

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

**Seventy-Sixth Session  
May 11, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:08 a.m. on Wednesday, May 11, 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/](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  
Senator Shirley A. Breeden, Clark County Senatorial District No. 5

**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Nick Anthony, Committee Counsel  
Karyn Werner, Committee Secretary  
Michael Smith, Committee Assistant

**OTHERS PRESENT:**

Phillip Black, Las Vegas Metropolitan Police Department  
Susan Fisher, representing the City of Reno  
Alice Baldrica, representing Nevada Rock Art Foundation  
Kyle Davis, Political & Policy Director, Nevada Conservation League and Education Fund  
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association  
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada  
Sally Ramm, Aging and Disability Services Division, Department of Health and Human Services  
Brooks Holcomb, Private Citizen, Reno, Nevada  
Charles Pascal, Private Citizen, Los Angeles, California  
Ruth Carney, Private Citizen, Gardnerville, Nevada  
Lora E. Myles, representing Carson and Rural Elder Law Program  
Julie Butler, Records Bureau Chief, Records and Technology Division, Department of Public Safety

**Chairman Horne:**

Good morning and welcome to the Assembly Committee on Judiciary. Please make sure your cell phones and laptops are on silent.

We have two bills on the agenda. As a reminder, this late in the session a bill can come up for a work session at any time and does not need to be posted. When a bill is ready to be processed and moved, it is the prerogative of the Chair to do so. We will not be doing that today, however.

We will start with Senate Bill 257 (1st Reprint) and Senator Wiener.

**Senate Bill 257 (1st Reprint): Revises various provisions governing graffiti offenses. (BDR 15-616)**

We will open the hearing on Senate Bill 257 (1st Reprint).

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

I bring to you Senate Bill 257 (1st Reprint), which deals with graffiti. There are several components to the bill. If I may share a modest story about what the lightbulb over my head was that made me decide to bring this measure forward. I visit a lot of schoolchildren in Clark County every year. I visit between 3,000 and 4,000 students every school year in 20 to 30 schools. I was in a middle school, and a young man asked me why the graffiti laws are so tough. I did not want to presume that he was a tagger, but the fact that he was concerned about it raised my curiosity. It came to me very clearly that graffiti is theft, and I realized that I wanted to do more work on graffiti. I shared with the students that graffiti is stealing another person's property value, and is taking without permission. It reduces the value, not just for the owner of the property, but also for those people who live, work, or participate in activities in that area. Graffiti is very widespread.

I represent a district in the inner city, the urban center of Las Vegas, and we are plagued on a regular basis with graffiti. I shared a moment ago before I came up that there was one moniker that appeared overnight on three blocks of Valley View Boulevard. It ended next to a bus bench, and the message on the bus bench was the graffiti hotline. I thought that was an interesting, poetic coincidence. A significant level of damage has occurred throughout the urban center district. As I drove around southern Nevada, I realized that my district is not unique, it just happens to have a little more graffiti because of its location. You will hear from others about the extent of the damage graffiti does to property. Clark County has an estimated \$30 million a year in property damage from graffiti. It is the number 1 property crime in southern Nevada.

The bill before you, Senate Bill 257 (1st Reprint), reduces the aggregate value of damage that is used to determine the penalty from \$5,000 to \$500. The Reno Police Department has shared some of the concerns it has with the \$5,000 aggregate. It could take 25 or 30 offenses before the Department could do what it needs to do. In the original bill, I set the aggregate at \$250, but I decided to raise it to \$500 because it is about damage. I heard from many people, after this bill was introduced, who have had \$10,000 to \$15,000 of cumulative damage over a period of time. The Stremmel Gallery in Reno sent me an email on each offense over a period of five or six years. The redundancies are significant. The repetition of that damage comes and comes

and comes; they have to repair it, it gets damaged, they repair it, it gets damaged.

Not all taggers are gang members. Sometimes it is a unique population of people who just want to destroy other people's property. I wrote a book called *Winning the War Against Youth Gangs* that deals with youth gang behavior. It is a library book for schools across the country. Having written the book some time ago, I reread how I described taggers in it with enough distance that I said, "Oh! That is an interesting way to portray it." Taggers use the city or the community as their canvas.

There are several parts of the bill that resulted in the first reprint. One is the increase from \$250 up to \$500. Committing the offense on a "protected site", and that is defined in the bill, is also new to the reprint. I used "historic site" in the original bill, but at the request of those who want to ensure that some areas get more protection, "protected site" was included as a new definition in statute. That is a category C felony. I know that you are very concerned, as we are, about how we levy categories or degrees of accountability. I did a lot of studying on the category Cs and Ds before I determined it should be a category C for this bill. I went through every felony in the categories currently in law. I found a lot of bouncing around, and as we said in our Committee, each legislative session people have different mindsets about the categories. When I looked at many of the category C felonies, I realized more and more what makes this very distinctive is the amount of damage.

These protected areas are unique. They are pristine and, no matter what we do to repair them, they can never, ever be returned to their original state. It is done. Even if it is repaired, it will never be the same, and forever is a very long time for it to be damaged. Many of us from the south, and probably most of you from the north as well, remember the recent incident at Red Rock Canyon. I was born in Las Vegas and I grew up in a community where Red Rock Canyon was a sanctuary, and still is. I do not know of many things that have rallied the community in the past several years as the damage that was done there by graffiti violators. There is great angst, concern, and sorrow that, no matter what work is done to repair the damage, it can never be restored to its original state.

The bill says the court may order restitution and require the offender to participate in counseling for juveniles. That is already in statute, but I wanted to restate it here because many of the young people who get involved with graffiti just need redirection. That is the path that I would like to travel, to redirect behaviors. We can also require the family or legal guardian of the young person to participate in counseling. For those of you who are new,

this is how the process works. My very first bill in my first session was to change the age of the offenders for which the court can require their families to go into counseling from under the age of 17 to under the age of 18. It had been "under the age of 17," which did not capture 17-year-olds. It is resurfacing here.

Finally, the measure requires that a person convicted of a third offense must perform up to 300 hours of community service for up to a year. Let me explain. I scoured every statute in the 50 states to see what is done for graffiti offenses. This one I felt was important as a deterrent. The reason I said "for up to a year" is that it encourages the court to order the 300 hours be spread out for up to a year at its discretion. It is my hope that the offender has to keep the area that he dirtied up with his graffiti clean for up to a year. That would be a constant reminder that he is responsible for cleaning it. If that area has been restored for whatever reason, the court has the discretion to assign the offender to another area comparable to the area that he dirtied up. For one year, he has to go back every week, or every day, or whatever it takes to maintain that restored area for one year. That should be a reminder, and a deterrent to having to keep going back and being responsible for the repairs. We do not currently do that.

