MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 29, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:04 a.m. on Monday, April 29, 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:

Assemblywoman Lesley E. Cohen, Assembly District No. 29
Assemblywoman Lucy Flores, Assembly District No. 28
Assemblyman Ira Hansen, Assembly District No. 32
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Jim C. Shirley, District Attorney, Pershing County
John Wagner, Independent American Party
Robert Roshak, Nevada Sheriffs' and Chiefs' Association

Kristin Erickson, Nevada District Attorneys Association
Steve Yeager, Public Defender's Office, Clark County
Beverlee McGrath, Best Friends Animal Society; American Society for the Prevention of Cruelty to Animals; Nevada Humane Society; Northern Nevada Society for the Prevention of Cruelty to Animals; Nevada Political Action for Animals; PawPac; Lake Tahoe Humane Society and Society for the Prevention of Cruelty to Animals; Compassion Charity for Animals; Pet Network of Lake Tahoe; Wylie Animal Rescue Foundation; Lake Tahoe Wolf Rescue
Margaret Flint, Nevada Humane Society; Canine Rehabilitation Center and Sanctuary
Richard Hunter
Fred Voltz
Jesica Clemens, Incred-A-Bull
Keith M. Lyons, Jr., Nevada Justice Association
Vanessa Spinazola, American Civil Liberties Union of Nevada
Sean B. Sullivan, Public Defender's Office, Washoe County
Michelle Ravell

Chair Segerblom:
I will open the hearing on Assembly Bill (A.B.) 212.

ASSEMBLY BILL 212 (1st Reprint): Prohibits the possession of portable telecommunications devices by certain prisoners. (BDR 16-639)

Assemblyman Ira Hansen (Assembly District No. 32):
This simple bill takes the prohibition against the possession of cell phones and other portable telecommunications devices by prisoners in the Department of Corrections (DOC) and applies it to inmates of our county jails or similar local detention facilities. The new language in section 1, subsection 4 of A.B. 212 mirrors the language used to prohibit cell phones in prisons. The differences are necessary to clarify that an inmate who is not yet convicted of another crime could still be guilty of possessing a cell phone or similar device without authorization. It also specifies that for jail inmates being charged or already serving a sentence for a misdemeanor, violation of this statute would carry a misdemeanor charge. For those charged with a gross misdemeanor, it would be a gross misdemeanor; for those charged with a felony, it would be a felony. Inmates would not face a stiffer penalty for possessing a cell phone than for the original charge.

The DOC originally proposed a law banning possession of portable telecommunication devices by its inmates in A.B. No. 106 of the 74th Session. The law has worked well for the DOC as a major deterrent against inmates trying to keep cell phones, and the law has not needed amendment since its passage 6 years ago. It is reasonable to have a similar restriction for our jail inmates.

This bill was brought in response to a lawsuit out of Pershing County regarding whether a county jail inmate could have a cell phone in his or her possession. That case eventually went to the Nevada Supreme Court.

Chair Segerblom:
What is the theory behind having the penalty escalate based on why the offender is in jail?

Jim C. Shirley (District Attorney, Pershing County):
We graduated the consequences because if you were in jail waiting to go to prison on a felony charge, it would not worry you to face a misdemeanor charge for carrying a cell phone. We were trying to keep the consequences on the level of the crime for which the person was in jail.

Chair Segerblom:
Did the original bill make it a felony for everyone, and the Assembly Committee on Judiciary reduced it?

Mr. Shirley:
No. The original bill had felonies and gross misdemeanors lumped together and misdemeanors with misdemeanors. When we discussed it before the Committee, the members broke it down so each level had the same corresponding crime. That seemed a lot more fair. Someone in jail on a misdemeanor will not face a felony charge and vice versa.

The lawsuit referred to eventually resulted in the Nevada Supreme Court decision *Sheriff v. Andrews*, 128 Nev. ____, 286 P.3d 262 (2012). We had a prisoner who had somebody throw a cell phone to him over the fence. He then hid the cell phone among some Bibles in his cell. By the time we found it, he had made a number of phone calls, threatening people on the outside and calling family members. We prosecuted him for violation of *Nevada Revised Statutes* (NRS) 212.093, which is the prohibition against having an escape device. The

Nevada Supreme Court said that the prohibition in NRS 212.093 applied only to items that physically manipulated the jail.

In almost every case in which an inmate used a cell phone to escape, murders have been committed either during or immediately following the escape. In fact, a situation like this in Nevada caused the statute to be amended in 2007. In that case, a social worker brought the cell phone in to the prisoner; he used it to communicate with confederates and escaped. After his escape, he killed two or three people. A similar thing happened after a recent escape in Arizona. An inmate used another inmate's cell phone to communicate with confederates, escaped, killed a family in the Arizona desert and fled up into Colorado. In Brazil, there have been cases of carrier pigeons bringing cell phones into jails.

Chair Segerblom:
Have officials considered jamming the cell phone signals in prisons?

Mr. Shirley:
They cannot. A federal law prohibits a local government from having jamming technology within the prisons. In any event, we would never be able to afford something like that in Pershing County. I think it was just an oversight that A.B. No. 106 of the 74th Session did not include language adding jails. The biggest concern is not the use of cell phones to escape; it is their use to threaten witnesses, contact confederates and conduct criminal enterprises while inside the jail. Cell phones bypass the jail phone systems, so the monitoring you normally do of inmates' interactions cannot be done.

Chair Segerblom:
Many of the inmates of county jails are there because they have not yet been convicted. If you are awaiting trial on a felony and you get a felony for having a cell phone, and then you end up pleading to a gross misdemeanor on your original charge, does the cell phone charge become a gross misdemeanor?

Mr. Shirley:
Yes.

Senator Ford:
I am not certain I understand the progression of the penalties. Is the point that a person in jail on a felony is not concerned about a gross misdemeanor, so we need to charge the prisoner with a felony for having a cell phone?

Mr. Shirley:
That is exactly the point. If someone is in jail awaiting trial on a Category A felony, it is not going to mean anything to convict him or her of a misdemeanor because it does not add anything to his or her sentence.

Senator Ford:
Did I understand you to say that if an inmate charge changes from a felony to a gross misdemeanor, the cell phone charge also goes down to a gross misdemeanor?

Mr. Shirley:
That would be the just thing to do. I do not think you should impose a penalty that is heavier than the original charge.

Senator Ford:
Is that in the bill? As I read section 1, subsection 4, I am not certain it says that if the penalty is pled down, the cell phone penalty will follow suit.

Nick Anthony (Counsel):
I believe your reading of the bill is correct. If you would like language that specifically says the inmate could only be convicted of the lesser charge to which he or she pled, then we can certainly add that.

