

**MINUTES OF THE  
SENATE COMMITTEE ON HEALTH AND EDUCATION**

**Seventy-fifth Session  
May 11, 2009**

The Senate Committee on Health and Education was called to order by Chair Valerie Wiener at 4:09 p.m. on Monday, May 11, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Valerie Wiener, Chair  
Senator Joyce Woodhouse, Vice Chair  
Senator Shirley A. Breeden  
Senator Maurice E. Washington  
Senator Barbara K. Cegavske  
Senator Dennis Nolan

**COMMITTEE MEMBERS ABSENT**

Senator Steven A. Horsford (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Sheila Leslie, Assembly District No. 27

**STAFF MEMBERS PRESENT:**

Marsheilah D. Lyons, Committee Policy Analyst  
Mindy Martini, Committee Policy Analyst  
Sara Partida, Committee Counsel  
Shauna Kirk, Committee Secretary

**OTHERS PRESENT:**

Amber Howell, Deputy Administrator, Division of Child and Family Services,  
Department of Health and Human Services

Senate Committee on Health and Education  
May 11, 2009  
Page 2

Kevin Schiller, Director, Department of Social Services, Washoe County

Constance J. Brooks, Senior Management Analyst, Administrative Services,  
Clark County

Melissa Faul, Services Chief I, Bureau of Services for Child Care, Division of  
Child and Family Services, Department of Health and Human Services

Jodi Tyson, Social Services Program Specialist, Grants Management Unit,  
Department of Health and Human Services

Judge Harold G. Albright, Reno Justice Court

Denise Quirk, M.A., Clinical Director, CEO, Reno Problem Gambling Center

Craig Swope

Lori Ambriz

Cheryl B. Moss, District Judge, Department I, Family Division, Eighth Judicial  
District

Dr. Judy Phoenix, Nevada Psychological Association

Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's  
Office

Bill Uffelman, President and CEO, Nevada Bankers Association

Kristin Erickson, Chief Deputy District Attorney, Criminal Division, Washoe  
County District Attorney

John W. Helzer, Assistant District Attorney, Criminal Division, Washoe County  
District Attorney

Samuel G. Bateman, Nevada District Attorneys Association

Mark Woods, Deputy Chief, Division of Parole and Probation, Department of  
Public Safety

Lea Tauchen, Director of Government Affairs, Grocery and General  
Merchandise, Retail Association of Nevada

Lawrence P. Matheis, Executive Director, Nevada State Medical Association

Marla McDade Williams, Chief, Bureau of Health Care Quality and Compliance,  
Division of Health, Department of Health and Human Services

Elisa Maser, President & CEO, Nevada Advocates for Planned Parenthood  
Affiliates

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

Bruce Arkell, Nevada Senior Corps Association

Connie McMullen, Publisher, Senior Spectrum Newspapers

CHAIR WIENER:

We will start the meeting with Assembly Bill (A.B.) 76.

Senate Committee on Health and Education  
May 11, 2009  
Page 3

[ASSEMBLY BILL 76 \(1st Reprint\)](#): Revises provisions governing the placement of children who are in the custody of an agency which provides child welfare services. (BDR 38-332)

AMBER HOWELL (Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services):  
I have written testimony I will read in support of A.B. 76 ([Exhibit C](#)).

CHAIR WIENER:

In going to the fifth degree of consanguinity, did you have a sense of how many people we might engage? Is there a reason we went to the fifth degree?

MS. HOWELL:

We went to the fifth degree of consanguinity to remain consistent with some of the recommendations made in the interim study, "Placement of Children in Foster Care." That was the main reason we had launched this into statute.

KEVIN SCHILLER, (Director, Department of Social Services, Washoe County):

We do support this bill. We currently look at the third degree of consanguinity. To reduce children being placed in foster care, particularly at the point of removal or intervention, the fifth degree expands the window so we can move forward with placements and safety planning with those relatives in placement. I cannot give you a number on what that will look like. In Washoe County, approximately 47 percent of our foster placements are now relatives. The fifth degree will increase it 10 to 15 percent. This will allow us not to delay waiting for licensure.

CHAIR WIENER:

Section 3 is deleted by amendment. Do you remember what was deleted?

MS. HOWELL:

We looked at putting this language into *Nevada Revised Statutes* (NRS) chapter 432B. That language has to do with emergency placements. This was not consistent with the requirement set forth in the Adam Walsh Child Protection and Safety Act, so it deleted the requirements for that type of placement and put it into NRS chapter 424 that dealt with the foster and adoptive placement.

SENATOR WASHINGTON:

Can you tell me the cause and effect of this bill with the Adam Walsh requirement? Is it going to prohibit you from recruiting new foster families with the extensive background checks?

Ms. HOWELL:

It is currently in statute to check the fingerprints, the Federal Bureau of Investigation and the child abuse and neglect screenings (CANS). This adds the five-year requirement. The child welfare agencies contact other states where the potential foster families have lived. We have had this requirement since October 2008. We have not seen any difficulty at the State level. A barrier comes from getting a response back from the states in a timely manner.

