MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 8, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:40 a.m. on Friday, May 8, 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 Tom Grady, Assembly District No. 38
Assemblyman John Hambrick, Assembly District No. 2
Assemblyman Ellen M. Koivisto, Assembly District No. 14
Assemblywoman Bonnie Parnell, Assembly District No. 40
Assemblyman Tick Segerblom, Assembly District No. 9
Assemblywoman Ellen B. Spiegel, Assembly District No. 21
Assemblyman Lynn Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Nathan Ring, Extern to Assemblyman Horne
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

Nancy E. Hart, Nevada Network Against Domestic Violence
Mark J. Krueger, Assistant District Attorney, Office of the District Attorney, Lyon County
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety
Donna Coleman
Barbara Calwell
Tom Roberts, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Jason Frierson, Office of the Public Defender, Clark County
Orrin J. H. Johnson, Deputy Public Defender, Office of the Public Defender, Washoe County
Rebecca Gasca, American Civil Liberties Union of Nevada
Flo Jones
Neil A. Rombardo, District Attorney, Carson City
Lucy Flores
Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General
Tonja Brown
Allen Lichtenstein, American Civil Liberties Union of Nevada
Keith G. Munro, Assistant Attorney General, Office of the Attorney General
Karen Hughes, Las Vegas Metropolitan Police Department
Dr. Lois Lee, President, Children of the Night
Joseph Murrin
Stephanie Parker, Executive Director, Nevada Child Seekers
Terri Miller

CHAIR CARE:
We will open the hearing on Assembly Bill (A.B.) 309.

ASSEMBLY BILL 309 (1st Reprint): Revises provisions relating to the crime of stalking. (BDR 15-994)

ASSEMBLYWOMAN ELLEN M. KOIVISTO (Assembly District No. 14):
Assembly Bill 309 was presented at the request of the family of Jana Adams who was murdered by a stalker. You have a packet (Exhibit C) containing a picture of Jana and e-mail messages from Jana's family. She was a young

woman with five daughters, the youngest being a month old when Jana was murdered.

The bill adds texting to the crime of stalking. According to a study from the U.S. Department of Justice released in February, text messaging appears to be the stalker's new favorite tool. The study found that in 23 percent of stalking or harassment cases in 2006, the antagonist had used some form of cyberstalking, text messaging or e-mail.

SENATOR WIENER:
I am glad this bill is coming forward because I have a measure on cyberbullying. I referred to cyberstalking in my testimony because of how egregious we consider cyberstalking with adults and cyberbullying with children. More than half the young people in this country have been cyberbullied. Texting has a level of anonymity that one cannot have face-to-face. Because we carry phones wherever we go, we are forever vulnerable to this kind of intimidation and harassment. I congratulate you for bringing this measure forward. This bill will keep others from having to experience this horrific intrusion on their lives.

CHAIR CARE:
Mr. Wilkinson, I want to be sure I am reading this correctly. We are creating a statutory definition of text messaging and throwing it under *Nevada Revised Statutes* (NRS) 200.575. In sections 3 and 4 of the bill, there are references to text messaging having the meaning ascribed to it in NRS 200.575. What is referred to in the definition we are creating today?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
Yes.

CHAIR CARE:
Existing law was amended at one time to add electronic mail network sites. In this age of modern communication, text messaging is an additional way of communicating through instruments. Please testify to section 1, subsection 1 where the scope of stalking is broadened to include, "... or fearful for the safety of a third person."

ASSEMBLYWOMAN KOIVISTO:
The language in this bill is based on a bill passed in Utah.

SENATOR WIENER:
This is a first reprint. What changes were made with the amendment?

ASSEMBLYWOMAN KOIVISTO:
Part of the bill concerned Assemblyman William Horne. We deleted that section because the district attorneys felt they could prosecute without it.

CHAIR CARE:
Nancy Hart, your letter (Exhibit D) is restricted to the addition of texting as a form of stalking.

NANCY E. HART (Nevada Network Against Domestic Violence):
We strongly support this bill because it adds text messaging to the statutory language which already refers to electronic mail. The addition of text messaging is clear and inclusive.

CHAIR CARE:
Section 1, subsection 1, reads, "A person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the safety of a third person." Do you have any thoughts on this?

MS. HART:
Third person is broad, and we are not sure who it is intended to cover. There was a proposed amendment in the Assembly to change that language to member of the family, family member or member of the household, but the amendment was not considered. It is easy to imagine the fear of the parents whose 13-year-old daughter is being harassed by a third person by text messaging. Third person is too broad because you can theoretically apply on behalf of somebody you saw in a restaurant who you thought was being harassed by text messaging.

CHAIR CARE:
I had the same concerns. This is a matter of case law that gets into intentional infliction of emotional distress. That is in the civil world where a third party kills or injures somebody and a family member is a nearby witness. According to section 1, subsection 1, the first offense for stalking is a gross misdemeanor and a subsequent offense would be a Category D felony.

MS. HART:
That is correct. Senator Wiener asked about the amendments in the Assembly. In its original form, the bill proposed to add emotional distress as another form of harassment. That section was removed because nobody was comfortable with it, but the third person remained.

SENATOR WIENER:
What happens when a parent receives a text message that threatens their child? It is a threat they received directly about the third person. Is that how this is intended?

MS. HART:
That is another way in which this language is brought. It could include a threatening text message you receive about a third person making you fearful for that third person. It could also be interpreted that the text message a third person received is threatening to them.

SENATOR WIENER:
I have trouble with that piece. I can understand receiving a text message that threatens someone I care about such as my nieces and nephews. I do not live with them, but they are the members of my family about whom I could receive the threatening message.

MS. HART:
Section 1 is linked to the text messaging throughout this bill. The phrase "fearful for the safety of a third person" is intended to cover your fear, wherever that fear comes from. The fear could come from a text message you have received, from a text message another person has received or from a letter somebody else receives that threatens the third person. The language covers your fear for that third person.

CHAIR CARE:
We will close the hearing on A.B. 309 and open the hearing on A.B. 325.

ASSEMBLY BILL 325 (1st Reprint): Revises provisions relating to sex offenders. (BDR 14-1028)

ASSEMBLYMAN LYNN STEWART (Assembly District No. 22):
Assembly Bill 325 puts restrictions with flexibility on sex offenders in dealing with their victims. More than 21 states have laws concerning sex offenders and their victims, restricting them in various ways. This bill tries to protect the victims to the ultimate measure and yet give flexibility to the Department of Public Safety so they are not hampered in their control of sex offenders. We have an amendment to this bill which addresses sex offenses between school personnel and students (Exhibit E, original is on file in the Research Library). We have expert witnesses to testify.

ASSEMBLYMAN TOM GRADY (Assembly District No. 38):
Mark Krueger, the Deputy District Attorney from Lyon County, is here and I will give up my seat for him. This bill was brought to the Assembly at their request.

MARK J. KRUEGER (Assistant District Attorney, Office of the District Attorney, Lyon County):
This bill came from a prior bill. The focus provides the same protections to 16- and 17-year-old students who are victims of sex-related crimes as the victims under 16 years of age receive. The protections include having an attendant when they testify and keeping their information confidential.

