

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session  
April 29, 2015**

The Senate Committee on Judiciary was called to order by Vice Chair Becky Harris at 1:05 p.m. on Wednesday, April 29, 2015, in Room 2134 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 Becky Harris, Vice Chair  
Senator Michael Roberson  
Senator Scott Hammond  
Senator Ruben J. Kihuen  
Senator Aaron D. Ford

**COMMITTEE MEMBERS ABSENT:**

Senator Greg Brower, Chair (Excused)  
Senator Tick Segerblom (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Nelson Araujo, Assembly District No. 3  
Assemblyman John C. Ellison, Assembly District No. 33

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nick Anthony, Counsel  
Julia Barker, Committee Secretary

**OTHERS PRESENT:**

Mason Simons, Elko Township Justice Court; Municipal Court Judge,  
Elko County

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Regan Comis, Nevada Judges of Limited Jurisdiction  
Ben Graham, Administrative Office of the Courts, Nevada Supreme Court  
Jonathan Friedrich  
Brigid Duffy, Juvenile Division, District Attorney's Office, Clark County  
Kevin Schiller, Assistant County Manager; Director, Social Services, Washoe County  
Marlene Lockard, Nevada Women's Lobby  
Jason Frierson, Chair, Legislative Committee on Child Welfare and Juvenile Justice  
Susan Roske, Chief Deputy Public Defender, Office of the Public Defender, Clark County  
Kerry Kleiman, Student Attorney, Juvenile Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas  
John T. Jones, Jr., Nevada District Attorneys Association  
Steve McBride, Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services  
Chuck Callaway, Las Vegas Metropolitan Police Department  
Frank Cervantes, Director, Department of Juvenile Services, Washoe County  
Sean B. Sullivan, Public Defender's Office, Washoe County  
Mike Dyer, Director, Nevada Catholic Conference  
Mike Patterson, Lutheran Episcopal Advocacy in Nevada  
Allan Smith, Religious Alliance in Nevada

**Senator Harris:**

I open the hearing on Assembly Bill (A.B.) 160.

**ASSEMBLY BILL 160 (1st Reprint)**: Makes various changes relating to courts.  
(BDR 1-453)

**Assemblyman John C. Ellison (Assembly District No. 33):**

Assembly Bill 160 allows justice and municipal courts to be held in different locations under certain circumstances. The law as written is strict about where court proceedings can take place. In an effort to expand access, make better use of resources and provide flexibility to courts, section 1, subsection 3 of A.B. 160 allows justice court to be held in additional locations. Justice court does not allow proceedings to be held in other locations. This bill cleans up language in the law. Judge Mason Simons has talked with other Nevada judicial courts who are on board with this. There is a proposed amendment ([Exhibit C](#)).

**Mason Simons (Elko Township Justice Court; Municipal Court Judge, Elko County):**

I submitted written testimony for the record ([Exhibit D](#)).

**Senator Harris:**

You would like the flexibility to have trials or court appearances take place in jail facilities with appropriate courtrooms. Section 1, subsection 3, paragraph (b) of the bill says, "any county or city jail or detention facility where a person whose offense or alleged offense which is subject to the jurisdiction of the court is customarily held in custody." That provision does not require appropriate facilities. I am concerned for the safety of court personnel and making sure there is access to needed resources, technology and anything else required to hold a hearing.

**Mr. Simons:**

A person accused of a crime has a right to a public trial. A judicial officer has a constitutional obligation to ensure any proceeding is publicly accessible. We did not include that language in the bill because there is already a constitutional obligation to ensure that happens.

**Senator Harris:**

Do you like the flexibility section 1, subsection 3, paragraph (b) gives, or would you tighten it up to make sure appropriate facilities are required? I am concerned a court have access to the things necessary for a fair hearing.

**Mr. Simons:**

The bill as written gives the needed flexibility to hold proceedings when appropriate. It is not our intent to hold trials in a jail. A room is available for proceedings and publicly accessible in Elko County. We would not normally hold trials at the jail. It would be proceedings, such as in-custody arraignment hearings, first appearances on felony cases or contempt hearings for a person arrested on a bench warrant. These proceedings would not normally require witnesses' testimony.

**Senator Harris:**

Section 1, subsection 3, paragraph (c) says "any other place located within the same county." What are some of those locations?

**Mr. Simons:**

The proposed amendment, [Exhibit C](#), removes that section. An amendment proposed in the Assembly modified section 1, subsection 5 to allow court to be held in other locations where court is customarily held, as long as the parties stipulated that. Given that change, section 1, subsection 3, paragraph (c) was duplicative.