Mr. Shirley:
I would have no objection to that. The intent is for the cell phone possession penalty to mirror the penalty of the crime the inmate was originally charged with.

Assemblyman Hansen:
I concur. That would make perfect sense.

Senator Ford:
I will offer it as a friendly amendment if this bill advances.

Senator Hutchison:
Section 1, subsection 4 says a prisoner shall not possess a telecommunications device "without lawful authorization." How is that phrase interpreted?

Mr. Shirley:
Within a jail, a sheriff has the authority to authorize certain things. For example, an inmate on the work crew might have a shovel, which might constitute an escape device. But because the sheriff authorized the inmate to have a shovel at that time, the inmate is not subject to a criminal penalty.

Senator Hutchison:
So what is authorized is decided on a case-by-case basis by the sheriff and correctional facility. What constitutes a lawfully authorized cell phone is not defined anywhere.

Mr. Shirley:
Correct.

John Wagner (Independent American Party):
We support A.B. 212. I assume cell phones are confiscated when prisoners are incarcerated. That means someone is smuggling cell phones in to prisoners. I would think the person who smuggles in cell phones should also be guilty of a crime.

Robert Roshak (Nevada Sheriffs' and Chiefs' Association):
I am also speaking for the Las Vegas Metropolitan Police Department and Washoe County Sheriff's Office. We support A.B. 212.

Kristin Erickson (Nevada District Attorneys Association):
We are in support of A.B. 212. Having a cell phone in jail is always a serious security threat.

Steve Yeager (Public Defender's Office, Clark County):
We are neutral on this bill. I want to bring one potential area of concern to the Committee's attention. Some concern was expressed in my office about tying the penalty to the custody status of the offender. It was conveyed to me that there could be a constitutional problem with that, in that the penalty for the crime would depend on something unrelated to the crime itself. I did some research on this and found that there is not a lot of caselaw dealing with the Eighth Amendment to the U.S. Constitution, which includes the "cruel and unusual punishment" or proportionality doctrines. Most of the caselaw seems to deal with death penalty work. I was not able to find anything that would directly relate to this, but it was suggested that one way to avoid this issue is to have a

stepped-up penalty, where the first offense would be a misdemeanor, the second offense a gross misdemeanor and the third a felony. I am neutral on the bill because I was not able to confirm if that is a legitimate constitutional concern, but I wanted to make you aware of it.

Chair Segerblom:
What is your opinion about the argument that if you are in jail for a felony, getting a misdemeanor is irrelevant?

Mr. Yeager:
I certainly understand the rationale behind that, but there are some practical considerations for how the charge would actually work. Typically, when you are found with a cell phone, you are charged right away. In theory, that charge would be related to what you are in custody for. Some practical difficulties would arise; for example, the cell phone charge would have to wait until the resolution of the underlying charge. But I agree with the position that if you are in custody on a serious felony, you are probably not going to be deterred by the specter of a misdemeanor hanging over your head.

Chair Segerblom:
Mr. Anthony, do you feel it is constitutional to have a varying penalty?

Mr. Anthony:
I am not aware of anything that would say it is clearly unconstitutional.

Senator Hammond:
I am not a lawyer. You say you have constitutional concerns, and yet this was heard in the Assembly, giving you ample time to track down those concerns, and you have not found any yet. Your concerns are clearly not that serious or you would not be neutral on the bill. You are just throwing out the idea. Is that correct?

Mr. Yeager:
Yes. When we looked at this in the Assembly, this concern was not raised; it was brought to my attention recently. In the limited research I did, I was not able to find anything saying this is unconstitutional. I just want to make the Committee aware that this is a concern. I will continue to look at it, but at this time I do not have any reason to believe it would be a problem.

Assemblyman Hansen:
This bill closes a peculiar loophole in the law. I am willing to work with legal staff to resolve any potential issues on the penalties. The bottom line is that people in jail should not be allowed to have cell phones.

Chair Segerblom:
We will close the hearing on A.B. 212 and open the hearing on A.B. 110.

ASSEMBLY BILL 110 (1st Reprint): Revises provisions concerning canines and breed discrimination. (BDR 15-567)

Assemblyman James Ohrenschall (Assembly District No. 12):
Many municipalities in the U.S. have enacted ordinances declaring one specific breed of dog dangerous or vicious. Assembly Bill 110 seeks to preempt the enactment of such ordinances in Nevada. I am not aware of any existing ordinances like that in Nevada, but many cities around the U.S. have enacted breed-specific ordinances. From everything I have learned since I was asked to introduce this bill, the problem is with the owners of these dogs, not the dogs. It is how the dog is raised.

Chair Segerblom:
Did we have a bill like this last Session?

Assemblyman Ohrenschall:
Assemblyman John Hambrick did introduce A.B. No. 324 of the 76th Session regarding dangerous and vicious dogs. However, it did not specifically prohibit local breed-specific ordinances.

Chair Segerblom:
Are there currently any such ordinances in Nevada?

Assemblyman Ohrenschall:
Not that I am aware of, no. There are quite a few in municipalities across the U.S., including Denver, Colorado. This bill seeks to make sure that does not happen in Nevada. Legislation banning breed-specific legislation is supported by the American Kennel Club (AKC), the American Veterinary Medical Association, the National Animal Control Association, the American Society for the Prevention of Cruelty to Animals (ASPCA) and the National Animal Interest Alliance. This is important preventive legislation.

Senator Ford:
You want to preempt local ordinances and the ability for local counties to enact their own laws in this regard, is that right?

Assemblyman Ohrenschall:
Yes. In this instance, we believe an ordinance like that is misguided and will cause more harm than good. I have letters of support from Kevin O'Neill of the ASPCA (Exhibit C) and Sarah Sprouse of the AKC (Exhibit D) attesting to that. When one breed is declared dangerous and banned, it leads to more problems.

Senator Ford:
How? If I ban the breeding of pit bull dogs at a local level, how does that ban lead to more problems with pit bulls?

Assemblyman Ohrenschall:
Of the many scenarios, the one that comes to mind is that caring owners who make sure their dogs get the training they need will not run the chance of breaking the law by raising good dogs.

Senator Hutchison:
Why not allow local governmental authorities to make local decisions about dogs? Are we so smart up here at the State level that we have to take that over?

Assemblyman Ohrenschall:
Yes, but not in all the details. In the original version of A.B. 110, we prescribed a procedure to be followed when a dog was declared either dangerous or vicious. It was a good process, and we worked hard to get all the local governments and animal control agencies on board. Lots of folks were tweaking it to make it work for their local areas. In the end, however, we amended that part out of the bill and left such matters to the discretion of local governments. But in terms of saying that every individual animal in a particular breed is dangerous and must be banned, the action in this bill is wiser than any potential local ordinance. Those ordinances have not worked well in the municipalities that have enacted them in other states.

