MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
March 6, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:17 a.m. on Wednesday, March 6, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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 Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblywoman Lesley E. Cohen (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nancy Davis, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

John L. Arrascada, representing Nevada Justice Association
Vanessa Spinazola, representing American Civil Liberties Union
Steven Yeager, representing Clark County Public Defender's Office
Sean B. Sullivan, representing Washoe County Public Defender's Office
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, representing Washoe County Sheriff's Office
Adam Hopkins, Lieutenant, Washoe County Sheriff's Office
Tim Bedwell, representing City of North Las Vegas
Carey Stewart, Director, Washoe County Department of Juvenile Services; and President, Nevada Association of Juvenile Justice Administrators
John B. Simms, Chief Juvenile Probation Officer, Department of Juvenile Services, Carson City and Storey County
John C. DeVaney, Lieutenant, Henderson Detention Center
Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Clark County District Attorney's Office
Buffy Brown, Child Advocacy Attorney, Washoe Legal Services
Jon Sasser, representing Washoe Legal Services; and Legal Aid Center of Southern Nevada
Ronald P. Dreher, representing Peace Officers Research Association

Chairman Frierson:
[Roll Called. Standing rules reviewed.] We have two bills on the agenda. I will open the hearing on Assembly Bill 133.

Assembly Bill 133: Makes various changes to criminal law. (BDR 14-423)

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3:
The genesis of this bill was a U.S. Supreme Court ruling that was made in April 2012. I heard about the decision and I was appalled; my reaction to this was visceral. I thought most of these judges claim to love the *U.S. Constitution* more than they love life itself, and I was perplexed about this decision. I decided I wanted to have a bill drafted on this subject. This is a bill about strip searches.

Let me tell you about *Florence v. Board of Chosen Freeholders of County of Burlington*, 132 S. Ct. 1510 (2012). The U.S. Supreme Court has ruled that guards may routinely strip-search even minor traffic offenders when they are arrested and detained. [Continued to read from written article (Exhibit C).]

When I was gathering signatures for this bill draft request, one of the first things that my colleagues who are attorneys said to me was, "If the Supreme Court says you can do this, then there is nothing to be done." Since I am not an attorney, I went to Brenda Erdoes, Legislative Counsel Bureau. She wrote me this:

> You asked about the effect of the decision of the Supreme Court of the United States in *Florence* with respect to your bill draft concerning strip searches. In *Florence* the U.S. Supreme Court held that officials may strip search a person who has been arrested for any crime before admitting the person to jail, even if there is no reason to suspect that the person is carrying contraband. Thus the decision in *Florence* means that such searches do not violate a person's rights against unreasonable searches under the Fourth Amendment. In response to this case, your BDR limits the circumstances under which a strip search may be conducted in Nevada. Your bill draft does not, however, conflict or seek to overturn the decision in *Florence*, but rather to provide greater protection to a person with respect to strip searches than is required to be provided under the Fourth Amendment. States are free to provide greater protection to persons than required by the Fourth Amendment, and many states have chosen to do so by limiting the circumstances under which officials may conduct strip searches of arrested persons.

While discussing this with the Las Vegas Metropolitan Police Department, the Washoe County Sheriff's Office, and the North Las Vegas Police Department, one of the things they have assured me is that what is in my bill is already in their regulations. I still want to proceed with my bill because I think the average person reads a paragraph in the newspaper and sees that the Supreme Court says you can strip-search anyone, no matter what their crime, and they are going to believe that is the end of it. I think this needs to be in statute so the average citizen knows that in Nevada it is a little more restricted than that.

Assembly Bill 133 says that if a police officer arrests someone "for a misdemeanor offense that does not involve a dangerous or deadly weapon, a controlled substance or violence" he cannot perform a strip-search just to put that person in a holding tank, without first putting in writing some arguable

facts about why they feel the need for a strip search. The bill also states that the supervisor on duty must approve the strip search. Strip searches have to be done by a person of the same gender, and they need to be performed in a private area. There are also definitions of "strip search," "contraband," and "visual body cavity search." The last part of the bill states that the same applies to juveniles.

John L. Arrascada, representing Nevada Justice Association:
I would like to share with you a story that happened to a client of mine nine years ago. She had gone away on a long vacation and retained me when she came back because she believed her traffic citations had gone to warrant. I investigated and found out that they had. I had a conversation with the district attorney that was handling the citation cases and asked if the warrant could be converted to a summons. That request was denied. We then made arrangements for my client to turn herself in at the Washoe County jail. She arrived there with just her clothes and identification as I instructed her. I met her at the jail and left as she turned herself in. The next morning I received a phone call from her. She was in tears. This was a traffic violation, a misdemeanor, yet the jail subjected her to a full body cavity search. When she asked why, the response was, "You knew you were coming, so what a great opportunity to smuggle something into the jail." This professional woman was subjected to what courts have called the most frightening and humiliating invasion, even when conducted with all due courtesy. She was subjected to feelings of humiliation and degradation associated with forcibly exposing her own nude body to strangers for visual inspection. That is what this bill is addressing.

The scope of this bill is very narrow. It does not apply to misdemeanor offenses that involve controlled substances, use of threat or violence, or deadly weapons—those are all excluded. What we are dealing with here is the person who is arrested for a nonviolent misdemeanor—primarily traffic violations.

There was a case before the U.S. Supreme Court, *Atwater v. Lago Vista*, 532 U.S. 318 (2001) in which they ruled that it is within the officer's discretion to arrest, even on misdemeanor citations which carry a fine only, if they feel it is necessary under the circumstances. This bill is providing some level of human dignity to the people who are arrested for the most innocuous offenses, the nonviolent, nondrug-related, traffic-type violations. This exact same language has been codified in California under their penal code.

This bill provides a threshold of protection of the individual rights and liberties of nonviolent, nondrug, and nonalcohol-related misdemeanants. It provides to them the lowest level of protection on a statewide basis for all of our jails to

follow. There are exceptions for the misdemeanant. If an officer can provide a reasonable and articulable suspicion that this person may have some form of contraband, then the offender could be subject to a strip search of his person and all of his body cavities. It is not a bill that intrudes upon the effective protection and policy-making decisions of law enforcement, but it does provide a minimum threshold of protection for the individual rights of the misdemeanant.

Assemblyman Ohrenschall:
How would this bill apply if someone was pulled over and arrested on suspicion of driving under the influence (DUI) of alcohol? Would the officer still need reasonable suspicion of a weapon to perform the strip search?

John Arrascada:
In looking at the language of the statute, it does not address alcohol per se, but I believe on a DUI arrest, if an officer can establish some form of reasonable articulable suspicion that the intoxicated driver may have contraband within their body, such as a weapon or drugs, that may be enough to perform a strip search for contraband.

Assemblyman Ohrenschall:
If this bill became law, could the officer look at the offender's record to see if he had a history of drug or weapon offenses, or would it just be the suspicion at the time of the arrest?

John Arrascada:
That would be a way for the officer to develop reasonable and articulable suspicion to warrant them going to a supervisor and saying, "I believe we need to perform a strip search on this person because of their criminal history. They have a long history of drug possession, or they have weapons violations, and for the safety and security of the inmates and the jail, we believe there is a necessity to conduct a strip search."

Assemblyman Ohrenschall:
In your experience, do you find that many people arrested for a DUI offense are strip-searched?

John Arrascada:
To my recollection, I have not had a client tell me they were arrested on a DUI and then strip-searched. Most people arrested for DUI are processed and when their blood alcohol is below a .02, they are released on their own recognizance or bail is posted.

Assemblywoman Spiegel:
When we go through airport screening, oftentimes we are essentially strip-searched with the new technology. Is that technology ever used in the penal system? If so, would that fall within this bill since the person would not actually be taking their clothes off?

Assemblywoman Pierce:
Washoe County brought that up during my conversations with them. I have been mulling amending this so that this does not prohibit that kind of search.

Assemblyman Wheeler:
We heard some stories of people who really did not need to be searched. I am wondering if you have any stories of people who were arrested for a very minor violation, not strip-searched, and actually had contraband such as drugs or weapons that created some type of discord in the jail?

Assemblywoman Pierce:
I do not have stories like that, but the gentlemen from law enforcement will address that.

Assemblyman Martin:
This seems to be an all or nothing process. You get arrested; you get strip-searched. I think what the issue really comes down to is a training issue. It almost seems like we need a poster in the officer's breakroom that reads, "A strip search is appropriate when the following offenses occur:" and have a list. It is one thing to pass this legislation, but another in enforcing it. I think we need to ensure that these officers are trained as to when and when not to do a strip search.

