MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 13, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:39 a.m. on Wednesday, May 13, 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 James Ohrenschall, Assembly District No. 12
Assemblywoman Peggy Pierce, Assembly District No. 3
Assemblyman Lynn Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Ernest K. Nielsen, Senior Law Project, Washoe County Senior Services
Lora E. Myles, Carson and Rural Elder Law Program
Frank Ellis, III, Chair, Article 6 Commission
Charles J. Short, Article 6 Commission

Allen Lichtenstein, American Civil Liberties Union of Nevada
Greg Ferraro, Chair, Commission on Judicial Discipline
David F. Sarnowski, General Counsel and Executive Director, Commission on Judicial Discipline; Standing Committee on Judicial Ethics and Election Practices
Ben Graham, Administrative Office of the Courts
Jason Frierson, Office of the Public Defender, Clark County
Kristin Erickson, Nevada District Attorneys Association
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
Orrin J. H. Johnson, Office of the Public Defender, Washoe County
Brett Kandt, Office of the Attorney General
Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services
Samuel G. Bateman, Nevada District Attorneys Association
Connie S. Bisbee, M.S., Chair, State Board of Parole Commissioners

CHAIR CARE:
I will open the hearing on Assembly Bill (A.B.) 320.

ASSEMBLY BILL 320 (1st Reprint): Revises provisions relating to guardianships. (BDR 13-906)

ASSEMBLYWOMAN PEGGY PIERCE (Assembly District No. 3):
I am the proud sponsor of A.B. 320 which enhances the process for proposed ward and guardianship cases. I was introduced to this subject by Ernie Nielsen of the Washoe County Senior Law Project. Mr. Nielsen told me of a case where a senior woke up one day and discovered, with no knowledge of how this happened, she had become a ward of the court. She had not been consulted, she had not be warned, it happened.

Assembly Bill 320 is an effort to ensure this does not happen to any of my many senior constituents or again to anyone of any age in Nevada. I would like to turn this over to the professional, Ernie Nielsen. He can take you through the bill and the amendment. Mr. Nielsen has been working hard with all of the interested parties. There have been many e-mails; there were amendments on the other side, so I feel certain we have consensus. I will let him present the bill in its final form.

CHAIR CARE:
That would be fine.

ERNEST K. NIELSEN (Senior Law Project, Washoe County Senior Services):
We provide representation to seniors in a wide range of areas and are often appointed as the attorney for people proposed to be wards. This bill is a due process bill and addresses four basic issues.

First, A.B. 320 requires a level of assessment done before a judge issues a final order. Second, because some wards can be excused from appearing in court, it means the court and the ward may never have any interaction. It provides a mechanism that enables the court to communicate to the ward who may not be present. That person has a right to an attorney and other details about the guardianship. As originally conceived, the bill required a hearing and permission from the court before a ward could be moved to a locked facility. That has been watered down.

Page 4, section 1, subsection 3, lines 33 through 40 deal with the required assessment. This assessment must happen before the judge makes a final decision. This is important so the judge has sufficient information to make rational decisions about whether a guardianship is necessary or what limitations should be placed on the guardianship.

Page 4, section 2, deals with the ward's right to an attorney. Statute states if a proposed ward wants an attorney, the judge must appoint an attorney. The new language in the first reprint requires the judge to advise the ward at the first hearing that they have the right to counsel. In cases where the ward is not present, the mechanism for excusing a ward's presence will now be the vehicle for communicating the information about the right to an attorney and will also include information about whether that ward wants an attorney. We have bridged the gap for proposed wards who never appear in court and never have interaction with the court. This is an effort to enable the ward to exercise their due process rights.

Page 5, section 3 details what the certificate to excuse the presence of a ward needs to address. It includes language that requires the person signing the certificate to certify they have informed the proposed ward of their rights as well as information from the proposed ward to be communicated back to the court. The person signing the certificate indicates any limitations they believe

exist within the ward's capacity to understand the dialogue. This cures the problem where some wards never have any interaction with the court.

Section 4 on page 6 deals with the guardian's reports to the court. Currently, the guardian of the person is required to file a yearly report to the court about the ward's condition. Some cases are summary in nature and therefore not an annual hearing. This report is the only line of communication between the condition of the ward and the court; this is the only way the court can evaluate the guardianship.

The first reprint includes the Aging Services Division, Department of Health and Human Services, in that process as a vehicle to help communicate the ward's reaction to the move to a residential, locked facility. In section 4, we have removed the Aging Services Division involvement because of the fiscal note they proposed. In the new language, when a ward is moved to a locked facility, the guardian must file a report with the court with an order from the physician or other authorized person authorizing this move to a locked facility. The court determines the format for the report. For example, in Washoe County, if the court wants it to come directly to the court, they can create the report form in the style of a request for submission.

Page 7, section 5 adds language requiring the court's permission to move a ward to a locked facility unless certain things happen. Subsection 6 outlines the ways a guardian can avoid coming to court to obtain permission to move a ward to a locked facility.

Page 3 of the proposed amendment (Exhibit C) adjusts this language to remove the Aging Services Division. I had dialogue with Deborah E. Schumacher, District Judge, Department 5, Family Division, Second Judicial District, who indicated there was an inadvertent inclusion of juvenile guardianships in this bill. We have taken out those references and made it clear this bill is focused on adult guardianships and not juvenile guardianships. There are a number of places where the word "adult ward" is put in its place. A section on page 4 of Exhibit C makes specific references to "adult wards" so as to distinguish from "juvenile guardianships."

On page 3, line 34 and page 4, line 3 of Exhibit C, we have made changes that recognize the petitioner is not the proposed guardian but is filing a petition requesting somebody else become the guardian. Care is taken to not include

things where the mechanism used is to track where the person might be or to help the person perform activities of daily living. Those things do not pertain to locked facilities. This definition will only apply to this particular section. It will not affect anything in chapter 449 of the *Nevada Revised Statutes* (NRS). Lastly, it defines residential long-term care secured facility; there is clarity in what we are talking about.

On the Assembly side, there was discussion between interest groups about this bill. This first reprint reads close to the consensus on the Assembly side. The exceptions are the minor changes I made in the proposed amendment, Exhibit C.

CHAIR CARE:
Nobody signed up in opposition to the bill. I received an e-mail from Ms. Sala about the fiscal note, and that has now been removed from the bill.

LORA E. MYLES (Carson and Rural Elder Law Program):
We have consulted extensively with Mr. Nielsen on this bill. We had reservations about it in the beginning, but with the proposed amendment, it is a workable bill. We can work with the changes in the statutes.

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 320.
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> SENATOR PARKS SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
I will open the hearing on A.B. 496. Mr. Ellis, I asked you yesterday if you could give us a brief history on how the bill came before us. I do not know if there were additional comments you wanted to make.

ASSEMBLY BILL 496 (1st Reprint): Revises provisions governing judicial discipline. (BDR 1-1110)

FRANK ELLIS, III (Chair, Article 6 Commission):
No. I gave you a history (Exhibit D, original is on file in the Research Library) of how we got to this point. It appears we have consensus on this bill as currently written with one amendment to section 13. That is set forth in the outline passed out yesterday. It summarizes the areas of change dealing with four goals when we started this process: transparency, timeliness, clarifying and making the procedure more effective, and ensuring fairness to the judge, judges or justices.

If you look at page 2 of that summary, section 13 shows an amendment that would be the provision of legislation done as a compromise to timing issues required with this amendment and statistical information concerning the age of pending cases included in the annual, and some instances, the biennial report.

As I said yesterday, I would be happy to go through this summary, but all I would be doing is touching on those same points included therein. We are happy at this point. We have worked with the members of the Commission on Judicial Discipline, their Executive Director and accepted input from judges and the public. The bill goes a long way to improve that process.

CHAIR CARE:
Is Mr. Short there for backup if needed?

MR. ELLIS:
Yes. I need it quite often.

CHARLES J. SHORT (Article 6 Commission):
Yes. I am here.

CHAIR CARE:
On the issue of transparency, page 18, section 32 is the disclosure of information contained in the complaint. In subsection 3, line 23 says,

> Nothing in this section prohibits a person who files a complaint with the Commission ... a judge against whom such a complaint is made or a witness from disclosing at any time the existence or substance of a complaint, investigation or proceeding.