MR. SCHILLER:

At a county level, we have not seen a significant impact. I would concur with Ms. Howell's assessment of the delay between the states. Another pertinent issue is that we were seeing a demand and an increase in the fees requested through other agencies. This also improves that mechanism because of the staff's time associated with it.

CONSTANCE J. BROOKS (Senior Management Analyst, Administrative Services, Clark County):

I am representing Clark County in support of A.B. 76.

SENATOR NOLAN:

We know after years of testimony that some of the people who abuse children are those who are closest to them. This bill makes a lot of sense to me.

SENATOR NOLAN MOVED TO DO PASS A.B. 76.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR WIENER:

We will now hear A.B. 89.

Senate Committee on Health and Education  
May 11, 2009  
Page 5

**ASSEMBLY BILL 89 (1st Reprint)**: Revises provisions governing the regulation of licensed child care facilities. (BDR 38-334)

MS. HOWELL:

I have written testimony in support of A.B. 89 (Exhibit D). Based on discussions with the Washoe County Department of Social Services, the Division of Child and Family Services would like to propose an amendment to section 3, Exhibit D.

CHAIR WIENER:

In section 2, line 7 of the bill, it states "or evidence from any other source ... ." What might that include?

MELISSA FAUL (Services Chief I, Bureau of Services for Child Care, Division of Child and Family Services, Department of Health and Human Services):  
This has to do with the central repository and any other source of child abuse and neglect such as convictions. That is how I interpret it.

CHAIR WIENER:

On line 12, it states "or has had a substantiated report ... ." Mrs. Partida, is there some reference in statute that sets the standard for substantiation?

SARA PARTIDA (Committee Counsel):

I am not aware of a legal reference to a substantiated report. I will get back to you on it.

MS. HOWELL:

In NRS chapter 432B, there is a definition of substantiation. Currently in NRS chapter 432A, we have a stipulation that, if the potential applicant has been convicted of child abuse and neglect, the applicant is denied immediately. We want to state, if they have substantiation on the child welfare agency side in the Statewide Automated Child Welfare Information System and we do the CANS, it would show up.

CHAIR WIENER:

Unless we do this, it could slip through, because the efficiency would not be there as a statutory mandate.

Senate Committee on Health and Education  
May 11, 2009  
Page 6

MS. HOWELL:

That is correct. They would have to be convicted for us to deny them.

CHAIR WIENER:

In section 5, subsection 2, paragraph (h), it talks about fraud, theft, embezzlement ... within the immediately preceding 7 years. Is that 7 years a federal requirement?

MS. HOWELL:

I do not believe it is.

MS. FAUL:

The person who drafted the bill suggested following another NRS.

CHAIR WIENER:

Is that standard already in statute?

MS. FAUL:

Correct.

SENATOR WASHINGTON:

I also have a concern with section 5, subsection 2, paragraph (h). The 7 years does not bother me, but these seem to be outside the norm when it comes to CANS. Who put that list together?

MS. HOWELL:

The two other licensing entities within the State, Washoe County, Department of Social Services and Clark County, have consistent language under moral turpitude crimes.

SENATOR WASHINGTON:

Do they license child-care facilities and group homes?

MS. HOWELL:

Correct. The State does not oversee child-care licensing as a whole. Three separate entities perform that function. They have additional codes they enforce and have these types of crimes listed within their codes.

SENATOR WASHINGTON:

Will you walk through the practicality of the bill? If the counties are actually doing the licensing of these facilities based on these requirements, would the Division of Child and Family Services (DCFS) be providing oversight, or the licensing as well? If I were a child-care facility, would I have to go through the county and then through the DCFS to be licensed?

Ms. HOWELL:

It is three separate licensing entities. The DCFS also licenses child-care facilities depending on what jurisdiction the facility is in. Washoe County handles a majority of the Washoe County facilities with the exception of institutions. Clark County does a good portion of some of the facilities in Las Vegas, but the Bureau of Services for Child Care also licenses many facilities in Las Vegas as well as the rural regions and institutions. The Bureau does not have these stipulations.

SENATOR WASHINGTON:

Is it not overlapping?

Ms. HOWELL:

No.

SENATOR WASHINGTON:

Once licensed in Washoe County, do they not have to be licensed by the Bureau as well?

Ms. HOWELL:

No.

SENATOR WASHINGTON:

I would like to know about this age group. I think it is a little far-reaching.

Mr. SCHILLER:

I believe your question is specific to your concern that it is far reaching.

SENATOR WASHINGTON:

It just seems inconsistent with child abuse and elder neglect.

CHAIR WIENER:

Because this is licensing for child-care facilities, those might be consistent with people who cannot properly or legally manage the facilities. That might be part of that inclusion.

MR. SCHILLER:

This was done in collaboration with our licensing ordinances. As a county, we evaluate it. When they come in to apply and we determine there is criminal history, there is an appeal process within the county. They are allowed to move forward with the application process. It can go as far as the board of county commissioners. I do not see this excluding many people. We end up utilizing this when looking at licensing. Most of the applicants go forward with the appeal process. In the appeal process, we are able to weed out whether what we found was an isolated incident in the past or something chronic.

