MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 6, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:32 p.m. on Monday, April 6, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Todd Moody
Ishi Kunin
Catharine Murray, Executive Director, Premier Adoption Agency, Inc.
John T. Jones, Jr., Nevada District Attorneys Association
Nikolos Hulet
Kevin Schiller, Department of Social Services, Washoe County
Jason Frierson
William Horne, Nevada Alternative Solutions Inc.; CWNevada, LLC

Dan McNutt
Todd Mason, Wynn Resorts
Mitch Langberg
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
Chuck Callaway, Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, Sheriff's Office, Washoe County
Christopher Boyd, City of Henderson
Shelly Capurro
Laurel Stadler, Northern Nevada DUI Task Force
Laura Freed, Deputy Administrator, Division of Public and Behavioral Health, Department of Health and Human Services,
Troy Dillard, Director, Department of Motor Vehicles
Tracy Birch, Las Vegas Metropolitan Police Department
Kiera Sears, Black Rock Nutraceuticals LLC
Will Adler, Executive Director, Nevada Medical Marijuana Association
Cindy Brown
Julie Monteiro
Mona Lisa Samuelson
Vicki Higgins, ECONEVADA LLC

Chair Brower:
I open the Senate Committee on Judiciary with the hearing on Senate Bill (S.B.) 255.

SENATE BILL 255: Makes various changes to provisions governing the termination of parental rights. (BDR 11-637)

Senator Scott Hammond (Senatorial District No. 18):
I presented a bill just like S.B. 255 last Session. This new bill requires the Department of Health and Human Services (DHHS) to establish a registry of putative fathers. I have a Proposed Amendment 6238 to the bill (Exhibit C).

Chair Brower:
Most, if not all, of us remember S.B. No. 113 of the 77th Session.

Senator Hammond:
We made compromises with those opposed to the bill last Session. Some compromises are in Proposed Amendment 6238, Exhibit C. I received an email

from former Assemblyman Jason Frierson opposing the bill, and we are willing to work with him. This registry will give putative fathers a voice so they can put their names on this registry when one believes he may have fathered a child. We want to make sure this happens before an adoption occurs. If necessary, we will correct things to make the registry not punitive to somebody trying to do the right thing.

Todd Moody:
I am an adoption attorney with over 20 years of experience terminating parental rights and finalizing adoptions. The grounds we have for termination of parental rights do not include the commission of a sexual offense. The first proposed amendment in Exhibit C adds rape to the grounds for termination of parental rights.

Termination of parental rights cases are sealed in Clark County but not Washoe County. We propose sealing those cases statewide, making them confidential to protect information about a child, mother or father.

We propose amending *Nevada Revised Statute* (NRS) 127.060 in section 0.4 to focus on residences of petitioners. We propose deleting parts of subsections 1 and 3, replacing them with, "the adoption of a child born in or found in the State of Nevada shall only be finalized in a district court in the State of Nevada after the child has lived in the home of the petitioners for a period of 6 months prior to the granting of the petition."

Exhibit C proposes amending NRS 127.070 in section 0.5 by adding subsection 3:

> The mother of a child who has executed a relinquishment or consent for adoption may rescind the relinquishment or consent only if the parental rights of the father of the child have not been terminated through: (a) The father's execution of a relinquishment or consent for adoption; or (b) An action brought pursuant to chapter 128 of NRS.

Section 13.5 amends the definition of abandonment of a child in NRS 128.012 to mean any conduct of one or both parents of a child evincing a settled purpose on the part of one or both parents to forgo all parental custody and

relinquish all claims to the child, including but not limited to, failing to provide meaningful and significant financial support to the birth mother during pregnancy or to the child following birth. This adds focus to what is occurring prior to the birth of a child.

Section 14.5, section 1, subsections (a), (b) and (c) amend NRS 128.030 whereas the place for filing a petition includes: (a) the county in which the child is found; (b) the county in which the acts complained of occurred; or (c) the county in which the child resides. We propose adding section 2 stating, "The parental rights of a parent, known or unknown, of a child born or found in this State may be terminated exclusively by a district court in this State."

