MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
April 8, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:14 a.m. on Wednesday, April 8, 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:

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Allison Combs, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Julie Kellen, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Marlene Lockard, Reno, Nevada, representing Subcontractors' Legislative Coalition, Las Vegas, Nevada
Risa Lang, Chief Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau, Carson City, Nevada
Stefanie Ebbens, Staff Attorney, Legal Aid Center of Southern Nevada, Las Vegas, Nevada
Kim Robinson, Directing Attorney, Nevada Legal Services, Carson City, Nevada
Michele Johnson, President and CEO, Consumer Credit Counseling Service, Las Vegas, Nevada
John Sasser, representing Washoe County Senior Law Project, Reno, Nevada
Robert Gronauer, Constable, Constable's Office, Las Vegas, Nevada
Eric Stovall, Attorney, Reno, Nevada
Kevin Schiller, Social Services Director, Department of Social Services, Washoe County, Nevada
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada
Jennifer Rains, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada
Kimberly Surratt, Reno, Nevada, representing Nevada Justice Association, Carson City, Nevada
Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada, Reno, Nevada
William Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada

Garrett Gordon, Reno, Nevada, representing Olympia Group, Las Vegas, Nevada
Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada
Sam Bateman, Las Vegas, Nevada, representing Nevada District Attorneys Association, Reno, Nevada
David Sarnowski, General Counsel and Executive Director, Commission on Judicial Discipline

Chairman Anderson:
[Roll called.] We will start with Assembly Bill 501. Let us open the hearing on A.B. 501.

Assembly Bill 501: Revises provisions governing mechanics' and materialmen's liens. (BDR 9-1159)

Marlene Lockard, Reno, Nevada, representing Subcontractors' Legislative Coalition, Las Vegas, Nevada:
The Subcontractors' Legislative Coalition represents tens of thousands of subcontractors and laborers in their efforts to get paid. Over the last several weeks, we have worked diligently with other parties in the construction industry to agree on modification and amendments to the Nevada's mechanic lien statute. As a result of our efforts, we have agreed with the Associated General Contractors of Southern Nevada (AGC) to make Senate Bill 352 a joint bill between the AGC and our coalition to replace the entirety of the language set forth in S.B. 352 with the language of Assembly Bill 501, and we wish to amend certain language in A.B. 501 by way of a jointly offered amendment. The language of S.B. 352, as amended, is the subject of a mock-up that was passed out at the Senate Committee on Judiciary on April 6. We have agreed not to proceed with A.B. 501 with the understanding that S.B. 352, as amended, will be passed out of the entire Senate without any further changes or modifications, and it will be treated as a joint bill between the AGC and our coalition. We look forward to working with you and this Committee to pass S.B. 352 into law.

Chairman Anderson:
We will remove this bill from our agenda and put it back on the board.

We will open the hearing on Assembly Bill 517.

Assembly Bill 517: Provides that terms defined in the Nevada Revised Statutes have the same definitions in the corresponding portions of the Nevada Administrative Code. (BDR 0-663)

Risa Lang, Chief Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau:
Assembly Bill 517 is a fairly simple bill. It is a clarification during drafting of regulations, which we do during the interim. We generally tell agencies that the definitions in the *Nevada Revised Statutes* (NRS) apply to the *Nevada Administrative Code* (NAC) as well. We do not have anything specifically to support that in statute. This would put that in statute to give the agencies some comfort that they do not have to redefine terms in the NRS and have to revise those every time the Legislature changes those definitions. Essentially, that is all this bill does.

Chairman Anderson:
This Committee has a responsibility of keeping the front part of the NRS in place because we are the oldest Committee other than Assembly Committees on Ways and Means and Government Affairs. All of the housekeeping comes to us as a procedure.

We will close the hearing on A.B. 517.

The Chair will entertain a motion.

> ASSEMBLYMAN GUSTAVSON MOVED TO DO PASS ASSEMBLY BILL 517.
>
> ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
We will open the hearing on Assembly Bill 491.

Assembly Bill 491: Makes various changes concerning the execution on property of a judgment debtor or defendant. (BDR 2-948)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:
I am here to introduce Assembly Bill 491. I am going to give the highlights of the bill and hand it over to Stefanie Ebbens in Las Vegas.

Chairman Anderson:
We have a mock-up of the bill (Exhibit C). There are some extensive revisions that will be coming. Are you speaking to the original bill or to the mock-up?

Assemblywoman Kirkpatrick:
As of 9:00 p.m. last night, there were still some revisions coming, so I will give a small introduction, and Ms. Ebbens will be able to go from there.

Currently, federal law exempts certain funds, for example, social security benefits, from execution. Current procedures sometimes result in freezing a debtor's bank account while a determination is made as to what funds are exempt. In these dire economic times, when assets are frozen, people are left without the substance that they need to pay their rent, food, and medical care. This bill is very important. The statutorily exempt funds are defined in this act and are frequently awarded to the most vulnerable of our communities' population: the elderly and the disabled. That is the intent within this bill.

I would like to turn testimony over to Stefanie Ebbens in Las Vegas.

Chairman Anderson:
This particular piece of legislation came from Assemblywoman Kirkpatrick's Committee on Government Affairs. Because of the nature of the topic of this bill, it is not the subject matter tended to by their Committee.

Assemblywoman Kirkpatrick:
Chairman Anderson, you serve on the Assembly Committee on Commerce and Labor with me, and you heard about my constituent who received her garnishment letter the day after it was taken out of her check. There are extenuating circumstances as to why we have to look at this piece of legislation.

Stefanie Ebbens, Staff Attorney, Legal Aid Center of Southern Nevada, Las Vegas, Nevada:
[Spoke from prepared written testimony (Exhibit D).]

I would like to provide you with an illustration as to why this bill is so important. Take for example, an elderly woman whose sole income comes from the federal government in Social Security Disability benefits from her deceased husband. She counts every penny in her meager budget of $1,100. She is served by the Constable with a notice that her account has been frozen by a creditor who has sued her on her deceased husband's medical debt. She does not drive, has never been sued, and has never been in the court system before. Under the current system, she must figure out how to file a claim of exemption, arrange transportation to and from the courthouse, figure out what claim of exemption applies to her property, and she must fill out and serve the court required paperwork upon the bank, Constable, and creditor. Under our current system, she has eight days to figure this out.

After she has completed every step in that process, her creditor can still object to her claim of exemption because of a $100 deposit in her bank account from when her son gave her money to buy groceries. A judge must rule on that claim of exemption, and the Constable must seize and maintain the $200 that was in her account.

At the end of it all, she will be without access to any money. She will not have money to buy food, pay her rent, or pay for her medication, leaving her virtually destitute.

[Continued with prepared written testimony (Exhibit D).]

Kim Robinson, Directing Attorney, Nevada Legal Services, Carson City, Nevada: I am here to testify on behalf of A.B. 491 based on experiences we have had in our offices dealing with clients who have had their monies garnished and levied upon out of their bank accounts.

Nevada Legal Services is a nonprofit, legal corporation serving indigent clients who meet our low income eligibility requirements. We deal with a number of areas including assistance with consumer affairs. We also deal with termination of public benefits, welfare, social security, and so on. The focus today is on the consumer issues relating to the garnishment of bank accounts.

I have submitted a written testimony (Exhibit E), so I am not going to repeat it now. I will indicate the primary concern we have is that under the current system, the money is taken out of the clients' accounts, and they have no access to it, as Ms. Ebbens previously testified. They have no access to it, often times, for over a month, leaving them without the resources they need to meet the necessities of life. In addition to that, the biggest consequence is that they are often charged with numerous bank fees relating to not only the levy on their account but overdraft fees, bounced check fees, and such. This is because of the time factor of when they get their notice that their accounts have been levied upon and when the account is actually levied upon.

One case that I highlight in my written testimony states that more than twice the amount of the original debt was charged to the client in bank charges, overdraft charges, and levy fees. This was on an account where she had $150 in her account, and the original bill was $247. I also have a number of clients who have been repeatedly levied upon by the same creditor for the same debt, where the debt is transferred from one collection agency to another.

Chairman Anderson:
Given the nature of Nevada Legal Services, you probably tend to see people with limited means, or they would be able to meet their financial obligations without garnishment. If they are using the direct deposit method, which Social Security prefers, they may not realize what happened.

Assemblyman Ohrenschall:
I have a quick question about section 3 of the bill and how it works with the existing Chapter 21 of *Nevada Revised Statutes* (NRS). Right now, if someone has a writ of execution against them on their bank account, does it automatically extend to their safe deposit box? What is happening right now, and what does this bill remedy?

Kim Robinson:
My clients do not tend to have safe deposit boxes. Therefore, I have not encountered problems with that issue. I will leave that question to someone else's expertise.

Michele Johnson, President and CEO, Consumer Credit Counseling Service, Las Vegas, Nevada:
Our organization serves residents throughout the State of Nevada at any one of our eight locations. Consumer Credit Counseling Service, as one of the services provided, assists consumers in preparing orderly repayment plans to liquidate their outstanding credit obligations and avoid the necessity of bankruptcy. Each of these clients goes through an intensive financial analysis working with their certified consumer credit counselor to create a workable monthly budget. The only method for repayment plans to be successful is for creditors to provide concessions, such as a reduction of monthly payments and/or interest rates and a waiver of late fees and over limit fees. Our clients, the majority of whom qualify as low to moderate income, must also make sacrifices. This includes creating and sticking to a budget with all available funds being paid to creditors to liquidate debt. Our clients have no savings, and as part of the repayment program, all lines of credit are closed. These clients, literally, have no financial safety net.

An immediate example of what can occur comes to mind with an 82-year-old gentleman who received $1,000.25 in social security payments. A garnishment from a payday lender resulted in a freeze on his checking account, which resulted in an eviction notice. Only because of the considerable effort put forth was the eviction halted and funds finally released, but only after this gentleman experienced extreme distress.

To compound the issue, knowing at what point the judgment would be satisfied proved impossible. The original creditor could advise only to the amount of funds received with no idea when, or if, additional funds were forthcoming. All too often, our clients must cancel their repayment plan due to an aggressive creditor attaching both paychecks and checking accounts. Consumers have no choice but to file bankruptcy, affecting the consumer, their creditors, and our community at large. Exacerbating the problem of aggressive garnishment tactics is a consumer paying through garnishment on a debt believing they are close to payoff, including accrued interest, only to find the balance is hundreds more than realized due to additional collection fees. To the majority of Nevadans, many of whom are less than one paycheck away from homelessness, these additional fees can make the difference in paying rent or not.

The remedies proposed will likely benefit thousands of Nevadans without causing hardship to the creditor or the courts.