Senator Hutchison:
So you are saying that the subject of the bill lends itself to a statewide regulation rather than a local one, based on experience outside of Nevada.

Assemblyman Ohrenschall:
Yes. Breed-specific legislation is not well-thought-out, and it does not work well to protect the public or the animals. This bill is good policy and needs to be uniform across the State.

Senator Ford:
I am still skeptical about this. I do not disagree with Senator Hutchison that we should be letting the counties make this decision. I am also surprised this issue did not come to the Senate Committee on Natural Resources, which I chair. We recently heard a bill about exotic animals, and ultimately it was rewritten to the point where we are giving local autonomy to Clark County and the cities to develop their own legislation regarding the ownership of captive wild animals. I do not understand why we should prohibit local communities from making their own regulations about dogs. West Las Vegas may have a different kind of pit bull problem than the rural counties. Why should Clark County not be allowed to regulate that issue?

Assemblyman Ohrenschall:
I do not disagree with your comments, but I do not believe A.B. 110 would deny any local government the ability to regulate dangerous or vicious dogs. They would still have that power. What it would preempt is banning specific breeds outright and declaring that one breed of dog is dangerous or vicious by virtue of its genetic makeup. This bill would not prohibit the ability to, if need be, take a vicious or dangerous dog away from its owners and destroy it. It simply does not allow local governments to paint one breed with a broad brush.

Senator Ford:
Would section 1, subsection 6 of the bill prevent Clark County from saying the dogs that are proliferating in West Las Vegas, primarily pit bull breeds, need to be regulated more heavily?

Assemblyman Ohrenschall:
Subsection 6 would prohibit local governments from singling out one specific breed of dog. It would not prohibit local governments or animal control agencies from looking at a problem with dangerous or vicious dogs.

Senator Ford:
They can look at it, but they cannot do anything about it.

Assemblyman Ohrenschall:
I respectfully disagree. This bill does not change what local governments or animal control agencies can do to deal with dangerous or vicious dogs. They can do plenty of things, up to and including ordering the dogs to be destroyed in the worst cases. The bill simply does not allow them to impound every pit bull in the community, to go house to house looking for pit bulls. They can still check for dangerous dogs.

Senator Jones:
I need to give a little background. On December 26, 2011, my 6-year-old daughter was mauled in the face by a neighbor's dog. It was not the specific breed that is being referred to in this. That dog is still roaming the streets in my neighborhood, despite having bitten more than three people. Can we strengthen the laws with regard to dogs that are dangerous but do not seem to have anything happen to them?

Assemblyman Ohrenschall:
This bill does not change the local government's ability to set standards and regulations. In the horrifying situation you describe, that dog would be subject to being declared dangerous, perhaps even vicious, under existing statute. Perhaps the problem is the execution of the law by the county or the city. This bill would not change that. It would not change the rules for a dog being declared vicious or dangerous. It just says that one breed cannot be singled out.

Senator Jones:
It seems like the focus of the law is to protect people who do not need protection rather than those who do need protection.

Assemblyman Ohrenschall:
Perhaps the laws could be tightened. Existing law allows the animal control agency to take action against the dog that mauled your daughter and its owner. We are saying that dogs and their owners need to be held accountable based on the dogs' actions, not on the dogs' breeds. That has to do with how the dog is raised and trained, not its genetic makeup.

Senator Hammond:
I think I understand what you are getting at, and I also understand my colleagues' problems with it. You are saying you cannot look at one breed and label it as dangerous. I agree with that. I wonder if we should be having this

conversation in front of a county commission and letting it make this decision, since each county seems to have a different opinion on the problems in its jurisdiction. However, I understand the big picture here. I was at a park on Saturday with my 2-year-old daughter. A pit bull came by on a leash, and she grabbed it. My immediate reaction was to grab my daughter and pull her out of the way, but the dog turned around and licked her, then walked away.

I understand the need for a bill to make sure we are not discriminating against one particular breed. But are we overreaching? Are we not allowing the local jurisdictions to look at the problem? Your intent is to make sure we do not label every single dog in a breed as vicious and eradicate each one.

Assemblyman Ohrenschall:
Many people do not have the kind of positive experience you had with what is known as a bully breed. Nevada has not yet had a local ordinance of this type, but many communities around the Country have them. I do not believe those communities have had positive results from those ordinances. I am not one for tying the hands of local governments, but here the evidence is that those ordinances are not good for the dogs, the owners or the public. That is why I think this is needed.

Beverlee McGrath (Best Friends Animal Society; American Society for the Prevention of Cruelty to Animals; Nevada Humane Society; Northern Nevada Society for the Prevention of Cruelty to Animals; Nevada Political Action for Animals; PawPac; Lake Tahoe Humane Society and Society for the Prevention of Cruelty to Animals; Compassion Charity for Animals; Pet Network of Lake Tahoe; Wylie Animal Rescue Foundation; Lake Tahoe Wolf Rescue):
We support A.B. 110. As Assemblyman Ohrenschall said, this bill leaves in place the ability of law enforcement to confiscate and euthanize dangerous and/or vicious dogs while preventing dogs from being euthanized based solely on breed. Currently, 6,000 pit bull-type dogs are euthanized daily in the U.S. This is a look-alike thing. Pit bull is not a specific breed of dog, but many dogs look like pit bulls, and it is difficult to distinguish between them.

Clark County has an ordinance that outlaws breed-specific ordinances, and Washoe County is working on something similar. At this time, 300 cities and towns in the U.S. have breed-specific legislation. It does not work. Fourteen states prohibit breed-specific legislation. They still allow dangerous or

vicious dogs to be controlled. The reasoning behind breed-specific legislation is public safety, which is why Denver, Colorado, adopted it in 1989. Denver did a 12-year study of dog-related hospitalizations, and in that time Denver had 273 cases. The neighboring City of Boulder, which does not have breed-specific legislation, reported 46 cases in that same period. Denver taxpayers are shelling out $1 million a year for a law that fails to make the community safer. Breed-specific legislation does not ensure public safety and is extremely expensive to enforce. I have a handout from John Dunham and Associates showing the anticipated costs associated with breed-discrimination legislation (Exhibit E).

Chair Segerblom:
Clark and Washoe Counties, which between them have about 85 percent of Nevada's population, already prohibit breed-specific ordinances. Therefore, this bill will affect about 15 percent of Nevada's residents.

Ms. McGrath:
Yes. If you would like further information, I have a packet of information regarding misconceptions about pit bulls prepared by Best Friends Animal Society and others (Exhibit F).

