MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
March 8, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:03 a.m. on Tuesday, March 8, 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
Julie Kellen, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Kevin Schiller, Social Services Director, Washoe County Department of Social Services
Jon Sasser, Advocacy Coordinator, Washoe Legal Services
Thomas Morton, Director, Clark County Department of Family Services
Amber Howell, Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services
Brett Kandt, Special Deputy Attorney General, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General
Alicia L. Lerud, Deputy Attorney General, Bureau of Criminal Justice, Special Prosecution Unit, Office of the Attorney General

Chairman Horne:
[Roll was called.] Today we have three bills on the agenda. The sponsor of Assembly Bill 205 pulled it from today's agenda. The first bill is Assembly Bill 111.

Assembly Bill 111: Revises provisions relating to domestic relations. (BDR 11-197)

Kevin Schiller, Social Services Director, Washoe County Department of Social Services:
Assembly Bill 111 came out of the Interim Committee for Child Welfare and Juvenile Justice. I thought I would walk you through each section of the bill.

The amendment in section 1, lines 1 through 9 "authorizes prospective adoptive parents to attend, by telephone or in person, any hearings held by the court concerning a petition for adoption if the prospective adoptive parents reside in another state or jurisdiction and the adoption is of a child who is in custody of an agency which provides child welfare services." To give you perspective on that, under current statute, for us to finalize an adoption with a child who is placed out of state, we must wait on that state to proceed forward with finalization of the adoption. We do not have the ability to finalize the adoption of a child placed with a prospective adoptive family, say in California, at the

time they are ready to adopt. We are dependant on that state. This creates an exception so they can attend a hearing in Nevada by telephone so we can move forward with the finalization of the adoption.

Chairman Horne:
I have a question on that particular section. When it says it allows any hearings by telephone, I envision an adoption taking place without the court ever laying eyes upon the adoptive parents.

Kevin Schiller:
Currently, when we place a child in another state, we must go through an Interstate Compact for the Placement of Children (ICPC). We work with our sister social services agency within that receiving state to work on supervision of that, and ultimately, the consent and approval of that adoption. What would occur in this case is that, although they would not be present for the court hearing, in many cases that child who will have been placed out of state would have come through the child welfare system and within that family court. We would still be working with the Child Protective Services agency in that other state to provide home visits, contacts, and finally saying this family is ready to adopt. We are dependent on that receiving state, pursuant to the ICPC. Indeed, you will have circumstances where they would not be present in front of the court. In the reverse, in current statute, as we place children for adoption in another state, we are dependent on that other court and other agency to move forward based on the reports.

Chairman Horne:
You kind of alleviated my concerns but not completely. It seems that at some point, adoptive parents and the child are getting together and someone is monitoring that visitation somewhere, whether it is here or in the other jurisdiction. As an example, if we send a child to California for these visitations, and there is somebody supervising them, I do not see the enormous burden to have at least one hearing where a prospective parent must be present. Right now, we are sending our children somewhere else out of state without having laid eyes on the adoptive parents one time and relying on the words of another agency in another state. I understand the Interstate Compact, but it gives me concern. If they can manage the visitation, it would not be much to say you have to meet in front of the judge before this is finalized.

Kevin Schiller:
As we move through a *Nevada Administrative Code* (NAC) 432B case before we come to adoption, in the placement of the child, you are absolutely correct. If the child is staying with a relative or somebody we recruit through an adoptive recruitment process, we go through a home study process in

conjunction with identification of that home. We look at that home in accordance with licensure requirements because there are federal requirements passed down to the states. In most cases, before we place the child, we have had contact with that individual. We do not just send the child off to the receiving state, as you have indicated. When we place that child out of state, after we have done that transition, there may be visitation at some level as transition between the home they are in here and the home in the receiving state. As we move through that process, we become more and more dependent on that correspondence and information from the worker, in terms of what is occurring on the case. If I was to move for a finalization of a family that is currently in Texas, in current practices, I ultimately must consent to the adoption, but the supervision, care, and control of that child has been positioned over to that child welfare agency. We do not see that adoptive family again. To alleviate your concerns, there are many reports and paperwork we receive and conversations that occur before we consent to that adoption to ensure it is appropriate. I can certainly recognize your concern because that family will not be in front of that court.

