MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
April 24, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:39 a.m. on Friday, April 24, 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 Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman Chad Christensen, Assembly District No. 13
Assemblywoman Marilyn Dondero Loop, Assembly District No. 5
Assemblyman Ruben J. Kihuen, Assembly District No. 11

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Tom Roberts, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Cherie Jamason, Food Bank of Northern Nevada
Sarah Borron, Three Square Food Bank

Graham Galloway, Nevada Justice Association
David Kallas, Las Vegas Police Protective Association; Southern Nevada Conference of Police and Sheriffs
Jason Frierson, Office of the Public Defender, Clark County
Samuel G. Bateman, Deputy District Attorney, Office of the District Attorney, Clark County; Nevada District Attorneys Association

CHAIR CARE:
I will open the hearing on Assembly Bill (A.B.) 286.

ASSEMBLY BILL 286: Revises the provisions governing the crime of trespassing. (BDR 2-833)

ASSEMBLYMAN CHAD CHRISTENSEN (Assembly District No. 13):
I am here to talk about A.B. 286, which addresses an issue law enforcement officials and others in Las Vegas have advised me of. If a Good Samaritan invites a guest into his home, it is hard to get the guest out of his home if the guest refuses to leave.

To illustrate the problem, my sister-in-law's neighbors had their home foreclosed in November. In an effort to help this family, my sister-in-law invited them to stay with her for a few days and allowed them to put their things in her garage. In mid-December, my sister-in-law asked them to leave, and they would not leave. They knew their rights. They had even had their mail sent to my sister-in-law's home. The Las Vegas Metropolitan Police Department informed me this is an issue. The police did come to the house, and the family refused to leave, saying they knew they had 30 days.

Assembly Bill 286 says if a property owner invites someone in and he subsequently wants to uninvite that person, if the guest refuses to leave, the property owner has the right to call law enforcement, who can write the person a ticket for trespassing.

CHAIR CARE:
It seems to me that, in a situation like this, law enforcement would give the guests a couple of hours to pack their things and leave. Was there any discussion like that in the Assembly?

ASSEMBLYMAN CHRISTENSEN:
Yes. The groups I thought would be involved—law enforcement, the District Attorney's Office and the Public Defender's Office—did not testify in opposition to this bill. The conversation was that law enforcement wants the law to have some teeth. They do not want to pull anyone out by their ankles. They just want to be able to say when we come back in three hours, you will get a ticket for trespassing if you are still here. Let us do this peacefully.

SENATOR WIENER:
What happened with your family?

ASSEMBLYMAN CHRISTENSEN:
It is one of the most interesting lessons I have learned in human behavior. In the end, the unwanted guests vacated and left their things in the garage. I thought the property owners were allowed to put the guests' things in the driveway. They could not do that or change the locks. My sister-in-law had to allow them back into the house because that is their right. The police came back for a third time and said this had gone on long enough. They packed their bags and left.

SENATOR COPENING:
You said they can be cited for trespassing. Can they not be evicted? Is a ticket for trespassing the most that can be done?

ASSEMBLYMAN CHRISTENSEN:
There is no eviction process available because it is not a landlord-tenant issue. They are just visitors on the property.

SENATOR COPENING:
It is outrageous that this can go on. Did your sister-in-law feel threatened by these people in her house?

ASSEMBLYMAN CHRISTENSEN:
Yes, she did. These people made life as difficult as they could. When they knew the time was coming, it got ugly.

SENATOR COPENING:
Your bill is to allow for the citation of trespassing. Did you consider putting provisions in your bill that would permit the homeowner or police officers to

force these people out? It seems if you are threatened in your own home, those making the threat should be out. Was that explored?

ASSEMBLYMAN CHRISTENSEN:
That did not come up in the Assembly. The discussion dealt with the trespassing issue. My intent is to protect the Good Samaritan. I am open to whatever this body might want to explore to protect those people.

One of my colleagues told me about a case where a gentleman was going out of town for a short period of time. He had a friend who was going through a hard time, and he invited her to stay at his house while he was gone. When he came back, she had nowhere to go and did not want to leave. He pulled her out of the house by the ankles. She called the police. The police arrested him for assault. He went to jail, and she stayed in his house.

SENATOR PARKS:
In today's economy with people losing jobs, the issue is perhaps more important for passage. I know of a lady in her early 70s who has rented a room in her house. How would this bill affect her since she is renting by the week?