Assemblywoman Pierce:
This bill is largely in regulation now, at least in Washoe and Clark Counties. I would like to have it in statute just so that if the regulations change, this will still stand. I think more citizens are likely to know what their rights are if it is in statute than in regulations. Very few citizens read the regulations of a law enforcement agency.

Assemblyman Martin:
How many complaints do you receive when people are getting strip-searched when in fact they should not be? That could give credence to the conversation about training issues.

Assemblywoman Pierce:
In researching this bill, New York City has paid out millions of dollars in two class action cases in the last 15 years because people were routinely getting strip-searched. There have been lawsuits all across the country over this. There is a story about an elderly nun who was strip-searched when she was picked up at a protest. You can go on the Internet right now and see a woman getting a body cavity search from a female officer on the side of a highway because she threw a cigarette out of her car. I think the vast majority for whom this happens simply do not believe they can fight this. They have no access to lawyers. If some of these people cannot get a subsidy to get a lawyer and they have to pay, they simply are not going to get a lawyer.

John Arrascada:
Most of the people who fall within the category that this bill is intended to address—the person with no criminal history who is arrested on some form of misdemeanor that is nonviolent, nondrug-related—are not going to complain because it is such a foreign event that they may think this is just how it is done in jail. The only time they have ever seen a jail experience is on TV or the movies. Before California passed this legislation, law enforcement policies and practices for conducting strip or body cavity searches of the detained person varied widely throughout the state. Consequently, some people were arbitrarily subjected to unnecessary strip and body cavity searches after an arrest for a minor misdemeanor infraction offense. Some search practices violate state and federal constitutional rights to privacy and freedom from unreasonable search and seizure. It was the intent of the California Legislature in enacting this same statute to protect the state and federal constitutional rights of the people of California by establishing a statewide policy strictly limiting strip and body cavity searches in this situation. California set the lowest level of threshold that we believe should be state policy for the dignity of our citizens. If this bill passes, I believe it will do the same for the people of Nevada.

Assemblyman Martin:
How much of this may be abuse of the system versus poor training? It would seem to be wise to implement a system of training and sensitivity. That has a lower cost than being sued later for something improper.

John Arrascada:
I am not going to go to the extreme by saying this is poor training from the standpoint of the sheriffs' departments and their jailers. What I believe this statute will do is establish the minimum thresholds as to when a nonviolent misdemeanant should be strip-searched.

Assemblyman Duncan:
What is the legal remedy for someone who is strip-searched with no reasonable or articulable facts to justify the search? Is there a civil remedy? Is it that, if someone was found taking contraband into a jail, that would be the subject of a Fourth Amendment suppression hearing?

John Arrascada:
The normal remedy would be for someone to file a *United States Code*, Title 42, Section 1983 civil action for deprivation of rights by the unlawful search and seizure of their person. It could also lead to a potential suppression motion. If the person was searched in violation of the policy or statutes and contraband was found, that might lead to a suppression motion. I cannot comment on whether it would be suppressed or not.

Assemblyman Ohrenschall:
What if someone has let a traffic citation go to bench warrant? This happened to a family member who had forgotten she had a traffic citation. She was pulled over on a different traffic violation and put in cuffs. The officer did not take her into custody and uncuffed her. It scares me that currently, an officer could have conducted a strip search without having a reasonable suspicion. Would this bill apply to that situation? That protection would probably engender more faith in the system overall.

John Arrascada:
That example is where I believe this bill would be most applicable, similar to the example I had of the client who had left on an extended vacation and forgot about her traffic citation. When she realized her error, she did what I would like to think is the right thing. She contacted an attorney because this speeding violation had turned into a warrant. That is the primary group of people that this bill would cover. The traffic offender who, for whatever reason, has a traffic citation go to warrant and bail has been established. If he is pulled over for another traffic violation and is arrested because of the warrant, I believe this bill would apply to that situation.

Assemblyman Ohrenschall:
I would like to thank Assemblywoman Pierce for bringing this bill to light. We have made a lot of progress with the community policing, and I think something like this goes a long way to help relations between the public and our officers who put their lives on the line to protect us. Obviously, it is the rare circumstance where a strip search happens when it should not, but I think a statute like this is going to engender more faith in our public.

Assemblyman Hansen:
In the example you gave of your client, is there currently something in statute that you can do to prevent that? Could you have sued the sheriff's office? Is there an absence of a remedy for something that was clearly a violation of that individual's bodily sanctity?

John Arrascada:
Actually, it was not clearly a violation because the jail establishes their policies and procedures. I am uncertain if the policies and procedures were followed at the time of her search. I did refer her to a civil rights attorney; I do not know what occurred from that point forward. Clearly the degrading situation that occurred did not have to occur. If this bill becomes law, it will not occur. It establishes a minimum standard. I think it is significant to note that this bill still allows an officer to conduct a strip search once they have a reasonable and articulable suspicion. This bill gets away from the ad hoc searches and a policy from the jail that allows for a strip and cavity search for everyone who is arrested, which is a violation of people's individual rights.

Assemblyman Hansen:
My concern is there are millions of dollars of lawsuits in New York after something like this was placed in statute, and the cops violated the new law. I am concerned about the liability end of this for Nevada. If this bill is passed, is the state going to be on the hook for million-dollar lawsuits from civil rights attorneys?

John Arrascada:
Possibly, but in all likelihood not, because if the jail is following the statute and has established policies and procedures to ensure the statute is being complied with, they have immunity from litigation. I do not know if the litigation in New York had the same or similar statute.

Chairman Frierson:
Are there any other questions? I see none. I will invite those here to testify in support to come forward.

Vanessa Spinazola, representing American Civil Liberties Union:
We are here in support of this bill. It provides a reasonable scope with exclusions to keep the dignity and protect the personal privacy of people who are charged with minor offenses. As noted, it provides an out. If law enforcement wants to conduct a search, they need to articulate those reasons in writing. This should not block law enforcement from doing their job. I would like to note that it is a severe invasion of personal privacy to be strip-searched, particularly for women. Women may be menstruating or pregnant.

Women who are arrested and put in jail are five times more likely than men to have experienced sexual and physical abuse, and I think the gender portion of this bill is very important. I think that invasion, even by another female, is very important to note.

Assemblywoman Pierce mentioned the *Florence* case, which establishes a floor. It does not prevent us from saying here in Nevada we want to protect our citizens higher than what was established in that case. From what I recall, the cases in New York actually originated from the attorney general's office, from folks filing complaints. So there is actually a cost on the state either way. I do not know if we can do the same thing here in Nevada, but the Attorney General is either going to be spending money prosecuting the cases and responding to the complaints, or defending them.

Strip searches are generally not considered a good correctional practice. In Justice Stephen Breyer's dissent of the *Florence* case, he noted that the American Correctional Association has a standard forbidding suspicion-less strip searches. He came to that conclusion after consulting with the American Jail Association, the National Sheriff's Association, the National Institute of Corrections, the Department of Justice, and the Federal Bureau of Investigation (FBI). The FBI actually forbids suspicion-less searches for minor offenses. Many correctional facilities across the country have a reasonable suspicion standard before they perform a strip search. Most of the major national organizations would support this bill, according to Breyer's dissent. Additionally, the American Bar Association has standards forbidding suspicion-less strip searches.

Finally, a lot of the litigation that resulted after these statutes were passed in other states actually originated from the jail officials who believe that by not being able to conduct these strip searches, major security problems in the jail would result. All those statutes were upheld and none of the anticipated problems resulted. There was no catastrophe; jail security was still fine afterward.

Chairman Frierson:
Did you say that the feds already adopted a standard, and do you have a citation for that?

Vanessa Spinazola:
It is the Department of Justice, Federal Bureau of Prisons, Program Statement 5140.38, page 5, 2004.

Assemblyman Duncan:
Do you think that by articulating this in statute, it can possibly be a vehicle for litigation?

Vanessa Spinazola:
I am not sure. I think that actually this is a protection for law enforcement as well as for anyone wanting to sue. If someone is writing down reasonable concerns for doing a strip search, they will have justification for performing the strip search. This could potentially end a suit early on without having it drag on in court. I am not sure it would increase litigation, but I think it would definitely narrow it down.

Assemblyman Duncan:
Is it your view that law enforcement can look at criminal history as a reason to perform a strip search, or will they only consider the event in question?