That is probably why the Nevada Press Association had an interest in this bill. I like this language, but I have a question about the following sentence: “The

immunity provided by NRS 1.465 does not apply to such a disclosure." Why is it somebody loses the immunity by making a disclosure? Is somebody worried about defamation if there is a mischaracterization of a complaint?

MR. ELLIS:
Under the old law, a strict confidentiality applied. Remember, this was before any statement of charges had been filed by the Commission. The Commission files statement of charges once there is a determination of reasonable probability the evidence could clearly and convincingly establish grounds. At that point, everything is public. But under the prior law, neither the complainant, judge, witness nor anyone affiliated with the Commission or its staff could disclose the nature of the complaint or the fact that a complaint has been filed.

It is clear, in that it would not stand up constitutionally. It is unconstitutional to prohibit a claimant, or for that matter a judge or witness, from discussing that they have filed a complaint against a judge. We changed the provision in this legislation to simply comport with free speech rights for anyone to say they had filed a complaint. Previously, if a complainant disclosed that he had filed a complaint, nothing was done. They were not found in contempt. When they originally signed the complaint form, they agreed they would not disclose; if they did, they could be punished for contempt. That is unconstitutional, and no one was prosecuted for it.

But the judge could not respond because he/she was still bound by those confidentiality rules. That may not directly respond to your question, but what we are talking about is that stage when a complaint has been filed and there has been no determination whether it has merit. There is immunity for those individuals who are speaking to investigators and to the Commission. After a statement of charges has been filed—since we opened the door for anyone, a witness, a judge or a complainant to say whatever they want about the complaint—they do as in any other public forum if there is defamation or any other issue. At that stage, that is why we excluded immunity for those comments.

CHAIR CARE:
Under the bill in its present form, the complainant loses the absolute immunity enjoyed by making disclosure, but he would lose the immunity as to any statements contained in the disclosure, not the contents of the complaint, right?

MR. ELLIS:
That is correct, if they made actionable comments against whomever. Like in a court of law, once a statement of charges is filed, those individuals have immunity, as do witnesses who are talking to investigators. We are talking about the public disclosure of information prior to the statement of charges.

CHAIR CARE:
On page 19, section 32, subsection 6, "Notwithstanding the provisions of this section to the contrary, at any stage in a disciplinary proceeding, if the judge, a third person or the person who filed a complaint ... " it says, " ... the Commission may, at the request of the judge or on its own accord, issue an explanatory statement ... to maintain confidence in the judicial system and the Commission." Do you really need that language or is it okay for the Commission to have that discretion at the request of the judge of its own accord?

MR. ELLIS:
Yes. We do need to have that language because in the previous section—unlike judges, witnesses or complainants who can talk about what is going on at any time, even prior to the filing of a formal statement of charges—the Commission cannot do this. Under the old law, the Commission could not even do this in situations with a misquote or misstatement.

CHAIR CARE:
I am not questioning making the explanation. When I saw the language to maintain confidence in the judicial system and the Commission, it frankly seemed a little lofty. We can leave it in there. It would be sufficient to say the Commission may issue a statement at the request of the judge or of its own accord.

MR. ELLIS:
I agree with you. It may not matter. I do not think it needs to be in there. In light of these high-profile cases the last few years, when we went into the process, that is one of the goals we attempted to attain. It may be unnecessary.

CHAIR CARE:
It really is the purpose of the bill.

ALLEN LICHTENSTEIN (American Civil Liberties Union of Nevada):
We support this bill. We have been concerned and have been involved in litigation concerning the question of transparency. The idea that people could file an action against a judge and not answer questions about whether they did was an anomaly this takes care of.

GREG FERRARO (Chair, Commission on Judicial Discipline):
We look forward to seeing the reforms embedded in this bill passed so it will help our process with transparency and help us expedite the procedure we undertake. We are a seven-member Commission. We meet fairly often. There is no set schedule, but we have been busy in the last two years. We operate under strict statutory guidelines. Much of what you see in this bill we strongly support and look forward to being able to implement. We made some amendments in the Assembly. They have been discussed, and we want to issue our support for the bill.

DAVID F. SARNOWSKI (General Counsel and Executive Director, Commission on Judicial Discipline; Standing Committee on Judicial Ethics and Election Practices):
The Standing Committee on Judicial Ethics and Election Practices provides advice to judges who seek it beforehand instead of forgiveness afterward. Most of the cleanup of amendments occurred on the other side. There is a proposal to address some reporting requirements via amendment. We can deal with those and provide the reports that you will require of us.

CHAIR CARE:
Mr. Graham, you touched on the proposed amendments yesterday, the reporting requirements and the statistical not by name under section 13.

BEN GRAHAM (Administrative Office of the Courts):
The suggestions we asked to be included dealt with section 13 and would give a legislative mandate for reports. The third item may appear redundant, but the confidentiality laws and rules created under NRS 1.4695 would be followed. This was reviewed with the Chair of the Assembly Committee before we talked about submitting this. It appears to be okay. But as we know, all bets could be off. We would appreciate an amend and do pass on this.

CHAIR CARE:
We have the bill in first reprint and the amendments proposed by the Commission, Exhibit D. Those are the reporting requirements, the provisions of confidentiality that apply and the statistical reporting only. It is a lengthy bill. If somebody wants to make a motion I will entertain it.

SENATOR WIENER:
I have before me the amendment from Mr. Ellis, Exhibit D, and the one from Ben Graham (Exhibit E). Are those the two you refer to? Are there others?

MR. GRAHAM:
No.

SENATOR WIENER:
Those concern one amendment to section 8 and one to section 13. I have an amendment that concerns the duties of special counsel. Is that not under consideration?

CHAIR CARE:
You are right. In the materials, there is a letter dated May 8 from Mr. Ellis.

MR. GRAHAM:
That is withdrawn.

SENATOR WIENER:
Could we hear that from the provider of the amendment?

MR. ELLIS:
It is withdrawn. Assembly Bill 496, as amended in the Assembly, is what we are looking at having enacted with the one amendment in section 13. That is the same amendment we both talked about.

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 496 WITH THE AMENDMENT PROVIDED BY MR. GRAHAM.
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> SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
I will open the hearing on A.B. 239.

ASSEMBLY BILL 239 (1st Reprint): Revises provisions relating to habitual criminals. (BDR 15-9)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
The origins of this bill came from a discussion I had with Philip J. Kohn, Clark County Public Defender. Mr. Kohn wanted a bill that would reform our habitual enhancement statute at NRS 207.010. I introduced the bill to the Assembly. There was much disagreement about the original bill, but Jason Frierson with the Clark County Public Defender's Office and Kristin Erickson, representing the Nevada District Attorneys Association, worked together with me. We compromised and amended the bill. It is something we can all live with and benefits our statutes. It provides for wise marshaling of our resources in terms of when we use a habitual criminal enhancement.

JASON FRIERSON (Office of the Public Defender, Clark County):
We come in support of this bill. We worked hard with the Nevada District Attorneys Association to come up with something that would help us streamline the criminal justice system. We felt this was a fair compromise to address the likelihood of putting people in prison who do not necessarily pose a danger to the community, while not compromising the State's ability to use the habitual statute on other offenders more deserving of that type of treatment.

This bill is something we came up with which all parties could live with. We believe this is a good move toward making our system more efficient and avoiding the use of the habitual statute with respect to people whose conduct does not necessarily warrant that treatment. We were happy with what came out of the Assembly.

CHAIR CARE:
At the end of the bill, a defendant could be considered a habitual offender criminal if convicted of a felony three times, and the conviction can be in any

jurisdiction. But if the third conviction is in Nevada, that would be cause for the person being a habitual criminal?

MR. FRIERSON:
That is correct. Currently, the felony habitual is still in existence, and there is a small and large habitual criminal penalty. The small being 5 to 20 years and the large being 10 to life. This bill originally impacted that scheme. But as it was amended and passed out of the Assembly, it did not affect that at all; it only affects the misdemeanor habitual. If somebody had five or more misdemeanor offenses, they could possibly be subjected to mandatory time. We collectively did not believe this was necessary in order for all parties to meet their needs.

