

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

**Seventy-Fifth Session
April 10, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:18 a.m. on Friday, April 10, 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:

Assemblyman Lynn Stewart, Clark County Assembly District No. 22

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Robert Gonzalez, Committee Secretary
Stephen Sisneros, Committee Assistant

OTHERS PRESENT:

Mark H. Fiorentino, Kummer Kaempfer Bonner Renshaw & Ferrario, representing Marriott International, Wynn Resorts, Ltd., and the Golden Nugget, Las Vegas, Nevada
Josh Griffin, Reno, Nevada, representing MGM Mirage, Las Vegas, Nevada
Carol Sala, Administrator, Division for Aging Services, Department of Health and Human Services
Sally Ramm, Elder Rights Attorney, Division for Aging Services, Department of Health and Human Services
Chuck Calloway, Sergeant, Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada
Diane R. Crow, J.D., State Public Defender, Office of the State Public Defender
Sam Bateman, Las Vegas, Nevada, representing the Nevada District Attorneys Association, Reno, Nevada
Margaret Flint, Reno, Nevada, representing Arch of Reno Wedding Chapel, Antique Angel Wedding Chapel, Silver Bells Wedding Chapel, and Chapel of the Bells, Reno, Nevada, and Vegas Adventure Wedding Chapel, Las Vegas, Nevada

Chairman Anderson:

[Roll called. The Chairman reiterated the Committee rules.]

We will begin the work session with Assembly Bill 476.

Assembly Bill 476: Makes changes relating to gaming enterprise districts.
(BDR 41-659)

Jennifer M. Chisel, Committee Policy Analyst:

Assembly Bill 476 was heard by the Committee on April 3, 2009. This is a Committee bill, and it would expand the geographical boundaries of the Las Vegas Boulevard gaming corridor. The Committee has one amendment to consider, which provides additional reference points to the property description ([Exhibit C](#)). There is another amendment being distributed to you right now, which will have to be explained ([Exhibit D](#)).

Mark H. Fiorentino, Kummer Kaempfer Bonner Renshaw & Ferrario, representing Marriott International, Wynn Resorts, Ltd., and the Golden Nugget, Las Vegas, Nevada:

Since your hearing on this bill, we have worked to try and address some of the concerns raised at the hearing. We have asked the staff to distribute two documents to you. One is another set of exhibits on three pages ([Exhibit E](#)), and the other is the language of the proposed amendment ([Exhibit D](#)). The purpose of the handwritten lines was to show you the changes we have made.

We are offering to delete portions of the expanded area for three separate reasons. The suggested portions to be deleted are crosshatched on the first page of the exhibit. If you turn to the second page, I can walk you through the first change, which I have circled. Remember that I testified that the vast majority of the yellow portion that is in Clark County was planned for resort hotels and casinos. The portion that was not so planned lies between Industrial Road and the railroad tracks. The first change would take that portion out, because it is planned for a combination of industrial and other commercial uses. It would delete the portion in Clark County that is not planned for resort hotel uses.

The second change is to delete a good portion of the boundary that would have lain in the City of Las Vegas. This was primarily intended to address the concerns raised by Mr. Segerblom and Mr. Manendo. You might recall that you asked me, if we extended it downtown as we had originally proposed, how many single family residences would be impacted. I said that there were some, but I did not know for certain how many. If you make the change we are suggesting to you this morning, I can tell you with 100 percent certainty there will be zero impact. The purpose of taking that out is to remove any doubt about whether there would be single family residences in the area that was proposed.

The final change, on the first page in the lower right hand corner, would remove a portion in Clark County between Tropicana Avenue and Sands Avenue. That was designed to address the concerns of MGM Mirage.

I am told both MGM Mirage and the culinary union will support the bill with these changes.

Chairman Anderson:

I am looking at the first page of your maps. I see Tropicana and Paradise are pretty clearly illustrated.

Mark Fiorentino:

Everything north of Sands Avenue would remain in the expanded boundary. Everything south would be deleted by this proposed amendment.

Chairman Anderson:

The black area is to be included or excluded?

Mark Fiorentino:

The black areas would be excluded from the bill.

Chairman Anderson:

Thus, the older neighborhoods and historic districts are protected, which were the initial concerns raised about the bill.

Mark Fiorentino:

Yes, sir.

Assemblyman Carpenter:

I can see what you mean on the first page, but when I look at the map on the third page, it appears that you are taking in more area.

Mark Fiorentino:

Yes, that is a mistake. I apologize. On the third page, those outer lines that are really more purple than black mean nothing in the bill. The reason we drew those outer lines is because those are the outer boundaries in the master plan for the city. For the purposes of our bill, the best way to understand it is by looking at the map on the first page. The yellow square at the very top of the map would be the only portion that would remain in the Las Vegas gaming corridor. It would be bounded by the railroad tracks, U.S. Highway 95, Las Vegas Boulevard, and, I believe, East St. Louis Avenue on the south.

Assemblyman Carpenter:

What happens by having this part of the gaming corridor disconnected from the rest of the gaming corridor? Does that present any problems?

Mark Fiorentino:

It should not. If you adopt the bill with these amendments, you will be covering the vast majority of downtown, where it is almost all developed with resort hotel casinos, but eliminating that portion south, where there are still some scattered residences. So, although it is not as geographically pleasing as the first proposal, it does protect those remaining single-family residences and some of the historic areas downtown that concerned Mr. Segerblom and Mr. Manendo.

Chairman Anderson:

Let me make sure I understand the boundaries on your map. Beginning at the northeast corner of the freeway, heading up to the railroad tracks, and then using the railroad tracks as a line?

Mark Fiorentino:

Yes, sir. That has not changed since the original bill.

Chairman Anderson:

Okay, then we come over the railroad tracks to East St. Louis Avenue, go through the existing enterprise district, come back down and pick up Paradise, come down to Sands Avenue, and go back up Sands Avenue to the existing district. Is that Las Vegas Boulevard?

Mark Fiorentino:

No, it is 1,500 feet from the center of Las Vegas Boulevard. That is the way the current statute is written, and we have maintained it.

Chairman Anderson:

Okay, we proceed back down, and that is the end of it. It excludes that triangle of land there. In addition, we pick up this little bit of ground south of U.S. Highway 95 between the railroad track and Las Vegas Boulevard.

Mark Fiorentino:

Everything you said was correct except the very first part. I thought you were describing the northern yellow section, but you were describing the southern yellow section. We moved the boundary so that the boundary in the southern section will not be the railroad. It will be Industrial Road, because the property

between Industrial Road and the railroad is not master planned for resort hotel casinos. The western boundary there will be Industrial Road, not the railroad tracks.

Assemblyman Manendo:

That answers a lot of my questions. I was trying to figure out if it was the railroad tracks or Industrial Road. We always have to be careful about our residents in the area.

Assemblyman Segerblom:

Is it your understanding that this portion of the city is all master-planned for casinos? I am concerned about the part in the north, where city hall is located, north of Stewart, between Stewart and the freeway.

Mark Fiorentino:

You are correct. The vast majority of it is planned for resort hotel casinos. The green on the map on the third page is city hall. Green means public facilities. That is where the existing city hall is.

Assemblyman Segerblom:

And the mob museum?

Mark Fiorentino:

The museum is clearly within the area that you would be adding to the gaming corridor. That is correct.

Assemblyman Segerblom:

Is there a reason why you do not just follow the city master plan?

Mark Fiorentino:

I guess that is a decision entirely up to you. It seemed to us that it is much easier to use the geographic boundary of U.S. Highway 95, because it is much easier to understand and codify, than to draw specific property lines that would include the city hall and the proposed museum.

Chairman Anderson:

It was my suggestion that we use naturally identifiable geographic lines rather than arbitrary ones.

Assemblyman Segerblom:

Is Sands Avenue what we call Twain?

Mark Fiorentino:

No, Sands Avenue is on the east side of Las Vegas Boulevard. Sands Avenue on the west side of Las Vegas Boulevard is called Spring Mountain Road.

Assemblyman Segerblom:

So that would include the Wynn golf course?

Mark Fiorentino:

Yes, sir, it would.

Chairman Anderson:

At the initial hearing, you suggested some additional language. Is it all included in this handout ([Exhibit C](#))?

Mark Fiorentino:

It is all included in this handout. If you agree with this map and these amendments, you would adopt this amendment and only this amendment. The one we passed out today.