Chairman Anderson:
Have you had an opportunity to look at the mock-up with proposed amendments?

Michele Johnson:
No, I have not. That happened late last night.

John Sasser, representing Washoe County Senior Law Project, Reno, Nevada:
The Washoe County Senior Law Project also sees seniors on a regular basis who are having difficulty with this issue, especially if they have some difficult credit card debt, and they have a bank account, including social security funds. Commonly, the client receives a note of execution but never receives a copy of the writ of garnishment, even though that is required under the law. A client will come to the Senior Law Project, which will file an affidavit, including a claim of exemption, and the senior will state they had never received a copy of the garnishment.

Often, I find that employers have difficulty calculating the correct amount of take-home pay that cannot be garnished using the formula in law. The biggest problem, then, is the sheriff in the north, as opposed to the constable in the south, gets caught in the middle and is not willing to make a judgment call. This matter ends up with a piece of paper being filed by the creditor's attorney in the court, and things then drag out for a length of time.

One example at the Senior Law Project is that a client's bank account was garnished, and there were exempt social security funds in there, but there were

also funds from part-time employment, which were also exempt because the weekly take-home pay was less than the federal minimums. The bank accounts were exempt two ways: the client filed an affidavit claiming exemption, but in response, the creditor filed an opposition. They did not request a hearing, so the case languished, and the sheriff refused, upon request, to release the funds. The Senior Law Project contacted the judgment creditor's attorney, and they again failed to comply with the law and requested that their opposition be withdrawn in December, but there was no response. As a result, the client had to file a reply and contact for submission in a court, and they did not get the social security money back until some 40 days later, with additional pleadings and some 100 days after the debtor had filed a notice of exemption.

The bill will help take care of this problem in several ways. It cures the timeliness problem by requiring the judgment creditor use a form created by the court. It requires the sheriff to return money on day nine if proper objections and filing requests had not been filed. It avoids late fees because it would enable the bank to determine the funds exempt, and leave the minimum of $1,000 in the account. It would prevent the bank from charging a garnishment fee for an unsuccessful garnishment. There are a number of other examples I could give, but I will not belabor the issue. This would be a terrific asset to the constables, the court, and the clients faced with this situation.

Assemblyman Cobb:
Could you explain the change in the mock-up (Exhibit C) on page 17, line 6 and similar sections for the 120 days?

John Sasser:
I would like to defer this question to Ms. Ebbens who worked until the midnight hour completing the mock-up and is the expert in the area. She could better address that question.

Stefanie Ebbens:
The 120 days is currently in effect for the constables processing one writ of execution. One writ of execution is good for 120 days, or until satisfied, whichever is less. What changes now is not the 120 days from the constable and/or sheriff's end, it just pairs the 120 days from the constable with a 120 days accounting from the creditor as well.

Assemblyman Cobb:
I am not familiar with garnishment of wages. What does it mean to pair with a creditor's accounting?

Stefanie Ebbens:
All it means is that every 120 days, the sheriff and/or constable prepares an accounting of what has been collected from the debtor. An additional provision has been added in which the creditor is also to submit, every 120 days, what has been received from the judgment debtor as payments.

Chairman Anderson:
If I am to understand, you are making sure the three accounts coincide so that the bank, creditor, and the debtor are able to recognize how much has been paid over the 120 days.

Stefanie Ebbens:
Yes, that is correct. It is just to reconcile the accountings.

Assemblyman Carpenter:
In the original bill, it says that every 90 days the sheriff prepares an accounting, but that has been taken out of the mock-up. Could you explain page 17 in the mock-up in regard to the disposable earnings? How do you figure that out?

Stefanie Ebbens:
The federal minimum wage is set annually. For our purposes, the disposable income for Nevadans, for a weekly amount, multiplies the federal minimum wage by 50. In these additional interrogatories, we have prepared a worksheet for employers to figure out the disposable income.

Assemblyman Carpenter:
We have a different minimum wage in Nevada than the federal minimum wage. This is with the federal minimum wage. What is that now?

Stefanie Ebbens:
Currently, I do not have that information readily available. I can get it to you though.

Assemblyman Carpenter:
I think we will be able to figure it out.

I understand those who are in hardship, but many of those situations are people who have good jobs and are getting along just fine. I do not have any problem with people who are in a tough situation, but I think we need to be careful so we do not go so far as to cover those who have the money but are spending it on other things.

John Sasser:
The 50 times the federal minimum wage is no change in current law. All this is doing is talking about an interrogatory that is part of the process and a worksheet that helps people who may be confused. We are not increasing the exemption by this bill, but we are restating what the current law is.

Assemblyman Carpenter:
I am glad to hear that. I have never been able to figure it out, so I will look at this and try to figure it out.

Chairman Anderson:
For those who are not attorneys, an interrogatory is a discovery tool in which written questions are proposed to one party and served on the adversary who must answer in writing under oath. That is what my legal dictionary says.

Robert Gronauer, Constable, Constable's Office, Las Vegas, Nevada:
I agree with the intent of this bill, which is to remove the inference step-backs to make a legal determination on funds and clarify the banks and the different accounts.

Chairman Anderson:
With the additional time frames, it would appear to give your office a longer lead time in terms of when garnishments are established and the serving of the document. This should give you a greater opportunity to get the paperwork to the people involved. That seems to be one of the great benefits of the mock-up.

We will close the hearing on A.B. 491. This is an extensive mock-up, but has been thoroughly vetted by the concerned individuals of the original bill. Given the lateness of the process, I would suggest that we move the bill or see it at a work session.

Chairman Anderson:
The Chair will entertain a motion.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 491.
>
> ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
We will open the hearing on Assembly Bill 500.

Assembly Bill 500: Revises provisions relating to domestic relations. (BDR 11-1156)

This is a bill that was rolled over from yesterday as a courtesy.

[Chairman Anderson left the room.]

Eric Stovall, Attorney, Reno, Nevada:
I am a member of the American Academy of Adoption Attorneys, which is comprised of around 320 adoption specialist attorneys across the country. I do more adoptions as a private attorney in Nevada than anyone else. For example, I participated in 91 adoptions last year.

The contents of Assembly Bill 500 show up in my practice on a regular basis. All of the sections proposed are examples from my practice that I have had over the last several years. Some of these examples have come up more times than I would like to see. I will take you briefly through the different sections and add a couple of comments to them.

Section 2 is a correction to a gap in current statute. In an agency adoption, the adoption agency takes legal custody of the child. Interestingly enough, there is nothing in statute on a private adoption—an adoption between individuals—which specifies that the adoptive parents have the legal custody at the time placement is made. We have had problems with insurance companies and medical providers recognizing the adoptive parents as actually having legal custody of the adopted child until such time as they were able to finalize the adoption, which in Nevada cannot be done for six months. Section 2 would address that gap in Nevada law and solve those problems for adoptive parents who are trying to get insurance coverage or medical treatment for their adopted child.

Sections 4 through 10 are an expansion of existing law, moving the exemption of a third degree of consanguinity from several normal adoption requirements such as a home study. If you are not related to the child or you are trying to adopt within the third degree of consanguinity, you must go through several processes, including a home study. This can present difficulties for family members trying to adopt family members. The third degree of consanguinity will reach a niece or a nephew, but it will not reach a grandniece or grandnephew. I had a couple in my office this last year who told me they wanted to adopt their niece, and we set that process up. In the midst of

getting the paperwork done, I discovered it was not their niece but their grandniece. We had to stop that process, and they were confronted with a sizeable amount of money to get a home study done because it was their grandniece rather than their niece. We were able to pull some strings and cure those problems for that particular couple, but the monetary aspects of getting a home study was going to be prohibitive to them. I do not think it is appropriate for there to be a difference of several thousand dollars between the adoption of a niece and a grandniece. This proposal would cure that.

Section 11 has to do with a rather large problem facing Nevadans who are trying to find adoptive placements. Oftentimes, an adoptive couple first looks in the yellow pages to try to find professionals they can contact. The yellow pages contains dozens of advertisements from adoption agencies who suggest they are in Nevada, but in reality, there are only about six licensed adoption agencies in our state. There are dozens of people trying to lure Nevadans into using their services for adoption. These entities are neither licensed nor regulated, and some of them pose large risks for adoptive families who may be asked to give them anywhere from $10,000 to $20,000 to find a child. People in Nevada think that they are licensed agencies, but they are not. What happens is that there is an exemption carved out in present law that would prevent any type of criminal retribution to be placed on a phone directory's manufacturer or publisher. It says they are not responsible if someone violates the existing law and advertises in their publication. Even if they know that those people are not licensed to do business, they can still take their money for an ad to be placed in the directory. This proposal would make it a criminal action if a publisher knowingly takes money from someone who is not licensed in the State of Nevada to do adoption work.

Section 12 is a necessary part of A.B. 500. I see dozens of cases every year. I do not want to unfairly speak about birth fathers who have problems that I do not understand, but inevitably what I see day-to-day in my practice is a birth mother, who is expecting to deliver in a few months, and having told her boyfriend that she was pregnant early on, he leaves her. He is not seen again until she comes up with an adoption plan and gives birth. The adoption agency usually contacts me to complete a termination of parental rights action, and through a due diligence process, we locate the birth father and serve him with the papers. For the first time, he says that he wants the child even though he has not supported the birth mother at all and does not decide on any action until the birth mother has made the huge decision of placing her child up for adoption. All of a sudden the birth mother is stymied, and she cannot go forward with the adoption plan because this man, who has not supported her throughout the adoption, all of a sudden throws a monkey wrench into the plan. What often happens is that the adoption cannot go forward, and the child is

kept by the birth mother and ends up being part of the system of child support and other issues. Instead of having the child being placed with someone who could properly care for him or her and can afford to do so, and wants to do so, the child remains in a home that is marginal in terms of finances. While the mother loves the child, she cannot care for him or her, which is why the birth mother wanted to place the child up for adoption to begin with. This change would allow the court to use that lack of support throughout the pregnancy as grounds for termination.

The last section, section 13, speaks to other situations that can come about. What I often see in my practice is a birth mother coming to the agency and saying she wants to adopt out her child, and she is delivering in a couple of months. She is asked where the birth father is, and she says that he is in prison. We then go through the process, and the agency sends out a social worker to the prison to talk with the birth father about relinquishment of the child for adoption. At that point, he says no, which is his right. If he is going to be in prison for the next three to five years, there is no way that he can care for this child. Many times, what I have experienced is that the birth father and birth mother have unresolved issues, and many times the birth father is trying to control the birth mother through the adoption process. This section of A.B. 500 would address that.