CHAIR CARE:
I am not going to dwell on it, but when I read the bill and looked at the deletion from statute previously, when a person has been three times convicted, whether in this State or elsewhere, petty larceny or any of any misdemeanor or gross misdemeanor ... . In California they came up with the three strikes law. Some of those third strike cases involved somebody who goes into a store and steals a video tape. Guess what, you just got life. It never made sense to me.

ASSEMBLYMAN OHRENSCHALL:
That is exactly what we were trying to address. Even though I was told this is rarely prosecuted that way where someone might have two serious offenses and the third one might have been stealing a video tape or candy bar, it is good policy for our State.

KRISTIN ERICKSON (Nevada District Attorneys Association):
Assembly Bill 239 eliminates the possibility of someone facing a habitual criminal sentence for a gross misdemeanor or misdemeanor prior convictions. After much discussion with Assemblyman Ohrenschall and Mr. Frierson, we reached this compromise. It also should be noted that this definition of the habitual criminal is different from California in that ours is discretionary. Because you have two or three felony convictions does not automatically mean you are a habitual criminal. It is up to the judge to make the finding that it is just and proper to find someone a habitual criminal.

SENATOR WASHINGTON:
For those of us who have been here as long as my colleague, Mr. Amodei, we do remember the implementation of the super habitual and small habitual status.

The reason is because gang activity at that time was high and proliferating. Those are big concerns with voters in the community regarding gang activity and being able to incarcerate or arrest for that activity. The small habitual provision was implemented for that intent. Maybe they have committed two major felonies and we needed to go after them. If it was a small misdemeanor or gross misdemeanor, we could tag them as a habitual criminal whether small or large for the intent of keeping an eye on them and supervising them. With the deletion of the existing language, are we negating that process now or are we going to have to come back and revisit that five or six years from now if crime ramps up?

MR. FRIERSON:
This bill does not change that. The small habitual would be the person with the third felony conviction in Nevada; they would still be exposed to habitual felony treatment. This would not affect that at all, the small or the large. This would only affect the misdemeanors, gross misdemeanor habituals that do not involve felonies. Once somebody has had a felony, we start looking at the felony habitual that would be the small felony habitual. As it currently stands, if somebody had two prior felonies and they picked up a misdemeanor, that would subject them to habitual treatment under law, and this bill would not change that. This bill is for the low-level offenders—the petty thieves who steal under $250 or the gross misdemeanor offenders and the way they are treated after so many convictions. Once we get into the felony area, this does not affect that.

SENATOR PARKS:
Every other year when I run for office, I have an opponent who says I am soft on crime and that the State needs to use the third strike rule for persons who move to Nevada and have committed their first and second strike in other states. I was shocked when I saw wording struck on page 2, lines 18 and 19 of the bill. But for the record, this is not a soft-on-crime bill that would remove the felonies committed in other states. It is still the discretion of the judge.

MR. FRIERSON:
That is correct. On page 2, line 16, of A.B. 239 regarding felonies, the out-of-state conduct is still looked at in Nevada. It is only the misdemeanors and gross misdemeanors. We collectively discussed this as not so much a matter of being softer on these offenders but being responsible and efficient with the dollars we had and who we choose to incarcerate. We felt the focus on the

folks with felony convictions, in and out of state, is the most appropriate way to put that in focus.

JAN GILBERT (Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada):
We are very concerned this Session with our revenue strains and our budgets. I saw this bill as something that would alleviate crowding in our prisons with people who need treatment programs rather than prison. You have crowding in our prisons; this seems like a just and fair policy change that would possibly get people out of the prison system and back on their feet. The whole Country is looking at the three strikes and rethinking how we look at our criminal justice system. I hope you will support this bill.

CHAIR CARE:
Mr. Johnson, you signed in for two bills and checked the speak box, one is a work session. I guess this is the one you want to testify on.

ORRIN J. H. JOHNSON (Office of the Public Defender, Washoe County):
This one I did want to get on the record, but everything has been said that I wanted to say, so me too.

SENATOR WIENER MOVED TO DO PASS A.B. 239.

SENATOR PARKS SECONDED THE MOTION.

CHAIR CARE:
You always want to ask those candidates when they say you are soft-on-crime ... you say okay, that is fine, but what is your proposal to raise the money for prisons, prosecutors, judges and the like? No. This is not a soft-on-crime bill.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
I will open the hearing on Senate Bill (S.B.) 45. We need to appoint a conference committee. This is the bill the Attorney General's Office became involved in. It had to do with someone above the age of 60 not having to show up to testify who could have his deposition taken in lieu of testifying at trial. We

moved that up to the age of 70, and it could only be done by a motion with good cause shown. The bill came out of the Assembly with a deletion of existing law which this Committee never discussed, and that was the imposition of a fine in addition to any criminal sanctions for elder abuse. We agreed not to concur. Either one of you gentlemen want to discuss that?

SENATE BILL 45 (2nd Reprint): Revises provisions relating to certain criminal cases involving older persons and vulnerable persons. (BDR 14-262)

BRETT KANDT (Office of the Attorney General):
Senate Bill 45 was heard early in the Session by this Committee and passed out quickly. Section 2, which was not discussed in detail during the hearing, would have expanded our Office's ability to seek a civil penalty upon a criminal conviction for certain crimes against the elderly.

When S.B. 45 made its way over to the Assembly side, there was some discussion whether the imposition of a civil penalty after a criminal conviction is constitutional. We thought it appropriate to delete that section of the bill. We will look at it later after Session. That section was deleted with our support. It came back to you, and that is the section at issue now.

CHAIR CARE:
I do not know what the Committee thinks; I was thinking about rescinding the action to not concur. However, I am not going to speak for the entire Committee. I do not know if there is a procedure. I imagine it will go back to the Assembly and they will not recede.

I will close S.B. 45 and open the work session on A.B. 265.

ASSEMBLY BILL 265 (1st Reprint): Revises provisions governing juvenile justice. (BDR 5-834)

SENATOR WIENER:
The Committee will recall I had concerns about what could happen to a juvenile who might not be responding to rewards to go back to school or whatever the needs were. The testimony was that a percentage of these young people cannot be enticed to change their behavior. The bill in good faith was to find a way to encourage them to get back on that path, whatever it takes, to be law abiding and play by the rules.

My concern was sometimes we do not know what prompts that ill-advised behavior. There is a high risk for many of those youths when you put them in a detention environment. It can be damaging to the child and not produce the outcomes we attempt to achieve.

Based on that, I had a well-attended meeting in my office yesterday with Assemblyman Mo Denis, Assembly District No. 28, and representatives of the juvenile justice community who were not supportive of putting these young people in detention. It was a positive meeting. We are going to work in the interim with professionals in juvenile justice administration. I volunteered my participation as well. My understanding is we should not move this bill forward and work with school districts to address our concerns.

CHAIR CARE:
Thank you. We will close A.B. 265. I will open the work session on A.B. 88. In the work session binder (Exhibit F, original is on file in the Research Library), you will see the additional proposed amendment from the Office of the Attorney General on page 5. The e-mail I received from you, Mr. Kandt, attempts to address all concerns raised in testimony on the bill. Has the American Civil Liberties Union (ACLU) among others had an opportunity to look at this?

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)

MR. KANDT:
We provided that proposed amendment on page 5 of Exhibit F to the ACLU.

CHAIR CARE:
Let me go through the proposed amendment. As drafted, sections 1 and 2 come out of the bill and would be replaced by what is contained in the proposed amendment. Section 3, which went to statute of limitations, would remain the same. As to the proposed amendment, subsection 1, “any person who, while under the age of 16,” and as I read through this coming to the end, “knowingly and willingly promoted, possessed or accessed the film, photograph or visual presentation.” I know we talked about this, but I do not know what this does to that or if we need to do anything about it. But is there a requirement that the defendant know the person is under the age of 16? There is no possible way for that person to know that.

KEITH MUNRO (First Assistant Attorney General and Legislative Liaison, Office of the Attorney General):
That is based on the totality of the evidence. They have to know they are viewing child pornography.

CHAIR CARE:
That is on the record. In subsection 3, "a plaintiff who prevails in an action brought pursuant to this section may recover his actual fees [damages], which shall be deemed to be at least $150,000." That threshold ensures if there is a judgment, the plaintiff will at least take something.