Margaret Flint (Nevada Humane Society; Canine Rehabilitation Center and Sanctuary):
We support A.B. 110. I have a handout showing pictures of 25 purebred dogs that all look like pit bulls, but only one of these dogs is a pit bull (Exhibit G). Three-quarters of shelter workers and the general public cannot pick out the pit bull. Only 3 percent of a dog's DNA contributes to its physical appearance.

Here is the problem. Recently, a community in Missouri adopted a pit bull restriction. Law enforcement literally went into people's homes and confiscated animals they thought looked like pit bulls and euthanized them. The owners had no recourse; there was nothing they could do. This is the situation we want to avoid. This is a heartbreaking scenario. We want to make sure Nevada families never have to experience this. In the 1970s, it was Dobermans that were feared; in the 1980s, it was German shepherds; and in the 1990s, it was Rottweilers. Now we are dealing with pit bulls.

Senator Jones:
I am trying to make sure I understand this. Having a dog declared dangerous is kind of a three-step process. If you have an animal that is declared dangerous, it also has to be vicious under NRS 202.500, subsection 1, in order to get you to subsection 5, which is the meat of NRS 202.500, the repercussions for having a dangerous and vicious dog. "Vicious" is defined as both dangerous and having without provocation killed or inflicted substantial bodily harm on a human being.

Let us say you had a dog breed ordinance in a county where officials said pit bulls were dangerous. Are there repercussions other than NRS 202.500, subsection 5, that come from that kind of a designation?

Assemblyman Ohrenschall:
As I understand it, if a dog is declared dangerous, the owner can still keep the dog, but a special permit is required and the owner must ensure the dog is enclosed in a safe place where it cannot cause harm. I believe that if the dog is declared vicious, that triggers the process to put the dog down. The preemption we are seeking, to disallow local government from passing breed-specific legislation, would not affect whether that dog, no matter what breed, is declared dangerous or vicious. It would not change that process.

Senator Jones:
If you adopted one of Michael Vick's dogs and it was declared dangerous because of its breed, what is the problem if the dog does not cause substantial bodily harm or kill someone? You are never going to be convicted under subsection 5 of NRS 202.500.

Richard Hunter:
I own one of the dogs rescued from the Michael Vick dog-fight training compound. Senator Jones, the importance of it for me, as a responsible dog owner and law-abiding citizen and someone who passed a federal criminal background check in order to have this dog, is that I do not want to be preemptively stigmatized. What you are saying does make sense in terms of thinking what is the real likelihood of it. However, I do not like knowing that I might already be preemptively designated as the owner of a dangerous animal based solely on his breed and without any consideration of his actual behavior and temperament.

Senator Jones:
Are there insurance implications of owning a dog that has been designated as dangerous?

Assemblyman Ohrenschall:
If a dog attacks someone, the owner's homeowner's insurance would be liable. If the owner is not a homeowner, I do not know the answer. I do not know, in terms of local governments, what kind of insurance requirements they impose.

Ms. McGrath:
If you have a dangerous dog, that dog is required to be muzzled and on a short leash when it goes out in public. You have to have an extremely high fence, and the dog must be confined at all times. There are many stipulations. The dog is regularly monitored by animal control officers.

Senator Jones:
That is not in the NRS. Are those requirements in local codes?

Ms. McGrath:
Each county has various code restrictions. Initially, Assemblyman Ohrenschall tried to combine the dangerous dog codes throughout the State in A.B. 110. It was very cumbersome and no one could agree, so that portion of the bill was dropped.

Senator Ford:
Do you have any studies breaking down dog attacks by breed? I am interested in seeing if any breeds show a greater propensity toward violence.

Ms. McGrath:
The American Staffordshire terrier, which is the AKC breed closest to what is commonly called a pit bull, is a very protective dog. As noted in Exhibit F, this breed was developed to be a babysitter. German shepherds, Doberman Pinschers, mastiffs and Chihuahuas also have a tendency to be protective.

Senator Ford:
Let me redirect my question. I am not talking about dogs that are protective. I mean dogs that tend to make aggressive, unprovoked attacks on other dogs or people. Do we know which dogs tend to have more of that propensity?

Ms. McGrath:
No. Some breeds have the ability to be trained to do certain things. The border collie will herd. The breeds I just mentioned can be trained to be more protective and more cooperative with what the owner requires of them.

Senator Hutchison:
You said that if we do not pass A.B. 110, a specific breed of dog would go into a shelter and be euthanized. Under what authority? What would allow that?

Ms. McGrath:
It happens in the rural counties all the time.

Senator Hutchison:
I thought you said no breed-specific ordinances exist in Nevada at this point.

Ms. McGrath:
It has nothing to do with a dog being dangerous or vicious. The way a dog looks will determine whether the dog is put down in the rural shelters.

Senator Hutchison:
Can you give me an example? Which counties?

Ms. McGrath:
Storey, Lyon, Nye and Elko Counties.

Senator Hutchison:
Are you saying that in all those counties, every single time you bring a dog of a specific breed into a shelter, the dog will be automatically euthanized?

Ms. McGrath:
I cannot say in every single case. I know it is being done in these counties on a regular basis. It depends on who is the manager of that shelter when the dog comes in. Nothing prevents shelters from doing it. In their minds, it is a precautionary measure.

Senator Hutchison:
I will not belabor the point.

In my mind, the reason it has been difficult to get everyone to agree on this bill is that it is a local issue. People have different views depending on their experience and what their voters want. You say there are no consequences of this, but there are consequences—political consequences. If you do not like the way your county commissioner or your city council is doing something, you kick the bums out. This is a local issue with important local considerations, and it is difficult to try to manage it at a State level.

Chair Segerblom:
But it seems crazy to have a dog that is safe in Clark County but gets put down immediately in Elko County.

Senator Hutchison:
Perhaps Elko County is having local issues with that breed of dog. Under the statute you want us to pass, Clark County would not be able to stop a breeder from starting a pit bull breeding factory next to a nursery school. You could not say, "Based on the breed, we're going to regulate," or "We're going to declare those to be animals that are vicious or dangerous." To me, this is a local issue and deserves local consideration.

Assemblyman Ohrenschall:
Certainly. If A.B. 110 were to pass, you could not have an ordinance that said a homeowner living next to a nursery school cannot have a Rottweiler. However, you could still have a law saying you could not have a dangerous dog next to a nursery school. Those protections are still there. We are trying to cure painting an entire breed with that broad brush.

The local jurisdiction is great, but the lack of uniformity could cause great issues. If I am allowed to have a Rottweiler in the City of North Las Vegas and I go to visit my cousins in Ely where Rottweilers are banned, I am now breaking the law. Because I took my dog with me to visit family, I am now a criminal and my dog is going to be put down. It is a recipe for quite a bit of problems.

