MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
April 27, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 9:08 a.m. on Monday, April 27, 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:

Assemblywoman Heidi S. Gansert, Assembly District No. 25
Assemblywoman Kathyrn McClain, Assembly District No. 15
Assemblywoman Debbie Smith, Assembly District No. 30

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General
Victor Schulze, Director, Nevada Clearinghouse for Missing and Exploited Children; Office of the Attorney General

Jeremy Shugarman
Stephanie Parker, Executive Director, Nevada Child Seekers
Orrin J. H. Johnson, Deputy Public Defender, Public Defender's Office, Washoe County
Renee Romero, Director, Forensic Science Division, Washoe County Sheriff's Office
Rosemary Womack, Nevada Senior Corps Association
Wendy Simons, Coalition of Assisted Living
George Flint, Chapel of the Bells
Margaret G. Flint, Chapel of the Bells
Tom Roberts, Las Vegas Metropolitan Police Department
Constance Brooks, Clark County
Shirley B. Parraguirre, Clerk, Clark County
Diana Alba, Clerk's Office, Clark County
Alan H. Glover, Clerk-Recorder, Carson City
Nancy Parent, Chief Deputy Clerk, Washoe County

CHAIR CARE:
The meeting will begin with Assembly Bill (A.B.) 59.

ASSEMBLY BILL 59 (1st Reprint): 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 (Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General):
I would like to introduce Victor Schulze from the Office of the Attorney General. He will go through our background and reasons for seeking passage of A.B. 59.

VICTOR SCHULZE (Director, Nevada Clearinghouse for Missing and Exploited Children; Office of the Attorney General):
I support A.B. 59 as it appears before the Committee. I serve as the Nevada State Children's Advocate for Missing and Exploited Children and the Director of the Nevada Clearinghouse for Missing and Exploited Children within the Office of the Attorney General. I will refer to the Attorney General's letter (Exhibit C). The purpose of this bill is to protect at-risk children from nonstranger abduction and kidnapping by strengthening existing law in preventing such crimes against children. The bill seeks to reduce the incidence of child abduction by amending portions of *Nevada Revised Statutes* (NRS) 125 and 125C, which pertain to the

legal presumptions relating to the standards a family court must apply in determining the custody of children.

Assembly Bill 59 seeks to provide to family court judges a tool to provide this protection to our children through the exercise of their sound discretion. The bill seeks to create a legal, but rebuttable, presumption where it is not in the best interest of a child for sole or joint custody or unsupervised visitation be granted to a parent or other person who has committed an act of child abduction or kidnapping in the past. The bill is premised on the fact that a prior abduction of a child constitutes a risk factor for increased probability of future abductions by the same perpetrator.

The provisions of the bill are consistent and harmonious with existing law concerning the relationship between child custody and abductions. Child abductions range from the surreptitious to the extremely violent. This bill seeks to reduce the incidence of child abductions. Child abduction is a grave concern with the National Center for Missing and Exploited Children, which reports that, at any one time, more than 800,000 children are missing from their homes. The caseload of the Nevada State Children's Advocate in prosecuting child abductors is growing. That number includes more than 100 criminal prosecutions and more than double that number in civil and other agency-assist cases.

Subsection 1 of NRS 125.480 creates the basic presumption that in determining the custody of a minor child, the sole consideration for the family court to consider is the best interest of the child. Nevada Revised Statute 125.490 further defines this presumption to provide an additional presumption in law that joint custody is in the best interest of the child. As a matter of public policy, NRS 125.460 provides that minor children should have frequent associations and a continuing relationship with both parents after the parents have separated. Parents should be encouraged to share both rights and responsibilities of child rearing.

These statutory provisions are further clarified by other statutes in NRS 125 which set forth a lengthy list of presumptive factors that a family court judge must take into account when determining the custody of a child under the best-interest standard. These factors include among others, the wishes of the child of suitable age, the level of conflict between the parents, the mental and physical health of the parents, the physical, developmental and emotional needs

of the child, the ability of the child to maintain a relationship with a sibling and whether either parent has engaged in any act of domestic violence.

Section 1, subsection 5 of NRS 125.480 creates a rebuttable presumption that it is not in the best interest of a child that sole or joint custody of a child be given to a person who has perpetrated an act of domestic violence. There is no provision in current law that extends this same provision to perpetrators of child abductions or kidnappings. Assembly Bill 59 seeks to close this loophole.

Working closely with the National Center for Missing and Exploited Children, police agencies in Nevada and across the country, Interpol, the U.S. State Department, family courts, private agencies such as Nevada Child Seekers and numerous foreign police agencies, the Nevada Clearinghouse has filed charges against child abductors who have kidnapped children from Nevada homes and kept them from their custodial parents. Some children are harbored secretly close to home without leaving the State. Others are taken great distances to places including New York, Florida, Mississippi, Israel, South Korea, Australia, Canada and Mexico.

In the child abduction and kidnapping cases we have investigated, I have spoken many times to the parents and children left behind. 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. These actions by the abductor demonstrate contempt for court orders and the legal process. After child recoveries and the reunification of missing children with their custodial parents, these children have an increased danger of being abducted again as demonstrated by the histories of custodial interference in these cases. After recoveries, victim parents live in constant fear of reabductions and are often forced to take difficult and expensive preventative measures to ensure the safety and security of their children.

The language of A.B. 59 closely mirrors the language set forth in NRS 125, which creates the rebuttable presumption against sole or joint custody of a child by a perpetrator of domestic violence. This new bill reflects the same public policy as well, following the same procedural and instructional method. It does no more than extend the policy determination against perpetrators of domestic violence being awarded custody to the similarly abusive context of child abductors exercising sole or joint custody or unsupervised visitation. It fulfills

the same goal of protecting Nevada's children from future harm and injury as does the domestic violence provision in the same statute on the policy consideration that abduction or kidnapping a child is a severe form of child abuse, exploitation and endangerment, Exhibit C.

The bill is flexible and fair, including a safety valve for those cases where a parent or other person who has abducted or kidnapped a child in the past can demonstrate to 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 can be rehabilitated if they desire. It acts as a strong incentive for abductors to address and overcome their past unlawful actions by demonstrating a changed attitude and behavioral perspective to the family court, Exhibit C. Joint custody should always be the rule in a vast majority of custody cases. Children should have close and meaningful relationships with both parents but not in cases of demonstrated domestic violence or child abduction.

Assembly Bill 59 will give family court judges the statutory authority needed when determining custody 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 of NRS 125A and the Uniform Child Abduction Prevention Act codified in NRS 125D. The Clearinghouse, police agencies, National Center for Missing and Exploited Children along with such local agencies as Nevada Child Seekers work together to reduce the risk of child abductions and kidnappings, Exhibit C. The bill has the whole-hearted support of police in Nevada, the Attorney General and the Nevada State Children's Advocate in this effort.

CHAIR CARE:
Would it be the case that the other parent raises the issue of the abduction in the first instance?

MR. SCHULZE:
In the civil context, that would be the case.

