MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
May 13, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 10:02 a.m. on Wednesday, May 13, 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 Greg Brower, Chair
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Becky Harris, Vice Chair (Excused)
Senator Michael Roberson (Excused)
Senator Tick Segerblom (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Heidi Swank, Assembly District No. 16

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Kim Surratt, Nevada Justice Association
Jessica Anderson, Nevada Justice Association

Jeff Witthun, Assistant Director, Family Support Division, Office of the District Attorney, Clark County
Marshal Willick

Chair Brower:
I open the hearing of the Senate Committee on Judiciary with the continuation of the hearing on Assembly Bill (A.B.) 98.

ASSEMBLY BILL 98 (1st Reprint): Revises provisions governing child support. (BDR 11-49)

Kim Surratt (Nevada Justice Association):
The first edition of this bill provided by the Legislative Counsel Bureau was not workable in any way, shape or form. It had every attorney, judge and organization in the State rising in opposition. That was not the intent. That form of the bill was not practical. You would not be able to calculate child support with it. There is a discrepancy when people say they oppose the bill, whether they oppose the current or original draft. This bill has gone through many editions.

A gentleman works for law enforcement and makes $50,000 a year. His ex-wife's new spouse has a high income, lives on a very large ranch, eats filet mignon every night and has a high standard of living. The ex-husband's child support is so high—because of the offset and presumptive maximum—that he can afford to live in a one-room studio with his children. The ex-wife is not earning income because her new husband makes so much money, there is no need for her to work. If we add in those factors, the court can deviate based on those circumstances and look at that fact pattern to determine what is fair.

We reached out to family law judges because it is popular to ask what judges think. It is like pulling teeth to get the opinion of judges. Part of that is the directive that judges are not to be involved in policy decisions. We got a speech from Nevada Supreme Court Chief Justice James Hardesty in Ely about when judges are supposed to be involved. As a family law section, we were frustrated to not hear from judges and wanted to hear from them on a more consistent basis about these bills. It is hard for us to get those opinions.

District Attorney's Offices in Clark and Washoe Counties received emails about this bill. They were sent all the emails and saw all the amendments. Washoe

County District Attorney's Office sat with us until we figured out what the office needed. Clark County never said anything, so we are comfortable it is on the same page as Washoe County, or we would have heard something.

Susan Hallahan with the Washoe County District Attorney's Office said the federal government required a review of these statutes every 4 years. Nevada is exempted because of caps in our statutory framework. The problem is that other states get this review every 4 years and revamp child support laws to keep them modern and up to date. Nevada is exempted from that, so our statute has stayed stale and changes have not been made. Inequities in our child support framework need to be fixed. This bill makes minor fixes for now. We already have the funding for the review from the money we receive from the federal government. After the review, we will be able to revamp Nevada's child support statutes and come to a more comprehensive fix by the next Session.

Chair Brower:
My reaction to the issue of the judges is that elected judges should feel free to express their opinions loudly and as often as they want. I have never understood the reluctance to do that. Judges do not work for anyone else. I will talk to them.

You make a point with your example, but I want to keep the hyperbole to a minimum. We do not know that the woman in your hypothetical eats filet mignon every night. That seems like an exaggeration intended to sound like this woman is living a more affluent lifestyle. Let us keep it real. We do not know that much detail about this woman's personal life.

Ms. Surratt:
That is true, but I could take 200 to 300 cases out of my office and come up with that scenario. I do not know that she is doing what I described, but the example is more of … She does not have blame and is not taking excess child support intentionally; there is no reason for her to work. The child support calculations come out unfair.

Chair Brower:
We understand the hypothetical suggests the woman is living a comfortable lifestyle that might mitigate the need for child support as calculated under the statute; but we do not know what she is eating every night, what kind of car

she drives or whether her new spouse shares his income with her. Let us stay away from that exaggeration.

Ms. Surratt:
The beauty of this bill is the child's standard-of-living facts are allowed to be argued in court with evidence presented because they are a deviation factor. If the scenario I described is true, we as attorneys or clients need to be able to prove that. If the scenario I described is not true, the woman needs to be able to demonstrate that through evidence and present her circumstances.

Jessica Anderson (Nevada Justice Association):
Two dentists married and later divorced. The husband was in cosmetic dentistry and earned around $280,000 while the wife went into general practice earning $110,000 a year. The husband pays the presumptive maximum in child support because his income is so high. It would not matter how much the wife earns, she would still get that same amount. That is not fair from the perspective of someone who does not have a high annual income and he or she gets the same amount as someone earning $110,000. It is not fair to the child in a primary custody situation who only has the benefit of one parent's income as opposed to a child in a joint custody situation benefiting from both incomes and going to two high-income-earning parent homes.