Vanessa Spinazola:
I do not know what the case law is on that. I would suspect that criminal history, particularly the kinds that are excluded in this statute, would be something that you could look at.

Chairman Frierson:
This concept is not necessarily new. For example, if a person is pulled over and has several failures to appear, that might be indicative of them not being likely to appear in court.

Assemblyman Ohrenschall:
I am familiar with many folks who have been arrested going to the Las Vegas American Civil Liberties Union (ACLU) office with complaints about excessive force or a strip search that was not needed. Do you think that having these clear guidelines and having a paper trail might reduce those claims of potential litigation?

Vanessa Spinazola:
I do. If we can simply ask for one document, and from that document determine that there was reasonable suspicion, that would allow us to simply not take the case.

Steven Yeager, representing Clark County Public Defender's Office:
We are in support of this bill.

Chairman Frierson:
As a public defender, do you have any knowledge of clients being subjected to a cavity search when they come to court? Would this bill affect that, or is this just upon initial arrest?

Steven Yeager:
I do not know the answer to that. My understanding is that this bill would be upon arrest as it refers to someone going into the general population of the jail.

Sean B. Sullivan, representing Washoe County Public Defender's Office:
We are also in support of this bill. I believe that this provides a level of protection, not only to the offenders who may be faced with this degradation, but also to law enforcement by simply having a supervisor codify it in writing prior to the strip search. Also, regarding training versus occupational abuse, if officers were trained in standard operating procedures at any detention center, they could ask their supervisor for authorization to see how strip searches are done properly. That would provide a level of training through the codification of a supervisor saying here are reasonable and articulable facts that we are prepared to stand behind for any sort of strip search.

Chairman Frierson:
Is anyone else here to testify in support of this bill? I see no one. I will now hear those in opposition to A.B. 133.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are here today in opposition. I have provided the Committee with a copy of our policy (Exhibit D) which is very in-depth and I believe covers most of what is in this bill. In addition, if you search the Internet for inmates bringing contraband or weapons into jails, thousands of hits come up. In five minutes, I picked five or six of them at random and copied and included them in the handout (Exhibit D). A large number of the cases where someone brought guns, knives, heroin, and other contraband into the jails, those folks were booked into the facility on a very minor traffic offense or bench warrant. We believe that strip searches are vital to the safety of inmates and to our staff, in doing our daily business in our facility. I would hope that, heaven forbid, if a friend, relative, or someone you know was detained in our facility and we were going to put someone with them as a cell mate, that he or she had been adequately searched to ensure they did not have a weapon or something else that could be used to harm their cell mate. We believe that there is sufficient case law on this topic that covers the issue of strip searches.

The question was brought up about training. While I was sitting here, I looked through our academy curriculum. When our officers go through the academy, they receive three hours of criminal law, one hour of constitutional law, six hours of investigative detention procedure, five hours of search and seizure procedure, four and a half hours of prisoner handling, and one hour of civil rights law. In addition, when they are out of the academy, they go through an intensive field training program where they receive additional training. Our correctional officers are the same. They go through intense field training and then advanced training throughout their careers on this topic along with a variety of other topics.

I think that the case law that the Supreme Court has ruled on, along with a few other case laws specifically directed to strip searches, have developed sufficient parameters and guidelines for us to follow. If there were a case where a particular person conducted a strip search and abused the procedure or violated someone's rights, there are civil avenues that folks can take to hold us accountable for that. We have been sued in the past for the way we operated under certain circumstances. This is an area that I believe should be left to case law and policy and procedure.

There are technology changes. Currently, we do not have a scanner machine in our detention facility. We had one in the past, but it did not operate correctly. We are currently looking at other avenues for purchasing one in the future. However, they are very expensive and our agency is facing a big budget shortfall in the next fiscal year. We believe that best practices and procedures change, technology changes, and if we codify police policy and procedure into state law, it makes it very difficult to go back. We have to wait two years, come before you again, and hold numerous hearings to try to change what best practices and procedures may have occurred. Finally, there are federal guidelines regarding this area that the young lady from the ACLU mentioned. I believe they are just that, federal guidelines. I do not believe that the federal law stipulates strip-search procedures.

Assemblywoman Spiegel:
How many strip searches does the Las Vegas Metropolitan Police Department typically perform in a year? What percentage of those are for minor offenses, or for juveniles? Also, how often, as a result of those strip searches, do you actually find something?

Chuck Callaway:
That is a difficult question to answer. We book approximately 70,000 people through our detention facility each year. When folks come in, they are initially held downstairs in a temporary holding area. They are not strip-searched in the

temporary holding facility. Oftentimes, if it is a minor offense, people will be walked through the facility or they will have a court date set and they may be only in that downstairs for a short amount of time. If the person is going upstairs to the general population area, they will be strip-searched. Everyone that goes into general population will be strip-searched for the safety of the other inmates and staff. I would point out that there is a difference between a strip search and a cavity search. We do not do a cavity search without a search warrant. We may do a visual cavity search, such as having someone open their mouth and look down their throat, or have someone bend over and "spread their cheeks." Of that 70,000 that we take in every year, I cannot give you an exact number of how many of them are strip-searched. I would say that anyone who stays for an extended period of time is strip-searched.

As far as contraband, I spoke to Captain Mike See, with our Central Booking Bureau, and he said that it is very common to find contraband on folks when they come in. Contraband can be a variety of things ranging from narcotics, pills, razor blades, a firearm, a knife, or another type of weapon. I do not believe, based on this information, that we are currently keeping a log of each time we find contraband on somebody. I cannot give you a specific number of cases, but according to Captain See, it is quite common to find contraband.

Assemblywoman Spiegel:
Do you know if that is for these minor offenses or juvenile versus felony offenses?

Chuck Callaway:
I do not.

Assemblyman Martin:
I am still concerned with the training issue. The continuing education that you mentioned sounded woefully inadequate. Is there an annual recertification? Is there any kind of sensitivity? Law enforcement is a tough job, but the mentality sometimes can be that everyone is a criminal, the question is to what degree. That is obviously not the case. Someone being pulled over for a misdemeanor traffic violation versus a felony is a major difference. The other question, beyond the training, is what are the penalties if there is a violation of procedure?

Chuck Callaway:
Officers do go through additional training throughout their careers. We are mandated by state law to maintain yearly Peace Officer Standards and Training certification, which is a number of yearly hours that need to be completed. Part of that training includes continual search and seizure training and

constitutional law. In addition, Metro has a program called University of Metro, Las Vegas, which is an online training program for officers. To answer your second question, we take violation of our policy and procedure very seriously. Depending on if it was an intentional violation or a training issue, punishment or discipline could range from more training all the way to termination, depending on the violation of policy and procedure.

Assemblyman Hansen:
This is starting to sound like all policemen do strip searches and body cavity searches. I assume when someone goes to jail, there is one specifically trained officer who exclusively does the searches. While there is general training for everyone, I assume there are some officers who are very specifically trained to do these searches properly. Is that correct?

Chuck Callaway:
Only in the very rarest of circumstances do we perform a strip search or body cavity search in the field. In my 24 years of police work, I have never seen it. I know there have been cases where someone swallowed a piece of evidence, such as a ring that was stolen. That person was then taken to a medical facility, a search warrant was obtained to do a stomach pump, or some type of cavity search depending on where the item was concealed. Normally that would be done in a medical facility.

The only other time I can think of where we would do a strip search in the field would be when we are doing undercover narcotics operations. If we have a confidential informant who tells us that drugs are being sold, and we are going to send him in to buy drugs and bring it out. We would search that person before he goes into the house to ensure he does not have drugs already, so we know the drugs he hands us are from that house. That is a consensual strip search. The confidential informant agrees to be searched before going into the house.

Assemblyman Hansen:
The detention facility has a very specific individual who does strip searches, correct?

Chuck Callaway:
That is correct. We also have nurses on staff at our facility. They are not always present during a strip search, but the officers there are highly trained in how to do a strip search.

Chairman Frierson:
Are you aware if any other states have guidelines in statute regarding strip searches?

Chuck Callaway:
I do not have any firsthand knowledge of what other states have as far as laws or procedures for strip searches.

