MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
May 17, 2013

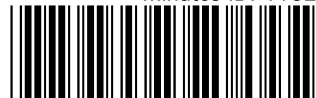
The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:48 a.m. on Friday, May 17, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington 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 nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Senator Tick Segerblom, Clark County Senatorial District No. 3
Senator Barbara K. Cegavske, Clark County Senatorial District No. 8
Senator Mark Hutchison, Clark County Senatorial District No. 6
Senator Mark A. Manendo, Clark County Senatorial District No. 21

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Dianne Harvey, Committee Secretary
Colter Thomas, Committee Assistant
Macy Young, Committee Assistant

OTHERS PRESENT:

Vanessa Spinazola, representing the American Civil Liberties Union of Nevada
Michael Patterson, representing the Lutheran Advocacy Ministry in Nevada; and the Episcopal Diocese of Nevada
Carey Stewart, Director, Department of Juvenile Services, Washoe County
Jennifer Batchelder, representing the Nevada Women's Lobby
Regan Comis, representing M&R Strategic Services
Rebecca Gasca, representing the Campaign for Youth Justice
Allan Smith, representing the Religious Alliance in Nevada
E.K. McDaniel, Deputy Director of Operations, Nevada Department of Corrections
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Robert Roshak, representing Nevada Sheriffs' and Chiefs' Association
Jason Guinasso, Private Citizen, Reno, Nevada
Francisco Nahoe, Private Citizen, Reno, Nevada
Gwen Linde, Private Citizen, Sparks, Nevada
Rocìo Grady, Private Citizen, Carson City, Nevada
Mark Foxwell, representing Knights of Columbus, Nevada State Council
Lynn Chapman, representing Nevada Families for Freedom
John Wagner, representing the Independent American Party of Nevada
Juanita Cox, representing Citizens in Action
Nicholas Frey, Private Citizen, Reno, Nevada

Barbara Jones, Private Citizen, Fallon, Nevada
Tim O'Callaghan, representing the Nevada Catholic Conference
Allen Lichtenstein, representing the American Civil Liberties Union of Nevada
Nechole Garcia, representing the City of Henderson
John T. Jones, Jr., representing Clark County Intergovernmental Relations
Elisa P. Cafferata, President & CEO, Nevada Advocates for Planned Parenthood Affiliates
Stacey Shinn, representing the Progressive Leadership Alliance of Nevada; and the National Association of Social Workers, Nevada Chapter
Edward Wynder, Private Citizen, Las Vegas, Nevada
Frank Cervantes, Division Director, Department of Juvenile Services, Washoe County
Alan Byers, Acting Administrator, Compliance Enforcement Division, Department of Motor Vehicles
Garrett Gordon, representing Olympia Companies

Chairman Frierson:
[Roll was called, and protocol was explained.] The Committee has a heavy agenda today, so we are going to hear the bills in order. I will open the hearing on Senate Bill 107 (1st Reprint).

Senate Bill 107 (1st Reprint): Restricts the use of solitary confinement and corrective room restriction on children in confinement. (BDR 5-519)

Senator Tick Segerblom, Clark County Senatorial District No. 3:
Senate Bill 107 (1st Reprint) is an issue which is coming to fruition around the country dealing with what we call solitary confinement, but it has many other names. It started out as a bill that was going to limit the solitary confinement in both juvenile and adult facilities in the state of Nevada. As it evolved, because of the controversy and newness of the issue, we agreed to a study of solitary confinement in the adult prison system, and then the juvenile court facilities agreed to limitations on their facilities. That is where the bill is amended to at this point. This issue is not going away, so I think it is important for all of us to start focusing on it and try to learn more about it over the years.

There is a lot of evidence that solitary confinement is psychologically devastating, particularly to youth, but also to adults (Exhibit C). If we are going to put people in that situation and we expect them to come out of jail, we have to realize that there are serious consequences. It is also much more expensive, obviously, to have three people, one per cell, as opposed to multiple-person cells. There are a lot of issues involved. It turned out to be a much bigger issue

than we could deal with in one bill, so what we have here is basically a compromise with juvenile being loaded, which they say is already currently in force, and then a study in the future. Ms. Spinazola is here to make a presentation.

Vanessa Spinazola, representing the American Civil Liberties Union of Nevada: The American Civil Liberties Union of Nevada (ACLU) is here in strong support of S.B. 107 (R1). I submitted a letter for the record (Exhibit D), which I will briefly summarize and add a few points to it.

Why look at the issue of solitary confinement? Research shows that solitary confinement has a profound impact on the health and well-being of the incarcerated, and in particular the mentally ill. There is actually a syndrome called segregated housing unit syndrome, and some of the reactions include increased anxiety and nervousness, revenge fantasies, fears of prosecution, and lack of impulse control. These are folks who will get back out in our communities after they are released from prison. Essentially, the clinical impacts of isolation are as detrimental as physical torture can be. This is exacerbated for juveniles because of the difference in cognitive development for children. There is a moral concern. We should be concerned about the state using solitary confinement on individuals who have been deprived of their liberty, but there is also the public safety concern that I briefly mentioned, as most prisoners will return to society, particularly the youth. Studies also show that these folks are more likely to reoffend than people who have not spent time in solitary confinement because of the difficulties they have reintegrating into society.

To mention the second part of the bill, I would like to call your attention to the amendment submitted by Senator Segerblom (Exhibit E). It is basically what we are working from. He is approving all the amendments. The second half starts with section 7, on page 3 of the amendment, and has to do with a study of solitary confinement. We use the term "solitary confinement," and no one in the state of Nevada or anywhere else in the country uses it. In the adult system, we hear terms such as "protective segregation," "administrative segregation," "disciplinary detention," and "disciplinary segregation." In the juvenile system, we hear terms such as "corrective room restriction," "behavioral room confinement," and "administrative seclusion." Those are some of the terms we are working with. What all of these terms can mean in terms of solitary confinement is basically depriving incarcerated people of contact with other individuals for 22 to 24 hours per day; restricting privileges and access to reading materials, radio, and TV; constraints on visitation; and creating an inability to participate in group activities. Ironically, solitary can

sometimes mean double-cell solitary, which is spending all of that time in a cell with someone else, but being restricted from all those privileges.

Because there are so many different types of segregation and so many different inconsistent administrative regulations—and I point to a number of those in my letter on the record—we believe a study of the impacts of these different types of segregation is warranted. In the study, some of the things we focus on are suicide rates, how mentally disabled people are treated, due process issues on getting out of solitary confinement once a person has been placed in it, recidivism rates, and the cost. You will notice in the study that we like to compare folks who spend time in solitary versus those who spend time in the general population and see what those results are.

I want to note that on the record, coming out of the Senate, the Nevada Department of Corrections (NDOC) was for the study; however, I had a drafting error when I drafted the study, and I did not include "protective segregation," so you will see in the amendment that "protective segregation" is added. There was no substantive reason for it; it was simply that I was looking through 300 pages of administrative regulations and I did not see "protective segregation," and it is my fault. However, I do believe that NDOC will oppose this addition. I do not see any reason why we should study the types of segregation in Nevada without looking at all types, which would include protective. Hopefully you will accept that amendment.

Finally, the first half of the bill deals with standardizing solitary and juvenile facilities. As mentioned, the effects of solitary confinement on the juvenile mind are even more debilitating than for adults. Kids in the juvenile justice system are also more likely to suffer from mental illness. There was a study done in New York that showed that 48 to 50 percent of the kids spending time in juvenile justice facilities had diagnosed mental disabilities, so the rates go up even higher.

We worked extensively with the juvenile justice administrators on the amendments for S.B. 107 (R1), and I will not go through them line by line, but I want to point out some of the highlights.

Chairman Frierson:
Keep in mind that we are starting from scratch, so if you are intending on going through the bill as a regular presentation, it would be helpful for us to go through the provisions of the bill. You can cross-reference to proposed amendments while you do it.

Vanessa Spinazola:
Excellent. For reference, section 1 and section 2 are substantially the same. The only differences are that section 1 has to do with local and regional facilities for juveniles, and section 2 has to do with state facilities. In section 1, in the amendment (Exhibit E), we are taking out the term "solitary confinement" for the reasons I have already mentioned. No one actually uses the term. In this section, we are talking about the situations in which corrective room restriction will be used. We talk that it is for modifying the negative behavior of the child, holding the child accountable for a violation of a rule, and ensuring the safety of the child.

Section 1, subsection 2, talks about an action that results in corrective room restriction. If it is more than two hours, it must be documented by a supervisor. In section 1, subsection 3, of the amendment, we state that the safety and well-being checks must be conducted. This has to do with the child being in corrective room restriction and having someone from the facility checking and making sure they are not suffering or potentially committing suicide.

Subsection 4 addresses the fact that the child shall only be in there for the minimum time required to address the original negative behavior they were put in for.

Chairman Frierson:
In subsection 2, I think the two-hour provision is a substantive one that is going to be the subject of conversation. That section is providing that if a child is being detained for those limited reasons, the child can only be detained for up to two hours.

Vanessa Spinazola:
They could be detained for longer; however, anything longer than two hours must be documented.

Subsection 3 has to do with conducting safety and well-being checks at intervals not to exceed 10 minutes. We worked with juvenile justice administrators on this, and it does not diminish their ability. Some folks do room checks three minutes apart, others eight minutes apart, and ten minutes was something we all agreed would work with everyone's regulations.

Subsection 4 states that the child should be in corrective room restriction only for the minimum time required, and they should be returned to the general population as soon as feasibly possible. Subsection 5 deals with the child who is subjected to room restriction for more than 24 hours. This has to do with the access that I was talking about earlier. Some of the detrimental effects from

solitary come when there is not access to privileges. This is a lot of what the juvenile justice administrators do already. Some of this has to do with the Prison Rape Elimination Act of 2003.

Subsection 5, paragraph (a), notes they should get not less than one hour of out-of-room, large muscle exercise. Paragraph (b) provides access to the same meals and to medical and mental health treatment. We amended in educational services after talking with the juvenile justice administrators a bit more. Paragraph (c) is a review, which is a due-process issue of the child being in there for 24 hours. The room restriction could be continued, but it must be documented in writing at that time.

Subsection 6 of section 1 is something that we obviously talked to the juvenile justice administrators about as well, and it has to do with limiting the detention for an incident to 72 consecutive hours. Subsection 7 has to do with reporting, and this is very important to us, so we can see what is happening to kids in the juvenile justice facility. We will have to report on all the items that I have outlined above.

On page 2 of the amendment (Exhibit E), subsection 8 addresses what I said earlier about there being different terms. The juvenile justice administrators asked all the facilities what terms they use, so this is how we have defined it. "Corrective room restriction" means the confinement of a child to his or her room as a disciplinary or protective action, and we included some of the terms that are currently in the regulations.

Section 2 is actually an almost verbatim repetition of section 1, except that it is for state facilities, so all the same provisions are provided in there, and the same amendments have been provided as well.

I want to note the fiscal costs. In Mississippi, they revolutionized their use of solitary confinement. The state reduced their segregation population in one institution from 1,000 to 150 individuals, and they eventually closed the entire unit. They saved about $8 million annually by doing this, and they also reduced the prison violence about 70 percent by getting rid of their segregation units. The federal government is studying the Federal Bureau of Prisons and their use of solitary therein. Also, comprehensive immigration reform is now looking at studying the use of segregation in immigration detention facilities. This is a national effort at this time.

We encourage passage of S.B. 107 (R1) with the amendments that we really worked on with the juvenile justice administrators. Also, in relation to the

study, we would like the protective segregation to be included. I will take any questions.

Chairman Frierson:
Section 7, although it is not bolded, is new language. I want to make sure that we do not overlook the fact that section 7 refers this matter of the study to the Advisory Commission on the Administration of Justice (ACAJ).

Vanessa Spinazola:
Correct. On the Senate side, this is where we initially had solitary as applied to state prison facilities and also county jails and detention facilities, and that proved to be controversial. We agreed to change all of that to a study, so that is all new language from the original drafting of the bill, but it is what was passed out of the Senate to the Assembly side, with the exception of the one amendment to include protective segregation in the study. I can go through the study if you would like.

Chairman Frierson:
If you could briefly, because it is new language.

Vanessa Spinazola:
This will refer the study to the ACAJ, and they will look at all the different terms that are used for solitary. Among the initial things they will look at—as in section 7, subsection 1—are the procedures that are used to put people in solitary initially. Subsection 2 has to do with security threat group identification, such as gang activity. That is in there because in other states, as I have read, people may have tattoos on their body and may not be in a gang anymore, but they are being put in solitary simply because of their identification tattoo. There can also be some racial undertones involving "gang activity."

Subsection 3 has to do with notification of release and release procedures. Again, this is the due process issue about folks being put in solitary. Subsection 4 has to do with access to the things that provide folks some sort of mental stability while they are in isolation: mental health services, audio and visual media, contact with staff, health care services, substance abuse services, reentry programs, programs for veterans, educational programming, and other services available to the general population. We want to be able to look at what is provided to folks in the general population versus what is provided to those in solitary.

Chairman Frierson:
Would it be fair to say that the study is proposing to look at everything that has anything to do with putting a minor in this type of confinement?

Vanessa Spinazola:
I would hope so, yes. As background, there are several other states that are studying solitary, including New Mexico, Texas, and California. This is basically a conglomeration of what other legislatures have studied.

Assemblyman Wheeler:
You mentioned in your testimony that apparently there have been some studies that prove mental disabilities after solitary. I am wondering if there were any studies done to the same people regarding mental disabilities before they went in, or was this study just after they came out?

Vanessa Spinazola:
I believe there are some comparison studies. The study that I passed around, which is the ACLU report, "Growing Up Locked Down," has to do with juveniles, and the New York study that I mentioned talks about folks who had diagnoses going in and also when they were out. Some of the differences that we see are that their mental illnesses are actually exacerbated and, arguably, part of the reason they are put in solitary is because of the way they act out in the prison population due to their mental disability. I am not sure if that answers your question but, yes, there have been some studies. Some folks are diagnosed, and a lot of folks with mental illnesses are not diagnosed before they go in, so it is hard to say.

Assemblyman Wheeler:
You said you have a comparison rate of people who have been diagnosed mentally disabled before they go in versus coming out. You presented solitary as exacerbating, defining, or actually causing these mental disabilities, and in your statement right now, that is kind of a backup, and I am trying to figure out where we are on this. Is it or is it not causing this?

Vanessa Spinazola:
That is a good question, and there are studies that will show—I can certainly get you a list of those, and I think some are cited in my letter—that it does cause it for individuals who do not have a diagnosed mental disability going in, and also that it exacerbates for folks who had a diagnosed mental disability when they went in to solitary. That is why we are interested in the study here in Nevada, and we hope we will get some Nevada-specific statistics on it.

Assemblyman Thompson:
I have a question about the Advisory Commission on the Administration of Justice. I would like to know more about their makeup and, if we do this study, how Nevada-specific is the study going to be? I think that the most counterproductive thing in the world is to do a study that does not relate

specifically to the area of concern. I would like them to focus on the data in Nevada and the issues in Nevada. It has to be very specific to our community, because a study can be done and it is not one size fits all. If it is going to be something that we are going to use as an effective tool to continue to build on our system, it has to truly drill down and work specifically with our community.

Chairman Frierson:
I will ask Mr. Ziegler to address it. The Advisory Commission on the Administration of Justice has been around for some time, and obviously throughout the session there have been several things referred to it, and if you are volunteering to be on the Commission, we are going to have a lot of work. I will have Mr. Ziegler talk about the Commission itself, because that goes far above and beyond this particular issue.

Dave Ziegler, Committee Policy Analyst:
The ACAJ is statutory, so the membership and duties are spelled out in the *Nevada Revised Statutes* (NRS). There are two members of the Legislature on the Commission and many other folks, including representatives from the Supreme Court, the district courts, the justice courts, the ACLU, and the Department of Corrections. It has quite a large membership and it also has a number of statutory subcommittees. It meets during the interim on an irregular basis. I would imagine in a typical interim it probably meets about six or seven times, and it has been chaired most recently by Assemblyman Horne.

Chairman Frierson:
It is in NRS Chapter 176, which goes over the makeup, duties, and subcommittees of the Advisory Commission in great detail.

Are there any other questions of Ms. Spinazola? [There were none.] I will invite those wishing to testify in support of S.B. 107 (R1) to now come forward.

Michael Patterson, representing the Lutheran Advocacy Ministry in Nevada; and the Episcopal Diocese of Nevada:
When Senator Segerblom first spoke, he talked about the fact that the bill was amended in the Senate hearings to remove the adult facilities from the bill. With his permission, we have submitted an amendment to you that reinstates sections 3 and 4 of the original bill (Exhibit F). Removing the youth from the bill's protections, as amended, we think is wrong. We think they still need to be in there for the adult systems.

One of the reasons we are so concerned relates to the federal Prison Rape Elimination Act of 2003. This year the Governor has to submit to the federal

government that we are making provisions to make sure that children who are in our state prisons are protected and that they are not subject to rape. We are concerned that one of the possible remedies to this would be to have an increased use of solitary or whatever the term is. In the amendment that we offered, we took out solitary and put in isolation, but there is still a debate going on regarding what term to use for the youth. That might have to be adjusted. I was in on that meeting, and there were so many different terms it was hard to pin down what the definition of solitary was.

I submitted to you a number of documents, and there are two that I want you to pay very close attention to. One is an article from the *Las Vegas Sun*. The title is "Age-old debate: Henderson boy's case brings to forefront issue of children being tried in adult courts" (Exhibit G). It includes a story about a 16-year-old boy in Clark County who, for various reasons, was put in solitary for his own protection, and his defense attorney commented, "I cannot tell you the difference it makes. You take a kid and lock him in a room for 23 of 24 hours of the day, and you drive him crazy." I think it would drive any of us crazy to be locked up that long. To do this to a young child in the adult system is unbelievably cruel. A number of children have resorted to suicide because the lockup has been so extensive and for such long periods of time. One young man was 17 years old and hanged himself because he had been in solitary for so long. We feel that the mistake was made taking the adult system out of the original bill. Mr. Segerblom has approved us putting this language back in.

Chairman Frierson:
Keep in mind that we do not know what that section was. It was taken out before it got here.

Michael Patterson:
You have it in the Nevada Electronic Legislative Information System (NELIS). Do you want me to read it to you?

Chairman Frierson:
If you could describe what it is you are proposing to put back in, it would help.

Michael Patterson:
As you have seen in S.B. 107 (R1), it says that section 3 and 4 are deleted by amendment. In our amendment (Exhibit F), we are proposing to re-add sections 3 and 4. Section 3 refers to the Department or a private facility or institution, and it would eliminate the use of solitary confinement on these youthful offenders. It also applies in section 4 to local jurisdictions such as county jails and other areas like that. Does that answer your question?

