amendment that we have proposed ([Exhibit C](#)). Initially, A.B. 495 was a comprehensive look at the current law in the area of medical negligence. It was an attempt to level the playing field. However, because of the commitments of this legislature and the timing, we made a decision to amend this bill significantly to get down to two issues that have created a fundamental and horrific injustice in our system. I want to make sure that the Committee as a whole realizes what we are trying to do and walk you through this presentation that we have put together.

Two fundamental issues need to be addressed that have come about as a result of this endoscopy crisis in southern Nevada. Currently under Nevada law there is no exception to the cap on noneconomic damages. That was a result of the Keep Our Doctors in Nevada (KODIN) initiative in 2004. We believe that the gross negligence of the physicians who were involved in this endoscopy crisis points out the unfairness of the law because bad health care providers are being protected by this law. We do not believe that was ever the intent of the people who sponsored the law or the people who voted for it. We ask that this Committee adopt an exception to the cap where a judge determines that the conduct of the health care provider constitutes gross negligence.

The second fundamental issue is the timing during which a harmed patient has the right to bring a claim against a negligent provider. Currently, because of the KODIN initiative, that time frame is one year from the time the patient discovers, knew, or should have known that he suffered an injury as a result of medical negligence or three years from the date of the injury, whichever occurs first. This law was adopted straight out of the California law that went into effect in 1975. However, even California has changed this law after realizing that one year for a harmed patient to realize that he was harmed as a result of medical negligence, and was injured thereby, is not sufficient time. We ask this legislature to go back to what the law was in Nevada for 100 years before it was changed in 2004.

There are many health care providers in this room who are quality health care providers. There are several here whom I consider to be friends. These amendments do nothing to affect quality physicians providing appropriate care to Nevadans. This amendment is specifically tailored to address grossly negligent physicians who disregard known standards of care and harm patients.

It goes without saying, from the American Medical Association's Principles of Ethics, that a physician, or any health care provider, shall be dedicated to providing competent medical care with compassion and respect for human dignity and rights. We now know that that was not the principle that was followed at the endoscopy centers of southern Nevada. Instead, endoscopists, anesthesiologists, and other clinicians made a conscious decision to reuse vials, syringes, and other medical apparatus. Despite the fact that all of these medical devices were designed for a single use, this group of physicians and the endoscopy center decided to put profit over patient safety by reusing, contrary to any known medical standard, single-use devices.

Shortly after the outbreak, an interim report by the Southern Nevada Health District described what had been going on. During the investigation the health district identified unsafe injection practices that placed patients at risk for exposure to blood-borne pathogens, including hepatitis C, hepatitis B, and the Human Immunodeficiency Virus (HIV). This was based on the identification of the unsafe injection practices and the determination that these practices had been the standard practices of this clinic since a remodeling in March 2004. It is coincidental that the KODIN initiative that protected healthcare providers went into effect in 2004. Bryan Labis, the senior epidemiologist of the Southern Nevada Health District was quoted as saying, "This did not happen by accident. What happened here is something that every nursing and medical school professor teaches its students not to do. There is nothing they can say that can possibly justify what they have done." As a result of these violations of known standards of care, over 50,000 people in Las Vegas Valley received a letter from the Southern Nevada Health District informing them that their lives were put at risk because of the unsafe practices and the known violations of standards of care at the endoscopy centers. This is a copy of the letter that each of the 50,000 people received telling them that they must all be tested now for these horrific viruses known as hepatitis B, hepatitis C, and HIV.

Under anybody's standard, these healthcare providers were grossly negligent and put profit ahead of patient safety. Now the law protects medical providers who violate known standards of care. How does the law protect these grossly negligent physicians? Remember that this initiative was represented to the people of Nevada as something that was going to decrease the cost of healthcare, increase the quality of care, and increase access. We know now that the quality was not increased as a result of this law; it was decreased. In the 14 months since this outbreak occurred, not a single medical provider's license has been revoked, and there are medical providers performing endoscopies today who were involved in this. If this law continues in effect, when patients seek to hold healthcare providers accountable for their gross negligence, they will be unable to because the law does not provide an

exception for gross malpractice. Consequently, these bad healthcare providers are protected.

What is amazing is that it is simply not the endoscopy clinic that we are aware of now. You have received a package from our organization pointing out several instances where healthcare providers have put multiple lives at risk in Las Vegas Valley. Dr. Wu, an osteopath, operated seven times and killed three patients. An ophthalmologist named Ken Johnson, who changed his name to Jane because his license was revoked in Ohio, moved to the Las Vegas Valley and used his wife's license to open an eye clinic where he, his wife, and two other ophthalmologists and optometrists harmed over 30 patients, seriously and permanently affecting their vision. Dr. Bass, another physician in Las Vegas, who drove around providing 24-hour 7-day-a-week care to anybody who called him from a hotel room or whatever, was allowed to prescribe and dispense narcotics resulting in the death of a well-known high school athlete in southern Nevada. As a result of that conduct Dr. Bass is now serving a life sentence for second degree murder. The environment, created by this law and the lack of regulatory mechanisms, has resulted in an air of indifference in the health care field.

Until we, the Board of Medical Examiners, the health districts, and the full force of our civil justice system hold these grossly negligent physicians accountable, patients in this state will continue to be harmed. What will the future hold for our citizens? That is for you to determine as policymakers. We are asking you, the Nevada Legislature, to hold medical providers fully accountable when they violate known standards of care and their conduct is determined to be grossly negligent.

To revisit the standard of gross negligence, several of you were here in 2002 when there was a special session where this whole issue came up before. In Assembly Bill No. 1 of the 18th Special Session this Legislature decided to place a cap of \$350,000 for the noneconomic or the life-changing consequences of bad care. It was a cap much different than what the law is today. It is much different because in that special session this Legislature recognized that there needed to be exceptions. The one exception that the Legislature unanimously agreed upon was an exception for gross malpractice. Gross malpractice, in A.B. No. 1, was defined as the "failure to exercise the required degree of care, skill, or knowledge that amounts to: (a) a conscious indifference to the consequences which may result from the gross malpractice; and (b) a disregard for and indifference to the safety and welfare of the patient."

That is a high standard. That is a standard that has to be evaluated when the evidence is presented to a judge. If that judge determines that the conduct of those healthcare providers reflects the conscious indifference to the consequences as well as a disregard for and indifference to the safety and welfare of the patients, the jury will be instructed that they may consider gross negligence as a finding against that bad healthcare provider.

We are not the only ones who believe that an exception for gross negligence should exist in our statute today. "My organization believes there are cases in which awards higher than \$350,000 are appropriate," was spoken by one of the health care providers' main lobbyists, Mr. Kragy, in 2003, referring to this concept of gross negligence. An industry journal, "*Business Insurance*," indicated in 2003 that any law limiting damages should have exceptions for particularly egregious acts of malpractice.

I want to give you a couple of analogies. If a healthcare provider decides to have a couple of cocktails or ingest drugs, which affect his decisions and then harms a patient, that physician's conduct is protected by the current law. If that same healthcare provider has a couple of drinks or ingests some drugs, gets in his automobile, and drives and hurts somebody, the person harmed by him under that circumstance may hold him fully accountable. If a healthcare provider is impaired and hurts a patient, that patient may not hold that physician fully accountable. However, if that physician leaves the hospital and one of you has ingested some alcohol or drugs and harms that physician, that healthcare provider may hold you fully accountable. That does not seem to ring true with Nevada values.

The other portion of our bill that is so important is the time frame, the statute of limitations. Currently under the law a harmed patient only has one year to decide whether or not to bring an action against a healthcare provider. As these healthcare providers testify here today, I think many of them will tell you that when someone's nervous system is injured it ordinarily may take 12 to 18 months for that harmed patient to know if the nerves have regrown. It takes that long for our body to heal nerve injuries. Under the current law, if someone has a nerve injury they have to file a claim. None of us want that to happen if they do not need to, but they have to file that claim within one year or they forever lose their rights.

It is the same in the endoscopy crisis. Many of those people who may have been infected still do not know if they are going to be infected because it takes one to three years for that insidious disease to show up. The one-year time frame ran out about three weeks ago, so patients who were harmed by that

practice at that endoscopy center had a choice: they could file a claim without knowing if they were infected or give up all their rights.

Many of those people filed suit, which is another interesting note to this story. You have been provided with material that says there has been all of these healthcare cost savings. The reality is that this crisis has not yet hit the insurance companies that insured these grossly negligent endoscopists and healthcare providers, nor has the burden on our court system created by these violations of known standards of care. It is a whole different ball game in southern Nevada now as a result of the grossly negligent conduct of these healthcare providers who put profit over safety.

We are not asking for this bill to be applied retroactively. That is for this Committee to decide. We want to make sure in the future that any medical care providers who make the same horrible decision that the people at the endoscopy centers did—injuring thousands of patients—or these other healthcare providers did—injuring hundreds—are held accountable.

Assemblyman Cobb:

Your testimony seems to go well beyond the scope of this simple amendment, so I want to return to the bill before us. This only refers to civil cases, the statute of limitations within those civil cases, and noneconomic recovery of damages. How would that have an affect on whether or not a medical practitioner, who is responsible for egregious actions as you have described, would lose his license?

Bill Bradley:

There are many systems in place, Mr. Cobb, as I am sure you are well aware. There is one process whereby that practitioner's license is hopefully brought in early by the Board of Medical Examiners. That is one leg of a three-legged stool. We know that in the endoscopy cases that has not happened yet. There are temporary suspensions of two physicians involved, but several have not had anything done with their licenses. In order to have a system that sends a message to healthcare providers that you may not put profit ahead of patient safety, we believe those grossly negligent providers should not get the benefit of the law that protects quality physicians. Under this bill, those healthcare providers who act in a grossly negligent fashion will be held fully accountable by a jury and not get the benefit of the protection that was passed in the initiative. We believe that creates an environment in Nevada where these poor healthcare providers, who have decided to come here and profit by putting patient safety at risk, will get the clear message that this will not occur in our state any longer.

Assemblyman Cobb:

There is no requirement to have a physician's license pulled in cases where the patient or plaintiff receives more than \$350,000?

Bill Bradley:

That is correct, but we hope that the civil justice system sends the message that grossly negligent care will not be tolerated by any system in this state.

Assemblyman Ohrenschall:

I have had many constituents who had procedures done at that endoscopy center, and I have many scared constituents who probably will never get tested.

It is my understanding that in the KODIN initiative attorneys' fees were capped. It is also my understanding that many patients who have been victims of medical malpractice cannot find an attorney because it is pretty costly for the attorney to try to bring one of these cases forward. Does the amendment to A.B. 495 change the cap on attorneys' fees?

Bill Bradley:

Unfortunately, it does not. There are people who want to portray this as an issue of doctors versus lawyers. That is really not the issue here. The issue is the safety of patients in Nevada and the fact that when healthcare providers violate known standards of care, they should not be entitled to the protections of the law to which patients are not entitled. The attorney fee limitation will not be changed by this amendment.

Assemblywoman Parnell:

I have a fairly specific question about the physicians you referenced who are still practicing. Are they still practicing because of the initiative language, because of medical board licensure issues, or the criminal system?

Bill Bradley:

I would have to say it is a combination of the three, Ms. Parnell. The medical board has not been able to revoke the license of any of these physicians, the criminal investigation is still going on, and the patients who were harmed by these known violations of standard of care are still in the pipeline.

Assemblywoman Parnell:

It is not necessarily a result of the initiative language?

