

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

**Seventy-Seventh Session  
April 10, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:15 a.m. on Wednesday, April 10, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Jason Frierson, Chairman  
Assemblyman James Ohrenschall, Vice Chairman  
Assemblyman Richard Carrillo  
Assemblywoman Lesley E. Cohen  
Assemblywoman Olivia Diaz  
Assemblywoman Marilyn Dondero Loop  
Assemblyman Wesley Duncan  
Assemblywoman Michele Fiore  
Assemblyman Ira Hansen  
Assemblyman Andrew Martin  
Assemblywoman Ellen B. Spiegel  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

John Hambrick, Clark County Assembly District No. 2



**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Brad Wilkinson, Committee Counsel  
Nancy Davis, Committee Secretary  
Colter Thomas, Committee Assistant

**OTHERS PRESENT:**

Sheryl Foster, Deputy Director, Programs, South, Department of Corrections  
Andres Moses, Staff Attorney, Eighth Judicial District Court  
Heather Procter, Senior Deputy Attorney General, Office of the Attorney General  
Eric Spratley, Lieutenant, Washoe County Sheriff's Office  
A. J. Delap, Government Liaison, Las Vegas Metropolitan Police Department  
Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office  
Philip Kohn, Clark County Public Defender  
Ben Graham, Government Relations Advisor, Administrative Office of the Courts and representing the Advisory Commission on the Administration of Justice  
Alex Ortiz, Department of Finance, Clark County  
Jeff Fontaine, Executive Director, Nevada Association of Counties  
Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety  
David Sonner, Captain, Southern Command Operations, Division of Parole and Probation, Department of Public Safety  
James Dold, Policy Counsel, Polaris Project, Washington, D.C.  
Patrick Ferguson, Policy Fellow, Polaris Project, Washington, D.C.  
Allan M. Smith, representing Religious Alliance in Nevada  
Elisa P. Cafferata, President and CEO, Nevada Advocates for Planned Parenthood Affiliates  
Kareen Prentice, Domestic Violence Ombudsman, Office of the Attorney General  
Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney  
Robert Roshak, representing Nevada Sheriffs' and Chiefs' Association  
Barbara Bell, representing Nevadans for the Common Good  
Camille Naaktgeboren, representing Nevadans for the Common Good

**Chairman Frierson:**

[Roll was taken and standing rules reviewed.] We will begin with the work session, and then start the hearings. We will begin with Assembly Bill 10.

**Assembly Bill 10:** Revises provisions relating to certain crimes involving gaming. (BDR 41-329)

**Dave Ziegler, Committee Policy Analyst:**

I am not advocating for or against any of these measures. The first bill is A.B. 10, sponsored by this Committee on behalf of the Gaming Control Board, heard on February 8, 2013. Assembly Bill 10 amends the existing statute making it unlawful to use a device designed to obtain an advantage in playing a game in a licensed gaming establishment by clarifying that it is unlawful to do so either solely or in conjunction with others. [Continued to read from work session document ([Exhibit C](#)).] For clarity on the amendments, if you favor the more recent amendment from the Gaming Control Board, it makes the public defenders' amendment moot, because it removes section 2 of the bill.

**Chairman Frierson:**

Are there any questions? Seeing none, I will entertain a motion to amend and do pass with the amendment submitted by the Gaming Control Board.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 10.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblyman Wheeler. The next item on the work session is Assembly Bill 44.

**Assembly Bill 44:** Requires associations of planned communities to allow the outdoor storage of trash and recycling containers under certain circumstances. (BDR 10-262)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 44 is sponsored by this Committee on behalf of the Nevada League of Cities and Municipalities. It was heard in this Committee on February 11, 2013, and in the Subcommittee on April 8, 2013. Assembly Bill 44 relates to common-interest communities and the powers of homeowners' associations (HOAs). [Continued to read from work session document ([Exhibit D](#)).] I have been told by the League of Cities and Municipalities'

representative that their amendment incorporates the Howard Hughes Corporation amendment.

**Chairman Frierson:**

Is there anyone here from the Howard Hughes Corporation? Are there any questions on the bill?

**Assemblywoman Fiore:**

I am going to vote yes, reserving the right to vote no on the floor. I would like to clarify with the bill sponsors and Howard Hughes Corporation on the amendments.

**Assemblyman Duncan:**

I will be voting yes, but I reserve the right to vote no. I have had numerous constituents reach out to me who are concerned with the amendment, which would allow homeowner choice. As it stands now, they would be required to leave their garbage can in their garage. However, I do have a concern with the way the screening will take place if the garbage can is outside the garage. I have many constituents who are worried that they are going to have to cover the entire garbage can and that the HOA will have the power to dictate to them that two 96-gallon garbage cans will have to be completely covered.

**Chairman Frierson:**

I have some of those same concerns, in particular communities that are patio homes or shared entryway homes with limited options. It was pointed out to me that most of those communities have common areas where the community could opt to create an area for garbage that all of the residents could use. That gave me some comfort with some of the same concerns.

**Assemblyman Wheeler:**

I would like to say I will be voting yes also, reserving the right to change after I look at the amendment.

**Assemblyman Ohrenschall:**

I have had several emails as well on this issue. I will be voting yes, reserving the right to change for the same reasons.

**Chairman Frierson:**

You always reserve the right to change your vote on the floor. I would appreciate it if you would let me know before you actually change your vote.

**Assemblywoman Spiegel:**

I am reserving my right to change my vote.

**Assemblywoman Diaz:**

I will be holding my nose and voting this out of Committee. I think this should be resolved at another level. I understand that if we do not move on it, we are forcing homeowners to store their trash in the garage. I know that it gets very hot, and not all garages are created equal.

**Chairman Frierson:**

I know there are concerns about when we go to single-stream recycling that whatever the problem is currently could be exacerbated. Are there any other questions or comments? I will entertain a motion to amend and do pass with the League of Cities and Municipalities amendment.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 44.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Mr. Carrillo. Next is Assembly Bill 91.

**Assembly Bill 91:** Revises certain provisions relating to programs of regimental discipline. (BDR 14-740)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 91 is sponsored by this Committee on behalf of the Advisory Commission on the Administration of Justice. It was heard in this Committee on February 14, 2013. Assembly Bill 91 relates to criminal procedure, probation, and suspended sentences. [Continued to read from work session document ([Exhibit E](#)).] The attached amendment provides that an offender can be sent to boot camp if his offense involved an act of violence and the district attorney stipulates to the defendant's eligibility. If the offender has never been incarcerated in jail for more than 12 months and has never been incarcerated in prison, he would be eligible. At the end of the mock-up amendment there is also some language that directs the Department of Corrections (DOC) to consider all of the information available to them when they decide whether the defendant is eligible to participate.

**Chairman Frierson:**

This amendment is the reflection of concerns by prosecutors about boot camp, as well as DOC and their concerns about the ability to accommodate certain individuals. The mock-up originally broadened the bill, but the amendment would basically require the district attorney to agree to the defendant's eligibility

which gives them the opportunity to consider the nature of the offense and the individual's background. Further, it directs the DOC to consider both the police reports and the presentencing investigation. I did receive communication from DOC asking for clarification about that provision. I have not heard anything in response.

**Sheryl Foster, Deputy Director, Programs, South, Department of Corrections:**

We did have a few concerns. Obviously, we are in favor of the boot camp program. We are making some changes to the program in hopes to improve it and to improve the recidivism rate of the people who are involved in the program, which will include reentry services for them. Our main concern regarding the amendment is the possible conflict with *Nevada Revised Statutes* (NRS) 209.481, which states that in order for someone to be in minimum custody, which is where our boot camp is located, they cannot have been convicted of a crime involving the use or threatened use of violence within the preceding year. Since the boot camp is in a minimum custody facility, if the crime the offender is coming to the boot camp for happened within the preceding year, that may be in conflict with the NRS.

**Chairman Frierson:**

Would it satisfy you if language were added that said, notwithstanding the provisions of NRS 209.481, to avoid conflict?

**Sheryl Foster:**

I believe that would resolve our concern.

**Chairman Frierson:**

Are there any questions?

**Assemblywoman Diaz:**

I do not quite grasp NRS 209.481. Is there a way someone could explain how that does not conflict with the amendment?