That is the measure before you. If you have any questions, I am here. We also have a lot of people who are here to speak more specifically about the bill.

**Chairman Horne:**

Thank you, Senator. Are there any questions?

**Assemblyman Frierson:**

You probably recall I was involved with the Las Vegas Metropolitan Police Department (Metro) in significantly changing and increasing the penalties for graffiti in 2007. We just raised the penalty from a gross misdemeanor to a felony for certain offense levels. I was really dismayed at the Red Rock incident, and glad to see protected areas incorporated into the bill. I do not often think there is enough community service involved, especially with young offenders. Counseling is not in this bill, but the courts often order those who have not completed high school to get their GED. In my line of work, I see folks who are 21 who have been labeled a felon since they were 17 or 18 and cannot get jobs. That is a lifetime label. I am concerned that we are labeling young offenders as felons for things that our generation only got a slap on the wrist for doing. Part of the problem might be that there was only a slap on the wrist. I am concerned about the labeling of young people as felons for something that is nonviolent, although extremely damaging financially. I would like to talk to those who were involved with the drafting of this bill in light of what we did

in 2007. No matter how many classes we give some folks, they will not change and will still do something reckless like Red Rock. We do not want to label everyone who makes a mistake a felon for life.

**Senator Wiener:**

As I said, I really deliberated because I have been here eight sessions, and in my first four, about 60 percent of the work I did was in juvenile justice. I continue to do more through the years, but not as much. I am a strong advocate of early intervention and doing exactly what you said. The Public Defender voice was heard in the Senate. A lot of the concerns have been addressed and incorporated in the measure. I did not take lightly the category C felony part. I looked at the extraordinary level of damage that graffiti causes. Although it is not violent to a person, it is violent to the environment in a way that can never, ever, ever be restored, and that is such a long time.

I looked at one category C felony that caught my attention. It related to the destruction of documents that support or relate to organ donor transplants. I am not dismissing how important that is, but I believe documents can be replicated. Then I look at Red Rock Canyon. People rallied from all over the country. Even the best restorers cannot restore it, and we have the best specialists. It is done. It is gone. The petroglyphs are protected areas, but so are other rock formations and things that do not have art on them. Even the cleanup is doing damage. It is certainly up to the Committee to consider, but I wanted the penalty to be substantial because graffiti causes such a distinctive level of harm.

**Assemblyman Frierson:**

Thank you. I agree with you wholeheartedly about the protected areas. We do not have that many of them, so for the ones that we do have that are permanently damaged, I applaud your effort to treat the penalty consistently with the damage.

**Senator Wiener:**

The felony only relates to the protected areas. The other pieces are something else. That is the "up to a year" and the "community service" should go to the same area to, hopefully, deter it. I would not want to have to go somewhere on a regular basis for a year to make sure it is clean if I was the one who dirtied it. There is a chance that others may come along and tag it. Even if it is not the original tag, that person still has to keep it clean, so it is a message.

**Chairman Horne:**

Is the change on the aggregate from \$5,000 to \$500 only for the protected areas, or is that for all tagging?

**Senator Wiener:**

Law enforcement can speak to that more, but I addressed it because general graffiti offenses are a concern. I believe in material that I looked at, and information from Reno, the average offense costs between \$175 and \$200 to repair and paint an area vandalized with graffiti. Law enforcement said, with the aggregate at \$5,000, it would need approximately 27 offenses before taggers could be stopped.

I also learned from law enforcement, and others who work on this issue, that tagging and graffiti are not what people generally do only once. It is a serial behavior. They will do it countless times. Again, on that one example on the main street near my house on Valley View Boulevard between Charleston and Sahara Boulevards, that moniker appeared repeatedly over and over again overnight for about four or five blocks on every concrete wall or block fence. The tagger was very busy because there were four or five other streets that also had that distinct moniker.

**Chairman Horne:**

I remember some of the testimony about the aggregate. I recall in the testimony that, while the cost of the paint and materials needed to remove the graffiti or paint over it was low, the municipalities were talking about the labor and man-hours involved that make the cost higher. That is how we originally got to the \$5,000 aggregate. It was typically one or two on a city building, or whatever gets you to that \$500 threshold right away. We were trying to find that aggregate. That is why I was curious how you came to \$500 from \$5,000.

**Senator Wiener:**

I responded to the concerns of Reno. If I may add, since you are talking about buildings, since I have been here in Carson City, I realized that I have not seen much graffiti, although I did spot it in three places. There is a new tag on one of the buildings across the street. What is interesting is anywhere I drive in southern Nevada, and I drive a lot, I see a lot of block walls with the history of graffiti on them. It is lingering. What you see are squares where they have been painted, and you see a lot of different painted squares. Yes, the moniker is gone, but the scars of repair are still there. Graffiti continues to lower property values and do damage to the community psyche as well. So it was a response to Reno's concern about the measure that was passed. We did the reform because \$5,000 was much too high, and this is what we came up with.

**Assemblyman Brooks:**

In my profession, I drive around the city quite often, and I can tell you that graffiti not only vandalizes, but it also terrorizes neighborhoods. So, thank you for bringing forth this bill.

Understand that it is not always kids that tag; sometimes it is 19- and 20-year-olds. I think it is appalling and unacceptable. I believe we need to take a stance against graffiti. If your neighborhood wall, or your home, is vandalized by graffiti, you take it personally and understand that graffiti is a problem that needs to be resolved. If kids are tagging, there may be other repercussions that we can deal with to see if we can teach them that this is not the right thing to do. Once you hit the age of 17, 18, or 19 and you are still doing graffiti on the highways and in the community, you are not only disrespecting the community, but you are also terrorizing it. Now all I see is "crap," gang writings, and gang territory. I am tired of making excuses for people who are not doing the right thing.

My question is, is it possible that we can work on ways to protect our children who are 15, 16 or 17 from peer pressure? Can we protect them without making them felons? We do not want to put a label on them that will hurt them in the future, but we need to hold accountable those who are terrorizing our neighborhoods who are of age because it is a form of terrorism.

**Senator Wiener:**

You have certainly expressed it in a profound way. I reference the damage as the psyche of the neighborhood. Again, the felony piece is about damaging something in a protected area. The other parts are just expanding on what is already in statute. There is always discretion, officers have discretion, but this gives them the tool to expand on serial taggers. We have law enforcement here who will address the measure. I hope education continues and I am always going to be out there talking to young people about graffiti.

I would like to have the liberty to address something else in the measure regarding older people.

**Chairman Horne:**

Are the elderly out there tagging now?

**Senator Wiener:**

I do not think tagging is defined by age, but rather as an activity.