Chairman Frierson:
I think that what you are saying is that the bill as it made it out of the Senate referred only to juvenile facilities, and you are proposing to apply the same restrictions on the treatment of juveniles and confinement in the adult establishments as well as the juvenile facilities.

Michael Patterson:
Correct. We know that NDOC is going to oppose this. I have an email pretty much stating that.

Chairman Frierson:
Are there any questions for Mr. Patterson? [There were none.]

Carey Stewart, Director, Department of Juvenile Services, Washoe County:
I am also here on behalf of the Juvenile Justice Administrators of Nevada. As Ms. Spinazola mentioned, there has been a lot of dialogue and discussion in regard to sections 1 and 2 of the bill. We appreciate everyone's efforts. We greatly appreciate the bill's sponsor taking out the language of solitary confinement and adding language that we use within our facilities. The juvenile justice administrators are in support of sections 1 and 2 of this bill as they are written. We feel this is going to be really good legislation that will set a good standard for our juvenile facilities to follow in years to come, especially when we have kids in the highest level of care when they are in our facilities.

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Jennifer Batchelder, representing the Nevada Women's Lobby:
We support the bill and would support the amendments as well.

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

Regan Comis, representing M&R Strategic Services:
M&R manages a campaign with the MacArthur Foundation to reform juvenile justice in various states. We would like to express our strong support of this bill. We have been very involved in all the negotiations to bring this bill to the current form it is. We hope that you can support it.

Chairman Frierson:
Are there any questions? [There were none.] Thank you for the video link you provided us some time ago.

Regan Comis:
Yes, and I did send it to all the Committee members as well.

Chairman Frierson:
Thank you.

Rebecca Gasca, representing the Campaign for Youth Justice:
The Campaign for Youth Justice is a national organization dedicated to ending the practice of trying, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. We strongly support S.B. 107 (R1). We were definitely involved in all of the conversations with respect to the current changes that you see before you based on what the Senate Committee on Judiciary decided to do. We are here in support of both the amendments that have been presented, which are both supported by Senator Segerblom. I wanted to express our deep interest in how the state is following up with the Prison Rape Elimination Act.

I wanted to state on the record that the Prison Rape Elimination Commission was very clear on the use of isolation, and it stated in part that the Commission strongly discourages the practice of segregating vulnerable residents, because isolation may aggravate symptoms of mental illness and limit access to education programming and mental health services. Youth may be segregated as a last resort for short periods when less restrictive measures are inadequate to keep them and other residents safe. We are very interested in the study and how it comes out, and we want to make sure that we are complying with these federal standards. We really appreciate your consideration of this bill. If I might add, I submitted written testimony that is more comprehensive (Exhibit H).

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

Allan Smith, representing the Religious Alliance in Nevada:
We are here in support of S.B. 107 (R1) in its form as well as with the friendly amendments, and we would like to echo the testimony that has been given in support of this measure.

Chairman Frierson:
Are there any other folks wishing to offer testimony in support? [There was no one.] Is there anyone in Las Vegas wishing to offer testimony in support? [There was no one.] Is there anyone in Carson City wishing to offer testimony in opposition?

E.K. McDaniel, Deputy Director of Operations, Nevada Department of Corrections:
I would like to give a little history of our involvement in this bill when we went through it originally. We had some concerns that were quite restrictive for the Nevada Department of Corrections to operate, and we did agree and still do agree with the amendments in regard to doing a study and providing information for the study. There have been several amendments added to it since we agreed to it, so there are a few things that we want to point out to the Committee that we have some concerns with.

First of all, section 7 basically talks about the Nevada Department of Corrections' responsibility to provide information. It is not very clear and it is not defined well enough for us to be able to provide the accurate kind of information that we think needs to be provided in regard to the study. I could go through them individually. For example, in subsection 2, it talks about disseminating information on security threat groups. Security threat group information is protected by some federal laws. There are some things that we can provide and some things that we cannot provide in regard to security threat group information, and in regard to confidentiality of identifying certain individuals as to gang affiliations. The amendment does not specify exactly what information we would need to provide. Some we could; we would not have a problem with it. Some we could not, so it needs to be much clearer in regard to what we could provide.

Chairman Frierson:
Are you talking about the study?

E.K. McDaniel:
Yes.

Chairman Frierson:
Are you on the Advisory Commission?

E.K. McDaniel:
No.

Chairman Frierson:
This measure directs the Advisory Commission to conduct this study. It does not tell the Department of Corrections what to do at all. It seems to me that this would be on the Advisory Commission to the extent they are able to obtain information to conduct this study, and how they get that information and the limitations on that seem to be something that the Advisory Commission could

adjust based on what the Department of Corrections is able to provide them. This does not require the Department to do anything.

E.K. McDaniel:
My apologies, Mr. Chairman. Generally, what happens is the Advisory Commission asks the Department of Corrections to provide them this information based on this law. Some of it we could provide, and some of it we could not provide without clarification.

The other thing was that Mr. Segerblom's amendment (Exhibit E) added protective segregation to the study. Protective segregation is clearly a separate and distinct issue from anything considered to be disciplinary segregation or administrative segregation. Our protective custody units are operated more like a general population unit. They are not isolated. They are only segregated from the main population. Their housing units are completely separate so, to us, it is like apples and oranges. If you are going to compare administrative or disciplinary segregation to protective segregation, you will find they are two completely separate entities. We had some issues with the wording "protective segregation" being added.

Chairman Frierson:
The way I read it, this whole section does not tell NDOC to do anything. This whole section tells the Advisory Commission to conduct a study based on the information that they can obtain, so if there is information that you cannot compile based on how NDOC operates, then I do not think that you are violating anything because this does not tell NDOC to do anything. With respect to the number of children who are in protective segregation, while you may not think it is relevant, I think the sponsor of the bill would like to know the numbers, even if you think that it is apples and oranges to compare protective segregation to disciplinary segregation. It seems to me that this section directs the Commission to simply ask for the numbers of juveniles who are in protective segregation.

E.K. McDaniel:
I want to clarify one thing. If that is the case, we would not have a problem with that; however, when we are asked by a commission or a group in government to provide certain information, generally we are commanded to provide that information. We have a computerized system that will give us a lot of this information that we could readily provide. However, it would be very costly to update our system, and it would also take additional staff to be able to compile this information and provide it to whoever asked for it.

Chairman Frierson:
I do not mean to imply that NDOC could ignore requests. It just sounds to me like you were saying you cannot provide the numbers of people in protective segregation. You just do not think they are the same for the policy consideration, and I think that is a different argument. Whether or not they are comparable is different from whether or not you can give them the number.

E.K. McDaniel:
I understand that, and we hope it is clearly understood that if we could provide it, we would, but if there is a cost associated with it or complicated issues in regard to providing the information, this Committee just needs to understand how difficult it would be for the Department.

Chairman Frierson:
I understand and appreciate that. Are there any questions from the Committee? [There were none.] When we make decisions that impact the prison population, we need to see what we are doing, so we did tour a prison, and we appreciate your hospitality in showing it to us. I think we are allowed to put this bill in context because we were actually able to see the facility. I think you are speaking to the challenges that are associated with the populations you deal with.

E.K. McDaniel:
We appreciated the opportunity to give you a tour. Thank you very much.

Chairman Frierson:
Is there anyone else wishing to provide testimony in opposition? [There was no one.] Is there anyone in Las Vegas wishing to provide testimony in opposition? [There was no one.] Is there anyone wishing to provide testimony in a neutral position?

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office; and Nevada Sheriffs' and Chiefs' Association:
The Washoe County Sheriff's Office supports constitutional rights and personal liberties as well as ethical and humane treatment of all persons and the safety and security of our jail and all staff and inmates within. Because of that, I am here as neutral to S.B. 107 (R1) because the sponsor did work with us to remove local jails from this bill. We would passionately oppose adding sections back in due to the enormous fiscal and operational impact that would have on correctional facilities, both state and county.

As this study moves forward in the interim, and as you come back next session, if there is going to be an answer to that study, please consider that we operate

our facility with the best care for all staff and inmates within. To that end, 10 percent of the population gets 90 percent of the attention. These are people who we put into protective custody because they come in as beautiful persons with gender issues and we cannot figure out where it is safest to put them. So we put them in protective custody for their protection. We put the people who will take any object and try to kill themselves with it into protective custody or administrative segregation or whatever. We put the people who want to kill everyone, staff and inmates alike, into single cells. None of that is a dark hole in the ground, without natural light or access to the voice of any other human beings, and they get checked on every 10 or 15 minutes per our policy. We treat them the best that we can, and at any opportunity, these people will try to kill us or anyone they can reach out to and try to kill. Just keep those things in mind. You are going to get a study and know why we do the things we do. I just want you to think about that, and I want to plant that seed so that you know. You are all welcome to come and tour the Washoe County jail and see how well we run it. We thank the sponsor for bringing this bill forward, and excluding us this go-round, and hope that next session we do not get added back into something like this.

Chairman Frierson:
What is your position?

Eric Spratley:
It is neutral. I would oppose the proposed amendment to bring us back in.

Chairman Frierson:
Are there any questions for Mr. Spratley? [There were none.] Is there anyone else wishing to offer testimony in neutral?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I would echo the comments made by Mr. Spratley. We are neutral on the bill, but we would oppose an amendment to include sheriffs' jails.

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

Robert Roshak, representing the Nevada Sheriffs' and Chiefs' Association:
Just throw in a "me too" to what my cohorts say.

Chairman Frierson:
Are there any questions? [There were none.] Is there anyone else wishing to offer testimony in a neutral position, here or in Las Vegas? [There was no one.] I will invite Ms. Spinazola back up to make any brief closing remarks.

Vanessa Spinazola:
We would hope that this would move forward with the current amendments proposed through Senator Segerblom. We worked very hard with the juvenile justice administrators. We did not hear any issues with the first two sections. Again, in the study, I understand from the conversation with Mr. McDaniel that we are okay with the study at this point and my drafting error of not putting in the protective segregation.

I want to clarify that he did mention something about fiscal cost, and I want to make sure that there are no fiscal notes on this bill. This is typically what ACAJ does, and there are typically no fiscal costs associated with those studies.

Chairman Frierson:
I know what Mr. McDaniel was saying, which is that if we require him to do something that he is currently not equipped to do, he is either going to not be able to do it, or he is going to have to associate a cost in order to make adjustments to be able to do it. The intention is not to put on NDOC something that they are not equipped to do.

Vanessa Spinazola:
Correct. Thank you very much.

[The following exhibits were submitted but not discussed: (Exhibit I), (Exhibit J), (Exhibit K) (Exhibit L), (Exhibit M), and (Exhibit N).]

Chairman Frierson:
With that, I will close the hearing on S.B. 107 (R1) and open the hearing on Senate Bill 192 (1st Reprint).

Senate Bill 192 (1st Reprint): Enacts the Nevada Preservation of Religious Freedom Act to prohibit governmental entities from substantially burdening the exercise of religion. (BDR 3-477)

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8:
I am here today to present Senate Bill 192 (1st Reprint) for your consideration. The freedom of religion is protected by both the *Nevada Constitution* and the *United States Constitution*. Unfortunately, the constitutional provisions do not identify a legal standard for protecting religious freedom. That is why Congress

passed the Religious Freedom Restoration Act (RFRA) in 1993, which declared that if a government action substantially burdens a person's religious freedom, that action has to be done in the least restrictive way and must be in a furtherance of compelling government interest. We will be hearing a lot about that compelling interest. In 1997, the U.S. Supreme Court held that the federal Religious Freedom Restoration Act could not apply to the states, so S.B. 192 (R1), titled the Nevada Preservation of Religious Freedom Act (NPRFA), is meant to fill the holes left by the 1997 decision. Passing S.B. 192 (R1) will bring Nevada in line with the other states—up to 28 now—that have passed similar laws protecting religious freedom by enacting the compelling interest statute, which you will learn more about from my colleagues.

I would like to walk you through the bill. I will start with section 3 on page 3. This provision clarifies that the bill applies to all existing and future state and local laws and their implementation. However, while the bill allows state laws enacted on or after October 1, 2013, to explicitly exclude the application of S.B. 192 (R1), the bill also makes it clear that this provision shall not be construed to authorize a governmental entity to burden a person's religious belief.

The bill includes two important definitions on page 3. Exercise of religion is defined in section 5 of the bill as the ability to act or to refuse to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief. In section 6, governmental entity is defined as the State of Nevada, a political subdivision of the state, or an agency of either.

The key provision of S.B. 192 (R1) is found in section 8 of the bill. Specifically, section 8 prohibits a governmental entity from substantially burdening a person's exercise of religion unless the governmental entity demonstrates that burden furthers a compelling governmental interest and is the least restrictive means of furthering that governmental interest. Senator Hutchison will go further into the topic of compelling government interest. These standards would apply even if the burden is the result of the rule of general applicability. That is on page 3, lines 14 through 17. To protect governmental entities, the bill allows a court to prohibit a person from bringing future claims under the act if a court determines that the person filed earlier complaints that were without merit, fraudulent, or intended to harass the governmental entity. That is on page 3, starting on line 33. Finally, section 9 of the bill makes it clear that S.B. 192 (R1) applies to actions pending on October 1, 2013, the effective date of this bill, as well as to actions filed after that date.

Senator Mark Hutchison, Clark County Senatorial District No. 6:
It is an honor for me to present this bill, S.B. 192 (R1). Before providing some legal perspective in context to S.B. 192 (R1), I would like to remind us all today about the basis for the religious freedoms that we as a country, as a state, and as a people have cherished for generations. We have learned since our youth that our ancestors came to this country and populated its shores in large measure to escape persecution and death from exercising their religious beliefs, which were contrary to the beliefs or practices of their home country monarch, dictator, or tyrant. Ironically, our ancestors, once here, were themselves often intolerant of other faiths. In 1776, Thomas Jefferson drafted the *Declaration of Independence* from England. It would cost the lives of tens of thousands of Americans, but eventually we won independence from the greatest military power on the planet at the time, according to George Washington, by divine intervention again and again. Following the war, the American people would embark on a great experiment of self-government guided by the *U.S. Constitution*, which was ratified by the states in 1788. Three years later, the Bill of Rights was ratified, including the first ten amendments to the *Constitution*. Of course, the First Amendment was its first declaration.

The *Declaration of Independence*, which has been described as American scripture and our greatest export, became the foundational source for religious freedom in the United States by declaring, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights." Of course, the First Amendment itself is a fundamental source for our religious freedoms as well: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Beyond these domestic sources of religious freedom, international law likewise embraces all people's rights to freedom of religion. The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by the United Nations General Assembly, declares in Article 1, "Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

Having described some of the sources for our religious freedom, let me now turn to S.B. 192 (R1) and provide you the legal context for this important bill. As Senator Cegavske pointed out, the Religious Freedom Restoration Act was passed in 1993 by Congress, and it is important for the community to understand why the legislation was even necessary then. In 1963, the United

States decided a case called *Sherbert v. Verner*, 374 U.S. 398 (1963). Adele Sherbert was a textile-mill operator and a member of the Seventh-day Adventist Church. Eventually, Ms. Sherbert's employer switched from a five-day work week to a six-day work week, requiring her to work on Saturdays. According to her faith, working on Saturdays was not permitted, so Ms. Sherbert refused to work on Saturdays and was fired. Unable to find other employment, she sought unemployment compensation in South Carolina and her claim was denied. She appealed the denial all the way up to the South Carolina Supreme Court, and then, having lost all of her appeals at the state level, she appealed the decision to the U.S. Supreme Court. In that case, the court, which was presided over by Chief Justice Earl Warren, and in an opinion authored by Justice William J. Brennan, Jr., established a test. He did not bestow any new rights, but established a test to determine if an individual's rights to the freedom of exercising religious beliefs had been violated by the government. The *Sherbert* test required a court to determine, first, whether a person had a claim involving a sincere religious belief and, second, whether the government's action was a substantial burden on the person's ability to act on that belief. If those two elements were established, then the government had the burden of proving that it was acting in furtherance of a compelling state interest, and that it had pursued that interest in the least restricted means towards religion.

The *Sherbert* test, established by the widely recognized progressive Warren Court and by the widely recognized, established, and respected Justice Brennan, was the law of the land in this country until 1990, when the U.S. Supreme Court decided a case called *Employment Division v. Smith*, 494 U.S. 872 (1990). In that case, the court, presided over by Chief Justice William Rehnquist, in an opinion authored by Antonin Scalia, decided that the state could deny unemployment benefits to Native Americans who had been fired from their state jobs for violating a state prohibition on the use of peyote, even though the use of the drug was part of a religious ritual. This case received wide publicity and wide attention. I might add that the American Civil Liberties Union (ACLU) represented the Native Americans in the case and promoted their rights to religious freedoms and their First Amendment rights. The Supreme Court reasoned that a law that forbade Orthodox Jews from wearing yarmulkes on government property would be unconstitutional, as it would be targeting a religion. On the other hand, a law forbidding all people from wearing hats on state property would be constitutional, even though the law would require Orthodox Jews to violate either their religion or the law in order to walk on government property. In other words, the court said if the law was neutral towards religion and generally applicable to all persons, the First Amendment would no longer apply, despite the very real burden the law placed on religious minorities. This is why there was a widespread outcry and concern expressed

by the *Employment Division* decision and why the U.S. Congress took action after the U.S. Supreme Court decided that case. The U.S. Congress almost unanimously passed the Religious Freedom Restoration Act of 1993, and it reinstated the freedoms protected under the *Sherbert* test by requiring the government to show a compelling state interest if the government burdened religious freedoms.

Consider that then-Representative Chuck Schumer introduced a bill in the House of Representatives that passed by voice vote out of the House and by a 97 to 3 vote out of the Senate. The bill was sponsored by Senator Ted Kennedy and cosponsored by, among others, Senator Barbara Boxer, Senator John Kerry, Senator Patrick Leahy, and our own Senator Harry Reid. But unfortunately for the states, the U.S. Supreme Court was not done with the *Sherbert* test. In 1997, the court declared that the Religious Freedom Restoration Act did not apply to the states, and only to the federal government, so the act governed federal law and federal actions but not states.

As Senator Cegavske so well stated, the Nevada Preservation of Religious Freedom Act is simply meant to adopt and mirror the Religious Freedom Restoration Act on the federal level, which was affirmed by overwhelming bipartisan support in the Senate and the House and was signed into law by President Bill Clinton. Senate Bill 192 (R1) largely mirrors that act.