Vice Chair Segerblom:
Do you know if these changes are consistent with other states?

Eric Stovall:
Yes, they are. I have seen a third degree of consanguinity in other states, but I have also seen larger degrees of consanguinity. As far as advertising, there are many states that have bans on advertising, as we do, but they also enforce them. Many states have support requirements for birth fathers that are addressed in section 12. It would require them to come forward and actually offer support to the birth mother during her pregnancy or face termination of his rights after delivery.

Vice Chair Segerblom:
What about respect to the prison?

Eric Stovall:
There are some states that would view a prison term as grounds for termination.

Assemblyman Horne:
My biggest issue with the bill is section 12, paragraph (h), the putative father section. I am constantly fighting against this. In 2001, before I was a member of this body, I actually testified against this provision in the Senate. This is on a more personal note, but you capture fathers like me, who was brought into my daughter's life by way of a notice in the mail when she was two years of age. From then on, I had to fight and sue just to get a paternity test to get into court to become part of her life. She is 22 years old now and going to school in Arizona, but if something like this were in effect, I would have never been able to have her as a part of my life, by no fault of my own but for not knowing that I had a daughter until she was two years old.

It is such a fundamental right to be a parent. There are so many different circumstances as to why a birth father did not reasonably support the birth mother during pregnancy. I cannot support this bill with this section in it.

Eric Stovall:
I understand what you are saying, and I agree that that would be a real problem. However, the statute states that "if a father knew the child's mother was pregnant." If a man knows that he is the father, this statute would require him to come forward and support that child's mother during the pregnancy. I believe that there is also a part of this that talks about if that is possible, and if he is able to support the birth mother. We can always draw fact circumstances where a man knows about the pregnancy but cannot do anything about it. That would not affect that person. Assembly Bill 500 is trying to reach the man who knows about the pregnancy, abandons the birth mother, does not support her even if he could, and shows up later on to say he wants the child.

Assemblyman Horne:
Would that not put a burden on the man by requiring him to presume that the child is his without question?

Eric Stovall:
If there is a question as far as paternity is concerned, he can ask for a paternity test.

Assemblyman Horne:
Not until after the child is born.

Eric Stovall:
That would be correct.

Assemblyman Horne:
This does not capture any of that. That is just one circumstance. I think this is overly problematic.

Assemblyman Carpenter:
I have a couple of questions in regard to section 11 where it is speaking to the newspaper and radio stations. I do not understand that language. In subsection 3, it states, "A periodical, newspaper, radio station or other public medium did not know that the advertisement violated the provisions of this section." Can you explain what that is about?

[Chairman Anderson came back.]

Eric Stovall:
It is my understanding that a publisher may have no idea that a person wanting to advertise is not properly licensed by the State of Nevada for adoptions. There was intent not to penalize the person who did not know. The way this can work in the real world is that the State of Nevada furnishes to these publishers the short list of those agencies that are licensed in the State of Nevada. They would then have reason to know that some proposed advertiser is not licensed. The penalty provisions of this statute would then come into play.

Assemblyman Carpenter:
It says here that they did not know.

Eric Stovall:
Where are you seeing that? I want to be sure that I follow you.

Assemblyman Carpenter:
It is on page 6, line 30 to 32.

Eric Stovall:
I apologize; I do not have lines 30 to 32 on my copy. There is a blank.

Chairman Anderson:
On page 6, section 11, subsection 3, lines 30 to 32 is the language. So, a list of the licensed agencies are sent to the various periodicals, newspapers, radio stations, and television stations. That would be considered notice. If they fail to note that, and they were notified, then they would be subject to the law. Would that be correct?

Eric Stovall:
That is correct. I have spoken with the State of Nevada head of adoption services, and we have discussed the problems with these "adoption facilitators," the unlicensed agencies. She is looking for a way to stop it from happening, and this law would possibly handle it.

Assemblyman Carpenter:
I guess that they could be sued, but they could not have a criminal penalty, is that right? You crossed out "civil liability."

Eric Stovall:
I understand your question, as far as the deletion of "civil liability." No one is looking to sue any facilitator. The intent of this part of A.B. 500 is to subject these publishers to a criminal penalty if they knowingly permit these facilitators to advertise. There is no intent to allow anyone to sue them civilly.

Chairman Anderson:
Mr. Anthony, based upon Assemblyman Carpenter's question about the removal of "civil liability" and Mr. Stovall's response, does this clarify the question that a criminal penalty is available through the state for a publisher who has been notified?

Nicolas Anthony, Committee Counsel:
Yes, I believe the intent of the amendments in section 11 is to delete the civil immunity there in red. There was some immunity prior, which would delete "civil liability." This would curtail the criminal immunity to only such situations where the medium did not know that the advertisement violated the provisions of this section.

Assemblyman Carpenter:
They could still be sued, correct?

Chairman Anderson:
Could they still be sued?

Nicolas Anthony:
I certainly believe so.

Eric Stovall:
I would guess they could be sued as well; however, I do not know who would be suing them for what. If there is some type of a breach of contract that they had with adoptive parents, the parents would be able to do that anyway,

regardless of any type of advertisement. There is no desire to open up an additional civil suit remedy against these people.

Assemblyman Carpenter:
Is the judge the one who makes the decision about whether a man is going to lose his parental rights if he did not provide support during the pregnancy?

Eric Stovall:
Yes, that is correct. Many times in my practice when I go in front of a judge on an issue like this, the judge goes through statutes to determine the grounds for termination. This would include that lack of support during the pregnancy as a ground that the judge can use. A judge is going to make that ruling.

Assemblyman Cobb:
I want to echo the comments from Assemblyman Horne on section 12(h). I remind you that we are dealing with a fundamental right. This is an incredibly vague section of this bill because it does not define what "support" is. It does not say "appropriate support to assist with the pregnancy of the child." It just says "support." If this section stays in the bill, I am not going to support it.

Eric Stovall:
I understand the concern, and I believe that there is good concern there. This bill might not have all the answers that are necessary. If this one section needs to be carved out, it can certainly be carved out for further work. The reality that I see is different than the exceptions that both of you have put forward. It is certainly understandable, and I do not mean to discount it. This is not an all or nothing proposition. These are about a half dozen issues that I face in my practice on a regular basis. If we can solve four or five of them, that would be great.

Kevin Schiller, Social Services Director, Department of Social Services, Washoe County, Nevada:
Just a brief comment around a possible amendment that I want to put on record. In sections 4 through 10, it defines "fourth degree of consanguinity." It is referenced throughout the bill in terms of defining the relationship. Currently, Senate Bill 342 and Assembly Bill 76 are coming through, and what they are doing is trying to amend *Nevada Revised Statutes* (NRS) 432B to define "fifth degree of consanguinity" as a relative relationship. My main point is to put on record that it may create some conflict statutorily, and we would suggest that it be defined as "fifth degree of consanguinity," to be in line with the other statutes in terms of defining the relationship.

Chairman Anderson:
I have seen several different consanguinity charts, and they are fascinating to look at. What would the fifth degree of consanguinity be?

Kevin Schiller:
I would ask my adoption supervisor to come up.

I will submit this chart so the Committee can see it (Exhibit F). When you go up the chart on fifth degree of consanguinity, you get into first cousins once removed as a reference point. Rather than going over it, I will submit it to the Committee.

To be clear, the consanguinity issue has come up under abuse and neglect statutes in order to qualify relatives to care for kids who are abused and neglected. That is the intent of the other legislation. For purposes of discussion, we are a child welfare agency, but we also serve as an adoption agency within Washoe County. We serve a dual role when it comes to that, and it is not exclusive.

Chairman Anderson:
This may prevent us from having to deal with conflict amendments later on.

Are there any parts of this bill that you feel would help your agency accomplish its workload?

Assemblyman Carpenter had earlier questions about advertising. From your professional capacity, do you have anything you would like to say about that or any other section of the bill?

Kevin Schiller:
No, not at this time. I want to point out the consanguinity for consistency across other statutes.

Orrin Johnson, Deputy Pubic Defender, Washoe County Public Defender's Office, Reno, Nevada:
What I would like to do right now is to introduce my colleague, Jennifer Rains who is a Deputy Public Defender in the family law division. She sees these termination proceedings as a practical matter every day. She is here to provide testimony with the Chairman's recognition.

Jennifer Rains, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:

I had the privilege of working for Mr. Stovall earlier in my legal career. I can certainly appreciate Mr. Stovall's position, coming from the private adoptions field. I represent parents whose children have been removed from their custody by the Department of Social Services. We are dealing with children who are in state custody by virtue of the Juvenile Dependency Action under NRS 432B, that has gone into a termination action under NRS 128.

I appreciate the position under section 12, so I will move to section 13 regarding imprisonment. The basic concern is that we are dealing with a fundamental liberty interest. As the case law from the United States Supreme Court, as well as the Nevada Supreme Court, says, this termination of parental rights is tantamount to the civil death penalty. This is a huge impact on families and must be treated carefully. Of course, we have the best interest of the child in mind, as well as parental conduct. Our existing statutes do a pretty good job of balancing those already. With the change proposed for imprisonment, there is a Nevada Supreme Court case *In re Parental Rights of J.L.N. 118 Nev. 621, 55 P.3d 955 Nev., 2002*, which says that imprisonment alone is not grounds for termination. However, I think in practice, the court can accommodate other factors and still terminate if it finds it appropriate.

It is the broad scope that is particularly concerning. There are a number of reasons that an individual might remain in custody for a year, which may or may not have anything to do with that individual's fitness to parent. It is not clear as to whether that person has actually been convicted or if that person is awaiting trial. When sentenced, sometimes parents are in custody before a child is removed, and the child is with the other parent or with a relative or guardian. There is some question as to whom that would impact. In addition, many of my clients are able to work a case plan for reunification with their children while in custody. With the funding crunches, these services are becoming more limited, but there are services, and sometimes very good services, available to a parent who is in custody. These services include parenting classes, substance abuse treatment, individual counseling, job training, and other services that further that parent's ability to be an effective parent upon release.

The year mark is about the time when many of our clients are coming out of custody. Upon release, many are able to engage with the Department of Social Services to reunify with their children in a relatively expeditious manner. Potentially, this would allow termination on viable parents, which would be inappropriate.

In addition, the Sentencing Project and others have done research on the disproportionate impact on mothers and people of color in terms of their families ending up in the foster care system when one parent is incarcerated. These family cases often have a parallel criminal case that may not be the reason for the removal, but there are competing or complementary proceedings. This provision can theoretically impact the ability to negotiate plea deals when someone is facing repercussions of losing their parental rights. I have had more than one client say to me, "I can do the time, but they cannot take my child." People can serve their time, and the impact is devastating. It deprives the parent and also deprives the child of having a parent.