CHAIR CARE:
Page 3 of the bill, describing "Guest," lines 15 through 18 says "... The term does not include a tenant as defined in NRS 118A.170." That is the landlord-tenant residential chapter. If they are paying rent, you get into the unlawful detainer.

SENATOR WIENER:
It would be discretionary for law enforcement to give the unwanted guests two or three hours to pack their things and leave. With trespassing, you need to leave immediately. The bill does not say law enforcement has to give two or three hours. Based on circumstances, they have the discretion in the field to make that judgment call.

TOM ROBERTS (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):
We are neutral on A.B. 286 because we have operated under the current system as long as I have been a police officer. There are sufficient laws in place to cover instances when you have a short-term unwanted guest. The problem in the current law is that if they establish residence, you have to go through the

eviction process to get them out of the house. Many things establish residence—getting mail at the house, the address on the driver's license. This bill would help clear up some issues and calls for service. There could be abuse by the homeowners who allowed people to move into their home. That is why we are neutral on this bill. We will use the tools you give us. If you pass this bill, we will carefully review how to enforce it, and we will give strict guidance to our employees on where to draw the line. If you have a temporary guest of less than a week, that would not constitute residency. We could ticket him for trespassing and ask him to leave. There is a gray area between one week and three weeks, and there are other factors we take into consideration.

SENATOR COPENING:
Would the responsibility fall on the police officer to determine whether that person is actually trespassing? He would have to act as a jury or judge in making that determination?

MR. ROBERTS:
This bill would allow more discretion in determining whether there is trespassing. We would lean more toward trespassing for short-term house guests, rather than looking at other factors that establish residency. We would use some of the same factors.

CHAIR CARE:
I have not read *Scott v. Justice's Court,* 84 Nev. 9, 435 P.2d 747 (1968), but the bill would codify existing law.

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
Yes, that is my interpretation. The *Scott* case was actually someone at a casino at Lake Tahoe who refused to leave and had been previously ejected from the casino.

CHAIR CARE:
This was not an overnight guest. Was this a patron?

MR. WILKINSON:
It was not an overnight guest. It was a patron who had been ejected from Harveys and kept returning. The same principle applied. The court stated even if you are originally invited, when you are uninvited at some point, you then become a trespasser.

CHAIR CARE:
Seeing no one else interested in testifying, I will entertain a motion.

SENATOR WIENER MOVED TO DO PASS A.B. 286.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will go to work session. We have the work session document (Exhibit C, original is on file in the Research Library). We will address A.B. 93, Exhibit C, page 2.

ASSEMBLY BILL 93 (1st Reprint): Revises the definition of the crime of assault. (BDR 15-313)

LINDA J. EISSMANN (Committee Policy Analyst):
There was no opposition to this bill, and there were no amendments. The Committee asked for a copy of the federal regulations. Julie Butler provided those, and they are in the work session binder, Exhibit C, pages 4 through 6.

CHAIR CARE:
We addressed the issue of present ability. The public defenders addressed that issue.

SENATOR WIENER MOVED TO DO PASS A.B. 93.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will address A.B. 120, Exhibit C, page 11.

ASSEMBLY BILL 120: Makes changes concerning orders for protection of victims of sexual assault. (BDR 15-625)

MS. EISSMANN:
There was no opposition to this bill, and there were no amendments. Nancy Hart, Nevada Network Against Domestic Violence, provided additional information regarding the federal requirements, which is in your binders, Exhibit C, pages 13 and 14.

CHAIR CARE:
The testimony was that all of the language in sections 3 through 7 on pages 3 through 6 of the bill mirrors existing law. Do we want to expand existing law to include these narrow circumstances?

SENATOR WIENER MOVED TO DO PASS A.B. 120.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will close the work session and open the hearing on A.B. 332.

ASSEMBLY BILL 332: Revises provisions governing immunity from liability for donating, receiving or distributing certain grocery products or food. (BDR 3-1017)

ASSEMBLYWOMAN MARILYN DONDERO LOOP (Assembly District No. 5):
I will read from my written testimony (Exhibit D).

CHAIR CARE:
We have the letters from Dr. Anderson (Exhibit E) and Michelle Kling (Exhibit F). We have the prepared testimony of Sarah Borron (Exhibit G). We have a letter from Cherie Jamason (Exhibit H).