Another part of this bill requires that in consensual relationships between teachers and students over 16 and 17, which would otherwise be consensual relationships, these teachers would have to register as sex offenders. The offense is already in the statutory scheme. It is already a crime; it just did not have a registration provision.

The final provision of Exhibit E on page 15 adds the ability for the Division of Child and Family Services (DCFS) under NRS 432B to assess children who might be in a position in a home to need assistance. I was contacted by DCFS and they opposed that portion of the bill. I have no objection to withdrawing that provision.

CHAIR CARE:
Which section?

MR. KRUEGER:
It is section 14 on page 15. I do not know if they still oppose it. It does not require an affirmative of them to act; it just allows them to act if they feel it is necessary.

CHAIR CARE:
I received this proposed amendment last night and it was distributed to Committee members this morning, Exhibit E. Section 3, subsection 1, paragraph (p) of the amendment reads, "Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550." Let us say you have an older student who returns to college and you have two people of age.

MR. KRUEGER:
This does not affect people of age. It would only be used in those rare instances where a 16- or 17-year-old student taking college courses got into a relationship with a college professor.

CHAIR CARE:
What was the bill on the other side?

MR. KRUEGER:
It was A.B. 126.

ASSEMBLY BILL 126: Makes various changes to the provisions relating to certain sexual offenses. (BDR 14-69)

MARK WOODS (Deputy Chief, Division of Parole and Probation, Department of Public Safety):
The role of the Division of Parole and Probation in this bill is the practicality of supervising the offenders with the distance rule. While we agree with the 500- and 1,000-foot rule, in practicality, we are running into several problems. A prime example is when you have a school on one side of the freeway and the sex offender living on the other side of the freeway. By rule, they are within 1,000 feet, but the sex offender will have to climb over two fences and an eight-lane highway to get to children. If we stick to the 1,000-foot rule, there are few places in the metropolitan areas that a sex offender could live. Our concern is we would drive them underground. With the amendment presented, it is left to the discretion of the Division or the Chief on a case-by-case basis.

This will allow us to supervise these individuals without forcing them to break the rules or go underground and we start losing them.

CHAIR CARE:
Does the 1,000-foot rule fall within the purview of the permanent injunction issued by Judge James C. Mahan, U.S. District Court, Nevada?

MR. WOODS:
It does not go retroactive, and that is the permanent injunction. The future is the one that this would still fall under, the people who could be convicted of a crime today and in the future.

CHAIR CARE:
That injunction is broadly written. It cites two pieces of legislation that came out of the 2007 Session. I know the matter is on appeal. We have another bill that would create a standing interim committee to review all the statutes in place. I do not know if we are contemplating legislation here that may have been included in Judge Mahan's thinking when he issued the injunction.

MR. WOODS:
During that injunction, we had people living in a home for over 12 years. They would have been forced to sell their house and move. Those people did not have to because it would have made it retro to 1958. That was the group of offenders we were most concerned about. They were compliant.

We had one person who owned his house for 12 years and would have needed to move if that had passed. That has stopped. Our understanding is that in the future, if a bill makes law that has any kind of distance rule, we would like to have that flexibility because there is always going to be the problem of people moving closer. We dealt with a case recently where a person had lived in their house for a long time and a bus stop was built within 300 feet of the house. We would like to have some leeway on a case-by-case basis.

SENATOR WIENER:
Based on testimony, did DCFS have a concern with section 14 in the amendment?

MR. KRUEGER:
When this bill came up in the Assembly as A.B. 126, there was a concern presented to me by DCFS. I do not recall the exact nature of the concern, but we did not have a problem withdrawing the provision they opposed because we felt there were other important provisions we wanted to see get through. I do not know if they are still concerned. They did not testify at the last hearing.

SENATOR WIENER:
That was section 14?

MR. KRUEGER:
That was section 14, the provision of NRS 432B.

SENATOR WIENER:
Before we go to work session, could we find out if there are any objections by DCFS at this time?

DONNA COLEMAN:
I am a child advocate asking you to vote for A.B. 325. Twelve months ago, a Las Vegas policeman told me about a girl who was afraid to go to her family's home because her rapist had moved in next door. He knew what he was doing. The young woman was four years old when she was raped; she is now in her twenties. The young woman grew up in her grandmother's home, and now she must face this man taunting her and laughing at her when she visits. She must think twice about visiting her grandmother's home. Barbara Calwell, the young girl's grandmother, has lived in her home for 39 years and it is not feasible for her to move.

BARBARA CALWELL:
I would like the Committee to know that I must face this man everyday when I walk outside to get my newspaper or to get in my car. I live the ordeal all over again. When my granddaughter comes to my house, he laughs at her from his yard. When my daughter visited on Thanksgiving, he cussed her out. There is nothing I can do with this guy, but I am not about to move. Prior to moving, he knew I lived at this address. I am hoping something can be done so that he will have to leave.

TOM ROBERTS (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):
The victims of sexual assault have already gone through enough, and it would be horrible if they are revictimized. We support the victims of our community; anything we can do to prevent any future contact is helpful. We support the bill in its current format. I have not seen the amendment so I do not know what is involved, but we support the bill in its current form.

CHAIR CARE:
Amendment aside, the proposed bill deletes parole and probation officers assigned to the defendant and reads as Chief Parole and Probation Officer or as designee.

JASON FRIERSON (Office of the Public Defender, Clark County):
We do not oppose A.B. 325 in the way it came out. We opposed A.B. 126 in the Assembly, and we oppose the amendment to A.B. 325 because it adds to the sexual offender registration requirements. We are looking at consensual relationships albeit appropriate relationships currently treated as felonies under existing law that would require a lifetime registration as a felon. It is not appropriate to treat that type of relationship in the same manner as the traditional sex offender or sexual predator.

The definition in statute addresses both employees and volunteers. You have the potential for a 21-year-old lab assistant or volunteer at a university to have a 17-year-old girlfriend who is a student. And now, albeit already a felony in an inappropriate relationship because of the influence probabilities with that individual's position, we are talking about treating that situation as a lifetime sex offender situation. The true predators need to be treated as true predators and monitored the way they are under existing law.

To treat existing, consensual relationships because of that student/pupil situation as sex offenders is costly and inappropriate. Assembly Bill 126 had a fiscal impact because adding consensual individuals to the sexual offender list is a costly measure.

With respect to A.B. 126, NRS 200.364 is statutory sexual seduction which is a Category C felony and a sexual offense. Nevada Revised Statute 207.190 is the coercion statute. There is a sexual and a nonsexual coercion option if evidence shows a forced encounter. Nevada Revised Statute 201.540 is

referenced in the amendment, making it a Category B felony if the pupil is 14 or 15 years old and a Category C felony if the pupil is 16 or 17 years old. We can hardly imagine a scenario where statutory sexual seduction would not be charged in the appropriate manner which would have the sexual offender requirements.

