

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
March 11, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:04 a.m. on Monday, March 11, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Senatorial District No. 8
Senator Moises (Mo) Denis, Senatorial District No. 2
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Linda Cuddy, Program Administrator, Court Appointed Special Advocates,
Douglas County
Frank Schnorbus, Court Appointed Special Advocates, Douglas County

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Julie Butler, Records Bureau Chief, Records and Technology Division,
Department of Public Safety
Bart Pace, Office of the District Attorney, Clark County
John T. Jones, Jr., Nevada District Attorneys Association; Public
Administrator's Office, Clark County
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Megan N. Salcido, Office of the City Manager, City of Reno
Lisa Mayo-DeRiso, Celebrating Legacy
Randy Sutton, CEO, Celebrating Legacy

Chair Segerblom:

We have a bill draft request (BDR) to consider this morning.

BILL DRAFT REQUEST 15-71: Revises provisions relating to graffiti. (Later introduced as S.B. 237.)

SENATOR FORD MOVED TO INTRODUCE BDR 15-71.

SENATOR BROWER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

I will open the hearing on Senate Bill (S.B.) 141.

SENATE BILL 141: Revises provisions governing the dissemination of records of criminal history. (BDR 14-881)

Senator Moises (Mo) Denis (Senatorial District No. 2):

This bill requires a criminal justice agency to disseminate criminal record histories to the Nevada Court Appointed Special Advocates (CASA) Association or any of its local CASA programs as needed to ensure the safety of a child for whom a special advocate has been appointed. Court Appointed Special Advocates are trained volunteers who serve as *guardians ad litem* for children in need of protection. Typically, these are children in need of permanency and safety in their lives, and securing that for them is the primary role of the CASA. Under the provisions of *Nevada Revised Statute* (NRS) 432B.500, CASAs are

directed to, among other things: thoroughly research and ascertain the relevant facts of each case for which the *guardian ad litem* is appointed to ensure that the court receives an independent, objective account of those facts; and present recommendations to the court and provide reasons in support of those recommendations. The CASA volunteers get to know a child by talking to everyone in that child's life, such as parents, relatives, foster parents, teachers, medical professionals, attorneys, social workers and others. They use the information they gather to inform judges and others of what the child needs and what will be the best permanent home for the child.

In order to prepare confidential, objective reports and recommendations to the courts, CASAs must conduct comprehensive investigations to ensure the safety of the children they represent. In Nevada, CASAs search through criminal records by hand or online in the records of individual courts to be certain those being considered as volunteers are not criminal offenders. This process is particularly difficult in the rural counties due to their limited resources.

The only new language in S.B. 141 is in section 1, subsection 7, paragraph (x). This provision adds the Nevada CASA Association and local CASA programs to the list of people and entities to whom records of criminal history must be disseminated upon request. I understand an amendment may be offered today because the Nevada CASA Association is inactive at the present time. Linda Cuddy will talk about the amendment.

I do not believe S.B. 141 is a controversial bill. For these children, time is of the essence. Giving CASAs access to these records is crucial, especially in the rural areas. My understanding is that Washoe and Clark Counties have easy access to this information, but the rural counties do not. The main reason I brought this bill forward is because I know people who work in the CASA program, and they do great work to help kids get the help and advocacy they need.

Chair Segerblom:

Are you familiar with the amendment, and do you support it?

Senator Denis:

Yes.

Linda Cuddy (Program Administrator, Court Appointed Special Advocates, Douglas County):

I support S.B. 141. I have prepared testimony that provides some background on the CASA program and explains the need for this measure ([Exhibit C](#)).

As Senator Denis mentioned, I have an amendment to offer ([Exhibit D](#)). I have requested this amendment because the bill refers to the Nevada CASA Association.

The National CASA Association is a national network of 946 state and local programs, with some 70,000 volunteers nationwide. Each program is autonomous. In CASA of Douglas County, we operate as a court-based program as opposed to a nonprofit 501(c)(3) program. As a court-based program, we are under the direct supervision and authority of the district court judges in our jurisdiction. The district court judges are responsible for how we work and which cases we are appointed to. Because of a lack of funding, our state CASA association is inactive. The primary role that organization served was to coordinate training between the programs. There is no supervisory capacity, nor is there any casework done by the State organizations. It is strictly a coordination between the national program and the local programs, particularly in the rural counties.

