

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

**Seventy-Sixth Session
April 6, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 7:47 a.m. on Wednesday, April 6, 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 John Hambrick, Clark County Assembly District No. 2

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Nancy Davis, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Julie Janovsky, Senior Policy Specialist and Communications Advisor,
Polaris Project, Washington, D.C.
Jill Morris, Director of Advocacy, Not For Sale Campaign, Half Moon
Bay, California
Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
John V. Cracchiolo, Executive Director, Nevada Catholic Conference
Christopher J. W. Oswald, Director, State Government Affairs, Western
Region, Reed Elsevier, Sacramento, California
Larry D. Struve, Advocate, Religious Alliance in Nevada
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public
Defender's Office
George William Treat Flint, representing Select Legal Brothels of Nevada
Michelle R. Jotz, Director of Governmental Affairs, Las Vegas Police
Protective Association Metro, Inc.
Sam Bateman, representing the Nevada District Attorneys Association
Brett Kandt, Special Deputy Attorney General, Executive Director,
Advisory Council for Prosecuting Attorneys, Office of the
Attorney General
Julie B. Towler, Deputy Attorney General, Bureau of Public Affairs, Public
Safety Division, Office of the Attorney General
Michael Mauntel, Sergeant, Las Vegas Metropolitan Police Department
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties
Union of Nevada
Mark Alan Nissenbaum, Principal, Criminal Defense Law Center,
Reno, Nevada
Carl Post, Sex Offender Solutions & Education Network,
Middleburg, Florida
Mary Duval, Chief Executive Officer, Sex Offender Solutions & Education
Network, Stilwell, Oklahoma
Laurie Johnson, Nevada State Affiliate Leader, Citizens for Change
America
Jerod Updike, Private Citizen, Reno, Nevada
Wesley Goetz, Private Citizen, Incline Village, Nevada

Elisa P. Cafferata, President & CEO, Nevada Advocates for Planned Parenthood Affiliates
Marlene Lockard, representing Nevada Women's Lobby
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Tim Kuzanek, Captain, Special Operations Division, Washoe County Sheriff's Office
Rex Reed, Administrator of the Offender Management Division, Department of Corrections
Glynn Hays, Central Transportation, Department of Corrections
James G. (Greg) Cox, Acting Director, Department of Corrections
Carolyn Myles, Acting Warden, Florence McClure Women's Correctional Center, North Las Vegas
John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts

Chairman Horne:

[Roll was taken.] We have three bills on the agenda and a work session document. The work session document was posted yesterday after 5:00 p.m. We will begin with Assembly Bill 6.

Assembly Bill 6: Authorizes courts to allow certain victims of sex trafficking or involuntary servitude who have been convicted of engaging in or soliciting prostitution to seek new trials and have their judgments of conviction vacated. (BDR 14-366)

Assemblyman John Hambrick, Clark County Assembly District No. 2:

Before you this morning is A.B. 6 which deals with a topic within the human trafficking arena. This Committee, in the past few years, has heard horrendous stories about the scourge of human trafficking, including the commercialization of the sex trade of young men and women in this state and across the nation. These young women and men are victims. Assembly Bill 6 will attempt to terminate the continued victimization of these individuals. Should a young man or woman be able to escape the trafficker, he most likely has been arrested for prostitution or other crimes related to human trafficking. In an attempt to obtain employment, he will most likely have to list his arrest record. This is continued victimization of these individuals. Assembly Bill 6 will allow the court, upon petition of the victims, to vacate the arrest records. It would allow the victim to apply for employment and claim that he has not been arrested. This would give him some sort of semblance of normalcy.

We will never be able to return the innocence and so many other things these young victims have lost while being trafficked. We have got to start

someplace. I urge you to give this bill favorable consideration. This bill is not an attempt to retry the facts of any given case. The guilty sentences are in place, however the victims would be allowed to petition the court to vacate. There will be no plea bargaining, or forcing testimony to turn someone in. That is not the intent of this bill. It is only to allow the victim to petition the court for mercy and to vacate his sentence. Section 1 states the court may grant a new trial. Trial is a euphemism. It would be a hearing, or a trial without jury. The court may vacate the judgment if entered, take additional testimony, and direct a new judgment. Section 1, subsection 4, states "Except as otherwise provided in subsection 5, a motion for a new trial based on any other grounds must be made within 7 days" This bill will waive the seven days. There will not be a time frame. It often takes time to escape. There may be an arrest that is months or years old. Once the victim escapes, they need the opportunity to come into court without having a time limit involved. The court may waive the time limit as you see in section 1, subsection 5, paragraph (a), "The judgment is a conviction for a violation of NRS 201.354, for engaging in prostitution or solicitation for prostitution" This applies only to the victim, not the "johns." The involuntary servitude aspect of human trafficking is quite apparent. These women and men have no choice. They have been kidnapped, bought or sold, and are forced to maintain the pimps and their traffickers. Many are prostituted out 10 to 15 times a day, 6 days a week. They are truly victims.

[Assemblyman Hambrick read the rest of the bill.]

This bill is very clear and upfront. I tried not to make it very complicated. I wanted it to be very easy to decide. You will be hearing testimony from the author of this bill, Julie Janovsky. Jill Morris will also testify.

Chairman Horne:

I misunderstood part of your testimony. You said this does not call for a retrying of the facts, but the bill says they can petition for a motion for a new trial. I am confused on how you envision this. Someone is going to petition the court to vacate their previous conviction and for a new trial, or just a vacate and no trial at all?

Assemblyman Hambrick:

The word trial was put in by Legislative Counsel Bureau (LCB). Basically it will be a hearing for the court to determine whether or not vacating would be the proper course. I do not intend this to be a retrying of the facts. That has already been established. We are asking the courts to grant mercy on these victims and vacate the records that are already in place.

Chairman Horne:

I think the language will need to be clarified. It looks like most of these are trials before a judge with no jury, because most times they are misdemeanors.

Julie Janovsky, Senior Policy Specialist and Communications Advisor, Polaris Project, Washington, D.C.:

Thank you for the opportunity to provide testimony in support of A.B. 6. This legislation will help to provide victims of sex trafficking with a fresh start as they work to overcome the severe victimization that goes on during a sex trafficking case. I would also like to thank Assemblyman Hambrick for introducing this bill. The Polaris Project is a national nonprofit which works to combat human trafficking within the United States of minors, adults, U.S. citizens and foreign nationals. We do this by providing direct survivor support including intervention, housing, job training, and public education. We also provide advocacy at the state and federal level. I have provided you with written testimony ([Exhibit C](#)), and would like to highlight a few points.

Assembly Bill 6 is modeled after similar legislation which was enacted in New York in 2010. Currently there are several bills pending and advancing in California, Illinois, Maryland, and Pennsylvania. I understand the Committee is familiar with this issue already. I thank you for your previous work on it. Human trafficking is one of the fastest growing crimes in the world. It is estimated to bring in between \$32 billion and \$36 billion per year for traffickers. In Nevada, victims of sex trafficking include U.S. citizens, foreign nationals, children and adults, men and women, girls and boys. Typically traffickers will force victims to provide prostitution or commercial sex in massage parlors, residential brothels, or on the streets. Increasingly, victims are advertised on Internet sites and put in hotels or motels or at truck stops where they will be forced to provide sexual services to many, many men every night. Traffickers require the victims to meet a daily quota. If they do not meet the quota, which can be anywhere from \$500 to \$1,200, they will be subjected to additional abuse and torture. These victims face a horrific life. It involves repeated threats, beatings, rapings, starvation, and being locked up and psychologically tortured. As a result, survivors face a multitude of challenges once they are able to escape the trafficker's control. Often that includes severe physical and psychological trauma. Further, the average age of entry into prostitution for an American-born female is between the ages of 12 and 14. If they were brought in at that age, they were generally lacking some of the most basic tools used to go further in life. Most victims of sex trafficking incur a criminal record filled with prostitution convictions; a crime they were forced into. You can imagine these convictions carry great stigmatization, but they also create a tremendous challenge as a survivor attempts to seek employment, loans, and education.

I would ask you to look at this from the eyes of one of our clients. She finally escapes the control of a trafficker. She is able to get medical care, counseling, temporary housing, and is provided with basic job skills. She applies for jobs, lands an interview. At the end of the interview, the interviewer says, "Everything looks great. We would like to move forward with offering you the position. Give me one minute while we do a criminal background check. Is there anything we need to be aware of?" Our survivor is at a complete loss. This is the question that most victims are praying is not asked, because how do they defend their record of prostitution, and how do they tell a future prospective employer that they were a victim of human trafficking? I ask that the Committee give these victims a little bit of clarity and ability to move forward with their lives and away from the abuse of their past.

Chairman Horne:

Are you aware of other jurisdictions that have passed similar legislation?

Julie Janovsky:

New York was the first, and it is already in place and has been for about a year. Currently there are three other states where similar legislation is making its way through the process.

Chairman Horne:

In the victim's petition, do they articulate facts that they were victims of trafficking?

Julie Janovsky:

Since this statute was enacted in New York, there have been four victims who have come forth and petitioned the courts to have those convictions vacated from their record. They work with victim service providers, specifically, who work on human trafficking, who have been able to provide documentation. They do not have a retrial. They also submit a petition to the court, and the court makes the decision. Some of the other pending bills are a little different. In Illinois, for instance, they are working to add this as a crime where it can be expunged from your record if you can show that you were a victim of trafficking either through victim service providers or through law enforcement.

Assemblyman Frierson:

In my practice I often see young people that are runaways from other states and brought into Nevada. There may not be an indication that they were a victim of trafficking at the time. I want to ensure that those individuals have the opportunity to tell their story. It sounds like it is at a judicial discretion, and the judge would be able to evaluate the petition.

Julie Janovsky:

Under federal law, if a person is under 18 years of age, and is involved in commercial sex, he is automatically a victim of human trafficking. This is one of the elements that was placed in this bill.

Chairman Horne:

Any other questions? [There were none.] Thank you for your testimony.

Jill Morris, Director of Advocacy, Not For Sale Campaign, Half Moon Bay, California:

I would like to thank Assemblyman Hambrick for bringing this legislation to this Committee. What Nevada is doing with this bill is very innovative. Human trafficking is a terrible crime. It is one of the largest crimes worldwide. Human trafficking is the second most lucrative crime, the most profitable crime for the perpetrators. It comes second only to drug trafficking. One of the things that the Not For Sale Campaign does is help legislative bodies both on the federal level and the state level look at how laws have changed over the past 20 years, and look at ways to change them. Nevada is a unique place, given that in some counties, prostitution and sex work is legal. Nevada is seen by perpetrators as a haven. They come here and perpetrate these crimes. They sell humans for profit. People might not notice because there is a legal industry which might be a reason for some criminals to think they can get away with trafficking.

