MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
May 20, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:32 a.m. on Friday, May 20, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jeffrey Eck, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Gary Milliken, representing the Nevada Self Storage Association
John McCormick, Rural Courts Coordinator, Administrative Office of the Courts
Rocky Finseth, representing the Nevada Land Title Association
Garrett Gordon, representing Southern Highlands Homeowners Association
William Voy, Judge, Family Division, Eighth Judicial District Court
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Victor-Hugo Schulze III, Children's Advocate, Office of Advocate for Missing or Exploited Children, Office of the Attorney General

Chairman Horne:
[Roll was called.]

Ladies and gentlemen, welcome to committee passage deadline day in the Assembly Committee on Judiciary. We have a number of bills to process today. If they are not processed, they will die.

We will start the morning with Senate Bill 254 (1st Reprint).

Senate Bill 254 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-264)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman.

[Mr. Ziegler read from the work session document (Exhibit C).]

I will defer to Committee Counsel on the amendment.

Chairman Horne:
This morning, I had a number of the parties for S.B. 254 (R1) and Assembly Bill 448, recommending A.B. 448 be amended into S.B. 254 (R1).

This is solely for the purpose of keeping them alive into Conference Committee. These bills are not finished. My plan is to make sure I am on the Conference Committee from the Assembly to make sure things stay on track and on the up and up, et cetera. I am not trying to kill Senator Copening's bill, and I have already advised Mr. Ohrenschall that he is not getting everything in his bill. We are at risk of losing both bills, so in an effort to keep them alive, I will accept a motion to amend and do pass A.B. 448 into S.B. 254 (R1).

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 254 (1st REPRINT).
>
> ASSEMBLYMAN BROOKS SECONDED THE MOTION.

Chairman Horne:
Is there discussion on the motion?

Assemblyman Segerblom:
Mr. Chairman, to clarify, is this the bill as it was amended in the Subcommittee?

Chairman Horne:
This is Senator Copening's bill as we have it today and A.B. 448 as we sent it to the Senate. Is that correct, Mr. Ohrenschall?

Assemblyman Ohrenschall:
That is correct. The Subcommittee recommended some amendments to the Senator's bill, so I believe the correct motion would be to amend and do pass with the recommendations of your Subcommittee on Common-Interest Communities and incorporating the text of A.B. 448.

Chairman Horne:
That is correct. Mr. McArthur.

Assemblyman McArthur:
Thank you, Mr. Chairman. We spent probably 10 or 15 hours on this in the Subcommittee. Now we are amending another full bill into it, and I understand there are some other amendments. Plus, there is a big amendment into A.B. 448 itself. This is too much for me. I am going to vote no on this bill, on which we spent about 15 hours.

Chairman Horne:
That is fine. I understand. I am trying to handle it. Mr. Hammond.

Assemblyman Hammond:
Thank you, Mr. Chairman. I am having a difficult time understanding this. Like my colleague, I will probably vote no on this but reserve my right to change my mind after going through all the proposed amendments.

Chairman Horne:
Okay. Mr. Brooks.

Assemblyman Brooks:
I have been receiving some emails in regards to this bill. I was not on the Subcommittee, but it was discussed that it could cost a homeowner $250 to file a complaint, which now costs nothing. The concern is that the Office of the Ombudsman for Common-Interest Communities and Condominium Hotels is funded by homeowners, and not taxpayer dollars. I want to know if the Chairman of the Subcommittee could explain that piece to me, because I have not read the bill.

Assemblyman Ohrenschall:
Mr. Brooks, there was testimony from the Nevada Real Estate Division of the Department of Business and Industry that it does have some funding now that will pay for the mediations. However, it is not an infinite source of money. Eventually, the mediations will have to be paid for by the parties. One of our amendments that was proposed by the Subcommittee was that the parties would divide the costs of the mediation. We also proposed a cap for the cost of mediation. We proposed that the Department of Business and Industry, Real Estate Division would promulgate a regulation, establishing a maximum cap of $500 per mediation. That is the total for both sides, so each side might have to pay $250 maximum. That would be a flat fee. It would not be per hour. It would be the total cost of the mediation.

There are provisions in the bill, I think in one of Senator Copening's amendments that we did agree on, that if someone did not make a good faith effort at mediation or failed to show up, he might end up bearing all the cost of mediation. The mediator then, if the issue involves covenants, conditions, and restrictions (CCRs), could recommend arbitration. That has additional fees accompanying it. There are fees for the arbitrator. When we looked at A.B. 448, we established a cap on that. We had quite a bit of discussion on that. There was testimony about how arbitrators' fees sometimes become very high. For mediation in the short term, there will not be any fee because there is funding that the Real Estate Division has. In the long term, the parties would have to divide that cost, but it would be capped at $250 for each side under the proposal we have in our amendment.

The text of A.B. 448 caps arbitrator fees at $1,000. That is the same cap that is in Supreme Court Rule 24 for arbitrators. However, there is an exception for certain circumstances when the arbitrator needs to spend more time on a certain case. For exceptional cases, the arbitrator would be able to charge a higher fee than the $1,000 cap.

Assemblyman Brooks:
Thank you for the clarification. In reading over the bill, I could not find that particular piece.

Chairman Horne:
Are there any other questions or concerns?

> THE MOTION PASSED. (ASSEMBLYMEN HAMMOND, HANSEN, KITE, MCARTHUR, AND SHERWOOD VOTED NO.)

I will give the floor statement to Mr. Ohrenschall.

We will now move to Senate Bill 24 (1st Reprint).

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

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 24 (1st Reprint) is sponsored by the Senate Committee on Judiciary on behalf of the Nevada Supreme Court and was heard in this Committee on April 27 of this year.

[Mr. Ziegler read from the work session document (Exhibit D).]

The amendment adds in a couple of places the thought that the activity of the clerk would be under the direction and supervision of the Justice. Thank you, Mr. Chairman.

Chairman Horne:
Thank you, Mr. Ziegler. This proposed amendment was presented to give me comfort, in that I really did not like the idea of writs being signed by clerks without any judicial oversight. It was news to me that they already do it in district court. I am fighting the compelling need to require district courts to do it. That is why this is here. Are there any questions about the amendment or the bill? I would entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 24 (1st REPRINT).

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will give that to Ms. Dondero Loop.

Next is Senate Bill 47.

Senate Bill 47: Clarifies the definition of "minor" for the purposes of certain criminal statutes. (BDR 15-121)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 47 is sponsored by the Senate Committee on Judiciary on behalf of the Attorney General and was heard on March 8.

[Mr. Ziegler read from the work session document (Exhibit E).]

Chairman Horne:
My initial concern about this was capturing 17- or 16-year-olds that would otherwise not be labeled sexual predators, et cetera, for this. The age of legal consent in this state is 16 years of age. Mr. Kandt, please come forward. Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. My colleague, Mr. Hansen, and I met with Mr. Kandt yesterday to discuss the Chairman's concerns and some other concerns expressed by the Committee.

Two of my concerns were that not only do we have an age of consent of 16, but the potential of an emancipated 17-year-old who lives on his own. And we are worried about what he does in the privacy of his own home, if, for whatever reason, there was a photograph involved, for example.

My second concern was the omnibus nature of an effort to do something that had so many different, intricate applications across the board, and not having a full hearing on each measure that we were proposing to change and the consequences of that. While Mr. Kandt wanted to proceed with several areas, there was an effort to see with which areas the Committee was more comfortable. While the Committee members had not agreed that the other

areas did not need to be addressed, there were two areas that they thought, at the very least, could be addressed and would minimally have those consequences. One of those was in *Nevada Revised Statutes* (NRS) 200.030, involving the kidnapping of a minor. The other was NRS 201.340, regarding pandering of a child. The suggestion was that the Committee consider setting the age of a minor in those two provisions at under 18 for the time being, recognizing that this is something worthy of looking at, but with more attention than we had between just yesterday and today with the different statutes.

Chairman Horne:
Mr. Hansen, you were part of that meeting.

Assemblyman Hansen:
I was briefly. Unfortunately, I had a couple of other meetings. I agree with Mr. Frierson that we probably need to have a lot of these addressed by the whole Committee, but there were those two that he just mentioned—kidnapping and pandering—in which we were in complete agreement. The discussion I did not get to participate in, though, was NRS Chapter 200, sections 710, 720, and 725. Section 710 makes it unlawful to use a minor to produce pornography. Section 720 prohibits the promotion of sexual performance of a minor. Section 725 makes it unlawful to disseminate pornography involving a minor. On those, apparently there was some inability to come to a consensus when I was not there. I think that is something the Committee should look at for a couple of reasons. The first reason is, to be consistent with federal law, we want to define a minor as somebody under the age of 18. If we leave it blank, with our current statute, which allows consensual sex with a 16-year-old, you could potentially have Nevada becoming the child porn capital of the United States because we have not clearly defined who a minor is when it comes to the production of sexually explicit material.

I would think that, for those three statutes, we would be very wise to carefully look at that so we do not have an issue of having child pornography produced here in the State of Nevada because of vagueness in the law.

Chairman Horne:
Nevada has not had any problems prosecuting child pornographers that I have seen. Mr. Sherwood.

Assemblyman Sherwood:
What is the difference between the amendment and the bill that we are considering? It looks to me like they are the same. Are we voting on the amendment on page 2 of Exhibit E, or are they both the same thing?

Chairman Horne:
I think the problem with that proposed amendment by Mr. Kandt was that it was too broad. That is why he had discussions with Mr. Frierson and Mr. Hansen.

Assemblyman Sherwood:
I do not see that.

Chairman Horne:
That was just yesterday. The discussions with Mr. Frierson and Mr. Hansen are not in your work session document.

Assemblyman Sherwood:
The background that I got in this is that there are dozens of minors in the statute, and many of them are defined at different ages. I think the genesis for this, as I understand the history, is there was an incest case. The father was sentenced on incest, but he also filmed some of the act. He was not charged for that because "minor" was not defined. I would prefer we address the original bill and not get derailed by saying, "Here is a blanket statement for minors." There are dozens of these that are not defined. The discussion that Assemblymen Frierson and Hansen had yesterday would be just for the case of the 17-year-old who was forced to perform this. It was filmed, but there could not be a prosecution. That is my understanding of the reason for this bill.

I would hate to see the bill get blown up because the amendment is too broad.

Chairman Horne:
Well, you just blew it up. Mr. Frierson.

Assemblyman Frierson:
The question about the intent of the original bill may have been directed at the sponsor, but I think it was stated that was the nature of the discussions yesterday. That was not the nature of the discussions yesterday. We discussed the case that gave rise to this bill, but the purpose of the meeting was expressly to find an alternate way to provide clarification in a way that did not give discomfort. I feel compelled to say the purpose of having hearings is to vet and discuss these issues. It is difficult to change the definition of a minor everywhere on the planet without going through each example, vetting it, looking at it, and having testimony for and against it.

