MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
February 26, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:03 a.m. on Tuesday, February 26, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lindsay Wheeler, Committee Secretary

OTHERS PRESENT:

Todd Moody
Ishi Kunin
Jill Marano, Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services
Helen Foley
Christy B. Escobar
Chantelle Watt
Amy Turner
John T. Jones, Jr., Clark County; Nevada District Attorneys Association
Eric A. Stovall

Elisa P. Cafferata, President & CEO, Nevada Advocates for Planned Parenthood Affiliates
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Mary Kandaras, Deputy District Attorney, Civil Division, Washoe County District Attorney's Office
Thomas Moreo, Metro Forfeiture Division, Clark County District Attorney's Office
Lisa Rasmussen, Nevada Attorneys for Criminal Justice
Brian O'Callaghan, Las Vegas Metropolitan Police Department

Chair Segerblom:
I will now open the meeting with Senate Bill (S.B.) 113.

SENATE BILL 113: Makes various changes to provisions governing the termination of parental rights. (BDR 11-434)

Senator Scott Hammond (Senatorial District No. 18):
I am here to present S.B. 113. My handout (Exhibit C) shows the states that have a putative father registry. I like to refer to it as the responsible father registry. Another handout (Exhibit D) contains frequently asked questions. Most of the information applies to this bill. Senate Bill 113 requires the Health Division of the Department of Health and Human Services to establish a Registry of Putative Fathers. It allows for an expedited procedure to terminate the parental rights of a father for the purposes of adoption in certain circumstances. This bill addresses two issues: streamlining adoption proceedings in certain instances and avoiding situations in which a child is placed in a home and then later taken out of that placement. This bill ensures that a putative father has the opportunity to register his information, receive notification of any relevant proceedings for adoption or termination of parental rights and give notice of his interest in a child.

At least 36 states have a registry. This includes neighboring states of Arizona, Idaho, Oregon and Utah. Establishing a registry in Nevada would allow Nevada to better coordinate with these states and provide greater uniformity. As set forth in section 6, the Registry would allow a putative father to register by filling out a form within a certain time frame. He would then be entitled to receive notice of proceedings for the adoption or termination of parental rights of his child. As set forth in section 11, the Registry would be confidential and appropriate information released only to certain entities. The court, certain

welfare agencies and other specified parties would be allowed to view such information.

A registrant could withdraw his registration at any time by a notarized, written request. Under section 8, certain agencies or a person who has filed a petition for termination of parental rights could contact the Health Division for a search of the Registry. If the search reveals that a person has registered as a putative father, the Health Division would provide a certified copy of his registration form to the requesting entity. The Division would also notify the registrant that a petition or summary petition for the termination of his parental rights has been filed.

Section 10 requires the adoption of appropriate regulations. These regulations include fees to conduct the search of the Registry and provide a certified statement or copy of a registration form. The bill prohibits charging fees for registering or withdrawing a name from the Registry. This bill directs the Health Division to maintain a statewide campaign to make the public aware of the Registry and its purpose.

Senator Jones:
I am a proud cosponsor of this bill as a father of two adoptive children. Four years ago, I worked on legislation with Senator Terry Care. The adoption of my daughter was easy, as both birth parents gave up their parental rights before we even knew we had been selected. This bill is personal to me. My son's adoption was very difficult. My wife and I were informed that a birth mother was considering us for the adoption of her son. The birth mother selected us, and my wife and I were present for his birth. The next day, the birth father showed up and said he wanted to assert his rights. The voluntary relinquishment of the birth mother was now put into question. The next 8 months were filled with uncertainty as we worked through the court process. My wife was extremely stressed, and it was difficult for her to bond with our son until we knew he was ours. It placed a tremendous amount of stress on our family. We were lucky. In the end, we got to keep him. Others are not so lucky. Some families have the child taken away after placement. This bill does not take away any rights and allows a birth father to assert his rights even prior to birth. This bill allows for prospective adoptive parents to know that before accepting a placement a birth father has asserted his rights. I hope we join together to create the Registry.

Senator Hammond:
We are trying to make the adoption system better. My wife and I are adoptive parents. After our baby was placed in our care, we still had to terminate the father's rights. For 6 months we had to place an advertisement in a legal newspaper. I do not know of one person who reads this particular publication. That advertisement required the name of the birth mother so any potential birth father would recognize the name. It dragged the birth mother into the process for another 6 months when all she wanted was to move on. The Registry makes the process more discreet. The names will be in the Registry, but will only be accessed by only those who need to know.

Senator Hutchison:
We need to strengthen adoption polices while respecting the rights of the birth and adoptive parents. I am proud to be a primary cosponsor of this bill. Do other states have public campaigns to inform the public of these registries? How will the Registry allow for coordination with other states with registries?

Senator Hammond:
There is no uniform coordination with other states. A movement to make a national registry failed. If a national registry were to exist, we would have greater coordination between the states. Nevada would coordinate with Health and Human Services to get the word out and make it effective. Informing the public of the Registry is a difficult process. Mary Beck from the University of Missouri Law School will provide additional information regarding this area in additional testimony in the future.