Chair Brower:
Is there a statutory, presumptive maximum child support amount?

Ms. Anderson:
Yes. I have provided a printout of the presumptive maximums (Exhibit C).

Chair Brower:
Is it income-based up to a certain maximum?

Ms. Anderson:
There are income brackets ranging from $50,000 to $180,000 and up. Each bracket has its own presumptive maximum based on monthly income.

Chair Brower:
Is it routine for judges to award an amount above the maximum?

Ms. Anderson:
No.

Chair Brower:
Is the maximum the maximum?

Ms. Anderson:
It is not routine.

Chair Brower:
Is it possible?

Ms. Anderson:
Yes, because of the deviation factors. You get a statutory amount, and the judge has the ability to increase or decrease the amount based on those factors.

Chair Brower:
Is that ability unlimited?

Ms. Anderson:
Yes. The issue we as practitioners have is judges are reluctant to deviate because of the Nevada Supreme Court decision instructing judges that deviation is the exception, not the rule. Judges like to have consistent results. In my experience, it is hard to get judges to deviate. The most common time it happens is the cost of health insurance. Once in a while, you will get a decrease in child support payments if you are the parent paying for health insurance.

Chair Brower:
In any case, the court can deviate?

Ms. Anderson:
Yes.

Ms. Surratt:
Sometimes you will see a deviation for the cost of child care. The district attorneys tend to see more deviations than private practice attorneys. It is like pulling teeth to get a deviation factor for anything other than medical insurance or child care costs.

Jeff Witthun (Assistant Director, Family Support Division, Office of the District Attorney, Clark County):
The Family Support Division of the Clark County District Attorney's Office is responsible for 55,000 of the State's 97,000 child support cases, and we are 56 percent of the State's child support program cases.

Chair Brower:
What is the district attorney's role in child support cases?

Mr. Witthun:
A child support case is a Title IV-D Child Support Enforcement Program. Cases of children with parents in our Temporary Assistance for Needy Families Program and cases involving minors where paternity needs to be adjudicated or child support needs to be set are referred by the Division of Welfare and Supportive Services. That is about half of our overall caseload. Nevada citizens seeking paternity services or orders of child support may come to our offices to seek those services. It is our job to establish legal paternity for the 42 percent of children born out of wedlock in Nevada and locate noncustodial parents so child support orders may be set in a reasonable amount and enforced.

Ms. Surratt thought she had the support of the Clark County District Attorney's Office because we were copied on emails regarding A.B. 98 and did not respond. However, the Clark County District Attorney's Office opposes this bill because it revises provisions in Nevada's child support statutes dealing with presumptive maximum order-setting guidelines, creates formulas for joint custody situations and revises deviation factors a court must consider when deviating from regular statutory guidelines. I appreciate that Assemblyman John Ellison, Ms. Surratt and the others recognize and are bringing to the attention of this Committee that Nevada's child support guidelines are old, outdated and in need of revision. The Clark County District Attorney's Office agrees with that assertion.

The federal government has mandated in both the U.S. Code and the Code of Federal Regulations that each state will conduct a review of its child support guidelines every 4 years to ensure application of those guidelines results in awarding appropriate child support award amounts. This review process has not taken place since 1996.

This is the reason the Family Support Division opposes this bill. The bill amounts to a piecemeal approach to the larger need to undertake a holistic and comprehensive review of all Nevada's child support statutes with input from relevant stakeholders—including the Family Law Section of the State Bar, judges, child support attorneys in the District Attorney's Office, custodial and noncustodial parents—to utilize true, economic empirical data and determine what those changes should be. This economic analysis is critical, essential and required in Title 45 CFR Part 302.56. This section states that as part of a state's guideline reviews, it is required to consider economic data on the cost of raising children and analyze case data gathered through sampling or other methods on the applications of and deviations from the guidelines. The analysis of this data must be used in the state's review of the guidelines to ensure deviations are limited.

I have heard sponsors and presenters of A.B. 98 talk about fairness based on a few cases in Elko County of perceived inequity. We do not need to make law based on a few cases. They have tried to change the cap and formula determining child support payments and maximum child support amounts perceived as fair. Fair based on what? There are no case studies, and not all stakeholders are at the table. You are talking about a couple of areas of the child support statute when the whole statute needs to be looked at. Many child support provisions are interdependent of one another. This is the wrong vehicle to make this change. It is the time. Everyone in this room recognizes that a 4-year comprehensive review is overdue.

