

**MINUTES OF THE  
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Seventy-Seventh Session  
April 9, 2013**

The Senate Committee on Health and Human Services was called to order by Chair Justin C. Jones at 3:37 p.m. on Tuesday, April 9, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Justin C. Jones, Chair  
Senator Debbie Smith, Vice Chair  
Senator Tick Segerblom  
Senator Joseph P. Hardy  
Senator Ben Kieckhefer

**GUEST LEGISLATORS PRESENT:**

Senator Greg Brower, Senatorial District No. 15

**STAFF MEMBERS PRESENT:**

Marsheilah D. Lyons, Policy Analyst  
Risa Lang, Counsel  
Jackie Cheney, Committee Secretary

**OTHERS PRESENT:**

Michael J. Willden, Director, Department of Health and Human Services  
Jeffrey Fontaine, Executive Director, Nevada Association of Counties  
Bill Welch, President/CEO, Nevada Hospital Association  
Marla McDade Williams, Deputy Administrator, Health Division, Department of Health and Human Services  
Nicole Willis-Grimes, Director, Public Affairs, The Ferraro Group; Nathan Adelson Hospice  
Wendy Simons

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Bruce Arkell, Personal Care Association of Nevada  
Lawrence Fry, Coalition of Assisted Residential Environments  
Joan Hall, President, Nevada Rural Hospital Partners  
Daniel Mathis, President, Nevada Health Care Association  
Barry W. Lovgren  
D. Eric Spratley, Lieutenant, Washoe County Sheriff's Office  
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association  
Dennis Johnson  
Daniel Reid, National Rifle Association of America  
Megan Jackson, Nevada Firearms Coalition  
Richard Brengman, Firearms Retailer  
Christopher Frey, Deputy Public Defender, Washoe County Public Defender  
Office, Washoe County:  
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender  
Office, Washoe County  
Duncan Rand Mackie, Vice President, Nevada Firearms Coalition  
Chuck Burnett  
Jim Sallee  
Juanita Clark, Charleston Neighborhood Preservation  
Russ Martin  
Janine Hansen, President, Nevada Families for Freedom  
Ed Guthrie, Executive Director, Opportunity Village  
Amber Howell, Administrator, Division of Child and Family Services, Health and  
Human Resources Department  
David Truax, Intern to Senator Hardy, University of Nevada, Las Vegas

**Chair Jones:**

We will open the hearing with Senate Bill (S.B.) 452.

**SENATE BILL 452**: Revises provisions governing assistance provided to indigent persons. (BDR 38-1085)

**Michael J. Willden (Director, Department of Health and Human Resources):**

Senate Bill 452 is a legislative opportunity for Nevada to leverage additional federal funds. The indigent accident fund (IAF) or supplemental relief fund is financed by 2 1/2 cents of the property tax. This tax will bring approximately \$21 million per year to the IAF. Due to the State's dire financial situation over the past 5 years approximately \$110 million has been swept from the IAF account into the State General Fund (GF). The Governor's recommended

budget for the 2013-2015 biennium proposes to not sweep the funds to the GF but rather to use those funds to bring in more federal dollars for indigent care.

Section 2 of S.B. 452 states the Board of Trustees of the Fund for Hospital Care to Indigent Persons can contract with the Division of Health Care Financing and Policy (DHCFP), Department of Health and Human Services (DHHS) and select an amount of money to transfer to the DHCFP. Part or all of the projected \$21 million per year can be transferred to the DHHS Medicaid budget to leverage federal dollars. The funds can then be used to make enhanced rate payments and supplemental payments to hospitals, or they can be used as an offset of the nonfederal share for the County Match Program. The County Match Program is a program where the State and counties participate in paying for nursing home costs and community costs for the elderly and disabled. If all of the dollars were transferred, the \$21 million could be matched with federal dollars and be increased to \$56 million for indigent care expenditures.

Section 2, subsection 1, paragraph (c), requires any funds not used to make enhanced payments be returned to the IAF. Once the program is started, the Medicaid program must enter into State Plan amendments and seek federal approval. The program cannot be terminated unless all parties involved agree to end the program.

Section 2, subsection 1, paragraph (e), states money transferred from the IAF cannot be used to replace or supplant funding available from other sources for the same purpose.

Section 3 discusses a situation that may happen under the enhanced rate payments. Public and critical access hospitals may receive less revenue under this process than they would have under the previous IAF supplemental payments process. If this occurs, an assessment could be made on the other hospitals to help hospitals that receive less revenue. The funds collected by the DHHS would be maintained by the Board of Trustees in the Hospital Assessment Account.

In summary, S.B. 452 sets up a framework for IAF dollars to be used to obtain additional federal funding. Flexibility is established for the Board of Trustees to decide how the funds can be used to benefit the State.

**Jeffrey Fontaine (Executive Director, Nevada Association of Counties):**

The Nevada Association of Counties (NACO) supports S.B. 452. We are happy to get back the use of the IAF. In addition to the payments to the hospitals, the counties are looking forward to getting help to offset the increased costs for long-term care. The counties will work through the logistics with the DHHS staff to ensure successful implementation.

**Bill Welch (President/CEO, Nevada Hospital Association):**

Nevada hospitals and the NACO have worked on this concept for over 20 years. Senate Bill 452 will ensure patients who lack the resources to pay for emergency or catastrophic illness care have some means for having those costs offset. The hospitals will be paid some money for the care provided and accept that as payment in full. The counties are held harmless for any other expenses, and the patients are protected. Bringing in additional federal dollars will allow us to start looking for ways to increase Medicaid payments. Monies can be reserved for the IAF claims for hospitals that have a disproportionate share of indigent patients with catastrophic illnesses or injuries.