CHAIR CARE:
Subsection 10 of section 1 and subsection 4 of section 2 states, "'Abduction' means ... ," and then refers to the statute that goes to kidnapping. Is there a statutory definition of abduction?

MR. SCHULZE:
When I charge abduction, I can charge kidnapping which specifically refers to the taking of a child by somebody without custodial rights. I can also charge NRS 200.359 which does not use the term abduction but uses the terms removing and concealing a child in violation of a custody order. In most of these cases, the condition precedent for criminal prosecution is the existence of a custody order. The way Nevada statute is drafted, I can file criminal charges in the absence of a custody order if I can show the specific intent of one parent to deprive the other parent of the parent-child relationship.

CHAIR CARE:
The bill says there is a requirement of an evidentiary hearing, and if there is violation of a final order there is probable cause to believe there has been an abduction. The standard reads "clear and convincing evidence." A list of acts in section 2, subsection 2, paragraphs (a) through (c) that constitute conclusive evidence of an abduction or kidnapping are: a conviction, plea of guilty or nolo contendere and an admission by the defendant. These are conclusive, but I have concerns about the terms "clear and convincing." How would the court examine a situation where a parent has custody of a child on Saturday, is supposed to return the child at 6 p.m. but returns the child three hours late?

MR. SCHULZE:
I do not prosecute cases of standard custodial interference. I do not criminally prosecute the late return of a child or somebody overstaying visitation under either of those statutes. The burden of proof under the statute requires proof of the specific intent to deprive the other parent of the parent-child relationship. A case of overstaying custody by a short period of time would be too petty; I would not make it through a preliminary hearing. We included the burden of proof as being "clear and convincing," the highest civil burden, to protect abuse of this statute by other parents. I am not aware if the concomitant statute dealing with domestic violence, from which this statute was modeled, has ever been abused. Since there is a high burden and it is a rebuttable presumption, this allows the accused parent to come in and say he or she did not do it and you have not met your burden. At the evidentiary hearing in family court, if the other parent has met the burden of proof, to overcome that burden it must be shown it is not against the best interest of the child that the accused parent have continuing custody or visitation.

CHAIR CARE:
Is it possible that both parents could be accused of abduction?

MR. SCHULZE:
Because this is a unique area of law, I would say yes, anything can happen. This has been a learning process over the last three years. When the case is a close call, we trust the experience and sound discretion of the family courts to issue the appropriate order.

SENATOR WIENER:
Since this is a first reprint, what change was made in the original bill?

MR. SCHULZE:
The family court judges felt there was language in the initial bill where the simple filing of criminal charges by a prosecuting agency could trip the presumption that the complaining parent had met the burden of proof. We agreed with the family court judges that this was too low a burden. It probably eviscerated any sort of burden. We amended the bill to include that presumptions do not kick in unless there is a finding of probable cause in a preliminary hearing or in front of a grand jury when criminal charges are filed. That finding can be cited by the complaining parent in the family court to help meet the burden of proof.

CHAIR CARE:
What does the court do if we have a 10-year-old child who wants to stay with a parent despite an abduction attempt by that parent?

MR. SCHULZE:
The reason I drafted this bill to make this a rebuttable presumption was to defend against abuse of the statute because that issue always comes up with new legislation. A child of suitable age and discretion can present his or her opinion to the judge. This is a statutory factor on custody determination that a family court judge now makes. The entire chapter and the totality of the best interest of the child come into account when determining if the accused parent has met the burden of proof. The law states if the accusing parent has clearly and convincingly met the burden of proof and the burden shifts for the accused parent to overcome that burden, the family court judges can utilize their discretion and ask the child their opinion, assuming the child is of appropriate age and discretion.

SENATOR WIENER:
In looking at the blend of abduction and domestic violence, a child's input could be critical when a parent abducts the child because of alleged violence against the child in the other custodial household. This would be abduction in the best interest of the child.

MR. SCHULZE:
Senator Wiener is correct. The provisions under NRS 200.359 disallow me from prosecuting when the basis of the abduction was to protect the child or the parent from imminent physical harm. This is an affirmative defense. These cases are unique and fact patterns can be complicated. We do not prosecute people who have to leave because of domestic violence; we encourage those people to leave. Under the statute, the other parent would not have the ability to obtain joint or sole custody. Existing law and A.B. 59 work in tandem. In most cases of child abductions, there has been a prior incidence of domestic violence. Those two crimes go hand in hand. When drafting this statute, we tried to make it harmonious with existing law by following the structure on the disallowance of custody in cases of domestic violence. This is a specific affirmative defense to the criminal charge.

SENATOR WIENER:
Does this bill marry well with child abuse and neglect?

MR. SCHULZE:
It absolutely does. The philosophy of this bill is child abduction or kidnapping is a serious form of child abuse because it is an affirmative act. A provision in this bill amends with the same custodial language in NRS 432B addressing children in need of protection from abuse or neglect. We have covered all bases in a consistent, harmonious manner.

SENATOR WIENER:
I meant protecting and retrieving a child from domestic violence in the home through overstay of a custodial visit may be an abduction. I also meant taking the child from an environment where there is child abuse and neglect through abduction until proven otherwise. Is this similar to taking that child out of a household of domestic violence?

MR. SCHULZE:
In the process of give and take, the initial party has the burden of proof to provide clear and convincing evidence to prove abduction. The burden then shifts because the burden is rebuttable. An allegation of abuse and neglect should serve through the discretion of the family court judges, the experts in this field. If it is necessary to remove the child or the other custodial parent who is the primary caretaker for their protection, you would raise abuse in rebuttal. Under the exercise of discretion, family court judges would say this is a defensible case and the motion from the complaining parent would be denied.

JEREMY SHUGARMAN:
My son, Nathan Shugarman, was first abducted in late 2003. His mother was ordered to present him to the court where I was awarded custody. She had been convicted of domestic violence against me. Despite clear and convincing evidence of this domestic violence, a judge awarded visitation to Nathan's abducting mother. The court allowed unsupervised visitations every three weeks and allowed my son to be taken to California. After four months of these visitations and just before a decision by the court to award final custody to me, Nathan was internationally abducted to South Korea, a non-Hague country. He was missing for almost three years. I worked with the FBI, the State Department, the National Center for Missing and Exploited Children, Nevada Child Seekers and many nonprofit organizations trying to locate and recover Nathan and to prosecute his mother. Non-Hague countries do not promise recovery of your child. South Korea said it would try to get the mother back for prosecution, but could not guarantee recovery of Nathan.

When the heat was on the mother in South Korea, she left and went to Sydney, Australia, a participating Hague country cooperative with the laws of the United States. I was able to recover Nathan after three years. The mother was prosecuted by Mr. Schulze, spent close to a year in jail and was deported to South Korea. She left South Korea and went to New Zealand because Australia was unwilling to take her back.

