

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

**Seventy-Sixth Session
April 4, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:06 a.m. on Monday, April 4, 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:

Assemblyman Elliot T. Anderson, Clark County Assembly District No.15
Assemblywoman Irene Bustamante Adams, Clark County Assembly
District No. 42

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Elana Graham, Director, Intergovernmental Relations, Eighth Judicial
District Court
Jennifer Togliatti, Chief Judge, Eighth Judicial District Court
Mark Woods, Deputy Chief, Division of Parole and Probation
Tierra Jones, representing Clark County Public Defender's Office
Orrin Johnson, representing Washoe County Public Defender's Office
Michael Douglas, Chief Justice, Supreme Court of Nevada
Peter Breen, Senior District Court Judge, Washoe County Specialty
Court Program
Sam Bateman, representing Nevada District Attorneys Association
Brett Kandt, Special Deputy Attorney General; Executive Director,
Advisory Council for Prosecuting Attorneys
Michelle Jotz, Director, Government Affairs, Las Vegas Police Protective
Association
Chuck Callaway, Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
Morgan Baumgartner, representing Nevada Resort Association
Laurie Crehan, Regional Liaison, Office of the Deputy Under Secretary
of Defense, U.S. Department of Defense
Kimberly Surratt, representing Nevada Justice Association
Laurence B. Irwin, Major, State Judge Advocate, Nevada Army
National Guard
Joseph Baumann, Chief Warrant Officer, Nevada Army National Guard
Travis W. Hughes, Sergeant First Class, Nevada Army National Guard

Chairman Horne:

[The roll was called.] Good morning, ladies and gentlemen. Today begins a busy week. Tomorrow we begin 7:30 a.m. meetings. Although tomorrow is

posted as a work session, bills can come up for a work session at any time. On any given day, a bill we have already heard may be put on a work session to be processed. Anyone who has bills that are still pending, let me know if you believe you are ready. April 15 is the last day to take action on bills in our possession. There will also be a hearing this coming Saturday. As a reminder, a chairman may call any bill on the agenda at any time. The bills are not necessarily called in the order they appear on the agenda. Is Assemblyman Elliott Anderson present? I do not see him, therefore we will begin with Assembly Bill 135, which I will present.

[Vice Chairman Ohrenschall assumed the Chair.]

Assembly Bill 135: Revises provisions governing probation. (BDR 14-806)

Vice Chairman Ohrenschall:

Good morning, Chairman Horne. Please begin to present your bill.

Assemblyman William C. Horne, Clark County Assembly District No. 34:

For your consideration today is Assembly Bill 135. This bill is a piece of legislation attempting to curb some revocations. I believe it is something that should be explored by this Committee. Basically, we want to cut down on revocations for minor offenses for persons on probation or parole. In my practice, I have seen revocations for failure to pay fines or fees, and for minor offenses that do not directly indicate why they are on probation or parole in the first place. For instance, let us say someone is on probation for an assault and battery crime, and they have received a category D or E sentence for which they are serving probation. Subsequently, this person was charged with a misdemeanor shoplifting charge. In that instance, I do not believe that the person should necessarily be sent to a prison facility at a tremendous cost to the state. The person can clearly be punished through the municipal courts for the minor crime. There are also other sanctions processed through the court, such as monitoring by the Division of Parole and Probation. There are also those who are not paying fines. Some failures to pay are due to the high unemployment rate and the poor economic situation. Many are unemployed solely because of the position they are in. Many offenders have less than a high school education, which will limit employment opportunities. If unemployment is at 14 percent, and there are offenders with less than a high school education, they will have great difficulty getting a job. Therefore, the offenders will not be able to pay their fines and fees. I do not necessarily believe these offenders should be revoked for the failure to pay.

Section 1, subsection 2 would prohibit a court from ordering a probationer to serve a term of imprisonment for violating a condition of probation, unless being

convicted of another crime while on probation, or the court determines that the imprisonment is necessary to protect the community from further criminal activity. I have been in discussion with others pertaining to the bill, and have heard concerns from the Division of Parole and Probation. I have also had some discussion with Judge Togliatti. Based on prior discussions, I have provided a proposed amendment, which you will find on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit C](#)). I agree that this is a friendly amendment. However, I would like to add that the judge should make a finding and articulate why the person is being revoked, particularly in paragraph (a) through paragraph (d) of the amendment. We have had other statutes in which we have asked the judge to make a finding. Also in NELIS, there is a letter of support from Nevada Attorneys for Criminal Justice ([Exhibit D](#)). I will be more than happy to answer any questions.

Vice Chairman Ohrenschall:

Does anyone have any questions? If a probationer commits a minor offense, do judges have the discretion to keep from sending them back to prison, or is that something this bill will provide to them?

Assemblyman Horne:

Currently judges do have discretion. Usually an offender will receive a notice of revocation, and there will be a hearing. At the hearing, there will be a determination on whether the person violated the conditions of their probation. Usually, depending on the crime, the person may stipulate to a revocation for a dismissal of the new crime. There would more likely be more serious offenses to cause such action. In my opinion, there are a handful of judges that have revoked for extremely minor offenses. It is not the best use of taxpayer dollars or the Department of Corrections resources, when the offenders can be monitored or punished in other ways. If they are minor misdemeanors, they are likely to be under the jurisdiction of the municipal court. This bill also addresses what we have been trying to do since 2007, which is to be more responsible with our Department of Corrections funding. The bill should address whom we send to prison, whom we keep in prison, and look for alternative methods in which to supervise offenders, particularly those on the minor end of the scale.

Vice Chairman Ohrenschall:

I am glad you pointed out the possible cost savings regarding people who commit minor offenses. Are there any other questions?

Assemblyman Frierson:

Can you go over the proposed amendment to highlight the additional language? Other than language you would propose to add, you will consider this a friendly amendment?

Assemblyman Horne:

That is correct, Mr. Frierson. Subsection 7 of the amendment says, "The court may not revoke probation unless the court finds on the basis of the circumstances of the original offense, the intervening conduct of the probationer, and the probationer's performance on probation that" Right now, the amendment shows a series of transitory lines listed as (a), (b), (c), and (d). I propose adding letter (e) which will say the judge must articulate a finding of the above when ordering the revocation. I am not positive exactly how the language reads at this time. There is a draft of the language in our Legal Division.

Assemblyman Brooks:

With the proposed amendment, it seems to take the steam out of the argument that a criminal cannot go back to jail if he is hanging around with his gang buddies. In your original language, it stated that he would have to be prosecuted under a different type of conviction. This amendment seems to remove that language. I want to be sure you are okay with that.

Assemblyman Horne:

Sometimes we have to use baby steps in passing legislation. I have seen that one of the rationales for revocation was association with known gang members, with no underlying offense other than fines. The problem is, in certain neighborhoods, there is sometimes no avoidance of association with known gang members. Gang members may be someone's sibling, cousin, other family members, or the person next door. In order to get this policy moving, I am comfortable with the amendment.

Assemblyman Daly:

You have already answered one of my questions. I believe having the judges make a finding will be useful. Would the judges be free to order more community service or counseling rather than sending the offenders back to prison? There would be other tools available to judges. Is that correct?