One of the tactics that the traffickers use is to tell their victims, "If you call the police, or run away, or if this brothel is raided, you will be arrested for prostitution." When these victims are arrested for prostitution, it revictimizes them. Not only have they been victimized and had their bodies sold night after night, sometimes for years, then the system basically is revictimizing them by calling them a criminal. The victims I have talked to say, "I feel like it was my fault that this happened to me. Now I cannot get a job."

There are many victim services that help victims rebuild their lives, but we are pretty much handcuffed in situations like this, where the victim may be convicted of prostitution. There really is nothing a victim advocate can do. What we need to do is take the lessons we have learned from the past 20 years about trafficking and find ways to change the laws so that we can help these people. Having a crime on their record pretty much destroys their opportunity to be able to support themselves. If a person is unable to rebuild his life and get a legitimate job to support himself, he may be revictimized. I am calling on you to be innovative and to be a leader in this field. Be a leader in the anti-trafficking laws. You will show the perpetrators in your state that you take this issue seriously, you want to help victims, and you want to stop this heinous crime. [Provided written testimony ([Exhibit D](#)).]

Chairman Horne:

Thank you.

Assemblyman Carrillo:

This bill states the conviction will be vacated, but it does not state that the record will be sealed so it cannot follow them later in life. Is it necessary to amend the bill?

Assemblyman Hambrick:

I believe that vacating is actually a more stringent requirement than sealing. To vacate, it is as though it never existed.

Chairman Horne:

I understand that if something is vacated, there is still an arrest record.

Nick Anthony, Committee Counsel:

We can research that further to see if the intent needs to be further clarified.

Chairman Horne:

If we find a need, would you be amenable to provide a provision that says that upon an order from the judge to vacate, the records would also be sealed?

Assemblyman Hambrick:

I have found that the more eyes and hands involved, the better the bill. If we can have a review by legal counsel, I am in total agreement with an amendment.

Chairman Horne:

Any questions?

Assemblywoman Diaz:

Do you have any numbers as to how many people are being trafficked in Nevada?

Jill Morris:

I do not have any specific information for Nevada. Unfortunately, since this crime is so hidden, it is often impossible to give an exact number. I would say that there is probably a very high rate in Nevada. We see trafficking in every state and almost every community in the United States. Given the unique situation with legal sex work in Nevada, I would bet my career that there is a great number of sex trafficking going on there.

Assemblyman Sherwood:

You stated that with legal prostitution there is more trafficking. Do you feel that if prostitution were legalized, trafficking would go down because there is an outlet, or would it encourage trafficking?

Jill Morris:

I believe that in places where prostitution is legal, there is a propensity for traffickers to see that as a market. They see there is a demand for sex work, therefore, they go to those areas thinking customers are going to come to that area to pay for sex. If I provide a commodity, a person, then I will get more business because the actual customers will be there. There is a supply and demand. Where prostitution is legal or culturally accepted, traffickers see that as an opportunity for an open market.

Chairman Horne:

Any other questions? [There were none.] Thank you for your testimony. Anyone here in favor of A.B. 6?

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

We support A.B. 6. Anything that helps turn the lives around of these victims of human trafficking, our agency is behind.

John V. Cracchiolo, Executive Director, Nevada Catholic Conference:

We are in support in A.B. 6. We want to thank Assemblyman Hambrick for shedding light on this particular issue of human trafficking and the exploitation of so many people. We agree that certain individuals should have an opportunity to have their cases vacated, if indeed they were victims of human trafficking.

Assemblyman Kite:

I support this bill, and I put a lot of faith in our judicial system, but what happens if we seal or vacate someone's conviction, and he is arrested again? If a case is vacated, do you start building a case on that person all over again?

Chairman Horne:

I believe it would be a new charge of solicitation for prostitution. This does not preclude anyone from subsequent prosecutions for that conduct.

**Christopher J. W. Oswald, Director, State Government Affairs, Western Region,
Reed Elsevier, Sacramento, California:**

I am pleased to speak today in support of A.B. 6, which grants the court the authority, in certain circumstances, to reexamine the record of a victim of human trafficking who has been previously convicted of prostitution.

[Read from written testimony ([Exhibit E](#)).]

Larry D. Struve, Advocate, Religious Alliance in Nevada:

The Religious Alliance in Nevada (RAIN) Board has reviewed this bill and has instructed me to appear before you to very strongly support this bill. The Board did this at the request of Episcopal Bishop Dan T. Edwards, who has worked with Assemblyman Hambrick and many faith organizations in southern Nevada to try and get a handle on the scope of the human trafficking problem. The RAIN Board views A.B. 6 as a very compassionate piece of legislation. As you know, RAIN is about redemption, about giving people an opportunity to turn their lives around and try to become whole persons again. Assembly Bill 6 is the mainstream of that kind of legislation. If a child has been a victim of human trafficking, this bill certainly provides an opportunity for that victim to turn her life around. If this bill is passed, there are victims who will be able to take advantage of this legislation, who will turn their lives around, and persuade others who are victims of this terrible crime to do the same. RAIN believes that the subject of human trafficking is going to have to be addressed. It is a very pervasive problem in this state and it affects thousands and thousands of people. This is a good start and for that reason, RAIN hopes you process A.B. 6.

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

We support this bill, and appreciate the recognition that a lot of criminals are themselves victims of crime. We see that very often. As part of the criminal justice system, redemption and rehabilitation is as important, and sometimes even more important, than the punitive aspects of the criminal justice system. This gives us tools to do more than just explore legal defenses. In fact, most of what I do as a public defender is try to help people rebuild their lives so they do not become a repeat customer. We appreciate this bill for that opportunity, not just for my clients but for society as a whole.

George William Treat Flint, representing Select Legal Brothels of Nevada:

I am in support of A.B. 6 and recognize the courage Assemblyman Hambrick has shown in bringing this issue to the forefront. There are no strong figures available as it relates to the numbers of trafficking that goes on in this state. We are told by people more expert than I that Clark County and Washoe County

have as high or a higher amount of trafficking than exists anywhere else. Also, many young people end up in Las Vegas because of the glitz and the neon and inviting appearance of the city. Sometimes they are enticed. Sometimes minors are not trafficked or pimped, but are enticed into trying this with the promise of riches and glamour. Regarding residential brothels, I do not represent residential brothels. There are hundreds of residential brothels in this state. Testimony this morning referred several times to the legal activity in Nevada. Pimping in the state of Nevada is a felony subject to five years in prison. The brothels do not have any relationship whatsoever with known pimps. We do not hire underage girls. When a lady wants to work in a legal brothel, she is interrogated at length both by the sheriff in the county or the chief of police in the city as well as by the brothel management to ensure that she is there on her own will and accord. Additionally, in all counties except Lyon and Storey, the women must have identification proving they are 21 years old or older. In Lyon and Storey, they can work at 18 years of age, but their identification has to be pure.

There were 5,000 arrests in Clark County last year for soliciting and prostitution. Additionally there were 91 arrests in Clark County related to exploiters. That is unfortunate. This bill will help many of those otherwise innocent young men and women who were trafficked into the business, not realizing that it is illegal. It is unfortunate that we have such a varied attitude from one county to the next in this state. I am sorry, at times, that the model that has proven to work so well for the last 100 years has not been more widely accepted, not only in Nevada, but also nationally. Most politicians are loathe to have their fingerprints on this subject. It is a simple fact that you are not going to do away with the business of prostitution, regardless of how it is handled. Doing away with it is like trying to sweep the sand off the beach. In the country of India, they estimate many as 20 million prostitutes. It is tolerated there as long as the women do not exploit or advertise themselves. In England, a woman may work alone as a working lady completely free of any prosecution from the law. We have not heard a story this morning of what might happen or has happened as it relates to the substance of A.B. 6.

I grew up with a young lady in an eastern Wyoming town who worked in a local brothel. She was a lovely young lady. She started in the business at 20 years old and stayed in it for 10 years. It took her 10 years to erase the fact that she had been a working prostitute, although she had never been convicted. She finally landed a job and went on to have a 30-year career in an outstanding position in the federal justice system. We support this bill.

Chairman Horne:

Any questions? [There were none.]

Michelle R. Jotz, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.:

We appreciate this bill and are in support of it.

Chairman Horne:

Anyone else here to testify in favor of A.B. 6? Anyone opposed? Anyone neutral?

Sam Bateman, representing the Nevada District Attorneys Association:

We are neutral on this bill. Regarding the chapter to put this subject matter in, I had originally thought that perhaps Chapter 34 of *Nevada Revised Statutes* (NRS), which governs postconviction petitions might have been an appropriate Chapter. I understand the Chairman bringing up the fact that most of these probably had not gone to trial, in fact, most of these convictions are misdemeanors and probably 99 percent of them will be as a result of guilty pleas. There is also the possibility of addressing this issue through the motion to withdraw a guilty plea.

One suggestion that you may want to consider is the only time a soliciting case may end up as a felony conviction is if a victim has been known to have HIV or AIDS. If a person is stopped for soliciting, she has a blood draw, and, if applicable, she will be notified that she is HIV positive. If she solicits again, knowing she is HIV positive, we will charge her with a felony offense. You may want to consider if you want to include those individuals within the purview of this statute. It might be different than the standard adult misdemeanant who is being trafficked, but has been notified of their HIV status. I would like to note that the District Attorney's Office, Juvenile Division, works very hard to identify these trafficking victims and to help them. We may not have all the tools necessary to address this problem, but we certainly do not do a very good job identifying these victims when they become adults.

Chairman Horne:

For clarification, is it your suggestion, regarding those persons who are arrested and convicted for solicitation of prostitution after being notified of their HIV status, that they should or should not be included in this bill for relief?

Sam Bateman:

I am a little uncomfortable with it. I have not spoken to Assemblyman Hambrick about that specific small portion of prostitutes. I wonder if those individuals would fall into a different category than the young

people being trafficked. I see those individuals who have been given notice, and they would probably not fall into the same category that we are trying to address with this bill. I would just like it considered. It also creates a different situation where you are dealing with someone who has probably been convicted of a felony, maybe even done prison time, as opposed to the individuals that we are trying to capture in this bill and are most likely misdemeanants, most likely have already paid their fine, and have done some sort of informal probation. I see two different groups in the system. We tend to see the individuals who are HIV positive more on the streets and being arrested quite often.

Chairman Horne:

One thing that would concern me in putting them in a separate class is, arguably, the person who has been notified of her HIV status could still be being trafficked. I do not believe that knowing she is HIV positive will bolster her will any greater to fight the person who is trafficking her. Just because a person is HIV positive does not mean she does not have the same threat of harm as one who is not HIV positive. I do not believe she should be treated any differently.