In conclusion, S.B. 192 (R1) deserves the wide bipartisan support that it has received not only at the national level, and not only among the 28 states that have passed it, but also among the cosponsors and supporters of this bill. Religious freedom under the *Declaration of Independence* and the First Amendment is a hallmark, in my opinion, of this country's greatest and mightiest attributes. My own faith teaches, "We claim the privilege of worshiping Almighty God according to the dictates of our own conscience, and allow all men and women the same privilege, let them worship how, where, or what they may."

Chairman Frierson:
Are there questions for either Senator Cegavske or Senator Hutchison? [There were none.]

Jason Guinasso, Private Citizen, Reno, Nevada:
I am a citizen and a local Nevada attorney who cares very deeply about religious liberty and protecting that most fundamental of all rights often called the first among equals. Anytime you are dealing with a fundamental liberty that is being burdened by the state or federal government, it is important that the highest standards of scrutiny be applied to that government action. I have divided my

testimony into several memorandums that I have already submitted. [They include (Exhibit O), (Exhibit P), and (Exhibit Q).] I answered what have become the most common questions from the Senate Judiciary Committee to the Senate and what I anticipate may come from the Assembly, based on conversations I have had with some of your colleagues on the Committee.

The first memo that I prepared is "Why Does Nevada Need a Religious Liberty Preservation Act?" (Exhibit O). The second memo I have prepared is "Will Religious Liberty Preservation Act Result in an Increase in Litigation?" (Exhibit P). The third memo deals with cases and examples illustrating why Nevada needs the Religious Freedom and Preservation Act [exhibit was not received]. The fourth memo deals with some concerns raised by Senator Ford, who was initially a sponsor of the bill and then later concluded that he was not going to support it (Exhibit Q). I am going to leave those comments to the Committee to review in detail, because I tried to be comprehensive and thorough in addressing those questions and concerns in the memorandums. Nevada needs the Religious Freedom Preservation Act to preserve the protections Nevadans have already historically enjoyed to free exercise of their convictions based on their faith.

For those who do not know, we have a constitutional amendment in the *Nevada Constitution*. It is Article 1, Section 4, and it is titled the Liberty of Conscience provision. This provision provides that, "The free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in this State, and no person shall be rendered incompetent to be a witness on account of his or her opinions on matters of his religious belief, but the liberty of conscience hereby secured, shall not be so construed, as to excuse acts of licentiousness or justify practices inconsistent with the peace, or safety of this State."

While we do already have a very strong constitutional provision protecting conscience and liberty, S.B. 192 (R1) is necessary to codify the standard that Nevada courts have historically used to determine whether a person's religious beliefs should be accommodated when a state government action or regulation restricts his or her religious practice. Senator Hutchison explained very well the standard that should be applied, and that is that any time religious liberty is burdened by state government, the state has to show that it had a compelling interest to burden that person's exercise of their faith and that they chose the least restrictive means to accomplish that end. Senate Bill 192 (R1) will guarantee that this test will be applied in all cases where free exercise of religion is substantially burdened. This test is a workable test, and it has been used since 1963 for just these kinds of cases. It is not novel, and it has

coexisted with other laws with regard to discrimination and women's reproductive health for all that time.

I want to emphasize that S.B. 192 (R1) simply mandates a standard that the highest level of judicial scrutiny will be applied to religious liberty cases. It is an articulation of standard that will protect all Nevadans, not just a select few. Senate Bill 192 (R1) is not about dictating results. It is about fair standards being applied to a fundamental liberty, not picking winners and losers in a culture war. You are going to hear testimony from organizations such as the ACLU and Planned Parenthood who are going to try to draw this Committee into a debate about the broader culture war, and who should win and who should lose in that war. This piece of legislation is not about picking winners and losers. This is about ensuring that our Nevada courts, when analyzing these cases where very important rights are pitted against each other, apply a standard that is fair and equitable to all parties that raise concerns about their religious liberty being infringed upon.

If my testimony is not enough for you to emphasize that point, I think you should be aware that Senator Ford asked the Legislative Counsel Bureau (LCB) to prepare a memorandum addressing the impact of S.B. 192 (R1) on such issues as women's reproductive health rights, and a couple of hypotheticals were specifically presented. One hypothetical was in rural counties, a doctor is not providing contraception, or doctors are not providing abortions in emergent circumstances. The LCB analyzed those issues and first affirmed that Nevada already has strong laws protecting those interests. That is, a pharmacist under the current regulations cannot refuse to provide contraception to women who seek to have their prescriptions filled. Nevada law already protects that. With regard to abortions in emergent circumstances, Nevada law already protects that interest as well, and LCB did an excellent job of outlining that. The thing that you should take away from LCB's memorandum is that what the bipartisan sponsors of this bill have said since they introduced it is, in fact, the truth. This is a bill advocating a standard to be applied in courts. It is not a bill to pick winners and losers. It is not a bill to dictate results.

The ACLU provided several anecdotes. If you notice in their anecdotes, they are all from other states. There is not one example of a Nevada case where a woman's right to access to health care has been burdened in any way. I want to point out that I have every state RFRA, and every case and every brief citing any state RFRA that has been enacted, and not one case has been used to attack a woman's access to health care or to unlawfully discriminate against any minority. I think that is an important thing to understand.

Additionally, the ACLU memorandum alleges that there will be a flood of new litigation, and that simply is not the case. This compelling interest standard has been in effect for 40 years, and in the states it has been in effect for about 15 years. There have been a total of four cases filed in Idaho, three cases filed in Oklahoma, two cases filed in South Carolina, one case in Alabama, one case in New Mexico, and zero in four other states that have this law. In bigger states like Texas, Illinois, and Florida, there have been 15, 14, and 16 cases filed respectively. This bill is not an invitation to open the floodgates of litigation. Further, it is not a bill that is meant to be a sword to attack our rights that have already been established by Nevada law. This bill is a shield to protect the sincerely held religious beliefs of all people of faith, regardless of what their faith is.

In the examples I gave you, I would like you to pay attention to one particular example, because I think many of you here may be supporters of Senate Joint Resolution 13 (1st Reprint).

Chairman Frierson:
That is not before us today.

Jason Guinasso:
If that is the case, then S.B. 192 (R1) would certainly be complementary.

Chairman Frierson:
I do not want to confuse the record. That is not before us today, and we are consistent about not talking about other bills, other than in passing.

Jason Guinasso:
With respect to marriage and marriage equality, I would say that, for example, John and Joe want to get married, but the state of Nevada limits marriage under Section 21 of Article 1 of the *Nevada Constitution,* where it says, "Only marriage between a male and female person shall be recognized and given effect in this state." For many people like John and Joe, especially men and women in the gay, lesbian, bisexual, and transgender community, marriage is a term reflective of their faith and of their conscience. However, the state of Nevada has established the definition of marriage consistent with the traditional Judeo-Christian definition of marriage. If S.B. 192 (R1) is passed, John and Joe could challenge Section 21 of Article 1 of the *Nevada Constitution* on the basis that this definition of marriage substantially burdens their sincerely held religious beliefs regarding same-sex couples and unlawfully establishes a definition of marriage that favors certain religious groups over another. Would I agree with that kind of litigation personally? Probably not. But John and Joe would be guaranteed, like other religious faiths, a right to have this matter considered by

the court, and they would be guaranteed that a high standard would be placed on the burden on their exercise of faith. That is to say that the state of Nevada would be forced to show that it has a compelling interest in defining marriage in that way.

I gave you that example because ultimately, when you discuss this in your work session and you vote on this bill, a lot of folks are going to try to allege that the bipartisan sponsors of this bill have some secret agenda to take away rights from the gay, lesbian, bisexual, and transgender community, or to attack women's access to reproductive health, or to discriminate against some other minority. This bill will not facilitate that kind of attack. The bipartisan sponsors of this bill would ask you whether or not you trust the motives and the specific language that they have presented to you, or do you believe there really is some hidden agenda? In the example that I just gave to you, I have showed you how this bill might be applied to a particular party with a certain set of religious beliefs that may not be consistent with my own, but if S.B. 192 (R1) is passed, we can all walk away with the assurance that the courts will apply a very high standard to circumstances where people's faiths are substantially burdened by government, and that regardless of the outcome, we can know that those people are given appropriate due process under law, and that the highest standard of scrutiny is applied when their fundamental rights are substantially impacted.

Assemblywoman Cohen:
On page 2 of the bill, from lines 11 through 14, where it says, "WHEREAS, the United States Supreme Court has upheld facially neutral laws which burden the exercise of religion with little justification by the governmental entity that enacted the law," I would like to know in what cases the United States Supreme Court upheld facially neutral laws that burden the exercise of religion with little justification, so the key is little justification. I do not understand that the rational basis test is equating to little justification. I would like to know where that comes from.

Senator Hutchison:
I believe this was taken from the federal RFRA laws as well as state RFRA laws. I think that the reference is to the case that you are talking about, which is *Employment Division v. Smith*, the insurance commissioner of the state, that was referenced earlier where the compelling state interest test was abandoned. The compelling state interest test required the government to come forward and justify what was their compelling state interest for burdening religion. When Justice Scalia authored the opinion in *Employment Division*, he said that test no longer applied, and that the only thing the government needed to do was demonstrate it was not targeting religion, and that it was generally applicable.

So if I were to guess what the authors of this had in mind, I would assume that they are saying in abandoning the compelling state interest test, and then just looking to see if it is generally applicable, that is not as high a standard or that does not require a lot of justification. That would be my analysis. I do not know exactly why the authors did it, but that would be my suggestion.

Assemblywoman Cohen:
Page 4, section 8, subsection 3, line 29 is the attorney's fees section. Are there any other statutes that have an automatic attorney's fee against the state government? That seems odd to me.

Senator Hutchison:
My understanding is that this pretty much mirrors federal and state law.

Jason Guinasso:
Most of the states where this has been enacted—for example, Texas, Illinois, and a few others—have this provision in it. The federal RFRA has it as well, so it is a standard provision in every RFRA, and I think the reason for that is to provide some teeth with regard to protecting the fundamental liberty interest at stake. That is, if the federal government or the state government is going to burden faith, they have to understand that there is a cost to them if they do so without fully analyzing the issue and applying the test themselves. This provision causes a state entity to pause and consider. Are we going to burden a faith group's religious convictions, and if so, will our burdening of that faith group's exercise of religion pass constitutional muster? That kind of provision is a mechanism to cause those who would enact specific rules or regulations or take certain actions to stop and count the costs.

Assemblywoman Cohen:
What has been going on in Nevada? Are there examples of people whose religious beliefs have been burdened that this bill, if it had been passed, would have helped?

Jason Guinasso:
There are certainly going to be people here today who are going to testify to that. As an attorney, I recently represented a couple before a court that was a guardian of some children they adopted from Costa Rica. The minor child had substantial disabilities that carried into adulthood, which required the couple to be the legal guardians of that child into adulthood. They had to make some major health care decisions regarding that child, and in the course of making those decisions, their rationale was questioned by the court. I put this in my exhibit to you (Exhibit R), and you can read the transcript excerpts. The court specifically told my clients, your faith has no place in my decision-making, and

has no place regarding the decisions you are making regarding your daughter's health care. This should be a decision based just on the black-letter law applied to governing those particular health care decisions. In this circumstance, the faith of this family was essential to arriving at a conclusion about what health care was going to be provided and what health care was not. That is one recent example from last October where a family was told by a court in Nevada that their faith had no relevance to the decisions they were making regarding their ward.

Assemblywoman Spiegel:
I have a situational question. Let us say that there is a couple, John and Jim, and they are domestic partners in Nevada. Jim goes to work and he wants domestic partnership health insurance for John. His employer says that his religion is against homosexual couples, and because of that he denies health insurance coverage despite there being laws that would allow for it. If this bill were to pass into law, which law would prevail?

[Assemblywoman Diaz assumed the Chair.]

Senator Hutchison:
I do not know, because the compelling state interest test does not determine outcomes. The compelling state interest test is just a test. This is a great example. You have two competing interests. You have the state saying you need to cover domestic partners in terms of their health insurance, and we have passed a law that requires it for domestic partners. Then an employer says, wait a minute. My belief is not in favor of providing that kind of coverage because of my belief in terms of that union or relationship or domestic partnership. So you have two important interests now competing against each other.

What will the court do? Someone is going to sue over that. Then the court says, I have two competing interests in front of me. If this law passes, I at least know what test I am going to apply. The test I am going to apply is compelling state interest. So I say to the state, you passed a law that said there has to be health insurance coverage for domestic partner relationships. What was your compelling state interest for doing that? The employer says that it is burdening his or her religious beliefs. The state is going to say, you know why we do that? Because we think as a matter of policy and a matter of course, and a matter of fairness and a matter of equality, the people who have domestic partnership relationships, just like married people, ought to have coverage under their insurance policies. We think that that furthers a compelling state interest by providing more coverage for those couples, more people in Nevada, and we think it is the fair and just and right thing to do and it

is a matter of policy. That is what we have done, and we have had years of experience of it that has benefitted the state. That is our compelling state interest.

The court can look at it and say, that sounds like a compelling state interest to me, or the court can say, no, it does not sound like a compelling state interest to me. In fact, we know that in *Bob Jones University v. United States*, 461 U.S. 574 (1983) the U.S. Supreme Court has said that the government will always have a compelling state interest to eradicate discrimination. Bob Jones University wanted to have an all-white student body, and denied access to all minorities. The Internal Revenue Service pulled its tax-exempt status. Bob Jones University sued and said, we have religious beliefs for not admitting people other than white people. The U.S. Supreme Court said, tough. The compelling state interest that the government has will always prevail over your religious views when it comes to antidiscrimination laws. So even though I cannot answer the question in terms of definitely how that is going to be resolved—because the test does not determine outcome—we at least have a test to apply, and you are going to find that the state government will often have a compelling state interest in that scenario.

[Chairman Frierson reassumed the Chair.]

Assemblywoman Spiegel:
There was an example in 2010 when a transgender person went to the Department of Motor Vehicles (DMV) and wanted to change her driver's license to reflect that she is a woman and to use her new name, and the DMV worker expressed his religious beliefs and denied her the ability to do that. It seems like a similar situation. Are you then saying that the prevailing state interest would be to say that the DMV could not discriminate against that Nevadan?

Senator Hutchison:
Yes. I think the same analysis would apply. In order for this test to apply, the state worker would say, for whatever religious beliefs I have, I do not think that I should be issuing this driver's license to someone who is transgender and wants to change it. We have to assume that is the reason. The state law is that, as a matter of state policy and state law, we issue driver's licenses, and we do not ask those kinds of questions. That is the state law. The state worker says, that violates my religious beliefs. I am suing, or someone is suing. Then the court gets it and says, okay, state, what is your compelling state interest? The state says our compelling state interest is that we do not want individual workers at the DMV to make all kinds of decisions based on their religion about whether they are going to issue, or not issue, a driver's license. We want to issue the driver's license. It promotes uniformity, certainty, and

driver safety in the state. All of those are compelling state interests. The court looks at the DMV worker and says, I am sorry; those sound like pretty compelling state interest reasons. Your religious beliefs are a back door in this case. I think that is the way it would turn out. Who knows, but at least that is how the compelling state interest would be applied.

Chairman Frierson:
Are there any questions from the Committee? [There were none.] My question relates to a point that was raised earlier, which was that there were no cases that were, in your opinion, applicable. I ask this question on a weekly basis with bills that come before the Judiciary Committee, and that is, what are we fixing? Are there cases that give rise to the need to do this? I have not seen that either.

Senator Hutchison:
I believe Jason Guinasso addressed that in terms of a case that he had where a judge had said that the religious beliefs of the family would play no role at all in the decisions of their mentally challenged daughter who had a need for some health issues that were surfacing and were an issue in court. Following us, we also have other people who can give real-life examples.

Chairman Frierson:
Are there any other questions from the Committee? [There were none.] I will invite others to provide testimony in support of S.B. 192 (R1) to now come forward.

Francisco Nahoe, Private Citizen, Reno, Nevada:
I am a citizen of Nevada and Rector of Saint Thomas Aquinas Cathedral in Reno. Before coming to Nevada, I spent several years in New England as a member of the faculty of Phillips Academy in Andover, as a teaching fellow at Dartmouth College, and as a graduate student at the Divinity School of Harvard University. In all three capacities, I found myself something of an anomaly. I was a Franciscan and a priest, very much on the traditional end of the spectrum of Catholic theology and Roman liturgy in three thoroughly secular and radically pluralistic institutions: Andover, Dartmouth, and Harvard. Even so, I benefited tremendously from the experiences there.

At Harvard, for example, my fellow graduate students and our professors included Hindu, Muslim, Sikh, Christian, and Jewish, pro-choice and pro-life, and gay, lesbian, bisexual, and transgender persons of every imaginable political persuasion. The experience gave an ethnic and regionally provincial Catholic like myself a valuable insight into the religious, cultural, and ideological diversity that makes America great. The feature that kept these tremendously diverse

groups of individuals productively united in common intellectual, social, and communal pursuits was, quite simply, the principle of respect for matters of conscience—the very issue that lies at the heart of the Nevada Preservation of Religious Freedom Act before this Committee of Assembly members today. [Mr. Nahoe continued to read from prepared text (Exhibit S).]

Indeed, S.B. 192 (R1) is an appropriately balanced, legally tested, and reasonable approach to preserve the best features of religious and secular pluralism and their salutary impact on our American democracy, especially when those religious and secular values clash with one another. Senate Bill 192 (R1) offers us a standard of strict scrutiny that has proved over the decades to be effective and to be fair.

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Gwen Linde, Private Citizen, Sparks, Nevada:
I am United States Air Force retired, and I support S.B. 192 (R1). I urge your support for it as well. When I was commissioned as a second lieutenant in 1979, I took an oath to uphold and defend the *Constitution of the United States*. I take that oath very seriously. I see my testimony today as a continuation of that solemn oath.

You are going to hear from people who will tell you that S.B. 192 (R1) discriminates against women, and I am here to tell you that that simply is not so. We heard from these people at the Senate Judiciary Committee in March, and we were mystified to discover that their lobbyists had been pressuring Senators and Assembly members to oppose something as commonsensical as S.B. 192 (R1). They have told us that this bill discriminates against women, indeed, that it wages war on women. I know a little bit about war and more than a little bit about war on women. [Ms. Linde continued to read from prepared text (Exhibit T).]

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Rocìo Grady, Private Citizen, Carson City, Nevada:
I support S.B. 192 (R1), and I ask you to do so as well. I am a citizen of the United States and have been a resident of Nevada since 1986. I am a single working mom and I am doing my best to raise my two children, a 13-year-old girl and an 11-year-old boy in a household with the same kind of values that my mother handed to me and my brothers and sisters. Those values include

concern about the community we live in and the respect for the beliefs of others, even if they are not the same as ours.