**Brad Wilkinson, Committee Counsel:**

*Nevada Revised Statutes* 209.481 provides that the Director shall not assign any prisoner to an institution or facility of minimum security if the prisoner has, within the immediately preceding year, been convicted of any crime involving the use or threatened use of force or violence against a victim, which is punishable as a felony. I believe that was the provision that would conflict with this assignment to the program of regimental discipline. It would be very easy to state that it would be an exception to NRS 209.481.

**Chairman Frierson:**

Would it be easy drafting to say that A.B. 91 would be an exception to NRS?

**Brad Wilkinson:**

I think if we added, "except as otherwise provided in NRS 176A.780."

**Assemblywoman Diaz:**

I was looking at section 1, subsection 1, paragraph (b), subparagraph (2), and this seems contradictory in nature. Now that I have heard the language about the felony, it makes more sense now.

**Chairman Frierson:**

I guess we can go with an exception either way. We can either say an individual can go to boot camp as long as it does not violate NRS 209.481, or we can say NRS 209.481 is applicable except for if the prosecutor recommends boot camp. Are there any other questions? Mr. Wilkinson, I am assuming we would have to do a conceptual amendment incorporating NRS 209.481 into this bill?

**Brad Wilkinson:**

That is correct.

**Chairman Frierson:**

I will be seeking a motion to amend and do pass, with a conceptual amendment that NRS 209.481 would accommodate the provisions of the bill if the other criteria were met.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 91.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign A.B. 91 to Mr. Ohrenschall. Moving on to Assembly Bill 273.

**Assembly Bill 273: Revises provisions relating to the Foreclosure Mediation Program. (BDR 9-719)**

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 273 is sponsored by Assemblyman Eisen, heard in this Committee on March 27, 2013. It relates to deeds of trust and the Foreclosure Mediation Program (FMP). [Continued to read from work session document ([Exhibit F](#)).]

The sponsor has proposed an amendment. Briefly, it adds a new section to the front of the bill creating a contingency account for the FMP, the idea being that the program could accept gifts, grants, and donations or other sources of money to help operate the program. As far as the notice being provided to the debtor, the bill states concurrently with, but separately from, the notice of default. What the amendment would do is make it both ways, and that it would be provided with the notice of default and also concurrently with, but separately from, the notice of default. The debtor would get the notice in two separate envelopes. Looking further in the amendment, it clarifies how much time the administrator has to return the certificates to the trustee. I think the lenders wanted to have some time limit on providing the certificates. The last section of the amendment is in *Nevada Revised Statutes* (NRS) Chapter 116, dealing with common-interest communities. It states that a homeowners association may not foreclose a lien on owner-occupied housing if the housing is in the FMP.

**Assemblyman Wheeler:**

I will be voting yes, reserving the right to change my vote. I would like to review the amendment.

**Chairman Frierson:**

I do not recall there being any opposition to this bill, was there Mr. Ziegler?

**Dave Ziegler:**

I do not recall.

**Assemblyman Duncan:**

I am voting yes. I applaud Dr. Eisen for the efforts he has made in reaching out to the parties. My concern with the testimony we heard is that 50 percent of the folks that go through the mediations end up being foreclosed on in the future. I like the bill in that I do not think it increases the mediation time, but is it going to slow down the market-clearing functions that we are trying to do? I do recall there being some opposition.

**Chairman Frierson:**

There was opposition from an organization.

**Assemblywoman Cohen:**

On page 3 of the bill, lines 17 through 22 state, "You may have a right to participate in the State of Nevada Foreclosure Mediation Program if the time to request mediation has not expired." I have a note that was being removed because that was being provided separately. Now, with the way we are providing the two mailings, has that language been added back in?



**Brad Wilkinson, Committee Counsel:**

I think the notice is amended because it is more or less an opt-out program, so the thinking was that it is misleading to discuss having the right to participate in the program if the time had not expired. It is like you are going to be "in" unless you "opt out."

**Assemblyman Hansen:**

As I recall, there was concern about the 60-day time limit. Has that been amended?

**Dave Ziegler:**

Yes, the time frames in the amendment are in response to the concerns from the lending community.

**Assemblyman Martin:**

I am a strong yes on this. I would like to compliment Assemblyman Eisen for his hard work. I think this does add clarity and holds all parties accountable.

**Chairman Frierson:**

I will seek a motion to amend and do pass.

ASSEMBLYWOMAN SPIEGEL MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 273.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

The floor statement will be handled by Mr. Eisen and Mr. Ohrenschall. I will now move on to Assembly Bill 358.

**Assembly Bill 358: Enacts the Uniform Deployed Parents Custody and Visitation Act. (BDR 11-171)**

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 358 was sponsored by Assemblyman Ohrenschall, heard in this Committee on April 4, 2013. This bill relates to domestic relations and child custody and visitation. [Continued to read from work session document ([Exhibit G](#)).]

**Chairman Frierson:**

Are there any questions?

**Assemblyman Ohrenschall:**

Out of great respect for everything my colleague Assemblywoman Bustamante Adams did in the prior session in terms of trying to help deployed parents maintain relationships with their children, I would like to add her name as my chief cosponsor of this bill.

**Chairman Frierson:**

We can consider a conceptual amendment assuming Ms. Bustamante Adams does not oppose. Are there any other questions or comments on the bill? Seeing none, I will be seeking a motion to amend and do pass.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 358.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign this to Mr. Ohrenschall. The next item is Assembly Bill 370.

Assembly Bill 370: Revises provisions concerning common-interest communities. (BDR 3-1016)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 370, sponsored by Assemblyman Ohrenschall was heard in the Subcommittee on March 27, 2013 and also on April 8, 2013. This bill relates to common-interest communities and the procedures for resolving disputes over alleged violations of the governing documents of a homeowners' association (HOA). [Continued to read from work session document ([Exhibit H](#)).] For clarification, the section of the bill that grants authority to the Commissioner of Financial Institutions goes away in the amendment.

**Chairman Frierson:**

Are there any questions or comments?

**Assemblyman Ohrenschall:**

I know the conceptual amendment is rather complicated, but it represents a lot of hard work and compromise between the attorneys in legal aid. I think it is a fair compromise. The goal with this bill is to see if these disputes can be resolved at the mediation level. Hopefully they will be resolved inexpensively, which will be less of a burden on the homeowner and on the association. There will also be less very expensive arbitration fees and court costs.

**Assemblyman Duncan:**

As a member of the Subcommittee that Garrett Gordon and Mr. Ohrenschall worked on, I think it is important to have the mandatory mediation function because I think it will allow people to solve issues at the lowest possible level.

**Chairman Frierson:**

I will entertain a motion to amend and do pass with the amendment from the sponsor.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 370.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign this bill to Mr. Ohrenschall. We will move on to Assembly Bill 389.

**Assembly Bill 389: Revises provisions governing parentage. (BDR 11-922)**

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 389, sponsored by Assemblywoman Cohen, was heard in this Committee on March 29, 2013. The bill relates to domestic relations and actions to determine parentage. The bill authorizes (rather than requires) the child to be made a party to an action to determine parentage. The bill also deletes the requirement that a minor child must be represented by a general guardian or guardian ad litem. The sponsor has submitted a proposed amendment which is included in the work session document ([Exhibit I](#)).

**Chairman Frierson:**

Are there any questions? Seeing none I will entertain a motion to amend and do pass.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 389.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Ms. Cohen, the floor statement is yours. Next is Assembly Bill 395.

**Assembly Bill 395**: Revises provisions regarding common-interest communities.  
(BDR 10-1013)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 395 is sponsored by Assemblywoman Fiore and was heard in the Subcommittee on April 1, 2013 and on April 8, 2013. The bill prohibits the following persons from willfully bullying, intimidating, threatening, or harassing any of those persons associated with their common-interest community. [Continued to read from work session document ([Exhibit J](#)).]

**Chairman Frierson:**

Are there any questions? Seeing none, I will seek a motion to do pass.

ASSEMBLYWOMAN DIAZ MOVED TO DO PASS ASSEMBLY BILL 395.

ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.

Is there any discussion on the motion?

**Assemblyman Carrillo:**

I would like to compliment Assemblywoman Fiore in regard to having this bill come forward. Being a member of a homeowners' association, there can be heated debates and some people do not know when to stop. I think this is a step in the right direction.

**Chairman Frierson:**

It appears that Ms. Fiore has managed in two pages to do what I think is the spirit of what we have been trying to do in about 100 pages of many bills. Are there any other questions or comments?

