MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 11, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 8:23 a.m. on Thursday, April 11, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senatorial District No. 7
Senator Debbie Smith, Senatorial District No. 13

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Layne T. Rushforth
Pat Cashill, Nevada Justice Association
Carey Stewart, Director, Washoe County Department of Juvenile Services
E. K. McDaniel, Deputy Director, Operations, Department of Corrections
James "Greg" Cox, Director, Department of Corrections

Vanessa Spinazola, American Civil Liberties Union of Nevada
Garrett Gordon, Olympia Companies
Michael Joe, Legal Aid Center of Southern Nevada
Peter C. Neumann
Robert Crowell, Nevada District Judges Association
Robert A. Conway, Ironworkers Local 433, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers
Jack Mallory, Southern Nevada Building and Construction Trades Council

Chair Segerblom:
Our agenda today is a work session. We will open the work session on Senate Bill (S.B.) 138.

SENATE BILL 138: Authorizes irrevocable trusts and certain other entities to hold ownership interests in professional entities. (BDR 7-848)

Mindy Martini (Policy Analyst):
The work session document summary for S.B. 138 (Exhibit C) includes two amendments for consideration.

Chair Segerblom:
Are both of the amendments to be considered, Mr. Rushforth?

Layne T. Rushforth:
There is no agreement. We attempted to compromise and have addressed all of the concerns voiced by Pat Cashill of the Nevada Justice Association in our proposed amendment. Mr. Cashill also wanted to make an additional change to *Nevada Revised Statutes* (NRS) 166 covered in S.B. 307 that passed out of the Senate Judiciary Committee on April 10. Because we were representing the State Bar of Nevada with S.B. 307, we were not at liberty to agree to that change, so we were unable to come to an agreement. I am representing myself only while testifying on this bill.

SENATE BILL 307: Revises provisions relating to trusts, estates and probate. (BDR 12-179)

I have reviewed Mr. Cashill's proposed amendment; the concept of the amendment is okay, but it is legally ambiguous in respect to spendthrift trusts. Our proposed amendment more specifically addresses the alter-ego theory and

the reverse alter-ego theory. In regard to spendthrift trusts, the amendment makes it clear that NRS 166 is the governing legislation so as not to create a conflict.

I spoke to Francis C. Flaherty, President of the State Bar of Nevada. He is concerned the bill will permit the ownership of a professional entity by any other entity. Mr. Flaherty indicated that was too broad, and I agreed after hearing his explanation. The first amendment discussed also addresses his issue by deleting all references to any other entity. Mr. Flaherty had a second concern that the word "trust" was too vague because there are many legal trusts, including resulting trust, constructive trust, etc. The trust intended for this bill is an estate planning trust, so we have inserted the language into our proposed amendment that defines a trust that is established under NRS 163 and no other type of trust. There is no agreement, but I have tried to address all concerns without upsetting the Nevada Bar with respect to NRS 166.

Pat Cashill (Nevada Justice Association):
Mr. Rushforth is wrong when he says there is no deal struck on a key provision in S.B. 138 and S.B. 307. I dealt with Mr. Rushforth. I also dealt with J. Douglas Clark and Julia S. Gold of the Nevada Bar Probate and Trust Law Section. I have an email from Ms. Gold dated Sunday, April 7, at 12:14 p.m. in which she confirms her understanding of the deal we struck: "I will confirm that the proposed changes to chapter 166 [of NRS] do not modify creditor's rights from existing law other than to give a longer discovery period as stated above." The discovery period to which Ms. Gold and I agreed after the responsibility for negotiations was handed off to Ms. Gold was that the provisions of NRS 166.170 would extend the statute of limitations in this respect. The statute of limitations is now 2 years or 6 months from the date of discovery or the date on which a person should have reasonably discovered the wrong. The agreement was for the 6-month period to be extended to 1 year.

In my prior negotiations with Mr. Rushforth, he did not want us to modify the 2-year statute of limitations because Nevada has a significant edge over states such as Delaware, South Dakota and others. Based on my negotiations with Ms. Gold on behalf of the Nevada Bar, we agreed to extend the discovery period to 1 year. On the technical amendment, I said I would yield to Mr. Rushforth and Ms. Gold because of their expertise.

Chair Segerblom:
Is there a nexus between S.B. 138 and NRS 166?

Mr. Cashill:
Yes.

Chair Segerblom:
What is the nexus?

Mr. Cashill:
The two bills, S.B. 307 and S.B. 138, both contain amendments that relate to NRS 166.170; that was the reason for the negotiations.

Chair Segerblom:
Are you comfortable making the change to NRS 166 in this bill?

Mr. Cashill:
Yes.

Senator Hutchison:
Mr. Rushforth, could you address the 1-year versus 6-month issue?

Mr. Rushforth:
When Mr. Cashill, Ms. Gold, Mr. Clark and I were talking, I did not have approval to speak for the Nevada Bar, so this discussion was as citizens. After we conferred with the Chair of the Probate and Trust Law Section of the Nevada Bar, Mark Solomon, and other members of the Section, they were adamant that S.B. 307 be approved as approved by the Nevada Bar and not subject to changes. We believe that 6-month discovery period should stay at 6 months. Even though we all indicated a compromise as individual citizens, we never agreed on behalf of the Nevada Bar and are adamantly opposed as representatives of the Bar.

Senator Hutchison:
If there was a change to the 1-year modification to the statute of limitations, you would be opposed and prefer we do not go forward if that is insisted upon?

Mr. Rushforth:
Yes, based on instructions I received from the Probate Section under the purview of the State Bar. We want to maintain our leadership in Nevada under the trusts in NRS. Any kind of shift would show an erosion of our statute.

Chair Segerblom:
Do we agree to disagree? Because of the disagreement, we will not vote on S.B. 138.

Senator Brower:
If we are not going to vote, I will leave it to you, Mr. Chair, to explain to the State Bar of Nevada why we did not pass their bill. If we do not have the votes, we do not have the votes.

Chair Segerblom:
The State Bar bill passed out of this Committee yesterday.

Senator Brower:
In terms of their position on this bill.

Senator Hutchison:
It does not look like we have an agreement in order to call for a vote on this bill. I am fine pulling the bill.

Chair Segerblom:
You have one more day to keep working on it.

Mr. Cashill:
As you may recall, 20 years ago the State of California extended its general statute of limitations from 1 year to 2 years because the 1-year period proved to be too short a period of time for competent lawyers bringing good cases to ferret out the good from the bad. Our thought is that 6 months from the date of discovery is more likely to foster litigation than to enable capable people to make the tough judgment calls on whether to force litigation. When Mr. Rushforth spoke about the reasonableness of our position, I disagree with him. To the Nevada Justice Association from a public policy sense, based on the caseload, it makes sense to take a public policy position that favors a sifting process to avoid bad lawsuits.

Senator Hutchison:
I appreciate your trying to work out an agreement on the bill; we do have one more day.

Chair Segerblom:
We will discuss S.B. 103.

SENATE BILL 103: Removes the period of limitation for crimes relating to the sexual abuse of a child. (BDR 14-177)

Ms. Martini:
Senate Bill 103 removes all periods of limitation for crimes relating to the sexual abuse of a child. The law indicates an indictment, information or complaint files must be found upon reasonable discovery of sexual abuse by the victim before the age of 21 or before the age of 28 if he or she did not discover such abuse until after the age of 21.

Senator Ben Kieckhefer submitted an amendment to S.B. 103 (Exhibit D). The amendment retains the two-tiered structure of 21 years and 28 years. However, the amendment adds 15 years to the age. In section 3, subsection 1, paragraph (b), subparagraph (1), 21 years old becomes "36 years old if the victim discovers or reasonably should have discovered that he or she was a victim of the sexual abuse." Continuing on to subparagraph (2), 28 years old becomes 43 years old if he or she did not discover the abuse until after 21 years of age.