CHERIE JAMASON (Food Bank of Northern Nevada):
I support A. B. 332. This year, we will distribute approximately 8 million pounds of food to more than 90,000 people throughout northern Nevada. This is part of an effort to help provide people with food while we help connect them to federal nutrition programs. Approximately 90 percent of the food we distribute is donated. The revision to this bill will help to assure donors they will avoid liability when they contribute food for a charitable purpose.

We came before this body in the mid-1990s to adjust the Good Samaritan Act for this purpose. We did not go far enough. The makeup of food in the marketplace today is different than it was 15 years ago. Perishable food is more difficult to manage than nonperishable food. We pick up food in refrigerated vehicles. The people who pick up the food are trained in food-safety handling and certified by the Washoe County Health Department and the National Restaurant Association. This bill will help people understand there is no liability and will generate additional food resources for this purpose.

CHAIR CARE:
Immunity already exists for donors of wholesome food. The bill creates a definition for perishable food and includes that definition under wholesome food. Are donors already doing this, and the issue arose subsequently? Were they aware they should not do that if perishable food was not in the definition? The bill discusses perishable food that may spoil or otherwise become unfit. In other words, the time period has not yet run.

MS. JAMASON:
It is a clarification. People have been doing this for 30 years or more. The bill is in response to the increased concern everyone has about lawsuits. People donated food long before the Good Samaritan Act was in existence, locally or nationally. This bill affords a protection for them and is a clarification of perishable food as part of the broader category of wholesome food.

CHAIR CARE:
Are you aware of any existing lawsuits on this issue?

MS. JAMASON:
No.

SENATOR MCGINNESS:
Under the definition of perishable food on page 3, line 20 of the bill, it says, "… any food that may spoil or otherwise become unfit for human consumption after a period of time because of its nature … ." Is that vague? Is there enough protection for the person who donates the food?

MS. JAMASON:
The rules of operation under which this type of food is distributed are predicated on turning it within 24 to 48 hours. Our policy and the policy for the national organization, Feeding America, are to ensure that before any food is distributed, it is evaluated for safety. We deal with the uncertain period of time and anything not considered wholesome would never be distributed. It becomes the property of the food bank, so we are liable.

SENATOR MCGINNESS:
What is the definition of banquet food?

MS. JAMASON:
I am not sure there is one.

SARAH BORRON (Three Square Food Bank):
We serve the southern half of the State. We distribute donated food through agency partners in the community. We anticipate working on the federal nutrition programs. We rely on food donations, many of which are perishable products. I support A.B. 332 to increase donor confidence to give us those perishable products.

I received a telephone call from a restaurant owner. She was concerned that the law did not cover her enough to donate food from her restaurant. This bill would help her and others feel more confident in giving those products to Three Square Food Bank and other organizations.

CHAIR CARE:
Are you aware of any pending litigation involving this issue in Clark County?

MS. BORRON:
No.

CHAIR CARE:
You raised an interesting issue. We have grocery stores and restaurants. What else do we have?

MS. BORRON:
Those are the main two. Three Square picks up perishable food from nearly 100 grocery store outlets. We get very little from restaurants.

CHAIR CARE:
What measures would be taken to determine the perishable food you receive has not yet spoiled or otherwise become unfit after a period of time? Would that include labels in some cases?

MS. BORRON:
Yes. There are requirements from Feeding America. Most of our staff is ServSafe certified, which is the standard in the restaurant industry to ensure people have proper food-safety-handling training. If not, food prepared at a restaurant must be flash frozen and have an ingredient label. Then, it is transported in a temperature-controlled vehicle.

SENATOR WIENER:
Sometimes legislation takes us back decades in our personal history. My dad owned the Alpine Village in Las Vegas. They had a world-famous chicken soup. At the end of every day, nonprofits came to the kitchen and took the soup and anything else that had not been used. They did that for 30 or 40 years.

GRAHAM GALLOWAY (Nevada Justice Association):
When our association appears before you, we are usually opposing legislation that creates or expands immunity for actors. Although this bill is an expansion of the immunity provisions in existing law, we are neutral. We understand the importance and significance of this legislation. We were involved in the original passage of chapter 41 of the *Nevada Revised Statutes* (NRS). The language is okay because there is a good faith requirement if you seek the immunity of this legislation. We would like to support this bill, but we are never comfortable supporting immunity for anyone. However, this is a worthy cause, and we understand it.

