MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
April 28, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:32 a.m. on Thursday, April 28, 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 Mark Sherwood

COMMITTEE MEMBERS ABSENT:

Assemblyman Tick Segerblom (excused)

GUEST LEGISLATORS PRESENT:

Senator Sheila Leslie, Washoe County Senatorial District No. 1
Senator Shirley A. Breeden, Clark County Senatorial District No. 5

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Julie Kellen, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Frances Doherty, Family Court Judge, Family Division, Second Judicial District
Kevin Schiller, Social Services Director, Washoe County Department of Social Services
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General; Executive Director, Advisory Council for Prosecuting Attorneys
Kareen Prentice, Domestic Violence Ombudsman, Office of the Attorney General
Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence
Marlene Lockard, representing Nevada Women's Lobby
Caleb Cage, Executive Director, Office of Veterans Services
Kim Spoon, Private Citizen, Reno, Nevada

Chairman Horne:
[Roll was called.] We will start out of order and open the hearing on Senate Bill 112 (1st Reprint).

Senate Bill 112 (1st Reprint): Revises provisions relating to the records that may be reviewed by a juvenile court in certain proceedings. (BDR 38-199)

Senator Sheila Leslie, Washoe County Senatorial District No. 1:
I am here to present this bill. I am here as the former chair of the Legislative Interim Committee on Child Welfare and Juvenile Justice. There is a bulletin, No. 11-16, that you may find somewhere in your office that will give you more background on this bill and other bills you have heard or are going to hear. We received testimony at two hearings during the interim on this committee from Judge Frances Doherty about the problem she faced as a judge in the juvenile delinquency court. A situation happened when information from the juvenile dependency, which is child welfare court, was not available to her even though a child was involved in both systems. This bill is an effort to address the confidentiality of records issue, to also ensure due process rights are protected, and also to make sure judges are able to access the information

they need in order to make the best decision about a particular child's case. The bill was worked a bit through the Senate, and I think it is in pretty good shape now. We have addressed the concerns of the public defenders, district attorneys, and judges. With your permission, Mr. Chairman, I would like to turn this over to Judge Doherty.

Chairman Horne:
Please proceed, Judge Doherty.

Frances Doherty, Family Court Judge, Family Division, Second Judicial District:
I have presided in juvenile delinquency court for eight years, and I am the presiding judge of that court. I have also sat as a master for five years previous to that time.

Senate Bill 112 (R1) is a little bill that will make a big difference in the lives of children we meet in juvenile delinquency court. When a child comes off the streets, is arrested and comes before the judge, the judge must decide what the most appropriate, immediate safe release is for that child. Oftentimes, the only thing in front of me is a probable cause sheet that tells me about the circumstances of the arrest and very little more. Within our district, we have all sorts of custodial cases that may shed light on the life of that child. If I release the child into the care of the adult in the courtroom, I need to know whether that adult is or is not the subject of child abuse and neglect proceedings where the rights or privileges of custody have been removed. I also need to know whether the adult is or is not the real parent of the child or is the legal guardian. Without access to those other court orders and records within our district, we are blind.

Right now, the court can take judicial notice of certain orders that exist in other cases, but it is far broader than what we need to understand. If there is a child welfare case, I need to look at that last report in that case to see whether the child is in custody of someone other than the adult. If there is a legal guardianship case, I need to look within that case to see what the circumstances of removal from the original parent are. This statute gives notice to everyone. Within our district, we can look at related files, and if we look at those related files, we will give you copies of what we look at and copies of the order and due process ability to respond to them prior to the court making a decision. This statute is consistent with the Juvenile Justice and Delinquency Prevention Act, which mandates that every state, as a condition of receiving federal funds, to ensure the child welfare cases are incorporated into child delinquency cases. It is also consistent with the judicial notice provisions, as well as the child welfare statute of *Nevada Revised Statutes* (NRS) Chapter

432B, which allows us to look at records, but this is much more specific and meets the court's needs. I would appreciate your support this morning of the bill. It is critical to our safety requirements in juvenile court to allow a child to be placed with an appropriate relative upon release.

Chairman Horne:
In the amended bill, I am looking at subsection 4, where it talks about what the court may not use evidence for. If you could explain to the Committee how a judge ignores something he has seen in order to make a determination.