Chairman Anderson:
I am a bit concerned about section 13, page 8. It is the new language at subsection 9 where it states the "conviction of the father or putative father of sexual assault or statutory sexual seduction resulting in the conception of the child," and the courts recognition that it does not terminate the responsibility for support. That is not crossing any criminal lines that I can see, provided that the first part was there, including statutory sexual seduction or criminal rape. That does not fall in the same category, does it?

Jennifer Rains:
I did not mean to direct my comments. I meant criminal cases in general. With respect to that section in particular, there may be some consequences if there is a conviction for a sexual assault and how those cases are handled differently. If it was a part of the criminal case, that would be handled separately. In my comments earlier, I meant to refer to just about anything else.

Chairman Anderson:
But several months ago Mr. Stovall and I talked about the potential issues of a person being convicted of sexual assault or statutory sexual seduction and proving to be the father of the child. The issue was that we would not be able to proceed with the termination of their rights, but their continuation of responsibility. Am I misinterpreting a concept?

Orrin Johnson:
We are not here to advocate that rape victims should have to share parenting with their attacker. We would point out that in a statutory sexual seduction where the ages are not all that far and there is a consensual relationship, there might be some other issues there.

There are two issues here. One is that there is nothing in current law now that prevents a person who has been convicted of sexual assault from having their parental rights terminated. The other issue is broader. It is when we are

working with a client and dealing with a plea negotiation, where a plea negotiation would be appropriate, cost saving, and a good deal for the client, even if they are fine doing the time. If the impact is that they now face a per se rejection of their parental rights or a termination of their parental rights, that person may well decide to go to trial and fight a case with all of the expense that goes along with that. Otherwise, they would have taken a plea negotiation. In current law, they are still going to jail. A petition can be brought.

Our concern is that it will make it more difficult to reach those plea negotiations. We think that current law is adequate to cover the concerns that you are expressing, Mr. Chairman.

Chairman Anderson:
Assemblyman Carpenter, does your question deal with section 13?

Assemblyman Carpenter:
My question is about section 13, subsection 9. I have a problem with the conviction of statutory sexual seduction because the ages are not far apart. If the girl is 15 years old but almost 16 years old, and the boy is 18 years old, and the parents of the girl do not like the boy, a charge is filed against him with a possible prison term. It is consensual, and then the baby is born. In one case that I know of, we went to the judge, and he threw the deal out. In another one, the boy had to do some prison time. After he was released, they got married and "lived happily every after." I have a problem with statutory sexual seduction being in the bill because in the real world, things like this happen. As I see it, this sets people up.

Chairman Anderson:
Other than the fact that the father is unfit, there has to be a court process for finding the father unfit. I believe that it is separate from the trial itself of statutory sexual seduction.

Assemblyman Carpenter:
That is right. When you put these kids through a situation like that, it is traumatic. The parents of the girls will more than likely say that the boy is unfit. I have a problem with that being in the bill.

Orrin Johnson:
Assemblyman Carpenter is correct. Every family law case is incredibly fact specific, and no two are the same. There are many different personalities involved, and the best interest of the child means that there are many factors and a lot of balancing going on. Trying to shoehorn in anything, even if it would

allow for the judge to make a determination otherwise, we fear would have more negative consequences than beneficial ones. We ask you to consider the judicial discretion that can be beneficial to the majority of the cases.

Chairman Anderson:
The judge still has the responsibility of the best interest of the child, and this does not lessen that in any way.

Jennifer Rains:
No, it would not. There would still be a two-prong analysis: the first being the best interest of the child, and the second being the conduct of the parents.

Chairman Anderson:
Do you have any additional information Ms. Rains?

Jennifer Rains:
With the provision that I was speaking of before on page 8, subsection 7, line 4, which deals with the "demonstrable negative effect on the quality of the relationship between the parent and the child," the position we take on this matter is that it is a given. When a parent is in custody, and when a child is in foster care, there is a negative impact on that relationship. We thought it was important for you to know that there can still be a relationship, although it has a "demonstrable negative impact." Parents are still able to communicate with their children by letters, phone calls, and possible visitation. I have one client who was able to participate in her child's therapy session with the assistance of her caseworker at the correctional facility at the recommendation of the child's therapist. In all of these, there is an impact on the child and a fundamental liberty interest of the parent.

I think that in private adoptions, the children are more likely to be considered adoptable. Many of the children on my caseload are not likely to be adopted if their parents' rights are terminated. Like Mr. Johnson said, every family law case is exceptionally complicated and is case specific. Our concern is that this creates a broader net which may have unintended consequences of depriving children of viable parents and depriving parents of their liberty interest in their children.

Kimberly Surratt, Reno, Nevada, representing Nevada Justice Association, Carson City, Nevada:
I am a family law practitioner in Reno, and I also do many cases in rural Nevada. I am also an unpaid lobbyist with the Nevada Justice Association. The Nevada Justice Association allows family law practitioners to participate in and monitor some of the domestic bills, and that is what I have been asked to do today.

Another role I play is that I am an appeals hearing officer for Washoe County Department of Social Services.

My first comment is that I support this bill in part, and there are other parts in which I am in opposition to. I am not against the entire proposed bill. Mr. Stovall does have a tremendous amount of experience in adoptions. He does more than anyone else in the state that I know of. I do a good amount of them, but I also do many surrogacies and assistive reproductive technology work, which plays hand-in-hand with adoptions.

My hope today is to be a resource with a different perspective and angle on some of these sections. The first section that I want to go over is section 2, regarding giving legal custody. I can give you a quick summary. I have the exact same problem within my practice, and I have seen this problem. I share an office with several other family law attorneys, and they have seen this problem as well. It is an issue of how many pleadings and other things you can do before the court to accomplish the adoption at the end of the day. In a private adoption, it is much easier if the potential adoptive parents can be given the ability to get the child onto their insurance, among the other things that typical legal parents do. However, they are in that quagmire of the six-month period that is a problem. We support section 2.

I do not have an issue with having the fourth degree of consanguinity in the bill, but the fifth degree of consanguinity is getting a little further out. This is hard for my committee of domestic attorneys with the Nevada Justice Association to take a position on. It is one of those things that contemplates how far out to go. The big issue is that the further out you go, home studies are not required for the individuals, and there are steps that are skipped as a result of this change. Just because you are a relative, are you fit to be a parent? Fourth degree is not too bad, and I have enough examples from my own caseload, but with fifth degree, I start to get nervous. I want to make sure that we check in on these people to make sure that they are fit enough to have children in their home. It is different across the country, and I do not know what advice I can give you on that.

We support section 11 regarding advertising. The only advice I have is that there is a double negative in the language, and I think that is the reason it is difficult to read and discuss. Perhaps it could be more properly worded.

I believe section 12 is off the table at this point. I hope it is because we are not in support of it. The language is far too broad. I and many other family law practitioners can come in with many examples of how this section can be abused and taken advantage of.

Next is section 13, subsection 6. The problem I have with that section is twofold. I agree with all of the testimony given by Ms. Rains that there are many exceptions, and this does not provide for those exceptions. If this section were to make it through, my advice would be that it is too narrow to say a year from the child's entry into foster care. These children may not be in foster care. If you are trying to accomplish the goals, and what I think the intent of this section is, this does not necessarily do that.

We agree with section 7; however, the word "demonstrable" gives me a little bit of concern. I am here as a practical family law practitioner who may be in court trying to figure out how to prove what "demonstrable" is. It is a strange word and too vague for me, and I am not sure what it means.

Section 9 is the main section that I cannot agree with. The child support is the part that I have a problem with in this section. I understand that if someone raped another person, he should have his parental rights terminated immediately. It is a great goal for someone to continue to pay child support. From a practical family law practitioner perspective, when parental rights are terminated, that is the end of it. There is nothing left. I think you are opening a window to further argument. I can see myself having to be in court, against opposing counsel saying to me, "Well, if they had to support, then is inheritance still not part of this?" What else is part of it? We are starting to open a bigger window. There is also another statute, which is a third-party visitation statute. It says that if someone is giving support, and at some point had spent a significant amount of time with the child, does that open the window for that person to say that even though I am not a parent, I am going to visit this child because I am a third-party nonrelated person? It is a slippery slope. Once parental rights are terminated, they are terminated. I understand severing a rapist from the relationship as soon as possible, but our courts do this through other means. Sole legal and sole physical custody can be given to mothers. The father's obligation for support still stays intact.

Termination is usually done before moving on to the next step, which is adoption. Is the third party going to be left in the wings after a child is already adopted? Who is this person paying support to? Are they paying it to the new adoptive parents? This statute does not explain any of that.

Chairman Anderson:
What would happen if we change, at line 17, "a court shall" to "a court may issue an order of support for the child"? We affirmatively give the court permission to do that, but do not require them to do that. Would your objection be the same?

Kimberly Surratt:
It is still a slippery slope in my opinion. Either you are terminating, or you are not.

Chairman Anderson:
You would rather see the clean break?

Kimberly Surratt:
I would like to see a clean break.

Assemblyman Horne:
Ms. Surratt, I appreciate the clean break scenario as well, but I view that more as if someone has done harm; for example, if someone breaks your leg in a crime. A doctor says this is what it costs to repair that leg with doctor visits and physical therapy, and of course it must be paid. If a sexual, criminal act causes the birth of a child, the criminal should be told that this is what it costs to raise this child to the age of 18, and he should pay it. He does not get visitation, the child is not entitled to inheritance, and he is not caring for this child. Do you not think that there is a possibility that it could be viewed in that light?

Kimberly Surratt:
I understand the argument. It is a putative damages type of argument. It may be in the language. The words "child support" is a parental right. When you are a parent, you have an obligation to support your child. I think you are confusing the damages and wanting to punish with something that is dictated throughout the rest of our family law chapters as a parental right. I do not think you can bifurcate the two.

Assemblyman Horne:
I do not see it as a punishment, more as an obligation. You caused harm, and this is what it costs. For example, if I run my car into another car, then I have to pay for their car. I do not consider that a punishment, but rather an obligation I have. I am not confusing the two, but I see what you are saying with the term "child support."

Kimberly Surratt:
This is a hard argument. I agree that they should be obligated to support. From a lawyer's point of view, either you are terminating, or you are not. I do not know how that would legally work or be possible. You can put it into statute, but it is still a slippery slope.

Chairman Anderson:
The debate on child issues can go on forever.