SENATOR NOLAN:

Regarding the participation in an outdoor youth program, would it be for all outdoor youth programs, or for those programs in which the DCFS would be responsible?

MS. FAUL:

It is just under the NRS chapter 432A outdoor youth programs. It would not be all outdoor programs.

SENATOR NOLAN:

That is a different standard than we would use for other youth-related activities and events. We do not necessarily prohibit, in statute, who the different youth programs would utilize. Most of them have standards and background checks to make sure the people working with their children will not be a problem. The only thing that raises an issue is anybody who has ever had a violation of federal or state law regarding the possession or use of any controlled substance, including marijuana. That might be a misdemeanor conviction 20 years ago. Is that what you want to do?

MS. FAUL:

That is currently in statute under NRS chapter 170. Usually, after 20 years has passed, many of the crimes are expunged or dismissed from their record. If they have court paperwork regarding that, they are able to work.



Senate Committee on Health and Education  
May 11, 2009  
Page 9

SENATOR NOLAN:

I do not think that we expunge criminal records in this State anymore.

SENATOR WOODHOUSE MOVED TO AMEND AND DO PASS A.B. 89.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR WIENER:

We will now open the hearing on A.B. 102.

ASSEMBLY BILL 102 (1st Reprint): Revises provisions governing problem gambling. (BDR 40-329)

JODI TYSON (Social Services Program Specialist, Grants Management Unit, Department of Health and Human Services):

I have written testimony in support of A.B. 102 that I will read ([Exhibit E](#)).

JUDGE HAROLD G. ALBRIGHT (Reno Justice Court):

I have written testimony in support of this bill ([Exhibit F](#)). One of the concerns has been that the program becomes a repository or a place where people can go for any crime they have committed. We have always thought in terms of embezzlement, writing bad checks or things of that nature, but not about problem gambling. It has never been the intent that this be that type of a law. It is our intent to have placed in the bill, probably in section 8, a provision that provides for a threshold hearing to determine if a person should be placed into the program at all. In section 8, it speaks of that hearing. We were thinking of putting language in around the line that starts with "the court shall hold a hearing" before sentencing the person to determine whether he should receive treatment under the supervision of a qualified mental health professional and to determine if there is a nexus between the crime and the problem gambling. That language has not been clarified because the issue just came up today. We are not opposed to that language.

CHAIR WIENER:

Is the language you are referring to in the proposed amendment from Denise Quirk?

JUDGE ALBRIGHT:

No. The language that Ms. Quirk has relates to restitution. There was a request for some connection between problem gambling and the crime committed to show that it was a result of or in furtherance of the problem gambling. We are agreeable to that language being placed in the bill. In the threshold hearing, the court would consider whether there is a rational connection. For example, we do not want someone to blow up this building and then claim that they are a problem gambler and be placed in this program.

DENISE QUIRK, M.A. (Clinical Director, CEO, Reno Problem Gambling Center):

I have written testimony in support of A.B. 102 that I will read ([Exhibit G](#)). I would like to make clear what is involved in a professional evaluation. I carry several licenses. I am a licensed marriage and family therapist and a nationally certified problem-gambling counselor in addition to being a licensed alcohol and drug counselor. I consider myself an expert. Many individuals in Nevada are expertly qualified as well. When we do an evaluation of an individual who comes before us identifying that their evaluation has legal parameters, we note that in addition to all of the things we ask them. We do our own research. We try to make contact with whatever legal entity they may already be involved with. We get consents to gather that information. Our intent when evaluating an individual is for an overall mental health status and evaluation of whether or not they are problem gamblers. We use tools such as the South Oaks Gambling Screen. This is a research instrument that came out of a project from Illinois called "NODS." We use the 20 questions from Gamblers Anonymous, the Diagnostic Statistics Manual of Mental Disorders, Version 4, and parameters for pathological gambling. We do a 60- to 90-minute psychosocial evaluation interview that involves hundreds of question about their personal history in addition to their gambling history. When a qualified mental health professional in the State who is certified and licensed makes a recommendation to the court, we have spent a great deal of care ensuring that report has been done thoroughly. We agree that any convicted criminal who is also a pathological gambler should pay restitution before they are allowed to have their records sealed or released in any way.

CHAIR WIENER:

How does someone in recovery go about paying restitution?

MS. QUIRK:

There are a variety of ways. Very large sums of money are going to take a long time to be paid back, but it is paid back through their employment.

CRAIG SWOPE:

Problem gambling led me to embezzlement. My sentence in September 2004 was a 2- to 5-years suspended sentence, 5-years probation and restitution of approximately \$80,000. That was accomplished in a climate and housing market where the refinancing of my home made it possible. It would not have been possible without the support of my wife. I was also to do 180 days in jail. In my case, the restitution was made before sentencing. A case I remember best was a woman who owed \$100,000 with 6 months jail. Because of the jail time, she lost her job. If she had kept her job, she could have been able to repay some restitution. Because she went to jail, her husband moved from the State, and the marriage dissolved. Anything that can be done under the parameters of identifying the people that this program can help to save a family, save a job and pay restitution makes sense.