**Regan Comis (Nevada Judges of Limited Jurisdiction):**

The Nevada Judges of Limited Jurisdiction supports [A.B. 160](#) and the proposed amendment, [Exhibit C](#).

**Senator Harris:**

I close the hearing on [A.B. 160](#) and open the hearing on [A.B. 97](#).

**[ASSEMBLY BILL 97 \(1st Reprint\)](#):** Revises provisions governing wills.  
(BDR 12-505)

**Assemblyman John C. Ellison (Assembly District No. 33):**

The reason for [A.B. 97](#) has to do with a problem in Elko. If a person wanted to look at a will, he or she would need to hire an attorney and get authorization from district court to look at the will. This bill fixes that problem.

**Ben Graham (Administrative Office of the Courts, Nevada Supreme Court):**

You might wonder how the Administrative Office of the Courts (AOC) got involved. When the bill was introduced, Robin Sweet, the supervisor of the AOC, said, "Golly, this should not be a problem." Assemblyman Ellison agreed to put this on the backburner so we could investigate the problem. We found five or six different ways county clerks in the State handle wills. This bill makes it a uniform process. The original language said a will should be delivered to a personal representative and the clerk of the court within 30 days of the death of the testator. Once the will is delivered, it is part of the permanent record of the clerk of the court. This creates a problem for members of the public wanting to review a will. That is why we are proposing section 1, subsection 5, "A will that is part of the permanent record maintained by the clerk of the court becomes a public record open to inspection."

The proposed amendment ([Exhibit E](#)) was proposed in the Assembly. However, Legal Division did not remove *Nevada Revised Statute* (NRS) 239.010. That statute deals with other public record statutes, not court public record statutes.

A will is public record unless it has been sealed pursuant to Nevada Supreme Court Part VII, Rule 7. This rule allows sealing a will under certain circumstances. A court could seal a will on its own motion; but a party of interest would normally bring a motion to determine why an entire will, or portions of a will, should be sealed or redacted. Reasons for this could be a will contains personal information not meant to be public. There are procedures in place to do that. A person wishing to seal a will would need good reason before he or she goes through that process. Once A.B. 97 is amended and enacted, there will be an educational process. We tell Nevada counties that this law clarifies prior differences in procedure. This makes sure wills are open to public inspection unless specifically sealed.

**Senator Harris:**

Is the intent to have a uniform process by which all wills are administered in the State?

**Mr. Graham:**

Yes. We thought that was happening. When we found out it was not, we sought to correct that.

**Senator Harris:**

Have you had conversations with different county clerks about the bill?

**Mr. Graham:**

They have no quarrel with making this a uniform process. In Elko County, it was a certain process with one person and another way with a different person. This standardizes the process. Most courts handled wills according to the law, but a few did not. This helps them.

**Senator Harris:**

What does it mean for a will to be open to public inspection? Does that include copying a will?

**Mr. Graham:**

Copying wills is an issue I am not privy to. If a will were open to public inspection, a person could copy a will as long as portions had not been sealed or redacted. What county clerks charge for copies of a will would be standardized.

**Jonathan Friedrich:**

Why does a will have to be filed with a court?

**Senator Harris:**

Provisions in NRS require a will be delivered to the clerk of the court within 30 days of the death of testator for administration of a will.

**Mr. Friedrich:**

What if there is no probate required of a will?

**Senator Harris:**

That is a question for legal counsel or an estate planning attorney. We are a legislative body and not in a position to help you ascertain when or if an estate should be administered.

I close the hearing on A.B. 97 and open the hearing on A.B. 151.

**ASSEMBLY BILL 151 (1st Reprint)**: Revises provisions relating to the adoption of children. (BDR 11-757)

**Assemblyman Nelson Araujo (Assembly District No. 3):**

Assembly Bill 151 revises procedures to adoptions in Nevada. The law requires a court to grant a petition for the adoption of a child if it finds it is in the best interest of a child to do so. An order of decree for an adoption may not be made until a child has lived in the home of the petitioners for 6 months. This bill removes the 6-month requirement if the petitioner is the child's next of kin.

The law allows a child to be adopted by an adult as long as the adopter is 10 years older than the child. Consent of the child is necessary if he or she is older than the age of 14. This bill removes that 10-year rule.

Any two married persons may petition the district attorney of any county in the State for leave to adopt a child. This bill states a married person not lawfully separated from his or her spouse shall not adopt a child without the consent of the spouse, provided that the spouse is capable of providing that consent.

