MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
April 27, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:08 a.m. on Wednesday, April 27, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jean Bennett, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Ben Graham, representing Administrative Office of the Courts
John McCormick, Rural Courts Coordinator, Administrative Office of the Courts
William O. Voy, Judge, Family Division, Eighth Judicial District
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Victor-Hugo Schulze III, Senior Deputy Attorney General, Office of the Attorney General; Nevada State Advocate for Missing and Exploited Children; and Director of Nevada Clearinghouse for Missing and Exploited Children
Chuck Callaway, Director of Intergovernmental Services, Las Vegas Metropolitan Police Department
Valerie Cooney, Attorney, Carson City, Nevada
Nancy Hart, representing the Nevada Network Against Domestic Violence

Chairman Horne:
[Roll was taken. Procedures and policies discussed.] Today we will be hearing three Senate bills. We will open the hearing with Senate Bill 24 (1st Reprint).

Senate Bill 24 (1st Reprint): Revises provisions concerning writs of execution in justice courts. (BDR 6-321)

Ben Graham, representing Administrative Office of the Courts:
Mr. Chairman, members of the Committee, I have with me John McCormick who deals with the rural and limited jurisdiction courts, which we will be talking about today. Senate Bill 24 (R1) brings us forth into the twenty-first century with regard to document preparation and dealing with the volume of documents that comes through the courts. A person will go to court as a plaintiff to seek a judgment for monies they feel are owed to them. There are times when a civil defendant will admit they owe the money, and a judgment occurs. However, sometimes there is litigation when an amount is determined by the court. Since in this instance it is justice court, the amount will be $10,000 or under. Currently, if the lawsuit is in district court, the judgment will be for tens of thousands or more. However, generally it is not that much.

Once a judgment is issued, you have to try to collect on that judgment. Under current statutes, authority is given to a justice of the peace to execute a writ of execution. In some of the smaller jurisdictions, perhaps 3 or 4 writs of execution are issued each year. However, in the larger jurisdictions, as many as 2,500 to 3,000 writs of execution are issued per month. We are asking for the authority to allow a clerk, under the supervision of the justice of the peace, to execute a valid copy of the writ of execution. This has been the practice in district court for a long time, and it may have been an oversight that this was needed but not put into the statute earlier for justice courts. There has been no opposition to this bill. There were some questions, mainly informational, which were ironed out before we got here. I hesitate to say more than needs to be said. However, if there are any questions, we certainly are willing to answer them. I told my friend John McCormick here that we tried to bring a justice of the peace with us, but they are all busy signing executions. Judge Melissa Saragosa, Justice of the Peace, Las Vegas Township Justice Court, who testified on this bill on the Senate side, is a very active military person, and she is off doing something military today, otherwise she would be here.

Chairman Horne:
Thank you, Mr. Graham. I did not know that district court judges were not required to sign off on executions of judgment; particularly, because of the large amount of money that may be in a judgment. I have some discomfort on why we would not have judicial oversight, even at the justice of peace level on executions.

Ben Graham:
There is judicial oversight. These are presented to the chief clerk of the justice court. Although it is not a total, complete function carried out by the justice of the peace, regulations and oversight are followed to make sure there is a valid judgment, that no satisfactions have been filed, and that no other documents from creditors are in the file that would cause any hesitancy to process the writ of execution.

Chairman Horne:
When an attorney obtains a judgment and the attorney submits a writ, it is asking for a specific amount of money, and they have to show an accounting on how they get to that sum. You have many things to consider, including the principal that is owed, whether attorneys fees were awarded in the judgment and, if so, what the fees are, and the interest that may accrue, and whether the interest rate used to accrue it is accurate. The interest rate could be statutory, or it could be a contractual interest rate upon which the

parties had agreed. I question a method that will allow a clerk to just sign off and say, yes, there was a judgment.

Ben Graham:
I apologize, Mr. Chairman. I have a blank form (Exhibit C) from the Carson City Township, which might be helpful to illustrate what these documents have to contain; keeping in mind the document is part of an affidavit that is sworn to by the person seeking the execution, so there are penalties involved with that. In reading it, I found it interesting because there are so many exemptions which are contained on this document directing the sheriff to do something. Many calculations go into completing this document, and it goes along with the affidavit (reads from Exhibit C). This is a complex direction that the sheriff gets from the court. If they choose to, the justice courts may continue to utilize a justice of the peace. If not, we are asking that they can delegate the actual execution under their guidance to one of their court officials.

Chairman Horne:
I am suspicious as to whether or not the justice of the peace would do it himself since the initial bill read that the clerk would do this and not the justice of the peace.

Ben Graham:
The reasoning behind leaving the option with the justice of the peace is the realization that in some smaller jurisdictions there would be 4 or 5 of these executions a year, as opposed to 3,000 a month that might occur, for instance, in Clark County.

Assemblyman Hammond:
Mr. Graham, you used the words supervision and guidance when speaking about this bill. What is the extent of the guidance and supervision that you mentioned? Do they review these writs of execution once a week with the clerk? If the justice is already in the room with the clerk, should the justice of the peace be signing the writ?

Ben Graham:
Mr. Chairman, would it be okay to have staff distribute a copy of this form to members of the Committee?

Chairman Horne:
We can upload it to the Nevada Electronic Legislative Information System (NELIS) so we can take a look at it.

Ben Graham:
When a judgment creditor goes in and asks for a writ of execution, you will be able to see from the document being handed out it is not just a shot in the dark. The process is very specific as to what is owed and why. I suspect that even now the clerk does pull that file, or at least pulls the NELIS version, or whatever we have in the jurisdiction where a computer program is available, to verify that there is a valid judgment and what the award was. The judgment portion of this form (Exhibit C) states how much was awarded for principal, interest, attorney's fee, costs, and the amount of judgment that is entered. It goes on to state the interest that is accruing, and the amount that has been satisfied, if any. It then directs the sheriff to try to gather the amount. A judgment is good for six years unless it has been renewed. This information is verified and is subject to challenge if anybody refutes it. A party can come in and file a motion to review and to set aside the writ of execution. I do not know if that happens very often.

Chairman Horne:
Are there any further questions for Mr. Graham?

Assemblywoman Diaz:
If the clerks would be allowed to help with this process, I notice that the justice of the peace does have to sign off. Does this mean that they will double-check that the clerk did the writ correctly?

Ben Graham:
Currently, the form shows where the justice of the peace would sign. I imagine if this were to go through, that space on the form would say justice of the peace or authorized party. It would not be credible if I were to say that 3,000 of these are checked very often by the justice of the peace. They do rely on staff, even today with the necessity of a justice of the peace having to sign. I would assume in some of the smaller jurisdictions the staff puts the file on the judge's desk, and they look at it when they get a chance and then sign it. However, when there are so many writs coming through, there is a system created to guarantee as best we can the authenticity of the information, and the judge would summarily sign this after being assured it has gone through the process.

Assemblyman Frierson:
Mr. Graham, I believe you said this is already done in district court. Are you aware of any problems that have arisen with the process in district court? Secondly, are you aware of why justice court was not included when district court was given the authority to have the clerks perform this task?