Decisions by family court judges to award unsupervised visitation or joint custody take minutes, but it can take years or a lifetime to recover an abducted child. The laws in place for domestic violence get used more when a man abuses a woman, but the courts look at it differently when a woman abuses a man. Assembly Bill 59 is similar to domestic violence laws, and if passed, I hope the courts will look at it with no bias. There are many accusations in divorces,

and lawyers try to use domestic violence or abuse in custody cases against fathers. It is one thing to be spewing these accusations in court, but it is another thing to have convictions on the books and award visitation or joint custody to the accused parent. I would like to see passage of A.B. 59.

STEPHANIE PARKER (Executive Director, Nevada Child Seekers):
I am neutral on the sign-in sheet as a nonprofit organization, so I cannot ask you to vote one way or another. I changed my testimony this morning when I received a dissertation from a student at University of Nevada, Las Vegas, on parental abduction from the perspective of the victims and implications for counselors. We hear a lot about parents, but I thought you might want to hear excerpts from children who were abducted. One victim said:

> My father abducted me at two. He told me the first time about it when I was eight years old. My father used alienation well enough that it made me not want to find my mother. I was raised in a very strict religious environment, and he told me she was demonized, so it really shut me off.

Several of the children said many of the participants reported it was more difficult for them to cope after the abduction. When they were reunited with their families, they found out the truth, and the truth hurt. It was difficult finding out the parent you trusted and lived with was lying.

Another victim said:

> Well, I had a psychotic break. That was my coping mechanism. The psychosis is what actually saved my life because if I hadn't, I would've continued to suppress feelings. 'Cause the feelings were buried for so long, plus my dad was sexually abusive with me. And you know, emotionally abusive, and so all those feelings didn't surface until I was through with college and out on my own and stuff started to come into focus and what really happened. And I couldn't handle all the information at once, so I had a psychosis. I had a psychotic break and ended up in the hospital for three months.

We need to remember the words of the children and how this affects them.

ORRIN J. H. JOHNSON (Deputy Public Defender, Public Defender's Office, Washoe County):
My office is opposed to this bill; it is not necessary. In addition to representing indigent criminal defendants, we represent parents who are facing the prospect of having their parental rights terminated. There are horrific stories where children are abducted where custodial interference manifests over years. Nothing now prevents a parent whose child is a victim of abduction from petitioning the court to change the custody arrangement or to eliminate unsupervised visitation where there are convictions.

People who disregard a court order to take a child to South Korea will not be deterred by this bill. The people who will be impacted by the bill are those who keep their child for a few extra hours to finish a movie. According to section 1, subsection 8, paragraph (c), all it takes is an admission of that type of conduct before legal presumption is now created. If a father admits he and the child wanted to finish a video game and the father was mad at the child's mother, now there is additional litigation and potential Child Protective Services complaints. Even though the presumptions are rebuttable, these things create extra litigation, clogging the court systems and getting our office involved when we are strapped for resources. This is our primary objection to the bill.

We rely on a judge's sound discretion in the best interest of the child. If a judge is not using sound discretion of current law, this bill will not guarantee he would suddenly exercise sound discretion under new law. Imagine a scenario where a judge would look at this and think the presumption had an inadequate legal rebuttal and ordered supervised visitations, even if they were not in the best interest of the child. Since each of these cases are individual and fact-specific, these conflicts occur when we try to steer the judge's determinations from the Legislative Session.

CHAIR CARE:
The clear and convincing standard is not enough to give you comfort?

MR. JOHNSON:
No, it is not.

CHAIR CARE:
Is there a particular standard that would work, or do you think we should leave this up to the existing statutes and factors already on the books for the courts' consideration?

MR. JOHNSON:
It is best leaving it to existing statutes. Family law cases are fact-specific; they can turn ugly when spouses become angry with each other. Letting the judge make the determination is amorphous. The best interest of the child is not something you can put into a formula and get a computer to spit out an answer. Factors that cannot be quantitated are weighed. We suggest keeping it this way so judges can exercise sound discretion.

CHAIR CARE:
We will close the hearing on A.B. 59. We will open the hearing on A.B. 105.

ASSEMBLY BILL 105 (1st Reprint): Makes various changes concerning genetic marker testing of certain criminal defendants. (BDR 14-51)

ASSEMBLYWOMAN HEIDI S. GANSERT (Assembly District No. 25):
Assembly Bill 105 provides cleanup language for deoxyribonucleic acid (DNA) testing. Last Session, we passed a bill requiring DNA testing of all convicted felons. Last year, the abduction, assault and murder of Brianna Dennison brought the importance of DNA testing to Reno's attention. It showed the law needed improvement in obtaining all DNA specimens. Under this bill, every convicted felon will be tested for DNA. We discovered hundreds were not tested because it required a court order. This bill streamlines that process. If you are convicted of a felony, you will automatically be tested for DNA.

The bill says that if labs already have a specimen, they are not required to take another specimen. Because of the backlog, labs did not know what specimens had been taken. This bill enables them to take the sample if they believe they need it or refuse the sample if the specimen is not needed.

This bill also sets up a separate account. Currently, the person whose DNA is taken is supposed to pay a $150 fee. Many times, the fee is not paid. Reno raised hundreds of thousands of dollars to clear up the backlog of DNA specimens. All charitable donations went through a volunteer deputy association. This bill sets up a separate account, making it cleaner for the

County Commissioners. It is cleanup to help capture every DNA sampling required to prevent duplication. We now have an account for donations to help with the processing of DNA.

SENATOR COPENING:
I know the donations in Ms. Dennison's case helped make the backlog current. Do you feel more donations will be necessary in order to keep the backlog current?

ASSEMBLYWOMAN GANSERT:
The labs were able to cover the backlog with the donations. There is federal funding available, but you have to be a year back in your backlog to get the funding. Reno now has federal funding that will take care of them for awhile. In the meantime, we will start accruing a backlog and then circle around to get the federal grants again.

SENATOR MCGINNESS:
This says if the labs already have a specimen, they do not have to take another one. Are they mandated to take a specimen if one is not on file?

ASSEMBLYWOMAN GANSERT:
Yes, but because of the backlog, they could not figure out what they had on file.

SENATOR MCGINNESS:
Is this on any felony?

ASSEMBLYWOMAN GANSERT:
Yes, this is on any felony conviction. It was changed last Session to read upon conviction, not upon arrest. I had another bill upon arrest, but the fiscal note was huge so we did not move it forward.

SENATOR MCGINNESS:
I was concerned about fiscal impact. Some of my rural counties would have to transport somebody to a hospital, and the county would have to pay for that expense.

ASSEMBLYWOMAN GANSERT:
The DNA testing is not a blood sample. It is a swab of the inside of each cheek. It is a simple process, and the specimen is stored until processing.

SENATOR MCGINNESS:
Does law enforcement do this?

ASSEMBLYWOMAN GANSERT:
Yes.

RENEE ROMERO (Director, Forensic Science Division, Washoe County Sheriff's Office):
I agree with Assemblywoman Gansert's statements and fully support this bill. I have talked with Linda Krueger, the Director of the Forensic Science Division at the Las Vegas Metropolitan Police Department, and she is in agreement with this bill.