Mr. MUNRO:
That is correct.

CHAIR CARE:
If a plaintiff can prove all of the elements and a jury agrees that the award is far in excess of $150,000.

Mr. MUNRO:
That is a fair assumption.

CHAIR CARE:
I say that because you see these abuse cases coming out of various dioceses years after the fact, and most of those get settled. Some information leaks out, but it is a whopping figure in most cases. Is the $150,000 even necessary?

Mr. MUNRO:
Something out of federal law set that figure. This legislation is based on the federal law enabling legislation, and that is the figure they used. We adopted it.

CHAIR CARE:
Let us say a jury comes back and awards $1 million, it stays at $1 million, and the jury is not going to know about the $150,000. If a jury were to come back and say $85,000, after the jury is excused, that becomes $150,000. If the jury says $1 million, it stays $1 million; there is no offset or anything like that.

Mr. MUNRO:
There is no offset.

CHAIR CARE:
Do the damages stem from fact that the minor was filmed, or is it because the minor knows he or she has been viewed or possessed, is that right?

Mr. MUNRO:
That is correct.

CHAIR CARE:
It is not the act of filming. Somebody down the line sees this, the victim somehow becomes aware of that and the trauma sets in.

Mr. MUNRO:
It is the continued psychological injury.

CHAIR CARE:
Knowing that you have been viewed? All right. On page 3 of A.B. 88, section 3, subsection 2, line 5, there is no amendment, but the way it is drafted, "an action to recover damages ... must be commenced within 3 years after the occurrence of the following, whichever is later: (a) the court enters a verdict in a related criminal case; or (b) the victim reaches the age of 18 ... ." It strikes me that is a pretty short period to file such an action.

Mr. MUNRO:
We based that on what was in the federal legislation. If you want a longer statute of limitations, we are fine with that. But we are basing this on the federal enabling legislation. You have the discretion to go longer, and we are trying to make sure we are consistent with the federal law. We are okay with a longer period, but this is age 21, or if there is a related criminal case of child pornography at a later date, it is three years after. It could be a longer period.

CHAIR CARE:
Some 30-year-old is told, hey, by the way, I talked to somebody who said he saw you in a film. That is the reason I asked the question.

Mr. MUNRO:
And in something like that, you would have a type of criminal prosecution. If you did, it would be three years after the verdict. If there was criminal prosecution in that case, it would be to age 33.

CHAIR CARE:
What is the statute of limitation on the criminal act?

Mr. MUNRO:
It would be when someone possesses it, accesses it or views it. The standard statute of limitation for a crime would be from that date.

MR. LICHTENSTEIN:
I was here a few days ago, and one of the concerns we had was the disconnect between the criminal action and the civil action. We have introduced an amendment that ties it to what we most prefer.

In terms of Mr. Munro's or Mr. Kandt's proposed amendment, a few things put in that were not there before are even more troubling. One of them is a question of access. If you look at their amendment, Exhibit F, page 5, subsection 6, "for the purposes of this section, a person may be deemed to have accessed a film, photograph or visual presentation if he uses the Internet to view the film, photograph or visual presentation." And if you look in section 1 of Exhibit F on page 5, the "knowingly and willfully" is simply about accessing.

Any of us who use computers know we access things all of the time thinking it might be one thing and it turns out to be something else. I can access an e-mail that says, hello, and it is the guy from Nigeria who wants to move $1 million here. It happens on a fairly regular basis. The idea that accessing something—even if you see it and immediately get rid of it—then becomes actionable is quite problematic. It is one thing to say possessed and you have decided to keep it.

That is one thing within criminal law upheld by the courts. But merely accessing it, particularly with a computer, and knowingly and willfully accessing something and a language … I beg to differ with Mr. Munro because it does not say you have to know what you are accessing; many times with a computer we do not. We know we are accessing something. Under the language, that would be a crime.

The other is the question of assisting others to engage in sexual conduct. The damage from the child pornography is not about viewing it later on. If it is used for the promotion—promote means to produce, direct, procure—the manufacture of it is enough to trigger this even if it is not distributed to

somebody else. That is in subsection 7, paragraph (a) of the proposed amendment, Exhibit F, page 5.

In terms of assisting, someone could be assisting in a way that does not expose that person to their own sexual conduct. They are not necessarily involved in anything other than assisting somebody else. They are not a victim. The victim is the minor who is engaged in the sexual conduct being filmed and presumably shown. With somebody who remains clothed, the assistance may be conversation or whatever, it is not in the same situation. This was not here before in any of the versions I have seen.

We prefer the amendment that we proposed because it is much clearer. If someone is convicted of one of these child pornography crimes, then there can be a civil action by the victim. The person would have to prove they are in fact the victim, and they suffered these particular damages. There was a concern expressed that might create a double jeopardy problem. We researched it, it does not. Double jeopardy only involves a subsequent punitive action. This is impunitive; this is remedial. An individual is creating the action, not the State. We have some serious concerns about the amendment and understand the particular purpose. But the law of intended consequences may be at work with some of this language.

CHAIR CARE:
We are going to move the bill. With subsection 1, there is the issue of the word "accessed" the film, the inadvertent punching up of something and you get something else. What we are talking about is "accessing with the intent to view." Would you object to any language that would clarify that?

Mr. MUNRO:
We would not object to adding "accessed with the intent to view," if that would be clearer.

CHAIR CARE:
Something like that.

Mr. MUNRO:
We would be fine with that.

CHAIR CARE:
We will have to craft it, and we are not going to have the language today. That is No. 1. Then the word "assist."

Mr. MUNRO:
We would be fine with deleting that as well.

CHAIR CARE:
Mr. Wilkinson, did you catch working off Mr. Kandt's amendment and not the amendment proposed by the ACLU which is pretty plain? Those are the two major concerns. Mr. Lichtenstein, did you catch what we said about clarifying the word "access with the intent to view" or something like that and then deleting the word "assist"? We are not going to get the language today.

MR. LICHTENSTEIN:
Yes, I did. I would caution that "access with the intent to view" needs to be, "access with the intent to view child pornography." Presumably, when you access something, you intend to view it. The language has to be explicit in terms of that intent. Otherwise you end up with the same problem.

CHAIR CARE:
That is fine. That is a drafting exercise for staff counsel. Any questions from the Committee? Any additional comments?

Mr. MUNRO:
No comments on this section.

CHAIR CARE:
Then we will go to section 2. As to section 2, Mr. Lichtenstein, did you have a chance to review their proposed amendment?

MR. LICHTENSTEIN:
Are we talking about section 2 or amendment 2?

CHAIR CARE:
Amendment 2.

MR. LICHTENSTEIN:
Amendment 2 on page 6 of Exhibit F has the same issues of "accessing" and "assisting" that were in the civil version of it in Amendment 1.

CHAIR CARE:
We can make that consistent with section 1 of the amendment.

MR. KANDT:
Just to make it clear with regard to Amendment 1 and Amendment 2, we could specify that you "access with the intent to view," or whatever Legislative Counsel Bureau deems appropriate, and also to take out the language "or assisting others to engage in."

SENATOR WIENER:
I want to thank the representatives from the Attorney General's Office working with me on the level of penalties assigned to these in Amendment 2 to address my concerns.

Mr. MUNRO:
For the record, I also want to thank Mr. Lichtenstein. We worked well together yesterday, and we have a better bill by working with him.

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 88 BY USING THE ATTORNEY GENERAL'S OFFICE PROPOSED AMENDMENTS WITH THE TWO CHANGES DISCUSSED THAT ADDRESS CONCERNS THE ACLU HAD OVER LANGUAGE.

CHAIR CARE:
The motion as I understand it is: In sections 1 and 2, it would be the Attorney General's Office amendments to delete those and substitute what we have in Exhibit F with deletions consistent in both sections 1 and 2 of "assist" and "access" with the language along the lines of "access with the intent to view child pornography." Section 3 is not disturbed.

> SENATOR COPENING SECONDED THE MOTION.

SENATOR PARKS:
In earlier testimony, one of the issues we were talking about was of viewing streaming video. I want to make sure, since I got the impression it was the starting point, that we fully cover that.