Proposed Amendment 6238, Exhibit C, changes NRS 128.085 in section 19, subsection 1, lines 12 through 14 to state, "or a licensed child-placing agency with which a mother of an unborn child has commenced a plan for the placement of the child for adoption ... ." Language has also been changed in section 19, subsection 2.

Proposed Amendment 6238, Exhibit C, also changes the degree of consanguinity from the third to the fourth degree in all relevant sections. This is within a family relationship, extended by one degree.

Chair Brower:
To which section of the bill would the last proposed amendment be made?

Mr. Moody:
That would amend NRS 127.043, 127.045, 127.053, 127.120, 127.127, 127.280 and 127.2805

Ishi Kunin:
I am an adoption attorney and a fellow for the American Academy of Adoption Attorneys. I have gone through the proposed amendments and support them. They will help Nevada's adoption statutes. Opposition for the registry tends to center around the invasion of a putative father's privacy or the fact that mothers lie. This putative father registry is critical because mothers lie. The U.S. Supreme Court ruled putative father registries constitutional over 30 years ago. Over 35 states have putative father registries. The registries have proven an exceptional tool in helping families finalize adoptions and move forward, and

giving putative fathers—who otherwise might not get notice he is a potential father—the right to come forward to claim paternity and the right to parent.

The registry is not a mechanism used to shut out fathers. It is to say sex is notice. If you have sex with a woman and care to know if a child resulted from that act, this provides steps a putative father can take. A number of birth moms will either not disclose the birth father or will identify him but walk out the door as soon as she is told she has to provide notice. This bill protects putative fathers from the effects of that.

Senator Hammond:
The last time this bill was proposed, about 30 states passed this registry. Two years later, about 35 states have done so. This bill is not meant to be a punitive measure. A putative father has the right to put his name on a registry to know if a night he had with a woman resulted in a child. This cleans up issues about who gets what and who has rights to a child before an adoption goes too far. We want putative fathers to have the same claim to parental rights as birth mothers.

Senator Ford:
Ms. Kunin stated that the U.S. Supreme Court declared putative father registries constitutional 30 years ago. Does Texas have a registry?

Senator Hammond:
Arizona, Idaho and Utah do, but I am not familiar with Texas.

Senator Ford:
I vaguely recall this putative father terminology bandied around in Texas and wondered if this was comparable. How does this process work? Ms. Kunin said anytime you have sex, you are on notice that you may have a baby. Some questions from last Session dealt with when college-aged students engage. Are they to immediately run to the putative father registry and say, "I might be a daddy if she has a baby?" Is a time frame associated with when a putative father has to put his name on the registry? Is the registry confidential?

Mr. Moody:
Texas does have a putative father registry. A gentleman would have 9 months plus 30 days to register if he is interested in protecting his parental rights to a

potential child. If a birth mother chooses to place her child up for adoption, an agency, attorney or State would search through the confidential registry. The search is conducted at least 30 days after the birth of the child, after the window for the father to register closes. The search looks for anyone registered as the possible father of the child in question. If no one has, a court could allow a summary termination of parental rights because that father failed to register.

Senator Ford:
How could a 16-year-old boy know he needs to put his name on the putative father registry after having sex?

Ms. Kunin:
The bill allows DHHS to publicize to make the public aware of this registry. With so many states having adopted such a registry, we can learn the best ways to market this information. Minors may be the easiest to reach because schools and universities can post the information. Women's restrooms at the University of Nevada, Las Vegas, have postings about what a woman should do if she is being sexually assaulted or in fear of being assaulted. You can do the same things in men's restrooms and on campus notice boards. Reaching students is going to be one of the easier targets. The plan is to put forth a period of time where the registry and its requirements are advertised. Absent the registry, there is no assurance a 16-year-old—or any man who has had sex—can ever know of a baby created; unless you have an ongoing relationship with the girl, the registry is the only absolute way to know.