**Chair Jones:**

Mr. Willden, is there an amendment forthcoming?

**Mr. Willden:**

I do not have an amendment planned at this time. The framework established in S.B. 452 allows flexibility for the Board of Trustees to determine the amount of money that will be transferred to the IAF to be used for leveraging federal funds, administrative costs and to run the regular IAF Supplemental Relief Program.

SENATOR HARDY MOVED TO DO PASS S.B. 452.

SENATOR SEGERBLOM SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

**Chair Jones:**

We will open the hearing for S.B. 502.

**SENATE BILL 502**: Makes various changes relating to certain required investigations of the background and personal history of certain persons as a condition of employment, licensure, certification and other privileges. (BDR 40-1137)

**Marla McDade Williams (Deputy Administrator, Health Division, Department of Health and Human Services):**

Senate Bill 502 allows the Health Division, DHHS, to establish an Internet Website to conduct background investigations of employees of licensed facilities. I have submitted written testimony ([Exhibit C](#)) that describes the purpose of the bill, the background leading up to this proposed legislation, what we hope to accomplish with the bill and some highlights of the various sections of the bill. I have also submitted a detailed section-by-section description of S.B. 502 ([Exhibit D](#)) which I will review with the Committee. Amendments are forthcoming as specified in this document.

Section 1 of S.B. 502 codifies the Website in the *Nevada Revised Statute* (NRS) 439. This is the general chapter that governs the Health Division.

Section 2 authorizes the Health Division to establish the secure Website and lays out the provisions for the Website. The table on page 1 of [Exhibit D](#) displays the entities that will have access to the Website to check criminal histories of employees. An amendment will be submitted to add the provisions of NRS 449 to the list.

Section 2, subsection 4, specifies information in the Website is confidential, not subject to subpoena or discovery and is not open to inspection by the public.

Section 3 establishes the parameters for authorized users to search the Website. Searches can determine whether a person has been convicted of a disqualifying crime; verify information that identifies the person being investigated; determine whether disciplinary action has been taken by a professional licensing board against a person being investigated; and determine whether a person is excluded from participating in Medicare, Medicaid and other federal health care programs.

The Website is intended to be used by providers to enter relevant information about their employees, not for the Health Division to be the recipient of their data and then do the data entry for them. An amendment will be included to

make that clear. Suggested language is shown on page 3 of [Exhibit D](#). This secure Website is not available to the public. It will only be available to health facilities that hire employees.

Section 4 authorizes the Health Division to enter into cooperative agreements to obtain and accept information for inclusion on the Website. This would be from the other agencies that have registries relevant to employees in facilities licensed by the Health Division.

Section 5 specifies the personal information that may be maintained and stored on the Website. This section also establishes the authorized methods of storage.

Section 6 authorizes the Health Division to determine the information necessary for the user to conduct an investigation into the background and personal history of an employee. It also authorizes limitations on the user's access. This section specifies the information obtained from the Website may not be shared by the user. This is a key provision for the Central Repository for Nevada Records of Criminal History within the Department of Public Safety to ensure there is no secondary dissemination of information.

Section 7 authorizes the Health Division to adopt regulations to prescribe a user fee and to carry out the provisions of the bill.

Section 8 begins the amendments to Chapter 449, which is the chapter that authorizes the licensing of health facilities.

Section 9 adds the new facilities that will be required to do background investigations. Some of the facilities that are currently required to do background checks were somehow removed and need to be added back. There was no intent to take out any facilities. The list of the existing facilities that should already be required to do the background checks and the new facilities to be added with the amendment are shown on page 6 of [Exhibit D](#).

Section 10 adds a new section to the statutes for temporary employees as described on page 7 of [Exhibit D](#).

Section 11 identifies the law governing the expiration and renewal of a health facility license. It adds the newly covered facility types. An amendment is

needed to add back in any facilities inadvertently excluded and to add any new facilities.

Section 12 amends NRS 449.121, which specifies the exemption for a facility for the treatment of abuse of alcohol or drugs. The amendments to this section ensure that alcohol and drug abuse facilities required to do background investigations are able to take advantage of the new language as it relates to temporary employees.

Section 13 amends NRS 449.122 which governs the investigation of an applicant for a license to operate a certain facility, agency or home. This section adds the new facility types required to participate in the background investigation provisions. An amendment is needed to require only one set of fingerprints.

Section 14 applies to initial and periodic investigations of employees or independent contractors. It specifies that background investigations do not have to be redone for professionally licensed employees if they have had a background investigation within the preceding 5 years. It provides for an employer to retain an electronic copy of a person's fingerprints. It enacts provisions for background investigations for temporary employees. If a person willfully provides a false statement or information in connection with a background investigation, this section specifies a misdemeanor will be imposed unless a greater penalty is provided by law.

An amendment is described on page 11 of [Exhibit D](#) to clean up some of the language and enumerations of the bill. This amendment will specify only one set of fingerprints is required. The amendment adds a new section requiring information be entered into the Website within the same 10-day period as other requirements of this section.

Section 15 relates to the maintenance and availability of records for background investigations of employees or independent contractors of certain agencies, facilities or homes. The maintenance of records will be handled through the Website with the providers entering the information.

Section 15, subsection 4 provides for the interface with the Criminal History Repository to notify a facility of new arrests for existing employees. This will work hand-in-hand with allowing someone who has already had a background

investigation completed not to have to redo the background investigation if he or she changes employers and if the background investigation was completed within the preceding 5 years.