There are civil remedies here, as well. The tagger could be with someone who is of age. The bill does allow those who have had property damaged by graffiti to bring a civil cause of action.

**Assemblyman Sherwood:**

I tend to agree with my colleague, and maybe I am old school, but the graffiti used to be better than it is now.

The concern that I have on the felony, and I agree with the category C felony for protected areas, is the \$500 aggregate. What other laws do we have that you become a felon for \$500?

**Senator Wiener:**

That is current law, so I did not address that.

**Assemblyman Sherwood:**

Section 1, subsection 2, commencing at line 26, says, ". . . the value of the loss when aggregated is \$5,000 . . . ." Is it now becoming \$500 or more? How much discretion would a judge have to say, "This is a first-time offender"?

**Senator Wiener:**

I need Counsel's help, Nick. It was not my intention that the nexus was that the \$500 creates a category C felon, unless that is what happens.

**Chairman Horne:**

Paragraph (d) is part of subsection 1. Subsection 2 is separate. Please help us, Mr. Anthony.

**Nick Anthony, Committee Counsel:**

Yes. I believe Senator Wiener is correct in that you only reach the category E level if you exceed the value of the loss, and the aggregate exceeds \$5,000.

**Assemblyman Sherwood:**

So, I got my \$500s and \$5,000s confused.

**Senator Wiener:**

Thank you. That was a good lesson for me. I appreciate it.

**Assemblyman Sherwood:**

So you are only a category E felon if the aggregate is \$5,000 damage?

**Senator Wiener:**

That is current law.

**Assemblywoman Diaz:**

I work in an urban school and on many occasions we come in and find that walls of our portables, doors, and walls have been tagged overnight. Our new cafeteria that was under construction was tagged as well. We come in and our hearts break and our morale is low because we try to do everything to keep the environment for the children the best it can be in an older school built in the 1960s. You find tagging that I do not think is appropriate, especially on school grounds.

I think your bill is good. However, I do have a concern about section 2, subsection 3, where the court may award property damages to the owner in an amount up to three times the cost. I am concerned for my constituents. I know that some of these individuals who are tagging may be underage. Their parents may not even be aware of what is happening. It is already hard on them to make ends meet and feed their children. I am concerned that it is three times the cost, plus the attorney's fees, if they have the money to have someone represent them. Can you explain why we are making it up to three times?

**Senator Wiener:**

That is treble damages. That is not uncommon in punitive measures. We want to be really serious about this step. It goes beyond the cost of the damage, but treble damages are usually used as punitive measures. That would be at the court's discretion. Often, you hear about judgments in big cases where there is recovery for damages, and the jury comes in with an extraordinary amount because it was the punitive side. If the court, at its discretion, felt that this person had been doing this over and over, perhaps in the same neighborhood to the same people or school or park, the court could say, "Enough." It is at the court's discretion to assess the punitive damages.

**Chairman Horne:**

I read this, and it says a court may order damages in the amount of three times the cost of restoring the property. It seems to be mixing two different things. You have the cost of restoring the damaged property, such as \$1,000 to hire painters and buy paint, and the subsequent repair scars from the damage. The tag is not there any more, but the property is damaged beyond the extent of what it cost to repair it. The property owner would have to make a case on how much damage occurred. The property was worth "X" amount of dollars, but now, even after repair, it is only worth "Y."

**Senator Wiener:**

I would be amenable if there is a better way to express that there is value, and then there is cost. I would be willing to work on that because it is a very important point to make. That is what treble damages are about. It is about one more tool if there is an extraordinary level of damage.

**Assemblyman Frierson:**

I want to clarify the question about the \$500 trigger. It was my understanding that the trigger was to be able to aggregate the damage. So, currently, if someone tags at a \$50 cost each time, you would not be able to aggregate it until it reached the \$5,000 level, which was part of the changes in 2007. This does not propose to make the value of \$500 a felony treatment. It is the trigger to be able to add up multiple tagging incidents to a total of \$500 worth of damages to make one charge.

**Senator Wiener:**

Maybe I need Nick's help again. The category E was under section 1, so maybe I need clarity on section 2, on aggregating at \$500 versus \$5,000 and whether category E applies there.

**Chairman Horne:**

Mr. Frierson's concern for clarification is that if someone tags the building with the words "sugar bear" on it one time, that would be less than \$500. But if he did it twice, it could be more than \$500, and they could go out and find all of the "sugar bear" tags and it would add up to more than \$500.

**Nick Anthony:**

Correct. That is my understanding.

**Senator Wiener:**

That is a point that we probably need to resolve because it does say ". . . of determining the penalty prescribed in subsection 1, . . . " which is what we were talking about earlier about the category E. I am not married to the \$500 because I am the one who changed it from \$250 to \$500, but I did find grave concern from Reno that \$5,000 was an extraordinary amount to reach if it is at \$188 per event. I would be happy to work with the Committee.

**Nick Anthony:**

I think the Committee's intent back in 2007 was that there should be an additional threshold. It should be tougher to get to that category E felony. That is why they mirrored each other in the \$5,000 amount, so you would only have aggregating for those very serious offenders who have tags across the city. Then you would get to that level. What this does by moving it down to \$500 is

aggregate for a person and possibly bump it up from a misdemeanor to a gross misdemeanor. You might not ever get to the \$5,000 level. You might more quickly go from a misdemeanor to a gross misdemeanor.

**Senator Wiener:**

And that would make sense to me, Mr. Chairman.

**Chairman Horne:**

Did that clarify it, Mr. Frierson? [He indicated that it did.]

Are there any other questions for the Senator? I see none. Senator Wiener, do you have anyone in particular to testify first? Do you want me to call the names off the sign in sheet?

**Senator Wiener:**

However the names appear on the sign in sheet is fine.

**Chairman Horne:**

I want to start down in Las Vegas, since there is only one person down there.

**Phillip Black, Las Vegas Metropolitan Police Department:**

I will tell you a little about my experience, since that is what I base all of my conclusions on. I have been a police officer since 1994, but I have spent the last ten years as the Las Vegas Metropolitan Police Department's graffiti investigator, if you will. For the past decade, all I have done here in Las Vegas is investigate graffiti vandalism and tag crews. Basically, I apply all of these laws every day when I make arrests. I can tell you that it is a serious crime here. I agree with Senator Wiener that it is our number 1 property crime here in southern Nevada. The combined public and private property estimate is over \$30 million a year. It affects the citizens and businesses here in the Las Vegas area more than any other property crime.