Senator Ford:
I am not entirely sure what you said is accurate in terms of getting the word out to students. We have a hard time talking about whether sex education curriculum is appropriate. Try to talk about making kids put their names on a putative father registry. I hear what you are saying about the DHHS advertising and getting the word out about the registry, but I am not entirely confident that may sufficiently happen for purposes of complying with this statute.

Mr. Moody said a judge may declare a summary termination of parental rights. Explain the circumstances when it is not conclusive and a judge will not declare parental rights immediately terminated. What argument does the putative father need in order to say he knew he had 9 months and 30 days—but it has been 4

years and he now wants to be a father? Under what circumstances would judicial discretion be exercised?

Mr. Moody:
When a birth mother identifies a putative father so he can be served, the law requires us to do that. In that situation, a judge could not grant a summary proceeding of termination of parental rights. A court looks for the type of information provided by a birth mother, if any. You will see a summary proceeding if a birth mother could not identify the father because of a one-night stand or if she was homeless, intoxicated or on drugs at the time of the act and the unidentified father came forward. A court could say the name of the father was provided and, though no address was provided, a judge could require more information be obtained about the father.

Senator Hammond:
In many cases, to terminate the father's parental rights, a paid advertisement is placed in an obscure legal newspaper. Not many 16-year-old boys have heard about this newspaper. Once word gets out, the registry will be more accessible.

Chair Brower:
Does this all have to do with preparation for adoption? Is this scheme intended to allow a putative father to register to assert parental rights or be notified of a pending adoption?

Senator Hammond:
Yes. A birth mother does not have to give up any information about the father of a baby if she does not want to. To avoid a father asserting his parental rights at the last minute, a putative father can put his name on a registry. He can say a relationship may have ended with a pregnancy, but he does not know because the two lost contact or the woman withdrew. The putative father can put his name on this registry, including as much information he knows about the woman. The registry will be reviewed to see if anyone put his name on the list before an adoption is finalized. That way, the father can at least have notice.

Catharine Murray (Executive Director, Premier Adoption Agency, Inc):
I am a licensed clinical social worker. Premier Adoption Agency has been licensed in Nevada for 13 years, and I work with biological parents considering adoption every day. We have been hoping for this bill. There is an issue of

honesty among birth mothers. Many factors are in play causing birth mothers to not disclose the identity of the biological father. The reasons for doing so vary, but Nevada is the only state where Premier Adoption Agency is licensed and does not have a registry. The registry protects father's rights.

A big part of instructing the birth mother about her adoption plan and what to expect is identifying the father. In states with registries, when a birth mother is told to identify the father, they do it. Typically, the response is the biological father will not do anything so it does not matter. In Nevada, it is like pulling teeth to get women to divulge information about the father once they learn we track him down, serve him and give him the opportunity to come to court to assert his parental rights. They start backtracking. It is a vast difference between states. Birth mothers will go somewhere else because they do not want to disclose the name of the father. An adoption registry is the best thing Nevada can do to protect fathers.

John T. Jones, Jr. (Nevada District Attorneys Association):
The Nevada District Attorneys Association supports S.B. 255. This covers private adoptions and termination of parental rights proceedings pursuant to NRS 128. Those proceedings follow any type of action we have regarding NRS 432B which protects the health and safety of a child. If a parent does not do everything required to get his or her child back, we can initiate proceedings to terminate parental rights pursuant to NRS 128.

When we start a child welfare proceeding, a mother is not as forthcoming as she should be with respect to the name of the father. This gives the Division of Child and Family Services of the DHHS the ability to track down the father during termination of parental rights proceedings.

Nikolos Hulet:
As an adoption social worker in Las Vegas, I support S.B. 255. When we explain the adoption process to a birth mother, she refuses to give the father's name and goes somewhere else. Fortunately, we work well with the other adoption agencies in the City and can notify those agencies, providing the birth mother's name. However, each agency faces cases where the birth mother will not share that information.

Privacy rights of the putative father are a big concern of this bill. It would be a misdemeanor if information from the registry about a putative father was shared with somebody who has not requested that information. This registry would not be punitive but helpful for fathers who want to protect their rights. Although we speak with many fathers who do not care to, this would be helpful for the father who wanted to know. About 30 percent of cases have a named father. We have no way of notifying a putative father in 70 percent of our cases, and there is no recourse to find fathers in those situations.