I do not think a person can fully recover from gambling unless they pay restitution. That is part of recovery. I do not see jail as being a carrot. I happen to work with a number of community-service people who are in community-service programs. In a few cases, they have opted to bail out of community service and do jail time because it is easier. My bias is that they are not really looking to change their life. As the people are defined through the credentialed professional world that would qualify for this, it makes sense on a first offense. If they do not comply, they go to jail.

LORI AMBRIZ:

I am in support of this bill. I am a compulsive gambler. I was embezzling a substantial amount of money to support my gambling habit. I was caught in August 2007 and fired from work. I went into an outpatient treatment program on my own. I took the six-week outpatient treatment, attend Gamblers Anonymous and went to the "Intensive Outpatient Program" weekly. There was no treatment in jail for gamblers. I went to the 12-step meetings that were Alcoholics Anonymous based. I was charged with four counts of felony theft. I received 5-years probation; I was to pay restitution and either work full time,

go to school full time or do 16 hours of community service. I go back to court in November 2009 for an update and check-in. I report to a parole officer monthly and pay service charges of \$30. The cost for the outpatient program was \$25 for the intake fee and \$5 a day thereafter. The court fee after probation is \$165. I am working full time and go to school to become a gambling counselor. I am also attending court classes at the National Council on Problem Gambling.

CHERYL B. MOSS (District Judge, Department I, Family Division, Eighth Judicial District):

You have been given a copy of my written testimony in support of S.B. 102 ([Exhibit H](#)).

DR. JUDY PHOENIX (Nevada Psychological Association):

The Nevada Psychological Association is asking for an amendment to this bill ([Exhibit I](#)). We think this is probably an oversight, because they are called psychological assistants rather than interns.

ORRIN JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

We believe the diversion court programs work. As a criminal defense attorney, we go beyond just analyzing the legal case in front of us. Attorneys are called counselors and that is often a big part of our role. It is a big part of my job to not only make sure that my client gets a good deal or fair representation but to make sure they do not come back. It helps me give them tools to regain their self-esteem and keep them working. It is cost-effective for that reason. In today's newspaper, they mentioned this bill saying that people who had committed crimes of violence would be eligible. I do not believe that is correct. The amendments offered are good ones. There was some concern regarding workability in the Assembly. You cannot do a drug test on somebody to see if they have been gambling. You can put an ankle bracelet on them to make sure they are not at a casino or at a convenience store for hours.

BILL UFFELMAN, (President and CEO, Nevada Bankers Association):

With the amendment, I am now in support of this bill.

KRISTIN ERICKSON, (Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney):

I am a Chief Deputy District Attorney with Washoe County and have been there for almost 17 years. I also represent the Nevada District Attorneys Association.

We have several concerns we were not able to work out. Although there is no fiscal note, there is a financial impact. It is my understanding that the Division of Parole and Probation (P&P), Department of Public Safety, is not required to supervise. This means defendants will be free to come and go as they please without any restrictions or probation. They can leave their counselor's office and go directly to a casino and no one will know. If there is required supervision, there will be a fiscal note. In addition, the State will have to provide a judge to oversee a gambling-diversion court, and diversion means your case will be dismissed after completing the programs. This will be a financial impact on the State. The counties will have to provide a courtroom, a court reporter, a court clerk and a deputy sheriff to act as bailiff.

JOHN W. HELZER (Assistant District Attorney, Criminal Division, Washoe County District Attorney):

Long ago, I worked with Judge Breen who was one of the original collaborators on drug court in Washoe County. One of the people you heard from said he had to refinance his house. You do not see any methamphetamine users with any equity or any assets. There has been this effort to show you that we will be able to take care of the victims. I tell people they will probably not see restitution. My concern is the victims. Throughout this program, who is going to be talking to them? The victims have lost money and have had property damaged. You have heard the defendant will go to prison if they do not pay. The defendants do not go to prison if they do not pay. We do not have debtor's prison. We have to acknowledge that we have had a failure. The defendants do not get an honorable discharge; they get a dishonorable discharge. That does not mean much to a victim who was not paid. The defendant will sign a confession of judgment that we give to a victim. The victim now has to file a civil action to collect on the judgment. The defendants are not going to pay. Who is going to monitor the treatment of that victim? Parole and Probation handles it when we have a restitution issue at a felony level. At a misdemeanor level, if the defendants do not pay restitution, we bring them into the court to arrange for payment. How will the victim's needs be addressed? The victims cannot ask P&P, because they are not involved. They cannot ask the district attorney's office, because the district attorney's office is not involved. The only thing the victim can do is go to the court. That is a conflict. The court is working with the defendant to obtain a result of success.

CHAIR WIENER:

What do we do now to make the victim whole?

MR. HELZER:

We can at least be honest with them.

CHAIR WIENER:

With or without this legislation, we have a challenge to find the funds to make the victim whole. What do we do with the defendant under current law, and is there some benefit to helping a person through treatment so they do not do this to somebody else?

