

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Sixth Session  
April 12, 2011**

The Committee on Legislative Operations and Elections was called to order by Chair Tick Segerblom at 1:34 p.m. on Tuesday, April 12, 2011, in Room 3142 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. In addition, the meeting was teleconferenced to Orange County, California. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](http://www.leg.state.nv.us/76th2011/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Tick Segerblom, Chair  
Assemblywoman Lucy Flores, Vice Chair  
Assemblyman Marcus Conklin  
Assemblyman Richard (Skip) Daly  
Assemblyman Pete Goicoechea  
Assemblyman Tom Grady  
Assemblyman Crescent Hardy  
Assemblyman Pat Hickey  
Assemblyman William C. Horne  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman Richard McArthur  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblywoman Debbie Smith  
Assemblyman Lynn D. Stewart

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Committee Policy Analyst  
Terry Horgan, Committee Secretary  
Michael Smith, Committee Assistant

**OTHERS PRESENT:**

Michael Pescetta, Attorney, Las Vegas, Nevada  
Nancy Hart, representing the Nevada Coalition Against the Death Penalty  
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada  
Jan Gilbert, representing the Progressive Leadership Alliance of Nevada  
John Cracchiolo, Executive Director, Nevada Catholic Conference; and representing the Bishops of Nevada and the Religious Alliance in Nevada  
Jim Richardson, Private Citizen, Reno, Nevada  
Marlene Lockard, representing the Nevada Women's Lobby  
Mark Nichols, Executive Director, Nevada Chapter, National Association of Social Workers  
Kristin Erickson, representing the Nevada District Attorneys Association  
Richard Gammick, District Attorney, Washoe County; and representing the Nevada District Attorneys Association  
Donald A. McMartin, Retired Judge, Orange County, California  
Michele Fair, Office of the Chief, Division of Parole and Probation, Department of Public Safety

**Chair Segerblom:**

[Roll was taken.] We are not going to be able to discuss Assembly Bill 81 today.

**Assembly Bill 81:** Revises various provisions relating to elections. (BDR 24-406)

[This bill was not heard.]

**Chair Segerblom:**

I will turn the meeting over to the Vice Chair, Ms. Flores.

**Vice Chair Flores:**

We are now going to open the hearing on Assembly Bill 501. Mr. Segerblom will present the bill.

**Assembly Bill 501:** Establishes a moratorium on the execution of sentences of death and provides for a study of issues regarding the death penalty.  
(BDR S-1103)

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

Assembly Bill 501 deals with a moratorium on the death penalty, and also calls for an audit by the Legislative Counsel Bureau (LCB) concerning the fiscal impact of the death penalty on the State of Nevada. As you can see ([Exhibit C](#)), we are calling this bill the Bernie Anderson law.

The issue is very straightforward. A couple of weeks ago, the head of the prison system indicated that Nevada could not put someone to death if it wanted to because the current procedure does not work. In the past 30 years, only one person has been executed who did not want to be. The remainder of the people who were executed during that time requested that they be executed. Meanwhile, it is costing millions of dollars in legal fees to fight this, so I believe the time has come to analyze this closely from a fiscal perspective and realize that the death penalty does not accomplish what we are trying to accomplish. There are several people who want to testify on behalf of this bill, so I will turn it over to them.

**Michael Pescetta, Attorney, Las Vegas, Nevada:**

I am an attorney practicing in the area of capital law and habeas corpus law. I am here representing myself and not the federal public defender. I am testifying in support of this bill. If we are going to have a death penalty in Nevada, it is important that the public and members of this body have an idea what it costs.

I would like to take a minute or two to describe the procedure involved in imposing the death penalty. In order to get the death penalty in Nevada, you have to be convicted of first degree murder. At the penalty phase, there is a separate proceeding during which the state is allowed to prove one or more aggravating factors that are statutorily laid out in *Nevada Revised Statutes* (NRS) 200.033. There are 15 listed factors with 7 subsections, so there are about 20 aggravating factors. In a capital case, there typically is some litigation over the scope and applicability of those factors, and some of those factors have been found unconstitutional in whole or in part over the years.

Then the defense is allowed to present mitigation. Mitigation is essentially anything that a juror may decide is a basis for imposing a sentence less than death. The duties of defense counsel in investigating and litigating that mitigation case are imposed not only by the Sixth Amendment and by the state *Constitution* but also under ADKT 4-11, that is, Order 4-11 of the Nevada Supreme Court's Administrative Docket, which sketches out the requirements that counsel is supposed to perform in providing representation in a capital case. That mitigation case typically involves questions of mental illness and abusive background. Much of the expense of capital litigation at the trial level is due to the necessity of investigating and litigating those issues—frequently with expert testimony.

Then there is a mandatory appeal to the Nevada Supreme Court. Generally speaking, that is handled by the same lawyer who handled the trial. If the Nevada Supreme Court affirms the conviction and sentence, then there is a post-conviction proceeding during which the petitioner files a habeas corpus petition in the trial court. That is litigated with an eye to determining whether trial counsel was ineffective. That is usually the principal issue in adequately investigating or presenting the mitigation case or other constitutional claims. That also tends to take a good deal of time and resources. At that point, if the petitioner loses, the petitioner has to file a federal habeas corpus petition, and that is when my office, the federal public defender, generally becomes involved in the case.

**Assemblyman Segerblom:**

Up until the point when the second appeal is filed with the state Supreme Court, does the state pay for the petitioner's legal fees?

**Michael Pescetta:**

The state pays for everything.

**Assemblyman Segerblom:**

And it obviously pays for the prosecutor, too.

**Michael Pescetta:**

Yes. Over the 34 years that the death penalty has been in existence in this modern era, there has been only one individual who actually paid for his own defense. So throughout the state proceedings, the state and/or the county system fund all the litigation on both sides. When the scene shifts to the federal district court, the federal courts fund the case for the defendant and the state continues to fund the counsel for the state, which is the Attorney General's Office.

Of course, this process can take a very long time and result in a substantial amount of expenditure if the quality of representation at the beginning is not adequate. We had a case in which the defendant had gone for trial and two rounds of habeas corpus proceedings. The individual had been on death row for 14 years before we did some testing and discovered that he was mentally retarded and could not be executed.

In a case that ended just this year, an individual in northern Nevada had been on death row for 30 years and been through several state habeas proceedings. That individual had a habeas corpus proceeding in front of Judge Wagner in Winnemucca that our office conducted after investigating the physical evidence and finding a key state witness. Judge Wagner vacated the death sentence and ended up imposing a sentence of life with the possibility of parole. The Judge also directed the Department of Corrections to bring the defendant before the Parole Board immediately and requested that the Parole Board parole him immediately on the grounds that the Judge had grave doubts as to whether he was guilty. The necessity for continuing investigation in these cases is part of the reason for the delay in these cases and also for the amount of cost.

Let us turn to the statistics I provided on a sheet called "The Death Penalty in Nevada Since 1977" ([Exhibit D](#)). These statistics are maintained by our office, because keeping track of these cases is something we do. The total number of defendants sentenced to death in Nevada since 1977 is 149. As the Chair noted, there has been one involuntary execution during all that time. The other 11 individuals who have been executed are what we call "volunteers"—people who have given up their appeals and asked to be executed.