THE MOTION PASSED UNANIMOUSLY.

Ms. Fiore, the floor statement is yours. Lastly, we have Assembly Bill 422.

**Assembly Bill 422**: Requires an autopsy under certain circumstances when an offender in the custody of the Department of Corrections dies.  
(BDR 16-1143)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 422 is sponsored by the Committee on behalf of the Department of Administration. It was heard on April 5, 2013. This bill relates to the Department of Corrections (DOC). It requires the Director of DOC, in

consultation with DOC's medical director and Inspector General, to request an autopsy of an offender who dies while in custody if the next of kin consents or does not notify the Director of an objection within 72 hours after the death. There were no amendments ([Exhibit K](#)).

**Chairman Frierson:**

Are there any questions? I am seeking a motion to do pass.

ASSEMBLYMAN WHEELER MOVED TO DO PASS ASSEMBLY BILL 422.

ASSEMBLYMAN DUNCAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Mr. Duncan. That concludes today's work session. I will open the hearing on Assembly Bill 64. This bill involves presentence investigation (PSI) reports. The original bill was submitted by the Committee on behalf of the Department of Public Safety; however, the provisions of that bill have been withdrawn. Nevertheless, there was a need to deal with some technical aspects of PSI reports that could be accommodated by this vehicle.

**Assembly Bill 64:** Revises various provisions concerning criminal justice.  
(BDR 14-338)

**Andres Moses, Staff Attorney, Eighth Judicial District Court:**

I am here today to present our amendment to Assembly Bill 64 ([Exhibit L](#)). I would characterize this as a housekeeping amendment. It is intended to clarify *Nevada Revised Statutes* (NRS) 176.159, which is relating to the transmission of presentence investigation (PSI) reports to the Nevada Department of Corrections (DOC), and NRS 176.335, which is relating to the transmission of judgments of convictions to the jail. What this essentially does is allow the courts to electronically transmit these documents. I can say from experience, being a law clerk in the Eighth District, there is a lot of paper. This will help reduce that. I would also note that this is in line with the court's commitment to be efficient and to be environmentally friendly. Currently, we also use Wiznet's E-File & Serve, and an electronic docket, Odyssey, which is our case management system. This is in line with those changes.

**Chairman Frierson:**

Are there any questions? I see none. I think this is a pretty straightforward effort to facilitate the modernizing of communications of a PSI without any

unnecessary speed bumps. Is there anyone here who would like to testify in support of A.B. 64? Is anyone opposed? Is anyone neutral? I will entertain a motion.

ASSEMBLYWOMAN SPIEGEL MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 64.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign this bill to Mr. Ohrenschall. I will close the hearing on A.B. 64 and open the hearing on Assembly Bill 307.

**Assembly Bill 307:** Revises provisions governing victims of crime.  
(BDR 16-743)

**Heather Procter, Senior Deputy Attorney General, Office of the Attorney General:**

Majority Leader Horne, the primary sponsor of Assembly Bill 307 is the Chair of the Advisory Commission on the Administration of Justice. Attorney General Catherine Cortez Masto is the Chair of the Commission's Subcommittee on the Rights of Victims of Crime and Sources of Funding for Victims of Crime. As a result of the subcommittee's meeting, recommendations were made to the Commission which led, in part, to the creation of A.B. 307. Attorney General Masto and Assemblyman Horne have worked together closely on this bill. After A.B. 307 was introduced, there were some fiscal impacts that led to an amendment of this legislation. I am here today to testify to the amendment that has been provided to you ([Exhibit M](#)) which I believe all of you have in front of you. Assemblyman Horne has approved this amendment. [Continued to read from prepared text ([Exhibit N](#)). Also provided, but did not discuss ([Exhibit O](#)).]

**Assemblyman Hansen:**

I am confused with section 6. The portion being deleted reads, "Was not a citizen of the United States." Are the federal people requiring that we open this up to illegal aliens?

**Heather Procter:**

Section 6 has been removed with the amendment. The amendment only addresses prior sections 9, 10, and 14 of the bill. All other provisions have been removed.

**Assemblyman Hansen:**

So it is still the law?

**Heather Procter:**

It is still the law.

**Assemblyman Wheeler:**

With the amendment, is that huge fiscal note of \$6.3 million still in there?

**Heather Procter:**

The fiscal note has been removed with the amendment.

**Assemblywoman Diaz:**

We need the amendment in order to update our statutes so that we are in compliance with the recent reauthorization of Violence Against Women Reauthorization Act and have access to grants that are being offered at the federal level, correct?

**Heather Procter:**

That is correct.

**Chairman Frierson:**

Are there any other questions? Seeing none, I will invite those who wish to offer testimony in support of this bill to come forward.

**Eric Spratley, Lieutenant, Washoe County Sheriff's Office:**

We are in support of this bill.

**A. J. Delap, Government Liaison, Las Vegas Metropolitan Police Department:**

Our agency also supports this measure. We feel that anything that makes the victim feel more comfortable in making these types of reports is going to be beneficial to our investigation as well.

**Chairman Frierson:**

Is there anyone here in opposition to this bill? Is there anyone neutral? [There was no one.]

**Assemblywoman Diaz:**

I would like to seek clarification. Did Ms. Procter mention Mr. Brett Kandt's amendment? Are they working together?

**Heather Procter:**

Mr. Kandt's amendment ([Exhibit P](#)) has been incorporated into the new amendment in section 2, subsection 4.

**Chairman Frierson:**

I will entertain a motion.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 307.

ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.

**Chairman Frierson:**

Is there any discussion on the motion?

**Assemblyman Wheeler:**

I would like more time to read the amendment. I am not sure of this bill yet, so my vote would be no.

**Chairman Frierson:**

I certainly think that is fair, considering the amendment was presented today. We can provide some time to avoid any rush in judgment.

**Assemblywoman Diaz:**

I withdraw my motion.

**Assemblywoman Dondero Loop:**

I withdraw my second.

**Chairman Frierson:**

We will put this bill on a work session. I will close the hearing on A.B. 307 and open the hearing on Assembly Bill 423.

**Assembly Bill 423:** Revises provisions governing reports of presentence investigations. (BDR 14-741)

**Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:**

I would like to turn the presentation over to Mr. Philip Kohn, who has worked for Clark County for 20 years. Approximately nine years ago he was appointed as Public Defender for Clark County. He also ran the Special Public Defender's Office in Clark County for five years. He comes with 14 years of experience in indigent defense.



**Philip Kohn, Clark County Public Defender:**

Almost exactly two years ago, the Nevada Supreme Court decided the case of *Stockmeier v. State, Department of Corrections*, 124 Nev. 313, 183 P.3d 133 (2008). It happened at the end of the last session and there was not much we could do about it. We have included in your packet a copy of the case ([Exhibit Q](#)), but essentially what the case stands for is that once a criminal defendant has been sentenced and the judgment of conviction has been signed, if there happened to be errors in the presentence investigation (PSI) report, it cannot be changed. The report is final at the time of the judgment of conviction. This is incredibly important because the PSI report follows a defendant throughout the criminal justice system. The Department of Corrections (DOC) uses it to classify the defendant. The Parole Board uses it in its decision whether to release someone back into society. Right now there is no rule as to when a PSI needs to be to defense counsel or to the prosecution. We spent a great deal of time with this at the Legislative Advisory Committee. Since the time of *Stockmeier*, the United States Supreme Court decided two important cases: *Lafler v. Cooper*, 132 S.Ct. 1376 (2012) and *Missouri v. Frye*, 132 S.Ct. 1399 (2012). Those cases, both written by Justice Kennedy, talk about the right to effective assistance to counsel at the time of plea and sentencing. Justice Kennedy notes that the reality is "criminal justice today is for the most part a system of pleas, not a system of trials." The sentencing portion of the case is probably the most important thing we do as defense attorneys.

During our commission, we met with the Department of Parole and Probation (P&P). They provided statistics, and it turns out that from June 2011 through June 2012, they prepared 5,975 PSI reports; 1,914 were given to the defense three days before the sentencing. Another 1,302 were given to the defense four days before. Essentially, the majority of the reports were given to the defense within three to four days of the sentencing. I can tell you, having been the public defender for 9 years and in this office for 20 years, 3 and 4 days is not enough time for us to review the reports, go to the jail, meet with our client, let him digest the report—most of our clients have an eleventh grade education, at best—and find all of the issues that can hurt our client either at the DOC or at the Parole Board.