Sam Bateman:

I agree. I just want the Committee to know that we are dealing with more than misdemeanants, and there are some felony situations.

Assemblyman Brooks:

For clarification, are you stating that women who are HIV positive and have been in the sexual trafficking industry should be treated differently? What is your rationale for that?

Sam Bateman:

I am not suggesting that you treat them differently. I just want to ensure that the Committee knows we are not dealing with just misdemeanants.

Assemblyman Brooks:

I guess there would need to be a process put into place to determine whether this woman was actually trafficked or whether she is a prostitute. I think you may be looking for some language like that. I certainly would not agree that if a woman is being trafficked and she happens to contract HIV, that she should be penalized.

Chairman Horne:

Any other questions? [There were none.] Assemblyman Hambrick, there was a discussion on including those persons who have been convicted of felonies because they have been notified of being HIV positive and continued to solicit prostitution. Mr. Bateman wants the Committee to know that there are some

people with felony convictions that may or may not apply under this bill. Assemblyman Brooks and myself have concerns about excluding those persons from seeking relief who have been trafficked and happen to be HIV positive.

Assemblyman Hambrick:

Through the wisdom of this Committee, with your collective thoughts and experience, I will agree with the wishes and desires of the Committee.

Chairman Horne:

I will now close the hearing on A.B. 6. I will open the hearing on Assembly Bill 57.

Assembly Bill 57: Makes various changes governing certain criminal offenders.
(BDR 14-292)

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

I am here today on behalf of the Attorney General to discuss A.B. 57. The rationale for this bill came from discussion from the Advisory Committee to Study Laws Concerning Sex Offender Registration which was established by Assembly Bill No. 85 of the 75th Session. Assembly Bill 57 has been deemed to have merit, even while the litigation regarding Nevada's enactment of the Adam Walsh Act and the permanent injunction entered in *ACLU of Nevada v. Masto*, No. 2:08-cv-00822 (D. Nev. October 7, 2008), remain pending in federal court. Assembly Bill 57 addresses a fundamental "nuts and bolts" issue in the effective administration of the Nevada Sex Offender Registry, an issue that is unrelated to the Adam Walsh Act and independent of whether the Adam Walsh Act is implemented in Nevada. That issue, simply stated, is the ability of law enforcement to keep track of transient sex offenders in a manner that achieves the purposes of the Sex Offender Registry. With me is Julie Towler, Deputy Attorney General representing the Department of Public Safety, which maintains the Nevada Sex Offender Registry. Julie will go through the specific sections of the legislation. Also with me here in Carson City is Chuck Callaway from the Las Vegas Metropolitan Police Department. In Las Vegas is Sergeant Michael Mauntel of the Las Vegas Metropolitan Police Department's Sex Offender Apprehension Program. They will provide further detail on the challenges law enforcement faces due to deficiencies in the current sex offender registration requirements. Challenges we believe would be remedied by A.B. 57. [Brett Kandt also provided written testimony ([Exhibit F](#)).]

Julie B. Towler, Deputy Attorney General, Bureau of Public Affairs, Public Safety Division, Office of the Attorney General:

Section 3 of this bill adds the requirement that a sex offender, when registering with law enforcement agencies, must provide specific information if he does not have a fixed residence. This information would include the address of any dwelling or temporary shelter of the sex offender or any other location where the sex offender habitually sleeps. Currently, sex offenders must only provide, to the extent the information is available, information concerning the sex offender's fixed residence. Transient sex offenders have no fixed residence to provide and therefore may be located anywhere within the county of registration, posing significant challenges for law enforcement, which will be further detailed by the representatives from the Las Vegas Metropolitan Police Department. Please note that the proposed requirement that the sex offender provide information concerning any dwelling or temporary shelter of the sex offender, or any other location where the sex offender habitually sleeps, is subject to an important qualifier. This information must only be provided to the extent that it is available. Therefore, a sex offender who truly does not know where he will be sleeping tonight, tomorrow, or next week would not be caught in a legal Catch-22 by his inability to provide a location. Furthermore, the language as drafted is intended to allow a sex offender to provide multiple locations; recognizing the reality of the situation for some individuals may be that, for instance, they reside in one outdoor location unless the weather forces them into a shelter.

Section 5 of this bill expands the existing duty of a sex offender under *Nevada Revised Statutes* (NRS) 179D.470 to provide updated information to law enforcement agencies, to include notification after any change in location, temporary shelter or place where the sex offender habitually sleeps, or after staying in a jurisdiction longer than 45 days when the sex offender originally reported a stay of less than 45 days. Currently, sex offenders must only notify law enforcement after a change in fixed residence, including moving into Nevada from another jurisdiction, or a change in the primary address at which the sex offender is a student or worker. This revision would again address the failure of the current law to address transient sex offenders who have no fixed residence. Further it would address the issue of sex offenders who initially present to law enforcement that they do not intend to stay in Nevada, yet remain after a significant period of time. Forty-five days is the period proposed in the bill; however, based upon conversations with Committee members and law enforcement, 30 days may be more consistent with other statutory provisions and more preferable. We leave it to the discretion of the Committee.

Brett Kandt:

The Office of the Attorney General urges the Committee to approve A.B. 57 to require transient sex offenders to provide sufficient information regarding a sex offender's location, including any temporary shelter or place where the sex offender habitually sleeps, or to notify authorities when the sex offender remains in the jurisdiction beyond a specified period contrary to previous intentions. This will enable law enforcement to keep track of transient sex offenders in a manner that achieves the purposes of the Sex Offender Registry.

Ms. Towler and I would be happy to answer any questions. However, if it pleases the Chair, I would like to have Director Callaway and Sergeant Mauntel provide further detail on the challenges law enforcement face due to deficiencies in the current sex offender registration requirements, and how those challenges would be remedied by this bill.

Chairman Horne:

Several places in the bill reference the "offender" or "sex offender." I am under the impression that this piece of legislation is dealing with the registration of certain sex offenders. I do not understand the difference between "offender" and "sex offender."

Brett Kandt:

That is to be consistent with NRS Chapter 179D, which references "offender" or "sex offender." We are certainly focused on the issue of sex offenders, but that is a drafting issue.

Chairman Horne:

I appreciate the bill. One of my concerns in this area has always been those persons who drop off the grid. I find it is dangerous with those offenders out there that we do not know about. I get fearful of too many constraints that cause many offenders to say, "Screw this, I am going to move somewhere else." Now we do not know where they are, and some may be homeless. It is the ones we do not know as opposed to the ones we do know. There are persons out there, some of whom are homeless, and are sexual predators, sometimes called "sexual panthers," ready to pounce and no one knows where they are. I believe this helps to get them on our radar screen, yet allows them to place various locations as their residence.

Assemblyman Brooks:

This bill basically deals with a homeless sex offender. Is there a fine if they are found violating this particular law? Is it counted as another felony if they do not give you the proper cross streets, or for some reason the information is not correct?

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

In a nutshell, if we can show that the person is staying at a specific location and they have not provided us with that location, they would be subject to the penalties of the law. Our intent with this bill is not to penalize people. Currently there is a loophole in the law and it allows people to say, "I am transient," and not provide an address at all. Word gets out on the street that you can use transient, and are not required to give an address. I believe we have over 100 sex offenders that are registered as transient. We have no idea where these people are. In my experience working the street, I know that most homeless folks have a general location they stay at, whether it is under a bridge at a certain location, behind a building, or in an alleyway. They have a place where they put their personal belongings, where they sleep, and for the most part, they tend to stay in those general locations. We are asking them to provide us with those general locations, as opposed to just claiming to be transient.

Assemblyman Brooks:

How do you implement a law like that? You have a homeless sex offender that is living underground, in one of the tunnels. You go to look for him and he is not there. How do you effectively implement a law like that if they are homeless?

Chuck Callaway:

It is actually the opposite of that. It is not that we go look for them and they are not there, and we charge them with a crime. Suppose a sex offender is registered at an address, we go there looking for him and he is not there. The person at the home says, "He has been gone for a day or so, but he still lives here. His belongings are here, but he is visiting his cousin." We are not going to charge that person with a sex offender failure to change address. The same for the person living in the tunnel. They provided us with that location, and we go to the tunnel and they are not there. We are not going to try to locate that person and charge him with sex offender failure to change address. Some of these homeless folks build elaborate structures to stay in. I have actually seen in the Vegas Valley Wash where one gentleman had a lawn mower engine set up to provide electricity to a makeshift cardboard hut that he had built. In some cases we can show that someone is actually residing at a location for an extended period of time. Their belongings are there, their clothes are there, their bed is there. Those are the cases where that person told us they were transient and gave us no address but, in fact, we found that they were staying for a significant period of time in a location that we could show they were staying there. That is the point where we would possibly charge that person.

Our goal is not to try to charge sex offenders. Our goal is to give us an idea of where these folks are, primarily for an investigative tool. It actually protects other sex offenders. Person A is a sex offender registered at an address, person B is a transient sex offender without a registered address. Someone attempts to sexually assault a young child on their way to school. Our detectives are going to look in their database for sex offenders in the general location of where the crime occurred. Sex offender A may not have anything to do with the crime, but he may be on the radar because he is registered in the general area that the crime occurred. Sex offender B may actually be the one who was involved in the crime but because he is transient, we have no idea where he is. Our whole purpose is to try to close that loophole and give us an idea where these folks are, not so much to go out and charge people criminally.

Brett Kandt:

Page 2, lines 11 and 12, of the bill contains an important qualifier. It states, "A record of registration must include, if the information is available:" If you have an individual who is registering and truly does not know where he will be tonight, tomorrow, or next week, then that is information that is not available and he cannot be expected to provide it. It is not our intention to catch offenders who need to register in some sort of a legal Catch-22. We just want to provide as much information as possible to enable law enforcement to keep track of these sex offenders.

Assemblyman Frierson:

If we are not seeking to use this as a penalty measure, then why are we making it a penalty? I think everyone can agree that we need to be able to manage locations of sex offenders in a way that protects the public. My initial impression of this bill is that it is going to result in numerous felony charges. If that is not the intent, if the intent is to manage the ability to know where people are, would you be amenable to removing the felony treatment?

Chuck Callaway:

I think we need to have the penalty in there. If we remove the penalty, we create another loophole. If someone is transient and they are in fact staying at a general location that we can prove, because they have a bed set up and a makeshift structure, they have no incentive to register if there is no penalty.