Adding the sexual offender requirements in this bill is not necessary. It would encompass people not intended to be considered lifetime sex offenders. We do not oppose the other measures in the amendment. We do not oppose the attendant for court appearances or the pseudonym and protection requirements. We only oppose the sexual offender registration requirements.

CHAIR CARE:
Would you send an e-mail to staff identifying the sections of the amendment that are acceptable to you?

MR. FRIERSON:
I will.

LINDA J. EISSMANN (Committee Policy Analyst):
The fiscal note from the Department of Corrections is zero. Local government, the Division of Parole and Probation, the State Board of Parole Commissioners and the Records and Technology Division are all zero. They may be unable to assess the caseload increases. The actual numbers on the pages are zero.

SENATOR WIENER:
Does that reflect the original bill that is now the amendment?

MS. EISSMANN:
Yes.

ORRIN J. H. JOHNSON (Deputy Public Defender, Office of the Public Defender, Washoe County):
I did not see the amendment. We do not have any problem with the bill or some of the amended provisions, but we have issue with student relationships. As a matter of policy, once you start making everything a sex offense, nothing is a sex offense. The power of that label given to some of the most heinous offenders in our society becomes greatly diminished when people start thinking of streakers or a 17-year-old with a 21-year-old boyfriend as sex offenders. The

word loses all meaning. Let us keep the power of sex offender as being someone who is actually a sex offender and not have it used in this scenario.

REBECCA GASCA (American Civil Liberties Union of Nevada):
We echo the sentiments of Mr. Frierson and Mr. Johnson. The ACLU has been intimately involved with the *Nevada Revised Statutes* as they relate to sex offenses. Our litigation currently has a permanent injunction on the retroactivity of the laws. Before this amendment came out, we would have been neutral on this bill. Unfortunately, we did testify on those amendments in their original bill format on the other side, and our issues were the same as presented here.

Sex offense is a term that is and should be used very carefully by the State. This Committee knows the seriousness with which sex offenders are treated. You have heard bills that have tried to take away their voting rights. A case where an individual who is a volunteer at a school and happens to have a girlfriend or boyfriend being labeled a sex offender and subject to lifetime supervision is an overbroad interpretation and application of the law. We appreciate your heightened scrutiny to this amendment, and we hope you do not support it. We have no problem with the rest of the bill.

SENATOR WIENER:
Mr. Frierson, you were not completely negative on the amendment, only the part about the relationship between 21- and 17-year-olds. The ACLU does not like any part of it.

MS. GASCA:
It is a problem defining what could be a consensual relationship where the persons could be 21 and 17 years of age or 30 and 17 years of age. While it blurs the line and enters into a gray area, if it is a consensual relationship, those individuals should not be labeled sex offenders and be subject to sex offender application.

SENATOR WIENER:
For the record, there is nothing about the amendment that you would support?

MS. GASCA:
Correct.

MR. JOHNSON:
I have not had a chance to review this amendment thoroughly, so I do not want to say absolutely that I do not support it, but that probably is the case. I will let you know if it is not.

SENATOR WASHINGTON:
Are we working from proposed Amendment 4786, Exhibit E, or are you in disagreement with the bill?

MR. FRIERSON:
We are not opposed to this bill, but we are opposed to a portion of proposed Amendment 4786. Amendment 4786 attempts to incorporate provisions from A.B. 126 in a somewhat different form. We do not oppose the entire amendment, just portions that add this conduct to the sex offender registration list of offenses. The conduct is already treated as a felony. We do not oppose the protective measures or any other aspects of the proposed amendment, just the aspects of the sex offender registration.

SENATOR WASHINGTON:
Are you referring to section 2 that amends NRS 178.571 and the list of statutes that include NRS 200.5091 to 200.50995 or the language that made reference to section 3, subsection 1, paragraph (o) of the proposed amendment?

MR. FRIERSON:
I was only able to review this amendment a few minutes before speaking this morning. The sections we have issue with are sections 3, 4, 5, 6, 7 and 8.

SENATOR WASHINGTON:
Then you actually oppose the entire amendment.

MR. FRIERSON:
The amendment adds the ability for a witness to be protected by having an attendant in court. We do not oppose that measure. The amendment adds the ability for the name of the victim to not be published and to use a pseudonym. We do not oppose that measure. We oppose the measures that incorporate the registration requirements. This appears to be the bulk of the amendment because sexual offender requirements are mentioned in several different places.

MS. GASCA:
I do not want to leave anybody with any confusion. The ACLU does not have any problems with protections and having an attendant at a hearing. The sections that add in the relationships present concern.

SENATOR WASHINGTON:
May I ask Mr. Stewart the intent of the proposed amendment?

ASSEMBLYMAN STEWART:
Mr. Grady proposed the amendment. I will turn this over to the Deputy District Attorney from Lyon County.

MR. KRUEGER:
The intent of this amendment is to provide the same protections that the victims of sexual crimes under age 16 receive to those 16- and 17-year-olds in a relationship with a school employee or volunteer.

SENATOR WASHINGTON:
You are going after 16- and 17-year-olds who may be in a voluntary or consensual relationship, but because of the age difference may constitute statutory seduction.

MR. KRUEGER:
An actual provision in the crime section states those types of relationships are crimes because of a violation of trust. We are trying to say that except for that violation of trust, you would not have that type of crime, and they should be protected in the same manner as somebody who does not have the ability to consent.

SENATOR WASHINGTON:
I remember the original bill from Senator McGinness dealing with a situation from his district some years ago. This amendment would enhance particular statutes to protect individuals from perpetrators.

MR. KRUEGER:
That is correct. It is a two-part protection. One protection provides a pseudonym for the victim, who is usually known in a school setting, so that records are kept confidential. Because of the trust violation making it a crime, the second protection is the ability to have them register as sex offenders.

CHAIR CARE:
We will close the hearing on A.B. 325 and open the hearing on A.B. 474. Senator Wiener will take over as Chair.

ASSEMBLY BILL 474 (1st Reprint): Revises parole eligibility for certain offenders. (BDR 16-1127)

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):
This bill was brought by Assemblyman William Horne. Nathan Ring, legal extern for Assemblyman Horne and a staff member of the Legislative Counsel Bureau (LCB), will explain the bill, but he will not advocate for the bill.

NATHAN RING (Extern to Assemblyman Horne):
Since I am part of LCB staff, I take no position on A.B. 474. This was a bill introduced in the Assembly Committee on Corrections, Parole, and Probation. Assembly Bill 474 amends NRS 213.1215. The bill applies to those individuals under the age of 16 at the time of conviction who are sentenced to more than three years with the possibility of parole.

To be considered for parole under this bill, the inmate must meet several benchmarks. First, the inmate must serve the minimum term of their imprisonment. Second, the inmate must complete a general education, industrial or vocational program. Third, the inmate must not be identified as a member of a group that poses a security threat pursuant to the regulations of the Department of Corrections (DOC). Fourth, within the immediate preceding 24 months, the inmate must not commit a major violation of the regulations of the DOC or be housed in disciplinary segregation.