Based on a footnote in *Stockmeier*, where the Nevada Supreme Court refers to the federal rules, which give the defense and the prosecution the report 35 days in advance and recognizing that would be a burden, we came up with a compromise. We asked that P&P file the report 21 days before the sentencing. The defense would have seven days to meet with his client and make any corrections we believe are important. The prosecution would have seven days to respond to any corrections suggested by the defense, and the court would have seven days to find their own conclusions. We recognize that this is

different from what we have done in the past, but there have to be rules. Getting the PSI report three or four days in advance is simply not enough time for us to do our job.

About five years ago, the Nevada Supreme Court set forth performance standards for the defense. These performance standards are basically the same as the resolutions that were come to by the Supreme Court last year in *Lafler* and *Frye*—that we have to do a better job at sentencing. The only way we can do our job is to get the reports ahead of time.

Right after *Stockmeier*, one of the attorneys in the Clark County Public Defender's Office received a probation report with an allegation that a client had an escape case in some small county in Georgia. The District Attorney and P&P both had access to the National Crime Information Center (NCIC); public defenders do not have access by statute. We tried to run down this case in a small county in Georgia. There was no conviction. The P&P feels that when you consider criminal history, that includes arrests as well as convictions. If they were to interpret that differently, then maybe this law would be different. The fact is we had three to four days to try to find a small county in Georgia. If this report goes through to DOC, with any mention of an escape, you know he will never get programmed, and he will never get a minimum security. Finally the court agreed they could not prove the conviction so they threw it out. It took a few weeks for us to get to that conclusion.

We believe we can save time for the courts, and we can save money for the county by not keeping people in jail. If we get a report three days in advance and there is some contention as to what is said about gangs or arrests, it is going to take some time for us to run it down and someone is going to stay in custody. I believe that P&P testified at the Commission that about 37 percent of the probation reports are from clients who are in custody. It would help P&P if we amend the statute to allow more time for those reports that are out of custody so they can get to those in custody quicker; I believe everyone will be better served.

As an example of the problem, I have a letter from Branson Loney who is in DOC which was sent to me on March 13, 2013. It says, "Dear Mr. Phillip Kohn. My name is Branson Loney, an inmate at Southern Desert. The reason why I am writing to you is because there is a misunderstanding regarding my PSI. It says on file that I already have my GED, but I do not. The last grade I attended was 10th grade and that is it. I am wondering if the correction can be made on my file because I am trying to get my GED or Adult School Diploma here at Southern Desert but I cannot because of the matter mentioned before. Please correct this matter that I would humbly ask of you, and I would like a

copy of my corrected PSI. Branson Loney, Number 1096168." I have to write Mr. Loney to tell him we cannot do that. That is a real problem. If we would have had time to meet with him, let him digest the report, I believe this would have been corrected sooner. [Also provided, but not discussed, are ([Exhibit R](#)) and ([Exhibit S](#)).]

1

**Assemblywoman Cohen:**

I am concerned with page 3, line 7, the waiver provision. Is that opening the door to ineffective assistance of counsel claims?

**Philip Kohn:**

We had a lengthy discussion about that. Would I prefer that we could always make corrections at any time later when we find a mistake? I would absolutely prefer that. The problem that was pointed out by the District Attorneys Association through Mr. Mark Jackson, Douglas County District Attorney, was in the *Stockmeier* case. Ten years after sentencing, Mr. Stockmeier tried to litigate whether it was an act of violence. As Mr. Jackson pointed out, it is very hard to find witnesses and for the district attorney to represent their case 10 to 20 years later when it goes before the parole board. The short answer is that I would love to not have that provision, but the problem is how far out do we litigate these matters.

**Assemblywoman Cohen:**

Are we going to see this as an issue where the defense attorney is not bringing an issue forward so we have ineffective assistance of counsel claims because of the waiver?

**Philip Kohn:**

I am not sure. I am hoping that having 21 days to look at the report, if we find a problem that we missed in the first 7 days, there is nothing to not allow the district court to give us leave before the time of sentencing to correct it. I am hoping that will lead to fewer claims of ineffective assistance of counsel. My concern is when we write back to Mr. Loney and tell him, "Sorry, we missed that, but there is nothing we can do about it," that may well lead to a claim. To avoid ineffective assistance of counsel claims we need to do better. The Supreme Court has set forth performance standards that are guidelines to all defense attorneys of what we should be doing. This will give us more of an opportunity to do our job correctly.

**Chairman Frierson:**

Are there any other questions? Seeing none, I will ask those wishing to offer testimony in support.

**Ben Graham, Government Relations Advisor, Administrative Office of the Courts and representing the Advisory Commission on the Administration of Justice:**

The whole purpose of this is for fairness in due process. Having been in the system for 44 years, I have seen a lot, both on the defense and the prosecution side. There are a few issues that I think would not cover Mr. Loney's situation, but I think that with the exceptions in this bill, it would certainly be workable for the courts, as well as the counsels.

**Chairman Frierson:**

Is there anyone else here in support? Are there any here in opposition?

**Alex Ortiz, Department of Finance, Clark County:**

I am here to provide testimony in opposition to the fiscal impact of the bill exclusively, and not the policy issues related to the bill. I testified last session when the Governor's budget recommended assessing the counties for the cost of preparing PSI reports. We believe it is the State's responsibility to fund this statewide function. As you heard, PSI reports are used primarily by the courts, the DOC, P&P, the Parole Board, in addition to the public defenders, district attorneys, and the Attorney General's Office. It is my understanding that PSI reports are used exclusively by district court judges for related crimes. There is no nexus between these crimes and the counties that are assessed these costs. The P&P specialists that write the PSI report are state staff who report to state supervisors in the state department. They are writing a report used by a state judge for sentencing, and then by either a state institution or state parole after sentencing. Additional costs to the county that are proposed in this bill through the P&P fiscal impact will be an additional burden on the county. We estimate that the total fiscal impact to Clark County is approximately \$1.5 million over the biennium. That is due to the fiscal impact which includes an additional 21 specialists and approximately 37 vehicles. We are only in opposition to the fiscal impact, not to the actual policy issues related to this bill.

**Chairman Frierson:**

In what way is Clark County incurring additional costs?

**Alex Ortiz:**

There was a fiscal note put on this bill by P&P which has a county reimbursement, which is revenue to the state of \$2.1 million this biennium and the same going forward as well. That is what we are in opposition to.

**Chairman Frierson:**

That is deeper into the financial aspect than this policy Committee would prefer to go, but I will ask, is the county also liable for lawsuits on ineffective assistance of counsel?

**Alex Ortiz:**

Yes, they would be, but my position here is strictly on the fiscal impact.

**Chairman Frierson:**

That would be the shift in responsibility for the costs.

**Alex Ortiz:**

That is correct.

**Jeff Fontaine, Executive Director, Nevada Association of Counties:**

I would like to echo the comments made by Mr. Ortiz. We are concerned about the fiscal note. As Mr. Ortiz indicated, this would be an additional cost shift to the counties, with Clark and Washoe Counties having the most assessed. This would be on top of the \$7.4 million that is already in the Governor's budget to assess the counties for PSI reports for the next biennium. We believe that the PSIs are really something that is a state function and this would add to the cost shift to the counties.

**Chairman Frierson:**

I certainly understand the concern. If this bill were to move, there obviously will be continued discussion on the fiscal aspect of the bill. Is there anyone else wishing to offer testimony in opposition? Is there anyone wishing to offer testimony in a neutral position?

**Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety:**

Essentially, we rise as a neutral party in this. If we are given the resources, we will do the job. That is our mission.

**David Sonner, Captain, Southern Command Operations, Division of Parole and Probation, Department of Public Safety:**

I would like to offer some comments into the record. The accuracy of the PSI report is P&P's primary objective. The Southern Command Court Services Unit produces the majority of the PSI reports for the state. On average, the Southern Command produces 67 percent of those reports each month. For example, in January 2013, Southern Command produced 551 reports, Northern Command produced 210, and Northern Command Rural produced 66, for a total of 827 reports; Southern Command's portion being 66.6 percent. In February

of this year, Southern Command produced 503; Northern Command, 180; Northern Command Rural, 47, for a total of 730. Southern Command's portion was 68.9 percent. Currently, 97 percent of the PSIs are provided to all parties three to five days prior to sentencing. If Assembly Bill 423 extends the sentencing phase in district court, P&P's Southern Command would need the district attorney's file a minimum of 51 days prior to sentencing and that would require the district court calendars to adjust.