I also consider graffiti to be a gateway crime based on the arrests that I have made and from interviewing graffiti vandals from ten years old and up to their 40s. I believe it is a gateway crime, and I use that term because we often arrest graffiti vandals who are in their early teens and already have the mentality of going out at night and sneaking around vandalizing property. With this type of mindset, once they become an adult, they often move into greater and more violent crimes. We like to have any kind of deterrent. We send messages to these younger graffiti vandals that, if this type of conduct continues, it is going to lead to a life of crime, being in and out of jail, and possibly a life in prison. There has not been a lot of discussion in the conversations that I have had with most of the graffiti vandals on whether graffiti is art or crime. Everyone seems

to understand that it is a crime. I have interviewed these vandals extensively over the past ten years, and I can tell you they have no interest whatsoever in art. Sometimes we get members of the public that confuse this with art. They think taggers want to express themselves, but we have found that is not at all the case. They want to destroy property. That is why they are graffiti vandals. If the type of graffiti we are talking about was legal, they would not be doing it. They are not interested in any type of legal work. They are all about vandalism, and that is in their words.

Speaking on behalf of the Las Vegas Metropolitan Police Department, we support this bill. Historic sites are being targeted with increased frequency. I took a moment to look at the guide book for our 2011 to 2012 Legislative Session and I saw that Red Rock Canyon is, in fact, listed as one of the Seven Wonders of Nevada. It is interesting because Red Rock Canyon is being increasingly targeted by graffiti vandals. Although it is a federal jurisdiction area, we have plenty of historic and iconic areas that are covered by state law that are also being targeted by graffiti vandals. The reason they do this is it increases their status, what they call "fame." They make up a moniker and then apply it in their graffiti to any kind of important location, whether it is a police car or some other location. They choose locations they know will end up on television, such as the well-known "Welcome to Fabulous Las Vegas" sign here on our Strip. They do not fear being arrested because it increases their fame. That is why they do it. Taggers are also putting their work on the Internet more because it increases their status.

We definitely support the change of aggregation from \$5,000 to \$500. I agree wholeheartedly with Senator Wiener that \$5,000 is just too high. Graffiti is a serial type of crime. The \$30 million a year in damages is being caused by serial graffiti vandals, not vandals that are going out and doing just one or two locations. The serial vandals are going out every night covering the city with as much graffiti as they can. While most of the time we arrest taggers for doing \$1,000 or \$5,000 in damage, we are now submitting cases that have exceeded \$250,000 on documented graffiti vandals. They are dedicated to going out and doing the type of graffiti that you see everywhere. You can drive from one corner of Las Vegas Valley to the other and see specific vandals' graffiti monikers on nearly every power-box pole or wall that they can put it on. Graffiti is a serial crime, and this bill would allow law enforcement to more aggressively and effectively investigate graffiti vandals.

We also support any increased penalties because it has been my experience that taggers do not fear arrest. Arrest by law enforcement tends to increase their status, once again. That is why we find that graffiti vandals are increasingly targeting police vehicles and police stations. A vandal places his graffiti

moniker on a police car, takes a picture of it, and puts it on his Myspace or other website. That increases his status since he knows if he is arrested for graffiti, in his world and mind, that makes him more important. To be targeted by law enforcement makes him more important in the entire culture that he is involved with.

One last thing that I will touch on, which I feel is very important, is that we must increase the penalties on graffiti and make them more severe. Graffiti, overall, affects the criminal picture of a community. If you have any experience in the broken-windows theory, for example, studies have proven that a neighborhood or community that is covered with graffiti is much more conducive to crime overall, and says something about the police's ability to keep that community safe. If you look in the neighborhoods that are very high in gang prominence, they are covered with graffiti. The gangs put their graffiti up to send the message that they are in control, not us. In that respect, it is important to realize that we are not just talking about graffiti; we are talking about all of the other crimes that graffiti invites. We support passage of this bill as it is currently written.

**Chairman Horne:**

Having grown up in one of those neighborhoods, I know that no one wants to spend money on community centers in these neighborhoods; however, they will spend money on incarcerating youths who have nothing better to do than spray paint a wall. That is my two cents, but it does not reflect on my opinion of the bill.

**Assemblyman Daly:**

I am in support of measures like this. I understand the feedback. Will this help increase deterrents? In the neighborhood where I grew up, we never had this problem, but now I see it more and more. My own house was tagged. It "pisses you off." Once one tag is put up, rivalry starts. If you leave it up, a competitor will have to one-up the first tagger, and it will go back and forth. My worry is that I am going to catch one of them, and then I will be guilty of a felony. Hopefully, law enforcement will catch them first. Do you think this will increase the deterrent value? What do we need to do for enforcement?

I am all for community centers as well, but these taggers have parents. I am not worried about the triple penalties. I know where my kids are at night. If one of my kids was out tagging, I would be susceptible to penalties and it would be my own fault because I did not watch over them.

**Phillip Black:**

Yes, sir. I do believe it would serve as a deterrent. I interviewed one juvenile graffiti vandal who was relieved to be arrested because that qualified him for membership in a particular tagger crew that he was trying to get into. With that said, it would be a deterrent because they do not fear the actual arrest. If the penalties are not severe enough, it is only going to encourage them to get arrested again, not necessarily to get arrested intentionally, but to continue committing the crimes that will result in arrest.

One particular vandal that I have been dealing with since I started this work is now in his mid-thirties. He has been arrested four or five times this year alone. It would not surprise me if I came in next week and there was a report that he was out tagging Highway 95 once again. The most recent time was at Highway 95 and Ann Road. The police showed up, and the vandal took off running. You would expect this type of activity from a 15-year-old, but he has been arrested at least 25 to 35 times.

The penalties being more severe would definitely be a deterrent. It would send the message that our state is no longer going to be lenient on graffiti vandals. We are no longer looking at this as a type of menial property crime or quality of life issue. Tagging actually is a serious crime that is costing cities and states a lot of money. Severe penalties would also help in our investigations. Since graffiti vandals are serial criminals, they vandalize over long periods of time. The \$500 aggregation, as opposed to \$5,000, would allow law enforcement to more quickly investigate the vandals and submit cases to our district attorney's office that would trigger this increased penalty before they do \$5,000 in damages. If they have already done \$500 in graffiti damage, in all likelihood they are not going to stop. It would give us an important investigative tool in order to head them off earlier and not wait until they become a prolific graffiti vandal. When we do that, we are reducing the amount of victims out there that are going to have their property vandalized with graffiti. So, definitely "Yes" on both parts. It will serve as a greater deterrent, and it will definitely help law enforcement investigate them.

**Assemblyman McArthur:**

Under section 2, it says that a court may order a parent or legal guardian into counseling. In your experience, does that really help, or should we just increase the penalties on the tagger himself?