VICE CHAIR WIENER:
Are these requirements to be met together? Were these conditions vetted seriously in the Assembly?

MR. RING:
There were amendments made to this bill in its original form. There was work between Assemblyman Horne and several other parties.

VICE CHAIR WIENER:
And that related to the conditions of release?

MR. RING:
Yes, and the reason for the four conditions was laid out. Several constituents and inmates wrote to Assemblyman Horne explaining their situations. They were convicted as an adult when they were 15 years of age, completed programs, but they cannot get out until they are 70 or 75 years old.

SENATOR WASHINGTON:
If a person 16 years old or younger has been imprisoned for life with the possibility of parole, those crimes are either a Category A or B. They are heinous offenses. Some of them may be adjudicated to adult court to be convicted and sentenced to life in prison with the possibility of parole. This bill states that anybody who has been sentenced prior to the age of 16 who completes these mandatory release requirements may be eligible for parole after serving the minimum sentence. Is that correct?

MR. RING:
The bill provides that the minimum sentence must be met in addition to the other requirements.

SENATOR WASHINGTON:
In addition to?

MR. RING:
Yes. Meeting the minimum sentence is only one of the requirements.

SENATOR WASHINGTON:
You have to meet the minimum sentence and meet paragraphs (b), (c) and (d) of section 3, subsection 2 before you become eligible for parole.

MR. RING:
Yes.

ASSEMBLYMAN SEGERBLOM:
We looked at the prison population to see if there are people who have paid their price to society and should be released. We are punishing ourselves by keeping them in prison. Because of the age at which the crime happened or other circumstances, the inmate has indicated they could come back to society.

VICE CHAIR WIENER:
If they are under 16, they would have been adjudicated in the adult court to get into this system.

ASSEMBLYMAN SEGERBLOM:
Yes. They had to qualify as adults, but it is automatic for Category A and B felonies.

FLO JONES:
I am in favor of this bill with the provisions for 16 years. The minimum is 20 years. These folks will have spent quite a while in prison and hopefully accomplished things educationally and trained wisely so they can become productive people. Significant data shows the brain is not fully developed until you are much older. We have youngsters who do not have fully developed brains who may have committed horrible and heinous crimes. There must have been mitigating circumstances for them to receive a life sentence, otherwise the outcome would have been significantly different. This bill will stop some of the warehousing in our prisons. Many of the people being warehoused who are there for long periods of time are Category A and B offenders. Assembly Bill 474 provides an opportunity for prisoners to pay their debt to society and make a change in their lives.

VICE CHAIR WIENER:
We will close the hearing on A.B. 474 and open the hearing on A.B. 335.

ASSEMBLY BILL 335 (1st Reprint): Makes various changes relating to criminal gangs. (BDR 15-85)

ASSEMBLYWOMAN BONNIE PARNELL (Assembly District No. 40):
Assembly Bill 335 addresses the serious problem of criminal gang activity. Last spring, I mailed a questionnaire to my constituents asking what they wanted me to work on during this Legislative Session. I was alarmed to discover that public safety with an emphasis on gang activity was my community's No. 1 priority. I contacted Neil Rombardo, District Attorney of Carson City, and we began working on this bill. Mr. Rombardo, public defenders and representatives from the Office of the Attorney General present this amended version of the bill.

You have a mock-up before you (Exhibit F). Sections 1 and 2 of the original bill dealt with gang enhancement, but this amendment deletes those sections.

Section 3 provides that a building or place regularly and continuously used by members of a criminal gang to engage in or facilitate the commission of crimes constitutes a private nuisance. A private nuisance creates civil liability and allows any person whose property is injuriously affected to bring a civil action to abate the nuisance and recover damages.

This part of the bill is important to me. After sending out a postcard to my constituents, I received a phone call from an 80-year-old gentleman who lives in a mobile home park in Carson City. This park has caused great consternation for our sheriff and law enforcement. The older gentleman was being threatened, but the sheriff had limited recourse. This man had lived in this park for 40 years, and he no longer felt safe in his home.

It is time to address the issue. As I testified in the Assembly hearing, people were surprised this bill came from me. I am the teacher, and I chair the Assembly Committee on Education. I started working with kids when I was 16 years old. I have done everything in my adult life to give kids a chance and an opportunity to do the right thing. On the flip side, I understand that when people continue to make the wrong choices and make the decision to victimize others, we have to be as steadfast on that side of the issue as on the other. That is why I am passionate about the public nuisance part of A.B. 335.

Section 4 of the original bill addressed juvenile certification. Since we have a bill addressing the entire issue of juvenile certification, we deleted that section. Section 5 of the bill provides for criminal penalties for failing to remove the nuisance or allowing a nuisance to exist. Sections 6 and 7 provide for injunctions relating to nuisances.

There are two additional gang bills before you this Session. Senate Bill 142, sponsored by Senator McGinness, deals with gang recruitment.

SENATE BILL 142 (1st Reprint): Establishes the crime of criminal gang recruitment. (BDR 15-723)

Assembly Bill 154, sponsored by Assemblyman Harvey J. Munford, relates to the prevention of gang involvement.

ASSEMBLY BILL 154: Revises provisions governing the policies of school districts relating to criminal gang activity. (BDR 34-143)

Together, these bills comprehensively deal with the issue of criminal gang activity, an ever-increasing challenge to our law enforcement and community members.

NEIL A. ROMBARDO (Carson City District Attorney):
I support A.B. 335. I have worked with Assemblywoman Parnell since July 2008. Carson City has started the Gang Response Intervention, Prevention, and Suppression Program. Carson City is confronting its gang issue head on, and A.B. 335 gives us one more arrow to fight this problem. Carson City gangs have claimed territory, and the gangs terrorize those neighborhoods. We constantly arrest them on misdemeanor-type offenses, but they are released and go back to their ways. We need a law that allows us to enjoin these activities.

Only three states have successful gang injunctions. We have modeled this statute from a Texas statute which has been upheld as constitutional. California has gang injunctions in Los Angeles (LA). We worked with the LA City Attorney on creating this bill because they are the experts. The other state is Florida. It is time for Nevada to recognize this gang issue and pass this law so we can be on the cutting edge to stop gangs and protect our communities.

CHAIR CARE:
Section 6 would not apply cause of action against a governmental entity, so it goes without saying that in section 3 the building is privately owned, not a public building. Section 6, subsection 1, paragraph (a) of the mock-up, Exhibit F, reads, "A temporary or permanent injunction against any specific member of a criminal gang to enjoin his activity which is associated with the criminal gang ... ." We are not talking about seeking to enjoin criminal activity, just activity associated with a criminal gang, right? Could hanging out be considered?

MR. ROMBARDO:
It can be as simple as hanging out, but the courts said you have to show they are hanging out to further gang activity. It cannot be three guys sitting on the corner talking. It has to be three known gang members sitting on the corner either preparing or conducting criminal gang activity. You have to put together a case showing this is where they start their criminal lifestyle. This is where they plan on selling drugs.