The current death row population contains 71 inmates, all men. There are an additional ten individuals still on death row whose sentences have been vacated, or who have been granted some other form of relief and are awaiting further action in their cases.

If you look at item 3, those ten individuals whose death sentences have been reversed are a little less than 7 percent of the total sentenced to death. The 42 inmates who have been permanently removed from death row solely because of legal action are listed on line 4(a). That works out to a 34.9 percent error rate in the capital punishment system. Actually, I would say that rate is a little higher—closer to 40 percent—because some of these 149 individuals sentenced to death row were involved in more than one case. Some cases were reversed more than once by the state or federal courts. What this points up is that it is worthwhile at this point for this body, and for the electorate, to consider whether the death penalty is either cost-effective or desirable in its current form, since I think any program that came before this body, asked for

continued funding, and had to admit that there was a 30 to 40 percent error rate in what it did would probably run into some skepticism.

There have been a number of studies from other states showing that the cost of executing individuals is significantly higher than the cost of imposing a sentence of life without possibility of parole. The *Dallas Morning News* in Texas did a study in 1992 that showed executing people was three times as expensive as imposing a sentence of life without possibility of parole, and that each death sentence over the lifetime of the litigation cost about \$2.3 million. A study in Washington State showed that it cost about \$747,000 more to secure an execution rather than life without possibility of parole. We have never had a study of the actual costs in this state, so at this point all we have to go on is anecdotal evidence we can put together from the bodies that currently have it.

Since an Office of Appointed Counsel was instituted, early statistics show that expert and attorney fees for the defense in litigating a noncapital murder case are about \$50,000. The cost for defense and ancillary services such as expert witnesses for a capital murder case ranges from about \$180,000 to \$200,000. This was a very small pool of data, so it is practically anecdotal, but the fact is that everyone seems to agree that litigating a capital case does cost more than litigating a noncapital case. The question for this body is whether this body and the people of Nevada want to continue, knowing full well what the costs really are. Certainly, some people are in favor of having the death penalty, no matter the price. Some people might change their views in terms of the efficacy or desirability of the death penalty if the cost were more than they thought. Some people might consider the possibility of having a stricter, or narrower, death penalty. Instead of having 20 aggravating factors, narrow the class to 3 or 4 and focus on the worst of the worst offenders. That would be a more cost-effective way of having a death penalty.

There are people who say, quite sincerely, that there is no way you can put a price tag on justice, but the fact of the matter is that there are almost 1,000 people in the Nevada Department of Corrections who are in prison for committing homicide. The extent to which you can tell the difference, just on the facts of the case, between the cases in which a sentence of life without possibility of parole has been imposed and a case in which the death penalty has been imposed, tends to be very small. I think this body should consider passing this bill and giving us some empirical data concerning what this penalty is really costing us.

**Vice Chair Flores:**

Are there any questions from the Committee for Mr. Pescetta? [There was no response.] I have a question for you. There have recently been a number of

post-conviction DNA exonerations. Of those exonerations, do you know how many were death row inmates?

**Michael Pescetta:**

In Nevada, none.

**Vice Chair Flores:**

Nationally?

**Michael Pescetta:**

Former Attorney General Reno published a study in 1998 entirely devoted to DNA exonerations, but I do not have that number in front of me.

**Vice Chair Flores:**

I looked it up; it is 17. If there are no further questions for Mr. Pescetta, we will move on to Ms. Hart.

**Nancy Hart, representing the Nevada Coalition Against the Death Penalty:**

I have submitted a letter from Maizie Pusich with the Washoe County Public Defender's Office ([Exhibit E](#)) and would urge you to read it. I want to point out a couple of statements in her letter. While Mr. Pescetta discussed some of the appellate-level costs and also alluded to the trial costs, Ms. Pusich's letter speaks primarily about the trial-level costs. She writes,

Capital cases for the defense are far more expensive. Capital defense cases always take more time and money—often twice as much in time alone for each of the two defense lawyers that the law requires. . . .Over the past 14 years, our capital cases [meaning the Washoe County Public Defender's Office] have involved hundreds of hours of preparation for each case . . . . On average, each case takes 1,000 to 1,200 hours of attorney time.

I would like to point out that that is just the time involved and not the many other factors that raise the cost at the trial level, so I would encourage you to read her letter for those details. One final point she makes is,

The defense of capital cases is borne by taxpayers. There are currently no Washoe death row inmates who were represented by privately retained counsel. There have been some private appointed counsel, but all have been publicly paid.

We believe that an in-depth study of the cost of Nevada's death penalty is fully warranted. If you are going to cut government to the bone and ensure that all

government programs are operating efficiently and effectively, then the cost of maintaining a death penalty system in Nevada must be assessed.

I would like to make five points concerning the issue of cost and then a couple of points about the moratorium. The first, about cost, is that this is a public policy matter. Sometimes there are questions about why this is an issue that should be of concern. The answer is that decisions about whether to have a death penalty, and how the death penalty should be implemented in this state, rest squarely on the shoulders of the Legislature. With so much at stake, legislators should have complete information available to them, including information about the fiscal impact of maintaining a death penalty system. There is every reason to believe that Nevada's costs are consistent with the other states' cost studies, and we need to find out for ourselves by conducting our own study. Legislators need to know this information in order to carry out public policy decisions, and taxpayers deserve to know how many of their hard-earned dollars are spent maintaining Nevada's death penalty and with what results.

My second point is that other states have taken, or are taking, similar action. In my handout asking "Why A.B. 501? Why Now?" ([Exhibit F](#)), there is a list of other states currently considering measures very similar to this. Other states not listed are considering even more action, such as abolition or repeal, but many of these current state efforts are based on concerns about the cost of the death penalty. It is obvious that we are in the middle of a budget crisis, and that is why we find states considering this question. Just a week ago, the newest study came out—this one from North Carolina—and I have provided a two-page executive summary from that study ([Exhibit G](#)).

As you have heard, it is an extremely expensive penalty for a very small return, and that is my third point. Since 1977, we have executed 12 individuals in Nevada. Eleven of those have been people who have given up their appeals—the so-called volunteers. If you consider that 11 of those 12 have been executed by their own choice, only 1 individual was involuntarily executed in over 30 years of maintaining this expensive death penalty system. As you heard Mr. Pescetta say, it is clear how very expensive it is for such a small return. Even if you consider all 12 of those individuals, it is still a small return for the investment of our dollars.

My fourth point comes as a result of my primary professional work in the area of assisting victims of domestic violence and, to a lesser extent, victims of sexual assault and stalking. While I cannot and certainly would not speak on behalf of all victims or as a murder victim's family member, I can say from my own experience advocating for crime victims that we need more resources to



assist victims recovering from the experience of violent crime. There are some who say that when it comes to public safety, cost is no issue, yet public safety is not necessarily served when we spend large amounts of money seeking the death penalty for a relative handful of violent criminals while failing to adequately fund programs that will help all survivors of violence to heal. We submit that in a world of limited financial resources, choices can and must be made, and that the cause of public safety may well be better served by diverting these precious resources from the death penalty to victim assistance programs and violence prevention programs. Instead of focusing on punishing a relative handful of criminals, we must ensure that there are sufficient funds dedicated to providing adequate services and advocacy for all victims, but especially murder victims' families. We need an in-depth study of the costs of Nevada's death penalty so we can accurately evaluate whether public safety is best served by the continuation of this expensive program.