Ben Graham:
There was some initial concern from a couple of legal services groups whether this was a good measure. We spent a lot of time working on that issue with Mr. Sasser and with some other people in Clark County to see that their objections were addressed. In reviewing this, there has not been any difficulty in district court, and there was some assurance when talking with Judge Saragosa, with legal services in Clark County, and with Mr. Sasser in Washoe County, that there would be enough integrity in the process that we would not have problems.

John McCormick, Rural Courts Coordinator, Administrative Office of the Courts:
If I may answer the second part of Mr. Frierson's question, we tried to find out why it was not included in statute, and it was one of those questions we could not trace back far enough to find a sufficient answer.

Assemblyman Ohrenschall:
My question is for either witness. Is there a backlog now in the justice courts? If this bill passes, do you think that backlog will be alleviated? Will this bill create a more efficient method?

John McCormick:
I do not know if there is an existing backlog. It does take a significant amount of time for the judges to go through and sign these. This would greatly increase the efficiency of the court process because it is based upon an existing judgment, and this would allow that process to be more efficient.

Assemblyman Brooks:
Is the interest rate arbitrary or is it a set standard?

Ben Graham:
If it were a judgment based upon a contractual relationship, then it would be whatever the contract states. Either that or they might have compromised that amount. I believe there are some statutes dealing with actual percentage of interest rates. However, a judgment normally would be awarded by the court upon evidence of proof that you agreed to pay interest when you took on a debt. If not, there is a legal judgment percentage in our statutes. It is spelled out, it is not arbitrary.

Chairman Horne:
Are there any other questions? [There were none.] Mr. McCormick, did you have any official comments you wanted to place in the record?

John McCormick:
I am just here for backup.

Ben Graham:
I apologize that we did not have a real live judge here. We will be sure to get information to the Committee if they have any questions for a judge.

Chairman Horne:
Is there anyone else in Carson City who wishes to testify in favor of Senate Bill 24 (R1)? [There were none.] Is there anyone in Las Vegas? [There were none.] Is there anyone wishing to testify in opposition to S.B. 24 (R1), either in Carson City or in Las Vegas? [There were none.] Is there anyone wishing to testify who is neutral to S.B. 24 (R1), either in Carson City or in Las Vegas? [There were none.] We will close the hearing on S.B. 24 (R1) and bring it back to Committee. The hearing on Senate Bill 26 (1st Reprint) is now opened. Will that be presented in Las Vegas, Mr. McCormick?

Senate Bill 26 (1st Reprint): Revises various provisions relating to judicial administration. (BDR 14-323)

John McCormick:
Judge William Voy, with the Eighth Judicial District Court, will present S.B. 26 (R1). I would like to note that he will be talking about an amendment to SB. 26 (R1) (Exhibit D) that has been provided to the Committee.

Chairman Horne:
Is that the amendment we got this morning, after the 24-hour cutoff?

John McCormick:
My apologies for being late with the amendment; it has been provided here in Carson City.

Chairman Horne:
Good morning, Judge Voy.

William O. Voy, Judge, Family Division, Eighth Judicial District:
Good morning, Mr. Chairman. Senate Bill 26 (R1) essentially does several things. I will try to make my comments brief. At present, we order parents and legal guardians to pay the cost, or defray some of the cost, of placing a child into the care of the state or a county facility. It is called parental reimbursement. The amount is a small fraction of what it actually costs for the kids to be there. These financial orders pile up over the years. Unfortunately, many of these costs are not paid. When the child reaches 21 years of age,

the order for that financial obligation ceases to exist. Every year in Clark County, we write off hundreds of thousands of dollars in financial obligations because there is no legally enforceable obligation once the child turns 21. In addition, the cost to collect the money is exorbitant. There is a complicated court process of holding someone in contempt, and in show cause proceedings. We do not have the ability to give these financial orders to a collection agency to collect these costs. Our idea to reduce these obligations is to give the judgments to a collection agency to collect just like any other civil judgment. In that way, we would be able to enforce and collect these civil judgment obligations instead of writing them off every year as the orders expired.

In addition, we have restitution amounts that are ordered as to parents and the children. Many times, we also write off the restitution amounts when the child reaches age 21. In addition, we have children on probation or parole from the age of 18 until age 21, for no other reason than the financial obligation or the restitution amount is still outstanding. Senate Bill 26 (R1) will allow the court the flexibility to reduce these obligations to civil judgments in favor of the victims, or the county or state entities if that is the case. It will also allow them to collect on these judgments in the future. This will alleviate the unnecessary burden on both parole and probation of supervising the children, and on the court system that has to oversee the case because of the need to collect outstanding restitution amounts. It would give legal authority through the civil judgment to the person or entity that is owed the money, to allow them to use common collection procedures to collect. Essentially, that is what S.B. 26 (R1) does.

Many of our kids who are assigned community service have turned their lives around, they are back in school, they are now 18 years of age, and they have a full-time job. However, they still owe an outstanding obligation for community service. From time to time, I have had kids come into court on that issue who have asked if they could pay money in place of performing the community service because of the work or family obligations they are under currently. Over the years, we created a Victims Assistance Fund, and sometimes we allow a child to make a donation to that fund for victims in lieu of some community service, on a voluntary basis, with a kind of wink and nod. We decided it would be best to seek statutory authority and codify that practice so it is done without the wink and nod that historically has been used. One concern raised earlier was that people could buy their way out of community service. The obligation of community service is on the kid, and the donation would have to come from the kid's funds, and not a parent buying off the kid's obligation. We made modifications to the first bill draft to make sure that was what actually happens in those cases.

Lastly, regarding the amendment that was circulated this morning, I received word of this issue from the bench at 3:30 p.m. yesterday. At 5:00 p.m., when I first got to my office, I sent an email to everyone that I preferred to just delete section 5.5 and leave the statutory provisions that currently exist in *Nevada Revised Statutes* (NRS) 62.030, subsection 2 as is. In the original bill draft that was submitted to the Legislative Counsel Bureau (LCB), that particular amendment was not in the bill. It was in the original draft. I removed it and it was intended to apply to financial orders only as it relates to parents. Many times parents are not actually in court when these things are done, so it gives more due process rights to the parents and notice of financial obligations when we made the changes to section 5.5. In addition, it would save us money since we would not have to bring people back to court in order to give them actual notice of these obligations. We have this procedure in Clark County where we actually do this. We do not need section 5.5. What I really want in this bill is the ability and flexibility to allow these financial obligations not to be extinguished, to allow them to be collected in a more efficient manner without wasting the scarce resources of the juvenile justice system.

Chairman Horne:
Thank you, Judge Voy. I hope it does not come back to bite you in the butt that you have done some things with a wink and a nod from the bench. You mentioned that twice, on the record!

Judge Voy:
I am fully represented by counsel on both sides.