CHAIR CARE:
Section 6, subsection 2, paragraph (a), subparagraph (1) of the mock-up states, "any money damages awarded in an action brought pursuant to this section must be: (a) Paid by, or collected from: (1) any assets of the criminal gang ... ." Since a criminal gang is not a legal entity, how can a gang have assets?

MR. ROMBARDO:
Our criminal gangs in Carson City share firearms, so that would be something we would want to take from them. Our gangs are not well-funded; we have one gang sharing four guns. Other assets we would take would be drug money and shared vehicles.

ASSEMBLYWOMAN PARNELL:
I have been involved with Assemblyman Munford's bill, and I heard Senator McGinness's presentation on his gang bill in the Assembly Committee on Judiciary. When we hear the word "gang," we relate it to a group of people. Somebody during Senator McGinness's presentation talked about a gang as a group of people who may belong to the Rotary Club. We become concerned when we consider legislation identifying a group of people. I feel comfortable with this bill because the word gang is always preceded by the word criminal. There has to be criminal action involved with that group of people.

SENATOR WIENER:
As an author, I have written books on youth gangs. In my book titled *Gang Free, Friendship Choices for Today's Youth*, I discovered that gang members have much in common: uniforms, language and a social structure. I appreciate your bringing this measure. My one concern is the gathering part of this bill. I know it would be the burden of the district attorney or prosecutor to prove a gathering of a group of people. I have concern that we might be getting in the way of innocent young people gathering in a group. There are all kinds of groups, and they do not all look like gang members. You can find gangs in very wealthy neighborhoods where they may become ideological gangs or hate groups. These gangs are tougher because there is no economy driving them. There are many steps to take to ensure we are not intruding upon the gathering of those who are not producing a criminal outcome.

LUCY FLORES:
I support this measure because studies and data show these nuisance and gang injunction statutes are effective. A major study from the University of California,

Irvine, and the University of Southern California showed that in one particular injunction, there was an 8-percent decrease in intimidation by gang members, less visibility of gangs and decreased fear of community members about being confronted by gang members. I have researched gang injunctions, and they appear to be effective.

To address Senator Wiener's concerns, one of the major components of a gang injunction is that word travels fast in small communities. Injunctions do not enjoin every gang member in an entire city; the injunctions have to be controlled. There is a fair amount of burden to be proven. Data shows the injunction has to be in a small geographical area in order to be effective. An injunction is big news in a community. When gang members hear about it, they are discouraged to hang out. While hanging out is not a criminal activity, this is where criminal behavior starts. Injunctions discourage the gang from meeting up with friends on a street corner and getting into trouble.

I had a dysfunctional home life. By the age of 12, I was associated with gangs. By age 14, I participated in criminal gang activity: stealing, minor theft and generally getting in trouble. I was on juvenile parole by the age of 15. I wonder what could have been different for me if this bill had been in place when I was growing up. Perhaps I would not have done some of the things I did if this bill had existed when I was a known gang member.

I was a runaway at age 14. I hung out with my gang member friends in gang houses. For whatever reason, my best friend and I ventured into enemy territory. Had I known we were not supposed to be there, I would not have witnessed my friend's stabbing by the enemy gang. Assembly Bill 335 can prevent these types of things from happening to other kids. We have an issue when these kids repeatedly stay in gangs and become recidivist adult offenders. We are trying to do what we can to address the problem as it exists now, but we also must try to prevent these things from happening in the future. I have seen firsthand what gangs do to communities and families. I urge the Committee to consider and pass this bill.

BRETT KANDT (Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General):
We support this bill with the deletions of sections 1 and 2 as requested by the primary sponsor. I submitted correspondence in support of the bill (Exhibit G).

MR. FRIERSON:
This bill in its current form with the proposed amendment reflects a great deal of collaboration and cooperation amongst a great number of interested parties: the Attorney General, the district attorneys, members of the Defense Bar, Mr. Rombardo, Ms. Flores and Assemblywoman Parnell. This bill can move forward and provide the State with some options, but there are concerns. I have spoken with several organizations about the breadth of such injunctions and declarations of nuisances. Those will have to be addressed on an individual basis. It will be the individual injunctions in the individual locations that are subject to scrutiny.

I was delighted to hear Mr. Rombardo clarify that this bill is not designed to find kids hanging out but to address certain conduct. The bill does not intend to target young people of color on a corner in a park. That was a concern of some of the organizations. The deletion of sections 1 and 2 relieve a majority of the concerns. The injunction and nuisance statutes give law enforcement tools to go forward. To address the problem in an effective and legal way, those tools will have to be used in the way described by the bill's sponsor and Mr. Rombardo. We support the measure in its current form with the amendment.

SENATOR WIENER:
Assemblywoman Parnell made a reference to private nuisance and public nuisance. Line 39 on page 3 of the amendment references nuisance, and line 36 on page 7 references public nuisance. Do we need clarity, or is it appropriate the way it is written in each place?

MR. FRIERSON:
That language is fine. In discussing these measures, we looked at California which deals with it in a general nuisance way. The sponsor's intent of this bill was to clarify the ability of the prosecutor and/or city attorney to create ordinances to adjust as gangs adjust and deal with the problems as they arise. I do not know if they can get any more specific in the legislation because it is going to be a case-by-case basis.

SENATOR WIENER:
Page 7, section 7, line 36 references public nuisance. Should it read nuisance? I want to be consistent.

MR. FRIERSON:
From the perspective of the Defense Bar, I do not think we have a preference.

MR. ROMBARDO:
The bill creates two nuisance actions. It creates a private nuisance action for a homeowner who lives next to a gang house. You would have the right to sue that homeowner as a private nuisance as stated in sections 3 and 5. Sections 6 and 7 allow for public nuisances. Section 6 allows the county to create an ordinance, and section 7 allows the city to create an ordinance.

MR. JOHNSON:
I want to thank Assemblywoman Parnell for going out of her way to bring us to the table to address our concerns.

CHAIR CARE:
Mr. Bateman, you are okay with the bill, but you did not want to testify?

MR. BATEMAN:
Yes.

MR. ROBERTS:
We support A.B. 335 in its current amended form. We have 484 gangs in our jurisdiction or 10,440 documented gang members. Experts say your gang population is double the documented number. We cannot arrest our way out of the gang situation. One of our primary goals is to prevent, reduce and disrupt crime in our neighborhoods. This bill reduces and disrupts gang activity. It alleviates incarceration, court time and jail sentences and gives us a tool to disrupt these folks and steer them in the right direction.

TONJA BROWN:
I am for this bill, but it is not complete. Section 6, subsection 1, paragraph (b), subparagraph (2) says, "The owner of a building ... ." I have a concern. I have friends who have rented a building for over 20 years in an area of Carson City known for its gang activity. The owner of the building is in her 90s. The bill should read the owner, renter or leaser of the building. The property was recently broken into, and I asked the renters of the building if they were going to contact the owner. They said they would take care of things themselves because the owner is too old and they did not want to cause her stress. Maybe

there should be something in the bill to protect or notify the owner by giving the renters permission to take care of any problems. Would that work?