My fifth and last point concerning cost is that in 2002-2003, an interim legislative subcommittee considered this issue and came to the unanimous conclusion that a cost study should be conducted. A request was sent to the Supreme Court with the suggestion that the Court find grant funds, but here we are, nine years later, and the study has yet to be done. In fall 2008, the Advisory Commission on the Administration of Justice voted in favor of endorsing a cost study and, in fact, this bill passed out of the Assembly last session. This bill provides a vehicle for the very thing we have talked about since 2002. I respectfully suggest that now is the time to do it; now is the time to approve of conducting a comprehensive study of the cost of Nevada's death penalty. We cannot afford to wait any longer.

With respect to the moratorium, we support the moratorium in this bill because it makes sense to halt executions while we are studying the extent of the death penalty's fiscal impact. If you are concerned about the cost of having a death penalty, you should not be using it while waiting for critical information that will help make future public policy decisions regarding its use. You will be hearing from Rebecca Gasca about an effort to broaden the moratorium to a more comprehensive one, and I would like to suggest an alternative for your consideration that would broaden the moratorium. We suggest that the moratorium extend to all new criminal cases filed after the effective date of this legislation. There are two important reasons for such a moratorium: One, it would bring about immediate and substantial cost savings because, as you have heard, much of the cost of maintaining the death penalty system happens at the beginning stages of the homicide cases. Two, it would avoid the complication of halting pending appeals or pending trials in which juries may already be sitting. I do not have a formal amendment drafted, but I would be happy to

provide one to the Committee articulating this broader moratorium, and we would urge the Committee to amend the bill by broadening it in that way.

**Vice Chair Flores:**

Thank you, Ms. Hart. I suggest you work with the bill's sponsor on that. I also want to remind you that we are up against a deadline, so we do not have a lot of time if that is something you would like to pursue.

**Assemblyman Hickey:**

For those of us who want to consider having a study and have not made up their minds, adding the moratorium makes it difficult. If the intent is to study the expense and the time the process takes, the moratorium provision might make it difficult for some of us, and I include myself, to vote for the study.

**Nancy Hart:**

The moratorium proposal I just articulated would be a higher cost savings. If the Committee believes cost is an issue sufficient to warrant a study, then a broad moratorium to bring the costs down right now makes an enormous amount of sense to me. The moratorium currently in the bill makes sense from the standpoint of taking this issue seriously. If this is a program we have serious concerns about, and we are seriously going to look at the cost issues involved, it certainly warrants halting the program while we are looking at it. I do think it is a stronger argument for a broader moratorium.

**Assemblyman Horne:**

I am confused on the date and the broadening of the moratorium if the moratorium is only for two years for new cases. I do not know of anyone who is convicted and put to death within two years. I do not understand what that amendment would do. If someone was under threat of the death penalty, he probably would not be coming to trial by 2013 if he was charged today.

**Nancy Hart:**

As it is worded now, the moratorium would be on executions. No executions would take place. The broader moratorium would include new filings, trials, or proceedings.

**Assemblyman Horne:**

I see. The death penalty would be taken off the table for the next two years.

**Nancy Hart:**

You would see immediate cost savings, obviously.

**Assemblyman Ohrenschall:**

Looking online, it seems as though four states have recently conducted studies like this—Kansas, Tennessee, Maryland, and California. In each case, the state found it was more expensive to try someone on a capital charge than it was on a comparable life-without-parole charge. Assuming that we conduct this study and find similar results in Nevada, would enacting the moratorium now lead to early cost savings during this initial two-year period during which the death penalty is not instituted?

**Nancy Hart:**

Yes, I agree with that. We would see cost savings. There would be an early start to saving money. Am I addressing your question?

**Assemblyman Ohrenschall:**

Yes. If Nevada conducts this study, do you have any reason to believe Nevada's results would be any different in terms of the cost savings of not charging someone with the death penalty, as opposed to charging him with life without parole?

**Nancy Hart:**

There is no reason to believe that our death penalty would be significantly different. The studies have been varied in their findings. They found the cost to be anything from two to five times as much, so it is important for Nevada to look at what we spend on our death penalty. I think it would be consistent with those other states' studies.

**Assemblyman Ohrenschall:**

So during the moratorium, there will be cost savings for not charging people with capital offenses and just charging them with life without parole. Do you think those resources can be used to prosecute other types of criminals who are not being prosecuted now? Do you think the money saved could be put to good use in terms of getting crime off the streets?

**Nancy Hart:**

Absolutely. I am not going to pretend to be an expert on how the prosecutors decide their budgets and priorities, but on the assumption that you have X amount of money to spend, and you do not have to spend as much attorney time on death penalty cases, then you would have that much more prosecutor and investigative time available for resolving other criminal cases, either earlier or by utilizing more resources than you currently are able to provide.

**Assemblyman Horne:**

If an inmate is currently in the pipeline and if, during the normal process of a death sentence proceeding, his death sentence would have been after 2013, would any of his appeals stop? Would they continue even if the person would not likely be executed until after that 2013 moratorium?

**Nancy Hart:**

I would have to refer that question to Mr. Pescetta, because I do not know if a state legislature can toll, or hold off, the deadlines in federal court.

**Assemblyman Horne:**

That leads to the next question. If his sentence was imminent, I assume the execution could not take place until the conclusion of the moratorium. On one hand, the execution of a defendant would be stayed for a couple of years. On the other hand, another defendant would still be working through the process, because he would not likely be executed before 2013 and his attorney could continue to work on his appeals.

**Michael Pescetta:**

Certainly nothing this Legislature passes can stop the processing of appeals in the federal system. The moratorium you adopt could have, but the current language simply prevents any executions from occurring during the next biennium. That would not have any effect on the progress of any litigation in either state or federal courts or in the seeking of new death penalties. My understanding of Ms. Hart's proposal is that the moratorium should be broadened to prohibit filings of notices of intent to seek the death penalty at the initial trial level, so there would not be any new cases during the next biennium. The cost savings would occur immediately as to those cases because they would not have to go to trial or not have to prepare for trial. Then it would just be a question concerning how you want to couch the language of the moratorium if you also wanted to stay any proceedings in the state courts—either the Nevada Supreme Court or the state district courts during that period. It would not affect federal proceedings, but you could provide that all state proceedings would be stayed so that no further litigation would take up any further resources. That is your choice.

**Vice Chair Flores:**

I want to clarify that we are talking about Ms. Hart's expansion of an amendment that has not yet been submitted.

**Assemblyman Horne:**

I understand that. Talking again about the moratorium, if a person was on a final appeal right now and facing being put to death in the State of Nevada, and

that appeal fails during this moratorium period, the person would have exhausted all appeal rights, but Nevada would not carry out the execution until after the moratorium. Is that correct?