Frances Doherty:
In juvenile delinquency cases, children have the same constitutional protections adults have in criminal court, except for the right to a jury trial. If a child is charged with a delinquent act, there may be a trial, and there will be evidence received with respect to that conduct. The records I am referring to could not be used in any trial to prosecute a child for committing a delinquent act. These records would only be used for placement decisions or dispositional decisions. They would never be used to prove the guilt or innocence of a child during an adjudicatory trial. This is what that section is meant to address.

Assemblyman Sherwood:
The comment about consistency with federal guidelines and federal funds, if we do not pass this bill, are our federal funds in jeopardy? If so, how much federal funding are we talking about? Were you saying that if we pass this it will not hurt federal funding?

Frances Doherty:
It will not hurt federal funding. The language makes Nevada more consistent with the language in the federal statute. We have not been cited for not being in compliance. We have created language in NRS Chapter 432B that allows judges to look at the files of child welfare, but we have not created language as contemplated in the federal act that says a juvenile delinquency judge shall consider child welfare records, and shall incorporate those records into the juvenile delinquency file. That is what we do not have. I do not mean to sound an alarm; we are not currently being penalized or identified. As I look at federal law, as it is my obligation to ensure we are following that law, I see that our statutes need to be moved a little bit further to the intent of that law to ensure we are in compliance and to avoid any component of criticism in the future. It also makes so much sense, which is probably why it is identified that way. If I see a child in delinquency court, and Judge Deborah Schumacher sees that same child in child abuse and neglect court, and we do not have that shared information, that is ridiculous and not in the child's best interest. I will assure

you we are not being jeopardized with federal funds, but I think this law makes that less likely in the future.

Chairman Horne:
Are there any more questions? [There were none.] Senator Leslie, is there anyone else you wish to testify?

Senator Leslie:
The only other person I brought is Kevin Schiller from Washoe County Social Services.

Kevin Schiller, Social Services Director, Washoe County Department of Social Services:
I want to echo what Judge Doherty and Senator Leslie have indicated in support of S.B. 112 (R1), emphasizing that the kids who are being served in the juvenile justice system often touch both of our agencies. When you look at a review, we have about 300 kids who are age 12 and older who we have in the custody of the Department of Social Services. When you look at that population, over 20 percent of those kids have seen juvenile justice at some point or have had some level of contact. In addition to that, beyond those kids who are in placement, when we did a review of kids in the juvenile justice system or in child welfare where we have had joint contact, we found our penetration rate, if we were looking at Title IV-E and those types of issues, was over 35 percent. It is an ongoing contact issue. Treatment records and those issues that the judge needs to make relevant decisions for safety are critical. This bill will make it much easier for us to do that. It is in the best interest of these kids, and it will expedite services for them.

Chairman Horne:
What was going on before this? Were you just shooting blind?

Frances Doherty:
We would makeshift information gathering. For example, Mr. Schiller's staff would possibly attend a hearing at the last minute and give us an update if they knew the child had been arrested. If we had some information from the past, and oftentimes we do not, we are able to start questioning what child welfare is doing. Many cases are blind with respect to the statuses of the adults in the lives of the children when we see them, especially in detention hearings. It is a very precarious environment to make those decisions without that broader information.

This gives due process to all the court players. We will be able to say, "This is what we are looking at, but if we look at something else, we will give you a copy." It is a critical component of due process in our courts.

Assemblyman Frierson:
It sounds to me like the system has been working where the criminal or delinquency aspect has all of the information. The part of the system that is supposed to be determining the best interest of the child does not have that information. This bill is trying to make sure the folks who are acting in the best interest of the child have the same information as everybody else already has. It does not make sense to me that we have not taken care of this before now. It sounds like this is an effort to make sure everyone has the tools to work in the best interests of the children.

Frances Doherty:
That is exactly right. I will tell you that the judges who have reviewed the bill and considered it statewide have affirmed the need to have this bill implemented.

Chairman Horne:
Are there any other questions? [There were none.] Is there anyone else wishing to testify in support of S.B. 112 (R1)? [There was no one.] Is there anyone wishing to testify in opposition to this bill? [There was no one.] Is there anyone neutral to this bill? [There was no one.] We will close the hearing on S.B. 112 (R1).

We will go back to the top of the agenda and open the hearing on Senate Bill 66 (1st Reprint).