Moving forward into section 2 of this bill, this is basically providing an exemption to that "requirement for petitions for the adoption of a child who is in the custody of an agency which provides child welfare services," or to a child placing agency who are "residents of another state or jurisdiction are exempt from the residency requirement." Under current statute, there is a residency requirement for the petition to be filed. If we were able to finalize these adoptions, we are essentially allowing that family who is residing in another state to be exempt from the residency requirement for Nevada.

The final section of this bill, which is tied to a statute that was passed in the last session, deals with sibling visitation. Existing law requires a court to conduct a hearing to determine whether to grant visitation rights with a sibling as part of an adoption decree when the adoption is of a "child who is in custody of an agency which provides child welfare services." It would require the court clerk to give notice of the time and place of the hearing to any interested party in the adoption, and it further requires the hearing to be held at a date and time different from the date and time of the adoption hearing. I have Jon Sasser here from Washoe Legal Services, and we continue to work on this section because the issue that is presenting itself in this is that the adoption proceeding is a separate proceeding from the NAC 432B, or child abuse and neglect case. Although we have in statute, from last session, that we must have a hearing on sibling visitation, the difficulty becomes how and who we give notice to, so it is how we define an "interested party." When you get into defining sibling, the issue is whether the sibling is within the child welfare system. We fully support the best practice of insuring that siblings have contact. It is tied to national

statistics and success in adoption. For me to release that information out of my child welfare file over to the court is an issue due to confidentiality requirements on the NAC 432B case. The other issue is that the court gives notice to information contained in their court file, so that would be after a petition has been filed and there is information in the court file. We are working with Washoe Legal Services and the Legal Aid Center of Southern Nevada to try to determine whether there is another way around this to figure out how to give notice, possibly on the NAC 432B side and working on possible amendments. We have been trying since the last hearing was scheduled, and we are still working on it.

Chairman Horne:
Can you define "interested party?" Is that in statute?

Kevin Schiller:
In this section of the bill, it actually defines what the interested party is. In statute it defines it as the adoptive parent, prospective sibling, and other parties that are associated with the adoption. It lists them out, but the issue we are struggling with is when you get into defining "interested party." As an example, if I have a sibling who was adopted two years previously and rights were terminated, since the rights had been severed, they are not identified as a sibling. In reality, when you get into adoption practice, there may be cases where we may want to reach out to that prior sibling so they may eventually have contact. The purpose of this section is to give that sibling the right to petition in terms of getting their visitation in the future. I wanted to make sure I talked to the Committee about the struggles on how to define it. I think Mr. Sasser can give you a little more detail and history.

Outside of the sibling issue, I would point out that the importance of the residency changes is what we are finding in these economic times is that when we move to finalize an adoption, we have federal requirements to finalize adoptions pursuant to federal standards. They typically shoot for a time range of within 24 months. In most cases, it takes us a good year to get a child out of the system, and I am being fairly conservative in that estimate. We then become dependent on that receiving state to move forward toward the finalization. As you might predict, we do not necessarily become the priority in that state child welfare system in terms of finalization. We end up waiting for several months for that adoption to be processed and finalized. From an economic perspective, we are continuing to pay a foster care rate while that child remains in that home even though the adoptive family is ready to adopt the child which is in the child's best interest.