**Michael Pescetta:**

That is my understanding of the current language of the bill.

**Assemblyman Stewart:**

A study to determine the cost of executing 12 people? We could do that this afternoon.

**Nancy Hart:**

The cost of evaluating Nevada's death penalty system would look at more than the 12 individuals who have been executed. In the bill is a list of the items the study would look at—prosecution costs, defense costs, investigative costs, et cetera. You would be looking at those costs at all levels, and the 12 you referred to are the 12 who have actually been executed since 1977. We would be looking at the costs involved in prosecuting death penalty cases in all the counties in Nevada—how much attorney time was spent, how many cases were charged, and how many received death sentences versus how many are on death row. There are more numbers involved than just the 12.

**Assemblyman Stewart:**

I bet my interns could do it by Friday. Thank you.

**Vice Chair Flores:**

There is an exhaustive list of what will be studied on page 3 of the bill. Do we have any more questions for Ms. Hart? [There was no response.]

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

We are here to echo our support for this bill. This is a controversial issue that the state has waffled on for many years. I wish this data were widely available and easily searchable, because if it only took a matter of a few days, I would have had that information in front of this body. I have the distinct honor of working for the American Civil Liberties Union (ACLU), and I work on issues like this day in and day out. It is not feasible for us to compile this data. I would have done it if I could have in order to save the state money. We could have skipped the cost study and moved right to consideration of a full moratorium, or even abolition; however, given the absence of clear-cut data, I think it is important that this study or audit move forward as iterated in the bill.

I would like to speak a little more broadly on the de facto moratorium that somewhat already exists in this state. A few weeks ago I had the opportunity to attend the Board of State Prison Commissioners' meeting. Members of that Board include the Governor, Attorney General, and Secretary of State. They received a lengthy presentation from the Nevada Department of Corrections with regard to the Nevada State Prison. The ACLU of Nevada takes no position on the closing of the Nevada State Prison; however, this body knows that the death chamber is at Nevada State Prison. It is currently on the second floor of what is widely considered to be a non-Americans with Disabilities Act (ADA)-compliant building. The Department, as represented by Acting Director Cox as well as a few other individuals, noted that if a court challenge were to be brought forward in a case, and any execution were to be ordered, the court would likely hold that the execution could not be carried out. That is in addition to the issues nationwide concerning the three-drug cocktail that had been used for executions. The producer of that drug cocktail is not producing it anymore. This bill, we think, would be an iteration of the de facto moratorium in place around the nation and certainly within the State of Nevada.

If the state needs to reconstruct a new death chamber, it is looking at having to spend multiple millions of dollars. I urge Committee members to contact the Department of Corrections staff, who perhaps could speak on this matter. But certainly, they estimated that constructing a new death chamber would cost the state tens of millions of dollars. One idea thrown out at the Board of State Prison Commissioners' meeting was to modify a portion of an existing facility such as at the Ely prison. Certainly, the state has not budgeted for such an expenditure at this time. If you were to move forward with a moratorium, you certainly would not be forced to add that expense into the next biennium.

We support the expansion of the moratorium. The nationwide trend is an interesting one. Several states have recently abolished the death penalty, including the State of Illinois, which acted just a few weeks ago with very broad bipartisan support. The year before that, the State of New Mexico abolished it. Largely at the forefront of the debates were issues related to cost, but also the fact that the death penalty is being applied to urban, low-income individuals at a disproportionate rate. That certainly is an inconsistent use of government power from our perspective, and needs to be considered with respect to the carrying out of the state's duties in that regard.

From the ACLU's perspective, and a good governance perspective, transparency should be one of the most important issues at hand when the government takes certain steps, particularly when those steps may result in the taking of an individual's life. Without having a fair understanding of the resources the state must invest in to carry out sentences such as this, we think that the

government does a disservice to its constituents. Certainly, state government appropriations spent on one measure to protect the community—in this case on seeking the death penalty—means that less is available for other worthwhile endeavors.

Since the Honorable Judge McMartin is not available, I want to explain that he served for many years in Orange County in southern California. He probably calls himself the hanging judge. He sentenced ten individuals to death for horrifying and heinous crimes. Not one of them has been executed, although one of them did die in prison of natural causes. This judge recognized that in a recent opinion editorial that was published by the *Los Angeles Times*. It is an article well worth reading, especially for those of you who may support the death penalty, as this judge does, but realize that the overwhelming cost and burdens that the state is being saddled with in carrying out those duties undermines the idea for which it was established. The judge and many other individuals around the nation, regardless of their political stripe, have recently called into question the serious duty of the state to look at the costs and reflect upon its failings for public safety. While we have certainly tried to execute people, it has not worked. Many studies have shown that it is inconclusive whether people who commit these kinds of acts think about the death penalty and see it as a deterrent. So I hope the Committee moves forward in expanding the scope of this moratorium as well as with pulling these numbers.

**Vice Chair Flores:**

Are there any questions from the Committee? [There was no response.] We are going to move on to those who are in support of A.B. 501.

**Jan Gilbert, representing the Progressive Leadership Alliance of Nevada:**

The Progressive Leadership Alliance of Nevada (PLAN) works on issues that affect at-risk communities. We feel that this piece of legislation is crucial: Study the death penalty and determine the cost. Are low-income people disproportionately affected? Is it the representation? Why is it that more people of color are on death row than are represented in the population? We feel that this is a racial-equity issue, and we will be scoring it for our Racial Equity Report Card. There is not only the financial aspect of saving money for our state, but also the cost of lives and the possibility that these people should just spend the rest of their lives in prison rather than being executed. So we urge your support. People talk about the death penalty being a deterrent to crime, yet that has not been proven to be true, and it minimally addresses the problem of violent crime in our state.

**John Cracchiolo, Executive Director, Nevada Catholic Conference; and representing the Bishops of Nevada and the Religious Alliance in Nevada:**

I am on the Board of the Religious Alliance in Nevada (RAIN) and am speaking on behalf of their advocate, Larry Struve, who has submitted written testimony in regards to the Board of RAIN's position ([Exhibit H](#)). As you know, Catholic teaching opposes the death penalty as being immoral and, at times, unjustly applied. We support this bill to study the fiscal impact to the state, especially in these difficult budgetary times when so much of what is left of the safety net is being threatened and impacted. Allowing Nevadans to understand the true cost of putting a person to death, in lieu of life imprisonment without parole, should be available to every taxpayer in our state, so we urge the passing of A.B. 501.

**Jim Richardson, Private Citizen, Reno, Nevada:**

I teach introductory sociology, the sociology of law, work with the National Judicial College in the training of judges, and teach a course in social and behavioral science evidence. In all those courses, the kind of evidence and data that has been talked about here from other states is germane. Sometimes we have very interesting discussions about the death penalty, why we have it and other countries do not, its cost, and why it seems to be more applicable to minorities.