The primary changes in sections 16 relate to temporary employees and ensuring there is a mechanism in place to prohibit an employee from being deployed to a facility if he or she has a disqualifying criminal conviction. In subsection 1, new language requires termination of an employee if the employee has had a substantiated report of abuse or neglect. It is presumed this language relates to information obtained from the Child Abuse and Neglect Registry. Not all facilities provide care to children. An amendment is needed to clarify that termination of employment would only apply to those employees who work in facilities that provide residential services to children.

Section 18 specifies the effective date of these provisions.

**Senator Smith:**

I thought the provisions regarding the background check were already in place.

**Ms. McDade Williams:**

Currently, employees working at a nursing home who change employers and go to work at another nursing home must go through another background check. The individuals have to pay for a new set of fingerprints and pay the Criminal History Repository to do another background check. All the same processes for background checks are currently in place. The same pieces of paper have to be processed by the Health Division and must be retained by the nursing facilities. This is all done manually with no automation. Because it is not automated, it has all the inefficiencies and costs of having to repeat background checks. If an employee is hired at a nursing home and has a disqualifying criminal conviction, it could take 30 to 90 days before anyone finds out the person should not be working there. The Website eliminates that possibility from happening.

**Senator Hardy:**

Does S.B. 502 only include prospective employees?

**Ms. McDade Williams:**

The provisions in S.B. 502 will apply to employees hired after the effective date of the bill. Existing employees will still be required to have a background check every 5 years.



**Senator Smith:**

Is the requirement in section 10 regarding a temporary employment service a new requirement? I thought this was already in place.

**Ms. McDade Williams:**

If a temporary employment service deploys a nurse to a nursing home, the nursing home has the obligation to ensure the person has a background check. The temporary employment service does not have the obligation to do a background check for its employees. Senate Bill 502 shifts this burden to the temporary employment agency.

**Senator Smith:**

Does the temporary employment agency pay the background check fees?

**Ms. McDade Williams:**

Currently it is the nursing home's responsibility to pay the background check fees. The temporary employment service will be responsible for background checks for their employees if S.B. 502 is enacted.

**Nicole Willis-Grimes (Director, Public Affairs, The Ferraro Group; Nathan Adelson Hospice):**

I am testifying in support of S.B. 502, particularly section 9, which includes hospice facilities in the background check process. Currently, it takes up to 4 months to get the results of background checks for applicants and employees. This bill will improve that timeframe to 2 to 4 weeks.

**Chair Jones:**

Do you support the amendments?

**Ms. Willis-Grimes:**

We are neutral on the amendments and do not have any objections.

**Wendy Simons:**

I support S.B. 502 and the proposed amendments. I will read from my prepared testimony ([Exhibit E](#)).

**Bruce Arkell (Personal Care Association of Nevada):**

The Personal Care Association of Nevada includes many people utilizing the system for background checks. It is an industry with a large staff turnover.

Staff members frequently move from one facility to another. The electronic process for background checks as well as the 6-month review will be extremely helpful. Cost savings will be realized by the facilities and the Health Division. We support S.B. 502 and the proposed amendments.

**Lawrence Fry (Coalition of Assisted Residential Environments):**

The Coalition of Assisted Residential Environments represents the sector of long-term care that forms residential and assisted living facilities for seniors. We strongly support S.B. 502 and the proposed amendments. This is a good use of technology to help us do a better job of caring for our seniors. I have provided written testimony ([Exhibit F](#)).

**Joan Hall (President, Nevada Rural Hospital Partners):**

Our members have distinct part nursing homes and swing bed services. We support S.B. 502 and the proposed amendments for all the reasons stated by the previous testifiers.

**Daniel Mathis (President, Nevada Health Care Association):**

I support S.B. 502 and the proposed amendments. Some job applicants have been determined ineligible to work in facilities but have learned the time lines for being discovered. They go to work at one facility for several months until discovered, and then they move to another facility and work for another several months before being discovered. Passage of S.B. 502 will stop that practice.

**Chair Jones:**

I will close the hearing on S.B. 502 and open the hearing for S.B. 381.

**SENATE BILL 381**: Makes various changes to prevent recipients of certain public assistance from using benefits for certain purposes. (BDR 38-459)

**Senator Greg Brower (Senatorial District No. 15):**

I have presented a proposed amendment to S. B. 381 ([Exhibit G](#)) that provides an improved shorter version of the original bill. This bill has to do with the Temporary Assistance to Needy Families (TANF) program. This is a federal program overseen by the U.S. Department of Health and Human Services (US DHHS) administered by the states. The TANF recipients receive cash assistance, which in many states, including Nevada, can be accessed at automatic teller machines (ATMs) using an electronic benefits transfer (EBT) card.

Until about a year ago, there were no federal requirements for states to restrict EBT usage at certain locations. The U.S. Congress passed legislation in 2012 that requires states to enact restrictions on EBT usage. The penalty for not doing so by next year will be a potential loss of up to 5 percent of the TANF block grant monies. In response to that requirement, some states have passed restrictions on the use of EBT cards. States are required to report to the US DHHS steps taken to implement these policies by February 2014.

Senate Bill 381 is Nevada's attempt to comply with federal requirements. Other states that have taken similar steps vary in their approach. Some have implemented the minimum federal requirements, and others have gone beyond the federal requirements. Senate Bill 381 mirrors the federal requirements. Those requirements are specified in section 1, subsection 3 of [Exhibit G](#), which states a beneficiary of the TANF program is restricted from using TANF benefits in a casino, a liquor store or an adult-oriented establishment.

