MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
February 27, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:04 a.m. on Wednesday, February 27, 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 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

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senatorial District No. 17

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Eric Spratley, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association
Brian O'Callaghan, Las Vegas Metropolitan Police Department
Janine Hansen, State President, Nevada Families
Lynn Chapman, State Treasurer, Independent American Party

Keith Wood
Ron Cuzze, President, Nevada State Law Enforcement Officers' Association
Don Turner, President, Nevada Firearms Coalition
Joel Blakeslee, Southern Nevada Coalition for Wildlife
Jim Sallee, Las Vegas Valley Tea Party
Juanita Clark, Charleston Neighborhood Preservation
Herrmann Glockler
Daniel S. Reid, National Rifle Association
Lora E. Myles, Retired Senior Volunteer Program; Carson and Rural Elder Law Program; Public Guardian's Office
Dara Goldsmith
Kathleen Buchanan
Jon Sasser, Southern Nevada Senior Law Program; Legal Aid Center of Southern Nevada
Michael Beam, Chief, Department of Alternative Sentencing, Douglas County
Rory Planeta, Chief, Department of Alternative Sentencing, Carson City
James J. Jackson, Nevada Judges of Limited Jurisdiction
Laurel Stadler, Northern Nevada DUI Task Force
Richard Glasson, Tahoe Township Justice Court, Douglas County
Mark Jacobs, Chief Marshal, Henderson Alternative Sentencing Division, City of Henderson
Ian Massy, City of Henderson
Diane R. Crow, State Public Defender, Office of the State Public Defender

Chair Segerblom:
I am opening the hearing of the Senate Committee on Judiciary. Today we have three bills sponsored by Senator Settelmeyer; the first is Senate Bill (S.B.) 76.

SENATE BILL 76: Revises provisions governing permits to carry concealed firearms. (BDR 15-37)

Senator James A. Settelmeyer (Senatorial District No. 17):
This bill seeks to simplify the classification of the concealed carry weapons (CCW) permit process and provide for some uniformity across the State. Nevada is only one of three states that use a categorization system. Most other states allow CCW applicants to qualify with one gun. After they have qualified, the permittee is then allowed to carry other handguns under that one CCW permit. Nevada is also only one of eight states that require a live fire component.

I appreciate what the Nevada Sheriffs' and Chiefs' Association (NvSCA) has done with the class system and on the CCW permit process. Some states only require you to fire one bullet to classify. The Nevada qualification class does not ask a person to be an expert shooter. Instead, it checks for general competency, which is well done within the coursework the NvSCA has outlined with the instructors.

Some people compare the general competency testing to taking a driving test with an automatic vehicle, and then being required to retest if you buy a car with a stick shift, making sure you can qualify for your driver's license with that stick shift. This bill allows a CCW applicant to classify with one type of gun and does not require the person to go back and qualify for a different model as long as both are in the handgun classification.

Chair Segerblom:
If you do classify with a gun, do you have to shoot a target to, say, prove you can hit the heart?

Senator Settelmeyer:
Yes. It is a live fire component the State has, which only eight states require. I approve of what the NvSCA has done by setting parameters for their instructors. When I took my CCW course, two individuals could not pass. The instructor would not pass them because of their poor performance but said they both would be allowed to take the course again at no charge until passing the course. You have to hit the target to pass the course and qualify for your CCW permit. This requirement is intended to ensure that the permittee could hit his or her intended target and not have collateral damage if there was a situation requiring the gun to be fired.

In this bill, we are also clarifying what guns can be legally classified as handguns. We worked this out with the NvSCA and think we have a solution that will help them deal with any problems they have now. The bill addresses the issues of lawful gun owners and the concerns of NvSCA. It is a simple bill, if there is a simple bill.

Senator Hutchison:
I understand this to be simple. The way it is now, you have to list the semiautomatic handguns you qualify for on the back of your CCW. This

eliminates the need for the list because your CCW qualifies you for any handgun. It is more of a bookkeeping change, is that correct?