SENATOR AMODEI:
I heard interviews during your fundraising campaign where there was intimation that the State had not funded testing and therefore you needed to raise money. This is policy, but I am unaware of an obligation for the State to fund any individual's jurisdiction DNA testing. Were you aware of those comments being sold as the State did not fund the DNA testing, thus creating the backlog?

MS. ROMERO:
Yes, I heard those comments.

SENATOR AMODEI:
Do you know the source of those comments? Did I miss something that said the State is responsible for paying individual jurisdiction's lab bills?

MS. ROMERO:
No.

SENATOR AMODEI:
Thank you. I will leave it at that.

SENATOR WIENER MOVED TO DO PASS A.B. 105.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
We will open the hearing on A.B. 477.

ASSEMBLY BILL 477: Exempts a person who works for a landlord of a dwelling unit used for a residence for older persons from an additional background check. (BDR 10-100)

ROSEMARY WOMACK (Nevada Senior Corps Association):
I am a licensed administrator for long-term care. Wendy Simons and I brought this issue before the Interim Committee last summer. I will read my prepared testimony (Exhibit D). I support the bill.

ASSEMBLYWOMAN KATHYRN MCCLAIN (Assembly District No. 15):
Rosemary Womack laid out the reason for this bill. The issue was brought forward during my Interim Study Committee on Seniors and Veterans. Assembly Bill 352 of the 74th Session required maintenance people to get a background check if they worked around senior housing. Inadvertently, it duplicated a background check already required for long-term care facility workers. Assembly Bill 477 is a good bill, and we appreciate your support.

CHAIR CARE:
Was there any opposition to this bill?

ASSEMBLYWOMAN MCCLAIN:
No, and there were no amendments.

WENDY SIMONS (Coalition of Assisted Living):
You have my written testimony (Exhibit E). You have background information with regard to the law, and I defer from speaking.

SENATOR WIENER MOVED TO DO PASS A.B. 477.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
We will open the hearing on A.B. 262.

ASSEMBLY BILL 262 (1st Reprint): Makes various changes concerning the issuance of marriage licenses. (BDR 11-961)

GEORGE FLINT (Chapel of the Bells):
With me today is my daughter, Margaret Flint. Assemblyman Bernie Anderson, Assembly District No. 31, Chair of the Assembly Committee on Judiciary, sponsored this bill. I was told to proceed if he was not present. I will turn this over to my daughter.

MARGARET G. FLINT (Chapel of the Bells):
I represent miscellaneous wedding chapels in Reno and Las Vegas. We bring A.B. 262 for your consideration. This bill originally began as cleanup on restrictive identification (ID) requirements we were hit with in the 2007 Legislative Session. We thought we had negotiated most of the areas with the county clerks, but we ran into dilemmas in the last two years creating a negative fiscal impact on our industry. The last page of my synopsis (Exhibit F) shows Washoe County is down 3,500 marriage licenses and Clark County is down 17,500 marriages since the 2007 Legislative Session. We have a need to readdress these areas.

Shortly before this Session started, Amy Harvey, Washoe County Clerk, invited my father and me to sit down with her, her assistant Nancy Parent and marriage license supervisor Karen Erickson to discuss the idea that those affiliated with wedding chapels become marriage license agents due to low revenues. The County Commission is putting pressure on the agencies to cut the hours of the marriage license bureau. By statute, marriage licenses must be made available from 8 a.m. until midnight every day of the year in both Clark and Washoe Counties. We discussed the idea with Mrs. Harvey and her staff and concluded it was a doable idea that those of us affiliated with wedding chapels could become licensing agents. We discussed penalties, training courses, installation of software, fingerprinting and background checks. Mrs. Harvey gave us her consent to talk to Chair Anderson about a possible bill draft. A few

weeks later, she withdrew her offer for reasons unknown to us. We decided to propose the idea to the Committees despite Ms. Harvey's withdrawal. This doable idea could save the counties money because the county commissioners could regulate shorter hours. Weddings are very important to us in these difficult economic times.

Section 1.4 of A.B. 262 does not mandate the clerks to do this. We originally used the word "shall," but we chose to use "may," making it an option. If they find it becomes economically feasible, they can entertain the idea.

The bill has regulations addressing training courses. We are willing to work with them on weak areas. When I spoke with Ms. Parent this morning, she was concerned about the issue of the licensing agent dealing with minors under the age of 18 with a guardianship. At this point, you can have parental or guardian consent. A licensing agent would be able to accept the parental consent, but we would refer guardianship-type situations back to the county clerk's office.

Clark County Clerk Shirley Parraguirre and I have exchanged e-mails on weak issues for which I have proposed some amendments. Section 1.9, subsection 2 deals with documentation of couples already married. The statute reads that couples already married cannot obtain a marriage license. We have run into situations where couples were married in foreign countries or married many years ago in their own family-type ceremony, but have no documentation of their marriage. For various reasons, they now find the need to have a certified copy of a marriage certificate. The county clerk's office will deny a marriage license if they have had any type of ceremony performed. We discussed this in a meeting with the Washoe County Clerk and Alan Glover, Clerk-Recorder for Carson City. Mr. Glover suggested language that reads, "if the husband and wife have no recorded documentation of their marriage." The first reprint does not include this language, so we propose the amendment on page 3, section 1.9, subsection 2, Exhibit F, to clarify the language that a couple who does not have recorded documentation can obtain a marriage license.

Section 3, subsection 3 states, " ... The county clerk or marriage licensing agent shall not deny a license to an applicant who states that he does not have a social security number or who states that any other answer is unknown." The county clerks believe this is vague on the "unknown" because people could state they did not know their name or date of birth. I proposed the two amendments on page 3, Exhibit F, to clarify that language. I understand the

county clerks had their own amendments prepared to clarify this language. I suggest we submit all amendments for the Legislative Counsel Bureau to create language satisfying both sides.

Some language in the mock-up of A.B. 262 was deleted from the first reprint. That language allowed the counties participating in the certification of the licensing agents to have office hours determined by the board of commissioners. We need to go back to that issue. This would only apply to counties with populations under 400,000. Since Clark County is still issuing 96,000 marriage licenses, this would not be a feasible program for Clark County to try, but it would be a fabulous program for Washoe County. We propose to sunset the program after two years and readdress.

CHAIR CARE:
Section 1.4 contains the discretionary language and is applicable to counties with less than 400,000 people. Are you saying nothing in this bill applies to Clark County?

MS. FLINT:
No, I am sorry. Only the part about marriage license agents does not apply to Clark County. The clarification on ID requirements does apply to Clark County.

CHAIR CARE:
There is no fiscal note on this bill because it is discretionary, but there may be a cost associated if the county clerks choose to go along with it. We will let the clerks talk about the burden of adopting regulations. A provision in section 1.4, subsection 4 reads, "In addition to any other remedy or penalty, if the county clerk or a hearing panel appointed by the county clerk, after notice and hearing ... ." It is unclear to me if this would be a contested hearing under NRS 233B the Nevada Administrative Procedures Act. If the clerks become hearing officers, is there an appellate process for the party not pleased with the findings of the hearing officer?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
I do not believe that it would be subject to NRS 233B. I do not know exactly what was contemplated with this process, if there was supposed to be any sort of appeal. There is no provision allowing an appeal. I do not believe this would be subject to the NRS 233B provision, but if there was some other intent, I would be glad to accomplish that.