Assemblyman Frierson:

I agree. If there is no penalty, there is no way to enforce it. I am specifically talking about the felony. We could be paying \$35,000 to arrest and jail someone because he was homeless and not able to update his address, or did not know where he would be staying. This is kind of a discretionary scheme as to whether or not the information was sufficiently available. Would you be

amenable to something less than a felony: a misdemeanor, or something that would certainly get their attention, allow us to know where they will be, but not penalize them for simply being a transient? It is important that we have some sort of ability to do this, but in a way that makes sense and does not ultimately cost us a lot of money and not accomplish any more than if we made it a misdemeanor.

Chairman Horne:

How easy is it for the homeless to go to a substation and register? Would it be enough that if he happens to move two miles down the road and is at a different corner, he sees a police officer, and tells that police officer that he is now staying at that corner?

Chuck Callaway:

I would be open to looking at possible alternatives to address your concerns. I believe there needs to be a penalty in place. In regards to the penalty, even with a sex offender that registers at a residence, if we believe that he is not where he is supposed to be, and we charge him with sex offender failure to register, we have to provide documentation and proof to show that he knowingly and willingly changed addresses and did not update his address. The district attorney has the ultimate say of whether or not to prosecute the case. If we were talking about a transient person who moved a block up the street and an officer charged him for the crime, there are checks and balances in place to address those concerns. The district attorney would look at that in prosecuting those cases.

On average, there are 15,000 sex offenders registered, and there is only a small portion that fails to register. I do not believe the registration process is a burden on the sex offenders. I believe this bill allows for these transients to use multiple addresses. If he stays in St. Vincent's shelter one night, and other times stays under the bridge, he could list both locations where he routinely stays to encompass those areas that he moves between. Again, our goal is to try to allow law enforcement agencies to know where these sex offenders are. We are not opposed to them listing several locations. That tightens the loophole and is far better than the alternative where he claims to be transient and not provide any information at all.

Chairman Horne:

Legal provided an answer regarding an "offender" versus "sex offender." Per *Nevada Revised Statutes* (NRS) 179D.0559, "Offender" is defined as "Offender convicted of a crime against a child or offender means a person who, after July 1, 1956, is or has been convicted of a crime against a child that is listed in

NRS 179D.0357; or adjudicated delinquent by a court having jurisdiction over juveniles of a crime against a child"

Did the Attorney General have a proposed amendment to this bill?

Brett Kandt:

There are two amendments the Committee may wish to consider. One is the number of days specified on page 4, section 5, lines 42 and 43. We had specified 45 days, however in conversations with some Committee members and law enforcement, it was indicated that 30 days may be more appropriate and consistent with some other statutory requirements. The other amendment is regarding A. B. No. 85 of the 75th Session, which created the Advisory Committee to Study State and Federal Laws Concerning Sex Offender Registration. That Committee sunsetted, and there may be some benefit to extending the life of that Committee throughout the next interim. Our office would be happy to continue to participate with that Committee.

Chairman Horne:

How often did that Committee meet?

Brett Kandt:

We held four meetings and provided a report from the Committee.

Michael Mauntel, Sergeant, Las Vegas Metropolitan Police Department:

I work in the sexual assault unit. Currently we monitor 3,800 sex offenders in Clark County. Of those 3,800, 1,143 are visitors and 111 are transients. All sex offenders, upon their conviction or release from confinement, are advised of their requirements to register.

Chairman Horne:

Any questions? [There were none.] Anyone else wishing to testify in favor of A.B. 57? Anyone wishing to testify in opposition?

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

We have had an opportunity to discuss this with the Attorney General's Office and the representative from the Las Vegas Metropolitan Police Department. Section 3, subsection 3, of the bill, we believe it is very important that the registry allow for multiple addresses. From our reading of the bill, the word "any location" did not necessarily reflect that. We would prefer it to say "any locations." I appreciate the Committee's concern regarding the 48-hour reporting residency. It could be problematic for an indigent homeless offender who may not be able to get himself to a substation in order to reregister within

that time frame. As you may know, several courts around the nation have reversed convictions in cases involving statutory registration of homeless offenders on the grounds of impossibility of compliance, or insufficiency of evidence. If this reporting requirement could be put in another section, or something that makes it clear that the people in those circumstances will not get looped into this and it will not be misapplied, then we would prefer to see the time frame extended. California has a penal code that includes providing the registration of transient offenders every 30 days and to report the places where they eat, sleep, work, frequent, and engage in leisure activities. I believe it is the intent of the Committee to provide for circumstances to ensure that people are not improperly being caught up in the 48-hour limit, particularly as a result of the impossibility of compliance.

Chairman Horne:

Are you in support of the intent of the bill as a whole, with the inclusion of these various tweaks to make it operate, in your opinion, a little better?

Rebecca Gasca:

Yes, that is a fair reflection of our position. The American Civil Liberties Union did sit on the Interim Sex Offender Committee that was mentioned by Mr. Kandt. We would certainly encourage this body to continue looking with care at these issues. They are highly complex and complicated in nature especially in so far as you, Mr. Chairman, want to move forward with your other idea regarding civil commitment. We think it would be even more important to look at this issue entirely from the time in which people are found guilty, through their time in prison, and then their release. The entire approach will better serve public safety and better protect the civil liberties of all concerned.

Mark Alan Nissenbaum, Principal, Criminal Defense Law Center, Reno, Nevada:

If the goal is protection of society and our children, this bill does not do it. It seems to only provide loopholes in existing statutes by requiring an offender's "expectation" of movement.

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

Chairman Horne:

If you do not think this makes it safer, do you dispute that there are sexual offenders that are basically off the grid? They are homeless and are not registered, but should be? How would you propose that we track them?

Mark Nissenbaum:

I do not dispute that there is a problem. I do not dispute that there are people off the grid, and we have to find a way to track them. But to put wording in a bill that they must list where they expect to be, some people are not going to understand that, and the incorrigible are going to sneak around it. That is the problem I see with this bill. I see that what they are trying to accomplish does not do it. I see a tremendous amount of violators and I see them catching low-hanging fruit, not the person we want off the street. I do not know the solution, but I do not see this bill doing it. I am worried about violating children who are classified as sex offenders, or the kid who made a mistake. I am very worried about the predator. We are not catching them as much as we are catching the kids.

Chairman Horne:

Any questions?

Carl Post, Sex Offender Solutions & Education Network, Middleburg, Florida:

I was a deputy sheriff, correctional officer, fire fighter, and a veteran of the United States Army. I would like to address this Committee in regard to A.B. 57 which is being discussed here today.

[Read from written testimony ([Exhibit H](#)).]

Assemblyman Hammond:

That is very interesting testimony. I think I understand what you are saying about the registry. Many people get on it sometimes for very strange reasons. However, I would disagree that we get rid of the registry. I cannot imagine living in a neighborhood with 55 registered sex offenders. From personal experience, I had a sex offender move into my neighborhood. I had some neighbors who wanted to tell him not to even look at their children. I took a different approach, and talked with him. He expressed that he was glad the rest of the neighborhood saw him on the register, because it helps him to know that we know. In the research that I have done, most sex offenders want people to know they have a problem. I would suggest that we as a Committee keep in mind that there is a reason for the registry.

Carl Post:

When a sex offender is convicted, he is mandated to go to a psychosexual evaluation where a clinician evaluates him to find out exactly what the problem is. In several cases, the clinician can recommend that he needs more counseling, more intense care, or he needs to be watched a little closer. There are others that simply made a mistake, an error in judgment. He is not a threat to society; there is a low risk that he will reoffend. He could be reentered back

into society and live a functional life. But when he is put on the registry, he cannot get work. The first time he puts registered sex offender on his application, he is shown the door. If he cannot get work, he cannot pay his rent, and he does not have a place to live. If he is in counseling, he cannot pay his counseling fees, or his public defender fees. He is isolated. It is a serious Catch-22. According to the clinicians, if he is low risk and is not going to pose a problem, then remove him from the registry. Let him get back into society and learn from his mistakes. The recidivism rate for sex offenders once they learn what is wrong is 1.5 percent, so why penalize the remaining 98.5 percent? It saves a lot of money for law enforcement and it gives them the power to concentrate on areas that need concentrating on. If you have the lowest offender that is not going to bother anybody, and is going to fly straight, he is not going to wind up back in the system. Currently, once he gets in the system, he cannot get out. It keeps recycling with another charge. If he cannot pay his fees, or fails to register, he gets another charge on him.

Assemblyman Frierson:

This is a complicated and difficult area. We have to balance a person's ability to be productive in society with the need to protect the community. I do not know that undoing the scheme of registration and the public's knowledge of it is germane to this bill. Do you have any amendments to propose that actually facilitate the intent of this bill, which is to find a way to allow law enforcement to know where sex offenders may be, given the fact that it is going to be public? If not, will you submit something to this Committee relevant to this bill? I think the intent of this bill is noble and we should not question the entire scheme.

Carl Post:

I can try. I am not a law writer. I merely want to point out to the Committee some of the pitfalls involved so that you can use your knowledge and expertise and heart and soul when you write a law to ensure you understand what the long term effects are. Make sure you do not condemn someone who could be given a second chance, just because the law says to. Give the judges and law enforcement the power to follow the spirit of the law instead of the letter of the law. There are 500 ways to get put on the registry, but not one single way to be taken off of the registry. There needs to be a way that if there is a reasonable explanation, and the person is not a danger, let him go. If he screws up again, nail him to the wall; I'll bring the nails. I have been in law enforcement for many years, and there are people that intentionally break the law and people that unintentionally break the law, and they learn their lesson the first time.

Assemblyman Segerblom:

I agree with what you have said. I tried to deal with the current system with the tiers, and moving from one tier to the next. We definitely need to look at the reverse process, because a lot of people are rehabilitated. The recidivism rate for sex offenders is incredibly low, and we need to ensure we do not stigmatize people unfairly and allow them to go on with their lives.

Carl Post:

If someone gets put on a registry and truly qualifies for a tier 1 position, that would come from the clinicians and a board that is appointed to review these cases. I am sure the people on the board would have knowledge and common sense to make a proper decision if someone deserves a second chance. It could be something as easy as someone being put on the registry from day one, and after two years, three years, or five years clean, then that person goes in front of the board and requests to be removed from the registry. Even if he is a tier 2 or 3, and is five years clean, move him down a tier, another five years clean, move him down a tier, another five years clean, consider removing him from the registry. Save the money from having to chase him all around the country. If he is going to reoffend, statistics say he will reoffend within six months.

Assemblyman Hansen:

We actually had to look the registry up once in Washoe County. It was surprising how many people were registered sex offenders in our area. I am concerned when you said, "If he screws up again, nail him to the wall." When we are talking about sex with children, I am not willing to give a second chance. Maybe there are some specific cases that are highly unusual, where I would feel comfortable leaving sex offenders off the registry, but we are talking about kids. I am not willing to give a guy who has been convicted once a second chance. We were able to find out we had a tier 3 within a mile of my eight kids. We live in a rural area, and it was very disconcerting. I was very thankful they had the registry. We did not know about this guy, and our kids were literally playing within a few hundred yards of where this guy lives by himself in an apartment. I would have to disagree with this because I am not willing to give a guy a second chance at having sex with a child.