Senator Settelmeyer:
Somewhat, but I must correct you on one thing. In the 2011 Session, I worked on a change where you do not have to list your individual semiautomatics anymore. We went to a categorization system known as "semiautomatic or revolver." Only five states use a categorization concept, and some of them specify that if you can shoot a semiautomatic, you can shoot a revolver. This bill is seeking to bring our statute in uniformity with the majority of other states with live fire classes that only require competency with one firearm.

Chair Segerblom:
Have any other states done the same thing, where they just have a handgun category?

Senator Settelmeyer:
Most states have the categorization of one gun-all guns, like we are doing with this bill.

Robert Roshak (Executive Director, Nevada Sheriffs' and Chiefs' Association):
We are in total support of S.B. 76. It is a cleanup measure. Where the bill states that a concealed weapon will be a handgun, it clarifies issues some of the agencies have encountered. There have been situations where CCW permit holders have tried to carry legal, shortened versions of a semiautomatic rifle under their coats, thinking that because their permit says weapon, it includes their weapons. Making it handgun only clarifies this.

Eric Spratley (Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association):
We support this bill.

Brian O'Callaghan (Las Vegas Metropolitan Police Department):
We are also in full support of this bill.

Janine Hansen (State President, Nevada Families):
We are happy to support this bill. I have had my own CCW permit and thought the classes were excellent in preparing me to carry my weapon and feel secure in knowing I could hit the target. Most of the time when you are in a situation

where you must defend yourself, you only need to brandish your weapon—only 2 percent of the time do you have to use it.

Lynn Chapman (State Treasurer, Independent American Party):
We support this bill. I also have a CCW permit and even I am a good shot. The classes make for a better shooter.

Keith Wood:
We hear a lot about commonsense gun laws, and this is one of the few I have seen that made any sense. We do not require a separate driving test for someone who is going to drive an automatic transmission versus a manual transmission. It makes no sense for the law to be the way it is now, where someone has to take a separate test to carry one pistol as opposed to another pistol.

Ron Cuzze (President, Nevada State Law Enforcement Officers' Association):
We support this bill.

Don Turner (President, Nevada Firearms Coalition):
We appreciate and support this bill that will make carrying concealed firearm permits easier and less expensive for our citizens.

Joel Blakeslee (Southern Nevada Coalition for Wildlife):
We support this bill.

Jim Sallee (Las Vegas Valley Tea Party):
We support this bill. We think the permitting process is really about the integrity of gun owners and their competency to use weapons. The shape or style of the guns is irrelevant.

Juanita Clark (Charleston Neighborhood Preservation):
We support this bill, and I have submitted our written testimony (Exhibit C).

Herrmann Glockler:
I support this bill. I recently went through a repeat of the CCW permitting process and would make one recommendation. Between the completion of the test and the issue of the certificate, it was at least a 3-month period. I recommend it not exceed 1 month. While I waited for my new permit, I had to remove all the guns from my possession and put them someplace else because

my license had expired. Even though I had reapplied for the renewal 1 month prior to the expiration date, I still had to wait past the expiration, so there was a time gap.

Daniel S. Reid (National Rifle Association):
We support this bill, and I have submitted a letter of support (Exhibit D).

Senator Jones:
I have received many emails and calls from my constituents about this bill. I believe it is a sensible bill that protects lawful gun owners and assists law enforcement in doing its job.

SENATOR JONES MOVED TO DO PASS S.B. 76.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:
I am closing the hearing on S.B. 76 now and will open the hearing on S.B. 78.

SENATE BILL 78: Makes various changes concerning guardianships and powers of attorney. (BDR 13-465)

Senator James A. Settelmeyer (Senatorial District No. 17):
Several years ago, I worked with Senator Bernice Mathews at a meeting on issues pertaining to guardianship bills. We passed out a uniform guardian bill at the time, when she was in the Senate and I was in the Assembly. I was very grateful for her work, so when I was approached again to look at some of the issues occurring with guardians, I was receptive.

Young and old, we sometimes need someone looking out for our interests, and that can be a guardian. Sometimes it is not easy for a family member to do it. My wife was the guardian for her mother for some time, and it got to a point where they no longer had a relationship. Sometimes, trying to be the parent to your parent can cause problems.

Chair Segerblom:
Have we had this bill before? Is this a new one, or one coming back?

