MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
February 6, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:08 a.m. on Friday, February 6, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was video conferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Karyn Werner, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

Mark Kemberling, Chief Deputy Attorney General, Medicaid Fraud Control Unit, Office of the Attorney General
Keith G. Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Victor Schulze, Senior Deputy Attorney General, Office of the Attorney General
Ben Graham, representing the Administrative Office of the Court, Carson City, Nevada
Jeremy Shugarman, Private Citizen, Las Vegas, Nevada
Stephanie Parker, Executive Director, Nevada Child Seekers, Las Vegas, Nevada
Sharon Foley-Pryor, Private Citizen, Las Vegas, Nevada
Lydia Harrison, Private Citizen, Las Vegas, Nevada
Mark Harrison, Private Citizen, Las Vegas, Nevada
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada
Ann McDermott, Administrator, Real Estate Division, Department of Business and Industry
Michael E. Buckley, Commissioner, Commission for Common Interest Communities and Condominium Hotels, Las Vegas, Real Estate Division, Department of Business and Industry
Lindsay Waite, Ombudsman, Real Estate Division, Department of Business and Industry

Chairman Anderson:
[Roll called. Opening remarks.]

One of the presentations that we are going to hear is an overview of common interest communities. This will bring the Committee up to speed on one of the big issues that we will be facing during this legislative session. Common interest communities are a large part of the housing areas in southern Nevada;

however, they are located throughout the state. For instance, Elko has a common interest community that has issues that occasionally come in front of us. We need to be sensitive to the needs of all areas with common interest communities whether it is a 10,000-member common interest community or a 10-member common interest community. We will hear that presentation after we hear today's two bills.

We will now open the hearing on Assembly Bill 42.

Assembly Bill 42: Grants administrative subpoena power for the Medicaid Fraud Control Unit within the Office of the Attorney General to obtain certain records and materials. (BDR 18-273)

Mark Kemberling, Chief Deputy Attorney General, Medicaid Fraud Control Unit, Office of the Attorney General:
I am here this morning for Assembly Bill 42. A letter (Exhibit C) was prepared earlier and was sent over for distribution to the Committee.

Chairman Anderson:
Vice Chair Segerblom will assume the Chair and I will return. [Chairman Anderson left the room.]

Mark Kemberling:
The Office of the Attorney General is requesting an amendment to *Nevada Revised Statutes* (NRS) 228.410 through A.B. 42. The amendment requests that subpoena power be provided to the Medicaid Fraud Control Unit. This subpoena power would be limited only to the Medicaid Fraud Control Unit and only for those restricted areas in which that unit is allowed to operate. Any information that would be collected or gathered through this subpoena power would be maintained under the same restrictions that presently exist for all the other information that this unit obtains through investigative and oversight duties. Nevada law enforcement agencies already have different forms of administrative subpoena power, including the administrative subpoena power for public utility records. Other states' Medicaid Fraud Control Units have administrative subpoena power.

This particular amendment parallels the language of NRS 704.201, which is already an approved administrative subpoena power. The language for the penalty in A.B. 42 also parallels the language of an existing approved NRS, a penalty that would be enacted against any medical provider who failed to turn over records under the already existent reporting duties.

Vice Chair Segerblom:
What prompted this if you can tell us briefly?

Mark Kemberling:
The Medicaid Fraud Control Unit was founded in 1991. Since then things have evolved and changed. In particular, one of the landmark changes was the enactment of the Health Insurance Portability and Accountability Act (HIPAA) provision. The Medicaid Fraud Control Unit is a health care oversight agency and is not bound by other restrictions that HIPAA would enact over medical providers; yet there is a lot of confusion in the field regarding what a medical provider can or cannot provide to the Medicaid Fraud Control Unit. Most providers are concerned about their compliance with HIPAA and one of the safeguards for them is a subpoena. In the State of Nevada we could utilize the standing grand juries, but they are in two counties only. This causes a problematic oversight when a provider gets a criminal grand jury subpoena on a matter that may not need to see criminal resolution. Another problem is the rural counties have no readily available access to grand juries. Additionally, many of the providers have to report certain documents that they are in receipt of, whether it is to the Securities and Exchange Commission (SEC) or to other public bodies. Certain styles of subpoenas result in problems for these providers, whether fraudulent evidence is strongly suspected or not. Occasionally, there are some concerns with the altering of records that are provided to our agency, and this would allow us to enact some enforcement provisions in case altered records are provided.

Vice Chair Segerblom:
Is this intended mainly for the medical providers as opposed to the patients?

Mark Kemberling:
Yes, sir. The unit is not involved in what would commonly be referred to as "recipient fraud" unless it is organized recipient fraud in collusion with a provider. The unit is basically restricted by federal regulations from making inquiries regarding recipient fraud. There is an existing investigative and recovery unit within the state that looks at recipient fraud matters.

Assemblyman Cobb:
I was hoping to get a little more background since you are not really telling us what you are looking for and why you need these particular records. Why do you need this process to obtain these records? What prompts you to search out these records? What information in there is personal and would be exposed in terms of the individual's medical history? What is prompting you to go to the medical provider through this process as opposed to a grand jury? Are you using them to go after the medical provider? Are you using them because you

need some background information? Is it purposefully for use in a prosecution that is already under way?

Mark Kemberling:
It is for use in an investigation or inquiry that is already under way and it is not used toward the recipients. The records that would be obtained would be regarding the provision of service in a financially fraudulent manner, what would normally be referred to as "upcoding." Upcoding is when providers bill for services or goods at a much more expensive rate than what was actually provided. Maybe it was a "ghost patient"; patients who did not show that day yet claims were submitted to the Medicaid agency. It is based on the provider and the financial claims submitted. Those are the two main areas. Will we obtain individual recipient information? Yes, we will. Do we have restrictions already upon us regarding what we can or cannot do with that information? Yes, we do. We have restrictions and we have to safeguard that information.

Assemblyman Cobb:
What is the level of suspicion that you need under this proposed bill to seek these records without any type of warrant?

Mark Kemberling:
There are levels and volumes. We would need some cause, call it "probable cause," but the volume of that cause would probably be equivalent to the volume of probable cause for a grand jury subpoena, a search warrant, or for a preliminary hearing, which is basically slight to marginal.

Assemblyman Cobb:
Have you considered just asking the patients themselves for permission to see their records as opposed to using this route, which would still expose their personal information?