Senate Bill 66 (1st Reprint): Revises provisions relating to multidisciplinary teams to review the deaths of victims of crimes that constitute domestic violence. (BDR 18-268)

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General; Executive Director, Advisory Council for Prosecuting Attorneys:
I am here on behalf of the Attorney General to present testimony in support of S.B. 66 (R1). This bill is part of the Attorney General's ongoing efforts to improve Nevada's response to domestic violence and to ensure victim safety and prove offender accountability.

[Continued to read from prepared testimony (Exhibit C).]

With me is Kareen Prentice. With the Chairman's permission, Ms. Prentice will go through the specific sections of the legislation.

Kareen Prentice, Domestic Violence Ombudsman, Office of the Attorney General:

The Office of the Attorney General held a summit, Statewide Domestic Violence Fatality Review, on October 1, 2010. This summit brought together professionals from across the state to address the issue of domestic violence fatalities in Nevada. Attendees from this summit urged the Attorney General to move forward with the Statewide Domestic Violence Fatality Review Team. Statistics of domestic violence nationally and statewide are disturbing and reveal that domestic violence continues to be a significant problem in our state. According to the Violence Policy Center, Nevada consistently ranks in the top five states for women murdered by men.

[Continued to read from prepared testimony (Exhibit C).]

This team will review domestic violence fatalities statewide. The statewide team would work with established teams in Washoe County and Clark County. Local teams were established by *Nevada Revised Statutes* (NRS) 217.475 in 1997. The Legislature approved this bill that provided for the formation, on a local level, of domestic violence review teams. Our current bill would enable the Attorney General to form a statewide fatality review team, to expand and enhance the work of local teams. Washoe County currently has a team that is actively reviewing domestic violence fatalities. Southern Nevada is in the process of reestablishing a team. The data collected by all three entities would give a more complete picture of domestic violence fatalities and balance the workload.

Overall, domestic violence fatality review teams in other states have the following objectives: prevent future domestic violence and domestic homicide; provide safer provisions for battered women and their children; hold accountable the perpetrators of domestic violence and the multiple agencies and organizations that come into contact with the parties; and enhance a community's coordinator response. A fatality review provides an opportunity for a diverse, multidisciplinary group of professionals and community members to meet on a regular basis and discuss issues such as systemic response and social change.

I request that the Committee approve S.B. 66 (R1) in order to increase domestic violence victim safety and provide accountability for perpetrators of this crime.

[Continued to read from prepared testimony.]

Today there are many people here who are prepared to testify in support of this bill, and you have also received letters of support. Thank you for your consideration of this bill.

Assemblyman Frierson:
My question is about the provisions of the bill that talk about the release of confidential information. Why are we only talking about the release of confidential information regarding the death of a child as opposed to also the death of a victim who is not a child? Regarding the $500 civil penalty, I would not mind it being more. I do not want to do anything to hurt the bill, but I think it is important that this type of team be able to do the work it needs to do. It can send a message to folks about keeping confidential information confidential.

Brett Kandt:
The issue of confidentiality under NRS Chapter 432B is controlled in large part by the Child Abuse Prevention and Treatment Act. Those provisions regarding confidentiality were actually amended into the bill upon recommendation by Clark County. The confidentiality provisions and the penalty provisions for a breach of confidentiality mirror those that exist in other provisions under NRS Chapter 432B.

Chairman Horne:
Are there any other questions? [There were none.]

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence:
I am the Executive Director of the Nevada Network Against Domestic Violence, the statewide coalition of domestic violence programs in Nevada. I am here to speak in support of S.B. 66 (R1), which allows the Office of the Attorney General to convene fatality review teams to review domestic violence homicides.

[Continued to read from prepared testimony (Exhibit D).]

Chairman Horne:
Are there any questions? [There were none.]

Marlene Lockard, representing Nevada Women's Lobby:
We are also in strong support of this bill.

Chairman Horne:
Is there anyone else wishing to testify in support of S.B. 66 (R1)? [There was no one.] Is there anyone wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in the neutral position? [There was no one.] We will close the hearing on S.B. 66 (R1).

[Exhibit E and Exhibit F are entered into the record.]

We will open the hearing on Senate Bill 127 (1st Reprint).