Senator Hutchison:
We deal with that all the time. Different laws exist from county to county and city to city. It becomes a policy question that we have to ferret out. That is why we are here.

Senator Jones:
This is one of those issues where I have difficulty seeing the nexus between the problem and the solution. I do not see anything in this bill that would prevent animal shelters from putting down dogs because of their looks. Animal shelters can do whatever they want regardless of whether we pass this bill.

Ms. McGrath:
It is breed-specific legislation, which this bill prohibits.

Senator Jones:
But nothing here would prohibit anyone from euthanizing a dog. Am I missing something?

Assemblyman Ohrenschall:
You are right; nothing in A.B. 110 would prevent putting a dog down based on its actions. However, it would prohibit an animal control agency from putting a dog down based solely on its breed.

Senator Jones:
Yes, but Ms. McGrath did not say breed, she said what the dog looks like. So if a dog looks like a pit bull, animal control can still put it down. Right?

Assemblyman Ohrenschall:
I do not know how widespread this practice is, and I do not know that much about what goes on when an animal is impounded. If this is not based on the actions of the dog but on how it looks, that is a problem. Will A.B. 110 cure that? We have no guarantee, but that is not a reason not to pass a good bill.

Mr. Hunter:
I have a short video called "Vicktory Dogs" showing how the dogs removed from Michael Vick's dog-fighting facility have been rehabilitated (Exhibit H).

The importance of supporting A.B. 110 is that I need my freedom protected as a law-abiding citizen of Nevada. The issues raised by Senator Ford and Senator Jones are well-taken; we have a responsibility issue in those areas. I too have a house in Las Vegas, so I am well aware of the problem down there. The issue there is that we need leash laws and mandatory spaying and neutering, and we need to crack down on irresponsible owners. As we have all seen repeatedly, it is not just the dog those owners are getting in trouble with.

These are the same people who are visited by Child Protective Services, and they often have a criminal rap sheet. My concern is that I do not want to move to Las Vegas and on paper, because of the dog I own, appear to be no different from Michael Vick. If the dog is deemed dangerous based solely on his breed, I am looked at by the local government as no different from Michael Vick, and I can assure you that only one of us has to check in with a probation officer.

I understand the reverence for government at the local level, and that makes a lot of sense. But history is prevalent with examples in which citizens, if the local government does not adequately protect their rights, go to the state level for help and then to the federal level. If it were not so, segments of local populations throughout history would be denied their basic rights. The reason it is important to take preemptive action is we do not wait for responsible citizens' rights to drive cars, vote or own firearms to be taken away and then fight to get them back. Those are discretionary privileges, and when someone demonstrates himself or herself to be a criminal, we take those rights away from that person. But we do not lower our standard of living to our lowest common denominator. I am asking for you to pass A.B. 110 in order for me on paper to appear in a different designation from the criminal element vis-à-vis the dog I own.

Senator Ford:
I am still skeptical of this bill for two reasons. First is the local control issue. Second, I am not convinced that breed-specific legislation is wrong. I am looking at studies online that talk about pit bulls having a greater propensity for violence. I am looking at caselaw that talks about courts upholding breed-specific legislation based on these types of reports and expert identification. As far as your right to own a dog is concerned, I hear you; that is fine. But none of our rights are unfettered. We are not going to take away your right to own a pit bull, but just like getting a car requires license and insurance, we can require certain protections. I would think the local ordinances can put restrictions on what you have to do if you want to own a certain breed of dog.

Mr. Hunter:
To respond to your point about the online studies, I offer this analogy. The pit bull is a very strong dog. We have all been in a store and seen an out-of-control child, and we know to look to the parent to see the problem. If you are a negligent parent who has raised an eighth-grade bully, that bully may cause more mischief on the playground if he or she weighs 200 pounds. But at

that point, the horse is out of the barn. The real problem is your dereliction in your parenting duties.

I have no problem proving my merit as a pit bull owner in any community I move into. The importance of preemptive legislation like A.B. 110 is that I do not want a local municipality to be able to outright deny me the ability to have my dog. I do not want the local government to knock on my door and say, "I know you have a clean criminal record and there's never been any problem with your dog, but on paper he's dangerous and he's coming with us or you're moving." That is not hyperbole; this is what actually happened in Denver, Colorado. That is the importance of A.B. 110.

I understand it is a balance, but it always comes back to the issue of the responsible citizen. Throughout our laws, we draw a clear distinction between responsible citizens who have all the rights afforded to them as American citizens and those who are restricted for good reason. I look for us to draw that distinction.

Fred Voltz:
I support A.B. 110. I have written testimony explaining the need to outlaw breed-specific legislation (Exhibit I).

Jesica Clemens (Incred-A-Bull):
I am here in favor of A.B. 110. I have written testimony (Exhibit J) and a handout from the Animal Farm Foundation giving talking points regarding breed-specific legislation (Exhibit K).

Senator Ford asked about studies regarding aggression in dog breeds. If you look to the National Canine Research Council, you will find that Dr. Victoria Voith at the Western University of Health Sciences has done multiple studies on the link between breed and aggression. The two are not related. You can also look at the American Temperament Test Society facts and figures. The Society has been testing hundreds of breeds of dogs since the 1970s. The American Staffordshire terriers, American Staffordshire bull terriers and American pit bull terriers, which make up the pit bull group, perform extremely well in the temperament test, scoring overall in the ninetieth percentile.

This is not just a pit bull issue. Some 75 kinds of dogs have been outlawed in communities across America. They include pugs, Chihuahuas, German

shepherds and Rottweilers. This bill is not necessarily about the dogs. This is about the right of citizens to own the kinds of dogs they want, provided they are responsible owners and follow the laws of their local municipalities, such as spay/neuter and leash laws. Breed-specific legislation ultimately discriminates against the owner of the dog. As the owner of a pit bull-type dog, I strive to be responsible, to make my dog a safe member of the community. I do not want those rights taken away. Like Mr. Hunter, I do not want to be looked at any differently than anybody else. I am a responsible taxpaying citizen.

Assemblyman Ohrenschall:
I also have written testimony from Erik Gavilanes (Exhibit L) and Laura Handzel, J.D. (Exhibit M) in support of A.B. 110.

The ASPCA Website includes its position statement on breed-specific legislation that cites a study of such a ban in Prince George's County, Maryland, where the County said it found the ban had not been effective and had not increased public safety. The Centers for Disease Control and Prevention declined to endorse breed-specific legislation.