Mark Kemberling:
Many times the recipient in the Medicaid system never sees this information and does not even know that this information exists. The Medicaid recipients never receive bills for services provided, nor do they receive statements or explanation of benefits. When a recipient enrolls in the system there is a formatted procedure, and some of the procedures and agreements that are signed by the recipient authorize his information to be reviewed by certain entities. The Medicaid Fraud Control Unit is a health care oversight agency and deemed as such by the Code of Federal Regulations (CFR). This is our job. To look at these types of records is what we are enacted to do.

Assemblyman Ohrenschall:
I wonder if you could describe the current process. I was reading the letter and in it you said that an administrative subpoena would be less intrusive and more proficient than a search warrant or grand jury inquiry. What is the process right now, and is it so time consuming and burdensome to the unit that you are asking for this change?

Mark Kemberling:
Presently, we are able to utilize different methods depending on the style or nature of the provider. As expressed earlier, certain types of requests must be turned over to other regulatory agencies once received by a provider. We enact criminal as well as civil inquiries. It is not always proper to go to a grand jury system for what may not be a true criminal issue. Right now there is a gap in the existing record collection method. It is burdensome to obtain a search warrant, and then it is burdensome to actually seize the items. You must often gather up not just one person, but up to 15 or more state investigators and send them to a certain location to search and seize. It is not always a comfortable position to be in for either side of that process. A subpoena puts the onus on the holder of the records to go to wherever the records are, retrieve them, and return them to us instead of what would happen in the use of a search warrant that grants officers the authority to enter a locked building and go through every logical cabinet or desk for the records. That is not always necessary.

Assemblyman Hambrick:
Utilizing this effort, would you ever envision your investigators walking in with a demand subpoena as an investigative tool?

Mark Kemberling:
Demand subpoenas are not readily backed by *Nevada Revised Statutes*. I understand the concept, but would we forcibly enter and request a demand subpoena? That could be done; the true issue is what happens if they say we cannot do that right now. If you were to review all of the *Nevada Revised Statutes,* you would not see the ability to enforce a subpoena upon demand. What normally happens, and it is very logical in how it happens, is the recipient of the subpoena will see that there is a volume of records to be gathered. Whether they receive the subpoena by the primary investigator or secondary investigator, there is always a short conversation: How long do you think it will take to get this? Usually a week to two weeks is adequate. Even on grand jury subpoenas with hard and fast return dates, the common practice is that we receive a call from either the provider or his counsel and we work out an extension. That is not the best answer to your question, but that is the way the statutes are set up. I do not know how to explain it any better. I would

hate to have somebody walk in from my unit and slap down a demand subpoena and then try to have it enforced later. That would not go well for our unit.

Assemblyman Horne:
Would this be applied to cases currently under investigation and existing cases that may have already been filed?

Mark Kemberling:
Generally, a grand jury subpoena is not applicable after bind over or after indictment. At that time, there could be subsequent or additional investigations similar to, but not on, the same topic. If we are already in that stage of an investigation, we would use the existing tools available to us to investigate criminal activity. Would a subpoena be used in furtherance of that existing tool? As written, there is nothing to prohibit it, but that would not be the primary tool for that scenario.

Assemblyman Horne:
For the record, and this may be overly cautious, citing Standing Rule 23, I am going to have to abstain from participating in this bill because of a current client I am representing.

Assemblyman Anderson:
Under Standing Rule 23, which refers to conflict of interest, this reduces the size of the quorum. However, I do not believe it reduces it as an aggregate number unless somebody else has a conflict. I hope that you will still ask questions to raise the level of awareness of the Committee.

Part of my concern is the precedent that may be set here for other agencies of the state. I noticed in your letter to the Committee that you used Florida and Oklahoma as examples. Is this a common or unique system? Are there several states doing this, or are we one of a few? We are very tight in the use of this authority.

Mark Kemberling:
We would not be one of a few. Those two were examples that I had readily available to me in hard copy at the time that the question was asked. I did not survey all of the 50 Medicaid Fraud Control Units to get the exact language, nor did I include the other tool that is available in other scenarios called the Civil Investigative Demand (CID) letters that are authorized through the Federal Office of the Inspector General. This is another cumbersome method that also brings in another realm of agencies.

Assemblyman Anderson:
Is the purpose of the bill to reduce the difficulty that currently exists in trying to achieve subpoena power through the federal statutes? Or does it just make it cleaner for us here in Nevada to give your office this rather broad blanket authority? The reason I ask this question is that this Committee has the ability to subpoena someone to come here. However, for me to utilize the legislative power, I have to inform the Speaker. It is her authority and as an extension of the Speaker, she has to authorize me to utilize the authority of the Committee. Whom do you have to run this by? Do you have to specifically go to the Attorney General?

Mark Kemberling:
The statute is drafted so that the director of the unit or his designee would be authorized to do this.

Assemblyman Anderson:
Are you the director of the unit?

Mark Kemberling:
Yes, sir.

Assemblyman Anderson:
So only you or your designee can do this, and the designee could be a field assistant in the north, south, or a rural area, and it could be done over the telephone. This is an impressive power, is it not?

Mark Kemberling:
We are not saying it is not; it is. It is also a standard power. A grand jury subpoena is an impressive power and a search warrant is an impressive—and sometimes oppressive—power.

Assemblyman Anderson:
The grand jury is convened by the District Attorney for specific reasons, or a seated grand jury could be brought potential ideas on a regular basis.

To get search warrants you have to go to a judge unless there is probable cause. Is this a probable cause matter? Would you take one of these subpoenas with you because you are going down to the hospital and you want to pick up all the records that are there?

Mark Kemberling:
No. If that were to occur, the hospital would bring an action against us very quickly. Just as with any subpoena, a motion to quash is the most obvious

retort. It is a cleaner system. It will not be a tool used often, and it is not a spiteful tool to carry in your pocket and say, "I can. Here it is."

Vice Chair Segerblom:
This only goes to the providers and not to the patients. Also, a lot of it deals with HIPAA. Many times people are confused about the federal HIPAA laws and whether or not giving you the records will be a violation. This subpoena provides them protection. It is not as onerous as I thought it would be. Is the Medicaid Fraud Control Unit something that the federal government pays the State of Nevada to have?

Mark Kemberling:
Yes, it is. We also have a series of CFRs that restrict what we can do with this information. Our duties and our abilities to work with this information are narrowly drafted.

Assemblyman Carpenter:
The law enforcement agencies have to get search warrants. Why is it difficult for you to get one?