Senate Bill 127 (1st Reprint): Revises provisions concerning guardianships for certain veterans and their dependents. (BDR 13-160)

Senator Shirley A. Breeden, Clark County Senatorial District No. 5:
During the interim, I had the honor of serving as the Vice Chair for the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs. We met four times and heard from a variety of businesses, community groups, and advocates for seniors and veterans. The goal of the Committee was to determine and find ways to protect these individuals from abuse, neglect, and exploitation. This bill is one of the recommendations that came out of our Committee. Some of you may know former Assemblywoman Kathy McClain, who chaired the Committee. She was very passionate about these issues.

I would like to introduce the Executive Director of the Office of Veterans Services, Caleb Cage. He will go through the specifics of the bill with you and answer any questions you may have.

Caleb Cage, Executive Director, Office of Veterans Services:
I would like to thank you for the opportunity to speak on behalf of and in support of S.B. 127 (R1). I would also like to thank Senator Breeden for her hard work in bringing this bill forward. I do have some remarks.

The guardianship program for veterans has been seen as a responsibility of states since World War II when veterans started returning from that war. Oftentimes, they were unable to reintegrate into society, but they had estates and other matters that had to be taken care of. Like many other states, Nevada enacted this legislation. During 2006, we had 44 wards in our guardianship cases. In 2007, due to an executive audit, we started to unwind our program. We turned it over to other entities in the private sector. We have since eliminated the program and are continuing to work on the final process of doing so now. There are several problems with the veteran guardianship laws as they exist now. In my opinion, the biggest problem is as guardians of these

veteran wards, we must serve both the United States (U.S.) Department of Veterans Affairs (VA) laws and state laws. While one entity may approve something, the other may not. Further, while one entity may direct one action, the other may find issues with this. For example, in state law, guardians are limited to the number of clients they may have. The VA determines this more subjectively based on methodology and review of past actions. In state laws, there are certain allowable charges or administrative fees that differ from those that are allowable by the VA. Under VA guidelines, certain expenditures are authorized only through prior authorization. This is not necessarily the case with state laws. The VA has sole jurisdiction through its office and field examiners to direct money and reassign and terminate veterans' guardianships. There is little right to appeal and no grace period for awaiting court approval. As you might guess, this places the guardians in guardianship programs, like the ones we previously operated, in a tenuous situation where a court order may direct us to do one thing that is in direct conflict with VA law and other laws.

Another problem with *Nevada Revised Statutes* (NRS) Chapters 159 and 160 is the current trend to use them to complicate matters. Since NRS Chapter 160 only deals with veterans' funds, it is being interpreted that only VA funds fall under those rules, which is addressed in this bill. Therefore, a veteran who receives social security or private funds has some of his fiduciary guardianship held to the standard of NRS Chapter 159 while others are held to the standard of NRS Chapter 160. This requires split bills and split assets in a situation evolving where certain expenses allowable under NRS Chapter 160 are charged to those funds while they would not be allowable under NRS Chapter 159.

In conclusion, today there are approximately 700,000 veterans in the U.S. who have fiduciary guardianship provided by the VA. This number will likely grow due to the number of troops currently serving in combat zones, like Iraq and Afghanistan. I recently heard it put that there are approximately 500 service members a day becoming veterans in the U.S. With this in mind, the same problem exists as it did in World War II, where many folks are being diagnosed with posttraumatic stress disorder. This is becoming a key element of this returning demographic. We believe this law will go a long way in allowing the guardianship programs throughout the state to serve these veterans in the most efficient and best way possible.

Assemblyman Sherwood:
This seems like a pretty straightforward bill. The limitation in section 2 says no more than ten wards. Yet, we just heard testimony that the demand will only grow over time. Putting a cap on the number of folks any one person or entity can serve is setting ourselves up for a supply and demand train wreck. Am I missing something?

Caleb Cage:
We had 44 over a several-year period. That was the total number we were serving at one time. We are a statewide agency. I cannot speak for private practice guardians, but I do know there is a subjective standard handed down by the VA as to how many veteran wards one can have. That is what this pertains to. This would bring it in line with the federal standard.

Assemblyman Sherwood:
We are passing a law that is subjective. The number of wards set to ten is because the feds said ten? Why did we go from five to ten? Why do we even have an artificial cap?