Section 1, subsection 4 of [Exhibit G](#) provides that a person in such an establishment is precluded from knowingly accepting an EBT as payment. Section 9 requires DHHS to submit a report to the Legislative Counsel Bureau (LCB) detailing the measures taken to comply with the federal law.

**Senator Smith:**

On page 2 of [Exhibit G](#), lines 12 and 13, reference is made to non-restricted gaming licensees but not restricted gaming licenses.

**Senator Brower:**

That is a good point. The language in the bill probably should say restricted or non-restricted. I will defer to the LCB legal staff to address that issue.

**Chair Jones:**

Would a person who goes to the movies at the Red Rock Station in Las Vegas not be allowed to buy popcorn with an EBT card?

**Senator Brower:**

I do not know. I am not sure all these types of establishments were contemplated by the federal regulations. I will have to get clarification on this and get back to you.

**Senator Segerblom:**

Are all the criteria proposed in S.B. 381 in federal law?

**Senator Brower:**

Other states, including California, have longer lists of restricted types of establishments. This bill simply follows the federal law.

**Senator Segerblom:**

Where do marijuana dispensaries fit into this?

**Senator Brower:**

That was not included in this bill, nor is it contemplated in federal law.

**Senator Brower:**

Some may suggest this legislation is picking on TANF recipients. I do not see it that way. The U.S. Government Accountability Office Report states:

The purpose of TANF is to help needy families achieve self-sufficiency. However, any misuse of TANF funds not only deprives low-income families of needed assistance, but also diminishes public trust in both the integrity of the program and the federal government.

This is the intent of S.B. 381. Federal law quite reasonably requires us to do this. It is up to us to determine the details.

**Mr. Willden:**

The Middle Class Tax Relief and Job Creation Act of 2012 requires policies and procedures on this issue be in practice by February 2014. The federal government issued proposed regulations last summer which the DHHS reviewed. The final regulations are forthcoming.

The DHHS issues approximately \$44 million in TANF benefits on EBT cards each year. Of that amount, about \$22 million is exchanged at ATMs. About \$14.5 million are non-ATM transactions. This includes grocery store transactions. The other \$7 million to \$8 million is directly deposited into recipient bank accounts.

Implementation of this legislation will require the US DHHS to work with gaming establishments, liquor stores and the adult entertainment industry to ensure TANF EBT transactions are not conducted at those businesses.

**Chair Jones:**

Do you have any suggestions for avoiding the potential problems regarding the nonrestrictive gaming establishments?

**Mr. Willden:**

I do not understand all the gaming laws. This is something that needs to be researched further to make sure we get it right.

**Senator Hardy:**

Do I understand correctly that 10 percent, or almost \$9 million in a 2-year biennium cycle, would be lost from the TANF program if Nevada law is not brought into compliance with the federal law?

**Mr. Willden:**

To receive a \$44 million block grant, Nevada is expected to match it with a \$28 million maintenance of effort. Five percent of the \$44 million federal block grant is at risk, which equates to approximately \$2.2 million compounded. Typically, a 1-year corrective action period is allowed for states to come into compliance before the penalty is assessed.

**Senator Brower:**

The original bill clearly referenced "gaming at a gaming establishment" as opposed to some other kinds of spending. The amendment changed this wording to "spending at an establishment operating under a nonrestricted gaming license." I will work with Legal Counsel to resolve the issues brought up in today's hearing pertaining to this language.

**Chair Jones:**

Shaun Griffin, Executive Director, of Community Chest, Inc. submitted a letter of opposition to S.B. 381 ([Exhibit H](#)) for the record.

The hearing for S.B. 381 is closed, and the hearing for S.B. 501 is open.

**SENATE BILL 501**: Makes various changes concerning substance abuse prevention and treatment. (BDR 40-1141)

**Ms. McDade Williams:**

Senate Bill 501 has three primary purposes: 1) to alleviate a burden for certain alcohol and drug abuse facilities; 2) to require licensure for all alcohol and drug abuse facilities in Nevada; and 3) to allow certification of detoxification technicians to be handled by the Health Division rather than the Division of Mental Health and Developmental Services (MHDS).

Currently, alcohol and drug abuse facilities must be separately licensed by the Health Division and then be certified by the MHDS. Section 1 of S.B. 501 allows for one interaction for these activities. Although certification and licensure have been dealt with as separate activities, the Health Division intends to combine the activities and issue one document indicating the facility complies with the requirements that allow for licensure and for payment from the Substance Abuse Prevention and Treatment Agency (SAPTA) DHHS.

Section 2 of the bill deletes existing law that only requires licensure of an alcohol and drug abuse facility if it is currently certified. This change effectively means that all alcohol and drug abuse facilities must be licensed by the Health Division. Additionally, beginning in section 9, S.B. 501 reassigns the certification of detoxification technicians, facilities and programs for the education and treatment of alcohol and drug abuse from MHDS to the Health Division.

These efforts are intended to increase efficiencies and take advantage of economies of scale with a centralized licensure system that is being brought online by the Health Division in the next biennium. The bill moves the authority to approve the operation of a facility as an evaluation center from the State Board of Health to the MHDS.

Section 26 contains provisions that allow the Health Division to license detoxification technicians until the Board of Examiners for Alcohol, Drug and Gambling Counselors adopt regulations for their licensure. This Board has not adopted those regulations since 2003 when the transition was made from the Health Division to the MHDS. I will follow up on this if this bill is approved and moves forward.