Chairman Horne:
I have a question regarding the continued obligation of juveniles after they have become adults. There is a reason we have a juvenile system and an adult system, because we treat them differently. For instance, a juvenile is struck by a car when riding his bike in the middle of the street. As a result the juvenile receives extensive medical care through the University Medical Center, Las Vegas, which costs hundreds of thousands of dollars. When the child turns 21 there is still an outstanding balance. Does the child get stuck with the outstanding obligation, or does that obligation stay with the parent? I ask that as an analogy because if you have a 14-year-old child who becomes a delinquent and has some fees or restitution, and in the bill we say we can hold a civil judgment against the parent for not paying the restitution, fees, et cetera, even hold them in contempt, then when the child becomes an adult, will we relieve the parent of that obligation and then tell the child he still owes it? Would it be different?

Judge Voy:
No. In that scenario, the restitution amount from the court probably would not be the total that is due, if we are talking hundreds of thousands of dollars. I would use the Roy Martin Middle School case as an example, where a 12 year old burned a school down. That case involved about $25 million in real damages. With insurance, the school district was able to lower that amount to real damage of approximately $2 million. It is unrealistic to assume the parents, and/or the child, are ever going to pay this $2 million. Therefore, in that case, knowing that the school district, under statutory provisions, proceeded to get their $10,000 limit against the parents on the restitution I assessed what I believed to be a reasonable obligation on the parents, a couple thousand dollars more. This is where judicial discretion currently occurs. This bill draft does not change the court's ability to exercise sound discretion when necessary. It simply gives us the flexibility when appropriate to try to make that victim whole by giving them a civil judgment for whatever that restitution amount was in the first place. Currently, once the child reaches 21, the parental obligation is gone. There are times when I have an 18 or 19 year old, who owes a few hundred dollars and I cannot get it out of him. We do not have debtor's prison. Giving a civil judgment to a victim or to a governmental entity gives them a legal obligation which they can use to try to force payment, without the expensive process of involving the juvenile court system.

Chairman Horne:
To interrupt you, Judge, to simplify the question, what is the policy on when we have a financial obligation owed by a child that followed them into adulthood? I was looking for any other instances where we do that.

Judge Voy:
Probably not to the extent I was discussing. However, there are traffic fines in justice court and municipal court. If a 16 or 17 year old is involved in a traffic-related offense, he can appear in municipal court or justice court on those cases and be fined, and that fine does not terminate at age 21. This is codified in the current NRS Chapter 62 as it is. This is an example of an obligation that does not terminate automatically at age 21 that was incurred before the age of 18. The question is this: is the trade-off a balance? Sometimes you will have financial obligations that go past the child's 21st birthday as it relates to restitution only, because the other obligations are on the parents. In those cases, it still gives the victim the opportunity to collect that money eventually, even though it happened before the child was 18 years of age. Do you try to make the victim whole, or do you want to sever any prior obligations that person had at age 21, and the victim is not made whole? That is where the exercise of judicial discretion has to occur on a case-by-case basis.

Chairman Horne:
Are there any questions for Judge Voy?

Assemblyman Frierson:
Judge Voy, with regard to the provisions that determine if a person is indigent, is that in statute in criminal court, as opposed to in practice? If there is a poverty line, and if we give the court some flexibility in criminal court without a statute, do we need to put that in this bill?

Judge Voy:
The original bill draft included amendments to the criminal code for that same provision. This determination of indigency came from the Supreme Court's ruling on just that issue, for the purposes of appointment of counsel. The reason we need that in NRS Chapter 62 is, when I sit as a juvenile court judge, my powers and obligations are set forth in NRS Chapter 62 only. Juvenile justice is purely a creature of statute and only statute. Some of the inherent powers a district court judge has are modified and a cap is put on them because the statute does not allow it. For example, I cannot hold a child in contempt of court, but I can hold his parent in contempt of court. Some people believe contempt is an inherent power of the court, regardless of the age of the person. The statute specifically says that children cannot be held in contempt. I can put them in detention for failing to abide by an order, but I cannot hold them in contempt. This is why we have been using this standard, because the Supreme Court told us to, at least in Clark County. I thought that if we are using this standard, we probably should have the Legislature okay this as well. As I have said before, the Legislature and the juvenile justice system act as partners in juvenile justice because, again, we are creatures of statute when we sit as juvenile court judges. I view my role as one of a partner between the Legislature who makes the policy decisions on how we are supposed to treat our youth, and the court that is charged with implementing those policies and making those hard calls balancing public safety and best interest on a day-to-day basis.

Assemblyman Frierson:
It sounds as if what you are saying is that you think it should be in criminal court also, but you do not have jurisdiction to deal with that. You are at least trying to put it in the statute because it affects how you do your job. Is that what you are saying?

Judge Voy:
Yes. When we had it in statute, we had all kinds of people complaining about it being in the criminal courts. I said that was never my intent anyway when the

bill draft was done. I said cut it out of there. I am worried about juvenile justice, which is my only concern.

Assemblyman Frierson:
We heard a bill in this Committee, I think it was Assembly Bill 196, dealing with collection of fees and fines, trying to come up with a more efficient way to do that through the state controller. It would seem to me that if we are considering this measure on behalf of the courts, it might be worthwhile to duplicate that effort so if this is being done in the name of efficiency, perhaps that would be helpful as well.

Judge Voy:
Right now, we have to go through the court process to try to collect these obligations. This involves a proceeding in court called an order to show cause for contempt and contempt citations against the parents. It is a fairly costly and time-consuming procedure. When I first took over in 2004, the county gave me two administrative people to try to see if we could collect money. We did it for about nine months. Not accounting for the court time and the staff time with those two employees, during that nine-month period we collected one-third of the salary for those two employees. At that point, in 2005, I said we need a way to turn these collections into judgments that we can take to a collection agency. The collection agency does not like court orders, which are very inefficient, especially for a $500 or $600 obligation. The costly part about collection debts is reducing them to a judgment. By giving collection agencies a judgment, it makes it more attractive for them to receive all of these small judgments to try to collect on, and we get a percentage coming back to the state or county coffers. That was the original intent for having this done, rather than having the controller trying to collect. Quite frankly, I was just trying to help out the state and county governments by giving them something that could be easily collected, whether through a private collection agency or the controller's office, it does not matter to me.

Chairman Horne:
We can have Legal look into whether or not, in the bill, those outstanding judgments that were to be going to the controller's office would also include those that come out of juvenile court, and get that information back to the Committee. Are there any other questions for Judge Voy?

Assemblyman Ohrenschall:
I have a question about the suspension of the driver's license of a minor who has not been able to pay the judgment. Was there any discussion that perhaps that might impede them from being able to pay the judgment? They might need

their license to drive to work if they are working, or the one-year prohibition, if they do not already have a license. I was concerned about that.

Judge Voy:
Currently, under my general powers in the statute, I can suspend the driver's license or driving privilege of anyone under this court's jurisdiction. At the time we put these bills together, I went to the court's lawyer, Joe Tommasino, who prepares all of these bill drafts for us, and he lifted this stuff from other things like child support obligations, collection attempts, and things of that nature. Some of the language you see comes from some of those other existing statutory collection schemes. In this case, it is there as more of a threat than anything else. Why would I, as a judge who is trying to collect money from a child whose job requires him to have a vehicle, take away his driving privileges, thus causing him to lose his job? I think it is in there just as it is for child support obligations. For instance, if I had an outstanding child support obligation that I was not paying, my law license could be revoked. I think that is why it is in there. Again, it is a matter of discretion. The court has the ability to do it. However, it would be incredibly stupid for a court to do that under the scenario you mentioned. That is the best I can answer the question.