Senator Settelmeyer:
We had a uniform guardian bill last Session that addressed many of these issues. This is the first time I have brought forward the issues in this bill.

Lora E. Myles (Retired Senior Volunteer Program; Carson and Rural Elder Law Program; Public Guardian's Office):
I have a vested interest in guardianship because I am also a caregiver for a father with senile dementia. Most of this bill includes cleanup provisions with corrections and improvements from past bills. There are a couple new provisions.

Section 2 is something we tried to pass before. At that time, there was no training program for guardians. There are now guardianship training programs in Washoe County and Clark County. We are specifying here that if you have a training program for guardianship, especially for what is known as *pro per* guardians, or family guardians operating without an attorney, they do need training to understand what a guardian does.

Chair Segerblom:
Is there a requirement in statute specifying what is necessary for a training program?

Ms. Myles:
No, there is no specific training program in place, but rural counties are looking at what Clark County and Washoe County are offering. Both have excellent programs approved by the Guardianship Commissioner of Clark County Courts and by the Washoe County District Court.

Chair Segerblom:
To be a guardian in either of those two counties, do you have to take those courses?

Ms. Myles:
Yes, you do.

Section 3 of the bill addresses issues guardians can have with banks. Some banks are reluctant to recognize guardians and request personal documentation on the wards' incapacities when dealing with transactions. We feel it is inappropriate for a bank to obtain that information.

Section 4 addresses *Nevada Revised Statute* (NRS) 159.0595, which was added in 2011 in S.B. No. 128 of the 76th Session to require private and professional guardians to undergo background checks. At that time, there was discussion about whether background checks should be required for all guardians. Section 4 is a compromise, since it would be cost-prohibitive for the courts to require background checks of all family members who are guardians. Professional guardians, however, because they are private and licensed, must undergo full background checks. All public guardians in the State undergo a full background investigation, must be licensed and bonded and are employees of the counties where they work.

Sections 5, 6, 8, 9 and 19 clarify the notice provision. Every time NRS 159 was added to, we would also add a new clause on noticing. We are streamlining this into one provision. Our amendment to section 5 clarifies the new language (Exhibit E).

Section 7 is in response to guardians having been removed because of mishandling their wards' finances. Some of those guardians, usually family members, have bankruptcy issues. This section requires the guardian to notify the court immediately if he or she is in a financial situation which could affect his or her ability to act as a guardian. The court could then decide whether to remove the person from the guardianship and appoint someone else or to leave the guardian in place.

Section 10 addresses fee issues for guardianship attorneys. This is a compromise, but acceptable to the guardianship bar.

Section 11 helps us clarify the difference between minor guardianships, which refers to minor children, and guardianships of adults. When we revised that provision several years ago, we did not realize how we were affecting minor guardianships. Several judges have informed us that a simple birth certificate is proof that a minor needs a guardianship—you do not need a psychiatric investigation.

We have an amendment to section 12 and section 13 (Exhibit F). We are withdrawing some of the controversial provisions of those sections. The due process issue was one that many people asked about, and we will be addressing this in the future.

Section 14 clarifies requirements for a certificate excusing the ward's appearance at court.

Section 15 makes it mandatory that the guardian, whether family, professional or private, notify the courts within 30 days of a ward's death. There have been cases of wards being deceased for many years before notification and subsequent termination of the guardianship.

Section 16 and section 18 correct an error that occurred in the 2009 Session.

Section 17 allows a guardian to represent a ward, usually a minor ward, in a lawsuit unless the guardian is inappropriate, which would trigger the appointment of a *guardian ad litem*.

Section 20 established bidding increments in a court sale of real property. There are no bidding increments above the first bidding increment. In today's real estate market, we find sales of wards' properties in courts where there are increments of $.50 or $1, which takes up a lot of the courts' time.

Section 21 and section 22 set limitations on a guardian's actions following the death of the ward.

Sections 23 through 28 amend NRS 162A pertaining to powers of attorney. The changes clarify that in executing a power of attorney for health care, the ward, if living or residing in a care facility, needs a doctor's certification attached to the power of attorney for that health care. The certification must indicate the ward has the capacity to execute power of attorney. This was based on a court case by the Washoe County Public Guardian against a facility in Washoe County which allowed a ward to execute power of attorney when the facility knew the ward was incompetent. The person with the power of attorney exploited the ward, taking all the ward's assets.