The original bill, while trying to provide clarification, did just that. It did not go through each and every example. Mr. Kandt put together several lists and a lot of information to review to try and do that, but it was after the hearing. One of

the judge's rationales for dismissing a count in the aforementioned case was that to interpret it the way the parties were arguing the age should have been interpreted would have led to absurd results. That was the standard on the case that the judge used as part of why the judge concluded it was unconstitutionally vague. This does not change that. The two examples that the judge gave would still be the exact same results today if this bill were passed in that example. That is why I was uncomfortable moving forward with making a change to something that does not address the court's analysis at all. While it is worthy of addressing and necessary in a vacuum, in a state where we have the age of consent at 16 years, it is difficult to do it that way. So, we agreed that some comprehensive work needs to be done on how we address minors because of the way our statutes are written and because of the increase in technology.

When we left yesterday, we left with at least an effort at presenting something to the Committee that was not going to provide the discomfort that the original bill did. I wanted to clarify the nature of the discussion yesterday and why we came out with what we did.

Chairman Horne:
Mr. Hansen.

Assemblyman Hansen:
Thank you, Mr. Chairman. I echo his sentiments. As we went through the different statutes, there are some reasons that "minor" may need to be defined in different ways per statute. I would suggest that, rather than go with the full bill with all minors being defined that way, we take the ones dealing with kidnapping, pandering, and the production of pornography. They are NRS 200.310, NRS 201.340, NRS 200.710, NRS 200.720, and NRS Chapter 725. I suggest, in those five specific cases, we amend into this bill the definition of "minor" as being under the age of 18. I think we will need to have a review on the other ones next session.

Chairman Horne:
I want to stick with NRS 200.030 and NRS 201.340. Those are the two that the two of you discussed. I do not want to go any further than that. As stated before, all those other statutes need much more vetting.

> ASSEMBLYMAN SHERWOOD MOVED TO AMEND AND DO PASS SENATE BILL 47.

I have a motion to amend and do pass from Mr. Sherwood, with the amendments stating that NRS 200.030 and NRS 201.340 be amended to define a minor as someone under the age of 18 years.

ASSEMBLYMAN KITE SECONDED THE MOTION.

Is there discussion on the motion? Mr. Hansen.

Assemblyman Hansen:
Thank you, Mr. Chairman. I would like an explanation of the unwillingness to look at the child pornography statutes that I mentioned. Why would we not want to put that into this particular bill?

Chairman Horne:
That is a little out of order on this motion, but I stated that those need much more vetting by the Committee. Number 1, this is work session, so we are not vetting huge issues. Number 2, the meetings that you had with Mr. Frierson and Mr. Kandt dealt with just those first two bills that you agreed on. So, we are addressing what you were able to discuss in those meetings and not expanding beyond that.

Assemblyman Hansen:
Thank you.

Chairman Horne:
Are there any further questions or discussions?

THE MOTION PASSED. (ASSEMBLYMAN HANSEN VOTED NO.)

I will give this to Mr. Brooks for a floor assignment.

We will now go to Senate Bill 150 (1st Reprint).

Senate Bill 150 (1st Reprint): Revises certain provisions governing liens of owners of facilities for storage. (BDR 9-907)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 150 (1st Reprint) was sponsored by Senator Schneider, heard in this Committee on May 9, and presented by Mr. Milliken and Mr. Morrow, representing the Nevada Self Storage Association.

[Mr. Ziegler read from the work session document (Exhibit F).]

The amendment submitted by the Association incorporates the amendment that the Committee discussed. The amendment returns the concept of declaration of opposition to the sale to the statute. It deletes the idea that, if five or more bidders who are unrelated to the owner attend the sale, it is deemed to be commercially reasonable. It basically puts back in the repealed section, although one of the repealed sections is substantially modified in the amendment. It is *Nevada Revised Statutes* (NRS) 108.478.

Chairman Horne:
Thank you. Mr. Milliken.

Gary Milliken, representing the Nevada Self Storage Association:
We tried to address your concerns in the discussions that day. The changes that we made, we think, answer your questions and problems. I will be willing to answer any questions.

Chairman Horne:
The part that was deleted had to do with the five or more bidders.

Gary Milliken:
Yes, Mr. Chairman. You asked a question about that during the hearing. That is why we deleted that.

Chairman Horne:
Mr. Milliken, on the number of bidders you had in the original bill, it was not that language. Mr. Brooks.

Assemblyman Brooks:
Thank you, Mr. Chairman. I remember Mr. Frierson asked about section 16, subsection 1(c), which states that the owner may "Dispose of but may not sell any protected property contained in the storage space . . . ." He did not want it to be permissible. He said it should say "Dispose of, but may not sell . . . ." I want to check with him to see if that is something he still wants. I did not see it in the amendment.

Chairman Horne:
In this context, I do not know if there is a difference between a "may" and a "shall." It is the same.

Gary Milliken:
Whichever word you want to use is fine.

Chairman Horne:
Our legal counsel says it is the same.

Assemblyman Brooks:
Okay, then I am fine.

Chairman Horne:
Mr. Ohrenschall.

Assemblyman Ohrenschall:
Thank you very much, Mr. Chairman. I am looking at the amendment. I want to verify that the occupant's authority to file a declaration of opposition has been restored. It had been deleted in the original bill.

Chairman Horne:
Yes.

Assemblyman Ohrenschall:
That gives me a lot more comfort. Thank you.

Chairman Horne:
Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. Maybe Mr. Milliken can help me find a particular section of the amendment. I remember being concerned about the order of the steps that the storage facility has to go through when dealing with protected property, and it seemed to me to be in order of priority, but not really priority. I am trying to find it.

Gary Milliken:
Is it new language or old language?

Assemblyman Frierson:
It is old language.

Gary Milliken:
Are you talking about section 16, which addresses NRS 108.4763?

Assemblyman Frierson:
It is section 16, subsection 4. "The owner may dispose of protected property . . . by taking the following actions, in the following order of priority . . . ." It says "may," and I do not think the intention was for it to take

away from the order. My concern is, if it says "may . . . in the following order," what is to stop them from skipping step one and going to step four? I want to be sure that we are clear. If we have the owner disposing of protected property, I wonder if that "may" needs to be a "shall" to make sure he is going through those steps in order, as opposed to simply jumping to step four and getting rid of everything.

Chairman Horne:
I read that as permissive on the disposing of protected property, not as permissive on the order. The owner may dispose of protected property by doing the following . . . . That is how I read it.

Assemblyman Frierson:
After hearing it out loud, I think you are right. To make that a "shall" would require the owner to dispose of it when he might otherwise decide not to. I am comfortable.

Chairman Horne:
Mr. Daly.

Assemblyman Daly:
Thank you, Mr. Chairman. I recall we had a concern over the electronic notification and the 14 days. I still have concerns over the electronic communication. People send emails all the time; some people are better at reading them than others. I do not think there is anything that prohibits you from sending an electronic notice, but I think you have to use paper copies in the mail to make me comfortable.

Gary Milliken:
We looked at that and had a lot of discussion about that in the Senate. We must use the newspaper and whatever else we can use. That is fine. In section 2, line 8, we took out that it must be done with "electronic" confirmation. It does not have to be just electronic to get back to us. You can do mail, you can call, or you can stop by the office. We thought that was limiting.

Assemblyman Daly:
I am looking at section 15, subsection 1 of the attached amendment. It reads, "If any charges for rent or other items owed by the occupant remain unpaid for 14 days or more, the owner may terminate the occupant's right to use the storage space at the facility, for which charges are owed . . . ." You can do that through mail or electronic mail. I think a letter should be sent in the mail.

Gary Milliken:
We are saying "or." Is that your problem?

Assemblyman Daly:
Yes, I think the problem is the "or." It allows you to just send the email. I think you and the people who potentially will have their property taken away are going to be better served if they are getting a letter, rather than just an email.

Chairman Horne:
Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. I remember discussing this. There was a discussion about the confirmation. On the first page of this bill, it defines "electronic mail." Part of the definition is that a confirmation of receipt must be received. I think I recall that if there is an email sent that goes to somebody's junk mail, and you do not have a return receipt or confirmation, or an email in response, then it would not be considered an electronic mail for the purposes of this bill. I think that gave me at least some comfort. I do not confirm any emails when I get that box that says to confirm. If you are going to confirm it, it is going to be intentional or you are going to respond to it. I certainly understand the concern about email and how much of it might go to junk mail. I just do not know if any of the junk mail filters would give that return or confirmation of receipt.

Assemblywoman Dondero Loop:
Thank you, Mr. Chairman. I also remember discussing this, and I concur with my colleague. I mentioned in the original hearing that I have four of these units for my business, and if I should quit that job tomorrow, anything could slip through the cracks. Fourteen days is nothing in a huge corporation with something like this. They would not have an accurate email at that point. Thank you.

Chairman Horne:
It seems like we need to put an "and" in there.

Gary Milliken:
Mr. Chairman, it is fine if you want to change the "or" to an "and."

Chairman Horne:
Okay. Mr. Hammond.

Assemblyman Hammond:
At the risk of beating the crap out of this, I am going to ask one more question. Now, I am so unclear. At the beginning of the discussion, we talked about an amendment. I believe all the amendment does is strike out the part about five bidders unrelated to the occupant. Is that correct? And what exactly does that do to the bill?

Gary Milliken:
No, we put back in the occupant's declaration of opposition. There was a lot of concern that was not done. That has been placed back in.

Assemblyman Hammond:
Okay, thank you.

Chairman Horne:
Is there anyone else with a question? I will accept a motion.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 150 (1st REPRINT).
>
> ASSEMBLYMAN HAMMOND SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

We will give that to Mr. Daly. Mr. Brooks.

Assemblyman Brooks:
When he put back in the occupant's declaration of opposition to sell, did this Committee also want to see the action to enforce the lien as well, or is that not a big deal? I do not recall talking about it a lot. There were two pieces that were repealed from that section.

Chairman Horne:
That section regarding the lien is back in, but it is revised on the previous page at NRS 108.478.

Assemblyman Brooks:
Thank you, Mr. Chairman.

Chairman Horne:
As Mr. Ziegler said, there needs to be some cleanup.

Senate Bill 194 (1st Reprint) is next.

Senate Bill 194 (1st Reprint): Urges the Nevada Supreme Court to amend the Nevada Rules of Civil Procedure to require certain disclosures in class action lawsuits. (BDR S-563)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 194 (1st Reprint) was sponsored by Senator Joe Hardy. It was heard in this Committee on May 17.

[Mr. Ziegler read from the work session document (Exhibit G).]