When we receive phone calls from men who think a woman placed their child for adoption and want to do something, because of confidentiality in adoption, we cannot give him any information unless he has been named the father. This bill would help those men.

Kevin Schiller (Department of Social Services, Washoe County):
Washoe County Department of Social Services, as a social services agency under NRS 432B, supports S.B. 255.

Jason Frierson:
I am a former chair of the Assembly Committee on Judiciary and interim vice chair of the 2011-2013 Legislative Committee on Child Welfare and Juvenile Justice. Though I appreciate the intent of Senator Hammond, I oppose S.B. 255. The bill is problematic. It is not an issue of the inability to get people who oppose it to understand, it is just a disagreement. That is okay. By providing a registry, this bill gives an avenue to protect a father's rights. However, that avenue is erased because this bill expedites the termination of parental rights if a putative father fails to register. Termination of parental rights is called the death penalty in family law because it cannot be undone. This bill requires a putative father tell the state with who, when and where he had sex if he does not want his parental rights terminated.

My first case in private practice was a termination of parental rights proceeding representing a putative father, Rudy. Rudy had sexual relations with a married woman from Las Vegas while she was in Alaska. He did not know the woman was married. The woman also had sex with another individual. Rudy and the woman continued to communicate when she returned to Las Vegas. The woman was in the military and had health care benefits. When Rudy learned she was pregnant, he asked if he was the father. The woman said it was unlikely

based on the date of conception and due date. She told him another individual was likely the father. That information turned out to be fabricated.

Text and email messages prove that Rudy continued to inquire if the baby was his throughout the gestation period. The mother refused to give Rudy her mailing address, insisting the baby was not his. Two days after the birth, Rudy saw a picture of the baby and knew it was his child. Hearing that the mother was thinking about putting the baby up for adoption, Rudy contacted the mother to tell her he wanted to father the baby. At one point, the mother said she did not have the means to take care of the baby. Rudy told her to send the baby to him so he could take care of his daughter. Despite all that, the baby was placed in the care of an adoption agency and sent out of state to prospective adoptive parents. After nearly a year of litigation and some $70,000 later, Rudy was able to protect his right to parent his child. There was no parental fault because Rudy did nothing wrong. The putative father registry would not have helped Rudy, nor would have education campaigns helped because he lived in Alaska. Rudy just wanted to father his child. The registry would not have protected Rudy; it would have further expedited the termination of his parental rights, from which there was no coming back. That is the perspective giving me serious pause about the implementation of a putative father registry in a transient state like Nevada.

What if conception takes place out of state? What if one of the parents moves to or out of the State? What if one of the parents is in the military? What if one or both of the parents are minors? They cannot contract, so can they sign up for a registry without a parent? Now both the State and parents need to know with whom, where, when and how frequently a minor has sex.

There are public policy considerations worthy of discussion. There is no problem creating an expedited process to terminate those parental rights of a father who expressly decides not to father his child. However, you do not need a registry for that. If the father is identified and refuses to cooperate or says he is not interested, you can expedite the termination of parental rights process without having the State monitoring who is having sex with who, when and where.

This is the first time the bill has not had a fiscal note. I do not see how the State can create and monitor a new registry and launch a public education campaign to educate the public for free.

I was not privy to the terms of the amended language other than general discussions. Senator Hammond indicated work had been done. Much of the discussion would allow for the same outcome without putative fathers having to sign up on a registry. How many teenagers are going to sign up on this registry saying they had sex? How many young men step up when they recognize they are going to be fathers? To bypass and expedite the process is what gives concern. A father has a decision to make as to whether he steps up to his responsibility after a child is born. Rudy had no opportunity because he was out of state and the child had only been alive 2 days before she was put up for adoption and sent across the Country. He called us saying, "I want my daughter."