While I believe local autonomy is great in many cases, we have many examples of situations in which we preempt local autonomy. This is an area where it is needed.

Chair Segerblom:
I will close the hearing on A.B. 110 and open the hearing on A.B. 262.

ASSEMBLY BILL 262: Revises provisions governing child custody and visitation. (BDR 11-951)

Assemblywoman Lesley E. Cohen (Assembly District No. 29):
Before I discuss A.B. 262, I would like to review some legal terms that sometimes get confused but actually have very different meanings and which are relevant to this bill.

A divorce case is always a divorce case. If years after the divorce you come back to court because of visitation issues with a child or an issue about where the child is going to live, it is still a divorce case. It is a postdivorce action, but it is still a divorce case and not a custody case, even if custody is at issue. A paternity case is where parentage of the father has to be established. After

paternity is established, the court can make custody and visitation decisions, but the case remains a paternity case. Paternity is dealt with in NRS 126.

Assembly Bill 262 has to do with custody, which is covered in NRS 125C. Custody cases have to do with custody and visitation determinations between unmarried parents where paternity is not an issue. In those cases, the father is legally the father; the parents have filed the proper acknowledgement of paternity form with the court, or the court has already made that decision. To add some more confusion into this, NRS 125C includes statutes that address other issues such as grandparents' rights, custody and visitation of children with a parent who is deployed in the military, and moving a child out of state. On top of all this, you can refer to a custody issue, meaning the parents share time with the child, in a divorce or paternity case, but the case is still a divorce case or a paternity case.

In the case of *Miller v. Wilfong,* 121 Nev. 619, 119 P.3d 727 (2005), the Nevada Supreme Court ruled that "attorney's fees are not recoverable unless allowed by express or implied agreement"—and that is a contract—"or when authorized by statute or rule." Also, you have to be the prevailing party to be awarded attorney's fees.

Assembly Bill 262 looks to make it clear that in NRS 126, the courts have authority to grant attorney's fees in custody cases. Doing so would bring NRS 126 in line with other similar statutes. In divorce cases, the court can award attorney's fees even if the case becomes a postdivorce case, and the court can also award attorney's fees in a paternity case. In a custody case, except in a limited exception, the court cannot award attorney's fees. For example, think of two sets of unmarried parents. The first family never established paternity, so if the parents separate and go to court to get orders regarding the child's living schedule, attorney's fees can be awarded. The second family filed the paperwork to establish paternity, so if they come to court to resolve custody issues, the judge cannot award attorney's fees. There is really no logical reason why these two similarly situated families should be treated differently by the court. They are both unmarried parents; but in one family, paternity has been legally established.

Chair Segerblom:
So attorney's fees cannot be awarded if there was a paternity action. Is that correct?

Assemblywoman Cohen:
No. If the case is a paternity action, the court can award attorney's fees.

Chair Segerblom:
But if it was agreed that there was paternity but there was never a paternity action, the court cannot award attorney's fees. Right?

Assemblywoman Cohen:
Right. A lot of confusion arises between practitioners and laypeople who are representing themselves in court about whether they come into court as custody cases or paternity cases. If you then add in the issue of awarding attorney's fees, it adds more confusion. We see some back and forth where cases that could probably be custody cases are instead brought as paternity cases in order to allow attorney's fees to be awarded.

Chair Segerblom:
There is no logical reason for the distinction. The awarding of attorney's fees should be discretionary but available in any kind of case.

Assemblywoman Cohen:
Right. I have written testimony from District Judge Sandra L. Pomrenze (Exhibit N) in which she refers to this situation as "a 'doughnut hole' in the litigation process." We are not sure why it happened like this; it just happened.

The limited exception that does allow attorney's fees is in NRS 125C.180, which has to do with children of military families and deployment of a family member. It is a very specific exception.

What is happening is that practitioners are picking and choosing between NRS 125C and the paternity statutes. When litigants represent themselves, it gets more confusing. People are filing cases that could be custody cases; paternity is already established, but they are filing them as paternity cases in order to get an award of attorney's fees. When that happens, the judges are left with the decision of whether to dismiss the case and have the litigants refile, which wastes the court's time and the litigants' time and money, or to let the case continue as a paternity case when it is not technically a paternity case.

Just to make sure you are getting the full picture, I understand that a family court judge in Clark County did award attorney's fees in a custody case under

that limited exception, but it was not a military family. That case is now in appeal with the Nevada Supreme Court.

There is a lot of confusion, and A.B. 262 seeks to clarify the situation. It is also an issue of fairness and access to judgment. It is better for parents as a whole. We want to keep parents on equal footing. When one party has an attorney and the other does not, cases tend to get bogged down. We want to encourage people to have attorneys because it keeps the system flowing faster. When you are dealing with two pro pers, or even one pro per and one attorney, it bogs down the system.

This would also help to keep overly litigious litigants from dragging a case out. For instance, if you know your ex-spouse cannot afford an attorney and you can, you might try to drag the case out because you know your ex cannot meet you in court on equal footing. But if you know the judge can award attorney's fees against you, you may be more reasonable and try to stay out of court or keep the case moving through court faster.

This is an issue of access to judgment, and this bill is just filling that doughnut hole. The bottom line is that allowing attorney's fees in custody cases just brings custody cases in line with divorce and paternity cases.

Keith M. Lyons, Jr. (Nevada Justice Association):
We support A.B. 262.

Senator Hutchison:
I have two questions. First, can you get attorney's fees for child custody matters or paternity matters under NRS 18.010, which basically says if you get a recovery for less than $20,000, the judge can award attorney's fees? Maybe there is a roadblock to that in family court of which I am not aware. Second, page 2, lines 3 and 4 of A.B. 262 includes the phrase "if those fees and costs are in issue under the pleadings." I do not know what that means.

Assemblywoman Cohen:
You can get attorney's fees under NRS 18.010, but that is used only in cases with winners and losers. In these cases, it is not necessarily about winning and losing; it is about bringing the parties into equal footing. Under *Miller v. Wilfong*, that court said that there needs to be a statute that specifically covers this

situation. As I mentioned, in a case on appeal with the Nevada Supreme Court, a family court judge did allow attorney's fees in a custody case.

Senator Hutchison:
The purpose of this statute is to give a court discretion not to just award fees to the prevailing party, but to consider the circumstances and bring some equity and proportionality to payment of fees—who bears the costs for those payment of fees based on the case and the issues before the court.

Assemblywoman Cohen:
Yes. Just to be clear, in a paternity case the court can award attorney's fees. The statute specifically allows it. The only difference here is that in those families, the court has not established paternity yet; in these families, paternity has been established.

Senator Hutchison:
On my second question, that phrase sounds like the old Sandy Valley attorney's fees criteria, from *Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 35 P.3d 964 (2001), where you can get attorney's fees when they are not otherwise offered by statute or the contract. Is that what you are getting at here, or is it something else?

Assemblywoman Cohen:
It is standard in family court cases to ask for attorney's fees in your pleadings. I think that phrase is just getting at that, though frankly I had not really thought about it. I will have to look at the paternity statute. In a divorce case or in a paternity case, you automatically ask for attorney's fees.

Senator Hutchison:
You may want to put a period after "court," so page 2, line 3 reads, "... and at times determined by the court." In most civil cases, we routinely put in requests for attorney's fees. So you are just saying that these are typically at issue in the pleadings in family court.

Assemblywoman Cohen:
Right. But I will certainly compare that with what is going on in the paternity statute, which is probably where the language came from.

Mr. Lyons:
One of the issues is that the introduction to NRS 126 says it is a fundamental principle of Nevada law that all children should be treated equally, whether their parents are married or unmarried. A few years ago, I took a case in which I came in 5 years after the case started. It was filed as a custody case because the couple had already established paternity at some point. My client was basically indigent, and I ended up doing about $7,000 worth of work for which I could not be paid. You do not want to be the greedy attorney, but if those cases come in the future, the other side will have an attorney. If attorneys know they will not get paid, they will not take those cases. The system gets bogged down, people get treated unfairly, and the issue before the court regards what is in the best interest of the children. If one party has counsel who ensures certain evidence does not get before the court, the court will not have the evidence to decide what is in the best interest of the children. This can lead to the children being harmed.

With regard to NRS 18.010, I have never argued that, but if this bill is not passed, I will probably add that on. The only issue with NRS 18.010, subsection 1 is in a custody case, you are not generally seeking monetary damages but rather what is in the best interest of the children. Because there is no award of money, nothing under NRS 18.010 allows the awarding of attorney's fees.

Chair Segerblom:
How does the court determine to award attorney's fees in a case with no winner or loser?

Mr. Lyons:
In a case with no winner or loser, you argue the factors set forth in *Miller v. Wilfong*. If you are an attorney for rights and family law, you have a brief that sets out all the factors, including *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969). That Nevada Supreme Court decision includes a list of factors—including the skills of the attorney and the difficulty of the legal question argued—when awarding attorney's fees. The judge reviews those factors and then decides. It is a fairly straightforward process here in Nevada family court with the *Brunzell* factors.

Unfortunately, when it is simply a custody issue and parentage has already been established, the courts lack the jurisdiction to award attorney's fees. Another

Nevada Supreme Court case, *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998), says you can always question paternity even if paternity has been established. Is that a little bit of legal gamesmanship? Yes, it is, but that is the savvy attorney versus the unsavvy attorney. Assembly Bill 262 takes away the need to resort to such strategies. If the parents are only concerned about custody, they can litigate the custody case. It does not bog down the courts with extraneous matters.

Senator Hutchison's question about the pleading reference took me back to law school. I seem to remember an issue where a pleading was limited to a complaint, an answer, a counterclaim and an answer to the counterclaim. I do not know if that holds true today, and I have never researched how Nevada defines a pleading. If that is true and we want to make this fair, we may want to do as Senator Hutchison suggested and put a period after "court" because a lot of the earlier cases sought attorney's fees in the motion itself. If the motion itself is considered a pleading, we would not need it.

Senator Jones:
Nevada Revised Statutes 125.150 has that awkward language too. If we need to pull it out, that is where it came from.

Assemblywoman Cohen:
I will certainly consider Senator Hutchison's amendment.

This bill is just filling in a doughnut hole, making sure families in custody cases are treated equally with similarly situated families and making sure they are treated equally by the court.

Chair Segerblom:
I will close the hearing on A.B. 262 and open the hearing on A.B. 233.

ASSEMBLY BILL 233: Revises provisions governing postconviction genetic marker analysis. (BDR 14-1000)

Assemblywoman Lucy Flores (Assembly District No. 28):
This cleanup bill was initially passed in 2009 as A.B. No. 179 of the 75th Session. That bill was an effort to address a U.S. Supreme Court decision in *District Attorney's Office for the Third Judicial District v. Osborne*, 557 U.S. 52 (2009), which said a denial of access to postconviction DNA testing was not a

violation of due process. The decision left it up to the states to make this right available to those who have been already convicted in a situation where they had DNA evidence not previously tested, generally because the science did not exist at the time. In the last 10 years or so, we have had hundreds of postconviction exonerations due to the advent of DNA testing.

In 2009, we created a statutory right for postconviction DNA review. At that time, only those who had been sentenced to death had the right to petition for DNA testing. Assembly Bill No. 179 of the 75th Session expanded this to include those convicted of Category A and Category B felonies. Even though the minutes recorded that the intent was that there should be a right of appeal, the Nevada Supreme Court did not take that into consideration and said there was no right of appeal because it was not explicit in the statute. Therefore, A.B. 233 ensures a right of appeal for those who petition for access to postconviction DNA testing.

I have an amendment that makes two changes to A.B. 233 (Exhibit O). First, it was not clear that appeal was available to the State as well, and the language in section 1, subsection 10 of the amendment clarifies that if the petitioner is allowed to access DNA evidence under this law, the State can also appeal. This gives the right of appeal to all parties.

Chair Segerblom:
Do you have any objection to that?

Assemblywoman Flores:
I have no objection to that. It is part of our justice system that any party aggrieved has the ability to appeal.

Another change is in section 1, subsection 1, where I am removing the language requiring that the person be under sentence of imprisonment for the conviction. We have seen situations in which parolees were exonerated after they were released from prison. That is important because it clears your record completely and totally. It is not like sealing your record; you are actually exonerated of the crime of which you were convicted, and your record completely disappears. We thought "under sentence of imprisonment" probably covered parole, but we wanted to be clear, and the best way to be clear is to take out that language.

Chair Segerblom:
This is also true after parole has ended.

Assemblywoman Flores:
Correct. We want to make DNA testing available to everyone, regardless of whether you are still in prison, on parole or satisfied parole.

Chair Segerblom:
What is the standard when you seek to have your DNA tested?

Assemblywoman Flores:
The standard is an odd one. It is "reasonable possibility," which is completely different from other postconviction processes like habeas corpus or the other appeal measures available. This is almost a completely separate body of law because the *Osborne* decision said denial of postconviction DNA access is not a due process violation. This left it up to the states to create another right of appeal. We could not necessarily have the same higher standard that criminal law has because this is just the first part. This is just saying that we reasonably believe that had the DNA been tested at the time, the outcome would have been different. That does not mean that just because the petition is granted, the person is let out of prison. This actually would start the justice process over again. The DNA would be tested, and at that point the district attorney still has the opportunity to ask for another trial. That has happened in the past after DNA has been tested; on a couple of occasions, the person has actually been reconvicted.