Mark Kemberling:
Maybe there should be a distinction made between difficult and feasible. The example used to describe what happens when a search warrant is issued is probably the more complicated, expensive, and burdensome effect of that process. A search warrant authorizes the enacting, or the enforcing, investigators to enter a building and seize. That can appear troublesome; it is shocking to people when there are strangers in their provider's office seizing records. This affords for records to be handed over, and it affords for the holder of the records to go to the location of the records, open a drawer or storage unit, and obtain them and return them. A search warrant allows one to go in and seize records, continuing to search until they are located. The concern may be what it takes to obtain a search warrant. The actual drafting and writing of the search warrant is not as onerous as the execution of the search warrant. It creates a very different relationship between that provider and the Medicaid Fraud Control Unit. We have issued some very large search warrants in the past, but search warrants are not available or suitable for every scenario.

Assemblyman Gustavson:
I understand why the Fraud Unit might want to have subpoena powers, but I am very concerned about who we allow to have these subpoena powers because of questions that arise about these all of the time. I am not sure if you answered

Mr. Cobb's question as to why you do not just go and ask the patient for permission to acquire these records.

Mark Kemberling:
Let me clarify something. First, this is not merely the chart file of an individual patient, although that may be included. These are the billing and business records concerning the processing of the claims, which are not in the patients' chart file and are not considered a true medical record.

Second, many of these patients do not know what they have in their medical records. They never receive an explanation of benefits, a receipt, or a bill through the Nevada Medicaid system.

On the third point, when recipients become recipients, they sign waivers allowing their records to be copied and obtained as part of their recipient enrollment. They are aware that this may happen. Many of the records are not true in-the-chart medical record types.

Assemblyman Gustavson:
What I am concerned about is that the patients may not be aware of something that they are being billed for. If you are investigating a provider that is billing for services not provided, the patient would be unaware of it. But if you went to the patient and asked him if he was afforded this service, you might get the information that you are investigating. I know there are many types of investigations, but I wonder why, in this area, you could not just ask the patient for permission to search the records. I do not know if that is possible.

Mark Kemberling:
That actually brings up the other point. In some respects, it is an alarming factor to a patient that the provider is under investigation. They immediately think it has something to do with the quality of care and not something to do with billing. You need the records to ensure the accuracy of certain dates, in particular in the billing for services not provided, or dates when there might not have been an appointment. You also need to rule out simple things like transposing of numbers in the date. These things happen and you need to be able to rule that out. When people are approached with questions regarding their care provider, one of the first things they will do is pick up the phone and talk to their care provider and tell him that the Medicaid Fraud Control Unit was just there. Then I believe the quality of records you get afterwards would not have as much integrity as if you had gotten the records first.

Assemblyman Mortensen:
I am obviously seeing this differently from any of the previous questioners. We, as legislators, are constantly beating our chests and tearing our hair over the small amount of money that Medicaid has for this state. We are among the lowest in the nation. If we can help an investigator root out people who are abusing the system and the providers who are charging for "ghost patients" and overcharging the system, I feel we should make the tools available to do that.

Mark Kemberling:
Thank you, sir, and we have brought in millions of dollars just this last calendar year.

Assemblywoman Dondero Loop:
Is there any difference in the fidelity of the records when you do a search warrant versus a subpoena? A subpoena would ask the person to hand over the records and they might have time to alter them.

Mark Kemberling:
Yes, there is some degree of risk. There are also statutes that make the alteration of those records a crime; not a potential civil problem, but a crime. The destruction of those records would be a felony offense. Alteration or destroying an original record, the disposal of records so as not to have to comply, or the intentional failure to maintain records are all crimes. Those would be gross misdemeanors and there are penalties. Does it happen? I have been doing this since 1996, and I will say only occasionally.

Keith G. Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General:
If it would give the Committee any greater comfort, we would be happy to amend section 5 to say "the Chief Executive Officer upon the written approval of the Attorney General," and we can strike the designee language. The goal is to improve the fact-finding process. Assemblyman Mortenson aptly pointed out that this unit was created to make sure we do not have Medicaid fraud in this state. Mr. Carpenter, you asked if we could get a search warrant. Yes, we could, but this is a less intrusive method of fact-finding than a search warrant.

Chairman Anderson:
I presume that when you offer a potential amendment, it would have conditions. Since the Attorney General is often out of the state traveling, I assume it would be you or her Chief Deputy who would have such power, not her specifically. It is not *the* Attorney General, but it is either her or her surrogate.

Keith G. Munro:
That would be fine and we would be happy with that as well.

Chairman Anderson:
If this were to pass, we would not want investigators to have to wait for the Attorney General.

I will close the hearing on A.B. 42.

We will now open the hearing on Assembly Bill 59.

Assembly Bill 59: Creates a rebuttable presumption against an award of custody or unsupervised visitation for any person who has abducted a child in the past. (BDR 11-265)

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:
I am going to direct your attention to Senior Deputy Attorney General, Victor Schulze, in Las Vegas, who will be appearing to you on the video monitor to provide primary testimony in support of this bill.

Victor Schulze, Senior Deputy Attorney General, Office of the Attorney General:
I am here on behalf of the Attorney General to provide testimony in support of A.B. 59 as it appears before the Committee this morning (Exhibit D). I serve the Attorney General and the people of the State of Nevada as the Nevada State Children's Advocate for Missing and Exploited Children and as director of the Nevada Clearinghouse for Missing and Exploited Children within the Office of the Attorney General.

The purpose of A.B. 59 is to protect at-risk children from non-stranger abduction and kidnapping by strengthening existing law in preventing such crimes against children. The bill seeks to reduce the incidents of child abductions by amending portions of Chapters 125 and 125C of *Nevada Revised Statutes* (NRS), which pertain to the legal presumptions relating to the standards that a family court judge must apply in determining the custody of children in a custody proceeding.

Assembly Bill 59 seeks to provide to family court judges a tool that is not currently available by which they, through the exercise of their sound discretion and specialized knowledge, provide this protection to our children. The bill seeks to create a legal but rebuttable presumption that it is not in the best interest of a child for a parent or other person who has committed an act of child abduction or child kidnapping in the past to be granted sole or joint custody, or unsupervised visitation. The bill is premised on the fact that a prior

abduction of a child constitutes a risk factor for an increased probability of future abductions by this same perpetrator. The provisions of the bill are consistent and harmonious with existing law concerning the relationship between child custody and child abductions and kidnappings. As you know from media accounts, child abductions range from the surreptitious to the extremely violent. This bill seeks to reduce the incidents of all of these child abductions.