Assemblyman Ohrenschall:
Thank you, your honor. I just wanted to get that on the record, that it would be stupid if they did that.

Chairman Horne:
Are you going to be practicing in Las Vegas, Mr. Ohrenschall?

Judge Voy:
Mr. Chairman, you are practicing in Las Vegas.

Chairman Horne:
I know that. You have to go back to Las Vegas and practice, James.

Assemblyman Ohrenschall:
Eventually, but hopefully his honor's memory will be short.

Judge Voy:
Chairman Horne, I am looking forward to appointing you to some of my juvenile matters when you come to my court after the session.

Chairman Horne:
Are there any further questions for Judge Voy? [There were none.] Does anyone else in Carson City wish to testify in favor of S.B. 26 (R1)?

[There was no response.] Does anyone else Las Vegas wish to testify in favor of S.B. 26 (R1)? [There was no response.] Does anyone in Carson City or Las Vegas wish to testify in opposition to S.B. 26 (R1)? [There was no response.] Does anyone wish to testify as neutral either in Carson City or Las Vegas? [There was no response.] I am going to close the hearing on S.B. 26 (R1). We will now open the hearing on Senate Bill 57 (1st Reprint).

Senate Bill 57 (1st Reprint): Expands the circumstances pursuant to which a court is authorized to issue certain warrants. (BDR 11-289)

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:
I am here today on behalf of the Attorney General (Exhibit E) to present testimony in support of S.B. 57 (R1). This bill seeks to promote child safety in our state by strengthening the constitutionality of the process for the enforcement of family court orders on the recovery of abducted children. Appearing with me from Clark County is Senior Deputy Attorney General Victor-Hugo Schulze with our office. Before I ask Vic to go through the specific sections of this legislation for you, I want to inform the Committee that we are working closely with domestic violence advocates to review some concerns they have expressed with the enforcement process that we are proposing in the bill. If necessary, we may be submitting proposed amendments to address those concerns. With the Chairman's consent, I would like to turn this over to Mr. Schulze in Las Vegas, and after we answer any questions, close with some brief comments.

Victor-Hugo Schulze III, Senior Deputy Attorney General, Office of the Attorney General; Nevada State Advocate for Missing and Exploited Children; and Director of Nevada Clearinghouse for Missing and Exploited Children:
In our unit, we work with law enforcement agencies around the nation and in foreign countries to locate and bring missing children home. Senate Bill 57 (R1) will strengthen our ability to return missing children to their custodial parents by creating a fairer and constitutionally adequate recovery process than currently exists in Nevada law. This bill is part of the Attorney General's ongoing effort to increase child safety in the state of Nevada. Specifically, it pertains to what are commonly known to family court judges and law enforcement personnel in the missing children's arena as pick-up orders. When a child is reported as a victim of a nonstranger abduction, typically an abduction by a noncustodial parent, one remedy among many available to the victim is to obtain a pick-up order from a family court judge. These are orders entered on the record by a family court judge commanding the return of the child to his or her custodial parent. The statutory authority for the issuance of these orders is found in *Nevada Revised Statutes* (NRS) 125.470, subsections 1 through 4.

Courts in all states issue similar orders. Our statute has been in effect for many decades and probably no longer reflects constitutional standards for those pick-up orders that envisioned the involvement of the police. It is for this reason that S.B. 57 (R1) is being presented for your consideration. The bill adds a myriad of due process and protections of the 4th Amendment to the United States Constitution to the child recovery process. The thrust of the bill is to amend the provisions of NRS 125.470, subsection 2, authorizing a family court judge to seek the intervention of the police in enforcing a pick-up order. The current statutory language's constitutional shortcomings lie in its lack of procedural fairness in the process leading to the obtaining of the pick-up order. The lack of constitutional due process and 4th Amendment standards in the current process could expose law enforcement agencies in the state to potential civil liability after recovery of a missing child, even when that recovery is made pursuant to a court order. A pick-up order has significant constitutional dimensions due to a parent's fundamental right to the care, control, and upbringing of his or her child; and the process for obtaining such a court order must reflect these constitutional protections. By adding such protections to existing law, the amended statute will promote four interests. First of all and most important, it will foster the recovery of abducted children. Second, it will meet or exceed constitutional requirements for the family courts' orders. Third, it will protect law enforcement agencies and ultimately taxpayers from exposure to potential liability in civil rights lawsuits. Fourth, it will add substantial protections to the targets of the orders, by giving them an opportunity to be notified of the proceedings and to be present to give their side of the story, and to be heard in both predeprivation and postdeprivation hearings that are not now currently available to the targets of those orders.

All of these aims are important and laudable. Senate Bill 57 (R1) accomplishes these objectives by making the following changes in existing law. It brings Nevada law into conformance with the 4th Amendment standards by replacing the best interests of the child standard of NRS Chapter 125.470, subsection 2, with the 4th Amendment standard of probable cause and a requirement that the court recite the probable cause for the issuance of the order on the face of the order.

Senate Bill 57 (R1) adds a host of due process protections in the process to obtain the order to both the custodial parent and the possessory parent, or other person, by mandating predeprivation hearings and postdeprivation hearings, by mandating specific fact finding by the judge, and by adding a burden of proof that must be met, probable cause, that currently is lacking. The provisions of the bill mandate noticed hearings and an opportunity to be heard by both parties so that a judge can gather all of the pertinent facts before making a decision. Reflecting constitutional case law, the bill allows a child to be picked up in the

event of exigent circumstances or an emergency, if there is a genuine risk of flight or reabduction. However, the bill mandates even in those cases, a quick, noticed postdeprivation hearing to provide both parents with their just due process. In such cases, the family court can conduct such a hearing after the child has been recovered. This procedure applies to a broad range of emergency situations in which a child is in imminent danger of serious physical harm and other situations in which children are concealed from persons having lawful custody.

The bill protects against abuse of the system by perpetrators of child abuse and domestic violence by mandating that explicit information about related issues, such as past child abuse, domestic violence, and protective orders, must be furnished to the court by the applicant in the application for the fact-finding process. This measure is designed to protect abuse victims who have fled to avoid further domestic violence or child abuse at the hands of a would-be applicant. Current law does not mandate the furnishing of such information to the court and does not require specific fact-finding of these issues. The bill clearly defines the term abduction to include kidnapping, aiding and abetting a kidnapping, and the willful detaining, concealing, or removing of a child from a person having lawful custody of the child. The bill protects law enforcement agencies from potential liability for the alleged wrongful recovery of a child, by strengthening the family court process for issuing the appropriate warrants. The bill creates explicit statutory directives for police to enter private property to enforce warrants, and creates a requirement that the police must report to the court within 24 hours of the execution of a warrant. The bill also provides additional protections against abuse of the system by creating new authority for the family court to impose civil penalties, award attorney's fees and costs, and to apply other remedies in the event that the court finds that a petitioner or an applicant sought the warrant for the purpose of harassment or in bad faith. The process set forth in the bill is further protected from abuse and manipulation by criminal penalties which currently make it a felony offense to obtain a warrant wrongfully by material misrepresentation.