Chair Segerblom:
Does the petitioner pay for the test?

Assemblywoman Flores:
No, the State bears the burden of the test. For the record, I will note that since A.B. No. 179 of the 75th Session passed in 2009, there has been only one petition.

Senator Hutchison:
I was going to ask what kind of appeal load the court could expect from this. You are saying the load will be light.

Assemblywoman Flores:
We expect it to be very light. When we were first trying to pass A.B. No. 179 of the 75th Session, one of the things we continuously argued against was the theory that it would open a floodgate of appeals and everyone would petition for testing. Unfortunately, when you get into these cases, it is difficult to find evidence that still exists. In 2009, we also passed a companion bill, A.B. No. 279 of the 75th Session, requiring that evidence had to be preserved until incarceration ended. Before that, no law said you had to keep evidence. Folks had been convicted, and the evidence had been completely destroyed. Even if they did have a claim of innocence, there was nothing to test. All the same, hundreds of people who were wrongly convicted, quite a few of them sentenced to death, were then found to be completely innocent of the crime they were convicted of, and the State was getting ready to kill them. These are difficult cases. But when we do have them, it is our obligation to ensure that we do whatever we can to give them the opportunity to be heard, if that possibility exists.

Senator Hammond:
Is the DNA test you are talking about in A.B. 233 the cheek swab test that matches 13 genetic factors, or is it more involved?

Assemblywoman Flores:
It depends on what kind of test is required for the evidence. I am not a DNA expert, but I have been working on wrongful convictions since 2007, and it is my understanding that sometimes you might need more involved tests. Usually, a basic test using a cheek swab or a hair sample is enough.

Chair Segerblom:
The sample collected from the scene of the crime could have been any kind of DNA.

Assemblywoman Flores:
Correct.

Mr. Yeager:
We are in support of A.B. 233. With respect to Senator Hammond's question, the unique part of this bill does not have the same privacy concerns because the person donating the DNA is the one requesting the test. This means more expansive testing can be done.

Chair Segerblom:
Maybe we should expand it to cover all felonies rather than just Category A and Category B felonies.

Mr. Yeager:
We would be in favor of that.

Ms. Erickson:
We support A.B. 233. We would like to thank Assemblywoman Flores for addressing our concerns in her amendment and giving both parties the ability to appeal. We are also supportive of the amendment in section 1 of the bill that gives the petitioner the ability to petition the court at any time, not just during incarceration.

Vanessa Spinazola (American Civil Liberties Union of Nevada):
We support A.B. 233. We believe it remedies the due process concerns from the U.S. Supreme Court decision on *Osborne*, particularly in cases where the petitioners have to go back to the judge who actually sentenced them. It is important that they have the right of appeal.

Sean B. Sullivan (Public Defender's Office, Washoe County):
We support A.B. 233.

Michelle Ravell:
I am in support of A.B. 233, but it does not go far enough. In most cases, the appeal goes back to the judge who originally sentenced the person. That gives the judge a preconceived notion.

I brought a shoebox as a prop to explain what it is like to be innocent. Imagine you have been convicted of a crime you did not commit, and the evidence that will prove your innocence is in this box. But the court will not let you see the box; it will not let you have the box; it will not let your attorney have the box; it will not let your friends have the box; and it will not let any testing be done on any information in the box. In Nevada, you have to prove your innocence before you can prove your innocence. Genetic testing goes a long way to doing that.

Unfortunately, our law is predicated on a judge giving you the right to prove your innocence. Without a provision allowing the person to pay for the testing without the court having to order it, it is not true justice. You can scream all

you want that you are innocent, but no one will believe you until you can prove it.

I am proposing an amendment to A.B. 233 that gives the person the opportunity to prove it. In section 1, subsection 4 of the bill, change the word "may" to "shall." In section 1, subsection 4, paragraph (a), add, "Enter an order granting the petition and release of the evidence for genetic marker analysis if the testing is to be performed at no charge to the state. Otherwise, enter an order ..." and continue on as written. This is a simple amendment, and it gives the innocent person a chance to open the box.

Assemblywoman Flores:
I have seen Ms. Ravell's amendment, and I do not consider it a friendly amendment. I do not agree with the reasoning behind it.

I would like to address the idea that you have to prove your innocence before you can prove your innocence. This is why I was talking earlier about the reasonable possibility standard. "Reasonable possibility" is essentially the lowest standard you can think of. If there is any possibility whatsoever, the court must grant the petition. The burden of proof for a criminal standard is much higher. "Reasonable possibility" was purposely designed to have a low threshold; the idea was to have the court grant these petitions so we can discover whether the evidence can prove the person's innocence.

Second, the idea that paying for something in our justice system should automatically grant it to you is not the way our system works or is designed, nor should it work that way. It creates a situation in which people who have money are entitled to action in the courts just because they have money. That in and of itself is not fair. It is in fundamental violation of the way our system works. We motion, we petition, we do the appropriate steps that are necessary within our system, and at every step of the way that motion can be denied or granted. If those things happen, procedures exist to deal with the decision of the court. I cannot think of a situation where petitions are automatically granted. Therefore, I do not accept this amendment as presented.

Chair Segerblom:
What about expanding the categories of felonies included?

Assemblywoman Flores:
I would be open to that.

Chair Segerblom:
Is there any public comment? Hearing none, I will adjourn the meeting at 11:05 a.m.

RESPECTFULLY SUBMITTED:

_____
Lynn Hendricks,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE:_____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	6		Attendance Roster
A.B. 110	C	1	ASPCA	Letter of Support from Kevin O'Neill
A.B. 110	D	1	American Kennel Club	Letter of Support from Sarah Sprouse
A.B. 110	E	1	Beverlee McGrath	Breed Discriminatory Legislation in Nevada
A.B. 110	F	11	Beverlee McGrath	Information packet
A.B. 110	G	1	Margaret Flint	Pictures of 25 dogs
A.B. 110	H	NA	Richard Hunter	Vicktory Dogs CD
A.B. 110	I	1	Fred Voltz	Written testimony
A.B. 110	J	1	Jesica Clemens	Written testimony
A.B. 110	K	19	Jesica Clemens	BSL Talking Points
A.B. 110	L	1	Erik Gavilanes	Written testimony
A.B. 110	M	16	Laura Handzel	Written testimony
A.B. 262	N	1	Sandra L. Pomrenze	Written testimony
A.B. 233	O	5	Assemblywoman Lucy Flores	Proposed Amendment 8698