Josh Griffin, Reno, Nevada, representing MGM Mirage, Las Vegas, Nevada:

MGM Mirage supports this amendment and supports this bill.

Assemblyman Kihuen:

Under rule 23, I would like to disclose that my mother and brother are employees of MGM Mirage and members of the culinary union, but I will be voting on this matter. This issue will not affect me or my family any differently than anyone else.

Assemblyman Segerblom:

I would like it to stop at Stewart. I do not see why you would use the freeway as opposed to the city's own internal gaming district. However, if it is agreed to by the parties, I will not oppose it.

Chairman Anderson:

The Chair will entertain an amend and do pass motion. The amendment to be included is the Fiorentino language, which was a compromise among all the parties involved.

ASSEMBLYMAN MANENDO MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 476.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN PARNELL WAS
ABSENT FOR THE VOTE.)

Let us turn our attention to Assembly Bill 8.

Assembly Bill 8: Establishes the Statewide Central Registry for the Collection of Information Concerning the Abuse, Neglect, Exploitation or Isolation of Older Persons. (BDR 38-98)

Jennifer M. Chisel, Committee Policy Analyst:

Assembly Bill 8 would establish a central registry to collect information on substantiated cases of elder abuse. The Committee has four proposed amendments that were submitted after the hearing by Sally Ramm, who is the elder rights attorney with the Division for Aging Services, and a fifth amendment proposed during the hearing by the central repository ([Exhibit F](#)).

The first amendment would require the Division for Aging Services to adopt regulations to provide an appeal process for individuals in the registry, as well as other processes to carry out the registry. These regulations would be similar to those adopted by the Division of Child and Family Services for the child abuse registry. The second amendment incorporates the standard used in elder abuse investigations, which is reasonable cause to believe that abuse has occurred. The third amendment limits the scope of employers who may access the elder abuse registry to those who provide services to the elderly and removes the reference to children that was in the original bill. The fourth amendment ensures the confidentiality of victims of elder abuse. Also, there was a fifth amendment proposed during the hearing by the central repository. This would transfer responsibility for employment suitability determinations away from the central repository to the agencies that actually regulate the industries; in this case it would be the Office of Disability Services and the Health Division.

Chairman Anderson:

The Chair entertained an amend and do pass motion that Mr. Ohrenschall had put forward on this bill yesterday. In the course of our discussion, we put it over to today's work session. Mr. Ohrenschall, if you would withdraw the motion, it would make me feel more comfortable.

Assemblyman Ohrenschall:

I would like to withdraw the motion.

Chairman Anderson:

There was some discomfort with the bill. I suggest that we entertain the procedure to appeal, reports included in the registry, limiting the scope of employers who have access to the registry, and the confidentiality of victim information, in addition to the suggestion from Captain O'Neill, employment suitability determination, which would be taken care of by your office, Ms. Sala.

Carol Sala, Administrator, Division for Aging Services, Department of Health and Human Services:

To implement the proposed actions in the bill, the first thing we would need to do is develop regulations for how the registry would operate. Developing regulations requires public workshops and public hearings, so there would be the opportunity for input from the public. We would need to standardize the reporting on investigating cases to ensure there is consistency. We would need to review all substantiated cases; we are looking at having at least two levels of internal review for any case that is substantiated. That is because once a case is substantiated, the suspect would need to be notified of his right to appeal that substantiated ruling.

The intent is to have people, who have been substantiated as abusing, neglecting, exploiting, or isolating a senior, go into the registry. That could ultimately affect an employment decision. Employers would call the division. That would be part of the procedure. We would have to verify that the person calling is actually an employer who is considering someone and he has a reason to need this information. In other words, the suspect would be working with seniors in some capacity. So the suspect would need to be aware of their appeal rights. We would have an in-house review, and if the suspect still disagreed with the review, it would be referred to Appeals in the Hearings Division of the Department of Administration. Of course, there would be procedures in place to obtain signed releases from the suspects, because once they are in the registry they would have to agree to allow their names to be released to potential employers. It would require our staff to keep the registry up to date to make sure that when someone's name is in there, and it is reaching the 10-year period, those records are purged.

Chairman Anderson:

Those are all things you explained to us when we heard the bill on March 11, 2009. One of the big issues was due process.

Assemblyman Segerblom:

As I understand it, currently the law requires that, to be put in the registry, the only standard is reasonable cause to believe. You are saying that, in fact, it means there has been a substantiated case of elder abuse. Is that correct?

Carol Sala:

That is correct. Once the social workers do the elder-protective investigation, we always determine the outcome, whether it is substantiated or unsubstantiated.

Assemblyman Segerblom:

If it is substantiated, the person is notified that he has been identified as having abused someone and he has a right to appeal.

Carol Sala:

Correct.

Assemblyman Segerblom:

Now, what about when his name goes into the registry? Is he also notified of that fact and that he has a right to appeal?

Carol Sala:

We have not developed the regulations yet, but before their name would go into the registry, they would be able to go through the appeal process. If the outcome of the appeal was upheld—in other words, he continued to be considered a substantiated perpetrator—then he would be notified that he is going into the registry. The appeal process up front is what would determine whether he is going to go into the registry.

Assemblyman Segerblom:

You see the appeal process as based on the question of substantiation?

Sally Ramm, Elder Rights Attorney, Division for Aging Services, Department of Health and Human Services:

The appeal process would accomplish both. During the appeal process, the substantiation would have to be upheld in order to uphold the inclusion of the person's name on the list.

Assemblyman Segerblom:

Both issues would be addressed in the same appeal?

Sally Ramm:

That is correct.

Assemblyman Segerblom:

Who has the burden in that process?

Sally Ramm:

The agency has the burden of proving the case was properly substantiated and that the person was actually the correct person to have been substantiated as the abuser.

Assemblyman Segerblom:

Would you have any problem if, instead of using the words "reasonable cause," we changed the law to use the words, "reasonable cause to believe, as supported by a substantiated finding," or something to that effect, so it refers to the fact that the reasonable cause is the substantiation?

Sally Ramm:

I am not exactly certain I understand the wording, but if your idea is that the reasonable cause to believe included that the case was substantiated, then I would say that is proper and how it ought to be.

Assemblyman Segerblom:

Right now, it is not in the language. I would like to specify that is what "reasonable cause" means.

Sally Ramm:

I think that would be appropriate.

Chairman Anderson:

Mr. Anthony, can you draft the bill so it clarifies that "reasonable cause" includes that the case for elder abuse has been substantiated?

Nick Anthony, Committee Counsel:

Yes, we can certainly draft that.

Assemblyman Carpenter:

I am looking at the phrase, "which resulted in the belief." The amendment that my colleague is talking about would take that out and make sure the claim would have to be substantiated?

Chairman Anderson:

Mr. Carpenter is talking about page 3, section 12, lines 40 and 41. Mr. Anthony, will Mr. Carpenter's concerns be taken care of by Mr. Segerblom's suggested amendment?

Nick Anthony:

Yes. When we go through this bill, we will certainly make sure that the language "reasonable cause to believe" also includes that the case has been substantiated, so it has the higher burden throughout the text.

Assemblyman Carpenter:

We have a note here from Ms. McClain. It says that it will create a small fiscal impact. Do you have anything definite on what that might be?

Carol Sala:

We did complete a fiscal note for this bill. The fiscal impact for fiscal year 2010 is a little over \$200,000. It is \$277,000 for fiscal year 2011. That is to cover the additional staff we would need to do the levels of review within the division to determine whether a case has been substantiated, to manage the registry, to follow it through the appeals process, to do the notification to the alleged suspects, and to handle other matters.

Assemblyman Ohrenschall:

I admire the intent of the bill, but I did share a lot of the concerns that Ms. Rowland expressed. I might feel more comfortable if the due process considerations were in statute instead of just in the regulations, so that if someone did want to try to clear his name, there would be a procedure in statute.

Chairman Anderson:

You want an additional amendment that clarifies the appeal process for removing one's name from the registry? Do you have suggested language?

Assemblyman Ohrenschall:

I do not currently, but I could probably get that from Ms. Rowland or her assistants.

Assemblyman Segerblom:

Why do we not simply add the words "due process" in amendment 2, where it talks about a reasonable cause and substantiated? We could add that the person has the right to full due process to challenge that finding.

Nick Anthony:

I believe there is an appeal process spelled out in the *Nevada Administrative Code* (NAC). If it would provide more comfort to the Committee, we could take that same appeal process and amend it into this bill in the statutory language.

Chairman Anderson:

Would the question of substantiation then need to be addressed in addition?