Senator Jones:
In section 5, and maybe others, you added language regarding bankruptcy. I am concerned that, in the context of appointing a guardian, we not elevate bankruptcy to the level of the other items in that part of the bill, such as being a felon or being disbarred from the practice of law. Many people have gone through difficult financial times in the last few years and many who have gone into bankruptcy do it because of medical issues, which is the primary reason for personal bankruptcy. Is this the right way to go?

Ms. Myles:
Because of the increase in the elder abuse cases, seemingly tied to our tough financial times, we decided bankruptcy was important. When children or grandchildren are facing their own financial challenges, sometimes their mother's social security check is tempting. It is up to the judge whether the person going through bankruptcy can still be a guardian. Guardians are handling finances for a third party, and they are liable for those finances.

Chair Segerblom:
Bankruptcy is not a disqualifier but something that must be disclosed?

Ms. Myles:
Yes, it must be disclosed.

Senator Hutchison:
What are the disqualifying factors for someone not being able to be a guardian? A felon cannot be a guardian, right?

Ms. Myles:
Correct, but there are exceptions. We recently had a case in Carson City where a son was more than willing to be guardian of his mother. In the process of his application, the judge discovered the son was guilty of a felony for writing bad checks. The judge decided that if it was something else, he would have appointed the son, but because the son's felony was related to handling finances and he would be handling his mother's finances, the judge did not appoint the son as guardian.

Senator Hutchison:
Are there any other absolute disqualifying factors for becoming a guardian?

Chair Segerblom:
For the record, that is not an absolute, is it?

Ms. Myles:
The absolute disqualification is if the person applying to be guardian is under investigation or has been convicted of elder abuse or child abuse, or if the person does not live in Nevada.

Chair Segerblom:
You referred to a guardianship bar. Is that an official part of the State Bar of Nevada?

Ms. Myles:
No, it is an unofficial bar. There is an Elder Law Section, and most of the members who practice elder law also practice guardianship. This is a group of attorneys who regularly appeal for guardianships. This bill was drafted by a legislative committee through the State Bar of Nevada and was approved by the Bar's Board of Governors.

Dara Goldsmith:
I am a guardianship attorney in Las Vegas. Regarding Senator Jones's question about bankruptcy, under statute if you have filed for bankruptcy, when you apply to be a guardian, you must disclose that. To Senator Hutchison's question about discretion in guardianship: yes, it is discretionary who can be appointed a guardian. In the last 10 years, the Legislature has allowed us to appoint felons. Possession-of-marijuana felons from 40 years ago, who are now grandparents and have turned their lives around, could be guardians. Under prior law, they were eliminated from eligibility by statute. As to the out-of-state part of the law, a person can be a coguardian with a Nevada resident.

Chair Segerblom:
Is there a bill from the Probate Section of the State Bar of Nevada?

Ms. Goldsmith:
Yes, it is in bill draft request form but has not been introduced.

Kathleen Buchanan:
I am a Clark County public guardian. I would like clarification on section 22 pertaining to NRS 159.193. We worked on a modification to this section and on

subsection 1, paragraph (a) we added "for 180 days or," and I do not see it here.

Ms. Myles:
That is in the proposed amendment, Exhibit E.

Chair Segerblom:
We still have to adopt the amendment, but it sounds like, unless there is objection, we will do that. If you do not have a copy of the amendment, we can get a printout of it to you.

Jon Sasser (Southern Nevada Senior Law Program; Legal Aid Center of Southern Nevada):
The Southern Nevada Senior Law Program provides services to senior citizens in the guardianship arena. Our members are often appointed by the court as *guardian ad litems*. We help with the power of attorney for medical care. The staff is fine with this bill. The Legal Aid Center of Southern Nevada also supports this bill.

Chair Segerblom:
Seeing no more testifiers in favor, opposed or neutral to this bill, we will close the hearing on S.B. 78 and bring it back into a work session with an amendment. I will now open the hearing on Senator Settelmeyer's final bill, S.B. 101.