Senator Ford:
I like the intent of this bill. I am also an advocate of fathers' rights. Is the time frame contained in the bill sufficient to provide adequate notice to protect putative fathers' rights?

Senator Hammond:
It does. The system falls short of providing notice to putative fathers. Our colleges and universities are where many of these pregnancies occur. This Registry is a fair process. The potential father can put his name on the Registry before the birth of the child. The name can then be matched with the mother by entities who deal with adoption. This system is fair because the putative father can put his name on the Registry right away. It places more responsibility upon the putative father.

Senator Ford:
Does the bill contemplate responsibilities related to the child, such as child support? Will the Registry link existing laws and responsibilities relative to putative fathers?

Todd Moody:
Yes. It would allow the State to search the Registry for information in regard to a putative father for child support purposes. It would make it easier for the father to identify himself for child support purposes as well.

Senator Jones:
The term "putative father" is specifically defined in section 14 to include particular people who are in that category. There are others not in the category, such as presumed fathers. Presumed fathers are those who are married at the time of birth, not married but cohabitating with the mother 6 months prior to the time of birth and parents who have tried to marry each other. If the child is under the age of majority and the birth father receives the child into his home and holds the child out as being his natural child, he is a presumed father. A large category of men are not required to register under this bill.

Mr. Moody:
I am a partner at the law firm of Hutchison & Steffen, and I have been practicing law for more than 18 years in Nevada. I am a fellow with the American Academy of Adoption Attorneys. I have terminated the rights of more than 500 putative fathers and finalized approximately 3,000 adoptions for more than 5,000 children. The Registry of Putative Fathers makes various changes to provisions in chapter 128 of the *Nevada Revised Statutes* (NRS) which governs the termination of parental rights and, in certain circumstances, provides for a summary termination of parental rights. The bill revises provisions relating to the adoption of minor children.

A man who registers with the Registry of Putative Fathers gains the protection of Nevada law. The Registry entitles him to receive notice of a proceeding commenced in this State for the adoption of or the termination of parental rights of his child. The Registry affords him more protection than he now has under statute. It requires the Health Division to establish and maintain a statewide campaign to ensure the public is aware of the existence and purpose of the Registry.

A putative father is defined in NRS 128 as, " ... a person who is alleged or reputed to be the father of an illegitimate child." Section 14 of S.B. 113 revises that definition of "putative father" to also include, "a person who is not the presumed father, has not acknowledged paternity and has not been determined to have a parent and child relationship with the child." That is, he has not been determined to be the legal father of the child. Possible fathers may register with the Registry and are included within other provisions relating to the termination of parental rights. The bill authorizes certain agencies and persons to request a search of the Registry to determine whether a putative father has registered. The Registry provides for notification to the requesting agency or person and, if so, provides for notification to the putative father who registers.

The State Board of Health would develop the form to be used with the Registry and establish fees for searching the Registry. There is no fee for any man to register with the Registry. All information contained in the Registry is confidential. Agencies and individuals who are authorized to search the Registry would be entitled to certain, limited information.

This Registry would change my law practice and the prospects of adoption for my clients. Under NRS 128.150, if a birth mother wants to place her child for adoption and the father has not or will not consent to the adoption or voluntarily relinquish his parental rights, either the mother, the agency or the family of whom she is consenting to adopt must petition the court to have the parental rights terminated. The court requires that I make inquiries to identify and protect the interests of the putative father. If the father is identified, I am required to provide notice to him of the proceeding either by personally serving him with notice of the action or by publication. After his rights are successfully terminated, he then has 6 months to appeal the termination for lack of notice. After 6 months, he may not challenge the order on any ground.

The Registry of Putative Fathers provides another way to accomplish the termination if a birth mother relinquishes or proposes to relinquish her parental rights to a child for purposes of adoption. As long as no legal relationship has been established between the child and the father, he cannot be identified or the child becomes the subject of an adoption proceeding, I can file a summary petition to terminate his parental rights if he has not registered with the Registry. It would be up to the court whether to terminate his rights without a hearing. I could not use this procedure if there is a presumed father or if the father has established his parental rights.

This bill would facilitate the adoption process. The Registry would allow the termination—normally a 4- to 9-month process—to be done in a summary fashion in no sooner than 35 days. The 6 months to appeal the decision would no longer apply. Instead, the agency or individual I represented would request a search of the Registry and then send notice of the filing of a summary petition to the putative father. He would have 30 days to appear or notify the court that he has attempted to establish paternity or his rights may be terminated.

Senate Bill 113 would not remove the requirement to conduct a diligent search for any other putative father based on information included in an affidavit provided by the birth mother or other reasonably accessible means. If a putative father were found through a diligent search, he must be notified of his right to register with the Registry and that failure to do so will result in the termination of his parental rights. A petition could not be decided sooner than 35 days after the birth of a child. A summary petition that terminates parental rights would be conclusive and binding. I support this bill.

Senator Ford:
What is contemplated by the term "diligent search." Has the term been used in other states' uniform laws? What do the courts say determines a diligent search?