CHAIR CARE:
I suggest you bring it up with the sponsor of the bill. I do not know if that is necessary.

MS. BROWN:
Thank you.

MS. GASCA:
I want to thank Assemblywoman Parnell for taking out the beginning sections of the bill that addressed the criminal activity and the provisions that would allow enhancement of penalties based on prior misdemeanor records. Another bill being considered by this Legislature would enhance judicial discretion and take away the stacking of crimes to create a larger penalty which this bill would have done. This Legislature is realizing the importance of taking individual cases on a case-by-case basis and considering the merits of individuals and their prior records. The beginning of this bill would have shoehorned a person's record based on a one-size-fits-all treatment.

We are concerned that the proposed bill might disproportionately affect racial and ethnic minorities across the State in addition to affecting their First Amendment and freedom of movement rights.

Earlier testimony stated that gang injunctions have shown to decrease violence. A recent study released in 2007 by the Justice Policy Institute argued the billions of dollars spent on these injunctions across the Nation have failed to promote public safety and are counterproductive. Media, law enforcement and anecdotal evidence may say otherwise, but there is no scientific backing to these claims.

For about 15 years, the ACLU has been involved in the State of California in litigating civil and gang injunctions because of the implications they have on racial minorities and First Amendment rights of association. Our organization is uniquely aware of the problems that these types of bills and laws present. I realize for Texas this is a new and highly contentious arena. The local jurisdictions responsible for implementing these types of policies most likely would have a fiscal impact. Not only would they have to carefully craft these

injunctions, but history has shown they are subject to litigation. There are several examples of these injunctions where an individual who went to a job fair in a neighborhood under an injunction was arrested. Individuals subject to these injunctions have not necessarily been found by a court to be members of a gang but rather identified by law enforcement as being associated with this gang activity. Heightened scrutiny should be taken with this type of bill.

CHAIR CARE:
Mr. Rombardo, you have to file a complaint to obtain the injunction. Addressing Ms. Gasca's point, is there a way to name specific gang members as opposed to just the name of the gang?

MR. ROMBARDO:
The language requires we name the gang members and the gang. We are enjoining specific members and the gang to which they belong. The other three states list the name of the gang and the names of the gang members in the injunction and the actual criminal activity. You do not have a right to commit criminal activity. There is no freedom being taken away.

CHAIR CARE:
Ms. Gasca, please send me a memo on your freedom of association concerns for work session.

MS. GASCA:
Thank you. We will address some of the comments made earlier about how difficult it would be for enforcement to know whether individuals on a street corner are chatting about dinner or planning criminal activity.

CHAIR CARE:
We will close the hearing on A.B. 335 and open the hearing on A.B. 204.

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

MS. EISSMANN:
Not much has changed since we last considered A.B. 204, but Assemblywoman Spiegel did provide subsequent comments from Alan Crandall with one of the divisions of Mutual of Omaha Bank. His comments are included in your work session documents (Exhibit H, original is on file in the Research

Library). You asked staff to prepare a table itemizing and summarizing the various common-interest community bills. A version is in your work session documents, Exhibit H.

CHAIR CARE:
Section 1 remains the same. One thing that bothers me about section 2 is the duty of the association to enforce the liens, but I understand the argument with the economy and the high rate of delinquencies not only to mortgage payments but monthly assessments. Bill Uffelman, speaking for the Nevada Bankers Association, broke it down to a 210-day scheme that went into the current law of six months. Even though you asked for two years, I looked at nine months, thinking the association has a duty to move on these delinquencies.

SENATOR COPENING:
Having served as president of a large homeowners association (HOA) for three years, I will tell you that HOAs can get strapped in their budgets. Today, these community associations are experiencing foreclosures that can take up to two years, and somebody has to pay the cost. Members of the association maintain those properties through special assessments. I am in favor of the bill with Assemblywoman Spiegel's one amendment because it is already difficult for these associations to keep up with the presence of their communities due to foreclosures.

CHAIR CARE:
So you would take the amendment as offered by Assemblywoman Spiegel?

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED A.B. 204.
>
> SENATOR WIENER SECONDED THE MOTION.

CHAIR CARE:
Is there any discussion on the motion?

SENATOR WASHINGTON:
What if members of the association cannot afford the additional assessment to maintain the upkeep of a property in foreclosure?

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 21):
Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home. I carefully put this bill together to make sure it did not include any assessments for penalties, fines or late fees. The bill covers the basic monies the association uses to build its regular budgets. Additionally, all boards have the ability to waive any and all assessments for homeowners who come to them. I am on the board of the Green Valley Ranch Community Association, and we routinely have community members ask us to work with them to reduce or waive fees for them while they are going through economic hardships. We may put them on a payment plan. We and other boards are happy to work with our homeowners because we want them to have a good stable community, and we want to look after the overall association. Nobody will be using this bill to penalize. It helps the community remain financially stable and able to meet its obligations.

CHAIR CARE:
I do not have a problem with the bill, but I oppose the motion because I am more comfortable with nine months.

THE MOTION FAILED. (SENATORS AMODEI, CARE, McGINNESS AND WASHINGTON VOTED NO.)

* * * * *

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED A.B. 204 BY CHANGING SIX MONTHS TO NINE MONTHS IN SECTION 2 AND MAKING THAT NUMBER CONSISTENT IN THE BILL.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
Assemblywoman Spiegel, your House will have the opportunity to concur with what we just did, assuming this comes out of the Senate, or you may find the vote goes to conference committee where we can negotiate. The point is, you get a bill out of the Committee.

Let me go to A.B. 179.

ASSEMBLY BILL 179 (1st Reprint): Revises provisions governing postconviction genetic marker analysis. (BDR 14-869)

MS. EISSMANN:
Assembly Bill 179 is Assemblyman William Horne's bill and was heard on May 6. We have not taken action on it. There was no opposition. An amendment from Assemblyman Munford was offered to allow a petitioner to have a genetic marker test performed at his own expense if the court denied his petition. However, Assemblyman Horne has requested the Committee process the bill without the amendment.

CHAIR CARE:
We are clear the sponsor of the bill did not want the amendment.

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED A.B. 179 WITH ASSEMBLYMAN MUNFORD'S AMENDMENT.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CARE AND McGINNESS VOTED NO.)

* * * * *

CHAIR CARE:
We will open the hearing on A.B. 233.

ASSEMBLY BILL 233 (1st Reprint): Makes various changes concerning scrap metal. (BDR 54-53)

CHAIR CARE:
The sponsor of the bill was willing to delete section 7.5 of the bill, and Senator Amodei offered an amendment. I know Senator Wiener had some concerns about the personal identifying information.

SENATOR WIENER:
I am concerned that these scrap metal or junk companies are required to collect a lot of information that comprises the definition of personal identifiers and puts the seller at risk. This information could be sold from $14 to $70 and put their identities at risk for a long time. Counsel confirmed these are data collectors already mandated by statutes to provide protection of the information. I have talked to representatives from Metro to work in the interim to determine what other kinds of data collectors are out there to ensure they know the level of scrutiny and protection they have to offer people who are mandated to provide very personal information in order to transact the business. I am going to work with law enforcement to ensure we can enforce what is already statute.