MR. HELZER:

We would like to obtain success in treatment. Very often, all the victims are walking away with is some satisfaction of a conviction. In drug court, there is a high degree of recidivism as to the problem while they are being treated. We have dirty test after dirty test, and we tolerate it and tolerate it. I have not seen anything that says during this cure that we are going to tolerate other problem gambling cases from that same defendant. How are we going to address the fact that we are taking two steps forward and one step back? The one step back is another victim. That is going to happen while this process is ongoing.

Judge Albright made an effort to find a solution to what is a huge problem with the over-broadness of the types of crimes that will come into it. That was recognized when he said that he wanted to develop a threshold hearing. We do not do that hearing now. I would have to anticipate the client wanting to receive the benefit of diversion. Diversion equals dismissal, and there is no criminal record. It is a huge benefit. It is what motivates people to complete programs. You have heard there will be no nonviolent crimes. It will include burglary and home invasion. It can include anything that someone wants to make money at, such as selling paraphernalia, drugs or pornography to children. Those are not, to my knowledge, excluded from this statute. I do not believe that a defense attorney will say that it is not in the intent so we are not going to request a hearing for diversion. I have only testified twice, and the other time was on A.B. 47 which was also trying to promote expanding diversion. The people who are considering passing the law should know what they are buying. The way this has been worked, you qualify unless it is this ... and this ... It should say these are the crimes, specifically, for which we are seeking diversion. You heard the judge say they anticipated it would really be for embezzlement or writing bad checks. It would be better to say these are the crimes we are asking you to allow for a gambling diversion. Imagine a threshold hearing on a case where a person pulls up to a casino with kids in the car. They

go in, gamble and leave the kids in the car on a hot day. That is not excluded by this. How contested do you think the threshold hearing will be, and how long will it last? The answer is not having a threshold hearing. The answer is to be very specific and selective in the types of crimes you want for the people to receive this benefit. Unless they are willing to do that, you cannot roll the dice on the broadness. Ironically, you can have a prostitute who is subject to a prosecution receive no benefit, but her pimp who is taking the proceeds and gambling can go to gambling court. There is a need to narrow this down substantially.

[ASSEMBLY BILL 47 \(1st Reprint\)](#): Revises provisions relating to specialty courts.  
(BDR 14-409)

CHAIR WIENER:

If you have language to narrow this down for consideration by the Committee, we need to have it by tomorrow.

SENATOR CEGAVSKE:

Have you offered any amended language to the group that brought this bill? Is there anybody from the resorts or casinos who is going to come forward?

MS. ERICKSON:

We made several suggestions, such as eliminating category B felonies. They include home invasion, residential burglary, stolen cars and embezzlement above a certain dollar amount. We also made suggestions regarding restitution and expressed our concerns regarding the way the bill is currently written. Within the last year, we have had a \$2-million embezzlement. This man would qualify for diversion court. We expressed our concern that the wrong people would be allowed into this court.

SENATOR CEGAVSKE:

Is there a reason you did not submit an amendment to consider?

SAMUEL G. BATEMAN (Nevada District Attorneys Association):

I would only like to make two additional points. The fundamental difference between a diversion program and what we currently have are two things: First, diversions tend to be a little more sophisticated than the services they deliver. The second major component is the district attorney is excluded from the process. That is a huge part of what Mr. Helzer was saying. We are the front

line in making sure the victims get restitution. Oftentimes in Clark County on cases where someone does not have a significant criminal history, we do the very thing the diversion program is trying to do. We put them on probation, and we give them the opportunity to pay restitution. If they do and are successful, often they get a reduction to a gross misdemeanor or misdemeanor and sometimes even to a dismissal. We are a part of the process, and we make sure we represent those interests. In the diversion program, we are not. It can be done over our objections. Lastly, we have a significant bad-check program. We heard the parties talking about bad checks as being a part of those types of crimes we want to address. If you walk into a store and pass a bad check, knowing you do not have the funds for payment, it can be a misdemeanor or a felony, depending on the value of your check. We use that same statute for markers. If someone goes into a casino and takes out an IOU for \$50,000 and blows it all, they owe the casino \$50,000. That is considered a bad check. Associated with those charges are statutory schemes that allow us to collect fees and additional assessments to keep that system going forward. Last year, we collected approximately \$24 million in bad checks just in Clark County. It is a significant amount of money. It is important the restitution and fees be considered part of this diversion program.

MARK WOODS, (Deputy Chief, Division of Parole and Probation, Department of Public Safety):

I have been in the business for 25 years. Parole and Probation is signing in as neutral because, when we read the bill in the beginning, we felt we were not involved at that point. The only time we are mentioned is when someone is currently on P&P and we agree to this program. In testimony, we are hearing things such as monitoring by P&P and recommendation by P&P. I also heard electronic monitoring by P&P. We did not put a fiscal note with this because we did not believe we were involved. If it is the desire of the Committee to get us involved, there will be a significant fiscal note. We use a global positioning system to track sex offenders. They are supervised at 20 offenders to 1 officer. Normal house arrest is 30 to 1. It is an expensive program and self-funded. We cannot afford any more unfunded mandates. The average officer for the State will cost approximately \$105,000 per officer.