MR. KANDT:
That current technology created this gap in the law. We had discussions with other interested parties about trying to define streaming video and putting that in the statute. But that is problematic because it is current technology, it may not be a future technology.

CHAIR CARE:
Any discussion on the motion?

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
I will open the work session on A.B. 309.

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

LINDA J. EISSMANN (Committee Policy Analyst):
While there is no opposition, there was concern in testimony about the cause and threats to the safety of the third person. Soon after the hearing, I received an amendment from Assemblywoman Ellen M. Koivisto, Exhibit F on page 12, that would replace "third person" with "member of the victim's family or household." This was Assemblywoman Koivisto's amendment, although it was given to me by Nancy Hart on Assemblywoman Koivisto's behalf. Ms. Hart is here if you have questions for her.

CHAIR CARE:
There is no contest as to adding text messaging to all of the statutory definitions. Another issue not discussed much is whether we want to elevate the crime of a first offense from a misdemeanor to a gross misdemeanor; second offense would be a Category D felony as opposed to a gross misdemeanor; and the third issue is expanding the definition of stalking, and

now we would have the immediate member of the victim's family or household. No issue on stalking. Any thoughts on changing the degree of the crime for the first and subsequent offenses? For the members of the Committee, I was not persuaded to do that, but you may have different thoughts.

This is the amendment; section 1 reads:

> A person who, without lawful authority ... 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 member of the victim's family or household, and that actually causes the victim to fear [feel] terrorized, frightened, intimidated, harassed or fearful for the safety of a member of the victim's family or household, commits the crime of stalking.

SENATOR WIENER:
I referenced a measure that I am sponsoring this Session on cyberbullying. I am looking at the addition of text messaging, which cyberstalking is when it engages adult to adult, which is what this would do. It is one of those crimes that is not a one-shot. Ordinarily, the behavior tends to occur over a period of time.

Because of the anonymity, it has great levels of intensity we would not have face-to-face if you are following somebody. But with access 24 hours, 7 days a week to tools such a phone, these people have extraordinary control and can be malicious if it continues against the will of the person who owns the device. It is an ongoing insidious behavior not similar to what happens when you have a stalker who follows you home from work every night. I am glad to see text messaging has been added in any technology that comes from that. For me, the felony has a greater penalty because it is an ongoing behavior that rises to a higher level.

CHAIR CARE:
Any other comments or thoughts? Anybody want to make a motion of any kind?

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 309.
>
> SENATOR PARKS SECONDED THE MOTION.

CHAIR CARE:
What would the amendment be?

SENATOR WIENER:
Assemblywoman Koivisto's is the only one that we needed—family or member of household.

CHAIR CARE:
The motion by Senator Wiener, second from Senator Parks, would be to add the amendment by Assemblywoman Koivisto. Discussion on the motion? For the members of Committee, I will be voting against the motion because I was not convinced the crime should be elevated. I have difficulty with this idea that stalking can be someone other than the person who is actually being stalked. That is my personal opinion.

SENATOR WASHINGTON:
I am going to vote against it as well. I understand the intent Assemblywoman Koivisto is trying to do. But elevating it, as you have already stated, the bill did not convince me it needed to elevate to that status. I have a problem with the language regarding text messaging. As much as kids text message now—and I guess there is a new one, Facebook—it just goes on and on. We are moving down a slippery slope. The statutes dealing with stalking give law enforcement enough tools to deal with that type of individual.

SENATOR AMODEI:
I appreciate those thoughts, but in the last few years, I have had some acquaintances who allowed you to come as close to personally experiencing people who undertake this sort of conduct. With all of the technology and the competition for resources in law enforcement, a traditional domestic restraining order for these people that I know, and this is no hit on law enforcement or the public safety people, means very little in the face of text messaging.

Watching the effect it has on the stalked victims, who are trying to exist within the system and be left alone, has been an eye-opener for me, and I have not said anything on this. I appreciate those concerns and the concern about the penalty, but having watched it in action for folks who are pretty close to me, I can tell you that something other than the status quo needs to be attempted.

When you talk about the bill we processed recently that concerns whether or not you go back to victim-funding recompense, the testimony was not controverted that things are going on in that context which this clearly plays into. Based on personal experience, I will be supporting the bill. If it turns out it is a big drain on the penal system, I am sure my successor will right my error in this way.

CHAIR CARE:
The motion is before us, there has been a second, all those in favor please say aye.

> THE MOTION CARRIED. (SENATORS CARE AND WASHINGTON VOTED NO.)

* * * * *

CHAIR CARE:
I will open the work session on A.B. 313.

ASSEMBLY BILL 313 (1st Reprint): Makes various changes relating to tenants of property. (BDR 10-912)

Mr. Sasser, did you send something to the Committee yesterday?

JON SASSER (Statewide Advocacy Coordinator, Washoe Legal Services):
An amendment on page 14 of Exhibit F that clarified the effective date if you adopt reasonable late fees was worked out with the realtors concerning modifications or renewal of leases. The Committee had asked that I prepare a summary of my testimony, which I provided the Committee on page 15, Exhibit F.

CHAIR CARE:
We are adding section 5, "this act apply only to a rental agreement or renewal of a rental agreement entered into on or after July 1, 2009, or a rental agreement modification which modifies the terms of late fees entered into on or after July 1, 2009." That is clear. You will recall we have the deletion offered for section 2, so that is not going to matter.

I caused some confusion when we had the last work session on this bill. But if you look on page 3, section 3 of the bill, starting at line 23, "neglect or failure to perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those mentioned in NRS 40.250 to 40.252 ... ." That is unlawful detainer for nonpayment of rent, and there are additional reasons given. Mr. Sasser, as you will recall, corrected me that this section 3 applies only to the other breach of lease, whatever it happens to be.

Then we kicked into the extra day only for those actions and unlawful detainer or the notice. Going back to section 1, the issue is: One, I agreed that the late fees should be computed only once, although we did not make a decision one way or the other; then the scheme of capping late fees and whether that is to be done with a cap altogether, no cap at all, using language that says simply reasonable late fee, as is done in Oregon; or whether we want to have a statutory scheme three days to seven days not to exceed 3 percent, beyond seven days 4 percent.

I am wide open to any thoughts, any comments Committee members, on any of those issues. Does everybody agree late fees should be computed only one time?

SENATOR PARKS:
Having been a landlord before, I am sympathetic to having a stepped increase where there is a certain amount on the first date, and then if the rent has not been paid by the fifth date, it can go to a higher percent—5 percent on the first day and no more than an additional 5 percent after five days.

CHAIR CARE:
We may be talking about two different things here. In section 1, subsection 5 of the language reads: "If a late fee is imposed under this section, a landlord may only impose the late fee once for each late or partial payment." And the reason I say that, Mr. Sasser, is I have seen complaints where somebody vacates the premises, even though the landlord is attempting to mitigate, and the premises still sits empty for a lengthy period of time. Usually, this is done with a printout from the management company showing calculations of damages, late fees, late fees filed on top of late fees and interest charged on late fees. Maybe I should clarify what we mean in subsection 5.

MR. SASSER:
To clarify the difference, Senator Parks is referencing a tiered system in subsection 2, where it is so much on Day Three, so much on Day Seven and for weekly, it is everything on Day One. That is the issue which is different from subsection 5, which says you can only charge a late fee once if you are late for one month. If I am late for October, I am charged one late fee for October. If I am late for November, I am charged another late fee for November, but I cannot continue to pile on October.

CHAIR CARE:
I am in agreement with what Senator Parks said about section 1.

SENATOR AMODEI:
I want to thank Mr. Sasser. I want to say on the record, thank you for checking back, thank you for this material you have provided. You have been very informational about the bill, and I appreciate that, having forced me to concentrate on it.

In reflecting over the testimony, I was embarrassed and disturbed to hear Assemblywoman Peggy Pierce's testimony about the provision in her contract, which in my mind, although not having been a landlord, bears no relationship to her rent.