The amendment in [Exhibit D](#) removes the reference to the Nevada CASA Association from section 1, subsection 7, paragraph (x). This organization is inactive, and I am not sure when it will be up and running again. The amendment would instead refer to local CASA programs in counties having a population of less than 100,000.

Chair Segerblom:

Why limit it to counties with a population under 100,000?

Ms. Cuddy:

There was a bifurcation in the child welfare system in Nevada. Clark and Washoe Counties now operate under their own social service agencies. The Division of Child and Family Services, Department of Health and Human Services, is responsible for the child welfare system in the rural counties. The programs in the larger counties are able to access criminal records through their social service programs. The smaller counties do not have that ability.

The programs in the rural counties have a lot of limitations, particularly limited resources. The purpose of S.B. 141 is to allow us to complete our investigations in a timely manner so children do not languish in foster care. We have had many cases recently involving infants and young children. Our primary goal is family reunification. This means we need to get through the process as quickly as possible so we can safely reunite children with their families. To do that, we have to have enough information to know the reunification is safe.

Last year, our small CASA program in Douglas County advocated for 190 children. We only have 30 volunteers. Through our investigations, we were able to locate missing fathers. Our CASA volunteers are persistent in what they do, and they typically carry only one case at a time. They volunteer a lot of time to these investigations. We located three missing fathers, and after careful investigation, those fathers have now been safely united with children they did not know they had. This is preferred to putting children up for adoption.

Senator Hutchison:

I want to make sure this is clear on the record. There is nothing in our amendment that is going to exclude Clark County from having access to the criminal records. The larger counties have access to criminal records through other means. Is that correct?

Ms. Cuddy:

Yes. If for some reason they were not able to have that access, I would not want to see them excluded.

Senator Hutchison:

Do we need to include something to that effect in this amendment? Are you confident that we will not have to come back next Session and add Clark County?

Ms. Cuddy:

No, I do not see that happening. The Division of Child and Family Services is not capable of handling those two counties any longer.

Frank Schnorbus (Court Appointed Special Advocates, Douglas County):

I am a CASA volunteer and a therapeutic foster group home parent. I support S.B. 141. It is a tremendous amount of work to do one of these CASA reports. We do not get paid; the work is all volunteer, and it takes hours and hours to do

the necessary research. I do not want to give my report to the judge and then read something in the newspaper that I should have included in the report. The statute already gives access to a broad range of people, including reporters, prospective employers, the Commissioner of Insurance and the Board of Massage Therapists. We are just asking that the CASA programs be added to this so we can give more information to the courts.

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

We are neutral on S.B. 141. We anticipate that it may increase our workload. The cumulative impact of workload increases on the Repository over the last 4 years has been significant. We may approach the Interim Finance Committee in the next biennium for additional positions.

SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 141.

SENATOR JONES SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Segerblom:

I will open the hearing on S.B. 45.

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

Ms. Butler:

My written testimony explains the intent of S.B. 45 and gives a brief summary of each section of the bill ([Exhibit E](#)). I also have an amendment that proposes to eliminate section 11 entirely ([Exhibit F](#)).

Chair Segerblom:

Can you describe the process you follow when records are sealed? Do you file something with the district court first and then get that signed by the judge?

Ms. Butler:

People who want to get their records sealed must first file petitions with the court. The court is supposed to get a copy of the route sheet from the Central Repository for Nevada Records of Criminal History before the records are sealed. However, that does not always happen. Sometimes a court will seal a record and then order the Central Repository to also seal it. Since it has already been sealed, the record is gone, and we cannot follow the court's order. Sealing is supposed to happen at the local level. The person is supposed to petition the court to seal the record; then the court sends a copy of that order to the Central Repository, and we seal the record at the Central Repository and send it on to FBI officials so they can expunge it.

Chair Segerblom:

How do people get copies of their own rap sheets? Is that something they can ask you directly for?

Ms. Butler:

Yes.

Chair Segerblom:

Can a lawyer ask for that on the client's behalf?

Ms. Butler:

No. The individual has to request it.

Chair Segerblom:

Once the court makes its order, does the attorney send that order to you, or does it come from the court?

Ms. Butler:

The court sends it to us. The issue we are facing is that when an individual has a lengthy rap sheet and the court order simply tells us to seal the person's criminal history, we are left to figure out which conviction is to be sealed. Since fingerprints do not accompany the court order, we sometimes cannot positively match the court order with the person's criminal history, so we are left trying to match dates of birth and dates of arrest to discover the correct record to seal. It has become difficult and time-consuming. The intent of this bill is to try to fix that.

Chair Segerblom:

Will you propose some regulations to explain exactly what has to be done?

Ms. Butler:

There are two processes. There is the court process, which this bill addresses, and there is also an administrative process. If you were acquitted of a charge or the charge was dismissed, you do not have to go to court to seal your record at the Repository. That is the section we are proposing to take out in our amendment. We think we can specify what is required in policy.

Bart Pace (Office of the District Attorney, Clark County):

We support most of the provisions of S.B. 45. We need to have defendants take the responsibility to accurately define the charges they want sealed before the orders are signed by the judge so that the Central Repository and other local law enforcement agencies can readily identify the offenses to be sealed. We also support the amendment striking section 11 of the bill, since we do not want the administrative sealing process to apply to local law enforcement agencies.

My only remaining reservation to S.B. 45 is the definition of "agency of criminal justice" in section 3. I understand the intent, but in practice it is too broad. I want to be sure that definition is not tied to administrative proceedings for two reasons. First, in the court sealing process the records to be sealed are defined by the records, not by the agency. Second, the definition of "agency of criminal justice" found in NRS 179A.030 is too broad. This definition is based on where the financial resources are used, which could subject agencies like Child Protective Services (CPS), the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office to the sealing statute, which they currently are not. None of the courts have allowed the sealing of family court records or agencies that provide records for the prosecution or the handling of CPS cases.

Chair Segerblom:

What would you like to change?

Mr. Pace:

We would like to delete section 3 of the bill. This would sufficiently handle all my concerns. In NRS 179.245 and NRS 179.255, the focus is on criminal justice records, not on the type of agency. You can seal criminal justice records

in any agency under NRS 179.245 and NRS 179.255, even private agencies. The definition under NRS 179A.030 is too broad for some purposes and not broad enough for other purposes. Otherwise, I am in support of the remainder of the bill.

Chair Segerblom:

Ms. Butler, can you comment on that?

Ms. Butler:

When individuals seal their criminal records, they have the expectation that the records go away. We were not trying to include CPS-type agencies. Petitioners know who arrested them, which court adjudicated them, who supervised them, where they did time, and so on. We were trying to make sure all of those entities get copies of sealing orders so the seals are complete and the records do not come back to haunt the petitioners when they try to buy a firearm or get a job. That is the intent. We do not generally consider CPS as an agency of criminal justice when we do our criminal history record audits. The FBI does not consider CPS to be a criminal justice agency either. This definition is consistent with what is in FBI security policy, and it is also consistent with the definition in NRS 179A, which governs records of criminal history generally. It was never our intent that the definition include child welfare cases or things of that nature.

Chair Segerblom:

Ms. Butler, perhaps you could work with Mr. Pace and Mr. John T. Jones to work this out.

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

We support S.B. 45. We appreciate Ms. Butler and Mr. Pace working with us on this bill.

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

I am here to express our support for the Central Repository and S.B. 45.

Megan N. Salcido (Office of the City Manager, City of Reno):

We want our fiscal note to be removed from the bill. When we initially read S.B. 45, we had some misinterpretation issues. The bill's sponsor provided us with some clarification. Based on that conversation, we will remove our fiscal note.

Chair Segerblom:

I will close the hearing on S.B. 45 and open the hearing on S.B. 131.

SENATE BILL 131: Establishes provisions governing the disposition of a decedent's accounts on electronic mail, social networking, messaging and other web-based services. (BDR 12-563)

Senator Barbara K. Cegavske (Senatorial District No. 8):

I have written testimony explaining the purpose of S.B. 131 ([Exhibit G](#)). The idea behind this bill came from a new start-up company in Las Vegas called Celebrating Legacy. I have no relationship with this company and am meeting someone from Celebrating Legacy for the first time today.

Assemblywoman Marilyn Kirkpatrick (Assembly District No. 1):

I am here to show my support for S.B. 131. We owe it to our deceased loved ones to be able to shut down their Internet accounts and allow the family to move on. I did some research last year when we implemented some medical records online, and our biggest users were seniors. I have a renewed faith that our seniors are using these services as much as the youngsters.

Lisa Mayo-DeRiso (Celebrating Legacy):

We have been researching the area of digital legacy for about 3 years. On January 15, *The Wall Street Journal* did a cover story titled, "Life and Death Online: Who Controls a Digital Legacy?" The article covered the issue of digital legacy and the difficulty of obtaining access to those digital assets when a family member passes on. In 2011, McAfee, Inc., did a study showing that the value of our digital legacy accounts—Facebook, LinkedIn, Twitter and so on—is about \$55,000 between connections and relationships. We asked for this bill because some states are starting to look at laws to protect these assets.

