

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session  
March 4, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:01 a.m. on Monday, March 4, 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 David R. Parks, Senatorial District No. 7  
Senator Michael Roberson, Senatorial District No. 20  
Senator Pat Spearman, Senatorial District No. 1

**STAFF MEMBERS PRESENT:**

Mindy Martini, Policy Analyst  
Nick Anthony, Counsel  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

Lauren Scott, Executive Director, Equality Nevada, Inc.  
Elvira Diaz  
Z. Shane Zaldivar, Transgender Allies Group  
Jerra Strong

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Reverend Greg Davis, Pastor, Northwest Community Church, United Church of Christ, Las Vegas

Andrew Davey, Stonewall Democratic Club of Southern Nevada

Howard Watts III, Progressive Leadership Alliance of Nevada

Julie Butler, Records Bureau Chief, Records and Technology Division, Department of Public Safety

John T. Jones, Jr., Nevada District Attorneys Association

Ron Cuzze, President, Nevada State Law Enforcement Officers' Association

Tom Standish

**Chair Segerblom:**

I will open the hearing on Senate Bill (S.B.) 139.

**SENATE BILL 139**: Expands provisions governing criminal and civil liability for certain crimes to include crimes motivated by the victim's gender identity or expression. (BDR 15-703)

**Senator Pat Spearman (Senatorial District No. 1):**

I am here to present S.B. 139. I have written testimony explaining the urgent need for this civil rights legislation ([Exhibit C](#)). I have also distributed excerpts from three reports on hate violence against transgender people ([Exhibit D](#)), two CNN articles on transgender children ([Exhibit E](#)) and letters of support from Lesley R. Dickson and Planned Parenthood ([Exhibit F](#)).

We cannot forget the horrifying news account one late night in June 1998 telling us of James Byrd, Jr., an African American who was murdered by three men, two of whom were white supremacists, in Jasper, Texas. In October 1998, Matthew Wayne Shepard, a 22-year-old student at the University of Wyoming, was tortured and then tied to a fence as an added insult to this murderous act.

**Senator Brower:**

I would be interested in your explanation of why you feel S.B. 139 is needed. We all agree that the crimes we are talking about are horrible, and the perpetrators should be punished. Will adding "gender expression or identity" to our statutes have a real impact on our law enforcement efforts and our ability to prosecute those who commit these crimes?

**Senator Spearman:**

In the eighteenth century, the Declaration of Independence was written; its preamble begins with these words: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights ... ." That should have sufficed to keep people of color from being subjected to crimes against their humanity. Fast forward to the twentieth century, and we have Emmett Till, a young man who was brutally murdered, hanged and burned in Mississippi because someone thought he had looked at a white woman. Fast forward to 1962. A young girl, 7 years old, gets off a bus in Nashville, Tennessee, after traveling all night from Columbus, Ohio, thirsty and wanting a drink of water. She goes to the cleanest water fountain, and her mother snatches her back so she will not be killed for drinking out of the "Whites Only" water fountain. Fast forward again to 1969 and the integration of a high school in Alabama where the N-word was obviously out of taste and out of character for people of wisdom, but it was still used.

When we look at all these things, the composite may seem like it is just a matter of history. But that 7-year-old girl at the water fountain was me. At the age of 21, I was doing nothing but running and trying to keep my physical fitness up before I went into military service. In Petersburg, Virginia, 2 miles from Fort Lee, I was accosted by a truck full of young white men who yelled inflammatory remarks and threw glass at me. They turned around and came back looking for me, and the only thing that saved my life was my ability to belly-crawl in a ditch for seven blocks to get home.

We always say, "Do we need to add something else to hate crimes?" But whenever crimes are committed only on the basis of an aspect of the victim's characteristics, justice requires us to act.

**Senator Brower:**

Do you think this is a purely symbolic move, or do you think there is a deterrent effect as well?

**Senator Spearman:**

I think it has not only a deterrent effect, it also has the ability to finally bring people who have been marginalized out of the shadows. When I initially looked at this bill with Senator Parks, I was reminded of a young woman in Las Vegas who said to me, "I could not keep my job because I had to catch the bus." She did not have private transportation, and the first day she rode the bus, people

on the bus yelled all sorts of slanderous things at her. Going home on the third day, she was assaulted on the bus and brutally beaten. And while the perpetrators were beating her, they called her names, simply because of her gender expression and identity. This bill is more than symbolic. This is justice.

**Senator Brower:**

We all understand, as you do, that the assault you described was a violation of the law, and hopefully the perpetrators will be prosecuted. Is it your belief that enhanced penalties for such crimes would provide a greater deterrent effect, given that those activities are already against the law?

**Senator Spearman:**

Just as the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 added emphasis to the penalties a perpetrator could expect, I believe S.B. 139 does the same thing at the State level. There are those who hate so much that unless there are laws on the books to make them restrain themselves, they will act on that hatred.

**Senator Brower:**

Is it your hope that this bill will provide that impetus for self-restraint, a further deterrent to those who might otherwise be inclined to commit these crimes?

**Senator Spearman:**

That is the case, yes.

**Senator Hutchison:**

I do not want to get into a debate about whether people agree with others' lifestyles. My personal experience is that there are those who hate you because of a particular characteristic you have, whether it is religion, race or gender. All kinds of people have been violently attacked because of their particular characteristics, and in the past the government did not do anything about it. When there is evidence that someone has engaged in violent crimes because of a particular characteristic of the victim, it is appropriate to have a sentence enhancer. This bill may very well have a deterrent effect on those who engage in criminal activity for those reasons.

There are concerns about adding too many elements to the statute and watering it down. But our job as Legislators is to make decisions about which elements are needed in terms of good public policy and good government.

Do you agree that hate crimes are evidence of greater premeditation than crimes committed in other circumstances? Is that one of the reasons you think we ought to consider these enhanced sentence provisions?

**Senator Spearman:**

Any time you add prejudice, which is an irrational negative belief about someone, the very fact that they bring that mindset to the crime suggests they have already decided the victim is not human. Therefore, the crime is premeditated by definition.

**Senator Hutchison:**

Therefore, an enhanced sentence would be justified by a public policy standpoint. The fact that someone will choose to commit a violent act because of a particular characteristic demonstrates from an evidentiary standpoint and from a public policy standpoint an enhanced premeditation to commit the crime, and therefore we ought to enhance the sentences.

**Senator Spearman:**

I agree with you. The enhancement of the penalty gives the perpetrator the opportunity to at least think about what he or she is about to do. I also think the fact that we are humanizing a group of marginalized people sends a strong message about our commitment to human rights and human dignity.

**Senator Brower:**

In looking at S.B. 139, I note that the list of crimes covered is mayhem, kidnapping, sexual assault, robbery, battery, false imprisonment, involuntary servitude, assault, child abuse and stalking. The one crime that is glaringly missing is arson. You referred to the civil rights movement of the 1950s and 1960s, and arson was a big part of that. Is there a reason arson was not included?

**Senator Spearman:**

No. It would certainly be the Committee's prerogative to add that.

**Senator Brower:**

If we are going to make the list as comprehensive and logical as possible, that is something we ought to consider.

**Chair Segerblom:**

It will be brought up during the work session on S.B. 139.

**Senator David R. Parks (Senatorial District No. 7):**

I appear before you today in support of S.B. 139. This bill deals with Nevada's hate crime statute. In 2011, I brought forward S.B. No. 180 of the 76th Session, which was similar to S.B. 139. It had one provision that was slightly different that is not in this bill.

Nevada's hate crime statutes were originally passed into law in Nevada in 1995, A.B. No. 606 of the 68th Session, introduced by our former colleague, Assemblywoman Jan Evans. Senate Bill 139 seeks to add the words "gender identity or expression" to the existing list of protected groups, which includes race, color, religion, national origin, physical or mental disability and sexual orientation.

What is a hate crime? A hate crime occurs when the perpetrator of a crime intentionally selects a victim because of who the victim is. Hate crimes are message crimes—the offender is sending a message to members of a particular group that they are disliked and unwelcome.

How is hate crime punished in Nevada? The laws in Nevada do not punish hate crimes with specific penalties. Instead, Nevada law enhances the penalties for certain crimes if they occurred primarily because of the protected status of the victims. Depending on the original penalty, a hate crime enhancement can mean an increase in the category of crime or an increase in the amount of time a person can be sent to prison for such a crime.

At least 14 states, the District of Columbia and the federal government have statutes that include hate crimes motivated by the victim's gender identity or expression. Today, I hope you will join them by passing S.B. 139. The bill recognizes the fundamental rights of all Nevadans to be protected from violence motivated by the victim's gender identity or expression.

**Senator Hammond:**

It was my understanding that this bill is intended to send a message. What the perpetrators of hate crimes do is send a message, and we are sending a message of our own: that these acts will not be tolerated. As Senator Hutchison

said, it is despicable for one person to harm another person because of a particular characteristic he or she might possess.

The bill stops at presenting evidence that a crime was committed based on the victim's perceived status. Is it intended to go beyond that? Beyond the enhancement, is it your intent to do something in schools or elsewhere to educate that certain lifestyles are acceptable?

**Senator Parks:**

In the 2011 Session, we had testimony on S.B. No. 180 of the 76th Session in which it was demonstrated that one area of the law in which there is a definite deficiency is protecting individuals who are being victimized because of their gender identity or expression. There have been cases in which police and prosecutors have indicated they cannot prosecute those who victimize others because of their transgender status.

**Senator Spearman:**

Up until the 1970s, many of the standard textbooks used in public schools used pejorative and derogatory language about Negroes, Latinos and anyone else who was different. What happened to change that was that society evolved to the point where science trumped ideology. We do not have to like who a person is or what he or she does; it is not up to us to mandate or legislate how people accept other people. But we do have a moral responsibility to protect the least of these to honor human rights and human dignity. The law is the law. Eventually, our society may evolve to the point where we look at science, not ideology, theology or sociology.

**Senator Michael Roberson (Senatorial District No. 20):**

As the cosponsor of S.B. 139, I thank Senator Spearman for bringing forth this legislation. I support this bill.

**Lauren Scott (Executive Director, Equality Nevada, Inc.):**

I urge your support of this bill. I have written testimony describing the desperate need for this bill and presenting some shocking statistics about hate crimes ([Exhibit G](#)).

Senator Brower brought up the issue of arson. In 2008, Angie Zapata, who was a transgender woman, was found dead in her home with multiple skull fractures. She was beaten with a fire extinguisher four times and killed.

Samantha Brandau was beaten, gang-raped and stabbed several times. In 2009, George Steven Lopez Mercado was decapitated and partially burned. Andrea Waddell was strangled in her apartment and set on fire, so there is an arson component to this. Tyli'a Mack was stabbed to death in the street in broad daylight. Archie Davis was stabbed to death. Teri Benally was beaten to death. Christopher Jermaine Scott was shot multiple times.

These acts of violence were not only murders, they were brutal. They were deliberately designed to remove their victims' humanity, reducing them to animals. These hate crimes need to be met with additional punishment. I believe that adding an additional penalty of 1 to 20 years will be a deterrent. It will also be a symbol that Nevada will not tolerate this kind of activity. There are at least 15 hate groups operating in Nevada right now, and at least 20 percent of hate crime violence is directed toward the lesbian, gay, bisexual and transgender (LGBT) community.

**Elvira Diaz:**

I support this bill. I am here today with my child Christian, who is 7 years old. I want to thank you in advance for considering this bill. When you are a mother, you want to leave your children the best things in life. I want to give him the privilege of life, to be himself, to be loved, to be successful and not to be afraid. Christian is transgender and will be all his life. It is a hard process to understand if you do not know about it. This is a happy kid. He wants to have a happy life. I recently had surgery and almost died. The last thing I can do for Christian is to help him have a life.

Every year on November 20, we hold a Transgender Day of Remembrance to remember transgender people who have been murdered. The list of names comes to more than one person a day. Some have a face, such as the woman who was asphyxiated and her body burned; some do not, such as the victim whose head was repeatedly smashed with a spade.

I am trying to tell you that this is real. I know it is hard to understand what it is to be transgender or anyone else who is different from you. I just want to give you a challenge. God tells us we need to love one another. We are all the same; we are children of God, and we should support the love, not the hate. Adding "gender identity or expression" to the definition of hate crimes will stop some people from hating. We need to start loving each other.



Look at this happy child. He wants to be happy and to be loved. Transgender people want to be happy; they do not want to be afraid. Can you imagine what it is to be unable to be yourself, to have someone who wants to kill you because they do not like the way you are?

**Z. Shane Zaldivar (Transgender Allies Group):**

I support this bill. I am a former Marine. I am a husband, son and friend, and I work in my community to make it better. I am also a transgender man who transitioned 8 years ago. I cannot count the number of my personal transgender friends who have been beaten, lost their jobs or been hurt for the mere fact that they changed who they are to reflect what is on the inside, and folks did not agree with it. I have had all my paperwork changed; I am legally male, and I am legally married to my wonderful wife of 6 years. The only fear I have is that there will be a day when the wrong person figures out I am not the person they think I should be.

A hate crime is a hate crime. To exclude the transgender community from the definition reinforces the feeling that we are second-class citizens who are less than human and even less than animals. It makes those who target us feel they are correct to do the awful things they do to us. The enhanced penalties would let them know it is not okay to victimize us, and it will not be allowed.

**Jerra Strong:**

I support S.B. 139. I have written testimony that describes my experience with this issue and urges your support for this important legislation ([Exhibit H](#)).

**Reverend Greg Davis (Pastor, Northwest Community Church, United Church of Christ, Las Vegas):**

I support S.B. 139. Not adding the words "gender identity or expression" to the statute denies this group of our citizens the opportunity to have justice. I have written testimony urging you to vote for this bill of equal protection and justice for all ([Exhibit I](#)).

**Andrew Davey (Stonewall Democratic Club of Southern Nevada):**

I support S.B. 139. I have written testimony explaining the urgent need for this bill ([Exhibit J](#)).

**Howard Watts III (Progressive Leadership Alliance of Nevada):**

We support S.B. 139 because we believe all people should be treated equally under the law. This bill would bring Nevada's hate crime statute in line with our nondiscrimination laws in employment, housing and public accommodations, which were updated last Session. Research shows that LGBT people of color are significantly more likely to be the victims of assault, harassment and violent crimes than their white counterparts. For that reason, we are designating this as a racial equity bill, and we will be considering it for inclusion in Nevada's 2013 racial equity report card.

**Julie Butler (Records Bureau Chief, Records and Technology Division, Department of Public Safety):**

We are neutral on S.B. 139. Through the hate crime incident report form we now use, the Central Repository for Nevada Records of Criminal History can collect information on a monthly and quarterly basis on hate crimes where the bias is antitransgender or antigender nonconformity. The current hate crimes report form does not specifically say "gender identity or expression." If the sponsor and the Committee are okay with us using the existing categories of antitransgender and antigender nonconformity, there will not be a fiscal or operational impact to this bill. If you would like us to collect information with the specific term "gender identity or expression," it will require the creation of a separate reporting form for law enforcement agencies statewide to use when they send us their monthly incident reports. The Repository's uniform crime reporting program is voluntary, and even now we have issues getting information from some law enforcement agencies. For that reason, we are concerned about adding another form for them to fill out. This would in turn impact our ability to provide the data in the annual crime report to the Governor.

**Chair Segerblom:**

After S.B. 139 leaves this Committee, you and Senator Spearman could meet at some point to discuss that, recognizing the impact a fiscal note might have on delaying the process. The Committee is not interested in making that change at the present time.

**Senator Brower:**

I have a question for John Jones of the Nevada District Attorneys Association. We might all agree that this bill makes sense and we ought to do this, but we want to make sure it is going to work. Sometimes we pass laws that pose

practical problems for prosecutors. Could you briefly explain how this enhancement would be applied in a real case?

**John T. Jones, Jr. (Nevada District Attorneys Association):**

It would work just like the enhancements we already have. If we have evidence that a crime was motivated by the victim's gender identity or expression, we would charge the crime as an enhancement.

**Senator Brower:**

At the time of sentencing, the judge would be required to add on an additional term of imprisonment of not less than 1 year and a maximum of 20 years. Is that how you read it?

**Mr. Jones:**

Yes.

**Chair Segerblom:**

I assume the jury has to initially find that the crime was motivated by the person's gender identity or expression.

**Mr. Jones:**

Yes. Due to the *Apprendi v. New Jersey* 530 U.S. 466 (2000) decision, any fact that increases the maximum sentence would have to be proven by a jury. If that is proven by the jury, the judge would add an additional penalty.

**Senator Brower:**

I was going to ask about *Apprendi*. As you understand it, this bill would require an *Apprendi*-like finding by the jury in order for the enhancement to be applied. Is that right?

**Mr. Jones:**

That is correct.

**Senator Spearman:**

Thank you for giving me the opportunity to present this bill on behalf of citizens of Nevada who desperately want and certainly need equal protection under the law.

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**Chair Segerblom:**

We have received letters from Charleston Neighborhood Preservation and Nevada Concerned Citizens expressing opposition to S.B. 139 ([Exhibit K](#)).

I will close the hearing on S.B. 139 and open the hearing on S.B. 136.

**SENATE BILL 136**: Revises provisions relating to justifiable homicide by a public officer. (BDR 15-867)

**Ron Cuzze (President, Nevada State Law Enforcement Officers' Association):**

When we looked at the justifiable homicide statute, *Nevada Revised Statute* (NRS) 200.140, we found a hole in the protection for law enforcement personnel. The way the statute reads, there is no language that addresses the use of deadly force for imminent threats to life.

Senate Bill 136 adds one sentence, which we hope will cover all law enforcement personnel, especially in the area of civil liability. If a law enforcement officer used deadly force to meet what he believes to be an imminent threat to life, the matter might not get into a criminal court, but it would have a better chance of getting into a civil court. This bill is for the protection of all law enforcement throughout the State.

**Senator Brower:**

I am surprised we did not add this language earlier. The change seems to be a logical one, and it might apply to a great many situations law enforcement officials face occasionally, if not routinely.

**Chair Segerblom:**

I will close the hearing on S.B. 136 and open the hearing on S.B. 140.

**SENATE BILL 140**: Revises provisions relating to a lien for attorney's fees. (BDR 2-558)

**Senator Tick Segerblom (Senatorial District No. 3):**

I brought this bill at the request of Mr. Standish, so I will let him explain it.

**Tom Standish:**

I am an attorney with the law firm of Jolley Urga Wirth Woodbury and Standish. Senate Bill 140 is intended to address the attorney lien statute, which is

NRS 18.015. I have a handout regarding the Nevada Supreme Court's decision in *Argentina Consol. Mining Co. v. Jolley Urga* 125 Nev. 527, 216 P.3d 779 (2009) ([Exhibit L](#)).

The statute was intended to allow an attorney to file a lien in any litigation action and to file a motion to have that lien adjudicated by the court; it also gives the client the right to ask the court to adjudicate the lien. In its recent decision on *Argentina*, the Nevada Supreme Court narrowly interpreted the lien statute, and the general effect of that decision was to strictly construe the statute. The effect in the district courts has been that other than a strictly money suit for damages, the lien statute is no longer available to the attorney or the litigant in those cases. For example, in the Family Division of the Eighth Judicial District Court, the judges will not hear lien cases anymore. There may be two judges who will hear it if there is a consent from the client. Otherwise, they have strictly followed the literal wording of *Argentina*.

So the lien statute has become largely unavailable to attorneys and litigants. For that reason, we felt it was important to bring S.B. 140 before the Legislature to see if we could open that statute for the use of citizens and attorneys again.

In the *Argentina* case, the Nevada Supreme Court was dealing with two types of liens that have been recognized by the courts either statutorily or by common law. The charging lien is one in which the attorney has the statutory right to put a lien against a recovery in a case until the lien is adjudicated. The retaining lien is the common law right of an attorney to retain the physical file in a case until the lien is adjudicated and satisfied. In the *Argentina* case, the Nevada Supreme Court said the Jolley Urga firm, the claimant, was a defense firm. It successfully defended a claim, but it had no claim for recovery on the client's behalf. Therefore, the attorneys could not avail themselves of the charging lien statute.

The wording of the statute is specific. Subsection 3 of NRS 18.015 says, "The lien attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action ... ." However, this does not describe any cause of action in family court, for example, where the client might be awarded custody of children or child support payments. By public policy, family court judges have decided that is not a recovery and thus there is no charging lien. Similarly, if you had an injunction hearing or any cause of action other than a suit for a collection of money or property, no charging lien would be possible, according to *Argentina*. With

regard to the retaining lien, the Nevada Supreme Court said it was well established that a retaining lien could only be adjudicated by the court if there was a consent from the client. The only instance in which the attorney would be able to file a lien without the client's consent is if your client is recovering money damages. Some judges have allowed retainer agreements to be amended to tell the client at the beginning, "You are consenting to the lien statute." However, they are still reluctant to have this type of motion to adjudicate brought under the statute.

What the bill does is put the retaining lien into statute. It says that the attorney retaining the file in a case is the basis for the attorney to file a lien, and then for the client or the attorney to have it adjudicated.

Senator Ford asked me earlier whether the attorney could in fact assert a lien if he or she had already given the original file to the client. You could interpret the change in the statute to say that if you retained any property, meaning any part of the file, you would still have a basis. But it would be better to file a lien and move to adjudicate it before the attorney gives up the original file.

In my experience, the courts are hearing these motions on an expedited basis, so there should be no prejudice to clients. It is rare, in this age of digital copying, that clients do not have copies of everything. But this provides a simple way to make the statute inclusive instead of exclusive.

**Senator Ford:**

I have a couple questions. The first has to do with retaining a file. If a client wants to transfer the case to another firm, you generally have to give up the file to the other firm. It might make more sense to put into the statutory language that retention of a copy of the file would suffice for the purposes of a retaining lien. Do you foresee an issue with that? What I do not want to happen is for the attorney to give up the file and file a motion on a retaining lien, and then be told, "You do not have anything to attach a retaining lien to because you gave up the file."

Second, why did you not just look to undo the court's opinion relative to the charging lien issue? Why not just say a charging lien can apply in the context you describe?

**Mr. Standish:**

The Nevada Supreme Court asserted both liens in the *Argentina* case. The original wording of the statute talked about a recovery. My reading of the statute is that a lien attaches to any verdict, judgment or decree. That should include, for example, a family court decree. It says it also attaches to any money or property which is recovered on account of the suit or other action. The Nevada Supreme Court is not going to allow a charging lien under any circumstances unless there is recovery of actual money damages.

If you look back at the caselaw, the Nevada Supreme Court has been consistent. In trying to protect everybody involved in the case of, *John W. Muije, Ltd. v. A North Las Vegas Cab Company*, 106 Nev. 664, 799 P.2d 559 (1990), the court said that where the recovery was there, the attorneys certainly were not going to get their money before the other party had recovered theirs, which was where the defendant got a verdict against the plaintiff. The plaintiff's attorney had to wait till the defendant collected money from the plaintiff before he could collect his lien. I do not know how you legislate around the definition of a charging lien.

With respect to the retaining lien, it is an amorphous area. The statute says the retaining lien attaches to any file or other property left in the possession of the attorney by his or her client, and the attorney is authorized to retain that property. You could change the wording of the statute to provide that as long as the attorney has the original or a copy of the file, he or she could assert the retaining lien. That might be too broad in terms of the retaining lien and how that would be interpreted by the courts.

**Senator Ford:**

We have an opportunity to fix the language and make it clear enough that we do not have to fix it in the next Session. Is the language in this bill clear enough to allow attorneys to get a retaining lien and collect the money they are owed?

**Mr. Standish:**

Yes, I think so. I agree that there could be interpretation. Attorneys will have to be educated as to the use of the statute. For example, the lien must be filed promptly to avoid holding up the client from getting the retained file.

**Senator Ford:**

Section 1, subsection 4, paragraph (b) of S.B. 140 says "... properly left in the possession of the attorney ... ." It could be argued that it is not proper for us to retain a file for any reason, and our retaining lien is extinguished under that term as well. I will leave that conversation for the work session on this bill. I certainly understand where we are trying to go with this, and I appreciate it and I support the concept.

**Mr. Standish:**

I can tell you the Nevada Supreme Court is not backing off its position. There was oral argument on a different case several weeks ago, and the Nevada Supreme Court Justices were specifically concerned about the timing of the filing of the lien. They felt that an attorney could not file a lien at all, even a charging lien, when you had jurisdiction to do so if you were not still the attorney of record.

**Senator Hutchison:**

These liens surface when an attorney does not get paid by a client. A client does not pay Jolley Urga; Jolley Urga has the client's file and wants to assert a possessory lien. Attorneys have to first send out a notice and let the client know they are going to assert that lien under the statute. Is that correct?

**Mr. Standish:**

Yes. They file the attorney lien document in the file, and they serve it on all parties and counsel.

**Senator Hutchison:**

The fight takes place when the client tries to get the file because another attorney has been hired and needs the file. If the law firm refuses and gets into a dispute with the client, the client may then go to the State Bar of Nevada. The State Bar is ambiguous about whether the attorney must give up the file, but it does say the attorney must take care not to prejudice the client's rights. If the client needs the file, the attorney may want to put his or her malpractice carrier on notice. How does this bill solve that problem, or does it even attempt to?

**Mr. Standish:**

At common law, you were entitled to retain that file. That was the leverage the attorney had over the client. The clients had some emergency in the case and needed the files. Of course, this was back in the days when attorneys did not



have photocopiers. When I lectured on attorneys' liens, I told attorneys exactly what you just said: do not retain files or undermine your clients because they needed the file and did not have it. That worked because we had the charging lien to fall back on. We do not have the charging lien anymore.

The attorney could give copies of the file to clients so they do not suffer, while still stating that the original files are being retained. This might still be a problem in the case of an original deed of trust or some other original document. However, it would allow the attorney the right to file for adjudication.

**Senator Hutchison:**

Do you have any appetite for trying to clarify this statutorily in this bill?

**Mr. Standish:**

I would be happy to look at language on any of those points.

**Chair Segerblom:**

Just to clarify, you said once you do assert this lien, you have to go to court promptly and file some type of action on an ex parte basis to get it verified. Is that right?

**Mr. Standish:**

Ethically, that would be the proper thing to do. But the client litigant can also file. In fact, any third party who is affected, including the other side, could file if the party wanted to distribute property and felt the lien was attached to it.

**Senator Hutchison:**

I realize clients can do that, but they have no incentive to do that if they have the file or the copy of the file they need. The attorney would have to file a motion to have the lien adjudicated, and then there would be a full hearing to get a decision as to whether that lien would be perfected.

**Mr. Standish:**

Yes, absolutely.

**Senator Jones:**

This bill does not change the Nevada Supreme Court's determination that the attorney does not have the ability to file under current law. Is that right?

**Mr. Standish:**

Are you asking about the right to file the motion and adjudicate?

**Senator Jones:**

If you file a motion to adjudicate, do you get a judgment?

**Mr. Standish:**

Not in family court, no. They will not hear the motion at all. It will be denied.

**Senator Jones:**

Right now, I do not think you can get it in any court.

**Chair Segerblom:**

Will this bill not change that?

**Mr. Standish:**

Yes. This will make the change so there is a firm basis in the retaining lien concept for the attorney to file the lien and to file the motion to adjudicate.

**Senator Jones:**

My other question has to do with something that came up in a case of mine. Under the case of *SFPP, L.P. v. Second Judicial District Court*, 123 Nev. 608, 173 P.3d. 715 (2007), the court lacked jurisdiction after an order of dismissal. If the attorney does not file a lien promptly and there is a stipulation to dismiss and an order of dismissal by the court, at that point the attorney loses the ability to go to the court over which he or she seeks the lien. To file a lien at that point, the attorney must go to a different court. Is that right?

**Mr. Standish:**

That is correct. There needs to be an action. In the case of a recovery, there needs to be a recovery. I am sure the Nevada Supreme Court was angling toward that concept in this last case, saying that once the judgment has been rendered and the property has been transferred, there is nothing for the lien to attach to if you come along later to try to recover.

**Senator Ford:**

Do you have any thoughts on retroactivity?

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**Mr. Standish:**

I would think there was no prejudice in refiling your motion to adjudicate unless your contractual statute of limitations has expired.

**Chair Segerblom:**

I will close the hearing on S.B. 140. Is there any public comment? Hearing none, the Committee is adjourned at 10:22 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Tick Segerblom, Chair

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

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	7		Attendance Roster
S.B. 139	C	7	Senator Pat Spearman	Written testimony
S.B. 139	D	6	Senator Pat Spearman	Excerpts from three reports on hate violence against transgender people
S.B. 139	E	8	Senator Pat Spearman	Two CNN articles on transgender children
S.B. 139	F	2	Senator Pat Spearman	Two letters of support from Lesley R. Dickson and Planned Parenthood
S.B. 139	G	8	Lauren Scott	Written testimony
S.B. 139	H	1	Jerra Strong	Written testimony
S.B. 139	I	1	Greg Davis	Written testimony
S.B. 139	J	1	Andrew Davey	Written testimony
S.B. 139	K	3	Senator Tick Segerblom	Two letters in opposition from Charleston Neighborhood Preservation and Nevada Concerned Citizens
S.B. 140	L	6	Tom Standish	Amending NRS 18.015 regarding Attorney Lien Adjudication presentation