Chair Segerblom:
I was concerned Senator Kieckhefer had an unlimited term and asked him to add a definitive term.

SENATOR JONES MOVED TO AMEND AND DO PASS AS AMENDED S.B. 103.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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We will hear S.B. 107.

SENATE BILL 107: Restricts the use of solitary confinement on persons in confinement. (BDR 5-519)

Ms. Martini:
The work session document summary for S.B. 107 (Exhibit E) includes a conceptual amendment proposed by the American Civil Liberties Union (ACLU) of Nevada for discussion. The amendment significantly revises this measure to do three things. First, it provides for the prohibition of solitary confinement in juvenile facilities; second, it will prohibit the placement of a juvenile in solitary confinement in an adult prison or jail; and third, it would require the Advisory Commission on the Administration of Justice to study the issue of solitary confinement in its committee meetings.

Senator Ford:
I want to ensure we are not playing with semantics; everyone should know what is meant by solitary confinement. We do not use the term in our jails in Nevada because we use administrative segregation. We are talking about the administrative segregation as used in the penal system. There has been a lot of work done on this bill, and I look forward to supporting it.

Senator Brower:
If solitary confinement is neither the term used by the Department of Corrections nor the term used otherwise in statute, why are we using it in this bill? This may create additional issues with the terminology if it does not match what is already in statute.

Carey Stewart (Director, Department of Juvenile Services, Washoe County):
The juvenile justice administrators agree with the amendments to sections 1 and 2 of the bill as it pertains to the definition to corrective room restriction and the usage of corrective room restriction in our facilities for discipline and modifying a child's behavior. When working with ACLU people on this bill, they wanted the first component to be about limiting solitary confinement, and it cannot be used in the facility in that definition. We do not want to have any confusion whatsoever with the definition. We do use corrective room restrictions in our facilities and are in agreement with the process laid out in S.B. 107.

Chair Segerblom:
What is your term for solitary confinement?

Mr. Stewart:
We do not even use the term solitary confinement in our facility; it is a new term to us in the world of juvenile justice. I do not have a definition outside of the definition used in the bill which came from the Department of Corrections.

Chair Segerblom:
The term is defined in the bill.

Senator Hammond:
From the testimony, I remember we were not just discussing semantics but the operational part of solitary confinement. None of these juveniles or adults were ever confined in a place that allowed them to be out of sight, sound or view from anybody else. Even though they may be in their own cell, they could still talk to other people and see other people. The first two items mentioned in the amendments do not apply here. The study would be good so we could find out how things are done in this State. Is it correct to think we never confine anyone away from anyone else?

Mr. Stewart:
You are correct as it pertains to our juvenile facilities. We do not isolate juveniles away from our staff, their parents or their attorneys. From our perspective if we could delete the definition of solitary confinement as it pertains to sections 1 and 2, we could support the bill. If the bill goes forward as it pertains to corrective room restriction, we support the term because that is what we do in our facilities, and it is good legislation.

Senator Jones:
At the hearing I indicated I did not want to pass restrictions that would prevent anyone from protecting the child, whether in a juvenile facility or in jail. I would like clarification to ensure we are not doing something to jeopardize the children stuck in our system as opposed to protecting them.

E. K. McDaniel (Deputy Director, Operations, Department of Corrections):
I have the same concerns. I am confused about the amendment that only deals with the juvenile section of the bill. It does not speak to the adult side of the issue.

Chair Segerblom:
We are not amending any language pertaining to the adults.

Mr. McDaniel:
I object to the amendment because it does not define solitary confinement as used by the Department of Corrections. The term being defined in the juvenile section is correct, but it does not change the definition when referencing the adult section.

James "Greg" Cox (Director, Department of Corrections):
We have not had a chance to review the proposed amendments and agree when looking at semantics. As solitary confinement was previously defined, we have repeatedly stated that we do not follow that practice at the Department of Corrections.

Vanessa Spinazola (American Civil Liberties Union of Nevada):
The intent of one of the amendments was to address juveniles in the adult system, and that is why the definition remains in the amendment. Juveniles who are held in the adult system should not be held under the definition as indicated, whether it be solitary confinement or administrative segregation. The children should not be punished by using the definition as provided. The amendment would apply to the adult system but only to the juveniles.

Chair Segerblom:
Will Juvenile Justice Services accept the juvenile definition for your facilities?

Mr. McDaniel:
Yes. The way the amended language is written, it is not separated. The adult section does not define solitary confinement; it goes back to the old definition. The definition of solitary confinement listed in the juvenile section is not practiced at the Department of Corrections. I can agree with the language as long as it is incorporated into the adult section of the bill.

Nick Anthony (Counsel):
In reviewing the amendment in Exhibit E, the bottom of page 3 and the top of page 4 indicated the intent of the amendment applies to—juveniles who would be in a jail or prison facility—so language is included to address "administrative segregation, disciplinary segregation, disciplinary detention, or corrective room restriction for the purpose of punishing a child."

Chair Segerblom:
The definition in juvenile facilities is carried over into a jail or prison? The concern is the definition for prisons used for juveniles housed in the prison.

Mr. McDaniel:
The definition being used in the amendment for juveniles would be acceptable to the Department of Corrections, but the old definition is used when relating to the adult offenders. As long as the definition is used throughout the bill, we can accept the language.

Senator Ford:
I would recommend the testifiers work together to provide us with an acceptable amendment.

Chair Segerblom:
We are not asking for any changes in the adult section of the law, and the amendment only asks for a study. Juvenile Justice Services representatives indicated their acceptance of the language. You may be looking at the bill and not the amendment.

Senator Brower:
In light of the previous hearing, there are assumptions about what is happening in our systems that is not happening. Based on the confusion with which we are approaching the amendments, there needs to be a study that culminates next Session to make the identified changes with additional clarity.

Chair Segerblom:
We have a buy-in by the representatives from Juvenile Justice Services.

Senator Jones:
I would like clarification from Ms. Spinazola regarding her proposed amendment. In the proposed amendment, you want to delete sections 3 to 6 of the bill. I do not understand the difference in the language in red print and the language in green print. There is also no reference to the NRS.

Ms. Spinazola:
The intent is to take out solitary administrative segregation in regard to all adult prison and jail facilities except for children under 18 years of age; then the concept would apply. This is a conceptual amendment. The green print is the

originally proposed amendment, and the red print is additional added language to provide clarity about the definition of those terms. I do not want to lose the juvenile agreement on the other sections, and the study is a good compromise. I would be happy to work with Mr. McDaniel to further clarify the language relative to adult prisons.

Senator Hutchison:
My concerns dealt with section 4, and that is gone. Now we are talking about sections 1, 2, and there is a new section 3 with a study?

Chair Segerblom:
Yes. We are trying to make changes relative to juveniles for the next 2 years and then conduct a study.

Mr. Stewart:
Yes. We are in agreement with sections 1 and 2.

Senator Hutchison:
Have Mr. McDaniel and Mr. Cox signed off on sections 1 and 2?

Mr. Cox:
I would be happy to work with Ms. Spinazola in regard to the study, but we are not clear on the amendments.

Chair Segerblom:
We are taking out the portions that affect the Department of Corrections.

Mr. Cox:
If that is the case, we would support a study.

Chair Segerblom:
We are going to study the Department of Corrections relative to juveniles.

Senator Hammond:
Is that correct? The first portion talks about juveniles, but the second was relative to a juvenile in an adult prison or jail.

Chair Segerblom:
That portion is being deleted from the bill.