Chairman Horne:
Thank you. Are there any questions on S.B. 194 (R1)? I do not see any.

> ASSEMBLYMAN FRIERSON MOVED TO DO PASS SENATE BILL 194 (1st REPRINT).
>
> ASSEMBLYMAN HAMMOND SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

We will give that to Mr. Carrillo.

I think we are ready for Senate Bill 221 (1st Reprint) now.

Senate Bill 221 (1st Reprint): Makes various changes relating to trusts, estates and probate. (BDR 2-78)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 221 (1st Reprint), sponsored by Senator Wiener and Assemblyman Segerblom, was heard on May 2 in this Committee.

[Mr. Ziegler read from the work session document (Exhibit H).]

There is an amendment that follows the attached comprehensive summary provided by the State Bar of Nevada. The amendment responds to a disagreement that occurred the day of the hearing. The amendment was a compromise worked out among the parties to require a trustee to equitably reduce the amount of expenses charged against an income beneficiary of an irrevocable trust if the amount of the charges would exceed 15 percent of the trust's income, with certain exceptions.

So that the record is clear, if that amendment is accepted, there is no need for section 180.5 in the bill. The letter from Mr. Mark Solomon (Exhibit H) that transmits the compromise reads, "In addition to the attachment, which modifies section 182, the compromise would also eliminate the need for section 180.5."

Chairman Horne:
Mr. Ohrenschall.

Assemblyman Ohrenschall:
Mr. Chairman, I had a concern yesterday, and I appreciate your courtesy in delaying action on this bill until today. I have done a lot of research. I have had help from Assemblyman Brooks, who has studied this quite thoroughly; and I have talked to some people in Las Vegas who practice in this area. I am comfortable with it and the amendment. I appreciate the extra 24 hours.

Chairman Horne:
Thank you. Mr. Segerblom.

Assemblyman Segerblom:
There was a dispute between the lawyers, but they worked it out. I think it is a very good bill.

Chairman Horne:
Mr. Brooks.

Assemblyman Brooks:
For clarification, I asked the gentleman, Robert Armstrong, to come into my office because I was clueless. He basically said that it was a great bill. He just had a problem with section 182, because it would greatly favor income beneficiaries to the detriment of the principal beneficiaries, who are typically composed of younger generations and charities. His amendment fixes that. I went over that with Mr. Ohrenschall today, and it looks good, other than that one amendment.

Chairman Horne:
Okay, thank you very much. I see no other questions.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS SENATE BILL 221 (1st REPRINT).

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMMOND, MCARTHUR, AND SHERWOOD VOTED NO.)

Mr. Brooks can handle that on the floor.

Let us take a look at Senate Bill 307 (1st Reprint).

Senate Bill 307 (1st Reprint): Revises provisions relating to the exercise of the power of sale under a deed of trust concerning owner-occupied property. (BDR 9-958)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 307 (1st Reprint) was sponsored by Senator Copening and was first heard in this Committee on May 17.

[Mr. Ziegler read from the work session document (Exhibit I).]

On the day of the hearing, the sponsor proposed to amend the bill as a whole with the amendment that is attached. The amendment comes from the foreclosure mediation program. It would require trustees and lenders to notify homeowners of owner-occupied property of their right to seek mediation under the State of Nevada Foreclosure Mediation Program. Thank you, Mr. Chairman.

Chairman Horne:
Thank you, Mr. Ziegler. Mr. Ohrenschall's light is on.

Assemblyman Ohrenschall:
I had the privilege of chairing on the day Senator Copening presented this bill. Additionally, Senator Copening and I have bills that are substantially similar. I introduced Assembly Bill 388. We both worked very closely with the people at the mediation program at the Supreme Court, and we are going to work with them in the interim. I believe we are both following the same course. We are going forward with the amendment proposed, which will, hopefully, help more people who are in danger of losing their homes know about the mediation program and take advantage of the opportunity that it affords them. As to any other potential remedies, we will work with the people at the Supreme Court in the interim.

Chairman Horne:
Mr. Sherwood.

Assemblyman Sherwood:
I remember the day of the hearing. There was a concern that we already have a great mediation program, and this was at odds with that or would change things. The motion that we are talking about now is simply replacing the original bill with a mandate that a person will receive notification that there is an opportunity to take advantage of the program. Is that correct?

Chairman Horne:
I see Mr. McCormick in the audience nod his head in the affirmative.

John McCormick, Rural Courts Coordinator, Administrative Office of the Courts:
Mr. Sherwood is correct. The amendment requires two more notifications. They explain that the program exists. The first one goes out when you have received the notice that the default was filed. That is the one that appears on page 3 of the amendment, which is page 4 of Exhibit I. Towards the back of the amendment, there is a more extensive one that goes out with the recorded notice of default.

Assemblyman Sherwood:
If that is the extent of this, I have a question for the sponsor. You said you were going to work it out in the Senate. Does that mean that we are going to push this, or are we going to take the Senate bill and form a hybrid? What do you mean by that?

Chairman Horne:
The sponsor is Ms. Copening, but Mr. Ohrenschall said he worked on it.

Assemblyman Ohrenschall:
Our bills, A.B. 388 and S.B. 307 (R1), are similar; they are not identical. Senator Copening's bill was based on a program adopted by the State of Maryland. My bill was based on a proposed program at the California Legislature. This amendment would, I believe, make the bills identical, and it will increase notice provisions. I believe both bills are working their way through their respective Houses. Mine is in the Senate; hers is here. I think both bills are positive. They might help more people participate in the mediation program. I think we should definitely move forward on this bill; and, hopefully, the other bill will work its way through the Senate.

Assemblyman Sherwood:
Thank you.

Chairman Horne:
Are there any other discussions? I am open to a motion.

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS SENATE BILL 307 (1st REPRINT).
>
> ASSEMBLYMAN BROOKS SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN HANSEN, KITE, MCARTHUR, AND SHERWOOD VOTED NO.)

We will give that bill to Mr. Ohrenschall.

At this time, we will take a 15-minute recess.

[The meeting was recessed at 9:40 a.m. and reconvened at 10:12 a.m.]

Chairman Horne:
Senate Bill 381 (1st Reprint) is a bill we already processed. However, we forgot to put in an amendment regarding flexibility on the hours and the population for that, so we will need to rescind the action.

Senate Bill 381 (1st Reprint): Revises provisions concerning the issuance of marriage licenses. (BDR 11-227)

> ASSEMBLYMAN SEGERBLOM MOVED TO RESCIND THE PREVIOUS ACTION ON SENATE BILL 381 (1st REPRINT).
>
> ASSEMBLYMAN SHERWOOD SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Let us take up Senate Bill 381 (1st Reprint) again. Mr. Anthony can explain the proposed amendment, page 2 of Exhibit J.

Nick Anthony, Committee Counsel:
Thank you, Mr. Chairman. As you may recall, this bill dealt with what is essentially a two-year pilot program set to expire in 2013. The program is only for counties under 700,000. The amendment would allow counties with fewer than 100,000 residents to establish such a program if they choose. It would be permissive in the smaller, rural counties but still mandatory in Washoe County. It does not apply to Clark County at all.

Chairman Horne:
Are there any questions on the proposed amendment by the Nevada Associations of Counties (NACO)? I see none.

> ASSEMBLYMAN KITE MOVED TO AMEND AND DO PASS SENATE BILL 381 (1st REPRINT).
>
> ASSEMBLYMAN BROOKS SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

I was told the Senate is ready to hear my testimony. We are in recess.

[The meeting was recessed at 10:15 a.m. and reconvened at 10:43 a.m.]

Chairman Horne:
Senate Bill 402 (1st Reprint) is next. Mr. Ziegler.

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

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 402 (1st Reprint), sponsored by the Senate Committee on Judiciary, was heard in this Committee on May 5.

[Mr. Ziegler read from the work session document (Exhibit K).]

There are two amendments. Michael Buckley, representing the Real Property Section of the State Bar of Nevada on the day of the hearing, recommended an amendment which simply adds the word "public" in the section that has to do with the foreclosure sale of commercial property. The sale would have to be at a public location.

Chairman Horne recommends an additional amendment which would delete section 4.5 of the bill by amendment. That is the section that changes the definition of "indebtedness." The reason for that amendment is that, if it were to pass, it would be inconsistent with Assembly Bill 273, a bill that this Committee previously took action on. Thank you, Mr. Chairman.

Chairman Horne:
Thank you, Mr. Ziegler. Mr. Finseth, do you have concerns with this bill? [There was no audible response.] Mr. Brooks.

ASSEMBLYMAN BROOKS MOVED TO AMEND AND DO PASS SENATE BILL 402 (1st REPRINT).

Chairman Horne:
Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. I am trying to recall the discussion on this. I was concerned about section 4. It looks like the amendment is proposing to allow for a foreclosure to happen in a location other than the established locations, such as the courthouse. I think it is in subsection 2(b). The sale must me made ". . . at a location in the county in which the property . . . is situated as specified . . . ." In my initial reading of it, there was a concern about the sale occurring . . . .

Chairman Horne:
Mr. Ziegler.

Dave Ziegler:
Thank you, Mr. Chairman. Yes, that is the section in which Mr. Buckley from the State Bar recommends the amendment add the word "public" to the location description. This is only as it relates to commercial property. I think the testimony was that a residential foreclosure would still occur in the place where it always occurs. As long as commercial foreclosure sales were held at a public location, they would not have to occur in the same location as the residential foreclosures.

Chairman Horne:
Are you okay with that, Mr. Frierson?

Assemblyman Frierson:
Yes, I am.

Chairman Horne:
We have an amend and do pass motion from Mr. Brooks.

ASSEMBLYMAN SHERWOOD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will give this bill to Ms. Dondero Loop.

Let us go to Senate Bill 403 (1st Reprint).

Senate Bill 403 (1st Reprint): Revises provisions relating to the information which must be provided by a unit's owner in a resale transaction. (BDR 10-1126)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 403 (1st Reprint) was sponsored by the Senate Committee on Judiciary and was heard in this Committee on May 12. It was presented by Mr. Rocky Finseth on behalf of the Nevada Land Title Association and Mr. Russ Dalton of that Association.

[Mr. Ziegler read from the work session document (Exhibit L).]

Regarding the amendments, Marilyn Brainard, a member of the Commission for Common-Interest Communities and Condominium Hotels, was concerned that in the realm of common-interest communities (CICs), the term "assessment" is a term of art. It means a very specific thing, and it was felt that a more general term would be better at page 1, line 13.