While the bill would expand the use of pick-up orders designated as warrants, as they are currently referred to in the Uniform Child Custody Jurisdiction and Enforcement Act of NRS Chapter 125A, it does not expand the authority of family courts to issue pick-up orders beyond the parameters of current law. Instead, the bill provides substantial additional constitutional protections to benefit the targets of the pick-up orders and the police who enforce these orders. If anything, we expect a slight reduction in applications for police-assisted pick-up orders because of the additional procedures involved in obtaining such an order. We request the Committee to approve S.B. 57 (R1) in

order to increase child safety in the state of Nevada, and we stand ready to answer any questions the Committee might have regarding this legislation.

Chairman Horne:
Thank you, Mr. Schulze. I will start with the concerns on protecting law enforcement from lawsuits. Is that occurring now? Are law enforcement officers being sued for following a judge's order to take a child into protective custody?

Victor-Hugo Schulze:
I am not aware of any lawsuits in Nevada right now. This area of law is an emerging area in the last eight or ten years. The Federal Circuit Courts in the Second, Fifth, and Ninth Circuits, we are in the Ninth Circuit, have started to come down with published case decisions finding law enforcement agencies liable for the returning of a child under a process that does not meet 4th Amendment standards.

Chairman Horne:
You said there were three. You missed one which was not in the Ninth Circuit that found law enforcement agencies liable. This tells me that there were lawsuits, at least somewhere, that found a law enforcement agency was liable and acted outside the scope of a judicial order. Is that correct?

Victor-Hugo Schulze:
Yes. I am not aware of any lawsuits emanating from the state of Nevada. However, the lawsuits have started coming down in other parts of the country and that, as a matter of fact, was the initial impetus for the bill. The initial impetus was to create a constitutionally sufficient process to protect Nevada law enforcement agencies from those lawsuits that typically are filed in federal court under 42 U.S.C. § 1983: (Section 1983), alleging a civil rights violation. The Ninth Circuit has published case law on cases from, I think, the state of California, where in the child recovery process police agencies were sued. I am also aware of cases from the state of Louisiana that went to the Fifth Circuit Court, and cases from the state of New York that went to the Second Circuit Court. As I said, the initial impetus of the bill was to protect law enforcement agencies from those lawsuits. As long as this process follows due process and 4th Amendment standards, the police officers enforcing those warrants that are based on probable cause will be protected. They have good faith immunity from those lawsuits. Even in cases where a police officer is enforcing a court order, in those cases where the order itself did not follow 4th Amendment standards, those law enforcement agencies have still been held liable. That was our concern. The more pragmatic concern is that in many cases, southern Nevada law enforcement agencies simply will not enforce these

orders because they are afraid of civil liability and that concern for civil liability hampers our ability to have a working enforcement mechanism to enforce these custody orders, the enforcement orders. Police simply will not go into a house under one of these orders because they do not feel the current process sufficiently protects them from civil liability. That was our second concern.

Chairman Horne:
First, and I would like research to find out, I thought we already had a law in place that provides immunity in such circumstances to law enforcement officers, when they are following lawful orders from the court. I see Mr. Callaway out there, if he could come to the table, too, because we just heard Mr. Schulze say that law enforcement is refusing to follow a judge's order, and that seems puzzling to me.

Chuck Callaway, Director of Intergovernmental Services, Las Vegas Metropolitan Police Department:
In the course of my career, I have been on hundreds of these pick-up orders, and if I may, I would like to explain from a law enforcement perspective what typically happens. When a police officer shows up on a typical call, mom calls from 7-Eleven and she has a court order in her hand. She tells the police that her ex-husband lives up the street and the court order says the police have to go to that house and pick up the children who are at the house with dad. We typically go out to the house, we look at the court order first and make sure it has the seal of the court and that it is a valid civil court order from family court, not a criminal order. If we get to the house and dad answers and opens the door and sticks his head out and says, "You are not coming in the house to look for the children. They are not even here; they are at grandma's house, and even if they were here I am not giving them to you." The ability of a law enforcement officer to pursue that any further is basically over at that point. We turn back to mom and we say, "Dad is telling us the kids are not here; go back to family court." I think that may be where the issue lies because if, at that point, an officer were to go beyond those boundaries and say, "Well, we think the kids are here," and he pushes the door open to force his way in, and dad struggles with him, and something occurs, that law enforcement officer could be held liable for pursuing that further beyond the bounds, because it is a civil order.

The way S.B. 57 (R1) is drafted, it puts this issue more on the lines of a search warrant and the language would give the officer the ability to serve that warrant as he would a search warrant. We would have the authority then to enter a residence to look for the child, which is the way I understand the language of the bill.

Chairman Horne:
Thank you, Mr. Callaway and Mr. Schulze. It seems like we are shifting from the best interests of the child to a 4th Amendment standard. However, the 4th Amendment protects person and property from search and seizure. In criminal matters, and in the scenario that Mr. Callaway paints, if there is a civil order issued by family court allowing law enforcement to enter that home for the sole purpose to gather the children and give them to mom, I do not understand how that is a 4th Amendment violation. It is not an illegal search and seizure in a criminal context.

Victor-Hugo Schulze:
The United States Supreme Court has ruled that the 4th Amendment applies both in the civil context and in the criminal context. The 4th Amendment can also be the basis of a civil rights lawsuit under Section 1983 for alleged wrongful conduct by the police. What we did in detailed negotiations with staff of the Legislative Counsel Bureau (LCB) when we were finalizing the bill draft, was to write the 4th Amendment into the bill. These orders are denominated as warrants, they must be based on probable cause, and according to the provisions of the bill, the court must make probable cause findings of fact, the probable cause findings must be on the face of the warrant, the warrant must specify the child to be seized and the location into which the police are allowed to go.

These are not unconstitutional colonial-day general warrants where pre-Revolutionary War agents of King George III could get a warrant to go into any house in town, for example, looking for evidence of a crime. The 4th Amendment was written expressly into this bill. The 4th Amendment does not contain language that limits it to criminal prosecutions. The 4th Amendment deals with searches and seizures. If the police, as state agents, go into somebody's house which is an area not open to the public, they look around, they grab a child and take the child to court, or to child haven or to the other parent, the applicable question is, "Is that a search and seizure by a state agent?" The answer is "yes." Going into the house is a search; taking the child is a seizure, because of the fundamental right the parents have to the care, custody, and control of their children.

Keep in mind that under *Nevada Revised Statutes* (NRS) 125.470, subsection 1, we are not changing that section at all, and that allows a family court order, even if this bill passes, to enter what I would call a standard pick-up order that does not envision the involvement of the police. A situation like that would depend on the good faith of the parties. They are either going to obey it or they are not. An order under subsection 1 of the statute does not envision the involvement of the police and the police simply would not be involved.