SENATE BILL 101: Revises provisions relating to departments of alternative sentencing. (BDR 16-464)

Senator James A. Settelmeyer (Senatorial District No. 17):
I apologize for not getting the language correct to begin with and having to work off the mock-up (Exhibit G). The changes in the mock-up are necessary to incorporate some important and necessary clarifications.

This bill allows for pretrial sentencing to be done by the county or city department of alternative sentencing. When this was discussed in the past, some said the State should be doing it. However, we know the State does not have the funds to implement pretrial sentencing, so the counties do it. This bill enables legislation, adding the word "may," so there is no fiscal impact to the counties since it is at their own discretion whether to participate. There are

often conditions of bail that the court stipulates, including restraining orders, temporary protection orders (TPO), firearm purchase bans, controlled substance use bans, etc. These departments can do this and provide a valuable service to the courts to review the bail stipulations and make sure the conditions are met. In some counties, these issues are being handled differently. This bill is an attempt to help those counties without a separate program to implement alternative sentencing. We are attempting to codify activities already being implemented in many counties.

Chair Segerblom:
This is not the first bill we have seen from Douglas County about this issue.

Senator Settelmeyer:
Yes, we had this bill in the Assembly. At that time, we felt the State should deal with the issue, but since that time, the State has not stepped forward.

Michael Beam (Chief, Department of Alternative Sentencing, Douglas County):
We perform these functions for the courts in Douglas County and Carson City. We serve both the district and justice courts. We ask that this issue be addressed in the statutory provisions of chapter 211A of *Nevada Revised Statutes* to make it right. We perform pretrial services for persons accused of crimes and awaiting sentencing or trial. The court imposes conditions, and we supervise those individuals to make sure he or she complies with those conditions. We support this bill.

Chair Segerblom:
If there are orders from the judge, like drug testing or curfews, you make sure it happens, is that correct?

Mr. Beam:
Yes. A range of conditions can be imposed—drug or alcohol clauses, testing, firearm provisions, TPOs, stay-away orders, etc. It varies case by case.

Chair Segerblom:
In sounds like it saves money because the offender is not in jail and can work, depending on the case.

Mr. Beam:
Absolutely, on pretrial with bail conditions.

Rory Planeta (Chief, Department of Alternative Sentencing, Carson City):
We supervise persons who are released on bail or released on their own recognizance without bail. The judge puts conditions on the offender, and we supervise. We work from NRS 178.484, which allows judges to place conditions on persons to protect the citizens and protect themselves. The judge makes the decision on which conditions to impose, and once the individual is placed under our supervision, we make sure he or she maintains those conditions or we bring him or her back to the judge. Those conditions can include drug testing, no weapons, no gang associations, etc. These conditions are necessary to protect the public. We support this bill.

Chair Segerblom:
Does this just apply to Douglas County and Carson City?

Senator Settelmeyer:
The provisions could apply to anyone wanting to implement them. Only these two counties are in this situation to my knowledge. Mr. Planeta, do you know of other counties similarly situated?

Mr. Planeta:
Yes. Henderson has alternative sentencing; it is called supervised release, which we think is a good term. Part of this bill refers to probationers, but that is not what we call them. They are persons released under the supervision of the Department. We also perform misdemeanor probation, suspended sentences, house arrest, etc. We feel this legislation is a natural progression for us to watch those individuals and keep our citizens safe.

Chair Segerblom:
This sounds like a great program. Do we have more supporters?

James J. Jackson (Nevada Judges of Limited Jurisdiction):
I represent the Nevada Judges of Limited Jurisdiction, representing municipal courts, justice courts and the State. We support this bill. Originally, the bill had mandatory language, but it is now permissive, so we are fine with it.

Laurel Stadler (Northern Nevada DUI Task Force):
We support alternative sentencing with DUI offenders. We support this bill.

Richard Glasson (Tahoe Township Justice Court, Douglas County):
This bill brings to light something I and other small court judges use on a daily basis. Alternative sentencing allows a judge to shape behaviors and responsibilities and provide protections before adjudication. While we presume everyone is innocent, there is a period of time between arrests and the disposition of the case that can be a sort of never-never land. This alternative sentencing tool allows us to put some people on a right path and potentially eliminates the need for posttrial supervision or probation because the person has proven in advance that he or she has taken these classes or sobriety conditions seriously.