**Senator Hardy:**

Who has the ability to treat alcohol and drug abuse problems?

**Ms. McDade Williams:**

The Health Division licenses alcoholic and drug abuse facilities that receive funding from SAPTA. The services provided by the facility must be provided by an appropriate licensed professional. The services provided are designed to meet the needs of the individual.

**Senator Segerblom:**

If a facility does not accept any state or federal money, does the State have any regulatory oversight?

**Ms. McDade Williams:**

The State does not have any regulatory oversight at this time.

**Senator Segerblom:**

Do you know if any other states have regulatory oversight?

**Ms. McDade Williams:**

I do not know. I would have to do research. The provisions in S.B. 501 will allow the Health Division to have oversight over all licensed facilities.

**Barry W. Lovgren:**

The intent of S.B. 501 is to close a loophole that has allowed uncertified programs to operate without licensure. This is a good thing. However, I am testifying against the bill because as it is currently written, it does not accomplish what it is trying to do.

I have submitted my written testimony ([Exhibit I](#)) that explains in detail my concerns and recommendations.

**Chair Jones:**

Have you had an opportunity to meet with Ms. McDade Williams and discuss your concerns with her?

**Mr. Lovgren:**

I met with Richard Whitley, Administrator, MHDS. I told Mr. Whitley in November 2012 of the need to do this alignment. My recommendation made back then does not apply any longer because the authority for certification is being transferred in S.B. 501. Additionally, a year ago, I petitioned the Health Division to adopt standards to meet the current mandate of NRS 484C.310 so

the courts would have access to evaluation centers under that particular statute. The Health Division has not been able to lawfully refer a client to an evaluation center under NRS 484C since 2007. I petitioned the Board to adopt regulations to allow lawful evaluation centers at least until statutory alignment could be achieved this Legislative Session. That petition was granted, the regulation was drafted and nothing has happened since. The courts still cannot lawfully refer any clients to an evaluation center.

**Senator Hardy:**

I recommend these comments be reviewed with Ms. McDade Williams.

**Senator Segerblom:**

These sound like legitimate issues. I too would like these proposals reviewed by Ms. McDade Williams.

**Ms. McDade Williams:**

I would be happy to go through the concerns with Mr. Lovgren and Legal Counsel. If necessary, we will draft a proposed amendment.

**Chair Jones:**

The hearing for S.B. 501 is closed. The hearing is open for S.B. 277.

**SENATE BILL 277**: Revises provisions relating to firearms. (BDR 15-923)

**Senator Ben Kieckhefer (Senatorial District No.16):**

Senate Bill 277 is an attempt to correct the deficiencies in the system when addressing the mentally ill and their ability to purchase firearms. The intention is to place a reasonable restriction upon people who cannot be responsible gun owners while protecting the civil liberties of those who can.

It is generally accepted in state and federal laws that individuals who have been committed to a psychiatric hospital should be prohibited from purchasing firearms. The problem is the laws do not reflect the reality of how the mental health system and the judicial system interact to meet the needs of the people suffering from mental illness who pose a danger to themselves or others. In 2012, not one person was committed by a judge to the Nevada Mental Health Institute Hospital in Sparks. That was despite the fact psychiatrists filed 583 petitions with the court seeking commitments for patients they had



diagnosed as mentally ill whom they considered a danger to themselves or others.

In 2011, there were only 7 commitments out of 601 petitions. In southern Nevada, approximately 10 percent of the petitions for commitment are granted. Just because a petition is not granted does not mean it is not warranted. Several factors can result in a petition not being granted including: individuals upon advice decide to do a voluntary admission versus an involuntary admission; people who are stabilized and discharged before going before a judge; or continuance by the judge of the legal proceeding based upon that petition. No clinical difference exists between this group and the 10 percent in Clark County who are actually committed to the facility.

Under existing law, an individual's name is placed on the National Instant Criminal Background Check System (NICS) if he or she is committed to a psychiatric hospital. Under S.B. 277 and with several amendments proposed today, individuals will be put onto NICS on the filing of the petition for their commitment. The exception is if a judge determines there was no basis for the petition to be filed. If imposed, the prohibition to purchase firearms would last for 3 years. After that, the person could petition the court for reinstatement.

The provisions of this bill only apply to people who are petitioned for an involuntary admission to a psychiatric hospital. They do not apply to people seeking mental health treatment on their own. The provisions apply to individuals who are being held against their will under the Legal 2000 law who have been diagnosed with a mental illness and are considered by their psychiatrist as a danger to themselves and other people.

You may hear in testimony today concerns about taking away constitutional rights without due process. I recognize there is a big difference between a court order and a psychiatric petition. However, the psychiatric petition already carries significant weight in Nevada law. For example, petitions can extend the length of time in a hospital. When a petition is filed in court, a person can continue to be held against his or her will for up to 5 additional days beyond the original 72 hours. In essence, their right to freedom is taken away for another 5 days. The professional responsibility of the psychiatrist is relied upon for making determinations in the interest of public safety.

I am coming forward with S.B. 277 to address what I see as a significant gap between the intent of the law, what the people expect and the way the system actually works. I do not see this as the solution to all gun crime.

I have provided the Committee with an amendment to S.B. 277 ([Exhibit J](#)).

**D. Eric Spratley (Lieutenant, Washoe County Sheriff's Office):**

The Washoe County Sheriff's Office supports S.B. 277 and supports the citizen's right to bear arms. This bill does not infringe on those rights but provides additional protections for the citizens of Nevada.