Religious liberty is very important to me and to my family. For us, religion is not just about praying the rosary quietly at home. It is about getting involved in the community as religious persons. It is helping people when people need help. It is showing our values by the way we live and by the way we vote. I know that the First Amendment guarantees my right to the free exercise of my religion. But what happens if I have to deal with governmental rules or regulations that do not seem to me to respect my free exercise of religion? [Ms. Grady continued to read from prepared text (Exhibit U).]

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Mark Foxwell, representing Knights of Columbus, Nevada State Council:
I am an unpaid lobbyist who works as a legislative liaison for approximately 5,000 members of the Knights of Columbus in 41 councils and 13 assemblies throughout the state of Nevada. The Knights of Columbus is an organization of Catholic men and families who provide charitable benefits to the community regardless of whether they have any religion or not. We support S.B. 192 (R1). What we like about the bill is that it does not enable or entitle individual citizens to impose their religious beliefs on others. That is not what it does. It provides a standard for government to deal with individuals' claims of violation of their constitutional rights for the free exercise of religion.

This legislation, as others have testified, is needed in Nevada because of the 1997 U.S. Supreme Court decision, and we feel it is necessary for individual states to pass this religious freedom act. That is the extent of my testimony before you.

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Michael Patterson, representing the Lutheran Advocacy Ministry in Nevada; and the Episcopal Diocese of Nevada:
We were late in coming to the support of this bill because of the issues that the ACLU raised. We feel that the amendments that were offered on the bill in the Senate bring it into compliance and that our concerns about women's health care issues and discrimination against minorities have been appeased. We are able to give our support to this bill.

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Lynn Chapman, representing Nevada Families for Freedom:
I was a homeschool consultant for many years, helping and advising people get started homeschooling. I had one particular family come to me, and I helped them get started homeschooling. A month or so later, the husband was laid off from work and they needed some help, so they went to the state to ask for food stamps to help them get by. They had three children. The woman at the welfare office was giving them a hard time and, because the children did not have vaccinations because they were homeschooled, she asked why, and the mother said, "Our religious beliefs." She was then quizzed for about a half hour what her religious background was, did she have a letter from her pastor, where in the Bible did it say that about vaccinations, and on and on and on. There are all sorts of things that happen that you may never hear about. I helped her and told her what she needed to do. There are things that might seem small, but when it is affecting your family, it is not such a small thing. Please support this bill.

Chairman Frierson:
Are there any questions for Ms. Chapman? [There were none.]

John Wagner, representing the Independent American Party of Nevada:
I would like to say, "Us too."

Chairman Frierson:
Thank you.

Allan Smith, representing the Religious Alliance in Nevada:
For those of you who are not familiar with us, we are a group that is made up of five denominations: Nevada Roman Catholic Conference, Evangelical Lutheran Church in America, Episcopal Church USA, United Methodist Church, and Presbyterian Church USA. I can say that we do not agree on a lot of things, in particular reproductive health issues and same-sex marriage, but when we do not agree, you will see me silent, and when we do, I am here. I do not think that you need to hear much more, as you probably understand why I am here and in support.

Juanita Cox, representing Citizens in Action:
We certainly support S.B. 192 (R1). I will not bore you with the details.

Nicholas Frey, Private Citizen, Reno, Nevada:
I am an attorney in Reno, Nevada, and have been practicing for about 35 years. I have seen instances where this kind of bill would have eased my clients' path. As an example, I had a client who wanted to offer a non-Christian prayer at a city council meeting and was told he could not do that. When we pressed the issue with one of the persons in the city government, he said, "Well, all we have to have is a rational purpose for our rule. That is all it takes, and it will be upheld." I pressed the issue further with the attorney who represented the governmental entities as we went forward, and we were able to compromise the matter. I think that this kind of legislation would have made the proposition very plain. Obviously, if prayers are being allowed at a city council meeting, a person of any faith should be allowed to offer that kind of prayer.

I have seen other instances over the years when there have been zoning decisions where it seemed to my colleagues and I that there may be some religious discrimination going on. I think that this kind of legislation would have helped clear the path. We ended up having to resort to litigation, but we had lengthy discussions that took place over a period of months at a great expense to our clients that could have been avoided if we had had this kind of legislation in place. I hope you will support this bill. I think it is an important thing for the citizens of the state of Nevada.

Assemblywoman Spiegel:
Before we begin our floor sessions every day, we have a prayer, and oftentimes the prayers are given in the name of Jesus Christ. I belong to a religion that does not believe in Jesus Christ, and I know that some of my colleagues often feel excluded and left out, like we are not part of the body and we are not part of the prayer. Sometimes folks have expressed that they feel in some way that there is an effort to have them change religions. Under this bill and with the example that you were given, how do you think things like that should be handled for religious minorities?

Nicholas Frey:
I am not sure I understand your question. I think that clearly, as in the case I spoke of, if I were taking the position that prayers to be offered at that function only by those who would so close their prayers, that was the rule. They were not allowing Hindu prayers, they were not allowing Jewish prayers, they were not allowing other prayers, but only Christian prayers. I think that this legislation would clearly pave the way for persons of other faiths. I am Christian, but certainly others would be allowed, I think, under this law, to offer the prayers they want in the manner they want. I think that this bill would protect those of other faiths who chose to close their prayers in a fashion differently than traditional Christian persons.

Assemblywoman Spiegel:
So then it would not matter that a number of people felt bad and excluded?

Nicholas Frey:
Again, I am not following. I think if you had people there who did not close their prayers in the name of Jesus Christ, and wanted to offer a prayer in the manner that they typically pray, such as my Hindu and Jewish friends, they certainly could do so. They would not be required to close their prayers in the fashion that many traditional Christians close their prayers. That is a protection to those persons of other faiths, and I think that that is a liberating idea. You do not have to pray in a set form. You can pray in the form that you want to pray, and not in the form that the majority perhaps requires.

Assemblywoman Spiegel:
So what you are saying is that the majority would rule and the considerations and feelings of others are secondary?

Nicholas Frey:
No. I think it is just the opposite. The feelings or sentiments of the majority would not rule. In a typical Nevada community, the majority of those living there, if they were Christian, and they prayed in the manner that you described by closing their prayers in the name of Jesus Christ, a person of another faith would certainly not be required to offer a prayer in that form, and would not be prohibited from offering prayers simply because he or she does not use that form of ending a prayer. That was our situation. This city council group was saying, "You cannot offer a prayer here because you do not close your prayers in the name of Jesus Christ." So the fellow approached me and said, "Can you help arrange to persuade this group to allow me to offer a prayer?" In his case, he was a Hindu. He does not close his prayers that way, and I had to make several calls and have conversations with a number of individuals until all of them agreed and the decision was made, "Okay, we will allow him to offer his prayer." What I am proposing is that this bill would enable persons of different faiths, non-Christian, to also offer prayers if prayers are allowed in a city council meeting, or some other public function. If those prayers can be offered by a Christian, they can be offered by a Hindu, Jew, or Muslim.

I think that the important thing about this legislation, in the narrow context I am discussing, is that it would allow fair treatment of all. Certainly you have heard a lot about the standards that would be used. I believe that if litigation were commenced, the court would have a very clear standard that would guide it in making the determination that this kind of burden upon the religious choice of an individual, wanting to offer his or her own prayer in a form that he was used

to offering, would be duly burdened in that context. It would allow prayers of all religious groups to be offered.

Chairman Frierson:
Are there any questions from the Committee? [There were none.] Is there anyone else in Carson City who wishes to offer testimony in support?

Barbara Jones, Private Citizen, Fallon, Nevada:
Sheila Ward submitted written testimony and she had to leave. May I read her testimony (Exhibit V)?

Chairman Frierson:
If she has testimony that she submitted, we will certainly make it a part of the record and circulate it, but I would ask that you not read it.

Barbara Jones:
Okay. She is with the Nevada Legislative Affairs Committee. She is in support of the bill. I am also strongly urging you to please support S.B. 192 (R1) along with the other 28 states for this important and, I think, historic bill. The American Center for Law and Justice mentioned on TV the other night about 27 cases that are now coming up on the encroachment of religious freedoms, and this would certainly prevent a lot of that by passing the bill.

I am also in contact with religious representatives in every county in Nevada, and a number of people in Clark County. I worked with 26 ministries my first year back in Nevada. I am not officially speaking for them, but I know them well enough to know that they would also support S.B. 192 (R1). Thank you for considering this and we thank Senator Cegavske for presenting this bill.

Chairman Frierson:
Are there any questions from the Committee? [There were none.] Is there anyone in Las Vegas wishing to offer testimony in support?

Tim O'Callaghan, representing the Nevada Catholic Conference:
I am echoing the great testimonies this morning. The Nevada Catholic Conference supports S.B. 192 (R1).

Chairman Frierson:
Are there any questions for Mr. O'Callaghan? [There were none.] Is there anyone else wishing to offer testimony in support? [There was no one.] Is there anyone wishing to offer testimony in opposition to S.B. 192 (R1) in Carson City?

Vanessa Spinazola, representing the American Civil Liberties Union of Nevada: With the Chair's permission, I will briefly summarize the letter that I have, and I will have Allen Lichtenstein, our general counsel in Las Vegas, address any of the constitutional law concerns. I want to note that the ACLU supports religious liberty. We have a history of supporting these cases. I think the difference in RFRA is that we are concerned when expressing one's religious liberty crosses the line into depriving someone else of rights that they have. We are concerned that that may happen with this current RFRA.

Senator Hutchison mentioned the *Employment Division v. Smith* case. That was a huge case for us and is a really good example of one person who is being affected by a government burden. They want to wear the yarmulkes because it is their religious belief; however, the Air Force policy says that they cannot. By permitting that persons may wear their religious garb, they are not affecting any other person. They are not depriving any other person of their rights. Those are the types of free expression cases in which the ACLU typically gets involved.

Some of the areas where we are concerned that this would infringe upon rights is access to contraceptive freedom. I want to note that Nevada is very different from every other state that has passed a RFRA. We actually have a good law on the books. We have *Nevada Administrative Code* 639.753, which prohibits pharmacists from refusing to dispense contraception. Now, is it an open question if this RFRA passes whether this regulation will stand? Yes, it is an open question, and that is what is going to engender lots of litigation. I would argue that women have come this far, particularly in Nevada, to get a right like this, which we do not have in any other states, that we should not have to litigate our right to access contraception. We should not be going backwards in this state. It is possible that it will come out the other way.

This is also a reason why we do not yet have Nevada-specific examples about contraceptive refusals. Pharmacists in Nevada cannot refuse to dispense contraception; therefore, there are no examples. If this law passes, we may start seeing some of those examples, and we are concerned about that.

In terms of other litigation that is pending, in the last month the number of federal cases litigating the contraceptive provisions of ObamaCare have tripled. When I testified in the Senate, there were only 23 pending cases. Today, one month later, there are 59 cases. This issue will be bubbling up to the Supreme Court in the next year or two. Those cases are being litigated under the federal RFRA, which is substantially similar to S.B. 192 (R1).

The other concern that we have is, in fact, in regard to a woman's right to choose. I have provided examples in the letter (Exhibit W), but I will not go through all of them. We are concerned that health care professionals have an ethical obligation to perform their job, particularly in circumstances where a woman's life may be at stake, and we are concerned that if the RFRA passes, it may result in some examples of health care professionals feeling emboldened that they could refuse to support a woman's right to choose. That will result in litigation.

I want to note for the record that I do not know a lot about the case that Mr. Guinasso referenced in Reno, but I want to flesh it out a little further. This is in reference to the parents with the Costa Rican child. She was 35 years old, but she had the mental capacity of a 6-year-old. Allegedly, she had wandered from the group home where she was being held and engaged in sexual intercourse with individuals at a truck stop. She was also taking medication that, for someone who was pregnant, could endanger the birth of the child. In the affidavits that I looked at—we did have interest in this case at the time—she actually wanted an abortion, to the extent that a woman with a 6-year-old mental capacity can say that she does. So the conflict was, do these state guardians—who also had not filed their annual reports for their child for a number of months—have the right to go against her wishes? That is a fuller understanding of what happened in that case.

I also want to note that there were a couple of references to zoning issues, and the Religious Land Use and Institutionalized Persons Act would deal with any and all zoning issues. That is not at issue in the RFRA.

The final concern that we have is in reference to counseling services, and I have provided some examples of it (Exhibit W). We have seen in other states where students and counseling programs have refused to work with gay people. They have wanted to counsel gay folks that their life choices or their preferences are immoral, and they have used the RFRAs in those other states to say that they should be able to say that to their clients. We are concerned about that happening here. I want to note that ten national groups representing lesbian, gay, bisexual, and transgender (LGBT) issues are weighing in on S.B. 192 (R1). They are also adamantly opposed to this bill passing due to the possible backward steps in rights of LGBT individuals.

Ultimately, we believe that this is a proverbial solution in search of a litigation in women's reproductive rights problems. We are not aware of any particular issue that S.B. 192 (R1) would address. We have won religious liberty cases in Nevada, and we are concerned that this will open the door to significant litigation and steps backward in women's reproductive health.

Assemblywoman Fiore:
My question deals with when you are concerned with doctors refusing to give abortions. Would you prefer a doctor who has a religious belief not to give an abortion to someone, or give an abortion to someone reluctantly, or a doctor who is used to giving these types of surgeries? Would you prefer your patient to be safe with someone who does this practice, or someone who does not want to and is forced to?

Vanessa Spinazola:
I think the health care professionals should do what they are trained to do. We are mainly concerned with the emergency room context, and the examples I have provided are doctors, who presumably are trained across the board to perform any sort of emergency services, refusing in the context of an emergency abortion to provide those services. In one of the examples I provided, one doctor even refused to transfer the woman to another hospital, and she experienced severe blood loss because she had to leave the emergency room and drive to another emergency room in order to get the emergency abortion. I understand what you are saying, but I am concerned about health professionals doing what they are trained to do.

Assemblywoman Fiore:
I am concerned with legislating laws in place that force doctors to do things that they do not want to.

Chairman Frierson:
Are there any questions for Ms. Spinazola? [There were none.]

Allen Lichtenstein, representing the American Civil Liberties Union of Nevada:
I will try to keep this brief and deal with just a few areas that Ms. Spinazola did not. I guess I am going to disappoint some people who are supporters of this bill because I am not going to talk about culture wars, hyperbole, personal attacks, or anything like that. I would like to talk about something that we have not really dealt with much today, which is the text of the bill itself. For the ACLU, if this were simply a matter of having strict scrutiny for any case where an individual's or a group's religious worship was being challenged, I do not think we would have a particular problem with that. But this is not limited to religious worship.

If I could direct your attention to section 5, lines 37 through 40 on page 3, it says, "'Exercise of religion' means the ability to act or to refuse to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief." That is not the free exercise of religion. That is essentially anybody being able to use a

religious motivation to challenge any law. This will come up in two different contexts. It is an individual one where someone is worshipping or doing something that is not affecting someone else. Take the case of the pharmacy. Let us remember that the law came into effect prior to the pharmacist refusing to issue the proper medication. That did not just come out of nowhere. Let us say that particular one is challenged. Then we are dealing with competing rights. Constitutional laws often involve competing rights, and really, strict scrutiny is a constitutional term of art. It is one that Justice Kennedy has said strict scrutiny, a compelling interest and least restrictive means, at least in a free speech context, is almost always one that is impossible to meet.

Let us take the case of someone who needs particular medication and someone who will use this law, if it goes into effect, saying that they have this religious right. On the one hand there is the strictest deference because of someone's claim that they have a religious belief, where you do not have the same kind of deference and the same kind of need for that person to show that there is a compelling religious need with simply a religious motivation. You will end up with a lot of cases. Someone said earlier that there is not going to be much litigation, and then with every hypothetical that members of the Committee brought up, the court will have to decide this and the court will have to decide that. In fact, this bill as written allows someone to challenge virtually any law, with the exception of those that are defined as a civil rights law, and we know that civil rights issues and discrimination issues are not just covered within those particular laws. Part of the problem here is that we are not talking about someone practicing their religion or even people having to violate natural tenets of their religion. We are talking about language that says a religious motivation gets the greatest deference that the courts and the government could give, even though it may affect someone else whose rights do not get that same kind of deference.

There are a couple of other areas where the language is a little puzzling. On page 3, section 3, subsection 4 to paragraph (a), it says, "apply to any claim or defense regarding the employment, education or volunteer service of a person who performs or will be tasked with performing any religious duties for a religious organization, including, without limitation: (a) Spreading or teaching faith." So does that mean a schoolteacher can proselytize because that is part of their religious faith and they are tasked with that by their religious organization? Am I pulling this out of thin air? No. We have had numerous cases of teachers claiming free exercise rights to do just that, even in public schools.

I have litigated a number of free exercise cases, and won most of them. Generally, in those particular cases, you have a balancing of the rights of

religious conscience for certain acts, whether wearing a yarmulke or a religious T-shirt in school versus some other interests. The courts will have to balance the interest depending on the circumstance, and the law, as it generally goes, is if it is not disruptive, if it is not creating an undue problem for an employer, a school, or the like, then religious accommodation is required. So, although some make the suggestion that somehow people's religious rights and their right to exercise religious principles do not exist, they do exist in Nevada. We have litigated those in Nevada, but I think it is highly problematic to say that any religiously motivated action gets greater deference than any other kind of interest for anyone else.

As a final note, no one has talked about this, but on page 4, section 8, subsection 4, because someone filed a frivolous lawsuit, the ability to keep them out of the courtroom is not going to fly constitutionally. I will be happy to answer any questions.

Assemblywoman Cohen:
Do you think this will cause more lawsuits coming out of the prisons for prisoners claiming religious concerns?

Allen Lichtenstein:
It probably will. There are a number of them right now. I think it may create greater success on the part of prisoners in this kind of litigation because then they are going to have to pass something that exempts prisoners from these particular provisions. It is an interesting point I had not thought of. If this is applied across the board to prisoners, then in each particular circumstance, again, safety within the prison and the orderly run of the prison is undoubtedly a compelling interest. I think you will see more litigation from prisons, outside the prisons, in schools, and outside of the schools. Litigation is always going to take place, but here it is opening up a Pandora's box.

Assemblyman Wheeler:
I am wondering, since the other 28 states have passed this, have you seen increased litigation coming out of the prisons?