Caleb Cage:
I would have to defer to a guardian who works these issues on a daily basis. Currently, I believe the VA allows for upwards of 20. This is saying we would like to provide more opportunities. It is actually countering the supply and demand problem you brought up.

Assemblyman Sherwood:
Maybe we can talk later so you can help me wrap my brain around why we are putting a number on it.

Senator Breeden:
During our testimony both during the interim and in the Senate Judiciary Committee, several guardians came forward and indicated each individual has his own amount he can handle. This depends on how much time each ward takes. In speaking with the guardians, we felt that 20 were too many. It was a number we came up with.

Assemblyman Frierson:
In reading the language in the bill, it seems to me that we are trying to increase or broaden the opportunity to have guardians for these veterans but not creating an incentive for folks to not do this only for the money. There is a cap so we do not have folks trying to have 100 wards and receive 5 percent of these veterans' money. This would allow enough guardians to deal with the increase in the number of veterans. Does that speak to the cap of ten wards and why we are trying to expand this but not too broadly?

Caleb Cage:
I believe the change from the 5 percent to 4 percent was actually to tighten up the billing process more than anything. If I may speak to that, I brought written testimony from a guardian named Stan Brokl who works with many veterans in the State of Nevada. In several guardianships the court appoints a guardian

ad litem and an attorney for the ward, along with other court directed entities, all of which charge against the ward's estate. These charges far exceed 4 percent, which is currently the standard, unless there are limits placed on it. That is what this bill is intending to do. The ward's estate can be charged the 4 percent from these outside entities. Unless there is a limit placed on the estate, the 4 percent is meaningless. As an example, I have a veteran in a full care nursing facility in a VA medical center in Reno. The previous guardian hired a paid companion at $19 an hour, three hours a day, five days a week. The judge then appointed a personal attorney for the ward at a cost of $300 per hour. He goes on to speculate on where that incentive process is. His point is that a ward may have $75,000 to $80,000 sitting in a bank in full assets, and through the current system, that can be completely taken down to a zero balance in a very short time because that 4 percent is not being honored. There are outside expenses that are being approved by court order.

Chairman Horne:
You are decreasing the amount paid from 5 percent to 4 percent. In addition, you are taking the discretion away from the judge to go beyond that in extraordinary circumstances. The judge cannot make a determination in a hearing that maybe 5 or 6 percent would be caused by the complexity of the guardian's duties for that ward.

Caleb Cage:
The 4 or 5 percent, from the way I understand it, is 4 or 5 percent of the expenses. They are transactional fees and a percentage the guardian would make on behalf of serving the ward. This is decreasing the possibility of abuse of the financial situation. There are extraordinary circumstances. I believe the basis of this would say that the current law that oversees guardianship in the State of Nevada allows for that guardian to accept that liability and a responsibility to oversee that ward's estate and to be paid for doing so. In other words, it is so the account is not depleted to a zero balance. I do not know whether that answers your question.

Chairman Horne:
Not really, but we will work it out.

Assemblyman Ohrenschall:
I do have a few questions. I want to start out by complimenting Senator Breeden for her work during the interim. I know this is a very difficult issue. I am impressed by the hard work she has put into it. I think former Assemblywoman McClain has done an outstanding job in trying to protect our veterans. I have had personal experience with the state Office of Veterans Affairs. You have helped me with some of my constituents.

If this bill does not pass, and if there are veterans who need a guardianship and are not able to get it, what will happen to those veterans?

Caleb Cage:
Currently, there are private entities out there. There are private guardians who are managing these accounts and doing so according to the law. This is merely tightening up the law with respect to how many they can oversee and how they receive payment. Currently, the Nevada Office of Veterans Services is no longer accepting wards because of the workload and staffing issues related to it. There are private entities that are doing this in the state and out of the state.

Assemblyman Brooks:
Are you familiar with the amendment that was submitted by Ms. Kim Spoon (Exhibit G)? She states that in section 2, number 1, of her handout that when you go for more than two guardianships not from the same family, there is a particular certification process that must be granted. It is called a Private Professional Guardian (PPG). If this section were to allow us to give individuals up to ten wards, would this only pertain to PPGs, or would that be for anyone?

My second question has to do with the authority that would grant an individual up to ten wards. She is stating that there is no authority that would do such a thing. How are you going about implementing this if indeed it were passed? Would a person have to be a PPG in order to qualify?