Assembly Bill 423 impacts P&P, the district court, the county jails, district attorneys, and the public defenders' offices through required appearances of all parties, the production of objections in writing, responses in writing, findings entered on the court record, court-ordered corrections, and PSI report corrections. Section 1, subsection 5, paragraph (b) seems to allow for unlimited objections prior to the imposition of sentence. This bill would increase the in-custody time in county jails for incarcerated defendants; the in-custody time would increase from 30 days to a minimum of 51 days in custody. This will impact county jail resources. Assembly Bill 423 will increase the out-of-custody defendant sentencing phase by an additional 21 days. The out-of-custody time would increase from the current minimum 45 days to a minimum of 66 days or longer.

The PSI error problem overall is minor. It represents an average of 2 percent of the PSI reports produced by Southern Command Courts Services Unit. For example, in January 2013, 10 out of 551 reports had to be corrected. That is 1.8 percent. In February 2013, 8 out of 503 reports had to be corrected; that is 1.4 percent. In March 2013, 14 out of 513 reports had to be corrected; that is 2.7 percent.

Currently, P&P specialists in Southern Command do not appear in court. This has afforded them the capability to keep up with the demand. However, A.B. 423 would require P&P specialists to appear in court to represent the Division. This would require every P&P specialist to appear in court one time per week to cover sentencings. Southern Command would be required to cover 35 court appearances per week with 36 specialists. In terms of fiscal impact, the PSI production would be reduced due to the P&P specialists appearing in court each week. Additional P&P specialists would be required to meet the current PSI demand. Available PSI production time would be reduced by approximately 140 hours per week. Southern Command would need five additional Specialist III positions, one Specialist IV position, and one Parole and Probation Supervisor position for the Southern Command to keep up with the current PSI demand.

Additionally, in terms of fiscal impact, the necessity for a P&P specialist in the Southern Command to appear in court will require a minimum of 13 additional vehicles based on court calendars. The author of the report would more than likely not be able to represent his own report due to court coverage assignments being rotational, not criminal department specific. Therefore, the report author may need to be subpoenaed, thus additionally lengthening the sentencing phase.

The commonly disputed errors on PSI reports are based on documentation from other entities, whether they be arrest reports, NCIC records, Nevada Criminal Justice Information System records, criminal history records from other states, or victim information. The three most commonly disputed errors are gang information disputes, which occur 80 percent of the time; criminal history information disputes which occur 15 percent of the time; and other perceived errors which occur 5 percent of the time. If the PSI report is more than a week old, a new criminal history is run to determine if the criminal history in the PSI report is current. If all PSI reports are submitted at least 21 days prior to sentencing, then virtually all PSI reports will need a new criminal history run before sentencing, thus increasing the Division's administrative support workload.

**Chairman Frierson:**

I am a little flabbergasted that we just heard a bill about allowing PSIs to be done electronically, as a reflection of the frustration of not getting PSIs as easily as we could. Now we are talking about how there is no problem. I will say, spending about a decade in court, there are a lot of errors, which are not necessarily the fault of the report writer. Oftentimes, there is simply information that is not available to the writer. I guess I am sensing a little defensiveness over something that we are trying to ensure is accurate when we are talking about sending people to prison for a long time. We need to make sure we are not only sending them to prison for a long time based on accurate information, but that once they go to prison, they are being classified in prison based on accurate information. I am a little shocked that we are not more together on wanting to unilaterally ensure that it is done as accurately as possible.

**David Sonner:**

I would concur with that; our primary objective is to ensure the report is accurate. As you mentioned, for the most part, the information that we receive from other entities is the information that turns out to be inaccurate. It is not really the fault of our specialists in preparing those reports. The majority of our presentation today is related to the fiscal impact. We are more than happy to do the job, but we need the resources to do that.

**Chairman Frierson:**

You mentioned the extra time and the personnel that would be needed to go to court. I did not read where the report writer would have to go to court in the bill. Can you point that out to me?

**David Sonner:**

I do not believe there is a specific section in the bill that refers to that, but I believe in terms of representing the Division, it would be prudent on our part to have a PSI specialist in court to represent the report and discuss any alleged or perceived errors in the report.

**Chairman Frierson:**

Is that not the case now? When there is an alleged mistake that needs to be corrected of a material nature, that is already happening. I just do not see how this changes that. It just creates a timeline and structure for facilitating the correction of reports. I think that can still be addressed now, and they have managed to do it without a writer being in court for every sentencing.

**David Sonner:**

Currently, Southern Command is the only command that does not have the writers appearing in court at sentencing. All the other commands in the state do. We feel it would be prudent for our specialists to be there to be able to intelligently discuss the report and address any alleged errors.

**Chairman Frierson:**

And you do not think there is a need for that now?

**David Sonner:**

No, right now we feel that our primary responsibility is to produce reports, which is why we keep our specialists in Southern Command from having to appear—so they have more time to produce reports.

**Assemblywoman Dondero Loop:**

As a teacher, I have done hundreds of report cards. People do make errors on one side or the other. If you have children, I am sure you would want me to correct any errors I may have made.

**Assemblyman Hansen:**

We heard testimony earlier about a situation where an inmate had on his report that he had been convicted of some crime in Georgia, which turned out to be inaccurate. When you have those situations come up, surely there is some way to amend the report. The impression I get is that if a mistake is made, once it is past the timeline, there is no way to go back and correct what was clearly



a complete falsehood in the report. How do you handle that now? Is it, in fact, a situation where you just say, "Sorry, we blew it, but it is now part of the record and we are not allowed to go back and clean it up?" There has to be some kind of mechanism when, in fact, there is an error in one of the reports. If there is not, this bill definitely has merit.

**David Sonner:**

The way we currently handle that situation is when the parties are in court, if any of the parties perceive that there is an error in the report that needs to be corrected, at or prior to sentencing, the errors are discussed at that time. The court will issue an order detailing what needs to be corrected, and the Division will produce a supplemental report containing the correction and resubmit it to the court. The court generally continues the sentencing for a minimum of two weeks for the Division to do the research and to make the correction to the report.

**Assemblyman Hansen:**

So there is a mechanism in place when mistakes happen. I am trying to figure out where the necessity for this bill comes into play. If there is a situation after the timeline, you have some poor guy in prison, they are looking at his probation status on the basis of inaccuracies in the original report, even if it is a single case, this is something we clearly want to minimize.

**Bernard Curtis:**

We are not in opposition to this bill. We just need to let you know that there are some fiscal and resource impacts whenever you change a process. Whenever you ask for a process to be done much quicker, those things cost money. If you provide the resources to the Division, we are happy to do it.

**Chairman Frierson:**

Thank you. The resource aspect is beyond the policy consideration here, but I am concerned about a perceived increase in need for something that is already occurring. I would also disagree with the statistics, having sat in court for a decade, about the number of errors on PSI reports. It seems to me that any effort to be accurate is, in the long run, going to be helpful with some of the concerns about the impact. You can, by statute, do what you are already able to do, but this will give us a mechanism to correct the report if there are mistakes. I am concerned about the notion that we have to have somebody assigned in court every day to do what has been happening for decades already without someone being assigned in court. I can understand the impact about having to do it faster, but the rest of this seems to be a little overbroad in the predictions of impact.

**Bernard Curtis:**

I understand your concerns. Also, if there are objections, our PSI employees would have to go back and verify the truth of the matter as best as we can determine. Our information also comes mostly from situations that we have very little control over, such as other agencies, other states, and other jurisdictions, which are gathered together to make the PSI and do the evaluation.

**Chairman Frierson:**

Are there any other questions? Is there anyone else wishing to offer testimony in a neutral position? Seeing none, Mr. Kohn, do you have any closing remarks?

**Philip Kohn:**

I agree with much of what Mr. Sonner says. We are using information that is second, third or fourth hand in probation reports that is based on NCIC, or based on third-party reports of gang activity, which is critical in the prisons. Where I disagree with Mr. Sonner is that he says there are so few instances where we ask for corrections. The fact is we get the reports three or four days in advance. That does not give us time to go to the jail, give it to our client, have him truly digest it, and then make the proper corrections.