Eric Spratley, Lieutenant, representing Washoe County Sheriff's Office:
I am here in opposition to A.B. 133. I would like to introduce the concept of a "mule." If we arrest a major kingpin player in our jurisdiction and he is in our custody, he has the ability to reach out to his subplayers in his organization and cause them to be arrested and bring things into our facility. This subplayer is known as a "mule." I cannot speak of a specific incident, but I wanted to lay that concept out to you. We would get a call of a car in the middle of a roadway. When we get there, the driver will not identify himself, has no identification on him, and will not sign the traffic citation for blocking a roadway. We take him into custody and bring him into our facility. He could have contraband secreted on him, intentionally for the purpose of getting it to the person who called him to do that. Here we have a misdemeanor traffic offense and he is acting as a "mule" to bring items into our facility. That is where it would be the training of the officer to recognize that the vehicle is possibly registered to a relative of the kingpin. We may end up with articulable circumstances where we could do this sort of search.

Nevada Revised Statutes Chapter 211 already deals with county jails. It states that each county shall have a jail. It says that the sheriff of the county has charge and control over all prisoners committed to his or her care. I am not aware of the absurd allegations given in testimony regarding a full-body cavity search by the Washoe County Sheriff's Office of a female arrested for a traffic warrant nine years ago. I will, however, follow up on that so we may learn from it and use it as part of training. It is certainly unacceptable and not a part of our policy now, nor was it back then.

Our policies and procedures for managing jail operations provide for fair, impartial, safe, and secure treatment of the inmates in our care and custody within federal law, National Correctional Standards, and the NRS. We train our deputies in policies and procedures on a continual and ongoing basis. We have a system called Lexipol, which has daily training bulletins that covers topics such as search and seizure, laws of arrests, patrol vehicle operations, jail operations, and strip searches. Deputies must do a minimum of 12 bulletins each month, but they have the opportunity to do 30 each month. We do not

feel it is necessary to mandate in state law what is appropriately managed by regulations and legally tested policies.

Our purpose and mission in the jail is to provide for a safe and secure custody environment for pre-filed detainees and convicted persons under sentence. To that end, we enforce laws and rules and maintain a clean, safe, and orderly facility. You never know who is going to end up in jail, and we want to make sure it is safe and secure for you and your family.

To meet this challenge on a daily basis, we rely on our policies; best practices; emerging trends; federal, state, and local laws; and the ultimate decisions of our supreme courts. We rely on the reports from citizens regarding issues with our law enforcement officers or agency procedures. We take those issues seriously and we address them. We have the flexibility to network with facilities across the nation and around the world to discuss inmate issues and share information on how to best handle situations and to better respond to the needs of those in our care. Unnecessary mandates created by reactionary state laws stifle our ability to manage our facility in the manner the NRS authors originally determined, and ultimately put the inmates and the citizens at risk.

This bill is fraught with archaic terminology and language that handcuff law enforcement in their ability to safely do their job. For instance, section 1, subsection 3 states that a strip search must be done by a person of the same sex. Are we talking same sex or are we talking same gender? Senate Bill 139 was heard this week discussing gender identity or expression. Testimony was given by a female witness who was born with male genitalia. Do we want a male officer to perform an unclothed search of that female? Testimony was given by a male witness who was born a female. Do we want a female officer to perform a search of that man? These are the delicate issues we are trying to deal with in a custody environment. We are crafting and adapting our policies on a continual basis to ensure that we conform to the rights of each and every individual.

Section 1, subsection 5, addresses the visual inspection of the stomach cavity. The X-ray portion has been addressed. We have a machine called a SecurPASS, which allows prisoners to stay fully clothed and allows us to see past the clothing, past the genitalia, and into the body cavity. We want to make sure we are not limiting that ability, because we are trying to be more dignified in our search of these prisoners and still trying to find contraband, but we certainly do not want black and white law that stifles our use of technology. Section 1, subsection 5, paragraph (c) deals with asking a person to lift their shirt high enough to see their waistband for weapons. That could happen in the jail environment or out on the street, and according to this bill would constitute

a strip search. In a felony car stop environment, we pull the driver out, have him hold his hands up, raise his shirt, and spin in a circle so we can see if there are any weapons. Per this language, that would constitute a strip search in an open environment, so we would have double violations.

We are requesting that you take no action on this bill, which is not proposing clear guidelines, but black and white law. We should let the sheriffs manage their jails in the safe and efficient manner they currently do under state laws and current agency policy. In doing so, you will not place unnecessary financial burdens on your constituents and will allow for our community to trust in the safe and secure operations of our jails that the sheriffs currently provide.

Chairman Frierson:
You mentioned local law enforcement agencies have guidelines on this subject and you prefer that to a statutory mandate. Would you be opposed to a statutory reference that requires local law enforcement agencies to develop a policy regarding strip searches?

Eric Spratley:
I do not agree with there being state laws constricting what we already have. State and federal laws and Supreme Court decisions already guide what our agencies do and what our sheriffs abide by. I am representing the Washoe County Sheriff's Office, and I know that our policy is more restrictive than the proposed bill before you. We require written supervisor approval. The majority of the state is moving toward the Lexipol policy, so I would say that the majority of the state has these policies. Suffice it to say that we do not want to expose ourselves to civil liability, and we know that having rogue policies, unwritten policies, unenforceable policies, or policies not adhered to exposes us to liability across the state. The Nevada Sheriffs' and Chiefs' Association meets regularly to discuss issues and policies. I would recommend that we leave it at that level and not mandate things in state law that we can handle internally, much more quickly, as a policy decision.

Chairman Frierson:
I do not know that state law requires that a guideline be developed. If your agency already adheres to those guidelines, I do not know your position on a statute that directs departments to develop guidelines without specifying what those guidelines are.

Chuck Callaway:
We have a policy manual that is several thousand pages long. It is available to the public; it is public record. Our policy covers 99 percent of everything we do, ranging from employee labor relation issues and civil service rules to the

other end of the spectrum: SWAT operations, hostages, and barricade situations. I think that we set a dangerous precedent when we take every policy or every procedure that the police do and put it into law. Do we eventually create a law that says how the police do car stops, where the vehicle must be parked at a certain angle, or the officer must approach on the left-hand side? We get on a slippery slope when we start putting things into NRS or the law that should be in policy and procedure.

Chairman Frierson:
I believe you are addressing the bill. What if we do not put the actual policy in law, but direct the agencies to develop a policy—whatever it may be?

Chuck Callaway:
I do not have a problem with that at all. In fact, I would go out on a limb and say that the vast majority of agencies in the state have a strip-search policy and the strip-search policy is available through the Lexipol system, which is available to the entire state.

Chairman Frierson:
I realize I am putting you in a spot where you cannot really answer for everyone, but I am wondering if that is a way to address this issue without unduly tying the hands of those who have to put it in place.

Eric Spratley:
Yes, if you must move forward on this bill, please let it be written so we have a policy that meets these protections, but do not outline it specifically as written.

Chairman Frierson:
Along those same lines, for those who do have a policy, could you let us know what portions of this are not already included in policy?

Eric Spratley:
I do not have that answer.

Chairman Frierson:
I have heard that much of this has already been adopted, and I am curious as to what portions of it are above and beyond what already exists in policy.

Chuck Callaway:
As I stated earlier, a copy of our policy and, I believe, Washoe's policy was submitted to the Committee and is on NELIS (Exhibit D).

Chairman Frierson:
Thank you. Are there circumstances where you do not conduct a body search? Is the current practice that you exercise discretion in whether or not you conduct a search, depending on the circumstances?

Eric Spratley:
Yes, it is much like as is written in this proposed law. We need to have articulable facts, reasonable suspicion, a case presented, and written supervisor approval. We document every strip search; it is not just done at random. I would present to you that you may have circumstances like a patrol officer realizing on his way back to the jail that he has circumstances where he needs to do an unclothed search. This law requires his supervisor to come up to the jail and provide a written approval before he does the unclothed search. Maybe that supervisor is down on a major event at the south end of town, our jail is at the north end of town, and we want to make sure we are, in fact, not limiting the scope of what people can do operationally. But, yes, in our custodial environment, it is a very specific act done by trained professionals.

Assemblyman Ohrenschall:
In this era, people have forms on their tablets and can email them. Would it be possible, under this bill, for the officer who needs to do the search because he has reasonable suspicion that the person in custody has drugs or a weapon, to phone or email the supervisor with his concerns? The supervisor could perhaps approve the search electronically. This could avoid the lag in time.

Eric Spratley:
Yes, but I say we do not move forward with this bill and leave it to policy and procedure.