One of the advantages we do have in overseeing success is that individuals who are currently paying restitution can get time taken off supervision. That has been successful. Our officers are out in these homes a lot. If we see they have



cable television, we will turn it off to increase restitution payments. While it is not perfect, it does get the victims some money.

LEA TAUCHEN (Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada):

The Retail Association of Nevada had an issue with the restitution aspect. I believe that will be addressed with Ms. Quirk's amendment.

CHAIR WIENER:

We will now close the hearing on A.B. 102 and open the hearing on A.B. 123.

**ASSEMBLY BILL 123 (1st Reprint)**: Revises provisions governing certain offices of physicians and related facilities and surgical centers for ambulatory patients. (BDR 40-215)

MARSHEILAH D. LYONS (Committee Policy Analyst):

This measure was one of the measures that came from the Legislative Committee on Health Care during the most recent interim. As staff of the Legislative Counsel Bureau, I may not advocate for or oppose any legislation that comes before this body. However, at the request of Assemblywoman Leslie, I am providing some brief comments on the measure. This measure is similar to S.B. 70, which was processed by this Committee. It requires the oversight of physician's offices as well as ambulatory surgery centers that provide certain types of anesthesia. It is similar with one exception. This bill requires physician's offices and facilities to have, in addition to being licensed by the Division of Health, national accreditation.

**SENATE BILL 70 (1st Reprint)**: Requires certain offices of physicians and related facilities to obtain a permit under certain circumstances and requires annual inspections of surgical centers for ambulatory patients. (BDR 40-169)

LAWRENCE P. MATHEIS (Executive Director, Nevada State Medical Association):

These are two bills that approach the same subject in different enough ways, and I suspect you will be working in conference at the end of the Session to try to bring them together. One issue is the oversight of ambulatory surgery centers, two of which were involved in the hepatitis C outbreak. They are already overseen by the State. In A.B. 123, the proposal is that they can be nationally certified. While the State would be required to do annual reviews, it

would really be for infection control. If they find something else that is a problem while doing the review, they could turn it into a full inspection. It is a matter of what can most efficiently be done, and what can be implemented in the next 18 months to make sure we have addressed the issue and restored public confidence. Senate Bill 70 requires a full inspection each year of the ambulatory surgery centers. There is no provision for using the national certification as an alternative to the full annual inspection. The tougher issues are licensing what are unlicensed health-care centers, primarily physicians' offices. There is no national model for licensing office practices. We license the professional.

Several years ago, the Legislature passed a reporting requirement on all physicians. It required reporting on the procedures done using the levels of sedation as a surrogate for getting into the question of whether surgical practices in a licensed ambulatory facility are done safely. It is an imperfect way to get to the question we are trying to deal with which is injection practices and infection-control. The states that were going ahead on the use of sedation levels were states where there had been problems with surgical outcomes. They were looking at something different, and their regulations are focused on that aspect of it and not on the infection control issues. We are adopting in both bills the use of the sedation levels. The question is how to proceed towards regulating these practices, and how to get it accomplished.

Assembly Bill 123 makes use of the national accrediting and certifying. The problem there is the national accrediting bodies have not had to do a lot of physician practices. They have had to do ones that are almost an ambulatory surgery center, but not a lot of smaller practices. The real problem comes in with the conscious sedation level which we will find sweeps in the largest number of practices. It may be best to continue to require reporting on all three levels of sedation, and on both bills make an effort to put some exemption for some use of conscious sedation. They are different but should be brought together. We may want to delay it by two years. We support what you are trying to do.

CHAIR WIENER:

Do both of the bills have similar language on the levels of sedation?

MR. MATHEIS:

They differ, and rather than exempting conscious sedation, it exempts certain kinds of conscious sedation. The physician practices that were raising the concerns are ones where there are many patients. The concern is the cost of licensure and going through those hoops when they may not use that level of sedation. The one that had the greatest concern was in the pediatric oncology practice.

ASSEMBLYWOMAN SHEILA LESLIE (Assembly District No. 27):

If you are having a medical procedure done, it should not matter whether it is done in an ambulatory surgical center, a hospital or a doctor's office, you should be safe. It is very important for us to enact this legislation so people can have confidence in our health-care system again. Inspections are the most important part. We had a discussion in the Assembly today about the difference between the two bills. Assembly Bill 123 requires accreditation and S.B. 70 does not. I would be willing to look at softening it. I would prefer to soften the accreditation rather than the inspection. The inspections have continued through the work of Marla Williams and her staff. They are still finding problems. In order to make sure we have adequate infection controls, we have to keep those inspections going. That is the number one priority I have. The other difference is on that one level of sedation. The Assembly bill exempts pain medication orally and intravenously. The Senate bill only exempts it orally. We had a long discussion in the Assembly Committee on Ways and Means about how to roll this out, and it is going to take the full two years to get there. I am not eager to put it off two years. If you choose to have a procedure done in a doctor's office, you deserve to know that correct and safe procedures are being followed. The doctor's office piece is important. If some doctors decide that it is too expensive or intrusive or do not want Marla Williams looking over their shoulder and decide to not do the procedures, I am willing to accept that. That is a trade-off we have to be willing to accept. This will bring increased patient safety and confidence. I would be cautious about backing up too much on the doctor's office. Maybe we can do more on the pain medications.