Ms. Spinazola:
There is confusion about the ACLU amendment, so we will support the amendment submitted by Juvenile Justice Services and the study.

Senator Brower:
We will rely on Mr. Stewart to be comfortable with the amendment. If you determine the bill as amended will not impair your mission to deal with youthful offenders nor impair your ability to ensure the safety of juvenile offenders in your custody, then I am comfortable with the amended language.

Mr. Stewart:
These amendments do not impair what we do within our facilities.

Ms. Martini:
Relevant to the ACLU conceptual amendment for S.B. 107 in Exhibit E, you will: keep item 1 amending sections 1 and 2; delete item 2 referencing the prison or jail; and keep item 3 referencing the study. Consequently, everything to do with the adults for the Department of Corrections is gone.

Senator Jones:
You indicated we will delete item 2, but that amendment item says to delete sections 3 to 6 of the bill. We are deleting "and instead provide that a prison or jail may not place a juvenile in solitary confinement" and sections 3 to 6 of the bill.

Ms. Martini:
Yes.

Chair Segerblom:
Would the study be conducted by the Commission on Justice?

Ms. Martini:
Yes.

Mr. Cox:
I would support those changes.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 107.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:
We will now discuss S.B. 374 from the work session document (Exhibit F).

SENATE BILL 374: Provides for the registration of nonprofit dispensaries authorized to dispense marijuana and products containing marijuana to persons authorized to engage in the medical use of marijuana. (BDR 15-89)

Ms. Martini:
The work session document summary for S.B. 374, Exhibit F, provides for the registration of nonprofit medical marijuana dispensaries and sets forth the basic requirements for operating such a dispensary. There is a conceptual amendment proposed by Senator Segerblom and Senator Hutchison.

Senator Hutchison:
We had a hearing on S.B. 374 with many people who wanted to be heard regarding this issue. We sifted through the information in an effort to adopt best practices so this will be a professional, pharmaceutical, medicinal-type facility because this is medicinal marijuana. With tight inventory controls and by working with law enforcement and people with experience regarding this matter, we amended the initial bill to reflect these points. We also included a reciprocity provision whereby those who come to Nevada could purchase medical marijuana if their information is in a compatible database.

The Health Division of the Department of Health and Human Services will be instructed to create a database where the amount of medical marijuana recommended by the doctors can be tracked and stay within the limits set forth by law to ensure the medical marijuana card is active. We also want to ensure the physician has the credentials to make the recommendation. As long as the database is compatible, patients could have reciprocity with other states or jurisdictions such as Canada. We have also separately licensed, authorized and imposed fees for cultivation facilities where the medical marijuana will be in grow houses and edible product manufacturing facilities.

We did not talk about this before, but edible products are created from the marijuana that people ingest when they do not want to smoke the marijuana. This can achieve a better medical effect for them. We also provided that any of the fees raised by the bill will be used for the enforcement of the act to ensure the Health Division has plenty of money to do this right. I have also added that any excesses would be deposited into the Distributive School Account.

We provided information regarding the extensive database so the product will be tracked from seed to sale. A person cannot obtain a seed, sell the harvested product or anything in between unless we are able to track and control it. We raised the fees substantially and there were some concerns, but we want serious people involved in this process who have the liquid assets and capital to build and run the dispensaries in a business-like and professional manner. We determined these dispensaries could make from $100,000 to $700,000 a month, and the fees are reasonable.

Chair Segerblom:
There seemed to be much concern about giving preference to Nevada residents, so that language was added. The total number of dispensaries is based on one for every ten pharmacies. Based on those calculations, we have determined 40 for Clark County, 10 for Washoe County, 2 for Carson City and 1 for every other county.

Senator Hutchison:
We have also asked the Health Division to come up with training and certification opportunities for anyone who wants to be a cardholder as a dispensary, a cultivator or as a manufacturing facility for marijuana-infused food products. This is a conceptual amendment, and there is a great deal to capture here, but it is a big subject. We want to get this right by having the safe distribution of medical marijuana. I have stated I did not vote for this but as a constitutional right, we have to support all of these provisions and respect the people's right to speak through the constitutional amendment process.

Chair Segerblom:
Today's newspaper indicates the Governor shares our position on this bill. Hopefully, he will publicly endorse it.

Senator Hammond:
Although I did not vote for this issue on the ballot, it has become a part of the Nevada Constitution. We have not done a good job of ensuring we get this out to people after that measure passed. We have a much better bill than we had before and have made great progress on this issue. I like the reciprocity added to the amendment; it is important for Las Vegas in general.

Senator Brower:
I would not say this is the most pressing public policy we face in this State, but it is an interesting quandary given the disconnect between what the Constitution now requires and federal law continues to prohibit. This is a logical next step given the constitutional change. I appreciate the work done on this issue in uncharted territory. There are still a lot of questions out there.

SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 374.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:
We will discuss S.B. 160 from the work session document (Exhibit G).

SENATE BILL 160: Revises provisions governing deficiency judgments on obligations secured by certain residential property. (BDR 3-604)

Ms. Martini:
The work session document summary for S.B. 160, Exhibit G, may have a proposed verbal amendment.

Senator Jones:
I am not wild about the bill. I raised the issue about whether we could limit this to loans under the Federal Housing Administration (FHA), currently at $417,000 but subject to fluctuation. I propose we amend the bill, limiting amounts to less than the FHA conforming loan amount.

Chair Segerblom:
The testimony we heard indicated about 60 percent of the houses in Nevada are underwater. Someone eats the difference. The question is "How do you get the banks to the table to talk?" because it seems they have been unwilling to take that hit. The goal of this bill is to let the banks know if they are not willing to come to the table, homeowners can walk away and not worry about being sued for the difference. My hope is not for owners to walk away but for banks to come to the table and negotiate with owners. We all desire that banks offer 3.5 percent interest rates and owners stay in their homes.

With the package of homeowner bills, we will deal with a person buying his or her home at a foreclosure sale. Tomorrow we will deal with the homeowners bill of rights, and we want to insert some protections to provide the homeowners in Nevada some relief so the State can move forward. The properties all equal out, and the housing crisis is not going to end.

Senator Ford:
I agree we should do all we can to help those homeowners; I will be supporting many of the measures you have described. Unfortunately, I will not support this particular measure as I have grave concerns in applying changes retroactively to contracts. It is dangerous to do so relative to establishing a business-friendly environment.

Chair Segerblom:
We are not changing any contracts. We are just changing remedies of the law, just like the homeowners bill of rights and other homeowner bills: providing due process protections for homeowners and changing the way an owner can deal with a foreclosure. That is not changing the contract, but we are changing public policy through our Legislature. We will not act on this bill. We will move to S.B. 280.

SENATE BILL 280: Revises provisions relating to common-interest communities. (BDR 10-863)

Ms. Martini:
The work session document summary for S.B. 280 (Exhibit H) includes an amendment proposed by the Legal Aid Center of Southern Nevada. The amendment incorporates suggestions made by various stakeholders. The amendment makes changes to tighten up the procedures and provides that if a

past due obligation is 60 days or more, the homeowners' association (HOA) must mail a full statement of account, including all transaction history over the previous 24 months along with the schedule of fees that may be charged if payment is not received and also a proposed repayment plan. If the payment is not received within 15 days, the amendment provides for a repayment plan, provides the owner with the right to attend a hearing to verify the debt and allows the association to charge a fee—not to exceed $50—for a repayment plan. It adds a provision that the HOA may foreclose a lien if the delinquency amount is $1,000 or more or the amount—excluding accelerations interest, fines, etc.—exceeds 12 months of past due assessments. This amendment further provides that the association cannot foreclose a lien by sale based on a fine or penalty for a violation of the governing document of the HOA unless that violation poses an imminent threat of causing an adverse effect to the health, safety or welfare of the unit's owner. Finally, it allows for the redemption of the unit's owner but only if the unit is owner-occupied.