Rudy and his family keep in touch with me. We exchange pictures of our kids every 2 weeks. He was close to losing his daughter. Policy adjustment is a good idea, but the registry is not the way. When I heard about the proposed amendment, Exhibit C, I looked at other state policies. Florida has caselaw cross-referencing Utah. Both of these states address the registry and require the father to be known, have actual notice of that child and either refuse or fail to respond once given actual notice. We are talking about fathers who may not even know about their children. In Rudy's case, the mother was married. Her husband—knowing he was not the father—was the presumptive father. He terminated his parental rights right away, as did the other individual in Alaska. Rudy made it clear he did want to parent his child. When the agency contacted Rudy, he said, "Why would I talk to you? You are the people trying to terminate my parental rights. I'm telling the mother not to send this child out of state. I want to father my child."

You cannot legislate for every situation, but we are talking about the death penalty of family law. We talk about parents standing up to their responsibility and parenting their children. Tons of children are in the system, abused and neglected children who would benefit from an expedited process. You can do that without a registry. You can do that if the known father refuses to respond or cooperate. It seems to be impractical to say a man has to sign up on a registry regardless of age, experience or maturity.

This bill is dependent on the mother being forthright. That did not happen in Rudy's case. I have heard mothers do not want to volunteer that information. I understand that. I worked in child welfare for 2 years, representing the Division

of Child and Family Services in child abuse and neglect cases. What I do not understand is why it is acceptable for a mother to know the identity of the father and not disclose it. Some reasons involve abuse or sexual assault. I understand that time provides an opportunity to ferret through issues for parents to relinquish their rights so fathers can come forward. Fathers need time to be notified or for a family friend to ask, "Did you know she had a baby?" That way, the father can say, "No, but I need to make some calls and find out whether I am the father." This gives him an opportunity to father his child. I am willing to speak with Senator Hammond, as we have in the past, to work on ways to consider my concerns and expedite the process of termination or parental rights in appropriate circumstances. That does not require the government to know who, where and when you have sex.

Senator Ford:
Would you have the same concerns if the registry were voluntary?

Mr. Frierson:
I would have more comfort with it being voluntary. By voluntary do you mean the father has an opportunity to register, but not doing so does not result in termination of rights?

Senator Ford:
Exactly.

Chair Brower:
The entire registry is voluntary. If you do not sign up, you potentially lose your parental rights. We are not talking about disclosing your sexual history to the State when signing up on the registry. A putative father would sign up on this registry only if he wants to protect himself against termination of parental rights.

Mr. Frierson:
That is right.

Senator Ford:
Ultimately, it is a Hobson's choice. Do you want to protect your constitutional right to privacy? It is one choice to either relinquish your right to privacy and put your name on this putative registry or run the risk of losing parental rights. The

voluntary nature comes when you voluntarily put your name on this list, so it cannot result in an automatic termination of rights. That is the kind of process I am asking about.

Mr. Frierson:
It is voluntary, and no one is required to sign up under the bill's language. What is involuntary is the expedited termination …

Senator Ford:
You are right, it is voluntary, but the Hobson's choice comes in because the State says, "If you don't put your name on here, even though it's voluntary, I am going to terminate your rights at the end of the day." That does not make it voluntary in the truest sense of the word.

Mr. Frierson:
I agree. It is not voluntary because of the consequence. It would have a different impact if the consequence were not fatal. I want to make sure I do not misrepresent the nature of the constitutionality of a putative father registry, although the language is different in different states. We cannot say this version is the same as the registry in Florida. The concept of a registry is constitutional.

There are privacy considerations. A provision says the registry could be used to seek out child support, broadening the privacy considerations. If a man turns out not to be the father, he can know the mother had sex with another man around the same time as he did. There are privacy considerations if the registry is going to be used for that purpose. Neglecting to sign up on the registry should not result in termination of parental rights.