Also, Ms. Brainard proposed to replace the word "seller" with the word "purchaser" at page 3, line 40. This has to do with *Nevada Revised Statutes* (NRS) 116.4109 and the idea that when a unit in a CIC is being sold and the seller asks for a statement from the homeowners association (HOA) of the unpaid obligations. If the HOA does not provide that statement within ten days, according to the way the law reads now, the seller is not obligated for those amounts. The proposal is to change that to "purchaser." I would point out that that exact same change is made in section 55 of Senate Bill 204 (1st Reprint).

Also, an amendment has been proposed by Mr. Wadhams on behalf of Associa. The copy in the work session document has been superseded by a new copy that was handed out this morning (Exhibit M). Thank you, Mr. Chairman.

Chairman Horne:
Thank you. We will work off the second suggested amendment, and not the one in the book from Jesse Wadhams, but the one that was distributed today with the names of Mr. Wadhams and Mr. Finseth on it. Mr. Brooks.

Assemblyman Brooks:
If we are not going to talk about the other amendment, I may as well not ask my question.

Chairman Horne:
Are there any other questions, concerns, or almost-questions? Mr. McArthur.

Assemblyman McArthur:
I have an amendment here from Michael Buckley. Is that included in anything we are talking about?

Chairman Horne:
We are on S.B. 403 (R1).

Assemblyman McArthur:
Yes, that is what I have. My concern is on page 2, starting at line 12. It says, ". . . the unit's owner or his or her agent may rely upon the accuracy of the information set forth in a statement provided by the association for the resale." It looks like we are letting the seller off the hook this way just because there is something that did not happen to get into the paperwork. Now the seller is not going to have to pay because someone forgot to put it in the paperwork. There are many times when costs do not make it in. That does not mean the seller still does not have an obligation.

Chairman Horne:
I believe they worked this out to where the association has the opportunity to correct any errors, et cetera. Mr. Finseth.

Rocky Finseth, representing the Nevada Land Title Association:
I do not completely understand the question. We are comfortable relative to the bill as it stands. We worked diligently with Mr. Wadhams to try to address his issues and concerns. We think that the amendment before you covers both challenges that the intent of the bill was trying to meet and what Mr. Wadhams' client was trying to address.

Chairman Horne:
So, if an association makes an error and does not have the entire fee in there, does the association have an opportunity to correct that?

Rocky Finseth:
Yes, Mr. Chairman. I refer to the amendment. If the association becomes aware of an error in the statement that it has already sent, then it has the opportunity to correct that error. A replacement statement must be delivered to the unit's owner during that time period, but prior to the consummation of the sale itself.

Chairman Horne:
Mr. McArthur.

Assemblyman McArthur:
That is the problem I have. The fact that the association forgets to put something in should not relieve the seller of the obligation to pay that off. If you look at the last sentence, you are letting him off unless you have corrected the error. But, there may be some fees in there that just got missed in the paperwork.

Chairman Horne:
I am of the opinion that, in the situation when you are trying to sell a house, a request is made regarding what fees, et cetera, are owed so that the buyer can rely on that. So, he goes to the association for that information. The association presents a bill, and the buyer relies on that bill. Subsequent to that, the buyer does not want to discover additional fees that were not included in the bill. The association is the keeper of the records, et cetera. It should be able to provide an accurate accounting of what is owed. The association has an opportunity to correct that. If the association presents a bill and forgets to include a particular item, it can present an amended bill, and the buyer can rely on that. If, after the sale, the association comes up with something else, well . . . You might be uncomfortable with it; but I say that the association has been given the opportunity to look at its records, see what was owed, and put that amount into a statement. If the association did not at that time, you are not going to turn everything upside down out of its error.

Assemblyman McArthur:
I am fine with the buyer accepting that. The problem is there may be some expenses that the seller has not completely paid for. So, you are letting him off the hook. I guess the HOA and all the other unit owners would have to pay for it. I am fine with the buyer understanding what the fees are, but through some mistake or oversight, the association may have missed some obligations that the seller may have.

Chairman Horne:
Do you have additional comments, Mr. Finseth?

Rocky Finseth:
I would direct the Committee's attention to what is already in statute in this section on page 3, subsection 5, lines 36 through 41. That talks about what I think Mr. McArthur is trying to address. That has been in the NRS, and we are not proposing to change that in any way. I would certainly defer to Mr. Anthony for any further clarification on that.

Assemblyman McArthur:
That is for the purchaser, and I am fine with the purchaser. Subparagraph 5 talks about the purchaser and the buyer. I am fine with that. I am talking about some other built-in fees or obligations that may have been missed in the final papers before the consummation of the transaction. Either the seller or the HOA is going to be responsible in this case. You are letting the seller off the hook. The HOA, which means all the unit owners, has to pay for the fees just because someone forgot to put those obligations in the final papers.

Chairman Horne:
Mr. Brooks.

Assemblyman Brooks:
Mr. Finseth, you said that this has been in current statute and it has nothing to do with the amendments that you have made. Is that correct?

Rocky Finseth:
Yes, and I will point out that it says that if the association fails to furnish the document and certificate within the ten days allowed, the seller is not liable for delinquent assessments.

Assemblyman Brooks:
So, it actually does account for the purchaser and the seller in the statute. What you have been able to work out with Mr. Wadhams is an opportunity for that seller to still have to, within a certain time frame, be accountable for the certain fees and assessments that have been put into statute. I think your amendment covers that. I believe the problem with this bill is that these assessments, fees, and collections are actually holding up sales of homes and property. People are getting absurd collection fees at the last minute, and it is destroying the possibility of being able to sell their property. Is that correct?

Rocky Finseth:
I do not want to dip my toe into the collection fee issues in any way. The challenge for my client has been that when the demand letters are requested, as set forth is some exhibits that we showed to the Committee, those demand letters are good for a day. That does not work for my client. That is why we proposed the amendment.

Assemblyman Brooks:
It can interfere with the sale. Alright. I appreciate that. With that being said, I think a lot of the questions have been answered, so if the Chairman would so please, I would like to make a motion, but I will wait.

Chairman Horne:
Not yet. Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. I was concerned with getting muddied with some kind of fringe issues. It seemed to me that this was kind of a transparency issue and an efficiency issue. Part of the problem, if you take out any suggestion that people are acting in bad faith or trying to do anything, is sometimes there is miscommunication. This tightens it and encourages communication and the delivery of information that helps everybody stay on the same page. If there is a problem, I do not think that we are penalizing anybody, based on the testimony and the amendment. I think that we are simply saying to be forthright and have your stuff together, not as a penalty, but because it helps facilitate these transactions. I appreciate the work. I think the amendment accomplishes that and allows for the parties to get on the same page and help this whole thing work a little more efficiently and more transparently.

Chairman Horne:
Mr. Brooks.

> ASSEMBLYMAN BROOKS MOVED TO AMEND AND DO PASS SENATE BILL 403 (1st REPRINT).

Assemblyman Brooks:
My amendment would just be for the one proposed by Associa. I thought we were not discussing other amendments. If we are going to discuss them, then on page 3, line 40, the word "seller" is replaced with the word "purchaser." Does that in some way still leave the seller on the hook for paying these fines? I thought that is why we are going with the other amendment.

It is in current statute that the seller is not liable for the delinquent assessment. If we put in there "purchaser," then there is still an issue with outstanding fines that the seller would have to pay.

Chairman Horne:
I think it is silent on that. We will let the Legal Division comment, but that is to address that the purchaser is not going to be responsible for any delinquent assessments of somebody else. That is why that change was suggested. Mr. Anthony.

Nick Anthony, Committee Counsel:
That is correct. That request came from the CIC association, and it was to clarify that the purchaser is not liable for any delinquent assessments. As Mr. Ziegler pointed out, that change was also made in another bill that was passed out this session.

Assemblyman Brooks:
Okay, so I will strike that motion and enter another.

Chairman Horne:
Do you have a question, Mr. Sherwood?

Assemblyman Sherwood:
Yes. Thank you, Mr. Chairman. The testimony from Ms. Brainard was not related to this topic. Assemblyman Frierson nailed it. This is just an efficiency issue. The seller and purchaser are opposite people. So now, what is the recourse? When you get to closing, that should be it. I appreciate the fact that in another bill "seller" and "purchaser" also appear, but this is a pretty straightforward bill. Seller and purchaser are opposites. When you entertain that amendment, I think it negates the bill.

To the point of assessment versus obligation, that was not an issue either, because it clearly says "assessment," and then it goes through any possible fees, fines, and liens. The testimony from the CICs are concerns, but not for this bill. I have reservation with taking an unfriendly amendment to a straightforward bill.

Chairman Horne:
Mr. Ohrenschall.

Assemblyman Ohrenschall:
I will try to provide some clarification on this for Mr. Sherwood. I believe Ms. Brainard's amendment is meant to clear the water and not muddy the water. "Assessment" is a term of art under NRS Chapter 116, meaning the monthly assessment. Its first use on line 12 on page 1 is exactly what it is meant to mean—your monthly assessment, but the second use on line 13 is actually confusing existing language, which could be interpreted as including fines or other obligations. I believe her substitution there will actually clarify things quite a bit and lead to less confusion. Her substitution on page 3 at line 40, I believe, also clarifies things because it clearly states in NRS that these obligations would be the seller's responsibility and not the purchaser's. I hope that clears things up. Maybe Mr. Frierson can do a better job at it than I can.

Assemblyman Frierson:
That was my point. I thought we addressed this at the hearing. This is not new material. The word "assessment" as a term of art, I thought, was something we addressed at the hearing. The seller being liable is interesting to me. We have had discussions over the past several weeks about people owing and paying their debts, whether or not we protect them, and to what extent we protect them. This bill seems to be trying to tighten up the system. The seller's obligation that existed before we get to this point is different from somebody who is relying on the paperwork to make a purchase and then becomes aware of something he was not told is there after the fact.

I believe that, in the spirit of facilitating that closure, we are telling the purchaser he may rely on the information that was given to him when he made the deal and closed the sale. He should not be penalized for something completely out of his control that happened before he was involved. I still think that those changes are consistent with the intent to tighten up this system and to follow through on what I recall we discussed at the hearing. I do not think this is new.

Assemblyman Sherwood:
If these two amendments are not contradictory, that is fine. It just seemed like they may have been. If everyone is comfortable that they are not, then that works for me, too.

Chairman Horne:
Mr. Brooks.

Assemblyman Brooks:
I will make another motion. I think the amendment leaves room for the HOA to go after the seller for fees after the sale of the property. But as long as it does not interfere with the sale of the property, I am okay with those amendments. I would ask legal if this would interfere with the sale of the property. I make a motion to accept all of the amendments and do pass.

> ASSEMBLYMAN BROOKS MOVED TO AMEND AND DO PASS SENATE BILL 403 (1st REPRINT).
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN MCARTHUR VOTED NO.)

Let us give that to Mr. Sherwood. Next is Senate Bill 405 (1st Reprint).