CHAIR CARE:
Describe how you envision this hearing process. Would there be any right of appeal?

MS. FLINT:
We would have to talk to the county clerks to see how they envision the process. It was discussed that if the county clerk felt a certain licensing agent was not living up to his or her responsibility, the agent would be brought to a hearing. We did not discuss who would be present at this hearing, but I would assume it would be the clerk's department. At this point, we would be at their mercy. If the clerks felt we had not lived up to our responsibility, it would be their decision to take the agent's license away for a period of time. We discussed suspending a license for a certain period of time and having that particular agent retake the training course for an additional fee. Section 1.5, subsection 1, paragraph (f) allows the county clerk to charge a fee up to and not exceeding $100 for the training course.

We will be at the mercy of the county clerks for the privilege of trying this program. After this two-year period, we can report to you what worked, what did not and what needs to be changed. We want you to entertain the idea of allowing us to try this for a two-year period, assuming of course, the county clerk decides to allow us to do the program.

CHAIR CARE:
Clearly, your testimony is a result of the 2007 Session. Your statement makes reference to A.B. 262 as being a cleanup bill. I am thinking the decline in marriage licenses has to do with the declining economy.

MS. FLINT:
The economy has had some effect. It has been a gradual decline. I have compiled two folders of scenarios I have dealt with over the last two years. One touches on the consent from the parent. In the State of Nevada, as long as a party is 16 years old and has parental consent, they can be married. We have never had a problem with an ID as long as we had a certified copy of the minor's birth certificate. This displays the minor's name, date of birth and the mother's first and middle name. Six months ago, we encountered a problem where the mother's last name was different from the minor even though her driver's license confirmed the first and middle names on the birth certificate. The county clerk demanded a paper trail explaining why the name was different.

We had a mother who had been married five times. She was not able to document every marriage and divorce although the certified copy of the birth certificate showed her first and last name. Based on this, they were denied a marriage license. Our attorneys and I met with Ms. Parent. She agreed to accept an affidavit from the mother documenting her marriages and divorces. Until recently, we never had a problem with this. That is why we need to clarify this type of language.

In the 2007 Legislative Session, it was agreed that a party without a photo ID could present a certified copy of a birth certificate, along with a second document containing the name as an acceptable form of identification. The county clerk continued to demand photo identification on top of that certified copy of the birth certificate. We needed clarification in those areas.

SENATOR WIENER:
This brings to mind the bill we had on notaries and the effort to create the more ecumenical marriage. If we were to create this new category, going back to the definitions of marriage-licensing agents, would anyone employed by the chapel on the 24 hours a day, 7 days a week schedule become a licensing agent?

MS. FLINT:
We do have clarification that a marriage licensing agent must be affiliated with a commercial wedding chapel for a minimum of three years and must be 21. Normally, we do not offer services on a 24 hours a day, 7 days a week basis but from 8 a.m. to midnight. This would give the county clerk the option to be open Monday through Friday and close at 5 p.m. Licensing agents would be available in the commercial wedding chapels that are open until midnight. This is not to just satisfy the wedding chapels. These licensing agents would be available for the general public. Someone getting married on a weekend in a church who cannot get to the county courthouse before 5 p.m. can come to a commercial wedding chapel where a licensing agent is available and purchase a marriage license.

SENATOR WIENER:
Do you know how many people we are talking about if this bill were to be passed through?

MS. FLINT:
I would do three within my wedding chapel.

SENATOR WIENER:
How many chapels do we have statewide? I am trying to get a sense of the impact of issuing this particular credential so we know what we have to do to track those wedding licenses and subsequent marriages. I am looking at ensuring protection of these documents. How many chapels are in Nevada?

MS. FLINT:
Not involving Las Vegas, there would be roughly a dozen.

SENATOR WASHINGTON:
Going back to section 1.4, does the county clerk submit the regulations to the county commission, who then adopts those regulations?

MS. FLINT:
The county commission would designate what hours they want the county clerk to be open. Our regulations would be set by the individual county clerk.

SENATOR WASHINGTON:
Who would approve the regulations? Section 1.4 states regulations would be adopted by the county clerk. Section 1.4, subsection 3, paragraph (b) states, "Shall adopt regulations establishing standards of practice for marriage license agents." Does the commission adopt those regulations?

MS. FLINT:
It would be the county clerks. We would be in their hands. We are willing to do that and work with the county clerks.

SENATOR WASHINGTON:
Would the clerk write the regulations? Who has the final say?

MS. FLINT:
At this point it would be the county clerk in each individual county.

SENATOR WASHINGTON:
If the clerk's office sets the regulations, who approves the regulations? The regulations could be onerous to your industry, making it cumbersome for any agency to exist.

MS. FLINT:
I will allude back to the two-year program. There will be areas where we will need to report back as to how things are going and make any necessary changes.

SENATOR WASHINGTON:
I can see where there might be a conflict of interest between the county clerk and the agencies they are trying to approve where the regulations become too onerous. If there is a noncompliance issue with a hearing at the county clerk's office, you are setting yourself up for an adversarial role. Mr. Chair, your questions regarding administrative procedures hearings is important. Maybe they can level the playing field or be a mediator between the clerk's office and the licensing agent.

MR. FLINT:
We know we are laying ourselves at the mercy of the clerks. We have no recourse if they do not want to do this. You are creating permissive legislation. If this bill passes, we are comfortable enough with our long-term relationship with these people that we do not expect this to be an impossible ride. It may be a rocky ride, and that is one reason why we want the sunset so we can resell the program to both Houses in 2011, if necessary. I do not see this matter going to hearings and litigation. It will take some adjusting, as a marriage does, but I see this as something that will work well. My experience tells me we will get along with the controlling authority. This is a normal next step for our industry. It could save Washoe County nearly $250,000 a year in payroll if they could close at 5 p.m. during the week and have shorter hours on weekends.

It is an oversimplification to say this is not any different than buying your hunting license at a sporting goods store, having your car smogged at a private industry outlet or registering your new Cadillac at the dealership rather than waiting in a long line at the Department of Motor Vehicles. It is analogous to those situations. You are going to hear this is a more complex issue, a more sacred issue and one that takes special care. Between government and business, there are differences of opinion about these things, which is why we attempted to carefully craft that we are at the mercy of the clerk. The clerk does not have to do this unless he or she wants to or until the economy mandates it. You may hear we might be less than totally honest in issuing licenses because we would not want to lose a wedding. That statement is without merit; know we consider this the greatest opportunity this industry

might have. We will guard it with our lives because we do not want to lose this opportunity once given to us. If any of the clerks in their effort to protect what they have said they do not want to trust the chapels, keep in mind that before we send a couple to the courthouse now, we check these couples thoroughly. We do not send or take couples to the chapel who are not prequalified.