**Robert Roshak (Executive Director, Nevada Sheriffs' and Chiefs' Association):**

The Nevada Sheriffs' and Chiefs' Association supports S.B. 277.

**Dennis Johnson:**

I live in Carson City. I am a private individual speaking only for myself. I support S.B. 277. About 25 years ago, my brother had mental issues. When I noticed his irrational activities, I called the sheriff's office, the Federal Bureau of Investigation and the United States Secret Service. I learned there were no laws that would prohibit my brother from buying a firearm. My brother's situation got so bad he took his own life. People who have severe mental issues can snap at any point. We must do whatever we can to keep them from obtaining a weapon.

**Daniel Reid (National Rifle Association of America):**

I have submitted a written statement ([Exhibit K](#)). The National Rifle Association (NRA) opposes S.B. 277 in its current form. This bill could cause someone to lose his or her constitutional rights based upon the filing of a petition that does not afford due process. The NRA has been working with Senator Kieckhefer to find some agreeable language. The NRA is willing to support efforts to improve Nevada's mental health system without infringing on the constitutional rights of Americans.

**Megan Jackson (Nevada Firearms Coalition):**

I will be deferring to one of our board members in Las Vegas who is prepared to speak. I am submitting a letter ([Exhibit L](#)) from Don Turner, President of the Nevada Firearms Coalition, expressing opposition to S.B. 277.

**Richard Brengman (Firearms Retailer):**

Priscilla Ford was never formally adjudicated to be insane. Her weapon was a Lincoln Continental. The terminology in S.B. 277 is undefined or poorly defined. Too much of it refers to other statutes. Insomnia can be considered a mental illness. There are people who served in the military who have been denied the right to firearms because they had post-traumatic stress disorder (PTSD), but the level of PTSD appears to be irrelevant. Senate Bill 277 is premature, not fully defined and redundant to federal law. Please do not pass this bill.

**Christopher Frey (Deputy Public Defender, Washoe County Public Defender, Washoe County):**

I have submitted a letter ([Exhibit M](#)) from the Washoe County Public Defender in opposition to S.B. 277. Cases where a petition has been filed have not received judicial reviews. The individual cannot legally challenge the determination at the petition stage of the proceedings. We worked with Senator Kieckhefer to try to build in some front-end due process as an amendment to the bill. The language we came up with defeated the intent of the bill.

The procedural due process concerns in S.B. 277 are pronounced. Under existing law, a person is prohibited from obtaining a firearm upon a court order authorizing commitment. The firearm prohibition attaches only after a hearing, after appointment of counsel and after a judicial finding that the person meets the criteria for commitment. Senate Bill 277 proposes to push back the time when the prohibition would attach to the mere act of filing a petition. This is before the appointment of counsel, before a hearing and before a judicial review. This bill would make the accusation of a mental illness the disqualifying event as opposed to the actual adjudication of a mental illness.

Given the fact there is no mechanism to challenge the filing of a petition, it is not the appropriate time in the proceedings where one should be saddled with a prohibition as grave as not being able to possess a firearm. This is a constitutionally protected right.

In the domestic battery context, one is prohibited from possessing a firearm upon a conviction. These individuals have had the benefit of counsel, a contested proceeding and judicial review. Only after that does federal law deem it appropriate to deprive an individual of a constitutional and protected

right. Senate Bill 277 would have the most grievous consequence attached at the earliest stage of the proceedings without all the procedural safeguards.

**Chair Jones:**

The most grievous consequence would be if the petitioned person killed someone.

**Mr. Frey:**

I understand your point. Of course, we are very cognizant of the public safety issues. This is an extremely tough balance. This bill gets the balance wrong. The grievous consequence to the individual is the deprivation of liberty that falls on the heels of commitment. The prohibition that attaches is a collateral consequence. Collateral consequences do not attach until judicial review has actually occurred. In this case, the collateral consequence occurs before judicial review. It puts the cart before the horse and turns procedural due process on its head. This bill does not allow for any front-end protections. Existing law does. Existing law gets the balance right.

**Senator Hardy:**

In a hypothetical situation, an individual has an acute episode of a psychosis and threatens to hurt someone. The person appears to be a danger to self or others. He or she then goes to Scheels and tries to purchase a firearm. There has been no counsel or judicial review. What do you propose be done to prevent this person from buying a firearm that he or she may use to harm someone? How do we protect people who have been threatened? What is your solution?

**Mr. Frey:**

Existing mechanisms are already in place for that situation. It would be incumbent upon a person observing the psychosis to report the person to the police. If the individual is in acute psychosis, the person is subject to a Legal 2000 provision, which would result in a 72-hour hold in a mental health facility. The doctors on staff would review the person and determine the eligibility for the filing of a petition. The procedure would go forward from there. If the person were adjudicated mentally ill, the person would be prohibited from obtaining and possessing a firearm.

The second avenue for the person experiencing acute psychosis is to petition for an involuntary commitment. If the person refuses treatment, the existing law

allows that person to swear out a statement and file a petition. The mechanisms are in place but are reliant on a responsible citizen to do the reporting.

**Senator Hardy:**

What happens if a person tries to buy a weapon and the purchase is refused by the clerk because of the person's presentation and what has been heard in the media?

**Mr. Frey:**

I do understand the question and the hypothetical situation. In all due respect, I believe I have answered the question. If someone is experiencing an acute psychotic episode, it is the responsibility of fellow citizens to report the situation to the police to start the Legal 2000 proceedings.

**Senator Segerblom:**

Do you believe it is better to do a Legal 2000 proceeding rather than another process to prevent an unstable person from buying a gun? This bill does not propose taking away this right forever.