Senate Bill 405 (1st Reprint): Revises provisions governing business entities. (BDR 7-528)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 405 (1st Reprint), sponsored by the Senate Committee on Judiciary, was heard in this Committee on May 12.

[Mr. Ziegler read from the work session document (Exhibit N).]

Members, Committee Counsel and I discovered a mistake in our work this morning. There are no amendments to this bill. The amendment proposed by Valley Electric has been withdrawn, and I was under the impression that there was another amendment proposed by Mr. Kim from the Business Law Section of the State Bar of Nevada, but I was wrong. There are no amendments. Thank you, Mr. Chairman.

Chairman Horne:
Is there any discussion on S.B. 405 (R1)? Mr. Ohrenschall.

Assemblyman Ohrenschall:
Thank you very much, Mr. Chairman. During the hearing, I had some concerns about section 15 on page 9, which deals with the aggregate liability of a corporation, but I have discussed these with several people. I am now comfortable with it.

Chairman Horne:
Is there anyone else? I see none. I will entertain a motion.

> ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS SENATE BILL 405 (1st REPRINT).
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

I will give this to Mr. Hammond.

The next bill is Senate Bill 436 (1st Reprint).

Senate Bill 436 (1st Reprint): Revises provisions concerning pension benefits for justices of the Supreme Court and district judges. (BDR 1-1177)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 436 (1st Reprint) was sponsored by the Senate Committee on Finance on behalf of the Department of Administration, Division of Budget and Planning.

[Mr. Ziegler read from the work session document (Exhibit O).]

Chairman Horne:
Thank you. Are there questions, concerns, or discussions on S.B. 436 (R1)? I see none.

> ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS SENATE BILL 436 (1st REPRINT).
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Mr. McArthur can have that one.

We will now go to Senate Bill 204 (1st Reprint).

Senate Bill 204 (1st Reprint): Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 204 (1st Reprint) was sponsored by Senator Copening and heard in Subcommittee on May 10.

[Mr. Ziegler read from the work session document (Exhibit P).]

There is a more detailed abstract with the proposed amendments attached. Mr. Chairman, I suggest, in the interest of time, I just touch on the amendments.

Chairman Horne:
That is fine.

Dave Ziegler:
In section 4 of the bill, which addresses catastrophic events and creates a process by which a homeowners association (HOA) can be basically dissolved after a catastrophe, the Subcommittee recommends replacing the words "any other interested person" with the words "any other person with an interest in the community." These are people who can go to court and seek to have the common-interest community (CIC) dissolved if there has been a catastrophe.

Section 7 provides that the definitions in Chapter 116 of *Nevada Revised Statutes* (NRS) do not apply to the bylaws and declarations of HOAs. The Subcommittee discussed this at some length and discovered that the intent was actually exactly the opposite. In NRS Chapter 116 and in the declarations and bylaws of a CIC, the words and definitions in NRS Chapter 116 apply. The idea here is that a declaration or a set of bylaws of a CIC cannot override the definitions in statute.

In section 21, the Subcommittee recommends an amendment providing that the NRS provisions relating to notice of changes in governing documents do apply to a residential planned community containing more than six units. The idea here is that even in these small associations between 6 and 12 units, the people need to receive notice of changes in governing documents.

In section 30, which has to do with amendments to declarations, there are two amendments. The first one has to do with the idea that an amendment to a declaration should not delve into the behavior of residents in CICs. I think the idea was that people may play musical instruments or behave in odd ways, and that the declaration should not address that. The Subcommittee also recommends that if a declaration is going to be changed in a way that changes the uses to which any use is restricted, then the provisions of this section would apply.

In section 32, which requires an HOA to have an executive board and authorizes an HOA to be organized in any form authorized by Nevada law, the amendment would say that a small association with 12 or fewer units is not required to have a board.

In section 34, again, this amendment has to do with amending declarations and would provide that an executive board may not act to amend a declaration, the idea being that the unit owners themselves have to amend the declarations.

In section 45, which has to do with insurance, the proposed amendment recommends that the required amount of crime insurance coverage is three months of aggregate assessments on all units plus reserve funds up to a

maximum of $5 million. The amendment is the addition of the $5 million maximum.

Section 49 deals with collections. The agreement and recommendation of the Subcommittee, after discussion, was that all the language in this section should be deleted, except for subsection 11. That subsection has to do with the idea that a court can appoint a receiver. I think the idea is that collection issues are being addressed elsewhere.

Sections 50 and 51 are actually identical to a part of Senate Bill 30, which this Committee acted on earlier. Nevertheless, there are a couple of proposed amendments. One is that if an HOA does not produce the books and records as required within 21 days, there would be a $25-a-day penalty. The other amendment, which is consistent with other bills we acted on this week and earlier, mandates that if records exist in electronic format, they must be provided upon request by email at no charge. That same amendment appears farther down on the page in section 55.

In section 56, the amendment proposes to delete that section by amendment and retain the existing statute on warranties and who makes such warranties.

In section 58, which has to do with an independent committee of a HOA board compromising warranty claims, the Subcommittee was more comfortable with the word "address," rather than the word "compromise."

One final proposed amendment would add a new section to the bill. It was proposed by Mr. Gordon. It is attached. Relating to construction penalties, it says the association may impose and enforce a construction penalty if the right to assess and collect a construction penalty is set forth in:

> (1) the declaration;
> (2) another document related to the common-interest community that is recorded . . . ; or
> (3) a contract between the unit's owner and the association; . . . ,

the association has made the right to assess and collect a construction penalty available as part of the resale package that is required in the NRS.

After this amendment was submitted to the Subcommittee, but before the Subcommittee took action, Mr. Gordon came to the table and asked for a further amendment that this language also apply to public offering statements.

So, it would apply both to the resale package and to the public offering statement. Thank you, Mr. Chairman.

Chairman Horne:
First, let us hear briefly from Mr. Ohrenschall.

Assemblyman Ohrenschall:
Thank you very much, Mr. Chairman. Senate Bill 204 (1st Reprint) is quite a lengthy bill. It contains a lot of provisions that affect CICs. Mr. McArthur, Mr. Carrillo, and I went through it line by line with the help of Mr. Anthony and Mr. Ziegler. Senator Copening spent a lot of time with us, as did many of the other parties, including Mr. Gordon, Ms. Brainard, and Ms. Dennison. I would be happy to answer any questions from the Committee. I think we came to agreement on all sections. We were unanimous on everything. I think we pretty much pleased all the parties.

Chairman Horne:
What about Mr. Gordon's amendment? Mr. Gordon, please come to the table.

Garrett Gordon, representing the Southern Highlands Homeowners Association:
I am happy to go through the language of the amendment. It was submitted to the Subcommittee, where it was accepted and approved unanimously. The sponsor of the bill approved the language, as well, as did Karen Dennison from the State Bar of Nevada. I am happy to go further, or, if that satisfies you, I will stop there.

Chairman Horne:
You have added public offering, and that is not in here. You have got, "The association has made available a notice of the maximum allowable penalty and schedule that is part of the resale package . . . ."

Garrett Gordon:
The goal there was, again, to operate in the spirit of transparency this session with documents related to sales and associations. Subsection 2(b) addresses the maximum allowable penalty and schedule needed to be part of the resale package; but we asked, "What about the original buyer?" A resale package would be all subsequent buyers. The original buyer would get this public offering statement. It made sense to have both the public offering statement and the resale package included so that any potential buyer would be notified prior to closing what the maximum allowable penalty would be for one of these issues. Thank you.

Chairman Horne:
Mr. Segerblom, do you have any concerns?

Assemblyman Segerblom:
Does Mr. Ohrenschall have a position on that?

Assemblyman Ohrenschall:
I am in favor of more transparency on these construction penalties, because when you buy a lot in a CIC, if for some reason you are not able to build your home, construction penalties are one of the two exceptions under NRS Chapter 116 that can lead to foreclosure. Under NRS Chapter 116, you can lose your home if you fall behind on your monthly assessments. Normally, you cannot lose your home through foreclosure to the HOA for fines or penalties, except for these two exceptions in NRS Chapter 116. One of them is a construction penalty.

I think I would support anything that makes it more transparent and lets people know what they are getting into.

Chairman Horne:
Mr. McArthur.

Assemblyman McArthur:
Thank you, Mr. Chairman. I think "construction" really means the amount of time before someone has to build a home. We are not talking about actually building the structure. I want people to understand that. You have a certain amount of time to build your home in most of these HOAs. When we talk about construction, we are not talking about the building process.

We spent an awful lot of time on the bill, going through it line by line; and I think we are all pretty comfortable with it. I will vote yes, but I will reserve my right to change my vote, because I really want to see all the amendments we have coming in. We went through an awful lot of them. Thank you.

Chairman Horne:
Is there anyone else with questions, comments, or concerns on S.B. 204 (R1)? Mr. Segerblom.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 204 (1st REPRINT).

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

[Assemblymen Hammond and McArthur reserved the right to change their votes on the floor.]

We will give that to Mr. Carrillo, and Mr. Ohrenschall can back him up.

Let us examine Senate Bill 26 (1st Reprint).

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

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 26 (1st Reprint) was sponsored by the Senate Committee on Judiciary on behalf of the Supreme Court and was heard in the Committee on April 27.

[Mr. Ziegler read from the work session document (Exhibit Q).]

The amendment proposed by Judge Voy of the Eighth Judicial District Court would delete section 5.5 of the bill by amendment. Thank you.

Chairman Horne:
One of the issues I have with S.B. 26 (R1) is that it allows for a civil judgment for a juvenile after he becomes an adult. We have a separate juvenile system for a reason. Our nation decided to treat juveniles differently than we treat adults. I have seen over the years what appears to me to be an inching of moving juvenile issues closer and closer to adult issues and treating them the same.

This is just another one of those things. I feel comfortable speaking on this. My undergraduate degree is in criminal justice. I have studied these issues and the differences between adults and juveniles. Mr. Graham in the audience was one of my professors.

In that particular provision, when a juvenile commits an offense, there is restitution or fines, et cetera. You are saying that, when the juvenile becomes an adult, we are going to continue to hold him civilly liable for the offense.

I think the parents are liable for juveniles. The purpose of treating them in juvenile court is so that when they become adults, they can hopefully have a clean slate and their lives have been set straight, et cetera. In my opinion, this is inching more toward adult treatment. I do not know of any other instance where a child can, say, vandalize your car, and there is restitution owed for that. The parents may be held liable, and it gets paid. There is nowhere in statute that says when a juvenile becomes 18 he can be pursued as an adult. I have some discomfort with that.

Also, with the collections, I think there may be some problems with melding this with the other bill we did that we sent to the Office of the Controller.

Does anyone else have comments, questions, or concerns with S.B. 26 (R1)? Mr. Ohrenschall.