Senator Kihuen:
We have been meeting with interested parties for the past 2 weeks, working to meet all concerns from both sides. This amendment proposed by the Legal Aid Center of Southern Nevada includes those compromises, and I support the amendment.

Senator Brower:
As I understand it, this is a compromise. Is it agreed upon by all interested parties?

Senator Kihuen:
We tried to address all issues, but there was no compromise on certain issues. We wanted to amend the bill to meet everyone's needs, but not all concerns were addressed.

Senator Ford:
During the hearing, we heard this bill in conjunction with another bill that dealt with notice; one dealt with notice to homeowners and one dealt with notice to banks. We had many people speaking in favor of an exit notice to the banks, although they were presumed to have notice because of liens. I found a lot of pushback on the notices to homeowners to be interesting. I appreciate your work to provide additional notice to homeowners, especially when banks are

asking for additional notice during their legal proceedings relative to priority over homeowners' associations.

Senator Jones:
Could someone explain what issues were not worked out with the amendment?

Garrett Gordon (Olympia Companies):
An open issue is the length of time before an account can be turned over to a collection company. One requirement is for the owner to request a hearing before the board. Many of these smaller boards meet on a quarterly basis; so as the amendment is written, there would be at least two letters, 10 days apart for a total of 20 days. The first letter cannot be sent until the unit owner is 60 days past due for an additional 60 days. If the unit owner requests a hearing as well, it could be a total of 8 months before the collection activity could begin.

Our client boards expressed concern that the unit owners who are paying their assessments on time will be subsidizing the cost of these letters and special meetings in order to move forward with a collection activity. Another issue is in regard to the length of time added to the process by the amendment before going after the unit owner to collect the assessments.

Senator Jones:
I have spoken to homeowners' associations in my district. I represent Southern Highlands, Mountain's Edge, Rhodes Ranch and many others; probably 90 percent of my constituents live in HOA housing. I also sit on my own homeowners' association and understand the struggles they have. Homeowners' associations are representing people who live in these neighborhoods. I have concerns about the area of law when we continue to make changes to NRS 116 year after year. This amended bill provides some important protections for people in my district, so I will be voting in favor of the bill.

Senator Hutchison:
I am in favor of the notice provisions. We have heard about some abuses during these hearings. The challenge is the orderly transfer of real property. There remains a right of redemption, which seems unprecedented after a foreclosure sale, that clouds title. This would be very difficult in terms of the transfer of real property. From a public policy standpoint, I have a challenge with that provision. I will not be able to support the bill.

Michael Joe (Legal Aid Center of Southern Nevada):
This additional amendment regards the redemption. There may be some issues with the language, but it is not unprecedented. We have already addressed the redemptive period by shortening it from 180 days to 120 days because the time period was too long. It takes several months to evict someone from a property, and then will the new owner have to pay association fees and property taxes? In the bill, we are encouraging everyone to pay the HOA dues. During this time period if the new investor or owner of the property pays property taxes or HOA dues, it would be included in the redemption amount. The HOA would continue to get paid, and there is no doubt that payment of the dues would be reimbursed. We also limited it to owner-occupied with respect to Legal Aid. We are interested in properties where the owner is trying to stay in the property; if it is not owner-occupied, we do not have as much interest in providing the redemption. It is limited and many investors have told me that many properties are abandoned; this would not apply to those properties. The limitation makes this amendment a more workable provision in providing redemption.

Chair Segerblom:
Do you know if those are in the amendment?

Mr. Joe:
The additional amendment allows HOA dues and property taxes to be recovered in the redemption.

Senator Kihuen:
I support the additional amendment.

> SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 280.
>
> SENATOR KIHUEN SECONDED THE MOTION.
>
> THE MOTION CARRIED (SENATORS BROWER, HAMMOND AND HUTCHISON VOTED NO.)

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Chair Segerblom:
We will hear S.B. 243 next.

SENATE BILL 243: Revises provisions relating to genetic marker analysis. (BDR 14-137)

Ms. Martini:
The work session document summary for S.B. 243 includes amendments from Senator Debbie Smith, Senator Aaron D. Ford and Steve Yeager from the Clark County Public Defender's Office for discussion (Exhibit I). This bill is known as Brianna's Law.

The proposed amendment submitted by Senator Smith does several things; first it requires a standard form for use by law enforcement to identify the process by which a person may have his or her specimen destroyed and his or her DNA profile record purged. In addition, section 14 provides that law enforcement shall provide the form to a person upon release from custody in general. Previously, the release from custody was limited from the Department of Corrections or from the supervision of the Forensic Science Division of the Washoe County Sheriff's Office. Section 15 increases the administrative assessment from $2 to $3 in the amendment. In sections 13, 21 and 23, the amendment removes the words "if any" from providing a social security number and adds "or" to the provision of providing any other information identifying the defendant. New sections 35 and 36 create a Subcommittee to Review Arrestee DNA on the Advisory Commission of the Administration of Justice (ACAJ). This Subcommittee would have members selected by the chair of the Commission, consider issues related to the DNA access and forward recommendations to the 2015 and 2017 Legislatures.

A second amendment was submitted by Senator Ford that parallels Senator Smith's amendment, excepting Subcommittee membership changes. This amendment adds a requirement for the chair of the Commission to appoint a member from: the Nevada Attorneys for Criminal Justice with the nomination presented by this organization; a minority community organization whose mission includes the protection of civil rights for minorities with the nomination presented by the organization; and other community members as the chair deems appropriate.

The final amendment was proposed by Steve Yeager from the Clark County Public Defender's Office. This amendment limits the purpose of taking of DNA from individuals who are arrested for a violent felony offense. In his amendment, sections 12 and 13, the word "violent" is added to describe the

type of felony. He indicates the purpose is to make the destruction of DNA evidence automatic instead of submitting a written request. In section 13, subsection 8 deletes the requirement for a person to make a written request to have his or her specimen destroyed by requiring that specimen be destroyed under certain circumstances to include a felony charge reduction to a misdemeanor. In addition, the specimen must be destroyed if the arrest has not resulted in any additional charge for a felony within 1 year after the initial arrest; in the original bill, the time period is 5 years. Section 13 clarifies that the Central Repository for Nevada Records of Criminal History shall forward the request and documents within 6 weeks after receiving written notice that must be accompanied by a sworn affidavit from the prosecuting agency. The section 13 amendment also provides that if a sample could not be destroyed because all requirements were not met, the Repository must notify the person that the specimen could not be destroyed as well as the prosecuting agency to identify those requirements not met. Finally, it removes section 13, subsection 8 from the original bill, which is the process for the specimen to be destroyed, and replaces it with the new process.

Chair Segerblom:
Are there any comments on the amendment proposed by Senator Ford or the amendment proposed by Mr. Yeager?

Senator Debbie Smith (Senatorial District No. 13):
I support the amendment proposed by Senator Ford as it adds more to the Subcommittee already in the amendment I submitted. I am not in support of the amendment proposed by Mr. Yeager. I have endeavored to resolve the issues brought to us over the last 2 years, but specifically after the last hearing in this Committee, and feel we have.

Senator Brower:
The ACAJ does not necessarily have persons in its membership who meet the definitions of the Subcommittee membership you mentioned. I am wondering how do we logistically ensure the Subcommittee is truly a subcommittee of the Commission?

Mr. Anthony:
I would defer to the sponsor of the bill but am unsure if this is through the Advisory Commission or is a subcommittee of the Legislative Commission.

Senator Brower:
That would complicate things further because the Legislative Commission consists only of Legislators whereas the Advisory Commission on the Administration of Justice includes members who are not Legislators. Nothing requires the ACAJ membership makeup to include the types of individuals that Senator Ford is interested in obtaining to participate.

Chair Segerblom:
Senator Ford, how do you see this being enacted?

Senator Ford:
This will be a subcommittee of the Commission. Is it not possible to appoint non-Legislators to a subcommittee?

Senator Brower:
There is currently no requirement that the ACAJ makeup include persons with the various characteristics your proposed amendment includes. It is also possible the ACAJ membership makeup includes no such persons, so a subcommittee by definition could not include those persons either. We have to figure out how to make this work.

Senator Ford:
I can work with the bill's sponsor as this is a conceptual amendment. I want to ensure the intent of the amendment is implemented.

Senator Smith:
We have the same goal in mind and we may just need to work out language and logistics to give the interim committee authority to appoint someone who is not already serving to a subcommittee from outside. We can make that clarification, but our intent is the same.

Senator Brower:
We probably need to ensure the ACAJ includes as members those who meet the qualifications in your proposed amendment; then it would truly be a subcommittee easily formed from those members.

Senator Ford:
While I recognize the potential benefit of collecting DNA from people who are simply arrested but never convicted, I am concerned about how this statute can

disproportionately impact the lives of people of color in our communities. I indicated at the hearing that I could not vote for S.B. 243 knowing it would indeed have a disproportionate impact without certain safeguards. With that concern in mind, I propose an amendment to the statute which creates a subcommittee to review and evaluate the collection and use of arrestee DNA to ensure the implementation of this statute does not so disproportionately impact the rights of minorities as to outweigh the benefits of collecting this DNA.

Additionally, while we do not have this issue before us right now, there should be greater access to DNA for those who have been convicted. During the next Session we want to create a system where inmates may readily and inexpensively access DNA evidence relevant to their own cases. The use of arrestee DNA could play a role in exoneration of wrongfully convicted individuals—as my cousin, the district attorney in Dallas, Texas, has demonstrated. We must create meaningful access to DNA evidence, and I expect to present such legislation during the next Legislative Session.

Senator Hutchison:
I have heard from various constituents widely in support of this bill. Some expressed concern about the collection of data relative to privacy issues and whether we are pushing the envelope too far. I am comfortable this bill addresses fingerprints for the twenty-first century. The safeguards you have included allow for the destruction of DNA and the removal from the Repository, ensuring that those not convicted or found guilty of the crimes for which they are arrested can eliminate this from the record. We are not talking about the government maintaining long-term databases of people who are not ultimately convicted. This is a good balance between privacy and law enforcement in solving crimes.

Senator Kihuen:
Senator Smith has been working on this bill since the last Legislative Session, and I appreciate her incorporating our concerns into the legislation. I will be supporting the bill.

Senator Brower:
Section 13 of the bill provides that if the arrestee is not convicted, then the DNA sample is destroyed—not maintained but destroyed. Is that right?

Senator Smith:
Yes, that is true. In addressing the concerns we heard at the first hearing, we added the section about a form being provided to the arrestee rather than having to figure out how to ask for the form.

Senator Brower:
I hope those people listening over the Internet understand that as we process this bill.

Chair Segerblom:
There does not seem to be any interest in the amendment proposed by Mr. Yeager, but he thoughtfully laid out a narrower way to address this issue and as the bill moves forward. As I understand it, this bill will not have to go before the Senate Finance Committee?

Senator Smith:
I had my staff conduct a very thorough review to ensure the bill did not have to go before the Senate Finance Committee, since I chair that Committee. Staff spent quite a bit of time talking to the Forensic Science Division of the Washoe County Sheriff's Office; we decided the bill is not eligible for exemption so would not need to be heard by the money committee.

Senator Hammond:
The people who provided testimony did a wonderful job with an emotional issue, but they cut through it and went to the meat of the bill. Historically, when people were talking about the science of fingerprinting, the sides taken for and against were probably similar to what we heard as testimony on this bill. After seeing the application in the judicial system, people raising concerns regarding the collection of DNA will understand this bill as the fingerprinting of the twenty-first century.

Senator Kihuen:
I want to thank Brianna Denison's mother for her courage and persistence in lobbying all of us and addressing my concerns with the bill.

Senator Ford:
I also want to thank Senator Smith for incorporating my concerns into this legislation in order to avoid any unintended consequences.

SENATOR JONES MOVED TO AMEND AND DO PASS AS AMENDED S.B. 243.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Senator Smith:
We have come a long way. On behalf of the families, I appreciate your careful and thoughtful consideration of this legislation. We will monitor this bill very carefully; there is a year of implementation to go through.

Chair Segerblom:
We will hear S.B. 441.

SENATE BILL 441: Makes various changes to provisions governing business entities. (BDR 7-166)

Ms. Martini:
The work session document summary for S.B. 441 (Exhibit J) has three amendments proposed by Robert Kim of the State Bar and submitted for discussion. This bill makes various changes to provisions governing business entities. The first amendment heard during the Committee hearing provides clarification in the Legislative Counsel's Digest of the court-adjusted issue of whether Nevada courts can properly exercise personal jurisdiction over nonresident officers and directors who directly harm a Nevada corporation. On page 3, the amendment replaces "in real time" with the term "concurrently" in sections 3 and 4, and deletes languages in lines 31 and 32 from section 4. In section 22, it replaces the term "survivors" with "personal representatives." Finally, it replaces NRS 92A.460 with NRS 92A.480 in section 31.

The second amendment submitted after the hearing deletes section 13 of the bill related to a limited liability company. It replaces section 16, subsection 5 with new language boxed at the top of Exhibit J on page 9.

> If and to the extent that a member, manager or other person has duties to a limited liability company, to any of the members or

> managers, or to another person that is a party to or otherwise bound by the operating agreement, such duties may be expanded, restricted or eliminated by provisions in the operating agreement, except that an operating agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

The third amendment will be placed on line 36 of section 6, changing the language "or within 2 years after the date of ..." to "or within 3 years after the date of ... ."

Chair Segerblom:
Were these amendments negotiated with Mr. Cashill?

Mr. Cashill:
That is an accurate statement of the agreement Mr. Kim and I reached. He was representing the Nevada Bar, and I was representing the Nevada Justice Association.

Senator Brower:
Is there someone here from the Business Law Section of the Nevada Bar who could confirm that statement?

Mr. Cashill:
The amendments were all proposed to this Committee by Robert Kim. I plan to draft a joint communique to each member of the Committee to be signed by both Mr. Kim and myself, stating the specific agreement as read by Ms. Martini.

Chair Segerblom:
Were these amendments submitted by Mr. Kim?

Ms. Martini:
Yes. I have emails from both Mr. Kim and Mr. Cashill. Mr. Anthony also received those emails.

Senator Jones:
The first amendment deletes "in real time" and replaces it with "concurrently" with such proceedings. This sounds a little weird.

Mr. Cashill:
I ascribe that entire dialogue to Mr. Kim.

Chair Segerblom:
During the hearing, persons were defaulting through no obligation by directors, and we felt that was inappropriate.

Senator Jones:
The term should be "concurrent"—not "concurrently"—to be technically correct.

Chair Segerblom:
We need to change the word "concurrently" to "concurrent."

SENATOR JONES MOVED TO AMEND AND DO PASS AS AMENDED S.B. 441 WITH ALL OF THE AMENDMENTS.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:
Now we will go to S.B. 388. This is a bill we just heard, and some issues came up during the hearing. I would ask Mr. Anthony to explain what we are doing with respect to criminal penalties. Senator David R. Parks can verify we are not getting rid of any pedophile crimes or any crimes other than those that are unconstitutional.

SENATE BILL 388: Revises provisions relating to crimes involving certain persons. (BDR 15-927)

Mr. Anthony:
At your request, I will address some of the points raised about amending or repealing NRS 201.195 along with a summary of our existing statutory scheme relative to this bill. Senate Bill 388 relates to the crime of solicitation of a minor to engage in the infamous crime against nature, NRS 201.195. In layman's terms this specific crime prohibits an individual from soliciting a minor under the age of 18 to engage in a same-sex sexual act. Generally, if the minor engages in

the act, it is a Category A felony; if the minor does not engage in the act, it is a gross misdemeanor as long as there were no prior arrests.

Current law is being constitutionally challenged as it relates to individuals who can consent to sexual conduct, 16- and 17-year-olds and as it relates solely to persons of the same sex. During the hearing and subsequently, there have been suggestions to simply remove the provisions relating to the same-sex persona and make it apply universally to all persons. Doing this without addressing the age issue may not solve the issue of 16- and 17-year-olds who can lawfully consent to sexual conduct. Thus, if the Committee chooses to remove 16- and 17-year-olds and also address the concerns of persons of the same sex, then the policy choice would be to establish an entirely new crime of soliciting a child for sexual conduct. The crime would then apply to victims aged 15 or below. If Committee members wish to make this policy choice, they may also wish to consider whether the heightened penalties associated with the infamous crime against nature are appropriate punishments for the crime. This would become a general applicability solicitation statute and may make certain conduct, which is not currently a crime, now punishable as a crime.

With that information and the testimonies provided at the hearing, the act of soliciting a minor to engage in the infamous crime against nature is already covered by a multitude of Nevada criminal statutes. Before the members of the Committee is a three-page chart in the work session document (Exhibit K) which summarizes all sexual offenses relating to individuals under the age of 18. What you will note is that in almost every instance, the existing penalty in law is greater than that provided by NRS 201.195. For instance, luring a child under 16 years of age is a Category B felony. For all intents and purposes, luring a child is our general solicitation statute. This statute has been tested by the Nevada Supreme Court and upheld as recently as 2006. Statutory sexual seduction applies to all persons if the conduct was consensual but as an age-based crime, and that is a Category C, depending on the age of the offenders, or it could be a gross misdemeanor.

Lewdness with a child under the age of 14 is a Category A with life. Child abuse with sexual abuse is a Category A with life. Sexual assault, which is rape, applies universally also as a Category A with life but without parole in certain circumstances.

As was discussed, there are also attempt crimes for each of the offenses in the chart which may cover conduct which is intent to commit a crime akin to soliciting but not completing the underlying act. Without going through each and every crime and scenario, a short hypothetical situation might best describe the interplay between existing law and the policy choice before you.

A 19-year-old male solicits and engages in sexual conduct with a 15-year-old male, which constitutes a crime under NRS 201.195; if the act is completed, it is a Category A felony. Given that same scenario, by repealing NRS 201.195, the act is treated the exact same way under Nevada's law for the same act by a 19-year-old male with a 15-year-old female; there would be no gender difference. The prosecution may pursue statutory sexual seduction attempt and sexual assault if the act was forceful.

Chair Segerblom:
A chart in the work session document, Exhibit K, lays out the different crimes relating to sexual conduct with a person under the age of 18.

Mr. Anthony:
Yes. That three-page chart in the work session document is for the edification of the Committee members where the various penalties relating to sexual conduct by the age of the victim are identified.

Senator Jones:
Is anyone here from the Department of Public Safety? I have reviewed the proposed amendment submitted by Julie Butler, Records Bureau Chief of the Records and Technology Division, and had some questions. I want to understand the concerns about the Adam Walsh Child Protection and Safety Act of 2006 before we make this change.

Chair Segerblom:
We will hold S.B. 388 until the work session scheduled for Friday. I am sorry, Senator Parks, but we are making progress.

Senator David R. Parks (Senatorial District No. 7):
I want to make sure we get this right.

Chair Segerblom:
We will now discuss S.B. 389.

SENATE BILL 389: Revises provisions relating to real property. (BDR 3-601)

Ms. Martini:
The work session document summary for S.B. 389 (Exhibit L) has no amendments submitted for review; however, a verbal amendment has been submitted to provide that the owner of a single-family dwelling subject to a mortgage or deed of trust may submit a written request to a servicer for a certified copy of the note, mortgage or deed of trust and each assignment of mortgage or deed of trust. If the servicer does not provide the requested documents within the 60 days after receipt of request, there would be a penalty, such as reporting the bank to the Division of Mortgage Lending, Department of Business and Industry. The sponsor of the verbal amendment may have more specific information.

Chair Segerblom:
The original bill stated if the notice is not received in 60 days, the bank basically defaults and the owner owns the property. That penalty was determined to be too harsh, so the notification will now be sent to the Division of Mortgage Lending, the State regulatory agency for record-keeping. We want to put banks on notice so they will cooperate in the process.

Senator Hutchison:
Does this eliminate the quiet title action as well?

Chair Segerblom:
Yes.

Senator Hutchison:
Is there a way we can review the language prior to voting on the bill?

Chair Segerblom:
We want to encourage the banks to provide documentation within 60 days. The question is what is the penalty if they do not comply with this directive? We are trying to determine a penalty without putting the banks out of business. If you want to see the amendment in writing, we will bring the bill back on tomorrow's work session. We will go to S.B. 414.

SENATE BILL 414: Prohibits transmitting or distributing certain violent images involving a child under certain circumstances. (BDR 15-70)

Ms. Martini:
The work session document summary for S.B. 414 (Exhibit M) includes an amendment proposed by former Senator Valerie Wiener. This is the cyberbullying bill presented by Ms. Wiener. In sections 1 and 2, the amendment would replace the words "a violent offense" with the term "bullying" and provide the definition. In so doing, the amendment also deletes the definition included in the bill of an image of a violent offense. The amendment also deletes section 3 of the bill which revises the definition of cyberbullying.

Senator Hutchison:
Section 3 has been removed in its entirety, and it looks like bullying is defined elsewhere. The challenges I had with the bill were the vagueness of section 3; now the amendment refers back to bullying as previously defined. Is that your understanding of the amendment?

Chair Segerblom:
Yes.

> SENATOR JONES MOVED TO AMEND AND DO PASS AS AMENDED S.B. 414.
>
> SENATOR FORD SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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We will go to S.B. 424.

SENATE BILL 424: Revises provisions relating to foreclosures. (BDR 3-1113)

Ms. Martini:
The work session document summary for S.B. 424 (Exhibit N) includes one amendment proposed by Senator Jones. Section 1 of the bill would be amended to read, "Any right of first refusal pursuant to subsection 1 must be conditioned upon the same terms that the judgment creditor or the beneficiary of the deed of trust intends to accept in a subsequent offer to sell the real property."

Senator Jones:
I had expressed concerns at the hearing that this might slow down proceedings unreasonably for a financial institution to resell property. I want to provide homeowners who would like to get back into their own homes with an opportunity to do so, but it cannot be on whatever terms; they must be ready to go under the same terms whichever highest bidder the bank would like to utilize. For example, if the bank receives 30 bids and decides to award the bid to a bidder who will pay all cash over someone who has to seek financing, then the former homeowner would have to match the exact same terms and provide an all-cash offer.

Senator Hutchison:
It seems like a situation of multiple offers and the bank has determined what offer to accept, so the amendment allows the prior homeowner to say he or she wants the house back and will accept the exact terms the bank has already agreed to accept from another bidder. I can support the bill with the amendment.