Caleb Cage:
Not being a professional guardian myself, I cannot speak to the specific requirements of the PPG. This is an aspect of our agency we provide that is winding down. Her concerns appear to speak to the private industry of guardianship. She comes at this from a different angle than the State obviously would with respect to veterans.

The second question regarded increasing the number from five to ten wards. In her comments here, she said there is currently no function by the VA. Currently, state law has a process in place to limit the number to five wards. I do not think that process would change the limit to ten wards necessarily. It does speak to the difficulties that a state agency and guardians have in dealing with the two separate entities and if there are two different sets of regulations. This bill is trying to clear that up. There is some conflict there, and this confirms the opening portion of my testimony as well.

Assemblyman Brooks:
It still concerns me that we do not know what board is going to monitor the 5 to 10 wards. If we do not have a regulating authority, someone could have 20 to 30 wards. That is a concern to me, and I would like to follow up with you later as to how that is going to be implemented.

My final question deals with something the Chairman spoke about. I am concerned that many of these individuals, based on the testimony I have seen and read, have alcohol and drug addiction problems that require a certain amount of attention. It includes taking the wards to different places to receive help for their various needs. Are we making this process more cumbersome to penalize the guardian in taking them from 5 percent to 4 percent? The State is pulling back, so we are depending more on these private guardians to step up. What is the impetus for wanting to lower that percentage? To say it is to not take advantage of a ward is not a valid argument. I do not think one percent is going to make that much of a difference. I am wondering why we are decreasing that percentage. What is the real rationale behind that?

Caleb Cage:
The rationale is to bring it in line with the VA regulation. As far as the actual administration of the fiduciary responsibility of guardianships for the wards, I would defer to a guardian. Ms. Spoon does do this, and her concern is the decrease from 5 percent to 4 percent is punitive. I do not believe that is the portion she is saying is punitive. I believe she is saying the extraordinary expenses are punitive. That is in response to abuses in the system that have allowed for extraordinary situations to result in the complete depletion of a ward's finances. That is the way I understood her memo. We would oversee the guardian but not the ward. We would provide certain financial oversight, but we were not doing the day-to-day work a guardian would. We were working with private entities doing that. I cannot speak to the actual day-to-day operations she addresses in her memo.

Chairman Horne:
You mentioned a couple of times that this brings it in line with federal VA regulations. We are exceeding it currently. Usually, when you say you are bringing something in line, you are bringing it up to a standard. We are in line. If you made $50,000 a year, and we told you that federal regulation calls for $45,000 a year so we are going to reduce your salary because we need to come in line with federal regulations, that would be troublesome to you. Would you not agree?

Caleb Cage:
Maybe "bringing it in line" is a bad choice of words. If there is a limit set by the federal government that is a restriction. Bringing it in line would mean meeting that restriction. Obviously, that has an effect on people's ability to make an income.

Chairman Horne:
Is 5 percent in violation of the federal VA guidelines?

Caleb Cage:
I would have to check on that, but that is the way I understood it.

Assemblyman Brooks:
As a point of clarification, you mention that guardians would be moved to 4 percent, and the amendment by Ms. Spoon discusses that the punitive has nothing to do with the percentage. Mr. Cage, I think you are wrong, and you need to read that again. She distinguishes between a custodian and a guardian. A custodian receives 4 percent, and a guardian receives 5 percent. To take the guardian down to the same percentage as a custodian would be punitive.

Chairman Horne:
Ms. Spoon is here. Is there anyone else in favor of S.B. 127 (R1)? [There was no one.] We will move to the opposition.

Kim Spoon, Private Citizen, Reno, Nevada:
If you have not read my memo (Exhibit G), I want to let you know that this is my nineteenth year of working in guardianships. My first six years was working as a deputy public administrator with the Washoe County Public Guardian's Office. I went out on my own and now have an agency called Guardianship Services of Nevada, and we are in our thirteenth year of being a corporation. I have three other partners, but I am the only one here today. Other than the Public Guardian's Office, I have done more guardianships for veterans than anyone in the state. I have a passion for working with veterans. That is one of the reasons I am so alarmed by this bill. If this bill were passed, I would not be able to do guardianships for veterans. I do not want to see that happen.

Many things have been questioned and talked about. I find myself in an unusual situation because I have never come forward to say I do not want a guardianship bill to go forward. I am alarmed by this bill and concerned with the issues. I am not sure where to start with all of the questions. I tried to get ahold of Mr. Cage, but he was out of the area for a while, and we just could not get together. He has not had a chance to work with guardianships.

He is new in his position, and his office is no longer doing guardianships. His predecessor was one of the people that testified to this Committee, and he was confused as to how this worked. He was pulled in a couple of months after his testimony under contempt of court with the Washoe County District Court because of his misuse of funds he had control over as a guardian. He moved and received another job out of state. The situation was taken care of. I do not think he had the correct information when he testified. I know Mr. Brokl very well, but he has just started doing guardianships for veterans. However, he has done custodian work for years. I am glad to see him make the move to guardianships. I believe his testimony was incorrect in terms of the extraordinary fees. In fact, in the same case he presented to the Senate Judiciary Committee, he applied for extraordinary fees to the judge. I believe he has changed his mind since he testified.

There is some confusion, and I did try to clear it up in my memo. This confusion deals with NRS Title 13, Chapter 160, which is the Uniform Veterans' Guardianship Act. Then there is the policy and procedures for custodianship that the state VA has. Under NRS Title 13, Chapter 160, it says that guardianships are limited. It talks about the limit of guardians to 5 wards, and it also talks about the 5 percent for guardianships. Under the policy and procedures for custodians, that is 4 percent. Those are separated with one under the Uniform Act and the other under the policy and procedures for custodianship.

When a person becomes a guardian for a veteran, the VA then decides whether or not that guardian is going to be the custodian of the funds. That is where it comes in and recognizes a guardianship and approves whether or not that person will be made a custodian as well. It does not have to approve the guardian as the custodian and may decide another person will be made the custodian. That is its purview, but it has no way to authorize or deal with the fact that someone may have more than ten guardianships. The VA has nothing set up for that. It can only recognize the guardianship and approve of the custodianship after the guardianship is finalized. That is why in my memo under section 2, number 3, it states there is no way to deal with or conform to that.

If you want to go back and start with section 1 of my memo, the VA funds and other income a ward may have is not handled differently within the guardianship process. All guardianships, whether through the VA or not, must fall under NRS Chapter 159. Guardians must follow the statutes of NRS Chapter 159. The Uniform Act that was presented for NRS Chapter 160 brings in certain issues that pertain only to veterans, but all guardians must follow Chapter 159 of NRS. Funds are not used differently and are not spent differently. There is not a contract for a guardianship where there may be a contract for

a custodianship, which limits what a custodian may do and how he does it, unless he gets permission from the VA. That is not done in guardianships. There are no contracts. Everybody must spend the money the way NRS Chapter 159 allows. The difference comes in how the guardians are paid since NRS Chapter 160 states that we cannot, on a veteran's income, charge any more than 5 percent as a guardian. As I stated before, I think it should stay at 5 percent. The guardian has much more liability and responsibility than a custodian. The custodian receives the check and pays the bills. He does not deal with day-to-day life or making major decisions. We deal with life-and-death situations all the time. A guardian should be compensated even if it is just 1 percent more than a custodian. I do not understand why that would be changed. I think the testimony was that they were confused because they had not worked in guardianships and did not understand that difference.

What section 1 is trying to say is that all monies the veteran has also has to fall under that 5 percent because it must be paid the same way that is stated in NRS Chapter 160. There is a huge problem with that. If we can only charge 5 percent out of all a veteran's income, that dismisses the full assets. Those assets may be upwards of $400,000, but we cannot pay ourselves from those assets. They may have a pension of $2,000 or $3,000. If we have a veteran who has an income through VA, either compensation or pension, we can only charge 5 percent of that, but we are able to take our regular fees out of the assets, social security, or pension. That is only if the ward can afford it. Remember, all fees that come to the guardians must be approved by the judge before we can pay ourselves. We cannot just take money because we want to. That would eliminate any guardian who is trying to work for a veteran. If the only income is a pension from the VA, the highest a veteran can usually pay is around $2,300. Let us round that to $2,000, and the amount a person is getting at 5 percent is $100 a month for hours and hours of work that is being put in, especially at the beginning of a guardianship. As private professional guardians, we are paid out of the assets of the ward by law. We still must have our fees approved by the judge. If we only get 5 percent of a ward's compensation, we would not be able to take that case. Title 13 of NRS allows for extraordinary fees. As was told by Assemblyman Brooks, veterans are some of the hardest people to deal with because of the tremendous problems they have. I cannot imagine doing this kind of work for a veteran and not being compensated with extraordinary fees, if possible, if we can only take 5 percent of their income. The extraordinary fees can be paid if they have assets to pay the fees. The judge will only allow us extraordinary fees if there are funds to pay the fees. We cannot ask for extraordinary fees out of the 5 percent because it just does not make sense.

Between section 1 and section 2, there is no way that a private professional guardian could take on a veteran in any way if this bill were passed. We have many veterans. Since the State is no longer doing it, the Public Guardians' offices have waiting lists. As private professional guardians, we have been an intricate part in helping the veterans in this state. Without our ability to do that, I am not sure what would happen.

Assemblyman Frierson:
You gave us a whole lot of information, and I had a very difficult time trying to follow it. I was happy when you got through section 1, so I could focus on that particular section. I realize you are passionate about your work. I am trying to absorb the information so I can put it in context section by section.

In section 1 of your memo, you said guardians are already required to comply with NRS Chapter 159. Section 1 only deals with the handling of the money. Are you saying that because they are already required to do that, this language is not necessary?

Kim Spoon:
Yes. There is no need for this. I am not sure why it was put in there, other than the fact that the last paragraph says we would be paid the same way as well. I do not understand the reason this was put in. It is confusing.

Assemblyman Frierson:
Your reading of section 1 is that it does not do anything bad, but it is just repetitive?

Kim Spoon:
The one part of section 1 that is bad is that it states, ". . . including, without limitation, the requirements concerning filing an account as set forth in NRS 160.100 and compensating the guardian as set forth in NRS 160.120." If this bill were passed, the only thing a guardian could do is be paid 4 percent of a veteran's income. That is what this states. This has nothing to do with assets.

Assemblyman Brooks:
That opens up another can of worms for me. At this particular time, you can receive up to 5 percent of a veteran's assets and income?

Kim Spoon:
At this time, if we have a veteran who has income through the VA, then we can charge our regular fees, but only 5 percent of those fees can come out of the veteran's income. We can get the rest of our fees from his assets or other income. If a veteran only has an income through the VA and no other assets, we can only go up to 5 percent of that income.

Chairman Horne:
Are there any other questions? [There were none.]

Kim Spoon:
Are you clear about the PPG situation I mentioned? Do you want me to clarify that? One thing I did not say was that there is another criterion for a PPG if a guardian takes over two people he wants to get compensated for. Guardians can have up to ten wards without being a PPG if they are not going to be paid. I do not know anybody who does that in the State of Nevada. Anybody who has more than two wards not in the same family and wants to be compensated must be a PPG. That is not in compliance with NRS Chapter 160. Guardians must comply with NRS Chapter 159. It does not matter what NRS Chapter 160 says as far as ten wards.

Chairman Horne:
There are no other questions. Are there any others wishing to testify in opposition? [There were none.] Is there anyone wishing to testify in the neutral position? [There was no one.]

Senator Breeden, do you have any additional comments you want to put on the record before I close the hearing?

Senator Breeden:
I would like to remind the Committee that one of the goals of the Interim Committee in dealing with seniors and veterans was to protect them from abuse, neglect, and exploitation. Again, this was one of the recommendations that came out of that Committee. Not seeing the memo from Ms. Spoon earlier, I would like to indicate that I would be happy to talk with her about her concerns. She was not present at the Senate hearings.

Chairman Horne:
Ms. Spoon, I would ask you to talk to Senator Breeden. In the future, such letters and amendments are recommended to be submitted to the sponsor before the day of the hearing.

I will close the hearing on S.B. 127 (R1).

The meeting is adjourned [at 9:47 a.m.].

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 28, 2011 **Time of Meeting: 8:32 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 66 (R1)	C	Brett Kandt and Kareen Prentice	Prepared Testimony
S.B. 66 (R1)	D	Susan Meuschke	Prepared Testimony
S.B. 66 (R1)	E	Mike Sprinkle	Letter in Support
S.B. 66 (R1)	F	Traci R. Dory	Letter in Support
S.B. 127 (R1)	G	Kim Spoon	Memo