Assemblyman Ohrenschall:
I share many of your concerns. I think our juvenile court system is meant to try to rehabilitate children and to get them back on the right course. I am troubled by the thought of someone reaching majority and being saddled with debt and collection agencies hunting him down, possibly hurting his credit rating and his ability to find work, buy a car, a house and all the other things we want our young people to be able to do as they move forward in their lives.

Chairman Horne:
Thank you. I see someone in Las Vegas. Is that Judge Voy? Hello, Judge. Good morning.

William Voy, Judge, Family Division, Eighth Judicial District Court:
Chairman Horne, good morning.

Chairman Horne:
As a reminder, Judge, this is a work session, and typically we do not have rehearings on bills in work sessions. We may ask for clarification. If I have misstated some of the intent of the bill, please enlighten us.

Judge Voy:
On the issue of the juvenile who reaches majority and the judgment for restitution, the bill is intended to do the opposite of what you are saying. In practice, I have hundreds of kids on parole or probation at any given time who have restitution owed to a victim. The crime could have been done years ago. The juveniles are still under the jurisdiction of the court. They have finished every obligation other than that, and they are still on probation or parole in order to enforce, potentially, the ultimate collection of that restitution. I have kids on

probation and parole who do not need to be, and it actually subjects them to potential penalties because of a financial obligation owed to a victim.

The intent was to kind of balance both by allowing it to go to civil judgment. We would then be able to terminate the child from the jurisdiction of juvenile court so that he can go on with his life as an adult. They may have a civil judgment against them for $500, $600, $800, or whatever it may be; but at least it is an attempt to try to eventually make the victim whole, while letting the child move on into adulthood. I have kids on probation who are 19 or 20 years old who have no reason to be on parole or probation except for the outstanding restitution obligation. As soon as they are terminated from that status, the restitution responsibility ends.

That was our intent. That is why the public defenders in Clark County, the district attorneys, and I agreed that we needed to have this remedy in certain cases to benefit both the child moving into adulthood, because the jurisdiction ends at 21 and not 18 years, and to recognize the rights of the victims. This was the balance we tried to strike in that particular area.

Chairman Horne:
I understand that, Judge, but probation has an end date, a finite length. Even if you take it to 21, there is an end date. Say you have a probationary period that is three years of probation, and then that three years ends. The child at that time is 19 years old. When that probationary period ends and he is 19, and he still owes that $500, you extend his probation until he is 21 years of age.

Judge Voy:
Or until it is paid, one or the other.

Chairman Horne:
So, could it extend past his 21st birthday? Can you extend his probation in perpetuity?

Judge Voy:
No, only until he is 21. But what about the 18-year-old who is still on probation and does not need to be on probation but, for the next three years, is still on probation because he owes restitution? I have had kids that joined the military at age 18, but I cannot terminate their probation, because that terminates the restitution obligation with it. If I had the ability to turn it over to civil judgment, I could terminate probation, let them go on with their lives, and then the creditors could collect the civil judgment like everyone collects civil judgments. That is just an example that came up a couple months ago in a case that came before me.

Chairman Horne:
Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. When that happens in criminal court, a defendant can simply sign a civil confession of judgment, and the matter is out of the court's hands. I do not know if that is in statute anywhere, but it does not seem to me that we would be precluded if somebody wanted to join the military, from having him sign a civil confession of judgment. I think the concern here is, while we recognize some of those circumstances that the judge described, we are also including others who are not trying to get into the military and who will not be served by making this civil and following them in that way. Sometimes, having the structure of probation might be in a person's best interest. That is especially true if you have a 19-year-old who cannot pay a $500 restitution. Maybe a little structure will be helpful anyway.

Judge Voy:
None of my kids become employed, so they have no means of paying any of this. That is a cold, hard fact in Clark County. No one has any money, especially at this age, and especially the majority of the kids who come before me with their socioeconomic background. They have nothing.

Chairman Horne:
What is the point of the civil judgment?

Judge Voy:
The civil judgment at least allows the victim potentially someday to realize his restitution. But I, as a judge, cannot simply terminate that obligation and tell the victim, "Goodbye. Sorry. Because the convicted person is a juvenile, you have to live with the cost of the crime." I do that when they reach 21 years of age, but until they reach 21, I still keep them under the jurisdiction of the court on the odd chance that they might actually get some money some day. I cannot terminate that restitution order until my jurisdiction has been maximized. I can keep these kids on probation and parole until they are 21, but with the other cutbacks in government . . . .

I am talking about hundreds of kids at any given time who do not need to be supervised but technically still are supervised because of this restitution. The floodgates will open on July 1 in juvenile justice, and those are not just the result of the cuts from the state, but also the result of the proposed budget for the county that was sent to us on Monday.

Chairman Horne:
Are you precluded from issuing a civil confession of judgment?

Judge Voy:
Yes. They have to file an action in district court and proceed in that fashion. The way the filing fees are being used to fund things these days, I cannot remember what the current filing fee for civil actions is, but it is pretty substantial. Sometimes it far exceeds the restitution amount.

Chairman Horne:
I believe you can order a civil confession of judgment in your court, or maybe you cannot. Is there a statute that prohibits you from doing that in juvenile court?

Judge Voy:
Correct. When I am sitting as a juvenile court judge, I only act within the bounds of NRS Chapter 62. I have no other civil authority whatsoever when I am sitting as a juvenile court judge.

Chairman Horne:
Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Chairman. Is this bill discretionary for the judge? You do not have to necessarily do any of the things that you just said—18 or 21—and let them off probation. Maybe they should not be let off probation. It gives you the discretion, but you do not have to do it, right? Right now, you do not have the discretion.

Judge Voy:
Yes, sir.

Assemblyman Sherwood:
Concerning the juvenile who is trying to get on with his life, what does that look like? Can he choose probation? Is there interplay between you and the juvenile?

Judge Voy:
I have a calendar every Monday afternoon where I review this very same thing. These juveniles come before me month after month. I see whether they made any payment toward the restitution. And it continues. There are hundreds of cases like that every month, where we are trying to figure out a way to get the restitution paid and assist the child. That is all we are doing. This is just one

possible available remedy to address getting restitution paid for the victims and to have the juveniles move on in life.

Assemblyman Sherwood:
So if I am the juvenile, I do not have to keep appearing before you. My calendar is cleared, your calendar is cleared, and I can join the military or whatever.

Judge Voy:
Yes, sir.

Assemblyman Sherwood:
Thank you.

Chairman Horne:
Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. Judge Voy, I do not know if you fully addressed my question. In adult criminal court, civil confessions of judgment are ordered all the time. People are let off probation with outstanding restitution all the time. This is not really a new dilemma. I do not know why you would be precluded from requiring that the subject, especially once he is 18, as a condition of his probation, sign a civil confession of judgment. There are a lot of conditions that we order that are outside the confines of the court. We have children doing community service. We have children sometimes wearing a sign on a corner to teach them a lesson. We have all kinds of creative things that we can do. I am not entirely sure we are precluded from having a subject sign a civil confession of judgment.

Further, just like in adult court, I do not know if it is that difficult for a victim that has a copy of an outstanding restitution order from a court to seek to have that imposed civilly as well. We are not talking about thousands of dollars and hiring a lawyer; we are talking about simply getting a default filing. The victim certainly, I suppose, could also seek to have the filing fee added to it.

I think I understand that you are trying to anticipate budget tightenings and ways to make sure that the system still facilitates victims getting some money but not having the system have too many juveniles on probation solely for that purpose. I certainly respect trying to deal with that and to let as many off probation as we can, if the only reason they are on probation is because they have outstanding debt. We are going to be seeing the impact of these budget crunches across the board. Unfortunately, there is no way to insulate any of ourselves from it. If one of the realities is that we have to let some people off

probation who were otherwise compliant and allow a victim to take that outstanding order and file a civil judgment, just like we do in adult court, that might have to be, in the big scheme of things, something that we have to do.

Judge Voy:
I cannot do that. My order of restitution ceases to exist by operation of the law on the subject's 21st birthday, end of story. I have no further jurisdiction to enter a confession. Nor can my order be taken to justice court to be used as a basis to get a judgment against the juvenile. We have statutes that allow us to get judgments against the parents and guardians already. That is not the issue. It is against the juvenile who is now 18. That order becomes null and void—unenforceable—when he reaches his 21st birthday. Furthermore, if I terminate him from probation, that order by operation of the law also ceases to exist. That is somewhat of a catch-22. That is why, under Chapter 62 of NRS, juvenile court is strictly a creature of statute. I can only act within the bounds of that statute. My general inherent powers as a sitting district court judge are . . . . For example, I cannot hold a child in contempt of court—which is an inherent power of the court—because statute prohibits me from doing so. Here is where you have the difficulty.

Chairman Horne:
Are there any other questions, concerns, or comments? [There were none.] Thank you, Judge Voy.

Judge Voy:
Thank you, Chairman. If I might add, as you know, Judge Doherty and I both agree on this one. If that helps you at all, I do not know. That rarely happens, as you know.

Chairman Horne:
I appreciate your testimony, Judge Voy; and I think this is going to be one of those days where we agree to disagree. I think there are some other Committee members who are uncomfortable as well. Mr. Segerblom.

Assemblyman Segerblom:
Judge Voy, do you need anything in statute to go to someone who is 18 and say, "Will you sign a confession of judgment?"

Judge Voy:
I do not understand your question.

Assemblyman Segerblom:
You said that when they turn 21 you do not have any more authority over them, but when they turn 18, could you say, "If you are willing to sign a confession of judgment, we will let you off probation?"

Chairman Horne:
I think the judge was saying that once he terminates the probation, any order that he had issued while they were on probation basically becomes null and void. Perhaps the judge needs a statute that says orders for civil judgment continue to stand after the end of the probation, up to the age of 21, or something like that.

Assemblyman Segerblom:
You could just say, "If you are willing to sign the confession and show it to me, then I will let you off probation." Do you have that authority?

Judge Voy:
The problem is that confession has to get lodged in the district court, rather than in the juvenile court as a civil action. Many times, the filing fee to do so is more than the amount of the restitution owed. It is problematic. If it were a $10,000 or $5,000 judgment, then that would be a good way to do it. However, I cannot force the juvenile to do it, so if he or she says no, then he just stays on probation or parole until he is 21. He still does not pay, and he knows he will be out from under the obligation when he turns 21 and walks away from it. I have a lot of kids like that.

Chairman Horne:
Thank you, Judge.

Judge Voy:
Thank you, Chairman.

Chairman Horne:
Let us see if we can go to an easier bill, Senate Bill 57 (1st Reprint).

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

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 57 (1st Reprint), sponsored by the Senate Committee on Judiciary on behalf of the Attorney General and heard on April 27 in this Committee, relates to domestic relations, divorce, and child custody.