Finally, the three people who work at my wedding chapel have over 100 years experience combined in their qualifications for a license. We can do this and do it well, but until we get the chance to prove it, we are in a position of limbo. We will save the counties a lot of money. We will do the job as well as it is currently being done. We will also save the viability of four or five wedding chapels in northern Nevada that are up against the wall financially. This bill will enable us to retire two full-time Cadillac automobiles and the drivers because we will have those people standing by 16 hours a day to go to the Courthouse. It will be a big financial savings for us. We may even be looking at a broader-based business tax than what we are paying now. This will help us make those new expenses.

In conclusion, this is something we think we can do well, but we need the chance from you. We had no opposition to this in the Assembly.

CHAIR CARE:
Let us go to A.B. 432 and then return to the opposition for A.B. 262.

ASSEMBLY BILL 432 (1st Reprint): Revises provisions governing alcoholic beverage awareness programs. (BDR 32-526)

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):
Assembly Bill 432 was first implemented in 2005 by Assemblyman Oceguera. It was S.B. No. 457 of the 73rd Session. My constituents contacted me during the interim with concerns and complaints. The program was put under the auspices of the Commission on Postsecondary Education. They were to approve the programs developed by outside vendors on the alcoholic beverage awareness programs. After attending these programs, employees could apply for cost reimbursement. The fund was to be developed by fines levied against people who violated the program.

I received complaints from constituents and owners of establishments who had not received any reimbursement or even a response. There was never any

money in the fund because no fines were ever levied, which makes you wonder about the enforcement piece. Because there was no money in the fund, the Commission did not pay any reimbursements or notify people. To deal with this issue, we requested the Commission on Postsecondary Education put information on their phone system, Website and send postcards notifying people that there is no money and no refund.

Secondly, I submitted this bill to change up the program. It will be a civil violation if an employee who has not completed the awareness program serves alcoholic beverages. The bill requires the tax department to develop a form showing there is a violation and a fine is to be levied and collected. We heard in the Assembly that a process was never put in place; therefore, a process was never followed. When law enforcement inspected a facility, there was no fine collected, established or put into this fund. This has been in place for a few years, yet it has not been enforced.

The bill will clarify there is now a process in place, a civil penalty in place and money for enforcement in the amended version of the bill goes into the State General Fund for the support of community juvenile justice programs. This is a grant fund to enforce laws that prohibit the purchase, consumption or possession of alcoholic beverages by persons under 21. This was a good nexus to help encourage the enforcement of these laws.

I brought amendment language for section 1, subsection 6 of A.B. 432 (Exhibit G). Had money been deposited, it would have gone to the Victims of Crime Fund. When I presented the bill, I suggested in the first version that money be split between the Victims of Crime and Victims of Domestic Violence programs. Your Committee knows that domestic violence funding is in jeopardy. There is a nexus between consumption of alcohol and domestic violence. When the bill was processed out of the Assembly, that discussion was had but the bill was not reprinted and amended before going to the floor. This bill was heard in the Assembly Committee on Taxation. I talked to Assemblywoman Kathyrn McClain, and she asked rather than do a floor amendment that I bring the amendment to you. I bring you an amendment suggesting that 50 percent of the funding be deposited with the State Treasurer for credit to the account for Victims of Domestic Violence. Victims of Crime have a reserve and seem to have a stable funding stream. Domestic violence has had a difficult time with funding due to their revenue source.

CHAIR CARE:
I was not aware of the lack of enforcement. Section 1, subsection 3 says, "The notice of infraction may be issued by any peace officer ... ." I am trying to imagine the circumstances where any peace officer would look for an infraction of this nature. Is this something someone stumbles across while doing other things?

I do not have a problem with making the infraction public record. It is the additional language in section 1, subsection 4, " ... and is prima facie evidence of the facts which are alleged therein." The operator may contest that the facts are accurate. Did you have that discussion on the Assembly side?

ASSEMBLYWOMAN SMITH:
We did not have that discussion. I did know there was no opposition to the bill. There were some concerns about the flow of money for law enforcement, and we corrected that. If you have a peace officer who goes into an establishment that serves alcohol and is there for another reason but it seems obvious to the officer there may be reason to check for the cards of those employees, this seems a likely opportunity to check. With our budget constraints, this is not going to be a program where law enforcement officers will seek opportunities to go in and check employee cards. The likely situation is they will be in these establishments for another reason and will be able to check the cards at that time.

The question about prima facie evidence did not come up in the other Committee, but it was heard in the Assembly Committee on Taxation and not the Assembly Committee on Judiciary.

SENATOR WASHINGTON:
Are you aware there is a bill in Assemblyman Bernie Anderson's Committee dealing with the funding of domestic violence?

ASSEMBLYWOMAN SMITH:
Absolutely.

SENATOR WASHINGTON:
Do you know how much money this alcohol awareness program will generate?

ASSEMBLYWOMAN SMITH:
Right now it has generated zero dollars. You are not taking anything from one fund and giving it to another because no money has been collected. I hope with the clarification in this process that it will generate some funding. At this point, I have no idea how many dollars the fund may generate. From the testimony we heard in the Assembly, it sounds like investigations have been taking place, but fined in another route because there was no clear process developed with this program. There was an uncertainty about procedure in the law enforcement system, so if any fines were collected, they were collected in a different route and never deposited in these funds.

SENATOR MCGINNESS:
Are these the programs where a sting operation sends in a minor to buy alcohol?

ASSEMBLYWOMAN SMITH:
You could have that situation, or you could have a fight taking place in a bar where law enforcement would be present and feel the need to check the cards of all the employees to confirm who has gone through the alcohol beverage awareness program. It could be any type of situation where they are in an establishment and decide to check the cards.

SENATOR MCGINNESS:
I know those clerks and/or businesses are fined. You do not know where that money has been going?

ASSEMBLYWOMAN SMITH:
We do not. We heard testimony in the Assembly that fines have been levied. I have asked our fiscal staff to backtrack to figure out where the money has gone and where this system broke down. At this point, we have no idea.

SENATOR MCGINNESS:
Why did this bill go to Taxation?

CHAIR CARE:
In 2005, the original bill went to Taxation.

ASSEMBLYWOMAN SMITH:
I think it did go to Judiciary originally, but it was sent to Taxation because of the revenue side of the issue.

This bill will take this out of the realm of the Commission on Postsecondary Education. It will take away the possible reimbursement of fees. It has created heartache and frustration for our constituents and for the Commission, which really does not have the ability to carry this on.

SENATOR WASHINGTON:
Has there been a request for a legislative audit to discover where that money went?

ASSEMBLYWOMAN SMITH:
I believe the fines were levied under a different statute and assessed in a different way. I have asked our fiscal staff to begin the work once Session ends to find out what happened to the money from fines levied.

SENATOR WASHINGTON:
The fines are divided into two accounts, the Awareness Program and the Victims of Crime.

ASSEMBLYWOMAN SMITH:
The fines are to be split between Victims of Crime, and the people who took the classes were to be reimbursed from any leftover money. There was no clear process to figure how much money would be left and how it should be divided. Since no one received any money, it made sense to rearrange the funding stream and place it with the fund for the Community Juvenile Justice Programs and Victims of Domestic Violence rather than try to figure out a reimbursement system. It costs $40 to take the class, and not one penny has been reimbursed.