CHAIR WIENER:

Mrs. Partida, if we move forward with A.B. 123, do we have an opportunity in these three weeks to reconcile? How will this work?

Senate Committee on Health and Education  
May 11, 2009  
Page 20

MRS. PARTIDA:

Since this is still in our House, you have the opportunity to reconcile them, if possible. We will need to see how the Assembly processes S.B. 70. At this point, you should worry about this bill, and see whether you do want to reconcile. Otherwise, we will just identify them as being in conflict.

MARLA MCDADE WILLIAMS (Chief, Bureau of Health Care Quality and Compliance, Division of Health, Department of Health and Human Services):  
We are anticipating it affecting 235 physician offices. This is a fee-funded agency. All of our fees get charged back to the providers they regulate.

SENATOR CEGAVSKE:

Do you have an idea what the anticipated fee would be?

MS. WILLIAMS:

We have some rough estimates of approximately \$3,500 for our initial fee. When we first license them, we charge the initial fee. At the renewal every year, it would be half of that fee.

SENATOR CEGAVSKE:

Is that for new or existing?

MS. WILLIAMS:

Under this bill, all of the physician offices would be new facilities, and the first-time fee would be approximately \$3,500.

SENATOR CEGAVSKE:

Could it be more?

MS. WILLIAMS:

It could be, once we gain experience with regulating them.

CHAIR WIENER:

We will close the hearing on A.B. 123 and open the hearing on A.B. 206.

**ASSEMBLY BILL 206 (1st Reprint)**: Revises provisions relating to public health.  
(BDR 40-858)

ASSEMBLYWOMAN LESLIE:

This was sponsored by the Assembly Committee on Health and Human Services at the request of the Health Division. Many of the recommendations in this bill came from our Legislative Committee on Health Care. It makes various changes to the authority and responsibilities of entities who are responding to adverse public health events. It revises provisions relating to the reporting and investigation of sentinel events and medical facilities. It authorizes the Health Division to take control of certain medical records under certain circumstances. It also provides that a health authority may investigate suspected cases of an infectious disease or exposure to a biological, radiological or chemical agent and require a facility to cease and desist operations if it significantly contributes to such cases. This is in direct response to the experience in Las Vegas regarding the hepatitis C crisis. It also revises provisions relating to the licensure and discipline of these facilities. It requires certain facilities to provide information to their employees about whistle-blower protection to which they are entitled. We had some testimony during the interim that people were not clear about the whistle-blower protections. It also requires the Consumer Health Assistance Bureau for Hospital Patients to assist consumers in filing certain complaints against facilities. That came about because it was confusing for people on how one would complain, where they would go or what they would do.

CHAIR WIENER:

This is a first reprint. Do you know what was changed?

ASSEMBLYWOMAN LESLIE:

We added the whistle-blower protection and posting of the information. We also revised the section dealing with infectious diseases to add the exposure to the biological, radiological or chemical agent.

MS. WILLIAMS:

I want to bring your attention to the provisions regarding sentinel events and remind the Committee that what we are doing is finding facilities that do not report a sentinel event. That is new in the bill. It also clarifies injunctions and subpoenas that can be worked through by the local health authorities. It changes the per-person penalties that can be assessed against a facility to range from \$1,000 to \$10,000 per patient for each violation.

CHAIR WIENER:

Are they complementary measures?

Senate Committee on Health and Education  
May 11, 2009  
Page 22

MS. WILLIAMS:

They are complementary. This strengthens what happens if they do not report, and the other bill puts into statute that they have to assess the sentinel event.

SENATOR WOODHOUSE:

Bobbette Bond sent an e-mail on behalf of the Health Services Coalition in support of this measure ([Exhibit J](#)).

ELISA MASER (President & CEO, Nevada Advocates for Planned Parenthood Affiliates):

I would like a clarification of section 21, subsection 2, paragraph (c) of A.B. 206. There are several sections in the NRS that allow a minor to be treated for a medical condition without the permission or consent of a legal guardian. *Nevada Revised Statutes* 129.030, .050 and .060 have specific exemptions. In those cases where the State law has created an exception to protect the health of our teenagers and minors, I would not want to turn around and release those records to their parents.

CHAIR WIENER:

Did you present this in the Assembly when it was heard?

MS. MASER:

I did not. I did talk to staff about it, and it was taken out of the other bill. I did not realize it was in this bill.

ASSEMBLYWOMAN LESLIE:

It was not presented, but it is a reasonable request.

CHAIR WIENER:

Mrs. Partida, does it require new language or a deletion? It is on page 10, lines 13 to 15.