[Mr. Ziegler read from the work session document (Exhibit R).]

Senate Bill 57 (1st Reprint) authorizes a court, upon receiving a petition, to issue a warrant to take physical custody of a child where there is probable cause to determine the child has been abducted. We heard this before in work session, and I think I said the last time we heard it in work session that the amendment actually differs from the bill in its first reprint, so I guess I will go on to the amendment from Mr. Kandt.

The amendment has been revised since the last time this bill was in work session. The revision is in subsection 4(c) (Exhibit R), and has to do with the person or persons alleged to have abducted a child and the person or persons having possession of the child, if different. They may appear at a hearing telephonically or by video or may submit statements. Thank you, Mr. Chairman.

Chairman Horne:
Thank you, Mr. Ziegler. Does anyone have questions, concerns, or comments on S.B. 57 (R1)? Mr. Sherwood.

Assemblyman Sherwood:
Mr. Chairman, I thought you said we were going to move to an easy one. I recall the issue with this. There could be a disgruntled spouse who can call law enforcement and claim kidnapping, and we were getting ahead of what we thought the Supreme Court might do. Is my recollection correct? If it is, how does the amendment fix the concerns that we vetted?

Chairman Horne:
Mr. Kandt.

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:
There were two concerns raised during the hearing and during the last work session. One was the desire to leave the Uniform Child Custody Jurisdiction and Enforcement Act unamended so it retains its uniformity with other states. There was also some concern over the breadth of standing for somebody who could seek law enforcement assistance in recovering an abducted child. This amendment addresses both those concerns. It leaves the Uniform Act untouched and, instead, proposes to put an enforcement tool in *Nevada Revised Statutes* (NRS) Chapter 432, which concerns the Children's Advocate office. Secondly, this process, which is grounded in Fourth Amendment search and seizure requirements, would be limited to the Children's Advocate. So, this is a process by which the Children's Advocate would apply for the warrant. Nobody else would have standing to apply under this process.

Chairman Horne:
You are proposing the Children's Advocate from the Office of the Attorney General be the only one who could apply for this. None of the other law enforcement jurisdictions would be able to do that. They would have to go by way of the Act, correct?

Brett Kandt:
You are correct. If you look in subsection 1 of the proposed amendment, it says, ". . . the Children's Advocate or his designee in a particular case . . . ." That would be another sworn deputy attorney general in our office who would apply to the court for the warrant.

Chairman Horne:
Mr. Brooks.

Assemblyman Brooks:
Thank you, Mr. Chairman. I recall us having a few questions about this bill. This was supposed to waive some liability of the officers. On page 3, section 2, not only did it allow an aggravated parent to contact the authorities, but this actually says ". . . any other person having knowledge of the relevant facts . . . ." Did they take that out?

My next issue, if that has been taken out, is that we had discussed that the preponderance of evidence was going to be different. There was something to do with the preponderance of evidence, and this allowed the officers to go in solely with just cause. It reads, "The standard of proof is normally the preponderance of evidence, which is a higher standard than probable cause." I do not know whether the amendment fixed that. Are we back to probable cause, or does this help with getting a preponderance of evidence so that we do not just have people making up allegations to do this?

Chairman Horne:
I think that was something Ms. Hart put on the record in choosing one over the other as to the Act and the proposal by Mr. Kandt and the Attorney General's Office. Mr. Kandt.

Brett Kandt:
To answer the first part of your question and the issue of who could apply, we have addressed that by leaving the Uniform Act untouched. Instead, with this proposal, we limit the standing to apply for a warrant to our office. Secondly, on the issue of standard of proof, we are leaving the standard under the Uniform Act untouched. That is the "best interest of the child" standard for determining custody. This enforcement tool that we are proposing under

NRS Chapter 432 would have nothing to do with establishing custody rights. It would only enforce an existing custody right and would be based upon probable cause that the child has been abducted. That is the Fourth Amendment standard.

Assemblyman Brooks:
You are right. The one lady who came up and testified had discussed that. Right now, that proof should be based on the preponderance of evidence. I think that was the rub. Probable cause could allow you to go in and take action without any real proof, so I am still a little bit indifferent about that.

Brett Kandt:
In proposed subsection 8 of this amendment, it does indicate that, if the court finds by preponderance of the evidence at the hearing that the act of the abduction of the child was committed with just cause, the court can assume temporary emergency jurisdiction.

Chairman Horne:
Mr. Daly.

Assemblyman Daly:
Thank you, Mr. Chairman. I do not have a problem with the amendment leaving the Uniform Act the way it is. The court can still issue the pickup order, et cetera. This would be a separate process if there were additional evidence. You said only your office can apply for the warrant. Please explain to me the communication from the child services court to your office.

Brett Kandt:
Mr. Chairman, Vic Schulze is the Children's Advocate for our offices in Las Vegas. He might be the best person to provide that information.

Chairman Horne:
Okay.

Victor-Hugo Schulze III, Children's Advocate, Office of Advocate for Missing or Exploited Children, Office of the Attorney General:
We have not changed any amendment in the structure of the bill in the application process. We have only changed the standing provision. The Attorney General's duly appointed Children's Advocate would be the only one in the state, or his or her designee, to apply to the court for one of these warrants. That solves a whole bunch of issues, I think, that both we and the opponents had in our ad hoc committee in the family court.

Because the Children's Advocate will be the only person who can apply for one of these warrants, these warrants will always follow a police investigation of the facts, which means we can investigate both sides, instead of some interested party that may or may not have a motivation to slight the facts. We are also required to provide the service of process and the setting for all these hearings.

I am excited about this because the opponents' statements and concerns, I think, have resulted in a better bill. I think we owe them a debt of gratitude.

An investigation is done either by an investigator in my office or by the Las Vegas Metropolitan Police Department, to determine if, in fact, an abduction has taken place. The jurisdictional factor is that the child has to be located in the State of Nevada. That jurisdictional factor comes from NRS Chapter 42B. At that point in time, if we have specific information on the child and his location, then we could apply to the court for one of these warrants. It would have to be done under penalty of perjury—another Fourth Amendment requirement—and lay out all the facts.

We are also required to do a reasonable investigation, not only into the abduction and the simple issue of custody, for example, but we also have to look into issues of family violence. Sometimes people abduct children to protect the children. It can be the former spouse or the former spouse's new girlfriend or new boyfriend. We would be required to investigate that as well. We would investigate both sides. We present all those facts to the judge, and it is then up to the discretion of the judge, who is the ultimate expert in this case, as to whether or not the abduction, in fact, occurred.

Secondly, we would investigate whether it was with or without justification. We put that in there to protect children very specifically from family violence, and we have that definition of what justification means. Currently, that defense does not exist anywhere in Nevada law, so we are hoping to extend protection to children and victims of domestic violence by including that language.

We would apply for the warrant. The judge would say yes or no. In a case where we do not believe there is sufficient cause to believe that the abducting parent will flee the state, we have a hearing in front of the judge, where everybody receives necessary notice. Everybody is present. They can argue their case as to why the child was abducted, and then the court can make that determination. In a very limited number of cases where there is cause to believe that parent may abduct the child again and leave the state, we can apply for the warrant, and the judge can okay that to be done ex parte. But within 48 hours of that, the judge has to have a noticed, postdeprivation, due

process hearing where the same thing happens—all the parties come into court and argue the facts.

The bottom line why the Attorney General is so behind this bill is that the bill discourages people from engaging in self-help and taking the law into their own hands. It puts these disputes back where they should be, which is in front of a judge in a family court, those judges being the experts. In every case, whether we do a predeprivation or postdeprivation hearing, both sides get the case thoroughly investigated. The application is done by a neutral party; in this case it is the Children's Advocate. There is a hearing where everybody gets to show up and argue their case. If there is family violence and it was a justified abduction—which sometimes happens—then that judge is allowed to enter an emergency order to protect that child and/or the victim of domestic violence.

We think we have looked at every angle of this bill. I have run it by the Missing Persons Unit of the Las Vegas Metropolitan Police Department. They are excited about it. I ran this by our ad hoc committee in family court here in Las Vegas in the Eighth Judicial District. They are excited about it because they are going to get better information. Thank you.

Chairman Horne:
Mr. Segerblom.

Assemblyman Segerblom:
Thank you, Mr. Chairman. In the interest of trying to get out of here today, I think the process he has described is very fair. The Attorney General is going for the warrant because the judge has to issue the warrant. I just do not see any problem with it.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 57 (1st REPRINT).
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNAMIMOUSLY.

[Assemblyman Ohrenschall reserved the right to change his vote on the floor.]

We will give that to Mr. Frierson.

That is all we are going to cover for today, but we are not adjourning. We are recessing in case things change. We are supposed to be on the floor now. We will recess to the call of the Chair.

[The meeting was recessed at 12:19 p.m. and reconvened at 1:27 p.m.].

Chairman Horne:
Senate Bill 376 (1st Reprint) is next.

Senate Bill 376 (1st Reprint): Increases the penalty for certain technological crimes. (BDR 15-1000)

Everyone should have an email that was sent to you from Mr. Frierson. He was kind enough to assist in making this bill more palatable with the proposed amendment. Senator Cegavske stopped me in the hallway during the recess and said she was perfectly fine with it. If the Committee is okay, we can amend this into Senator Cegavske's bill. Mr. Ziegler will remind everybody about the bill.

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 376 (1st Reprint), sponsored by Senator Cegavske, was heard in this Committee on April 29.

[Mr. Ziegler read from the work session document (Exhibit S).]

Chairman Horne:
Thank you, Mr. Ziegler. Mr. Frierson, would you care to explain the amendment?

Assemblyman Frierson:
Sure, Mr. Chairman. The Senator came to me with the suggestion of a gross misdemeanor, if that would be to the comfort of the majority of the Committee. I talked with her about that. The new language would propose to increase the penalty from a misdemeanor, which is currently the law, to a gross misdemeanor. It would add the word "maliciously" so that it is not simply accessing a computer, but doing it with the intent to cause harm. It also removes the "or attempt to" language because there is actually a statute in law that handles all attempts for all crimes.

Chairman Horne:
Thank you. Ms. Diaz.

Assemblywoman Diaz:
Thank you, Mr. Chairman. While I empathize with the victim and the case that brought this legislation forward, after questioning law enforcement authorities

on the day of the hearing, there is really no reason in my mind why we need something separate from what is existing in statute. This is something that law enforcement can already look into and remedy. I will be voting against this bill. Thank you.

Chairman Horne:
Thank you, Ms. Diaz. Are there any other questions, concerns, or comments? Mr. Ohrenschall.