**Brigid Duffy (Juvenile Division, District Attorney's Office, Clark County):**

This bill is important to children in the foster care community. Approximately 500 children were adopted in Clark County in 2014. Ten children were affected

by the divorce issue delay. A grandmother wanted to adopt her grandchildren because her daughter was unable to get over her issues. That grandmother had been married for 20 years and separated for 15 years. For religious reasons, she never sought a divorce. It is awkward to tell a person that she must seek a divorce to adopt her grandchildren when she has not done so because of religious reasons. If a couple is not divorced, a spouse must consent to an adoption because he or she becomes financially responsible for the child. California has open statutes regarding divorce and dispensing of the consent requirement if the spouse was diligently searched for and could not be found or the spouse consents to an adoption, understanding he or she would not be financially responsible.

The age difference between the adopted child and the adopting person has also raised issues. Siblings aged 14, 13 and 9 in foster care for 4 years were adopted by a 26-year-old first cousin. That cousin married his 24-year-old fiancée during the course of fostering the children. During the home study portion of the adoption, we found out the 14-year-old and 24-year-old missed the 10-year cutoff by a few months. The couple no longer met the 10-year requirement to adopt as husband and wife. At the time, the wife was pregnant. The couple decided to get divorced so he could adopt his cousins as a single father. The two remarried after the adoption was finalized. That is absurd. This bill helps overcome those barriers.

**Kevin Schiller (Assistant County Manager; Director, Social Services, Washoe County):**

Social services primary goal is reunification. We serve as an adoption agency in terms of child welfare and a general adoption agency. It is a matter of law catching up with practices. We have to abide by federal requirements and seek out relatives from the onset of a child welfare case. We are looking at changing statute to meet practices. This bill eliminates barriers for adoptions. A month is a long time when seeking permanency for a child. A request from California for a home-study process could take 9 months before an adoption could be finalized. We are maneuvering around the bureaucracy component when it is in the best interest of the child to be adopted by a family member. Washoe County supports A.B. 151.

**Senator Harris:**

This bill provides a way for families to stabilize at-risk children and reduce the barriers in adoption. This is a commonsense solution that does not add to the difficulty of one being able to take care of his or her own family members.

**Marlene Lockard (Nevada Women's Lobby):**

The Nevada Women's Lobby supports A.B. 151.

**Assemblyman Araujo:**

When I heard how many youths would be impacted by this bill and the impact we could have on future children, I was inspired to move this bill forward.

**Senator Harris:**

I close the hearing on A.B. 151 and open the hearing on A.B. 153.

**ASSEMBLY BILL 153 (1st Reprint):** Revises various provisions related to sexually exploited children. (BDR 5-622)

**Assemblyman Nelson Araujo (Assembly District No. 3):**

This bill is known as the safe harbor bill, providing protections for sexually exploited children in Nevada. We have been working on this issue for a long time. Sexually exploited children are part of the most vulnerable population in the State. This bill ensures they are out of harm's way and receive much-needed care. We have worked diligently to ensure we had a bill everyone could rally around and would have the support needed to move it forward.

Section 6.5 amends NRS 62C by adding a new section stating:

1. If the district attorney files a petition with the juvenile court alleging that a child who is less than 18 years of age has engaged in prostitution or the solicitation of prostitution, the juvenile court:  
(a) Except as otherwise provided in paragraph (b), shall: Place the child under the supervision of the juvenile court pursuant to a supervision and consent decree, without a formal adjudication of delinquency; and order that the terms and conditions of the supervision and consent decree include, without limitation, services to address the sexual exploitation of the child and any other needs of the child, including, without limitation, any counseling and



medical treatment for victims of sexual assault in accordance with the provisions of NRS 217.280 to 217.350, inclusive. ...

2. If a child is placed under a supervision and consent decree pursuant to this section, the juvenile court may issue any order authorized by chapter 62E of NRS, including, without limitation, any placement of the child that the juvenile court finds to be in the child's best interest.

3. If a child is alleged to have violated the provisions of a supervision and consent decree under this section or an order issued pursuant to this section: The district attorney must not file a petition alleging that the child has violated the decree or order and the allegation must be placed before the court pursuant to a motion or a request for judicial review. ... The juvenile court may issue any order authorized by chapter 62E of NRS, including, without limitation, any placement of the child that the juvenile court finds to be in the child's best interest.

4. Except as otherwise provided in this subsection, if a child is placed under the supervision of the juvenile court pursuant to a supervision and consent decree under this section, the juvenile court shall dismiss the petition upon the successful completion of the terms and conditions of the supervision and consent decree or at the time the child reaches 18 years of age, whichever is earlier. ...