However, once the police get involved, the entire scenario changes because it becomes a constitutional issue and 4th Amendment due process protections have to be applied. Once the police become involved, the state and its power are involved, and that implicates the 4th Amendment directly.

Assemblyman Sherwood:
Thank you, Mr. Chairman. My question is along the same concerns that the Chairman expressed about the constitutionality. Obviously, when you bring this topic up it reminds us of the young Cuban boy, Elián González, and envisions a difficult situation to go in and seize a child. However, in your testimony, you said the way our statutes are now written, it is "probably" not constitutional. I am wondering if there is case law that backs that up, or are you just trying to avoid a problem?

Victor-Hugo Schulze:
So far, we have avoided lawsuits in this state. I do not have any case law from the Nevada Supreme Court or the United States Ninth Circuit Court of Appeals, on a case where state law enforcement officers have been sued. As a deputy attorney general, part of my job always is to protect the state and protect the taxpayers of the state from foreseeable liability down the road, and not wait for those issues to come up in the context of a lawsuit, and in that process, to protect the ability of the police to do their job without fear of lawsuit and also have an effective recovery mechanism that benefits the family court judges. Keep in mind, a family court order without an enforcement mechanism is simply a meaningless piece of paper. What we are trying to do is come up with a constitutional method that is fair, effective, and workable, and that the police will be comfortable using while at the same time giving the family court judges real teeth when they enter an order, meaning their order is not a suggestion, or a request, but an order from a court and it will be enforced.

I have been a prosecutor for 21 years, and my understanding is that the police really would rather use less intrusive methods than going into a house. You mentioned the case from Miami a couple of years ago that we are all familiar with, when the police were going in with automatic weapons, as I recall. Police in almost every instance would prefer not to go into somebody's home if there are less intrusive methods they can use.

It is an open question right now under the 4th Amendment whether we could use a standard search warrant to go and get a missing child in a criminal context, when we charge somebody with abduction, or kidnapping of a child, even if it is a noncustodial parent. My best guess is that we could. I would prefer not to do that, because I prefer the sensitivity of a family court judge to make this determination rather than a criminal judge. You are going after

a child; you are not going after contraband, or drugs, or stolen property. This type of warrant never requires that police barge into a house and take the child out of its home. However, the warrant would protect the police, for example, if they use less intrusive methods, such as surveillance of the house, waiting for the parent and child to come outside, and when the parent and child get into the car walking up to them and saying, "We have a warrant to take the child." That situation would not be a search of the house. It would still be a seizure under the 4th Amendment, but the warrant would protect the police. Under one of these warrants, when the child is recovered in a public area, it would not constitute a search. The police would still be covered from a due process theory that something was wrong with the process and from a seizure theory in a Section 1983 lawsuit when the police took the child into protective custody. Did that address your questions?

Assemblyman Sherwood:
Yes. Thank you.

Chairman Horne:
Mr. Schulze, did the family court judges ask for this as well? I do not have any judges signed in either in support or as neutral.

Victor-Hugo Schulze:
This bill draft came out of an ad hoc committee put together about a year ago, with which I am involved along with a couple Clark County family court judges. The committee's object is to work on local implementation rules for the Uniform Child Custody Jurisdiction and Enforcement Act and enforcement of out-of-state custody orders. The committee is in the process of rewriting all of the forms at the Self-Help Center for nonrepresented parties and educating judges and the bar. We have met a number of times. In those meetings we decided that the issues that needed updating were not only interstate orders, such as the enforcement of a custody order from Kansas or Texas when one of the parents lives here, but also in-state orders that emanate out of state where all of the parties are here needed some updating. Most of the basic structure of this bill is reflected in NRS Chapter 125A, which is the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which specifically targets the enforcement of interstate orders. This bill would apply to interstate orders and intrastate orders. It would point out that UCCJEA specifically provides that Nevada's legal responsibility for enforcing out-of-state orders can be handled using the provisions of the UCCJEA or any other provision available under Nevada law. We are not limited to the UCCJEA.

Chairman Horne:
I just asked if the family court judges were on board.

Victor-Hugo Schulze:
Yes, sir.

Assemblyman Hammond:
I think I have a pretty easy question here. I was going to ask the question I think you addressed towards the end of your testimony regarding the number of cases increasing. I mean, let us be honest, whenever we have these situations they are always a messy deal. I know a lot of parents who just get desperate and they will use the police and any other tool they have in order to get their child back. They might make accusations that may or may not be true. You said this would give you a new tool in your tool belt where you would be able to charge a person with a felony if they make false accusations. My concern is still, do you think this will increase the number of cases or claims that might be made? The reason why I say that is, if they get results from this, I would imagine more and more parents would try to use it. If you will just speak to how you believe this will decrease that number, I would appreciate it.

Victor-Hugo Schulze:
It is a complicated area, and I cannot predict what is coming down the road. This process is going to be a little more time-consuming for litigants and for family court judges, because the current practice under subsection 2 of the existing statute simply is that you file a motion with the family court, which typically will be handled *ex parte* because the moving party will allege he does not know where the other party is.

The typical deal is that a person shows up in court and says, I need a pick-up order because my spouse is gone, the kids are gone, I am married and have joint custody, and I want my kids back. We probably have an ongoing caseload at any one time of about 200 cases and generally, there will not be a live hearing. My experience is that a family court judge faced with such a motion will grant the motion and enter the pick-up order. That is especially true when a blank pick-up order accompanies the motion. Right now, there is not a lot of process, any kind of process, fact-finding or due process, or anything. It is a pretty easy process. In some cases, that process is abused by people because the reason the other party left was to protect their children from child abuse or domestic violence. Because of a lack of fact-finding, the enforcement judge does not know anything about the history of the case, and generally has not asked any questions about things like child abuse, neglect, protective orders, anything like that. Our bill requires that kind of fact-finding. My best guess is this will decrease the number of requests because there are more hoops to jump through. About 50 percent of these folks are going in unrepresented by counsel, so they will be using the forms that will be available at the Self-Help Center. We envision that those forms specifically will provide all of

the advisements. It is a felony to make a false representation on one of these forms, not only because the documents are signed under penalty of perjury, but also because you are trying to obtain a warrant. There are many civil penalties, fines, and contempt of court that go along with these requests. Therefore, you will be liable for a felony punishment. Currently, under the order system you are not liable for a felony. However, because these are going to be 4th Amendment complaint warrants, somebody will be. There will be live hearings in front of a judge and the judge can look that applicant in the eye and say, is everything on this application true? Do you want to think about what you said? I think that will slow the process down a little bit. I think there will be fewer bogus requests.

Assemblyman Daly:
I have a similar question. On page 5, subsection 10, if we are talking about someone filing a complaint for harassment after the hearing when you get the parties together, or in bad faith, it does not refer to any criminal proceeding, and it says the court "may." I am assuming those are civil penalties. Do you see many bad faith, harassment-type cases? Why do we not refer to the criminal stuff and make the word "shall" instead of "may"? Then people might be deliberate in their accusations.