Assemblywoman Spiegel:
It sounds like you have better statistics on strip searches than Metro. Will you follow up with me and provide the answers to those same three questions I asked Mr. Callaway? How many strip searches do you have overall, what percentage of those is for misdemeanants or juveniles, and what percentage of those do you actually find contraband?

Eric Spratley:
I will research that and provide it to you.

Assemblyman Hansen:
One of the ways to see if there is an inadequacy in your policy is lawsuits. For both Metro and Washoe County, how many suits have there been over violations of people's privacy through either strip searches or cavity searches?

If you were doing something bad and your policy is inadequate, I would get a lawyer and sue you.

Chuck Callaway:
As I said, we book 70,000 people a year through our detention facility. I am currently aware of one case where we were sued for a violation of our policy and procedure. I do not have the specifics of that case available with me, but it is my understanding that it was an incident where there were a lot of people in the jail on that particular day, and they were trying to get people upstairs in the general population, so they took four or five inmates, all of the same sex, into a room, lined them up, and performed a strip search on all of them together, which is completely unacceptable. I believe the court ruled in favor of the defendant in that case. I do not know what the outcome was, but that is the only case I am aware of where we were sued over our strip-search procedures.

Assemblyman Hansen:
So, for Metro, you had one case out of 70,000 per year. I would say that shows there is a minimal problem with the policy. In this case, the policy was actually violated.

Eric Spratley:
I will research the numbers. I am not aware of any pending or recent lawsuits regarding this, including the one we heard about this morning from nine years ago. We just do not have the volume that New York or California does. California put it in their code. We are not California; we are Nevada and we do things the way that works for Nevada.

Assemblyman Hansen:
Are your policies completely adequate as far as civil rights protection?

Eric Spratley:
Yes, that is correct. Our policies are always changing for the dignity and protection of our inmates.

Assemblyman Duncan:
Do you think the statute would compromise the security of your facilities? Also, what sort of burden would having to make a distinction between minor offenses versus offenses not covered by this statute put on you?

Adam Hopkins, Lieutenant, Washoe County Sheriff's Office:
I believe it would compromise our safety. For example, we recently had a gentleman with a razor blade in his dentures. We did not know he had it, he went through our SecurPASS machine, and it did not pick it up. It takes a very

trained eye to find those things. He went back to his cell and cut his wrists. It could very well have been a gang member who was tasked with hurting someone else. I believe that would set us up for some dangers.

As to the burden, I think it would be excessive. I want to make sure you understand that there are two separate strip search scenarios. If a patrol officer comes in who has a situation where a person may have something secreted, and he asks for a strip search, we do reports on that. We have supervisory approval, and we would assume that the officer on the street would have approval from his supervisor as well. However, once that person has not bailed out and is going back into our housing, then we do not write a report on every one of those strip searches. If we had to do that every time we take someone back to the general population, we would have to gain approval and write a report. That would stretch our already limited resources to a point where it would back up the entire system. Not only would it cause us a problem, but the officers on the street may very well have to wait as well.

Assemblyman Wheeler:
Do you see a situation where you would have to change your procedures on the spot, instead of having to wait two years?

Adam Hopkins:
We had to do that with our SecurPASS machine. We were the only ones on the West Coast to have this machine, so we adapted for it. If you are adamant that you do not want to go through the SecurPASS machine, we do not force you to do it. However, that will require a visual, unclothed search. If you are pregnant and you do not want to go through the procedure, you do not have to. We have to adapt daily. If you are excessively overweight, the SecurPASS machine will not work, so we would have to do an unclothed visual search.

Eric Spratley:
I would like for this Committee to be clear that, while we have identified two different unclothed searches, the strip search, articulable reports, et cetera, are slow methodical, discreet, confidential searches. It is looking for things like a balloon sticking out of a cavity or something which would indicate there is contraband. The unclothed search prior to housing is when we have every inmate shower and sometimes delouse, if there is a lice issue. We take their clothes and they are given inmate clothes. In that transition, before being given their inmate clothes, we do go through a not-so-thorough procedure—certainly no touching or invasive cavity searches going on—to ensure they have nothing apparent on them that could go back to the jail. It is not as methodical and is as discreet as it can be in a shower stall.

[Chairman Frierson left the room and Vice Chairman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:
Thank you. Earlier it was mentioned that much of this bill is already used as guidelines for Metro and Washoe County. You mentioned it would be an increased burden and might put safety at risk. How does that jive, if it is already being done? Where are the extra burdens and safety risks if these policies are already being followed?

Eric Spratley:
As I indicated, currently, we deal with policy that we can change on a minute's notice. For example, section 1, subsection 5, paragraph (c) states, "'Strip search' means a search which requires a person to remove or arrange some or all of his or her clothing so as to allow a visual inspection of the person's underclothing, breasts, buttocks or genitalia." In researching this, it will provide for a change in our policy. That wording limits the patrol officer, or people in the jail. If I see someone walking down the street who has a bulge on their side, I say, "Stop right there, keep your hands in view, and pull open your coat to let me see what is in your waistband." Per this wording, if I have them remove some clothing to see an article of clothing underneath, I have performed a strip search. Our policy says almost that exact wording. I am going to recommend to our folks that we put out a standing order that changes our policy until we can officially change it. We can do that on the fly. If it is codified into state law, we have to come back and have long hearings for things that need to be reverted back, instead of changing policy quickly.

[Chairman Frierson reassumed the Chair.]

Chairman Frierson:
Are there any other questions? I see none. Is there anyone else here to testify in opposition to A.B. 133?

Tim Bedwell, representing City of North Las Vegas:
I am here in opposition to this bill. I would like to highlight our organization's specific issues. Our primary concern regarding strip searches is the safety of the people in our facility, both our officers and anyone who has been arrested and is being held there. This is not something we do for any other purpose. Sometimes there are things found in the course of a strip search; contraband that does not necessarily have a direct safety impact, such as drugs. Primarily, we are looking for things that would affect the safety of the people in the facility. I would like to address how people end up in jail on minor offenses. They are generally discretionary offenses, misdemeanors which the officer has

discretion as to whether the person would go to jail or receive a citation. In our organization, there is policy that mandates if the person cannot be identified, or if the person has a history of not appearing in court for citations, then we would arrest him. The other reason someone would end up in jail for a minor infraction on a discretionary arrest would be if the person was extremely suspicious. If you saw me in your neighborhood and called the police because you thought I may be too close to your neighbor's window, when the police come and see me riding away on a bicycle at night, they would stop me for riding my bicycle at night without a light. They cannot find a reason for me to be where I am. I have no purpose for being in the neighborhood. I might get arrested for the suspicious activity as a discretionary police arrest. It is going to be hard to articulate specific reasoning for strip-searching me; however, it is a discretionary issue. Keep in mind that the arrest is discretionary, and so is the strip search.

We believe that you should not put extraneous rules on the officers who are trying to make the facility safer. We do not want to make this too onerous on the officers who are processing people very quickly. In our facility, there are a number of people coming and going all the time. There are also contact visitations that have to be considered for strip search. We have to trust that our officers can do those things properly. There are clear remedies now. My organization has been sued in a strip search case. That case is still in litigation. We do not oppose a mandate for a policy. We believe every organization should have a policy on this issue. Our organization does have a policy. What we do not support is the Legislature mandating what that policy is. It should be codified into law, and we should not have to ask for changes if we want something in the future. Ultimately, there are already remedies; a person's civil rights against an improper search and seizure already exists. You are fixing a nonexistent problem with this bill. [Also submitted but not discussed is a letter of neutrality (Exhibit E).]

Assemblywoman Fiore:
Do you think making a routine stop with nondetainable infractions is a solution?

Tim Bedwell:
I am not sure I understand your question.

Assemblywoman Fiore:
When you conduct a routine traffic stop, more of a nondetainable issue, such as speeding or other minor infractions, would that be a better solution?

Chairman Frierson:
In a previous presentation, the notion of making traffic stops infractions instead of misdemeanors was brought up as a way to make those offenses something that you would not necessarily be detained for. This would make many of the offenses we are discussing here something that someone would not go to jail for anyway.

Tim Bedwell:
I was a police officer in Arizona. Arizona, like other states that border Nevada, has petty offenses, or what they call civil violations, instead of misdemeanors for minor infractions, such as jaywalking, speeding, or failure to use turn signals. Those violations in other states are not criminal and you are not subject to arrest for those offenses. You could argue that this would take that element out of this discussion, because many of what would be considered minor infractions would not be something you are going to jail for anyway; therefore, it would solve the concerns of having that volume of people coming into jail.