Assemblyman Horne:

Yes, judges do have the discretion to change the conditions of probation. For instance, judges can increase the conditions of parole to include intense supervision, which would further restrict the offenders. The judges may only allow travel from home to work or school, et cetera. Even when the violation has nothing to do with drug or alcohol use, a judge may order no alcohol consumption. If the probationer is found to be intoxicated on a visit from the parole officer, he may be ordered to do random testing more frequently. The judge may also find the offender is in contempt and place him in jail for a few days. These are some of the options available to judges.

Vice Chairman Ohrenschall:

Are there any more questions? I do not see any. Do you have other witnesses?

Assemblyman Horne:

I have no other witnesses. Please feel free to call whoever is signed in. I know the Division of Parole and Probation was in opposition until they read the amendment. They should have changed their position. Please proceed however you wish.

Elana Graham, Director, Intergovernmental Relations, Eighth Judicial District Court:

I have Chief Judge Jennifer Togliatti waiting to testify in Las Vegas, regarding the proposed amendment.

Jennifer Togliatti, Chief Judge, Eighth Judicial District Court:

Good morning. I speak to you today wearing two hats, one as the Chief Judge of the Eighth Judicial District Court, and on behalf of Judge Andrew Puccinelli, who is the President of the Nevada District Judges Association. For the record, I would like to state the position of the District Association and the Eighth Judicial District Court regarding the amendment. As Chairman Horne has stated, it is a friendly amendment. Regarding the suggestion of a finding being made, subsection 7 of the proposed amendment reads, "The court may not revoke probation unless the court finds on the basis" Amending the language to read "makes a finding" may be more appropriate. I understand the position of the Chairman, and at this point I am not able to take a position on behalf of the Association because I have not had the opportunity to run this by the other judges. I cannot formally take a position at this time, but if the change were to be as indicated, it should not be much different from the original amendment.

Vice Chairman Ohrenschall:

Thank you very much. We appreciate your taking the time to come and testify. Are there any questions?

Assemblyman Segerblom:

Can you explain the significance of the proposed change?

Jennifer Togliatti:

Are you talking about the change that is not currently reflected in the language?

Assemblyman Segerblom:

Yes.

Jennifer Togliatti:

The first sentence of subsection 7 reads, "The court may not revoke probation unless the court finds" As it is written, I believe that a judge would need to make a finding under (a), (b), (c), or (d) in order to revoke someone. Changing language to read "makes a finding," may clarify it better.

Vice Chairman Ohrenschall:

Are there any more questions? I do not see any. Thank you.

Mark Woods, Deputy Chief, Division of Parole and Probation:

We were initially in opposition, however considering the amendment, we have changed our position to neutral. I agree with the Chairman in the sense that it is a fine line to walk, requiring small steps. In reality, there will not be much change in the supervisors' case loads. We will continue to inform the judges of the offenders' activities. The proposed amendment, shown as subsection 7, paragraph (a), is the one that is most important to us. If we still show the potential of criminal activity, the judges can take action. There are other consequences the judge can order besides total revocation. With this amendment, we feel that we can still protect the community the best way possible, with little change to our day to day operations. There is one small change we would like to make to subsection 7, paragraph (d), of the proposed amendment. We are the "Division" of Parole and Probation in lieu of the "Department" of Parole and Probation, as currently shown on the proposed amendment.

Vice Chairman Ohrenschall:

With regard to cost savings, do you have any idea how much the state may save if the bill passes?

Mark Woods:

No. It costs more to incarcerate than it does to supervise.

Assemblyman Brooks:

In the amendment, "except a minor traffic offense" has been omitted. Can you explain in what situation would we incarcerate someone for a minor traffic offense?

Mark Woods:

The person may have a history, or his crime may have something to do with vehicular manslaughter. If we are supervising someone who is not operating the vehicle well, we may want to bring him back immediately. To give you a better example, a standard condition consists of no alcohol consumption. If someone is convicted of a DUI, we will take the alcohol condition more

seriously than for someone who was convicted of a petty larceny. We may find someone drunk, who has been convicted of a petty larceny. We will deal with that person accordingly. However, if we come across someone with only one beer, but he has previously been convicted of a DUI, we will take it seriously and react quickly. The uniqueness of parole and probation is the necessity to take every individual situation at an individual rate. There is no blanket rule that would cover every case. The officer will need to use his judgment and expertise on dealing with each individual.

Assemblyman Brooks:

In your expertise, what percentage of the time is an individual reincarcerated for minor traffic offenses?

Mark Woods:

I do not have the numbers in front of me, but would say it is less than 1 percent.

Assemblyman Horne:

I would like to leave the Committee with two extreme examples that I have experienced in my practice. There was a gentleman who had absconded. He left the jurisdiction, and the Division of Parole and Probation did not know where he was. He was pulled over for a traffic violation in California. He had an outstanding warrant and was brought back to Nevada. He was gone for about four years. In that period of time, he was just completing his second year of college. The gentleman had no other violations, and he was engaged to be married. He was also on the college basketball team. Technically, he was doing everything that he was supposed to be doing, according to the conditions of probation, without supervision, in another jurisdiction. I pointed out to the judge that the reason he left was because he was homeless and moved to California to live with family. The man had turned his life around and was doing well. He was doing what we expect our probationers would do. The judge did not revoke him for absconding. Usually, for absconding, a judge will revoke. However, the man was placed on probation, and was able to complete it in California. The other extreme case was about a gentleman who was not paying his fines. The man had a ninth grade education and was a construction worker in Pahrump, where there was no work. The judge extended the probationary period and wanted more proof that the man was actively seeking employment, although the probation officer's report showed the man was applying for jobs. The probation was extended and the man found a job laying concrete at a hospital. To celebrate, he and his friend drank that night. While leaving the parking lot, the man hit a parked car, resulting in a DUI. The judge revoked his parole and sentenced him with 2 to 5 years in prison because he committed another crime while on probation. We made the argument that he was happy

because he finally had a job after being unemployed for over two years. Although he will be punished for the DUI by the municipal court, we asked that the court allow him to keep his job and provide for his family. Regardless, the judge revoked his probation. The two examples I have just provided are from extreme ends of the scale.

Vice Chairman Ohrenschall:

As shown in your example, it not only costs the state more money to incarcerate him, it also costs his family money as he lost his job and could not work.

Assemblyman Hammond:

If the judge does not have the discretion, what if the gentleman in your example did not hit the parked car? What if he was allowed to get on the highway and injure or kill someone? The court of public opinion would want to know why the judge did not imprison the offender. In making decisions regarding my kids at school, I always think about what will occur in the long run. I am worried about the discretion, and would like to be sure that the judges will still have the discretion to incarcerate the person if need be.

Assemblyman Horne:

No, I do not believe this bill will take that discretion away from the judge, particularly with the proposed amendment. In my scenario, I was not suggesting that the offender not receive the punishment for a DUI. I believe the punishments for DUI are appropriate, and trust that the municipal court would have imposed the appropriate punishment. We were not requesting that the judge look the other way and not punish the offender for his actions. That would have been wrong. All I am saying is to allow the municipality to provide the appropriate punishment for the crime, without sending the person back to prison at an extreme cost. It would be different if the person celebrated a second night because he was never punished for the DUI. The Department of Corrections was not necessarily the appropriate place to correct that conduct. In this scenario, the offender will serve his 2 years to 5 years at the Department of Corrections. When he is released, he will be required to answer for the DUI charge.