CHAIR CARE:
There was a time in Nevada where you could decipher a social security number off a driver's license. That is not the case anymore.

> SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED A.B. 233 WITH THE DELETION OF SECTION 7.5 AND THE INSERTION OF THE APPROPRIATE LEGAL STATEMENT THAT A VIOLATION OF THIS SECTION IS A MISDEMEANOR.
>
> SENATOR COPENING SECONDED THE MOTION.

CHAIR CARE:
Is there any discussion on the motion?

SENATOR WASHINGTON:
Does that mean the second and third offense will not be moved to a Category E felony? It is now a misdemeanor?

SENATOR AMODEI:
That is correct. If it is passed this way, it would be up to the prosecutor to determine what they wanted to argue for sentencing, either negotiations or after conviction. There is no second or third ramp-up. You have the misdemeanor upper and lower limits that govern for a conviction or a plea.

> THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
We will open the hearing on A.B. 88.

ASSEMBLY BILL 88 (2nd Reprint): Establishes a civil remedy for a person who was a victim of a sexual offense which was used to promote child pornography. (BDR 15-267)

ALLEN LICHTENSTEIN (American Civil Liberties Union of Nevada):
As a lawyer, I find that this bill creates concern. The purpose of the bill is to allow victims of child pornography to have a civil cause of action against those who are involved in the manufacture or distribution and even the possession of child pornography. The biggest problem of the bill is in section 1, subsection 5 which states, "An action may be brought pursuant to this section regardless of whether any person has been prosecuted or convicted of a sexual offense involving the victim." It is problematic because section 1, subsection 1 defines this as predicated on certain sexual offenses. It reads, "Any person who, while a minor, was a victim of a sexual offense of which any depiction of sexual conduct of such offense was used to promote child pornography ... ." Sexual offense in this bill is defined in section 1, subsection 6, paragraph (b), "'Sexual offense' means a violation of NRS 200.366 or 201.230."

Nevada Revised Statute 200.366 is sexual assault. It requires sexual penetration of some sort by a person who is unwilling or, in the case of children, incompetent to resist. Nevada Revised Statute 201.230 is lewdness with a minor under the age of 14. That is nonpenetration, but it also states the sexual contact has to be done for the sexual arousal of either the child or the perpetrator. These are elements of those particular criminal statutes. In order to prove up a case, each element has to be proven. These elements I mentioned are intent elements, mental state elements, even situational elements of the perpetrator of the act itself which cannot, in any case, be proved by a picture five years down the road. You cannot get a picture of a child in a sexual situation and assume this was a sexual assault without the criminal case being proved up. That particular language does not follow. The pieces do not fit together because without any hearing or case against the perpetrator, there is no way to determine that person's mental state and whether it fits those statutes.

The bill becomes strange when it says in section 1, subsection 1, " ... of which any depiction of sexual conduct of such offense was used to promote child

pornography ... .” Child pornography is defined in NRS 200.710 to 200.730. As written, when it says depiction, it does not say a picture or visual depiction which is what we think of in terms of what the statute says is child pornography. It is a depiction, perhaps even a written depiction to promote child pornography.

Child pornography has a specific meaning within the statute in NRS 200.700. In section 2, subsection 2, “’Promote’ means to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.” As written, the depiction of a real child rape used to inspire someone to make child pornography using another kid has the ability to have the first kid sue somebody who has a copy of that particular movie. I am sure that is not the intent, but that is what the language says. The problem is using criminal statutes to define a civil action without having to go through the process necessary to prove up a criminal case. This could be remedied easily and constitutionally by changing this to a situation where someone who is found guilty of child pornography can be sued for either possessing or manufacturing by the child in that pornography. Then there would be no question of somebody else’s intent or some other crime that does not fit into the situation of the pictorial child pornography. As it is written now, it is in the absence of any kind of criminal case. It would be impossible to prove, and defense lawyers would have a field day trying to defend against this.

CHAIR CARE:
Do you have any reservations about the underlying premise of section 1 providing a private cause of action for a victim under these circumstances, whether you implicate definitions under criminal statutes or just the underlying idea that a victim can sue here?

MR. LICHTENSTEIN:
That is a compound question. Whether it involves criminal statutes makes a lot of difference because child pornography is a criminal matter. There will always be a problem when you have someone acquitted on a criminal child pornography charge when one jury says the offense is not child pornography and a different jury says it is child pornography. That is problematic when you have a civil jury defining a crime. In the situation where criminal activity has been proved, do we have a problem with a private cause of action based on that? No, we do not.

CHAIR CARE:
How is that different than the acquittal of O.J. Simpson and the wrongful death judgment against him? I understand there were different standards and proponents of the evidence beyond a reasonable doubt, but the facts were the same.

MR. LICHTENSTEIN:
Same facts, but the civil case was not predicated on the language and the statute itself which is the criminal statute. Child pornography is a criminal statute. Anything that is not child pornography under that is constitutionally protected. There is no such thing as civil child pornography, but there is such a thing as civil wrongful death. O.J. Simpson was not convicted on the criminal matters but on the civil matters, which were totally and wholly separate; he was found liable under those tort claims. There is no equivalent tort of child pornography anymore than there is a tort of obscenity. These exceptions are criminalized to what otherwise would be protected speech because they involve children. For material which is presumptively protected, unless it is shown to be child pornography, you will be dealing with different standards for the same thing, whereas wrongful death and murder are two different standards and two different actions altogether, even though the facts are related.

SENATOR WIENER:
Would this bill create the civil cause of action for a tort in child pornography as we relate to this language?

MR. LICHTENSTEIN:
I do not think it would for a few reasons. One reason is it refers to child pornography as stated in the criminal law, but in terms of constitutional protection, the line is not drawn whether it is criminal or civil. The material is either constitutionally protected or not constitutionally protected. The standards and scrutiny are rigid. You cannot have criminal and civil child pornography like you do for wrongful death because constitutional problems would incur.

CHAIR CARE:
We had a thorough hashing of the proposed amendment. Your concern is with section 1 as currently drafted.

MR. LICHTENSTEIN:
That is correct.

KEITH G. MUNRO (Assistant Attorney General, Office of the Attorney General):
Assembly Bill 88 was the first bill heard by the Assembly Committee on Judiciary on the first day of session. This is the first we have heard of it. We find ourselves in an enviable situation to hear Mr. Lichtenstein say section 1 is a concept he supports. We relied upon the drafting of LCB Legal, and they did a good job. That type of conduct question with respect to the criminal statutes would be something you have to prove up in the civil case. Nevertheless, Mr. Lichtenstein wants to come up with language so he can protect the concept he supports. We would be willing to listen to his suggested language.