CHAIR CARE:
Regarding the issue of good faith, is there still a duty imposed upon the restaurant or the grocery to make some effort to ascertain that the perishable food has not already spoiled or otherwise become unfit?

MR. GALLOWAY:
It is not specifically embodied in this legislation. But if you wanted to enjoy the benefits of immunity, the restaurant owners or those supplying the food should act in good faith and investigate the condition of the food being donated.

CHAIR CARE:
I personally agree with that. It does not disturb the bill, but I interpret it the same way.

MR. GALLOWAY:
You have to do something. If you do nothing, you open yourself up to claims you have not acted in good faith.

CHAIR CARE:
Hearing nothing further on A.B. 332, I will entertain a motion.

SENATOR WIENER MOVED TO DO PASS A.B. 332.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
I will open the hearing on A.B. 384.

ASSEMBLY BILL 384 (1st Reprint): Revises provisions governing certain unlawful acts committed by prisoners. (BDR 16-820)

ASSEMBLYMAN RUBEN J. KIHUEN (Assembly District No. 11):
This bill has been introduced on behalf of David Kallas and the Police Protective Association.

DAVID KALLAS (Las Vegas Police Protective Association; Southern Nevada Conference of Police and Sheriffs):
This bill fills a void in the statutes our officers have had problems with. One of the most dehumanizing things that can occur is for someone to excrete bodily fluids on another person. Our officers come into contact with many people during their day. Unfortunately, some of them are not respectful of the officers. There is no statute to address the excretion of bodily fluids when it occurs outside a prison. A prisoner is defined as someone under lawful arrest, in lawful custody or in lawful confinement, but NRS chapter 212 does not apply to someone not inside a prison. It was originally opposed by the Public Defender's Office because of the significant sentencing guidelines. We amended the sentencing guidelines to differentiate between what happens to someone who violates the provisions of this statute if they are in prison and to someone in lawful custody of an officer outside a prison.

I am not aware of how the statute came about. The situation has been problematic during the time I have been an officer in Las Vegas.

SENATOR WIENER:
The initial measure involved corrections officers in our State facilities. Officers explained the exposure to viruses. One officer was still waiting to learn whether she had been exposed to human immunodeficiency virus (HIV).

JASON FRIERSON (Office of the Public Defender, Clark County):
Regarding the development of this area, I researched the phrase "gassing." There was concern inmates were stockpiling matter to use against the officers. It was treated harshly because of the nature of them saving, stockpiling and planning to use this against prison guards.

Mr. Kallas and law enforcement were concerned about the potential for that to happen, although there is less ability to stockpile in the same way prison inmates do. There was a concern with arrestees or people when they were not sure if they were technically a prisoner. There was also concern expressed on the Assembly side regarding whether spitting is a battery. There was concern that was a vague area of law and subject to litigation.

This bill would clarify the nature of that conduct. After working with Mr. Kallas and making some adjustments regarding how this was treated and what the

goals were, we decided that with this language we would agree to the bill going forward in the form it came out of the Assembly.

CHAIR CARE:
The bill says under lawful confinement as opposed to residential confinement.

SENATOR WIENER:
Is the punitive response in line with what we are trying to address? Are the first and second offenses aligned with crimes similar to gross misdemeanors and Category D felonies?

MR. FRIERSON:
This is a unique area. This language is not inconsistent with the way we treat some types of behavior. In some instances, it may have previously been a misdemeanor for a simple battery. But this is consistent with current battery on an officer as a gross misdemeanor for a first offense. The elevated penalty for a subsequent offense is unique to the fact pattern addressed in this bill. The gross misdemeanor is consistent with other measures involving battery on an officer.

SENATOR MCGINNESS:
Page 4, lines 18 through 22 of A.B. 384 state that the agency employing the officer will pay for examinations or testing. Was there a fiscal note required on this, or did you ask for one?

CHAIR CARE:
The fiscal note relates to Churchill County. Several entities were asked for a fiscal note. Churchill County came back with $6,000. Everyone else had zero. It is speculative as to how many would be prosecuted under this bill and its effect on local government. I do not know if there has been a subsequent fiscal note.

ASSEMBLYMAN KIHUEN:
We did not obtain a fiscal note on this. Was an amount brought up during the Assembly Judiciary hearing?