Carey Stewart, Director, Washoe County Department of Juvenile Services, and President, Nevada Association of Juvenile Justice Administrators:
The Nevada Association of Juvenile Justice Administrators supports guidelines that would eliminate the inappropriate use of strip searches for juveniles. However, we are opposed to this bill because we are concerned and need further clarification on how this bill would affect what we feel are current sound policies and procedures that are currently in place in our detention facilities that are designed to keep kids safe. Most of the strip searches that are conducted in juvenile detention facilities are initiated by detention personnel and not peace officers. Section 2, subsection 1 states that based upon reasonable suspicion and articulable facts, a peace officer needs to initiate the strip search. Our concern is in regard to the scope that would eliminate what we do on a daily basis. We have juveniles who are booked and detained in our facilities for misdemeanors and probation violations that also do not fall under the context of this bill. On behalf of Washoe County, unfortunately, we have to initiate a strip search due to prior designations that a juvenile may have had as a result of a prior detention. If a juvenile has a designation as a body carver and comes back into our facility, we will do a strip search to ensure that individual does not have any contraband on him, such as a razor blade, or anything that he could use while in the facility to harm himself.

We also have policies where kids are furloughed from our facilities to do work programs. For example, when kids are detained through our drug court, they go out on weekends on a work crew, and they come back at the end of the day. We do have a policy that we conduct a strip search on that occasion because the kids have been out of the facility while they are performing community

service work. At times they will be out of the direct line of sight of our supervisors. We want to be careful that this does not limit our ability to do what we feel are good procedures for what we have within our facility.

Assemblywoman Spiegel:
I wonder if you could also provide me with data regarding how often you actually find contraband on youths who have been arrested for minor infractions. I am trying to get a sense of how pervasive the issue really is. Also, how difficult would it be for you to get the exemptions when there are clearly articulable reasons for needing to perform the strip search?

Carey Stewart:
I will provide that data to you.

John B. Simms, Chief Juvenile Probation Officer, Department of Juvenile Services, Carson City and Storey County:
I believe this is a topic that needs to be understood, especially when it comes to the care of our children. In my career of almost 30 years, I spent 10 of those years administering a juvenile detention facility here in Carson City. I think it needs to be clearly understood that in Nevada we have what is called the Silver State Juvenile Detention Association. We are all administrators of people who oversee the juvenile detention centers. We meet, discuss, share issues, and even develop standards. We also follow American Correctional Association standards, and the National Juvenile Detention Association standards. We also follow our own standards. We are responsive to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) when they put out bulletins or updates. I think we are very good at taking care of what we have regarding the children that we are responsible for; we are good at what we do. When we get bulletins from OJJDP, either through the mail or the Internet, we respond to them at our very next meeting. If we need policy changes or if we need to upgrade anything we are doing to improve the treatment of children, we do that quickly and respond as fast as we can.

I also think we need to understand that the field we work in is ever changing. The kids that we work with are ever changing. We need to maintain the ability to respond to that change. In the 30 years of working in the facility I work in now, I cannot think of a single time when we did a body cavity search. For the same reasons as Mr. Stewart spoke of, we do visual strip searches from time to time. It is for the protection of the kids and staff.

John C. DeVaney, Lieutenant, Henderson Detention Center:
Our current policy on strip searches has a set criteria for what officers can and cannot do. Once they do the strip search, before the inmate is moved back to

the housing unit, a sergeant would be required to review and sign what was noted on the back of their inmate card as to why they were strip-searched. If we were to go to a system where we have the one sergeant that is on shift review every person coming in prior to them being strip-searched, it would create inefficiency within the facility. Once the sergeant signs off on the cards, if he finds that the strip search was conducted inappropriately, the officer is subject to disciplinary action by a write-up as part of his evaluation.

Also, we house inmates for U. S. Immigration and Customs Enforcement. They audit our cards as to what kind of searches we performed and whether the proper documentation was provided for those searches. Last year no issues were noted from the 50 or 60 cards that were audited. We have policy that has been vetted through many different correctional agencies. I write the policy for our facility, and I deal with Americans for Effective Law Enforcement, Inc. if I have questions. They let us know if what we are doing is good and proper. The only thing that is going to save you from litigation is if you have a policy and people follow it.

Chairman Frierson:
Is anyone here to testify in neutral? Seeing no one, I will invite Assemblywoman Pierce to come up for closing remarks.

Assemblywoman Pierce:
This bill has to do with people picked up on misdemeanor offenses, no deadly weapon, no contraband, no violence. It is a very small group of people that this bill is about. I have a little trouble understanding how, if you already have regulations that are stricter than this, this becomes burdensome. If I, at any moment in my life, have to choose between efficiency and the civil rights of the citizens of the United States, I pick the civil rights of the citizens of the United States. There are ten states that already have this in statute: Connecticut, Tennessee, Missouri, Iowa, Illinois, Ohio, Virginia, Florida, Michigan, and California. I would like this in statute because I think it is much more likely that the citizens of Nevada have heard of the Supreme Court case, read something about it, and think that makes this the law of the land. That is why I ask that you support this bill, and I will look into something that covers the new technology and amend that.

Assemblyman Ohrenschall:
I am in full support of this bill and would like to be listed as one of the sponsors.

Chairman Frierson:
I will now close the hearing on Assembly Bill 133. I will open the hearing on Assembly Bill 174.

Assembly Bill 174: Revises provisions governing proceedings relating to the abuse or neglect of a child. (BDR 38-991)

Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Clark County District Attorney's Office:
My legal history in the State of Nevada began about 13 years ago when I was hired by the Attorney General's Office to represent the Division of Child and Family Services (DCFS). I did that until I transitioned to the Clark County District Attorney's Office to continue in the field of foster care. After that I had the opportunity to become a hearing master in juvenile court in 2008. I did that until just recently when the newly appointed district attorney, Steven B. Wolfson, asked me to come back to run his juvenile division. I have several different perspectives of the child welfare system. When Assembly Bill 174 was created, I wanted the opportunity to come and talk to the Committee about what it means to the children of Clark County. In order to do that, I think it is important to give you some sort of perception of how we get to a ten-day required hearing.

The first thing that happens is there will be an investigation pursuant to *Nevada Revised Statutes* (NRS) 432B.390. In 2012, Clark County conducted approximately 8,463 investigations of child abuse and neglect. During an investigation, Child Protective Services (CPS) determines that there is reasonable cause to believe that a child is in need of protection and that it is necessary to do immediate action. In other words, if a present or impending danger exists with regard to that child's living conditions, CPS can remove a child and place him into protective custody, more commonly known as foster care. It could also include placement with a relative or under the newest statute with effective kin. After that removal, pursuant to NRS 432B.470, once that child is placed in protective custody, a hearing must be held before a court within 72 hours. We call that a protective custody hearing. At that 72-hour hearing, pursuant to NRS 432B.480, a court will determine if it is contrary to the welfare of the child to remain in his home, or if it is in the best interest of that child to remain out of the home. If CPS removes the child because they believe there is a present or impending danger, it goes to court in three days. In three days, that court is going to hear what the department has as far as the evidence and information they have gathered, and determine whether that child is going to continue out of the home.

Once that court determines to continue the child in protective custody, pursuant to NRS 432B.490, the agency has ten days to file a petition that includes the formal allegations of abuse and neglect. Currently, the statute reads they have ten days unless good cause exists. What the statute does not address is what happens if the agency misses the ten-day deadline to file. It does contemplate good cause; usually the district attorney's (DA) office asks for good cause prior to ten days. At the protective custody hearing in a case where we may have a child who has suffered a skull fracture, and the parent says this child fractured his skull when he fell off of the sofa, the DA's office will say we are trying to schedule an appointment with a medical expert to see if this skull fracture matches this parent's explanation, and we cannot get that medical expert's opinion within ten days. The court may find this as good cause so that the agency does not have to file an unnecessary petition. The court will usually grant good cause to get the opinion of a doctor before filing an allegation of physical abuse on the parent.

What is not seen as good cause may be the excessive caseloads within Clark County. It is very difficult to contemplate that a child may be placed at risk because I have deputies that carry 600 cases. I have investigators that are getting 1 to 12 new investigations each month. While this statute says the agency may file a petition in Clark County, the agency refers it to the DA's office and then the DA's office files it. The agency may not get around to getting it to a deputy in my office for eight days. That gives us two days. Maybe they give it to us on the ninth day, or maybe even on the eleventh day.