Mr. Moody:
My experience is that it varies from court to court. Many states rely on the affidavit of the birth mother. Other states require a practitioner research utility bills, DMV records or county assessor records or require a person to hire a process server to do a search. The courts want to be sure we have explored a last known employer, friends or relatives of a putative father. Those areas are contemplated by the courts in regard to a diligent search.

Senator Hutchison:
How would this bill provide more protection for putative fathers?

Mr. Moody:
There is no obligation for a birth mother to disclose a putative father. The birth mother has a constitutional right to privacy and does not have to name anyone. This bill provides a man who suspects a woman is potentially pregnant with his child to be able to register. His existence can be known, and it can be known

that he has an interest in the child. The Registry provides the man with notice which he has not had under Nevada law.

Ishi Kunin:
I am an attorney who has practiced for over 30 years. I primarily practice adoption and parental rights. A father may come forward after a child has been placed. The father has a right to his child when he has no knowledge of the child or was lied to by the birth mother. I believe that sex is notice. I am aware of 12 states that have provisions in their laws that state sex is notice of pregnancy. It puts the responsibility on a man to come forward if he has sex and a pregnancy is possible. He is provided notice of any attempted adoption. This bill protects everyone. There are potential issues when a birth mother comes forward and wants to present a child for adoption. In greater than 90 percent of these cases, the birth mother is not married and there is no presumed father. There are many reasons the birth mother refuses to disclose the birth father, including domestic abuse, fear the birth father will alter her plans or tell someone she does not want to know about the birth. There may be an improper relationship. Such reasons may compel a birth mother to lie about her knowledge as to who is the birth father.

A diligent search can only provide so much information. I have had birth mothers tell me they had no idea who the fathers were. I had another birth mother state she did not even know she was pregnant until the night before she gave birth. We publish most cases in the *Nevada Legal News*. We can publish notice for the statutory period as to "John Doe"; when no father comes forward, the adoption goes through. There are cases where the birth father finds out and comes forward. This may be because the birth mother is having second thoughts or the birth father finds out through friends and families and disrupts a placement. The Registry would provide notice to men to register in order to have responsibility for the child if they want that responsibility. Sex is notice. Other problems exist. Oftentimes, married men have to be personally served. If a mother thinks the name is "Bob Smith," there may be 33 men with that name in the phone book. I am required by the courts to provide personal notice to each of those men. It upsets and disrupts people's lives. This bill gives the father the right to provide notice that he is interested and may be found. It protects fathers when mothers have children born in this state and send the children out of State. This bill requires a person to go to the state of birth and review the registry. There was a movement to make a national registry, but it failed due to religious components.

Nevada's adoption and termination of parental rights statutes uphold the best interest of the child. *Champagne v. Welfare Division of the Nevada State Department of Human Resources*, 100 Nev. 640, 691 P.2d 849 (1984) provides that we must act in the best interest of the child. What can be of greater importance knowing this child is in a stable placement and cannot be disrupted? Alternatively, a father who wants to parent comes forward by receiving notice. This Registry is also important for children who come into the foster care system if there is no father's name on a birth certificate. With a Registry, a putative father would be a resource for State agencies to get more information regarding children placed in the system.

Jill Marano (Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services):
We support this bill to move children to permanency in a timely fashion. This bill will help identify potential parents or return a child to a biological parent. This bill also helps expedite the termination of parental rights.

Helen Foley:
I am a single mother who has adopted two children. Before the children are adopted and brought into the home, the 6-month waiting period is a scary time. The mother can relinquish the rights after 3 days. However, many fathers do not know of the child. If the putative father did know and had the opportunity to be a part of the process, it would be easier for the adoptive parents to make decisions before a child is brought into their home. This bill helps everyone involved including those who really want to be fathers and the adoptive parents who do not want the uncertainty and fear that their new baby will be taken away from them.

Christy B. Escobar:
I am an adoptive father and practice the law in this area. I have seen adoption disruptions. Senate Bill 113 helps the adoption process. It allows an adoptive couple to know there is an ending time. It can be almost a year and half before an adoptive family knows the adoption is finalized. The process typically takes 4 to 9 months with an additional 6 months. It is not in the best interest of the child or anyone else involved. I find it appropriate for a birth father to assert his rights as soon as possible. That notice occurs once the act of sex occurs.

Chantelle Watt:
My husband and I support this bill. In July 2012, our daughter was born. Three days later her mother relinquished her parental rights. We took her home, but 3 days after her birth, the father came forward. He knew about his child earlier but had stated he did not want anything to do with her. However, he was still within the time frame in which he could come forward. Two months later, we lost our daughter. It was the worst day of our lives. We support this bill. It would help each mother who does not want to parent and is forced to do so due to the father's assertion of rights. This baby who bonded with us now is forced to bond with another person. I feel it was not in her best interest.

Amy Turner:
I am a licensed social worker and adoptive parent. Yesterday, another birth father came forward a week after placement and stated he wants to assert his rights. Adoption disruptions happen after the child has been placed. It is very upsetting to everyone involved. I am in support of this bill.