Allen Lichtenstein:
I have not looked at the litigation in the prisons in other states. What I am looking at here is simply what the text of this particular document says. When you are talking about things that are substantially the same, you know as legislators that the devil is in the details and all of the words are important. Here the wording is much broader than I think we can support. If it were the idea of scrutiny for religious practice and worship, that would make sense.

Scrutiny and that kind of deference for anything that anyone says is motivated by religion probably does not.

Assemblyman Wheeler:
So the answer is no, correct?

Allen Lichtenstein:
I have not looked.

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Nechole Garcia, representing the City of Henderson:
The City of Henderson is in support of religious freedom; however, our concern with this bill is the language. We are concerned that the language is overbroad and is going to incur frivolous litigation that would use the City's resources. We share the same concern that Mr. Lichtenstein raised about section 5 being overbroad. We would also note that while other states have similar laws in place, not all of those laws are as overbroad or as broad as this. For example, in Pennsylvania, they chose to define what a substantial burden is, thereby discouraging any litigation through the courts. Because it is not defined here, it is going to end up forcing us to litigate that issue.

Finally, a concern on the criminal side for the City of Henderson is that any time, based on this language, if we were to prosecute an individual, if their defense was based on any part of their religion whatsoever, that would then put the burden on the City to first prove that the law is not a substantial burden before having to prove that they violated the law beyond reasonable doubt.

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

John T. Jones, Jr., representing Clark County Intergovernmental Relations:
I am here this morning on behalf of Clark County Intergovernmental Relations, and we are opposed to this measure. I appreciate both Senator Cegavske and Senator Hutchison meeting us prior to the hearing on the Senate side and listening to our concerns; however, we are still opposed.

I want to point out something that has not been said about the Supreme Court jurisprudence in this case. Basically the Supreme Court has carved out two types of case law with respect to laws that affect a religion. The first are laws that the Supreme Court does not consider generally applicable or religiously neutral. If a law targets a specific religion or a specific practice of a religion,

then reading the case laws, I would argue that strict scrutiny would still apply, so a court would still have to find a compelling governmental interest and the least restrictive alternative. What the Supreme Court did in the *Employment Division v. Smith* was to say that when we look at a generally applicable law—in other words, a law that applies to everyone the same; there is no type of religious intent or desire to suppress a particular religious practice—then we are going to basically see just that. Is it generally applicable? If so, then it is a valid law.

One of the people who testified previously said that this law will basically force local governments to analyze how particular laws or ordinances affect a religious organization. As Mr. Lichtenstein pointed out, I think this law is much broader than that when you look at the exercise of religion. Section 5 of the bills reads, "whether or not the exercise is compulsory or central to a larger system of religious belief." That basically puts it on the person, not the religion.

In Clark County, we have over 2 million people, and each one of them could argue that they are a religion unto themselves. I would say that Justice Scalia, in his opinion in the *Employment Division* case, articulated this by saying that aspects of public policy "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." To do so would create anarchy, allowing each believer "to become a law unto himself." In terms of practice, it is Clark County's position that this bill is overbroad, it will invite litigation, and because of that we are opposed.

Assemblyman Hansen:
Everyone is talking about this as if it is a brand new thing. My understanding is that this has been on the books in 28 other states in almost the same substantial form, yet we keep hearing people bring this up as though it is a new thing and there are some problems. Are you aware of any other counties or city governments around these 28 states that have seen substantial increases in litigation and problems? My understanding is that it has been minimal.

John Jones:
I have read law review articles, and what they indicate is there has been an increase in litigation. You used the word "substantial." I cannot say that, but I can say that from what I have read, there has been an increase in litigation surrounding this.

Pointing to what Ms. Garcia from the City of Henderson said earlier, one of the issues that causes litigation is always uncertainty and lack of definitions. I think the definition with respect to substantially burdened that Ms. Garcia brought up is a great example. What does substantially burdened mean? That is going to

have to be litigated in the state of Nevada to find out what that definition is. I appreciate that everyone who testified in support would indicate the courts are going to have to decide it. It is litigation that leaves the court to decide these questions. I think that is where the basis of Clark County's concerns lies.

Assemblyman Hansen:
So we have lawyers who are concerned about too much litigation?

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Elisa P. Cafferata, President & CEO, Nevada Advocates for Planned Parenthood Affiliates:
We certainly support religious freedom, and we believe that having the First Amendment of the *United States Constitution* as the first enumerated freedom is the best protection you can have. Then having it in the *Nevada Constitution* is very helpful and important. We think that the current situation in the state of Nevada, the balancing act that these cases go through currently, is the appropriate balance point for these rights.

I want to agree with Gwen Linde and thank her for her service. Women certainly are a lot more than their reproductive health care, and that is why you have seen me in here testifying on behalf of nonprofit disclosure, election transparency, social media issues, and other things. We are concerned that a lot of times women's reproductive health care seems to be the place where these issues get tested out. One thing that has not been mentioned is that, so often reproductive health care is a time-sensitive issue. Birth control pills today have such low doses of hormones that you need to be taking them within the same hour in each day to maintain the effectiveness. You do not really have time to go to court and litigate, whatever the outcome is, and it is not a case of us being concerned about the outcome of these cases. My concern is just the going to court part. You do not have time to go to court to decide if you are going to be able to get your prescription filled. Emergency contraception is even more time-sensitive; it only works if you have not ovulated, and once you have ovulated it is not going to be effective. That is a minute-by-minute, hour-by-hour time sensitivity concern.

I have a statement that we submitted (Exhibit X) which lists several cases, some in states where there are RFRA, and some in states where there are not. We are concerned that if we end up in court, either way, we have the time and expense. Let me talk about the flood of lawsuits. Is there or is there not a flood of lawsuits? One thing that has not been talked about is that over 25 states in the country—I do not have the exact number—have birth control

parity laws, or contraceptive parity laws. These have been on the books for decades. Nevada has a contraceptive parity law. Those say that if your insurance covers prescriptions, it has to cover the birth control prescription like any other prescription. There were not any lawsuits from any organizations, or very few—not enough to make the news—in the 28 states that have these birth control parity laws. At that point, the churches that have religious beliefs and did not want to fill these prescriptions did not have a legal problem with it.

The federal government passed the federal RFRA, and then there was the Affordable Care Act, and since those two acts, which require that insurance cover birth control, there have been 59 lawsuits under the federal RFRA. Now, there might not be state lawsuits that we can point to, although there are some, but 59 in six months seems to me a flood of lawsuits around the issue over women's reproductive health care. We think it is a legitimate concern, and that is why we urge you to leave the laws as they are and not support this bill.

Jennifer Batchelder, representing the Nevada Women's Lobby:
We also strongly support religious freedom; however, we are strongly opposed to this bill. As has been stated by a lot of people today, the *U.S. Constitution* and the *Nevada Constitution*, along with a lot of other documents and court cases, have secured religious freedoms in this country and this state. We do not feel additional language in statute is needed. This freedom and liberty does not need to be codified any further. Even with the amended version, we firmly believe that this legislation will not strengthen civil rights but weaken them. It can open the door, as it has in other states such as Florida, for groups and individuals to claim a religious belief and that a law violates that religious belief. An example of this in Florida was that the Aryan Nation decided to become a branch of the Christian Identity religion so they could claim certain acts would constitute a product of their religion. Cases are starting to happen regarding LGBT issues because of this law, not only in states with RFRA but in states without RFRA. Most recently in Washington State, a florist refused to provide flowers for a longtime customer's wedding because she did not believe in gay marriage, and the couple happened to be gay. The florist claimed that she did not have to provide flowers for their wedding because it violated her religious belief.

We believe that many other lawsuits will be brought forth if this is passed, and it will be costly for the cities, counties, and states. We believe this body should base policy decisions on what is best for the people of the state and not their religious beliefs. It can happen here. On the floor of our own Senate during the passage of S.J.R. 13 (R1), more than one senator opposed that resolution because they felt it violated their religious beliefs and convictions.

Stacey Shinn, representing the Progressive Leadership Alliance of Nevada; and the National Association of Social Workers, Nevada Chapter:
We are here in opposition to S.B. 192 (R1). Due to current protections, we find this legislation unnecessary and could possibly result in unintended consequences. We do not want to jeopardize any current rights or underrepresented populations, such as women's reproductive rights, LBGT rights, employment nondiscrimination acts, students and their schools' curriculums, and even animal welfare laws.

Chairman Frierson:
Is there anyone else in Carson City wishing to offer testimony in opposition? [There was no one.] Is there anyone in Las Vegas wishing to offer testimony in opposition?

Edward Wynder, Private Citizen, Las Vegas, Nevada:
I am here speaking in opposition on behalf of myself. Supporters of this law have talked about fairness and equality, but I feel that it is not fair and it is not equal because this law does not protect people like me. This law protects the deepest-abiding convictions of people because they believe in God, but because I do not, this law does not protect me. Certainly, with the hypotheticals we have had, we could come up with one where my neighbor and I do the exact same thing, and I am punished but he is protected because he believes in God. I support individual rights. I support religious freedom. I support individual freedom, but this law separates people into classes. It separates me into a class that the law does not protect and indicates that somehow my beliefs are not worthy of protection. I feel that it is fundamentally wrong and I ask you to vote no.

Chairman Frierson:
Is there anyone else wishing to offer testimony in opposition? [There was no one.] Is there anyone in Carson City wishing to offer testimony in a neutral position? [There was no one.] Is there anyone in Las Vegas wishing to testify in a neutral position? [There was no one.] I will invite Senator Cegavske and Senator Hutchison back up briefly for closing remarks.

Senator Cegavske:
We really appreciate the time that you have allotted us to speak. To those who have proposed opposition, I am going to let my colleague from the Senate respond. I want to thank Ms. Spinazola from the ACLU and Ms. Cafferata from Planned Parenthood. They were very good in giving us the information that they distributed to everyone, and I appreciate it.

Senator Hutchison:
I tried to think of what I could do to summarize what I knew would be opposition. If you do not want to have any litigation in this country, you just do not have to recognize rights. That is going to eliminate all litigation. In fact, most of the groups that came up and fought really hard, including the counties, ACLU, and Planned Parenthood, are more than willing to go to court when they think their rights are involved. When someone else's rights are surfacing, particularly religious freedom rights, now the argument seems to be, let us not go to court, and it is going to open the floodgates. The easy way in this country to cut down litigation—I can tell you as someone who has done it for 25 years—is just not recognize rights. Let us get past that argument and decide whether or not in this country since 1791 we have had this right. This is not some new right that we are bestowing upon ourselves or upon the people of Nevada. Since 1791, upon the adoption of the Bill of Rights, we have had the First Amendment rights, all of what we are talking about emanate from the First Amendment. All we are talking about is what test do you apply when you get into court. It does not open the floodgates. There are no new rights bestowed in this bill. The right that you and I have is in the First Amendment, and we have had it since the day we were born. The question in this bill is whether we are going to allow government to substantially burden that right without having to show first a compelling state interest to do so. If the state can show a compelling state interest to do so, that law stands. If it cannot, then we yield to religious freedom and liberties in this case.

The second thing I would say is that almost every one of the opponents say, we think, we believe, there is a possibility that, and then ignores 20 years of history at the federal level. I would suggest that if these draconian results are going to flow from RFRA, Harry Reid sure got it wrong. So did Barbara Boxer. So did John Kerry. So did Ted Kennedy. So did Chuck Schumer. Why bipartisan support for this legislation that has not resulted in all the draconian results that you heard about today? Mr. Chairman and Committee members, I appreciate your time and thank you for your consideration.

[The following exhibits were submitted but not discussed: (Exhibit Y), (Exhibit Z), and (Exhibit AA).]

Chairman Frierson:
Thank you, Senator. With that, I will close the hearing on S.B. 192 (R1) and take a brief recess [at 11:30 a.m.] for the Committee to get ready for the work session.

The Committee will come back to order [at 11:57 a.m.]. We have a significant work session today. I am going to get started, but we also may have to recess

at the call of the Chair and reconvene. This is deadline day. I will open up the work session and start with Assembly Bill 499.

Assembly Bill 499: Ratifies certain technical corrections made to NRS and Statutes of Nevada. (BDR S-522)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 499 is sponsored by this Committee and was heard yesterday. This is the biennial ratification bill, which ratifies technical corrections to the *Nevada Revised Statutes* (Exhibit BB). There are no amendments.

Chairman Frierson:
I suspect this is going to be the easiest bill in the work session. I will seek a motion to do pass.

ASSEMBLYMAN WHEELER MOVED TO DO PASS ASSEMBLY BILL 499.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Duncan will handle the floor statement. The next bill before us is Senate Bill 314.

Senate Bill 314: Provides that the right of parents to make choices regarding the upbringing, education and care of their children is a fundamental right. (BDR 11-880)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 314 is sponsored by Senator Denis and was heard in this Committee on May 10, 2013. This bill provides that the right of a parent to direct the upbringing, education, and care of the parent's child is a fundamental right. Under this measure, in implementing a statute, local ordinance, or regulation, the State or any agency, instrumentality, or political subdivision is prohibited from violating this right without demonstrating a compelling governmental interest that, as applied to the child involved, is of the highest order (Exhibit CC). On the day of the hearing, there was an amendment provided by the Division of Child and Family Services, which is attached. The Chairman of this Committee proposed a conceptual amendment on May 13, 2013. That amendment is also attached.

Chairman Frierson:
Are there any questions on the bill?

Assemblyman Thompson:
Have all the amendments been accepted?

Chairman Frierson:
It is the inclination of the Chair to entertain the motion to amend and do pass with the amendment that I provided to the Legal Division. I have cleared it through the sponsor of the bill. That amendment incorporates some language that was proposed by the Division of Child and Family Services previously.

Legal pointed out to me that there is some language in the original bill dealing with applicability that would provide some direction regarding how this applies, and without that it would probably raise some questions about existing rules. I believe that the sponsor of the bill actually proposed to put that in when I gave him the language, so that would be included in the Chair's conceptual amendment so it is clear on applicability.

Assemblywoman Diaz:
I would like to comment that, especially in this area when we are talking about children and parents, I think that in this arena when we are crafting laws, a lot of times people tend to be looking for negative things. I see this bill as a breath of fresh air, saying that parents do try to do what is best for their children and to assert that fact that parents really do try to do what is best for them. I am supportive of this bill with your amendment.

Chairman Frierson:
Are there any other thoughts on the bill? [There were none.] I will be entertaining a motion to amend and do pass.

> ASSEMBLYWOMAN FIORE MOVED TO AMEND AND DO PASS SENATE BILL 314.
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN CARRILLO, COHEN, AND HANSEN VOTED NO.)

Assemblywoman Diaz will handle the floor statement. The next bill is Senate Bill 389 (1st Reprint).

Senate Bill 389 (1st Reprint): Revises provisions relating to real property. (BDR 9-601)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 389 (1st Reprint) relates to real property. The bill is sponsored by Senator Segerblom and was heard in this Committee on May 14, 2013. Senate Bill 389 (R1) provides that the owner-occupant of a single-family dwelling subject to a mortgage or deed of trust may submit a written request to the servicer of the mortgage for a certified copy of the note, the mortgage, or deed of trust and each assignment. [Continued to read from the work session document (Exhibit DD).] On the day of the hearing, the sponsor submitted a proposed amendment, and it is attached.

Chairman Frierson:
Is there any discussion on the bill?

Assemblywoman Diaz:
Was this a homeowners' association bill or not?

Chairman Frierson:
This was not a bill with the Subcommittee. I will be entertaining a motion to amend and do pass.

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS SENATE BILL 389 (1ST REPRINT).
>
> ASSEMBLYMAN THOMPSON SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYWOMAN SPIEGEL VOTED NO.)

Assemblywoman Cohen will handle the floor statement. The next bill is Senate Bill 424 (1st Reprint).

Senate Bill 424 (1st Reprint): Revises provisions relating to foreclosures. (BDR 3-1113)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 424 (1st Reprint) relates to foreclosures, is sponsored by the Senate Committee on Judiciary, and was heard in this Committee on May 14, 2013. This bill provides that if a banking or other financial institution forecloses on real property, purchases that real property at the foreclosure sale, and intends to sell the real property for an amount less than the amount of indebtedness, the debtor must be afforded a right of first refusal, under the following

circumstances. [Continued to read from the work session document (Exhibit EE).] On the day of the hearing, the Nevada Credit Union League submitted a proposed amendment, a copy of which is attached. That amendment was accepted in part by the sponsor, but there was a portion that the sponsor did not agree with, and that is the portion that would require the debtor to have participated in the Foreclosure Mediation Program in order to be afforded the first right of refusal.

Chairman Frierson:
Is there any discussion on the bill?

Assemblywoman Spiegel:
I am really concerned that, if passed, this bill would lead to a lot of homeowners walking away from their property so that they could get it back at a reduced rate. I think it is really prone to abuse, and for that reason I will be voting no.

Assemblywoman Fiore:
I do not see that, because I think once you start not paying your mortgage, your credit score goes down and you will not qualify to be able to purchase that home.

Assemblyman Wheeler:
I agree with Assemblywoman Spiegel. I think this will incentivize bad behavior and has no place in Nevada law.

Assemblywoman Cohen:
I agree with Assemblywoman Spiegel and Assemblyman Wheeler. I am also not happy with the message this is sending to our constituents who work really hard to stay in their homes and keep their payments up, but I do want to see this go to the full body, so I am going to reserve my right to change my vote on the floor but still vote yes.

Assemblyman Thompson:
As the colleague on this Committee who has the most foreclosure notices in his district, I am definitely in support of this. Hopefully, we can work out the specifics of it, but I think it is a hope for homeowners who would like to stay in their homes.

Assemblyman Hansen:
I am a ditto with Assemblywoman Spiegel.

Assemblyman Martin:
I am in support of this bill. I understand the concerns about possibly codifying something that could encourage bad behavior, but the bad behavior has been done by the banks not being responsive to the homeowners in the first place, and maybe this will open the dialogue and finally get them to answer the phone in terms of debt reduction without destroying someone's credit. I am hoping this law does just that, and I am in full support.

Assemblyman Carrillo:
I will be voting this out of the Committee, and I will reserve my right to change my vote on the floor.

Chairman Frierson:
Are there any other thoughts on the bill? I will say that while some folks' basis for opposing the bill is that people will not be able to qualify for it, that could equally be a reason to support it as something that rarely is applicable and would rarely affect the market. Are there any other comments on the bill? [There were none.] I will be entertaining a motion to amend and do pass at the pleasure of the sponsor of the bill, meaning with the amendment that was offered minus the provisions that he did not approve.

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS SENATE BILL 424 (1ST REPRINT).
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN DUNCAN, HANSEN, SPIEGEL, AND WHEELER VOTED NO.)