Based on strategic planning meetings last October, the district attorney's offices running child support cases in their counties on behalf of the Division of Child and Family Services in conjunction with representatives from the Child Support Program agreed to hire a vendor familiar with conducting such studies in other states to assist in conducting a full-scale review of all Nevada's child support guidelines within the next year. This vendor will use empirical economic data relevant to Nevada to address any recommended changes up for legislative approval in the next Session.

Nevada should be allowed to complete this process like other states: methodically, thoughtfully, with a thorough review of all child support guidelines and with all vested stakeholders providing input—not based on a few cases within a certain section of Nevada. If this body wanted to defer this issue to an interim committee at the conclusion of the Session, we would welcome that.

The State has every intent to follow up on this. To piecemeal and create what amounts to bad law as a partial attempt at a fix that requires a change in 2 years because A.B. 98 negatively affects numerous cases is not good policy. This bill is based on formulas, data and presumptive maximums, not on empirical data and the input of all the stakeholders. It is not the right way to go.

Chair Brower:
We have beaten this close to death. I close the hearing on A.B. 98 and open the hearing on A.B. 362.

ASSEMBLY BILL 362 (2nd Reprint): Revises provisions relating to domestic relations. (BDR 11-745)

Assemblywoman Heidi Swank (Assembly District No. 16):
Assembly Bill 362 is a technical correction the Nevada Supreme Court asked us to fix in 2015. It allows property overlooked in a divorce to be divided after the divorce is finalized. More often than you think, property is overlooked or hidden during a divorce and does not get considered during division of assets. More than 60 percent of either one or both parties in Nevada do not have legal representation. They do not have anyone to advise them on what constitutes property in a divorce. When no lawyers are involved, assets—most often pensions—are not thought of as property. This bill allows for the equal division of such property.

Chair Brower:
Two bills deal with this issue. The other is Senate Bill (S.B.) 395. We hope to work those two bills together to come up with a bill that works for everyone.

SENATE BILL 395 (1st Reprint): Revises provisions governing domestic relations. (BDR 11-530)

Ms. Surratt:
This is a bill approved and vetted by the Family Law Section of the State Bar. We were zealous in wanting to get this passed. It is needed and desired because it ended up in two bills. Senate Bill 395 passed out of this Committee with the original language. Assembly Bill 362 has been modified because of negotiation with the Assembly Committee on Judiciary.

The changes made were in section 1, subsection 3. The no time limit verbiage was replaced by a sentence stating, "A motion pursuant to this subsection must be filed within 3 years after the discovery by the aggrieved party of the facts constituting the fraud or mistake." Another change was made to section 1, subsection 3, paragraph (b) stating, "If a motion pursuant to this subsection results in a judgment dividing a defined benefit pension plan, the judgment may not be enforced against an installment payment made by the plan more than 6 years after the installment payment."

The Assembly Committee on Judiciary did not want to leave this open-ended so an aggrieved party could file at any time. It wanted a more traditional statute of limitation. The compromise was this discovery-type rule language. Oftentimes, the omitted asset is a retirement plan that people do not discover or realize until an individual reaches retirement age. It was hard to come up with a time.

Chair Brower:
Do you like the language in A.B. 362 better than the language in S.B. 395?

Ms. Surratt:
I prefer the language in S.B. 395, but my concern is what will survive as a viable bill.

Chair Brower:
How about you, Assemblywoman Heidi Swank, and Senator Ruben Kihuen work together and compare notes. Ms. Surratt, you are the real expert; get back to us about what makes the most sense; then we can talk about political strategy so we have a bill that can pass. Let us get the best policy based on expert opinions and the input of both bill's sponsors.

Marshal Willick:
I have been writing on this subject and been a student of this area for a long time. The language in S.B. 395 was carefully crafted in its original form to mirror California statute, which has worked well for 35 years. If possible, that language should be the version passed. It would be better to have a problematic limitation than to not have a bill pass at all.

Chair Brower:
I close the hearing on A.B. 362 and adjourn the meeting of the Senate Committee on Judiciary at 10:33 a.m.

RESPECTFULLY SUBMITTED:

Julia Barker,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	8		Attendance Roster
A.B. 98	C	2	Jessica Anderson / Nevada Justice Association	Presumptive Maximum Amounts of Child Support