Carl Post:

I agree with you. If you hurt a child, there is no excuse for that. I am talking about people winding up on a tier 3 for being a boy 17 or 18 years old having unlawful sex with a girl 15 years old that lied about her age. He should not be a tier 3 just for doing what kids do.

Assemblyman Hansen:

My impression of the judicial system is that judges work extra hard to be fair. In cases like that, I find it hard to believe that they do not come up with some kind of arrangement between the prosecutors and the public defenders.

Mary Duval, Chief Executive Officer, Sex Offender Solutions & Education Network, Stilwell, Oklahoma:

Many refer to me as Ricky's mom. My 16-year-old was put on the registry for consensual sex. He met a girl at a teen club in Iowa. She told him she was 15 years old. We later learned, after he was questioned by police, that she was only 13 years old. An Iowa judge, along with the district attorney and public defender, required my son to make a deal that he would register for ten years, with two years probation sex offender treatment. We relocated my children from Iowa due to harassment, stalking, and vigilantism due to the public registry. We moved to Oklahoma, which has enacted the Adam Walsh Act. The Adam Walsh Act instantly changed my son to a tier 3 violent aggravated offender. My son lives every day with a tier 3 label. He faced homelessness and he has a driver's license that reads sex offender. He is treated like "crap" in our neighborhood. When people see my son on that registry, they do not see the story behind the face or the name or the address. They only see the monster. They do not come to us and they do not question us. I became an advocate three years ago on civil rights and constitutional rights of all individuals. My son is now off the registry due to new laws in Oklahoma. It has not changed the fact that it has affected my son for the rest of his life.

The problem I see here today is that this is a very complex issue with the homelessness and transients. Unfortunately, A.B. 57 will affect every individual. We are discussing all tiers, and painting everybody with the same brush. We have created transients because of residency restrictions. Many of these individuals have families and good support networks they can go to. But because of one law, now we have to create another law to figure out some loophole. The problem is that we need to have a rational sit-down. Politicians, law enforcement, and advocates need to have a committee. We need to have someone who is registered, that is not on probation, and has lived under these laws to be on the committee. We need to have a family member like myself who is the collateral damage to these laws. We need to understand how these laws effect everyone. I propose that you look at what happened in Iowa. Iowa was the first state to pass a 2,000-foot residency restriction. They have amended that and only require tier 3 to follow residency restrictions, tier 1 and 2 can live at home, near schools, and parks.

Nevada's Department of Corrections assesses sex offenders. We need proper assessments by experts and professionals. We need to look at this law and

understand that not all of them who go underground are dangerous, violent people. My son could be one of those people. At seventeen, after being on the registry, he said, "Mom, why should I care? Everyone treats me like a monster." There are many on your Nevada registry with the same problem. Why should he care? Every day he wakes up and waits for the politicians to pass another new law. He wants to try to rebuild his life but he cannot. As Mr. Post said, the offender cannot get a job. No one wants to hire a registered sex offender. My son was turned down for a Subway job because the insurance carrier said they would not insure the Subway with a sex offender working there, even though they understood my son has been dubbed a "Romeo" which means a juvenile who has consensual sex. If he does not have a job, he cannot pay rent. If he cannot pay rent, he is going to be homeless. There are families all across Nevada who will tell you, "I want my son or daughter to live here, but they cannot because of residency restrictions." We need to seek solutions.

One solution may be to look at what Iowa has done with only tiers 2 or 3 having to register. Do assessments with professionals in determining someone's risk. This would open up resources, time, and money for law enforcement to track those who are truly dangerous to our children. I am a victim of sexual abuse myself. I sat right here and heard someone say, "If I had 55 sex offenders in my neighborhood, I would have a lot of concerns." They are already in your neighborhood. Ninety-three percent of them are not registered. Ninety-three percent of them are first-time sex offenders. They are in your neighborhood. They are living with their children. Their children are playing with your children. You do not know who they are. Ninety-three percent of them are first-time sex offenders. That is proven by research. I ask this Committee to look at the facts. Do not paint everyone with one brush because then you paint my son with that same brush. What happens here in Nevada could happen in other states. Let us put a committee together, let us all come together and work together. Let us be rational and truly try to protect Nevada's children. Every time you pass a law, it is like poking a stick at a pit bull. Why should he try? I do not condone anything a sex offender does, but why should he try if you are not willing to give him a second chance? He has to believe that he has a second chance in order to change. He needs a support network, he needs his family. He needs excellent treatment providers. He needs good assessments. You all can make that possible, but you have to work with us, and we have to do it together. The bottom line is, we have to protect civil rights. We are talking about a felony penalty. The U.S. Supreme Court ruled that this is regulatory. I present to this Committee, if this is regulatory, if this is civil, then how can we give someone five years for failing to register an address? Or because they are homeless, we are going to make that a felony.

That is criminal and therefore that is constitutional. We need to be looking at this from all angles.

Chairman Horne:

Any questions? [There were none.] Thank you for your testimony.

Laurie Johnson, Nevada State Affiliate Leader, Citizens for Change America:

I also got on this bandwagon from personal experience. I am completely in favor of on both juvenile sex offenders (JSO) and adult sex offenders (ASO) levels in Nevada not steering towards Adam Walsh Act compliance any further. [Read written testimony ([Exhibit I](#)).]

Chairman Horne:

Thank you for your testimony. I see no questions. Jerod Updike is at the witness table. Mr. Updike is deaf and, unfortunately, we do not have an interpreter for him today. We will keep the record open if any of you have questions for Mr. Updike. Our committee assistant Michael Smith will read Mr. Updike's testimony into the record.

[Michael Smith read testimony submitted by Mr. Updike ([Exhibit J](#)).]

Chairman Horne:

Thank you.

Wesley Goetz, Private Citizen, Incline Village, Nevada:

I am here to say that this bill is not going to work. Basically it seems that you want to penalize people that are homeless. I have been out of prison for almost two years. On December 5, 2010, I was laid off from my job. It is very hard for me to find work. Every time I try, since I am a tier 2, the Division of Parole and Probation (P&P) has to tell any prospective employers. It seems like there are roadblocks put in front of me all the time. I want to work with friends who know me because that is the only time I can get a good job. I tried to shovel roofs when there is a lot of snow up at Tahoe, but P&P said I could not do that. This state needs to take responsibility in treating sex offenders. There should be a system where someone can actually lower his tier level. Since I was in prison for ten years, I feel the responsibility of the prison system was to rehabilitate me so that when I got out I could have a lower tier level. Instead, they increased my tier level when I got out. They are treating me like my crime happened yesterday, it happened in 1997. There should be a tier level system with P&P where they reevaluate you every six months to see if you are going to commit a crime again or not. I am being treated like I am the scum of the earth. There is a Senator in this legislative building that will not see me. I live in his district. You are treating people like the witch hunt in the 1600s. Everybody

went after witches then; then Hitler went after the Jews; then the black people were being treated like lowlifes. Each time it gets worse and we need to work together to change this. It is cruel and unusual punishment. In the 1400s people were tortured. Right now it is not physical torture, it is mental torture to me because I cannot find a job and I am going to be one of those homeless people. With A.B. 57, if I become homeless and I do not report something, I will be put back into prison. That is spending more of the taxpayers' money. I think we need to change the tier level system so sex offenders can be lowered after reevaluation.

Chairman Horne:

Any questions? [There were none.] Anyone else in opposition to A.B. 57? Anyone neutral?

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

We spoke with Mr. Kandt beforehand regarding the narrow issue of this bill. We were concerned that it would require everybody that was homeless to pick a location, whether they actually had one or not. It has been clarified that if they legitimately do not have a habitual location, they will not have to register at a made-up location and get caught in a Catch-22. I would like the record to show that is our understanding as well, if this particular piece of legislation passes. Based on the other testimony, we are very happy to work with anyone to help address these other issues at a later time.

Chairman Horne:

Any one else to testify? I will close the hearing on A.B. 57. We will take a ten-minute recess.

[Testimony provided by Terri Miller submitted into the record ([Exhibit K](#)).]

Chairman Horne:

The next bill is Assembly Bill 408.

Assembly Bill 408: Restricts the use of restraints on pregnant females who are in confinement. (BDR 16-117)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:

Assembly Bill 408 is a bill that I asked to have drafted after I read an article about this issue. In checking, this is an issue around the country and Nevada does not currently have any laws or regulations which prohibit it. It deals with the shackling of pregnant prisoners, particularly during labor. I have since come across some better language, and have submitted an amendment which revises

the bill ([Exhibit L](#)). I also have a small PowerPoint presentation with a very powerful photograph demonstrating what we are trying to get done here ([Exhibit M](#)). Essentially the amendment states that it is unlawful to shackle a pregnant prisoner, unless there are certain circumstances which make it absolutely necessary. In those cases, the agency must submit written findings as to why it was necessary. The amendment also creates a right of action for someone whose rights were violated under this act, in addition to current laws. Since the bill came out, I have had several law enforcement agencies say they do not do that, they have regulations to prevent this. Essentially all I am trying to do is ensure that it does not happen. Sometimes that is why you need laws to ensure the rules are followed.

Chairman Horne:

Thank you. Is the proposed amendment replacing the entire bill?

Assemblyman Segerblom:

Yes, it is.

Chairman Horne:

Would you like to review the parameters on this prohibition?

Assemblyman Segerblom:

I will begin by reviewing the amendment.

[Read Section 1 of amendment ([Exhibit L](#)).]

The rest of the amendment reiterates section 1 for different sections of the *Nevada Revised Statutes* (NRS). It deals with both state and local correctional facilities. You will hear testimony from several agencies that they do not want this legislation. I think it is a very important issue and we need to try to prevent the shackling of pregnant inmates.

Chairman Horne:

Did you discuss with law enforcement the issue of a physician making the assessment of the potential risk of an offender harming someone? I realize that some women offenders are violent offenders and others are not. I am concerned about a doctor making the determination on whether or not someone should be restrained for the safety of themselves or others.

Assemblyman Segerblom:

I have talked to law enforcement and they may specifically object to that point. The physician would make the assessment during specific events such as when

the inmate is in labor and delivery. Personally, I do not think that even a violent offender would be a threat during delivery.

Assemblyman Ohrenschall:

You said you were inspired to introduce this bill based on an article you read. Can you tell us about the article? Did something happen here in this state?