Jon Sasser, Advocacy Coordinator, Washoe Legal Services:
Both Washoe Legal Services and the Legal Aid Center of Southern Nevada have projects that represent kids in the NAC 432B proceedings and the issues surrounding that. As a way of background, the substance is one that everyone agrees upon. There is a right already, and there was going into the last session, for siblings to be together. The agency should give a high priority to have siblings placed together if possible. If that is not possible, they should have regular visitation with each other. There was no mechanism in the law for that once an adoption went through. For example, if one child is being adopted and the sibling is remaining in the system, how do you incorporate into the adoption proceedings that right of visitation? As a result, the language that is now in section 6, lines 27 and 28, was passed by the last session of the Legislature requiring this hearing in the adoption proceedings to deal with the sibling visitation issue. In the interim committee, Master Buffy Dreiling of the Family Drug Court, Second Judicial District Court, brought forward the issue of understanding that right but not knowing how to procedurally do it. They have not been having any of these hearings because there was no way procedurally to identify who the interested parties were, give notice to those interested parties, et cetera. The only place where that information might exist is at the agency. The agency is not a party to the adoption but does have to give consent to the adoption, so it does communicate with the adoption court in a confidential matter. The information they have regarding these parties is confidential, so they thought they could not share that in terms of addresses and those kinds of things in order for the court to give notice. Judge Deborah E. Schumacher and Master Dreiling came to the interim committee and said, "We have a problem, and we do not know the solution to it. Maybe the interim committee could propose some legislation that would come up with a solution." After the recommendation of the interim committee, we had some ongoing dialogue trying to come up with a procedure that works. We were dialoguing right through last Sunday around one approach that has not been acceptable to all parties. We are still trying to figure that out. As Mr. Schiller mentioned, we are now toying with the idea of not doing that in the adoption statute but creating some additional exceptions to the confidentiality requirements in the NAC 432B statute. I think everybody agrees it is very important for visitation to continue, but we have not quite figured it out procedurally in light of the confidentiality rules that exist. Hopefully by your work session, we will have something.

Assemblyman Hammond:
This is a fabulous bill, and I do like it. I do see the problems in it though. There are some language issues. I want to address a couple of them with you because I know you are anxious to go to a work session with this bill. It is a very important issue. In section 6, subsection 2 states, "The clerk of the court

shall give written notice of the time and place of the hearing. . . ." My concern there is when you say "clerk," it sounds like the court is going to be doing a lot of running around and finding the addresses. It might be pushed onto the attorneys who will then have a lot of work to do, and it might drive up the cost of the adoption. Some of them do it for $250, but they might double or triple the cost of that. Have you thought about that?

Jon Sasser:
You are right. There are only three entities who can give the notice, and they are the court, the attorneys, or the agency. We have gone around and around with the pros and cons of each of those three.

Assemblyman Hammond:
That is a deep concern of mine. We better make sure we know how that is going to play out before we go forward. The other thing I am concerned about is that you must give notification to the sibling, and you are doing this in a hearing before the official adoption takes place in court. Could we do that when the termination of rights are done? What might happen is there might be a sibling who is difficult to get a hold of, and the adoption moves forward and then the sibling comes forward. For example, a sibling might be incarcerated in another state and a year after they get out, they say if they had known what was going on, they may have wanted to visit or take the child in themselves. What if everyone does their due diligence and everything looks good, are you going to have to go back and open that adoption?

Kevin Schiller:
To give some background, in the existing child welfare case, we are already held accountable under NAC 432B to insure it is in the best interests that siblings have contact. With that, we have court-ordered sibling visitation orders, and that becomes part of our mandated case plan through the court. I am giving an estimate, so for up to a year to a year and a half, as we manage that case, we are identifying who those siblings are and creating the visitation as a result. When we move to an adoption, and as the director, I must consent to the adoption; we address that issue before we ever move forward by giving that information to the attorneys so they can petition. We give them a copy, and we talk about what the best interest is. I would never consent to the adoption if there is any disagreement that is occurring around that visitation and if it would not be in the best interest of the child. Once the adoption has been finalized, and we assume we have done our due diligence, the issue then becomes what court is accountable for addressing that issue if a sibling visitation does not occur. That is a challenge in here, but I am not opposed to giving the notice if we can manage a way to do it on the NAC 432B side because we are already accountable in the best interest of those children to

make sure that is occurring. I have had none of these to date that I am aware of, even working with the Nevada Advisory Council for Children, where we have not been able to come to an agreement in terms of what the best interest of those children looks like in terms of the ongoing visitation.

Assemblywoman Dondero Loop:
When they make these phone calls so they do not have to attend in person, where are these phone calls made from? Can they be made from their house?

Kevin Schiller:
I do not think we specified where that phone call is going to come from. In theory, I guess it could occur via a telephone call from somebody's residence. One area we could look at more concretely is where that should occur.