Child abductions are a grave national concern with the National Center for Missing and Exploited Children, which reports that at any time more than 800,000 children across the country are missing from their homes. The caseload of the Nevada State Children's Advocate in prosecuting child abductors is growing and includes approximately 100 criminal cases and more than double that number in civil and other agency assisted cases.

As you know, NRS 125.480, subsection 5, creates a rebuttable presumption that it is not in the best interest of a child to be placed in sole or joint custody of a perpetrator of domestic violence. What this bill does is take that same theory, that same protective device, and seek to extend that from the crime of domestic violence to the crime of child abductions and kidnappings. There is no provision in current law that extends that same presumption to protect children from perpetrators of child abductions or kidnappings. Assembly Bill 59 seeks to close this loophole. In working closely with the National Center for Missing and Exploited Children, police agencies in Nevada and across the country, Interpol, the State Department, family courts, private agencies such as Nevada Child Seekers here in Nevada, and numerous foreign police agencies, the Nevada Clearinghouse for Missing and Exploited Children has filed charges against child abductors who kidnap children from Nevada homes and keep them from their custodial parents. Some are being harbored secretly close to home without leaving the state, but others are being taken great distances to varied places including New York, Florida, Mississippi, Israel, South Korea, Australia, Canada, and Mexico.

As I talk to victims of child abductions and kidnappings, both the left-behind parents and children in the cases that we investigate, I have begun to learn that abductions and kidnappings, once perpetrated, remain ongoing threats. In approximately half of the Clearinghouse's cases, abductions of children have been preceded by earlier abduction attempts, threats, or less aggravated custodial interference incidents by the abductor; actions which demonstrate complete contempt by child abductors for court orders and legal processes. Even after child recoveries and the reunification of missing children with their custodial parent, these children are in an increased danger of being abducted again as demonstrated by the histories of custodial interference in these cases.

After recovery, victim parents often live in constant fear of further abductions and are forced to take difficult and often expensive preventive measures to ensure the safety and security of their children.

The language of A.B. 59 was designed to closely mirror the language currently set forth in NRS 125.480 that creates the rebuttable presumption against sole or joint custody of a child by a perpetrator of domestic violence. We used that same statute because, as most people recognize, child abduction is a horrible form of child abuse and is closely related in many cases to incidents of domestic violence. The existing statute on domestic violence and this proposed statute on child abduction serve the same child safety and crime prevention function. They fulfill the same goal of protecting Nevada children from future harm and injury just like the domestic violence provision does on the policy consideration that abducting or kidnapping a child is a severe form of child abuse, exploitation, and endangerment.

The bill is flexible and fair, and includes a safety valve for those cases where a parent or other person who has abducted or kidnapped a child can demonstrate before the family court that he or she is no longer a danger to the child's safety and welfare. This provision protects children from the abuse of child abductions, while at the same time recognizing that perpetrators of child abductions can be rehabilitated. This is an optimistic bill. These parents can be rehabilitated if they want to be and the bill acts as a strong incentive for abductors to address and overcome their past unlawful actions by demonstrating a changed attitude, a changed heart, and a changed behavioral perspective to the family court before that abductor is able to obtain unsupervised custody or visitation of that child.

Joint custody is the presumption in this state under the general statute, and joint custody should be the rule in the vast majority of cases. Children should always be able to have close and meaningful relationships with both parents when there is no demonstrated history of domestic violence or abduction in the past, but not in the cases of demonstrated domestic violence. Assembly Bill 59 will give family court judges the statutory authority they need when determining custody and the ability to consider whether a parent or other person has committed an act of child abduction or kidnapping. The bill acts in tandem with existing law, including the Uniform Child Custody Jurisdiction and Enforcement Act, which is in Chapter 125A of NRS; the Uniform Child Abduction Prevention Act, which is located in Chapter 125D of NRS; and the work of the Clearinghouse, police agencies, National Center for Missing and Exploited Children, and partner agencies such as Nevada Child Seekers, to reduce the risk and incidents of child abductions and kidnappings. The bill has

the wholehearted support of the police departments in Nevada, the Attorney General, and the Nevada State Children's Advocate.

I would like to add before I end that the Attorney General, the Chief of Staff, and I were able to meet on Tuesday, February 3, 2009, with representatives of the family court judges. They did express one concern with the bill, but we were able to reach a very happy consensus. So, I have an amendment that strikes some of the language that appears in the bill. It will not affect the operation of the bill and, with that amendment, I believe we have the support of the family court judges.

Chairman Anderson:
According to the Attorney General's Office, the proposed amendment represents a compromise that the family courts will agree to. The Attorney General's Office and the family courts would support the following:

- The removal of section 1, subsection 9, lines 29 through 43. (The subsection below would need to be renumbered as number 9. Any references to it, the bill drafter would have to take care of so that there would be no confusion with that change.)
- On page 5, section 2, subsection 3, at line 42 through line 45 will be removed.
- Lines 1 through 11 on page 6 will be removed.
- On page 7 of the bill, section 3, subsection 3 will be removed.

Is there a representative from the family court, for the record, to indicate that this is what they want?

Ben Graham, representing the Administrative Office of the Court, Carson City, Nevada:
This is an issue that has been discussed for the past week. It is my understanding from Judge Ritchie and others that the family court feels these amendments leave their discretion intact, while still protecting the interests of the child. They do support this matter with these provisions removed.

Assemblyman Horne:
In relation to the amendments, you propose to delete subsection 9, but subsection 10 also refers to criminal charges that are filed against a person. Section 2, subsection 4, and section 3, subsection 4 also refers to this presumption when criminal charges are merely filed. It is my understanding that is why the proposed deletion occurred in subsection 9, of section 1. Why was it not done in the other sections?

Victor Schulze:
The language in the three sections that we agreed to delete is identical. I would point out for the record that in each paragraph following those three deleted paragraphs there are references to three subsections, and those will have to be modified down to two because they now refer only to the two foregoing paragraphs. The reason that subsection 9 was offensive was that it allowed conclusive evidence based on a charge being filed rather than a finding by the family court. The bill, as written, does not require a criminal conviction for an abduction. For example, NRS 200.359 under the kidnapping statute, a criminal conviction or an admission to the facts of an abduction or a kidnapping under Nevada statute, or a substantially similar statute in a different jurisdiction, would act as proof of that having taken place. In every case, the family court judge has to make a finding after holding an evidentiary hearing. To add some extra due process to the rights of parents, we increased burden, just as the domestic violence statute has done to the highest civil burden, which is clear and convincing rather than just a preponderance of the evidence. In addition to the fact that it is a rebuttable presumption, it is also the highest civil standard.