John T. Jones, Jr. (Clark County; District Attorneys Association):
Both entities I represent are in favor of this bill and have proposed amendments (Exhibit E) particularly in section 6, subsection 1, paragraph (c), which could strengthen the Registry. In other states, a father waives his rights to notice and consents to the adoption if he is not listed in the Registry. The amendment adds that if a putative father can show by clear and convincing evidence it was not possible to file with the Registry within the 30-day time frame and that he filed within 30 days of the impossibility being lifted, he could proceed with asserting his rights. Additionally, a provision should be added that the governmental agencies should access the Registry for free as stated in section 10. Sections 8 and 11 detail who can specifically access Registry information; those sections should be combined into one section. Oftentimes, it is difficult to get an affidavit from the mother. We request an alternative method be added to the bill in section 12.

Chair Segerblom:
Have Mr. Moody and Ms. Kunin reviewed the amendments?

Senator Hammond:
I received the amendments late this morning and would like to review them more thoroughly before commenting.

Ms. Kunin:
I have not reviewed the amendments. I am concerned about the meaning of "impossibility" in section 6 and extending a period of time for which notice would be acceptable. I agree with the alternative to the birth mother's affidavit.

Mr. Moody:
I have not reviewed the amendments. I do have concern regarding the ability of a father to assert his rights based upon impossibility. I feel that may weaken the Registry.

Ms. Kunin:
The 30 days referred to in the bill is after the birth of the child. The father has had the prior 9 months of pregnancy to submit to the Registry.

Mr. Jones:
We understand that the father would have 9 months and 30 days to submit to the Registry. The amendment provides that if a father does not submit within that time frame, the father waives any right to consent to the adoption and his rights as a potential putative father.

Senator Hutchison:
Is it the intent of the amendment for the Registry to be the primary vehicle by which fathers can assert their rights by this new system?

Mr. Jones:
Yes. That is the purpose of the amendment. A putative father has 9 months during the pregnancy and an additional 30 days after the birth of the child to submit to the Registry. Section 12 provides for an additional 30 days after the father receives notice of a filing of a petition or agency, and that additional time affects the efficiency of the Registry. We are trying to strengthen the Registry. A public campaign portion of the bill places men on notice. If a man thinks he may potentially have a child, he should register.

Chair Segerblom:
Please work together to address these issues. We will bring it back for a work session.

Eric A. Stovall:
I am an adoption attorney, and I am in opposition to S.B. 113. Half of my practice deals with adoptions. I represent adoptive parents and work on over 100 adoptions each year. We need to make it easier to remove barriers. This bill does not make it easier to adopt. This Registry adds additional costs to an already expensive process.

In my practice, an adoption plan is initially made. A birth mother comes forward wanting to place her child. The birth mother fills out an affidavit and either identifies the putative father or does not disclose that information. The petition for termination is typically filed after the baby is born, although it can be filed prior to the birth. I serve any putative father who the birth mother identifies. A 3- to 5-minute court hearing is held. If the putative father comes forward, the hearing is transferred to a contested trial, which can take months to complete. If the putative father does not come to the hearing, a default is entered. The hearing determines whether the legal requirements are met.

This bill establishes more bureaucracy. Who is going to pay for the Registry? Taxpayers will have to pay for the Registry on the front end, and adoptive parents will pay for the Registry so it can be self-sufficient. An average adoption costs between $25,000 to $35,000. This will increase those fees.

Identifiable putative fathers must be provided notice and the opportunity to respond. There is no change with this bill. If a putative father is identified, he has to receive notice. The birth father has to make affirmative steps to contest an adoption. The court still has to review the case. This bill adds an additional cost burden to the State and does not avoid a significant step or time. Inevitably, there will be claims the Registry is unconstitutional. I believe litigation has already taken place in other states which have similar registry systems. There are no low-cost means in which to promote adoption.

A disrupted adoption is terrible. I work with those adoptive parents, and I try my best to make sure those adoptive parents are protected. This bill does not change that putative fathers may still come forward. Disruptive adoptions will still occur. Alternative ways exist to improve the adoption process without adding costs. There needs to be legislation adding grounds to terminate the rights of birth fathers who do not come forward. An amendment to *Nevada Revised Statute* 128.105 would be just as effective. We should add additional grounds for termination of rights, such as a putative father who abandons the

birth mother during pregnancy or rapes the birth mother. These types of protections can be added as an alternative to implementing an expensive registry.

This bill only cuts a few weeks out of the adoption process. The time it takes to terminate a father's rights is typically 8 to 10 weeks. This bill reduces that time to approximately 4 weeks. I do not see any time-saving advantage. Even if the Registry may significantly reduce the time, the adoptive family may not finalize the adoption for 6 months. The process should not be rushed. A statewide advertising campaign is a laudable goal, but taxpayers pay initially and adoptive parents will pay for that campaign in the end. If a father asserts his rights, a Registry will not change his rights to that child. A putative father may still assert his rights in advance as well. Nothing keeps a putative father from filing a paternity suit in advance of the birth of a child. If there were a prohibition to that assertion, legislation could be enacted without implementing the Registry.