Nick Anthony:

I believe that is an additional requirement, so we would also make that clarification.

Assemblyman Ohrenschall:

Mr. Chairman, that would give me a lot more comfort.

Nick Anthony:

I want to clarify the process we are talking about in the NAC. We will be taking language from the child registry. We would be copying that for this elder abuse registry.

Chairman Anderson:

I will entertain a motion of amend and do pass, and rerefer to the Committee on Ways and Means. The amendments to be included are numbers 1 through 5 of the work session document. We will also include language clarifying the meaning of "substantiated claims," as well codifying the right of due process.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 8 AND REREFER IT TO THE ASSEMBLY
COMMITTEE ON WAYS AND MEANS.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

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

Let us turn our attention to Assembly Bill 368.

Assembly Bill 368: Authorizes courts to admit involuntarily certain persons to programs for community-based or outpatient services under certain circumstances. (BDR 39-155)

Chairman Anderson:

Assemblyman Stewart, I understand you have additional information you want us to consider that was not considered at the hearing.

Assemblyman Lynn Stewart, Clark County Assembly District No. 22:

That is correct, Mr. Chairman. I have amended section 25. This was done in consultation with Judge Ritchie, Judge Voy, and Mr. Rick Loop ([Exhibit G](#)).

Chairman Anderson:

The suggestion that the county appropriate sufficient funds for the operation of the district court to process and adjudicate petitions seems to conflict with the other amendment. Mr. Stewart, are you anticipating that the state is going to pay for this program, or the county?

Assemblyman Stewart:

This language is completely permissive. The intent is that the county would provide the program when funds are available. It is strictly "may," strictly permissive. It is setting up a program similar to successful programs in several other states; however, since we are devoid of funds, it would be permissive, giving them the authority to implement the program when they had the revenue. This was at the suggestion of the two judges.

Chairman Anderson:

I was under the impression that the judges also wanted to have the opportunity to accept gifts to run the program, but I do not see that in this most recent email.

Assemblyman Stewart:

The amendment to subsection 3 of section 25 would include that. The county may accept grants, donations, and other sources.

Chairman Anderson:

The language in the original email you sent says, "The Legislature may allow the division to maintain the operation of community-based services, and may accept grants, donations, and other sources of revenue in spending funds in the furtherance of this act." That is not part of this. What is your intent?

Assemblyman Stewart:

The intent in subsection 3 was to allow a source of revenue in the meantime.

Chairman Anderson:

There is no subsection 3 in the one that you sent me.

Assemblyman Stewart:

That was the email from Judge Voy. We added subsection 3 just to provide them with a source of funding in the meantime, if it became available.

This is an email that I gave you today to show that we conferred with Judge Voy and Judge Ritchie. I believe you have one that I sent in yesterday with the three subsections.

Chairman Anderson:

That is what I am trying to determine. Which of these two documents do you want us to address?

Assemblyman Stewart:

I want you to address the document I sent you with the three subsections.

Chairman Anderson:

Thank you for the clarification, because I was looking at the most recent document you gave me. There were not three subsections nor a section 25. Of course, this was not discussed at the time of the hearing.

Assemblyman Stewart:

I apologize for that. I just added subsection 3 as a possible intermediate source of revenue until they were able to determine if they could provide funds from the county.

Chairman Anderson:

So these three amendments are from you, and, while Judge Voy thinks that they are helpful, they are not from him.

Assemblyman Stewart:

Subsection 1 and subsection 2 are directly from what he sent me. I added subsection 3.

Chairman Anderson:

This would create a fiscal note.

Assemblyman Stewart:

Mr. Chairman, that was not our intent. There would be no fiscal note. They may accept grants as they came in from private individuals or other sources but not from the county or the state. There would be no requirement for any government entity to provide any funds.

Chairman Anderson:

Could you explain to me why the unusual date of September 1, 2009, rather than the usual October date? What is the advantage of gaining a month?

Assemblyman Stewart:

That was from the judges, evidently to give them more time to implement the program.

Chairman Anderson:

It would be a month later. There is only a month difference.

Assemblyman Stewart:

The effective date came from the judges. I am not sure why they did that.

Chairman Anderson:

In our work session document, we have reflected the effective date of September 1, 2009, and the county funding and authorized acceptance of grants and donations, which Ms. Chisel incorporated from the suggested amendments proposed by you, Mr. Stewart, and by Judge Voy.

Assemblyman Horne:

First, I do not think I ever received a clear answer on the difference between community-based and outpatient services. Second, language in the bill mentions that a noncompliant patient can be brought back to community-based or outpatient services. They use the term "clear and present danger to themselves or others," which is typically a standard you use to commit a person to a facility. I do not know why you would use that same standard to bring them into a community-based or outpatient service program. Third, I recall asking how they identified these people who would come into this program, who may have "mental illness" and not have complied in the past with mental health treatment. Will they identify a homeless person on the street with mental illness but not necessarily affecting anybody else? I did not get a clear answer to those questions.

Assemblyman Stewart:

Mr. Horne, I do not think we are going to go combing the streets for people. If someone—a parent, a family member, a police officer, et cetera—observes a person who is acting dangerously, then they could petition to the judge to determine whether or not that person needed treatment. The whole purpose of this is to provide a vehicle for the judges to get more immediate treatment to individuals, to preclude them from violent acts upon themselves or others. The basis for Kendra's law, which this bill is based upon, was that a family member was killed by a mentally-ill individual because he did not get treatment. Since it has been implemented, they have been very successful in treating individuals in outpatient programs, rather than taking a longer time to put them into inpatient mental health facilities.

Assemblyman Horne:

I am concerned about section 12, subsection 2, paragraph (d): "The court determines that, as a result of a history of noncompliance with treatment for mental illness, the subject of the petition needs to be admitted to a program of community-based or outpatient services to prevent the relapse or deterioration of the subject of the petition which is likely to result in harm to himself or others." This gives me some concern. I believe the Las Vegas Metropolitan Police Department (Metro) also had some concern about going out and picking up people at the request of family members.

Chairman Anderson:

Some of the questions that were raised by law enforcement revolved around that. In addition, the language in section 16, subsection 2, "upon the written request by a professional responsible," might mean that a doctor gets to make the call as to whether law enforcement needs to pick up these individuals.

**Chuck Calloway, Sergeant, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada:**

That is correct. I spoke at length with Assemblyman Hardy several weeks ago about this, and it may have been a miscommunication. I thought that clarifying language might be put in the amendment. In some of the other jurisdictions, when a person walks away or fails to comply with treatment in an outpatient program, rather than bring that person back to the outpatient facility, which is unsecure and he has the ability to walk right out again, it is treated like a "Legal 2000" in our state, and he is admitted into an inpatient facility against his will at the request of the doctor.

Chairman Anderson:

Mr. Stewart, those questions were not addressed in any of the amendments I see from Judge Voy or you, so I am in a quandary. It is a successful program in

many places in the country, and the lack of services in this area reflects woeful inadequacy. This has the potential for saving the human beings involved and it is also a cost-saving measure for the public as a whole. It keeps mentally-ill people out of jail and prisons. It is not mandatory; it is permissive. It is the right thing to do, and it is cost-effective. But there are some legitimate concerns about enforcement and due process rights.

Assemblyman Stewart:

I would be willing to accept any amendment that you come up with to make enforcement more reasonable or effective.

Chairman Anderson:

We were hoping that was going to happen.

Chuck Calloway:

I think the simple solution from the law enforcement side would be to change the language in subsection 2 of section 16 to allow the officer, at the request of the doctor, to conduct a "Legal 2000" when the subject is located, rather than bringing him back to the outpatient facility.

Chairman Anderson:

Is the term "Legal 2000" uniformly utilized throughout law enforcement in the State of Nevada?

Chuck Calloway:

I know it is in Clark County. I cannot speak for the other jurisdictions.

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

I cannot answer that question. I am not that familiar with the process. I can find out quickly, but I cannot confirm it. We used to call it "form 6" when I was on the street.

Nick Anthony, Legislative Counsel:

I am somewhat familiar with that term. I do not believe it is a term that is defined or used in statute. I believe it is a term used by local law enforcement. If we could get something in writing explaining what that process is, instead of using the term "Legal 2000," we can certainly work that into this bill.

Assemblyman Stewart:

I would be very agreeable to that, Mr. Chairman.

