

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

**Seventy-Seventh Session  
February 26, 2013**

The Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 4:07 p.m. on Tuesday, February 26, 2013, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. 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 James Ohrenschall, Chair  
Assemblywoman Lucy Flores, Vice Chair  
Assemblyman Elliot T. Anderson  
Assemblyman Wesley Duncan  
Assemblyman Pat Hickey  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman Andrew Martin  
Assemblyman Harvey J. Munford  
Assemblyman James Oscarson

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst  
Kevin Powers, Committee Counsel  
Karen Pugh, Committee Secretary  
Macy Young, Committee Assistant

**OTHERS PRESENT:**

Scott F. Gilles, Esq., Deputy for Elections, Office of the Secretary of State  
Justus Wendland, Administrator, Help America Vote Act, Office of the Secretary of State  
Barry Gold, Advocacy Director, AARP Nevada  
Kathleen Buchanan, Public Guardian, Clark County  
Susan DeBoer, Public Guardian, Washoe County  
Lora Myles, representing Carson and Rural Elder Care Law Program  
Stacey Shinn, representing Progressive Leadership Alliance of Nevada  
Jon Sasser, representing Southern Nevada Senior Law Program  
Ginny Casazza, Private Citizen, Reno, Nevada  
Mary Porter, Private Citizen, Gardnerville, Nevada

**Assembly Bill 108: Revises provisions relating to the eligibility to vote of certain persons. (BDR 24-267)**

**Chair Ohrenschall:**

[Roll was called.] Today we have Assembly Bill 108 being presented by Assemblyman Elliot Anderson.

**Assemblyman Elliot T. Anderson, Clark County Assembly District No. 15:**

Assembly Bill 108 stems from the *Constitution of the State of Nevada*, Article 2, Section 1, which states that "no person who has been adjudicated mentally incompetent, unless restored to legal capacity, shall be entitled to the privilege of an elector." [Read from prepared text ([Exhibit C](#)).]

However, there is no clear standard on what "mentally incompetent" means in the *Nevada Revised Statutes* (NRS). [Read from prepared text ([Exhibit C](#)).]

I will be accepting a friendly amendment from the Secretary of State's Office, regarding uniform registration, canceling, and notification procedures, but I will leave that to Mr. Gilles and Mr. Wendland to discuss.

**Chair Ohrenschall:**

Assemblyman Anderson, thank you for working on this legislation to ensure that people who want to vote, and are able to vote, can do exactly that.

**Assemblywoman Flores:**

Is it the responsibility of the court to transmit that information to the county clerk, and then the county clerk cancels the voter's registration?

**Assemblyman Elliot Anderson:**

*Nevada Revised Statutes* 293.542 deals with the court providing the certified order. Section 2 of this bill will add new language to NRS 293.540 that states the county clerk is to be provided a certified copy of the court order. Once the court of competent jurisdiction sends that order to the county clerk, that is when the clerk will cancel the registration. This is to ensure that the person is afforded due process, so it must be the court that actually sends the order to the clerk for it to be cancelled, and not some different agency that may not fully understand the standard; otherwise we could be facing potential lawsuits.

**Assemblywoman Flores:**

Are the courts currently transmitting those certified orders? I want to ensure that if it is already in the statute, the courts are forwarding these petitions to the county clerk.

**Assemblyman Elliot Anderson:**

I do not have personal knowledge of the district court's existing process, but I have been advised that there have been differences in practice between the courts in Clark and Washoe Counties. This bill will attempt to standardize that process, which is established under NRS 293.542.

**Assemblyman Munford:**

Approximately how many people do you feel could be reinstated to the voter rolls as a result of your bill?

**Assemblyman Elliot Anderson:**

I do not have personal knowledge of how many persons may have been affected by this. I know of at least one case where a state agency wrongly informed an individual that he could not register to vote because he was in a guardianship. And one to me is enough. Section 4 of this bill discusses the existing statute whereby someone may have his or her franchise reestablished if he or she is restored to mental competence.

There are people who feel their franchise has been taken away wrongly. This bill would provide the standard for determining what mental competence is.

**Chair Ohrenschall:**

I think that is an important point. It is not only that people have been told by a court or their county registrar that they cannot vote, but also that some people may be afraid to vote because they are in a guardianship situation. I believe this bill has the potential to help people who are capable of voting not to be afraid to pursue it.

**Assemblyman Martin:**

Do you think the effect of this law would be that there will be fewer people adjudicated and not able to vote?

