MINUTES OF THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
May 13, 2015

The subcommittee of the Senate Committee on Judiciary was called to order by Chair Greg Brower at 9:34 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.

SUBCOMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Ruben J. Kihuen
Senator Aaron D. Ford

GUEST LEGISLATORS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblyman John Ellison, Assembly District No. 33
Assemblyman Lynn D. Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

A.J. Delap, Las Vegas Metropolitan Police Department
John T. Jones, Jr., Nevada District Attorneys Association
Eric Spratley, Lieutenant, Sheriff's Office, Washoe County
Kim Surratt, Nevada Justice Association; Family Law Section, State Bar of Nevada
Jessica Anderson, Nevada Justice Association

Chair Brower:
I open the meeting of the subcommittee of the Senate Committee on Judiciary with the hearing on Assembly Bill (A.B.) 371.

ASSEMBLY BILL 371 (1st Reprint): Establishes provisions governing the destruction of certain physical evidence. (BDR 4-734)

A.J. Delap (Las Vegas Metropolitan Police Department):
This fairly simple bill was sponsored by Assemblyman Lynn Stewart. We have support from the public defenders. The Las Vegas Metropolitan Police Department and other law enforcement agencies deal with large amounts of impounded marijuana coming from grow operations in houses. Since 2007, the Police Department has conducted investigations on approximately 100 grow operations throughout the Las Vegas Valley and Clark County. That equates to 10,500 plants impounded a year, which is 5,000 pounds of marijuana plant material. That much material takes up space, and we are having a difficult time managing that.

Assembly Bill 371 allows the destruction of confiscated marijuana beyond 10 pounds of impounded material from each grow operation without needing the defense attorneys or prosecutors present at the marijuana destruction. It allows the evidence vault to sample five different locations through the entirety of each impound, document the weight and retain 10 pounds of the impound for evidence purposes. Remaining marijuana can be destroyed after the full weight of the impounded marijuana is recorded and pictures are taken for evidence purposes.

Scheduling a meeting of involved parties to be present at the time of the destruction is difficult and time-consuming. This gives evidence vault personnel the opportunity to document evidence and dispose of excess material. That will alleviate storage and health issues and free up needed space in our evidence vault. We attempted to mitigate this issue with a device called a high-density storage unit, costing about $100,000. It holds around 250 boxes of marijuana and expedites the drying process. I have provided pictures of the evidence vault and high-density storage unit (Exhibit C) to show how much space is taken up by the impounded marijuana.

Chair Brower:
You are talking about postseizure, preadjudication—whether by trial or admission of guilt—destruction of marijuana. Is the idea to keep up to 10 pounds of impounded marijuana and destroy the rest of the seized contraband?

Mr. Delap:
Yes.

Assemblyman Lynn D. Stewart (Assembly District No. 22):
I sponsored A.B. 371 and concur with Officer Delap's testimony.

Chair Brower:
Is it the position of the Clark County District Attorney's Office that preadjudication destruction of the contraband will not hamper the ability to prosecute and try a case in terms of proof?

John T. Jones, Jr. (Nevada District Attorneys Association):
The Nevada District Attorneys Association supports A.B. 371. The Clark County District Attorney's Office worked with the Las Vegas Metropolitan Police Department and Assemblyman Stewart to craft this bill. This will not hinder potential prosecution of these types of offenses. Statute has measures to help in terms of proof, those being the five representative samples and the requirement for photographs to adequately demonstrate the entirety of the evidence. This bill originally included other controlled substances, and we worked with the defense attorneys to remove that portion so it only deals with impounded marijuana exceeding 10 pounds.

Chair Brower:
Does this bill have the support of the public defenders?

Mr. Delap:
Yes.

Mr. Jones:
Yes.

Eric Spratley, Lieutenant (Sheriff's Office, Washoe County):
The Washoe County Sheriff's Office supports A.B. 371.

Chair Brower:
I close the hearing on A.B. 371 and open the hearing on A.B. 92.