Senator Ford:
Is there an opportunity for foul play during this process if a bank says it will accept a particular offer, the homeowner is given the right to accept the offer and then the bank accepts another offer as opposed to the offer provided to the homeowner?

Senator Jones:
That is an interesting question under that scenario if the bank went to a different offer or the original accepted offer; if it then accepted a different offer, it would have to go through the same procedure of providing a right to the former homeowner.

Senator Hutchison:
This seems like a commonsense approach. The bank has already decided to take a foreclosure sale offer. When we allow the previous homeowner the ability to match the offer, it should not hurt the bank at all.

Chair Segerblom:
If this scenario works and the bank becomes devious by working around the law by only accepting cash offers, then we will come back in 2 years and change the law.

Senator Hutchison:
We could modify the law to reflect a better public policy.

Senator Brower:
I question how viable this will actually be in practice. I am not sure most folks who have been on the wrong end of a foreclosure will be able to turn things around and successfully take advantage of this opportunity.

Senator Jones:
I agree this will be used infrequently, but if there is a homeowner out there who can meet the offer, then it is a good thing.

Chair Segerblom:
This is another tool in the toolbox to help underwater homeowners.

> SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 424 WITH THE CONCEPTUAL AMENDMENT PROPOSED BY SENATOR JONES.
>
> SENATOR FORD SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

* * * * *

We will discuss S.B. 421.

SENATE BILL 421: Requires a court to excuse a juror for cause under certain circumstances. (BDR 2-1109)

Ms. Martini:
The work session document summary for S.B. 421 (Exhibit O) includes an amendment proposed by Peter C. Neumann. We also have an amendment submitted by Mr. Neumann that clarifies a financial interest on the part of the juror in section 1, subsection 1, paragraph (e). The amendment also clarifies in section 1, subsection 1, paragraph (g) "that the juror is biased for or against any party to the proceeding." Finally, sections 2 and 3 add that challenges for cause may be completed in the judge's chambers.

Chair Segerblom:
Mr. Neumann, did you say you could support this in civil matters?

Peter C. Neumann:
I spoke to District Judge Janet J. Berry to indicate I had heard of concern about the bill from some judges, even though prior testimony indicated they were neutral. She suggested we limit it to civil actions. Language could be inserted in section 2, "In civil actions, the court shall excuse any juror who the court determines is more likely than not to be biased for or against any party to the proceedings." It would not be a constitutional problem to distinguish criminal cases from civil cases. There is a large distinction between the two types of cases. In criminal cases, the jury must determine guilt or innocence by a unanimous verdict. In a civil case, only three-quarters of the jury has to concur. There are 12 jurors in a criminal action and only 8 jurors in a civil action. The difference is in the burden of proof; the State has to prove the case beyond a reasonable doubt in a criminal case, by a preponderance of evidence in a civil case.

The problem some of the judges saw in the bill was that it would be more difficult in the capital murder case to seat jurors who were willing to impose the death penalty if the defendant was guilty and the aggravating circumstances were present.

In civil cases, we only have 4 peremptory challenges; in criminal cases there are 8 or 12 challenges per side. In civil cases, the plaintiff and the defendant each have four peremptory challenges. Those peremptory challenges are so precious that we should not be made to waste them on a juror who has already said, "I cannot be fair in this case." The language of the Nevada Supreme Court is a 1995 decision called *Thompson v. State*, 111 Nev. 439, 894 P.2d 375 (1995) as a challenge-for-cause criminal case where the Nevada Supreme Court reversed a conviction. A decision like this costs the State or county a great deal of money because juror No. 89 said different things during the examination of voir dire such as "I would have a hard time because the defendant looks guilty to me." Another time the juror said, "I would not be comfortable if I were the defendant having a person with my frame of mind sitting as a juror." Yet the judge rehabilitated that juror and got the juror to say, "I can be fair." The judge did not excuse that juror for cause and the defendant was convicted, so the Supreme Court reversed the case. It is unfair and costs the taxpayers a lot of money.

The language I favor reads, "It is difficult to conceive of a more effective obstruction to the judicial process than a juror who has prejudged the case." The Nevada Supreme Court cites that quote from the United States Supreme Court in a case called, *In re Michael,* 326 U.S. 224 (1945). In the case *Thompson v. State*, 111 Nev. 439, 894, P.2d 375 (1995), the Nevada Court also stated, "simply because the district court was able to point to detached language that prospective juror eighty-nine could be impartial does not eradicate the fact that he previously demonstrated partial beliefs, capped by an unequivocal statement that Thompson was guilty." The Justices are saying that even though the judge rehabilitated the juror and got the person to say the magic words, "Yes, I can be fair," the juror demonstrated that he or she could not be fair on several other voir dire questions, so the case was reversed.

Senator Ford:
Is this all one case where the judge rehabilitated a juror and on appeal, the U.S. Supreme Court disagreed and said the juror should have been dismissed?

Mr. Neumann:
Yes. The case was reversed based on what the judge did. I also have copies of the case (Exhibit P) for the Committee.

Senator Ford:
The concern I had during the hearing on S.B. 421 was that we are tying the hands of judges in some regard relative to the discretion they have and the good job they do—whether picking jurors or otherwise. You have suggested adding rebuttable presumption as opposed to simply presumption, is that right?

Mr. Neumann:
We took the language out completely. The whole phrase is now gone. The language is amended under section 1, subsection 1, paragraph (g), and section 1, subsection 2 has been deleted by the proposed amendment.

Senator Ford:
What is the current belief of the judges from your prospective?

Robert Crowell (Nevada District Judges Association):
I have not seen the amendment you have been discussing, but I did send a copy of the bill to the president of the Nevada District Judges Association (NDJA), District Judge David Hardy emailed back as follows:

> This is the best I could do from a remote location. The NDJA does not support the proposed legislation. Unlike other states in the federal courts, Nevada already gives lawyers the right to inform their peremptory challenges through participating and supplemental voir dire. The NDJA would like additional time, probably during the interim between this Session and the 2015, to do a detailed comparison of other state systems. The current concerns include: One, a broadening of the fair impartial standard currently in use to something unknown but grounded in the simple exposure to or opinion about broad themes; the uncertainty of what it means to try the motion to excuse; the creation of a new standard of proof; the enlargement of time to pick a jury; increased cost to expand jury pools; increased cost adjudicating venue issues; in high profile cases, increased costs when venue has changed; subordination of existing decisional authority particularly with respect to rehabilitation and clarification of opinions; misuse by jurors who wish to be excused; and finally, a general relinquishment of control during jury selection which creates an earlier stage of advocacy.

There is some confusion on behalf of the judges as to what support/not support means—whether that is for or against. That is why I read you the email I received in response to the bill from the President of the NDJA.

Senator Ford:
Is the email in response to the original bill but not the amendment?

Mr. Crowell:
That deals with the amendment as well.

Senator Ford:
The amendment we are discussing right now?

Mr. Crowell:
Yes. That is the amendment I gave to the NDJA for review, but I have not heard back from the Association regarding the civil cases amendment.

Senator Hutchison:
We have given discretion to the judges, so let them exercise their discretion; if they are wrong, the Nevada Supreme Court will reverse them. I do not see a need to change the system at this point.

Mr. Neumann:
This would not change the system. The law is already in place for what this bill codifies; it is a duty of a judge to excuse a juror who has stated in open court that he or she cannot be fair. The problem is those few judges who will not excuse a juror, as in this *Thompson v. State* case, even though the juror has stated he or she cannot be fair. The judge tries to rehabilitate the juror. Just imagine a juror saying "I cannot be fair on a case like this," so one of the lawyers asks the judge to excuse the juror. The judge leans over the bench and says to the juror, "Mrs. Jones, you are not really saying you cannot be fair, are you?" The juror is now intimidated into saying, "Yes, I can be fair," when everyone in the courtroom knows that juror has already stated he or she cannot be fair. The judge denies the cause and the party aggrieved by her statement in court is forced to use his or her peremptories.