I am not sure I was clear regarding the ability to correct errors on the PSI report. Once we get past the sentencing date, no matter how incorrect the report is, if it says the client killed five people, and he has never hurt anyone in his life, but it is in the probation report, and the defense has not caught it, it cannot be changed. That is what *Stockmeier* stands for. We cannot correct it once we get past the sentencing, no matter how easy it would be to prove that there is an error. We have to make sure that we have time before the sentencing to do this. Three to five days is not enough, especially with the situation we are in right now in the southern area. Because of the problem at Clark County Detention Center, a lot of our clients have been moved out to the north valley and are somewhat inaccessible to the public defender. This is going to go on for a few years. I know at some point it will be remedied, but the fact is it is not easy for us to get to the jail. The bill that would send probation reports to the courts does not include us. It takes us a day or two to get the report through our office and to the right deputy. Three days is not enough. I would ask you to please look favorably upon this bill.

**Chairman Frierson:**

We will need to take this testimony into consideration. I would encourage members of the Committee to reach out to Mr. Kohn and to Mr. Curtis and his staff for questions and clarification on how this will impact them. I will close the hearing of A.B. 423 and open the hearing on Assembly Bill 338.

**Assembly Bill 338: Provides certain protections and services for victims of human trafficking. (BDR 16-679)**

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

In essence, the bill you have before you is a bill that will give additional guidance to law enforcement, the district attorney's office, the Department of Health and Human Services, and the Department of Education. It is a bill that will assist the victims of this terrible scourge of human trafficking by getting additional information to the general public about this situation. Joining me from Washington D.C. is James Dold who will present the bill.

**James Dold, Policy Counsel, Polaris Project, Washington, D.C.:**

We are here today to talk about Assembly Bill 338. The Polaris Project is an anti-trafficking organization based in Washington, D.C. We do a number of different things working closely with the federal government. We operate the National Human Trafficking and Research Center and the National Hotline for the U.S. Department of Health and Human Services, which means we field calls from all across the country related to human trafficking—calls directly from victims—connecting them with service providers throughout the nation. We also receive tips from community members or victims who want us to report information to law enforcement. We are able to send that information to our local, state, and federal law enforcement contacts. To date we have taken over 70,000 calls from across the country, identified over 9,000 potential victims of human trafficking, and sent over 3,000 tips to our law enforcement contacts at the local, state, and federal levels, which have resulted in the successful arrest of traffickers and, more importantly, the successful rescue and escape of victims of trafficking from these terrible types of situations. In addition, we also directly serve victims of human trafficking in our Washington, D.C. and New Jersey client services offices, and we engage in policy advocacy at the state and federal level. We have worked in all 50 states and have passed close to 100 laws related to human trafficking all across the country.

It is a pleasure to be before this Committee testifying on A.B. 338. This particular bill relates to trying to create more of a protection and prevention model within Nevada. At the federal level, we call this the three-piece paradigm, which is the prosecution of traffickers, the protection of victims, and the prevention of human trafficking. This bill focuses on the latter two aspects, protection and prevention. To my right is Patrick Ferguson who will help me present parts of this bill.

Walking through the bill, section 1 is related to making sure that when victims are identified by law enforcement agencies in Nevada, there is a victim-friendly model in place. Oftentimes, victims who come into contact with law

enforcement are nervous, scared, and if they are undocumented, there could be a fear of being deported. Even if they are a U.S. citizen, there is the fear of, "What is going to happen? My pimp has always told me that I am only going to be seen as a prostitute, no one is going to care." Section 1 begins to address this by ensuring that when law enforcement comes into contact with a victim of trafficking, they are able to verify that a number of things happen. Number one, they inform the victim that she has been identified as a victim. Number two, they want to ensure that the victim is notified that she might be eligible for a victim compensation fund, and put her in contact with the right folks who can get her on the right path for those services. Third, refer her to victim services, if they are available, and let her know who to contact for shelter, and who to contact to provide potential legal representation.

Section 1, subsection 2, paragraph (d) is one of the most important parts of the bill. It ensures that foreign national victims are provided with Form I-914, Supplement B. In 2000, the federal government created the "T visa," the trafficking victim visa, which allows persons who were trafficked in the United States, or are in the United States on account of a trafficking situation, to apply for a visa to be able to stay here while cooperating with law enforcement in the prosecution of a trafficker. It has been a great program that the feds established to ensure that when victims are coming forth, especially foreign national victims, that there is not the fear of law enforcement, that they will not be deported. In order to be eligible for that T visa, however, they have to have a Form I-914 provided and they have to be cooperating with law enforcement in the investigation and prosecution of that trafficker. This would ensure those forms, if requested from law enforcement, would be made available. Again, this is trying to get to a victim-centered approach and not criminalizing people who have been forced to commit acts of prostitution or other offenses as a result of trafficking. This bill will get away from criminalizing them, and treat them as victims. It will ensure they know that law enforcement and prosecutors are on their side and are not there to arrest them in those types of situations. The same thing is true for the U.S. citizen victims as well, making sure that they know that there is access to victim compensation funds and other services out there. We think this is a great component of that bill. There is a similar provision that has been passed in California, as well as several other states.

Polaris Project is an observer to the Uniform Law Commission that is currently addressing this issue, and we are hoping to have a uniform law promulgated this summer. This is another provision that we are talking about including in that uniform law as well. So this is going to be something that we hope will be staggered across the United States. There are certainly other states that have

looked at this issue that include very similar provisions. I am now going to turn this over to Patrick Ferguson to review section 2 of the bill.

**Patrick Ferguson, Policy Fellow, Polaris Project, Washington, D.C.:**

On behalf of the Polaris Project, I would like reiterate my colleague's sentiments in saying that we appreciate this Committee taking the time to hear testimony regarding the importance of A.B. 338. This bill is a critical component of Nevada enacting a comprehensive legal framework to combat human trafficking. Specifically, I am going to talk about section 2. Section 2 requires posting of the National Human Trafficking Resource Center (NHTRC) hotline in certain establishments where victims are likely to come into contact with that number. This provision is essential to reaching victims and educating community members about human trafficking. For victims, the ability to reach the hotline can mean a difference between continued servitude and freedom. This hotline is able to connect law enforcement, victim services, and the community together. In 2012, the NHTRC hotline received roughly 20,000 calls. However, only 174 of these calls, or less than one percent, originated from Nevada. There is evidence that suggests that mandatory posting of the hotline does increase call volume, which in turn leads to more tips about potential human trafficking situations in any given state. Texas is a prime example of this. Texas was the first state in the country to enact legislation requiring the posting of the NHTRC hotline in certain establishments. To date, over 35,000 establishments across the state of Texas have done so. We now receive the greatest call volumes in Texas. Last year, of those 20,000 calls, Texas accounted for roughly 3,500 of them. We were able to confirm that out of those 3,500 calls, 409 of those callers learned about the NHTRC hotline number through posters similar to the one that A.B. 338 requires. That is roughly one in seven calls, which is a fairly high number.

What this data suggests is that hotline posting laws work, and they can have a tangible effect in successfully identifying victims of trafficking and rescuing them from those situations. To date, 17 other states have enacted similar legislation. All of the establishments required to post the hotline are places where trafficking victims are likely to come into contact with the poster, and as such will have the greatest impact on their successful rescue or escape. These establishments include truck and rest stops, mass transit facilities such as bus stops, airports, and train stations, as well as any places that have previously been cited as being a public nuisance for prostitution.

Lastly, one of the great parts of section 2 is that it has a limited fiscal impact because the enforcement of this bill can easily be built into the existing duties of the specified department. The applicable establishments can print the posters from the Department's website, which leads to a negligible financial impact on

Nevada. In summary, posting the hotline has tangible, beneficial effects, not only on victim's lives, but local Nevada communities and the state as a whole. I will turn this back over to James Dold.

**James Dold:**

The only other thing I would add regarding section 2 is that last year we saw California enact the most comprehensive mandatory hotline posting law. They require close to 14 different types of establishments to post the hotline. We do not have data on the impact of that, but that was a huge win for us. Pennsylvania, Louisiana, Texas, Arkansas, Georgia, and Montana are the most recent states that have enacted this legislation. We also have bills pending in New York. This is another section we are hopeful will be included in the uniform law when it is promulgated in July.