TOM ROBERTS (Las Vegas Metropolitan Police Department):
We have a special investigation section routinely spot-checking businesses. We were issuing criminal citations, and it may not have been used in the civil citations. When those went to court, that is how the fines were assessed. Generally, we do not get involved in what happens with assessments, but we can make it our business and research to find out where the ball was dropped. Enforcement is being done.

CONSTANCE BROOKS (Clark County):
I am here in support of A.B. 432. Clark County is supportive of any potential measures that will allow us to better collaborate with the community regarding juvenile justice programming to keep kids out of trouble.

CHAIR CARE:
We will close the hearing on A.B. 432 and hold it over to work session. Let us go back to A.B. 262.

SHIRLEY B. PARRAGUIRRE (Clerk, Clark County):
We did have several meetings while this bill was in the Assembly. This does not affect Clark County at this time, but past experience has shown that whatever starts will trickle down throughout the entire State. When this bill was in the Assembly, as a means of compromise, I acted as a middle man between George and Margaret Flint and other county clerks whose counties are less than 400,000. We agreed to the permissive language appearing in your amendment making it totally discretionary on the county clerks to allow the chapels to issue licenses. I have always been adamantly opposed to anyone other than the county clerks issuing the licenses because there is much involved in the issuing of marriage licenses. We have to check IDs, and we have problems with proper paperwork for parental consent.

I testified before you on Senate Bill 130 dealing with the licensing of ministers to perform weddings.

SENATE BILL 130 (1st Reprint): Revises certain provisions governing certificates of permission to perform marriages. (BDR 11-468)

I let you know at that time the difficulty we had in monitoring the ministers, making certain they recorded the marriage certificates timely and completed the paperwork correctly. This is why we were opposed to the notaries being given the license to perform weddings. I have the same issue with this suggestion. If I have 100 chapels in Clark County with 3 to 5 people in each chapel, that is a lot of monitoring my office will have to do of these licensing agents. I am not saying they could not be trained, but I see no reason for it. Although it does not affect Clark County now, indirectly it will affect us. Someone could go to Nye County and obtain a license from a licensing agent, but the marriage could take place in Clark County. You do not have to get married in the same county where you get your license.

The second reason for opposing this is a matter of public policy. I have a fear of turning over social security numbers and personal information to these licensing agents. This is confidential information. We require proof from a couple requesting a copy before a copy with their social security number is provided. We do provide copies to law enforcement, but if I wanted a copy of your records, it would not be supplied to me with the social security number. These are vital records that should be left with the county clerk.

Mr. Flint compared marriage licenses to smog or fishing licenses. Smog or fishing licenses are not vital records. There was testimony about the ID requirement. I will leave that issue there. I have always been opposed to anyone other than clerks issuing the licenses.

Margaret Flint addressed the provision in section 1.9 concerning the renewal of vows. Wedding chapels can and do renewal of vow ceremonies; there is no license required. There is a need to have a remarriage. We have had couples from Vietnam wanting a permanent record of their marriage but were unable to obtain one from their country. We agreed on this in a prior meeting, but it did not get in the amendment. I have supplied you with proposed amendments (Exhibit H).

We are also opposed to section 3.5, subsections 3 and 4 where it states applicants may not be denied a license if they answer “unknown” to a social security number or any other answers. It is “any other answer” that we oppose. The way the bill is written, someone could walk in and write down their name and that would be all they have to give us. They could say “unknown” on their birth date, the number of marriages and their place of birth. Nevada Revised Statute 122.050 mandates what information is to be gathered by the county clerks. If you are going to allow an applicant to answer “unknown” to every question, that makes your mandate under NRS 122.050 useless. The only question I would be comfortable in taking “unknown” as an answer would be questions relating to a bride or groom’s parents. We have difficulty with couples not knowing their mother’s maiden name or their father’s place of birth. We do not have issues with social security numbers. If couples are from out of the country, we know they do not have social security numbers. If they are from the United States, we suggest they get their number and come back.

I would like to address the decline in marriage licenses. Since 2005, there has been a nationwide downward trend. I suggest a small part of the decline has to

do with ID requirements. I testified during the hearing on S.B. 130 that we had less than 1 percent of the 96,000 licenses issued where anyone was unable to comply with our requirements.

Senator Care asked about the remedy if a hearing was going to be held pursuant to this bill. I do conduct hearings in Clark County related to certification of ministers to perform weddings. When conducting these hearings, I use existing statutes as my standards. The statute says there is supposed to be a witness; if there is none, I revoke the minister's license. If ministers have forged signatures or if they do not timely file the wedding certificate after repeated letters, then we revoke their certificates. Our standards make sure the minister complies with statutes. A remedy in the statutes says ministers can appeal any decision to district court. If A.B. 262 is passed, perhaps it could be amended to include language about a district court appeal.

A few sessions ago, the Legislature made a provision for the county clerks correcting typographical errors through an affidavit. There is no charge if it is a typographical error on the licensing paperwork. We have errors in misspellings and transition of names on a regular basis. I sign many affidavits during busy times when clerks have human error. The way this bill is written, if a licensing agent made those errors, it would not be the licensing agent who would make the corrections; the county clerk would be processing those errors. I take issue with that provision.

I submitted a proposed amendment, which is a housekeeping matter. Nevada Revised Statute 122.061 addresses the hours of operation of a marriage license office. It jumped out at us for the first time that the statute now says in counties over 100,000 population that the marriage license office has to be open from 8 a.m. to 12 p.m., 365 days a year. This applies only to Clark and Washoe County. That was the intent of this statute many years ago. It now says 8 a.m. to 12 p.m., but it should say 8 a.m. to 12 a.m. or 12 midnight. The way the statute currently reads, our offices only have to be open four hours a day, Exhibit H.

DIANA ALBA (Clerk's Office, Clark County):
Addressing the nationwide downtrend, we do have statistics and articles we can provide the Committee if that would be helpful. This trend is not unique to Nevada.

CHAIR CARE:
We will take it as it is.

ALAN H. GLOVER (Clerk-Recorder, Carson City):
Last week, I worked on this bill to see how it would function if it were passed, and I could not figure out a way to make it work. I talked to the District Attorney because the proponents of this legislation have emphasized that this is permissive legislation. It does say on page 2, line 16 that the county clerk "may" certify a person. I told the District Attorney to look at lines 23 and 24 which says the county clerk "shall" establish a course of training and "shall" adopt regulations. Our District Attorney said all 16 counties would have to adopt regulations. If they did so and somebody applied to be a licensing agent, it would be the burden upon us to give them a license unless we could prove they were not qualified under our regulations. This is not permissive legislation. It is almost mandatory legislation after we adopt regulations that provide if an agent met those provisions, we would have to license them. This presents concern.

CHAIR CARE:
Do you mean that after the adoption of the regulations, the clerk may certify someone so long as that person has the qualifications? You are required to do so?