Bill Bradley:

The initiative language, we contend, created the environment in which bad healthcare providers put profits over patient safety, so we believe the initiative

language is partially responsible for this crisis as well as several others in southern Nevada.

Assemblywoman Parnell:

If the medical board and the criminal system had been more proactive they would no longer be practicing?

Bill Bradley:

I think that is partially true. There was an organization specifically hired to monitor quality assurance in this endoscopy clinic, formed by another founding partner of the insurance company that now ensures all of these endoscopists. Had that entity done its job, had the HMOs done their job, and had the Board of Medical Examiners been more aggressive this would not have happened. We pointed out to you in the paperwork we passed out last week where there are other instances of multiple repetitive acts of known violations of the standard of care not being picked up. We wonder where the healthcare providers themselves were. Why were they not reporting? This system broke down right at the basics, and it was allowed to flourish for four years before it was finally discovered. That is inexcusable.

Assemblyman Carpenter:

Under your amendment all of the repealed sections would remain. Is that right?

Bill Bradley:

That is correct. All of the repealed sections would remain, but an exception would go in for gross negligence and the time to bring a claim would be extended as it was under A. B. No. 1 that you unanimously voted for in 2002.

Assemblywoman Dondero Loop:

You referenced the doctors who are still working. What has happened to the nurses in these cases?

Bill Bradley:

The nurse anesthetists? I will tell you one horrible story of a physician's assistant who worked in the endoscopy center but was not participating in the known-standards-of-care violations. She had to leave Las Vegas in order to try to find a job to feed her family. She has not been able to find a job in northern Nevada; no insurer will insure her because she was connected to the endoscopy center as a former employee. I do not know if you are talking about the involved nurse anesthetists or people who were not involved. I would have to refer to my colleagues in southern Nevada about the involved nurse anesthetists. I believe some have left and some are still there.

Assemblywoman Dondero Loop:

In general, have the nurses who worked in those centers lost their licenses?

Bill Bradley:

I am not aware of a single healthcare provider who has had his license revoked by a regulatory body. Several healthcare providers have been suspended, but there are numerous hoops to go through before licenses are finally and formally revoked.

Chairman Anderson:

We are focusing on a very narrow group of physicians who may fall into the category of gross negligence. This is a relatively small number of people. The standard for doing this is relatively high.

Bill Bradley:

You are correct on both observations as well as the statute of limitations, Chairman Anderson.

Chairman Anderson:

The expansion of the statute of limitations is necessary because the medical process being what it is, it takes time to find out whether you are harmed and the extent of that harm.

Bill Bradley:

That is correct.

Assemblyman Carpenter:

If someone is found guilty of gross negligence, who would set the amount of the damages, a jury or a judge?

Bill Bradley:

In today's environment, a jury sets the damages, and they do not know about this law. This is one of the horrible injustices associated with this law. In today's environment, a jury goes into the deliberation room and decides damages not knowing about this law. If a jury awards damages in excess of \$350,000, the jury is asked to leave. The minute the jury leaves the attorneys for the healthcare providers ask the judge, pursuant to the law, "Will you please reduce that noneconomic award down to \$350,000." That is done without the jury's knowledge. Under this bill, if a judge decided that the conduct of the healthcare providers constituted gross malpractice, the judge would then instruct the jury that they may consider the issue of gross negligence or gross malpractice. The jury would be asked on a written form: "Do you find that the conduct of these healthcare providers constitutes gross negligence?" The jury

would be asked to check a box as yes or no. If the jury checked yes and awarded damages, those are the damages that would be awarded, and they would stand pending a review by the judge. If the judge felt the damages were proper under the law, the judge would uphold those damages. There would likely then be an appeal to the Nevada Supreme Court, and the Supreme Court would have another opportunity to review what happened in that case, what the jury did, and whether the damage award is consistent with law. The jury would make the award; if the judge felt it was appropriate, the judge would let the award stand, and the checks and balances of the appellate court system would come into play to review that award again. That is why we believe this is such a solid system. There are checks and balances at every juncture of one of these cases.

Dennis Sieben, Private Citizen, Carson City, Nevada:

I am speaking to you because my father died a slow, painful death from gross medical malpractice. He went to a hospital for rehabilitation after surgery. He was totally reliant on the hospital. The hospital failed to properly feed, turn, or clean my father. He was malnourished and dehydrated. He lost over 47 pounds in just over one month. These simple preventative measures would have avoided the skin breakdown and pressure ulcers. We noticed a foul smell in the facility. The skin breakdown progressed to painful necrosis. I would hold my dad to comfort him as much as possible as they stripped the dead areas until they were raw. He would wince because of the intense pain and fight to hold back the tears. He declined so much that he eventually died. There was a total breakdown in patient safety from the doctors and nurses. Those responsible for my father's safety all got paid for work they did not do. The state investigated and found that they had violated numerous known standards of care. The hospital favored its own profit over the safety of its patients.

Our family was impacted in so many different ways. My parents were married for 51 years. My mom lost her soul mate. My mom and her four children filed suit, and our case was capped at \$350,000 despite the gross negligence of the hospital. Our healthcare system failed us. They were not held accountable, and nothing has changed since. The only way we can truly protect our healthcare system is to hold those people accountable for what they have done.

My dad, who was a plumber, had a coffee mug with these words written on it: "The plumber protects the health of the nation." Unfortunately for my dad, this hospital did not protect his health.

Kevin Murray, Private Citizen, Reno, Nevada:

I have been asked to sit before you and tell the story of my priceless little girl. I want you to imagine playing with your granddaughter last Friday and then,

tonight, having to unplug her from life support. Following is what transpired over four days. My daughter was perfectly healthy Friday morning. Later Friday my daughter had an extremely elevated fever. I made two calls to doctors, but the doctors said it did not warrant an office visit. When I say elevated I mean 104 to 105 degrees. They said if it persisted to take her in on Saturday to urgent care. I got an appointment on Saturday; I saw a doctor. That doctor took a history and said, "Your daughter has a viral infection, an upper respiratory infection." I paid the doctor, and took my daughter home. I did not realize it would be the last time I would be taking her home. The next morning, Sunday, I went in to check on her and found my daughter in great distress. The fire department was called out. She was flown to St. Mary's where she was diagnosed with bacterial meningitis via a spinal tap. The doctors decided she could not be cared for there; it was better if she was transferred to Washoe Medical Center. She was transferred to Washoe Medical Center where my wife and I were told they were going to do a test for brain activity. That evening a test was done, and we were told there was no brain activity. She was brain-dead. We asked them to repeat the process. On Monday morning and Monday afternoon they tested for brain activity to appease us. Again, the results showed that she was brain-dead, and we had to remove her from life support.

I do not understand how you can quantify a life. You have bad doctors out there, and you are allowing these bad doctors to continue practicing.

What transpired over those four days—from a healthy little girl to one who I had to let die—is inexcusable. I had not one contact with a doctor, not two contacts with doctors, but three contacts with doctors. The standard of care was definitely broken, but these doctors are still allowed to continue because of the arbitrary cap. As a father, as a citizen, and as a husband I have to ask: with our state and our country unwilling to protect a life in the womb but willing to arbitrarily set a monetary cap for life outside the womb, why do we consider a life priceless? That makes no sense to me.

Georgia Woodard, Private Citizen, Carson City, Nevada:

In March of 2005 my life was changed forever when a doctor, whom I trusted, offered to perform a routine colonoscopy on me. I had no symptoms. He did not tell me that he was not trained in colonoscopy and that he had never performed one before. He did not tell me that his training was a one-day seminar in Las Vegas, where the colonoscopies were demonstrated on mannequins. I later learned that in order for a doctor to be certified for competency in a colonoscopy, he must perform at least 100 colonoscopies. I was the first. Under the instruction and supervision of a qualified colonoscopist, he should have performed 100 procedures. He did not. I learned

that the risk of perforation in the hands of a trained colonoscopist was less than 1 in 3,000. As a result of this doctor's deception and incompetence, my bowel was perforated during this procedure. I spent over a month in intensive care. My family was told I would die. I required a colostomy, which I lived with for many months. Fortunately I was able to be reconnected, so I no longer have to wear the bag, but it has taken me over a year to recover. I lost my muscle tone, so when I woke from the coma I could not move. I had a trach, a breathing tube, in my throat, so I could not talk. It was a panicky situation. I believe that this doctor and the hospital that allowed him to perform the procedure should be held fully accountable for their actions.

Megan Gasper, Private Citizen, Las Vegas, Nevada:

I had to have two colonoscopies performed by both the Shadow Lane Clinic and the Desert Shadow Clinic. The first procedure I had done was to diagnose colon cancer, for which I had a biopsy and had the polyp removed. I have to have yearly colonoscopies, so I had a follow-up appointment at the Desert Shadow Clinic. As a result, I am diagnosed with type II autoimmune hepatitis C. I have been undergoing treatment for 11 months. I have a 45 percent chance of a full recovery. I am 33 years old, and I have two children, a five-year-old and a seven-year-old. This has stolen a year of my life, and I cannot tell you that it will not take more. I have lost 12 pounds of muscle. I have had other issues that may seem small, but when you have to get out of bed every day knowing that you have to take medicine that will seriously affect your ability to even play with your children, it is hard to give yourself an injection.

I am in support of A.B. 495, a bill that will no longer protect the healthcare industry when they injure patients. The measure that voters approved was designed to limit frivolous lawsuits. It was not intended to protect doctors like Dr. Desai, who placed the health of patients at risk. Unfortunately, when you give people special legal protection there is always someone who will try to take advantage. Please right the injustice that was created when the medical malpractice initiative was passed. Please vote for A.B. 495.

Angela Hopper, Private Citizen, Las Vegas, Nevada:

[Spoke from prepared testimony ([Exhibit D](#)).]

I am 27 years old, I have two children, and since the surgery I have not been able to do a lot of the things I used to do. I used to teach my son how to skateboard, go fishing, camping, and hiking. I cannot do those anymore.

Misheline Maheu, Private Citizen, Las Vegas, Nevada:

I have been healthy all my life, but I had a bleeding ulcer, and I was transported to Desert Spring Hospital. The doctor who took care of me performed an endoscopy. As a follow up, two months later I had to go to the Shadow Lane Clinic where they did another endoscopy, but they also performed a colonoscopy. I was infected with hepatitis C. It is very hard on me because, at first, the people I was working with were shying away from me, thinking that they could catch it just by talking to me. They would not let children come to me because they were afraid I would give it to them. After explaining the situation it became a little bit better.

I am in support of A.B. 495, a bill which will no longer protect the healthcare industry when they injure patients. The measure that voters approved was designed to limit frivolous lawsuits. It was not intended to protect doctors like Dr. Desai who has placed the health of his patients at risk. Unfortunately, when you give people special legal protections there is always someone who will try to take advantage. Please right the injustice that was created when the medical malpractice initiative was passed. Please vote for A.B. 495.

Pauline Kennedy, Private Citizen, Las Vegas, Nevada:

I am here to speak for my husband who passed three days before Christmas in 2006. There was a total breakdown of medical care, starting with the pulmonologist, the medical-testing clinics, a surgeon, and a hospital. He had a cough for quite a while, and he went to a pulmonologist who had x-rays done. She said, "This is not cancer. Cancer is a mass. This looks like a spider web." She sent him to be tested at a medical lab. They diagnosed him with cancer. He went through hell. They tested him from the top of his head to his toes, and he waited a week to get the test results back. "There was no cancer; it did not spread." He went to a surgeon, Dr. Smith, in Henderson, Nevada, who said, "I will take a portion of your lung. You will be in the hospital for six days. You will be just fine." The day he was to have surgery we were in the anteroom, and the anesthesiologist came in and told Dr. Smith, "Do not do surgery, you can handle it another way. His kidneys will not hold up under surgery." Dr. Smith said, "He will be fine." He performed the surgery. On the second day the doctor came in and said, "I have good news and bad news. The good news is that you never had cancer. The bad news is that we took your lung anyway." The doctor told him he had valley fever which is totally correctable with antibiotics. Instead of six days in the hospital he stayed for six weeks and spent another two weeks in rehabilitation.

He never recovered. He was on dialysis for the rest of his life. He had five grandchildren, and five great-grandchildren, four of whom he never got to see. This is a total breakdown. We saw two law firms to try and correct this. They

would not take the case. They said we have a good case, but they will not take it because of the cap. By the time they collect all of their information, make studies, and so forth, there is no money in it, so they will not take the case. He passed away. We celebrated our 50th wedding anniversary while he was in the hospital.

This needs to be corrected. I do not know how to correct it. I am not for frivolous lawsuits. We all remember the doctors walking to California and all that. We all knew it was a bad law. My husband had a long life ahead of him. I am alone now and struggling. I think that someone needs to correct this. Whatever you people can do, I would appreciate it and so would my family.

Jim Crockett, representing the Nevada Justice Association, Las Vegas, Nevada:
I am an attorney and have been in practice for over 35 years. I am here on behalf of the Nevada Justice Association, and I am here in a representative capacity for the people with whom I have spoken regarding medical malpractice claims over the past six years since the 18th Special Session of the Legislature in 2002. During that time I have interviewed, or reviewed medical malpractice intake forms, or spoken on the telephone with over 750 people. We were not able to help any of them, however. It had to do with two primary problems. The first was the statute of limitations, and the second was the cap on damages.

Oftentimes, this legislative effort is framed as a dispute between doctors and lawyers, but is not. We lawyers work in a representative capacity. When we speak, we speak on behalf of the people who cannot speak for themselves. I am sure that if even ten percent of the 750 people I spoke with, but could not help, knew about the hearing today and the fact they could come testify, they would be here to do that, but by and large these are not things that are in the common experience of regular citizens. Instead, they are things that are known about by people who traffic in law and legal issues and, in this case, medical issues.

The reason that the statute of limitations and the cap were problems for the people who I spoke with, and made it impossible for us to be able to help them with their case, ran this course: In some instances involving the wrongful death of children, senior citizens, or stay-at-home moms, the families understandably spent months trying to cope with their grief, loss, and sorrow before they were prepared to go talk to a lawyer to find out whether or not they had a meritorious case. As a result, by the time they had contacted me or another lawyer—because we were not necessarily the only firm they spoke to—many months had gone by. The records needed to be collected, medical experts needed to be contacted to give their opinions about whether or not there was negligence. If

there was negligence, then another expert needed to be contacted about whether or not it caused the problem the person had. If so, another expert is needed to determine if that problem caused the death. In the time that was remaining it was either impossible or unlikely that we could put together a properly documented case within the one-year statute of limitations period. Many times people contacted us after 12 months, after the limitations period expired.

Secondly, people who were injured through medical negligence spent weeks or months trying to correct the problem, let it run its course, or seek out medical care from other medical providers to try to fix what had happened to them. They would use up months, sometimes beyond the one-year statute, and therefore we could not help them.

The second category had to do with the caps on damages. The most heart-wrenching cases were the ones like the woman who just testified: death or injury to a senior citizen, where the medical issues are so complex they would require multiple experts to put a case together, and because of the cap there was no way that a lawyer could produce a result for the injured party or family after the expenditure of all the expert witness fees. Literally, nothing could be done. It was very frustrating to hear people say, "You do not understand, this was gross negligence. They removed the wrong lung." We had to say, "In the original law there was an exception for gross negligence, but that exception was eliminated under the KODIN initiative. I know this is an extreme example, and it does involve gross negligence, but there are no exceptions to the rule."

I am here today to tell you, on behalf of the 750 plus people I spoke to that if you would just return the statute of limitations to what it was before and if you would reinstitute the exception for gross negligence, giving the opportunity for those cases to be heard, that would be a great step forward from where we have been for the last six years.

Assemblyman Manendo:

My mother was a part of this debacle at the endoscopy center. For a long time our family was at its wit's end because we did not know what was going to happen. Thank God she was fine, but we did not know that for a long time. I know the pain she went through. There were sleepless nights, and she was absolutely sick because she thought this was going to be the start of the end of her life.

Marilyn Mora, Private Citizen, Reno, Nevada:

I am in support of A.B. 495. As the survivor of two cancers that were found in prestages, I want to live and work in a state that attracts and maintains the best and brightest doctors, but I am also here to represent my husband who died in December 2004. I have a lawsuit concerning my husband's medical care, which is scheduled for a jury trial in January 2010. The best and brightest doctors in our state should be held accountable for their actions.

I am happy that the Nevada Supreme Court also recognizes the importance of accountability for doctors as was seen in the recent jurisdictional decision concerning my case: an out of state radiologist who erroneously read my husband's Magnetic Resonance Imaging (MRI) electronically can be sued for medical malpractice in the State of Nevada. The California radiologist in the case contended that she could not be sued in Nevada even though she read my husband's MRI and wrote the MRI report. The Nevada Supreme Court disagreed.

My belief is that the legislative process should not determine a limitation of \$350,000 in noneconomic damages in medical lawsuits. We have a legal system that should make that determination.

I also urge you to revise the time limitation for filing complaints. Please allow adequate time for patients or surviving families to file such complaints, because consideration of the treatment and the standard of care most likely occur after the treatment or after death.

There should be no ceiling in medical malpractice. Our courts in Nevada have the power to set aside excessive verdicts. Medical malpractice lawsuits are complex. A cookie-cutter approach to noneconomic claims is not the answer. Individuals should not be deprived of compensation for the consequences of medical malpractice injuries. In many cases noneconomic injuries far exceed economic damages.

We need competent doctors in the State of Nevada. We also need businesses that can operate cost effectively with reasonable healthcare costs in the state. I am in support of A.B. 495 and do not believe this drives competent doctors out of the state or drives out existing or new businesses due to healthcare costs. Medical malpractice lawsuits, again, are very complex. For that matter alone, people who pursue medical malpractice claims should not be typecast as bringing frivolous claims. I can tell you there is nothing frivolous about being involved in a medical malpractice claim. It is a long and arduous process for a claimant. It makes them relive, over and over, the original pain they suffered.

At the end of the day I ask you to walk in my shoes if my husband's claim is validated by a jury. The jury should decide my family's pain when a daughter's 16th birthday was missed by three months, a 25th wedding anniversary was missed by four months, and a father's 90th birthday by 6 months. Consider the pain and suffering when there is no father to walk my two daughters down the aisle at their weddings, and there is no father-daughter dance. Please support Assembly Bill 495.

Karen J. Johnson, Private Citizen, (City Unknown), Nevada:

I would like to share with you the story of my lovely young 31-year-old-daughter, Amy S. Moore, the mother of my two grandchildren who died on November 9, 2003, due to the negligence of Dr. Skogerson and the Carson Tahoe Hospital staff. The surgery he performed on Amy was not successful, but Dr. Skogerson could not have known that because he left for Florida the same morning he performed the surgery. Dr. Hutner was left to care for Amy after surgery. Dr. Hutner had no experience in this type of surgery. Dr. Hutner observed that he advised Dr. Skogerson to fix the umbilical hernia Dr. Hutner and Dr. Skogerson found while operating on Amy's abdomen. Dr. Skogerson must have been afraid he would miss his airplane. Dr. Hutner informed me that he could have saved Amy if the staff would have taken Amy's vital signs when they were supposed to.

Yes, I am involved in a lawsuit. Would not you be? These children should not have lost their 31-year-old mother. The children not only lost their mother, they lost their home, friends, and Amy's love. The children lost all confidence in the hospital and the doctors. I am not involved in the lawsuit because of financial gain. I am involved to see that this doctor and hospital compensate these children for their reckless performance that caused the death of my young, beautiful daughter. If the people of this wonderful State of Nevada continue to make it harder to file lawsuits against doctors and hospitals that do not perform up to standard operating procedures, there will not be any checks and balances. If we the people continue to allow mistreatment to go unchallenged, more innocent people will die unnecessarily. If tort reform continues to favor misfit doctors people like my grandchildren will never be able to afford an attorney to compensate for their loss.

Holly Meader, Private Citizen, (City Unknown), Nevada:

I am here today to tell you the story of my son, Nicholas, who is 17. Nick suffered a severe tibial plateau to his lower right leg, an area around the knee. He was taken by ambulance to the emergency room where I thought we were seeing a doctor but found out after the fact that we were simply seen by a physician's assistant (PA). A medical doctor never came into our room. We were instructed, after the x-rays were taken and they realized where the bone

was broken, to go home and follow up with an orthopedic surgeon in a couple of days. We went home, I called the next morning for the appointment, but I could not get one until the following afternoon. That was the first opening they had. When we got there, not quite two days after the injury, Nicholas was immediately sent to emergency surgery in an attempt to save his leg and his foot. His leg is now about three inches around, about half the size of his noninjured leg. He will walk with an orthotic device for the rest of his life, he will be on nerve medication indefinitely. There were many indications along the way that Nicholas should have been seen by a medical doctor and admitted to the hospital, where an orthopedic surgeon should have been called in to evaluate his condition before any decision was made to send him home.

This was completely avoidable, and I believe that all known standards of medical care were completely violated. It was clear medical malpractice; I believe the doctor and the PA made gross mistakes that have essentially cost Nicholas his leg. Three hundred and fifty thousand dollars may seem like a lot of money to some, but when you are telling an active 17-year-old boy that that is what your leg is worth, it is a hard pill to swallow.

Doctors who make these bad decisions and do not practice their profession diligently should not be protected by the law. The law should protect the victims of their mistakes and carelessness. I urge you to vote for this bill to extend the statute of limitations and to allow the provision for gross negligence to be considered, so that the victims of these bad decisions can have the best quality of life they are entitled to.

Dr. Rudy R. Manthei, Las Vegas, Nevada, Chairman, Keep Our Doctors in Nevada:

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

The reforms that we passed with the initiative have failed to be mentioned. There is no cap on economic damages. Also, any exception to the noneconomic damages will eliminate the insurance rates and resume the practice of defensive medicine. Also note that there has been no increase in the frequency of malpractice claims in Clark County since the passage of the initiative.

Assemblyman Horne:

I have a couple of questions. The amendment just came today. Have you had an opportunity to review the amendment?

Rudy Manthei:

No, I have not, nothing more than what was presented today.

Assemblyman Horne:

Did you have an opportunity to see it while we were listening to the prior testimony?

Rudy Manthei:

Briefly.

Assemblyman Horne:

Are you still opposed to the bill with the narrow scope dealing only with gross negligence and the extension of the statute of limitations by one year?

Rudy Manthei:

Any exception for noneconomic damages creates a problem with the carriers and the progress we have made. We removed it initially because the punishment is in the criminal statutes. As far as holding doctors responsible for malpractice, the recourse is still there in the criminal statutes. I believe that is the direction we should be going with Dr. Desai. The issue was brought up as to whether the passage of the initiative has created a problematic resolution of malpractice claims. We had problems prior to the initiative, and we still have problems now. The issue, essentially is, do not hold all of healthcare responsible for the actions of a few. The issue needs to be addressed by the medical board as far as dealing with licensures and not by penalties that are going to create a hardship for Nevadans.

Assemblyman Horne:

You believe that the absence of an exception does or does not protect your bad physicians?

Rudy Manthei:

I do not think it makes a difference. If you have gross negligence it is criminal. Obviously what is in place right now has not changed things as far as bad physicians. Bad physicians should be dealt with by the medical board. I do not believe that having an exception will change that behavior.

Assemblyman Horne:

I have heard about the \$380 million savings. Could you outline how Nevadans save \$380 million a year?

Rudy Manthei:

Look at Dr. Hamm's report, where he broke that down into two different aspects ([Exhibit F](#)). Part of that is the direct savings as far as malpractice premiums for healthcare professionals. The practice of defensive medicine,

which still occurs to some extent, is where Dr. Hamm has equated most of the cost savings.

If a physician is afraid that everything he does will come under scrutiny as far as malpractice, he will tend to over-utilize every blood test, every x-ray, and every modality in order to protect himself legally. That practice of defensive medicine, which has proven to be very cost ineffective, was occurring during the crisis when we did not have enough physicians. Realize that in 2001/2002 there were \$22 million in awards against southern Nevada physicians, whereas in the previous five years there were \$21 million in awards. That type of risk essentially changes the practice of physicians to the practice of defensive medicine.

Assemblyman Horne:

With this proposed amendment, that advance from defensive medicine should not change because this amendment only addresses gross negligence. So there would be no reason to return back to defensive medicine.

Rudy Manthei:

That would be hard to say. What is gross negligence? For example, the two exceptions from A.B. No. 1 were exceptional circumstances with gross negligence. What is that? Any case that people think is bad enough may fall under that purview. That would be the interpretation of a judge. If you go back to creating exceptions, you are going back to the same uncertainty as to what gross negligence really means.

**Robert Byrd, Chairman, Independent Nevada Doctors Insurance Exchange,
Las Vegas, Nevada:**

We insure approximately 15 percent of the practicing physicians in the state.

As you know, we have had a series of insurance malpractice crises in Nevada. These were in 1975, 1985, 1994, and 2002. I know it is not considered wise to blame the lottery mentality as the cause of these crises. As has been adequately pointed out in the past, there have only been a very few large "bell ringing" awards in Nevada; however, those few cases have gotten the attention of the insurance companies, loud and clear. From that point forward the practice is to not consider culpability as an issue. If you have a case that has severe damages, or if you have a case that is going to elicit significant sympathy from a jury, settle the case. Do not go to court because you are going to get banged. As a result, the frequency of claims in Nevada increased exponentially from a low of about 8 percent in 1986 to a high of 16 to 17 percent in 2002. The demands of the attorneys became more and more

onerous; they became more difficult to negotiate with. The balance of power had shifted to the plaintiff's side. Predictably, premiums increased.

The fact is there is a very solid ceiling as to how much premium a doctor can pay. As soon as you get near the ceiling, another crisis occurs. I have been working very closely with doctors for approximately 34 years in the State of Nevada. A few truths have come through to me. There is no air of indifference. That does not exist. Doctors care dearly about their patients. I can tell you that they actively support and get involved with anything that will improve patient care or patient safety. They have always supported legislation that is appropriate in that area. They advocate for improving and continually reviewing their office procedures and their office staff procedures. They regularly participate in risk management programs. They do not just go to show up, they participate. They are constantly upgrading their own skills through continuing education. They do all they can, and they have consistently done that.

The tort reform, which was passed through a series of efforts from 2002 to 2004, is working. Premiums have gone down, and they should continue that trend. Competition for the malpractice premium dollar is now alive and well, from 2 carriers in 2002 to 12 carriers who are actively seeking that business today. The claim frequency, as far as my company, is down 40 percent. That is a big number. Interestingly, the average cost of claims, what we call severity, has stayed pretty much the same. If you read the Division of Insurance report, they suggest that severity is down 31 percent, but that has not been our experience. It has finally provided a very stable environment for the medical delivery system.

The effect of A.B. 495—and these things are fairly predictable—will be to return the frequency of claims to the pre 2002 levels. My actuaries are one of the leading actuarial firms in the country. According to them, premiums will initially increase 50 percent. It could be as much as 65 percent. Competition will slowly disappear. Doctors will once more be forced to leave Nevada. Patients will then have limited access to doctors, and the level of care will deteriorate.

Chairman Anderson:

How long have you been in Nevada? Has your previous insurance experience been out of state or has it all been in Nevada?

Robert Byrd:

I started my insurance career in California. I did not get to Nevada until 1963.

Assemblyman Carpenter:

I know when we buy workman's compensation and other insurance, the insurance companies come around and check what we are doing to see if there are any problems we should correct. Do you do the same thing with doctors and other facilities you insure?

Robert Byrd:

We certainly do, but not as regularly as you might find with a workman's compensation carrier. We have some laws that we have to worry about, the privacy of patient records, for instance. If we are insuring a surgical center we will do a physical inspection. In addition to that, we offer regular risk management seminars. We have a person who does those and is very experienced. I think we had one last week in Las Vegas. We had over 100 doctors involved in it. That is the extent of what we do. We act upon anything we see that suggests there is a need for us to go into a doctor's office. We recently had a renewal, for instance, where the doctor had two claims in a row after a very clean history. Our primary concern in that case was what went wrong in the communication process because they were similar-type cases. We went to visit with the doctor and see if we could figure out if there was a common thread that could be avoided in the future.

Assemblyman Carpenter:

What do you do if you find something wrong? Do you make sure it is corrected?

Robert Byrd:

We try to, and we follow up. If it does not get corrected, that doctor becomes uninsurable.

Assemblyman Horne:

Have you had an opportunity to read the amendment that was presented involving gross negligence and the extension of the statute of limitations by one year?

Robert Byrd:

I got a very quick view of it.

Assemblyman Horne:

Listening to testimony on gross negligence, you had stated in your testimony that the claim frequency was down 47 percent?

Robert Byrd:

Forty percent.

Assemblyman Horne:

That is overall claims, everything. I think Dr. Manthei stated that the number of gross negligence claims was low. If we went to just a gross negligence exception—if we are talking about a small number—you would still have a high number of medical malpractice cases that would fall underneath the cap and should not affect any type of lawsuits or premiums.

Robert Byrd:

I do not know how small that number might be. I admit that I read it very quickly, and I am not an attorney, but it looks to me like a very broad definition of gross negligence, which could bring a lot of cases.

Assemblyman Horne:

I do not practice in this area of law either. I think Mr. Bradley outlined how it would be addressed in court, where a jury would make the determination as to whether that standard of care had been met. Gross negligence is the failure to exercise the required degree of care, skill, or knowledge that amounts to the conscious indifference to the consequences that may result in gross negligence and a disregard for and the indifference to the safety and welfare of patients. Everybody knows about the endoscopy center. I think it is safe to assume that would fall under, at least, gross negligence. This amendment would say that they are not protected by KODIN, or A.B. No. 1 prior to that. You say that this step is going too far and would make the entire system unstable again?

Robert Byrd:

No. I did not say that. It looks to me like a very broad definition that could bring a lot of cases, a lot more than prior definitions I have heard of. I think it needs some study.

Assemblyman Horne:

This type of harm could happen again. Is it possible that you could find a way, without doing some expansive study, to say: there are certain people in our profession who operate outside of the standard of care, they should not have these protections, so let us not give them the protections and still provide a stable environment for good doctors.

Robert Byrd:

In the world we live in I would hope that we could sit over a cup of coffee and hammer that out in about ten minutes.

Assemblyman Horne:

I think Dr. Manthei suggested the redress for such instances should be sought with the medical board or the criminal justice system. Is that your position today as well?

Robert Byrd:

Yes. I agree with that.

Assemblyman Ohrenschall:

When there is a bad actor, when there is a doctor like Dr. Desai, do you think that doctor should get the benefit of the existing \$350,000 cap, when there is gross negligence?

Rudy Manthei:

As far as Dr. Desai is concerned, the actions necessary to stop that behavior is truly, I believe, a medical board issue, taking away his license. If you are looking at penalties and you are asking, "Is a cap or a limit on noneconomic damages of \$350,000 sufficient in this case?" I would ask, "Pertaining to whom?" Pertaining to an individual who takes a blood test? Like you, I had family members who were there also. I know there are legislators who had blood tests taken, and the blood test was normal. Do I believe that a \$350,000 award in that instance is not fair? I would say it absolutely is fair. I think what you are essentially asking is, "Does this protect the doctor or create a situation where a doctor would continue malpractice without the consequence of having noneconomic damages greater than \$350,000?" I would say that physicians who practice in this manner obviously have issues of ethics and have crossed over. I do not think that monetary penalties work when you are dealing with ethical or unethical individuals. I think what is needed is much harsher than that, remove their license and their ability to practice.

Assemblyman Cobb:

We have already heard testimony that the current statute—even the amended bill presented to us today—has absolutely no effect in terms of the criminal prosecution or the regulatory prosecution of individuals who are the bad actors in medical society. It is your contention that those processes, together with the recovery for economic damages, which includes lost wages, medical bills, legal fees, and an additional recovery for pain and suffering of up to \$350,000, all grouped together, act as an effective deterrent to this type of behavior as well as an effective punishment after the fact?

Rudy Manthei:

No. I do not believe that economic penalties are a deterrent. I think the system that needs to be fixed is not the medical malpractice system, but the medical

board and oversight of hospitals and facilities dealing with physicians who are impaired. They need to have the ability and the resources to deal with these physicians swiftly in order to protect the people in Nevada. That is where the solution is, not with creating penalties that will affect the access to healthcare for all. Nevada is in a situation where our level of uninsured and our access to healthcare is critical. Anything that taxes that system even more, which these penalties would, affects access to healthcare for others, and that is not fair either. The most appropriate course of action is to deal with that physician's license, not penalties and fines. They have not worked. When we had issues, we voted for the initiative and passed A.B. No. 1. We are still having issues. If it were solely a tort issue, why is it not resolved with the actions we have taken? It is a multiple-disciplinary problem that needs to be dealt with. It is an ethical problem that has to be addressed.

Assemblyman Cobb:

My overall question had to do with the whole system. You already have criminal, you have regulatory, and you have civil. Civil includes economic damages, which would cover the loss of wages, medical bills, and legal fees, as well as a noneconomic recovery up to \$350,000. Do you think that all works together to compensate as well as punish?

Rudy Manthei:

I think the system works the way it is set up now, insofar as trying to make the individual economically whole. The parameters of the initiative not only created some limits but also created some resources to protect the individual as far as periodic payments and collateral sources. As the reward becomes larger, more money goes to the individual and less to the attorney. I do believe that system works and is effective.

Assemblyman Horne:

If we are just talking about gross negligence claims, do you have an idea of the percentage of gross negligence claims we have had since KODIN, claims that would have been defined as gross negligence under A.B. No. 1?

Rudy Manthei:

I think that would be difficult to say based on what is being proposed here, having a jury determine what constitutes gross negligence. If you asked every individual who spoke earlier, they truly believe that their case would fall under gross negligence. The problem with a jury is the difficulty in understanding the complexity of the case, especially in neuro cases, cerebral palsy (CP) cases, and so forth. Whenever malpractice happens to us or to a family member, we would consider that to be gross negligence.

Assemblyman Horne:

If it gets that far, the attorneys are supposed to educate a jury. We do not expect our jurors to have medical degrees, so the attorney explains to them what the standard of care is for procedure X, whether or not it was met, and explains the difference between gross negligence and an accident. Sometimes bad things happen during procedures, but sometimes doctors make bad decisions during procedures. The issue is trying to find the difference between an accident during a procedure and a bad doctor's bad decision.

Rudy Manthei:

In a perfect world it would work that way. Unfortunately, you can get both sides of a question, especially on neuro cases and CP cases. Finding out where the problem occurred can be very complicated and very difficult for someone to understand.

Dr. James Swift, Medical Director, Sunrise Children's Hospital, Las Vegas, Nevada:

I am speaking to the effects of this bill on the pediatric medical community in general and specifically to the care provided by pediatric subspecialists. I have been a licensed physician in the State of Nevada for the past 13 years. Our group represents 40 specialists in the areas in pediatric intensive care, neonatology, pediatric emergency medicine, and pediatric hospice medicine, and I am the only forensic child abuse physician in the State of Nevada.

When the original malpractice crisis came up between 2002 and 2004, we were insured by CNA Surety. When CNA notified the state that they would be leaving the market, we were left scrambling to find adequate insurance. At that time we saw a 300 percent increase in our overall rates. If I can bring that home a little bit on a personal level, my prevailing rate at the time for my malpractice insurance was \$15,000 a year. It immediately went up fivefold to \$75,000 a year. At that time we had licensure in other states as well.

The passage of the 2004 reforms really benefited our situation. We saw a gradual reduction in the rates we were paying and a stabilization in terms of our ability to be insured. Because of changes to the Nevada law, a company that had not written before in the State of Nevada, the Doctors Company which had insured us in California, entered the market at that time. We are currently insured in four states: Nevada, Montana, Illinois, and California. My malpractice rates in those other states run, on average, \$18,000 a year. My malpractice rate here still sits in the \$55,000 to \$60,000 range. Again, the rates have come down, but we are still, at least as it relates to pediatric healthcare, much above the other states we deal with. Nonetheless it is part of our overhead costs. That does not include the tail coverage or the extended

reporting that we need to pay for our physicians when they decide to leave the state. Those rates can vary anywhere between \$85,000 and \$150,000. In the last month we had a great physician of ours leave the state for family reasons with a \$150,000 tail that our organization paid to satisfy that particular reporting structure. Again, it becomes a business component for our organization. While we represent a small fraction of physicians licensed in the state to be pediatricians and pediatric subspecialists, we are the majority of those vital physicians providing the care for the critically ill children in this state, either at the emergency level, neonatology, or the pediatric intensive care unit.

Elevating liability premiums creates an economic concern that will fundamentally alter what we are able to do in terms of recruiting physicians and retaining those physicians. We know that the surgical subspecialties related to pediatrics are also under pressure with these rates. If we see the rates go up, we can expect that surgical subspecialists may opt out. Those patients will default to coming to the hospital where we provide the care in the emergency room (ER) or the intensive care unit (ICU). Rather than treat patients, we will likely triage patients out of the state because we will have lost the surgical subspecialists to treat the very critically-ill patients.

While I know the legislature is working on behalf of the physicians in the state with regard to Medicaid cuts, trying to reinstitute some of those, in the 13 years I have been here running our organization we have not seen an increase in Medicaid reimbursement or cost of living increases for that program. As you know, many of the private insurance companies mirror that. When you add to that the current considerations we have for our malpractice premiums and the changes that could occur, it really presents a perfect economic storm for us in the pediatric medical community. In Nevada we trail the bordering states in our ability to recruit and retain subspecialty-trained pediatric physicians.

Does Nevada still have a problem with its malpractice programs? Our answer has been no. We are stable, and it brings confidence to physicians who want to come here. We know that medical groups such as ours are beset by the higher cost of doing business, including health insurance costs we pay for our physicians. We have wage pressures because there is an ever-shrinking pool of these subspecialists in the United States. The ability for us to pay for these physicians and maintain them in the state is, at times, very difficult. If we add additional layers of malpractice liability costs, it is going to have a devastating impact on us economically, and we carry the burden that, as many people have pointed out, the children run the gamut in terms of what may happen later in their care. As much as we police our physicians, we know there are consequences that may come up much later in life, up to the 18 year range.

We do not currently approach the number of pediatric subspecialist physicians we need for the state. This bill will have a detrimental effect on our ability to recruit those physicians in the future.

Assemblyman Horne:

You said that you had medical malpractice insurance in other states, but you practice here?

James Swift:

We are a large multispecialty group that provides these types of services in other states as well. We are a hospital-based group that contracts with hospitals for providing physicians to care for these patients. We are in Reno, Henderson, and Las Vegas, Nevada. We provide those services to the hospitals we contract with. We also provide those services at other hospitals in other states, so we can look at the cost of our malpractice insurance here in comparison with other states.

Assemblyman Horne:

When you were telling us the premium costs, were you talking about your premiums? The insurance company insures each individual physician. If you are practicing in Nevada your insurance premiums will obviously be different here than in another jurisdiction where you are licensed but not practicing.

James Swift:

Correct. I practice in all of those states. The rates I mentioned were specific examples of my rates. Being one of the senior physicians here in the state in this particular specialty, I think that gives an illustration of where the rates have been. I have been a practicing physician in the state of California for 15 years, as well as a practicing physician in these other states where we contract for these services.

Assemblyman Horne:

I am trying to understand the disparity between insurance rates. You said \$18,000 elsewhere and \$50,000 here.

James Swift:

Correct.

Assemblyman Horne:

If I am an insurer I would ask, "Where are you seeing most of your patients?" I assume that is where your rates would naturally be higher, because even though you have the ability to see patients in another state, you are primarily

seeing them here. You are part of a bigger group, but you are seeing more of your patients here.

James Swift:

I see an equal number of patients in the state of California and the State of Nevada. I work a lot. For instance, I will take a couple of our physicians who are what we call "moonlighting physicians." They work for us between a couple of states. They have a lower premium rate in the state of California than they do here in the State of Nevada. While we have never really approached the rates we see in California, we have been pleased to at least see a rate reduction in this state over the last number of years.

Chairman Anderson:

You mentioned the Doctors Company that has been providing medical malpractice insurance on-again, off-again in Nevada. An earlier review of that particular provider showed a difference between the rates set in the northern part of the state versus the southern part of the state. Does that still remain true today?

James Swift:

I can comment from our experience of having physicians who are licensed to practice here in the north. The rates are the same now between the north and the south. We are a large enough group that they were happy to insure us. They said that the rates are going to be uniform. The default was to the higher-rate level.

Chairman Anderson:

The northerners were impacted to a different degree than they had been before as a result of this process?

James Swift:

Also the fact that the doctors were not affected. Our organization pays their malpractice premiums, so we provide that layer of security for those doctors.

Robert Byrd:

The frequency rate in the north is still just a fraction of what it is in the Clark County area, a factor of four to five times more claims per doctor insured in the south than there are in the north.

Chairman Anderson:

In the rural areas, is that true even though there are fewer physicians and fewer services potentially available because there are only three or four hospitals out there?

Robert Byrd:

We only have two zones in the state. One is Clark County, and the other is everywhere else.

Assemblyman Segerblom:

If you are talking about three times higher malpractice insurance rates in Nevada than in these other states where you are, is that because of the doctor or is that because of the insurance system? We have a law which is comparable to the other states now, so why are you paying a rate that is three times higher in Nevada?

James Swift:

At the time of the crisis when my rates went up, I had no claim history and no preceding claims history in the 15 years before that. It was what we thought was an arbitrary issue related to insurers leaving the state. With the passage of the KODIN reforms, initially, there was no change in our rates. We were first with Nevada Mutual until the Doctors Company entered the state. They claim the reason for these rates is the concern that the Nevada law has not been challenged at the Supreme Court level in the state, and there could be another shoe to drop. I do not know whether that is true or not, but that is one of the excuses that I have been given.

Assemblyman Segerblom:

Right now you are paying rates as though there was no cap on damages, so theoretically this change would not affect you at all.

James Swift:

No. We are paying rates that are lower. That \$75,000 was the maximum I hit. On average, our insurance rates are down about 22 percent for all of our physicians since the 2004 law.

Assemblyman Carpenter:

This question is for Mr. Byrd. Maybe you know, or does someone have the statistics on the number of cases that have been filed since 2002 or 2004?

Robert Byrd:

A complete study has been done by the Division of Insurance, which basically shows all of the statistics, the size of the claims, the number of claims, and the specialty in which the claims originated. It is a wealth of information that was just presented to this Legislature last month.

Chairman Anderson:

[Recessed at 11:11 a.m. and reconvened at 4:00 p.m.]

[The Committee was called back to order. Roll was called.]

Let us reopen the hearing on Assembly Bill 495.

Tray Abney, representing the Reno/Sparks Chamber of Commerce, Reno, Nevada:

In the chamber's agenda for economic vitality for Nevada, which is in our public policy manual that guides my positions here, we state our support for three specific things related to A.B. 495. We first mention our support for medical malpractice tort reform, which nearly 60 percent of Nevada voters approved in 2004. We mention our support for caps on noneconomic awards which A.B. 495 does away with, although I understand there was an amendment that was introduced this morning dealing with that. Third, we mention our support for the availability of and access to affordable insurance for employers.

We are worried that any bill that makes it more expensive for doctors to operate in this state makes it more expensive for all consumers of healthcare to actually get coverage and receive treatment. Just over the halfway mark of this legislative session, in other committees we are dealing with health insurance mandates, worker's compensation changes, and other bills that we fear would make it more expensive to run a small business, not to mention whatever tax package comes out at the end of this Session. My members want to provide health insurance and other benefits to employees, but we worry that we cannot take much more. We urge this Committee to oppose this bill and all others that threaten to leave more people uninsured or unemployed.

Assemblyman Horne:

Did you have an opportunity to review the amendment, and what is your take on the amendment?

Tray Abney:

I saw the amendment this morning. I am not a lawyer, so I am certainly not prepared to testify in favor of or in opposition to the amendment. I heard other testimony earlier this morning as to the broadness of the gross negligence language. I think our members would prefer certainty, and we worry that any kind of crack that you open for more lawsuits against doctors could drive up costs.

Assemblyman Horne:

With the primary supporters bringing forth an amendment, arguably that is what we are considering today.

Tray Abney:

I am concerned about anything that opens the door to not having caps on noneconomic damages, and I think the amendment does that. We still have concerns, although not as many concerns as we did with the original bill.

Chairman Anderson:

We will make Robert Kessler's testimony part of the record ([Exhibit G](#)).

I have a letter from Kenneth Zuetel, a licensed attorney. We will have it entered into the record ([Exhibit H](#)).

Dr. John Nowins, Las Vegas, Nevada, representing the Clark County OBGYN Society and Keep Our Doctors in Nevada:

America is now in an economic crisis that shows no signs of being resolved. Nevada is in the same economic crisis with no signs, at this point, of being resolved. Now along comes Assembly Bill 495, which essentially is designed to eliminate KODIN. This will recreate the healthcare crisis in Nevada. A healthcare crisis is not something that the people of Nevada need right now. They do not need to see trauma centers closing and major medical centers and clinics without doctors. Pregnant women who are about to deliver their babies do not need to suddenly find out that there is no obstetrician in the hospital. This would be totally unacceptable.

KODIN has been instrumental in bringing in hundreds of excellent healthcare professionals to Nevada who now call Nevada their home since KODIN was passed overwhelmingly in 2004. Very large centers of healthcare excellence are now opening up all over Nevada, especially in the south. We now have new brain surgery centers, stroke centers, cancer centers, and chest pain centers.

KODIN, as you know, has also been studied on an economic basis. As you found out today, Dr. William Hamm has shown that KODIN reform saves Nevada's citizens over \$381,000,000 each and every year. It is also important for the Nevada Legislature not to penalize the 99.9 percent of healthcare professionals who are doing a great and honorable job each and every minute of every day because of the actions of very few. It is also important to emphasize that when the people of Nevada voted in 2004 they successfully capped personal attorneys' fees so that by law the injured person will always receive the majority of any settlement. This is a very important factor of KODIN. Any injured person should be treated this way.

I hope most of you were able to see *60 Minutes* on CBS last night. There was a story about a cancer clinic shutting down in Clark County because of the economic crisis. Now we have A.B. 495, which could create a healthcare

crisis. Obviously, this would not be good for Nevada. Realize, also, that all of the tort reform aspects of KODIN of Nevada are in the California tort reform law, which has existed for over 30 years and is working very well.

It must also be stressed that the Nevada tort law is actually better economically than what exists in California. The main point is to preserve access to healthcare for the people of Nevada. KODIN has a proven record of doing exactly that. KODIN is working; please do not change it at all. It is not broken; do not fix it.

Assemblyman Segerblom:

Have you read the amendment that has been proposed?

John Nowins:

I have not. I have been going to emergencies in and out all day. I would vote not to change a thing.

Assemblyman Segerblom:

You feel that even if a doctor cuts off the wrong leg three times in a row, those individuals should be limited to \$350,000?

John Nowins:

That, to me, is something that a criminal lawyer might have to take up, something as gross as that. The bottom line is that KODIN has factored in medical expenses. One hundred percent of medical expenses would be paid. Physical therapy, pharmaceuticals, you name it, are paid 100 percent. On top of that the noneconomic damages kick in, which are far and beyond what has existed in California for over 30 years.

Assemblyman Segerblom:

You are saying \$350,000 is far and beyond what has existed in California for 30 years?

John Nowins:

Exactly. In California it is \$250,000.

Assemblyman Horne:

You said in response to Mr. Segerbloom's question that it is a criminal matter. You recognize KODIN is protecting what you characterize as a criminal. Being a good doctor, you get these protections, and somebody who is a criminal will get the same protections. Is that okay with you?

John Nowins:

It is never okay for anybody to cut off the wrong leg three times, but I can tell you that this law has existed in California for 30 years. It provides access to care, and patients are able to get care. It is working very well here.

Assemblyman Horne:

When somebody who, cuts off the wrong leg three times is protected by KODIN, would that not be a symptom that the system is broken, to a limited extent, but still broken?

John Nowins:

You are saying that KODIN actually protects that doctor?

Assemblyman Horne:

If you have gross negligence to that degree, and you have a cap of \$350,000 on noneconomic damages, the same cap that you enjoy as a good doctor, it sounds like protection to me.

John Nowins:

One thing that needs to be emphasized here is that every medical malpractice case in Nevada has to be submitted to the Nevada Board of Medical Examiners. They are also tracking everything that we do. If they saw that a doctor cutting off the wrong limb three times, I would expect them to act.

Assemblyman Horne:

People disagree with the board being the sole determiner of what gross negligence is.

Dr. David A. Johnson, Minden, Nevada representing the Nevada Academy of Family Physicians, Reno, Nevada:

I have been thinking a lot about the amendment to the bill. I am a family physician, I am a father, and I am a husband. My wife and I are victims of medical malpractice. A few years ago, after what I now know, as a physician, was negligence, I carried my unconscious wife down the stairs and took her to the hospital. With her blood pressure barely palpable, she was rushed into emergency surgery. Over the last ten years she has been in multiple surgeries. We continue to suffer from this. At the time I was not a physician. I did not know what I know now, but when we discussed it we felt that our justice would be served by making sure that physician could not repeat the same mistake. We did not seek economic damages. We felt that informing the Board of Medical Examiners would be the appropriate course of action so that this physician could be disciplined.

Since then I have become a physician, and I was in medical school when the KODIN laws were enacted. I was there when the trauma center was closed. The malpractice climate in our state at that time limited access to care. People died in helicopters on the way to the trauma center in Phoenix, because there was no trauma center here. We need to ask ourselves: what is the greater injustice? I feel that denying our state proper medical care is a greater injustice. We will lose physicians. In the written materials I submitted this morning, I provided the United Health Foundation's rankings for the entire United States ([Exhibit I](#)). Nevada is number 46 for primary care physicians. We are number 50 for pediatric subspecialists. If we doubled the number, we would still be 50. We rank number 48 for public healthcare funding. We rank number 50 for the number of children who are immunized. Our healthcare system has been squeezed to the point of almost being ineffective. It is embarrassing for our state to be at the bottom of the pile.

My medical schoolmates are doing residency in other states. Nevada is not a happy place to come back to. KODIN makes it a little bit better, but even after years doctors are still very wary of coming back here. Is it permissible for malpractice of a grossly-negligent nature to happen? No, it is not; however, from the position of a victim, all negligence is gross negligence. I think it is unrealistic to expect that we are going to remove the cap on gross negligence cases without abusing the tort system. I really feel that if we remove the cap, and allow it to be open season on those who commit gross negligence, we do not have a stopping point. Do we stop when we become like Florida \$300 million was awarded to a single plaintiff last year? Is that what a life is worth? Is that what a leg is worth? At what point do we start victimizing the patients who are innocent and the doctors who are innocent? I send patients out of state every day to get care because it is not available in Nevada.

I am a good doctor. I take care of my patients. They get my full attention every time I step in a room, and I fight for their care. That is why I am here today. I do not think that the tort system is perfect; I do not think that the medical system is perfect; but I think that the lesser of the two evils is to protect the innocent, those who have not harmed anybody.

Chairman Anderson:

What happens when somebody is harmed dramatically? I think of my sister-in-law who lost her fingers and toes and cannot change the diapers on her grandchildren because of a physician's mistreatment of a simple process, which was not supposed to cause other medical problems. How do you compensate for the trauma that happened to your wife? Do you think that should be okay? Do you think the Legislature should take greater action toward the medical board so that they are held to a higher degree of reporting to the Legislature

than they currently have? They report quarterly to us. There is a committee that reviews them on a quarterly basis; I happen to sit on it.

David Johnson:

That point was brought up several times this morning when the people in favor of the bill were testifying, and it was sidestepped on various occasions. It was part of the solution, but yet these doctors who committed gross negligence still hold their licenses. We are here today talking about more money, and those doctors are still hurting people. We have not yet stopped the problem. We have not halted the disease, yet we are talking about compensation to those who are hurt, and we are going to keep compensating those who will continue to be hurt. I really feel that money is not going to ease your pain and suffering all the way. I believe that there are doctors who need to be sued. I believe that there should be compensation. There is economic compensation and noneconomic damages. We have to ask ourselves: when are we hurting the general population in order to compensate those people in a noneconomic way? I believe that our efforts are a little misdirected because we should have been addressing the discipline of these physicians a long time ago. We have skipped a step and come to where we are now. To answer your question, yes, we should be doing more to discipline physicians. I do not believe that allowing open season on determining noneconomic damages is in the best interest of the people. I believe that will hurt the innocent.

Assemblyman Horne:

You pointed out that you should be protecting people who have done nothing wrong, but I would think these injured patients would be at the top of that list. I think it is important to keep that in mind. Also, since I have been a member of this body—I am in my fourth term and I have been a member of this Committee the entire time—there have been complaints about the lack of attention the medical board pays to disciplining or getting rid of bad doctors. I have said this to police officers, attorneys, and others. When you have a profession where the licensing board is slow to react, the profession should be the first to stand up and say, "You have got to go. Because you are practicing with gross negligence, it is hurting the rest of us." Punitive action such as noneconomic damages may send that message to the rest of you that these few doctors are causing a climate that is unacceptable. Maybe the rest of you good doctors will apply additional pressure to your board and say, "What are you doing?" I cannot tell you how many people have called me and emailed me about the endoscopy center alone asking "How come they have not reacted?" Rightly or wrongly, it is a good question whether the board is reviewing these cases in a timely fashion or an efficient fashion. It is an issue of balance.

I do not mean to be picking on the doctors, but I was happy to see the amendment when I came in this morning. To me the amendment says, "We victims are willing to come this far." But what the doctors say is, "No. What we have is perfect. We are not moving." It is clear it is not perfect, but the doctors will not give. It does not seem like there is any type of effort to compromise and try to fix the problem. That is what is frustrating. I invite you and other doctors to say, "Look, they make some good points here. We have some bad doctors, and it is not being adequately addressed by the board." What do we do? We cannot put our heads in the sand and say, "The current system is working. Let us not be like Florida, let us not be like others." Let us work together to fix it.

David Johnson:

When there is more clarity on what is gross negligence, I think the physicians of this state will be more comfortable. Again, I think there is a lot of potential for abuse. Everybody is going to want to have a finding of gross negligence because there is more economic reward for having gross negligence, and they will interpret it that way as much as they can.

Assemblyman Horne:

Earlier today it was stated that a jury will be given the definition of the gross negligence standard, they can look at the definition and check off boxes as to whether or not they believe that standard has been breached. Is it your position that when a judge says gross negligence has occurred in a particular case, you do not trust a jury to make that determination?

David Johnson:

I have to say yes. I agree that they are possibly not qualified to make that decision. As we listened to the testimony this morning, all the physicians in the room and I sat there and thought, "That might be gross negligence, and that might not be." I think it is difficult to make that decision without the help of a qualified professional.

Assemblyman Horne:

The problem is that those jurors are the same 60 percent you hold up saying, "They voted for KODIN."

David Johnson:

I guess we have some work to do.

Assemblyman Cobb:

I have to agree, in part, with my colleague. I have long held that there is not enough punishment in the legal profession for some of the stuff that lawyers do

and get away with. Frankly, from some of the testimony we heard today, maybe there is not enough being done by the medical board. Do you feel that not compensating claimants for noneconomic damages over \$350,000 is somehow going to better address malpractice than examining the medical board about how strenuously it regulates its doctors?

David Johnson:

I think that from the perspective of discipline, we will improve the care of medicine in this state. My insurance company is going to pay that settlement. Whether it is \$350,000 or \$1 million, my premiums are still going to go up. I do not think that you discipline doctors by charging their insurance company more money.

Dr. Paul Stumpf, Private Citizen, Reno, Nevada:

I had the pleasure of speaking to this Committee five years ago when we had the first emergency crisis. At that time Saint Paul had pulled out; that was my carrier. My insurance went from \$25,000 to \$56,000 overnight. I had not been sued. Fortunately, over time we were able to get with Inland Insurance, the independent company in Nevada, and my rates have come back down to a reasonable level of about \$25,000. In fact, we have been notified that we will probably get a decrease in our premium. In terms of the cost of insurance, the current system is working.

I would like to address one of the questions Assemblyman Horne has been asking. I would like to use the analogy that this is like our healthcare premiums. Your health insurance rates have probably gone up every year even though you have never been sick. Why? Your rates go up because you are in a pool of insureds, some of whom are getting sick or using excessive amounts of healthcare dollars. You are paying for the privilege of still having insurance by paying increased rates. The same is true for malpractice. Yes, there are only a small number of bad actors, as you said, but it affects the greater pool of physicians because the insurance companies raise everybody's rates to cover that small number.

I have a new partner, Dr. Galanopolous. He is a hepatobiliary and pancreatic surgeon. He is the only fellow-trained surgeon of that type in Nevada. He will leave this state if KODIN is reversed. He is the only one who does liver surgery in northern Nevada. Previously all of those cases were sent to Stanford, the University of Southern California, the University of California, Los Angeles, or any hospital that would take them. He is doing surgery here, which is a benefit to our patient population by making it easier for family members to visit them in the hospital. Also for the two local hospital-run insurance companies, Saint Mary's and Renown, they are not paying out-of-state insurance rates and

fees to California hospitals and physicians. He is also doing pancreatic surgery, which most general surgeons can do, but because of his special training he does it in one-half to one-third of the time it takes the rest of us to do it. That is an expertise we potentially can lose.

Unfortunately, Nevada has the stigma of not being a very good place to live. We find it very hard to recruit new physicians to this state. Our tort reform is one of the factors that helps us recruit new people.

Assemblyman Segerblom:

Is your partner leaving because KODIN would be changed to provide unlimited damages for gross negligence or because insurance premiums are going up?

Paul Stumph:

That was what he told me when I spoke with him on Friday. He did not know about the amendment. I would have to talk to him again regarding what his feelings would be about the current amendment. He is still here, but he has informed me he will leave if this state reverses its tort reform. He just got here in September.

Chairman Anderson:

Where did he come from?

Paul Stumph:

He did his fellowship in Texas. Prior to that, he was on staff at the University of California, San Francisco. Prior to that, he was in practice in Chicago, where he is from and his family still resides. He left Chicago because they had no tort reform and in four years his insurance premiums went from \$30,000 to \$113,000.

Dr. Joseph Walls, Private Citizen, Carson City, Nevada:

[Read from prepared testimony ([Exhibit J](#)).]

A young lady sat here this morning and talked about a surgeon who maybe wanted to get on a plane and did something wrong to her daughter. I know nothing about that case, but I knew that surgeon, and I know that the medical policing worked. He lost his license in Nevada. I do not know what happened with that lawsuit, but I know that the hospital where he worked put a moratorium on his cases and said, "Let us think about what this guy is doing. Let us see what is wrong here." The result was that the surgeon got a lawyer and sued the hospital. The hospital ended up paying him and his lawyer a substantial amount. Here was a case where the medical policing worked but the legal system did not. It was not the tort reform. I imagine that lady still has

her case pending. The reason that surgeon and his lawyer got money was because the hospital did not know what a jury would do if it went all the way to trial. There was some procedural way that they stopped him. That is our legal system at work.

Chairman Anderson:

We had a special session to examine and put out a piece of legislation that brought about some major reforms, yet physicians continued to pursue the issue after that. They would not wait to see if that law was going to bring about the needed reforms. Several times we have had discussions with the medical board. In your opinion why do you think that the physicians did not wait to see if the law was going to work? There were some physicians who thought those medical screening panels were good for eliminating bad physicians. Now we have neither.

Joseph Walls:

After that special session was one of the times I lost my liability insurance carrier, as they left the state because they did not yet see a stable market. There was the fear of people breaking through that soft cap. I was on the medical legal screening panel, and I also think it was a tragedy to lose it. I do not know how we lost it, but we lost it in the negotiations. Sitting on that panel, the vast majority of lawsuits were not because a doctor performed malpractice, it was because the doctor was a poor communicator or there was a bad outcome even when the doctor made the right decisions. The majority of those cases were found that way. You are trying to punish the few, but as you do so you punish all of us.

Chairman Anderson:

At the time we heard of the difficulty with obtaining medical malpractice insurance. I think that is the reason the doctors all got together and created their own corporation to make sure there was greater stability.

Joseph Walls:

After that special session, and the liability carriers were still leaving, we said, "We have a model right next door. It has been working for 30 years. Every time it is challenged, the California legislators push it away because it is working." We said, "Why do we not do that?" By compromise with the plaintiffs' lawyers we came up with \$350,000 for noneconomic damages, rather than the \$250,000 California had. Sometimes the question is asked: "Is \$350,000 enough?" That person may get a \$5,000,000 settlement. The economic portion may take them up to \$5,000,000.

Dr. James G. Marx, Private Citizen, Las Vegas, Nevada:

I am speaking against the amendment and against the underlying bill. I would like to do so for the following reasons. KODIN was passed a number of years ago as a result of the lack of access to medical care which was caused by the rapidly escalating cost of medical malpractice claims. The upshot of that was that physicians at the lower end of the income scale and physicians who are in particularly vulnerable specialties, servicing patients in an emergency capacity, were becoming frightened and intimidated regarding their ability to provide care without undue retaliation. The effect of KODIN has not been to deter patients from pursuing lawsuits against doctors. If you look at the statistics for lawsuits filed in Clark County over the last seven years you will see that the passage of KODIN did not deter lawsuits. More suits were filed after KODIN. Access to care is not denied because of the cap or the lack of the cap. As judgments in lawsuits become higher and higher, the actions of a few bad doctors, who should have been stopped and have apparently not been stopped, will then trickle down to the relatively low number of doctors who are practicing in Nevada.

To put things into perspective, California has approximately 120,000 doctors. Colorado, a state with approximately the same population as Nevada, has 16,000 doctors. In Nevada we have approximately 4,000 doctors of various varieties. We have a severe shortage and lack of access to care. For those doctors who provide care at the access point, the primary care doctors, the pediatricians, and the Obstetrician/Gynecologist (OB/GYN)s, increasing those costs significantly will discourage immigration into and even encourage emigration from Nevada. By doing that, we will have even less care. For those good doctors who remain here it will be even more difficult for them to provide the excellent care they have been providing.

This bill punishes bad doctors by increasing the amount that good doctors have to pay to subsidize those bad doctors' actions. This is not good public policy. I think we need to address the issue of bad practice. Malpractice does not mean malice, it does not mean malicious, and it does not mean gross negligence. Malpractice is what occurs when an inadvertent mistake in treatment results in some sort of adverse consequence to the patient. No one listening to the testimony this morning could help but be moved by those sad stories. Those are not about malpractice in many cases. Whether we have KODIN or limits on noneconomic damages has nothing to do with the occurrence of those horrible stories. Had there been no cap whatsoever, those stories would have all been told.

Passing this law is bad policy. It will be bad for Nevada, it will be bad for you, and it will be bad for me when we need to go to doctors. I think the bill and the amendment should not be passed out of Committee.

James L. Wadhams, Las Vegas, Nevada representing the Nevada Hospital Association, Reno, Nevada:

We have seen several bills in other committees in this legislative session that all try to deal with the perception of a decreased access to care. Empirically, we can tell you that we are having a difficult time maintaining the physician staffing in our hospitals, particularly for our emergency calls. This is derived from our population plus the number of physicians we have. The purpose of our testimony is to identify that the access to care is dependent upon the willingness of physicians to practice in Nevada. We all know from the prior crisis, when physicians leave, particularly when facilities shut down, all citizens are deprived of access. We think that is the most critical element here. Hospitals need doctors in order to perform those services. We especially need specialists. The sad consequence we saw in the early part of this decade is that many of the good doctors left, perhaps not the bad.

I have read the proposed amendment. I am not sure that it is sufficiently precise to give anyone any particular comfort, but more importantly, the existing system, the initiative that was passed in 2004, has produced some stability in decreasing insurance rates, which has allowed us to attract some subspecialists. To hear the stories of specialists leaving and centers being closed, where care was being rendered, puts all of us residents of Nevada back at risk of having to be transferred to hospitals in California, Utah, Texas, or wherever. The Nevada Hospital Association opposes this amendment.

It is important to recognize—and this has been referenced in some of the testimony—that the tort system is generally designed to compensate people for harm that has been caused by the actions of others. It has not historically been used as a method of trying to eliminate bad actors. We have seen that in auto insurance, general liability insurance, and medical malpractice. It is not a system that has the effect of eliminating bad practitioners. While we are sympathetic to the frustration on the regulatory side, we think that is where the focus needs to be. We suggest moving very carefully in tinkering with a system that has provided some stability.

Dr. Sandra Koch, Private Citizen, Carson City, Nevada:
[Spoke from prepared testimony ([Exhibit K](#)).]

Assemblyman Segerblom:

I am concerned about the bill because a doctor who makes \$1 million a year is trying to save a dollar by reusing a disposable item that puts people's lives in danger, that gives them hepatitis. How can you possibly justify limiting the injured person when that doctor is so greedy he would endanger lives to save a dollar?

Sandra Koch:

We need a systems approach to these kinds of problems. There should have been inspections, but we are short on funding, and inspections did not take place. As soon as we figured out what was happening, this particular physician's license should have come up immediately before the State Board of Medical Examiners. You should take a look at how the State Board of Medical Examiners is working. I think that is an excellent idea. I would very strongly support your doing exactly that, but when you increase the amount of money that is paid for noneconomic damages, you do not punish the bad physicians. The insurance companies are paying that money anyway, but it is not coming out of their pockets, it is coming out of the pockets of all the rest of the physicians who are doing their best to take care of people on a daily basis. I do not make anywhere near that kind of money. I just work day in and day out to do the best job I can delivering babies and taking care of women in Carson City. I would appreciate your support here. Look at the automobile industry. When we had lawsuits over who caused the accident, we went to no-fault insurance. We need to be moving in that direction so we can hold physicians accountable in an effective manner, so we can increase the safe practice of medicine and increase the speed of the payment of compensation that patients deserve when they suffer from medical harm.

Assemblyman Horne:

You said you think it is a good idea to examine the medical board. Are you aware that there has been more than one occasion, since I have been here, where we have addressed the medical board with bills that would have put doctors on probationary licenses and similar provisions, and we always get pushed back? We always get pushed back because they say, "It is going to affect our insurance. It is going to affect our licensing in other jurisdictions." It is not like this body has never tried to address the medical examining board. We have done it before in the short time I have been here, and we have always gotten pushed back from doctors.

Sandra Koch:

I would like to point out that the vast majority of bad outcomes in medicine are actually from systems errors. They result from a combination of circumstances that sometimes lead to an egregious outcome. They result from systems errors,

and those need to be examined in detail. Bad doctors are a very small minority. I am all for revoking licenses. Perhaps we need to have an interim study board take a look at exactly how the Nevada State Board of Medical Examiners is functioning. I have served as an expert for them, reviewing charts and interviewing a physician from Las Vegas who had multiple complaints, so I had an opportunity to see the system from that perspective. I have not seen it from the top down because I am a private practice OB/GYN doing the best I can every day to take care of my patients.

Chairman Anderson:

I have letters in support to be entered into the record from Assemblywoman Leslie and Bruce Tigney ([Exhibit L](#), [Exhibit M](#), and [Exhibit N](#)).

We will close the hearing on A.B. 495.

Let me open the hearing on Assembly Bill 497.

Assembly Bill 497: Provides for the collection and sharing of certain statistical data and information relating to the criminal justice system.
(BDR 14-1154)

This bill was put together by the Legal Division at the request of Mr. Horne and me. This relates to the kinds of records we traditionally look to, asking the Central Repository for Nevada Records of Criminal History to try to track various important parts of the legal process so that, through their office Captain we will have the essential information to make informed decision. Captain O'Neill has noted some problems in the bill.

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

[Spoke from prepared testimony ([Exhibit O](#)). A proposed amendment was referenced ([Exhibit P](#)).]

Chairman Anderson:

Is the statistical report that you currently prepare based upon a business year or a calendar year?

P.K. O'Neill:

A calendar year.

Chairman Anderson:

Would January 1, 2010, be more reasonable?