MR. LICHTENSTEIN:
I am not sure what I was hearing. You asked whether we would have a problem and feel there is a constitutional issue if there is a civil cause of action. With caveat, I said there are no constitutional issues as far as we know.

CHAIR CARE:
You heard testimony that this was the first bill heard by the Assembly Committee on Judiciary. From that perspective, this comes late. Nonetheless, it is an important issue. If you have language you would like to circulate, we will look at it. This will go on work session next week.

We will close the hearing on A.B. 88 and open the hearing on A.B. 380.

ASSEMBLY BILL 380 (1st Reprint): Makes various changes relating to the sexual exploitation of children. (BDR 15-727)

ASSEMBLYMAN JOHN HAMBRICK (Assembly District No. 2):
Assembly Bill 380 started to form many years ago. I have been involved with youth issues for many years. Child prostitution and the trafficking of youngsters is a scourge that people do not like to talk about. This bill comes into play after an individual has been convicted of the crime of trafficking. Section 2 opens the possibility of freezing and forfeiting assets derived from trafficking. There is a $100,000 level of punishment if the victim is over the age of 14 at the time of the occurrence. But the level of punishment is significantly higher if the youngster was under the age of 14 at the time of occurrence. I have a short video (Exhibit I, original is on file in the Research Library).

Three domestic minor sex-trafficking victims were interviewed in Clark County. They said they were sold 10 to 15 times a night, 6 days a week over an 18-month period. If you extrapolate those numbers of the 207 minors arrested, there would have been between 646,000 and 970,000 sex acts in that 18-month period. If you figure $20 to $100 for one act, we are talking significant amounts of money. That is why you see potentially high penalties in the bill. The Clark County vice unit has gone into trafficking houses on their arrest and found up to $500,000 in cash. Pimps are used to going to jail; it is the cost of doing business. We need to hit them in their pocketbooks. We are never going to stop this scourge, but let us send a message that this will not be tolerated. The best way is to start taking their monies.

KAREN HUGHES (Las Vegas Metropolitan Police Department):
Our vice unit is one of the largest in the country. Carson City, Reno and some of the larger cities in Nevada are dealing with the same issues. I have two full-time investigative teams. One team deals with nothing but child pandering cases and has been in existence since 1994. We are the model agency throughout the Nation for dealing with child exploitation, especially when it comes to sex trafficking of minors. This dedicated team rescues these kids out of a life of prostitution. The teams work with William O. Voy, District Judge, Department A, Family Division, Eighth Judicial District, Clark County, the Public Defender's Office and the District Attorney's Office to find venues for these kids to get out of the life of prostitution. Clark County is limited in its resources to make these kids whole.

I congratulate Assemblyman Hambrick for bringing this bill forward. The assets he talks about are real. I have an adult pandering team that deals with adult victims. Sometimes the victims are only a few months older than our children. We have seen 18-, 19- and 20-year-old girls recruited and enslaved into a life of prostitution by men making enormous monies off these women's backs. In February, we had a case where a particular offender had $389,320 cash in lock boxes recovered from his vehicles and home. Those assets were seized along with his titled luxury vehicles, luxury jewelry and firearms. Those are the four key factors in any pandering case. Those proceeds of the illicit acts of prostituting both children and women into a life of prostitution are real.

These women were being trafficked out of a strip club in Las Vegas. We have victims we have not even identified. Last year, my unit identified 150 victims and 157 the year before. This bill hurts the bad guys in their pockets. Our

pandering statutes are doing an adequate job. We are working with the District Attorney's Office to get strong penalties for the pimps and find venues where we can get treatment for this special population of children to prevent them from going back into this "game," as it is termed. The resources from those proceeds will go to preventative measures to get these kids the help they need. We will continue to target the prolific offenders who make a living out of exploiting our youth. My agency and I support A.B. 380, and it is a long time coming.

DR. LOIS LEE (President, Children of the Night):
I am the founder of Children of the Night, the most comprehensive social service program for victims of child prostitution between the ages of 11 and 17. We have a 24-bed home in Los Angeles which features an on-site school. We have served over 10,000 children in the last 30 years. New York has nine beds for children and young women, ages 16 to 21. Atlanta has six beds operated by the Department of Probation, and that is it within the United States.

Nevada is embarrassingly lacking programs for girls. Nevada is the only state in the Union that does not have a Young Women's Christian Association. Prostitution has risen to be the most popular characteristic of Las Vegas, even greater than gambling. There were only four books in the library of Clark County Juvenile Detention Center for girls. Children of the Night donated two large boxes of teenage novels and videos for teenage girls. For $555, the library could be stacked with GED preparation books, SAT preparation books and directories of colleges (Exhibit J). We need to generate revenue from pimps or from whatever means possible in order to show these girls there are alternatives to prostitution. Nearly half the children arrested in Nevada for prostitution are not even from Nevada. Nevada has become the new Hollywood where pimps bring girls to work them as prostitutes. I urge you to pass this bill.

JOSEPH MURRIN:
I will read from my prepared testimony (Exhibit K).

STEPHANIE PARKER (Executive Director, Nevada Child Seekers):
I want to thank Assemblyman Hambrick for bringing this issue to light. Last year, we assisted over 350 families with missing children, primarily runaway children of whom a great percentage were involved in prostitution. Unfortunately, we do not have any local facilities for children to receive treatment. These places are out of state and most of these families do not have

any insurance. This bill would assist in providing those services to help local children not fall into this situation again.

TERRI MILLER:
I have been an advocate against the exploitation of children for many years in Nevada. My family has been touched by sex trafficking. My niece was trafficked from Las Vegas to Japan. She was led to believe she would be a model in the fashion industry, but modeling was not what was intended for her. Fortunately, she escaped, made contact with her family and was brought home after two months.

This legislation is important to me both as an aunt, mother and advocate for the State of Nevada. Child prostitution is a greed-driven crime. Panderers make money off the backs of these women and children. Recent testimony on a controversial bill by a leader in the legalized prostitution industry stated that 10,000 women and girls are brought into Las Vegas on any given weekend for the purpose of selling their young bodies to men. If you take those 10,000 girls and use the $1,000 a night quota shown earlier in the video, these panderers are making up to $30 million per weekend. Because this is a greed-driven crime, the thing that hurts them most is to take their assets and their money and put them away for a long time. This bill is a viable solution, and I ask you to pass it.

CHAIR CARE:
We are going to close the hearing on A.B. 380 and will reopen it at a later date.

SENATOR WASHINGTON:
I talked with Assemblyman Hambrick about an amendment. If we cannot provide an amendment, I hope you will pick up the mantle and see that future Legislators will create an honest ombudsman at the state level who will deal with trafficking and coordinate efforts in the prevention, treatment, rescue and conviction of those perpetrators by using confiscated fines and monies to create an ongoing collaborative statewide effort. If we cannot do it this Session, I hope you will pick up the mantle and see this through in my absence.

ASSEMBLYMAN HAMBRICK:
Should my district return me to the lower house, you have my word.

CHAIR CARE:
Members of the Senate Committee on Judiciary, there being no further business, we are adjourned at 11:16 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: