

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session  
March 6, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:03 a.m. on Wednesday, March 6, 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

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Hollie Hendrikson, National Conference of State Legislatures  
Lisa L. Adams, Program Administrator, Prescription Controlled Substance Abuse  
Prevention Task Force, State Board of Pharmacy  
J. David Wuest, R.Ph., Deputy Secretary/Inspector, State Board of Pharmacy  
Mel Pohl, M.D., Medical Director, Las Vegas Recovery Center  
David Goldwater, CBL Toxicology Services, Inc.  
Rocky Finseth, Pharmaceutical Research and Manufacturers of America  
Marjorie E. Powell, Pharmaceutical Research and Manufacturers of America  
Lawrence P. Matheis, Executive Director, Nevada State Medical Association

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David A. Johnson, M.D., Chair, Policy Committee, Nevada Academy of Family Physicians  
Lesley Pittman, Keep Our Doctors In Nevada  
Annette Teijeiro, M.D.  
Ivan Goldsmith, M.D.  
James G. Marx, M.D.  
George A. Ross, Las Vegas Metro Chamber of Commerce; HCA, Inc.; Sunrise Health System of Hospitals; Astellas Pharma US, Inc.  
Bill M. Welch, Nevada Hospital Association  
Raymond McKay, Las Vegas Defense Lawyers  
William Von Tobel  
Tray Abney, The Chamber, Reno-Sparks-Northern Nevada  
Jay Parmer, Generic Pharmaceutical Association  
Graham Galloway, Nevada Justice Association  
Peter D. Krueger, Nevada Petroleum Marketers and Convenience Store Association  
Brian McAnallen, Las Vegas Metro Chamber of Commerce  
John T. Jones, Jr., Clark County  
Lea Tauchen, Retail Association of Nevada  
Randi Thompson, National Federation of Independent Business  
Angela Morrison, Professor, William S. Boyd School of Law, University of Nevada, Las Vegas  
Yvanna Cancela, Culinary Workers Union Local 226  
Kyle Edgerton, Immigration Program Director, Catholic Charities of Northern Nevada  
Stacey Shinn, Progressive Leadership Alliance of Nevada  
Astrid Silva  
Vanessa Spinazola, American Civil Liberties Union of Nevada  
Steve Yeager, Clark County Public Defenders Office; Washoe County Public Defenders Office  
Eric Spratley, Lieutenant, Washoe County Sheriff's Office  
Brian O'Callaghan, Las Vegas Metropolitan Police Department  
Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office  
Julie Butler, Records Bureau Chief, Records and Technology Division, Department of Public Safety

**Chair Segerblom:**

Vice Chair Kihuen will now chair this portion of the hearing.

**Senator Kihuen:**

We will open the meeting with Senate Bill (S.B.) 75.

**SENATE BILL 75**: Establishes a cause of action for persons who become addicted to a prescription drug. (BDR 3-98)

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

Senate Bill 75 deals with an epidemic in our Country and State of the use and addiction to prescription pills, specifically, medications such as oxycontin, which is a heroin substitute. These medications are overprescribed and available. Use of these substances results in many people becoming addicted, overdosing and committing suicide. The intent of this bill is to get away from a regulatory framework and turn it over to the lawyers. I believe in our society if you want to get rid of a problem or regulate it, give it to the trial lawyers. If they sue, the insurance companies become involved and regulation will begin. The second intent of this bill is in regard to addiction. If a person becomes addicted to one of these prescription drugs and that person wants to go to rehabilitation, the cost of rehabilitation should be borne by the physician or manufacturer, not by society. During the drafting of the bill, it became broader than my initial intent. We know these drugs are addictive and the outcome in certain cases will result in addiction. The people who know that outcome should pay for that rehabilitation. That cost should be shared. When a person does not have insurance and cannot afford to go to rehabilitation, it creates a circumstance where that person may steal or commit other crimes due to the addiction.

**Hollie Hendrikson (National Conference of State Legislatures):**

I track issues related to injury and violence prevention in relation to prescription drug overdose and abuse. I will reference the presentation ([Exhibit C](#)) regarding prescription drug abuse, overdose and misuse as shown on Slide 2 of [Exhibit C](#). In 2008, drug poisoning became a leading cause of injury death in the Nation. For the first time in decades, death from motor vehicles has been surpassed by drug poisoning. Since 1980, drug poisoning deaths have steadily increased. In 2008, there were 41,000 deaths related to drug poisoning versus 38,000 deaths from motor vehicle accidents.

Between 1999 and 2008, the number of opioid prescription deaths increased from 4,000 to 14,800. This dramatic increase is not found with other drugs. Prescription painkillers during that time caused more deaths than heroin and cocaine combined. The poisoning and drug poisoning deaths are not led by illicit drugs, they are led by prescription opioid painkillers.

The green map on Slide 3 of the presentation, [Exhibit C](#), shows overdose deaths from prescription painkillers, and the orange map on Slide 3 shows the quantity of prescription painkillers sold in the states.

The amount of prescription painkillers distributed in pharmacies, hospitals and doctors' offices was four times larger in 2008 than in 1999. There has been a significant increase in the distribution of these types of drugs. Nevada does not have the highest overdose death rate for the amount of prescription painkillers sold, but is above the national average in both categories on Slide 4. Nevada surpasses the national average. For approximately every 100,000 people in Nevada, 20 deaths occur from prescription drug overdoses. Nevada ranks third in the Nation for drug overdoses. New Mexico and West Virginia are ranked higher than Nevada. Approximately 12 kilograms of prescription painkillers were sold per 10,000 people. Florida is the only other state that sells at a higher rate.

There is also a growing issue with methadone use and its role in the increase of overdose deaths nationwide. Methadone has played a central role in this epidemic. Methadone was safely used for decades. However, its medical use has extended beyond addiction treatment and it has been increasingly prescribed as a painkiller.

As methadone's use for pain has increased, so has its nonmedical use. Over 30 percent of prescription painkiller deaths involve methadone even though only 2 percent of painkiller prescriptions are written for this drug. The relationship between methadone deaths and written prescriptions is not proportionate. The top graph on Slide 5 of [Exhibit C](#) shows that between 1999 and 2007, the use of methadone for pain use has increased as well as related deaths. The number of deaths related to methadone use is higher than other prescribed painkillers. For every overdose death, there are 10 drug abuse treatment admissions and 32 emergency room visits for abuse or misuse. This has a huge impact on the health care delivery system. Studies have shown that the health care costs for addicts are 8.5 times higher than for nonabusers. There is a huge increase in nonmedical use of prescription drugs. There are 825 nonmedical users for every

overdose death, Slide 6. Seventy percent of nonmedical users obtain the prescription drugs primarily from friends or relatives for which they had written prescriptions. There are very few drug thefts from pharmacies or doctors' offices. Drug diversion is the issue here. Once the drug is prescribed, it is diverted to the abuser.

Twenty-two states have introduced legislation to address prescription drug overdoses. Ten states have bills to allow a degree of immunity for individuals who seek medical assistance or administer treatment for those experiencing an overdose. These bills aim to encourage those who are experiencing an overdose to access medical treatment. Nine states have introduced bills to amend or modify existing prescription drug monitoring programs. Forty-nine states have these types of programs which track prescriptions. Four states prohibit the substitution of opioids as analgesic drugs and require tamper-resistant technology.

The abuses of pain management clinics, often called pill mills, have increased. These mills primarily employ physicians who engage in treating pain by prescribing painkillers. Three states have bills to require oversight of these clinics. Two states have bills to amend the requirements for chief medical examiners' investigations into overdose deaths related to controlled substances. Those bills allow for the collection of information about the characteristics of victims who died from an overdose. Additional bills establish drop-off box grant programs and continuing education in pain management for health care professionals. The drop-off boxes would allow those with unused medications to drop them off at doctors' offices or other designated locations so unused medications are not available.

**Lisa L. Adams (Program Administrator, Prescription Controlled Substance Abuse Prevention Task Force, State Board of Pharmacy):**

I have written testimony ([Exhibit D](#)) which details the Prescription Monitoring Program (PMP) authorized by the Nevada Legislature in 1995. The program, which became operational in 1997, is an electronic Web-based system that collects data on controlled substance prescriptions dispensed by Nevada pharmacies. The PMP is available electronically 24 hours a day, 7 days a week. Enrollment by practitioners and pharmacies is simple, and those providers can check to see if a patient is receiving controlled substances from any other practitioner. The PMP does not show any other types of medications. The PMP is another tool for health care providers to improve care for their patients, make

informed decisions as to patient care and to hopefully curtail abuse of controlled substances.

Many patients rely on controlled substances for various health care needs, including mental health disorders and seizures. Patients should be closely monitored by health care professionals because these medications place patients at risk for side effects, including addiction.

The PMP provides raw data. There is no diagnostic information. The program may show a patient who is receiving large quantities of controlled substances. However, a person viewing the program would not know if that patient is a cancer patient or an abuser of those drugs. A majority of patients receiving controlled substances have a legitimate medical need. Identifying patients who may be abusing medications is more difficult. Oftentimes, a patient seems to be more likely to be misusing the medication if going to separate specialists. However, many patients see different specialists for different types of treatment and medication, and the primary care physician has referred patients to those additional specialists. There are also drug-abusing patients who go to multiple physicians and pharmacies to receive additional medications. The PMP sends unsolicited reports to practitioners and pharmacies in a proactive approach. It attempts to identify those who have a controlled substance overlap and indicate potential misuse. An unsolicited report and letter is sent to every practitioner and pharmacy from which the patient has received a controlled substance. The letter informs those entities if the patient is obtaining a controlled substance from multiple locations. Prescription overdose is a huge problem across the Country. It is difficult to identify abusers. The PMP mission is to improve health care by offering practitioners and pharmacists information to reduce prescription overdose, decrease doctor shopping and misuse. We in no way want to limit the access of medications to patients who truly need them.

**Senator Ford:**

I am looking at the chart on Slide 4 in [Exhibit C](#) which depicts overdose death rates per 100,000 people at 19.6 percent in Nevada in 2008 as compared to the national average of 11.9 percent. To what would you attribute Nevada's rating?

**Ms. Adams:**

The 24-hour lifestyle that Nevada has may contribute, but I am not sure.

**Senator Ford:**

Do you know who would have that information?

**J. David Wuest, R.Ph. (Deputy Secretary/Inspector, State Board of Pharmacy):**

That is a complicated question. Nevada has experienced some of the pill mills. The Board of Pharmacy has oversight of practitioners who dispense controlled substances. We have had enforcement activities against physicians and pharmacies. We have worked with the U.S. Department of Justice, Drug Enforcement Administration about physicians' offices. It may be our society. It can fluctuate. I agree with Ms. Hendrickson's testimony that this is an issue in Nevada.

**Senator Ford:**

In [Exhibit C](#), on Slide 4, the chart indicates the amount of pain medication sold per 10,000 people in 2010. Nevada is at 11.8 percent versus 7.1 percent for the Nation. I suspect that the amount of painkillers could relate to our population, such as an older population that utilizes those medications. Is there another attribute that may contribute to this number?

**Mr. Wuest:**

Nevada's transient population could play a role in that number. I agree that Nevada has issues with the use and abuse of prescription painkillers.

**Senator Hutchison:**

Based on the pie chart in [Exhibit C](#), Slide 7, 70 percent of these nonmedical users obtained the drugs from family, friends and relatives. How does this bill address that problem?

**Mr. Wuest:**

I do not have an answer. Senate Bill 75 does not address that particular issue. A labeling requirement on all prescriptions states it is a felony to transfer the use of that prescription to another person. I am not sure how well that is enforced. It is a felony and against federal law.

**Senator Hutchison:**

Can any of the testifiers tell me how Senate Bill 75 solves the problem of how 70 percent of nonmedical users receive their drugs from family or friends?

**Mr. Wuest:**

I am not sure that it does.

**Ms. Hendrickson:**

I am not sure how the bill itself would solve that issue. It is an issue other states are dealing with. It is difficult because that issue occurs outside the doctor-patient relationship.

**Senator Segerblom:**

Dr. Pohl is a recognized expert in substance abuse. I would like him to explain to the Committee what is involved in rehabilitation, treatment and costs.

**Mel Pohl, M.D. (Medical Director, Las Vegas Recovery Center):**

I am a family physician and addiction specialist who has been treating drug addiction for over 30 years. Addiction is an epidemic. People who become addicted do not set out to do nefarious things. Many people who have legitimate pain conditions go to providers who mean well. In the end, a person is given substances and then becomes addicted. I think the labeling and stigmatizing of people as addicts and physicians who prescribe those medications for appropriate reasons are neither good or bad. We are seeing elevated levels of death and drug dependence that causes significant disability and cost to society. Most of the time, patients go to doctors because they have symptoms for which they want treatment. Physicians attempt to give relief for those symptoms. I think we have gone wrong in treating pain with opioids. Using methadone for pain has advantages; it is readily available, less expensive and long acting, but it has disadvantages.

It is important to step back from this epidemic and intervene with appropriate strategies. One of the most appropriate ways—introduced by President Barack Obama’s Office of National Drug Control Policy—aimed at educating prescribers. There are many states looking at mandatory education for licensing physicians as part of licensing requirements. The licensing board in Mississippi now requires 2 hours of chronic pain training. We have no such legislation in this State. We want to screen people appropriately and be proactive with the



individuals who are likely to get into trouble with these drugs. These individuals have a history of addiction, mental illness or family problems.

If a physician used prescription monitoring programs to run a report on every patient before prescribing, we may have information that would lead to different avenues of treatment. Physicians should be checking the database on every patient. These drugs are not necessarily being given away freely by those who are prescribing them. A person may be prescribed a certain amount for pain and only use a few of those pills; then he or she puts the rest into the medicine cabinet only to have a 17-year-old child take those medications and dispense them at a party. The abuse of these drugs is rampant between the ages of 12 and 25. If someone has an addiction to these drugs, and they are causing more problems than benefits, the patient needs to be removed from those drugs in a managed way. This medically managed withdrawal can be done as inpatient or outpatient treatment. This treatment can cost anywhere from \$50 to \$100 per day for a community program. A private facility can cost up to \$1,000 per day and can last 5 to 7 days or longer. Detoxification from addiction is not treatment. Detoxification is separating a person from the drug. Treatment deals with teaching the person how to deal with life issues and pain without the medication. This can occur in low-cost housing or rehabilitation facilities. The cost can range anywhere from \$75 to \$1,000 per day. It can last from a month to 90 days. Treatment experts have varying opinions on what is the most appropriate treatment for each individual patient.

**Senator Segerblom:**

Senate Bill 75 does not address the person who receives the drugs from the prescriber. This bill addresses the issue of when people receive prescriptions from their doctors and become addicted and want to get off the addiction. Senate Bill 75 addresses who should pay for that process. The doctor and manufacturer know a person can become addicted and when that person does, then the doctor or manufacturer should bear the cost to have that person go through rehabilitation.

**Senator Hutchison:**

Do we not already have legal theories to address those issues, such as negligence or products liability cause of action? This is a product that is being sold. If it is dangerous, and manufacturers or doctors know there is a problem with the product, does it not fall under a traditional products liability or negligence law if one could prove those elements?

**Senator Segerblom:**

We do not have such theories with this specific issue. The doctors and manufacturers know the drug is addictive yet still allow its production and prescription under the current legal theories. It does not involve any oversight or regulations; it is self-regulated.

**Senator Brower:**

Senate Bill 75 is creating a cause of action in the absence of any defect in the product. If the product is defective, there are causes of action. If there is a failure to warn, that can be a basis for a tort action. In the absence of those issues, we could substitute in other things, such as alcoholic beverages.

**Senator Segerblom:**

That is the point. These drugs are being used in their intended manner. Everyone knows what they are used for and knows the consequences. Who bears the societal cost when the drug is causing harm to the person or family? Either health insurance or these companies are going to pay.

**Senator Brower:**

How would this bill affect State-run medical marijuana dispensaries?

**Senator Segerblom:**

That is an issue. Theoretically, if an individual became addicted, then that individual could sue the dispensary.

**Senator Brower:**

And the State for allowing the dispensary to be set up?

**Senator Segerblom:**

I do not think so, since the dispensary will be set up similar to a pharmacy. You cannot sue the State because the pharmacy distributes the drug. It is something to consider.

**David Goldwater (CBL Toxicology Services, Inc.):**

The CBL Toxicology Services supports Senate Bill 75. We offer a unique drug testing service. If a physician prescribes a drug and the patient comes back for a refill, we offer a drug test to determine whether the prescribed drug is in the patient's system. This is to ensure the patient is taking the drugs prescribed and not distributing them to others. A patient may be getting the drugs from another

source. The person presents for a refill, and if those drugs are not in his or her system, it would indicate those drugs are not being used as intended. This testing also allows for easy identification of pill mills and doctors who overprescribe if the medications are not in a patient's system. Senate Bill 75 is another tool for policy makers to fight abuse.

**Senator Hammond:**

Does your service give everyone a mandatory test; is it not discretionary?

**Mr. Goldwater:**

It is up to the discretion of the physician to order a panel of tests prior to refilling the prescription. Many times, the physician does not. However, if a physician is going to be diligent before writing a prescription, we offer this test.

**Senator Hammond:**

In the future, every doctor would have to order this test to prevent the 70 percent of the use of the drug by friends and family?

**Mr. Goldwater:**

If patients were having their drugs taken by family or friends and they present themselves for a refill, doctors could order this test. If the drugs are not in patients' systems, there would be cause to suspect abuse. Senate Bill 75 is a sufficient check within the system to get at several of the problems in dealing with this type of abuse.

**Rocky Finseth (Pharmaceutical Research and Manufacturers of America):**

I am here representing Pharmaceutical Research and Manufacturers of America (PhRMA). We oppose Senate Bill 75.

**Marjorie E. Powell (Pharmaceutical Research and Manufacturers of America):**

I represent the men and women doing the research to bring new medicines to market. I have provided my written statement and a handout concerning medicines in development in relation to mental illnesses ([Exhibit E](#)).

We agree with this Committee's concerns about the growing nonmedical use of prescription drugs. Medicines are developed to be used by patients for specific conditions. The medication is approved by the U.S. Food and Drug Administration because the agency decides if the benefits outweigh the risks for a particular use for a particular patient. Prescription drugs are not safe for

anyone else to use for any reason, and they should not be shared. The sharing of prescription drugs is rampant.

Seventy percent of people who abuse these drugs get them from friends and family. The pharmaceutical companies are doing research for new medication that can aid in treating addiction or deter abuse. Last year, 26 medicines were in development for addiction disorders. Seven are in development for the treatment of opioid addiction. There are a number in development for alcohol addiction. If a person is addicted to one thing, he or she may become addicted to others. The pharmaceutical companies are also developing abuse-deterrent medications for existing and new medicines. Five on the market are abuse-deterrent. In most instances, there is a generic counterpart.

However, many insurance policies, such as Medicaid, require the patient to get generic formulas because they are less expensive. These generics often lack the abuse deterrent within their formulas. More than 90 percent of addictive or abused prescriptions are manufactured by generic manufacturers. Medicines that are abused remain important in treating people who need them. The public needs to be educated on not sharing medication and not leaving those prescriptions readily available to be borrowed or stolen.

Physicians need to be educated on how to identify individuals who may be addicted, taking their prescriptions inappropriately or seeing multiple physicians. Physicians need to learn what to do when they think a person may be addicted. If I were a physician treating a young individual who had been coming to me for years, and I suspected that patient was abusing those medicines, I am not sure how I would deal with that situation. It is a scenario that many physicians face on a daily basis. How does that physician tell the patient he or she needs to take a blood test to determine whether he or she is abusing that prescription?

Nevada was an early state to develop and adopt a PMP. However, other states are looking to refine their PMP systems. One suggested change is to make sure information is available from surrounding states. For example, an individual may have prescriptions filled in Nevada and California because of the close proximity to both states. Patient information from the U.S. Department of Veterans Affairs has not been included in the PMP because of the agency's own restrictions. A large number of service members returning home from war are prescribed medications, and they may become addicted. The PhRMA has been working with the National Governors Association whose public policy counsel is

working with seven states to develop programs addressing this issue, making improvements to the PMP system and developing additional treatments and education.

**Lawrence P. Matheis (Executive Director, Nevada State Medical Association):**

This issue is close to critical levels, and we are addressing it in many different ways. We do not think S.B. 75 achieves the desired result of addressing the growing addiction and abuse of prescription drugs. We feel every prescriber of schedule II controlled substances should register for the PMP and make use of that information. We have not gotten a software program that provides complete, real-time information. We are continuing to work on the program to make it better and to make sure doctors appropriately use it. The principal concern with S.B. 75 is the contradiction in regard to the use of prescription drugs. Virtually every cancer patient is on a significant range of medications, including opioids to treat pain. Other patients who have similar, painful illnesses and who are on pain medications face the problem of dependence and addiction. That does not mean it is not the appropriate prescription, even if it may be addictive. You do not want to have a chilling effect on those patients being able to get those appropriate prescriptions.

This approach would discourage the appropriate use and prescription of those drugs. In those cases, if that individual does become addicted, that addiction is a lesser side effect than the treatment of the illness or injury. It would have a chilling effect on prescribing those medications initially. That would create more referrals. There is a need to build an infrastructure that improves the knowledge base for the physicians regarding their patients who may be drug seekers. The most difficult portion is the development of a public education campaign. In many cases, deaths are not directly attributed to the prescription of the drug itself. This is a complex problem, but we do not think S.B. 75 achieves the desired results.

**David A. Johnson, M.D. (Chair, Policy Committee, Nevada Academy of Family Physicians):**

I will now read from my written testimony ([Exhibit F](#)). Medications are dangerous. The members of the Nevada Academy of Family Physicians treat thousands of people every day. Senate Bill 75 would place our members in a position where we cannot prescribe and treat our patients. This is going to hurt more people than it will help. We oppose Senate Bill 75.

**Lesley Pittman (Keep Our Doctors In Nevada):**

I am here on behalf of Keep Our Doctors in Nevada (KODIN). We believe strongly that the provisions of S.B. 75 effectively bypass the provisions of the KODIN initiative, Ballot Question No. 3, that passed in 2004 amending *Nevada Revised Statute* (NRS) 41A.097 which sets the limits on medical malpractice claim time frames and damage awards. This bill unhinges the physician's prescription aspect of care from the KODIN provisions. Why should this provision be treated any differently when physicians have no control over what a patient does with the drugs after they have been prescribed? We believe there is sufficient oversight by the Board of Medical Examiners to go after physicians who practice unprofessionally. That oversight is working as a deterrent. We believe this bill will destabilize the medical malpractice insurance market in Nevada and undo the stabilization brought through the passage of the KODIN initiative. It will reduce the willingness of a physician to prescribe drugs. This impacts the patients who legitimately need them for pain. I oppose Senate Bill 75.

**Annette Teijeiro, M.D.:**

I will read from my written testimony ([Exhibit G](#)). Not all patients prescribed these medications become addicted. Senate Bill 75 will not address those issues. I oppose S.B. 75.

**Ivan Goldsmith, M.D.:**

It is clear this legislation is shilling for plaintiff attorneys.

**Senator Kihuen:**

You are out of order, sir. You need to stick to the bill. Those comments are out of line.

**Dr. Goldsmith:**

There is no epidemic. The medication is tamperproof. This bill will unleash the floodgates of ridiculous litigation against physicians who prescribe medication to treat sick patients. Our hands will be tied. Patients will feel targeted and may become violent and doctors may be harmed. In Las Vegas, doctors have been shot. Without treatment and the ability to address a patient's pain, this bill does nothing to address the issue. It is interesting that the pharmacies are released from this bill, but the doctors and manufacturers are not. They are the deep pockets. Most of the statistics quoted are not valid statistics. Few patients develop an addiction to the opioids prescribed. They may be dependent but not

addicted. Published articles reference those points. We have limited ways to treat patients with chronic pain. More pressure is going to be placed on physicians, and it will hurt thousands of people.

**James G. Marx, M.D.:**

I am a pain addiction specialist in Las Vegas, and the woman sitting next to me typifies what we see in our practice. Her name is Helga. She has severe crippling deformities. She has taken 120 milligrams of methadone for the last 15 years. She obviously is not addicted. She has a doctorate degree in physics and is the face of a person in chronic pain. She has constant daily pain and without that medication, her life would be a living hell. To deny her that medication would be awful. I see many sides of this issue and a wide span of individuals in my practice. I oppose this bill in its entirety. This bill neither addresses the treatment of pain, addiction or patients for any condition. It does not promote the welfare or improve the treatment of any individual. It will provide a means to bring litigation against doctors. I cannot believe that any person who is knowledgeable in this area of treatment or addiction was consulted in the drafting of this bill. I would like the record to reflect that my comments were not allowed.

**Senator Kihuen:**

Please submit your testimony in writing.

**George A. Ross (Las Vegas Metro Chamber of Commerce; HCA, Inc.; Sunrise Health System of Hospitals; Astellas Pharma US, Inc.):**

We do not diminish the seriousness of this issue. We agree we need to look at ways to solve and attack this significant issue. Senate Bill 75 does not do that. This can be solved with the existing mechanisms or by amending the statutes. It does not mean this issue has to be solved by a private right of action. We agree with the testimony of KODIN and PhRMA. From a business environment point of view, the bill provides a broader message to the business community by creating a private cause of action for producing a legal product. The only thing a company did wrong was produce a legal product that has legitimate legal and medical uses. I have worked on tort issues from a nonlegal point of view. When private lawsuits occur, you have to fund those lawsuits with deep pockets, such as those of the manufacturer. People who have drug or alcohol overdoses come to hospitals for treatment.

Hospitals grant doctors and nurses privileges and usually have a pharmacy on the premises. Litigation will place them all in the chain of litigation because they have the money to pay out an award. What kind business environment will that promote? Pharmaceuticals are a large industry. We would love to have more businesses in our State conducting research and manufacturing. We cannot scare those businesses away. There are other ways to solve this issue. We may send a negative message to the businesses we are trying to attract to our State.

**Bill M. Welch (Nevada Hospital Association):**

The Nevada Hospital Association opposes S.B. 75. We think this strategy is reactive and not proactive. Most of the patients come from the emergency room. We are concerned that this will have unintended consequences on how our doctors treat patients who come into our facilities for fear of potential future litigation. We would be happy to work on strategies to address these issues but feel this bill is not the way.

**Raymond McKay (Las Vegas Defense Lawyers):**

I am a board member of Las Vegas Defense Lawyers, and we oppose S.B. 75. This bill is trying to create a statutory cause of action to correct illegal drug abuse. This bill wants to solve that problem by suing our doctors and drug manufacturers. There are other regulatory means to achieve the goal of the bill. Nevada law already protects its citizens by common law tort actions against drug companies for causes such as fraud, product liability or failure to warn. Nevada law allows patients to sue their doctors if they fall below the standard of care. Senate Bill 75 fails to address or define addiction. *Black's Law Dictionary* defines addiction, but this bill does not. The bill is also trying to step away from the traditional American rule regarding attorneys' fees. It is creating a statutory right to allow a unilateral person to recover attorney's fees and costs. I am not sure if doctors or drug companies were the prevailing parties they would be allowed to collect those fees as well.

**William Von Tobel, M.D.:**

I have been a family physician since 1984. My practice consists of mainly geriatrics. If the intent is to stop primary care physicians from prescribing pain medication, then it does that. Most chronic pain is treated by the primary care physicians. We do this in the normal course of our practice. Thirty percent of the elderly require chronic pain medication. We begin with the least toxic medication in treating our patients. Those include substances such as Tylenol, Advil or Aleve. Geriatricians advise not to prescribe these lower toxicity drugs to



our geriatric patients. We are advised to treat pain with the less potent narcotics. Our elderly will be affected as physicians will prescribe lower toxicity medications such as anti-inflammatory drugs which have far greater negative impacts upon our elderly patients' health. Primary care physicians will then send those patients to a chronic pain specialist. Those chronic pain specialists will then refuse to prescribe those needed pain medications. This legislation will create a crisis within the medical community. We agree there is problem. We are willing to come up with something that would make a difference.

**Tray Abney (The Chamber, Reno-Sparks-Northern Nevada):**

We oppose this bill.

**Jay Parmer (Generic Pharmaceutical Association):**

Generic Pharmaceutical Association does not believe that increasing the liability of manufacturers will lessen the risk that patients, when treated appropriately, will become addicted to medicines. We fully support efforts to educate the public about the dangers of drug abuse. We are committed to participating with the U.S. Food and Drug Administration in examining workable methods of deterring the abuse of these drugs. People who abuse prescription drugs get them from multiple sources, including illegal or improper prescribing. Strict liability for manufacturers of drugs needed to treat acute and chronic pain is not the answer to this serious health care challenge.

**Senator Segerblom:**

There is an issue. Whether this bill addresses that issue is another question. I do think this is a serious issue.

**Senator Kihuen:**

I will close the hearing on S.B. 75 and turn the hearing back to Chair Segerblom.

**Senator Justin C. Jones (Senatorial District No. 9):**

I am here today to introduce Senate Bill 111.

**SENATE BILL 111**: Requires production of certain evidence under certain circumstances. (BDR 3-771)

We have all at one time or another decried the proliferation of frivolous lawsuits, which cost businesses money and clog our courts unnecessarily. I believe

S.B. 111 is a positive step in reducing frivolous lawsuits. We have all heard of the situation in which a plaintiff asserts that he or she was injured while walking into a casino or Wal-mart and allegedly slipped and fell. Only after costly discovery is it found that the person's own carelessness or the action of another caused the injury.

Senate Bill 111 creates a mechanism for an attorney presented with a client claiming an injury to seek any videotaped evidence before filing suit to ensure that the claim is not frivolous. The attorney requesting the video evidence must pay the cost of acquiring it. This will save time and money for everyone involved. The business does not have to put its liability insurer on notice or spend money defending against a frivolous claim. The courts will not waste time on frivolous cases. The attorney hired by the plaintiff will not waste time and money pursuing a losing claim. If the video evidence shows a legitimate claim, there is no harm to the business because the evidence would come out in discovery in the end. This is a win-win for all parties involved, and I urge your support. I have included law review articles regarding presuit discovery for the Committee.

**Graham Galloway (Nevada Justice Association):**

The goal of S.B. 111 is to decrease or eliminate litigation in the area of premises liability cases. For example, a client is walking through the Wal-mart parking lot and is hit by a driver backing into a spot. We have a suit. We ask Wal-mart for the video to determine whether the client was liable or injured. Wal-mart will not give us the video to make that determination until a lawsuit is filed.

A second example is a client claims she tripped over an item at a casino. The casino is forward-thinking and invites me to review the video. I look at the video and determine she missed a step. With this bill, I could look at the videotape and tell the client she does not have a case.

Another example is a client loading furniture at a store that has video surveillance. A car crashes into my client, and the video shows the driver running away from the scene. The driver's company states that the driver did not have the company vehicle at that time. The video clearly contradicts that assertion. When we look at the videotape prior to litigation, we can determine whether a case should be filed with the court. The only time we file litigation is when we are told we cannot look at the videotape. We are proposing unique

legislation. We are asking that there be prelawsuit discovery in a limited scope to only video or photographic evidence that exists. It saves money.

Opponents will say that it gives the plaintiff's attorney an advantage. It does not give anyone an advantage. It eliminates unnecessary litigation, time, resources and expense. The opposition has presented several points. Some people believe that if we view video prior to litigation, somehow we as trial lawyers will fish or troll for additional cases. I have been practicing for over 30 years. I have looked at countless hours of videotape. I have yet to see two incidents on a tape. Most of the time we do not get our client's incident on the video. I have never seen a second case within a video or photograph of a second accident and tried to track that person down. The concept of fishing and trolling does not exist. I have never heard of an instance of that happening. Further, unless a person in the video is wearing a billboard with identifying information, it is almost impossible to fish for additional clients or litigation. It is a frivolous argument.

There is some concern with a due process violation. We are not taking property. I do not understand how this argument can be made. Due process is not involved in this legislation. We are not taking anyone's constitutional rights away. Another concern I have heard is that video evidence is private property, and why should the State tell us what to do with our property? The government regulates private property all the time. Government regulates property in every form and fashion. That argument is not appropriate. This legislation is to lessen litigation. As a trial lawyer, I receive a lot of complaints about the amount of litigation. This will decrease litigation time and costs. It is clear, simple and forward-thinking.

**Senator Ford:**

I am intrigued at the ability to reduce litigation. I have heard many of the issues you mentioned regarding the bill. There is prelitigation discovery in Texas. Do we have similar prelitigation discovery or statutory authority in Nevada?

**Mr. Galloway:**

There is no real avenue short of taking prelitigation depositions, which is a unique and difficult task. It is difficult to get anything prelitigation. Nevada does not have a systematic process to do so.

**Senator Ford:**

It exists in that you may get prelitigation depositions.

**Mr. Galloway:**

You have to petition a court to do so, incurring fees and time. A person has to go through the court for prelitigation discovery. It is easier to just file the litigation and follow with the normal course of discovery. I have only seen prelitigation discovery work in instances where a witness is going to be out of the Country or death is imminent. That is different from what this bill proposes in the form of videotaped evidence.

**Senator Ford:**

What about a prelitigation *subpoena duces tecum*?

**Mr. Galloway:**

A court would need to have that issued. I cannot have a subpoena issued without any court intervention.

**Senator Ford:**

Would you be amenable to include your intent within the Nevada Rules of Civil Procedure (NRCP) relative to prelitigation discovery?

**Mr. Galloway:**

I would. You can do it both ways. I think the best and easiest way is to amend the statute. In order to change the NRCP, there will need to be multiple hearings with the Nevada Supreme Court and other entities. This way is easier.

**Senator Hutchison:**

We are all in favor of reducing litigation. You assume people and companies act in their best interests, which is a fair assumption. You have given examples of companies who are forward-thinking and act in their own interests. Companies are going to look at their videos and ask you to review the videos with them because the evidence will show the companies did nothing wrong. You, as a good lawyer, will say, great, we are not going to pursue litigation. However, others may look at their videos and determine the videos may or may not exonerate them and they do not want to give the evidence up. They may want to have their lawyers involved. Or maybe they do not want to disclose other circumstances depicted on the videos. Why can we not allow them to act in their best interests and not force them with a law to produce the discovery they

may not want to produce? If they do not produce the videos, they are violating the law regardless of the reasoning.

**Mr. Galloway:**

That point is well-taken. A lot of people do not act in their best interest. Many entities are forward-thinking and realize it is in their best interest to provide this information and cooperate. Many entities and people do not. It is almost a kneejerk reaction with those people. They just respond with no. If they say no, I then file lawsuits and receive the evidence. There is nothing worse than receiving evidence and seeing my clients are in the wrong and caused their own injuries. It happens so often, and that is why I am here today.

**Senator Hutchison:**

Are you concerned about extra judicial process requiring a party to disclose potentially damaging information?

**Mr. Galloway:**

That would be a concern on the defense side. Some people may state that they are being bullied by this legislation. Last Session, this idea was presented and the concern was attorneys would bully small business owners or home owners. If so, that overriding concern could be addressed by an amendment. We could craft wording in the bill that allows that sort of procedure and address the concern about extra judicial bullying to remove that type of intimidation. It would be an easy fix.

**Senator Jones:**

A proposed amendment ([Exhibit H](#)) would exempt residential home owners. John Jones, Jr., from Clark County also proposed an amendment that would give the County a longer time to respond. I accept those amendments.

**Senator Brower:**

I assumed this bill was in relation to business owners only. However, this bill is drafted to apply to any property owner. That is a concern. I am interested in reviewing the amendments. This is a departure from the way things are done. I submit that we sometimes need a departure from the status quo. Are there other states that have adopted similar litigation?

**Mr. Galloway:**

I am not sure of any other state with this type of legislation. I believe Texas has some prelitigation system. In this day and age in which the criticism concerns too much litigation, this is a tool to decrease litigation. I do not disagree that there is too much litigation. At times, the system fails us.

**Senator Jones:**

Six states have presuit statutes that allow for presuit discovery. Those states include New York, Illinois, Texas, Ohio, Alabama and Pennsylvania. They do not have this exact framework, but they have provisions that allow for presuit discovery. I think there is a movement in the federal court for presuit discovery. Under Federal Rules of Civil Procedure Rule 27, there is some provision for presuit discovery.

**Senator Brower:**

I know proponents would like to interpret Federal Rule 27 more broadly to allow for more than just depositions. Nevada has the NRCP Rule 27. You stated that NRCP 27 could be used in this context, and you do not like that idea?

**Mr. Galloway:**

I am not opposed to that idea. However, practically NRCP 27 does not work. I have to go before a judge in order to get pretrial subpoenas or depositions issued. I am better to just file the lawsuit and go through the procedures. By using the prelitigation avenues available, there is no savings of time or money.

**Senator Ford:**

If you did prelitigation discovery and you have determined that there is no case, you are not going to file the litigation.

**Mr. Galloway:**

We are not interested in litigating cases which have no merit. We are only interested in legitimate cases.

**Peter D. Krueger, (Nevada Petroleum Marketers and Convenience Store Association):**

My opposition as a business owner is important. There are other remedies. This is essentially the same bill brought last Session that was defeated. There is always going to be opposition between business owners and trial lawyers. The trial lawyers are asking the Legislature to do their marketing and business in

deciding where to put their resources. The trial lawyers are a business. They have to look at the evidence and listen to their clients in order to make judgments about the validity of cases. For a trial lawyer to come to a business and ask for private property prior to being sued runs counter to a healthy relationship between a plaintiff and business. There is no bill like this in any state that would require this level of evidence given before any litigation. It will not save money. We have no idea whether there would be more litigation. We are asking a lot of businesses to take a leap of faith that they will be sued less and save money without knowing whether there would actually be less litigation. Once a suit is filed, an allegation of some form of wrongdoing has to be asserted. We are opposed.

**Brian McAnallen (Las Vegas Metro Chamber of Commerce):**

I represent over 6,000 businesses via the Chamber of Commerce. The target is on the businesses and the business community. By removing private residences and governmental property, this bill is aimed primarily at businesses. This bill will not reduce costs to businesses which will be required to comply within 10 days. There is an issue with the business owner who may not be the occupying entity within that building—for example, strip malls leased to businesses that operate out of a unit. There will be difficulty in communicating between owners and occupiers in obtaining the requested information within the time frame. If there is a movement in the federal courts in regard to prediscovery, should we not wait and see how that turns out before we go forward with this bill? There are six other states with prelitigation discovery, and this bill is not modeled off those laws. Businesses are concerned about receiving a litany of letters from attorneys asking them to comply with these types of discovery requests. Mr. Galloway stated that oftentimes attorneys do not see their clients in the video at all. How is the business going to know what they are to look for and produce? Why were more amendments not presented to clean this issue up? We oppose this bill.

**John T. Jones, Jr. (Clark County):**

We are not necessarily opposed to this bill. In many instances, Clark County already has had the duty to turn over certain types of information through public record requests. Our objection initially is to the 10-day requirement considering the current budget and economic constraints. We feel 20 days would be better suited. We have provided an amendment ([Exhibit I](#)).

**Mr. Abney:**

We are strongly opposed to S.B. 111 and feel it is a vast overreach—an invasion of privacy and private property rights. A videotape is private property as is a computer. I cannot imagine turning over my computer to an attorney because he or she thinks there is something on it. The attorney can ask for the video and the business can comply if it wishes; but for us to rely on the good will of trial attorneys is a vast overreach.

**Lea Tauchen (Retail Association of Nevada):**

We are opposed to the bill. Some of the information presented in videos is sensitive information as to how a business conducts its operations. Most of our members do not have security, legal or human resource departments, and it is difficult for them to comply with or understand their rights in this issue.

**Randi Thompson (National Federation of Independent Business):**

It is foggy to me whether home-based businesses would be exempt.

**Senator Kihuen:**

We will open the hearing on Senate Bill 169.

[SENATE BILL 169](#): Revises provisions governing criminal penalties. (BDR 15-495)

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

This bill is proposing that misdemeanors and gross misdemeanors, which currently have a penalty of up to 1 year, be reduced to 364 days ([Exhibit J](#)). We are reducing the penalty by 1 day. The purpose is in regard to immigration law. If a person is convicted of a crime punishable by imprisonment of up to a year, there are adverse implications in that person's ability to apply for citizenship. Oftentimes misdemeanors are pled to without a second thought. However, down the road when that person tries to apply for citizenship, he or she encounters great difficulties. This bill would not retroactively apply. A lot of misdemeanor crimes are incidental. The change of 1 day would have a huge impact on those who wish to become citizens.



**Senator Brower:**

Does any other state have similar legislation?

**Senator Segerblom:**

Angela Morrison will testify as to that issue.

**Angela Morrison (Professor, William S. Boyd School of Law, University of Nevada, Las Vegas):**

I am a professor at the William S. Boyd School of Law and teach in the Immigration Clinic. This bill provides for an important revision to the penalty to crimes defined as gross misdemeanors. This legislation is important given the serious immigration consequences the current penalty carries. As a result, the collateral consequences for noncitizens convicted of certain gross misdemeanors are far more serious than for citizens convicted of the same crime.