Assemblyman Segerblom:

No, the article stated that this was an issue around the country. When I researched it I found there are no laws to prevent it. I am not sure it has ever been an issue in Nevada, but it is important and something that needs to be looked at. Studies show that fetuses are aware of the environment their mother is in and it can cause lifetime disabilities for them. Anything we can do to give the future baby better mental health, the better for everybody.

Assemblyman McArthur:

I appreciate the intent of this bill. It appears that it is mainly for women in labor. The first part of the amendment states ". . . shall not use restraints on a prisoner or detainee known to be pregnant" That means if there is a pregnant women, regardless at what stage of pregnancy, restraints cannot be used.

Assemblyman Segerblom:

There are exceptions, but the concept is that many times prisoners are routinely shackled when being transported. This would discourage shackling being done to nonviolent pregnant prisoners, which is what we are trying to prevent.

Assemblyman Hammond:

For clarification, the original bill stated it would apply to women in the second or third trimester of pregnancy. Your amendment changes that to being "known to be pregnant?"

Assemblyman Segerblom:

Yes. The basis for that is psychologically, the fetus is aware of their environment and anything that is constraining or mentally harming the mother can also be harming the fetus.

Chairman Horne:

Is anyone here to testify in favor of this bill?

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

We have submitted written remarks ([Exhibit N](#)). We are in full support of A. B. 408, and I would like to note for the record that at least ten different states have adopted state laws that are very similar to the amendment to this bill. This is certainly a trend, and I would imagine that the story that initially inspired Assemblyman Segerblom was a part of the slew of national attention in this area, particularly in response to the Rebecca Project for Human Rights. This is a national organization that looks at human rights issues. Many different medical and correctional professionals agree on limiting the use of shackles on pregnant women. Pregnancy is a medical issue and it is a responsibility for the state to provide safe conditions for pregnant women in order to have and carry out the most healthy pregnancy possible. We think that the default in requiring written findings of why an inmate should be shackled is the best course. Without that, the state should have no objection. If a person does not pose a threat to themselves or others, if they are not a flight risk, and they are pregnant, particularly if there are other associated medical concerns, then the state should not be shackling them.

Although Assemblyman Segerblom was not aware of this happening in the state, the ACLU has recently received a complaint from a woman incarcerated in the state of Nevada. She is nine months pregnant and has been forced to wear shackles around her waist, arms, and legs to all of her medical appointments, including when the physician examines her. In her letter she told us the chains around her stomach are very uncomfortable and are causing her harm. She is scheduled to have a C-section due to complications during her pregnancy, and she is very afraid about the safety of her unborn child. This young woman was convicted for cashing a fraudulent check and is classified as a nonviolent offender.

The fact that the state has a default position to shackle women like that, I think is incredibly unfortunate. That is what this bill seeks to correct. From our position, shackling pregnant women can be considered cruel and unusual punishment. The Nevada Department of Corrections (DOC) has created some draft policies that are intended to take effect this month. While they provide some safeguards, we believe they will not do enough to protect pregnant women from unsafe restraints. For instance, their policies require pregnant inmates to be shackled to the hospital bed at all times, until the attending physician declares that a pregnant woman is in labor. This means that a pregnant woman who may be transported to a hospital for urgent care, including an emergency C-section, will be shackled during transport and again shackled to the bed at the hospital. Additionally, the requirement to replace restraints after delivery may prevent mothers from effectively healing and breast

feeding. Finally, this policy will not protect pregnant women in local and private facilities throughout the state, or protect pregnant juveniles held in detention. One of the amendments to this bill deals specifically with pregnant juveniles in detention. Of those states that already restrict the practice of shackling pregnant prisoners, none have reported escapes or threats to medical or correctional staff from pregnant prisoners. There are no documented instances of women who are in labor, delivery, or postpartum recovery escaping or causing harm to themselves, security guards, or medical staff. To address the "known to be pregnant" versus "second or third trimester," I think the specific finding of fact is the best default. This is a serious medical issue and the state has a duty to see that it is carried out in the most healthy manner possible. If a pregnant woman has a herniated disk or slipped disk, a medical professional should be overseeing her care and should have the prerogative to recommend that shackling not be used.

Chairman Horne:

You stated there are no incidents recorded in Nevada of an attempt to escape or a battery by a prisoner who was pregnant?

Rebecca Gasca:

My testimony is that in the states that are already restricting the use of shackles on pregnant women, none have reported escapes or threats to medical or correctional staff. Even by removing the state's right to automatically shackle women, there have been no resulting detrimental effects in relationship to those women who otherwise would have been shackled had the law not been passed.

Chairman Horne:

Since these women are inmates, we need to ensure that they remain inmates until such time that their sentence has expired or they have been paroled. I assume an inmate would not want the prison guard in the examining room with her. Would DOC be required to have someone outside the door at all times to ensure that they do not walk out? I am thinking about an inmate who gives birth, and is in the hospital for 48 hours. Is there going to be someone there monitoring the whole time to ensure she does not escape?

Rebecca Gasca:

As noted, those states that have already adopted similar laws have not found any documented incidents in which a woman postbirth has attempted to escape. I am not sure what policies those other states have put in to address the very unlikely situation that after birth a woman would try to escape, but certainly, since it has not happened, whatever policies they put in place would be adequate for the State of Nevada to adopt and follow as well.

Chairman Horne:

Are there any questions? [There were none.]

Elisa P. Cafferata, President & CEO, Nevada Advocates for Planned Parenthood Affiliate:

We are in support of A.B. 408. We have clients who have been through the criminal justice system. Our philosophy is that we like to work with our patients and educate them in their own health care decisions and help them to have healthy pregnancies when they desire to do that. Pregnancy, labor, and delivery can be a very daunting experience. With the guidance from medical professionals, the criminal justice system can make the process as humane as possible for pregnant prisoners. When you asked about a prisoner who was staying in the hospital 48 hours after delivery, that is an unusual circumstance since they kick you out pretty fast after delivery. From a practical perspective, I am certain that the criminal justice system has policy in place any time a prisoner goes to the hospital to ensure they do not escape. I was moving pretty slow after my deliveries. I think there would be a way to address the flight risk concerns. I would echo the other comments and note that the Rebecca Project for Human Rights has been successful in passing a similar law at the federal level to end or greatly restrict the practice of shackling incarcerated pregnant women. [Written testimony also provided ([Exhibit O](#)).]

Assemblyman Hammond:

Originally, Assemblyman Segerblom had the restriction of shackling anyone who is in the second and third trimesters of pregnancy. Now it is including anybody who is known to be pregnant. He mentioned that the reason is that the fetus knows about their surroundings. Could you confirm that? How early does a fetus know that the mother might be shackled?

Elisa Cafferata:

I am not a doctor, and I am not in a position to speak to the awareness of a fetus. I know the science and study of pregnancy and the various trimesters is ongoing. I would suggest that from a practical perspective, in the first trimester, you would be worried about women who want to carry their pregnancies to term having challenges with walking and tripping. This would give you some protection in the criminal system from possibly inducing a miscarriage for a woman who wants to carry her pregnancy to term. I think you want to look at providing all the medical protection that you can.

Assemblyman Hammond:

I am curious because of Assemblyman Segerblom's statement that the fetuses know their surroundings. If you can find that statistic, I would appreciate it.

Elisa Cafferata:

I will try to provide some information to you.

Marlene Lockard, representing Nevada Women's Lobby:

We support this bill. I cannot imagine trying to escape during the process of delivering my son.

Chairman Horne:

Are there any questions? [There were none.] Anyone else here wishing to testify in favor of A.B. 408? Anyone opposed?

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

We do not believe that women in labor should be shackled. With that being said, we think the language in A.B. 408 is very broad and some cause of concerns. On any given day, we have about 3,200 inmates in the Clark County Detention Center and about 20 of those inmates are pregnant. We average one delivery a month. Of those prisoners, one-third are violent offenders, two-thirds are gross misdemeanor or felony offenders. One of our concerns is that the term pregnant is very broad. A prisoner could be three weeks pregnant and we would not be able to put restraints on her. I know that Ms. Gasca stated that she is not aware of any cases where a prisoner has escaped or committed a battery on an officer, but just because it has not happened does not mean it will not.

Our corrections officers are responsible for the prisoners and the safety of the public. When they leave the detention center with a prisoner, if that prisoner escapes or takes someone hostage or commits a crime, those correctional officers are ultimately responsible. That is why we have issues with section 1, subsection (a), where it states, "If the doctor, nurse or other professional treating the prisoner or detainee requests that restraints not be used, the corrections officer accompanying the prisoner or detainee shall immediately remove all restraints." In most cases that would not be an issue, but there are some cases where that would not be recommended and the corrections officer should have the final say, not a doctor, not a nurse, of whether or not those restraints should be taken off. As I said, the corrections officer is responsible for the safety of the prisoner and the public.

We do have a standard operating procedure at the Las Vegas Metropolitan Police Department that says when a prisoner is in labor, the shackles are to be removed, and when a pregnant prisoner is being transported and restraints are placed on the prisoner, we have medical personnel that monitor the prisoner every 15 minutes to ensure she is not in discomfort because of the restraints

and that there is no medical issue that warrants the restraints being removed. When the restraints are removed, a report is done by our officers that outlines why the restraints were removed and what the situation was. We believe that our current procedures are effective and do not believe that policy and procedure needs to be outlined in state law.

Assemblyman Hammond:

Many states have already passed this law, and no instances have been reported of anyone escaping. My question is how long have these laws been on the books?

Chuck Callaway:

I do not have that information. I think it is difficult to obtain those statistics because if a prisoner committed battery on an officer or attempted to escape, that crime would be tracked, but not necessarily flagged that the prisoner was pregnant at the time.

Assemblywoman Diaz:

You stated that 30 percent of inmates are violent. I am wondering how many of them are violent and pregnant?

Chuck Callaway:

I can try to get the information for you. I was told we currently have approximately 20 pregnant women in our facility. Based on the percentage, if one-third of the population are violent offenders, a guess would be that 6 of the 20 would have some type of violent offender history.

Assemblywoman Diaz:

You also stated that you felt the decision should be made by the correctional officer whether to restrain the individuals. Is there communication between the officers and the medical staff?

Chuck Callaway:

Absolutely, we communicate with the doctors. As I said, 99 percent of the time, if the doctor recommends the restraints be removed, we comply with that. I believe that the officer should have the final say. For example, we have a prisoner who is two months pregnant, and is injured. If she posed a risk to the people in the hospital, and the doctor requested the restraints be removed, when the wound could be treated without removing them, and the officer felt that was a bad idea, we would want to give the corrections officer the final say. In most cases you are absolutely right, we would comply with the doctor's wishes.

Assemblyman Sherwood:

The proposed amendment states that within two years someone could come back and say they have been shackled, and it would hold the state civilly liable for attorney fees, litigation costs, damages, et cetera. This could cost the state millions of dollars for frivolous lawsuits. If the bill were to be narrowed specifically to section 1, would that be acceptable to you?