Assemblyman Hambrick:
I understand the clean break aspect. I am completely unfamiliar with family law in this state, but in some states, any support whether it is this type or other family support, the payments do not go directly to the parent but to the court. Would that make a difference in this case?

Kim Surratt:
In Nevada, the payments do not go to the court. Most support goes directly between the parents. The district attorney's office can collect child support and forward it on and enforce payment through garnishment. Payments never go directly to the court. Can the court order that? We have played with that in the past in some divorce cases, and the court does not have any interest in dealing with the monies and being the transfer point. The obligation is to the child and not to the mother of the child when we talk about child support in the State of Nevada.

Chairman Anderson:
Nevada is somewhat unique in that the best interest of the child is the main concern. I think that quite a few states follow that practice, while we take the course of seeing to the best interest of the child.

In addition, some of the smaller counties do not have the ability or office staff to handle the transfer of funds and other obligations for an expedited process.

Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada, Reno, Nevada:
We also have concerns with section 13 of the bill, which is at the bottom of our amendment (Exhibit G).

Chairman Anderson:
The American Civil Liberties Union (ACLU) thinks that it is alright to add this into the record for the day regarding the conviction of a father and finding the father unfit? And changing "shall" to "a court may issue an order" reaffirming that. Would they still have that concern if that change was made?

Rebecca Gasca:
We understand that there are other sections in the law that would cover that issue, and our issues with that section of the bill are particularly in subsections 6 and 7.

Chairman Anderson:
In addition to the ACLU, I have an email from Sherry Keithey (Exhibit H) who wants to add an additional amendment requiring continual financial support by any parent whose rights were terminated under NRS Chapter 128. This would save millions of dollars on welfare spending and improve the lives of abused children.

I think that presents a certain level of problems, and we may not want to go there.

I will close the hearing on A.B. 500.

I am going to suggest that if we move with the bill, that we move with sections 1, 2, 3, and 4 as it is written and not raising it to the fifth degree of consanguinity. Sections 8 and 9 deal with that issue as well. Mr. Anthony, in section 11 there is a double negative in the language. Is there any suggested language that you see there that will make it clearer?

Nicolas Anthony:
I do not have a suggestion immediately, but we can play with that language when we have some time and possibly take out the "not" on line 28. We will certainly work with that language.

Chairman Anderson:
I would suggest that we hold the language in section 11 and remove section 12 in its entirety. In section 13, we should remove lines 44 and 45 on page 7 and lines 1 through 6 on page 8. We need to renumber the sections properly with the "conviction of the father or a putative father of sexual assault or statutory sexual seduction results in conception of the child. If a court terminates parental rights based on a finding that the father is unfit." This reaffirms the courts responsibility to find the father to be unfit in a separate hearing, and a court "may" issue an order of support rather than "shall" be required when we place that statutorily.

I am waiting to see what the comfort level of the Committee is before I entertain a motion.

Assemblyman Carpenter:
Did you leave "statutory sexual seduction" in?

Chairman Anderson:
I did. I thought seriously about removing it, although I do think it presents a bit of a problem. I agree with you that there are many cases where the 15-year-olds who are almost 16 years old and an 18-year-old have a child together, and the parents are concerned. In my opinion, if the court has to find the father as unfit, that is within the courts prerogative. I do not think it is an automatic, however. I have no strong feelings about the "statutory sexual seduction" question.

Assemblywoman Parnell:
I am extremely uncomfortable with the bill in general. It leaves the assumption that, because a man is not immediately involved with a pregnancy, that person does not have the potential to become a good father.

Chairman Anderson:
Do you mean the section of the bill, or the bill as a whole?

Assemblywoman Parnell:
I think the bill as a whole. As I listened to the opposition, I tend to agree with them, and I am certainly not prepared to vote for it at this time.

Chairman Anderson:
I heard differently with sections 1 and 2, and the rest of the sections as needing legislation, particularly with respect to advertising.

Assemblyman Carpenter, would you like "statutory sexual seduction" removed?

Assemblyman Carpenter:
Yes, absolutely.

Chairman Anderson:
Mr. Anthony, does that create a presumption that is different?

Nicolas Anthony:
If it is the Committee's intent, we can remove "statutory sexual seduction" from page 8, line 13.

Assemblyman Horne:
I still have some angst about moving up to the fourth degree of consanguinity. I know we are not going to the fifth degree. For an example, President Obama is related to Dick Cheney, so Dick Cheney could have raised President Obama.

Chairman Anderson:
If I heard the agencies correctly, there is hope to broaden the consanguinity question with another piece of legislation, which may or may not be coming to this Committee. We may end up with a conflict notice.

Mr. Stovall, we are in a work session, would you come up?

Do you see any problems with the change from "shall" to "may," the removal of "statutory sexual seduction" from the language of the bill, and retaining the third degree of consanguinity?

Eric Stovall:
I have no issue with the first portion that you mentioned. However, I believe the Committee should adopt the fourth degree of consanguinity. It is a move that would allow someone to adopt their grandniece. I do agree that going on to the fifth degree is broad. Considering what our families look like today, going to the fourth degree makes sense, and it will allow adoption of someone's family member that they might not be able to adopt because of financial reasons.

Chairman Anderson:
We want to make sure that you can work with the rest.

Assemblyman Horne is of the opinion that we should retain the language, and therefore, sections 4, 5, 6, 7, 8, and 9 of the bill would stay the same. That leaves us the issue of what is outlined in section 2 and the material in section 3, which is a cross-reference. We are also left with the material in section 11, with some language to be retained, and section 12 would be removed. In section 13, we would retain the language in subsection 9, but remove the language "statutory sexual seduction." We would also change "shall" to "may." In addition, we will change the timeline for the effectiveness change in section 9.

Mr. Anthony, have I covered what could conceivably be the bill?

Nicolas Anthony:
Yes, I believe so. Just to clarify in section 11, you did want bill drafting to try to wordsmith that so that we could delete the double negative there.

Chairman Anderson:
If that would be possible, that would be good.

The Chair will entertain a motion.

We will retain the language in sections 1, 2, 3, and delete sections 4, 5, 6, 7, 8, 9, and 10 because those are cross-references to the degree of consanguinity, but retain the cross-reference to eliminate the problems of periodic newspapers. We will remove section 12 in its entirety and remove subsections 6 and 7 of section 13 and renumber the subsections. Also in section 13, we will remove the language "statutory sexual seduction" but retain the rest of the subsection, "If a court terminates parental rights based on a finding that the father is unfit pursuant to this subsection." Mr. Anthony, is that language necessary?

Nicolas Anthony:
Yes, I believe that language would stay in.

Chairman Anderson:
A "putative father to support the child pursuant to chapter 125B of NRS is not terminated. A court 'may' issue an order of support for the child, requiring the father..." Do we have to rework the reference before that? It does not make the assumption that it is going to be terminated.

Nicolas Anthony:
Certainly, I think we have the intent of the Committee down, and if you would like, we can return a copy of the amendment to the Committee, but I think we can take it from here.

Assemblywoman Parnell:
With so much being deleted from the bill, I do not know what is left that I would be voting on. I think a number of us are a bit uncomfortable. I will either be voting in the opposition or waiting for a mock-up of the changes.

Chairman Anderson:
How many of you want to wait for a mock-up?

Research, please do a mock-up for us for A.B. 500 as I have outlined it, or as close as you can.

Assemblyman Carpenter:
I would like to speak to the part of the bill that talks about child support and sexual assault. You do not know what is going to happen in these cases and what a judge sees or does not see. It seems to me that if someone was able to provide this support, and the judge says, "Okay, you are going to do this," it is better than if his parental rights are terminated, and that should be the end of it.

Chairman Anderson:
I know that we would like to see it as a clean break. We expect the judge to make some determinations based upon his position and his involvement with the case. We heard from several attorneys who practice in this area that each of these cases are so uniquely different, that trying to draw a broad line in statutory law is difficult. We would want to make sure that the judge has the opportunity to do the right thing and trust that he will do the right thing by the parent and the child. What is in the best interest of the child is the number one concern.

We will see how it comes out in the bill draft, and hopefully that will make it clearer for everybody.

I will not take a motion on the bill.

[Recessed and reconvened.]

Chairman Anderson:
A quorum is present.

We will be hearing a presentation from the Subcommittee relating to homeowners' associations (Exhibit I). Vice Chair Segerblom chaired the Subcommittee, and Assemblyman Hambrick and Assemblyman Kihuen served on it.

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:
We will go through them in numeric order with the exception of A.B. 350.

Chairman Anderson:
It is your intention to go through the presentation with Assembly Bill 108, Assembly Bill 204, Assembly Bill 207, Assembly Bill 251, Assembly Bill 311, Assembly Bill 361, and then A.B. 350?

Assemblyman Segerblom:
Yes. Assembly Bill 108 has actually been put into A.B. 350, so we do not have to talk about it.

Allison Combs, Committee Policy Analyst:
We are moving first to Assembly Bill 204, and that is on the top of page 2 of the Subcommittee report. This was a bill that was heard in the full Committee, and it dealt with the priority of liens in a common-interest community. The Committee voted to amend and do pass this bill with two amendments

proposed by the sponsor that are contained behind tab 204 for this measure. If you will turn to tab 204 (page 48 of Exhibit I), the first amendment tries to address the concerns with the federal Fannie Mae lending provisions. It limits the application of the bill to single-family detached dwellings, so that the other types of dwellings that would be subject to Fannie Mae are no longer part of this change, to increase the lien priority from six months to two years.

You can see a mock-up of the second amendment on the second page behind tab 204, and that amendment requested by the sponsor of the bill would require that, if an association has established a collection policy, the policy be provided to the unit owners. The policy shall outline the responsibilities and obligation of paying the assessments timely and generally describe options available to the association if the owner fails to pay assessments.

The next bill, on page 2 of the Subcommittee report, is Assembly Bill 207.

Chairman Anderson:
Ms. Combs is referring to the copy that is in our binder and not to the handout copy that is available to the public. In the handout copy, you will have to go past the proposed amendments to A.B. 350 before you will find the amendments to the other bills.

Allison Combs:
Assembly Bill 207 was also heard in the full Committee. The Subcommittee voted unanimously to recommend an amend and do pass with the amendment that was presented by the sponsor during the full Committee as well as the Subcommittee (page 50 of Exhibit I). That amendment would exclude small associations of 20 or fewer units located in counties with a population of 45,000 or less from their requirement of having a reserve study conducted by a person who holds a permit under Chapter 116A of *Nevada Revised Statutes* (NRS), and would instead allow the executive board to determine the qualifications of that person. Testimony indicated that this was a provision that was included in an omnibus bill from last session as well.