I was also disturbed by the folks on the other side talking about this. You say if we stretch this out, maybe that cuts down on homelessness. The answer to homelessness is not balancing that with people who rent dwelling space for a living. Theoretically, I am okay with setting maximums so their late fees bear no resemblance to the costs of landlords. I look at the whole administrative cost in and out of government. I look at these fees thinking I am not sure that reflects the costs to somebody to chase somebody for five or ten days. I am not sure that can be quantified. I am just saying what it is like to chase somebody who is late, or if they want to put them out. You have said Nevada is fairly quick about putting them out. That whole administrative cost strikes me that there needs to be a better balance of the cost for the graduated rates. I do not know if we had any testimony on the cost to tell somebody, hey, you are late in the rent.

It would be an interesting comparison. I am not saying that you are wrong. But I am uncomfortable where these amounts have been set. I know you had to set them somewhere. I know your objective. But I do not want anybody gouged,

like Assemblywoman Pierce's story. That bothers me. If you are late, it ought to reflect the actual cost to the business person.

As far as the time frames, Mr. Sasser, were you trying to lengthen them? It bothers me when I look at jumping through those hoops to set up that five- and seven-day stuff. The little experience I have had in law practice, they are going to be in there for most of a month by the time folks get that paperwork done. Then the horror stories on the other side started to weigh on me.

Most of the concepts, I am happy with. You asked for thoughts, so there you are. Something is needed in this area, but not where you have drawn some of those lines for me personally.

MR. SASSER:
May I respond? One of these is the late fee. Any out-of-pocket cost the landlord has can be added to the late fee. I am focusing on late fees. If you have a bad check charge, your can add a bad check charge in addition to the late fee. If you serve court process papers, you can charge that as well if you go to court for nonpayment of rent.

The homeless tie is when you have these extremely high late fees. If the landlord drops the five-day nonpayment of rent, you have to pay any late fees in addition to the rent in order to avoid the nonpayment-of-rent court proceeding. When those get too excessive as they are piled on top of the rent and the tenants are having a difficult time raising the amount, that issue comes in.

In terms of actual loss, I concluded my testimony with my mortgage payment. If it was 15 days late, the late fee was approximately 4.5 percent. The industry standard, as I understood it from Susan Fisher, was 7 percent on Day Five. This reflects that, so it must have something to do with their cost. It is not a scientific survey or study, but the 7 percent came from our negotiation via the Assembly—which they brought forth for the Nevada Association of Realtors.

ASSEMBLYWOMAN PEGGY PIERCE (Assembly District No. 3):
I want to be real clear. I look at leases all of the time. Every standard lease I have ever seen has a place for late fees. It also has a place where you fill in what a bounced check costs. It also has a place to fill in attorneys fees and if they evict you, court fees. There are all kinds of other fees in every standard lease the landlord can fill out anyway they choose.

SENATOR AMODEI:
And I appreciate that. But my contexts are in conjunction with having a problem making the rent payment, which is clearly a primary thing for most folks, roof over their heads; then you add those other things up and lengthen the amount of time for them to leave. I am not insensitive to the homelessness issue, but if you cannot afford to pay your rent, you add those other things up and give them more time to clear that. Those landlords are in the business to provide lodging. I do not know whether the solution is providing temporary shelter information if you do this, but giving them more time on the landlord's dime is not the answer to keeping them in the shelter.

MR. SASSER:
The bill does not lengthen the time in nonpayment of rent cases. It lengthens two days on the front-end notice of the lease and two days for breach of lease which are people paying their rent. There is a dispute over something else, so it is not the landlord's dime in that sense. For all cases, including nonpayment of rent, it goes for the execution changes of language from within 24 hours to 2 days. It does add an extra day that is probably on the landlord's dime, but it may save the landlord a lot of other money because it gives the tenant the time to get their belongings out. The landlord does have to store the tenant's belongings and collect those fees, etc. That one extra day cuts both ways.

SENATOR AMODEI:
I understand. When I roll all of this together, I agree with the policy; what happened in your lease should not happen. And I am not insensitive to homelessness. If this is not where the person is going to end up staying, I will stop.

CHAIR CARE:
Mr. Sasser, is there any objection to language similar to Oregon's reasonable amount, meaning the customary amount charged by landlords for the rental market?

MR. SASSER:
Oregon gives you three options. That is one of the options Oregon offers. It took me most of the morning to figure out what they meant. Oregon seems to say you can charge a one-time flat, not tiered, fee as Senator Parks would like, a reasonable amount based on the customary charges in the market. I am not sure what those are. At least Ms. Fisher does not need to understand that is

7 percent on Day Five. Next, you can do a daily amount based on 6 percent of whatever that first amount was in No. 1. So it is 6 percent of 7 percent. I am still working on how you calculate all of that. That is confusing. Then you get another option that seems to be something on Day 5, something on Day 10, Day 15, etc. That is what Oregon does. If you just went with option No. 1, reasonable amount once per rent period, I prefer the bill the way it is. That would be better than you not processing the bill.

CHAIR CARE:
We will process the bill. Rather than arguing about 3 percent this period, 4 percent this period or 5 percent, the thing to say is a reasonable amount charged by landlords for that rental market. You have used the figure 7 percent; in commercial context, it is usually around 10 percent. Residential may be lower. I will take your word for it.

SENATOR AMODEI:
In your example, there was a cutoff for five days and ten days. I looked at it, and it was $50. Then you added another whatever, and it was a better deal to wait ten days, and it was less a day. If you are trying to get at what we want, we want you to pay your rent as close to on time as possible, I wonder if it is a daily thing. If you are three days late, it is "X" percent a day; if you are ten days late it is the same percent. In other words, the quicker you pay, the fewer penalties you pay. But if I am going to pay $10 for the first five days, and then at ten days I am only going to pay $8 a day, when you add them both together, it is a better deal. It is more money. If these folks are managing, the objective is to keep them in but get paid. An incentive is that each day you wait it costs you this much more. There is no deal in there—you need to get it paid as quick as you can.

CHAIR CARE:
To get a bill out of here, I would point out to Mr. Sasser in section 1, subsection 4, that if this is subsidized housing, those rates apply anyway. We could not supersede that with whatever we did. Is that right?

MR. SASSER:
Subsection 4 deals with the types of housing where a tenant pays a portion of the rent and the housing authority or federal government pays a portion of the rent. This says the late fee would be assessed on the tenant's portion of the rent, not on the full amount the government would pay.

SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 313 WITH THE PROPOSED AMENDMENT BY WASHOE LEGAL SERVICES DELETING SECTION 2 OF THE BILL.

CHAIR CARE:
Section 1 remains as is as would section 3 and the subsequent sections dealing with the period for unlawful detainer and breach of lease, not to include late payment and the other traditional.

SENATOR PARKS:
And the motion includes the revised wording in section 5, the added language.

CHAIR CARE:
That goes to the date, modification and renewals of existing contracts or leases.

SENATOR COPENING SECONDED THE MOTION.

CHAIR CARE:
I said we would get a bill out of here; if this ends up being the bill, so be it. Mr. Sasser and Assemblywoman Pierce, on July 1, the effective date of the bill, case law says those NRS 40 notices are to be strictly construed; you cannot make mistakes on those. Would you be interested in changing the effective date of the bill to January 1, 2010? The reason is to accommodate practitioners who have a need to know and a period of continuing legal education so people are aware of the changes. Otherwise, if they are not aware of a bill that becomes effective on July 1—Do you understand what I am saying, Assemblywoman Pierce? The lawyers who practice in this area are going to have to learn about this change. To the maker of the motion, would you be agreeable to changing the effective date?

SENATOR PARKS:
Definitely.

CHAIR CARE:
Senator Wiener has asked we restate the motion. Mr. Wilkinson, do you want to do that as you understand it?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
As I understand the motion, it is to delete section 2 of the bill, to include the revision to section 5 relating to the renewal of rental agreements and to change the effective date to January 1, 2010.

SENATOR WASHINGTON:
I am confused. Ms. Fisher represents the monthlies, and we have talked about section 1, subsection 5. Senator Parks, is your amendment for a straight flat fee or a tiered?

SENATOR PARKS:
My motion called for no change to section 1.

SENATOR WASHINGTON:
The landlords had some concern about this. I can ask later, so I am going to vote against the bill.

> THE MOTION CARRIED. (SENATORS AMODEI, McGINNESS AND WASHINGTON VOTED NO.)

* * * * *

CHAIR CARE:
Assemblywoman Pierce, this is probably going to be the subject of a floor amendment or two.