Another reason we wanted to look at this issue has to do with Nevada's attempts to diversify our economy and bring in new businesses. In southern Nevada, we are trying to attract a younger audience, younger employers and young companies. Young companies are dedicated to and invested in digital assets. Being one of the states that has passed this law recognizing the importance of digital assets would help Nevada send a message to young companies that we realize this is a new time for people and digital assets are important.

Senator Hammond:

You are basically asking that companies such as Facebook or LinkedIn release the passwords and other information of deceased members to their families. Would families also be able to shut down the sites if desired?

Ms. Mayo-DeRiso:

That would be their decision. Right now, if a family member with a Facebook account dies, Facebook gives you two options: you can either delete the account or put it in a memorial status. However, you cannot gain access to the account. If your deceased family member had all sorts of great pictures on Facebook, you would not be able to access them. In the past, pictures were kept in physical photo albums; now, photos are on our phones or Facebook pages. If you are the executor of the estate and the laws of your state say you can access the Web data, Facebook and LinkedIn will release the information to you. Some families would want to leave a Facebook page up with the note that the person has passed away. There are literally hundreds of thousands of Facebook pages for people who have passed away that still function with no notice that the person is gone. A dear friend of mine passed away, and his LinkedIn page stayed up for a year and a half. His wife did not know what a LinkedIn page was.

This bill addresses those issues and the growing issues of being able to have your family participate in those decisions. Facebook and LinkedIn are starting to come around. The U.S. Department of Commerce is looking at passing a universal law, but they say it will take 3 years. States like Nevada and Oklahoma are getting ahead of the curve and passing laws now. At some point, we will all probably be in line with the rest of the states.

Senator Hutchison:

You may want to make this more expansive because of the way technology changes. You have specific digital information sites or vehicles here, but the way technology changes, it would make sense to add a sixth category: "or any other digital information account or assets." These restrictive definitions sometimes become outdated.

Ms. Mayo-DeRiso:

That is a good suggestion.

Chair Segerblom:

Is there a reason why states like Nevada and Oklahoma are passing these laws and tech-savvy states like California and Washington are not?

Ms. Mayo-DeRiso:

It may be because Facebook and Google have their headquarters in California. I have been in contact with the journalist who wrote the article in *The Wall Street Journal*, and right now some seven other states are looking at this issue. We may soon see as many as 14 states with this type of legislation.

Senator Ford:

Other bills being brought this Session contemplate putting restrictions on the use of Facebook; for example, we want to say employers cannot force applicants to disclose their passwords. We are looking at declaring certain uses to be inappropriate. I am wondering if there need to be safeguards in this bill to protect information on Facebook or Twitter from inappropriate use. Do we need to think about that?

Ms. Mayo-DeRiso:

The provisions of S.B. 45 only go into effect after a person dies, so it is housed in the portion of NRS covering inheritance issues. I know a lot of companies have regulations that employees cannot access Facebook during work hours and so on, and I would imagine those are under employment laws. But we could look at it.

Senator Ford:

I understand that. But with the executor being the one who is able to take over the account, I wonder if there might be a need to protect either the executor from inappropriate approaches from folks to misuse the account, or to keep the executor from misusing the account. I do not know if those are things we need to be concerned about, but perhaps we should think about it.

Ms. Mayo-DeRiso:

I agree. We will look at it.

Senator Brower:

Were you suggesting that this type of law has not been passed in California because companies like Google and Facebook would be opposed to it?

Ms. Mayo-DeRiso:

When families first began to challenge Facebook and other companies on this issue, there was some pushback. As families started to win in court, which they have done frequently, the companies have taken a more cooperative approach. They understand that this is something they have to address. The concept is becoming more palatable to those companies, which is why we are seeing more legislation in this area.

Randy Sutton (CEO, Celebrating Legacy):

Celebrating Legacy is a new Nevada-based corporation I founded to allow people to take control of their personal legacies and pass them on to future generations. Unlike many other Websites, Celebrating Legacy is designed to allow families to take over these accounts. They remain active even after the death of our members because it is their personal legacies we help the families celebrate.

If you look at the national picture, there is also an economic factor here. For instance, when you purchase iTunes, many people have a great expenditure involved with purchasing music. There are some questions now whether you can pass that music on to future generations.