Sec. 7. This act becomes effective upon passage and approval.

**Jason Frierson (Chair, Legislative Committee on Child Welfare and Juvenile Justice):**

This issue was brought to my attention during the interim. Over the course of my involvement in family and criminal court, I am continuously shocked by the number of juveniles in the system put on the streets by panderers. The challenge is when authorities do not realize a child is under age when he or she is arrested for prostitution or pandering. A child cannot be housed in an adult jail, so he or she is housed in a juvenile detention center with nonsexualized juvenile offenders. There is a mixture of different kinds of offenders with different needs. We need to find a way to meet the needs of victims, which is

what these children are. Professor Mary E. Berkheiser, William S. Boyd School of Law, worked with law students, myself and Assemblyman Araujo to come up with a way to address this problem and submitted testimony supporting A.B. 153 ([Exhibit F](#)).

Under A.B. 153, a juvenile arrested for solicitation will be given a consent decree rather than being treated as a juvenile delinquent. That is similar to a stay of adjudication in the adult system. This puts the juvenile under a county's jurisdiction. It is in the child's best interest to receive help from the county to meet his or her needs. The consent decree has conditions. A juvenile would enter a plea as a consent decree so he or she would not be adjudicated. It is important a juvenile have conditions. If a juvenile violates those conditions, there is a mechanism that would not treat victims as criminals. If conditions are violated, the district attorney will not be able to file a delinquent petition as a result of that violation. The district attorney can file an additional petition if it is an act not relating to the circumstance surrounding the decree. A juvenile under a consent decree who robs a store can be charged for that act.

**Senator Harris:**

Let us say a juvenile enters into a consent decree and reengages in prostitution or solicitation. Will he or she be charged with delinquency, or is there a mechanism providing resources to help sexually exploited individuals?

**Mr. Frierson:**

It is not a delinquent act if a juvenile reengages with his or her panderer. The intent is to have the ability to detain a juvenile to get him or her away from a panderer. A juvenile will not be detained as a delinquent but in his or her best interest as having violated part of the conditions of the consent decree. Otherwise, it would be a different delinquent act. It is not a delinquent act for a juvenile under this consent decree to reengage in prostitution or pandering. The juvenile would have additional services and conditions provided to help prevent him or her from engaging in that lifestyle.

**Senator Harris:**

If a juvenile engages in the same act for which he or she has a consent decree, that would not be a delinquent act. If it is something else considered criminal, could the juvenile be considered for disciplinary action regarding delinquency?

**Mr. Frierson:**

Yes. If a juvenile is in the process of having a consent decree and reengages in prostitution or pandering, the conditions are not enough to address the issue and need to be expanded. The ultimate goal is to not treat victims as criminals. This bill is progress toward treating victims as victims.

**Senator Harris:**

Is the plea entered prior to the consent decree sealed so exploited individuals are able to leave our system?

**Mr. Frierson:**

I would defer to the district attorneys for answers about the juvenile process. The Division of Child and Family Services would be better situated to address the nature of those records.

**Senator Harris:**

I would be concerned a victim could be revictimized and exploited because something has not been sealed after he or she has made a genuine effort to overcome a situation he or she was placed in.

**Mr. Frierson:**

I agree with that. I would defer to the experts in that field for a response as to how that plays out.

**Senator Harris:**

Section 6.5, subsection 4 states, "A child who has reached 18 years of age may consent to remain under the supervision of the juvenile court for the purpose of receiving services provided under the supervision and consent decree." I understand a child can remain supervised until the age of 21. Sometimes, victimization of this manner can follow a person throughout a lifetime. I would not like a victim to be cut off from services he or she needs as part of healing. Do we have services in the community or places for them to go, or are victims let go at the age of 21?

**Mr. Frierson:**

The intent is to acknowledge that issue. We do not cut victims off because, oftentimes, a panderer is waiting for him or her. The intention of expanding services beyond the age of 18 addresses that. Services cannot last forever; but there are other community service options. Attorneys representing juveniles,

caseworkers and district attorneys have access to services. It is a team approach to meet the needs of a child victim. Acknowledging that the State needs more services, we try to provide a child with as many services as possible. To the extent services are available, the system is designed to provide those transitions.

**Senator Ford:**

Have other states incorporated similar legislation? How effective has legislation been?

**Mr. Frierson:**

This type of legislation is not unique. Students at the William S. Boyd School of Law looked at safe harbor legislation around the Country. I will get information to you about how many states have similar legislation.