The next bill is Senate Bill 131 (1st Reprint).

Senate Bill 131 (1st Reprint): **Establishes provisions governing the disposition of a decedent's accounts on electronic mail, social networking, messaging and other web-based services. (BDR 12-563)**

Dave Ziegler, Committee Policy Analyst:
Senate Bill 131 (1st Reprint) is sponsored by Senator Cegavske and was heard in this Committee on May 13, 2013. This bill authorizes the personal representative of a decedent to take control of, conduct, continue, or terminate any account on any Internet website providing social networking, short message service, electronic mail service, or any similar electronic or digital assets of the decedent. The measure specifies that it does not authorize a personal representative to take control of, conduct, continue, or terminate any financial

account of the decedent including, without limitation, a bank account or investment account (Exhibit FF). The sponsor submitted a proposed amendment. Our office mocked that up and the mock-up is attached. Basically, the amendment limits the power of the personal representative to terminate the account.

Chairman Frierson:
Is there any discussion on the bill?

Assemblywoman Diaz:
Just for clarification, the amendment gives the family members the ability to close out any accounts that the deceased might have, correct?

Chairman Frierson:
It would not necessarily be a family member. It could be your personal representative, maybe the executor, but it is whoever the person that was designated as a personal representative. Yes, it would be for the purpose of closing the account. I believe that an amendment was submitted by the sponsor to reflect that. The staff looked at it, and it refers to that language throughout, so I would imagine that the intent of the amendment is to make it consistent throughout the bill. Is there any other discussion of the bill?

Assemblyman Carrillo:
Is there a certain time that has to take place? That way we know that the account has been closed and it does not take them a year to close the account. Is there any date or time frame upon the deceased passing? What kind of time frame are we looking at?

Chairman Frierson:
I will defer to Legal. I do not think that the bill contemplates a time requirement or limitation.

Brad Wilkinson, Committee Counsel:
That is correct.

Assemblyman Carrillo:
So they can still have access to the accounts and not be held accountable for how long it goes before they have to close them? The amendment says that is the only thing they are supposed to be doing.

Chairman Frierson:
My reading of the amendment reflects that the person can go in solely for the purpose of closing out the accounts, so they could not go in for the purpose of

accessing email for maintaining, continuing, or posting on behalf of the person. There is no time limit and, I would presume that in the instances where it is uncertain as to when the death occurred, it allows some flexibility, but in narrowing it to closing, I think the intention would have been to make sure that that was the only purpose.

Brad Wilkinson:
I think that is accurate. The bill does not require that the account be terminated, but it authorizes a personal representative to do so.

Assemblywoman Diaz:
As a final point based on what my colleague, Mr. Carrillo, just brought up, the person will not be granted access to the account, just the power to terminate it. Is that correct?

Brad Wilkinson:
The bill does not speak in terms of limiting it in that fashion. I imagine that you may need to have access to it to terminate it, but the only authorized action is actually termination, not continuing it. I think that that contemplates that the person would have access to do so.

Assemblywoman Diaz:
The information for logging into the accounts is given to the person, and if the person never terminates the account, they could potentially still keep it up. How do we really know that they are going to use the login information to terminate it, instead of continuing to use it or keep it up?

Brad Wilkinson:
That is a good question. As it is proposed, the amendment only authorizes termination and does not require it. Presumably, if it were not terminated, then it would continue. By removing the language about taking control of, conducting, or continuing, I think it is contemplated that it will be terminated if the personal representative wants to do so. That may well be in accordance with a will that specifically provides that it should be closed. There is no time frame as to when that has to occur, so you are correct in that it could, in fact, continue for some period until it was terminated.

Chairman Frierson:
I think that in order to access someone's account, it is a requirement that you have a password and information, and in order to get that, you have to contact the provider of the service. I think, in a practical sense, that is when the conversation would take place that I am the representative and this person is

deceased and either you close it out or let me in there so I can close it out. I am trying to describe what I think the conceptual effect is of the bill.

Assemblywoman Diaz:
My concern would still lie with what my colleagues have said. We are allowing the access to the accounts for that purpose, but how do we really know that that purpose is going to be followed through with? That is my underlying concern. There is nothing else in the bill that speaks to it.

Chairman Frierson:
Given those concerns, I will throw out there a conceptual amendment that provides that the personal representative may contact the provider for the purpose of closing the account or something that does not allow the dissemination of a password, but allows a personal representative to provide evidence that they are the personal representative and to direct the service to close out the account.

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8:
For the record, the person has no access whatsoever. The only thing they can do is terminate it, and the social media has access, so you would have to contact them to terminate. That is the only access. You have no access to do anything, but if you do not know that they have that social media, you would not know to terminate it. There is no access at all. It is just to terminate. That is what the amendment does.

Assemblyman Carrillo:
They would not have access to the account, but they would have to show some type of document such as a death certificate to show that this individual had passed on, and the process would fall in place where they would go ahead and terminate the account at that point. The way I see it, this is to prevent people from going into the personal business of that individual and keeping that person in the frame of mind that they know them as—not saying that the individual has any skeletons in his closet, but in the hopes of preserving that individual's memory of that person the way it is. I want to make sure that is exactly what we are going to be doing.

Senator Cegavske:
You are absolutely right. All this does is give you the right to terminate. You have to have a death certificate. You have to have information to give them. You cannot just call up and say, I am so-and-so's whatever. There has to be documentation, and there is no time period because each account is so different. There is no access that any individual has to that account other than being able to terminate.

Chairman Frierson:
In concept, if the language reflected something more along the lines of a personal representative having the authority to direct the termination of an account of the decedent, would that accomplish your intent?

Senator Cegavske:
If that language is better, that is fine. We wanted the access to terminate, to be able to get to them and say, I would like it terminated. That language is fine.

Assemblywoman Diaz:
If we could get that clarification, I am good with just being able to terminate the accounts and having no further access.

Chairman Frierson:
Are there any other comments from the Committee? [There were none.] At this time, I will entertain a motion to amend and do pass with the conceptual amendment that a personal representative would have the authority to direct the termination of an account upon the death of the subject.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS SENATE BILL 131 (1ST REPRINT).

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Frierson:
Assemblyman Hansen will handle the floor statement. The next bill is Senate Bill 111 (1st Reprint).

Senate Bill 111 (1st Reprint): Requires production of certain evidence under certain circumstances. (BDR 3-771)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 111 (1st Reprint) has to do with evidence, is sponsored by Senator Jones and was first heard in this Committee on May 16, 2013. Senate Bill 111 (R1) requires a person who owns or controls the premises on which an injury or death allegedly occurred to produce and provide copies, if any, of any visual evidence of the incident to the claimant or an attorney representing the claimant. [Continued to read from the work session document (Exhibit GG).] There were no amendments.

Chairman Frierson:
Is there any discussion on the bill?

Assemblywoman Spiegel:
I have a number of concerns about this bill, particularly about how it would affect small business. I understand that in some regards it might cut down on the cost of litigation and, if the bill passes, I would hope that in the future it might be amended to make it a little less onerous. I will be voting no on this.

Assemblyman Thompson:
I will be voting to pass it out of Committee; however, I would like to reserve the right to change my vote on the floor.

Assemblywoman Fiore:
As a small business person, I will be voting no on this bill.

Assemblyman Duncan:
I have concerns with going through the discovery process in an extrajudicial manner, and, of course, there were the concerns raised by businesses, so I will be voting no.

Assemblyman Hansen:
Having made the mistake one time of giving information to a potential litigant without consulting my attorney first, I can say that it is a huge mistake to allow people to do that. Any potential litigation should always be done through an attorney, even something that seems as harmless as turning over a videotape. I think it would be very wise to do the opposite and counsel people, if they are getting letters from attorneys, to be sure to consult an attorney before they give anything to anyone, civil or criminal.

Assemblyman Carrillo:
I will be voting this out of Committee and reserve the right to change my vote on the floor.

Assemblyman Wheeler:
I will be a strong no on this. I believe this bill pulls one person's property right over to another, and I do not think we have any room in Nevada for that.

Assemblyman Martin:
I am a strong yes as a small business owner. One of the businesses I own has cameras and we have had to produce the evidence and, of course, it exonerated us. I believe the good outweighs the bad here, so I am in full support.

Assemblywoman Cohen:
I also believe the good outweighs the bad and that ultimately this is going to help reduce frivolous lawsuits.

Assemblyman Ohrenschall:
I will be supporting the measure today. I know that there are some serious and valid concerns, but I think the good outweighs the bad. With issues like this, letting the cards be out there on the table might actually help resolve suits as opposed to allowing people to keep their cards close to their chest. There is a process in the bill to oppose letting that video out, if there is video at all. There is nothing mandating that video even be at the premises. I think it is carefully constructed and it could help reduce litigation. I will be supporting it.

Chairman Frierson:
Are there any other thoughts on the bill? I will be seeking a motion to do pass.

> ASSEMBLYWOMAN DIAZ MOVED TO DO PASS SENATE BILL 111 (1ST REPRINT).
>
> ASSEMBLYWOMAN COHEN SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN DUNCAN, FIORE, HANSEN, SPIEGEL, AND WHEELER VOTED NO.)

Assemblyman Ohrenschall will handle the floor statement. The next bill is Senate Bill 118.

Senate Bill 118: Revises provisions relating to forfeiture of property. (BDR 14-462)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 118 has to do with criminal procedures. The bill is sponsored by Senator Brower and was heard in this Committee on May 14, 2013. The bill changes the standard of proof that a plaintiff must establish in a proceeding for forfeiture of property from the proceeds attributable to the commission of a crime. It would change the standard of proof from clear and convincing evidence to a preponderance of the evidence (Exhibit HH). There were no amendments.

Chairman Frierson:
Is there any discussion on the bill?

Assemblywoman Diaz:
I have some concerns about the potential impact of changing the language, so I cannot support this bill.

Chairman Frierson:
I will make two points, one that supports the notion, and one that does not. There was a chart providing information about the number of states that have different standards. I think the testimony of the bill's proponents was accurate about there being a majority that had a lower standard. However, this matter was addressed in the Nevada Legislature and, from my review of information, the bill changed because of abuses. That is expressly why it was changed and when it was changed.

Are there any other thoughts on the bill? [There were none.] I will be seeking a motion to do pass.

> ASSEMBLYMAN WHEELER MOVED TO DO PASS SENATE BILL 118.
>
> ASSEMBLYMAN DUNCAN SECONDED THE MOTION.
>
> THE MOTION FAILED. (ASSEMBLYMEN CARRILLO, COHEN, DIAZ, DONDERO LOOP, FRIERSON, MARTIN, OHRENSCHALL, SPIEGEL, AND THOMPSON VOTED NO.)

The next bill is Senate Bill 177 (1st Reprint).

Senate Bill 177 (1st Reprint): Prohibits a minor from committing certain acts relating to the possession and use of tobacco products. (BDR 5-689)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 177 (1st Reprint) has to do with minors in possession of tobacco. It is sponsored by Senator Settelmeyer and was heard in this Committee on May 1, 2013. The bill prohibits a child under the age of 18 from purchasing, possessing, or using tobacco products, or falsely representing his or her age to purchase, possess, or obtain tobacco products. A child who commits an offense related to tobacco is a child in need of supervision and may be ordered by the juvenile court to pay a fine of $25 for the first offense, $50 for the second offense, and $75 for the third or any subsequent offenses. [Continued to read from the work session document (Exhibit II).]

On the day of the hearing, there was an amendment submitted on behalf of the company, Altria. It is attached. It amends the language in a number of

different places to speak to products made from or derived from tobacco. After the hearing, the sponsor forwarded an amendment from the Washoe County Public Defender's Office that addressed two issues. One is the idea that this would not be a primary offense for purposes of a traffic stop, and also that the Washoe County Public Defender's amendment would carve out an exception for religious use. Clark County has also submitted a proposed amendment. All of these amendments are attached. The Clark County amendment would basically set up a system in which this would be handled only pursuant to the authority of a local ordinance adopted by the Board of County Commissioners. For the record, the Washoe County Public Defender's Office asked me to indicate that despite their proposed amendment, they are neutral on the bill.

Chairman Frierson:
I spoke with the bill's sponsor about the desire to get something out that addresses this issue and addresses the frustration on the part of some, in particular in his district. At this time, I would be inclined to entertain a motion to amend and do pass with combining all three of the amendments discussed.

ASSEMBLYMAN CARRILLO MOVED TO AMEND AND DO PASS SENATE BILL 177 (1ST REPRINT) WITH THE THREE AMENDMENTS DISCUSSED.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Wheeler will handle the floor statement. The next bill is Senate Bill 224 (1st Reprint).

Senate Bill 224 (1st Reprint): Revises provisions governing driving under the influence. (BDR 43-668)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 224 (1st Reprint) has to do with driving under the influence. It was sponsored by Senator Cegavske and heard in this Committee on April 30, 2013. This bill imposes a fee of $500, in addition to any other penalty, if a person pleads guilty or is found guilty of certain charges of driving under the influence (DUI) of intoxicating liquor or a controlled substance. The money collected from the fee must be used to support a specialty court program established to facilitate testing, treatment, and oversight of certain persons who suffer from a mental illness or abuse alcohol or drugs. The measure provides for the imposition of community service if a defendant is unable to pay the fee (Exhibit JJ). There were no amendments.

Chairman Frierson:
Is there any discussion on the bill?

Assemblywoman Diaz:
While I do believe that this is a noble cause and that the specialty courts in this area do provide great service to many of our constituents that have an issue with drinking and driving, we have heard all session long that we just are not getting the monies collected on the fees that we are imposing. I support the DUI specialty courts and Senator Cegavske's intent, but at this point in time I think it is too burdensome. Hopefully, we will see some better times in our state where we can adequately fund these types of programs that benefit everyone.

Chairman Frierson:
I neglected to point out a valid issue that was brought to my attention by Ms. Cohen. The language of the bill as it exists addresses persons arrested for DUI but did not take into account that some folks may not be convicted of DUI and would still be subjected to the additional requirements. Her concern was that there are folks who participate in diversion and get a reduction in their sentence, and should be able to still provide the additional requirements. For those against whom the case was not pursued or it was reduced due to an inability to prove the DUI, it would make sense to not apply this to those individuals. So to make the record clear about what I am talking about, there are times when someone may plead to a reckless driving instead of a DUI. It is my experience that that occurs when the state is unable to prove the charge. That is different from when a person who, as a part of the serious offender program or diversion program, pleads guilty to the offense but the adjudication is stayed so that they can participate in the program. Those individuals would, in fact, be required to do the additional requirements. The sponsor has indicated that that would be consistent with her intent. I wanted to make that clear so when we are having comments on the bill, we understand that that is what we are talking about.

Assemblyman Thompson:
I am in support of this bill. It may be difficult for us to collect. I believe there is a 40 percent collection rate right now. I talked with a few sponsors who were proponents of the bill, and they stated that in our community we have one of the lowest rates of payment for DUI offenders. It is extremely important that we have specialty courts. We have specialty courts that help our veterans. They are dealing with many issues, including mental health issues. We have the DUI courts, we have the mental health courts, and we even have courts for our homeless who are chronic inebriates. It is so important that we try our best to

collect as many coins as possible to keep these specialty courts alive. I will be in full support of this bill.

Assemblyman Ohrenschall:
During the hearing, I had a lot of concerns about some of the issues that my colleagues brought up, but I talked with folks who are involved with specialty courts, and most of my concerns were addressed. I think this bill will help, so I will be supporting it.

Assemblyman Hansen:
As I recall in testimony, the judges were actually the ones who were adamantly opposed, including some of the specialty court ones. Has something been changed with regard to the amendment, or is there anyone from that community who is going to clarify on that? I am going to vote no on it unless the judges were comfortable with it, because they clearly were not.

Chairman Frierson:
As to my recollection of it, and Mr. Ziegler can confirm, I remember Judge Linda Bell testifying in support. I believe the Administrative Office of the Court is not in support.

Dave Ziegler:
The opposition on the day of the hearing was from John McCormick from the Nevada Supreme Court and the Administrative Office of the Court, Judge Alan Tiras, President of the Nevada Judges of Limited Jurisdiction, and Judge John Tatro of Carson City. That was it for the opposition.

Assemblywoman Cohen:
I believe it was the Nevada Judges of Limited Jurisdiction as a whole.

Chairman Frierson:
Judge Tiras is the president of that organization and speaking on behalf of the organization.

Assemblyman Carrillo:
In regard to the fee, the amendment was if they could not come up with the money, they would do some type of community service equivalent. Is that not what they are already doing now? Is it just more community service, so we would probably have the cleanest state in America?

Chairman Frierson:
The bill would increase what is there, so it would increase existing fines by $500 and increase the existing community service requirement. It also

designates where the additional fees would go. Are there any other comments on the bill? [There were none.]

Senator Cegavske, I want to clarify something to make sure I am not misrepresenting your intent. The bill specifically refers to individuals found guilty of that charge or a lesser offense including, without limitation, a traffic violation arising out of the same traffic episode. I think there is comfort in that notion, and I do not want to misrepresent what your intent was as much as your willingness to accommodate that concern.

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8:
You are right. You and I had a discussion, and I was very amenable to the amendments that you discussed. I would like to thank you and the Committee.

Chairman Frierson:
So it was not your intent originally, but you willingly worked with some folks who had concerns.

Assemblywoman Diaz:
How is this bill changing?

Chairman Frierson:
In section 1, subsection 1, starting on line 8, the language "or a lesser included offense, including, without limitation, a traffic violation, arising from the same traffic episode" would be stricken. With that conceptual amendment, I will be seeking a motion to amend and do pass.

> ASSEMBLYWOMAN FIORE MOVED TO AMEND AND DO PASS SENATE BILL 224 (1ST REPRINT).
>
> ASSEMBLYMAN THOMPSON SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN CARRILLO, COHEN, DIAZ, HANSEN, SPIEGEL, AND WHEELER VOTED NO.)

Assemblywoman Fiore will handle the floor statement. The next bill is Senate Bill 373 (2nd Reprint).

Senate Bill 373 (2nd Reprint): Makes various changes relating to judgments. (BDR 2-932)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 373 (2nd Reprint) relates to the enforcement of judgments. It is sponsored by Senator Segerblom and was heard on May 3, 2013. This bill authorizes a court to issue a written order permitting a judgment debtor to pay in installments if the court determines the person is unable to pay the full amount. The bill also increases the portion of a judgment debtor's take-home pay that is exempt from garnishment from 75 percent to 85 percent if the gross annual salary or wage of the debtor is $50,000 or less. [Continued to read from the work session document (Exhibit KK).] The sponsor, Senator Segerblom, has submitted a proposed amendment, and a copy of it is attached. It would reduce the $50,000 amount mentioned to $40,000. The amendment would increase the portion of a judgment debtor's take-home pay that is exempt from garnishment to 85 percent if the gross annual salary or wages of the debtor is $40,000 or less.