Chair Segerblom:
You can take information from the individual's cooperation with conditions imposed during pretrial and apply it to sentencing?

Judge Glasson:
Absolutely. There have been times when, because of the abysmal behaviors between arrests and trial, arrestees prove they are not going to be responsive to probation later on. More often than not, we see that these arrestees are just good, responsible people who might have stubbed their toes. They follow the straight and narrow during pretrial, and we do not have a recidivism problem with them when we use this tool.

Chair Segerblom:
Do district attorneys have access to the pretrial information when they are making decisions?

Judge Glasson:
Yes, it is public information. The ankle bracelets and other tools we use are wonderful technology.

Mr. O'Callaghan:
The Las Vegas Metropolitan Police Department is neutral on this bill. I also represent the Nevada Sheriffs' and Chiefs' Association, and that organization supports this bill.

Mark Jacobs (Chief Marshal, Henderson Alternative Sentencing Division, City of Henderson):
We fully support this bill. It would be a great tool for us to use on a local level. We supervise around 2,000 probationers and 200 individuals released with conditions of release from our courts every day. This bill would allow us to get over some challenging hurdles in supervising those offenders.

Chair Segerblom:
Do the individuals who have been charged with the crime have to pay for equipment issued to them, like ankle bracelets?

Mr. Jacobs:
Yes. It is not a burden on the taxpayers, and that is also true of our probationers. When we have individuals released with conditions, we have concerns about situations like no contact orders, no further arrest clauses, drug and alcohol testing, GPS monitoring, alcohol monitoring, etc. It is a challenge to try and enforce and keep track of these people and those conditions without a specific statute.

Ian Massy (City of Henderson):
We support this bill.

Diane R. Crow (State Public Defender, Office of the State Public Defender):
I represent people in Carson City, Storey County, White Pine County and Eureka County. I do not oppose the spirit of this bill, but I oppose the end result as we have seen it here in Carson City. Conditions of bail that are supervised by alternative sentencing include call-in and color-coded drug testing. This means a person who has been arrested and not convicted of a crime and not lost his or her constitutional rights is required to call in on a daily basis. If their color is called, they must go in during certain hours and take a drug test. If they are not on color-coded testing, they can just be called in any day or an officer can go to their houses and require them to provide a drug test. The officer can search accused people's homes and vehicles even though they have not been convicted. They are charged with a crime—misdemeanor, gross misdemeanor or felony—but they still have their constitutional rights. My concern is that we are taking the rights away from people who have not been convicted.

This bill, to me, is somewhat akin to a bill introduced last session regarding DNA testing of anyone arrested for a felony. People have constitutional rights. We cannot stomp on either the U.S. Constitution or the Nevada Constitution.

Chair Segerblom:
If a person does not agree to the conditions of release terms, can he or she stay in jail or post bail?

Ms. Crow:
That is another issue of constitutionality. Bail has to be reasonable, not coercive. You cannot force someone to agree to drug testing to get out of jail.

Chair Segerblom:
If a person refuses to cooperate with the drug testing, does the bail go so high it is impossible for them to pay?

Ms. Crow:
Most of my clients cannot make bail. If the person does not agree to the drug testing conditions, that contributes to the denial of one's own recognizance release. That is coercion. Who does not want to get out of jail—to go back home, go back to work and support the family? It is coercive to force someone to give up his or her constitutional rights to get out of jail. I am very concerned about the ultimate outcome of this bill.

Senator Brower:
The government has enormous power, particularly over those who are arrested. From the law enforcement perspective, these issues have been litigated long ago. It is part of the system and has been upheld by state and federal courts around the Country—that the types of things here do not violate the U.S. Constitution. No less than the U.S. Supreme Court has said that upon arrest, your defense rights are not the same as someone who has not been arrested. Therefore, people can be held in custody in some cases and in other cases, they can be released but on certain conditions. We have litigated these issues, have we not?