Vice Chairman Ohrenschall:

Are there any more questions for Chairman Horne or Mr. Woods? Chairman Horne, I believe you mentioned earlier that there is a letter on NELIS from the Nevada Attorneys for Criminal Justice in support of the bill. I do not believe they have anyone here to speak in favor of the bill, but they have submitted a letter. Is there anyone else in the neutral position?

Tierra Jones, representing Clark County Public Defender's Office:

I signed in opposed to the bill; however, with the proposed amendment, we are in support.

Orrin Johnson, representing Washoe County Public Defender's Office:

We are in the same position. We were concerned with the original bill that took away too much discretion. The amendment restores the necessary discretion, while protecting the people from revocations that will not do any good in some cases. We appreciate the amendment and fully support it. Thank you.

Assemblyman Brooks:

Since you are the public defenders, how often do you see people going back to prison for minor traffic offenses?

Tierra Jones:

It depends on which court hears the cases. Some judges would revoke for such offenses, while some would not. If there are other offenses occurring, they will be listed on the violation report, such as committing minor traffic offenses. I do not have an exact number, but it does depend on the jurisdiction.

Orrin Johnson:

I cannot say that I have ever seen such a case, where the sole violation was a speeding ticket or a similar offense. Usually, there would have to be something a little bit more serious. I cannot speak for every department in Washoe County, although I think it is relatively minor. There are some judges with a blanket policy for revocation after only one chance. What this amendment does is address the issue because it requires a finding from the judge, even without adding that language in there specifically.

Vice Chairman Ohrenschall:

There are no further questions. Thank you. Is there anyone else neutral to A.B. 135?

Michael Douglas, Chief Justice, Supreme Court of Nevada:

I signed in against the bill; however, with the proposed amendment, we are neutral. I wish to point out that there is always a concern in terms of the discretion that judges have with revocations. This was a discussion that needed to be had about not only revocation, but also about sentencing. Some of these individuals that are placed on probation are placed there because of these conditions. Regarding the financial impact, the impact is sometimes the front end. Quite often, the judge feels the easiest thing he can do is to send someone to prison, while the hardest thing he can do is put the offender on probation. I applaud Mr. Horne in discussing the technicalities. There are some

other very important conditions, such as why the individual committed the offense, which need to be addressed. The bill will have a direct effect in terms of our administration, especially the courts. With the amendment that has been put forth, we move our position to neutral. Senior Judge Breen is a very important individual in the specialty court programs such as mental health and drug courts. He understands the importance of those conditions. He is also here to speak to you.

Peter Breen, Senior District Court Judge, Washoe County Specialty Court Program:

I am a Senior District Court Judge and together with Senior Judge Archie Blake, we handle all of the cases by felony court, specialty court, adult drug court, mental health court, felony DUI court, and veterans' court, in northwestern Nevada. At any given time, we have between 1,200 to 1,500 people we are supervising. Let me first say that I became aware of this bill on Friday. I came down to testify in opposition because of a concern that I had. Listening to Chairman Horne, I agree with everything he has said. I cannot imagine not making a finding before sending a person to prison. It may be oral but should be made on the record, for minor offenses as well.

Judge Blake and I, along with other court judges, are in the business of keeping people out of prison. Our concern was the requirement that there be another conviction. We were concerned that making such a limitation of the judges' discretion would encourage prosecutors to file new charges if they wanted to send a person to prison, intending to add another crime to the person's record. There are two things that motivate someone in the courts. The first is the fear of prison. The second reason is the hope that they can have their records sealed, which they can in many cases, such as graduating from our extensive programs. We were concerned that we may have another charge to deal with such as another felony filed and processed through the system, which would hurt our client's chances of being successful. With what I heard today, we will be satisfied in merely expressing what our original concerns were about the bill. It seems like it primarily requires a judge to exercise discretion in a way that we like, intending to keep the defendants out of prison. Limiting judicial discretion is a serious thing because the judge is the one best suited to make the decision. I do not want to waste your time, but there is a quotation that comes from an old case, which is my favorite quotation. I will leave it for another time.

Vice Chairman Ohrenschall:

Your Honor, we are all interested now. Yes, please continue with the quote.

Peter Breen:

This was written by an appellate court judge who I believe left a lot of his heart on the trial bench, when he came here. This is the quote from *Marshall v. Lonberger*, 459 U.S. 422 (1983): "As was aptly stated by the New York Court of Appeals, although in a case of a rather different substantive nature: 'Face to face with living witnesses the original trier of the facts holds a position of advantage from which appellate judges are excluded. In doubtful cases the exercise of his power of observation often proves the most accurate method of ascertaining the truth How can we say the judge is wrong? We never saw the witnesses To the sophistication and sagacity of the trial judge, the law confides the duty of appraisal.'"

Vice Chairman Ohrenschaal:

Thank you very much, Judge Breen. Are there any questions? I do not see any. Is there someone waiting to testify in Las Vegas?

Sam Bateman, representing Nevada District Attorneys Association:

Initially, I signed in as opposed. It is my understanding that if the bill goes forward, it would do so with the friendly amendment, which has been discussed previously. I will not take up your time to explain the problems with the original bill, because it appears we will be moving forward with the proposed amendment. I would be happy to answer any questions regarding our perspective in Clark County.

Vice Chairman Ohrenschaal:

I do not see any questions. Thank you for your time. Is there anyone else who wishes to speak in opposition?

Brett Kandt, Special Deputy Attorney General; Executive Director, Nevada Advisory Council for Prosecuting Attorneys:

I had signed in opposition like everybody else. However, with the friendly amendment, I would like to clarify that our position changes to neutral.

Vice Chairman Ohrenschaal:

I do not see any questions for Mr. Kandt. Is there anyone else to speak in opposition? It appears we have heard from everyone. We will bring the bill back to the Committee, and I will turn the gavel back over to the Chairman.

[Chairman Horne reassumed the Chair.]

[An additional exhibit not discussed previously is a letter of opposition to Assembly Bill 135, from Tom Ely of the Nevada State Law Enforcement Officers' Association ([Exhibit E](#)).]

Chairman Horne:

Thank you, Mr. Vice Chairman. We will open the hearing on Assembly Bill 161.

Assembly Bill 161: Revises provisions governing the crime of trespassing.
(BDR 15-729)

Assemblyman Elliot T. Anderson, Clark County Assembly District No.15:
I am here to present Assembly Bill 161 to the Committee. This is a bill revising the crime of trespassing. All of us here are citizen legislators. We see things in our own lives which allow us to make better decisions on related subjects in the Legislature. Whether it is having a business background, practicing law, or understanding ranching, we all have something to offer. I work in the security department in a major casino in Las Vegas. I believe that my experience there will be helpful in solving a problem in Nevada's biggest industry.