I have also been an expert witness in pretrial hearings in some capital cases in this state, such as the Gallego trial in Lovelock and the Priscilla Ford trial in Washoe County, so I have some background on this subject. The part of this bill that attracts me as a citizen and sociologist is the part that deals with the study. We need data. This is a contentious, controversial issue, and there are many differences of opinion on it. We do not usually look with great admiration on studies done in other states, even if they do appear rather compelling and consistent. I think we need Nevada data, and I hope you will support at least that part of the bill, so we can get Nevada data and know exactly what we are talking about in terms of the cost in all the counties.

I do not know if you remember, but in the Gallego murder trial in Lovelock, they actually went on *Good Morning America* and asked for money so they could carry out the trial. The trial did take place, and you probably know the result.

I would like to see us gather our own data because the people in Nevada are divided on this issue. If we are going to do anything about it, we need data Nevadans will accept. Again, I urge your support for at least the study portion of the bill.

**Vice Chair Flores:**

Are there any questions? [There was no response.]



**Marlene Lockard, representing the Nevada Women's Lobby:**

The Lobby believes in the principle that the lives of all people are inherently valuable and worthy of respect and dignity. Based on this principle and the inequities in the current death penalty system, the Nevada Women's Lobby is opposed to the death penalty and has testified in support of reforms and in favor of a moratorium in previous legislative sessions. Today, we support the cost study because in light of the state's financial woes and the terrible cuts happening to so many vital government programs, it makes sense to take a close look at how much we are spending on our death penalty system.

From what we have learned, we understand that maintaining the death penalty is a very expensive public safety program. Like all government-funded programs, its costs should be reviewed and evaluated. Nevada needs to make difficult choices about what we can afford to fund, and lawmakers and taxpayers alike should have accurate and complete information about the costs of maintaining the death penalty. As in the past, the Nevada Women's Lobby supports the moratorium on the death penalty while the study is being conducted. We would also support a broader moratorium that included the halt to all death penalty litigation at this time.

**Vice Chair Flores:**

Do we have any questions? [There were none.] I do not have anyone else signed in to testify in support of A.B. 501. Is there anyone here in Carson City or in Las Vegas who would like to testify in support of A.B. 501?

**Mark Nichols, Executive Director, Nevada Chapter, National Association of Social Workers:**

I am here to speak in support of A.B. 501, and we would like to express our appreciation to Assemblyman Segerblom for sponsoring this bill.

I would like to speak through the perspective of my first master's degree, which was in business administration, where I was schooled in scientific management. My instructor would be astounded that business decisions or policy decisions would be made without complete information, particularly about cost. Nevada is in an economic crisis, and the budgets of our state and counties are under extreme stress. The public demands a cost-effective government. We expect our Governor and legislators to make informed policy decisions when taxpayer money is at stake. Policy makers and the public deserve and require full disclosure of the actual costs of the death penalty.

In some of my research for a social work project, I found an Urban Institute Study conducted in 2008 on the Maryland death penalty. They found that the average cost associated with a noncapital murder case was \$1.1 million. A

capital-eligible case, where the death penalty was sought but not imposed, cost \$1.8 million. The cost soared to \$3 million when the sentence was the death penalty.

Ultimately, the policy decision this body needs to make is whether the Legislature and the public need and deserve to know what the true cost of the death penalty is. The National Association of Social Workers, Nevada Chapter, also supports Ms. Hart's recommended broadening of the moratorium to prohibit further trials involving the death penalty, so Nevada can immediately begin to realize cost savings.

**Vice Chair Flores:**

Are there any questions from the Committee? [There was no response.] I do not see anyone wanting to testify in support, so we will move to the neutral position. Is there anyone testifying as neutral? [There was no response.] We are going to move to the opposition.

**Kristen Erickson, representing the Nevada District Attorneys Association:**

We are opposed to A.B. 501. With me here today is Richard Gammick, the Washoe County District Attorney. Mr. Gammick is currently the longest sitting District Attorney in the State of Nevada.

**Richard Gammick, District Attorney, Washoe County; and representing the Nevada District Attorneys Association:**

I am a prosecutor and am here on behalf of the Nevada District Attorneys Association and our office. I have spent 10 years prosecuting and am in my 17th year as the District Attorney. During that time, I personally prosecuted ten death penalty cases, so I have been involved in this subject for a lot of years. I started out as a sophomore in high school writing a death penalty term paper. At that time, I learned that the death penalty was a deterrent and is a deterrent. We need to keep what we are talking about in perspective.

I have heard all kinds of different reasons to attack the death penalty. Now we are hearing that it is a financial issue. What we do not hear is that the death penalty needs to be stricken from the law books in the State of Nevada, because in the last survey I am aware of, 72 percent of the people in this state support the death penalty. So we are here doing what the public wishes us to do.

I am not objecting to a study on the fiscal cost of the death penalty. We did not object to it two years ago when this bill was before the Legislature, nor before that. If the Legislature can find a grant to do an unbiased, neutral study of the cost of the death penalty, we are in support. I only ask, if that does

happen, that everything be included in the study, including those people who are in prison for life without the possibility of parole. The study needs to include their medical costs, the costs when they have terminal diseases, and the other costs the state encounters when these people are incarcerated.

I am here today to speak against the moratorium. We hear what other states are doing, what other states have done wrong, and the problems other states have, but have you heard a single fact or a single case in this state that would justify a moratorium of the death penalty? We have done it right. So far, we have completed every one of these cases the way they should be done. The Ninth Circuit Court of Appeals is reputed to be the most liberal circuit court in the United States, yet they pass on our cases, return them, and we execute people in this state.

Currently, 84 people are sitting on death row. There is something else I would like you to remember about this subject. These are the worst of the worst. These are the people who have forfeited their right to live any longer in this society because of their actions—not anyone else's actions. We need to make sure we continue to send that message to these people and then that we execute them.

Is the system broken? Absolutely. Why do we have people sitting on death row for over 20 years? That needs to be fixed. If you want to fix something, fix this so it is done much more quickly while still protecting all the rights of the accused. We are absolutely dedicated to that, so much so that we never seek the death penalty in Washoe or Clark Counties without doing a full and complete staffing of the case before making that decision. Just last week, we filed notice of death penalty on a case. That individual not only stabbed his grandmother to death, but he also stabbed his two-year-old son to death. Does a jury of the people in this community not have the right to sit in judgment on that individual, not only to decide whether he committed the two counts of first degree murder, but also to decide whether he deserves to die in the death chamber? I think the people have the right to make that choice, and that is what the death penalty does.

Today, I have heard all the costs associated with trial and all the costs associated with investigation, but I am here today to say I do not support any of that. The costs of a death penalty case come about during the appellate process because it is so long and not carried out in an expeditious manner. The cost of trial, the penalty phase, and the cost of sentencing a person to death are not that much more than those of a first degree murder case. I have been through many murder trials, and there is not any substantial difference between the costs at all.

In 1996, Congress passed federal habeas corpus relief. If a state is an opt-in state, then the whole process can be sped up. Federal court gets one appeal and they have to make that decision. If they do not make it, their pay stops. The circuit court gets one shot at it, and they have a certain time frame within which to make their decision. If they do not make a decision, their pay stops, so it expedited the entire system while protecting rights. I do not ever want to lose track of that. What happened to the opt-in provision? There is only one state in this whole nation that may opt in and that is Arizona. We have tried, but could not meet their requirements and neither can any other state that has a death penalty.