**Susan Roske (Chief Deputy Public Defender, Office of the Public Defender, Clark County):**

I am the Chief Deputy Public Defender in Clark County and an adjunct professor at the William S. Boyd School of Law, University of Nevada, Las Vegas, Juvenile Justice Clinic. I reached out to Assemblyman Araujo with Professor Berkheiser regarding A.B. 153. This bill changed quite a bit during the legislative process, so pandering as a juvenile is a consent decree and remains a delinquent act. I represent children who have been arrested and prosecuted for engaging in or soliciting acts of prostitution. This is an important first step toward a true safe harbor bill to decriminalize prostitution for children. The State lacks many services for these children, although they are growing in Clark County. We have a long way to go, including a safe house and treatment facility for child victims outside of juvenile detention centers. It is important to protect child victims in Nevada without incarcerating and prosecuting them, which is being done every day in Clark County.

**Kerry Kleiman (Student Attorney, Juvenile Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas):**

I have submitted my written testimony for the record ([Exhibit G](#)) supporting A.B. 153.

**Senator Harris:**

Thank you for sharing the experiences of your clients. It gives the Committee context for the nature of this bill.

**Ms. Duffy:**

The Juvenile Division of the Clark County District Attorney fully supports A.B. 153. We appreciate working with sponsors to get language to work with our system. It is not where we started and no longer provides a facility desperately needed in the State. We were not able to get to where we need to be. We still use detention facilities as a placement option for child victims whom we are protecting. We recognize that these juveniles are preyed-upon victims who need to be treated thoughtfully and appropriately. At the end of the consent decree, the bill requires the case be dismissed. We have methods for sealing records. There is legislation addressing sealing records to help victims and delinquents move on with their lives.

I have concerns about dismissing the case when the juvenile turns aged 18, but we do not want to force these children to remain in the system because they are victims. We are hopeful. It can take years to get these children on the right path with the proper services. Because the children are victims, it is appropriate to make it a choice to remain under supervision after the age of 18. We have counselors and advocates to talk with victims about the necessity to voluntarily remain under the jurisdiction of the court until 21 years old. We hope they want to stay with us. We are treating these children as victims, not delinquents.

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

The Nevada District Attorneys Association supports A.B. 153. I handled this caseload as a deputy district attorney in Clark County. It is difficult work. Victims require a lot of intervention to help them through the experiences that bring them before the court. This bill is a step in the right direction. Is it perfect? No. This bill does not address a safe house in Clark County. Ms. Roske and others have been working for years to get a safe house for children to have a safe place to stay while counsel is pending. Any conversation about these victims cannot be had without a mention of a safe house.

**Steve McBride (Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services):**

The Division of Child and Family Services supports A.B. 153.

**Chuck Callaway (Las Vegas Metropolitan Police Department):**

The Las Vegas Metropolitan Police Department supports A.B. 153.

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**Frank Cervantes (Director, Department of Juvenile Services, Washoe County):**  
The Washoe County Department of Juvenile Services supports A.B. 153.

**Ms. Lockard:**  
The Nevada Women's Lobby supports A.B. 153.

**Sean B. Sullivan (Public Defender's Office, Washoe County):**  
The Washoe County Public Defender's Office supports A.B. 153.

**Mike Dyer (Director, Nevada Catholic Conference):**  
The Nevada Catholic Conference supports A.B. 153.

**Mike Patterson (Lutheran Episcopal Advocacy in Nevada):**  
The Lutheran Episcopal Advocacy in Nevada supports A.B. 153. This is a good extension of A.B. No. 67 of the 77th Session.

**Allan Smith (Religious Alliance in Nevada):**  
The Religious Alliance in Nevada supports A.B. 153.

**Assemblyman Araujo:**  
At least 28 states have enacted similar safe harbor legislation.

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**Senator Harris:**

I close the hearing on A.B. 153 and adjourn the meeting of the Senate Committee on Judiciary at 2:04 p.m.

RESPECTFULLY SUBMITTED:

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Julia Barker,  
Committee Secretary

APPROVED BY:

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Senator Becky Harris, Vice Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	10		Attendance Roster
A.B. 160	C	2	Mason Simons/Elko Township Justice Court; Elko Municipal Court	Proposed Amendment
A.B. 160	D	3	Mason Simons/Elko Township Justice Court; Elko Municipal Court	Written Testimony
A.B. 97	E	2	Ben Graham/Administrative Office of the Courts, Nevada Supreme Court	Proposed Amendment
A.B. 153	F	2	Jason Frierson/Legislative Committee on Child Welfare and Juvenile Justice	Mary E. Berkheiser Letter
A.B. 153	G	1	Kerry Kleiman/Juvenile Justice Clinic	Written Testimony