As one may imagine, casinos can attract assorted troublemakers from time to time, which may consist of people who may just be having too much fun. This can present a number of problems for those who work in the casinos. It can also be a problem for law enforcement. This problem creates the necessity for casino security to ensure the safety of visitors and employees alike. Police agencies across the state are not able to be in all places at once. Casino security takes reports when someone is missing property, they ensure compliance of underage gaming laws, they ensure that guests make it safely back to their rooms, and they maintain general good order. I have personally seen all manner of criminal complaints filed, and have a multitude of stories that I can tell. Later, I will tell a story that I see way too much.

This line of work has allowed me to learn about several subjects within the gaming industry, therefore I have a comprehensive view. I am familiar with the operations of the table games department, the slot department, the valet, and the front desk. While performing my regular duties, I noticed a serious strain on police resources brought on by repeated violations of the law, and violations of *Nevada Revised Statutes* (NRS) 207.200, commonly referred to as trespassing.

Slide 2 of my presentation ([Exhibit F](#)) will explain more about trespassing in casinos. Of course, everyone understands the necessity of the trespassing law. Although casino security takes great pride in their work, they would be the first to tell you they are not the police. They do not have the training and specialization of a police department. Therefore, they do not try to act like one. To avoid confrontations or calling the police, most security departments will simply ask the troublemakers to leave the casino's property. Trespassing is

a much more straightforward law. There are no gray areas, as would be seen at a casino.

Slide 3 describes the first step in the trespass process. When asked to leave, most people do not cause trouble and will proceed to vacate the premises. The trespassers seem to get the message after being notified of the "informal trespass," by being asked to leave the property. An example of an informal trespass could be someone who is disturbing other guests, perhaps because the person had too much to drink. Another example is someone falling asleep repeatedly after being awoken, or multiple guests complaining of being harassed by another guest. Depending on the severity of the disruption of business or violation of law, this may or may not be considered permanent. This step may be skipped in lieu of a formal trespass.

Slide 4 describes a "formal trespass." A formal trespass is used for repeated problems, or a more serious infraction. A report is generated internally, which includes video of a warning being given to the offender, requesting he leaves the property. Additionally, a photograph of the person is taken including the person's contact information. This process usually takes approximately one hour and is used to document an official warning to satisfy NRS 207.200. Subsection 2 of NRS 207.200 requires an official warning be provided to the individual notifying him that he is trespassing. A trespassing arrest cannot take place until the statute is satisfied. I should note that this is the first step when someone is arrested on a casino property by a vice squad, or any other division of law enforcement. An informal notice may be used depending on time constraints, staffing levels, and the seriousness of the disruption caused by the offender, in lieu of the formal notice. The next step involves an even greater time commitment, in many cases.

Slide 5 will summarize step three, which is a citizens' arrest for trespassing. This is only used for repeated, formally warned violators. If a person is suspected of having been formally notified of trespassing, identification is requested, and his name is run through a computer in search of a match. If a positive match is found, NRS 171.126 allows for "arrest by private person" for purposes of notifying a peace officer. If such an arrest is made, the private citizen is required to care for the detainees' well-being for up to one hour. This method is utilized in casinos often because of the vast number of trespassing violations which occur. Unless a person is already in custody, it can sometimes be difficult for law enforcement to rapidly respond to trespassing calls because they may be dealing with more serious issues. It is important to note that an arrest cannot be made until a formal trespass warning is provided as per the requirements of NRS 207.200. Without this warning, a criminal complaint pursuant to this arrest will be discarded, and the arresting private citizen is at

risk of being sued for false imprisonment or kidnapping. There is also the chance the arresting citizen may be arrested criminally. Casino security departments will not purposely employ this step.

At this point, you may be wondering, what does this crash course in casino security have to with the State Assembly? I explain this on slide 6. Repeated violators are usually convicted. However, the penalties are insufficient to stop repeated trespassing among the most frequent violators, such as those involved in prostitution. I have personally asked some of the repeat violators why they keep coming back. They expressed to me that the penalty, which is usually a small fine, is just a slap on the wrist. Compared with the amount of money they earn, at just one property alone, the fine does not amount to much. The offenders have also informed me that they usually hire an attorney, and almost always evade any substantial fines. Afterward, they return to business at the hotels and cover their fines in upwards of 1,000 percent. Unfortunately, the financial incentive is motivation for the repeat offenders to continue to break the law in the gaming industry, particularly in Las Vegas. This leads to a drain on police resources, and the resources of gaming companies. When an offender is arrested, someone is responsible for the offender's health and well-being. In practical terms, law enforcement, or an arresting private citizen, remains unable to respond to any other incidents occurring while they have an offender in custody.

Another time-consuming measure involves the numerous reports and paperwork to be completed. Additional time restraints required for an arrest or formal trespass notice involve video recording and photographs needed to satisfy the evidentiary requirements. Time spent in this tedious process takes security and police officers away from other surveillance such as watching table games or slots for cheaters, and responding to other criminal activities. Nevada thrives on tourism, and we need to do all that we can to ensure the safety of the gaming establishments and its guests. Even in the best of times for the gaming industry, this is a problem. As we all know, it is not the best of times, which makes this even more imperative.

Slide 7 explains what this bill will achieve. There is a conceptual amendment ([Exhibit G](#)), which can be found on NELIS. Assembly Bill 161, as amended, is simply a sentencing guideline. It provides judges with the maximum discretion while dealing with a drain on the resources of law enforcement and gaming institutions. The bill only applies to people previously convicted of solicitation and convicted of trespassing, on three or more occasions, within a period of five years, and it only applies at a gaming establishment. I really want to emphasize that the sentencing guideline requires convictions. Convictions require specific warnings under NRS 207.200. For each gaming establishment resulting in an

arrest by a private person, a specific formal trespass warning must be administered. One formal trespass warning at a gaming establishment does not apply to other gaming establishments, unless they are owned by the same company, and all said properties are mentioned in the formal trespass warning. Therefore, if a person is arrested at one property, he is not automatically barred from entering other establishments, unless owned by the same company. Additionally, the person would have had to have been previously warned, and subsequently arrested. Five years from the date of a trespassing conviction, the incident is removed from the person's record as the sentencing guideline mandates.

This bill provides judges with options. A judge may impose one of three options which include the current maximum misdemeanor fine of \$1,000, community service, or a program for rehabilitation of sex workers. Depending on the offense, certain options may work better than others. For someone who may have been caught up in the sex trade industry due to unfortunate circumstances, this sentencing guideline helps direct them off the streets and into rehabilitation. For a repeat offender, who is very aware of the business they are engaging in, the sentencing guideline may allow for the recovery of funds expended by the state for dealing with the consequences of the violations. Working class people in the gaming industry should not have to run the risk of being sued for providing inadequate security, due to the time constraints caused by repeat offenders, who are making thousands of dollars, weekly. The third sentencing option available to judges is a community service option, which is another tool for dealing with repeat offenders. It is highly unlikely that someone previously convicted of solicitation, who has received three trespassing notices within a five-year period, has been wrongly accused. Overall, this bill will provide judges with the tools which will help solve a very big problem in Nevada.

I was going to discuss further why this guideline is needed. To save time, I will skip that part. There are a number of people present to testify in support of the bill.