MR. GLOVER:
I believe they were basing theirs upon other issues that have come before county commissioners in which you have standards. If an applicant meets those standards, you cannot deny them a license. It is a process issue.

SENATOR WASHINGTON:
That is a stretch. It is a stretch on Clark County because they do not have to participate. They are not included in the program. It is a pilot program for two years. It is permissible language. If you participate in the program, then you have to come up with regulations to govern that program. What you are saying does not make sense.

MR. GLOVER:
It would help in this legislation if it were made clear that it is strictly up to the purview of the county clerk if they are going to participate in such a program. As you work down through this bill, there are many areas that are not clear. As

the proponents of the legislation pointed out, they hope to be back in two years with corrections and changes. I suggest you may be back for the next five sessions making changes.

Another example of confusion is in section 1.2 which says, "... licensed for that purpose." Which license is it? Is it the county business license or a state business license? There are a number of counties that do not have business licenses. If one of the requirements is that you be licensed, what type of license is that? You want to make it clear that it is the county business license.

SENATOR WASHINGTON:
I appreciate what you are trying to say. It is obvious you are against the bill. Once again, the language is clear that if a county desires to participate in the program, line 26 says they shall adopt regulations. Those regulations can include whether you want to make sure that business or agent has a business license or whatever licensing is necessary for them to be qualified to be in business.

MR. GLOVER:
I know what their intent is in making a pilot program, but I am not sure this legislation does that. I see a lot of problems coming up in litigation that potentially could cause us problems. You may want to tie down the licensing agent to the chapel in which they are employed, and the chapel or licensee could only issue licenses from the county in which their chapel is located. A chapel in Washoe County may want to buy their licenses from me because the Washoe County Clerk would not license them. I assume since you are licensing someone, the county would have authority by ordinance to establish an investigation fee similar to a liquor license application.

To Senator Washington's earlier comments, I was concerned over the regulation part of the bill. Clerks do not adopt regulations. What process are we going to go through? Do you want to pin that to NRS 233B or should we adopt it by ordinance? As a clerk, I normally work under regulations of the Office of the Secretary of State for Elections, as Recorder under the Department of Taxation regulations. When we got into real property transfer tax, we set up a whole new section on how to appeal. There was a hearing before the county recorder, you appealed to a board and then you could go to district court. It could be capricious. There has been an allusion that a marriage license is similar to hunting or fishing licenses. They are required to post bond. You may want to

put in the bill to apply a statewide amount for the bond. If not, one county could set regulations for a $100,000 bond to be posted and another county sets a $250 bond.

The bottom line is, we have spent a lot of time in this Committee and Legislature protecting public information. With a marriage license, you give your name, date and place of birth, full social security number and mother's maiden name. Over the next ten years, we are spending over $50 million countywide to redact social security numbers from our records. This bill gives it to a third party. There are ways around that. The bonds can handle some of those issues. This bill, as written, has open-endedness that could end up in potential litigation. Regardless, every county will have to adopt regulations because it says we "shall" adopt regulations. It needs work.

SENATOR WASHINGTON:
The last few suggestions you made were fair. The bonding issue might work to protect the social security information. Did you speak to the authors of the bill concerning your issues to bring resolution or solutions to this bill before it came to us? It sounds like nothing was done to the bill.

MR. GLOVER:
We sat down and had a good meeting with Chair Anderson and agreed on many things. The heart of this bill, chapels issuing licenses, is something none of the clerks agreed to. Mr. Flint proposed to have this included in the bill. We never agreed to that proposal, because we never saw the language. They suspended the rules and got it amended. It was not until after we saw the amendments to the bill that we could start working on the bill to see how we could make this thing work. We are opposed to the bill, so it makes no sense to negotiate.

SENATOR WASHINGTON:
It is obvious you do not want the bill to pass because you want to protect the sanctity of the clerks being able to issue marriage licenses. I have been here 16 years and I know Chair Anderson does not operate like that. If there was some concern about the bill, and if the two parties could work out their concerns or reach a compromise to language both parties could agree upon, he would process the bill. I am not speaking for him, but for it to pass out of one Committee, off the floor, and over here without the stakeholders having agreements ... .

MR. GLOVER:
Chair Anderson went out of his way and put time in when we were working on the original bill.

SENATOR WASHINGTON:
I do not mean to be argumentative, but some things, okay ... .

NANCY PARENT (Chief Deputy Clerk, Washoe County):
The Washoe County Clerk is opposed to the idea of chapels issuing marriage licenses. As the Flints indicated, Ms. Harvey did entertain discussions with them when we were first told we had to cut $500,000 from our County budget. We were concerned about having to keep the marriage license open until midnight, 365 days a year. We did that against our better judgment, under a lot of pressure and before talking to our fellow county clerks. We have since found a way to maintain the office hours mandated by the statutes. Therefore, we are opposed to the chapels issuing marriage licenses.

To address Senator Washington's question, we never saw the printed bill. We never saw the printed amendment or the first reprint until it was passed from the Assembly floor. We did not have a chance to address item by item the specifics of the licensing provisions.

We are opposed to chapels issuing licenses because of the vital statistic function. It is an important record. It creates a legal document, and it should be done by a governmental agency. Secondly, if wedding chapel employees are allowed to do issue licenses, there are some provisions they should not be authorized to do. This is a situation Ms. Flint mentioned in the instance of court-ordered guardianships. They can be complicated court orders to dissect and figure out if the person in front of you does have the power to consent to marriage because in many cases they do not.

The other aspect would be the single-signature license where it is up to the county clerk, only under extraordinary circumstances, to issue a single-signature license. We take that very seriously in Washoe County and would want to limit that to the county clerk's discretion. If the person disagrees with the county clerk's decision, they have the option under statute to go to district court. Those two circumstances should be reserved to the county clerks if the other portions of the bill pass.

I find myself in a position of defending the Washoe County Clerk's Office. The Flints alluded to the numbers going down further the last two years because we have been asking for a photo ID. If we did not have a photo ID to match the name, we would have no idea if the person is who they say they are. We had a five-year period where we asked for no ID at all. The marriage licenses still decreased during that time. The trend is continuing. It does not seem to be related to the ID requirements.

SENATOR WASHINGTON:
We do not require a photo ID to vote, and now we require a photo ID to get a marriage license? Something is backwards.

CHAIR CARE:
One is a constitutional right, and the other is a privilege. I think the restraints do not belong on the constitutional right but that is a debate we will probably have later in the Session.

MS. PARENT:
We try to be lenient in Washoe County. We have taken school IDs. It does not have to be a government-issued driver's license.

We agree with Clark County's suggestion for remarriage and hope that you make the change so that only those that need the documentation are issued a license for remarriage. Renewal of vows is not a legal thing, and the chapels can do that at any time.

On the "unknown" answers, we agree the only "unknown" answer should pertain to parental information.

CHAIR CARE:
We will hold this over to work session. Members of the Senate Committee on Judiciary, there being no further business, we are adjourned at 11:23 a.m.

RESPECTFULLY SUBMITTED:

_____
Janet Sherwood,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE: _____