On page 3 is Assembly Bill 251, which was also heard by the full Committee and the Subcommittee. The Subcommittee voted unanimously to amend and do pass with amendments agreed to by the sponsor to address procedures to follow when a candidate for a board is running with no opposition. That is a draft amendment prepared by the Legal Division (page 52 of Exhibit I).

Assembly Bill 311 was heard by the Subcommittee, and it voted unanimously again to recommend amend and do pass with amendments proposed by the sponsor. A draft of the amendment prepared by the Legal Division, at the

request of the Subcommittee, is attached (page 57 of Exhibit I). It would address the timing of the review of the financial statement of the associations with an annual budget of less than $75,000.

Finally, Assembly Bill 361 was heard by the Subcommittee, and it voted unanimously to recommend amend and do pass with the amendments proposed by the sponsor as well as some that were proposed by Michael Buckley with the Commission for Common-Interest Communities and Condominium Hotels. A mock-up provides the changes that are there to clarify what would improve the procedures presented (page 59 of Exhibit I). This bill would provide that someone who has a security interest would have to give their contact information to the association. There is a problem when the associations do not have the contact information in these cases involving foreclosures. The second portion of that bill would allow the associations to try to maintain the property in these kinds of situations when they have been vacant for some period.

Chairman Anderson:
Mr. Anthony, is there anything that you need to add to this?

Nicolas Anthony, Committee Counsel:
The Legal Division prepared amendments for A.B. 251 and A.B. 311. I believe they are pretty straight forward.

Largely, I am here today at the request of Vice Chair Segerblom to go over A.B. 350 when you are ready.

Assemblyman Segerblom:
To remind you, A.B. 108 was a bill proposed by Assemblyman Oceguera. It dealt with the way the management companies are regulated and the codes of conduct for the way that they operate. It was largely taking regulations that had already been adopted by the Commission and made them into law. What we did was basically folded those regulations into A.B. 350.

I would appreciate it if Mr. Anthony could go through the bill.

Chairman Anderson:
If I am to understand, A.B. 108 will be off the table because its elements will be incorporated into A.B. 350.

Assemblyman Segerblom:
That is correct.

Nicolas Anthony:
As Vice Chair Segerblom indicated, A.B. 108 was combined with A.B. 350. The proposed mock-up for it is attached behind A.B. 108, and A.B. 350. This document was passed out to the Subcommittee.

Chairman Anderson:
For those of you who have a document in front of you, that would be the mock-up 3895 for A.B. 350 (page 4 of Exhibit I). Is that the document that you are working with?

Nicolas Anthony:
Yes. At the Subcommittee's final work session, there were three additional requested amendments that the Subcommittee unanimously voted on. You will see those amendments included in this revised mock-up dated April 7. The first is in section 1. This was a recommendation that was originally proposed to go into A.B. 204 and is now in section 1 of this bill. It relates to a common-interest community's ability to recover a reasonable fee for collecting past-due obligations.

There was also an amendment proposed by Vice Chair Segerblom at that hearing that would require a unit's association to provide an opportunity to speak at the beginning of the meeting as well as on each agenda item. That is included in this bill.

Lastly, Assemblyman Kihuen asked for an amendment to the mock-up that would require common-interest community executive board meetings to be held at different times throughout the year so its unit owners could make themselves available to meetings that were held outside of normal business hours. If you would like, I can walk through the mock-up section-by-section and go over what each particular provision does.

Chairman Anderson:
That might be helpful since we have not had an opportunity to hear some of these bills. We want to make sure that all of the problems have been properly vetted.

Nicolas Anthony:
As indicated, section 1 authorizes a reasonable cost for collecting past due obligations and provides definitions therein.

Section 2 was originally proposed in A.B. 350 and would have required a supermajority for certain votes. That section is deleted in its entirety. Section 3 of the mock-up keeps an internal reference that was there in

A.B. 350. It has been kept the same. Section 4 is a provision from A.B. 350 that merely codifies the business judgment rule in the statute. Section 5 is also from A.B. 350. It deletes provisions that would allow a common-interest community to charge interest on past due fees.

On page 6, subsection 8 you will see some purple language. That is a deletion of reference that is made in terms of section 1. This deletes the existing law, which currently allows common-interest communities to collect past due obligations at certain fees. Subsection 1 would subsume this subsection 8, so it is no longer needed.

Assemblyman Segerblom:
Instead of having a specific dollar amount for a certain collection, now they just use the term "reasonable"?

Nicolas Anthony:
That is correct.

Chairman Anderson:
We are moving from a specific to a more ambiguous term?

Assemblyman Segerblom:
I would think a more reasonable term.

Chairman Anderson:
Instead of knowing exactly what it would cost, now it says "reasonable."

Assemblyman Segerblom:
You never know.

Chairman Anderson:
"Reasonable" depends upon if you are the payee or the receiver.

Nicolas Anthony:
Moving through the bill, on page 7, section 6 was a provision that was originally included in A.B. 350. We are taking this section out, which would delete the provision of A.B. 350, and which would have required term limits on board members. All of the purple language is coming out, and we revert back to existing law.

Section 7 requires copies of certain documents and minutes of the meeting to be provided electronically if available. If they are not available electronically, then a hard copy will be available at a cost of 10 cents per copy. Page 11, in

green, would require an opportunity to speak at the beginning of each meeting and also, as provided in A.B. 350, on each agenda item. The Subcommittee made a change in the bill. It originally called for five minutes on each agenda item, but the Subcommittee recommended a move to two minutes on each agenda item. Again there, in subsection 6, similar language on providing copies in electronic format or at 10 cents per page.

Assemblyman Segerblom:
Is not two minutes required by the open meeting law?

Nicolas Anthony:
That is correct. I believe two minutes has been upheld by case law as a fair opportunity to be heard under the open meeting law.

On page 12, this would be deleting new language from A.B. 350.

Assemblyman Manendo:
Is that two minutes per person, or two minutes total for a public hearing?

Nicolas Anthony:
It would be two minutes per unit's owner.

Chairman Anderson:
If I am to understand, if you and your spouse appeared together, you would not each get five minutes to speak, but between the two of you, would be given two minutes.

Nicolas Anthony:
Continuing on page 12 of the mock-up, section 8 provides an amendment suggested by Assemblyman Kihuen that requires meetings to be held at different times besides during regular business hours, at least twice per year.

Page 13 has language relating to providing copies electronically. Subsection 5 places back in existing law the requirement of a period for public comment from the units' owners to be held at the beginning of each meeting and again two minutes on each agenda item.

Page 14 again has language relating to copies and also deletion of the purple language contained in A.B. 350.

Chairman Anderson:
The public comment period is one of the big issues that we hear on a regular basis by people who are in common-interest communities. Are there

going to be two opportunities to comment, once at the beginning, and again when that issue is taken up?

Nicolas Anthony:
That is correct.

On page 16 is new language inserted by the Subcommittee. Currently under existing law, interest on assessments is allowed to be collected at up to 18 percent per year. This new language would cap interest on assessments at prime plus two percent. This is the same limitation on civil judgments, and that is where the Subcommittee got this recommendation.

Page 17 deletes language from A.B. 350, which would have defined special assessments and placed certain limitations on special assessments. On page 18, these provisions were originally included in A.B. 108 and related to budgets in there now, placed in section 11 of the bill. Page 19 requires documents to be located within 60 miles of the common-interest community if they cannot be located closer.

Page 20 is a reference to subsection 1 and takes up the question of what is a reasonable cost when collecting certain past due charges. This deletes a reference. On page 21, A.B. 350 originally would have stripped the authority of a common-interest community to foreclose on a property for past due assessments. Also on page 21, in orange, is what the Subcommittee recommended to put back in the foreclosure process.

Section 13 again requires a 60-mile requirement for certain books, records, and reports to be located either in the business offices of the association or within 60 miles of the common-interest community (CIC). Page 22 puts back in existing law a fee of up to $10 per hour to review any books or records. It also requires that upon written request, copies must be made available, and if available in electronic format, at no charge.

Section 14 adds new language that was suggested by the Subcommittee regarding damages if a board member or the CIC retaliates against a unit's owner. They would be subject to these particular damage provisions.

Chairman Anderson:
Could you explain to me a little bit about the $10 per hour in section 13? I am a bit concerned. If I am living in a CIC, and I go to the office because I need a copy of a document that should have been given to me years ago, am I now going to be charged to receive a copy of a document? I understand that it may

take some time to locate the document because it may be from some time ago, yet I need it. Is there now a charge that was not there before?

Assemblyman Segerblom:
This is existing law. It was taken out in A.B. 350, but it is existing law. What we have done is add the fact that many of the documents have been computerized, and if that is the case, it must be made available for free.

Chairman Anderson:
Current law requires a $10 fee?

Nicolas Anthony:
Current law authorizes up to $10 per hour to review any books, records, or contracts.

Chairman Anderson:
This merely maintains the authorization to go there?

Nicolas Anthony:
That is correct.

Assemblyman Segerblom:
There is one dispute that has arisen. In current law, the management group can charge up to $160 for a copy of the covenants, conditions, and restrictions (CC&Rs) if a unit owner has lost them. We require that they be provided for free. There has been concern by the management companies that one of their sources of fees has been taken away from them.

Chairman Anderson:
This is the document that your Subcommittee agreed to.

Assemblyman Segerblom:
Yes.

Nicolas Anthony:
Skipping over to page 24, this is an internal reference. On page 25, A.B. 350 would require certain CICs to provide certain information, either in video or in person. This deletes that requirement. Page 26 is a new amendment that was authorized by the Subcommittee that requires a statement be provided from the declarant to the purchaser explaining all fees and costs in the CIC. Again, on page 27, the same requirement would apply to any subsequent purchaser as well. They would be on notice as to a statement describing all fees and costs of the CIC.

Assemblyman Segerblom:
And fines as well, correct?

Nicolas Anthony:
That is correct.

Page 28 parallels the earlier deletion of the video or in-person requirement. Page 30 adds back in the reference authorizing foreclosure.

Assemblyman Segerblom:
The original A.B. 350 prevented a CIC from foreclosing for a lien, correct?

Nicolas Anthony:
That is correct. Originally, A.B. 350 would have prevented foreclosing on a unit for a past due assessment. This puts the foreclose provisions back into existing law.

Page 33 is new language that was going to be added by A.B. 350, which would have provided fines against board members for certain actions. This deletes those fine provisions. Page 34 deletes language and, therefore, puts back in the foreclosure provisions.