Ms. Crow:
There has been litigation. There is a case out of the Ninth Circuit Court of Appeals: *United States v. Scott*, 450 F.3d 863 (9th Cir. 2005). The United States District Court for the District of Nevada granted a motion to suppress for

evidence that was obtained on supervision. The Ninth Circuit Court upheld the motion to suppress. The United States appealed it to the Ninth Circuit and the State lost. The head notes of that case refer to constitutional rights of people not convicted and unconstitutional coercive conditions that cannot be imposed.

Senator Brower:
What conditions did the Ninth Circuit decide were unconstitutional?

Ms. Crow:
One head note says pretrial release individuals are not probationers. Probationers have a lesser expectation of privacy than the public at large. People released pending trial, by contrast, have suffered no judicial abridgement of their constitutional rights.

Senator Brower:
My point is that the issue of whether certain pretrial release conditions are unconstitutional has been litigated. It is a fact of our system that pretrial defendants are sometimes held in custody, their passports are removed, they are subjected to drug testing, etc. That is a bigger issue and not really what this bill is about.

Ms. Crow:
I agree that is not specifically what the bill is about, but it is the ultimate conclusion to this bill. The Ninth Circuit is stating that people not convicted still have constitutional rights, and it is invasive to go into their homes and require them to have search and seizure clause.

Senator Brower:
You are right. Even those who have been convicted have certain constitutional rights. The Eighth Amendment to the U.S. Constitution applies to even those who are incarcerated. What the courts have done over centuries is to decide conditions may be imposed that do not violate the Constitution. I respect the rights of you and your clients to challenge certain types of conditions, and it is up to the system to continually hear those challenges and decide whether they meet constitutional muster. The conditions we impose in this State and in the federal system have been determined constitutional by judges.

Chair Segerblom:
In pretrial supervision, if officers find drugs at homes of defendants, can they be prosecuted?

Ms. Crow:
Yes, but they generally are not. My other concern about this bill is that in most of the sections, while it includes new language about pretrial or presentence release, it still labels the person a probationer, which is not accurate.

Chair Segerblom:
We can change that in the bill.

Senator Hutchison:
Is there anything in this bill that is constitutionally infirm?

Ms. Crow:
No.

Mr. Spratley:
We are neutral on this bill because it does not apply to our jurisdiction of Washoe County, but we are in overall support of S.B. 101. Our jail supports the judicial, conditional release of inmates to not only help reduce our inmate population, but also allow those persons who made mistakes and can follow court conditions to be out of custody to live their lives. Without appropriate monitoring, as this bill provides, those conditions most likely would not be met.

Chair Segerblom:
As I understand it, this bill could apply to Washoe County if you opted for it.

Mr. Spratley:
We do have a Department of Alternative Sentencing in Washoe County, but I am not sure of its role.

Senator Brower:
Is it a fact that without pretrial release, we could not keep every arrestee in custody?

Mr. Spratley:
That is true. Our jail is already 50 inmates shy of maximum capacity. We are always being creative in how we can let the people out whom we believe will follow the program and not continue to reoffend and create victims. This is a huge step in helping us manage our population statewide.

Senator Brower:
Allowing arrestees out on their own recognizance or on bail without conditions does not work either.

Mr. Spratley:
Yes. It would be ludicrous to let arrestees go without some conditions, without them knowing someone may check up on them at any moment. A portion of arrestees will reoffend or drink without those imposed conditions.

Senator Settelmeyer:
Some of the wordsmithing addressed by the testifier in opposition may be found in the amendment. We had a bill a long time ago addressing the issue of the larger counties in the State having a division between the pretrial and the posttrial alternative sentencing departments, and the smaller counties wanted them together since they were already doing it that way. With this bill we are looking for codification for a practice that is already occurring.

Chair Segerblom:
I will close the hearing on S.B. 101 and adjourn the meeting of the Senate Committee on Judiciary at 10:13 a.m.

RESPECTFULLY SUBMITTED

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBITS

Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	9		Attendance Roster
S.B. 76	C	1	Juanita Clark	Testimony
S.B. 76	D	1	National Rifle Association	Letter from Daniel S. Reid
S.B. 78	E	3	Lora E. Myles	Proposed Amendment
S.B. 78	F	3	Lora E. Myles	Proposed Second Amendment
S.B. 101	G	3	Senator James A. Settelmeyer	Mock-up