Assemblywoman Dondero Loop:
If we had a placement that was not a great placement, and we have had those with tragic outcomes, now we have a person making a phone call from their house and nobody knows what is going on in that home. I feel like with these adopted children, we need to have more checks and balances in that respect.

Kevin Schiller:
My response to that would be to have one location where the phone call is made, but also having agency representatives from the receiving state's jurisdiction present. That does occur now when we have any type of phone hearing or testimony. We could be more specific with that to address your concern.

Assemblyman Sherwood:
As far as Interstate Compacts are concerned, what kind of response do we get? Does California, or any other state, accommodate us the way we seek to accommodate them?

Kevin Schiller:
You hit the nail on the head. There is reciprocity within the ICPC to the degree that it can be enforced. One of our frustrations is, and California is a good example, they have a high child welfare population, and they actually have county administered programs. The state ICPC office tries to work with multiple counties, and our biggest frustration is that we are ready to move forward in the best interest of a child to give them permanency. We end up making multiple calls with limited response through the ICPC process to get them to move forward towards the finalization. At the receiving state level, we will be able to talk to that jurisdiction about their readiness, and most of the time they will say they are ready. However, waiting for the court time and

going through that process tends to be the holdup in terms of reciprocity. I do not see anything in the near future changing at the federal level to manage that. There are other states that have this existing in their statute so they can move forward with the adoptions.

Assemblyman Hammond:
I do not really have much of a question. I wanted to reiterate what Assemblywoman Dondero Loop mentioned. She mentioned it might be a good idea to have a way to monitor the phone calls, and I think that is an excellent idea. I think the language should say something in there that the phone call needs to take place either in the presence of an agency or welfare worker or in the agency itself. The adoptive parents also need to know what is going on.

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

Is there anyone in support of this bill? Is there anyone in opposition? [There were none.]

We will head down South. Thomas Morton is signed in as neutral.

Thomas Morton, Director, Clark County Department of Family Services:
Clark County's official position on the bill is neutral with concerns. We very much support the principle of being able to finalize adoptions in Nevada for children placed out of state. I appreciate the Committee members' concerns. I would point out as an example, the court in Tulare County, California, has little knowledge of these children before they come before it to finalize the adoption. In contrast, the court in Nevada has quite a bit of knowledge about the history of these children and why they came into care and why parental rights were terminated. It was perhaps involved in the placement of the child with the receiving family in the other state and has received regular reports from the child welfare agency about how well the children are faring. It makes more sense for the court in Nevada to finalize the adoption because it has much more information than the court in the receiving state under the ICPC.

I would echo the Committee's concerns about verification of the identity of the adoptive parents to make sure they are, in fact, the ones on the phone. As you and Mr. Schiller suggested, I think that could be rectified by requiring the phone call be made from the agency that provides child welfare services and the identity verified by staff of that agency in the other state.

In regard to the notification, we have concerns in part because of the burden. It is unknown how much burden there is, and when you start talking about

siblings in these cases, it gets a bit complicated. For example, in Clark County, we had a case before us where the parent originally lived in California, had parental rights terminated earlier on two other children in California, and those children are not known to the Nevada system as they were adopted in California. The family comes to Nevada and has a third child who entered our child welfare system. Are the siblings originally born to the same parent who actually had their parental rights terminated and were adopted in California? There may have been no contact or visitation between these siblings. There is a certain ambiguity in the language around notification as to who is a sibling. I think Mr. Schiller identified that.

In terms of the orders, we support sibling visitation, but I think when we do that, the intent is we are supporting visitation among siblings who have had contact with each other and there may be a bond. I think moving forward, it is important to clarify what siblings we are talking about. Are we talking about all siblings who are related by blood? Are we talking about siblings who may be related by marriage where there is no blood relation? I would urge Mr. Sasser and Mr. Schiller to further clarify which siblings we are talking about.

Chairman Horne:
I would take some exception to qualifying that a sibling must be a blood relation because that does not necessarily make a family. While somebody may call my second father my stepfather, I never called him that. It does not take blood relations to make a family, and siblings can grow up together and not be blood related but consider themselves siblings nonetheless. Mr. Morton, do you have any other suggestions to clear this up to move you from your neutrality position?