Senator Hutchison:
I agree in that situation. When the juror cannot be fair and impartial and has admitted to bias and truly is biased, I am in agreement. The law does require as much, but the challenge is that many times potential jurors will say anything to get out of serving on a jury. They will say, "I just cannot be fair, judge. I am absolutely biased." The judge will then probe that witness and discover a scheduling problem or an issue that can be resolved. The fact that a juror says, my state of mind is going to be biased, we have to give judges a chance because they are so good at what they do; they have tried thousands of cases. Rather than say once somebody expresses that state of mind with bias and that is it—that juror is gone—give the judges enough discretion to explore the statement further. If the juror is actually biased, the judge should dismiss him or her. If the judge does not do the right thing, the Supreme Court will reverse the decision.

Mr. Neumann:
You just reiterated this language because it continues to give the court discretion. The amendment says the courts shall excuse any juror who the court determines is more likely than not to be biased.

Senator Hutchison:
Right.

Mr. Neumann:
The discretion of a judge is not changing. The judge still makes the decision.

Senator Hutchison:
I agree, but this is something the judges have available to them now. The judges have discretion to take the caselaw, requiring them to be sure the jurors are impartial; to codify it is unnecessary. We all agree this is happening and this issue exists, but I do not see a need to codify the language.

Mr. Neumann:
The reason we need to codify the language is because of those few judges who will not follow the law. A person cannot sit down while selecting a jury and talk about a dozen different U.S. Supreme Court decisions. Time is limited. Basically this is a split-second decision. If this language was in statute, we could hold this up to the judge to remind them NRS 16.060 says if the judge decides, more likely than not, we will ask them to recuse that juror.

Senator Hutchison:
Do you argue with the judge that it is more likely than not, and when he or she responds it is not very likely, you say, yes it is. It is not necessary.

Mr. Neumann:
The judge will not let me argue; he might give me about 10 seconds.

Senator Ford:
I am not ready to vote on this bill today.

Chair Segerblom:
We will discuss S.B. 478.

SENATE BILL 478: Revises provisions relating to the employment of offenders. (BDR 16-1202)

Ms. Martini:
The work session document summary for S.B. 478 (Exhibit Q) includes no amendments. The bill reduces the impact of employment of offenders on private employers. It provides that in the event a State-sponsored program for employment of offenders does not operate profitably, the plan determines how the program will generate profits in the future. It also provides for a surety bond of $1 million when entering into a contract with a private employer to secure any outstanding debt or liability.

Senator Hutchison:
The bond amount seems prohibitive. What is the nexus with a $1 million bond?

Robert A. Conway (Ironworkers Local 433, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO):
Regarding the $1 million surety bond, the contractor who testified is in debt to the State in the amount of $448,000 in regard to utility costs, guard services and inmate wages along with $668,000 due the federal government in regard to employees outside of the prison. With that debtload to the State already at $500,000, it seems the $1 million surety bond is appropriate.

Senator Hutchison:
Is it sound public policy for us to set a bond amount based on a specific incident as opposed to saying what is required in order to allow this type of work to continue and benefit those within the prison system? We want to balance this idea of those inmates and witnesses who said there were great benefits to this project. We also heard from testifiers who raised concerns about those who are not paying their bills and doing things right.

Chair Segerblom:
The bond is up to $1 million, so there is some flexibility. The proposed bond amount would cover a $100,000 contract.

Senator Hutchison:
You need a large bond amount not to exceed that contract amount, or $1 million, whichever is less, ensuring everyone still gets paid.

Chair Segerblom:
Mr. Conway, would you be agreeable to an amendment on the bill?

Mr. Conway:
We want to be covered for someone like this who owes the State $448,000 plus the time spent by the State trying to collect those monies. With all the private businesses, workers and labor unions that have to compete, it makes it next to impossible.

Chair Segerblom:
We understand the problem and are seeking a solution. We are trying to determine what job would not need a $1 million surety bond. If it is not a $1 million job, it should not require a $1 million bond.

Mr. Conway:
Maybe we could consider a minimum and a maximum amount, depending on the dollar amount of the contract that the Board of State Prison Commissioners and the Interim Finance Committee deem necessary. The problem began because the process was not initially vetted through the different commissions. That is how we got into this predicament in the first place.

Senator Hutchison:
Oftentimes, a percentage of a job determines the bond amount. I am sympathetic to the idea that we do not want the kinds of companies in the State that default on their obligations or compete unfairly. I like the idea of a notice requirement, but the bonding amount seems to impede legitimate companies coming in to do the work that could be done. We could tie the bond amount to a reasonable established criteria for purposes of this kind of work.

Mr. Anthony:
I can certainly craft some language, maybe a bond amount in relation to the total dollar value of the underlying project. We can have a cap at the high end and a cap at the low end or no cap.

Chair Segerblom:
Up to $1 million.

Senator Hutchison:
If we could have a percentage relationship with the bond, I could support S.B. 478.

Mr. Conway:
I would agree to an amendment to ensure the Senator will vote for the bill. We do not want to be placed in this predicament again.

Jack Mallory (Southern Nevada Building and Construction Trades Council):
Another critical item to consider is if you move forward with the concept of a sliding scale on a surety bond, the discretion for setting that amount needs to be somewhere other than with the Director of the Department of Corrections. That decision needs to be made by the Board of Prison Commissioners.

Chair Segerblom:
Why is that?

Mr. Mallory:
As Mr. Conway mentioned, some issues surfaced with the way this contract with Alpine Steel was completed.

Chair Segerblom:
Who signs the contract?

Mr. Mallory:
I believe it is the Department of Corrections.

Chair Segerblom:
We will work on an amendment for the bill.

Senator Jones:
Given the concept of retention when dealing with construction contracts, you could match the retention-type concept up to a maximum or something along those lines.

Senator Hutchison:
The concept is to have a percentage of the contract awarded tied to the surety bond amount. Mr. Anthony will write the language to capture that concept.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 478.

SENATOR JONES SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:
We were not going to hear S.B. 297, but we will amend the bill to 1 year and put it on the work session agenda for tomorrow.

SENATE BILL 297: Revises provisions relating to certain crimes against older or vulnerable persons. (BDR 15-1005)

Chair Segerblom:
We are adjourned at 10:56 a.m.

RESPECTFULLY SUBMITTED:

_____
Martha Barnes,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE:_____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	2		Agenda
	B	7		Attendance Roster
S.B. 138	C	11	Mindy Martini	Work Session Document
S.B. 103	D	3	Mindy Martini	Work Session Document
S.B. 107	E	5	Mindy Martini	Work Session Document
S.B. 374	F	7	Mindy Martini	Work Session Document
S.B. 160	G	1	Mindy Martini	Work Session Document
S.B. 280	H	9	Mindy Martini	Work Session Document
S.B. 243	I	44	Mindy Martini	Work Session Document
S.B. 441	J	9	Mindy Martini	Work Session Document
S.B. 388	K	32	Nick Anthony	Work Session Document
S.B. 389	L	1	Mindy Martini	Work Session Document
S.B. 414	M	4	Mindy Martini	Work Session Document
S.B. 424	N	1	Mindy Martini	Work Session Document
S.B. 421	O	3	Mindy Martini	Work Session Document
S.B. 421	P	4	Peter C. Neumann	*Thompson v. State*, 111 Nev. 439, 894 P.2d 375 (1995)
S.B. 478	Q	1	Mindy Martini	Work Session Document