I will open the work session on A.B. 325.

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

MS. EISSMANN:
Mr. Chair there was an e-mail from Mark Krueger, Assistant District Attorney, Lyon County, late yesterday that an amendment agreement had been reached. We have an amendment (Exhibit G), which does not bear a name; it has colored print and was handed out this morning. I am presuming that is the amendment Mr. Krueger was referring to, but I am not sure.

CHAIR CARE:
Assemblyman Stewart, do you have an answer to that?

ASSEMBLYMAN LYNN STEWART (Assembly District No. 22):
That is correct. Mr. Krueger from the Lyon County District Attorney's Office and the public defenders have worked out this agreement.

CHAIR CARE:
What do we have then?

ASSEMBLYMAN STEWART:
They are here if you would like to hear from them.

MR. JOHNSON:
At the original hearing, we discussed our concern with one of the proposed amendments about adding the crimes "against a pupil," as this amendment is starting to call it, making those explicitly sex offenses for personal registration. However, the proposers of that amendment wanted to maintain some of the protections for victims of those particular crimes, which are already crimes. We did not have any problem with that. Mr. Krueger worked hard with us to make sure our concerns were addressed with regard to the sex offender and that protection for those victims of the crimes, which we do not have a problem with, be included in the bill.

This bill definitely represents consensus language. We do not have any problem with the amendment as stated. We apologize for the lateness but appreciate your patience in allowing us the time to make sure this change is right and well drafted, and will address concerns without undue burden on anything else.

CHAIR CARE:
Yes. I remember when Mr. Frierson started to say deletions of sections 3, 4 and 5. I jumped in and said 6, 7, 8, and was off by a few numbers, but that is basically what the amendment is here, is not it?

SENATOR WIENER:
For clarity because we also had one offered by Mr. Grady, this would replace Mr. Grady's amendment?

ASSEMBLYMAN STEWART:
Yes. Mr. Grady is in full agreement with this.

SENATOR WIENER:
So we do not consider his, we would consider this consensus.

ASSEMBLYMAN STEWART:
Consider the latest amendment.

SENATOR WIENER:
This is the amendment from Mr. Krueger.

ASSEMBLYMAN STEWART:
Yes.

CHAIR CARE:
Mr. Grady told me this morning that this had been worked out.

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 325 WITH THE CONSENSUS AMENDMENT FROM MARK KRUEGER, EXHIBIT G.
>
> SENATOR COPENING SECONDED THE MOTION.

CHAIR CARE:
Senator Parks wants verification. He is holding the proposed amendment in the work session binder, Exhibit F.

MS. EISSMANN:
No. Mr. Chair, The amendment passed out this morning from Mr. Krueger is not in your binder because we got it this morning.

SENATOR WIENER:
Mr. Chair, I have the proposed amendment dated May 11, 6:03 p.m., that has the language in black ink. Is that the language we are voting on?

CHAIR CARE:
This is the proposed amendment to the proposed amendment, right? That was not in the binder, but we all have it. Let the record reflect we are talking about

the four-page document that says at the top "Proposed Amendment to: Proposed Amendment 4786 to Assembly Bill No. 325," Exhibit G, with deletions for sections 2, 3 and 4 among other things.

SENATOR WIENER:
That is the one I am referring to in my motion.

ASSEMBLYMAN STEWART:
That is correct.

CHAIR CARE:
Any discussion on the motion?

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
I will open the work session on A.B. 335.

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

MS. EISSMANN:
Mr. Chair, this bill was heard on May 8. Rebecca Gasca from the ACLU expressed concerns and offered to provide written comments which we have, although I do not think her name is on it. Assemblywoman Bonnie Parnell suggested an amendment on page 45 of Exhibit F deleting sections 1 and 2 of the bill, but that was discussed in the hearing. There are comments from the ACLU on page 46. I received nothing more than that. The bill was supported as amended by the sponsor; there was not any opposition except for the ACLU comments.

CHAIR CARE:
I have reviewed the ACLU concerns. We do have a statutory definition of criminal activity, that is not the issue. Other issues are where you have a nuisance not for illegal activity but activity to facilitate the commission of crimes by the criminal gang. Is there any way to draft this in such a manner that it would say where the regular and continuous activity in the presence interferes

with the comfortable enjoyment of life or property? This could be somebody calling the police and saying, I have a bunch of gang members next door and they are making a lot of noise, or they are doing something. I understand the intent of the bill. I can see where this activity makes people uncomfortable and maybe even fearful. Does anybody have any thoughts how we could narrow it down so it is not susceptible to constitutional challenge as being vague.

SAMUEL G. BATEMAN (Nevada District Attorneys Association):
Are you referring to page 4, the definition on lines 39 through 41, is that paragraph (d) of subsection 1 of section 3?

CHAIR CARE:
It is in the mock-up in Exhibit F, page 52, section 3, subsection 1, paragraph (d). The mock-up deletes sections 1 and 2, and the language is the same in both documents.

MR. BATEMAN:
I am sorry, can you repeat where I am looking?

CHAIR CARE:
Look at section 3, subsection 1, paragraph (d) that begins, "A building or place regularly and continuously used," do you see that?

MS. EISSMANN:
Mr. Chair, the page numbers and line numbers are different on the mock-up than in the actual first reprint. You are talking about page 4, lines 39 through 41, in the actual bill as opposed to the mock-up. Mr. Bateman does not have the mock-up; he has the bill.

CHAIR CARE:
The language is the same in both documents. Just referring to the section and subsection of the bill, section 3, subsection 1, paragraph (d) reads, "a building or place regularly and continuously used ... ." Do you see that Mr. Bateman?

MR. BATEMAN:
I do.

CHAIR CARE:
I am concerned about the vagueness. The nuisance is not a result of any criminal activity. You have you have members of a gang and people who are not members of a gang, and they are not carrying membership cards. They are in there together, and they may or may not be talking about facilitating the commission of crimes by the criminal gang.

MR. BATEMAN:
I do not have any language that I would be able to suggest that might narrow it. I can tell you our practice in prosecuting these cases, especially in Las Vegas, and I am sure Neil Rombardo, City of Carson City District Attorney, has the same experience up here. The Las Vegas Metropolitan Police Department (Metro) knows where the gang houses are. They know because of their constant investigations into gangs. They know by field interviews of gang members. Within a law enforcement community, it becomes patently known which homes are being used as the gathering places to meet and disseminate from there to go commit whatever crimes.

You are referring to the language "place regularly and continuously used by the members of a criminal gang." I assume "criminal gang" would be the definition in statute, which is a relatively narrow definition that requires the particular group to commit certain felonies on a regular basis. The language continues "to engage in, or facilitate the commission of, crimes by the criminal gang." I can see the problem is not reasonable to doubt standards as we go forward with the nuisance. It is not particularly vague when you compare it to the criminal activities of a gang and what we in the criminal world have to prove in relation to defining the criminal gang and what it is those criminal gangs are doing. I do not know if it is less specific than paragraphs (a), (b) or (c) before our focus with paragraph (d). I assume it would have to be challenged on an individual basis.

CHAIR CARE:
Committee members, the existing nuisance statute would apply as well: "The action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance." I am trying to envision the guy next door who has a criminal gang in the house next door and what does he do? He files a suit. I do not know that he would do that.

MR. BATEMAN:
The Chair is absolutely right. The whole example given to you by Mr. Rombardo was this trailer park where all neighbors are constantly harassed by the one location with the gang members. From my experience in prosecuting these cases in Las Vegas, the neighbors know the gang house but shut their doors at night and stay inside. They are not going to make a lot of noise about a civil suit between individual parties relating to where the gang members are hanging out. That is in the statute and available to a private citizen. But you are right, this is something that the government is doing and probably the district attorneys office through Metro and vice versa. That should alleviate the concern because it would require us to have some preexisting knowledge and actual evidence of what is going on at the particular location by gang members.

CHAIR CARE:
Focus for a moment on the district attorney who knows this house and is able to seek an injunction. We are not talking about enjoining criminal activity again; we are talking about doing something that relates to gang activities, which is pretty vague, but I am not saying it cannot be done.