In conclusion, before you is a bill targeting a specific problem. A real problem exists in Nevada's casinos today, mainly on the Las Vegas Strip. Resources are being drained in both private industry, and in government. Assembly Bill 161 is a practical solution, to a practical problem. It is extremely narrow, and it is not a moral crusade, nor is it seeking to punish anyone needlessly. Although targeting a very specific problem, it may end up as the solution to other illegal prostitution issues because of the rehabilitation option. The bill has gone through a thorough vetting process by the Legal Division and has been found to be constitutional. Additionally, the bill was reviewed by the American Civil

Liberties Union (ACLU), and they have expressed no concerns. There has been a letter offered in opposition to A.B. 161, which was reviewed by the Legal Division. It is my understanding that the claims as presented in the letter are wrong. I will be happy to answer any questions.

Chairman Horne:

Thank you, Mr. Anderson. Did you have communications with anyone from the Nevada Attorneys for Criminal Justice (NACJ)? I see the letter, which was signed by Amy Coffee and Lisa Rasmussen ([Exhibit H](#)).

Assemblyman Anderson:

I received the letter late Thursday. I had no previous communication with them. I have been working on this bill for three months, and talking with the various stakeholders. I met with the ACLU back in December regarding this issue. I attempted to get in touch with NACJ by email. They replied over the weekend, but I found no opportunity to speak with them.

Chairman Horne:

It is unfortunate that there is nobody here on behalf of NACJ to answer questions. Hopefully they are listening and will reach out to you. Sometimes we like to ask questions as to the rationale on an opposing position. Receiving a letter does not provide us with the opportunity to do that. Do you have a preference as to whom I call first to testify?

Assemblyman Anderson:

Ms. Jotz has a few good statistics, which will assist in your understanding of the full scope of the problem. For the record, I knew this was a problem, but even I was surprised at these statistics.

Michelle Jotz, Director, Government Affairs, Las Vegas Police Protective Association:

I am the Director of Governmental Affairs for the Las Vegas Police Protective Association, and the Southern Nevada Conference of Police and Sheriffs. I pulled some statistics for a 26-month period. The statistics begin January 1, 2008, and go through March 5, 2011. During that period, there were 23,512 arrests or citations for trespass in our jurisdiction. Obviously, that is a significant drain on police resources. There were thousands of recidivists on the list, and there were several people cited or arrested more than 50 times during that 26-month time period. In fact, the page I am displaying is only one of 203 pages of arrests or citations. Officers are spending a significant amount of time responding to in-custody trespasses. I am in my fourteenth year of being a police officer. During my time as a police officer, I had the time to work the area that encompasses the Las Vegas Strip.

I responded nightly to in-custody trespasses. Many of those lead to prostitution-related arrests within the casinos. I had the opportunity to ask the offenders why they continued to violate the trespass ordinance. The offenders explained to me that there was no incentive not to. They received a slap on the wrist with minimal fines, and were frequently dismissed. This bill will help put some teeth in the law. Anything that will reduce the drain on police resources is something we support. With that, I ask you to support A.B. 161.

Assemblyman Frierson:

I applaud the bill's sponsor for the educational component. I support anything we can do to help the often homeless girls who are brought here from out of state. While I applaud the effort of the criminal component, it seems to me that if a former prostitute, who is now homeless, gets arrested for trespassing, it would fall under this statute because she may have a prior conviction within the last five years. In fact, she may have several priors for solicitation but is now homeless. Homeless people kicked off properties, are also charged with trespassing. With the amended language, would this bill place these types of individuals in the same statutory scheme?

Michelle Jotz:

I have to defer to legal on that question. I can tell you that during my time on the Las Vegas Strip, I had dealings with what is commonly referred to as the "carpet hos," who are the girls that work the casinos. Those girls are not homeless. They make thousands of dollars per night, and typically stay in high-end hotels. I cannot refer to the people who are considered the street prostitutes, because those are not the people I have previously dealt with.

Assemblyman Frierson:

I am referring more to the people who are not prostitutes. I am referring to the homeless people. When a homeless person is sleeping on a property, and police are called, he would be arrested for trespassing. Is that correct?

Michelle Jotz:

If they were properly noticed under NRS 207.200, that would be correct.

Assemblyman Frierson:

My concern is that the people who may have a past prostitution record may be an unintended target.

Chuck Callaway, Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

We support A.B. 161. I would like to thank Assemblyman Anderson for letting us know his intent for the bill, and asking for our input. I do not have much to

add as far as statistics. There is a definite nexus between the crime of trespassing and the crime of prostitution that occurs in our hotels on the Strip and on Fremont Street. The vice section tells me that approximately 75 percent of their prostitution arrests take place in the hotels and casinos. There is one section of the bill that I asked the bill's sponsor to amend. In section 1, subsection 2, paragraph (b), on line 17, it says "imprisonment in the county jail." This morning, it was brought to my attention that in Clark County we have a city jail and a county jail. The city jail can house misdemeanor offenders. With this particular language, if someone were arrested in the city on Fremont Street, they would have to go to the county jail. We are requesting that the word "county" be removed so the person could be taken to the city jail, if arrested in the city. With that amendment, we support the bill.

Assemblyman Frierson:

It is my understanding that judges currently have the discretion as described in the provisions that are proposed in A.B. 161.

Assemblyman Anderson:

I would hope that they do, but whatever is happening is not working. I do not want to take any discretion away from the judges. I have worked with you to make it more palatable in that regard. There is a real issue that is going on here, and I see it every day. Ms. Jotz saw it every day in her duties as a police officer. We need to find a way to fix the problem. I believe we have allowed the judge enough discretion to deal with the problem. Yet, there is an escape hatch for the more traditional criminal penalties, if need be. There is the option of rehabilitation programs. I am more than willing to talk about an amendment which would help to protect indigent people. I will do whatever I can to be sure the judges have options for any unforeseen circumstances. For the more professional offenders, there is a real problem which we need to address.

Assemblyman Frierson:

Would you be amenable to something which would allow for a dismissal after completion of certain requirements, which would help some of the young people who get caught up in this?

Assemblyman Anderson:

I certainly would be amenable to talking more about this. I am just trying to solve the problem which occurs with the professional offenders. The closer we get to that solution, the better. I am open to discuss any option.

Assemblywoman Dondero Loop:

Is the casino security guard industry all private?

Assemblyman Anderson:

Personally, I am on staff. I am aware that some casinos do that, but it is a very small percentage. The reason is for liability purposes. This type of job is much more detailed than most are aware of. Some companies have been sued for security officers acting improperly. My understanding is that for most of the major unrestricted licensees, you will find that they are all staffed.

Assemblyman Dondero Loop:

With that being said, what prevents a security guard from making subjective decisions about who may be arrested?

Assemblyman Anderson:

Because of the vast amount of incidents, there is some subjective decision making required. The main reason I am bringing forth this bill is because casino security officers do not have the time to go after each person engaged in prostitution. I can provide many examples where we would be told to reread the NRS to offenders because the police do not have the manpower to make an arrest. There are many issues I am trying to get at, specifically not being able to remove anyone who has not been formally warned. People have to be made aware that they are subject to arrest if they return to the property. Legally all bases may be covered, but the time involved and the staffing levels are preventing arrests in many cases. We would like to be sure that everyone who is in violation is taken off the property, but it is just not practical to do so.