Chair Segerblom:

Does this bill allow you to pass iTunes on to a future generation?

Mr. Sutton:

That was my understanding. Your digital legacy is part of your personal assets.

Senator Ford:

I have lots of iTunes songs and would love to pass them on to my children, but I am not sure S.B. 45 does anything to make that happen. As I read this bill, iTunes does not qualify under any of the categories.

Mr. Sutton:

This bill is a first step in the process, then. As the concept of a digital legacy becomes more and more a part of our culture, at least we have a step up on the avenue.

In closing, I would say that Nevada is just one of the states now looking at legislation on these lines. With the current economic situation and our desire to

bring in new businesses, for Nevada to be on the cutting edge of this kind of technology is a benefit to our state.

John T. Jones, Jr. (Public Administrator's Office, Clark County):

The Clark County Public Administrator is an elected official who oversees the administration of estates of persons who do not have anyone qualified or otherwise eligible to administer them. The Clark County Public Administrator is in support of S.B. 131, but I want to touch on a few points.

Regarding Senator Ford's comments about iTunes, one of the issues we want to discuss is adding clarification in this bill as to specifically who is using the accounts. For example, it says the family can terminate an account, and that seems pretty straightforward; but if the family decides to continue the account, perhaps there should be some mandate as to who specifically is operating the account. That way, maybe we can cut back on the potential for misuse or fraud. With respect to Senator Hutchison's question, we would caution against overlapping the issue of digital legacies with online financial or investment accounts. Those accounts currently need appropriate court-order authority to access and/or manage. We want to make sure there is no overlap between social media and investment accounts.

Senator Ford:

I want to be certain this bill does not purport to override, for example, preexisting contracts. If you sign up for an iTunes account, and in the contract it says if you pass away your account reverts to iTunes or cannot be transferred or something, I want to be certain this bill does not purport to override contractual language.

Ms. Mayo-DeRiso:

The iTunes contract includes language that says you cannot pass the tunes to another person. There is no such language in Facebook, LinkedIn or the other social media Websites. It is just a matter of the protocol of the site.

Senator Hutchison:

Mr. Jones, why do you think we would have to be more specific than the bill already provides in terms of who has control of accounts? Section 1 of the bill says " ... a personal representative has the power to take control of, conduct, continue or terminate the account of the decedent" Can you flesh that out for me?

Mr. Jones:

The issue is with the words "take control of, conduct, continue." If the executor is going to, say, continue blogging for a decedent, it is the position of the Clark County Public Administrator that there should be some kind of tag on the Website that says someone else is continuing the blog for the decedent. That way, everyone who reads the blog knows it is being kept up by someone other than the original blogger. It could be a statement or a black band by the name.

Senator Hutchison:

It is a matter of disclosure.

Mr. Jones:

Yes.

Assemblywoman Kirkpatrick:

I would like to emphasize that S.B. 131 is not targeted at one specific company. It is more about being able to access those files and help people shut down or continue the accounts. Nevada is starting to use Internet services more; we are starting to be more computer-friendly than many states. This gets us into the national news because we are seen as an old Western state, the one everyone thought would be the last one to join the digital era. However, the Legislature's Nevada Electronic Legislative Information System is one of the top in the U.S. Our online training programs are being used by the National Conference of State Legislatures and the Council of State Governments as training modules for other states.

Senator Cegavske:

Assemblywoman Kirkpatrick and I will work with Mindy Martini, the Committee's Policy Analyst, to incorporate the good suggestions made to improve S.B. 131, then come back to the Committee with an amendment.

Senator Jones:

I would also recommend you get in touch with the Probate Section of the State Bar of Nevada. When I read the bill, the language seemed a little fuzzy. It would be helpful to talk to the State Bar and make sure we get the language right in terms of giving the personal representatives the authority to have control over those accounts.

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Senator Cegavske:

I would hope the LCB has already done that, but we will double-check.

Chair Segerblom:

Is there any public comment? Hearing none, the meeting is adjourned at 10:02 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	5		Attendance Roster
S.B. 141	C	2	Linda Cuddy	Written testimony
S.B. 141	D	1	Linda Cuddy	Senate Bill 141 Amendment Request
S.B. 45	E	4	Julie Butler	Written testimony
S.B. 45	F	2	Julie Butler	Proposed Bill Amendment #1
S.B. 131	G	2	Senator Barbara K. Cegavske	Written testimony