MR. BATEMAN:
I understand it would have to be specific in the actual injunction. I have not done civil cases for about five years, but any injunction order would have to lay out clearly who it was relating to and what they could or could not do. The ACLU was referring to this. It would be on a specific basis as to that particular injunction. I do not know how to make it more specific.

CHAIR CARE:
Anybody want to try a motion?

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 335.
>
> SENATOR COPENING SECONDED THE MOTION.

SENATOR AMODEI:
While Senator Washington is looking at the bill, I have listened to the discussion and like the fact that it could be an additional tool in sections 1 and 2. That is a big part of the bill in my mind so I will be opposing. Hitting people in a civil pocketbook sounds like a tool we should give a chance to and see how it works

as opposed to the traditional you are going to jail, which is a challenge. The Ron Goldman family was able to sue O. J. Simpson civilly and get his attention, which is a good idea in this area too. I am opposed to the motion.

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

* * * * *

CHAIR CARE:
We still have A.B. 335 in front of us.

SENATOR AMODEI MOVED TO DO PASS A.B. 335.

CHAIR CARE:
Mr. Wilkinson, would you explain this to us? That goes to section 1, deleted section 2.

MR. WILKINSON:
Mr. Chair, which section are you referring to?

CHAIR CARE:
Refresh my memory, the amendment deleted sections 1 and 2.

MR. BATEMAN:
Sections 1 and 2 were purely criminal sections. After further discussion with representatives from the public defenders, Assemblywoman Parnell and Mr. Rombardo from the Carson City District Attorney's Office, there was a consensus to strike those two sections and go forward solely with the public nuisance and injunction sections which Mr. Rombardo was trying to target with the bill. We were in agreement to strike sections 1 and 2.

CHAIR CARE:
We had a motion fail and Senator Amodei is trying to push something forward. Is there a second to the motion?

SENATOR WASHINGTON SECONDED THE MOTION.

SENATOR COPENING:
What would it mean to bring this back in? Since this is new language, are you saying the criminal penalty is addressed in some other provision?

MR. BATEMAN:
My understanding is sections 1 and 2 passed out of the Senate Committee on Judiciary and through Assembly. In between that and the hearing before you, there was further discussion about those particular sections. All of the parties discussed and came to that agreement over in this particular House. If those were pulled out, it would have to go back, considering Assemblywoman Parnell's involvement in the discussions.

CHAIR CARE:
The motion is to do pass.

MR. BATEMAN:
Then it would not have to go back. Correct.

CHAIR CARE:
If the Senate adopts A.B. 335, then it goes to the Governor.

MR. BATEMAN:
That is correct.

SENATOR AMODEI:
Mr. Wilkinson, if this is covered elsewhere and it is also passed in this law, then in the post-section true-up, having it in this bill will not affect the ultimate status of those particular criminal statutes. Is that right?

MR. WILKINSON:
There is confusion. The motion would be to pass the bill in its current form. No language like this exists. There is a current criminal gang enhancement in NRS 193, but this is a new thing where if you have a misdemeanor or gross misdemeanor done for a criminal gang and a person has prior convictions, then it is bumped up to a felony, and there is a driver's license provision. That is section 1. Section 2 says you do not get the additional gang penalty if you get this one. If the motion passed, it would pass the bill as it is.

CHAIR CARE:
There is always a possibility of a Senate Floor amendment if the Committee passes it out. There is a motion before us.

THE MOTION CARRIED. (SENATORS COPENING AND WIENER VOTED NO.)

* * * * *

CHAIR CARE:
I will open the work session on A.B. 474. There is no opposition and no amendments. Are there any questions?

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

SENATOR WIENER:
The Legislative Counsel's Digest provides a prisoner sentenced to life imprisonment with the possibility of parole and at the age of less than 16-years-old and all of these conditions met. What if there is more than one sentence to life imprisonment and they are consecutive?

MR. WILKINSON:
Subsection 1 does not apply to consecutive sentences. This new provision does not contemplate the possibility of a remaining consecutive sentence. Usually, if you are paroled and you have a consecutive sentence, you are paroled to the next sentence. That may be a technical issue. The idea is you get out of prison, not that you are moved to another sentence. That may be something we need to clarify.

CHAIR CARE:
Any other questions or concerns?

SENATOR PARKS MOVED TO DO PASS A.B. 474.

SENATOR COPENING SECONDED THE MOTION.

MR. WILKINSON:
In reading this bill, the interpretation is if the bill is not amended, it suggests that you would only be paroled to the next sentence and not released from prison. If the desire is to have somebody released from prison and not paroled to a consecutive sentence, we would need to include a specific reference as appears on page 1, lines 5 and 6.

SENATOR WIENER:
Mr. Chair, I know there is a motion and a second, but I would like clarity and maybe a conversation with the person who brought the measure. I do not know if there was contemplation of multiple sentences that run consecutively.

CHAIR CARE:
It is a serious issue.

SENATOR WIENER:
But that creates a monumental difference in the circumstances.

CHAIR CARE:
Is the maker of the motion agreeable to withdrawing the motion so we can take this up again tomorrow? It sounds as though we may need some clarifying amendment.

CONNIE S. BISBEE, M.S. (Chair, State Board of Parole Commissioners):
We have a particular young man who would meet these requirements. He committed two horrible sexual assaults at the age of 15. I am glad you brought up consecutive sentences. His sentence structure is a sexual assault five years to life, with a consecutive battery to commit sexual assault, which is a ten-year sentence. To clarify, that ten-year sentence is not actually ten years because it is going to expire somewhere between five and one-half and six years.

What we have is a sex case followed by a sex case. Because of a finding by the Nevada Supreme Court, he is not required to go to the psychiatric panel on the sexual assault five-to-life sentence.

The interesting thing about sex offenders is they tend to be very good and compliant inmates. What you have is a gentleman who committed two serious sexual assaults who has had no disciplinary problems. He is not gang affiliated,

he is educated. You are not going to find any complaints about him as an inmate.

If A.B. 474 passes as it is, when we see him this month, we are required to parole him on that sexual assault. As counsel said, the way we would look at it is you parole him, he would be institutionally paroled, but you would parole him under those conditions. That would bring him to his sentence of battery to commit a sexual assault. He would see the psychiatric panel. Say the psychiatric panel says this is a dangerous young person, and we say he is at high risk to reoffend. That would keep him in prison for that full five and one-half years. At the end of that, he has parole because A.B. 474 paroled him mandatorily under the sexual assault for life. He has had a psychiatric panel, but he has already met that requirement to expire that case under the lesser case that is the consecutive. In five and one-half years, he walks out the door. That is what I want you to consider. The Board does not have an issue with it if it is the intent of this law is to not keep young people, who did something horrible, in prison for the rest of their lives.

What I have seen over the years under normal cases—a murder is not a normal case—is, if you have a young person who comes in on a life sentence for committing a horrible crime, not a sex crime, and complies with everything you ask is probably very safe to release. Maybe something horrible happened in his life or whatever. It probably would be somebody the Board would seriously consider anyway, even without A.B. 474. But the concern is this particular example.

SENATOR WASHINGTON:
You are saying A.B. 474 would almost mandate that the Board review this 16-year-old based upon the conditions met, and he could actually be paroled based on the requirements in this bill.

MS. BISBEE:
Yes. Your protection is—and I know this was thought about—the sex offender has to be certified "not a high risk" by the psychiatric panel. You would not have an issue with his first five-to-life sentence because the professionals who understand sex offenses and sex offenders would say, chances are he is not going to recommit or no, you need to keep him because he is going to recommit. Because of litigation on our psychiatric panel requirements, the problem is we cannot have him seen by the psychiatric panel until he is on his

last sentence. And that sentence, regardless of what the psychiatric panel is going to do, expires in five and one-half years. That is the concern. Normally, you would have all of the protection in the world and A.B. 474 would not be a problem with a sex offender. A little sentence that follows is the problem.

SENATOR PARKS:
I withdraw the motion on A.B. 474.

SENATOR COPENING:
I withdraw the second on A.B. 474.

CHAIR CARE:
The maker of the motion has graciously withdrawn the motion so we can ponder this for another 24 hours. But we need to obtain something from staff counsel. We will put this on work session for tomorrow and adjourn at 11:01 a.m.

RESPECTFULLY SUBMITTED:

_____
Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE: _____