Chairman Horne:

It seems like this bill is narrowly targeted to the prostitute. Having grown up in Las Vegas, I can say that this is a vast industry. There are other facilitators in the industry such as pimps, who are just as involved in "making a love connection." There may be a patron at the casino spending money who is seeking the company of a prostitute. It is highly doubtful the casino will seek to have the patron removed from the property in this instance. Do you get the point I am trying to make?

Assemblyman Anderson:

Yes, I do. To answer your question, I do not think that anyone thinks this bill will stop prostitution in Las Vegas. I think it can help to clean up some of the sex trade aspects by utilizing the rehabilitation option. That is why I am very thankful to Assemblyman Frierson for working with me on this, because his input has helped to improve the bill. In terms of your specific question, for people going up to a room and not bothering anyone, we do not know who is a prostitute. There is no way we can possibly have knowledge of that unless they are making a disturbance. This bill is aimed at people who have been arrested on property by a law enforcement agency, who have been previously

warned to stay off of the property. There have been incidences in the news about clubs engaging in certain activities. Most of the clubs are lessees of casino properties. There is no direct control for these clubs besides contracting agreements with the agencies. In my role as a security officer at a casino, if I heard of any employee being involved in such an activity, it would have been reported to management and would probably result in an internal report being filed.

Assemblyman Hansen:

Regarding the amendment referring to the treatment and rehabilitation, do you have any idea what the cost and recidivism rate is?

[Vice Chairman Ohrenschall assumed the Chair]

Assemblyman Anderson:

This is a relatively new program. The program in the Las Vegas valley is called Hookers for Jesus. It is a legitimate program. Bill Young, who is a former sheriff, is a founding member of the board. I should also point out he is a former vice president of Station Casino's security. This program is not operated by the state. It is a nonprofit organization, and it is a new program. I understand that it has a lot of promise. There is a halfway house as part of the program. It has been created by a former prostitute who was caught up by the sex trade, just like one of those examples you hear about on the news. She escaped the industry and uses this resource along with many community stakeholders to free these girls from the prostitution system. I spoke with Assemblyman Frierson about this option and began investigating this. I believe that it is a great program. For people who have been wrongly brought into this industry and are not greatly profiting from it, this will be a phenomenal program to help them. There has been nothing like it before, and I believe it will be a great private and public partnership of sorts.

Assemblyman Hansen:

Mr. Callaway, do you aggressively go after the johns or just the ladies?

Chuck Callaway:

We go after both the johns and the girls. In fact we sometimes perform reverse sting operations, where we pose a female officer as a prostitute to catch the johns that approach her.

Assemblyman Hansen:

From a law enforcement perspective, if the goal is to reduce prostitution in casinos, how effective are the current programs? Will this bill add anything to the effectiveness?

Chuck Callaway:

Some of the programs we are currently using have an impact on the industry. Anything that can be done above and beyond those measures is helpful. Proving a case of solicitation or catching a prostitute in the act of soliciting can be difficult. With this law, we can take into account the people who are trespassing in the casinos for the purpose of solicitation but have not yet been caught soliciting.

Vice Chairman Ohrenschall:

Are there any other questions? I do not see any. Who else is there to testify, Mr. Anderson? Is there any particular order you prefer?

Assemblyman Anderson:

I would like to have Ms. Jones from the Clark County Public Defender's Office come up next.

Tierra Jones, representing Clark County Public Defender's Office:

I do applaud Assemblyman Anderson, who reached out to us before the legislative session even started for our position on this bill, and any impact it may have. He has made every attempt to address our concerns with several amendments, such as distinguishing between the prostitutes and the homeless. Based upon the amendments, we do support the bill. We also support the educational component of the bill which allows for the opportunity to seek treatment or to provide community service, making for productive members of our community.

Vice Chairman Ohrenschall:

Thank you, Ms. Jones. I understand you are okay with the education aspect and the criminal penalty aspect. Is this correct?

Tierra Jones:

Yes, we are okay with it based on the fact that the individual will have the opportunity to complete community service and give back to the community. Additionally, the educational component would allow him to seek treatment and possibly get out of the industry.

Assemblywoman Diaz:

After hearing Ms. Jotz testimony about how often this happens, how does it work when people are being arrested in the casinos more than ten times? I would like to have a clear picture of the procedure involved if this sort of thing occurs ten times or more for an individual. There should be something in law that would take care of this, but I do not see it remedied. Can you enlighten me?

Tierra Jones:

Basically, when someone has been trespassing, it is the prosecution's discretion as to what the person is charged with. Once he has been charged with something, the cases are sometimes negotiated. The district attorney decides how to proceed. It is then up to the individual defendant whether he wants to go to trial or whether to negotiate the case. Judges do have discretion on what the sentences will be. On any misdemeanor, the sentence may be a maximum of a \$1000 fine, a maximum of 6 months in custody, or both.

Assemblywoman Diaz:

I am hearing that the judges currently have the discretion to do what the bill is stating.

Tierra Jones:

Yes. Currently the maximum penalty is a \$1000 fine, up to 6 months in custody, or both. They do have the discretion to decide.

Assemblyman Anderson:

I would like to make a comment. I understand that judges do have the discretion, but they are not acting on it. The professional repeat offenders are not receiving the maximum penalty. Meanwhile, police resources are being wasted. The offenders come out laughing. They have laughed at me personally, while saying, "Dude, I am going to be right back in here, and will make up the fines I have paid in hours." The professional offenders literally laugh at the system. With that being said, there are people wrongly caught up in the industry. This bill, as amended, will provide specific options to help them. The judge could give them some sort of alternative sentencing. As amended, this bill will point them in that direction. I think everyone would agree that there really is an issue out there. The statistics prove anecdotally what security workers on the Las Vegas Strip, and elsewhere in the state, see and understand.

Vice Chairman Ohrenschall:

Are there any more questions? Can we have Ms. Baumgartner come forward?

Morgan Baumgartner, representing Nevada Resort Association:

We are in support of this bill. Mr. Anderson came to us early in the session to advise us that this bill was one that he was promoting. We were very happy to see it because this is a fairly significant problem with our properties. The problem takes away a considerable amount of time for the employees and law enforcement officers. We believe this is a deterrent to the continuing activities by the habitual offenders which we often encounter in our properties. We are in support of the bill with amendments. I would be happy to answer questions.

[Chairman Horne reassumed the Chair.]

Assemblyman Frierson:

Would you remain supportive if there were a component which allowed the defendants to complete therapy, treatment, classes, et cetera, in order to avoid a conviction?

Morgan Baumgartner:

I believe that it would be a very good idea. The goal is to stop this kind of behavior. If a program were completed removing the offender from practicing the trade on casino property, it would be a good outcome.

Assemblywoman Dondero Loop:

After speaking with Mr. Anderson about the bill and doing some research, it is my understanding that security guards are generally employees of each resort or corporation that owns the resort. Has there been any thought about somehow regulating that industry? My concern is that some of the security guards are making subjective statements based on their own personal wants or needs.

Morgan Baumgartner:

I can certainly ask that question. I assume that our guards are given training as they enter into the profession, and there are certain standards which must be met. I cannot answer that specifically but will certainly be willing to look into it.