I do take exception to one item I saw in the bill and that is where it says that there is no effect on local government. All the categories in the bill that the Legislative Counsel Bureau (LCB) would be expected to research and report back on, in order to determine the cost of death penalty cases, will come from the offices of the district attorneys. Our personnel will be spending a lot of time pulling these statistics and making them available to the LCB so they can report back to you. I believe there is going to be a substantial fiscal impact on the counties, and we would be glad to furnish that information to you should you request it.

I kept hearing another phrase: "A very small return." I have a tough time dealing with that phrase, because when you deal with the surviving members of the families, there is nothing small about the return at all. Absolutely nothing. These people lived through an absolute horror, and then we compound it because they do not even survive long enough to see the person executed. I have found one family during all the time I have been involved in death penalty cases who opposed the death penalty. All the rest of the families felt it was the right way for justice to be served in their cases.

**Assemblywoman Kirkpatrick:**

In the two largest counties, Clark and Washoe, how many cases are pending, and has there been an increase in numbers?

**Richard Gammick:**

How many cases of what?

**Assemblywoman Kirkpatrick:**

Outside the 84 people on death row, how many are pending?

**Richard Gammick:**

Washoe County currently has 22 murder cases in our office, and 1 of those is a death penalty case.

**Assemblywoman Kirkpatrick:**

In the last ten years, have you seen a significant increase in those types of cases?

**Richard Gammick:**

We are pretty strict on when we apply the death penalty so, no, we have not. We staff every one of those cases, and there is very exhaustive staffing to be certain that is the direction we want to go and that it is supported by the law.

**Assemblywoman Kirkpatrick:**

How would I get Clark County's numbers?

**Richard Gammick:**

We will get those figures to you.

**Assemblywoman Kirkpatrick:**

What is the time frame for one person to go through the entire process?

**Richard Gammick:**

If you are talking about the period between the crime being committed and the execution of the perpetrator, one individual has been on death row for well over 20 years.

**Assemblywoman Kirkpatrick:**

If that is the case, and if we have already paid for that person to be in our prison system for 20 years, what is the benefit of continuing to pursue that process?

**Richard Gammick:**

The benefit is that we hope to ultimately carry out the law as it was written and execute that person. I do not agree with that 20-year waiting period. It is because the perpetrator gets to appeal again and again and again on the same issues. At this time, we have no way of stopping that, short of the federal habeas corpus relief I spoke about, but none of the states seem to qualify for that.

**Vice Chair Flores:**

I am sure the 17 people who were exonerated due to DNA evidence appreciated the nonexpedited process.

**Richard Gammick:**

That never happened in this state.

**Assemblyman Horne:**

How would you streamline this process? What would you eliminate in the appeal process to get to the execution more rapidly?

**Richard Gammick:**

If the system is used properly, and if you have competent personnel, appeals should be limited to one time. All of the issues should be brought forward. Another appeal should not be allowed unless something new has been discovered or come up, and it can be proved that the information is new and that the courts have never seen it before. The appeal process goes through the state courts and then goes through the federal courts—you have to remember how many different layers of court these appeals go through. Post-conviction relief, which is challenging your attorneys, should be kept to one time unless it can be shown that there is proof one of the attorneys was incompetent. Once one gets through the entire process, that should be it.

**Assemblyman Horne:**

In the State of Nevada, if someone is found guilty and sentenced to death, the first appeal would be to the state Supreme Court?

**Richard Gammick:**

Yes.

**Assemblyman Horne:**

If that appeal were not denied, it would go to the Ninth Circuit?

**Richard Gammick:**

Depending on what the issue is, it may go to federal district court and then to the Ninth Circuit Court.

**Assemblyman Horne:**

All right, it goes to federal district court and then to the Ninth Circuit and then to the U.S. Supreme Court.

**Richard Gammick:**

If they grant it, yes, sir.

**Assemblyman Horne:**

If you allow for each of those steps, we are also subject to the calendars of each of those courts.

**Richard Gammick:**

Yes.

**Assemblyman Horne:**

I am sure a habeas petition is not something that can be drafted in a couple of weeks, so appeals all the way to the U.S. Supreme Court already take an enormous amount of time.

**Richard Gammick:**

I can only speak to what I have seen in Florida, Texas, and Georgia, which have put expedited systems together. They are seeing execution within six to eight years with the teams they have working on death penalty cases.

**Assemblyman Horne:**

If we were to adopt narrowing of the appeal process, would your office and the Nevada District Attorneys Association be willing to look at narrowing the front end of the process as well? Expediting it, so to speak?

**Richard Gammick:**

I assume you are talking about going to trial. Normally, we are ready to go long before the defense is, so I do not think it would cause us any problems at all. Usually, the defense requests additional time from the court, and that is granted because of the nature of the case.

**Assemblyman Horne:**

I am sure there are continuations on both sides. In Nevada, if a jury fails to bring a sentence of death, the district attorney can have a new jury empanelled. That seems to be another addition to the length of time for the entire process. Someone is found guilty and then is sentenced. In order for an expedited process, is that an area the district attorney's office would be willing to look at?

**Richard Gammick:**

I cannot speak to that because I have never been faced with that situation.

**Assemblyman Ohrenschall:**

Earlier today, someone stated that the death penalty is not really an effective deterrent for violent crime. How do you feel about that?

**Richard Gammick:**

I have been arguing that for 50 years and have never found the solution, because everyone has his own opinion. What I have seen at the prisons, what I have learned by talking to various people convicted of first degree murder, and adding my life experiences, indicate that it is a deterrent. However, other people will come forward saying there is no way it is a deterrent. There have been crimes committed in states where people know the death penalty does not exist, just because it does not exist there. So in my opinion and with my

experience, it is a deterrent, but not in all cases. Sometimes, these cases are simply gut reactions and they happen very quickly. People do not really reflect on what can happen to them.

Is it the panacea for all cases? No, but I do believe in some cases it is a deterrent, and that people will not commit a murder because they know they will face execution. In fact, the individual we just filed against, through his attorney, expressed fear of the death penalty and did not want to see it.

**Assemblyman Ohrenschall:**

I was looking online at crime statistics in Nevada over the last 20 years. It seems as though violent crime has dropped, yet we have not executed anyone in a while, so I am wondering how that jibes. If we have not executed anyone in a while, are people really afraid of it, or is crime just dropping on its own because of other factors? Maybe it is not the deterrent you think it is.

**Richard Gammick:**

There are a multitude of reasons why violent crime has dropped. We are not denying it. That figure is from the Uniform Crime Reporting System through the Federal Bureau of Investigation. As far as murders and death penalties, we have 84 people pending right now on death row. We are still putting people on death row, and now we are pursuing another case. I do not know how active they are right now in Clark County, but we will get those figures.