Chairman Frierson:
Is there any discussion on the bill itself?

Assemblyman Thompson:
I will be voting for this to get it out of Committee; however, I want to reserve my right to change my vote on the floor. I appreciate the reduction to $40,000 because that helps the consumer, but I want to look out for the small businesses. I really would have hoped that we could have gotten to 80 percent.

Assemblyman Hansen:
It was very interesting discussing this bill with all the various lobbyists. We received a lot of different angles on this. I come from both a blue-collar background and a small business perspective, but most of the people who were bringing it up were using examples of big credit card companies abusing this kind of thing. Having actually gone through this process, I would have to say that my observations are for the small business people in particular. The local judges are very, very supportive on trying to work out payment arrangements, even to getting payments down to $10 a week. I am going to vote no on this bill. There are so many protections in the bill right now for the debtor side of it that, for the small business person in particular, I think this is taking it just a little too far in the wrong direction.

Assemblywoman Diaz:
We have been through really hard times in our state these past couple of years, and our construction industry and other industries were hit especially hard, so when they brought that perspective to me, I did not really have it. When someone who was used to an income and was spending based on that income, now all of a sudden he does not have a job anymore, and he could not get on

his feet for a year or two—and knowing people who committed suicide after losing their job—I am compelled to give them the benefit of the doubt and help those people who might be in a tight situation. This limits the amount that creditors can get when the people are getting back on their feet and trying to make ends meet for their families. I see that as a priority. I think some compromise has been made, to $40,000, and it does not apply to all the cases. It is only $40,000 and lower and 15 percent of that they can garnish. I think that our people in Nevada who have been through such hard times deserve this. I am a strong yes.

Assemblywoman Fiore:
I sat on the trauma prevention program unit for five years, and I basically went on homicides and suicides. My first call was a man who hung himself over a $37 Southwest Gas bill. I will be in strong support of this bill.

Assemblyman Martin:
I fully understand what the intent of this bill is and the goal of trying to protect people and make things more affordable for them. I fundamentally believe that this is the wrong approach. My accounting and finance background is telling me that we need to do much more work and a whole different structure of this. Accordingly, I am a no on this.

Assemblywoman Cohen:
I am going to vote to move this out of the Committee, but I am going to reserve the right to change my vote on the floor. I appreciate everything that my colleagues have said. I have expressed some concerns about abuse and household expenses.

Assemblywoman Spiegel:
I had some initial concerns about this bill. I am really grateful for the amendment. I think there are many Nevadans who are having difficulty paying their bills. I think this could help both Nevadans and businesses because they will be more likely to live within the 15 percent garnishment at the lower end, which will help them avoid bankruptcy and extinguish the debt for the business. I think this would help business and help Nevadans. For that reason, I am going to vote yes.

Assemblyman Ohrenschall:
I am supporting the measure. I think the parties have worked hard to try to get to a compromise. No bill is perfect. There are people who are struggling to stay afloat now, and I think that whatever we can do to help them is important. I think this bill has the potential to help creditors too, because if someone has a manageable payment, it may take a little longer to make the creditor whole, but

it might actually happen as opposed to presenting someone with a garnishment that is just going to set them up for failure. I do not think the law should allow setting people up for failure who have already been devastated. Is the law perfect? Of course not. Is it possible that someone might try to avoid a debt? Yes, but that happens now. I do not think we can legislate against that. I will be supporting the bill.

Chairman Frierson:
I am inclined to entertain a motion to amend and do pass.

> ASSEMBLYWOMAN SPIEGEL MOVED TO AMEND AND DO PASS SENATE BILL 373 (2ND REPRINT).
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN DUNCAN, HANSEN, MARTIN, AND WHEELER VOTED NO.)

Assemblyman Carrillo will handle the floor statement. The next bill is Senate Bill 107 (1st Reprint) from today's hearing.

Senate Bill 107 (1st Reprint): Restricts the use of solitary confinement and corrective room restriction on children in confinement. (BDR 5-519)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 107 (1st Reprint), having to do with solitary confinement and other similar phenomenon as they relate to minors, is sponsored by the Senate Committee on Judiciary and was heard in this Committee earlier today. The amendment from Senator Segerblom was the amendment that was presented today to the Committee.

Chairman Frierson:
My recollection is that there were two amendments. There was Senator Segerblom's amendment and then the amendment provided by Mr. Patterson reinserting provisions that were struck out by the Senate when the bill was heard there. I believe Mr. Patterson's proposed amendment would apply these provisions to the adult jail and prison facilities as they are to the juvenile facilities. Is there any discussion on the bill?

Assemblyman Hansen:
This is basically just a study at this point, is it not?

Chairman Frierson:
No. The bill proposes to prohibit a child from being detained in solitary confinement.

Dave Ziegler:
In section 1 of the bill, a local or regional juvenile detention facility must not subject a child to solitary confinement. The child detained may be subjected to corrective room restriction only if less restrictive options have been exhausted and only for the purposes specified in the bill. Discipline resulting in corrective room restriction for greater than two hours must be documented in writing and approved by a supervisor. The child may be subjected to corrective room restriction only for the minimum time necessary, and must be returned to the general population as soon as possible. A child subjected to corrective room restriction for more than 24 hours must have at least one hour of exercise per day; access to the same meals, health treatment, contact, and legal assistance as the general population; and a status review at least once every day with continuation documented in writing. The detention facility must report monthly to the Division of Child and Family Services, and the Advisory Commission on the Administration of Justice must conduct the study. This exactly parallels provisions as they would apply to a state-run juvenile detention facility.

Chairman Frierson:
Does that answer your question, Mr. Hansen?

Assemblyman Hansen:
It sounds like a study to me.

Chairman Frierson:
Is there any other discussion on the bill?

Assemblywoman Fiore:
When the juveniles are restricted to their rooms, do they have books to read? Is it a time-out?

Frank Cervantes, Division Director, Juvenile Services, Washoe County:
Yes, they do get certain items in their room, at least in Washoe County. They get a book, schoolwork, and other provisions.

Chairman Frierson:
I have toured some of these facilities, and I do not recall seeing any books or anything in the Clark County facilities.

Frank Cervantes:
You are correct. That is why I am responding just for Washoe County. The bill at least tries to standardize a higher level of care for corrective room restriction statewide, and I think that is what our target is.

Chairman Frierson:
Are there any other thoughts or questions on the bill? [There were none.] I will seek a motion to amend and do pass.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS SENATE BILL 107 (1ST REPRINT) WITH THE AMENDMENT PROVIDED BY SENATOR SEGERBLOM.

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Ohrenschall will handle the floor statement. The next bill is Senate Bill 425 (1st Reprint).

Senate Bill 425 (1st Reprint): **Revises certain provisions relating to pari-mutuel wagering. (BDR 41-1111)**

Dave Ziegler, Committee Policy Analyst:
Senate Bill 425 (1st Reprint) has to do with pari-mutuel wagering. It is sponsored by the Senate Committee on Judiciary and was heard in this Committee on May 10, 2013. Senate Bill 425 (R1) authorizes a person who is licensed to engage in off-track pari-mutuel wagering to accept wagers for less than full face value, agree to refund or rebate any portion of the full face value of a wager, or increase payoffs or pay bonuses on winning wagers, unless the Nevada Gaming Commission otherwise prohibits such conduct by regulation (Exhibit LL). On the day of the hearing, the Pari-mutuel Association proposed an amendment, and it was not approved by the sponsor. A copy is attached.

Chairman Frierson:
Is there any discussion on the bill?

Assemblyman Hansen:
I was told there was another amendment proposed this morning, or it is still the original amendment?

Chairman Frierson:
This is the only amendment that I am aware of. Are there any other comments or questions on the bill? [There were none.] I will be seeking a motion to amend and do pass.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS SENATE BILL 425 (1ST REPRINT).

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

Chairman Frierson:
Is there any discussion on the motion?

Assemblyman Ohrenschall:
That is with the amendment that is not friendly, the one that is not supported by the sponsor?

Chairman Frierson:
I believe that is the only amendment, and it proposes to direct the Gaming Commission to form a study group consisting of members of the Off-Track Pari-Mutuel Wagering Committee. I will say there was a discussion off the record outside the Committee about requiring that the study group be formed and directing that the study group make recommendations. While that was never submitted, it was something that was discussed. I would assume that was not something Assemblywoman Diaz was including in her motion. Are there any other questions on the motion? [There were none.]

THE MOTION PASSED UNANIMOUSLY.

Chairman Frierson:
Assemblyman Ohrenschall will handle the floor statement. The next bill is Senate Bill 312 (1st Reprint).

Senate Bill 312 (1st Reprint): Makes various changes concerning victim impact panels. (BDR 43-888)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 312 (1st Reprint) is sponsored by Senator Manendo and was heard in this Committee on April 30, 2013. The bill makes the Department of Motor Vehicles (DMV) responsible for regulating and registering the organizations that sponsor and conduct victim impact panels. Each meeting of a victim impact panel must be conducted by a qualified coordinator and have security personnel on site. [Continued to read from the work session document (Exhibit MM).]

On the day of the hearing, there were proposed amendments from the Northern Nevada DUI Task Force and also from Judge Richard Glasson at the Tahoe Justice Court. Both of those amendments are attached. There is also another amendment that was put up on the Nevada Electronic Legislative Information System today. It comes from the Chairman and it is somewhat similar to Judge Glasson's proposed amendment, but it does have some differences.

Chairman Frierson:
Is there any discussion on the bill?

Assemblywoman Spiegel:
Would you please walk us through your amendment?

Chairman Frierson:
I have discussed this with Senator Manendo. If you look at section 6, subsection 2, paragraph (d) of my proposed amendment, the first proposed change would be to strike paragraph (d) requiring a curriculum describing the materials to be covered. I think that the title and the nature in itself covers the victim impact panel and the coordinator is able to cater that to their liking. It is clearly a victim impact panel.

Section 6, subsection 5, imposes an administrative fine; it is proposed to add "not more than" a $5,000 administrative fine. Section 7 deals with the qualified coordinator and subsection 1, paragraph (a) provides that the coordinator must have successfully completed a specialized training of victim advocacy including, without limitation, training offered by the National Organization for Victim Assistance or a comparable organization that is nationally recognized. The remainder of the requirements for a coordinator, while certainly positive, seem to be a high standard for a nonprofit organization trying to provide this service, and the comparable training to a national organization seemed to be sufficient. Section 8 requires a victim to submit to the sponsor documentation concerning the events that gave rise to the harm suffered by the victim, and then it gives some particulars that may include without limitation, I thought went without saying. There are certainly different forms of documentation, but if we are going to require a coordinator to be trained, that would be something appropriate for the coordinator to screen and provide flexibility, especially depending on different-sized communities.

Section 8, subsection 3, deals with fines and community service, and I proposed to add "not more than" for both to provide flexibility. Section 9 deals with having requirements for the victim impact panel and excluded a victim who was victimized by their own behavior. I found in my experience that

the victims who hurt themselves are the ones who oftentimes have the greatest impact on other offenders.

Section 9, subsection 1, proposes to strike paragraph (b) and the transitory sentence from paragraph (a) and further, subparagraph (2) dealing with not allowing someone who hurt themselves to be a victim. The existing paragraph (d), which would become paragraph (c), requires there to be security. I propose to strike "who are trained in the detection of a person who is under the influence" of a controlled substance and intoxicating liquor and, frankly, I think my reflection was that in ten years of criminal practice, I did not know what that was or whether that actually existed other than something subjective that a coordinator could do himself with his training or require his security to be on the lookout for.

Section 10 deals with the collection of fees. I propose to strike the sentence that the sponsor shall not generate a profit, because this deals with nonprofits that I think are handled by definition with their registration and would lose it if they were not complying with the requirements of a nonprofit, which I believe is another issue that may come up. Section 10, subsection 5, deals with a fine, adding the words, "not more than." The remainder of the bill I believe is including the amendment provided by the sponsor, Senator Manendo.

Assemblyman Thompson:
Is there any way that we can ask a question of the bill's sponsor?

Chairman Frierson:
Yes. Senator, would you come up?

Assemblyman Thompson:
My question relates to the DMV. I totally agree with having the appropriate standards for this, and I definitely would want it to be where all the victim impact panels that are in the community have a fair chance to get in compliance and to meet all the standards that are listed here. My question is on the DMV end. Do they have designated staff who serve as the regulators, or is it Sally one day and Billy the next day?

Senator Mark A. Manendo, Clark County Senatorial District No. 21:
The Department of Motor Vehicles testified that they had the staff to be able to do this. I do not know how they would do it. I am assuming they would have people in place. In my other hat in my life, I work in the collision repair industry, and DMV regulates that when they inspect from time to time. There are 160 body shops just in southern Nevada that are regulated. They do not do it every day. They come out from time to time and do inspections, just like the

Occupational Safety and Health Administration comes out from time to time. I am assuming that it would be something like that; they would oversee, regulate, and have some people in place to do it. That is probably not going to be all that they do.

Chairman Frierson:
Are there any questions from the Committee? [There were none.]

Alan Byers, Acting Administrator, Compliance Enforcement Division, Department of Motor Vehicles:
The Compliance Enforcement Division is the division that regulates the vehicle industry and many others to include drive schools. We do have dedicated staff and investigators who are dedicated particularly to drive schools who would have the ability to oversee this project, if passed.

Assemblyman Thompson:
Say that an organization said we want to be a certified or a listed victim impact panel. Is this like a certification process? Once an organization has met all of the requirements, are they on the DMV's list as a valid victim impact panel organization?

Alan Byers:
Currently, that would be the process. We take information to show that they are certified. We would then license them as a victim impact panel, and those victim impact panels are made available on our website to the public as far as who is certified by the DMV.

Assemblywoman Fiore:
Even though we watered this down with the amendments, I am still very concerned that we are putting a monopoly in statute, so I will be voting no on this measure. I am not very comfortable with the language.

Chairman Frierson:
Senator, we discussed this on the recess, and I want to get on the record regarding whether or not organizations that provide this service have to be a nonprofit. I say it with someone from DMV here just in case they know. Is it your understanding that these organizations are required to be a nonprofit?

Senator Manendo:
Under current law—and Legal can correct me—the victim impact panels, at the direction of the courts, have to be a nonprofit. I cannot remember the statute that they have to be run not for profit.

Chairman Frierson:
We have located *Nevada Revised Statutes* 484C.530. It indicates that the panel may not be operated for profit. Are you aware of whether or not organizations such as Options are a nonprofit? I tried to look them up and they did not seem to reflect a nonprofit status. My reading of it suggests that a corporation that is a for-profit corporation can do this, but cannot do this for profit. So if I have a business and I want to, as a service to the community, become a coordinator of a victim impact panel, I could do it as long as I was not making money off of it, but that does not mean that I, as a corporation, had to be a nonprofit in order to do it. That is just my quick reading of the language that was pointed out to me. Ms. Cohen and I discussed that. Does it answer your question at all?

Assemblywoman Cohen:
Yes. I was concerned because I know we have some mental health providers in Clark County, and they were interested in providing the service in the future. I wanted to make sure they could do that.

Chairman Frierson:
We are looking at all of the amendments. The bill puts a population cap on it, so that provision would only apply to communities of less than 100,000; however, the Northern Nevada DUI Task Force has proposed a bill that would have raised it to 700,000, meaning it would include all counties except for Clark County in that amendment. I believe that Senator Manendo's proposed amendment did not adopt that change in population cap. In effect, my reading of the bill would be that it would preclude a for-profit corporation from being able to engage in providing a victim impact panel.

Assemblywoman Diaz:
Although I have not had a lot of time to get familiar with the amendment language, I am a little concerned. Not a lot of different people who are in this line of business were brought in on a work group to work on it. That is the concern I have. When you cross something with everyone's voices at the table, you usually have better policy. I am going to vote for it out of Committee and reserve my right to change my vote later.

Assemblywoman Spiegel:
Ditto.

Assemblyman Hansen:
Ditto.

Assemblyman Duncan:
Ditto.

Chairman Frierson:
Of course, you all reserve your right to change your vote. I will be entertaining a motion to amend and do pass with the amendment I provided incorporating Senator Manendo's other amendments with respect to the judge's language.

> ASSEMBLYMAN THOMPSON MOVED TO AMEND AND DO PASS SENATE BILL 312 (1ST REPRINT).
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN FIORE AND WHEELER VOTED NO.)

Assemblyman Thompson will handle the floor statement. The next bill is Senate Bill 141 (1st Reprint).

Senate Bill 141 (1st Reprint): Revises provisions governing the dissemination of records of criminal history. (BDR 14-881)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 141 (1st Reprint) relates to the dissemination of records of criminal history. It is sponsored by Senator Denis and was heard in this Committee on May 7, 2013. It requires an agency of criminal justice to disseminate a record of criminal history to a court-appointed special advocate program in a county whose population is less than 100,000 as needed to ensure the safety of a child for whom a special advocate has been appointed by a court (Exhibit NN). There were no amendments.

Chairman Frierson:
Is there any discussion on the bill?

Assemblywoman Fiore:
My biggest concern with S.B. 141 (R1) is that our Department of Public Safety right now is 65,000 records behind in implementing them in the system. This would ultimately give volunteers access to criminal reports and, unfortunately, sometimes people get judged by what they read and it could be inaccurate. I am going to be voting no on this.

Assemblywoman Spiegel:
I had a number of concerns about this bill as well, especially relating to privacy. I will be a no also.

Assemblywoman Diaz:
This has been a difficult one for me to come to a conclusion on. I have heard what court-appointed special advocates (CASA) intended to do, but I have also been made aware that in our rural areas they might not operate the same as in our urban areas such as Clark and Washoe Counties. They might be more limited in staff. Maybe something that would procedurally happen in those larger areas might not be happening in the rurals because the personnel is not available. What would give me some comfort in passing this bill would be if we would put a sunset on it, and that it would come before us next session and we would hear that it had a positive or negative effect. I do not want to think of a situation where we placed a child in danger. I would be willing to move it forward with a conceptual amendment to put a sunset on it.

Chairman Frierson:
When would that sunset be?

Assemblywoman Diaz:
It would probably be the next legislative session, so July 2015.

Chairman Frierson:
Are there any other comments or thoughts on the bill?