There is no requirement for a birth mother's name to be placed in an advertisement. The publication time is 4 weeks. I believe there is a 6-month maximum appeal time in which a termination order can be contested for any grounds. Legislation can be enacted to reduce the appeal time to 30 days, which is the normal appeal time for almost all other court actions. Under a registry system, John Doe terminations would still be applicable. John Doe terminations keep someone from coming forward who was not identified by the birth mother. Misidentification can still happen with a registry system, as notice and personal service would still be required. I do not think we are solving any issues. I see additional costs and burdens.

Senator Hutchison:
You stated you work with four different agencies. Are you here on behalf of them, or are you testifying on your own behalf? Have you cleared your testimony with those agencies?

Mr. Stovall:
No. This is my own personal testimony; I am not representing anyone but myself today.

Senator Hutchison:
You stated that you felt that the Registry would not assist with the identification and service. You stated various individuals with the same name as

the putative father as provided by the birth mother would still have to receive notice. This bill would include placing identifying information, such as a social security number and addresses, on the Registry. Why would all the individuals with the same name have to be served when we have specific, identifying information?

Mr. Stovall:
If a man registers, it would be unnecessary to contact each and every person with the same name. The mistake comes from the birth mother giving a general name without any other identifying information. If the man is identifiable under the Registry, you still have the due diligence to notify that person.

Senator Hutchison:
Do you agree that sex equals notice of pregnancy?

Mr. Stovall:
Yes.

Senator Hutchison:
Are you in agreement that a man can then take steps to register once he is put on notice of a possible pregnancy by having sex?

Mr. Stovall:
I am in favor of sex being notice. I recommend the Legislature add abandonment of the birth mother during pregnancy to the statute. The man has notice, and that time period should count toward the termination of rights.

Senator Hutchison:
You stated that there would be less litigation if we amended the statute to include abandonment of the birth mother during pregnancy or if the birth mother was raped. However, there will always be litigation regardless of what is changed. Would it not be a factual determination for a court to make as to whether the birth mother was in fact abandoned or raped?

Mr. Stovall:
Yes. A person has to go through a contested trial process regardless of whether a registry system is in place. We will not get away from that litigation. We should add grounds instead of instituting a registry.

Senator Jones:
Did you make your concerns known to the drafters of the bill? Please do that prior to testifying. I have spent tens of thousands of dollars on my adoptions. Personally, I would have been more than willing to spend a few extra dollars to go through a putative registry process. Have you had clients who would not be willing to spend a $100 or so for a registry?

Mr. Stovall:
No. I do not believe this Registry would only be a couple hundred dollars. It is going to be much more expensive.

Senator Jones:
Do you believe the State would be charging hundreds of dollars to do a simple search?

Mr. Stovall:
The Registry will cost a lot of money that will have to be paid by someone.

Senator Jones:
I did not see a significant fiscal note on the bill.

Senator Ford:
My concern is regarding the rights of putative fathers. Do you believe this bill has sufficient safeguards to protect the rights of a putative father?

Mr. Stovall:
This process is too quick. The putative father has 9 months prior to the birth and 30 days after birth to make an assertion of rights. If a putative father is notified by personal service, is known and has opportunity to come forward, there is adequate time. However, if a birth mother keeps the name secret, then he does not have notice. The timing does not cause me concern. There are adequate safeguards regarding that issue.

Mr. Moody:
Mr. Stovall's comments are not new ideas since protections are already in Nevada caselaw. A birth father who abandons a birth mother becomes a factor in the adoption process.

Chair Segerblom:
Can you indicate where the bill makes the adoption process more certain for the adoptive parents?

Mr. Moody:
Yes. A birth mother who relinquishes her rights 3 days after birth and does not list the father. Instead of taking 4 to 9 months to terminate the rights of a John Doe, it could be done in a summary proceeding in as little as 35 days after the birth of the child. It would give peace of mind to an adoptive family and protect the birth mother and child.

Mr. Stovall:
I disagree that it takes 4 to 9 months to terminate parental rights. I routinely do it in 10 weeks. It could take place within 30 to 35 days, unless the birth father comes forward and asserts his rights, which could happen under the Registry.

Chair Segerblom:
Assuming there is no birth father identified, under this bill the proceeding would occur faster. The adoptive parents would have peace of mind.

Mr. Stovall:
It would be 6 weeks under the Registry as opposed to 8 to 10 weeks.

Ms. Kunin:
Caselaw in Nevada allows for abandonment to be considered prior to the birth of the child. That time gets tacked onto the 6-month presumption. If the State had a registry and a man registered upon sex, a practitioner would be able to identify that birth father prior to birth. That putative father would receive notice and the abandonment time would begin to run because you have an identifiable person. The hope would be that the notified father would either relinquish or assert his rights prior to the placement of a child in an adoptive parent's home. The 30-day period would not have helped in the prior testimony of the Watts. The birth father came forward 3 days after the child was placed in their home. There is an additional period of time in which a birth father could come forward. A birth father who typically asserts his rights does so prior to the birth of the child. Even if there has been no assertion of a father regarding a child, the time in which the adoptive parents have to wait is stressful. Having finality or knowledge that a birth father cannot come forward after a child is placed in an adoptive parent's home is reassuring.