Thomas Morton:
If we are talking about siblings who have had contact and some evidence of an emotional bond, that would be the first priority. I do not want to deny visitation or contact with other siblings, and perhaps the siblings should have knowledge of where their siblings are located for the purpose of establishing visitation in the future if they so choose. I think it would be a bit of a stretch and burden to ensure visitation among all siblings that might be defined in a family constellation. I would suggest some kind of criteria to limiting what siblings we are talking about.

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

We will close the hearing on A.B. 111 and bring it back to the Committee. We look forward to working out those provisions, especially in section 6.

[All exhibits on the Nevada Electronic Legislative Information System (NELIS) are submitted to the record, including Exhibit C and Exhibit D.]

We will open the hearing on Senate Bill 23.

Senate Bill 23: Clarifies the entity responsible for carrying out certain duties relating to the adoption of a child with special needs. (BDR 11-459)

Amber Howell, Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services:
We are here this morning to present S.B. 23, which is a Division of Child and Family Services (DCFS) bill and proposes additional language to Chapter 127 of *Nevada Revised Statutes* (NRS) to assist in clarifying the entity responsible for carrying out certain duties related to the adoption of a child with special needs. If I could direct the Committee's attention to S.B. 23, specifically section 1, subsection 2 dealing with NRS 127.186. It adds language that states "whichever has custody of the child." This is the only language change within this bill.

I would like to brief the Committee on the practice of adoption subsidies and explain the reason we are requesting this change. When a child is adopted within the state of Nevada, and it is determined the child has special needs, the child welfare agency is able to provide an adoption subsidy to assist in the financial support to the adoptive parents who will be raising the child. In order to qualify for an adoption subsidy, a requirement includes the child being in the custody of an agency that provides child welfare services or a Nevada licensed child placing agency, which would be a private adoption agency. More requirements include an effort being made to locate an appropriate adoptive home that could adopt the child without subsidy assistance, the child is five years of age or older, a member of a sibling group, has a diagnosed disability, has factors that places the child at high risk, or is difficult to place because of race.

The existing statutory language related to the adoption subsidy process was listed in NRS 127.186, which includes the responsibility of the agency that provides child welfare services to notify the potential adoptive parent of a child with special needs of the availability of an adoption subsidy. The current language does not clearly identify who is responsible for notifying the adoptive parent of the potential of an adoption subsidy. The proposed language in this bill would provide clarity by indicating the agency that has custody of the child is the responsible entity for notifying the prospective adoptive parents of the adoption subsidy.

In a recent private adoption case that was considered under judicial review, the judge indicated he felt NRS 127.186, section 2, could be interpreted to indicate that both the child placing agency and the agency that provides child welfare services are responsible for the notification to the potential adoptive parents, whether or not the child welfare agency was a party to the adoption. Senate Bill 23, section 1, subsection 2, seeks to provide clarity to this statute.

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

It seems fairly straightforward. I will entertain a motion.

> ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS SENATE BILL 23.
>
> ASSEMBLYMAN HAMMOND SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN SEGERBLOM WAS ABSENT FOR THE VOTE.)

We will close the hearing on S.B. 23.

We will open the hearing on Senate Bill 47.

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

Brett Kandt, Special Deputy Attorney General, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General:
I am here to testify in support of S.B. 47. This bill clarifies the definition of the term "minor" as used in Title 15 of *Nevada Revised Statutes* (NRS) regarding crimes and punishments and "except as otherwise defined by specific statute, 'minor' means a person who is under 18 years of age." We have provided supporting materials (Exhibit E) and (Exhibit F) in which we have attempted to identify all the criminal statutes involving minors in NRS 193 to 207.

Alicia Lerud is here to provide some additional testimony on the reason for bringing this bill for your consideration.

Alicia L. Lerud, Deputy Attorney General, Bureau of Criminal Justice, Special Prosecution Unit, Office of the Attorney General:
As Mr. Kandt has indicated, the purpose of S.B. 47 is to better clarify the term "minor" as used in Nevada's criminal statutes. *Nevada Revised Statutes* (NRS) contain numerous references to "minor," and these statutes are generally intended to protect Nevada's children from sexual exploitation or other harmful conduct. Often, the term "minor" is defined as an individual of a specific age, however, there are a few instances within the statutes where "minor" is not defined. In 2009, we had a criminal action out of Elko County (Exhibit G). In that case, the court determined NRS 200.710 was unconstitutionally vague because it was unclear whether "minor" referred to an individual under the age of 16 or under the age of 18. This bill simply seeks to clarify that unless otherwise specified, "minor" refers to an individual under the age of 18.

Chairman Horne:
Currently, the age of consent is 16 years of age. With the change in this statute, a 16-year-old could not consent to make a pornography film. Here is a scenario. A male 18-year-old and his girlfriend have sex, and there is no crime there. If they film that with her consent, he is looking at a category A felony. Is that correct?

Brett Kandt:
With the scenario you presented, you are correct. If "minor" in the child pornography production statute is defined as a person under the age of 18, then that individual in the scenario you presented could be facing criminal prosecution.

Chairman Horne:
Is that the result we are trying to obtain with this bill?

Brett Kandt:
No. We just wanted to identify those statutes that appear to use the term "minor" without a definition. I propose there be a catch-all definition to remove any possible unconstitutional vagueness in those statutes. We leave it to you as lawmakers to determine what the appropriate definition of "minor" should be in any particular statute.

Chairman Horne:
I would certainly like to close that result. I do not think it was the result that was intended. It is not a result I would be comfortable with because theoretically, if they even put it on their cell phone, they have produced pornography and are subject to prosecution. If they did not, they would not be

subject to prosecution. If we could close that loophole, that would give me a great deal of comfort.

Assemblyman Sherwood:
Similar to the issue the Chairman brought up is the issue of "sexting." You are not mandated to be a category A felon if you engage in "sexting," but it is there as a deterrent. How do we negotiate that? Obviously you should not be engaged in that, especially if it is not a consent, et cetera, but now they are category A felons because they were "sexting." How do we deter them without turning them into category A felons, for the 16 and younger crowd?

Brett Kandt:
I would propose that education is a component in the problem of "sexting." Educating children that taking pictures of somebody who is a minor and transmitting those via electronic means is a crime. Hopefully that education component will reduce those instances. We could decline to prosecute in a "sexting" situation between teenagers if the determination is made that justice would not be served by prosecuting the individual who transmitted the sexual pictures via electronic means.

Assemblyman Ohrenschall:
You brought up the scenario of an 18-year-old with a 16-year-old girlfriend. Let us say you have two 16-year-olds who are dating. If one of them sends one of these pictures via phone to the other, would they both potentially be culpable under the child pornography statutes? How would that work if the bill passes as is?

Brett Kandt:
Under the statutes as they stand, regardless of what we are proposing with this bill, both individuals could face criminal liability in that scenario you proposed. Once again, our response has been two-faceted. One is the education component, which has led to a substantial decrease in instances in "sexting." The other is the exercise of prosecutorial discretion in order to ensure justice is served.

Assemblyman Ohrenschall:
If there were prosecution, that criminal liability would subject them to that category of felony under the child pornography statutes?

Brett Kandt:
I do not have the text of NRS 200.710 in front of me, so I cannot tell you what the criminal penalty is provided in that statute. I do believe it is either a

category A or category B depending upon whether it is a first or subsequent offense.

Assemblyman Ohrenschall:
I was looking at NRS 200.750, and it looks like it is a category A felony for that offense.

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

Is there anyone else present wishing to testify in favor, opposition, or as neutral on S.B. 47?

We will close the hearing on S.B. 47 and bring it back to the Committee. All exhibits on NELIS will be made part of the record.

Meeting is adjourned [at 8:51 a.m.].

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 8, 2011 **Time of Meeting: 8:03 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 111	C	Deborah Schumacher	Comments
A.B. 111	D	Chrystal Main	Proposed Amendment
S.B. 47	E	Brett Kandt	Letter in Support of Senate Bill 47
S.B. 47	F	Brett Kandt	Criminal Statutes Involving Minors
S.B. 47	G	Brett Kandt	Elko County Court Case