**Assemblyman Elliot Anderson:**

The standard from the American Bar Association is that if your right to vote is to be taken away, someone has to show that you have no desire to participate in the process. If you can articulate that you want to vote, with or without accommodations, and you can vote, you are going to be able to vote.

One person voting is not going to turn an election. We are not seeing large numbers of people being declared mentally incompetent. However, if you wrongly take away someone's right to vote, you are looking at a huge deprivation. Just imagine if any of us had our right to vote taken away.

**Assemblyman Oscarson:**

Mr. Anderson, you and I talked about this issue at length. I did not know these things were happening, so I appreciate your bringing the topic forward. I agree with your comment that the key issue is the right to vote, and no one can say you cannot vote just because you are a ward. I support this.

**Chair Ohrenschall:**

Assuming your bill passes in its current form, and someone enters into a guardianship, would the onus be on the county clerk or on the person who is challenging that ward's capacity to vote, to say that he or she cannot vote?

**Assemblyman Elliot Anderson:**

If someone wants to take your voting rights away from you, they have the burden to prove in court that you do not have the mental competence to vote.

**Chair Ohrenschall:**

So that would be in a separate action from the guardianship proceeding.

**Assemblyman Elliot Anderson:**

I would see it being addressed on the guardianship petition, which I will let the public guardians speak to. Not every guardianship is the same; some are limited to specific functions that a ward is not able to do. I would envision this being one of the things that someone can plead if they think that the person is not mentally competent and cannot vote.

**Chair Ohrenschall:**

Are there any other questions from the Committee for Assemblyman Anderson on Assembly Bill 108? [There were none.] Mr. Gilles, Mr. Wendland, thank you for being here today and speaking on Assembly Bill 108.

**Scott F. Gilles, Esq., Deputy for Elections, Office of the Secretary of State:**

Let me start by saying the Secretary of State's Office supports this bill. We believe this legislation will create specific procedures and requirements on how a clerk may cancel a voter registration for individuals in this circumstance. This essentially removes any possibility of incorrect presumption by a county clerk or a different interpretation of what it means to be adjudicated legally incompetent, insane, or mentally incompetent.

As Assemblyman Anderson testified, we have heard stories of a guardianship that is presented to the clerk, and the clerk has cancelled that registration. I do not know how many times this may have occurred, but as Assemblyman Anderson indicated, one is too many. What this bill does is create a procedure that once the county clerk or registrar receives this order, they in fact must cancel the registration.

Assemblyman Anderson did indicate a recommendation that our office had regarding sections 3, 4, and 5 of the bill. The change that we are proposing would require that the district court send the certified copy of the order not only to the county clerk but to the Secretary of State's Office as well. We can then use the infrastructure of our statewide voter registration database to communicate that information to all counties in the state. This would prevent a situation where someone has been deemed mentally incompetent by a court and has been removed from the voter rolls in Clark County, and then the person attempts to register to vote in Lincoln County. We would also receive any communication from the court that the individual had restored his or her rights, so we can transmit that information out to the other counties.

To answer Assemblyman Munford's earlier question, at this time we do not have specific numbers regarding voters deemed mentally incompetent as we do not receive copies of the certified orders from the court in our office. We would be able to collect and provide some statistics on this going forward

if we were to receive those notices. At this time I can only estimate that it would be far less than 1,000 individuals per year statewide. We know in Washoe County it is typically four to seven per month.

**Chair Ohrenschall:**

Of those roughly 1,000 people whose voter registrations are cancelled in a given year, do you know of any who tried to fight or appeal the order?

**Scott Gilles:**

We do not have those numbers, and we are not aware of anyone coming forward to challenge this.

**Chair Ohrenschall:**

In looking at section 4 of the bill, what if a voter's registration is cancelled because of a finding about competency, and then somehow the person's competency is restored. Would he or she then go to the county clerk to try to restore their registration or do they go to the Secretary of State's Office?

**Scott Gilles:**

My understanding of the process is they would have to go through a court of competent jurisdiction. Once the court issues the order saying the rights have been restored, they would send that information to the applicable county.

**Assemblyman Elliot Anderson:**

Let me interject and point you to section 1 of the bill, which specifically talks about the process to follow and what the procedural and substantive standards are. The way I read the bill, and my clear intent as well, is that all this happens through the court of competent jurisdiction.