Moving on to section 3, this section deals with the Department of Health and Human Services (DHHS) developing a plan to do a number of things. This is to ensure that DHHS has a plan in place on how to identify victims of trafficking, assisting victims in applying for federal or state assistance, and helping to coordinate the delivery of vital services such as housing, health care, mental health care, and potential legal services. All of these things are within the mandate of the plan. It has had a huge impact in other states where this has passed. For instance, the commonwealth of Virginia most recently passed this law in 2011 and what we saw, from a tangible impact standpoint, was the department convening stakeholders from the community and bringing everyone together to brainstorm about how each of the different sectors of government and nongovernment organizations can work together to ensure that when victims are identified, there is a protocol in place so that each person knows who to contact and who provides what service, from legal services to housing to health care, et cetera. This should have a negligible fiscal impact because it focuses on the plan, which is one thing that is going to raise great awareness within DHHS and ensure that all of the applicable agencies know about human trafficking so that victims of human trafficking have a better chance of being identified.

I will now skip to section 5 which focuses on the third key that I mentioned earlier—prevention. In 2010, the Polaris Project began looking at an innovative type of bill that had not been done before to get awareness and training materials on human trafficking into local school districts. The reason that we started doing that was because we began to analyze the data through the NHTRC hotline that we operate and found there were a substantial number of calls we were receiving directly from educators. One teacher who called was worried about one of his students who otherwise had been doing really well in school, but her grades started to drop off, and he noticed that she was falling

asleep in class. When he initially approached her about it, it became evident to him that she was in a labor exploitation situation when she had been brought to the United States from Central America. She had been going to the local high school. She was essentially charged with taking care of children, doing all the chores in the house, and was required to wake up every morning at 4 a.m. to get her chores done. There was also a lot of emotional and verbal abuse going on. So the teacher called the hotline looking for help. What we were able to do was connect that teacher and his pupil with a local service provider who was able to work with the student developing an action plan and making sure that there were things in place to make her a little bit safer. That was a great resolution; she is in her last year of high school and is doing well. That is just one example of how we were able to connect a teacher and student with resources that would ameliorate, to a certain degree, that type of situation.

In another situation, we received a call from a teacher who saw one of his students advertise on <backpage.com> for commercial sex. The teacher called the hotline and reached out to the parents of this particular student. We were then able to connect both the parents and the teacher with one of the local human trafficking task forces. They were actually able to get the student back from that situation.

All across the country we were receiving calls from educators. What we began to realize was that they are on the front lines of this. There was recently a huge case in northern Virginia where gang members were recruiting young girls out of suburban middle and high schools. Because that is often a tactic used by traffickers, and because middle and high school girls are so often the targets, it was essential and apparent for us to ensure we were getting accurate information to the local school districts. So, in 2011, we developed a new law that passed in Maryland and Virginia that required the Department of Education working in concert with different nongovernment organizations and the Department of Health and Human Services to develop training and awareness materials to provide to local school districts.

I will emphasize that we do not actually require there be training to minimize the fiscal impact. All that is required is that these materials be available to the local school districts. The school districts can then choose how they want to get the information out. It could be an email to teachers or provided at new teacher training. There is a variety of different ways to get the information out. We have provided materials that we developed to assist local school districts in identifying victims of trafficking. These could be used by DHHS to fulfill its obligation under section 5 in getting the information out to local school districts. A few years ago, I provided training for the Department of Education in Georgia. These materials are now on their website for all teachers to access. Again, this

is getting to the prevention side so we can ensure that teachers in Nevada are well educated on the topic and what to do when victims of trafficking are identified. That concludes our presentation of A.B. 338.

**Assemblywoman Cohen:**

You mentioned there are 14 locations where the posters had been placed, correct? You mentioned bars, truck stops, et cetera. Can you tell us of any places that surprised you, where we would not necessarily think there would be an issue?

**James Dold:**

When you look at the bill in California and other states, they often require the posting in strip clubs and other sexually oriented businesses. In California, Texas, Arkansas, and Alabama, they also require posting in bars that have only a liquor license. We were very cognizant of a potential pushback from various entities and decided to pare down the scope of establishments that would be required to post the hotline. When I was in Las Vegas, I was fortunate enough to do a ride-along with law enforcement and remember seeing the truck stops and various places where some activity takes place in Clark County. In terms of places that are shocking are commercial fronts posing as legitimate businesses but are actually engaged in commercial sex. There is a tanning salon in Pennsylvania where trafficking was happening. We are not able to get at every single establishment where trafficking might be occurring. We recognize that and try to ensure we are targeting those places where there has been trafficking in the past, or where trafficking victims are likely to come into contact with the poster. Certainly major transportation hubs such as truck stops, rest stops, bus stations, or train stations are places where victims are likely to come into contact with the poster. Delta Airlines has a phenomenal program. The airline ambassadors raise awareness of human trafficking because the stewardesses who work for Delta have stories of identifying a victim of human trafficking and not knowing what to do. They partnered with us and various organizations in raising awareness so that when victims are on planes, folks are not afraid to call the national hotline to report suspicious activities.

**Assemblywoman Cohen:**

We talked a lot about sex trafficking and a little about forced labor. I am also interested if we are seeing a lot of forced labor with older people. We have talked about younger people, but is there a big market in forced labor of older people who think they are coming here to have a regular job and find out they are being locked in someone's house and forced to do manual labor?



**James Dold:**

This is one of the things that does not get talked about as much. There is a fascinating report that the Department of Justice put out in 2010 that analyzed arrests and investigations data between 2008 and 2010 by federally funded human trafficking task forces around the country. They found that overwhelmingly, from investigations on the part of law enforcement, 88 percent of those cases were sex trafficking. The interesting data was that when they interviewed the different service providers, the overwhelming number of victims were, in fact, labor trafficking victims. In our client service office here in the District of Columbia, the majority of victims that we serve are persons who are in labor trafficking situations. Any time you have a demand for cheap labor, and you have a vulnerable population that is trying to escape an economically desperate situation, or that may have crossed into this country without documentation, you have the potential for labor trafficking situations to arise. There is a distinct difference between labor exploitation and labor trafficking, again referring to those elements of force, fraud, and coercion, but there have been some high-profile cases in the last few years.

One of the largest human trafficking cases in the history of the U.S. at the Department of Justice in 2010 involved a foreign labor recruiting firm based in Los Angeles called Global Horizons. That case involved over 600 Thai workers who were originally promised high-paying jobs and were brought over to the United States on visas. They came here legally, but when they got here, they were not given the jobs they were promised, and they had to pay exorbitant amounts in recruiting fees. In order to pay those fees, they took out loans against their homes and farms which resulted in a huge amount of debt that, based on the amount of money they were actually going to make, they would never be able to pay off. They ended up in this debt situation based on the fraud that was committed by Global Horizons. These workers were shipped to farms all across the country. Those individual farms were not necessarily complicit in the trafficking activity, but that one entity required those exorbitant fees, and then used false promises of high wages to get the workers here, essentially resulting in these people being in a labor trafficking situation. Some of those workers also had force and fraud used against them; their passports and documentation were taken from them. High migrant populations working on farms, is another possible forced labor situation, along with construction and hospitality work. I was an assistant beverage manager at Caesar's Palace; I know there is a huge number of employees in the back of the house that many people never see.

In 2011, the U.S. Department of Justice prosecuted a labor trafficking ring that was being run by Ukrainian folks who had brought in foreign laborers from South America to clean Walgreens and Targets late at night in Philadelphia. The

means that were used to hold those persons in servitude were rape and threats of physical violence against those people and their families. For a period of two years, they would clean these stores late at night, and no one knew what was going on.

Getting back to the point where you have vulnerable populations, or a demand for cheap labor, there will always be the potential for a labor trafficking situation. We see it in a variety of settings from construction work to agriculture, to cleaning, to back-of-the-house employees. That is why these provisions are so important to ensure that we are getting information about the hotline out there to places where victims could potentially come into contact with it.

**Assemblywoman Diaz:**

Being an educator, I zoned in on section 5. I sit on the Education Committee, and oftentimes school districts are concerned that we continually pass unfunded legislation. I was wondering how the district would perceive this. Is this a funded or an unfunded mandate?

**James Dold:**

I am certainly sympathetic to those concerns. Our intentions with this bill are not to create an unfunded mandate, but rather to do the best we can with the limited resources we have. We did our best to make sure there was no mandatory training in these provisions. We focused exclusively on the development of materials and to ensure they were provided to the local school districts. We have provided materials that can be used by the school districts to fulfill the requirement of this section. The big aim is to make sure that teachers are aware that human trafficking exists and that information and resources are available if they suspect a student may be a victim of trafficking. We felt this was a healthy compromise to make sure that we balance the best of both worlds while also trying to address a very real concern with sex and labor trafficking amongst students in the school districts around the state.