P.K. O'Neill:

I would prefer to go with January 1, 2011 because I will think it will take that long, as broad-based as this bill is. I am even somewhat concerned about the July 2010 date if it could be done in that short of a time period. We believe that we could make some minor changes in programming to make the pages available for the various agencies to do their own correlation and submit the data.

We need better guidance from you or somebody on what data is needed.

Chairman Anderson:

In 1993 the chairman of the Committee on Judiciary gave me the task of looking at the problem of recidivism. One of the major problems that Mr. Carpenter, who also served on that committee, and I found was the lack of information and statistical information to backup the needs for prison reform and court filings. In fact, if it was not for the limited information that was then available through your department, there would not have been anything. The prisons had some, but the courts had very few things. We have moved a long way since then. Every step of the way there has been kicking and screaming either by the courts or law enforcement in terms of trying to report different kinds of crimes. Luckily, you have been doing the work here, so Mr. Carpenter and I would like to make you happy. We do not want to put an undue burden on you, but the lack of statistical information was one of the big issues that came up in many of the meetings I attended. One of the major criticisms by the gentleman who was looking at the prison system, the Sawyer Center, and others was how woefully inadequate we were. I thought we were moving at breakneck speed because of the hard work of your department, yet they did not seem to think that was true.

P.K. O'Neill:

Having come in October 2005, I have to say that the division's uniform crime reporting unit is solely tasked with just the collection of criminal data: what crimes are committed, the times, the days, and the type of offenders. We also collect domestic-violence information, and recently, since the last legislature, we have been reporting data on crimes against the elderly. We have never been tasked with maintaining any records on recidivism, because it is not necessarily a police function. It is something, I think, that should come out of Corrections with the assistance of Parole and Probation, which does collect a lot of the information. Unfortunately, their electronic management system is antiquated and does not allow for a lot of demand. It is a very narrow-scoped and unwieldy unit. It was state-of-the-art 15 years ago when it was developed, but today it is nowhere near functional enough to fit your needs.

Although we signed in as neutral on this, I want to stress our first point. My division and I support better data collection; it is appropriate in this world today. It is what we all need to justify where we are and where we want to go. My issue with A.B. 497 is not with the spirit of the bill, it is with the mechanism for and development of the information. The way it is written, I do not understand it. We are here today to ask for better clarification and then to allow us to either develop our own in-house system or conduct a larger study, which would also be costly. However, at the end of the study I will guarantee you will get what you want in an appropriate fashion. The trouble may be the price tag necessary to bring us up to 21st-century technology.

Assemblyman Horne:

You said there was some kind of federal prohibition against giving the data directly to defense attorneys and public defenders, even though their clients can give it to them?

P.K. O'Neill:

Both Nevada statutes and the *Code of Federal Regulations* (CFR) define what a criminal justice agency is and who is allowed to access that information. Public defenders and defense attorneys, because of the nature of their business, are excluded from that. They do not fall under the definition of a criminal justice agency either in state statute or the CFR. They are able to get the information through one of three ways: criminal history provided by their client, a court order served upon us by a judge, or during discovery, if the prosecutor has any criminal history information. We have actually had cases where public defenders or defense counsel have asked us for all criminal history on anyone who may sit on the jury or testify. The district attorney did not even have that information. If he did, he would have to give it up in discovery. They have said that they wanted this information. We are a little protective of opening that door, even slightly.

Assemblyman Hambrick:

Adding on to your explanation of the old system in the Department of Corrections, can you or your support staff give us an idea of the number and age of the platforms that may be involved and the problems you are going to face by trying to convert them into a 21st-century database?

P.K. O'Neill:

That is a difficult question to answer. I will use the courts as an example. The Administrative Office of the Courts (AOC) has developed a Multiple County Integrated Justice System (MCIJS) for the courts to use, for free, if they desire. Several of the courts have opted to take it on and utilize and embrace it. Some of the courts at the various levels have decided to go their own way and

develop their own records-management system. Some of the courts have said, "No. I do not want to do that. I have enjoyed a quill pen for years, and I will maintain that." Those are some of the difficulties. The Department of Corrections has been developing the Nevada Corrections Offender Tracking System (NCOTS), a brand new system developed by a company out of Canada called Syscom Technologies. I am not sure if it is built on a National Information Exchange Model (NIEM) platform or designed to that level, but I know that it would at least be Global Justice Exchange Model (GJXML). It can be easily accessible to data mining, if you program it correctly. The Offender Tracking Information System (OTIS), used by the Division of Parole and Probation, is 15 years old. I do not know the level of the record management systems of the district attorneys. I know that Carson City has a rather robust and modern system, but I am not sure what White Pine may have, for example, if they have anything at all. The district attorneys should speak to that. We would have to build and interface with the full gamut from spread sheets and pencils all the way to compliant or current systems. It would probably be built like a silo or a stand-alone system separate from the Criminal Justice Information System (CJIS). We would build a separate statistical data file and try to feed off of that and build interfaces.

If you would like to go to the Cadillac version, I would suggest that we do a study, bring in the stakeholders, talk about the needs, talk about their systems, talk about what they have and where they need to be, and we could report back to you with a much better idea of what you would get and how much it would cost.

Assemblyman Carpenter:

I do not think there is any question that we need this data. I would rather give the job to you than to some study because studies usually do not turn out the way you want them to.

On page 3, line 42 of the bill, "the effectiveness and operation of educational and vocational programs for criminal offenders...", if you collected this data, would you have to have some kind of expert to analyze it, or do you have someone in your department who could do that?

P.K. O'Neill:

We would have to hire somebody. If you read farther up in section 4, what you are referring to actually starts on line 29: "Each agency of criminal justice ... shall collect and maintain records ... to the extent that agency has such statistical data" We would want each agency to do their own collection, do their own correlation and tabulation of the data, and report it to us. They would have the expertise to make the effective calls on what programs they may or

may not have. On the other hand, the fox gets to watch the henhouse; they can report on whatever they want. Statistics, as you well know, can say anything you want depending on how you manipulate them. I would like to manipulate it to give you, the Legislature, whatever you want.

We are more than willing to do this. We believe in it, but we would ask those agencies to collect that. We do not have the technical ability and the staff to evaluate the Division of Parole and Probation's program or to determine if the Department of Correction's program to release offenders early back to a halfway house is productive or not. I think that would best be handled by an outside agency, such as the universities or some other professionals. I would still like to hire additional statisticians to properly collect and present this information to you in a workable fashion and then develop an application that would allow the movement of the numbers as the questions change. It is a difficult question to answer because it does not have a yes or no answer.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada:

We applaud the Committee for bringing this issue forward. We all know that good decisions are based upon good information. We want to know what you want from us. We will try our best to give that to you. We have a wide variety of data management systems, all the way from very sophisticated systems to manual systems such as in Eureka County, which used to have their record system in a shoebox. It is not quite that bad now, but we still have some manual record systems out there. We would be happy to do whatever we can with this. We know it is important. We would just like to know what you would like to have from us and what impact that would have on our agencies.

Chuck Calloway, representing the Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

We are neutral on this bill. We realize that it is important. There is a need for you to have that information. We echo the same concerns that Frank Adams and Captain O'Neill voiced.

Chairman Anderson:

Have the two of you had an opportunity to review the proposed amendments?

Frank Adams:

Yes.

Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada:

We are in support of this bill. Any effort to evaluate and obtain the effectiveness of programs is something that we think will better help us to

advise our clients. I have spoken with Captain O'Neill about removing public defenders from the list of required reporters. We have no issue with that. We would cooperate with the collection of data to find out which programs are effective regardless of whether or not it is required. However, most of what we would have is information that we obtained from law enforcement. The only other information we have is typically confidential information that we would not be able to provide. To the extent that we could be helpful and cooperative we certainly would. We support the sentiments expressed by Captain O'Neill. We would support any study that would provide an accurate assessment of the programs.

Orrin Johnson, Washoe County Public Defender's Office, Reno, Nevada:
I agree with Mr. Frierson.

Diane Crow, State Public Defender, Office of the State Public Defender
Speaking on behalf of all rural public defenders, including contract attorneys, they would not be able to comply with the public defender responsibilities, but we support the bill.

Chairman Anderson:
One of the areas we continue to be concerned about is the disparity between the most populated areas and the least populated counties of the state, in terms of how criminal defendants are treated by law enforcement, the courts, and the public defender. The lack of availability of public defenders in some counties is truly amazing. That question has to be approached statistically to keep this body aware of the fact that not everybody lives in Reno, Sparks, Carson City, Las Vegas, or Henderson. Those communities are used to those kinds of services.

Diane Crow:
My office covers the Seventh Judicial District, which is the counties of Eureka, Lincoln, and White Pine. We have a computer system; however, I believe it is my shoebox that I left when I served for a year there in 1990.

John McCormick, representing the Administrative Office of the Courts:
I am neutral on the bill. I would echo the sentiments that have already been expressed. We support the improvement of data collection processes and getting more data in order to make more informed decisions. Our concerns are quite similar on narrowing what specific data elements need to be collected and the impact this process may have on resources. Regarding the last comment concerning public defender data, the Supreme Court's administrative order of January 4, 2008 ADKT No. 411 was the first indigent defense order issued by the court. It instructed the Administrative Office of the Courts to begin

developing measures regarding indigent defense throughout the state. We are working with the judicial system to try to get some better data elements regarding public defender and contract attorney representation.

Chairman Anderson:

Do you think there is something else that should be in this list that is not there now? What is missing from here that we should be asking if we want a true profile of a system that reflects a balanced approach?

You helped put together the judicial statistics in that report?

John McCormick:

A little bit. That is one of the many activities I am involved with.

Chairman Anderson:

Do you think this fairly reflects the judicial system that you work with? Does it push the envelope so that we get a true feel for where it is going?

John McCormick:

The open-ended question leaves room for that. I do not have a specific answer on what additional elements we need to collect.

Chairman Anderson:

Let us close the hearing on Assembly Bill 497 and bring it back to the Committee.

The Chair will entertain a motion.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 497.

THE MOTION WAS SECONDED BY ASSEMBLYMAN SEGERBLOM.

Assemblyman Horne:

We will go with the date of July 1, 2010.

Chairman Anderson:

We will take the amendment offered by Captain O'Neill.

THE MOTION PASSED UNANIMOUSLY.

The bill is going to be rereferred to Ways and Means.

We are adjourned [at 8:49 p.m.]

RESPECTFULLY SUBMITTED:

Kyle McAfee
Committee Secretary

Katherine Malzahn-Bass
Committee Manager
Editing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 6, 2009

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda.
	B		Attendance Roster.
A.B. 495	C	Bill Bradley	Proposed Amendment.
A.B. 495	D	Angela Hopper	Testimony in support.
A.B. 495	E	Rudy Manthei	Testimony in opposition.
A.B. 495	F	Rudy Manthei	Financial report on medical malpractice tort reform in opposition.
A.B. 495	G	Dr. Robert Kessler	Testimony in opposition.
A.B. 495	H	Kenneth R. Zuetel	Letter in opposition.
A.B. 495	I	Dr. David A. Johnson	Letter in opposition.
A.B. 495	J	Dr. Joseph Walls	Testimony in opposition.
A.B. 495	K	Dr. Sandra Koch	Testimony in opposition.
A.B. 495	L	Chairman Anderson	Letter in support from Letticia Clark dated April 8, 2009.
A.B. 495	M	Chairman Anderson	Letter in support from Pauline Kennedy undated.
A.B. 495	N	Chairman Anderson	Letter in support from Robert Handal undated.
A.B. 497	O	P.K. O'Neill	Neutral testimony.
A.B. 497	P	P.K. O'Neill	Proposed amendment.