**Chair Ohrenschall:**

Once a court confirms that the person's competency has been restored, he or she is eligible to vote and can go to a county clerk and reregister. Mr. Gilles, you mentioned trying to notify all of the counties that a person's registration has been cancelled. Will your amendment also address competency being restored and notifying the other counties that the person is now eligible to reregister?

**Scott Gilles:**

Once we have the information from the court, we will place the person on a list. The list will be run against the statewide database on a nightly basis, so that if someone on that list tries to register in a different county, our statewide database will send a report to that county saying "This person just registered

yesterday. We have them on this ineligible list, so you need to follow up and find out whether or not this is, in fact, the same person."

**Chair Ohrenschall:**

And you will be able to notify the counties that someone has become eligible to register to vote again.

**Scott Gilles:**

Yes.

**Chair Ohrenschall:**

Are there any questions for Deputy Secretary Gilles? [There were none.]

**Justus Wendland, Administrator, Help American Vote Act, Office of the Secretary of State:**

On a daily basis I interact with the county election administrators, and I support this bill for two reasons. First, it adds clarification for what the courts need, as well as what the counties need, in order to process these individuals. Second, it will create a central repository, as Deputy Gilles described, in our database that will allow the counties, when they receive a registration, to identify this individual as somebody who is either on that list or not.

**Chair Ohrenschall:**

Are there any questions for Mr. Wendland? [There were none.]

**Barry Gold, Advocacy Director, AARP Nevada:**

States should enact guardianship and conservatorship laws that protect older people's due process rights. These safeguards should include, at a minimum, an assessment by the court on the ward's capacity to vote and retention of the ward's right to vote unless the court makes a specific finding of incapacity to vote. [Read from prepared text ([Exhibit D](#)).]

**Chair Ohrenschall:**

In your experience in working with the Nevada AARP, do you find that many members have contacted you or AARP with issues concerning voting?

**Barry Gold:**

I do not have any personal knowledge of that, but I have talked to people in the community, and this has come up, as voting rights are a very important issue.

**Chair Ohrenschall:**

Are there questions for Mr. Gold? [There were none.]

**Kathleen Buchanan, Public Guardian, Clark County:**

The Clark County Public Guardian supports the bill for individuals who are found to need a guardian, since many of them still have the capacity to vote. We are equally appreciative for the inclusion of specific language in NRS Chapter 159 and NRS Chapter 293 that provides new sections addressing voting rights. [Read from prepared text ([Exhibit E](#)).]

**Chair Ohrenschall:**

How many wards does the Clark County Public Guardian currently have guardianship over?

**Kathleen Buchanan:**

We serve approximately 512 persons.

**Chair Ohrenschall:**

And do you have any data as to how many of the 512 want to vote and are denied the right to vote or had their registration canceled?

**Kathleen Buchanan:**

We do not have those numbers simply because it has never been an issue.

**Chair Ohrenschall:**

If Assembly Bill 108 does pass into law, either in this form or as amended, does your office have the resources to assist anyone who is interested in trying to restore his or her right to vote, if it has already been cancelled?

**Kathleen Buchanan:**

Absolutely.

**Assemblyman Duncan:**

First, I have to disclose that Ms. Buchanan is a client of the legal firm I work with in Las Vegas, and she is also a constituent. I did want to ask at what stage do you anticipate this tool being used? Would it be at the temporary guardianship stage?

**Kathleen Buchanan:**

I do not foresee it being under a temporary guardianship, which is usually due to financial exploitation or horrific medical conditions that the ward would face. If we did look at this, it would be under a general guardianship. As I mentioned, this really has not been an issue with our office, but I believe it is a great addition to law and would like to see a specific section in NRS Chapter 159 to address it.



**Chair Ohrenschall:**

Are there any other questions for Ms. Buchanan? [There were none.]

**Susan DeBoer, Public Guardian, Washoe County:**

Over the years we have had many questions from family members about an individual's right to vote, and we have referred them back to the attorney on their specific case. I echo Ms. Buchanan's comments that it really has not been an issue with our wards, but I'm not necessarily sure we would have heard about it if someone was sitting at home with a care provider or a similar situation. So I really do appreciate the clarification on this.

**Lora Myles, representing Carson Rural and Elder Care Law Program:**

The subject of voting rights has come up in our office, but not in regard to one of our wards wanting to vote. Rather, it involved voter fraud. An incident occurred several years ago at a nursing home in Carson City where a staff member took the voter registration application that is on the back of every Medicaid application and registered people in the nursing home to vote. The people were registered whether or not they had been deemed incapacitated, whether or not they could communicate, and whether or not they were responsive and could react to the world around them. The staff member had registered each person as an absentee voter, so the ballots were mailed directly to the nursing home. We discovered this because the public guardian was guardian to several of the people who were registered to vote. Unfortunately, the staff member disappeared and was never prosecuted. We estimate that she may have voted as many as 30 times.