Violent crime comes and goes. This year we have 22 murder cases in the office and last year we had 10, so I never know where this is going. One time the murders will involve gangs, another time families will be involved, and the next time it will involve a murder that occurred during another crime.

**Assemblyman Ohrenschall:**

In states that do not have capital punishment, is violent crime higher when compared with states that have capital punishment?

**Richard Gammick:**

I have never compared that. I worry about my state and my county.

**Assemblyman Hardy:**

Do you feel some of the costs related to these cases are due to people who are against the death penalty?

**Richard Gammick:**

From my experience, these cases are very thoroughly litigated before we ever see the death penalty. Is there extra expense there? Yes, there is. Is it really a



big issue? I do not believe so, because they need to be very exuberant about all these cases. We spend a lot of time in the Legislature and in other venues debating this issue, and the majority of Nevadans continue to say that they are in favor of it.

**Assemblywoman Kirkpatrick:**

Do you think people are in favor of the death penalty because they believe it is happening faster than 20 years? Have we ever asked that question? I can see where people would be in favor of the death penalty, but if they knew it was taking 25 years and nothing had happened, might they change their minds? I am assuming you got your information based on polling results, but have we asked the question both ways? Would they be in favor of the death penalty knowing it costs this amount of time and this amount of money? If I polled my district, I am sure they would all be in favor of the death penalty, but I wonder if they would be in favor if they knew the cost, time, personnel, and all the other factors that go into it.

**Richard Gammick:**

The polls I am aware of have been taken by the media, usually the leading media in the state, which are in Clark County—either the *Las Vegas Review-Journal* or the *Las Vegas Sun*. One comment I hear most often is, "I believe in the death penalty. I believe you should execute people convicted of this; however, I wish it were done in a quicker manner." No, they are not happy having people sit on death row for 20 to 25 years or more.

**Vice Chair Flores:**

Are there any more questions? [There was no response.] No one else is signed in, but does anyone else want to speak in opposition? [There was no response.] All right, we will close the hearing on A.B. 501. Welcome back, Mr. Chairman.

[Notice of a teleconference was received in the hearing room.]

**Chair Segerblom:**

Your honor?

**Donald A. McMartin, Retired Judge, Orange County, California:**

Hello.

**Chair Segerblom:**

I apologize. We thought you were going to call around 1 p.m. Have you been on the phone all this time?

**Judge McMartin:**

Yes.

**Chair Segerblom:**

If you are willing to talk to us for a few minutes, we would appreciate hearing your testimony. We will reopen the hearing on Assembly Bill 501.

**Judge McMartin:**

I am a retired Orange County judge. I sentenced at least ten men to death row and tried many capital cases. In Orange County, the district attorney and I would decide which cases warranted going ahead with the death penalty and which ones did not.

After I sentenced ten killers to die, they called me the "hanging judge." Decades later, not one of these murderers has been executed—my first one was in 1978—so I have changed my mind about the death penalty. Lengthy appeals, legal errors, and retrials have made a mockery of decisions I once believed promised resolution for the family members and victims.

It costs over \$200,000 to commence a death penalty case, and it does not bring any resolution to the victims or to the families of the victims. There are millions of dollars in court costs and emotional torture as cases bounce around the endless legal maze, and I am speaking of California, which has 700 people on death row. Only 11 people have been executed in California, but not any of my cases have come close to being executed.

It is a cruel lie. What victims' families deserve and justice requires is that we swiftly lock up those convicted of murder without the possibility of parole. It is time to stop playing the killing game and wasting money on death penalty cases that never are resolved. Spend it on law enforcement, schools, and on the needy. That is my view on this subject.

**Chair Segerblom:**

How many years were you a Superior Court Judge?

**Judge McMartin:**

Fifteen or sixteen. I was appointed by Governor Jerry Brown.

**Chair Segerblom:**

Are there any questions for Judge McMartin? [There were none.] Thank you so much, Judge. I apologize for the confusion, but your testimony was very helpful.

All right, we will close the hearing on A.B. 501 and go to the work session on Assembly Bill 132.

**Assembly Bill 132**: Revises provisions governing the dates for certain elections. (BDR 24-684)

**Patrick Guinan, Committee Policy Analyst:**

[Mr. Guinan read an explanation of the bill and proposed amendments from the work session document ([Exhibit I](#)).]

**Chair Segerblom:**

The Cities of Reno and Sparks both came to me saying that they were concerned about this bill, so it will apply only to cities that had not yet changed to even-year elections.

**Patrick Guinan:**

Those cities include Boulder City, Caliente, Elko, Henderson, North Las Vegas, Las Vegas, and Yerington.

**Chair Segerblom:**

This bill would allow city councils to vote to change their municipal elections to even-numbered years, if they wanted. Are there any questions from the Committee?

**Assemblyman Grady:**

I did not hear Fallon listed. It is a general law city.

**Chair Segerblom:**

It is a general law city, so this would not apply.

**Assemblyman Grady:**

So they are okay on it?

**Patrick Guinan:**

I think they are okay. During our earlier discussion, they testified that they were in support of the bill as the amendment was suggested, so they would definitely not be included in any changes. They like things the way they are.

**Assemblyman Stewart:**

So this bill is strictly permissive.

**Chair Segerblom:**

Right. It just gives them the authority to make the change if they wish to. Essentially, terms of office that now end in June would lose eight months and end in November if they moved voting for those offices to the even-year general election. Seeing no further questions, I would take a motion.

ASSEMBLYMAN DALY MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 132.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

**Assemblyman Horne:**

I reserve the right to change my vote on the floor.

**Assemblywoman Kirkpatrick:**

I also reserve the right to change my vote on the floor.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS  
ABSENT FOR THE VOTE.)

**Patrick Guinan, Committee Policy Analyst:**

The final bill in today's work session is Assembly Bill 301. [Mr. Guinan reviewed the bill and proposed amendments using the work session document ([Exhibit J](#)).]

**Assembly Bill 301:** Revises provisions governing the restoration of civil rights for ex-felons. (BDR 16-687)

**Chair Segerblom:**

The clerks indicated there was a lot of confusion and that they did not really know how to apply the law, so we said if an individual had completed his or her sentence, parole, or probation, that the individual would now be eligible to vote. We removed the part about jury service and right to hold public office, but the individual would have the right to vote.

**Assemblyman Hickey:**

Looking at proposed amendment 5, it says, "Delete requirement that a person be given a voter registration application upon discharge." Theoretically, the person could be discharged the day of an election. Are we allowing same-day registration?

**Assemblyman Horne:**

I am okay with the proposed amendments, but there is one small concern I have involving the provision "regardless of honorable or dishonorable discharge." We constantly tell people who have done their time and have been discharged from prison to "go out, be a productive member of society, and do everything the rest of us are doing," but we take away their buy-in, which is the right to the polls, the right to express their likes or dislikes about something. I support ex-felons being able to vote, but have a problem with those who get dishonorable discharges—that means the individual did not do everything correct after parole or probation. I do not want to kill the bill, and I think they should be able to go to the polls and vote, because we are asking them to be members of society.