Assemblywoman Dondero Loop:

There have been several articles that I have read in newspapers about security guards not necessarily following resort protocol. With that being said, some people who may be habitual problems would not end up leaving because of their relationship with certain security guards.

Assemblyman Sherwood:

Mr. Anderson, thank you for bringing this bill forward. As I am looking at the amendment regarding the treatment program, my concern is that we are creating a mechanism that may grant us a legacy cost if not executed properly. I certainly applaud your efforts. What is in the bill to ensure that we do not have a private/public partnership, leading to costs? I am afraid that if this bill passes, suddenly \$25 from every court case will be allocated towards solving this problem in a private facility, but with public money.

Assemblyman Anderson:

If something like that did become a problem, the Legislature can always correct it later. I will also point out that there are other options available. It is not mandatory that judges place people into this program. As far as I am

concerned, we are not mandating any costs potentially legacy-wise to Nevada. The language does say "if such a program is available in the jurisdiction," which is another escape hatch from that requirement.

Assemblyman Sherwood:

I realize that we cannot mandate future legislators to keep it there, but the scope is something to potentially be worried about.

Chairman Horne:

I do not see any other questions. Thank you very much. Is there anyone else to testify? Mr. Bateman, please proceed.

Sam Bateman, representing Nevada District Attorneys Association:

We are in support of A.B. 161. Obviously, there is an issue which has been addressed. Assemblyman Anderson has been talking to many people for input to solve the issue. He has provided the conceptual amendment, so obviously there will be some amending of the language and various options. In general, we recognize the problem, and we support the attempt to address it. I will be happy to answer any questions you may have.

Chairman Horne:

I see no questions. Thank you. Is there anyone else wishing to testify? I see none. We will close the hearing on A.B. 161 and bring it back to the Committee. Please keep working on the concerns and issues, Mr. Anderson. We will now open the hearing on Assembly Bill 313.

Assembly Bill 313: Revises provisions governing the custody and visitation of children for persons who are members of the military. (BDR 11-627)

Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42:

Thank you for the opportunity to present Assembly Bill 313. With me are two individuals who have been instrumental in helping me bring this legislation forward. To my right is Dr. Laurie Crehan with the United States Department of Defense. Next to her is Major Laurence Irwin, Staff Judge Advocate for the Nevada Army National Guard. I will go over the sections of the bill. Afterward, Dr. Crehan will provide a broader picture. There is similar legislation that 19 other states are considering. Major Irwin will speak of the issues from the local perspective. I want to thank the Major for attending today because he is either on vacation or it is his day off.

As you know, it is not a hidden secret that there is a substantial increase in our armed forces around the world. Being a military family is extremely challenging.

It becomes even more complex when the parents are no longer married. The Department of Defense is a strong advocate for the welfare of the child, and believes that the demands of military service should not disregard the parents' rights. That is what A.B. 313 is about.

The bill seeks to protect the military parents' rights while seeking the best interest for the child. Sections 3 through 9 outline general definitions with regard to military deployment. Section 10 states that the court should not make a final judgment on the existing child custody arrangements until 90 days after completion of deployment. Section 11 states that deployment or future deployment should not be the sole reason for making permanent changes to existing custody or visitation orders. Section 12 addresses temporary modification of custody or child visitation orders to reasonably accommodate the deployed parent. Section 13 further states that the temporary modification will be reinstated once the deployed parent completes the mission. Section 14 covers circumstances regarding regularly scheduled hearings involving custody or visitation matters, and states that the court shall permit expedited hearings, or allow the deployed parent to present testimony or evidence by affidavit by electronic means, or a combination of both. Section 15 deals with allowing the deployed parent to delegate his or her visitation rights to a family member. It also describes provisions as to when it can or cannot occur. Section 16 says that if the deployment is forthcoming and the custody or visitation orders have not yet been issued, it allows a court to hold an expedited hearing for issuing a temporary order. Section 17 outlines the cooperation required between both parents if the military orders are pressing before the hearing occurs. Section 18 spells out that deployment should be considered a temporary absence. Section 19 addresses the issue of parents causing unreasonable delays, and allows the court the liberty to award costs and reasonable attorney fees. Finally, section 20 states that the provision regarding custody and visitation does not apply if there is an order for protection against domestic violence. I would like to turn it over to Dr. Crehan to provide a broader picture of the bill.

Chairman Horne:

I do not see any questions at this time. Dr. Crehan, please proceed.

Laurie Crehan, Regional Liaison, Office of the Deputy Under Secretary of Defense, U.S. Department of Defense:

Our mission is to be a resource to state policymakers, as they work on issues related to quality of life for military families. I want to thank the Committee for the ability to testify on behalf of A.B. 313. I would also like to thank Assemblywoman Bustamante Adams for carrying this legislation. [Continued reading from written testimony ([Exhibit I](#)).]

Assemblyman Kite:

One section of the bill states an individual may present his deposition either by mail or electronically. I support that. Can you give me a scenario where if a member of the military is deployed, and the family is living in another state, would this bill still cover the Nevada resident who may be deployed somewhere else? In other words, there are many times when both spouses will be transferred to a duty station outside their state of residence. If the custody suit has been filed somewhere other than their state of residence, will this law help them?

Chairman Horne:

I notice that Ms. Surratt is in our audience. She practices in family law. If we can have her come up to the witness table, she would be best suited to answer the question.

Kimberly Surratt, representing Nevada Justice Association:

I am an unpaid lobbyist and a private family law practitioner in Reno, Nevada. I practice exclusively in family law throughout Nevada. Assemblyman Kite, the question that you posed is a jurisdictional question. This bill will assist with any family that has managed to obtain original custody jurisdiction in Nevada. We have some extensive jurisdictional acts around the country regarding which court and which state has jurisdiction over a child. For the most part, the rule is based on a child residing in a state for six months. Once that child has resided in the state for six months, the residing state takes jurisdiction over the child. However, we also have to deal with some complex issues regarding where the original custody orders took place. Were they issued in Nevada versus the state where the two parents may be stationed at the time? There is a very wide range of jurisdictional conversations that we may have in that context. If Nevada was the state that had the original custody order over the child, this bill will be our guideline for the issue.

Chairman Horne:

Some of these deployments are sometimes longer than six months. Additionally, they are not necessarily considered deployment. They may be training missions that may exceed six months or a year. The jurisdiction in that case would not necessarily change because they are away for more than six months. Is that correct?

Kimberly Surratt:

That is correct. If someone already had a custody order in Nevada, the jurisdiction of the custody order will be in Nevada, and will be the state to modify the custody order. This bill will be extremely useful in that context. Nevada does not lose the jurisdiction just because someone may be gone for six

months. When we deal with custody issues, we follow the child and not the parents around the country. Therefore, we are concerned with where the child is located and not where the parents are located. If the parent is gone on an exercise or deployment, we watch the child and not the parent.