Chuck Calloway:

I will try to find what that particular wording is in statute. I know, for us, a "Legal 2000" is when the person is a threat to themselves or to someone else; the officer makes that determination in the field and notifies a medical unit to transport the subject against his will to an emergency room, where he is physically cleared by a doctor and seen by a psychiatrist.

Diane R. Crow, J.D., State Public Defender, Office of the State Public Defender:

I think the reference is to NRS Chapter 433, which is the chapter for involuntary commitments and talks about the "Legal 2000."

Chairman Anderson:

Mr. Calloway, will that satisfy law enforcement's concerns?

Chuck Calloway:

Yes, sir, I believe it will.

Chairman Anderson:

I do not see how the effective date of September 1, 2009, benefits them. They would be better off with the regular date. We will clarify that the county may fund this, if they wish. They are authorized to accept gifts as suggested by Assemblyman Stewart. We will further amend the bill to clarify that the peace officer would be operating under NRS Chapter 433, if that is the correct equivalent of a "Legal 2000," so that their concerns about unsecure outpatient services may be alleviated.

Mr. Horne, I understand that this remains a concern for you.

Assemblyman Horne:

It does.

Chairman Anderson:

Is there anything we can do to fix the bill?

Assemblyman Horne:

No. I do not want to hold up the bill if it is the will of the Committee to move it. I will vote no until I can get some more comfort. I reserve my right to change my vote on the floor, but I will not hold up the bill.

Chairman Anderson:

The Chair will accept a motion of amend and do pass A.B. 368. The amendments will clarify that the county may appropriate sufficient funding, as appropriately placed by bill drafting; will authorize the acceptance of gifts,

grants, and donations; and will clarify that the peace officer, who will be picking up people and returning them, will operate under the procedure of the appropriate statute.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 368.

ASSEMBLYMAN MCARTHUR SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN HORNE VOTED NO BUT
RESERVED HIS RIGHT TO CHANGE HIS VOTE ON THE FLOOR.)

Let us turn our attention to Assembly Bill 495.

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

Jennifer M. Chisel, Committee Policy Analyst:

Assembly Bill 495 is the medical malpractice bill. The primary proponents of the bill submitted an amendment that eliminates most of the bill, with two exceptions ([Exhibit H](#)). The first exception would retain existing statutory language in section 1, which limits noneconomic damages in a professional negligence case to \$350,000 but specifies that in cases of gross negligence there would be no cap on damages. The term "gross negligence" is defined as outlined in the amendment, which is attached in your work session binder. The second amendment would retain most of the existing statutory language in section 5, the statute of limitations provision. In subsection 2, line 1 on page 4 of the bill, it would increase the time periods from three to four years and one year to two years. The amendment would maintain existing statutory language in the remaining sections of the bill. In section 8 of the bill, which proposed to repeal certain sections of NRS, those provisions would remain existing law in NRS.

Chairman Anderson:

We heard very compelling testimony from patients about their concerns and the need for the expansion of the statute of limitations. I received an email from one physician who indicated that certain types of medical processes probably would fit within the current statutorily-defined years, but others indicated a need for more time. The doctors on the other side of the issue raised the point of the need to ensure there are enough doctors in the state, when the cost of practice, factoring in the cost of insurance and the potential for suit, is

prohibitive. The issue is divided. It is either a yes or no answer. On one side, we support the patients, and on the other side, we have concerns about keeping doctors in Nevada.

Assemblyman Cobb:

I wanted to make a similar comment, but I disagree on one point. I do not believe this is patients versus doctors. I think this is going to hurt patients as much as doctors, if we pass this bill. The net effect of raising caps on noneconomic damages, which is only one part of the overall recovery of an individual in a lawsuit like this, is that it hurts every single doctor in the state, not just the bad ones. We have a regulatory system for punishing bad doctors. We have a criminal system for punishing bad doctors. As a matter of fact, on the civil side, the insurance companies are the ones that pay these damages anyway. The net effect will be that every single doctor in this state will be charged higher premiums and there will be fewer doctors here, especially in some of the specialties we need. I understand that people are aggrieved and they deserve to have a recovery. I just do not think that driving doctors out of the state by raising premiums—which means raising the cost of health care for every Nevadan—is the way to punish bad doctors. It is a wide net that brings in good doctors. I will be voting against it.

Chairman Anderson:

I do not disagree, Mr. Cobb. The ultimate cost of the system is going to affect patients one way or another. Shall a patient who has been harmed have the opportunity, in a larger time frame, to bring suit if there is gross negligence, not for simple negligence, but gross negligence? That is the issue in front of us. I think it is a pretty fair, straightforward question.

I would suggest, then, that the motion be an amend and do pass. The amendments would be removing the damage cap for professional gross negligence, defining gross negligence, changing the statute of limitations from three to four years and from one to two years, and eliminating the rest of the bill in its entirety.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 495.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

Assemblyman Horne:

I think this is a good amendment. When the bill first came out, I did not support it. The amendments really narrow the focus on what we want to achieve and what harm we want to address. It is not unprecedented for this body to revisit

something. Sometimes you have to put all the pipes together and turn on the water to see where the leaks are. The problem is we have bad doctors practicing in a criminal nature, and they are protected by current law. They are shielded by the same law as the good doctors. I do not think that was ever this body's intent. This is a good compromise to address a narrow area. I will support it.

Assemblyman Carpenter:

I do not have any problem with extending the statute of limitations, but without some kind of cap on gross negligence, it is my feeling that these insurance rates are going to go really high. There is no way to predict what is going to happen.

Chairman Anderson:

The Chair put the bill in the work session document because I thought it would work. I think it is important for the Committee to take a position.

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

Let us turn our attention to Assembly Bill 380.

Assembly Bill 380: Makes various changes relating to the sexual exploitation of children. (BDR 15-727)

Jennifer M. Chisel, Committee Policy Analyst:

Assembly Bill 380 provides for asset forfeiture in child pandering or prostitution cases. The Committee has two amendments to consider that were suggested by the Nevada District Attorneys Association: first, amend section 3 to change the civil penalty into a criminal fine, which may be deposited with the district attorney (DA) or the Attorney General (AG); second, delete section 4, which prohibited a prosecutor from negotiating a plea deal in child pandering or prostitution cases ([Exhibit I](#)).

Chairman Anderson:

So this would take all the civil penalties and make them a criminal fine? How many fines are there of \$1 million in the current statute?

Sam Bateman, Las Vegas, Nevada, representing the Nevada District Attorneys Association, Reno, Nevada:

I do not know of any in our code. Those were the initial numbers that were in the civil penalty portion of the bill. Our concern, both the AG's office and our office, was that potentially, under the law, we would not be able to recover a

civil penalty that is so closely tied to a criminal penalty. This is the only solution I could see to effectuate what Mr. Hambrick was trying to do and still allow us to be able to get the penalty. We also made it an "up to" amount, as opposed to a fixed amount. The size of the numbers was not necessarily what the district attorneys were concerned about.

Chairman Anderson:

I was curious to see that.

Assemblyman Horne:

We still have the forfeiture portion. Where does this forfeited property go?

Sam Bateman:

We have forfeiture for a variety of crimes, where the proceeds can be forfeited if they are directly tied to the crime itself. Where forfeiture money goes, I think some of it goes to law enforcement agencies. I do not know exactly where all the forfeited money goes directly after it is forfeited. But, it seems there are two separate provisions in Mr. Hambrick's bill. One is the forfeiture provision. We would have to file a civil complaint and prove that whatever it is we are attempting to forfeit has some tie to the actual crime. We have forfeiture divisions in Clark and Washoe Counties. I am not sure about the other counties. That is the process for forfeiture. It is different than collecting a fine that would be tied to a conviction. We can forfeit property without a conviction because it is an entirely different civil case.

Assemblyman Horne:

We have another bill dealing with victims of sexual exploitation and their opportunity to seek civil remedies. It seems to me that this is along those same lines. If there is some forfeited property directly related to pandering activities, a significant portion of that forfeited property should go to a fund aiding the victims as well. That is something I would enjoy seeing in this bill. I mentioned that to Mr. Hambrick once, and that was primarily along the lines when we were talking about the 60/40 spread that he had in the civil penalty. In this particular realm, however, I would like some type of fund that is going to exploited children.