**Chair Segerblom:**

I appreciate your comment. That was a policy question we debated. Many times a dishonorable discharge relates to the fact that the individual did not make restitution. We felt it was wrong that someone's right to vote was based on how much money he was able to pay back. We would be open to staying with only allowing honorable discharges to be able to vote, if it was the Committee's wish.

**Assemblyman McArthur:**

It looks as though it would immediately restore the right to serve as a juror. I thought you said the right to vote was the only one that was restored? Did I get that backwards?

**Chair Segerblom:**

I think you have it backwards. The original bill said you would have the right to serve on a jury and the right to run for office. We took those two parts out. This just says you have a right to vote, or at least, that is the intent.

**Assemblyman McArthur:**

On page 9, line 36, of the proposed amendment "the right to vote" is crossed out, and on line 37, "the right to serve as a juror" is not crossed out.

**Patrick Guinan:**

I believe "the right to vote" being crossed out was an addition in the original bill, and it has been removed. What you see there is language that currently exists in statute, so the changed language to the statute has been removed and the current statute is what exists in the bill the way it has been amended.

**Assemblyman McArthur:**

Does someone have the right to vote?

**Assemblywoman Flores:**

It refers back to subsection 4, reading, "Except as otherwise provided in subsection 4," and then it gives a list that includes if you were a category A felon, et cetera.

**Patrick Guinan:**

The restored language Assemblywoman Flores was referring you to is also language that was there previously and refers back to that section. What you are looking at is that they do have the right to vote based on fulfilling all the categories in subsections 2 through 4.

**Assemblyman McArthur:**

Do they also have the right to serve as a juror, because that was left in the bill?

**Patrick Guinan:**

Pursuant to the language in section 4, subsection 2, which lays out all the categories under which they will have successfully completed their terms so that then they can. That is all current statute; there is nothing new there that would change their ability to serve on a jury or to vote.

**Assemblyman McArthur:**

We are giving these people all their rights back—the right to vote, the right to sit on a jury, the right to run for office. Were you purposely leaving out the right to bear arms? They have all the basic rights back, so it looks as though that right was purposefully left out.

**Chair Segerblom:**

That right is not in existing law. To make it simpler, all we have done is change the part about the right to vote. We have not tried to add any new rights. The right to serve on a jury and the right to run for office is the current law under certain extreme circumstances.

**Assemblyman McArthur:**

I understand that has a time frame of four years and six years. So we are purposefully leaving out the right to bear arms.

**Chair Segerblom:**

We are not adding it. That was never part of the bill, and we are not trying to put it in.

**Assemblywoman Kirkpatrick:**

I received tons of email on this subject, and had to show my constituents that current law allows restoration of the right to vote. There is a process. When I told them, they were shocked, but I showed them that the information was on the clerk's website. I also told my constituents that it did not necessarily make it easy to do. This bill streamlines the process a little bit so that it is very clear who can or cannot do it.

As an example, we have a long-time family friend who received three driving under the influence tickets and was convicted of a felony. She spent 15 years trying to get her rights restored. She is a great person, works a full-time job, and has a great family, but she could never vote. She went through the process and received a pardon, and I explained to her how to get the right to vote back. This does streamline the process, but it is not adding a new category to the statute.

I agree with Mr. Horne about the honorable discharge. There has to be an incentive for them to pay off those fines and keep moving forward, and I want to say that for the record.

**Assemblyman Stewart:**

Could we put something in the bill along the lines of "with the recommendation of the parole officer"? That might take care of concerns my colleagues and I have. The discharge could be dishonorable because the person had not completely paid his debt back, but the parole officer could still feel the individual was worthy.

**Chair Segerblom:**

I think we just go to the honorable discharge. I do not know how we would make that distinction, because that is essentially the determination they make. I do not think they would be willing to qualify themselves.

**Assemblywoman Flores:**

I support removing "dishonorable," and I think that would address the concerns of anyone having to make a recommendation. In order to get an honorable discharge, you have to have been recommended for that status by the person who is supervising you.

**Assemblyman Ohrenschall:**

Was it mentioned earlier that you can go from an honorable discharge to a dishonorable discharge because you are behind in paying some fines?

**Chair Segerblom:**

My understanding was that if they release you with a dishonorable discharge, it is because you have not done the restitution you were required to under your sentence. I do not like to link the right to vote to financial ability, but on the other hand, I am sure there are people who do not pay just because they do not want to pay, and we do not want to incentivize them either.

**Assemblyman Ohrenschall:**

Can they get extensions of time to pay the fine if they want to work towards an honorable discharge?

**Chair Segerblom:**

We have someone here from the Division of Parole and Probation who can answer that question.

**Assemblyman Horne:**

In my practice, it is rare to get a dishonorable discharge solely because of fees and fines. Also, we have a bill in the process that would have collections for outstanding fines go through the Controller's Office. Even after a person is released from Parole and Probation, we would still have a mechanism to collect these debts owed by probationers. They are likely to get an honorable discharge and still have a debt to the state, but that debt can still be collected, if possible.

**Michele Fair, Office of the Chief, Division of Parole and Probation, Department of Public Safety:**

A person can get a dishonorable discharge for not paying all owed restitution or for not meeting other requirements set forth. If he pays it off later, he can petition to have the dishonorable discharge converted to an honorable discharge, and we do that.

**Chair Segerblom:**

What other things would lead to a dishonorable discharge other than not paying a fine?

**Michele Fair:**

Repeated violations and not completing other requirements such as drug treatment and things like that.

**Chair Segerblom:**

Are there any questions? [There was no response.]



ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 301 WITH THE AMENDMENT FROM THE WORK SESSION DOCUMENT, AND TO FURTHER AMEND IT SO THAT ONLY THOSE WHO ARE HONORABLY DISCHARGED REGAIN THE RIGHTS SET FORTH IN THE AMENDMENT.

ASSEMBLYWOMAN FLORES SECONDED THE MOTION.

Is there any discussion on the motion?

**Assemblyman Stewart:**

I am going to vote for this bill with the reservation that I might change my vote based on my previous comments.

THE MOTION PASSED UNANIMOUSLY.

**Chair Segerblom:**

Is anyone here to give public comment? [There was no response.] We will be meeting again on Thursday, hopefully to resolve several bills still pending in the Committee. We are adjourned [at 3:28 p.m.].

RESPECTFULLY SUBMITTED:

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Terry Horgan  
Committee Secretary

APPROVED BY:

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Assemblyman Tick Segerblom, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Legislative Operations and Elections

**Date:** April 12, 2011

**Time of Meeting:** 1:34 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 501	C	Assemblyman Segerblom	PowerPoint
A.B. 501	D	Michael Pescetta	"The Death Penalty in Nevada Since 1977"
A.B. 501	E	Nancy Hart	Letter from Maizie Pusich
A.B. 501	F	Nancy Hart	"Why AB 501? Why Now?" Document
A.B. 501	G	Nancy Hart	"The Death Penalty in North Carolina: A Summary of the Data and Scientific Studies"
A.B. 501	H	John Cracchiolo	Letter from Larry Struve
A.B. 132	I	Patrick Guinan	Work Session Document
A.B. 301	J	Patrick Guinan	Work Session Document