ASSEMBLY BILL 92 (1st Reprint): Makes various changes relating to parentage. (BDR 11-301)

Assemblywoman Teresa Benitez-Thompson (Assembly District No. 27):
I am here to introduce A.B. 92.

Kim Surratt (Nevada Justice Association; Family Law Section, State Bar of Nevada):
Assembly Bill 92 is supported by the Nevada Justice Association and the State Bar of Nevada Family Law Section. I chair the lobbying committee for both organizations for family law purposes. This bill has been vetted by the State Bar, meaning it went through all sections and each committee had the opportunity to state potential opposition to the bill. There was no opposition to this bill. This bill is the result of the passage of a comprehensive assisted reproductive technology bill last Session to give Nevada an edge up in reproductive technology. It made Nevada one of the most modern states in the reproductive industry. We found glitches in the bill that needed working out in terms of how to issue a birth certificate from the State Registrar of Vital Records. We did not make the leap from the law passed last Session into that final step of issuing birth certificates. The State Registrar of Vital Records needed guidance and assistance to make that leap.

The additional problem was people were obtaining orders validating surrogacy in another state and coming to Nevada to have that order enforced. From a full faith and credit perspective, that seems to be rational, except when the state lacked subject matter jurisdiction over the baby because the baby was not born in that state. Nevada law was never assessed in making the determination to issue a birth certificate, although other specific requirements passed last Session. One requirement is that a surrogate has to have her own independent legal representation. Other states may not require such things. We needed to narrow this down. This bill is about identifying Nevada as the state issuing an original birth certificate.

I am careful to use the word "original." For example, a birth certificate of a child adopted in another state can be amended after that child has lived in that other state because that state has jurisdiction over that child. "Original" was chosen

because Nevada would have subject matter jurisdiction over a child born in Nevada with an original birth certificate. There is no opposition to this bill.

Chair Brower:
I was taken aback by the reference to the reproductive industry, but I think the Committee understands what you mean. Is that term in statute?

Ms. Surratt:
No, but it is referenced as an industry because it is a cross section of the medical and legal fields.

Chair Brower:
It is a new reality we have been attempting to legislate over the last few sessions. I close the hearing on A.B. 92 and open the hearing on A.B. 98.

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

Assemblyman John Ellison (Assembly District No. 33):
The intent of A.B. 98 is to make joint custody fiscal situations more fair and to not put one parent in poverty. We have had problems in rural areas with this issue. An officer making $40,000 to $50,000 a year will be sued by his or her spouse who makes $100,000 a year or vice versa. We are trying to create fairness for both parties and the children.

Jessica Anderson (Nevada Justice Association):
I am a family law attorney in Reno and chair of the Executive Council of the Family Law Section of the State Bar of Nevada. I am also a domestic committee member of the Nevada Justice Association. The purpose of A.B. 98 was to remedy inequities in Nevada's child support law and how that law is applied to joint physical custodians. As amended, the bill codifies statute with respect to how child support is calculated in cases with a primary physical custodian. It partially codifies law dealing with how child support is calculated in cases where parents are joint physical custodians. It increases the presumptive maximums for various income brackets to close percentage gaps and adds factors the court may consider when determining whether to deviate from the statutory amount.

We have a proposed amendment (Exhibit D) resulting from work we did with the district attorney's office requiring a quadrennial review of Nevada's child

support statute to make sure we are up to speed with current trends and ensuring the child support law is fair and equitable. The law has not been substantively looked at for a long time. The last modification was in 2003. Section 8, subsection 4 deals with calculating child support in primary custody situations. While the language is more clear, the law remains the same.

Section 8, subsection 5 deals with child support in joint physical custody cases. This codifies the 1998 Nevada Supreme Court case *Wright v. Osburn*. Let us say parents have one child and joint physical custody. Eighteen percent of each parent's income is taken and offset to whatever the higher-income-earning parent would owe to the lower-income-earning parent. In 1998, joint physical custody was not the norm. It has become more of the starting point for custody situations in the past decade. In 2003, the Nevada Supreme Court case *Wesley v. Foster* decided that, after the *Wright v. Osburn* calculation, the presumptive maximum is applied to the higher-income-earning parent's income. That is what the child support would be. The question was if the cap was applied before or after the offset. *Wesley v. Foster* stated it was after the offset.