Chairman Anderson:

I am trying to determine what an appropriate limit would be. The highest penalty is \$500,000, for class A felonies. I do not know of anything that goes beyond that. The normal penalty limit for B felonies is \$100,000. For C felonies, the limit is \$10,000, and the limit is \$5,000 for D and E felonies. If we are going to consider it as a serious offense, I would suggest to the

Committee that we pick either the A or B range. The B range would be \$5,000 to \$100,000. It might be acceptable to choose \$100,000. If we want to say that we are extremely serious, then we would choose \$500,000. However, \$1 million is a bit of a reach.

Pandering is already \$100,000 currently. They are already paying \$100,000?

Sam Bateman:

It is not common in Clark County to actually sentence someone and give them a fine. That is an option for a judge. I think Mr. Hambrick's intention was to address those very few individuals who are engaged in a high volume of pandering.

Assemblyman Hambrick:

My intent on the \$1 million fine was directed at a conspiracy, where more than one of the pimps would bring these girls into town. For only one individual, the \$1 million fine would not come into play. We had testimony from Clark County law enforcement, where they have found almost half a million dollars in the pimps' residences. We are dealing with a lot of money made from pandering these young girls. The \$1 million fine was only if there was a conspiracy of more than one individual. If we are looking at only a single individual, I will defer to the Chair.

Chairman Anderson:

The advantage of the bill is the Legislature's emphasis to the judge that, in addition to the criminal penalty, he ought to consider also imposing a fine. We want that to take place, particularly if it is a child. A fine of up to \$500,000 is, in the overall scheme of things, the very top of the ladder. Mr. Anthony, can we fit a fine into our statutory scheme?

Nick Anthony, Committee Counsel:

Yes. This Committee can certainly decide to add whatever amount of fine you choose. I did a quick search, and it does look like the statutes go up to \$500,000 for certain felonies.

Chairman Anderson:

I think it is an important piece of legislation. I see the attorneys want the return of plea bargaining into the bill, so the district attorney's discretion is there. I think that is a problem. We do not want the district attorney to use the potential for a \$500,000 fine as a tool to get them to plead to a lower charge. We want these folks to stop taking advantage of underage girls.

Assemblywoman Dondero Loop:

How do they go about getting these fines paid? They probably do not have bank accounts or paychecks. How do they substantiate that someone has the funds? Can they not say, "I do not have money"?

Sam Bateman:

If it is a forfeiture situation, where we file a civil complaint, it would be similar to any other civil action where you have whatever remedies exist: attachments on property, bank accounts, or, if they have a job, their paycheck. In the case of fines, normally those are collected through the court system. We have included in the bill the ability for the district attorney's office or the AG's office to collect those fines. Basically you have a judgment of conviction that would include the fine. You could use whatever collection laws are available to collect that money.

Assemblywoman Dondero Loop:

If somebody gets convicted, and he has money hidden, which many of them are adept at doing, and he says he does not have anything, these fines are worthless, correct? These people are not stupid. Unfortunately, they use their brains for the wrong thing.

Sam Bateman:

The Assemblywoman is right. If they do not have assets, you cannot get blood from a rock. However, the forfeiture provisions, which allow you to immediately freeze assets so those assets cannot be done away with while the criminal case is proceeding, would allow us to at least try to reach those individuals who have assets that we can readily identify early on. The law enforcement agency would be able to alert our office in the course of their investigation as to where those assets might be. I do not think they will have bank accounts. That is what Mr. Hambrick was suggesting. It would be property. If actual cash is found, you could freeze that and either forfeit it or use it towards the fine. I agree, it is not a perfect remedy if we cannot find the actual assets.

Chairman Anderson:

You do not get to take the property until after the criminal findings of guilt or innocence. Is that not so?

Sam Bateman:

Because of the lower standard in the civil arena, we can forfeit property if we can prove that it is tied to criminal conduct. That is a possibility. I am not 100 percent certain of that.

Chairman Anderson:

I thought what you are suggesting in your amendment is a fine upon a person's conviction of pandering. A forfeiture would not take place until after conviction.

Sam Bateman:

There are essentially two avenues. One is forfeiture. That would not depend on conviction. The fine would depend on conviction. Forfeiture statutes are already in existence. The only thing we are doing with this forfeiture statute is allowing for the freezing of assets. That might couple itself with the fine after the fact.

Chairman Anderson:

It is going to take a bit of craftsmanship to write the bill. It is less than straightforward.

Assemblyman Carpenter:

In the matter of discretion, it is already in there. If they think they cannot prove it, they do not have to go forward with the case.

Chairman Anderson:

The Chair will entertain an amend and do pass motion on A.B. 380. The amendments to be included limit the fine to a maximum of \$500,000, so it is consistent with the penalties for class A felonies, and retain the plea bargaining discretion for district attorneys.

Assemblyman Horne:

Would the Committee be interested in my suggestion that proceeds go towards a child victims' fund?

Chairman Anderson:

In counties that have such programs in place, the fines collected from successful prosecutions will go to them. Is this possible, Mr. Anthony?

Nick Anthony:

Yes. We can craft a provision that would require any proceeds from forfeiture to go to the victims.

Assemblyman Horne:

Not necessarily to the victims. I would like the proceeds to go to organizations or a fund to aid those organizations that help runaway youth, child victims of sexual exploitation, et cetera.

Assemblyman Hambrick:

I concur. When I crafted the bill, I did not name specific programs because I thought the counties would identify the programs within their counties. Judge Voy is trying to have a similar program, Children of the Night. I wanted to leave that to the discretion of the counties to determine what would be the best program, rather than naming specific programs.

Chairman Anderson:

I would prefer that it would go through the district attorney's office in the county to identify the suitability of the program, rather than the county manager, thus keeping it to programs that the DAs felt were successful. This would be a higher standard, I think, than saying the county gets to balance their budget based upon this money.

I will entertain a motion of amend and do pass. The amendments to be included limit the fine to \$500,000 and designate that the proceeds of the forfeiture would go to appropriate programs as determined by the district attorneys who specifically deal with child endangerment and runaways.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 380.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Let us move to Assembly Bill 408.

[Assembly Bill 408](#): Makes various changes relating to crimes. (BDR 15-522)

**Chuck Calloway, Sergeant, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada:**

Assemblyman Christensen sponsored this bill on our behalf.

Jennifer M. Chisel, Committee Policy Analyst:

Assembly Bill 408 revises the definition of "act of terrorism" and increases the penalty for criminal racketeering. During the hearing, the primary sponsor indicated that the intent of the bill was to add gang-initiated killings as an act of terrorism and suggested that subsection 1 be amended to strike the new language and to maintain the existing statutory definition of "act of terrorism," but then add "gang-initiated killings" to that definition ([Exhibit J](#)).

The Committee also has a second amendment to consider that was submitted after the hearing. This is to clarify that section 2 is intended to specifically target criminal gang-related racketeering and to punish that conduct as a category A felony, with a fine not more than \$100,000.

Chairman Anderson:

I noticed the gang racketeering question was a little broader than you might have suggested. I do not know who drafted that for you, Mr. Calloway.

Chuck Calloway:

I drafted that, and I am rather new at the amendment-drafting game, so I apologize if it was broad. In the testimony that we gave in the initial hearing on this, the question was raised whether we were trying to target all racketeering or specifically criminal-gang racketeering? It was our intent to target just the criminal gang racketeering.

Chairman Anderson:

So you are going to take away the rest of the racketeering for everyone else?

Chuck Calloway:

No, sir, that is not the intent. Our goal would be to add this specific language for criminal-gang activity and keep the original language for the original racketeering. I apologize for any confusion.

Jennifer Chisel:

We did receive your language, and it appears that it would change the entire racketeering statute to make it apply only to gang-racketeering activity instead of racketeering in general. That is why I did not include the language of your amendment in the work session document. I included your statement of intent because I was hoping that was your intent, based on your statement.

Chuck Calloway:

That was our intent. It was never to strike out the original racketeering language.

Chairman Anderson:

I think there is a certain level of concern about this. In the instance of the drive-by shooting Assemblyman Christensen referenced, you were able to successfully charge the individual under the current statute. Making this crime an act of terrorism requires a double-edged proof that they are part of a gang and that the act was the result of gang activity. The gang activity itself becomes part of the definition of racketeering. That is a broader use of the term than is usually used.

Assemblyman Carpenter:

It also says in here that it will be changed as a category A felony. The category B felony, which is in the statute now and carries a 5- to 20-year sentence, can be given by the judge. Why would we change it from a category B to a category A felony?