MS. MASER:

If you just said with the exceptions listed in NRS 129.030, .050 and .060, it would be covered. Those are the sections of the NRS dealing with the emancipation of minors.

Senate Committee on Health and Education  
May 11, 2009  
Page 23

CHAIR WIENER:

I would feel more comfortable having language that would address everybody's concerns.

ASSEMBLYWOMAN LESLIE:

I agree. I am not sure if an emancipated minor would have a legal guardian.

SENATOR NOLAN:

Medical providers are subject to the Health Insurance Portability and Accountability Act of 1997 (HIPAA) provisions. However, I do not know that law enforcement or the district attorney are subject to the same HIPAA provision of confidentiality when they subpoena medical records,. In the process of an investigation where they have taken many of the medical records, what type of confidentiality are patients guaranteed now?

MRS. PARTIDA:

Generally, when things are disclosed for public health reasons, they are kept confidential. I can look into that and get the Committee a more complete answer.

CHAIR WIENER:

We will close the hearing on A.B. 206 and open the hearing on A.B. 263.

**ASSEMBLY BILL 263 (1st Reprint)**: Authorizes the Aging Services Division of the Department of Health and Human Services to establish a program of all-inclusive care for the elderly in certain counties. (BDR 38-509)

ASSEMBLYWOMAN LESLIE:

You have been given a document titled "Developing PACE in Nevada" ([Exhibit K](#)). This is about the Program of All-Inclusive Care for the Elderly (PACE). It is a program that integrated Medicare and Medicaid financing. It allows seniors more choices to stay out of nursing homes. It has a capitation rate and a private provider commits to providing all of the services for someone who is already eligible to go into a nursing home. These are people who are on the edge of going into a nursing home. Many seniors want to remain in their home. A PACE program would come in and provide all of the services needed for a person to remain at home and be paid this capitated rate. They can do things such as taking their cat to the vet. It also provides in-home nursing care. If the person needs to go into a nursing home for a brief period, the program

would also pay for that. It is a great deal for the State in terms of saving money. The best thing is that it gives the seniors a choice. The bill was amended. We had to take out the money. We had some money in there to help the Department of Health and Human Services hire someone to process the waiver and the plan amendment we would need to do the in-house care. Instead, the measure now asks the Division of Health to report twice a year to us about their progress in establishing a PACE program. They do not need this legislation in order to implement a PACE program. However, to get some of these new programs started, it is very important to show the Legislature's intent and keep the oversight with the Department to make sure progress is being made. The bill has brought many advocates together who want this program and will work hard to get it.

CHAIR WIENER:

Could you talk about page 2, line 10 regarding the federal compliance requirements, as well as the need for resources? Did you want a provision for gifts, grants, donation, bequests and other things?

ASSEMBLYWOMAN LESLIE:

I believe we put that in specifically towards the end of the bill. It is in section 3, subsection 1.

CHAIR WIENER:

Mrs. Partida, could they receive unsolicited contributions as well?

MRS. PARTIDA:

That is correct. They do not have to apply before accepting.

CHAIR WIENER:

This gives us something to capture federal and other monies through that gift portion of the bill.

CAROL SALA, Administrator (Aging Services Division, Department of Health and Human Services):

The Health Division is excited about this bill. When the bill was amended in the Assembly, it allowed us to remove the fiscal note. At the Assembly side, the question did come up about why it needed to be in statute. I think it gives it the validity and the recognition it needs.



Senate Committee on Health and Education  
May 11, 2009  
Page 25

CHAIR WIENER:

Was Clark County not included because of the resources?

ASSEMBLYWOMAN LESLIE:

We are trying to get a pilot program up and running and the numbers are more manageable in Washoe County. If you would like to amend it to be more global for the State, I am agreeable to that.

CHAIR WIENER:

If you want to show intent, it would be good to include Clark County.

ASSEMBLYWOMAN LESLIE:

The preliminary work that we did was based on Washoe County. Many of the PACE programs now are showing great success in rural areas.

BRUCE ARKELL (Nevada Senior Corps Association):

One of the reasons the Nevada Senior Corps Association took an interest in this bill is because I worked on the PACE program in Washoe County in 1984. At that time, there was little interest for it, and we did not have the data to support it. Barry Gold in Las Vegas had to leave, but he has submitted his testimony for the record ([Exhibit L](#)).

CONNIE McMULLEN (Publisher, Senior Spectrum Newspapers):

I have written testimony in support of A.B. 263 ([Exhibit M](#)).

SENATOR WOODHOUSE MOVED TO AMEND AND DO PASS A.B. 263.

SENATOR NOLAN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR WASHINGTON WAS ABSENT FOR THE VOTE.)

\*\*\*\*\*

Senate Committee on Health and Education  
May 11, 2009  
Page 26

CHAIR WIENER:

We will now adjourn the Senate Committee on Health and Education at 6:20 p.m.

RESPECTFULLY SUBMITTED:

---

Shauna Kirk,  
Committee Secretary

APPROVED BY:

---

Senator Valerie Wiener, Chair

DATE: \_\_\_\_\_