**Phillip Black:**

In this case, I would think ordering parents into counseling would probably help. If I had to pick which was more important, I would say increased penalties would be more important; however, I believe when we are talking about

juveniles, I think counseling is an important aspect. Once again, the vast majority of parents know where their kids are, and they know what they are doing. We have found that many of the parents of the graffiti vandals that we are constantly arresting are not very engaged with their kids. This is true not just in graffiti, but in all types of juvenile crime. When these kids get involved in graffiti at a young age—13, 14, or 15—and they start getting arrested, they know that the penalties are not as severe as a juvenile offense as it would be in the adult courts, so they have a tendency to continue to do it.

My personal opinion on that is that parents become culpable when that happens. If a child sneaks out in the middle of the night, gets a can of spray paint, sprays a wall, and it is unknown to his parents, I can be tolerant. Children are going to do things that parents do not know about, and there is nothing we can do. That can happen to any of us. However, if a juvenile starts getting arrested for graffiti, his bedroom is covered in graffiti, and all of the signs are there, the parents' detachment is contributing to the problem, especially if they ignore the police's warnings. As a parent, tolerance is almost encouragement. It would be beneficial if the parents were compelled to be involved in the kid's counseling, especially since they themselves face being penalized. If a child damages property, and there is small claims action or a lawsuit filed, the parents could be held monetarily responsible for that child. I made a comment previously that when a juvenile gets involved in graffiti, he is getting the entire family involved. They are all going to have to face the consequences whether it is from the courts, a rival gang, or a rival tag crew. The family faces responsibility, so they should all be involved in the remedies for the juvenile's behavior.

**Assemblyman Carrillo:**

About a year ago, you sent some information to me on graffiti abatement and the different gang signs. Some of my constituents had asked for this information because they get different tags.

You brought up a good point on the individual who is 35 years old and a serial tagger. Do you know of any counseling that he has ever gone through? I know this is somewhat not related, but I am curious what is being done to curtail this behavior other than slapping a big fine on him, throwing him in jail, and throwing away the key.

**Phillip Black:**

In his particular case, I am not aware of any counseling that was court ordered, or any counseling available to him while he was incarcerated. The courts can order impulse counseling for graffiti or other crimes; however, I am not aware of any counseling that he took. I know he became involved in other crimes,



primarily narcotics. He became an avid drug user and lived the life of a degenerate. He did not have a job or do anything that contributed to society in any positive way. He did go to prison for a period of time after repeated arrests, and repeated probation and parole violations. He was sentenced to Nevada State Prison for a couple of years. When he was released, he was out for a month or two and got arrested for graffiti in Las Vegas. That was about three years ago, and he is probably arrested every three or four months for graffiti. I do not know how accepting he would be of anyone's advice. Law enforcement officers have lectured him to no end over the last 15 years that he needs to start thinking about getting out of his life of crime, and that he should start thinking about getting a job since he continually gets caught. The element of fame that he wanted so badly was what led him to be arrested again, again, and again. We started to believe that he just did not care if he was arrested. I do not know if there is any kind of counseling that would get through to him.

**Assemblyman Frierson:**

I think that topic speaks to my concern. It is not a critical one, just a practical one. When we go from a category E to a category C felony, this is not about deterrent. It is a felony. This is about punishment. I understand the frustration of dealing with individuals like a 35-year-old who simply keeps tagging. Since he went to prison, came out, and is still doing tagging, that tells me he is not thinking about what the penalty will be. It is about punishment, and that is a valid position to have. It seems that this bill is about punishment and periodically relieving the community of these individuals that we have given up on after so many years.

For those individuals who are not ready to be thrown away, we have other statutes. Those have provisions that say if a felon goes through probation, treatment or education, stays out of trouble, and does not reoffend, those charges can be reduced down to less than a felony. I am hopeful for the young people who ventured into tagging not realizing the penalties, if there is a way for them to complete probation, pay restitution, and not end up with a lifetime felon label. Frankly, I miss the days when you could be punished by wearing a sign on the street corner and be embarrassed, and that was the form of deterrence. That is not an option these days. I am aware of that. I have had clients who went out to remove graffiti and now have rival gangs watching them. They have a greater problem now because they are trying to spray paint over someone else's moniker on a wall. It is not simple anymore. I hope that those who are not ready to be thrown away, and who are not serial offenders, will do everything possible to avoid the label of felon.

**Phillip Black:**

I would agree. If there was some type of counseling that could be created that would head people off before they get to that point, I would be in full support of it. One thing that I have learned about graffiti vandals is they are very impulsive, obviously. They become obsessed with graffiti. We have had individuals who were so obsessed, they could not stop. We all know, as human beings, we can get addicted to anything; some very strange things sometimes. These people can become addicted to graffiti. A young man who was a student at Silverado High School was arrested several times as a juvenile. After he crossed the threshold of 18 years of age, we continued to have dealings with him. I could see that this young man was honestly making an attempt to get out of tagging. He had decided that he was not going to be a graffiti vandal any longer. He wanted to become a graffiti photographer because he just could not get away from it completely. In the midst of taking pictures, he was assaulted and beaten pretty badly by some old graffiti vandals who recognized him as an enemy. I talked to him at that time, and he said he decided to become a photographer because he just could not get away from it. He broke down crying; he was completely addicted to graffiti. He eventually was able to get away. He finally found a line of work that took him away from Las Vegas. I do not know if he is still at it now, but I know that he could not stay away from it. I find this is a trait for many graffiti vandals.

Sometimes what we need to do as law enforcement is to attach a specific or unique moniker to a specific tagger because they use a unique tag name; otherwise, they will not get the credit for their work. We often find the moniker is written on a tagger's body somewhere, on his clothing and books, in his room, and everywhere. By me saying this, I am not giving anything away to that element so they will know to clean things up, because they cannot clean things up. They are obsessed with graffiti and are very impulsive. They will often carry stickers of their moniker so they can place them anywhere. For example, if a tagger came into the Grant Sawyer Building, he could not bring a can of spray paint into the elevator, but he could pull a sticker out very quickly and place it on the elevator wall. They are obsessed with getting their name or moniker out there. If there was some type of counseling available that would stop that, obviously, we would be in full support of it.

**Chairman Horne:**

I see no further questions. We will move back to Carson City, and I see a few people who would like to speak. You do not have to put the same testimony on record again, but feel free to come up. I know Ms. Fisher has something to put on record.

**Susan Fisher, representing the City of Reno:**

I will not repeat a lot of what has been said, but the City of Reno did bring forth Senate Bill No. 105 of the 72nd Session, and we did not have the \$5,000 threshold written into the bill as we originally proposed it. We took the statute that was already in place for aggregating other particular crimes. We wholeheartedly support this bill, and applaud Senator Wiener's efforts in trying to do whatever we can to get a handle on this issue. We are specifically interested in the part that takes it further by protecting the historical sites, the protected sites. In the last couple of months, we have had vandals hit the protected sites, and we are not just talking about graffiti. They have hit the James D. Hoff Peace Officer Memorial in Idlewild Park in the City of Reno. They have also hit our Basque Monument in Rancho San Rafael Park. In the past week, they have hit the Stone Mother at Pyramid Lake, which is costing a lot of tourism dollars to the Pyramid Lake Paiute Indian Tribe because they have had to close that area. This bill will help address some of those issues.

**Chairman Horne:**

Are there any questions for Ms. Fisher? I see none.

**Alice Baldrice, representing Nevada Rock Art Foundation:**

I am an archaeologist, and I am with the Nevada Rock Art Foundation, which is a private, nonprofit, statewide organization with over 350 members devoted to the preservation of rock art in the State of Nevada. The mission of the organization is to identify, document, and research rock art, and to educate and create public awareness of the need to preserve what is an irreplaceable resource. We spend time on the road giving lectures, tours of rock art sites, and putting together publications to let people know why it is so important to preserve such sites. The rock art itself is pecked images in rocks, or painted images in rocks. You have already heard about the damage done at Red Rock Canyon. There is some concern within our organization that this damage cannot be corrected. This is something that is being examined with federal agencies, but most conservators are of the opinion that this is not something that can be remediated. Rock art itself imparts knowledge of cultural and belief systems of people who lived here for over 10,000 years. It is extremely upsetting to tribal members who are still alive, whose ancestors created these images. They still consider these places sacred. This is a major desecration and these are not something that can be remediated. They are pristine, until they are marked up.

We have a situation outside of Virginia City at the Lagomarsino Canyon Petroglyphs, which is listed on the National Register of Historic Places. Someone has scratched and defaced one of the panels. A conservator goes out every couple of years at the cost of \$2,500, which our organization pays for, so

she can remediate this. It has to be done every couple of years. She paints over the damage that was done by someone who thought he was clever. This is really hurtful, and it is destructive to a resource that cannot be replaced.

The Nevada Rock Art Foundation supports this bill as it is written. We believe this is a theft of the past, not just property damage, but a major theft.

**Chairman Horne:**

Thank you. I see no questions.

**Kyle Davis, Political and Policy Director, Nevada Conservation League and Education Fund:**

The topic has been discussed pretty well, so I will not add very much. Obviously, we are in support of this legislation. We worked on the language with Senator Wiener on the Senate side regarding protected areas because we think tagging is happening more and more. I was not aware of the incidents that Ms. Fisher brought up, so we want to do what we can to try to prevent these things from happening. The thing that came to mind immediately was what if someone were to damage the Valley of Fire State Park in southern Nevada. The park is something valued and upheld by the state, and we want to make sure we protect these areas. We feel this bill is a good step toward that, so we are in support.

**Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:**

You have heard from Detective Black about the problems in the urban areas, but this is also an issue in our rural and small communities. We would like to speak in support, in particular, of the section that deals with the protected sites because many, many of these are in our rural areas. It is up to local law enforcement to take action. A small amount of graffiti in a small city is the same as a large amount of graffiti in a large city. We believe this bill will go a long way to help us to deal with graffiti.

**Chairman Horne:**

I see no questions. Is there anyone else here who would like to testify in support of S.B. 257 (R1)? I see none. Is there anyone in opposition? [There was no one.] Now we will take those who are neutral.

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

We appreciate all of the work that Senator Wiener has put into this bill. We originally signed in as opposing this bill on the Senate side, and we do still have some of the same concerns expressed by this Committee today. We look forward to working with the Committee in order to address those.

I want to note for the record that, with respect to ordering parents to receive counseling, we hope that you will consider mirroring the laws that are on the books in this state regarding truancy. Parents can be ordered to seek counseling when they are found to be contributing to the behavior of their children. We think that is an important nexus to maintain, especially when ordering parents to counseling who may be working two or three jobs to make ends meet, cannot afford counseling, are not available, and are not at fault for their children's behavior. Generally speaking, we have the same concerns regarding the felony levels.

**Chairman Horne:**

Are there any questions for Ms. Gasca? I see none. Senator Wiener, do you have any closing remarks that you would like to make?

**Senator Wiener:**

I appreciate your level of engagement with the issue. We had great witnesses, and if there are any concerns of the Committee, or any incubated thoughts that come along, I am willing to discuss them. This is an extraordinarily important measure for all of us. I encourage your support to move the measure forward.

**Chairman Horne:**

We will close the hearing on Senate Bill 257 (1st Reprint). We will open the hearing on Senate Bill 128 (1st Reprint). Good morning, Senator Breeden.

**Senate Bill 128 (1st Reprint):** Revises provisions governing guardianships.  
(BDR 13-156)

**Senator Shirley A. Breeden, Clark County Senatorial District No. 5:**

As you know, I have the pleasure of serving as Vice Chair on the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs during the interim. Senate Bill 128 (1st Reprint) is one of the recommendations that was brought forward from that Committee. Former Assemblywoman Kathy McClain served as the chairwoman, and many of you probably know that she is very engaged in these topics.

With me at the table is Sally Ramm, who is an elder rights attorney for Nevada's Aging and Disability Services Division of the Department of Health and Human Services. She worked quite extensively with Kathy McClain.

We worked on the Senate side on this bill. There was quite a bit of testimony. We have revised the bill; that is why there is a first reprint for your consideration today. Ms. Ramm will advise you of the specifics of the bill. I understand you have received an amendment from Mr. Holcomb, whom I have

not had the opportunity to meet with yet. I know Ms. Ramm was speaking with him this morning. Please let Ms. Ramm walk you through the bill. That would be most appreciated.

**Chairman Horne:**

We will, and I spoke with Mr. Holcomb and reminded him of his lapse of protocol since he has been a member of this body before. I had that discussion with him.

**Sally Ramm, Aging and Disability Services Division, Department of Health and Human Services:**

Today, I am representing a group that began working on this bill in 2009, right after the session ended. Guardianship legislation is brought before the Legislature every session, and is almost always contentious.

[Read from prepared testimony ([Exhibit C](#)).]

**Chairman Horne:**

Are there any questions for Ms. Ramm? I see none. Senator, do you have anyone else you want to testify?

**Senator Breeden:**

Sally is my backup.

**Chairman Horne:**

Then I will open it up to anyone else who is present wishing to testify in favor of Senate Bill 128 (1st Reprint).

**Brooks Holcomb, Private Citizen, Reno, Nevada:**

I am a former Assemblyman and I served on the Judiciary Committee. I support this bill. It is very good. There are some very, very serious problems out there.