Currently, there are several arguments going on about what the remedy is if the DA's office misses that deadline. Does the child just automatically go home to what could be a potentially unsafe living condition? This statute seeks to put a remedy in place so that before a child is sent home, the court will see that child again to determine whether it remains to be contrary to their welfare to be in that home, or in his best interest.

If you match this statute, NRS 432B.490 with 432B.470 and 432B.480, you will see that the court is making these determinations all the way along, and sanctioning everything the department does.

When I was a hearing master, an argument was made to me on a sexual abuse case that they missed the deadline—they were supposed to file it by January 10 they filed it on January 11—and that this child needed to go home. I looked at the attorney and said, "That creates an absurd result." As a mandated reporter, I am going to pick up the phone and call the hotline and ask them to commence a new investigation to determine whether that child is safe in that home. I do not know how they remedied that unsafe living condition in those last 11 days.

Assembly Bill 174 is asking to put a remedy in place in order to get the matter back before the court. The Nevada District Attorneys Association proposed an amendment to the original language (Exhibit F). The original language said that the agency may file a motion to place the matter back before the court. When looking at the amendment, I thought if we had time to file the motion to put it back in front of the court, we should be getting the petition filed. There needs to be a way to get the matter back in front of that court. In Clark County we are lucky enough to have a very easy way to do it. We call them setting slips, where you write on a little piece of paper, it is signed off by someone, and the matter gets in front of the court within 24 hours. This proposed amendment (Exhibit F) deals with allowing anyone to be able to get their case back on the calendar as fast as possible. If the child's attorney was concerned that his or her client was hanging out there too long, or parents were concerned that their case was not being heard, they would also have the ability to do it. It is not just the agency that could bring it back before the court. It is any party to that case. That is the purpose of the proposed amendment.

Chairman Frierson:
In reading the bill, the one analogy that I look at is in criminal law. If a complaint is late, the court has the option of giving the state more time with the complaint or releasing the defendant, but it does not address the substance of it. If someone is alleged to have committed a crime, but it takes the state more than a few days to draft the complaint, the court sees it as an issue of whether the defendant stays in custody, not if a crime occurred. Similarly, this bill says if a child is in a dangerous situation and for whatever reason that is not resulting in good cause, the petition is late, we do not punish the child by sending that child back to the dangerous environment; we simply allow the court to make the placement decision.

Brigid Duffy:
That is our position, in that this is not about whether we can continue with allegations of abuse or neglect and service this family. The important thing to remember about this type of work is that it is about servicing families and children and ensuring their situations are safe and that they will not be harmed in the home. The issue should not be about whether we can still proceed with a court hearing, if we can still file; it is whether this child remains in a foster home or with a relative pending the time needed to file that petition. By getting the matter back before the court, it lets the court continue with its determinations that it had already made, under NRS 432B.470 and 432B.480. These are sanctioned removals by a court.

While I believe that the opposition is going to focus on the length of time that this could cause a child to be unnecessarily in foster care, I would ask while you

are considering that, that this is going to become a circular issue. Even if the child goes home, if he is unsafe, the DCFS could end up removing that child again, giving the DA's office ten more days to file that petition, and that is ten more days of this child's life in foster care. This would shortcut any length of time for that child because of the inadvertent caseload issue.

Assemblywoman Diaz:
The crux of this issue is to ensure that our children are in the safest placement while all of the cases are being resolved legally; is that what the bill is seeking to do?

Brigid Duffy:
In a way, yes. We do not want to see children go home because deadlines are missed, possibly due to human error. Practically speaking, this is very rare. It usually happens when we bring in new deputies, or as caseloads increase. It would be a terrible situation to put a child in harm's way because of a caseload size. We filed 1,439 petitions in 2012. That is out of 8,463 investigations. I have eight deputies who are filing those petitions.

Assemblyman Wheeler:
This bill basically gives you more time to make a filing, which means more time that most of these kids are in an environment other than home. By the numbers you just gave us, the vast majority of these kids do not need the petition. By giving you more time, are we not allowing these kids to remain in foster care for another five or six days, or however long it takes you to get this done, instead of going home, when most of the them need to go home?

Brigid Duffy:
I believe that this bill will assist that situation because it puts it back in front of a court. In Clark County, we have a protective custody hearing within 3 days, the next hearing date is about 14 days later. In between that time, we have ten days to file the petition. Every time we have missed it, we have missed it by one, two, or three days. We get it filed within the 10- to 14-day window. There are times we have shown up in court on the fourteenth day without filing the petition. Once it is in front of the court, the court can question the CPS worker, asking if the child is still unsafe, or can he be sent home. To have a petition, or continued court involvement, the child does not have to be in foster care. The child can be home and we can provide services in a home. The DA's office can still file a petition with the child in the home.

This bill will provide a mechanism to get a case back in front of a court. The court may determine that the child is safe now. Two weeks have gone by, mom is engaged in treatment, grandma moved in from California, or the violent

individual in the home has moved out. The court can then send that child home even before we go to trial on the allegations. The court can send the child home pending trial or pending petition being filed because that child is safe. I would say that children spend more time in foster care when we ask for good cause on the front end. In those cases where a child has a skull fracture and cannot get into a medical expert for three weeks to see if mom's explanation matches the injury, that child is definitely staying out of the home for three weeks. The court will say that is good cause, so I am going to give you an extra 14 days to file the petition. On the "oops" cases, that means the court is going to say, you missed your deadline, but this child can go home while you do everything else.

Chairman Frierson:
Under current law, if the state misses the deadline and the child is returned home, the state could refile, which would, in essence, double the amount of time the child is removed before a petition is filed, as opposed to being able to remedy it right away. Is that correct?

Brigid Duffy:
That is the distinction. If we miss the deadline, mom shows up at the DCFS office stating that the petition was supposed to be filed on March 5, but today is March 6, so give me my child back. The DCFS gives the child back, a call goes to the hotline, a new investigation takes place, and if it is determined that the child is unsafe, the child is removed again. A new 72-hour hearing will be held—potentially new trauma to the child—and then a whole new ten days for the DA's office to file. This bill says we missed the deadline, put it before the court and let the court determine whether it remains contrary to the welfare of that child. We can put these on within 24 hours.

Assemblywoman Fiore:
I am concerned for both sides. We also have the case in Las Vegas where a two-year-old toddler was severely beaten while in foster care. How do we balance this?

Brigid Duffy:
In my 13 years of handling child abuse and neglect cases, nothing can be more painful than thinking you are protecting a child and sending that child into foster care, only to be abused. It is very difficult. I do not believe that anyone in the DA's office believes that foster care is the ultimate answer to any question. We understand that it is a trauma to a child to be removed from home. Even the most abused children are traumatized. It is hard to balance that. We try to find relatives; unfortunately children are abused when they are placed with relatives too. The faster we can service families and make them

able to care for their own children, the better for everyone involved. Foster care is necessary for some of our children.

Assemblyman Ohrenschall:
You stated this bill could reduce the time for a child to be in a facility. Do you think this could speed up family reunification if we do not have to go through the process twice? Is that part of the plan?

Brigid Duffy:
As a lawyer, I always try to anticipate what the opposition would be for a bill or a law. I anticipate that children's attorneys are going to have some concern over the fact that this could prolong a child's stay in foster care. For people who do not work in this arena, it is important to note that the DCFS is offering help to families and children the moment they become involved. Once they are able to de-escalate the situation, get a child out of an out-of-control situation, and once it has calmed down, they assist the family. They are not waiting for 72 hours or a week. They provide information for shelters immediately. Nothing should slow down getting a child home, because the DCFS is providing reasonable efforts pursuant to federal and state law to get children home, to make situations safe, even to prevent the removal of that child in the first place. I would say to you that this should not slow down a reunification process because we should be giving them services the moment we meet the family.

Chairman Frierson:
Are there any other questions? I see none. Is anyone here to testify in support of A.B. 174? Seeing no one, is anyone here in opposition of A.B. 174?

Buffy Brown, Child Advocacy Attorney, Washoe Legal Services:
I am presenting the position for both northern and southern Nevada. Our overall public policy is not having children languish either in an unsafe home or in foster care. I submit to you that this bill does not really address that issue. The court always has the authority, even after a protective custody hearing, to order the child to be placed in the home under certain conditions, or to stay out of the home under certain conditions. If the DA's office misses the deadline and the child had to be re-removed because of that imminent danger, the bottom line is that the child is protected. If the court felt that the child could be safely back at home on the fifteenth day versus the ninth day, the court could order that.