The public guardian was notified by the elections office, and the public guardian changed the process for dealing with mail for wards residing in nursing homes. This bill does clarify issues. I think it adds to the ability to take people off the rolls when they seriously cannot vote any longer, and it does prevent this kind of voter fraud.

We do have wards who vote. In fact, the public guardian in Carson City and the Carson City District Court have adopted a psychological and clinical evaluation that is mandated in all guardianships of adults. One of the questions that the psychiatrist asks in that evaluation is whether the ward can vote. This bill does clarify what the psychiatrist would be looking for, as well as what the court would then order.

**Assemblyman Hickey:**

You raised a very interesting issue. Did you report that incident to the Secretary of State's Office and was it ever followed up?

**Lora Myles:**

The public guardian reported the matter to the elections office in Carson City, to Mr. Glover, and as I understand, it was reported to the Secretary of State, but I do not have any personal knowledge of that happening.

**Chair Ohrenschall:**

Have you ever been a party to a proceeding where a ward has tried to either keep the right to vote or regain it?

**Lora Myles:**

No, we have not had that issue come up. If a ward asks to vote, then of course we talk to the ward's doctors and determine whether the ward can vote and usually allow him or her to vote. We have never disallowed a ward to vote if he or she has requested it. By the time most wards are under guardianship, they are severely demented and no longer have any knowledge about what state they are living in, and they do not even think to vote.

**Chair Ohrenschall:**

Regarding those wards who requested to vote, in your experience, had they not had their registration cancelled and were they still on the rolls?

**Lora Myles:**

Their names were not removed from the voter rolls and they were able to vote.

**Chair Ohrenschall:**

Are there any questions for Ms. Myles or Ms. DeBoer? [There were none.]

**Assemblyman Elliot Anderson:**

This is why we really need a clear standard. If you have a situation where people are not even talking, it is important that the guardian knows exactly what the standard is.

**Chair Ohrenschall:**

Anyone else here in Carson City in support of Assembly Bill 108 is invited to please come forward.

**Stacy Shinn, representing Progressive Leadership Alliance of Nevada:**

We are always in support of legislation that expands voting rights and ballot accessibility. Personally, as a licensed social worker in the state of Nevada working with individuals with developmental disabilities and severe and persistent mental illness, I personally back this bill. I know that current mental disability rights policy is all about community integration, living similar lives, and making contributions to society, such as voting. Assembly Bill 108

is a protection of a vulnerable population, and a way of keeping them as part of our community as well as protecting their right to vote.

**Chair Ohrenschall:**

In your experience, both as a social worker and with the Progressive Leadership Alliance of Nevada, have you had many citizens facing guardianship contact you because they have been either taken off the rolls or prevented access to vote? Has the current law had a chilling effect on their participation?

**Stacy Shinn:**

I have never seen a client of mine blocked to vote. However, I have been asked by the National Alliance of Mental Illness (NAMI) to present workshops to its members who did not understand the voting process.

**Chair Ohrenschall:**

Are there any other questions for Ms. Shinn? [There were none.]

**Jon Sasser, representing Southern Nevada Senior Law Program:**

Prior to the start of the legislative session, Assemblyman Anderson held a series of community meetings for the stakeholders in Clark County and both Barbara Buckley, the Director of the Legal Aid Center of Southern Nevada, and Sheri Vogel, the Director of the Senior Citizens Law Project in Las Vegas, attended those meetings. Unfortunately, neither Ms. Buckley nor Ms. Vogel could be here today. They send their apologies and asked me to come to the table to express their full support for the bill.

**Chair Ohrenschall:**

Are there any questions for Mr. Sasser? [There were none.]

**Ginny Casazza, Private Citizen, Reno, Nevada:**

I have submitted to this Committee written testimony ([Exhibit F](#)). I have been working in guardianship for over 20 years, and I support this bill. We may not have examples of where this has been a problem, such as somebody saying he or she was denied the right to vote because of due process, but I would not want a whole category of people to be disenfranchised and unable to vote when they truly had the capacity to do so. As a Nevada citizen, this is what I would want for myself and my family.