I got involved in this topic because my father left an estate, and I was the beneficiary. The court appointed Bank of America as trustee. However, the court decided that the trustee was mismanaging the trust. I represented myself *in pro per* for three years, and finally Bank of America decided to drop out. The court appointed an interim trustee to handle the trust. When I did not hear from him for a while, I went on the Internet and was shocked and amazed with the court appointee's background. I contacted my brother, whom I had not talked to for many years, and he was agreeable to having me serve as the successor trustee. I immediately filed a complaint. I went to court and the interim appointee and his attorney did not show up, so the court appointed me trustee.

From that experience, I have been getting many calls from people in California. One gentleman flew up here from Los Angeles. I have gotten other calls from people who are being "ripped off." Their family members are being detained in Nevada and not allowed to leave, and their trusts are being depleted. This has got to be corrected, and you are the people who can make that difference.

I came to the Legislature for the Old Timers' Day Luncheon and looked up a couple of bills. I found one bill that I thought was very appropriate for a proposed amendment that would complement what I read. It is the same chapter, *Nevada Revised Statutes* (NRS) Chapter 159. The only problem is that this does not go far enough. My proposed amendment ([Exhibit D](#)) would prohibit the court from appointing a private fiduciary as a guardian. You are considering NRS 159.0595, and my proposal is to amend NRS 159.061. If you look at section 1, subsection 4, paragraph (b), it says, "A private fiduciary who may obtain a bond . . . ." This gives the court the power to say that they do not need to obtain a bond. When you see what is happening, and all you have to do is go on the Internet and see the numerous cases, you will agree that this needs to be addressed. What I have done is to say that, "A private fiduciary who obtains . . . ." I could have said "shall obtain" or "must obtain," but I just said ". . . who obtains a bond in this State and who is a resident of this State, if the court finds that the interests of the ward will be served appropriately by the appointment of a private fiduciary. Notwithstanding, any person convicted of a felony, a misdemeanor involving financial transactions, or filed bankruptcy in the last ten years, or has pleaded no contest for any offense which involved financial malfeasance or fraud, shall not be appointed as a private fiduciary." We need to tie the hands of the courts so they cannot appoint these private fiduciaries who are "raping" estates, and I use that term intentionally. All you have to do is look at the numerous cases on the Internet.

With me are two people who have contacted me, and there are others, who were willing to share briefly what has happened to them in the State of Nevada, and specifically in Las Vegas.

**Charles Pascal, Private Citizen, Los Angeles, California:**

I represent one of the families that has undergone a horrific ordeal because of the infancy of an industry, which is guardianship. Before I start, I was thinking about how I could compare it. If you were a stockbroker in 1877, Mark Twain said, "A stockbroker selling a mining stock is as a hole in the ground owned by a liar." Then in 1929, we had the crash. Then we had the financial calamity of 2008. What this means is that the financial industry needed to be regulated. In this particular case, the guardianship industry needs to be regulated.

My situation involved a court appointed fiduciary who basically took control of my mother-in-law's estate in 2007. The Nevada court granted my mother-in-law the right to live in California next to her daughter. When we initiated a California proceeding because of accounting irregularities by this fiduciary that were found in the amount of over \$300,000, all of a sudden my mother-in-law was taken against her will, and against an existing Nevada court order, back to Nevada. Prior to her being taken, she weighed 134 pounds and was in excellent health. Six months after arriving in Nevada, she died of dehydration with a weight of 122 pounds.

I cannot save my mother-in-law, but what I can do is tell you that private fiduciaries must be regulated and why. The fiduciary in a guardianship is the motor that runs the engine. It is the money that draws the private fiduciary. They come in and take control. The families have no say. Fortunately, that is not the case throughout all of Nevada. I have talked to people in northern Nevada, and I want to make it very clear that I am happy to learn that the situation here is different than in southern Nevada. I ask that Nevada consider itself, and I know it will, as one state as an industry grows up. I am here to emphasize what we are trying to do is make a positive change, to regulate private fiduciaries, to back S.B. 128 (R1) and Mr. Holcomb's amendment, so we can ensure that senior citizens and their families will get the quality of life that they need. There is one uncontestable fact: we have more older people than younger people in the United States today. Another uncontestable fact is that we are going to have more older people as time goes on. These people are going to require guardianship services and protection. I hope the members of this Committee, as well as the rest of the Nevada State Legislature, will feel it in their hearts to upgrade the level of care for our senior citizens, so that the legacies that our seniors leave to their families can be passed on and be reinvested to continue rebuilding Nevada, and all other states, so our country continues to be strong. If we do not regulate guardianship, we are weakened by the lack of regulation and the lack of foresight. Right now, it is much easier to become a guardian than to become a real estate broker or a stock broker. One person told me that, but I do not know if it is true, a cosmetologist takes more tests than a guardian. As we sit around thinking about this, and we realize that private fiduciaries are managing hundreds of thousands of dollars worth of assets, we have to ask ourselves, What is the level of care that we need, what do we want to have for our senior citizens, and how far are we willing to go to protect them?

**Chairman Horne:**

Thank you for making the trip from California to testify and tell us your story. You have my condolences in your loss. I am sorry that happened in our state.



**Ruth Carney, Private Citizen, Gardnerville, Nevada:**

I am still involved in an ongoing, horrible case in Clark County with a dear friend of mine whose father, Mr. Olvera, is a World War II veteran. He did a lot for us or we would not be sitting here. He gets very shoddy treatment from the court and from the court-appointed guardian in Clark County.

In 2009, problems started when Mr. Olvera's wife of 63 years died at his feet. My friend, Rebecca Schultz, is a California resident and she called me for help. By the time things progressed, one of the private guardians went to the court and was assigned as the temporary guardian for Mr. Olvera and his estate. At 92 years old, Mr. Olvera was shocked. He assumed a doctor would have worked with him and checked him before that would happen.

We are still fighting for his right to live with his daughter, which is where he chooses to live. The problem was that we were not getting anywhere in court. Although we had attorneys, the court was very rude to us. The guardian was very arrogant, and the court allowed him to carry on conversations with the judge, but we were not allowed to talk. Mr. Olvera was by himself in his home in Nevada, and was angry that he had to pay a private guardian out of his own funds. He wanted to go with his daughter, but they violated his civil rights. He was never allowed to go to court, since the guardian sent him a message that he was not to come to court. So, he decided to go with his daughter. Mr. Olvera finally left with his daughter to live in California about six months ago, but the Nevada court would not let him stay. The family takes loving care of him. Rebecca will tell you how her father has had health check-ups, and how she takes him to the VA Medical Center. We are still in court trying to get him the right to live with his daughter.