For the last 12 years, Nevada has been operating under that rule. As joint physical custody becomes more prevalent, we discovered that the ruling created inequities for some joint fiscal custodians. Once there is a large enough income gap between parents' incomes, the lower-income-earning parent's income is no longer factored in. Once the presumptive maximum is applied, that is the child support. The lower-income-earning parent's income is no longer part of the equation.

Say you have one parent earning $50,000 a year and another parent earning $150,000. The parent making $50,000 a year has a child support obligation of $750 a month while the parent making $150,000 a year has a child support obligation of $2,250 a month. With the offset, you get $1,500 month, which is above the presumptive maximum. The parent earning $150,000 a year would pay $954 a month, and the income of the parent earning $50,000 would no longer matter. It would not matter if the joint custodian was no longer a joint custodian. That is an inequity A.B. 98 remedies.

Instead of applying the cap after the offset, the cap would be applied to both parents' incomes before the offset, resulting in a more fair child support agreement.

Chair Brower:
What would the result be of your hypothetical under the bill?

Ms. Anderson:
The parent earning $50,000 a year would owe $670 a month in child support, and the parent earning $150,000 a year would owe $1,338. The child support owed by the higher-income-earning parent would be the difference of those two amounts. It is not a substantial difference, but it is not the same as what a noncustodial parent would pay, which is what we intend to fix.

This bill adds deviation factors to give the court more things to consider. For instance, the child's standard of living in each household and specific circumstances of a child who has reached the age of majority are considered. A lot of things happen in those cases. An 18-year-old in high school is still subject to a child support obligation. What if that child is not really living at home but couch-surfing, and a parent is still paying child support in the full amount? I do not know if that is fair and should be something the court should consider.

The bill also adds the relative income of both parents to existing deviation factors and includes any contributions made for the payment of household expenses by an adult cohabitating with either parent. We are codifying that caselaw into this deviation factor.

Chair Brower:
What section is that?

Ms. Anderson:
That is section 9, subsection 9, paragraph (l).

Child support can be a complicated thing. This bill has been worked and reworked with input from all interested parties, such as other family law attorneys, the district attorneys, the Attorney General and judges. We incorporated all the district attorneys' changes, so I am not sure what any opposition would be. We cannot make child support law perfect. A lot of inequities arise, but we are trying to fix something as joint physical custody becomes more of the norm.

Chair Brower:
What is the position of family court judges in Nevada on this bill with the proposed amendment, Exhibit D?

Ms. Anderson:
It is unclear. We heard from a family court judge concerned about the amendment before we increased the presumptive maximums and have not heard back since. I heard the judges had made a decision not to weigh in on policy decisions. The judge we were in contact with when I brought up the issue of inequities of joint physical custody told us it was rare. It is not rare in my practice. It may be rare by the time it gets to the judges because many cases are settled and child support is one of the things you do not fight about because it is statutory.

Chair Brower:
If child support is not fought over in divorce cases, what is fought over? Maybe I have been fortunate in that I am blissfully ignorant of such issues, but I always thought it was child support because with a no-fault system, what is there to fight about?

Ms. Anderson:
We may not be fighting about issues such as child support in court, but as a family law practitioner, child support is one of the underlying basis for almost all postdivorce issues of coparents. It is the source of much contention in joint fiscal custody situations when parents share children on an almost equal basis, and one parent paying child support thinks he or she is being taken advantage of. That parent thinks it is secret or nontaxable alimony. It creates animosity between parents, which we will never be able to fix. This bill helps parents who feel they are being treated unfairly in the child support arena.

Chair Brower:
I adjourn the meeting of the subcommittee of the Senate Committee on Judiciary at 10 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. 371	C	4	A.J. Delap/ Las Vegas Metropolitan Police Department	Cover Letter and Photographs
A.B. 98	D	4	Assemblyman John Ellison	Proposed Amendment