Victor-Hugo Schulze:
I appreciate your question. What we put in here was the civil penalties and the fines that the family court judge can assess when he makes a finding that the application was filed in bad faith, to harass. It does not happen in every case. However, in our caseload it has happened a couple of times. Sometimes people leave a bad situation to protect themselves and to protect their children from abuse and from domestic violence. The criminal statute is a separate statute. It is currently a felony separate from this to attempt to obtain a warrant in the state by way of false representation.

One issue right now is, let us say you have a domestic violence situation where the husband is abusing the wife, so she leaves one day. In cases such as this, the husband may run to court, file for divorce, and the next week seek custody claiming that he does not know where the wife is and does not know if she has left the state with the children. Assuming the husband has an abusive motivation, he will be allowed to serve her by publication, he will get the orders, a week later he will get a pick-up order, and then he will go to the police and say, "Go enforce this pick-up order, I want my kids back." In that scenario, there is no current mechanism under the law for an enforcement judge. Keep in mind this is only an enforcement mechanism. This bill does not create custody rights. Those are pre-existing elsewhere in the law. We are dealing only with enforcement of an existing custody right. There is no provision in the law right

now where that enforcement judge can learn about domestic violence, child abuse, and protective orders. The judge does not know anything about that relationship. Under this bill that judge will be informed specifically about those issues, and it is no longer a matter, as it is under NRS 125.470, subsection 2, where those issues can be ignored and a person can say, "I am married, she took the kids, I need a pick-up order." Under this bill, very explicit information will have to be provided, in addition to either a copy of the custody order, or a statement that the person is married, and under the statute has joint custody. Because it will be more complicated, I believe the more abusive parties will not want to go in front of a judge, file a paper under penalty of perjury, and will face criminal penalties if he files a bogus claim. In our office, I would estimate that 25 percent of the cases we investigate for abducted children, criminally and civilly, are bogus claims. Either there was no abduction, or the taking was done to protect the children. It is a minority of the cases, but it is not uncommon. We are aware that it happens, we are sensitive to that issue, and we wrote those sensitivities into the bill.

Chairman Horne:
Are there any further questions for Mr. Schulze? [There were none.] Mr. Kandt, do you have brief remarks?

Brett Kandt:
Very briefly, once again, the bill is predicated on the specific requirements of the 4th Amendment. I am not going to recite that for you, although I brought my copy today. The pick-up orders issued under NRS 125.470, subsection 2, have all the attributes of the warrants that are described in the 4th Amendment. The emerging case law indicates that courts are finding that these orders must meet 4th Amendment standards. That is why we deemed it prudent to bring this bill for your consideration.

Chairman Horne:
Are there any other witnesses in Carson City who wish to testify in favor of S.B. 57 (R1)? [There were none.] Are there any other witnesses in Carson City who wish to testify in favor of S.B. 57 (R1)? [There were none.] We will move to the opposition. Does anyone here in Carson City wish to testify in opposition to S.B. 57 (R1)?

Valerie Cooney, Attorney, Carson City, Nevada:
I am here today to talk to you about Senate Bill 57 (R1). I have been practicing in the area of family law for the past 24 years. I am currently the executive director of a nonprofit legal services organization that provides free legal assistance to victims of domestic violence in rural Nevada. The legal services we provide include representation in such matters as divorce, child custody,

paternity, and guardianship. I have engaged exclusively in this work for the past 9 1/2 years. Because I live and work here in Carson City and deal with domestic violence on a daily basis, I was asked to come and speak to you about our concerns regarding the bill. [Read from prepared testimony (Exhibit F).]

I can think of a number of cases wherein a parent, supporting an abuser's position in efforts to gain custody of the child, would indeed have knowledge of facts that they determine, if you will, to be relevant to the case and would now have standing to go into court to seek a pick-up order. [Continued to read from prepared testimony (Exhibit F).]

There has been no showing that Nevada's statutory scheme is constitutionally deficient. There have been no known suits filed in this state. My research has indicated two cases, one out of the Fifth Circuit and one out of the Ninth Circuit over the course of the last decade that address a similar situation. [Continued reading from prepared testimony (Exhibit F).]

I would also like to let the Committee know that "Memo: Impact of SB 57" (Exhibit G) was prepared by a working group on this bill, was submitted to NELIS, and should be available for your access.

Chairman Horne:
In the Attorney General's presentation, we heard that there are currently cases in the Ninth, Fifth, and Second Circuit that dealt with the constitutional issue on these types of warrants or pick-up orders, and that they were not constitutionally valid based on the 4th Amendment instead of the best interests of the child. Are you familiar with any of these cases?

Valerie Cooney:
We have had discussions with the proponents of the bill, and we are in the process of attempting to work out solutions. During the process of our discussions, Mr. Schulze has indicated that he has a list of relevant cases. In my own research, I have been able to identify two cases, one of which I know is on Mr. Schulze's list. I am somewhat reluctant to identify this as an emerging area of the law. These are cases that came down and were filed within the last decade. One of the cases is from the year 2000, the other is from 2006. I have not read the cases in any detail. I know they are civil suits under Section 1983, but believe that they allege illegal search and seizure. I think the lower courts held that qualified immunity applied, and that the officers had no liability. I do not know that there is an enormous problem with litigation on this subject or topic. I certainly would be prepared to review and provide a memo to anyone on the Committee who would desire research on the subject of the numbers and types of cases, and what the result has been.

Chairman Horne:
As long as your research is not single-spaced, two-sided pages, that would be okay. My second question is, in your opinion, if this bill were to pass and as you stated we would be departing from the uniform laws in the United States, what do you think would be the result, for instance, if one of these warrants issued out of Nevada was for a child who is in Kansas? How do you anticipate the Kansas jurisdiction treating that warrant if it is now different from the way Kansas operates under the uniform laws?

Valerie Cooney:
If I understand your question, Mr. Chairman, if we were to adopt this measure and an order would issue, I think that a court in any other state will give that order full faith and credit. I do not think the Kansas court would necessarily do any type of an analysis of what the law is in the state of Nevada. I think they would look at the face of an order and would enforce that order without determination of the merits of the order or whether it was based on relevant facts that were determined by the court. Our concern about the UCCJEA is diverging, or moving away from, an act that has been adopted in all 50 states. We are concerned about a bill that deals exclusively with interstate, that is state-to-state jurisdiction of cases, and deviates or moves too far from that Uniform Act so as to make it inconsistent with other states and to increase as a result litigation or disputes, to further involve courts in an analysis of the application of our statute, which may be different from Kansas' statute, UCCJEA. Uniform acts are studied, they are prepared by people who have spent a great deal of time and years working on a particular act dealing with disputes and issues raised by the proposed act, and resolving those so as to avoid some of the problems that we have in enforcement of out-of-state orders. The uniform acts should be maintained and should not be modified absent an important reason do so.

Chairman Horne:
One of my concerns is that you mentioned in your testimony that S.B. 57 (R1) would be lowering the standard for an order issued out of Nevada. If a child is in Kansas with his mother, and Kansas is using the best-interest standard, it would become an extradition order for Kansas to enforce.