Chuck Calloway:

Several times a year we deal with high-level gang members who are involved in racketeering-type activity. We find that, under the current statute, they are not afraid of getting a five-year prison sentence. It is difficult for us to get them to snitch on other gang members or give us information regarding other gang activity with that low threshold of five years. We are trying to raise that threshold to give us a more powerful bargaining tool to target those high-level gang members. During the course of the year, it is a very small number. According to our gang lieutenant, less than five people a year would fall into the category we are trying to target with this language.

Chairman Anderson:

In the category B range, you have 2- to 20-year sentences and \$100,000 as a top-end fine. The A felonies tend to carry sentences of 15 years with a 5-year minimum for parole but can range anywhere from 20 to 45 years with a \$10,000 to \$500,000 fine. The \$100,000 fine could fit for category A felony. The prison time is, at a minimum, a 15-year sentence with a minimum of five years before the possibility of parole. I think, even with a category B, the bill is going to have difficulty.

Assemblyman Horne:

I still have concerns on this. You heard my testimony on gang-initiated killings. This is already covered in statute. There are already a plethora of laws that will get these people in prison for life. That is one of my concerns. I do not want to take up the Committee's time, but I cannot support the bill.

Assemblyman Kihuen:

I would like to echo the comments of my colleague from the south. I think it uses the word "terrorism" too broadly. It loses a lot of the value. Just because someone is a gang member does not mean that he is a terrorist. I have concerns with the bill as well.

Assemblyman Segerblom:

I agree that there are plenty of applicable penalties. I do not see a need for this bill at this time.

Chairman Anderson:

Does anybody else wish to weigh in on the issue? Let us turn our attention to Assembly Bill 209.

Assembly Bill 209: Revises provisions governing the attendance of certain offenders at meetings of panels of victims of crimes relating to driving under the influence. (BDR 43-872)

Jennifer M. Chisel, Committee Policy Analyst:

Assembly Bill 209 deals with victim impact panel meetings in driving while intoxicated (DUI) cases ([Exhibit K](#)). The bill removes the court's discretion to order a defendant to attend a victim impact panel meeting regardless of the distance from the defendant's home. However, as the Committee will recall, an amendment was proposed to restore that portion of the bill to maintain the court's discretion in those situations where the defendant lives more than 60 miles away from the nearest meeting. The other amendment the Committee has to consider is to require that a defendant attend a live victim impact panel meeting. There is a mock-up attached for your review that shows both amendments. This bill was discussed in work session previously.

Assemblyman Horne:

So nothing has changed since our last consideration? Is there an additional amendment? Is this the same as it was presented last time?

Chairman Anderson:

This is still the same bill. Mr. Manendo, there is not anything else you wanted to put into it?

Assemblyman Manendo:

That is correct, Mr. Chairman. Basically, it is the same bill. I just think that some Committee members needed a little time to think about it.

Assemblyman Horne:

Then nothing has changed for me in regard to the bill. I would still be opposed.

Assemblyman Segerblom:

I am one of those who really had not focused on the bill. Since we stopped our deliberations last time, I have received emails from Judge Assad, who I strongly support. I have seen in his courtroom how he makes DUI offenders examine the possible consequences of their actions. If those people think that this is important, it must be important. I think we are just clarifying what existing law is. I think that was the intent of the law to begin with. Absent knowing why we should not go with existing law, I support this.

Chairman Anderson:

Mr. Manendo, I believe the live meetings are important. That was the intent of the original legislation. I am concerned about the times when it is not going to happen because of a snowstorm, or the power went out, or any number of things that could happen. I think that the bill could work if we gave the chief judge of that district the opportunity to use discretion in order to take care of an inordinate backlog. I do not believe it should be open to every judge in the district. I do not believe it should be at the justice court level. I think the 60-mile limit will still be in place; however, the option must be left open for unforeseen circumstances.

Assemblyman Manendo:

I do not know how that works. So the chief judge would ultimately have the say whether someone could go or not?

Chairman Anderson:

No, if it can be demonstrated that a live panel created a hardship in a particular county due to unforeseen and uncontrollable circumstances, the chief district judge needs to have the option to reorganize and restructure the program.

Assemblyman Manendo:

I appreciate that. I know they get several opportunities to go to a live panel. I think after three or four opportunities they should be able to make it to at least one of them. The live impact panels have never turned anyone away, other than those who were intoxicated or being disruptive.

Chairman Anderson:

Without that, I do not think I can support it.

Assemblyman Cobb:

I have examined the bill a bit longer and read some of the comments on it. I think it is an appropriate compromise, and I would like to see it move forward. I would make a motion if you would accept it, Mr. Chairman.

Chairman Anderson:

The amendments are the live meeting, the court discretion, and maintaining the existing law regarding the 60-mile radius, along with the other suggestions in the bill. The Chair will entertain a motion.

ASSEMBLYMAN SEGERBLOM MADE A MOTION TO AMEND AND DO PASS ASSEMBLY BILL 209.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ANDERSON AND HORNE VOTED NO.)

Now we turn our attention to Assembly Bill 283.

Assembly Bill 283: Revises provisions governing the payment of compensation to certain victims of crime. (BDR 16-609)

Jennifer M. Chisel, Committee Policy Analyst:

Assembly Bill 283 removes the statutory cap of \$50,000 for crime victim compensation. Christina Conti from the Victim Witness Assistance Center in the Washoe County District Attorney's Office opposed the removal of the cap and suggested an amendment to retain that cap but to also provide up to an additional \$50,000 for certain catastrophic cases, so long as the fund has enough money to support such an award. The language of her proposal is attached for your review ([Exhibit L](#)).

Chairman Anderson:

Mr. Manendo, you worked with a group of people in my office and you arrived at a compromise. Is this correct?

Assemblyman Manendo:

Yes. I discussed ideas with Ms. Conti and others. We arrived at a compromise regarding the cap and people's various concerns. I assume we are in agreement because I have not been contacted by anyone since arriving at our compromise.

Chairman Anderson:

The dollar figure is a concern. I am concerned with the Legislature losing control over the cap and just leaving it open-ended, limited only by what is in the fund. I think we need to set a statutory limit so we maintain our authority. It would be nice to see an unlimited amount of funds in the account, but the reality of life is that there is never an unlimited amount of funds. I am also concerned about how the process works. There are going to be some catastrophic cases which go well beyond whatever cap we place.

Assemblyman Segerblom:

I agree with you. I do not want to completely remove the cap at this point. We might raise the cap to \$100,000. That would hopefully cover cases like the woman who testified. If that turns out to be improper, people down the road can take the cap off, but to take it off at this point seems a bit extreme. I would support some kind of higher limit.

Assemblyman Carpenter:

I agree with Mr. Segerblom. I do not think we can remove that cap because, as you said, there is never enough money. Doubling the cap should help the situation.

Chairman Anderson:

I know that the State Board of Examiners have some restraints. Currently, they are not even up to the current cap. Part of the stress stems from the availability of funds.

Assemblyman Ohrenschall:

I would like to echo the comments from my colleague from District 9. I think a cap is reasonable, but a higher limit would be good. I think the State Board of Examiners is composed of reasonable people, and I do not think they will make irrational decisions in each case.

Assemblywoman Parnell:

I would suggest that we have "not to exceed" language in the bill, so we could pick \$75,000 or \$100,000 and still maintain some latitude.

Assemblyman Segerblom:

Mr. Manendo, are you saying you would remove the cap? When I read the amendment, it is set at \$100,000.

Assemblyman Manendo:

This is not my amendment. The amendment I was supporting was the original bill. If the Committee sees fit to continue with some type of cap, then I would yield to the judgment of the Committee. There are only a couple of catastrophic cases a year, but when they occur, they are very serious. That was the intent of removing the cap altogether. It is expensive when they have to retrofit someone's home, fit prostheses, pay for medical bills or prescription drugs; there is a list of things they do. It is very rare that they need to go above the \$50,000, but sometimes it could go over \$100,000.

Chairman Anderson:

Looking at Ms. Conti's suggestions 1, 2, and 3: "the amount of money in the fund available for payment of compensation"—that would give greater guidance to the State Board of Examiners regarding what they had to consider—"anticipated expenses for the next quarter"; and "circumstances surrounding the claim." Suggestions 1 and 3 may have some validity. "Anticipated expenses for the next quarter" is ambiguous; you do not know how many claims are going to come in. While you do not want to run the well dry, you have no way of knowing how fast it is going to fill, either. You do not want to say, "Oh, it is only the first quarter, we do not know what is going to happen in the next three quarters, and we have a catastrophic event right here in front of us." I would not want that to be a deterrent for them.

Assemblyman Manendo:

They do not pay claims straight out. Rather, they pay them over time for that purpose, because of that very concern. If something happens—a lot of cases going on right at once—they negotiate those particular claims with hospitals, for example. It is paid over time, so they do not pay out the money in January and then have nothing left for February or March. They work that out with the different entities.

Chairman Anderson:

Let me make the suggestion that we amend the bill to set a \$100,000 limit on the amount of compensation and provide for an additional award of \$50,000 upon approval of the State Board of Examiners, after the Board considers the amount of money in the fund available for the payment of compensation and the circumstances surrounding the claim. Thus, we have the assurance that the Board of Examiners will carefully examine each case, and we retain control of the cap.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 283.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Assemblyman McArthur:

Did you raise that cap to \$100,000?

Chairman Anderson:

We did. We would amend the bill to cap the amount of compensation at \$100,000, with the possibility of an additional \$50,000, which makes the potential \$150,000. Currently, members of the Board of Examiners have been

limiting themselves to \$35,000, and they will probably continue to do what they do in order to manage the fund well. I just felt that Ms. Conti's points should be statutorily put into place so that members of the Board of Examiners clearly understand what our concerns are.

Nick Anthony, Committee Counsel:

So the cap is going to go to \$100,000?

Chairman Anderson:

Correct.

Nick Anthony:

And then an additional \$50,000, if the Board finds circumstances 1, 2, and 3, as outlined in the work session document?

Chairman Anderson:

I am a little in doubt about number 2. Maybe that is part of their normal process. If that is the case, then we can do that, but I am not knowledgeable enough about their process to feel comfortable with it.

Nick Anthony:

But, Mr. Chairman, those findings are only on the excess over \$100,000?

Chairman Anderson:

Right. The Chair will place the question on Assembly Bill 283 of amend and do pass, with those amendments as suggested: \$100,000 with the additional \$50,000 if criteria 1 and 3 are met.

THE MOTION PASSED UNANIMOUSLY.

Let us now turn to Assembly Bill 481.

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

Jennifer M. Chisel, Committee Policy Analyst:

Assembly Bill 481 defines "fugitive from justice" in response to a Nevada Supreme Court case that held *Nevada Revised Statutes* (NRS) 202.360 unconstitutional since it did not define that term ([Exhibit M](#)). During the hearing, Assemblyman Horne and other Committee members indicated that the provisions in the bill should apply only to persons charged with felony offenses, and the Committee may consider amending subsection 1 to change the word "crime" to "felony."

Chairman Anderson:

There was concern from quite a few of you regarding all sorts of things that could be placed on the record. We have heard complaints in the past that somebody is arrested and languishes in jail because nobody comes and picks them up. That puts an unfair burden on the county to feed and house them, and it takes up jail space. Nobody wants to pick up the expense for taking the person back to their home in Florida, New York, or wherever. By limiting it to felons, we clarify what we are really trying to get to.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 481.

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Let us now turn to Assembly Bill 1.

[Assembly Bill 1](#): Prohibits certain demonstrations at a funeral, memorial service or ceremony. (BDR 15-150)

Jennifer M. Chisel, Committee Policy Analyst:

Assembly Bill 1, presented by Assemblyman Stewart, prohibits a person from demonstrating at a funeral based on a 60-minute time frame and a 300-foot distance. The Committee has three amendments to consider ([Exhibit N](#)). The first two are in the alternative, and then, if the Committee were to adopt amendment 1, it could consider amendment 3.

The first amendment was submitted by Mr. Stewart at the hearing to replace the bill as it was written, and the mock-up is attached for your review. On page 1 of the mock-up, an element of intent is added so that a person shall not demonstrate with the intent to impede, disrupt, disturb, or interfere with a funeral or memorial service. This amendment also removes the word "ceremony," limiting this to funerals or memorial services. The Committee alternatively has another suggestion from the American Civil Liberties Union of Nevada (ACLU). This is also attached for your review, behind the mock-up. This proposal narrows the scope of the bill by indicating that the person conducting the funeral has the right to control the event without interference. It further describes prohibited conduct, similar to the first amendment. It also specifies that demonstrations are authorized on a public forum, and that a cemetery is not a public forum. Finally, it describes the places as "funeral" or "burial service."

On the second page of the bill explanation, there is a third amendment available for you. This was proposed by Skip Daly with the Laborers International Union. This adds additional places where demonstrations are restricted. These would be a state or federal execution, a family planning clinic or facility, a Planned Parenthood facility, or a courthouse when court is in session. The language of this amendment is attached behind the ACLU amendment.

Assemblyman Hambrick:

I am leaning towards support. I understand that cemeteries are considered private property, so would that be 300 feet from the gate? The distance from the primary access to the cemetery would need to be at least 300 feet?

Chairman Anderson:

I think the reason why Mr. Lichtenstein submitted his amendment was to clarify the intent. Three-hundred feet is not that great of a distance.

Assemblyman Hambrick:

A football field is 100 yards, or 300 feet.

Assemblyman Segerblom:

But the question is if it is 300 feet from the cemetery gate or 300 feet from the ceremony?

Nick Anthony, Committee Counsel:

I will attempt to clarify the bill. The definition is ambiguous. It says 300 feet from the funeral. It does not say 300 feet from the gate. As written, it is not 300 feet from the gate because there is a line of Supreme Court cases, I believe, that have arrived at that interpretation.

Chairman Anderson:

The courts have made a definitive statement?

Nick Anthony:

I am sorry. I should not say Supreme Court cases. There are federal cases that have looked at the issue of distance requirements and what is considered reasonable. Apparently, it could be a situation where the funeral is in the middle of a large open area or cemetery, so the protest could be going on inside that location as long as it is 300 feet from the funeral.

Assemblyman Hambrick:

I thought that when the amendments were being explained, it was said that cemeteries are private property. Being such, would that not be potential

trespassing? This is why I raised the question whether it is 300 feet from an entrance—I do not want to say gate—to private property?

Chairman Anderson:

It is a fair question because we want to make sure that we understand. It is not unusual at large cemeteries to have more than one funeral service going on. In reality, we do not want any funeral service to be disturbed, even though the attention may be directed to a particular one. On the other hand, we also do not want to broaden it so that we are taking in public areas. The gate is at the end of your private property. Now we are going to move a football field away.

Assemblyman Lynn Stewart, Clark County Assembly District No. 22:

It was our intent to have the bill interpreted as 300 feet from the site of the memorial or funeral service.

Assemblywoman Parnell:

I prefer amendment 1. It is pretty specific. On lines 9 and 10, they are talking about 300 feet from the site where the service is taking place. That would take away any concern about gates or entrances. I would support this bill with amendment 1.

Assemblyman Horne:

I still oppose this bill for the same reasons I had during the hearing, and not because I am against veterans' funerals, or whatever. But, if amendment 1 is accepted, I do not see why we would not accept amendment 3 as well.

From the testimony, if we find it abhorrent to protest at these funerals, I find it equally abhorrent that this same group, which is primarily responsible for protesting funerals, also protests family-planning clinics. Why would we exclude that venue? Families make heart-wrenching decisions all of the time in going to places like this. A protest is the last thing they want to see. I find that type of activity abhorrent as well.

I still disagree with the First Amendment violation I believe this bill represents. However, if we are going to pass the bill, I do not know why you would not include the groups identified in amendment 3, with the exception of the Planned Parenthood facility. It actually identifies a group. I think it should be more general than that.

Assemblyman Segerblom:

I support this bill, though I feel it is unfortunate that we have to deal with it. My concern is about some of the issues raised by the American Civil Liberties

Union. I thought they mentioned that the term "memorial service" could reach to a Memorial Day event. Mr. Stewart, did you look at that issue?

Assemblyman Stewart:

That was not our intent. We only wanted to target the service or memorial that takes place near the time of death. This would not be broadened to include Memorial Day or anything like that. Because of the sacred nature of the funeral, we did not want to include other places as well. This is a very sacred and special time.

Chairman Anderson:

So then we are establishing for the record that we are not including these other kinds of events. We are talking about the actual memorial service, the actual one-time event that is going to take place.

Assemblyman Stewart:

That is correct, Mr. Chairman.

Assemblyman Segerblom:

In addition, the ACLU raised another question. What about when the funeral procession is going down the road? That would not be covered, right?

Assemblyman Stewart:

That is correct.

Assemblyman Segerblom:

It is designed for the final resting place, either at the church where the service is being held or at the cemetery where the burial is actually taking place.

Assemblyman Stewart:

That is correct, Mr. Segerblom.

Chairman Anderson:

I posed that question during the testimony. I think we established on the record that the bill was not to include anything other than the service itself. We are addressing the protests, the sole purpose of which is to garner media attention because of the fact that there is a memorial service taking place. Protesting at such an event is likely to receive coverage by the media, and thus creating unwelcomed attention and distraction for those involved in the funeral service.

Assemblyman Gustavson:

I agree with Ms. Parnell in adding only amendment 1 to the bill. This bill is very specific to memorial services. There is a good reason behind this. If we start to expand on this, it could be detrimental to the survival of the bill. I support this bill with amendment 1 only.

Assemblyman Carpenter:

I support amendment 1 because I think it specifically refers to the memorial or burial service. I think that amendment 1 is where we should be on this bill.

Assemblyman Ohrenschall:

My concerns have to do with the comments Mr. Lichtenstein made during the hearing. I have been here only two sessions, and I do not have a lot of experience, but some of my limited experience has taught me that when we have disagreed with Mr. Lichtenstein and passed bills against his opinion, we have ended up in federal court, spending a lot of money to be on the losing side of a lot of cases. I know we are not a money committee; we are a policy committee. However, unless this bill is narrowly tailored, people are going to come to Nevada to challenge this law. We will end up in federal court, and we may end up losing. I do not know how much money we will spend to lose a First Amendment case in federal court. I can only support this bill with amendment 2.

Chairman Anderson:

Mr. Ohrenschall, I believe that concerned groups are going to challenge this bill regardless of which side of the issue we are on. It is not unusual for the ACLU to take up state issues. I do not think that giving into the ACLU or accepting any of their suggestions is a guarantee of protection from suit. Even if we adopted their language, they might still sue. That is my observation based upon their track record, not just here in Nevada, but throughout the nation.

Assemblyman Mortenson:

I think amendment 3 is too narrow. There must be some kind of language we could use that would describe the situation which the Committee would be comfortable with, and was not as narrow as the few definitions in amendment 3.

Nick Anthony:

We could expand it. I do not know to which other types of facilities you would like to expand. I am open to suggestions if you have something in mind: airports, schools, I do not know.

Assemblyman Horne:

This highlights my concerns. We will not be able to stop finding speech that we dislike and find abhorrent. I find it abhorrent that a white supremacy group can walk down the middle of a black neighborhood. However, I will defend their right to do that, despite the ugly history our nation has with those types of groups. I would fight for their right to do that. When we start picking out one group to say, "We are not going to let you have any speech that we do not like," and start excluding others, the other groups are going to stand up and say, "Well, what about us? We want you to censor that speech as well as it applies to our particular set of facts and circumstances." That is why this is not a good bill. It is highlighted by Mr. Mortenson saying that amendment 3 is too narrow.

Assemblyman Manendo:

I agree with Mr. Horne. People have the right to demonstrate. I do not think that this bill says that they are not allowed to demonstrate.

Assemblyman Cobb:

I want to make it clear that this is not a viewpoint-based bill. It does not have to do with an individual's stance on an issue; it has to do with time, place, and manner only. That is what makes it constitutionally-permissive. I think it is an appropriate way to ensure that all memorials are respected. I know this was brought forward because we abhor certain practices having to do with veterans' funerals, but this applies to all memorials, and it is not viewpoint-based at all.

Assemblywoman Parnell:

I would move to amend and do pass A.B. 1 with amendment 1.

ASSEMBLYWOMAN PARNELL MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 1.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HORNE, KIHUEN, AND
OHRENSCHALL VOTED NO.)

Chairman Anderson:

Let us turn our attention to the last bill on our work session document,
Assembly Bill 262.

Assembly Bill 262: Makes various changes concerning the issuance of marriage licenses. (BDR 11-961)

Chairman Anderson:

Several of you are concerned. Ms. Flint, there were several different problems with the original bill. The opportunity is available if you want to come forward and clarify the record. I was under the impression that an agreement had been reached on compromise amendments. Ms. Chisel, do you want to remind the Committee that we had talked about, and have in our work session document, compromise amendments: renewal of marriage vows, minimum age to marry, marriage license provisions, an additional \$10 fee, amending section 4, and fees for certified copies ([Exhibit O](#)). Mr. Segerblom had removed our potential second amendment regarding the minimum age for the witness. Mr. Flint agreed that in any county whose population is 400,000 or less, the county clerk may appoint marriage license agents. That provides permissive language. He further indicated that the dollar increases in his amendment were not needed and that (d) and (e) in number 1 of his amendment were no longer needed: that is the additional \$10 fee in section 4 of the bill and the fee for certified copies of marriage certificates in section 5 of the bill.

Margaret Flint, Reno, Nevada, representing Arch of Reno Wedding Chapel, Antique Angel Wedding Chapel, Silver Bells Wedding Chapel, and Chapel of the Bells, Reno, Nevada, and Vegas Adventure Wedding Chapel, Las Vegas, Nevada:

That is correct.

Chairman Anderson:

Is that exactly where we stand? We are going to include 1(a), 1(b), and 1(c), and amendment 3 of Mr. Flint's amendment, with the "may" language?

Margaret Flint:

This is correct. I have reviewed the mock-up, Mr. Chairman, and it is satisfactory.

Assemblyman Cobb:

I want to clarify that it does remove sections 4 and 5 of the bill.

Chairman Anderson:

This mock-up, Ms. Chisel, is the newest version?

Jennifer M. Chisel, Committee Policy Analyst:

That is correct, Mr. Chairman.

Chairman Anderson:

And it includes Mr. Flint's suggested language changes?

Jennifer Chisel:

Yes, it does.

Chairman Anderson:

So, Mr. Cobb, the mock-up reflects the discussion that was held when we went late into the evening the other day. The removal of section 4 was the question.

Nick Anthony, Committee Counsel:

On page 7 of the mock-up, you will see section 7, which was the prior section 4. You can see it was struck there. The mock-up does delete all of the prior section 4 and section 5, which contained certain fees.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 262.

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:

Let me indicate that this is not in your binder; however, the Administrative Office of the Courts was concerned about Assembly Bill 45.

Assembly Bill 45: Requires the State Public Defender to provide defense services to indigent persons in counties without county public defender offices and to fully fund such services. (BDR 20-457)

I do not think that there is time to proceed with a full discussion of the bill or the suggested amendments. I would suggest that, for no other purpose than to keep the bill alive and as a courtesy to the court, which is concerned about this particular issue—because we all are concerned about proper defense of the people who are accused of a crime, we are making sure the Miranda rights are always there—the Committee take an amend and rerefer to the Committee on Ways and Means without recommendation, including the amendments suggested by the Administrative Office of the Courts.

ASSEMBLYMAN MORTENSON MOVED TO AMEND
ASSEMBLY BILL 45 WITHOUT RECOMMENDATION AND
REREFER IT TO THE ASSEMBLY COMMITTEE ON WAYS AND
MEANS.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

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

Chairman Anderson:

Does anyone have any other bills to bring up today? [There were none.]

[The meeting was adjourned at 11:50 a.m.]

RESPECTFULLY SUBMITTED:

Robert Gonzalez
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 10, 2009

Time of Meeting: 8:18 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda.
	B		Attendance Roster.
<u>A.B. 476</u>	C	Jennifer Chisel	Work Session Document.
<u>A.B. 476</u>	D	Mark Fiorentino	Proposed Amendment to <u>A.B. 476</u> .
<u>A.B. 476</u>	E	Mark Fiorentino	Maps of the Las Vegas gaming corridor.
<u>A.B. 8</u>	F	Jennifer Chisel	Work Session Document.
<u>A.B. 368</u>	G	Jennifer Chisel	Work Session Document.
<u>A.B. 495</u>	H	Jennifer Chisel	Work Session Document.
<u>A.B. 380</u>	I	Jennifer Chisel	Work Session Document.
<u>A.B. 408</u>	J	Jennifer Chisel	Work Session Document.
<u>A.B. 209</u>	K	Jennifer Chisel	Work Session Document.
<u>A.B. 283</u>	L	Jennifer Chisel	Work Session Document.
<u>A.B. 481</u>	M	Jennifer Chisel	Work Session Document.
<u>A.B. 1</u>	N	Jennifer Chisel	Work Session Document.
<u>A.B. 262</u>	O	Jennifer Chisel	Work Session Document.