Laurence B. Irwin, Major, State Judge Advocate, Nevada Army National Guard:

Thank you for the opportunity to testify this morning. I have submitted prepared testimony ([Exhibit J](#)). From a local perspective, I think this law fulfills a need in protecting our service members in the Nevada Army National Guard. Since 2003, we have had approximately 20 to 25 company deployments. In the Army, those deployments are normally in excess of one year. In the Nevada Army National Guard, they are approximately 90 days. I know of cases where some are deployed for 90 days, 5 times or more. I believe the law is a good law. It provides greater protection to our service members, and does not allow them to be punished for deploying. I have seen this happen. I spent a good amount of my time in the role of a legal assistant. I assist army or air members with family law packets. About 75 percent of my time in the legal arena is dedicated to family law issues, which can be quite contentious and complicated. I believe this bill is a constitutional law which strikes a good balance between the rights of both parents. It recognizes that, as per *Nevada Revised Statutes* (NRS) Chapter 125, a delegation of visitation must be consistent with Nevada's revised third party visitation statute, which was amended after the landmark U.S. Supreme Court case of *Troxel v. Granville*, 530 U.S. 57 (2000). Also, allowing for the opportunity to provide testimony by fax, email, or phone, helps the court to move forward more quickly. Delay helps nobody in a family law situation. Although the Servicemembers Civil Relief Act is available to stay proceedings, often staying proceedings is sometimes the worst option, resulting in greater legal costs and frustrations. I will be happy to answer any questions the Committee may have. Thank you.

Assemblyman Daly:

I have more of a comment than a question. I support what we are trying to do here. Regarding section 17, I am not sure whether we are going to be successful ordering hostile parents to cooperate with each other. We may do better to ask them to cooperate with the court. The section also states that parents have to provide the orders immediately. There probably should be some parameter included, like as soon as possible, or within 24 hours, especially if it is a hostile situation. Other than that, I think it reads very well, and we should move forward.

Chairman Horne:

I think that Ms. Surratt can address your concerns on that issue, such as requiring parents to cooperate, which is one of the responsibilities for the

attorneys. The attorneys should ensure their clients are cooperative. If they are not, they do so at their own peril.

Kimberly Surratt:

As a family law attorney, trying to get people to cooperate almost never happens. Family law is based on factors. We do not take just one element to decide the best interest of the child. There are many factors that we must contemplate for the child's best interest. If there is a provision requiring people to cooperate, and one parent is not doing so, that is something to consider in the weight of making a decision in the best interest of the child. We like it when those type of provisions are in there because when people see it in statute, and see that it is ordered, they seem to cooperate a little bit easier because visitation or time with their child could be jeopardized. I will agree with your statement that anything stating "immediately" is a wide discretion, which can have any interpretation. Most judges would define the timeline themselves, which may be the better way to go. Depending on the specific circumstances and facts pertaining to the specific family, "immediate" may have a different definition on a family by family basis.

Chairman Horne:

Are there any more questions? Ms. Surratt, do you have a formal statement to make for the record?

Kimberly Surratt:

On behalf of the Nevada Justice Association, we support this bill. As a family law practitioner, this bill covers many of the elements that I am often here testifying to. It leaves the discretion to the court. It uses "may" as the key word, which I am always looking for in any family law context. Every family is so significantly different. The bill is well drafted, and the only time it uses the word "must" is in the context of the order. Once the service member is back in the country, and we are dealing with your typical everyday factors for deciding custody, it is important for us to have an order that dictates the reason for modification, or the reason things were held back was because of deployment. It should not be because of other factual contexts within the family. Thank you.

Assemblywoman Diaz:

I know that sometimes upon return, the military person may not be physically or emotionally 100 percent. I was wondering whether the 90 days referenced in section 10 could be extended through the court system. Is the 90-day framework long enough for the military person to be well and take on a custody case? Can the court deem a longer window?

Kimberly Surratt:

As I read it, he cannot proceed until 90 days past the termination, which would mean he does not have to proceed right at 90 days. Our family court has a wide range when dealing with children. The jurisdiction remains open until the children are adults. Orders can always be modified or adjusted based on the children's best interest. A court can easily hold off longer than 90 days, as this bill is drafted.

Chairman Horne:

I see no other questions. Is there anyone else to testify in support of A.B. 313?

Joseph Baumann, Chief Warrant Officer, Nevada Army National Guard:

I am here to support the bill because many times when we are deployed, we do not have a lot of choices. Nowadays we have better communication than our forefathers had, but there is still a lot of gap. Ms. Diaz, regarding your question pertaining to problems with soldiers coming back physically or mentally disabled, I almost take offense. People at home can have the same issues as well. As sometimes viewed in the media, soldiers may have problems, but there is no mention about what is happening here in the United States. I received divorce papers while I was deployed. I did not have much choice or many options while I was away. I was able to hold it pending until I returned. This bill will give the soldiers that are deployed, male and female, the ability to have the time to deal with the issue. The 90 days allowed in the bill is usually a good time to get everything straight.

Assemblywoman Diaz:

I did not mean to say that all soldiers are coming back mentally unstable. What I am saying is that there may be special circumstances with a few. Some may come back with physical ailments that they have incurred during their missions. My question was referring to the exceptions. I am not saying that it is the norm. I just wanted to clarify my question.

Joseph Baumann:

That is fine. My ex-wife actually assumed that I was going to come back deranged, and that was one of her reasons for filing the divorce.

Chairman Horne:

Are there any questions? Is there anyone wishing to get on the record for A.B. 313?

Travis W. Hughes, Sergeant First Class, Nevada Army National Guard:

I also just went through a painstaking divorce where custody was a major issue. My unit is up for deployment currently, and I am unable to attend the

deployment. The judge stated that if I were to deploy, custody would go to my ex-wife in Utah. The judge said that once I returned, the establishment rule will have taken effect, and I probably would not get joint custody. My commander granted me an exemption from this deployment since I have already deployed once in this war effort. The judge has now granted full custody to me; however, what I was looking for was a joint custody. There should be a joint fairness between the two of us. Basically, the judge used my deployment or my potential deployment as a determining factor. Because that has already taken place, the bill will not help me much right now. What we are trying to do is help other service members so that this does not happen to them. I support this bill 100 percent.

Chairman Horne:

I see there are no questions. Thank you very much for your testimony. Is there anyone else opposed or neutral? I see none. We will close the hearing on A.B. 313. I thank Assemblywoman Bustamante Adams for bringing this bill to us. I think it is an excellent piece of legislation. Is there any other business to come before the Committee? Is there public comment? Seeing none, we are adjourned [at 11:10 a.m.].

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 4, 2011

Time of Meeting: 9:06 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 135	C	Assemblyman William C. Horne, Clark County Assembly District No. 34	Proposed Amendment
A.B. 135	D	Lisa A. Rasmussen, Nevada Attorneys for Criminal Justice	Written Testimony
A.B. 135	E	Tom Ely, Nevada State Law Enforcement Officers' Association	Written Testimony
A.B. 161	F	Assemblyman Elliot T. Anderson, Clark County Assembly District No. 15	Presentation
A.B. 161	G	Assemblyman Elliot T. Anderson	Conceptual Amendment
A.B. 161	H	Amy Coffee and Lisa Rasmussen, Nevada Attorneys for Criminal Justice	Written Testimony
A.B. 313	I	Laurie Crehan, Office of the Deputy under Secretary of Defense	Written Testimony
A.B. 313	J	Laurence B. Irwin, Major, Nevada Army National Guard	Written Testimony