**Mr. Frey:**

I favor the existing law, which only attaches the prohibition after a Legal 2000 is filed, after an evaluation is conducted at the mental health facility, after counsel is appointed, after a hearing occurs and after two court-appointed doctors (a psychiatrist and a psychologist) evaluate this individual. A judicial officer can then evaluate that evidence and decide whether the person is mentally ill. At that point and time is when the disability attaches. That is the existing law, and that is the correct balance.

**Senator Segerblom:**

We are only talking about prohibiting a person who has obvious mental problems from buying a gun. We are not talking about putting someone in prison forever. It seems your due process protections go way beyond what is needed.

**Mr. Frey:**

Forgive me. I do not understand your question.

**Chair Jones:**

Senator Segerblom is suggesting that taking away someone's liberty, as in putting him or her in jail, is different than taking away their ability to purchase a firearm. Would you agree that there is a difference?

**Mr. Frey:**

I agree they are different rights, but they are equally protected rights.

**Senator Hardy:**

Does adjudication take place as part of the Legal 2000 process, or is the person simply released after the 72-hour hold?

**Mr. Frey:**

If the 72-hour hold expires and the person is discharged, a medical professional has determined the individual does not have a mental illness that would cause harm to self or others, and the person would be free to purchase a firearm.

If a medical professional deems the person to be suffering from a mental illness and could cause harm to self or others, the 72-hour hold is prolonged. A petition for commitment is filed and a hearing is held within 5 days. All the procedural due processes would attach. Once a judicial officer adjudicated the person as meeting the criteria for commitment, the person would be prohibited from purchasing a firearm.

**Sean B. Sullivan (Deputy Public Defender, Washoe County Public Defender Office, Washoe County):**

I echo the sentiments and comments made by Mr. Frey. I could not have articulated them better myself.

**Duncan Rand Mackie (Vice President, Nevada Firearms Coalition):**

The Nevada Firearms Coalition opposes S.B. 277. I will read from my prepared testimony ([Exhibit N](#)).

**Chuck Burnett:**

I am a private citizen and firearms instructor. I oppose S.B. 277. My objection is the lack of due process and the 3 years imposed before persons can petition the court for removal of the record from the NICS and relief from the disability. The 3 years appears to be an arbitrary number.

**Jim Sallee:**

I concur with all the previous speakers who have spoken in opposition to S.B. 277. I have one point to add. The mass killings have been done by people on psychotropic drugs. No one seems to be addressing that issue.

**Juanita Clark (Charleston Neighborhood Preservation):**

The Charleston Neighborhood Preservation opposes S.B. 277. I have provided a prepared statement ([Exhibit O](#)) which I will read for the record. I am frightened about the number of people that I entrust for my safety to be in favor of this bill. I am astounded at the lack of respect for the law and the Constitution of the United States.

**Russ Martin:**

I am a private citizen. I echo the voices of opposition to S.B. 277.

**Janine Hansen (President, Nevada Families for Freedom):**

The Nevada Families for Freedom opposes S.B. 277. We echo the concerns expressed about due process.

**Senator Kieckhefer:**

Senate Bill 277 attempts to address a difficult topic. The 3-year prohibition for being able to purchase a firearm was put in place because it is consistent with the period in statute for other restrictions on firearm purchases.

Mr. Fry stated the balance is correct in existing law. There have been no commitments to the Sparks State mental hospital out of 583 petitions and only 7 commitments of 601 petitions in southern Nevada during the past year. I question whether that is the right balance for public safety.

I would like to reserve some time to meet again with the parties involved to determine if it is possible to come up with some amendments to S.B. 277 that would be agreeable.

**Chair Jones:**

I will close the hearing on S.B. 277 and move to the work session for S.B. 276.

**SENATE BILL 276:** Directs the Legislative Committee on Health Care to conduct an interim study of the delivery of supported living services to recipients of Medicaid. (BDR S-891)

**Marsheilah D. Lyons (Policy Analyst):**

The description of S.B. 276 can be found on page 1 of ([Exhibit P](#)). Senator Cegavske has proposed an amendment that adds job and day training services to the issues to be studied.

**Senator Smith:**

Is it possible to consider in the study how providers are paid? There are many intricacies in the rates and payments, particularly in the supported living arrangements contracts?

**Ed Guthrie (Executive Director, Opportunity Village):**

The last time a rate study was done was after the 2003 Legislative Session. I was the chair of the group that did the study. Part of the study looked at how people were paid and what people were paid. It would be appropriate to add this to this study.

**Senator Smith:**

An example would be looking at area standards for housing payments. Do you see this as an appropriate inclusion to the study?

**Mr. Guthrie:**

A review of rate structures and the logic used to determine those rates could be included in the study.

**Senator Smith:**

Please include this request as part of the record. If S.B. 276 passes, I will expect the study to include these items.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 276 WITH PROPOSED AMENDMENT 7764.

SENATOR SMITH SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

**Chair Jones:**

We will move to the work session for S.B. 258.



**SENATE BILL 258**: Creates the Task Force on the Prevention of Sexual Abuse of Children. (BDR 38-192)

**Ms. Lyons:**

An explanation of S.B. 258 has been provided ([Exhibit Q](#)). There are no amendments.

**Senator Smith:**

At the initial hearing, I asked how the task force will be funded considering there is no fiscal note attached. I also requested a limitation be placed on the number of task force meetings to keep the costs down. I still have the same concerns.

**Senator Brower:**

I am open to doing whatever makes sense in the way of an amendment.