Starting on page 35, this is where A.B. 108, which was heard by this Committee, is placed into A.B. 350. As the Subcommittee worked through the provisions of A.B. 108, these were tweaked slightly with modifications as suggested by Michael Buckley. Those suggestions are included. It looks like it is all new language, but these are provisions, found in the next several pages, that were originally included in A.B. 108.

Chairman Anderson:
Are there any controversies within A.B. 108 that are then incorporated into those sections?

Assemblyman Segerblom:
Did you say controversies? A.B. 108 was actually taking regulations that already existed and putting them into statute. Mr. Buckley was allowed to review those and make some changes based on the comments they made during the hearing.

Chairman Anderson:
None of those conflicted substantially with administrative regulations?

Assemblyman Segerblom:
That is my belief, yes.

Nicolas Anthony:
Yes, that is correct. In certain places where there have been regulations that have been changed, we went through and changed those provisions as well in this bill.

Chairman Anderson:
Those are pages 30 through 41?

Nicolas Anthony:
They pretty much start at page 35, section 26, through the remainder of the bill.

Lastly are the repealed sections on page 43, which restore the foreclosure provisions.

Assemblyman Horne:
Could someone explain to me the testimony on foreclosure due to failure to pay assessments found on page 30, from section 20? I have some angst about foreclosing on assessment in a nonjudicial foreclosure sale.

Chairman Anderson:
Are you talking about the new lines that are being added in the mock-up on page 40, lines 15 through 23?

Assemblyman Horne:
No, page 30, lines 15 through 23. If you fail to pay owners assessment, you could lose your home.

Nicolas Anthony:
If I may, the language on page 30 is existing law, so that would be restored. It is providing notice that if you do fail to pay your assessments your house may be foreclosed. During the hearing, there was testimony by a number of individuals who spoke about the concern of what would happen if they did not have this process, and somebody did not pay their assessments and chose to pay down their credit card or other outstanding debt instead. This puts the CIC at risk and increases the cost to the other homeowners. There was concern that those provisions were somewhat of a "hammer" over individuals to make sure that they continue to pay their assessments.

Assemblyman Segerblom:
That was, by far, the most controversial part of the bill. In the interest of trying to come up with something that we could all live with, we were willing to take that out. The nonjudicial foreclosure sale refers to the similar process that is used when you foreclose on someone now.

Assemblyman Horne:
I thought there may have been some compromised language in that area. It was looking to change that portion.

Assemblyman Manendo:
I am going back to section 9 on page 15, the two minute part. I have an additional question that I thought of. I understand the reasons for going from five minutes to two minutes, but if there is a situation where they get their two minutes and the board says that is all they will take as far as public testimony, was there any discussion about giving other members an opportunity to have their two minutes?

Assemblyman Segerblom:
This says that every unit owner receives two minutes. The concern expressed by the large associations was that if each member has five minutes, then the meeting will go a long time. We felt strongly that every unit owner had a right to comment on the agenda item. If you feel this is drafted inappropriately, we can change it.

Assemblyman Manendo:
I am not seeing that it says every unit owner. Maybe it is okay the way it is.

Chairman Anderson:
Mr. Anthony, I thought this was the question we asked, and you were of the opinion that it allowed for each unit owner to have the opportunity to speak. Assemblyman Manendo, is that the nature of your question? You would like each individual to be heard, or you want each unit owner to be heard?

Assemblyman Manendo:
I would like each unit owner to be heard.

Nicolas Anthony:
I believe the language is consistent and has been interpreted to allow each unit owner to be heard, by the language saying "must allow a unit's owner." That would apply to every unit owner in the CIC.

Chairman Anderson:
Let me reemphasize that there are two opportunities at the meeting: the first being at the beginning of the meeting, and the second being for the agenda item. Is that correct, Mr. Anthony?

Nicolas Anthony:
Yes, that is correct.

Chairman Anderson:
Each unit owner has two opportunities at each meeting.

Assemblyman McArthur:
I do have a question of clarification, and this is on A.B. 204. We only have the amendment part in our handout because it does not match up to our original bill. I could not find the two different sections between our bill and the mock-up. Was that 24-month look-back left in? Do we have a way of getting rid of the Fannie Mae discrepancy with that?

Allison Combs:
If you look at page 2, that takes the language from the bill currently. The 24-month look-back is still in there but only for single-family detached dwellings. The purpose of that is to exclude those types of dwellings that would be subject to the Fannie Mae issue.

Assemblyman McArthur:
The rest of them are not subject to the Fannie Mae issue?

Allison Combs:
Correct.

Assemblyman Segerblom:
Even though he does not agree with it, we worked with Mr. Uffelman to write this language.

Assemblyman McArthur:
I understand.

Chairman Anderson:
I am fairly comfortable with the Subcommittee's report; however, I do not want anybody to feel that they have not had an opportunity to speak.

William Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada:

I am here as a homeowner. I am a lawyer by trade. I testified in front of the Subcommittee, and I think they did a wonderful job. They took many of the issues that were controversial out of the bill and repaired it.

I have two specific comments. On page 16, section 10 it talks about charging interest on unpaid assessments. It says that you cannot charge interest for 60 days. That makes us a bank because nobody has to pay their bills until 60 days late. We need the funds to run our operation. I would suggest that you strike the provision that says, "That is 60 days or more past due." Otherwise, we are the best loan in America, and I hope that you will change that.

Secondly, I am here as a board member. This entire system will only work if you get volunteers. You can have the greatest set of laws in America, but if people do not volunteer to serve on boards, this system will not work. If you turn to page 22, section 14, this is new language that has been added by the Subcommittee, and I would like to quickly cover this. I cannot get insurance for punitive damages. I abhor anybody retaliating against any member of the association, but we have to make decisions every day. Every day we make a decision that someone says is unfair or retaliatory. This new language makes me, as a board member, subject to a claim of punitive damages. If that happens, I quit. I will not serve on a board and expose my family to a claim of punitive damages because I want to volunteer and serve on my homeowners' board. This will end the pool of volunteers. This will blow out, literally, every single smart volunteer who wants to serve on a board. It is like popping a balloon. If every disgruntled member in an association can sue me for punitive damages, I would have to turn over my financial information in a lawsuit. I am a defense attorney, and I see what happens when people are sued for punitive damages. My suggestion is simple: strike the words "punitive damages." If someone is retaliated against, let them collect compensatory damages and attorneys fees. That will solve the problem, and they are made whole, but you will not destroy the pool of volunteers that is critical to this association process.

Garrett Gordon, Reno, Nevada, representing Olympia Group, Las Vegas, Nevada:

At the Subcommittee, we addressed specifically page 22, section 13, paragraph 5 of the mock-up. Our issue was the fact that electronic copies, if available, should be produced at no charge. Olympia Group's position is that they do run a business. If you go to the county recorder's office and ask for documents, there is a cost. It takes a lot of time to compile the packets, and if there is a cost, and if there are limitations in NRS—for example the $10 per

hour with a $160 maximum for other items—that should stand. I would request, and I did submit an amendment (Exhibit J) on Monday, for that new language in section 13, paragraph 5 to be removed.

Chairman Anderson:
The question is that it is supposed to be an aide to provide electronic information in that format. By limiting the number of copies, I can understand. It is easy to push a button on a computer to make a copy as compared to compiling packets.

Assemblyman Segerblom, would they not be able to get the $10 per hour for the search and the rest of the materials required?

Assemblyman Segerblom:
That is my understanding. Many times there is a flat fee where they will charge $160 for a copy of the CC&Rs. Our bill makes it so that if it were available in electronic form, a fee could not be charged.

Chairman Anderson:
They currently cannot charge for their CC&Rs as it is.

Assemblyman Segerblom:
No. My understanding is that they currently charge $160 for the CC&Rs.

Chairman Anderson:
I will close the hearing on the report from the Subcommittee. I will indicate that we can go either one of two ways. We can take action today in the work session, or I will put it into tomorrow's work session. I want to make sure that the Committee has sufficient time to discern the problems with the new A.B. 108 and A.B. 350 combined bill. If the Committee is comfortable moving it, that is fine with me.

Assemblyman Manendo:
Back on that last topic on page 22, I want to be sure I understand. If I move into a homeowners' association (HOA), I get a copy of my CC&Rs. I lose them two years later, and I want another copy. I can get those for no charge? Should I be charged something because it is a document, and I am requesting an additional copy? That seems a little unfair to ask a company to do work a second time around for free.

Assemblyman McArthur:
I agree with Assemblyman Manendo that with this in here and absolutely no other charges, when a company has a bunch of people wanting a copy of their CC&Rs, that could turn into a big expense, and it could turn into a problem for some of the homeowners' associations.

Assemblyman Segerblom:
Currently, the way the bill is drafted, the only time it would be free is if it is electronic. If they have to make 100 pages, they would be able to charge that hourly cost. We felt that if it was on the computer, they could push a button to print it out. That is a policy decision that you can disagree with.

Assemblyman Horne:
Was there discussion about amendments and changes that have been made to CC&Rs and getting those changes to the unit owners? Would they just get the changes and supplement it with their existing CC&Rs, or would they receive a new CC&R with the incorporated changes? If this situation happens, I do not think that the unit owners should be charged for the new CC&Rs.

William Magrath:
I am president of the Caughlin Ranch Homeowners Association, and I have been on that board for 20 years. I have appeared for seven different sessions here as a volunteer.

In response to the question, the $10 per hour was originally in the law because, if a member comes in and wants to look at all of the books, you cannot just put them in a room. There must be someone guarding that person because we have the duty to protect those books and records. That is what that $10 per hour is. If a person requests a copy, at our association, we tell them to go online and print them out. It is there for free. This provides that if the documents are available electronically, you get them for free. I think that is the intent of the amendment from Assemblyman Segerblom. I think that there is still a photocopy charge that is assessed at a maximum of 25 cents per page if a member requests copies of other documents. The bill has changed that to 10 cents per page.

Chairman Anderson:
"If upon a written request from the unit owner, copies must be provided to the unit owner in electronic format if available at no charge." Is it your opinion that this negates the $10 per hour charge?

William Magrath:
The $10 per hour is for watching somebody if they are going through the books and records for a couple of days. That is a reimbursement for that cost. If someone comes in and wants a copy of their CC&Rs, we direct them to the website to download them for free. If we do not have them online, and we have to make a hard copy, we charge them only for the copy and not $10 per hour to copy it.

Assemblyman Mortenson:
I think my question was mostly answered. Are all of your books and records online as well? Can they be examined without charge?

William Magrath:
We are a big association of 2,250 members. Some of our records are online on our website. Many smaller associations do not even have a website. I cannot answer for them. If any records are online, anyone can get access to them, but most of our records are generally kept in file cabinets. When people come in and need to look through them, we have the right to charge them up to $10 per hour to watch them. To answer your question, most of our records are not online because there is too much paper. In those cases, we would charge them 10 cents per copy, which is now provided in the bill.