MR. KALLAS:
There was no discussion on fiscal notes. If an injury occurs in the line of duty, it is covered under workers' compensation. This would be no different. This bill is a reporting requirement. If someone excretes a bodily fluid on an officer, the agency is required to divulge the results of any tests conducted. I am surprised

there are any fiscal notes because workers' compensation takes care of on-the-job injuries.

LINDA J. EISSMANN (Committee Policy Analyst):
I am looking online at the fiscal notes from various agencies. The ones I have looked at have all been zero.

SENATOR PARKS:
Would NRS 212.189 apply to an intoxicated person who slobbered on a police officer who arrested him? The bill says knowingly.

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
Simple slobbering would not fall under that intent requirement. That would not be done knowingly.

MR. FRIERSON:
Section 1, subsection 1, paragraph (d) specifically references "Use, propel, discharge, spread or conceal or cause to be used ... ." This bill and the legislative history make it clear that it is an intent to discharge or propel a bodily fluid. I have never seen slobbering charged in a way that did not express clear intent to propel some type of bodily fluid.

CHAIR CARE:
If there is no further discussion, I will entertain a motion.

SENATOR WIENER MOVED TO DO PASS A.B. 384.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will go back to work session and address A.B. 259, Exhibit C, page 22.

ASSEMBLY BILL 259 (1st Reprint): Makes various changes relating to criminal offenders. (BDR 16-631)

MS. EISSMANN:
There is no opposition to A.B. 259. There was an amendment from Mark Woods, Deputy Chief, Department of Public Safety, Exhibit C, page 23. I have an e-mail from Howard Skolnik, Director, Department of Corrections, letting the Committee know that he supports the bill and the amendment.

CHAIR CARE:
I will entertain a motion.

> SENATOR McGINNESS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 259.
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> SENATOR WIENER SECONDED THE MOTION.
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> THE MOTION CARRIED. (SENATORS AMODEI AND WASHINGTON ABSTAINED FROM THE VOTE.)

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CHAIR CARE:
We will address A.B. 322, Exhibit C, page 24.

ASSEMBLY BILL 322: Makes various changes concerning conduct related to racketeering. (BDR 15-1000)

MS. EISSMANN:
Assembly Bill 322, as A.B. No. 521 of the 74th Session, went through both Houses of the Legislature unanimously in the last Session. You had asked for background information about what happened. My understanding is that in conference, there were other bills amended into it, and it died.

MR. WILKINSON:
In section 4 of the bill, there is a minor technical error. The statute of limitations for a violation of section 1 is set forth in subsection 1 of section 4 as four years. We should have added it into the list of crimes in section 4, subsection 2 to indicate the statute of limitations is not three years for that.

CHAIR CARE:
If there is nothing further, I will entertain a motion.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 322.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS AMODEI AND WASHINGTON ABSTAINED FROM THE VOTE.)

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SENATOR WASHINGTON:
Regarding A.B. 120, I will vote in the affirmative, but I want to offer an amendment on the floor regarding fictitious filing of a temporary protective order (TPO). The falsifying or the fictitious filing of TPOs creates more problem than good. There should be a penalty or recourse if it is found a person has falsified a filing for a TPO.

CHAIR CARE:
We will address A.B. 237, Exhibit C, page 17.

ASSEMBLY BILL 237 (1st Reprint): Revises the provisions governing the certification of certain juveniles as adults for criminal proceedings. (BDR 5-825)

MR. WILKINSON:
There were three proposed amendments. First, in the bill as originally introduced in section 1, page 2, line 10, the age was raised from 14 to 16 for discretionary certification. There was a proposal to make that change. It was taken out in the Assembly amendment. The proposal is to add it back raising the age for discretionary certification from 14 to 16.

Mike Pomi of the Washoe County Department of Judicial Services proposed eliminating the concept of presumptive certification, Exhibit C, page 17. You would be left with discretionary certification.

There is a proposed amendment from Samuel Bateman, Exhibit C, page 20. This takes a different approach directly addressing the admissibility of a statement, admission or confession made by a child. It would provide that it may be

admitted into evidence in any proceeding where it is offered to impeach the testimony of a witness testifying at such a proceeding.