Mr. Olvera's trust has also been withheld from him. A lot of money has come out of it with no accounting for it. He has set up his own bank account and post office box in California, but he is not allowed to receive his Social Security checks. He went to Social Security to have his check sent to him, but the fiduciary, through his attorneys and the court, have the checks coming into the trust or to the fiduciary. He does not know which. They also take his veteran's check, and froze his trust so he cannot take any money out. He gets no money. The fiduciary, as soon as he was appointed guardian, took everything out of Mr. Olvera's safe deposit box. The fiduciary said it would be safer in his office than at the bank.

We are getting the worst treatment. Mr. Olvera now needs a psychologist's evaluation stating he is competent. He has slight dementia, but the psychologist says he should be with his family so they can help him. He is happy and surrounded by his loved ones. This is an ongoing battle that has

cost us all a lot of money. It is also costing the taxpayers for the court's time. He is very unhappy about his money going out. He has requested his trust be transferred to a bank near his residence in California, but the court has not responded.

I came forward to help my friend. I would be the coguardian with Ms. Schultz. We were never checked out, and we have nothing in our background to prevent us from being guardians. We do not know why we are getting the treatment we get. Mr. Olvera is 92 years old, and we worry about him.

Then I found out about Mr. Holcomb's amendment. I am very supportive of it. I hope we can get some help for all people who are elderly or disabled so they cannot be treated inappropriately. [Ms. Carney provided prepared testimony ([Exhibit E](#)), but did not refer to it.]

**Chairman Horne:**

Thank you. Are there any questions for Ms. Carney?

**Brooks Holcomb:**

If this bill were enacted, the person Ms. Carney has referred to could not be appointed guardian because of his background.

**Chairman Horne:**

I see no questions. At this time, I would like to call Ms. Ramm forward again for clarification. Have you had an opportunity to look at Mr. Holcomb's proposed amendment? Have you had a chance to determine how this would affect the bill in its current form?

**Sally Ramm:**

I received the amendment late yesterday, and I have had an opportunity to read it and to look at the law as it stands. The law currently requires the guardians to have the qualifications and backgrounds that Mr. Holcomb is requesting in his amendment. Guardians are not allowed to have a felony or anything on their record that would be damaging to the ward. I think that Mr. Holcomb's amendment addresses private fiduciaries. In the places in Nevada law where private fiduciaries are mentioned, I do not believe they are actually defined as anything different from being a guardian of the estate. I may have overlooked that, but "private fiduciary" is not a term that we usually use in Nevada, although I understand it is sometimes used in southern Nevada. My experience is that, in Nevada, we use the term "guardianship of the person" or "guardianship of the estate." I looked at the NRS index last night, and did not see that "private fiduciary" was defined anywhere. I think the law, as it stands, would probably cover the issues that Mr. Holcomb is bringing up, not to say the

law is always followed, especially in the area of guardianship. There are a lot of times where things are overlooked for one reason or another. For instance, the ward does not always get to court when he should because the guardian, for one reason or another, blocks it. It happens a lot even though the law requires that the ward be in court. There are parts of the law that are not followed well. Some of the things that they mentioned are in those situations.

I do not think the amendment would change the law. The only thing that might change is to have an opportunity to add a definition of "private fiduciary" into the law that matches the definition of "guardian of the estate." "Private fiduciary" is mentioned in the parts of the law that Mr. Holcomb is trying to amend. We could put a definition in the law. It would address Mr. Holcomb's concerns.

**Chairman Horne:**

Is there anyone else here wishing to testify in favor of S.B. 128 (R1)?

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

I agree with Ms. Ramm on the addition that Mr. Holcomb is proposing. In NRS 159.059, under qualifications of a guardian, whether he is a private fiduciary or any other person, to be appointed as guardian he cannot serve if he has been disbarred or has lost his license in any profession, or if he has been convicted of a felony, or been convicted or investigated for elder abuse, child abuse, or spousal abuse. Having a definition of what a private fiduciary is would be a good thing. Statute used to have a provision that said if a private fiduciary or any individual serving as guardian for three or more wards who are not related to the guardian, he would fall into the classification of private, professional guardian. That was removed some time ago, but it might be a good idea to look at reinstating it. If the fiduciary was serving as guardian for more than three wards, he would have to meet the qualifications of private, professional guardian, as well as the normal qualifications for a guardian.

**Chairman Horne:**

Thank you. Are there any questions for Ms. Myles? I see none. Is there anyone else to testify in favor of S.B. 128 (R1)? I see none, so we will move to the opposition. Is anyone opposed? I see none, so we will move to the neutral position.

**Julie Butler, Records Bureau Chief, Records and Technology Division, Department of Public Safety:**

My office has proposed a friendly amendment ([Exhibit F](#)) to S.B. 128 (R1). We worked this out in cooperation with Ms. Ramm from the Division of Aging and Disability Services.

[Read from prepared testimony ([Exhibit G](#)).]

**Chairman Horne:**

Does anyone have questions for Ms. Butler? I see none. Is there anyone else in the neutral position? I see none. Senator Breeden, do you have any final comments that you would like to put on the record?

**Senator Breeden:**

You have heard some stories this morning that are quite compelling and that was the goal of our Committee during the interim. We are here to protect those vulnerable persons who really have no voice of their own. I have not seen the friendly amendment that was presented but, if Sally Ramm has agreed to it, it is fine with me as well. I would urge the Committee's support of this measure, and if there is anything we have to do, we would be happy to work with you.

**Chairman Horne:**

I will close the hearing on Senate Bill 128 (1st Reprint) and bring it back to Committee. Is there any business to be brought before the Committee? Is there any public comment? [There was no response.]

[Becky Olvera Schultz provided prepared testimony ([Exhibit H](#)) but did not testify.]

We are adjourned [at 10:56 a.m.].

RESPECTFULLY SUBMITTED:

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Karyn Werner  
Committee Secretary

APPROVED BY:

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Assemblyman William C. Horne, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** May 11, 2011

**Time of Meeting:** 9:08 a.m.

| <b>Bill</b>   | <b>Exhibit</b> | <b>Witness / Agency</b> | <b>Description</b>                                   |
|---------------|----------------|-------------------------|--|
|               | A              |                         | Agenda   |
|               | B              |                         | Attendance Roster                                    |
| S.B. 128 (R1) | C              | Sally Ramm              | Prepared Testimony                                   |
| S.B. 128 (R1) | D              | Brooks Holcomb          | Letter Dated May 11, 2011,<br>and Proposed Amendment |
| S.B. 128 (R1) | E              | Ruth Carney             | Written Testimony                                    |
| S.B. 128 (R1) | F              | Julie Butler            | Proposed Amendment                                   |
| S.B. 128 (R1) | G              | Julie Butler            | Prepared Testimony                                   |
| S.B. 128 (R1) | H              | Becky Olvera Schultz    | Prepared Testimony                                   |