Valerie Cooney:
The reality is that the process that currently exists to discuss and determine the enforceability of an order, that is, who should consider and exercise jurisdiction at the particular time, is determined by the statute itself. The statute provides that the judges in the two courts, in this case a Nevada court and a Kansas court, either with or without the involvement of counsel, would speak with each other by telephone and discuss which judge should exercise jurisdiction based

upon the statutory criteria that defines jurisdiction of these courts. At that time a determination will be made about the order in question. My experience is that judges disagree on the interpretations of the jurisdictional provisions in the statute and that the attorneys in each case end up in a significant legal dispute about the exercise of jurisdiction. The procedures set forth, I think in the UCCJEA, will dictate how this process is handled, and who may enforce the court order. I do not know if that has helped you or explained some of the process and answered your question. If not, maybe you can ask it again.

Assemblyman Ohrenschall:
My question is regarding the text on page 3, lines 30 to 32, where it says, "it appears to the court upon a petition submitted by an aggrieved party or any other person having knowledge of the relevant facts." My concern is with the "or any other person" language in that test. I believe earlier today with the Chairman we talked about a scenario where the significant other of an estranged parent could be the other person who might try to get involved with this and not do it out of the best interest of the child, but out of some other interest. Do you see this now or do you think that might happen with this expansion to "any other person."

Valerie Cooney:
Probably one of the big problems with the bill is identifying an individual who may have standing to come into court to seek a pick-up order. It is a problem. We have had discussions with the proponents of the bill in an effort to resolve this issue and we are working on that. I think we can reach some agreement about who may and may not be able to come into court. As written, it is far too broad. As written, girlfriends of perpetrators, acquaintances, roommates, their mother, their father, their sisters, their brothers, all of those people in these cases have information about what is going on in the family and all could make a claim to having knowledge of relevant facts. In our view, the language is very broad, and needs to be more specific as to those who may come in and seek these orders. I think we are working in that direction, and I am hopeful that we will reach an agreement.

Chairman Horne:
Are there any other questions for Ms. Cooney? [There were none.] Ms. Hart, did you have comments you wanted to put on the record?

Nancy Hart, representing the Nevada Network Against Domestic Violence:
I would like to reiterate what Ms. Cooney noted that we did miss the hearing in the Senate which happened on the third day of the session. Nevertheless, we have been working since shortly after the session began to both understand this S.B. 57 (R1), to get our questions answered about the bill, and to work

with the sponsor to see if there is a way to address the concerns that we have. We also did meet with Chairman Horne yesterday afternoon to advise him of the fact that we have these continuing concerns and that we had not been present in the Senate hearing.

To reiterate Ms. Cooney's testimony on a couple of issues, I would urge the Committee to look at the memo (Exhibit G) she mentioned. Our concerns about this bill are really about the unintended consequences of what might otherwise be, and I think is, a genuine, sincere effort to make pick-up orders work better. As mentioned, we have questions about how the provisions actually would work, because some of them are broad, some of them change things, and it has raised many questions. We think further study and discussion is advisable, and we are not sure there is an emerging consensus about where the law needs to go. Finally, the more general point is that the statutes that we are talking about provide a lot of detail, and a lot of dense outline of procedures and factors. We think there are as many explanations that go to training and education about how these bills work, as they do to needing to change the laws.

I would note that Mr. Schulze's presentation makes it sound as if there are no factors that have to be considered and no clear process for obtaining issuance of a pick-up order, but that is absolutely not the case. The current law under the Uniform Acts provides explicit procedures for these pick-up orders and criteria that go to the best interest of the child. In fact, this bill narrows the circumstances while simultaneously lowering the burden of proof for getting one. Therefore, we think there are a lot of issues that need further discussion; the breadth of the parties is one of our significant concerns; the departure from uniform codes is of significant concern; and for me most significantly, the departure from the best interest standards is of significant concern. The best interest standard permeates the statutes on custody and, we believe, is a standard that is familiar not only to other states but to all of the family court judges as well, and that is a wise standard to be following. We have concerns about replacing that with probable cause standard.

Mr. Schulze also alluded to an ad hoc committee that apparently included one or two family court judges from southern Nevada. We have had our own conversations with a couple of family court judges in northern Nevada who have a lot of concerns about the broadening of the parties. They find it troubling, unprecedented, and that it infringes on parental rights. We think further discussion is needed, and continue to be open to discussing things with the bill sponsor, and hope language can be worked out that will address our concerns.

I would like to add something to Ms. Cooney's response to the Chairman's mention if this bill were to pass, of the pick-up order being entered here in Nevada and Nevada tried to have it enforced in Kansas. I believe there is a very real possibility that order would create consternation in the Kansas jurisdiction because it would not be in line with the Uniform Act and it would be more difficult to enforce. It might not be unenforceable, but it might require extra steps that a court would have to go through in order to establish that it was entered in accordance with law.

Chairman Horne:
Are there any further questions for Ms. Hart?

Assemblyman Ohrenschall:
To either witness, I believe Ms. Cooney mentioned there could be unintended consequences, with the bill as written, towards victims of domestic violence. Could you explain that one more time or give an example of "because of the way this bill is written it might produce unintended consequences"?

Nancy Hart:
The easiest example is in the broadness of the parties that we were talking about, and the fact that a victim of domestic violence might leave a relationship with the father and take the four-year-old child with her and leave the jurisdiction and go to California to stay with her parents. Two months later the father of the child, who still resides in Nevada, might not be able to get a pick-up order. We have questions about how far afield can this go. We know that patterns of domestic violence result in perpetrators of domestic violence being well aware of how the legal system works, and they are good at manipulating that system. Those perpetrators often are in a position to urge the girlfriend to go to the court to obtain a pick-up order, when there is no basis for her having any interest in the child. It is the manipulation of the system that we believe would be used against a victim of domestic violence who legitimately had fled for the safety of herself and her children.

Chairman Horne:
Thank you. Are there any other questions? [There were none.] Thank you, Ms. Hart and Ms. Cooney. Is there anyone else here in Carson City wishing to testify in opposition of S.B. 57 (R1)? [There were none.] Is there anyone in Las Vegas wishing to testify in opposition of S.B. 57 (R1)? [There were none.] We will now close the hearing on S.B. 57 (R1). At the very least it seems like there is much more work to be done on this bill, so I urge the parties to keep

talking and keep me and the Committee in the loop on the progress, if any. Is there any further business to come before the Committee? We had a slew of Senate bills that passed out of their house last night, many of which are coming to our Committee. If there is no other business before the Committee, we are adjourned [at 10:57 a.m.].

RESPECTFULLY SUBMITTED:

_____
Jean Bennett
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 27, 2011 **Time of Meeting: 9:08 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 24 (R1)	C	Ben Graham	Writ of Execution Form
S.B. 26 (R1)	D	John McCormick	Amendment to S.B. 26 (R1)
S.B. 57 (R1)	E	Brett Kandt	Letter in Support of S.B. 57 (R1)
S.B. 57 (R1)	F	Valerie Cooney	Prepared Testimony
S.B. 57 (R1)	G	Valerie Cooney	Memo: Impact of S.B. 57