**Senator Smith:**

I do not want to create a fiscal issue. The DHHS has stated they can absorb the expenses. I would like to limit the number of meetings to try to keep the task force from being too expensive. It has no fiscal note to cover costs.

Does this bill have some kind of an exemption because it creates a study?

**Risa Lang (Counsel):**

This study would not have an exemption.

**Senator Smith:**

I am concerned about no legislative pay. This may prohibit legislators from participating. Some legislators cannot afford to miss work to attend meetings in the interim.

**Senator Brower:**

Are you referring to the appointees?

**Senator Smith:**

Yes. However, if you pay them, there will be a fiscal note.

**Senator Brower:**

I believe there are individuals willing to serve without pay.

**Senator Smith:**

Can the DHHS confirm that it is possible to absorb the costs? Can we agree upon a confined number of meetings?

**Amber Howell (Administrator, Division of Child and Family Services, Department of Health and Human Services):**

We looked at existing funding sources that could accommodate this project. The Division receives an annual allocation of funds from the Child Abuse Prevention Treatment Act. These funds can be used for services that are child protective in nature. Studying sexual abuse of children is an allowable use of these funds. The Division will absorb the costs of S.B. 258 utilizing these funds. We will use staff paid out of these funds to serve on the committee and to work on the project.

**Chair Jones:**

I will volunteer to serve on this committee free of cost. I suspect Senator Brower would also volunteer.

**Senator Brower:**

I will.

**Chair Jones:**

Senator Smith's recommendation is to amend S.B. 258 to state the members of the task force shall meet at the call of the chair no more than four times per year.

**Senator Smith:**

Are four meetings a year sufficient?

**Ms. Howell:**

The four meetings would be a minimum to accomplish what needs to be done.

**Chair Jones:**

Are six meetings more realistic?

**Senator Smith:**

Six meetings would be good.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 258 SPECIFYING NO MORE THAN SIX MEETINGS PER YEAR.

SENATOR SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Jones:**

Next is S.B. 318.

**SENATE BILL 318**: Requires the Legislative Committee on Health Care to conduct an interim study concerning claims, coverage and payments under policies of dental and health insurance. (BDR S-1061)

**David Truax (Intern to Senator Hardy, University of Nevada, Las Vegas):**

I will read from my prepared testimony ([Exhibit R](#)).

**Senator Hardy:**

I spoke with the Commissioner of Insurance who indicated he was familiar with this problem. The Commissioner is willing to participate in an interim study.

**Senator Smith:**

Is this like the balance billing issue we have heard so much about over multiple sessions?

**Senator Hardy:**

It is similar in that a particular entity does not pay their part. This situation is unique because it has received a prior authorization. The problem occurs when the bill is submitted for payment. There are only two codes; one is a dental code and the other a medical code. The bill is rejected under both codes. It appears this should be simple to resolve, but is not. That is why it will take time for the Commissioner of Insurance to bring all the people together to fix the problem.

**Senator Smith:**

Are you still asking for a study, or can the Commissioner of Insurance just do this?

**Senator Hardy:**

I asked the Commissioner of Insurance that question. He said he could do this and report to the Legislative Committee on Health Care in the interim so we can work through this process.

**Senator Smith:**

Do you still need the bill?

**Senator Hardy:**

A formal study is not needed. This is a study and report through the Commissioner of Insurance. This bill allows that process to take place with the force of legislative intent coming into the next Session.

**Chair Jones:**

Is the Commissioner of Insurance reporting to the Legislative Committee on Health Care about his findings?

**Senator Hardy:**

Yes. He is prepared to have stakeholders involved in this process to solve the problem.

**Chair Jones:**

In section 1, subsection 3 of S.B. 318, it says the Legislative Committee on Health Care shall submit a report of the results of the study. Is the Legislative Committee on Health Care simply putting its stamp on the Commissioner of Insurance's report or is there something more the Legislative Committee on Health Care is supposed to do?

**Senator Hardy:**

The Legislative Committee on Health Care will receive the report and discuss it in an open public meeting.

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**Chair Jones:**

The hearing on S.B. 318 is closed. There being no further business before this Committee, this hearing is adjourned at 5:59 p.m.

RESPECTFULLY SUBMITTED:

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Jackie Cheney,  
Committee Secretary

APPROVED BY:

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Senator Justin C. Jones, Chair

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

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	9		Attendance Roster
S.B. 502	C	3	Marla McDade Williams	Prepared Testimony
S.B. 502	D	19	Marla McDade Williams	Section by Section Description
S.B. 502	E	3	Wendy Simons	Prepared Testimony
S.B. 502	F	1	Larry Fry	Written Comments
S.B. 381	G	8	Senator Brower	Proposed Amendment 8054
S.B. 381	H	1	Chair Jones	Written Comments of Shaun Griffin
S.B. 501	I	2	Barry W. Lovgren	Written Comments
S.B. 277	J	6	Senator Kieckhefer	Proposed Amendment 8081
S.B. 277	K	1	Daniel S. Reid	Letter of Opposition
S.B. 277	L	1	Don Turner	Letter of Opposition
S.B. 277	M	2	Christopher Frey	Letter of Opposition
S.B. 277	N	2	Duncan Rand Mackie	Written Comments
S.B. 277	O	1	Juanita Clark	Letter of Opposition
S.B. 276	P	4	Marsheilah D. Lyons	Work Session Document
S.B. 258	Q	1	Marsheilah D. Lyons	Work Session Document

S.B. 318	R	1	David Truax	Bullet Points
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