CHAIR CARE:
The consideration in section 1, subsection 3 of the bill is that the bill was originally drafted to comport with *In Re William M.,* 124 Nev. Adv. Op. 95, 196 P.3d 456 (2008). The language in the First Reprint addresses the self-incrimination concerns. It says the child has substance abuse or emotional behavioral problems. I do not know how the court makes that determination, but it will not be a statement from the child himself. We have the proposed amendment from Mr. Bateman.

SENATOR COPENING:
It would be helpful to me if Mr. Bateman could explain what he has added.

SAMUEL G. BATEMAN (Deputy District Attorney, Office of the District Attorney, Clark County; Nevada District Attorneys Association):
I sent you an e-mail, Exhibit C, page 18, regarding why I did not present this amendment before the hearing. It was decided in the Assembly to go with the original language. Rather than jeopardizing the bill, I decided not to provide the amendment until the issue came up at the hearing.

In Re William M. focused on the fact that in rebutting the presumption a juvenile should be certified because he committed a sexual assault or an offense with a firearm, he would have to say to the court that what he did was substantially influenced by his substance abuse problem. It was appealed to the Nevada Supreme Court on the grounds that is requiring a juvenile to incriminate himself. He would have to rebut the presumption in front of a judge to benefit himself. The Nevada Supreme Court found that was a potential violation of a juvenile's Fifth Amendment rights.

The case law before *In Re William M.* dealt with the nexus issue on a number of occasions and had not addressed it as a Fifth Amendment violation, but found it was an important part of the process. The Legislature has addressed this issue before.

Our amendment, Exhibit C, page 20, suggests keeping the language as it is, but providing that the prosecutor cannot use any of the incriminating statements made in any other proceeding. We cannot use the incriminating statement by a

juvenile against him. We cannot use it in juvenile court if he is not certified and he is adjudicated, whether guilty or innocent. We cannot use it in another certification process, which would be the discretionary process. If he is certified, we cannot use it in district court.

That was the most clear and easy way to keep the concepts contained in the statute in the presumptive certification process and, at the same time, safeguard the rights of the juvenile making that statement.

The judge hearing the presumptive certification has already determined by statute that it is presumed the juvenile will be certified because he has committed a violent sexual assault or an offense with a firearm. The only way the juvenile can rebut the presumption and stay in juvenile court is to make the incriminating statement that he did it because of his drug problem. The concern about the statement being made and violation of his Fifth Amendment rights is not within the context of the presumptive certification process because that statement only benefits the juvenile at that stage. The concern is the statement can be used at some other point when we are trying to find him guilty, prosecuting him or still trying to certify him under a different statute. In reality, if I cannot certify someone under the presumptive process, there is no way I will get him certified under the discretionary process. We developed this remedy to prevent his incriminating statement from being used against him in any other proceeding but the actual presumptive certification proceeding where he makes the statement.

CHAIR CARE:
The statement could be used to impeach the testimony of a witness at another proceeding. Give us a scenario.

MR. BATEMAN:
That would be where the defendant makes a statement, is not certified and stays in juvenile court. He has gone through the presumptive certification process and said he did it and did it because he was on drugs. Then we go to a juvenile proceeding, which is like a trial. Let us assume the juvenile got on the witness stand and said he did not do it and was not there. We can use his statement to impeach him because he did make a statement he was there. That is consistent with the law regarding any witness. Let us assume in adult court that the police violate the rights of a defendant in getting a statement. We cannot use that defendant's statement in court. However, if the defendant gets

on the witness stand and says something different than what he said in the statement to the police that was suppressed, it can be used even though it was a violation of the Miranda rights, for example.

SENATOR COPENING:
On amendment No. 1, where it is suggested the age for discretionary certification be raised from 14 to 16, would those under 16 be dealt with in the juvenile court?

MR. BATEMAN:
Yes, they would remain in the juvenile system unless they committed a very serious crime like murder, in which case they would be automatically direct filed to adult court.

SENATOR COPENING:
For crimes like murder and more egregious crimes, a juvenile would be automatically considered for adult court?

MR. BATEMAN:
That is correct. The only crimes for which there is no juvenile jurisdiction are murder and attempted murder. If a juvenile is 16 and has previously committed what would be an adult felony and he commits a sexual assault with violence, for example, he would go straight to adult criminal court. The juvenile court would have no jurisdiction. There is no juvenile jurisdiction for murder, attempted murder and sexual assault if a juvenile has already been convicted of a prior felony as a juvenile.