What we deleted was the requirement that a family court judge treat a charge as conclusive evidence of an abduction. I agreed with Judge Ritchie in our meeting that it does not provide enough due process. When there is no criminal charge, the family court holds its own hearing. Again, this does not require a criminal charge. The family court would, or would not, make that determination, and then the burden would shift to the other parent to see if he or she could overcome the presumption. With the deletion of that evidence, we are deleting the references to the Attorney General's Office, which simply files a charge not withstanding some type of conclusive proof. I think that is appropriate and Judge Ritchie was correct. I think the bill was flawed in its original form. That was my oversight.

Assemblyman Horne:
In subsection 10 of section 1, where there has already been an order entered concerning custody, if a person is subsequently charged with a criminal charge of abduction in this matter, the judge can review a motion to reconsider that custody.

Victor Schulze:
I see what you are talking about now. I do not think I addressed your question right on point. If the family court has already entered a custodial order and there is a subsequent abduction of the child in violation of the order, we can charge that under the statute. Subsequent to those charges being filed, section 10 does not create any kind of presumption by itself, and it does not create a presumption of conclusive evidence of an abduction taking place. All it says is

that the family court has the authority to revisit the issue of the effect of the abduction and on the appropriateness of that parent having joint or sole custody or unsupervised visitation after that final custody order is made. Does that answer your question?

Assemblyman Horne:
Yes; however, this states that the court "shall." This is a directive requiring them to do that. Do the courts today not already have this ability to consider whether or not to entertain a motion to reconsider custody?

Victor Schulze:
The statute directs the family court to hear a motion for reconsideration. That refers to the "shall" language when such a motion has been filed. Without this provision, I would be concerned if a motion was filed based on an abduction, whether there was a criminal charge or not, that the motion would simply sit and not be addressed. To tighten up the requirement that family courts address the issue of the appropriateness of abductors having any custody or unsupervised visitation, we prefer that the bill require the judges to revisit the issue. Not *ex parte* and not *sua sponte*, on their own, but simply in those cases where a motion to modify the order has been filed by one of the parties. We want to be sure that none of these cases slip through the cracks. That is the intent of that language.

Assemblyman Mortensen:
Just a few days ago I was talking with some people from the American Civil Liberties Union (ACLU) about the really broad use, maybe even abuse, of the term kidnapping. A situation exists where man number one steps in front of man number two to keep him from leaving the room because he wants to talk to him for a minute. He is charged with kidnapping. I am worried that a parent who detains his child momentarily might be charged with kidnapping and, therefore, an otherwise very good parent could be kept from having that child in his custody. I am worried about the abuse of the term kidnapping or abduction.

Victor Schulze:
I agree. I think that almost any criminal statute out there has the potential for being abused. My first general response would be that we have to rely on the common sense of judges and prosecutors, and finally, on the high burden of proof. In the criminal system, the ultimate protective device is the high burden of proof and the fact that the proof is on the state under the kidnapping statutes, specifically NRS 200.359.

A parent who overstays visitation by a week, and we are not even talking about a momentary issue, is not somebody who has ever been prosecuted by my

office. The crime of abduction requires either the violation of a court order entered by the court—so it has the flavor of contempt of court combined with kidnapping—or if there is no court order, I must show the specific intent of that abductor to deprive the other parent of the parent-child relationship. Because our statute is a specific-intent crime, there is a double burden that I have to show. There are two protective devices to avoid your concerns. One is the higher burden of proof, which means the family court judge must find the offense by clear and convincing evidence. The second protective device written into the statute is the rebuttable presumption. The family court judge in a case could say, "Yes. I think you abducted the child. I find that you abducted the child by clear and convincing evidence. But based on additional evidence that has been shown, I think you have overcome the presumption." You could overcome that presumption if you show, for example, that you went to counseling or you show that you attended classes at a parenting project. You must demonstrate to the family court judge that you have learned that abduction harms children and families, you have overcome your control and power issues, and you will not ignore the order of the family court. In a situation where there is an order, an abducting parent who has shown remorse and changed his or her ways can still get custody. That is why we built in those protective devices to keep the statute from being abusive and, hopefully, we have addressed your concerns. I agree with you that the law can be abused.

Assemblyman Mortensen:
That is a little more reassuring.

Assemblyman Carpenter:
What happens in a situation where a parent takes a child away from an abusive situation where the other custodial parent is abusing the child?

Victor Schulze:
I am glad you asked that question because it is right on the point and I think it relates to Assemblyman Mortensen's concerns. In the abduction statute that I prosecute as Children's Advocate, it is an affirmative defense to that statute. Specifically written into the statute is that a parent who has to leave because the child is being abused, or that the parent who leaves has been a victim of domestic violence, has an affirmative defense. We do not charge those cases. As a matter of fact, your question is extraordinarily timely and I am glad you asked it because my investigator and I were dealing with that exact issue yesterday. A gentleman had reported his child and his wife were gone from the home, so we investigated the case. The investigator spoke to the alleged perpetrator and she was able to demonstrate to us that she had been the victim of domestic violence. That is not a case that we would ever prosecute. The

way we operate our prosecution caseload is to not only apply that section in the statute, but also the broader defense referred to as a "necessity defense" under common law. Under our statute, there are certain restrictions on that defense, so we take a much broader view and investigate every one of our cases. There is always a possibility that alleged abductors have to leave for personal safety issues. When they do so, we are on their side. We do not prosecute those cases.

Chairman Anderson:
I have a concern about how this bill may be used. I recognize that children are often used as pawns in the family court setting. The foremost concern for us is to take the position that is in the best interest of the child. How do you keep someone utilizing this statute from saying, "I have custody of my children and today is not my day to have custody, but there is a family event going on and I want them to go to it"? The parent would keep them rather than release them to the other parent, and it is the third or fourth time that this has happened within a relatively short amount of time. Would you use this statute to determine the kidnapping issue since there is already a court order? How does that work? Are you going to get in the middle of that type of discussion, or is there some other tool?

Victor Schulze:
The question that you are asking is one that comes up every day in our investigations. We distributed to the Committee a copy of our annual report (Exhibit E) that we are required to file. As you can see, we have returned 67 children last year and assisted in approximately 600 investigations both in state and, through other clearinghouses, out of state. The question is how you distinguish what I would call a petty custodial interference situation that is not a crime and an abduction that is a crime. The statute gives us some direction. For example, when there is no custody order, we have to prove in a criminal case that the parent intended to deprive the other parent of the parent-child relationship; not that it was an inconvenience issue, but an intent to actually deprive them of that relationship. What we have done in the last 18 months is work on a set of investigation protocols and a set of prosecution protocols for the very question you are asking because these issues come up every day in our cases. Is this actually an abduction or has a parent simply gone to the police because he or she is angry that, for the third time, a parent returned a child a couple of hours late. That is not a case we would ever prosecute. When a case is appropriate for the family courts and not the criminal justice system, we step back very quickly and tell the police that the prosecution request is denied and it is a case for the family court to get involved with, if they want to deal with the issue. Some of the issues we look at to determine if this is simply a custodial interference by parents or an actual serious abduction are the duration

of the abduction (did this last for 30 days or more) and whether or not the child was taken outside the city, county, or state. A 30-day abduction outside of the state is a criminal issue, especially when phones are cut off and the other parent does not know where the child is. If the child is in the home of the other parent and everybody knows where the child is, that is not going to be a criminal case. Those cases we do not charge. I think it takes a certain amount of finesse and concern for your reputation as a prosecutor to know the distinction between those two. Coming up with some relatively objective prosecution and investigation protocols has been part of this process.

Jeremy Shugarman, Private Citizen, Las Vegas, Nevada:
My son, Nathan Shugarman, was first abducted in late 2003. After two months, his mother was ordered to present him to the court where I was awarded custody. At that time, the court allowed unsupervised visitations once every three weeks and allowed my son to be taken out of the state to California. After four months of this, just before a decision by the court to award final custody to me, Nathan was internationally abducted to South Korea. He was a missing child for almost three years. He was finally recovered from Sydney, Australia, with the help of the Nevada Office of the Attorney General, the Federal Bureau of Investigation (FBI), the State Department, the National Center for Missing and Exploited Children, Nevada Child Seekers, and many other organizations. The mother was arrested, extradited, convicted, and then deported from the United States. If she was ever able to enter this country or try to get custody of him again, I would live in constant fear that this would happen again. Please pass this bill so that anyone who abducts a child could never have custody rights or any type of unsupervised visitation to prevent this from happening to me again or to other people who have suffered through this terrible crime. Thank you.

Stephanie Parker, Executive Director, Nevada Child Seekers, Las Vegas, Nevada:
Our organization was started in 1985 to address the plight of missing children, and this, of course, is just one of many issues. I will be very brief today because we have several parents who have been affected by this specific crime who wish to speak. One thing that I would like to say is that, as an advocate for children, our organization puts aside judgment of an abducting parent and a left-behind parent. Our priory is to protect children, and we think that is what this bill does.

Sharon Foley-Pryor, Private Citizen, Las Vegas, Nevada:
I am an educator of 35 years and a victim of child abduction. I support A.B. 59. Anytime a parent takes a child, all parties are affected by it, but the greatest victim is the child. My grandson was taken from me and has suffered

greatly. Although his mother has custody of him again after several years, I believe this could happen again. She has citizenship in England, and her mother is from Uruguay and has family there. I live in constant fear that he will be taken.

Lydia Harrison, Private Citizen, Las Vegas, Nevada:
I thank Nevada Child Seekers, and I am very grateful to Mr. Schulze for this bill, which I totally and completely support. My grandchild was abducted, or kidnapped, with seemingly the blessings of family court. An order was entered that she was to live in two countries, two months in Mexico and two months here. That was the rotation for about three or four years. During the first rotation, everything was disconnected and bonding stopped. It is considered, not alleged, a true abduction kidnapping. I feel that the judges are trying so hard to be fair to the parents that they have almost overlooked the child. Therefore, I strongly support this bill and I am happy that it is being brought to everyone's attention. My grandchild has still not been returned.

Mark Harrison, Private Citizen, Las Vegas, Nevada:
My case is very well known. My daughter, Jessica, has been gone about nine years. The law failed miserably. There were no set actions to take to address this properly. I followed directions perfectly, yet I was not getting help for my child. We need A.B. 59; it is a start in the right direction. The judges will still have their discretion. Too many people, and especially the children, have suffered. Please consider this bill, and if there are any issues that need to be worked on, let us put our minds together and get it passed so we can protect our children.

Chairman Anderson:
We will now turn to those who are in opposition to the legislation.

Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:
I represent the Washoe County Public Defender's Office, which may seem a little odd that I am here on what is a child custody issue. For the record, our office represents parents whose children the government is trying to take away. Often these dependency cases overlap with divorce proceedings and custody battles. I also have experience working for a family law office, although in another state, and I think I have some relevant experience to share. While certainly noble, the intention of this bill may lead to a lot of unintended negative consequences that may hurt more people than it helps. That is why I am here. I understand the very delicate issues at hand and want to make sure we address them as soberly as possible so that we are not using too much force to solve a problem.

The Supreme Court of the United States has recognized that the right to parent your children is a fundamental right that is protected by the *Constitution*, which is important when looking at burdens of proof and at what point the government can start taking that right away. That is something that must be kept in mind and must underlie every single thing we talk about today. The other thing, if I can use a mining analogy in this state, is that we always need to be careful not to use eight sticks of dynamite when half a stick will do. Often we try to solve a problem with too much force and we end up creating more problems than we originally solve. My fear is that this bill is a perfect example of that. I think there may be a way for us to address the very real concerns that have been brought up without using a sledgehammer when a scalpel would be better.

First of all, I want to say what we like about the bill, and that is section 1 on page 3 of the bill draft. It is *Nevada Revised Statutes* (NRS) 125.480, subsection 4, sub letter (l), where "Whether either parent or any other person seeking custody has committed an act of abduction against the child or any other child" is added to the list of things that the family court judge "shall" consider when they are considering custody. That makes absolute sense and what this does is force an addition to an itemized checklist that the judge must make a record of having taken into consideration when making that custody determination. That is a great idea; it does not take away any of the discretion of the judge. It forces him to actually look at it and make a record of it so he cannot simply ignore it, which I fear is something that happens occasionally in family court.

The rest of the bill, unfortunately, removes a great deal of judicial discretion. What you have essentially done is force the judge to make a premature decision. The person being accused of child abduction is a person who stands to lose a fundamental right protected under the *Constitution*. The accuser shifts the burden of proof to the accused if they can prove a prima facie case, if they can show clear and convincing evidence. In family court, a person is not entitled to an attorney and often times cannot afford an attorney. The person who is accused should not have the burden of proving himself innocent, but that is how the law is written. Mr. Schulze noted that this bill is flexible and fair because it allows the person to rebut that presumption, but again, shifting that burden of proof makes things less flexible and less fair. The requirement that the judge look at it provides fairness and flexibility. It also allows the judge to take it into consideration without forcing the accused to mount a case in his own defense.

Unfortunately, one of the things that I often experienced when I was working as an intern in a family law office was jilted former spouses, or sometimes they were never married, who would use their children as pawns. I personally experienced that when I was a child, although certainly not to the level that many other people have. So again, I absolutely understand the emotional toll that this takes and the concern that people have. All too often we see exactly what Assemblyman Mortenson was worried about, that a momentary detention of a child, even something that was willful like wanting to stay for a family event or such, would turn into an accusation. Even if that would not have been prosecuted as a practical matter, it still ties the judge's hands. Once that accusation is made and—sometimes the facts are not even in dispute—the clear and convincing evidence is shown that one parent deprived the other parent of his or her parental rights under the original custody order for even a week, the judge "shall" presume he or she is not fit and should not have sole custody or even unsupervised visits. Those are the problems. We are less worried about the prosecutors, although we always need to keep in mind there is always the potential of a rogue prosecutor. We are worried about this in a civil matter or even a dependency matter.

Unfortunately, another thing that I witnessed when handling dependency cases was the very well-intentioned social worker who would sometimes get so focused and so tunnel-visioned that he or she would jump to early conclusions. It would be easy to make an assumption and make representations to the court that the person was abducting when, in fact, they were doing very well and there was simply fighting between the two parents. This would lead to unjust results and it would cause a delay in the restoration of parental rights. Those are the things that we greatly fear.

Finally, I want to be most delicate and again note my respect and understanding of the situations that these Las Vegas parents who have testified are in, but the question must be asked: Would this bill, had it been in place, have prevented those actions? I do not know that it would have. If someone is set on abducting a child and taking him away, disregarding the rights of the other parent, moving to another country, cutting off phone lines, disregarding other court orders where there is already a custody plan in place, would another presumption prevent that in the first place? Would they stop? Oftentimes, in some of the stories that we heard, the children were abducted before a problem was known. Or if the problem was known, there would not necessarily have been enough evidence to have changed the custody award, or prevented the person from ever having custody of the child, or having unsupervised visits. The abduction still would have taken place. The potential for abuse in the statute is manifest. Mr. Schulze said that we need to rely on the common sense of judges and prosecutors, and the heightened burden of proof. We do

need to rely on the common sense of judges to a certain extent, but the law needs to be carefully crafted so we are protecting people against prosecutors who might not be doing the right thing. If we had to completely rely on the common sense of prosecutors for our protections and rights, then we could do away with the entire criminal statute and we would only prosecute people who do bad things as determined by the prosecutor. That is something that we need to be careful about.

[Committee recessed for five minutes.]

Chairman Anderson:
A major issue, especially for newer communities in the State of Nevada, is common interest communities. This Committee created some statutes dealing with common interest communities in 1991. Since then, they have become a larger issue. Common interest communities existed before 1991, but their evolution in the State of Nevada has been progressive. Nevada has some of the most progressive legislation dealing with this issue. While people who move into them are often surprised that they abandon certain rights when they move in, they come to appreciate them. In fact, sometimes that is the very reason they move into a common interest community, so they do not have to deal with the blight that often appears in terms of home maintenance, even in newly constructed areas. I appreciate the difficulty of your job and welcome you here.

Ann McDermott, Administrator, Real Estate Division, Department of Business and Industry:
I am the administrator of the Real Estate Division for the State of Nevada. To my immediate left is Lindsay Waite. She is the ombudsman for the Commission for Common Interest Communities and Condominium Hotels. And to my far left is Michael Buckley, who is the chairman of the Commission for Common Interest Communities and Condominium Hotels. The Division has prepared a handout that the members of the Committee should have that is entitled "Real Estate Division Biennial Report, February 2009" (Exhibit F).

What we would like to do is to have Mr. Buckley present some history about the common interest community legislation and discuss the role of the commission. Ms. Waite will then provide an overview of what the Ombudsman Office does and its role. They will be the primary testifiers this morning.

Michael E. Buckley, Commissioner, Commission for Common Interest Communities and Condominium Hotels, Las Vegas, Real Estate Division, Department of Business and Industry:
[Mr. Buckley read from his written testimony (Exhibit G).]

Assemblyman Kihuen:
Mr. Buckley, is there a cap on the amount that an HOA, or a common interest community, can charge someone for late charges per month? For example, if someone went away for a year and forgot to pay, is there a cap on what they can charge per month?

Michael E. Buckley:
Yes, there is, and it is in the statute.

Lindsay Waite, Ombudsman, Real Estate Division, Department of Business and Industry:
I am going to paraphrase the biennial report (Exhibit F). I will speak extemporaneously and start by continuing with the point that Commissioner Buckley ended with on how important education is.

In the biennial report that we presented you will see Table 7. It shows the breakdown of almost 3,000 associations and their locations. As the Chair stated in the beginning, they are all over the state. While the majority is in the Las Vegas and southern Nevada area, there are quite a number in Carson City, Reno, and the northern areas as well. There are a variety of different associations and we find that one of our main functions is to try to provide education and information to every association and homeowner throughout the state.

On the back of the handout is the organizational chart that shows there are 15 staffers. I will just briefly go through what the functions of our office are and the public service that we provide to the community. I am going to talk a little bit about our registration process, which relates to the $3 per door fee and what it covers. I am also going to cover primarily what I do, which is processing intervention affidavits and holding informal mediation conferences to resolve concerns.

We have our compliance section and that is where our investigators are. We have a total of five compliance investigators that look into violation of law allegations. We have the alternative dispute resolution (ADR) process, which is under NRS Chapter 38 and is a separate process from us that we just facilitate. That is where people can challenge actions of associations that relate to governing documents. It is required that they go through that process if they ultimately wish to go to court.

Finally, we have an education function and an education and information director who is in charge of developing education not only for community

managers, but also for homeowners and boards. I am going to touch on those briefly.

We are required by statute to collect a $3 per door fee, which has been in existence for a while. These funds support the staff in engaging in the functions that we are required to do by statute. The intervention affidavit is one of the ways homeowners, board members, or renters can make complaints about concerns they have in their homeowner associations. It is basically a form that is attested to by a notary in which people raise allegations about governing document concerns, landscaping, parking, fines, violations of law, and that kind of thing. What I do is review those and send out letters summarizing the issues and offering conferences to people to resolve those concerns.

I started this job 2-1/2 years ago. There have been about 750 intervention affidavits that have flowed through my review and, of those, we have had about 250 agreements to meet. When people meet, we work out the concerns about half of the time. I do come up north every few months to address concerns up here as well; I am happy with the success rate. We really encourage people to come and meet, but sometimes it takes a lot of phone calls. There are all kinds of reasons why people do not want to meet. But when we get them to meet, we have a good experience and about half of the time people reach agreements. If people do not want to meet, there is a review by the investigators of our compliance section. If it is an alleged violation of the statute, cases are opened and the investigators make determinations on whether a board has made errors. If so, our primary goal is educational and not punitive. In many instances where there are violations of statute, letters of instruction are issued by the compliance section. If there are serious violations of law, they are referred to the Attorney General's Office, where ultimately a decision on whether or not to prosecute is made. In those cases, they are prosecuted before the commission.

I know in the past there were complaints about time delays, but we believe it is completely under control now. I handle matters within a three-month period and our compliance section generally takes under a year from beginning to end. We are very happy with the efficiency of our staff. Not only do investigators investigate, but they also handle about 50 walk-ins a month. These are people who have questions about the law and whether or not they have a case. Overall, we provide a lot of public service to the communities at large. We field between 1,000 and 1,500 calls a month and a total of over 100 walk-ins a month in both the north and south. One of our main goals is to give help and information to people and associations. There is, unfortunately, lack of knowledge.

Assemblyman Manendo:
I know that you set the guidelines for the managers' education, so if a manager happens to have a leave of absence for whatever reason, does he have to be recertified, take the class again, or pay the fee again? Can you help me understand that process?

Michael E. Buckley:
I can defer to Ann McDermott on this, but my understanding is you are certified for a one- or two-year period and you stay certified during that period.

Assemblyman Manendo:
I was under the impression that if you are gone for a few months, you have to re-take the test and you have to pay the money again. I know this has happened so I was wondering what exactly the process is.

Ann M. McDermott:
As Mr. Buckley pointed out, it is for a set period of time. A leave of absence for a brief time within that period would not have any effect on credentials.

Chairman Anderson:
A manager would have to be recertified if his credential was set to expire within that time and he was out of the area. There is no extension.

Ann M. McDermott:
That is correct. And there are educational requirements and fees due on an annual basis.

Chairman Anderson:
In the past, we have heard concerns that the Office of the Ombudsman did not have the ability to respond to situations and to really make the homeowners' associations or the other groups comply. Are we getting better compliance since the last time we met two years ago? Do you feel that the Office of the Ombudsman is able to carry out its function? Have we given you sufficient powers to do what has to be done, like tell the homeowners' association that their impound balance is not enough, or your manager practices are such that we have problems?

Lindsay Waite:
The changes that have occurred over the last 2-1/2 years relate to the policies and practices that basically came into effect. We believe that questions are being addressed quickly. Are you talking about the education outreach, or are you talking about specific allegations of violations?

Chairman Anderson:
No specific allegations of violations. Some of these questions I will probably get to when we begin to hear the 17 bill draft requests (BDR) potentially awaiting us. We had a major piece of legislation in the last session that this Committee worked on intensely, and several members put huge amounts of time in on this issue, so I know that we will be asking a lot of questions.

Lindsay Waite:
Specifically with regards to elections and any concerns that are immediate that pertain to health, safety, or embezzlement, we do have a fast-track process by which that is handled. You may want to hear from Ms. McDermott. She was going to speak as to what happened in the Las Vegas area regarding the Federal Bureau of Investigation (FBI) investigation and some concerns that were raised by that.

Chairman Anderson:
I note, on page four of the report (Exhibit F), in table 2 there were 787 affidavits, and numbers of conferences held and resolutions reached. I am concerned because there seems to be a little disagreement in numbers.

Lindsay Waite:
Those are intervention affidavits. That is my end of it, the mediation. The next section is the compliance section, which has different numbers to report. If you look at tables 4 and 5, they show the number of cases opened, and I think that averages 100 a year. There are cases in which there is no jurisdiction or there is no evidence. There are cases that are open in which letters of instructions have been issued to boards where there are violations of law. Basically, the letters indicate, "You did this wrong. Here is the right way. We are monitoring you." An area of prime concern is elections and recalls that are not being handled properly. We do have some systems in place whereby we make sure to the best of our ability that elections are being held properly.

Chairman Anderson:
I will ask the members of the Committee who might be interested in serving on a subcommittee that we will be dealing with on common interest community issues in its entirety to contact Laurel Armbrust in my office. Talk to the Vice Chair if you cannot talk to me directly. I want to give Ms. McDermott the opportunity to speak, but we are out of time.

Ann McDermott:
I was going to address a couple of the issues that are within Chapter 116 and within the Ombudsman's Office in the Real Estate Division. I have submitted those in the report (Exhibit F) under "Significant Issues" and I am available for any questions at any time.

Chairman Anderson:
Meeting adjourned [at 11:02 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 6, 2009 Time of Meeting: 8:08 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 42	C	Mark M. Kemberling, Chief Deputy Attorney General, Medicaid Fraud Control Unit, Office of the Attorney General	Letter to the Chairman
A.B. 59	D	Victor Schulze, Senior Deputy Attorney General, Office of the Attorney General	Letter to the Chairman
A.B. 59	E	Victor Schulze, Senior Deputy Attorney General, Office of the Attorney General	Annual Report of the Nevada State Advocate for Missing and Exploited Children
	F	Lindsay Waite, Ombudsman, Real Estate Division, Department of Business and Industry	Biennial Report, February 2009, Office of the Ombudsman
	G	Michael E. Buckley, Commissioner, Commission for Common Interest Communities, Las Vegas, Real Estate Division, Department of Business and Industry	Testimony of Michael Buckley, Commissioner, Las Vegas, Commission for Common Interest Communities and Condominium Hotels