Chairman Frierson:
You stated if a child has to be re-removed. Is there a return home in between?

Buffy Brown:
Potentially. In Washoe County if there was that extreme concern, the agency could also seek a warrant without placing the child back in the home. Our position is that this bill does not do anything toward either protecting a child or not protecting a child. There are already mechanisms in place to do that. This bill takes away the need of urgency in our agencies by having only ten days. If you have good cause to go beyond ten days, maybe the set of circumstances that your agency is under at that time is good cause. In the time that it would take you to go back to a hearing, just put the resources in place and file a petition.

Chairman Frierson:
What do you mean by "just put the resources in place?"

Buffy Brown:
If we have the resources to go back to another hearing, it would seem we would have the resources to file the petition. The point being, there are already lots of mechanisms to have that child be protected versus just saying this child has to go home into an unsafe circumstance because someone missed a deadline. The reason we have these strict time frames is because it puts the importance on acting at these times. If we put a provision in there that gives them an out by filing a slip and going back to court to buy more time, the fear is that mechanism is going to be used more and more. We are not going to have that happen one or two times per year. It is just going to be decreasing the importance of having the petition filed in ten days. You could request a warrant to have the child remain in care. You could re-remove if there was true imminent danger to the child. You can file the petition and then amend it prior to going to court so that you include that additional information that you have been waiting for. There are numerous other mechanisms that are in place for those one or two cases happening each year where the ten-day time limit may not be met, versus putting an "out" into law that will make it easier to miss the ten-day time frame by filing a slip of paper and asking to go back to court. That is our overreaching concern. On the big scale of things, is this going to change practice? I would say it is not going to provide any more protections, but it may provide for less concern with meeting ten-day time frames, less concern about going to our county commissions and asking for more resources in order to meet the requirements of what our children need.

Chairman Frierson:
I would like to give you a scenario that is a Clark County reality to address this bill. There is a mother, her boyfriend, and a child. The boyfriend abuses the child, and the child is removed. Because the DA has 600 cases, by the tenth day they do not get the petition done. The court has already decided that overwhelmed workers is not good cause in the court's mind. So the good cause provision would not remedy the situation. The attorney for mom and boyfriend comes to court and says because the petition was not filed in ten days, send the kid home. Under existing law you are saying the remedy is to send the kid home, where the abusive boyfriend still resides, and the state has to simply hurry up and refile a petition rather than provide a mechanism in law to prevent that child from being returned to the situation. I think that is what this bill is trying to remedy. I recognize the concern about encouraging or maybe discouraging folks from doing it timely, but the statute is silent about what happens if that ten-day deadline is not met. In the absence of a statutory fix to address what happens, we run the risk of the case being dismissed and the child being sent home to a dangerous situation due to no fault of the child, but because of human error. How do you propose to deal with that human error that is a reality in Clark County?

Buffy Brown:
Currently, statute does not address warrants, but case law clearly does. In the case law mechanisms, there would be a way to have the agency or that DA's office step right back into the courtroom and say this child would be at imminent risk of harm if he goes home. We need a court order, a warrant, or a pick-up order which can be in place prior to having the child go home and having DCFS waiting for the child at the home only to place the child back into foster care. The DCFS does not have to remove a child from the child's home if DCFS feels that the child is at risk of harm. They can remove the child before they get to that home and oftentimes they do, whether it be at school, or day care, a relative's home, or with somebody who has taken the child because they are afraid the child will be harmed at home. They do not have to wait until the child gets to the home before they re-remove if there is truly imminent risk of harm.

Chairman Frierson:
I do not want to skip over the fact that when you say re-remove, in there is a return.

Buffy Brown:
I am saying that you do not need to have a physical return. On paper, there is a lapse in time so the child is no longer in protective custody, which triggers the other timelines and gets the child back into court in 72 hours. I do not believe

that the child has to be physically taken home, or even be told they are going back home.

Chairman Frierson:
What do you do when the district court judge issues a minute order that says take the kid home? Section 7 proposes to do exactly what you described, which is to bring him back before the court to make a decision about placement. If the district court judge in Clark County says in the absence of this language, "I am ordering you to send this kid home right now," the state then runs the risk of sending the kid home and having to go through the process of filing a new complaint or petition with the kid having gone back into a dangerous situation.

Buffy Brown:
I understand and respect the differences between Clark and Washoe Counties. I have dealt with those differences time and time again. My only comment is, as mentioned by Ms. Duffy, when she was sitting as a hearing master, if she truly felt the child was going to be harmed, she would have been right back on the phone making a report triggering removal. I would question the district court judge, if I removed before the child physically hit the doorsteps, as to what they meant by home. Did they not believe they could re-remove where case law across the country says that you can? I think it is probably an exercise in frustration and semantics in terms of resources and policy practice. Our position is that we caution about making law in response to that particular situation when we believe there are already mechanisms that would allow that.

I am not going to presuppose what the minute order says, and the context in which you are putting it. I can see that scenario happening with that particular judge. If that judge has taken that position, then is that judge going to be very accommodating when you come back into court and say, "We blew it; you should make a decision as to whether this child should go home"? It seems that in the majority of our cases, everyone is working for what they believe is in the best interest of the children and not intending to put children in actual risk of harm. I think there have been questions over time: how imminent is the risk, how quickly are we adapting to the time frames, and how efficiently are we working? Our biggest concern is that this is going to allow for more opportunities to not make the deadline if we give an "out" compounded with the amount of time it will take to get back to court for this hearing within which we could have filed the petition in the first place.

Chairman Frierson:
I would like to provide you with information about both the district court and the Supreme Court about their position on the absence of language because

I believe there are several pending matters that interpret it the way the sponsors of this bill are concerned about. I do not think this is isolated to one judge.

Jon Sasser, representing Washoe Legal Services; and Legal Aid Center of Southern Nevada:
Just to be clear, to a degree Ms. Brown's testimony may have been taken as there are mechanisms in place now; therefore, we are not willing to discuss any needed tweaks to the statute to address the jurisdictional argument that the Chairman seems to be concerned about. We are glad to discuss with all the parties to see if something can be carved out to take care of those incidents without undermining the integrity of these deadlines and keeping kids away from their parents against the law.

Chairman Frierson:
Are there any questions? I see none. Is anyone else here to testify in opposition to A.B. 174? I see no one. Is there anyone here to testify in the neutral position?

Ronald P. Dreher, representing Peace Officers Research Association:
I have to testify in neutral because I am in support of the amendment to A.B. 174. You gave a beautiful example of the concerns we have. I am in support of the amendment that has been provided by the Nevada District Attorneys Association. This goes back to the fact that the protection of the child is of utmost importance. Give the courts and the DA the option of extending time frames versus sending the child back under a court order.

Chairman Frierson:
Is there anyone else here in a neutral position of A.B. 174? I see no one. I will now invite Ms. Duffy to come back up for closing remarks.

Brigid Duffy:
I would like to state that putting this into statute is the responsible thing to do. It at least sets a standard for everyone to be clear that this is what is going to happen. I will also say that, if I have DAs who are working for me who are missing deadlines because they can, that is my own internal issue that I will have to deal with. That is not acceptable. That is not good public service. That does not serve families well. I would certainly hope that proposing this amendment would not mean that my deputy district attorneys would then sit back and move something to the bottom of the pile because they have 30 days, or that it does not matter if they miss this deadline. Also, the issue of returning and removing a child again has some federal implications because it would be seen as a reoccurrence of abuse. Once a child is removed again under the federal review, which is the Child Family Service Review, it would be seen as a

reoccurrence of abuse and could affect the federal review and also federal dollars to the State of Nevada if we have a high level of reoccurrence of abuse.

Chairman Frierson:
Thank you for bringing this bill forward. I will now close the hearing on A.B. 174. I will now open this meeting up for public comment. I see no one. I will adjourn this meeting [at 10:54 a.m.].

RESPECTFULLY SUBMITTED:

_____
Nancy Davis
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 6, 2013 **Time of Meeting: 8:17 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 133	C	Assemblywoman Pierce	Supreme Court Oks Strip Searches for Minor Offenses
A.B. 133	D	Chuck Callaway	LVMPD Strip Search Policy
A.B. 133	E	Tim Bedwell	Letter of Neutrality
A.B. 174	F	Nevada District Attorneys Association	Proposed Amendment