**Assemblywoman Diaz:**

In adopting this, what grade levels are we speaking to? When is the issue of human trafficking taught to students?

**James Dold:**

Typically, we see human traffickers go after middle and high school girls between the ages of 12 and 17. I do not think the bill specifies what grade range the materials should be provided to. I would say probably middle school and high school.

**Chairman Frierson:**

Are there any other questions? I see none. Is there anyone here to testify in support of A.B. 338?

**Allan M. Smith, representing Religious Alliance in Nevada:**

I am here to speak in favor of A.B. 338. We support Assemblyman Hambrick's commitment and passion for this issue. With respect to the bill, I think identification and reporting are very important in terms of bringing resolution to these victims, bringing some kind of a hopeful healing to their situation. I did have a question regarding the sign that is required at certain places and notice that it primarily targets places where any kind of prostitution or sex industry is happening, and with Mr. Dold's comments regarding Walmart, why are they leaving out places such as grocery stores, fast food restaurants, or any other place where people can go?

**Chairman Frierson:**

I will remind you that you are in support. If you have a proposed amendment, then you would not be in support. If you have a question of the sponsor, you will need to address that off-line.

**Allan Smith:**

I did not mean to bring that forward as a point of concern in terms of the passage of this bill. In regard to a complementary bill, Assembly Bill 311, which has been through this Committee, my coworker Mike Patterson has reported to me that he is consistently getting checks in support of that bill for assistance to victims. Obviously, this establishes a procedure going forward with victims' treatment, education, and assistance. Finally, we certainly support any effort in terms of education. With that, I would like to bring my testimony in support.

**Elisa P. Cafferata, President and CEO, Nevada Advocates for Planned Parenthood Affiliates:**

We have testified in support of services and education several times before you. We would also like to be on the record in support of this bill as well.

**Assemblywoman Spiegel:**

I know that Planned Parenthood has been backing efforts to implement comprehensive, age appropriate, and medically accurate sex education in our schools with Assembly Bill 230. I was wondering what you think about including provisions related to human trafficking into that curriculum should that bill pass?

**Elisa Cafferata:**

Assembly Bill 230 does have a provision which would include making sure young people are aware of all of the laws relating to sexual activity, healthy relationships, consent, and abuse. We support education for young people to be able to make healthy and legal choices, so we would support the education component in this bill separately as well.

**Kareen Prentice, Domestic Violence Ombudsman, Office of the Attorney General:**

The Attorney General's Office supports A.B. 338. We believe it is important to support victims of sex trafficking and give them tools and resources to become survivors and also to prevent future victims of this crime.

**Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney:**

We, too, are in support of this measure.

**Eric Spratley, Lieutenant, Washoe County Sheriff's Office:**

I am here in support of A.B. 338 and thank Assemblyman Hambrick for bringing this bill forward. I would like to go on the record to admit that our lack of education and awareness in this arena has been a detriment to law enforcement and our ability to fully serve victims. This was brought to light during the interim when we were working with the Attorney General's Office on this issue. We want to change that and support this bill to do so.

**Robert Roshak, representing Nevada Sheriffs' and Chiefs' Association:**

Ditto.

**A. J. Delap, Government Liaison, Las Vegas Metropolitan Police Department:**

Ditto.

**Barbara Bell, representing Nevadans for the Common Good:**

We also wholeheartedly support Assemblyman Hambrick's bill.

**Camille Naaktgeboren, representing Nevadans for the Common Good:**

Thank you for hearing this bill. Speaking on behalf of Nevadans for the Common Good and myself, we do support A.B. 338. Just to make this a little bit more personal, I was a trafficking victim from the time I was 5 years old through age 17. I did not know what to do, I had no idea and I had no resources. I lived with a backpack so that I could run away should the opportunity present itself. The opportunity never did present itself. Had I seen a hotline number or had a teacher reach out to me, I may have been spared several years of trafficking. A couple aspects of this bill that we definitely

support are sections 2 and 5 to help get the information about trafficking out there.

**Chairman Frierson:**

Thank you for all the hard work that Nevadans for the Common Good has done on all of these issues. Are there any other questions? Seeing none, I will invite anyone in opposition to come forward. Is there anyone wishing to offer testimony in a neutral position? I will now ask Mr. Hambrick to come up with closing remarks.

**Assemblyman Hambrick:**

Regarding the DHHS and their plan, basically it is a system to use in-house. This was never meant to have a grandiose plan, but to use the brainpower of those within the state to get together with the stakeholders. We also have information available to educators in our state. I am very grateful to the Committee for hearing this bill. This is a tough topic and I appreciate it.

**Assemblywoman Spiegel:**

I have a question related to the education section. Have you reached out to the sponsor of Assembly Bill 230 to discuss integrating the materials should that bill pass?

**Assemblyman Hambrick:**

I have not, but I will.

**James Dold:**

I would like to say thank you to the Committee for all of your hard work this session on these bills. I know it is a tough topic and a very timely one with all of the violence that has been happening on the Las Vegas Strip. I know for me personally, this issue has a huge impact for several different reasons, but also because Nevada is my home; it is where I grew up and went to school. This is a bipartisan issue and we have a lot of support. Thank you for all of your work.

**Assemblyman Ohrenschall:**

You stated you are working on something similar to this measure to promulgate the Uniform Commissioners Conference. Does that also have the education component, or will it?

**James Dold:**

Currently, it does not have that component in it. The Uniform Law Commission has not addressed training teachers within the Uniform Law. It is probably unlikely to be included primarily because it has not been a topic that has been discussed as much as the other provisions.

**Assemblyman Ohrenschall:**

Do you know if there is any movement at the federal level for the U. S. Department of Education (DOE) to include this training in their recommendations?

**James Dold:**

We have had several meetings with the DOE on this issue. Primarily, I think the DOE is getting geared up to do something. Officials I have met with have expressed a great willingness and interest in working on this issue. Actually, it was through the U. S. DOE that I was put in contact with the San Diego School District. The San Diego School District has developed an amazing system that I think the U. S. DOE may have interest in replicating in other school districts. Basically, they have opened up all the case files of kids who are potentially at risk. They looked at the juvenile records—child welfare records—to see what kind of contact they have had with the system. For particular types of students that are deemed to be at risk, they invite them to participate in a program that talks about healthy relationships and educates them on the recruiting tactics of pimps. The woman who developed this program says it has been an extraordinarily effective tool within their school district. I would not be surprised to see something like this come down the line sometime in the future.

**Chairman Frierson:**

Thank you. I will now close the hearing on A.B. 338, and open it up for public comment. Is there anyone here who would like to provide public comment? Seeing none, this meeting is adjourned [at 10:41 a.m.].

RESPECTFULLY SUBMITTED:

---

Nancy Davis  
Committee Secretary

APPROVED BY:

---

Assemblyman Jason Frierson, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** April 10, 2013

**Time of Meeting:** 8:15 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 10	C	Dave Ziegler	Work Session Document
A.B. 44	D	Dave Ziegler	Work Session Document
A.B. 91	E	Dave Ziegler	Work Session Document
A.B. 273	F	Dave Ziegler	Work Session Document
A.B. 358	G	Dave Ziegler	Work Session Document
A.B. 370	H	Dave Ziegler	Work Session Document
A.B. 389	I	Dave Ziegler	Work Session Document
A.B. 395	J	Dave Ziegler	Work Session Document
A.B. 422	K	Dave Ziegler	Work Session Document
A.B. 64	L	Andres Moses	Amendment
A.B. 307	M	Heather Procter	Amendment
A.B. 307	N	Heather Procter	Written Testimony
A.B. 307	O	Heather Procter	Excerpt from Violence Against Women Reauthorization Act
A.B. 307	P	Heather Procter	Proposed Amendment
A.B. 423	Q	Philip Kohn	<i>Stockmeier</i> Case

Assembly Committee on Judiciary

April 10, 2013

Page 40

A.B. 423	R	Steve Yeager	Letter regarding transmission of PSI reports
A.B. 423	S	Steve Yeager	PSI Reports Written and Delivered to Clark County District Court