Chuck Callaway:

Yes. We also have a concern in section 1, subsection 4. We believe that could potentially open our agency to liability. Based on that language, someone could say, "The handcuffs were put on too tight while I was 3 weeks pregnant." They could file a civil claim against our agency. On behalf of the Las Vegas Metropolitan Police Department, we would not be opposed to a basic "prisoners who are in labor shall not be restrained." When we go too far beyond that, the language becomes too broad and restricts the daily operations of our corrections officers.

Chairman Horne:

Will that open another set of problems on a correctional officer being able to make an assessment on whether or not an inmate is in labor?

Chuck Callaway:

I agree. The language could be tightened to "if it is a reasonable belief that the prisoner is going into labor or based on the late terms of pregnancy, where labor is about to occur." I would leave that to Legal to determine the best language for that. Our recommendation is this is something that should be left to the policy and procedures of the correctional facilities.

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

Understand that law enforcement has no desire to cause any pain, discomfort, or distress to a pregnant inmate. There are 17 county jails and 4 city jails within the State of Nevada that section 2 would apply to. I have queried those agencies. We are not aware of complaints or problems that have come forth. We monitor and follow the National Institute of Corrections that helps us develop policies along these lines. Our agencies do have policies dealing with pregnant inmates and inmates with medical issues. We are concerned, especially with the language in section 1, as to when we can and when we can not restrain an individual. Much of that is at the discretion of the officer. We are also concerned with sections 3 and 4 that allow those lawsuits to come forward, putting the cities and counties into some pretty high risk situations. We understand where the issue is coming from, but again, we are not aware of a problem in Nevada. The agencies that hold these types of inmates are concerned with what is happening.

Chairman Horne:

Are there any questions? [There were none.]

Tim Kuzanek, Captain, Special Operations Division, Washoe County Sheriff's Office:

I echo the comments made by my colleagues this morning and add that between February 2008 and February 2010, 287 inmates were identified as pregnant and spent time within the Washoe County jail. They accounted for 26,093 bed-days. Of those inmates, the charges that they were in custody for amounted to 130 felony crimes, 45 gross misdemeanor crimes, and 199 misdemeanor crimes. The felony crimes were for spousal battery with a deadly weapon, robbery of a victim over the age of 65, robbery with a deadly weapon, attempted robbery, false imprisonment with a deadly weapon, solicitation to commit murder, battery on a peace officer, and many other crimes. To say that all inmates, by virtue of being pregnant, make them a nonescape risk, I think strokes it with a pretty wide brush.

At the same time, I am happy to report that we have worked with the courts in Washoe County to reduce the number of bed-days that pregnant inmates are spending in custody in the Washoe County jail. Since 2009, we have been able to reduce the amount of bed-days that pregnant inmates are spending in custody by 19.94 percent. We are working in the right direction.

Inmates are in custody for a reason. When we transport them to doctor visits or hospitals, the problems they are associated with do not automatically go away. We work with the medical professionals both inside our facility and at the hospitals to regulate our procedures. We remove the restraints when appropriate, or put the restraints back on when it is appropriate, not only to prevent them from escaping or from injuring the medical staff, but to prevent them from injuring themselves.

Chairman Horne:

While recognizing they are in prison for a reason, I think it is fair to say that not all are in for violent reasons. There are "white collar" crimes with no violence, or no threat to anybody. They do not have a history with that type of conduct. Also, we only have one women's facility in the state. Some of them are classified as minimum custody. We have several different facilities for men.

Tim Kuzanek:

I would be happy to provide the statistical data I have per crime and how many inmates if you would like that information.

Assemblywoman Diaz:

When a pregnant prisoner is about to give birth, she is transported to a medical facility. If she is violent, does the guard remain with her throughout the entire birth experience?

Tim Kuzanek:

In most cases they do. If she is actively violent at that particular time, often we will send two deputies with her. We send female deputies who work with the medical staff in our facility, the ambulance staff that transports the inmate, and the medical personal at the facility. There is an exchange of information on how to best handle the situation.

Assemblywoman Diaz:

I am visualizing a pregnant inmate going to have a baby. She is being escorted by a couple corrections officers. I can understand the need for her hands being shackled, but not the ankle or waist shackles. Once she is in the medical facility, if there are two officers overseeing her, why would we need to constrain her at that time?

Frank Adams:

I hope the Committee understands that our law enforcement agencies work with the inmates, we do not shackle people to where they cannot move. We are not ogres. We take all issues into consideration. We have policies and procedures. We try to do the best for the safety of the public and the inmate.

Chairman Horne:

Thank you. Is there anyone else here to testify in opposition of A.B. 408?

Rex Reed, Administrator of the Offender Management Division, Department of Corrections:

Women in our system are becoming more violent. It used to be if there was any kind of violence among women inmates, it was basically kicking and scratching. Women are starting to use weapons now. We have had some pretty serious assaults with weapons that have been homemade by inmates. If a woman is pregnant, and this bill becomes law and we are restricted in shackling them, we have a problem. We move inmates with other inmates. If you have one inmate with no constraint, the constrained inmates are at risk. We have four women's facilities. Most female inmates are at Florence McClure Women's Correctional Center. We have women in there who have killed their own children. This is one of my concerns. Also, we already do what is being asked. If we go to a medical facility with a woman who is pregnant, and the medical staff recommends she be unrestrained, we do that in most cases. We work very closely with the medical staff. The amendment does not define a health

professional. Is a phlebotomist a health professional, for example? We do have administrative regulations which are approved by the Board of State Prison Commissioners, which is made up of the Governor, the Attorney General, and the Secretary of State.

Regarding belly chains, they are the most humane form of shackling. If you shackle an inmate's hands in front of her, that becomes a weapon; she can reach over an officer, pull in, and she could garrote him. As a pregnant woman, it can be very uncomfortable if you put her hands behind her back. A belly chain allows an inmate to have better balance and still be restrained and, if put on correctly, is the most humane way to restrain an inmate.

There is always an example that shows the exception to the rule. We took a person to the State Board of Pardons Commissioners who was supposed to die fairly soon. He was pardoned and let go. He wound up in Florida and killed a prostitute. If we are referring to this being a medical condition, there are other conditions that are medical as well. If a person is not restrained, that is a danger to our officers. If we are transporting a single unrestrained woman, she has hands free, she can make a weapon out of anything she finds. We do not shackle minimum custody inmates, but if they are medium or above, we do. This may lead to a situation where an inmate feels freer to run away. If you are at medium or above custody, we shoot to kill. I do not want to put someone in a position where they start to think about running away. If a person is in her early stages of pregnancy, and is thinking about making a dash, and we have to restrain her physically, she can get hurt.

Chairman Horne:

Are there any questions? [There were none.]

Assemblywoman Diaz:

I am hearing that the major concern for law enforcement agencies is the pregnancy from beginning to end, correct?

Rex Reed:

For the DOC, it is our biggest concern.

Assemblywoman Diaz:

Would you be amenable if the amendment stated the inmate should not be shackled when they are about to give birth, while being taken to the hospital, during delivery, and in recovery. Would that alleviate some of your concerns?

Rex Reed:

It would alleviate some of our concerns. Obviously we would prefer that the bill be further researched before going forward. We would like to see it redefined as to when we need to remove the restraints.

Assemblyman Sherwood:

I would like clarification of the amendment regarding being civilly liable for up to two years. Can you comment on what that would do to the state? How much an average civil claim costs the state?

Rex Reed:

We do not have that many pregnant women. I would guess we have about 10 to 12 a year. That would be the number of civil suits we could expect if this came into being and there were problems because of the bill. I would assume a woman who was in our custody and had a complaint could file a civil suit now, with or without this bill. I do not have an estimate on the monetary liability we have.

Assemblyman Sherwood:

So, the amendment for civil action is redundant, there is already a remedy there, correct?

Rex Reed:

Yes. Inmates are allowed access to the courts as long they exhaust their administrative remedy.

Assemblywoman Diaz:

Are there any situations where violent pregnant woman have tried to escape?

Glynn Hays, Central Transportation, Department of Corrections:

No, I have not seen that happen.

Assemblywoman Diaz:

Just so I am clear, for women who are about to give birth, you have not seen any of them trying to escape while being transferred to and from the medical facility?

Glynn Hays:

Generally, because of privacy issues, we may not necessarily know someone is pregnant until the late stages. But for late term pregnancies, no, I have not seen anyone try to escape.

Michelle R. Jotz, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.:

All of our concerns have been outlined by Mr. Callaway, so I will just say me too.

Chairman Horne:

Is there anyone else in opposition to this bill?

James G. (Greg) Cox, Acting Director, Department of Corrections:

As described by my colleagues in opposition to this bill, this has recently been a national issue for not only corrections but jails also. I will speak to corrections. I am a member of the Association of State Correctional Administrators (ASCA), and for the record, they have a proposed resolution on restraining pregnant inmates. I would like to provide that to the Committee members. This resolution clearly lays out the fact that the health and well-being of a pregnant woman and her unborn child is of paramount concern to correctional and medical staff. One of the biggest concerns in corrections would be that it does not seem possible to craft legislation to cover the variety of conditions and circumstances under which pregnant inmates might require some form of physical restraint. That is what we have been discussing today. We have recently adopted in our temporary regulations that we are going to submit to the State Board of Prison Commissioners in regards to use of restraints in transportation of inmates. This is a temporary regulation that I signed on March 22, 2011. We are in the process of getting this out to staff for training. Basically, the regulation states: "Pregnant Inmates being transported outside the institution. No leg iron shall be used. Furthermore, when transporting pregnant inmates outside the facility to medical appointments, court, parole, and discharge, the inmate will be placed in metal handcuffs with the handcuffs placed to the front side of the inmate. While transporting/escorting the inmate in restraints the escorting officer will ensure they maintain constant contact with the inmate by firmly grasping either the inmate left or right arm near the elbow to maintain stability and control."

In my career, I spent over ten years as a warden at a female facility. Issues arise with leg restraints and getting a female inmate into a van and outside a van to receive medical treatment. We will not use leg irons once we know the inmate is pregnant. Continuing with the proposed regulation, "Restraints will be removed once it has been determined by the attending physician that the inmate is in labor. Restraints will remain off of the inmate during the entire labor and delivery process. While all restraints are removed, the escorting officer must remain within constant visual of the inmate. If the local medical staff denies the officer entry, or presence in the delivery room during delivery, the officer will first ensure there is no other exit from the delivery room." We would provide

additional custody staff to supervise and manage the inmate. Generally, we add additional staff when the inmate is not being restrained. This resolution was adopted by ASCA on March 18, 2011. We are in the process of getting the temporary regulations to the Committee for their review.