Chairman Anderson:
It sounds to me that the Committee is not quite ready to take action on this. We will turn to our other documents in the work session.

We will start with Assembly Bill 499, which we heard yesterday.

Assembly Bill 499: Revises provisions relating to discovery in criminal proceedings. (BDR 14-1158)

Jason Frierson, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada:
After the hearing yesterday on Assembly Bill 499, I conferred with Mr. Johnson and members of the Nevada District Attorneys Association to come up with language that we believe we all could live with but would also allow for the flexibility to address the concerns in the smaller counties that do not necessarily operate in the same way as the larger counties. What we came up with was something we thought would address those needs along with the concerns that we have about the need to get discovery at the soonest available opportunity (Exhibit K). With that in mind, we decided to move some language down to a later portion in order to be more organized and make it clear that the goal is to provide for discovery exchange as early as possible. If it is not possible at the

initial arraignment, the latest would be five days before the preliminary examination. That made it clear that this was not applying to misdemeanors. It also made it clear that there is some flexibility.

We started by deleting what were lines 3, 4, and part of 5, so we start with "the prosecuting attorney shall provide a defendant charged with a gross misdemeanor or felony with copies of any..." to make it clear that we are talking about gross misdemeanors and felonies. Subsequently, what was previously page 2, line 8, is where we moved the added language and inserted at the end of line 8 "at the time the person is brought before a magistrate pursuant to *Nevada Revised Statutes* (NRS) 171.178; or as soon as practicable thereafter, but not less than five days before a preliminary examination." That is where we believe we allow the flexibility.

Chairman Anderson:
Mr. Bateman, are you okay with these amendments?

Sam Bateman, Las Vegas, Nevada, representing Nevada District Attorneys Association, Reno, Nevada:
Miss Erickson and I worked on these amendments, and I believe we can comply with the basis of these amendments.

Chairman Anderson:
The Chair will entertain a motion.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 499.
>
> ASSEMBLYMAN HORNE SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
We will move to Assembly Bill 496, which we heard earlier this week. We have a mock-up for this bill (Exhibit L).

Assembly Bill 496: Revises provisions governing judicial discipline. (BDR 1-1110)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 496, as you will recall, relates to the judicial discipline process, and during the hearing, David Sarnowski, the Executive Director of the Commission on Judicial Discipline, submitted several suggested amendments.

His revisions and comments are attached to your bill explanation along with a mock-up that does include the conceptual language of those revisions. There are 11 specific topics, and I will try to walk the Committee through those in as brief a manner as I can.

If you look at the mock-up, which is behind the comments from Mr. Sarnowski, we will start with amendment number 1, which is found on page 2 of the mock-up. This would revise the definition of a special counsel to reflect more accurately what the duties of that position actually are and to remove some of the information that they are not responsible for. Amendment number 1 is also found on page 8 of the mock-up. This would indicate when special counsel is likely to be appointed, and that would be during the interim suspension stage when the proceeding becomes adversarial.

Again, let me indicate to the Committee members this is a mock-up prepared by the Research Division, and it is based on comments provided by Mr. Sarnowski, so the language may look different if the Committee adopts these amendments. Amendment number 2 is on page 2 of the mock-up in section 11. This would remove the restriction that an alternate commission appointee cannot reside in the same county as the appointed commission member.

Amendment number 3 is also found on page 2 in section 13. This regards the timing for when the commission is required to have the annual report prepared instead of within three months before the end of the fiscal year. It is changed to within three months after the end of the fiscal year. Additionally, on page 3, Mr. Sarnowski requested that the first annual report be due September 30, 2010 rather than 2009, and the first biannual report be due September 30, 2011.

If we move to page 4 of the mock-up, this is amendment number 4. This would provide immunity for witnesses who provide statements to an investigator during an authorized investigation.

Amendment number 5 can be found on page 5 of the mock-up. This clarifies that willful misconduct includes conviction of a felony, gross misdemeanor, and misdemeanor by inserting the words "any crime." Currently, it applies to a felony or misdemeanor, so they wanted to capture gross misdemeanors as well.

Amendment number 6 can be found on page 9 of the mock-up. This would lower the standard of proof to a preponderance of the evidence for a judge who raises mental illness or other disability as a defense.

Amendment number 7 is on page 10 of the mock-up. This would delete the presumption that a judge failing to respond to a complaint would be an admission of misconduct.

Amendment number 8 is found on page 12 of the mock-up. This changes the word "must" to "should" in order to give the commission some flexibility when a hearing on the formal charges must be held.

Amendment number 9 is found on pages 1 and 18 of the mock-up. This changes the definition of "censure" to more accurately reflect the discipline process that is used by the Commission. It removes the word "suspension" and adds "removal or bar of a judge." As a note, there may be some confusion. I believe the word "removal" is defined; however, the word "bar" is not defined. Removal of a judge is when the judge is actually in the position, and they have to be removed from their current position as a judge. Barring a judge is when the judge has already left office and ensures that they cannot be reelected to judicial office. That term may need to be defined.

Amendment number 10 is on page 18 of the mock-up. This would clarify that medical records and other privileged information remain confidential.

Amendment number 11 is on page 19. This specifies that the provisions apply prospectively and the effective date would be January 1, 2010 for this act.

Assemblyman Segerblom:
Do we need to define "bar"?

Chairman Anderson:
I think we do need to define it. I suggest that we move with Mr. Sarnowski's suggestions in the mock-up that has been prepared. We should make sure that "bar" is appropriately defined so it reflects his intent. Our Research staff had indicated that the term "bar" is not currently reflected in state statute. In this particular case, we are referring to "bar" as those who formerly held judicial office who are now prevented from running again.

David Sarnowski, General Counsel and Executive Director, Commission on Judicial Discipline:
Your policy analyst was accurate in identifying the fact there is not a definition of the word. She was also accurate in identifying that when that does arise, the commission has jurisdiction over a judge. It is our position that we retain jurisdiction over someone whom we first had jurisdiction over, even when they leave the bench, and the commission has completed its proceedings against those persons. For example, if they lose an election, or in the case of a pro tem

judge, their appointment is rescinded or otherwise expires as a result of the action of the appointing authority of city council or county commissioner. In those instances, the Commission has taken action and has said we do not think you should be a judge again and, therefore, you are barred from being a judge, just as a removal of a sitting judge acts as a "bar" to him becoming a judge ever again by way of appointment or election, unless that decision was overturned by the Supreme Court.

Assemblyman Carpenter:
I did not get to hear the testimony on this bill, so I did talk to Mr. Sarnowski about a couple of things I wanted clarified. The problem I have is the 18 months after they receive a complaint. They have 18 months to come up with an action. I think that is a long time. People get frustrated with the government taking so long to resolve an issue. Mr. Sarnowski did explain that there are some things that come up, that they cannot meet a shorter timeline. It would seem to me that if they had a year to complete this situation, it would be plenty of time. It would be good to add something that designates a shorter time unless there is some extenuating circumstance that makes it last longer. This is when people get frustrated.

Chairman Anderson:
At the hearing, that question was broached. The chairman of the Commission indicated that the longer period of time was necessary because of the difficulty in trying to get the Commission together. It is a matter of calendaring the many individuals who are involved in their own court processes and the Commission. Given the nature of some of the complaints, coupled with the need of an adequate investigation, they get to them as quickly as possible.

David Sarnowski:
I think you summarized what was said the other day. By way of clarification, we contract out our investigative process, and it has always been that way since the mid-1990s. One of the things that does occur is when we start getting short on investigative money, usually toward the end of the year, we have to stop investigating. For example, I put out a directive the other day that everything was to be put on hold, with the exception of a couple of cases that are of highest priority, to make sure that we do not go over budget. That is something that seemingly comes up in the latter part of each budget year.

I do appreciate Assemblyman Carpenter's concern about how long it does take to process an investigation to get it to a reasonable cause determination.

Assemblyman Carpenter:
We have that on the record, and if anyone asks me about it, I will tell him to pull up the record and he can call Mr. Sarnowski if there are any questions.

Chairman Anderson:
The Chair will entertain a motion.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 496.
>
> ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
There was a bill that Assemblyman Horne was concerned about the other day, which is Assemblywoman Koivisto's Assembly Bill 309. We will move to this bill now, and then we can adjourn for the day.

Assembly Bill 309: Revises provisions relating to the crime of stalking. (BDR 15-994)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 309 is the bill that relates to the crime of stalking, and it raises the penalties for that crime. There were several amendments. Amendment one removes emotional distress from the bill, found on pages 1 and 2 of the mock-up (Exhibit M). Amendment two removes provisions related to the protective order to keep existing law regarding that process. Amendment three is a drafting amendment to remove the term "actor" from the definition of text messaging.

If you recall, during the work session, there were some questions regarding subsection 6, lines 18 through 24 on page 2 of the mock-up. This is the section that indicates that in a prosecution it is not a defense that actual notice was not given or that the person did not intend to cause the victim to feel terrorized. Assemblyman Horne and some others had some concerns about this. The agreement is that this particular provision can be removed from the

bill as well. Thus amendment number four would delete subsection 6 at lines 18 through 24.

Chairman Anderson:
Assemblywoman Koivisto and I had a short discussion as to whether this would be an acceptable amendment to her, and she agreed that it would be. We can remove subsection 6 on page 2 of the mock-up, lines 18 through 24.

The Chair will entertain a motion.

> ASSEMBLYWOMAN PARNELL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 309.
>
> ASSEMBLYMAN CARPENTER SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

[The meeting adjourned at 12:34 p.m.]

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 8, 2009 **Time of Meeting: 8:14 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Rosters
A.B. 491	C	Assemblywoman Marilyn Kirkpatrick	Mock-up of proposed amendments.
A.B. 491	D	Stefanie Ebbens	Written testimony.
A.B. 491	E	Kim Robinson	Written testimony.
A.B. 500	F	Kevin Schiller	Degrees of Family Relationships handout.
A.B. 500	G	Rebecca Gasca	Proposed amendment from ACLU.
A.B. 500	H	Sherry Keithley	Proposed amendment.
	I	Assemblyman Tick Segerblom, Allison Combs, and Nicolas Anthony	Report from the Subcommittee on homeowners' associations.
A.B. 350	J	Garrett Gordan	Proposed amendment.
A.B. 499	K	Jason Frierson	Proposed amendment.
A.B. 496	L	Jennifer Chisel	Work session document.
A.B. 309	M	Jennifer Chisel	Work session document.