Assemblyman Ohrenschall:
Thank you, Mr. Chairman. I share the comments expressed by my colleague, Ms. Diaz. I think there are adequate penalties in statute now for this crime, and I will be voting no. I appreciate all of Mr. Frierson's hard work, though. I think it is a good amendment, but I will be voting no.

Chairman Horne:
Okay, thank you. I would entertain a motion.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 376 (1st REPRINT).
>
> ASSEMBLYMAN HANSEN SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN CARRILLO, DIAZ, AND OHRENSCHALL VOTED NO.)

One more issue: Senate Bill 356 (1st Reprint).

Senate Bill 356 (1st Reprint): Establishes the crime of stolen valor. (BDR 15-999)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Senate Bill 356 (1st Reprint) is sponsored by Senator Halseth and was heard in this Committee on May 18.

[Mr. Ziegler read from the work session document (Exhibit T).]

Chairman Horne:
Thank you, Mr. Ziegler. I brought this up because I received an email from a friend of mine, Steve Sanson, which addressed an issue with the veterans' court. There are veterans who are not permitted the benefit of the veterans' court because the nature of certain crimes, such as domestic violence

and assault and battery, excludes them from the veterans' court. Basically the only veterans allowed to utilize it are those with drug or alcohol problems.

He makes a good point, in that veterans are trained to be extremely aggressive. Many veterans are trained in combat. Their criminal conduct may stem from, in part, some of the very training that is keeping them out of the veterans' court, and the veterans' court should be able to address those particular issues or take that into consideration.

I am not certain whether this is even germane to this bill, but if it is, I wanted to get this on the record that it may come up in Conference Committee. I need to know how everyone feels about that. We did not have a big hearing. We have exclusions for domestic violence and the like for reasons. Are we going to make exceptions for veterans in this? Mr. Segerblom.

Assemblyman Segerblom:
I think that would be a great addition to this bill because, as you said, we encourage them to fight, and they sacrifice by learning how to be violent. Those skills do not automatically turn off when they come home. That ought to be something that a court could consider. My concern is that we will have to amend this bill so that it can go to Conference Committee.

Chairman Horne:
That would be it, but I am not going to move it with the other stuff. This would be a vehicle.

Assemblyman Segerblom:
Are we doing the amendment on increasing the jurisdiction of the veterans' court?

Chairman Horne:
Yes, to allow for domestic violence and assault and battery cases.

Assemblyman Segerblom:
Another reason is Assemblyman Hammond already has a similar bill, which is a great bill. I am not sure we need to duplicate it.

Chairman Horne:
Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Chairman. I am looking at the joint standing rules. This is so tangential to the original bill that it would break our own rules to do this unless you completely gutted the bill. Is that what we are doing?

Chairman Horne:
This is the bill. I am going to be chopping that tree down, carving it out, making a boat, and using that boat to transport something else.

Assemblyman Sherwood:
So, the stolen valor thing goes away completely. And then you are saying if you served in the military, you can beat up your wife.

Chairman Horne:
I never said that. You just said that.

Assemblyman Sherwood:
This is the first time I have heard of it, so I just want to understand.

Chairman Horne:
It will go to Conference Committee. If you are uncomfortable with it, it is a no.

Assemblyman Sherwood:
That is just my knee-jerk response without having . . . . I do not mean to be facetious. As it has been explained, I am not really comfortable with it without taking a closer look and having some dialog.

Chairman Horne:
Okay. That is fine. Mr. McArthur.

Assemblyman McArthur:
Thank you, Mr. Chairman. I am curious to know if the author of the bill is aware of this.

Chairman Horne:
No, this is all new and fresh, and today is the deadline. I think the author knew stolen valor was not moving. The fact that the bill number will move with different language should not strike somebody as surprising. Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. Did you say Veterans in Politics actually suggested that we find a way to allow those veterans who have a domestic violence charge to participate in the veterans' court?

Chairman Horne:
In my conversations with Mr. Sanson through email and on the telephone, he believes that is a void, and it is somewhat unfair for those veterans because of that. As I said before, part of their training makes them kind of . . . . I am not making excuses for those veterans, but the veterans' court should be open to those individuals. It is a policy question, for sure, but I think it is a legitimate question to ask. I told him I would see if there was something we could do to find a place for it. Mr. Hansen.

Assemblyman Hansen:
Thank you, Mr. Chairman. Did your friend in Veterans in Politics know that the plan was to remove the stolen valor portion of the bill? Did you discuss that portion of it with him?

Chairman Horne:
Actually, I told him I did not like this bill. I do not hide anything.

Assemblyman Hansen:
I am just curious. What was his feeling towards this particular bill—the original draft?

Chairman Horne:
We did not talk about his feelings on the stolen valor issue, but he knew that I would use stolen valor as a vehicle, if I could, for that concern.

Assemblyman Hansen:
I was on their show one time, and I just wonder what their take was on the stolen valor issue itself.

Chairman Horne:
Mr. Sanson and I have disagreed on a number of things in the past, and I still call him a friend. He thought it was important to try to do this, but he knew from my discussions with him that I was not moving stolen valor.

Assemblyman Hansen:
Thank you.

Chairman Horne:
Mr. Brooks.

Assemblyman Brooks:
Thank you, Mr. Chairman. Do we still have Mr. Hammond's stolen valor bill?

Chairman Horne:
We do not have it. The Senate has it.

Assemblyman Brooks:
So, maybe the bill can be amended.

Chairman Horne:
I have no control over bills in the Senate. I have control over this bill here. I can only handle what I have in my possession.
Also, the Legal Division might say this bill does not fit into this chapter and may not be able to do it, but he is not here. I am trying to get it done before deadline.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS SENATE BILL 356 (1st REPRINT).

Chairman Horne:
We will allow Mr. Ziegler to read that into the record.

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman. Regarding the motion, existing statute needs to be amended to allow military veterans to have access to the veterans' court, regardless of whether they were combat veterans or not. It must also be amended to require the court to establish appropriate programs for treatment of veterans and members of the military and to expand the coverage of the court beyond drugs and alcohol to domestic violence, assault, and battery.

Chairman Horne:
Thank you, Mr. Ziegler. I forgot to mention that one portion. In today's time of combat, to exclude it to those serving under combat descriptions is fiction. We know many women in the armed forces find themselves in combat areas. They have been wounded and killed in combat and do not have combat designations. They would be excluded from utilizing the veterans' court. That is an important part as well.

ASSEMBLYMAN DALY SECONDED THE MOTION.

Chairman Horne:
Is there discussion on the motion? Mr. Hansen.

Assemblyman Hansen:
Mr. Chairman, I respect your right as Chairman, but I think that we are rushing a bill that I would like to get an opportunity to hear. Because it was brought up at

the last minute, I will have to vote no against something I might otherwise normally support.

Chairman Horne:
Okay. Mr. Hammond.

Assemblyman Hammond:
Thank you. I am not sure exactly what is going on here, either. I know that you are gutting the bill and putting some other language in there. You have to see later on whether it is okay with the Legal Division and if it is germane to the original topic. I understand that part, but I really have not read anything in there. If I understand this correctly, it basically kills my original bill that is in the Senate, which should be coming back pretty soon, and this one here at the same time. Am I wrong on that?

Chairman Horne:
I do not know if your bill in the Senate is coming back to the Assembly or not.

Assemblyman Hammond:
It has passed out of Committee; it has not passed the floor yet.

Chairman Horne:
I have no control over that bill now.

Assemblyman Hammond:
I know, but if this bill is gutted, and you put the new language in, what happens to the bill in the Senate as a result, without any motions or votes? Say it passes the Senate floor and it goes to Conference Committee. Does that kill the original language in my bill in the Senate?

Chairman Horne:
What we do on one bill does not affect the language on another bill. Your bill is still alive. Your bill is not rendered moot just because we have this. They still have your bill.

Assemblyman Hammond:
You said you do not know what happens after that.

Chairman Horne:
If it comes over, and it goes to Conference Committee, Conference Committees are another animal. This action on this bill does not change what they decide to do on your bill. They can do what they want with it over there. Even though

the two bills contain much of the same language, yours is a different bill with a different number. Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. Has the bill sponsored by Mr. Hammond been amended in the Senate?

Assemblyman Hammond:
I understand it was amended to its original form with the monetary attachment.

Chairman Horne:
If they process it, it has to come back here for us to concur or not concur.

Assemblyman Frierson:
I can certainly only speak for myself. My action on this bill has nothing to do with my vote for the other bill, and if we have an avenue, we get a couple of things accomplished. I do not think the intention is to kill any stolen valor effort. The intention is to use a separate vehicle for another goal, since we have a stolen valor vehicle in place.

Assemblyman Hammond:
That is what I wanted to know.

Chairman Horne:
Okay, we have a motion from Mr. Segerblom and a second from Mr. Daly. There is no more discussion.

> THE MOTION PASSED. (ASSEMBLYMEN HANSEN AND KITE VOTED NO.)

[Assemblyman Hammond reserved the right to change his vote on the floor.]

We are recessed. Thank you, ladies and gentlemen.

The meeting was recessed at 1:48 p.m. and reconvened at 4:56 p.m.]

Chairman Horne:
The Assembly Committee on Judiciary is now reconvened, and we are adjourned [at 4:56 p.m.].

[Senate Bill 42 (1st Reprint), Senate Bill 91, and Senate Bill 127 (1st Reprint) were not discussed.]

RESPECTFULLY SUBMITTED:

_____
Jeffrey Eck
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 20, 2011 **Time of Meeting: 8:32 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 254 (R1)	C	Dave Ziegler	Work Session Document
S.B. 24 (R1)	D	Dave Ziegler	Work Session Document
S.B. 47	E	Dave Ziegler	Work Session Document
S.B. 150 (R1)	F	Dave Ziegler	Work Session Document
S.B. 194 (R1)	G	Dave Ziegler	Work Session Document
S.B. 221 (R1)	H	Dave Ziegler	Work Session Document
S.B. 307 (R1)	I	Dave Ziegler	Work Session Document
S.B. 381 (R1)	J	Dave Ziegler	Work Session Document
S.B. 402 (R1)	K	Dave Ziegler	Work Session Document
S.B. 403 (R1)	L	Dave Ziegler	Work Session Document
S.B. 403 (R1)	M	Dave Ziegler	Work Session Document
S.B. 405 (R1)	N	Dave Ziegler	Work Session Document
S.B. 436 (R1)	O	Dave Ziegler	Work Session Document
S.B. 204 (R1)	P	Dave Ziegler	Work Session Document
S.B. 26 (R1)	Q	Dave Ziegler	Work Session Document
S.B. 57 (R1)	R	Dave Ziegler	Work Session Document
S.B. 376 (R1)	S	Dave Ziegler	Work Session Document
S.B. 356 (R1)	T	Dave Ziegler	Work Session Document