According to the Migration Policy Institute review of the U.S. Census Bureau's 2011 American Community Survey, approximately 308,788 people in Nevada are noncitizens. This includes those who are legal residents, nonimmigrants and undocumented. In particular, children have family members who are immigrants. Of these children, 39.3 percent live with at least one parent who is an immigrant. Of those, 89.2 percent or 221,238 are United States citizens. Why does this matter? Under Nevada law, individuals who are convicted under certain gross misdemeanors and receive a sentence of 365 days or 1 year or less are categorized as aggravated felons under the U.S. Immigration and Nationality Act.

It does not matter that it is called a gross misdemeanor under Nevada immigration law—individuals who commit an aggravated felony can face the following consequences. If those people are undocumented or here without authorization, they can be deported without a hearing. Even individuals who are legal, permanent residents are deportable. There is mandatory, unreviewable detention following release from criminal custody or upon referral to immigration court for anyone convicted of an aggravated felony. Those individuals are ineligible for asylum or withholding of removal. They are additionally ineligible for waivers of inadmissibility given to other immigrants under extreme hardship, a qualifying U.S. citizen, a legal resident spouse or a parent. They are subject to permanent inadmissibility following their deportation from the United States.

There is no way these individuals could legally reenter the United States. There are also enhanced penalties for people deported based upon an aggravated felony for illegally reentering the United States. Some aggravated felonies are for particular offenses for which a court has imposed a sentence of 1 year or more. Four categories within the immigration law impact Nevada law. These crimes under immigration law are defined as crimes of violence, theft, fraud, forgery, bribery, perjury and the related attempt offenses. *Nevada Revised Statute* 200.368, subsection 2, statutory sexual seduction, and NRS 200.450, challenges to fight, are considered crimes of violence under immigration law. Certain battery offenses and possession of an instrument with the intent to commit burglary may also be included as an aggravated felony. I often see the crime of an issuance of a check or draft without sufficient money funds or credit—a minor circumstance with huge implications on a person's ability to seek citizenship. The time imposed by the court, regardless of whether the time is suspended or not, is considered part of the sentence. It does not matter if a person gets a suspended sentence of 1 year when it is a gross misdemeanor. That sentence is considered a year under immigration law.

Someone who writes a bad check in Nevada and is charged with a gross misdemeanor but receives a suspended sentence is still considered an aggravated felon. Persons who commit burglary with the intent to commit any other felony and receive an imposed term of imprisonment of 2 years are not aggravated felons under immigration law. I have to advise people that they are not able to apply for citizenship and need to see an immigration attorney immediately because they are subject to deportation. Those include individuals who are legal residents who have been here for many years. This breaks apart families.

This bill ensures that those residents who are convicted of minor offenses can remain in the Country and continue to support their minor children. It helps to ensure that those minor children do not become wards of the State. There have been many studies conducted regarding the impact of parents who are deported and leave behind children who are citizens. Those children become a burden on the State.

This bill will not impact immigration enforcement. People who are unlawfully present in the United States or who have convictions that make them deportable will still be subject to deportation proceedings. This bill only ensures that people will not be unfairly classified as aggravated felons and that

deportation is not automatic. It preserves the ability of immigration courts and officials to make the determination of who may be worthy of an exercise of discretion.

I have done a brief overview of selected state legislatures regarding maximum penalties for gross misdemeanor offenses ([Exhibit K](#)). Washington is the only state I found that has enacted this type of legislation. The legislation was enacted to avoid these serious immigration consequences. Additionally, many states do not have this category of crime. Many states have a list of felony and misdemeanor crimes. Most states define a felony as a crime punishable by a year or more in a state penitentiary and a misdemeanor as punishable by a year or less in jail. The term "aggravated felony" is now including much fewer crimes than before, and these are serious crimes. In 1996, Congress started to include additional theft crimes. It seems Nevada is in line with other states in its definition of misdemeanor and gross misdemeanor crimes. I support this bill. It makes sentencing fair to both citizens and noncitizens. It ensures the law matches what individuals think they are pleading to. It matches the seriousness of the crime committed and will help keep families together.

**Senator Kihuen:**

In Clark County, we have partnered with the U.S. Immigration and Customs Enforcement (ICE) in the 287(g) program that provides when undocumented people end up in jail, they can look up their immigration status regarding deportation. How does this bill impact the 287(g) program?

**Ms. Morrison:**

Changes are happening with that program. There is a new ICE program called Secure Communities, which in a lot of ways has replaced the 287(g) program. Any individual booked into the Clark County jail on suspicion of committing a crime that immigration law would define as an aggravated felony would automatically be subject to removal proceedings and referred to immigration court. Legal residents need to plead to the crime first and be convicted before they face deportation proceedings.

**Senator Kihuen:**

This is going to put people who write a bad check into the same category as those who murder and rape? I am the first to say that if you come to this Country and you do those serious offenses, you should be deported.

**Ms. Morrison:**

Yes.

**Senator Hutchison:**

I am sympathetic to the fact that minor crimes have serious implications and consequences for immigration purposes. Is there a reason why we cannot target those crimes which are nonviolent and minor, those that should not result in serious, adverse consequences, as opposed to making a change to all gross misdemeanor crimes?

**Ms. Morrison:**

That would be up to the Legal Division to determine. It may be more time-intensive than to making a simple time change of 1 day.

**Yvanna Cancela (Culinary Workers Union Local 226):**

We represent individuals from over 84 countries. Immigration has always been a priority for us. In 2001, we established the Citizenship Project. We have helped over 10,000 people establish legal citizenship for free. We see this situation Ms. Morrison described on a daily basis. Something like writing a bad check can seriously affect a person's ability to gain citizenship. This bill will improve the lives of Nevadans and ensure fairness.

**Senator Kihuen:**

Thank you for all the work you do.

**Kyle Edgerton (Immigration Program Director, Catholic Charities of Northern Nevada):**

I am here representing the Catholic Charities of Northern Nevada. Please see my handout regarding the legislative impact on noncitizens ([Exhibit L](#)).

A crime involving moral turpitude that is punishable for a year or more also allows for deportation. It is a term of art and a concept open for interpretation. A lot of the state laws mentioned by Ms. Morrison could also be crimes involving moral turpitude. I have provided examples in [Exhibit L](#) of conduct that may not have been wise but still results in severe penalties. Nevada draws a distinction between the different types of punishments; however, it is a problematic issue with an overlap at the 1-year mark. If we define misdemeanors or gross misdemeanors as crimes punishable up to a year and a year beyond, there is something neat and clean that fits with this bill. There is

an issue with due process. We should acknowledge that 90 to 95 percent of all cases result in a plea agreement. People are often pressured or find it expedient to plead guilty. Those individuals often figure that pleading to a misdemeanor is not a big deal because a lay person's understanding may depart from actual legal understanding for immigration purposes.

**Senator Hutchison:**

Do other states have problems with the time overlap? Or do most states make a clear distinction?

**Mr. Edgerton:**

I am not sure, but I know Washington does.

**Stacey Shinn (Progressive Leadership Alliance of Nevada):**

We are members of the Nevada Immigration Coalition. This bill is up for review for the Progressive Leadership Alliance of Nevada report card as a positive bill. According to Syracuse University's Transactional Records Access Clearinghouse system, there were 208,214 deportations in the United States in 2012, and 2,093 of those individuals deported were from Nevada. Nationally, 15 percent of total deportations were due to criminal reasons versus 22 percent in Nevada. Washington recently enacted legislation regarding the 364-day change and now has a 16 percent rate of deportation because of criminal charges. Illinois has had similar legislation, and that state's rate is down to 12 percent because of criminal deportation. States that have the 364-day legislation have lower rates of criminal deportation. Additionally, 6 percent to 10 percent of our citizens' deportations could have been avoided if this legislation was in place. This system of deportation leads to the separation of families. In the first half of 2011, 46,000 parents of children who are citizens were removed from this Country, leaving 5,100 children behind to be placed into foster care. This bill would help protect those who have made a minor mistake in their lives and also their families and loved ones.

**Astrid Silva:**

I have been labeled a lot of things in my life. The only label that has defined me is my undocumented status. No matter what I do, that will be what I am and I speak for the undocumented individuals. A lot of times undocumented individuals are unable to come and speak due to the fear that we may be deported. Families are torn apart every day. Those numbers are daunting. This bill would have a huge impact on people's lives. I have not committed a crime,

and not even tattoos are permanent these days. Everyone makes mistakes. These are things we do not think about because we do not deal with them. One day's change would allow those people to become citizens and keep families together.

**Senator Kihuen:**

Thank you for your courage to testify based upon your status. I know you are representing hundreds of thousands of people who are working, paying taxes and doing what they are supposed to do to become citizens and stay with their families.

**Senator Hutchison:**

Thank you for your testimony.

**Vanessa Spinazola (American Civil Liberties Union of Nevada):**

We are members of the Nevada Immigrant Coalition. We support this bill. We are also supporting the record-sealing provisions based on privacy issues. Often, employers will seek to avoid accountability for paying wages to workers they suspect of being undocumented. Those bosses will often accuse a worker of stealing tools or minor infractions on the job and then call immigration. Those individuals are deported. It results in no wages being paid, lowering of the wage floor and providing incentives to hire undocumented workers because a boss is able to accuse them of minor infractions and have them deported.

**Senator Hutchison:**

Do you know what other states do with the overlap of time? Is Nevada unique, or are we in line with other states?

**Ms. Spinazola:**

I do not know.

**Steve Yeager (Clark County Public Defender's Office; Washoe County Public Defender's Office):**

Increasingly, indigent defense is being defined by immigration consequence as the most important element of a case. Any legislation that would give more clarity in this murky area of the law would help. If you have an individual charged with a more serious crime who is considering whether to accept a plea negotiation, the jail time or probation is not necessarily the individual's concern; the immigration implications are most considered. This bill creates more

flexibility within the courts. It says that Nevada does not feel these particular offenses are felonies. If you are convicted, you are not going to be automatically deported. Instead, an individual is able to plead your case.

Our State is unique in having the category of gross misdemeanor. Other states may have categories of misdemeanors and felonies. This is also a state sovereignty issue. The federal government does what it wants in the area of immigration, but any protection we can give our citizens to say they are not automatically deported is important. It would help public defenders tell clients that they may be able to stay in this Country. It also helps unclog a lot of backlog in the system. Often when an individual is a citizen, the case will be negotiated because the offer is fair and everyone agrees. However, when someone is not a citizen, you will have a backlog of cases in determining the consequences for that individual.

There are some concerns regarding the provision relating to the sealing of records for gross misdemeanors. An individual has to wait 7 years to seal. That length of time is the same as a Category E felony. I think there should be some difference since there is a difference in the penalty levels.

**Senator Hutchison:**

This bill would take away the automatic deportation consequences but does not take away the discretion of an immigration court in evaluating whether that individual should be deported?

**Mr. Yeager:**

It is a complicated area of law. It is my understanding the federal government can come in at any point and put a hold on an individual. The bill does not prevent that from happening. By changing the time to 364 days, this bill allows the judge to have discretion as opposed to the individual being automatically deported.

**Senator Hutchison:**

Under state law, if individuals are placed within a certain category, they are automatically deported and there is no discretion?

**Mr. Yeager:**

Yes, that is my understanding. The United States Supreme Court has advised criminal defense practitioners that they are required to have enough knowledge

in order to have an intelligent conversation with clients so they understand the consequences. This would not change the federal government's ability to do what it feels it should do.

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

We oppose this bill based only on the 2-year, record-sealing provision; otherwise, we support the bill. That portion would have a huge negative impact. We submitted a \$50,000 fiscal note to Senate Bill 45 regarding the sealing of records and the financial impact.

We were not asked to complete a fiscal note for this bill. This bill would require sealing records for all arresting agencies by the Sheriff's Office in order to have every booking sealed. Our system does not expunge, and we allow agencies to review those records if necessary. Sealing records is a time- and labor-intensive process. We can support the bill if that provision is removed.

**SENATE BILL 45**: Revises provisions governing the sealing and removal of certain records of criminal history. (BDR 14-345)

**Senator Ford:**

What would be amenable to you?

**Mr. Spratley:**

We would be amenable to 5 years.

**Brian O'Callaghan (Las Vegas Metropolitan Police Department):**

We have the same issue. We are down 17 percent in the sealing department staff, and that would be an increase in the cost.

**Senator Ford:**

Are you amenable to 5 years?

**Mr. O'Callaghan:**

We would have to discuss that.

**Kristin Erickson (Chief Deputy District Attorney, Washoe County District Attorney's Office):**

We object to the sealing provision. It is a resource issue for us as well. There are few true gross misdemeanors. The majority of gross misdemeanors are pleas



down from a felony. We have an issue with reducing the sealing provision for serious crimes that constitute felony conduct. We would be amenable to 5 years.

**Senator Hutchison:**

Everyone who testified against this bill: are you opposed to the rest of the bill reducing the time to 364 days?

**Mr. Spratley:**

No.

**Mr. O'Callaghan:**

No.

**Ms. Erickson:**

We are neutral.

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

We have the same concerns regarding the sealing provision because it would place a large burden on our Department by increasing the workload. We would request approaching the Interim Finance Committee if that seal volume exceeds our capacity to process requests in a timely fashion.

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**Senator Kihuen:**

I will now close the hearing at 11:38 a.m.

RESPECTFULLY SUBMITTED:

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Lindsay Wheeler,  
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. 75	C	10	Hollie Hendrikson	Presentation
S.B. 75	D	3	Lisa L. Adams	Written Testimony
S.B. 75	E	7	Marjorie E. Powell	Written Testimony and Handout
S.B. 75	F	4	David A. Johnson	Written Testimony
S.B. 75	G	4	Annette Teijeiro	Written Testimony
S.B. 111	H	1	Nevada Justice Association	Proposed Amendment
S.B. 111	I	2	Clark County	Proposed Amendment
S.B. 169	J	1	Senator Tick Segerblom	Slide
S.B. 169	K	7	Angela Morrison	Handout
S.B. 169	L	8	Kyle Edgerton	Written Testimony