Senator Jones:
I agree completely.

Elisa P. Cafferata (President & CEO, Nevada Advocates for Planned Parenthood Affiliates):
We would like to raise the issue of parental rights in cases of rape. We are supportive of the Registry because it provides clarity. We have a teen parenting program in which we provide education for teen mothers. A frequent question is whether the birth mother has to name the birth father. This bill would clarify that for young women. We would like to make sure the legislative intent of this bill is not seeking to create new parental rights in cases of rape. Senator Hammond agreed to further discussion regarding these issues. Several states provide a path to terminate parental rights in cases of rape and abuse. We are not seeking to amend this bill. We would like to see it move forward and have Nevada join states that provide protections for mothers. In many cases, a mother enters into a criminal proceeding and bargains away her right to prosecute a rapist in exchange for the termination of the father's rights.

Senator Hammond:
Among the frequently asked questions in Exhibit D is one regarding the constitutionality of a registry. This issue was addressed in *Lehr v. Robertson*, 463 U.S. 248 (1983) regarding upholding those registries and the cost.

Chair Segerblom:
Is there a fiscal note?

Senator Hammond:
Yes. There is a fiscal note. This bill saves the State money in the long run by placing children sooner. Many states have saved millions of dollars by placing children just a month sooner. Some states charge the adoptive parents approximately $100 or so to access the registry. Those states have on average a 1,000 entries per year. In Nevada, that money would be used to maintain the Registry.

Chair Segerblom:
Most of the Committee cosponsors and supports S.B. 113. We will close the hearing on this bill and move to S.B. 118.

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

Senator Greg Brower (Senatorial District No. 15):
I introduce this bill at the request of the Attorney General's Office on behalf of the Nevada District Attorneys Association. This bill is intended to assist Nevada's law enforcement agencies in their efforts to target criminal enterprises motivated by greed. We are talking about organized crime operations, major drug dealers, and pimps and sex traffickers of the type we heard about during the recent joint committee hearing on Assembly Bill 67. Nevada law already enables law enforcement agencies to seize property used by such criminals to perpetrate their crimes and allows for the seizure of the proceeds of such crimes. This bill would simply change the standard of proof in forfeiture actions from clear and convincing to preponderance of evidence.

ASSEMBLY BILL 67: Revises provisions relating to crime. (BDR 3-403)

Chair Segerblom:
Is this before a conviction?

Senator Brower:
Yes. It can be. Oftentimes, a civil forfeiture action will commence prior to a conviction, but rarely does the forfeiture action conclude before a conviction. Typically, the civil forfeiture action is stayed pending the outcome of the criminal action. Many criminals are motivated by the acquisition of material goods. The ability of law enforcement to forfeit seized property can be a very effective tool in reducing the incentive for illegal conduct. Asset forfeiture is simply intended to take the profit out of crime to ensure that crime does not pay.

A bit of history might be helpful to those who have not been involved in a forfeiture proceeding. The government's ability to seize and keep property or forfeit property related to criminal activity goes back to English common law. Today, forfeiture is commonly used by both federal and state governments. Nevada's statutory scheme dates back to the 1980s. For decades, the standard of proof in forfeiture actions was preponderance of evidence. During the 71st Session, the standard was changed to clear and convincing. The clear and convincing standard is not what federal law and the laws of most states require. This bill would return Nevada to the more common preponderance standard. As

the civil litigators on the panel know well, the preponderance standard is the one used in the vast majority of civil cases. Most asset forfeiture proceedings are civil, not criminal proceedings.

With respect to the 2001 change in the law, I extend thanks to attorney Lisa Rasmussen who dug up the legislative history from S.B. No. 36 of the 71st Session. I was reminded that as a member of the Assembly Judiciary Committee during that Session, I had serious reservations about the change from preponderance to clear and convincing. I now support Nevada's prosecutors who believe that 2001 change in the law was a mistake and should be reversed. I have the benefit of hindsight and the experience of being a part of such proceedings as a federal prosecutor. I should note that in reading the 2001 bill legislative history (Exhibit F), what seemed to be behind the bill was an issue with the federal scheme that was fixed in 2000. Prior to 2000, the federal law allowed for forfeiture upon probable cause and placed the burden on the claimant to the property to actually prove the property was not related to criminal activity. In 2000, Congress changed that law amidst a lot of controversy and pushback from criminal defense organizations. I believe that the 2001 Legislative Session was influenced by the federal issues at the time.

This bill would not give Nevada's law enforcement agencies the power to seize and forfeit property related to criminal activity. Those entities have had that power for decades. This bill changes the standard. I am not an expert in asset forfeiture. Mary Kandaras from the Washoe County District Attorney's Office and Tom Moreo from the Clark County District Attorney's Office will testify. They are the experts. They do it every day and are here to answer any questions you may have. Brett Kandt from the Nevada Attorney General's Office is here to lend his support.