This resolution meets the two goals of proper caring for inmates and providing appropriate security. It is the position of ASCA that addressing these issues through legislation unnecessarily limits the options for correctional administrators to apply professional expertise in those exceptional circumstances where the interest of safety and security of all concerned and the health and well-being of pregnant inmates may require unanticipated approaches consistent with the intent of the resolution.

Over the years, as a shift supervisor, a major, a chief of security, associate warden, and warden, I have looked at our approach and looked at how we apply restraints. Medical staff would most certainly be part of the decision-making process.

I oppose any amendment with any type of civil component. I agree with Rex Reed. Our inmates have the ability to file civil suits or lawsuits for what they consider to be inappropriate behavior or harm to them. We appreciate the interest of Assemblyman Segerblom, and would like to work with him on the content. I do oppose it as written. I think that it is not possible to craft legislation to allow you the ability to do your job and provide for public safety and security. Also, we have a significant concern with the health and welfare of the inmate and unborn child.

Chairman Horne:

Thank you. Any other comments?

Carolyn Myles, Acting Warden, Florence McClure Women's Correctional Center, North Las Vegas:

No restraints are used on pregnant woman when they are in labor and delivery. Once the woman is returned to the room, we put one end of a leg iron on her ankle and one end on the bed. The reason is that our officers at the hospital are unarmed. This is for officer safety. After a woman delivers, her state of mind is unknown. She has just relinquished custody of her baby to family or to the courts.

We also have a problem with people coming to the hospital to visit her. We had an incident recently where a male individual came into the inmate's hospital room. When the officer told him he had to leave, he pushed the officer. She had to call for backup and had to involve the Las Vegas Metropolitan

Police Department. We do not have a problem during labor and delivery, but once they deliver, they need to be restrained. I also am concerned regarding the second trimester; women in their second trimester can be in good physical shape. They run and work out. We have to take them to court and medical appointments. If they are not restrained, they can do damage to the officer. We need regulations on restraints.

Chairman Horne:

Are there any questions? I see none. Anyone else to testify in neutral on A.B. 408? Assemblyman Segerblom, do you have any closing comments? [He did not.] I will close the hearing on A.B. 408 and bring it back to Committee. We will now move on to our work session document. We have three bills.

Assembly Bill 9: Provides for the collection of additional fees in justice courts. (BDR 1-322)

Dave Ziegler, Committee Policy Analyst:

This work session document is available on Nevada Electronic Legislative Information System (NELIS). This bill is sponsored by this Committee on behalf of the Nevada Supreme Court and was first heard on March 31, 2011.

[Read description of bill ([Exhibit P](#))].

In an attempt to be helpful, the Administrative Office of the Courts (AOC) proposed an amendment to make this bill and the proposed amendment consistent with your action in Assembly Bill 261. On the first page of the amendment there is a line that states "If the sum claimed exceeds \$5,000 but does not exceed \$7,500." That line is an attempt to make the two bills consistent. Actually, as a technical drafting matter, it would be better if that line did not appear in the bill, and the two bills stand alone. Otherwise there is a potential for a conflict later on. If it is your pleasure to adopt this amendment, the staff recommends that line be removed.

Chairman Horne:

Thank you. This is a particular provision that I would like to address. For further clarification, Mr. Anthony, should we delete that line?

Nick Anthony, Committee Counsel:

As Mr. Ziegler stated, the reason for deleting that particular proposed amendment in Assembly Bill 9 would be that if, in fact, A.B. 261 were to not pass, then you would have an authorized fee under A.B. 9 if it were to pass, but no increase in the small claims court jurisdiction level. In an effort to make the

two mirror each other and not be contingent upon one another, that line would need to be removed in this particular amendment.

Assemblyman Sherwood:

The concern I have with the way the amendment is rewritten, is section 4, subsection (a), paragraphs (1) and (2). It states exactly what the increased fees can be used for. The way these fees have been amended here, these are double, triple, or quadruple the fees. We are talking about a substantial amount of money. I do not see a note as to how much, but if we are going to do that, why would we say it is for the courts but only for A through H? If they have needs for staffing, or a whole host of things they would like to do, for example put metal detectors in or subscribe to LexisNexis, et cetera, why would we constrain them with the specifics? The other issue is if they raise a ton of money, perhaps that money could be used elsewhere.

John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts:

The language as proposed in the amendment mirrored an Assembly measure regarding district court last session. We would not object to having the money be less restrained. As far as the amount of money to be raised, I would be happy to provide an analysis to the Committee.

Chairman Horne:

We have a deadline next week. I am comfortable with the drafted bill with the exception of the line we discussed earlier. Any other Committee thoughts?

Assemblyman Frierson:

I agree with the Chairman. I do not recall those constraints being expressed as an issue. I believe this adequately addresses the courts concerns and needs, and I support it.

Assemblyman Sherwood:

For clarification, are the courts 100 percent self-sufficient? They are not asking for state funds and also to get an increase in fees? If they are self-sufficient, then I am in support of this. But if the state is giving them a certain percentage of money, that may be a question.

John McCormick:

Justice courts are supported solely at the county level. The way the amendment was designed, this increase would provide funding specifically for the justice court and also provide more funding for the counties as well. That is where all the filing fees go, to the county general fund.

Chairman Horne:

I will entertain a motion.

ASSEMBLYMAN BROOKS MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 9.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Horne:

I will assign this bill to Assemblywoman Dondero Loop to present on the floor.

Assembly Bill 213: Makes various changes relating to gaming. (BDR 41-163)

Dave Ziegler, Committee Policy Analyst:

This bill is sponsored by this Committee and was heard on March 29, 2011.

[Read description of bill ([Exhibit Q](#))].

Chairman Horne:

Are there any questions concerning this bill?

Assemblyman Ohrenschall:

Professor Faiss and his students worked together with Mark Lipparelli, Chairman of the State Gaming Control Board and fine-tuned this bill. I think they have addressed the concerns and it is another good piece of legislation. I would also like to compliment Mr. Serrano for his work on this bill.

Chairman Horne:

Are there any other questions? Seeing none, I will entertain a motion.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 213.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I am assigning this bill to Assemblyman Ohrenschall to present on the floor.

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

Dave Ziegler, Committee Policy Analyst:

Assembly Bill 313 was sponsored by Assemblywoman Bustamante Adams and was heard in this Committee on April 4, 2011.

[Read description of bill ([Exhibit R](#))].

Chairman Horne:

Are there any comments?

Assemblyman McArthur:

I certainly support this bill, but am concerned with one point. Section 12, subsection 2, paragraph (d), requires a change of address or telephone number to be given at least 30 days before such change. If you request a new telephone number, you do not know the number until you actually get it. It would be impossible to give a 30-day notice for these types of changes.

Assemblyman Hammond:

If you are being deployed, how much notice do you have?

Chairman Horne:

That depends on the type of deployment. Would you prefer to change it to as soon as practicable?

Nick Anthony, Committee Counsel:

I believe you could change that to at least 30 days after such a change. The idea is you are supposed to provide notice within a certain amount of time. This would cover the situation where you might have a telephone number change, but do not know what the new number is.

Assemblyman McArthur:

I would be comfortable with "as soon as you know."

Assemblyman Kite:

I would approve of the amendment. I was once given three hours notice before I was deployed. I want to go on record saying that we cannot send our young men and women off to defend us and then take their kids away from them while they are gone.

Assemblywoman Diaz:

This section requires the remaining parent, who will have temporary custody of the children, to give the information to the parent being deployed with 30 days' notice of such a change. It is informing the person who is deployed of any changes in the address or telephone number, so contact between the deployed parent and his family remains intact.

Assemblyman McArthur:

I do not want to require someone to have to provide something that is unknown. You cannot give 30 days' advance notice to something you are not aware of.

Assemblyman Frierson:

I think Assemblywoman Diaz is correct. This is not referring to the parent who is being deployed. It is referring to the parent who is not being deployed to provide the deployed parent with that information.

Assemblyman McArthur:

I agree, but the information would still not be available 30 days in advance.

Assemblyman Frierson:

I think the point is, if you are the spouse at home, and you intend to change your phone number, wait 30 days. Let the court know you are planning on changing your phone number and then hold off for 30 days so the parent who is deployed has enough time to have that information and be able to contact the family.

Chairman Horne:

Does that sound like a reasonable interpretation?

Nick Anthony:

It does. I can certainly see both sides.

Assemblyman Frierson:

I do not have an issue with changing the wording to as soon as practicable. I think the point is to give the deployed parent enough time to contact his family.

Assemblyman Brooks:

I understand that this is to tell them to wait 30 days, but I think as soon as practicable would be a little bit more acceptable. Whenever you interfere in someone's life, there can be any number of issues. There could be threatening phone calls, or some other reason why they need to change their number

without a 30-day notice. I think as soon as practicable would be more palatable, particularly dealing with the issue of having a parent being deployed.

Assemblywoman Diaz:

My concern with "as soon as practicable" is that maybe for a parent who does not want the deployed parent to have contact with the children, as soon as practicable for them might be 60 days. I think we need to ensure we are protecting their rights while they are deployed. I do not know if the sponsor of the bill would want it at perhaps 15 or 30 days after the change.

Chairman Horne:

I think we are making a lot out of nothing. We could change it to say "as soon as practicable, but no later than 30 days."

Assemblywoman Bustamante Adams, thank you for sponsoring this. I think it is a good bill.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 313.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign this bill to Assemblywoman Bustamante Adams to present on the floor. Assemblyman McArthur can assist her.

That concludes this work session. This meeting is adjourned [at 11:57 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS**Committee Name: Committee on Judiciary****Date: April 6, 2011****Time of Meeting: 7:47 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 6	C	Julie Janovsky	Polaris Project Report
A.B. 6	D	Jill Morris	Written testimony
A.B. 6	E	Christopher Oswald	Written testimony
A.B. 57	F	Brett Kandt	Written testimony
A.B. 57	G	Mark Alan Nissenbaum	Prepared statement
A.B. 57	H	Carl Post	Written testimony
A.B. 57	I	Laurie Johnson	Written testimony
A.B. 57	J	Jerod Updike	Written testimony
A.B. 57	K	Terri L. Miller	Written testimony
A.B. 408	L	Assemblyman Segerblom	Amendment
A.B. 408	M	Assemblyman Segerblom	PowerPoint presentation
A.B. 408	N	Rebecca Gasca	Prepared statement
A.B. 408	O	Elisa Cafferata	Prepared statement
A.B. 9	P	Dave Ziegler	Work session document
A.B. 213	Q	Dave Ziegler	Work session document
A.B. 313	R	Dave Ziegler	Work session document