Assemblyman Ohrenschall:
I share a lot of the reservations that Assemblywoman Fiore had on this measure, and some of the other members, but I think Assemblywoman Diaz' proposal is something that I could live with. We could see what happens at the next session. This will not exist in perpetuity, and then we could decide whether or not this is something we want to continue. I think it is a reasonable proposal. I am willing to support Assemblywoman Diaz' amendment.

Chairman Frierson:
I will entertain a motion to amend and do pass with a two-year sunset.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS SENATE BILL 141 (1ST REPRINT).

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARRILLO, FIORE, MARTIN, SPIEGEL, AND THOMPSON VOTED NO.)

Assemblywoman Cohen will handle the floor statement. The next bill is Senate Bill 179 (2nd Reprint).

Senate Bill 179 (2nd Reprint): Makes various changes to provisions governing public safety. (BDR 43-79)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 179 (2nd Reprint) relates to public safety. It is sponsored by Senator Manendo and was heard in this Committee on May 15, 2013. This bill authorizes the governing body of a local government or the Department of Transportation to designate a pedestrian safety zone on a highway, after making findings that such a zone is appropriate and necessary. [Continued to read from the work session document (Exhibit OO).]

The Chairman of this Committee has proposed a conceptual amendment which would delete the provisions related to a course of pedestrian, bicycle, and traffic safety. Those provisions that would be deleted appear in section 15 and section 29.

Chairman Frierson:
That notion I brought up in the hearing reflected my hesitation with a reference to a set of classes that do not exist, at least at this time, although a judge certainly could order that without it being mandated in statute if such a class ever was created. Is there any discussion on the bill?

Assemblywoman Fiore:
I know this is not a money committee, but is there not a cost in changing the signage, for instance, from yield to stop?

Chairman Frierson:
I believe that the Department of Transportation agreed that they could absorb the cost.

Assemblywoman Spiegel:
So the amendment would drop the class?

Chairman Frierson:
Section 15, page 14, says that the court may, in addition to the fine, order a driver to attend a course of pedestrian, bicycle, and traffic safety approved by the Department of Transportation. Subsection 4 refers to that course and an exemption, and then later on in the bill it has the same reference. The proposal is not to say that this should not be. It does not exist. We are saying that the court may refer someone to take a class that has not been created yet, so if it is created, the court could certainly do it.

Assemblywoman Spiegel:
If there is the class Erin Breen of the Safe Community Partnership Program had testified that some have already volunteered to give the class—there would not be a fiscal note. There was no discussion about administrative issues that would arise, such as who would be responsible for administering it, who would make sure that the court got the documentation and that the people attended the course, and all of those matters.

Chairman Frierson:
We just heard a bill creating a coordinator and a whole structure for confirmation of the curriculum and whatnot. The court right now refers people to nonprofits for treatment and education without a statute being required, so they can certainly do that when made aware of it. I just did not know, from a drafting standpoint, if it was prudent to make reference to it in the statute itself.

Assemblywoman Spiegel:
Thank you for clarifying it. I still have some reservations, so I think I am going to be a no for now.

Assemblywoman Fiore:
I am concerned with section 16, subsection 1, paragraph (c), where a layman is supposed to know what 250 feet is. I am concerned because as our statute now stands, jaywalking is a misdemeanor, with up to six months in prison. Can we amend that subsection out?

Chairman Frierson:
What subsection are you referring to?

Assemblywoman Fiore:
Section 16 where it talks about the layman is supposed to know what 250 feet is. By the light poles, that is 125 feet, which is not stated anywhere, so it is quite confusing. I am scared of this bill because we have so many laws on the books and now we are going to make jaywalking up to a year in prison.

Chairman Frierson:
You are proposing to strike paragraphs (c) and (d)?

Assemblywoman Fiore:
Yes.

Chairman Frierson:
Are there any other thoughts?

Assemblywoman Spiegel:
There was also a discussion about there being a volunteer workforce and volunteers being used, and I was wondering if there was a plan in place or if there was any contemplation of what it would take to manage all the volunteers?

Chairman Frierson:
Would you refer to a section?

Assemblywoman Spiegel:
I will look through it and come back.

Assemblyman Duncan:
I am going to vote yes out of the Committee. I just need to digest the amendments a little more. I have some concerns about the effect on the smaller communities as well.

Assemblyman Thompson:
I ditto what Assemblyman Duncan stated.

Assemblyman Ohrenschall:
I am going to ditto what Assemblyman Duncan and Assemblyman Thompson stated. I also will be voting to move it out of Committee and reserve my right to change my vote on the floor. I need to digest the amendments.

Assemblyman Wheeler:
I am just a flat, rural county no on this.

Assemblywoman Diaz:
There are many things that give me great discomfort, so at this point I am a no.

Assemblywoman Fiore:
Even with all the amendments, and just because I have so much respect for you, Senator Manendo, I am going to vote no but with my reservation to change my vote on the floor. I am really hoping that we can fix this.

Assemblywoman Dondero Loop:
I absolutely understand everyone's reservations on these, but if you have ever been in a school zone and watched what goes on there, it is a scary sight. It is amazing to me that more things do not happen. We have had children hurt, injured, and killed walking to and from school. I do not know how we can fix this to do something. I do not want to be on the far end of punishing people for something they may not know, but I think this is workable and fixable. I would like to see if we could do something with it, and maybe the sponsor has some suggestions.

Assemblywoman Cohen:
I am going to echo what my colleagues said. I have some concerns, but I will move it out of the Committee.

Assemblyman Martin:
I am going to say ditto to my colleagues who came before me. I am a yes but am reserving the right to change my vote on the floor.

Chairman Frierson:
Are there any other thoughts? [There were none.] I do not know what the Committee's appetite is with respect to the suggestion that was made by Assemblywoman Fiore regarding the 250 feet delineator. Are there any thoughts or questions on the part of the Committee? Any indication as to whether or not there is an appetite for that to be part of the motion? There has not been a motion yet, but that was a suggestion.

Assemblywoman Spiegel:
I think it is a good suggestion because most people do not know what 250 feet is, and I think educating people that they need to count streetlights is going to be a challenge.

Assemblywoman Diaz:
The part of the bill that gives me the most heartburn is the penalties. I think that sometimes the biggest offenders are going to be in my community and, as it is, we already face so much. I am all about keeping our children safe and the area safe, but I think we could do more educational awareness in schools, and maybe create some kind of partnerships between schools and parents by which

the parents help by being crossing guards and such. I just think that there are other remedies that we can try to exhaust.

Assemblywoman Dondero Loop:
Just for clarification purposes, I think most of us have been to a football game and most of us know how long a football field is, which I believe is 300 feet, so we can kind of gauge 250 to 300 feet. While I agree that most of us do not know that, it is a good teacher lesson.

Chairman Frierson:
Are there any other thoughts from the Committee? [There were none.] I will be seeking a motion to amend and do pass with the amendment suggested by Assemblywoman Fiore. I will also be entertaining a motion to incorporate my proposed amendment. First, I will be entertaining a motion to amend and do pass, removing the reference to classes and removing the reference to 250 feet in paragraphs (c) and (d). [There was no response.] I will be seeking a motion to amend and do pass with either proposed amendment.

> ASSEMBLYMAN CARRILLO MOVED TO AMEND AND DO PASS SENATE BILL 179 (2ND REPRINT) WITH THE AMENDMENT BEING THE REMOVAL OF THE REFERENCE TO 250 FEET AND THE REMOVAL OF THE REFERENCE TO THE PEDESTRIAN CLASS.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN DIAZ, FIORE, AND WHEELER VOTED NO.)

Assemblywoman Dondero Loop will handle the floor session. I am going to recess with respect to Senate Bill 280 (1st Reprint) and Senate Bill 192. I will briefly open it up for anyone to provide public comment. [There was no one.] Assembly Judiciary is now in recess [at 1:52 p.m.] until adjournment of the Assembly Committee on Education.

[The Assembly Judiciary Committee reconvened at 6:20 p.m.]

Chairman Frierson:
Continuing the work session, I am going to call Senate Bill 280 (1st Reprint).

Senate Bill 280 (1st Reprint): **Revises provisions relating to common-interest communities. (BDR 10-863)**

Dave Ziegler, Committee Policy Analyst:
Senate Bill 280 1st Reprint is related to common-interest communities. It is sponsored by Senator Kihuen and was heard in the Assembly Committee on Judiciary Subcommittee on May 9, 2013 and May 16, 2013. Members, I will spare you the reading of the details of S.B. 280 (R1). I think the idea is to have a replacement amendment. This morning a document was posted on the Nevada Electronic Legislative Information System for today's meeting labeled "S.B. 280 (Replacement)" (Exhibit PP), and I think that is a useful point of reference, although it is not literally what is being proposed, but at least it is in the ballpark, and the Chairman will address the details.

Chairman Frierson:
The mock-up replacement is a result of significant negotiations and replacement of language in the original S.B. 280 (R1). Much of the provisions in the original S.B. 280 (R1) were recently amended into Assembly Bill 98 (R1) in the Senate, so with that there was still an appetite to address some problems, particularly in regard to homeowners' association foreclosures. This is the mock-up that was made part of the record originally to A.B. 98 (R1), but for our purposes, the green language in the mock-up reflects the language that is proposed to be a substitute in S.B. 280 (R1) in its entirety.

In short, that mock-up creates a statutory structure where an HOA is allowed to place a lien for assessments and abatements, the lien has super-priority status, and the HOA is allowed to foreclose on that lien. If there is a subsequent HOA foreclosure sale, this mock-up clarifies that the sale does not extinguish the first; however, the HOA is allowed from that sale to receive the amount of the lien that is owed to them.

I am going to read some language, and it does not necessarily have to be verbatim, but it makes the point that the association can also file a lien for the cost of collecting past-due obligations, and that this lien is to be paid at the sale of the first security interest and should be included in the priority of the sale of that first security interest. Essentially, what we are saying is if an HOA forecloses on an assessment and abatement and subsequently sells in a foreclosure sale, the HOA can get their assessments and abatements. The HOA can also file a lien for collection costs, and the HOA would be able to receive the amount of that lien for collection costs upon the sale of the first. It attempts to clarify that the title is subject when there is an HOA foreclosure sale to the first, and that way when someone makes the purchase of the HOA, they know what they are getting. The intent is to make sure that it stabilizes the market and that there is certainty in that title and folks know what they are getting. Hopefully, it will resolve lawsuits and things that reflect a lack of clarity regarding that title.

The mock-up also authorizes a lender to create an escrow account for the purpose of collecting assessments similar to how banks now have an escrow account for mortgage insurance. This bill would authorize a bank to create an escrow account for assessments. If that were done, it would alleviate the concern for collection costs in its entirety, because not everyone pays their mortgage insurance through an escrow. It needs to be permissive and not mandatory.

For folks who have already read the mock-up, you will notice the very last portion of the bill, subsection 5 of section 15, reflects that it does extinguish the first; however, what we are proposing to move forward today expressly provides that it does not. So the language in section 15, subsection 5, would read, "The foreclosure by sale of the super-priority lien does not extinguish the first security interest." A purchaser of the lien at the foreclosure sale acknowledges they are buying subject to the first security interest or the record deed of trust. That is attempting to clarify that it does not extinguish the first, but sets up a priority system for the HOA to be made whole at the beginning for their assessments and abatements and at the end when it is sold for the cost of collections.

I will say that there is also an appetite at some point, not today but possibly on the floor, to discuss some language that might provide some incentive to HOAs to not send the account to collections in the first place. That is something that we may continue to work on to decrease the incentive for that and to hope to increase the incentive to work with a homeowner to make those payments on the front end. I believe that is essentially what the mock-up does. Because S.B. 280 (R1) is Senator Kihuen's bill, he would be sponsor as well as myself and Senator Segerblom. Are there any questions on the bill?

Assemblyman Hansen:
Did the Subcommittee not get all these options? When we did not hear back from the Subcommittee, what happened to the bill at the Subcommittee stage? I would like to hear from someone about that and why, I assume, these propositions were offered to them at that point. I am wondering why we are hearing it now after we did not get it back from them.

Chairman Frierson:
I can say as Chair of the Committee, because even if they did not move it, I could have. Senate Bill 280 (R1) in its entirety did not move out of the Subcommittee, and none of this language was in S.B. 280 (R1). Senate Bill 280 (R1) dealt with notice provisions prior to collections. That language has since been picked up and adopted into A.B. 98 (R1), which we had already passed out, and it is in the Senate. Because S.B. 280 (R1) died and

there were several of us receiving phone calls from judges, attorneys, and lenders regarding the uncertainty of title in this dilemma during the last couple of years, this language was something that could address it, and this vehicle was an appropriate and germane way to do it. This was not presented before the Subcommittee in Assembly Judiciary.

Garrett Gordon, who had been involved with this concept and actually attempted to provide something similar to A.B. 98 (R1) when it was in our house, was involved in the development of this language, and it was too late when we proposed it for A.B. 98 (R1) to be able to consider it. There has been work on this language since then to get it right. Assemblywoman Spiegel was involved in the conversations as well as Assemblywoman Cohen. Assemblyman Duncan was made aware of it as of late, and we took time to make sure, at least at this point in time, that the concerns that were previously holding this notion up were addressed. Everyone reserves the right to vote one way in the committee and another way on the floor if they so see fit, and I would certainly ask the folks to take a hard look at it. I believe this is strong language that really clarifies some title issues and uncertainty issues in the real estate market.

Having been part of the conversations as well, I would ask for the Committee to consider supporting it, continue to digest it, and ask any questions that they might have. I do not think this bill picked a side. I think this language attempted to take into consideration everyone who had not, at this point, been able to come to an agreement to make sure that the priorities were that the homeowners' associations get the money that they are dependent on in operating, that they can get their collection costs, but that is when everything is sold. At least they know they have certainty and ability to get their monthly assessments and abatements and that the title is clear as far as whether or not it was subject to the first.

I think that Assembly Bill No. 273 of the 76th Session neglected to include a second if there is a second, so the intention is to make sure we do not make that mistake this time and that, if there is a second, it is included as well as the first is. For example, if you have an 80/20 loan and the 20 percent was a second, I think that our conversations contemplated making sure that we did not overlook that.

Assemblyman Duncan:
I was looking back through my notes; maybe Mr. Gordon can address this. In the first presentation of A.B. 98 (R1) and the super-priority lien, there was some worry about the U.S. Department of Housing and Urban Development guidelines

and potentially violating federal underwriting guidelines. Was that addressed in this latest nuance?

Garrett Gordon, representing Olympia Companies:
If you go to page 8 in the conceptual amendment, there is currently a carveout for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) that the super-priority includes nine months, except if federal regulations provide otherwise. We view that to say if federal regulations provide cost of collecting other than what is in state statute, then they would have their carveout. There was a letter that was distributed by Alfred Pollard, who was general counsel to the Federal Housing Agency. I spoke with him yesterday and he indicated that he wanted to make sure his exemption or carveout was still there for federal preemption law purposes—even if we drafted law that was contrary to Fannie Mae or Freddie Mac guidelines—and that federal law would trump any kind of new state law. I think it is covered, but I can follow up with him when we see all this put together to make sure he is comfortable.

Chairman Frierson:
Are there any questions or comments from the Committee? [There were none.] I will be seeking a motion to amend and do pass with the amendments discussed today.

> ASSEMBLYWOMAN COHEN MOVED TO AMEND AND DO PASS SENATE BILL 280 (1ST REPRINT) WITH THE AMENDMENTS DISCUSSED TODAY.
>
> ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Cohen will handle the floor statement. There being no more business before Assembly Judiciary, we are now adjourned [at 6:35 p.m.].

RESPECTFULLY SUBMITTED:

____
Dianne Harvey
Recording Secretary

____
Linda Whimple
Transcribing Secretary

APPROVED BY:

____
Assemblyman Jason Frierson, Chairman

DATE: ___________________________

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 17, 2013 **Time of Meeting: 8:48 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 107 (R1)	C	Senator Segerblom	Slide Presentation
S.B. 107 (R1)	D	Vanessa Spinazola	Letter
S.B. 107 (R1)	E	Senator Segerblom	Proposed Amendment
S.B. 107 (R1)	F	Mike Patterson	Proposed Amendment
S.B. 107 (R1)	G	Mike Patterson	Testimony
S.B. 107 (R1)	H	Rebecca Gasca	Testimony
S.B. 107 (R1)	I	Mike Patterson	Testimony
S.B. 107 (R1)	J	Mike Patterson	Testimony
S.B. 107 (R1)	K	Mike Patterson	Testimony
S.B. 107 (R1)	L	Vanessa Spinazola	Article
S.B. 107 (R1)	M	Steve Yeager	Article

S.B. 107 (R1)	N	Steve Yeager	Testimony
S.B. 192 (R1)	O	Jason Guinasso	Memorandum
S.B. 192 (R1)	P	Jason Guinasso	Memorandum
S.B. 192 (R1)	Q	Jason Guinasso	Memorandum
S.B. 192 (R1)	R	Jason Guinasso	Statement of the Bauers
S.B. 192 (R1)	S	Father Francisco Nahoe	Testimony
S.B. 192 (R1)	T	Gwen Linde	Testimony
S.B. 192 (R1)	U	Rocio Grady	Testimony
S.B. 192 (R1)	V	Barbara Jones	Testimony of Sheila Ward
S.B. 192 (R1)	W	Vanessa Spinazola	Letter
S.B. 192 (R1)	X	Elisa Cafferata	Letter
S.B. 192 (R1)	Y	Maggie Garrett	Testimony
S.B. 192 (R1)	Z	Lauren Scott	Testimony
S.B. 192 (R1)	AA	Susan Meuschke	Testimony
A.B. 499	BB	Dave Ziegler	Work Session Document
S.B. 314	CC	Dave Ziegler	Work Session Document

S.B. 389 (R1)	DD	Dave Ziegler	Work Session Document
S.B. 424 (R1)	EE	Dave Ziegler	Work Session Document
S.B. 131 (R1)	FF	Dave Ziegler	Work Session Document
S.B. 111 (R1)	GG	Dave Ziegler	Work Session Document
S.B. 118	HH	Dave Ziegler	Work Session Document
S.B. 177 (R1)	II	Dave Ziegler	Work Session Document
S.B. 224 (R1)	JJ	Dave Ziegler	Work Session Document
S.B. 373 (R2)	KK	Dave Ziegler	Work Session Document
S.B. 425 (R1)	LL	Dave Ziegler	Work Session Document
S.B. 312 (R1)	MM	Dave Ziegler	Work Session Document
S.B. 141 (R1)	NN	Dave Ziegler	Work Session Document
S.B. 179 (R2)	OO	Dave Ziegler	Work Session Document
S.B. 280 (R1)	PP	Chairman Frierson	Proposed Amendment