An example of how a typical case progresses is as follows. There is a seizure of certain property by law enforcement. For example, the Nevada Highway Patrol stops a vehicle for speeding on the highway, and a search turns up a large amount of cash, weapons and illegal drugs. Incident to the arrest of the occupants of the vehicle, the troopers seize it all. The occupants are then charged criminally, and the district attorney initiates forfeiture proceedings pursuant to *Nevada Revised Statutes* 179 by filing a civil suit against the property itself, known as an in rem action. The government then notifies all known potential claimants to the property who can answer the suit, thus

asserting their claim to the property. The case proceeds through discovery and to trial. Most cases settle. It is at the trial that S.B. 118 comes into play.

Chair Segerblom:
Is this during a jury or bench trial?

Senator Brower:
It can be in both. The government must prove by clear and convincing evidence that seized property is either the proceeds of criminal activity or the means for criminal activity. This standard of proof is not the same standard that is used in other types of civil cases. It is not the standard burden used in asset forfeiture cases in most states (Exhibit G). It is not the standard used in the federal system. This creates two problems. First, it is more difficult for the government to prove its case, necessitating more witnesses, more court time and more inefficiency in the process. As a former prosecutor, I understand that it should not always be easy for the government to prove its case. I believe that all members of the Committee understand that. However, it should not be unreasonably burdensome. The government lawyers are our lawyers. We want them to succeed if they have the evidence to succeed. We do not want to make it unreasonably burdensome to do so. The second problem is due, in part, to the first problem. Law enforcement agencies often defer to federal authorities because of the more efficient preponderance standard. State agencies lose a lot of money when this happens.

Chair Segerblom:
Would the FBI receive proceeds rather than the local law enforcement agency?

Senator Brower:
Potentially. Sometimes local law enforcement would receive a cut. And it is not just the State law enforcement agencies that lose. The NRS provides for the contribution of a large percentage of forfeiture proceeds to school districts. When big cases go federal, Nevada's education system loses out on that money. If we could change the standard and keep more of that money within the State agencies, some of it is likely to go to the school districts. That is a good thing. Asset forfeiture provides a valuable tool for law enforcement. It helps strike at the economic foundation of illegal activity, ranging from illegal drugs to sex trafficking to racketeering enterprises. I read a recent article that law enforcement in Clark County coddles pimps. I am not sure I agree with that or if it is true, but that perception exists. Senate Bill 118 would provide a real

way to help law enforcement take the assets of pimps, sex traffickers and organized crime enterprises and provide a real disincentive to engage in that sort of activity.

Senator Ford:
I sit on the Senate Committee on Education. During a recent Committee hearing, we heard a lot of concern regarding the government trying to tell us how to run our families. Is this not another way for the government to take my personal property before I have been convicted?

Senator Brower:
Every day, law enforcement takes people and property with no more than probable cause before these people have been convicted of any crime. It is constitutional. There are procedures and safeguards to protect against permanent, unwarranted seizing of property. That seizure does not change with this bill.

Brett Kandt (Special Deputy Attorney General, Office of the Attorney General):
This bill changes the State standard to keep with the federal standard and that of the majority of states. The federal standard is Title 18, United States Code, section 983C. This bill will promote more efficient use of the limited resources of our courts, law enforcement and prosecution agencies without impacting the due process rights of those claimants to that property. Those individuals will still be accorded the level of due process attendant to all civil proceedings.

Mary Kandaras (Deputy District Attorney, Civil Division, Washoe County District Attorney's Office):
I handle all the civil forfeiture proceedings for Washoe County. We support this bill that is aimed at changing the standard of proof.

Chair Segerblom:
Do you find a lot of cases where the local agencies give up the right to the case to the federal government because the standard of proof is too high for local agencies to meet?

Ms. Kandaras:
In many cases, I defer the forfeiture proceeding to the federal government because the standard of proof is lower in federal court. I have a higher standard of proof to meet. I take very few cases to trial. Those that I do take to trial are

typically prisoners who have already been convicted in a criminal court, such as drug dealers. Those dealers are our bread and butter. We often go to trial on those cases in which I have to prove beyond a clear and convincing standard. I bring in all the evidence. I bring in more evidence. I often duplicate the evidence to be sure I meet the high burden of proof. It is duplicative of resources. Essentially, I am having a second criminal trial on an issue which should have one or two witnesses. We have numerous due process protections regarding arbitrary taking and keeping of property. Property cannot be seized without probable cause. We are required to give adequate notice to the property and person. If we wrongfully take someone's property, we have to return it with interest. There are numerous protections keeping us from arbitrarily taking and seizing property.

Chair Segerblom:
During a jury trial, does the jury know the person has been convicted of a crime? It seems to me, clear and convincing is a 75 percent standard versus preponderance of the evidence, which is 51 percent. I do not see a huge difference.

Ms. Kandaras:
The jury is entitled to know that the individual has been convicted in a criminal trial. However, my standard is higher. I will not take the chance with less evidence when the standard of proof is more evidence.

Chair Segerblom:
Have you ever lost a trial?

Ms. Kandaras:
No.

Senator Jones:
I like the information regarding a portion of the seized monies going to education. Under NRS 179.1187, 70 percent of the amount of money seized in excess of $100,000 goes to the school district in the judicial district. Would you be amenable to an amendment reducing that amount down to $50,000 or increasing the percentage given to education? I think we should have more money for schools, so let us tack it on this bill

Ms. Kandaras:
I know a percentage is given to education.

Senator Brower:
We can discuss that proposal further.

Thomas Moreo (Metro Forfeiture Division, Clark County District Attorney's Office):
We would like to have consistency throughout the State. Since 2001, the Legislature has amended and proposed a number of laws regarding racketeering under NRS 207.360 and technology crimes under NRS 179.1211. Both have criminal forfeiture proceedings that take place when assets have been seized as a result of the criminal activity. In criminal proceedings, the burden of proof is a preponderance of the evidence. If the Legislature has allowed the standard to be lower in criminal forfeiture proceedings, we would like the civil forfeiture standard be the same. It should be consistent across the board with a standard of proof being preponderance of the evidence.

Senator Ford:
During the 71st Session, was there any evidence presented regarding an overly aggressive approach to seizure of property?

Senator Brower:
I have not reviewed all the legislative history, but I was there. I voted for the bill. During that time, federal problems were being presented. Horror stories were told of the government overreaching. It does happen, but it should not be an obstacle to this bill.

Lisa Rasmussen (Nevada Attorneys for Criminal Justice):
We would not have problems with the bill if federal protections were included in Nevada law. Federal law has a different statute for each different item being seized. The Nevada Attorneys for Criminal Justice provided written opposition (Exhibit H). The protections are present in the federal law but not in our State. In 2001, many people testified regarding this issue. A man testified that he had $220 million seized. That bill went back and forth between the Houses. Instead of putting in an extensive list of due process safeguards, those Legislators made the standard higher. If you would like to have the standard lowered, then you need to add in the due process safeguards. We do not have safeguards. I have had cases in which clients have had money seized at the time of arrest and the

money just disappears. I have also had bank accounts seized in federal court, but the person may ask the court for some of the monies seized to hire representation. There is nothing similar to the federal standards in Nevada. In 2001, there was a backlash to the federal laws. Simple ways exist to add more protection to those who may be innocent. There are differences between the federal and State statutes. The federal statutes distinguish between personal and real property.

There is a 60-day notice period or up to 90 days in some circumstances. To my knowledge, that notice is not provided with any consistency in Clark County. I am not sure if those local agencies are giving cases over to the federal government because the standard is lower. I think local agencies are giving the larger dollar amount cases to the federal government because the federal office knows how to do them efficiently. I am not sure if Clark County even has a specific person or department to handle these types of cases. We would support Senate Bill 118 if safeguards were included. Each county should have a person who is appointed to deal with these types of cases. In Clark County, it is erratic. I have provided an *Institute for Justice Publication* (Exhibit I) which grades the states regarding these issues. Exhibit I gives Nevada a D-plus in terms of protections. The research indicates no accountability. We want accountability on what is seized and where the money goes. Nevada law enforcement officials are required to report on forfeiture but did not respond regarding requests for information. There is an additional concern of no transparency in our State.

No one ever files a civil suit against funds seized on criminal cases. It does not happen in Clark County, but always happens in federal court. Due process protections are very important. There has to be a forfeiture action filed in every case in which something is taken. The standard is lower with racketeering cases because it requires a conviction. Nevada is missing due process protections in the statutory scheme.

Chair Segerblom:
How much money is collected per county via forfeiture actions, and do you have a breakdown of where that money goes?

Mr. Moreo:
Las Vegas Metropolitan Police Department keeps those records, and they can provide that to you.

Brian O'Callaghan (Las Vegas Metropolitan Police Department):
I do not have that information but will get it to you. We support this bill.

Senator Brower:
In Exhibit I provided by Ms. Rasmussen, almost every state receives a D. Under the Nevada profile, the burden is placed incorrectly. It states that the burden is placed upon the claimant. The burden is on the government. It is important to get the due process procedural safeguards correct. The people do not benefit from a higher standard; the people benefit from the correct due process procedural safeguards. There needs to be further work done together.

Ms. Rasmussen:
I would be more than willing to work on that.

Chair Segerblom:
We will now close the hearing at 10:58 a.m.

RESPECTFULLY SUBMITTED:

Lindsay Wheeler,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	5		Attendance Roster
S.B. 113	C	24	Senator Scott Hammond	States with Putative Father Registries
S.B. 113	D	3	Senator Scott Hammond	Frequently Asked Questions
S.B. 113	E	3	John T. Jones, Jr.	Proposed Amendments
S.B. 118	F	95	Senator Greg Brower	Legislative History on SB 36-2001
S.B. 118	G	1	Senator Greg Brower	Innocent Owner Burden in State Civil Forfeiture Laws
S.B. 118	H	3	Lisa Rasmussen	NACJ Opposition
S.B. 118	I	123	Lisa Rasmussen	*Policing for Profit*