**Chair Ohrenschall:**

Are there any questions for Ms. Casazza? [There were none.] Is there anyone else in support of Assembly Bill 108 in either Carson City or Las Vegas who wishes to be heard? [There was no response.] Is there anyone neutral

on A.B. 108 who wishes to speak? [There was no response.] Is there anyone in opposition to A.B. 108?

**Mary Porter, Private Citizen, Gardnerville, Nevada:**

The Legislative Counsel's digest in the bill refers to the adjudication of mental incompetency; however, the statute refers to two conditions: one being insanity and the other mental incompetency. They are two different conditions. Someone who is diagnosed as being insane is done so by a psychiatrist on the basis of axes contained in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV). There really should not be a reason for insanity to be excluded from section 2 because it is something different than mental incompetency, which should not have been included.

With respect to the language concerning mental incompetency, as drawn in the proposed statute, it is overbroad in the use of the term "desire." How does one determine desire? Many of the questions that you raised about getting the word out to families and getting notifications out, et cetera, are actually administrative details that can be worked out. Those things are not actually set forth in the statute, but they can be implemented even under the language as already written without any modification, because under NRS 293.540 it says "If the insanity or mental incompetence of the person registered is legally established."

**Chair Ohrenschall:**

Ms. Porter, is it your concern that we are losing the two definitions, insanity and mental incompetence?

**Mary Porter:**

No, what I am saying is that insanity should stay as it is. If the clerk gets an order of insanity, nothing else needs to be done, because by definition that person is incompetent to vote. We should be dealing with whether someone who is mentally incompetent, which is a broader category, can still vote. And with respect to the language that says "desire," is desire what we want to say, or aren't we really talking about psychiatrists using DSM-IV criteria to help the court decide and make the proper order? Those are my points.

**Chair Ohrenschall:**

Are there any questions for Mrs. Porter? [There were none.] Is there anyone else opposed to Assembly Bill 108 in Carson City or Las Vegas? I see no one opposed. Is there anything else you would like to say, Assemblyman Anderson?

**Assemblyman Elliot Anderson:**

In regard to the last presenter's testimony stating that insanity is determined by a psychiatrist, that is exactly why we have to revise it, because the taking away of someone's right to vote cannot come from a psychiatrist. It needs to come from a court, or we are setting up the state for liability. There is plenty of nationwide case law on this issue. As far as the use of the term "desire," we want to create a low bar for the standard that if an individual wants to vote, and expresses the "desire" to vote, he or she will be allowed to vote.

**Chair Ohrenschall:**

The way your bill is structured with the court issuing the order to remove someone from the voter rolls, would the court hear testimony from a mental health professional?

**Assemblyman Elliot Anderson:**

Absolutely. If they are going to take away someone's right to vote, they have to have someone testifying with personal knowledge of the person's condition. We are not mandating expert testimony; that would be more for the court to decide, but the standard is "clear and convincing evidence."

**Chair Ohrenschall:**

Do you know if the testimony at the hearing would have to come from a medical doctor, psychiatrist, or psychologist, or does the social worker testify to the person's competency?

**Assemblyman Elliot Anderson:**

There is no requirement for any sort of expert testimony, so the court may take whatever testimony it finds relevant. That is a decision for the court. The direction from this bill is that if a person expresses a desire to vote, and is in that court, that person should still be able to maintain his or her right to vote. We just need to know that they are capable of communicating that they do want to vote, and that is when it gets into the language of communicating a "desire" to vote.

**Chair Ohrenschall:**

Are there any other questions for Assemblyman Anderson? [There were none.] I know you will work with the Secretary of State and the other interested parties to address any concerns in the bill. I will close the hearing on Assembly Bill 108. We have no bill draft requests (BDRs) from the Committee today, so I will open the meeting to public comment from anyone in Carson City or in Las Vegas. [There was no response.]

I will close today's meeting of the Assembly Committee on Legislative Operations and Elections. Meeting is adjourned [at 5:10 p.m.].

RESPECTFULLY SUBMITTED:

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Karen Pugh  
Committee Secretary

APPROVED BY:

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Assemblyman James Ohrenschall, Chair

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

**EXHIBITS**

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

**Date:** February 26, 2013

**Time of Meeting:** 4:07 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 108	C	Assemblyman Elliot Anderson	PowerPoint "Setting a Standard to Protect the Right to Vote"
A.B. 108	D	Barry Gold	AARP Nevada statement in support
A.B. 108	E	Kathleen Buchanan	Statement in support
A.B. 108	F	Ginny Casazza	Statement in support