This was a committee bill in the Assembly. It was a set-aside to address the Nevada Supreme Court opinion and to fix the portion of the presumptive statute. When it was submitted to the committee for a hearing, it was changed as we discussed earlier, and the ages for both discretionary and presumptive certification were changed. At that time, the Nevada District Attorneys Association and other law enforcement had a problem with changing both ages. The compromise was keeping the 14-year-old standard in the discretionary certification, but changing it in the presumptive certification. That passed unanimously out of the Assembly.

CHAIR CARE:
Let us address the issue of self incrimination and whether a statement should be permitted that may not be used in another proceeding except for impeachment purposes.

MR. FRIERSON:
This is an area where we can disagree. If this amendment regarding the statement was placed into the bill, we will be back here with another Nevada Supreme Court opinion saying it is unconstitutional. The impetus behind the Nevada Supreme Court case declaring the presumptive statute unconstitutional was that the statement was simultaneously used for the juvenile to take advantage of the opportunity not to be certified, but expose himself later to criminal prosecution or have that statement used against him in later proceedings. The example that was discussed regarding impeachment is that precise situation where a juvenile may have done whatever he needed to do to avoid certification. If that was not successful, he would be facing adult criminal procedures where he might contend that he only said that to avoid certification. That situation would bring us back here if that statement was used against him when he initially said it to avoid being certified.

CHAIR CARE:
Regardless of its form, are you both in agreement that there should be something in the bill to address the issue—either Mr. Bateman's amendment or the language contained in the First Reprint of the bill? One possibility is to delete any discussion of that in the bill.

MR. FRIERSON:
Just for clarification, are you asking if we are in agreement about why have a presumptive certification?

CHAIR CARE:
No, I mean the issue of substance abuse. That should be entertained by the court in the certification proceeding. There should be language permitting that in one way or another.

MR. FRIERSON:
It is our position that if we have a presumptive certification process, the juvenile should have the opportunity to at least present before the court that he has some problems.

CHAIR CARE:
The question for the Committee is whether we are going to leave the existing language in the First Reprint or adopt Mr. Bateman's proposed amendment.

MR. BATEMAN:
I do not have strong feelings about the amendment. If this bill passes exactly as it is before you today, the Nevada District Attorneys Association will not have a problem.

CHAIR CARE:
The other two possible amendments were regarding the discretionary certification, raising the age to 16. It was suggested by Mr. Pomi to eliminate presumptive certification in its entirety. The district attorney's office would have issues with both those proposals.

SENATOR AMODEI:
Is there an objection to putting this on Wednesday's work session for those two issues? I would appreciate more time on this bill to think about a presumptive certification and the age change for presumptive certification from 14 to 16.

CHAIR CARE:
We can do that. We will not concern ourselves with the proposed amendment from Mr. Bateman on the issue of substance abuse and what statement may or may not be made. We will confine ourselves to the age issue and the process of presumptive certification.

SENATOR WASHINGTON:
I agree. I need more time as well.

CHAIR CARE:
We will address A.B. 253, Exhibit C, page 21.

ASSEMBLY BILL 253: Revises the crime of resisting, delaying or obstructing a public officer in the discharge of his duties. (BDR 15-892)

MS. EISSMANN:
On A.B. 253, there was opposition from Mr. Frierson and Mr. Johnson, who mentioned they thought sufficient statutes already exist to address this issue.

There was some discussion whether they were going to work on an amendment. They decided not to, so there are no amendments.

CHAIR CARE:
I have correspondence from Mr. Frierson. His letter said they were unable to come up with an amendment on behalf of the Public Defender's Office after discussing with members of the defense bar. The letter says, "If the Committee deems it necessary to move forward with the bill, we will have to monitor the use of the legislation to determine whether it warrants a revisit in future sessions."

The testimony was there are existing statutes. Does the Legislature want to make a statement saying we understand the seriousness of accosting or attempting to interfere forcefully with a police officer?

SENATOR WASHINGTON:
I would make a motion with the amended language you just stated that we realize the seriousness of apprehending or accosting an officer's firearm in the line of duty, realizing there are statutes that would address the situation, but in this case we realize the seriousness of this and send the bill out.

CHAIR CARE:
It was not a proposed amendment. I just said in passing the bill out, that would be one of the reasons for doing that.

SENATOR WASHINGTON MOVED TO DO PASS A.B. 253.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
There being nothing further to come before the Committee, we are adjourned at 10:24 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: