

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Sixth Session  
May 5, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:16 a.m. on Thursday, May 5, 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](#)) and the Attendance Roster ([Exhibit B](#)), 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/](http://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](mailto: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:**

Senator Valerie Wiener, Clark County Senatorial District No. 3

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Kristin Erickson, representing Nevada District Attorneys Association  
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General; and Executive Director, Advisory Council for Prosecuting Attorneys  
A. J. Delap, Government Liaison, Las Vegas Metropolitan Police Department  
Troy Barrett, Sergeant, Las Vegas Metropolitan Police Department  
Frank Cervantes, Division Director, Washoe County Department of Juvenile Services; and Member, Nevada Association of Juvenile Justice Administrators  
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender  
Lawrence P. Matheis, Executive Director, Nevada State Medical Association  
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada  
Bart Mangino, representing Clark County School District  
Lora E. Myles, representing Carson and Rural Elder Law Program  
Michael Buckley, representing State Bar of Nevada

**Chairman Horne:**

[The roll was called.] Good morning, ladies and gentlemen. We have three bills to hear today. The first will be Senate Bill 277 (1st Reprint). Afterward, we are going to take a recess at 9:15 a.m. and will reconvene at approximately 10:00 a.m. Let us open the hearing on S.B. 277 (R1).

**Senate Bill 277 (1st Reprint):** Revises provisions governing certain acts by juveniles relating to the possession, transmission and distribution of certain sexual images. (BDR 15-10)

**Senator Valerie Wiener, Clark County Senatorial District No. 3:**

Before you is S.B. 277 (R1), which revises provisions regarding certain juvenile acts including the possession, transmission, and distribution of certain sexual images, which many of you know as "sexting." I asked for this

measure before the end of last session or shortly thereafter, because I worked last session on cyber-bullying and became aware of the sexting epidemic. Sexting is the act of using technology or communication devices to either possess or transmit sexual images to another person or to view on a device. If the members of the Committee would indulge me, as you look at the bill, I would like to set up the purpose and need for the bill. The last two "whereas" statements listed in the preamble of the measure state, "WHEREAS, Children often act without fully contemplating the potential grave consequences of their actions, including, without limitation, the serious penalties imposed for violating child pornography laws, the requirement to register as a sex offender for violating such laws, the negative effect on relationships, the loss of educational and employment opportunities, the use of such materials in bullying and cyber-bullying, and the distribution of such materials on the Internet to a worldwide audience; and WHEREAS, It is important to educate children about the serious consequences of engaging in sexting and to provide an effective and measured response to children who engage in such behavior without imposing penalties on these children which will severely, negatively and, in many cases, permanently alter these children's lives." That is a lot of information summing up what this bill is about.

Within this legislation, there will be various situations where young people may be involved. While researching the matter, in order to understand the breadth and reach of this behavior, I discovered that 20 to 25 percent of teenagers in this country admit to engaging in sexting. My thought was if 20 to 25 percent admit it, how many actually do it? It is a pervasive challenge for us. There are three scenarios listed in section 1 of the bill. A child is considered someone under the age of 18, as defined in the measure. If the child sends an image of himself or herself, the consequence of that action would determine that child would be in need of supervision. If a child sends an image of someone else, it is a delinquent act. If the child possesses an image on a communication device, the child will be deemed in need of supervision. This was first considered a delinquent act in the original bill, but we have since amended it to requiring supervision. There were concerns because the images are on the phone, but the penalty was considered stiff. Therefore, there are affirmative defenses built into the legislation as well. You will find that within the affirmative defenses, there can be steps taken to destroy the image or report it to an official or law enforcement, which was the second change to the bill on the Senate side. We added a school official as someone to report the images to. What is important in this measure is that it represents an alternative for the authorities to consider.

Originally, when I began drafting this many months ago, I talked to people in criminal justice. I learned that there were concerns because it was unclear how to handle this type of situation. I realized that I needed to work with juvenile

justice who can take this bill into the arena where it is most appropriate in order to work with these types of challenges. What is important to realize is when these acts occur, in current law, we either do nothing or these juveniles are put into a juvenile sex offender registry. As I read in the preamble, that measure can have lifelong impacts just because somebody pushed "send" on his phone. I often have said that if I could legislate to software and hardware manufacturers to change the word "send" to read the word "infinity" or "eternity," I would be a happy person. It is out there forever for all to see.

This bill gives the juvenile justice authorities a tool. It is an alternative because under current law, the penalty is nothing or everything. With this bill, we give young people a chance to understand the consequences of their decisions and they will have an opportunity to change their behaviors. Because I did work on cyber-bullying which is now current law, there is a substantial education component throughout our public education. You will see in this measure, we also have expanded cyber-bullying laws so that there will be an education component to this as well. I think education is a key, and this will also include sexting as part of the definition and the curriculum addressing cyber-bullying in schools. I do not know at what age this particular component will be taught. It will be addressed by those experts who understand more about what is age-appropriate. It will be taught in an age-appropriate way through the schools.

I had a conversation with the Attorney General about this issue a few weeks ago. She travels to schools throughout the state and one of the things that often comes up in conversations during her presentations is sexting. When the Attorney General shares the fact that right now young people could be listed in a juvenile sex offender registry, it is a wake-up call for them. But again, it is do nothing or place the offender in the sex offender registry. Those are the only tools the officials currently have.

Mr. Chairman and members of the Committee, there are others here who can speak of how this works. I engaged in a video conference with approximately 18 people as we were developing the concept. The group consisted of law enforcement officials, school districts, the Attorney General, district attorneys, public defenders, safe schools officials, and the members of the American Civil Liberties Union (ACLU). Everyone was at the table, and it was a great experience. Everyone who participated had the opportunity to share and discuss concerns. This bill would provide an alternative to authorities. I am available for questions.

**Assemblyman Ohrenschall:**

Thank you for presenting this bill. I do admire your work on the issue. Can parents deactivate the feature from the children's phones, disabling them from being able to send pictures? I am wondering if that is an option that is open to parents.

**Senator Wiener:**

I do not understand the technology; therefore, I do not know the answer.

**Assemblyman Frierson:**

My question is regarding the provision that says, "If the minor who is the subject of the sexual image is older than, the same age as or not more than 4 years younger . . . ."

**Senator Wiener:**

My understanding is that it is not so much about separating a dating age, but at some point it becomes child pornography. At that point, four years or a greater difference makes it a child pornography offense.

**Assemblyman Frierson:**

My question may be more appropriate for law enforcement to address. Would a less than four year difference cover all of the rest? In other words, if we are going as far as four years younger, it would seem to encompass the same age or older than.

**Senator Wiener:**

Some of the people who sat in at the table in that video conference included René Yeckley, Principal Deputy Legislative Counsel and Brenda Erdoes, Legislative Counsel. They worked very closely in the drafting, and there was a reason that the language was presented that way. I cannot answer as to why. I know that more than four years difference would be considered child pornography.

**Chairman Horne:**

That issue is confusing to me as well. Also, let us say that an 18-year-old and a 16-year-old are dating. If the 18-year-old young adult male takes a picture of his girlfriend, who is 16 years old, on her camera, and she sends the picture, she may be deemed a child in need of supervision, but what would he be considered? If he took the photo but she transmitted it, what is the outcome?

**Senator Wiener:**

We do not address the taking of the photo. It would be the possession or transmission of the photo that would be the issue. The district attorney may be able to help me to answer this.

**Kristin Erickson, representing Nevada District Attorneys Association:**

It is my understanding that the bill is addressing the transmission. Can you repeat the second part of your question?

**Chairman Horne:**

I understand that this bill is addressing the transmission. If the 16-year-old young lady transmits the image, she can be deemed as a child in need of supervision. However, law enforcement will ask her who took the picture. She will reply, "My boyfriend, Jimmy." As it turns out, Jimmy is 18 years old. What happens to Jimmy?

**Kristin Erickson:**

That is an excellent question. I am not sure, at this point, if we have addressed that issue. I suppose we could look at different types of crimes, such as disturbing the peace. It could possibly be considered possession of child pornography depending on the image. We would have to prove he took it, and we would have to examine the various crimes to see what was available to us. What this bill does is to give us another option for the children who possess and transmit the pictures. It certainly provides us with a tool to address the problem amongst minors.

**Assemblyman Brooks:**

The bill says that existing law prohibits a person from committing certain acts regarding pornography involving minors. In the Chairman's example, can we convict the 18-year-old, in current law?

**Kristin Erickson**

We would have to look at the picture and the factual situation to see if there is a law that applies. At this point, I am not sure there is a particular law that would apply. It could be considered possession of child pornography or the production of child pornography.

**Assemblyman Brooks:**

Legal age of consent is 16 years old. Would that alter it or can you still apprehend the individual?

**Kristin Erickson**

Yes, if he is taking a picture which can be construed as child pornography. He can be prosecuted for production or possession of child pornography.

**Assemblyman Brooks:**

What if the individual was 17 instead of 18? Would that still apply?

**Kristin Erickson**

Yes, I believe so.

**Assemblyman Brooks:**

I mean if the 18-year-old took a picture of the 17-year-old, as opposed to the 16-year-old, would it still apply?

**Senator Wiener:**

In section 1 of the bill, subsection 7, paragraph (b) describes the definition of a minor as being a person under the age of 18.

**Assemblyman Brooks:**

I have one last follow-up question. Line 25 of the Legislative Counsel Digest talks about having committed a delinquent act. When someone is accused of committing a delinquent act, is he considered a juvenile sex offender?

**Senator Wiener:**

The intention of the bill is to provide other options so that the offender would not be considered a juvenile sex offender. This bill will provide alternatives. It does not mean that with repeat offenses the offender cannot be considered in that way. It will be up to the juvenile justice authorities to take action. This will provide a tool for early intervention to change behaviors.

**Assemblyman Brooks:**

Is that why you used language about a child in need of supervision?

**Senator Wiener:**

Yes. That was at the request of the District Attorney's Office in Las Vegas as well as the public defender.

**Chairman Horne:**

Was there a discussion on how likely is it the juveniles will be identified? Last year I visited four different high schools, and we talked about this subject, specifically the dangers of it. It was surprising to me to discover that many of the kids are doing it. Some of the responses have been "What business is it of theirs?" I am thankful that we did not have cell phones when I was young.

I am not saying that anything like this would have happened, but I am thankful this was not around back then. It seems like it is so pervasive. I have looked at my niece's Facebook page and wondered why she would wear some of the outfits she is wearing. Some of the images out there are surprising. I am thinking that there are Facebook images being seen by a school teacher. Or, a parent will see his child's friends on Facebook.

**Senator Wiener:**

It is such a large challenge. This bill is a step to provide us with tools. The part that I feel brings justice is the piece involving education. Because of cyber-bullying education we are building a curriculum, which begins as early as second grade. It may not occur every year, but it goes up through Grade 12. The cyber-bullying curriculum will now include information about sexting. That part will not start with the second grade. The appropriate grade to begin will be determined. This bill will include that in the definition so that it can be included in the cyber-bullying curriculum. Attorney General Masto shared the same type of experience that you had while visiting with students. When she shares with students the consequences under current law, the students are numb with shock while realizing that this could be something that would affect them the rest of their lives. Possibly the juvenile justice authorities who are present could speak. I believe we also have Bart Mangino from Clark County present. There is a collaborative effort happening between educators and juvenile justice to ensure that we can turn these behaviors around in the best way possible because currently we do not have the tools to do so.

**Chairman Horne:**

I see no other questions. Is there a particular order of speakers you would prefer?

**Senator Wiener:**

Perhaps you could call Mr. Kandt first, followed by whoever else wishes to come forward. We have people here and in Las Vegas. I will turn it over to whomever is gracious enough to come to the table and talk about it from their perspective.

**Chairman Horne:**

Thank you, Senator. Mr. Kandt, please proceed.

**Brett Kandt, Special Deputy Attorney General, Office of the Attorney General;  
and Executive Director, Advisory Council for Prosecuting Attorneys:**

We support S.B. 277 (R1). We think it is an appropriate criminal justice response to the problem of the transmission of sexual images featuring minors. I do want to stress to the group that this does not change the definition of child



pornography. A sexual image featuring a person under the age of 18 is still considered child pornography. This bill establishes that under these narrow circumstances where the transmission of the images falls under the described parameters, it changes the sanctions. It is trying to formulate an appropriate response to the problem of minor sexting.

I would like to clarify a question that came from Assemblyman Brooks regarding the existing child pornography statutes and the cutoffs. The production of child pornography is criminalized if the pornography features a person who is under the age of 18. The possession statutes actually criminalize possession if the person featured in the material is under the age of 16.

**Assemblyman Frierson:**

I think some of the questions that some of my colleagues have previously asked reflect our struggling with the difference between the high school senior who is 17 years and 364 days old and the high school senior who is 18. In high school, how do we expect them to acknowledge that they are a different person a day later if they are dating someone who is younger than 18 years old, or 15 years old in a possession sense? I do not know if there is a way to do this. I am curious as to how this has been dealt with in other states. Do you have information available on how other states have handled it so that we do not act like the two are very different when they are actually only a day apart? That is basically my discomfort, because I think this clearly reflects a great deal of work and effort to allow for the proper treatment of these minors. My concern is the 18-year-old high school senior being treated different than his or her classmate who has not turned 18 yet.

**Brett Kandt:**

The age of 18 reflects a coming of age. There are many legal consequences when a person turns 18. The consequences of the actions of an 18-year-old can be significantly different than for someone under the age of 18. As legislators, you established that age, and you have also accorded a certain amount of discretion to law enforcement and prosecutors to assess a situation allowing prosecutors to decline prosecution in appropriate instances where they do not believe justice would be served.

In response to your question about what other states do, I do not have that information. Senator Wiener worked closely with Legislative Counsel in drafting this bill. I do believe they examined child pornography laws in other states. There are efforts to address the sexting issue, and they may be better able to offer some input on how other states address it.

**Assemblyman Brooks:**

For clarification, currently, if the individual was 18 and took the picture, it would be the 16-year-old you would prosecute. If the person was 17, it would be considered consensual.

**Brett Kandt:**

If you look at the child pornography statutes in *Nevada Revised Statutes* (NRS) 200.700 through NRS 200.760, the sections that criminalize the possession of child pornography make it a crime if the person portrayed in the pornography is under the age of 16. The sections that criminalize the production or distribution of child pornography use the term minor but do not define it. Law enforcement and prosecution have defined it as under the age of 18, and have enforced those laws under the presumption that minor means a person under the age of 18, although it is not defined in statute.

**Assemblyman Brooks:**

Would this bill change it so that anyone under 18 would be considered the minor? By having sexual images of a 17-year-old distributed would also make it a crime. Am I correct?

**Brett Kandt:**

For purposes of this bill and the statutes that would be created by this bill, minor would mean a person under the age of 18. I do not believe the definition of minor used for this proposed statute would impact the definition of minor used in the existing child pornography statutes.

**Assemblyman Brooks:**

Thank you for the clarification.

**Chairman Horne:**

I see no more questions for Mr. Kandt.

**A. J. Delap, Government Liaison, Las Vegas Metropolitan Police Department:**

Our agency would like to offer our support for this measure. We are especially thankful for Senator Wiener for including us in the working group. She convened a large group of individuals with expertise in the area. We feel it was productive, and we welcome future opportunities for any other measures along the line of law enforcement. Sergeant Troy Barrett is present in Las Vegas and ready to testify, if you so desire. He is the supervising detective for the unit that investigates crimes related to this matter.

**Chairman Horne:**

Officer Delap, I am not sure if I should address this question to you, but how do you anticipate these juveniles will be brought to the attention of law enforcement? How will a typical sexting issue come before law enforcement for investigation?

**A. J. Delap:**

That question is probably best addressed by Sergeant Barrett, who is down south.

**Troy Barrett, Sergeant, Las Vegas Metropolitan Police Department:**

Traditionally, how we are notified about these incidences is either from a friend who is aware of the transfer of images or by one of the parents who identified it by looking through the child's phone. It comes to our attention or through the school district, which would receive the preliminary information.

**Chairman Horne:**

Is this the area in which you work?

**Troy Barrett:**

Yes, my detail handles the investigation along with the sexual assault detail.

**Chairman Horne:**

If this bill passes, what do you anticipate your caseload being? How often do you receive calls like this? I am anticipating that from every high school there will be at least one call about something like this occurring.

**Troy Barrett:**

The increase will be dramatic. My office receives one to two phone calls per week. Traditionally, we are completely within the realm of education. If it is a case of two juveniles of similar ages sharing images with each other, we do not believe it is in the public's interest to perform an investigation. We would notify the parents and educate the children about the repercussions of sending images on the Internet. As the Senator mentioned, the images are out there forever.

**Chairman Horne:**

If this passes, you would not be saying that these are children of the same age, and you will just talk to the parents. There would have to be a process to take place making them children in need of supervision. Correct?

**Troy Barrett:**

That is correct. It will be something new for us in the realm of doing a thorough investigation. Traditionally, my office processes felony investigations and we have to collect evidence, provide forensic examinations, and present the cases for a trial. There will be an impact if we are forced to provide more investigations. Obviously, we are limited in resources for how many personnel are allocated to any specific crime section.

**Assemblyman Segerblom:**

Do you have any restrictions on your ability to access information from a smartphone? Do you have to obtain a subpoena or warrant?

**Troy Barrett:**

Traditionally, if we acquire knowledge of information regarding any cell phone, smartphone, or otherwise, we will obtain a search warrant in order to allow access to the information on the phone, just as we would for a computer.

**Assemblywoman Diaz:**

I am wondering what the current consequences are for a teen who is involved in sexting. What happens to him?

**Troy Barrett:**

Traditionally, the situation of similar age teens sharing images with each other is handled through education. If it is a situation where someone is being malicious by sending images to numerous persons in the school district or to other kids, we will do a complete investigation and refer back to the District Attorney's Office for a recommendation on the possible consequences that may be imposed.

**Assemblyman Daly:**

I want to make sure I am following this properly. In existing law, theoretically someone sexting can be charged, if under the age of 18, with a sexual offense and become a registered sex offender. Is that the way it is in current law?

**Troy Barrett:**

As the law is written today, technically, it could occur that way.

**Assemblyman Daly:**

The way I am reading this is it will provide an alternative, depending on the circumstances. There is a litany of things listed including purchasing images, redistributing images, or not taking the responsible action to report it, which are all factors on whether or not a person will be charged. Therefore, if a person is in possession of 50 different photographs and he is distributing them, he will

not fall under this category because it has risen to the higher level. There are some factors to be determined in order to allow an individual to utilize this more innocent type of situation. Is that correct?

**Troy Barrett:**

That is my perception. Yes, meeting these criteria, there would be no way for the individual to become a registered sex offender under the bill before you.

**Assemblyman Daly:**

Regarding the age difference issue, my views are whatever you set as the age limit is the age limit. There is always going to be someone who is one day before the limit. That issue does not concern me that much. In comparison, for a drunk-driving offense, someone could say, "I was just 0.01 percent over the limit." It does not matter, because he was still over the limit. There are always discretionary matters, and it is what it is. That is what happens when you set a bar. Once a person turns 18, he is an adult and will have to do things differently. Theoretically, if a person is 17, has a girlfriend who is four years younger, and has sexual images of her, under this law he could still avoid being considered a sex offender, depending on the rest of the circumstances. I am just trying to understand the circumstances involving the four-year age difference. Is there a minimum age such as a 9-year-old girl and a 10-year-old boy or vice versa? I did not see a minimum age mentioned.

**Troy Barrett:**

When I read it, I saw it as being a date range up until the age of 18. Someone else may be able to better clarify the intent. The range of four years would apply up until the age of 18. At that point, this bill would no longer apply.

**Senator Wiener:**

As we were drafting this, our attorneys felt that anything more than the four years difference would be considered child pornography, so it was something that was determined by Legal. We determined the minor as being under 18. We did not specify the case of a 10-year-old and a 6-year-old. It did not get that specific. We would have to look at everything, and that is what the authorities will be doing on a case-by-case basis. What is important about this is that it is an alternative. As stated in the digest, it would give the authorities who work with this every day a tool for discretion in how they handle these cases. As it is now, that child sex offender registry is a long life or nothing. On the Senate side, there were questions about taking the possession aspect out as in the scenario that the Chairman mentioned about the 18-year-old and the 16-year-old. Here is a scenario to consider: the new girlfriend finds a provocative picture of the former girlfriend on her boyfriend's phone and sends it to a thousand friends. Now, a thousand people have this

girl's picture on their cell phone, whether they want it or not. There are affirmative defenses as Assemblyman Daly noted. You can remove it from your phone, or tell an authority or a school official. However, it is likely that law enforcement is not going to view a thousand people's phones. Yet, if there is someone who has 60 photos and received them on a recurring basis, it gives the authorities the discretion to order supervision. The authorities do not currently have that tool to redirect behaviors where the choices may not be the healthiest of choices. The intention was for early intervention so that these behaviors will cease.

**Assemblyman Daly:**

Once the picture is out there, if another person who is over 18 is accumulating these pictures, that is considered a separate crime because they do not know the individual in the picture. This person has possession, and this will not change anything in this regard. Correct?

**Senator Wiener:**

I am not an expert but this bill deals with the juvenile concept. In the beginning I was going to try the criminal approach, and decided that I would prefer to use the juvenile side approach to get into this issue earlier. In a situation for anyone over the age of 18, there are laws that were not addressed in this bill.

**Assemblyman Daly:**

We are trying to fix the kid as seen on *60 Minutes* a year ago, which was about a 12-year-old who received a picture from another kid and was charged. Because he emailed the picture to someone else, he was charged with distribution. We are trying to address that sort of situation, right?

**Senator Wiener:**

Yes, distribution of pornography. We are trying not to do that here.

**Assemblyman Daly:**

Is that what he was charged with? I do not know what the outcome was.

**Senator Wiener:**

Currently, it is considered a pornographic act.

**Assemblywoman Dondero Loop:**

Thank you, Senator Wiener. My only concern is that we do not take the common sense out of it. I absolutely agree with you about the educational aspect of it. I am so concerned that Mr. Mangino would end up with 20 kids in his office daily. We would have an entire high school multiplied by how many high schools that we have in Nevada registering sex offenders.

**Senator Wiener:**

If that were the scenario currently, the children would be put into a juvenile sex offender registry. This is the alternative so that we do not have to take that route. We have juvenile justice authorities present who can respond to some of the questions regarding the practicality of the matter. If these individuals could speak, I would appreciate it.

**Chairman Horne:**

Sure, we will do that. Meanwhile, Mrs. Diaz has been waiting with a question.

**Assemblywoman Diaz:**

Maybe the other individuals could answer the question, but I was just wondering what the supervision is like.

**Senator Wiener:**

The experts can answer that and it is a great transition. Thank you very much.

**Frank Cervantes, Division Director, Washoe County Department of Juvenile Services; and Member, Nevada Association of Juvenile Justice Administrators:**

We are in full support of this bill as amended. This bill allows the juvenile justice community to handle these sexting citations and referrals with a variety of available options. To answer your question, a child in need of supervision does not mean a formal state of probation. What it allows is for us to look at a case as it comes in and determine if it requires an educational response, an informal sanction, or it could run all the way to district attorney review. We could take someone to formal court and place him on probation, depending on the nature of the offense.

**Chairman Horne:**

You heard me ask the Sergeant in Las Vegas about the potential increase in reporting if this becomes law. What do you anticipate will happen?

**Frank Cervantes:**

I would anticipate that many of our referrals will come from the school district or victims reporting cases to the parent who will call local law enforcement. We would receive a referral from that standpoint. As to the number of increased referrals, I do not know that I could speculate on that. We have other cyber-related offenses such as harassment, or cyber-bullying, and they come in under that venue. With sexting, we will have to wait and see. What the bill does allow is for us to make an evaluation to keep the sexting offense out of the sex offender specific statutes which have a much more serious and long-lasting consequence for a young person.

**Chairman Horne:**

You have heard some concerns about the discretion of law enforcement and the District Attorney's Office. I guess you would also have some discretion there. The concern is, hypothetically, if Mr. Hammond's nephew Chad does it, it may be treated differently than my nephew Pookie.

**Frank Cervantes:**

It does allow for discretion, and we are allowed to evaluate the referrals as we receive them. There is somewhat of a standard response to such offenses. As it has been noted, either the child needs supervision, or for the sexting of another minor, it falls under a misdemeanor statute. We have a full menu to deal with any of those related charges.

**Chairman Horne:**

Are there any questions? There are none. Thank you, sir.

**Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender:**

We agree with many of the previous statements as to why this is an important bill. There are a wide variety of different situations that fall under a certain set of elements that may meet an offense. Having a lot of different options, and how to appropriately and proportionately deal with them, especially for juveniles who we are trying to rehabilitate rather than punish, is absolutely critical. That just makes common sense, as Assemblywoman Dondero Loop noted. Even though there are other issues to consider, I would ask this Committee to not let the perfect be the enemy of the good in this particular case. This bill deals with minors who need the most intervention. This will significantly assist many of my clients while also protecting society's juvenile clients in particular.

To respond to the 10-year-old, 9-year-old issue, a child under 12 actually can commit a delinquent act by statute. There is a lower limit to that and you will not see 7- or 8-year-olds getting wrapped up in this system. Even though the bottom ceiling is not shown in this bill, it is generally in statute in the juvenile justice system.

**Chairman Horne:**

I see no questions. Thank you.

**Lawrence P. Matheis, Executive Director, Nevada State Medical Association:**

To provide a subtly different perspective to this by the health and mental health system, one of the realities is that the new technology is most seductive to youngsters. We do not know the long-term consequences in terms of mental health and other issues that may derive from this. I think this bill gives us the opportunity to provide early interventions, and to deal with what may be



potential problems. Nationally, we have seen the occasional suicide story, and the occasional violence story. We do not have long-term studies because the technology has not been around that long. We can anticipate, especially in Nevada, where we have the highest youth suicide rates, that this can be another factor. It is good to try to head that off. I think the early intervention also provides an early opportunity for identifying youngsters who may be more appropriate to receive counseling or other interventions. I believe that Senator Wiener is on the right track in terms of trying to identify how to get to the underlying issues of judgment that goes into the sort of behaviors we are describing. We are talking about youngsters who are not in the position to be able to make judgments based on long-term expectations about how this may affect their lives and their family's lives. It is a new challenge, and the technology is not going away; therefore, we are going to have to learn to deal with the adverse consequences along with whatever benefits there are. From the perspective of the physician community, we support this legislation.

**Chairman Horne:**

Are there any questions? I see none.

**Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:**

We really appreciate Senator Wiener for bringing this forward. We support the overall intent of the bill. This is a problem that has been noted across the country with children being forced to register as sex offenders for life. This is a wonderful first step in taking a more measured approach towards the sex offender registry. We especially appreciate the educational component of this bill. All too often minors do not understand the consequences of laws. Sometimes they do not even know which laws exist, and the educational aspect of it will certainly help tenfold in that regard. There is only one minor issue we have, and we have spoken with Senator Wiener about it. I just wanted to make sure it was down on the record. Parts of this bill were taken from pornography statutes, because it is a natural response to mitigate the problems that were in that statute. The word simulation is used which could apply to someone taking a picture or sending a video or image of a simulation of an act. We really do not want juveniles to be caught up in that because at some point they could be determined as delinquent. However, I think that is a policy decision for the Legislature. Overall, we really appreciate the measured approach and the care that Senator Wiener took in bringing together all the different stakeholders. Certainly that has resulted in a very robust piece of legislation which is a very proficient attempt to remedy the problem.

**Chairman Horne:**

There are no questions. Thank you. Are there any others in Carson City wishing to testify in favor of S.B. 277 (R1)?

**Bart Mangino, representing Clark County School District:**

We would like to echo our thanks to the bill's sponsor, Senator Wiener, for not only bringing forth this legislation but also bringing together the stakeholders who you heard testify prior to my arrival. We look at S.B. 277 (R1) as being another option for students in reporting and establishing an environment of trust between the students, the school, and the adults on campus. It is one more option for early intervention which we feel is absolutely critical. The earlier we can intervene as educators, the better off our students will be.

**Assemblyman Hammond:**

I like a lot of the components of the bill, such as the graduated penalties. I believe it is the appropriate measure to take. I have noticed the teachers are not included in those school authorities listed. How do you see the teacher's role there? Would we be compelled to report everything that we think might be a situation? The kids nowadays speak freely in class and have no filter. They say everything in front of us. Sometimes I have to remind them that I am in the room and can see and hear them. What will be our mandate as teachers?

**Bart Mangino:**

I believe we currently have policies and regulations in place that deal with bullying. We see this as another potential area of cyber-bullying and bullying, in general. Our teachers, administrators, and support staff in the Clark County School District have an obligation to report such matters and take them seriously. Again, when you take a look at establishing an environment of trust within the classroom, and expanding that to the whole school, we would like to have students who are comfortable and feel safe coming to the teacher or administrator. When this bill was initially drafted, we had the opportunity to talk with Senator Wiener. At that time, our concern was that it did not give the student an opportunity to report a situation to anyone in the school setting. We believe that the new language, in addition to the current policies and regulations, will expand the opportunities and options for students.

**Assemblyman Hammond:**

Here is an example of a scenario that I would like to see how it would play out. I think it is important, because I have had this discussion probably four or five times a year with most of my classes, especially since I have seniors in my class. Let us again use the example of Mr. Horne's nephew Pookie. Let us say it is after gym class, and all the guys are showering before they go to the next class. All of a sudden, Chad comes by, sneaks a picture of Pookie, and then

sends the picture out to his friends. Chad is in an individualized educational program (IEP). How do you see that playing out when in the IEP it says that Chad makes bad decisions and has judgment problems? With this particular law, will this apply to an IEP student?

**Bart Mangino:**

Given the generalities, it would be my interpretation there would have to be a manifestation meeting to determine whether or not that behavior was part of the student's handicapping condition. Based on the determination of the meeting, you would be faced with determining the potential consequences in this particular case. Dealing with a special education student, there are parameters that need to be followed. Talking about a general education student, there are progressive discipline steps that need to be followed. As a result, what we would be examining is every particular situation within the context of policies, regulations, behavior guidelines, and federal laws, for special education students to determine what potential consequences there would be, if any.

**Assemblyman Hammond:**

In this case, because of the federal implications, the IEP procedure must be followed first, and then the state law would be applied. Is this correct?

**Bart Mangino:**

That is my understanding.

**Assemblywoman Diaz:**

If a student is going to be penalized in accordance with this new law, are there also consequences on the Clark County School District side? My coworker's son was involved in a situation like this. He was taken from the school he attended and was placed in an alternative school. It was very hard on the family. Therefore, I am wondering if the student will be penalized by the school district for this kind of behavior.

**Bart Mangino:**

It would be considered on an individual basis depending upon the infraction. If the infraction takes place on school grounds and is not determined to be a criminal offense, district procedures and guidelines will be followed. For example, there is the potential for placement or behavior programs for the student. I have to address this generally, because each case would be different and would depend on the student with regard to discipline in the Clark County School District.

**Assemblywoman Diaz:**

For a child with a first offense, the ability to make a decision is sometimes absent. Therefore, the child may receive one of these images and continue to pass it on. What I do not want to see is for the child to be taken from his home school and placed in another school because of a first offense. I would like to make sure it will be handled in the school district as is described in the bill. If the behavior continues and is habitual, I would expect the consequences to be more severe. We should not be punishing them to the full extent on the first offense.

**Chairman Horne:**

I see no other questions. At this time, I will move to the opposition. Is there anyone opposed or neutral to S.B. 277 (R1)? I see none, and I will close the hearing on S.B. 277 (R1). We are in recess until 10 a.m.

[Recess was called at 9:17 a.m. by Chairman Horne. The meeting was reconvened at 10:07 a.m. by Vice Chairman Ohrenschall.]

**Vice Chairman Ohrenschall:**

We are now going to reconvene, and will hear Senate Bill 88 (1st Reprint). Ms. Myles, you have been very patient all morning, and I appreciate that. Mr. Segerblom has not yet returned. Would you mind starting out the introduction of this bill?

**Senate Bill 88 (1st Reprint):** Enacts the Uniform Real Property Transfer on Death Act. (BDR 10-59)

**Lora E. Myles, representing Carson and Rural Elder Law Program:**

In 2003, Nevada became one of the first states to pass a deed upon death act allowing for inheritance of real property without probate. Nevada's deed upon death act, which is found in *Nevada Revised Statutes* (NRS) 111.109, predates the Uniform Real Property Transfer on Death Act. In fact, the Uniform Act refers to NRS 111.109 continuously throughout the commentary. In 2010, a group of us, including county recorders and assessors, began revisions on Nevada's deed upon death act. We examined the Uniform Act, and part of the revision process was a merger of the two acts. We wanted to keep Nevada's current statutes and provisions while enhancing NRS 111.109 with importation of provisions from the Uniform Act. We also included changes based upon the past six years of experiences by county recorders, attorneys, and county assessors in this area. The bill before you today is the Uniform Act with a distinct Nevada twist.

The first Nevada twist is the terminology. We have elected to use Nevada's terms of owner, grantor, beneficiary, and deed upon death, which are commonly used in our state rather than the terms contained within the Uniform Act. The first portion of the bill refers to creating deeds upon death and their effect upon property ownership. Section 12.3 of the bill allows transfers to multiple beneficiaries, which have been part of NRS 111.109 since 2003, and we wanted to retain that. Section 12.7 allows for partial or whole interest transfer by joint tenants or tenants in common which are community property tenants. Section 16 follows current Nevada law requiring that deeds upon death be recorded prior to the death of the owner of the property in order to be effective. Section 19 details ownership rights of the owners during their lifetime. The deed upon death does not remove the owners' right to transfer the property, mortgage the property, or deal with the property in other ways during their lifetime. The beneficiaries are exactly that; they are beneficiaries and have no right of interest to the property until the owners' actual death.

Section 21 allows the beneficiaries to disclaim an interest in the property. This is of particular interest in this time and era of mortgages and upside-down mortgages on property where a beneficiary may not want to inherit the property, because it is subject to a mortgage that is greater than the value of the property. A disclaimer must be recorded in order to be effective.

Sections 22, 22.5, and 23 create protection for mortgage holders and creditors of the owner upon death of the owner. Nevada's title companies, banks, and Medicaid estate recovery have looked over the bill and all are in full approval of these provisions because the bill provides protections for their interests.

In redrafting the Uniform Act with the Nevada twist, we kept Nevada's forms. We had three statutory forms in the prior provisions concerning deeds upon death. The Uniform Act utilizes a two-sided form. Unfortunately in Nevada, if you record a two-sided form, there is automatically an additional \$25 charge to do so. That would create a problem for the people who really do not want to spend an additional \$25 to record a deed. We kept Nevada's language which is currently in our statutory form, although we amended it slightly in order to reduce some of the confusion that has been in some of the forms. The particular forms include: the actual deed upon death naming beneficiaries on the property; a revocation of deed upon death, because the owners can revoke a deed upon death at any time; and the affidavit upon death of the owner or grantor which is required in order for the beneficiaries to gain possession of the property at death. The remaining sections of the bill are primarily cleanup provisions to conform the other statutory sections to this bill, if passed.

In practice, deeds upon death are efficient. They are very inexpensive, and if a senior has one drafted, he would basically pay a drafting charge and \$15 to record it. They also provide a real benefit to Nevada's seniors. For example, I had a client whose children had been fighting for a great many years and were not speaking to each other. The client was very concerned that if she put together a will, the probate would be contested, would be held up for many years, and would cause even greater rifts within the family. We provided her with a deed upon death, listing all three children as equal beneficiaries. When she passed away, the children discovered that all three of them had to be in full agreement in order to deal with the property. Eventually they decided to sell off 600 acres from what was a full section of land. They retained 40 acres turning it into their own private time-share. The daughter from New York uses the house on the property in the summertime. The son from Fairbanks comes down in the winter because it is much nicer along the Humboldt River in Nevada in the winter than it is in Fairbanks. He has built a cabin on part of the 40 acres. The other son, who is in the military and does not have a house, uses the property when he is home from the military. It forced the children to all be in agreement with each other. If it had gone through probate, one of the children would have been named executor and the contention within the family would have continued. This is a real benefit. Not only is it very inexpensive but it does unify families in many ways. The beneficiary does not have to be a family member. It can be anyone that the owner cares to leave the property to.

**Vice Chairman Ohrenschall:**

Do you know if any other states have enacted this uniform act?

**Lora Myles:**

I am not sure how many are in the process, but as of December 2010, there were only 12 states that had a deed upon death act. At that point in time, I believe there were only two or three that had enacted the Uniform Act. In most of those states, their acts predated the Uniform Act.

**Vice Chairman Ohrenschall:**

If someone executed one of these deeds upon death, and let us say there was a will that contradicted it, what would take place in that scenario? Would there still be a probate process?

**Lora Myles:**

Under the provisions of deed upon death or as in other sections of the statute, if there are named beneficiaries on an asset, the named beneficiaries take that asset regardless of what is said in the will. If there is a will that conflicts with the named beneficiaries on the deed upon death, the deed upon death holds up.

**Vice Chairman Ohrenschall:**

Are there any questions for Ms. Myles?

**Assemblyman Frierson:**

How are seniors notified of this information and provided the form? If a senior attempted to do this without recording it, would it just go to probate because it was not properly recorded?

**Lora Myles:**

Our county recorders are a good bank of information for our seniors. What typically happens is a senior comes in and asks about adding their dependent on the property deed. That is not always the best thing to do and many times results in elder abuse investigations because the dependent exploits the senior. The county recorders will offer this procedure as a better option. The recorders will suggest that the senior go and talk with Nevada Legal Services, the Carson and Rural Elder Law Program, or to an attorney about establishing a deed upon death. Additionally, senior centers talk to seniors about this. If the senior does not record the deed upon death, unfortunately, the deed upon death will be invalid. It must be recorded before the senior passes away. In that case the estate would have to go through probate.

**Assemblyman Daly:**

You said that there is already a Uniform Act regarding this matter. Is that right?

**Lora Myles:**

*Nevada Revised Statutes* 111.109 went into place in 2003. It actually predated the Uniform Act. The current bill before you is a merger of the Uniform Act and Nevada's existing act.

**Assemblyman Daly:**

We had an act prior to the Uniform Act, and now that there is a Uniform Act, instead of adopting that act, we are taking some elements out of it and incorporating it into our law. Is that what this is doing?

**Lora Myles:**

Yes.

**Assemblyman Daly:**

On page 12, section 31, subsection 12 is eliminating securities et cetera. Is that to comply with the Uniform Act? It seems to me those items would be taxable if they were conveyed through this deed upon death.

**Lora Myles:**

Yes, and there is also another bill in the Legislature this year. I believe you heard the bill on Tuesday morning. It concerns the provisions for naming beneficiaries on securities and bank accounts. This combines with that to allow seniors or any other individual to name beneficiaries on any asset in Nevada, thereby avoiding probate completely. I have one client with over \$3 million in assets. He has beneficiaries named on everything, including his car, motorcycle, and pickup truck. When he passes away, it will cost his children less than \$30 to record his death certificate with the county recorder's office. There will be no probate.

**Vice Chairman Ohrenschall:**

How would these deeds upon death defer if someone wanted to execute a quitclaim deed to their son or grandchild? Are these the same?

**Lora Myles:**

This is different. The legal term is commonly known as a sleeping deed. Unfortunately, that could create issues, especially if the son or the daughter has the deed. We do have elder abuse cases where the son or daughter takes the deed and records it before the death of the senior. We have actually had people evict their parents from the property once the property is transferred into the children's name. This method prevents that from occurring because the beneficiaries have no legal right to the property until the owner is deceased.

**Vice Chairman Ohrenschall:**

Thank you for clarifying that. Are there any further questions for Ms. Myles? I do not see any. Thank you for your testimony. Is there anyone else who wishes to testify? [There were none.] We will close the hearing on S.B. 88 (R1). We will not vote today because the Chairman is absent. I am sure it will be examined at a work session. Thank you for your time. We will now open the hearing on Senate Bill 402 (1st Reprint).

[Senate Bill 402 \(1st Reprint\)](#): Revises provisions relating to real property.  
(BDR 9-1090)

**Michael Buckley, representing State Bar of Nevada:**

I am an attorney at Jones Vargas and a member of the Real Property section of the State Bar of Nevada. I am here on behalf of the State Bar of Nevada in support of S.B. 402 (R1). I will walk you through the bill. As a preliminary comment, this bill came out of the Real Property section. To quote the Bylaws of the State Bar of Nevada, the types of issues we look at "(1) relate closely and directly to the administration of justice; (2) involve matters which are not primarily political and as to which evaluation by lawyers would have particular



relevance if not related closely and directly to the administration of justice; or (3) come within the section's special expertise and jurisdiction." These came out of our Real Property section's subcommittee on real estate finance.

Basically, the bill consists of clarifications dealing with various matters concerning deeds of trust. The first change is noted on line 8 of page 4. These deal with the uniform covenants. A borrower can adopt, by reference in a deed of trust, to have the customary provisions in a deed of trust. The way this statute was originally written, it stated that the deed of trust could secure attorney's fees in an amount equal to a percent of the debt. In the real world, attorney's fees are not considered a percent of the debt. This is changing the law to permit reasonable counsel fees. Most borrowers are not willing to agree to permit a percent of the debt as attorney's fees because it does not have anything to do with the enforcement issues. Usually people write in a reasonable percentage. This is an alternative and will make it clear what the actual practice is. Section 2 on page 5, lines 29 and 30, conform to the aforementioned change that the parties may use a percentage or reasonable attorney's fees in lieu of the percentage. Section 3 indicates that under Nevada law, if there is to be an assumption fee in a deed of trust, the assumption fee must be set out in the deed of trust. Here it states that the amount of the assumption fee must be set. How those assumption fees are usually phrased in deeds of trust is that they are a percentage of the debt. Looking at the bottom of page 5, what this states is that it allows the assumption fee to be set as a fixed sum, a percentage of the amount, or some combination of the same. It allows for more flexibility and recognizes what is perhaps actual practice.

When the foreclosure statutes were changed in 2007, all the foreclosures occurred all in one place. For those of you familiar with Clark County, there is an incredible crowd at 930 South 4th Street in Las Vegas, where all of these foreclosures occur. The purpose of section 4 would be to allow parties of a nonresidential deed of trust to specify a location other than the location specified by the county commission, which is how it is set up currently. By the way, I would suggest that in line 16, where it says, "For a foreclosure of commercial property, at a location in the county . . . ," it should say, "at a public location" to be clear. I have heard discussion that someone might have tried to hold the foreclosure sale somewhere that was not public, like in a conference room. Clearly, the foreclosure sale has to be in a public location. Section 4.5 is clarification on *Nevada Revised Statutes* (NRS) 40.451, which is a definition of indebtedness. Basically, when we looked at this carefully, we saw that the statute as written did not incorporate the legislative intent when the statute was enacted. We basically changed some commas to semicolons and changed the word "amount" to "amounts" to make it agree. The intent was to clarify the original legislative intent, particularly in subsection 4, the

amounts secured by the mortgage. The reference to "other amounts" represents the other amounts actually advanced.

Section 5 is a combination effort. Presently NRS 100.091 and NRS 106.105 both deal with the lenders' requirements and borrowers' rights dealing with impound accounts for taxes and insurance. There are two separate statutes making for some inconsistencies. Our proposal in section 5 is to put all of the requirements in NRS 100.091, thereby eliminating the other section of NRS. We find that sometimes people forget to look in both places, and we think it is a good idea to consolidate. With that, I would be happy to answer any questions about S.B. 402 (R1).

**Vice Chairman Ohrenschall:**

Thank you for proposing this bill. Are there any questions for Mr. Buckley? I do not see any questions. We will not take action on this measure today because our Chairman is absent. I am sure it will be a future work session document. Is there anyone neutral or opposed to this measure? We will bring it back to committee, and we will close today's hearing of the Assembly Judiciary Committee. [The meeting adjourned at 10:30 a.m.].

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

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Recording Secretary  
Jean Bennett

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Lenore Carfora-Nye  
Transcribing Secretary

APPROVED BY:

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Assemblyman William C. Horne, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** May 5, 2011

**Time of Meeting:** 8:16 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Record