William Horne:
I testified against a similar bill when I was a law student in 2001. I did not know I had a daughter until she was about 2 years old. I found out because her mother applied for welfare and named me as the father. When I received the notice in the mail, I wanted a paternity test. My daughter's mother completely relinquished her claim for welfare—including the claim that I was the father—when she learned of my request for a test. I filed suit to find out if I was the father. After 3 years of litigation, the situation was finally resolved, and I was in my daughter's life fulltime. If the mother wanted to put my daughter up for adoption, she could have done so without my knowing. She would not have

had to make the effort to identify me as the father. She tried to say I was not the father after I wanted to be a part of my daughter's life and do more than just write a child support check. Those of you who know me know I am a hands-on father.

Too many mothers do not want to identify the fathers of their children. That is not okay. We should not put the burden on putative fathers to put their names on a registry because mothers do not want to identify fathers. That is bad policy. Until a mother tells me I am the father of her child and have responsibilities, it is no one's business to know who I have slept with and when. You are asking a lot of teenagers to tell someone they had sex. Regardless of whether the registry is confidential, they are still telling someone and putting their names on a registry. That almost completely removes from the birth mother the burden to identify the father.

Shutting out fathers—who have nothing but good intentions of being fathers—in an expedited fashion will have unintended consequences. It is not supposed to be easy to terminate someone's parental rights, even for the reason of putting children in good homes. There should be some work involved. We cannot have it both ways. We cannot say a father has a fundamental parental right to raise his child, then flip it to say we can easily take that right away to allow somebody else to have that parental right. It is a fundamental right. I should still have a right to raise my child, whether or not I have good relations with the birth mother. We should have policies allowing a father to step up and be notified and holding a mother accountable to identify the father. It is too bad if a mother does not want to, but that is part of her burden to give that information.

Senator Hammond:
Mr. Frierson and Mr. Horne brought up some good points. We have some room to work with them. The moment Rudy shows up at a social function with his daughter, he loses privacy because people will ask where the baby came from. Somehow, some privacy will be given up. The privacy issue is important, and I get it. You do not have that right now. It would be helpful if fathers could put their names on registries in different states. We may be able to work on something like that. Thirty-five states have this registry and reciprocity may possible. There are some things we can work on.

A father does not have much in the way of rights. The Nevada Supreme Court decided the termination of parental rights was the death sentence of family law. The court talked about the best interest of the child in that same opinion. Senator Ford asked about a father deciding he wants to be a part of his child's life 4 years later. What is the best interest of the child when a father finds out about a child 4 years after the birth? What if that baby has been adopted? What do you do when the father claims he was never told about the baby? The registry says it is notice if you had sex with somebody. Should the father's parental rights not have been terminated? I cannot imagine how it is in a child's best interest to relocate him or her from an adoptive situation into an unknown a family. A 4-year-old knows whom he or she sees every day. I want to make sure we think about the best interest of the child.

Senator Ford:
How does this bill apply only to adoptions? Will the putative father put his name on the registry of the child who is not adopted?

Senator Hammond:
Yes.

Senator Ford:
We heard testimony about a 5-year process for a father to be a part of his daughter's life. I would bet the best interest of that child was to have her father. What it comes down to may be a simple disagreement, not a misunderstanding. What about the notion of a voluntary registry instead of one that leads to the termination of parental rights if a putative father does not put his name on this list?

Senator Hammond:
We can consider that. We want to avoid having a birth mother refuse to identify the father because she does not want to or because she does not know who he is. A birth mother can claim she does not remember the birth father and never have to give up a name. The converse of this scenario is if the mother gets an abortion because she does not want to give the baby up for adoption, raise the baby or tell the father about the baby. The father would never be notified and she would not have to get anybody's permission to do so.

Senator Ford:
Are you adverse to a voluntary registry?

Senator Hammond:
We need to make sure the father has notice of a baby. It is also a matter of practice. It will help if people know about the registry. Mr. Horne would not have had to wait years to be a part of his daughter's life had his name been on a registry.

Chair Brower:
We will close the hearing on S.B. 255 and open the hearing on S.B. 442.

SENATE BILL 442: Revises provisions governing arbitration. (BDR 3-1138)

Dan McNutt:
I have proposed commonsense amendments (Exhibit D) to S.B. 442.

Chair Brower:
The bill proposes changing the law and we have proposed amendments, Exhibit D, seeking to change the bill. What is the bill about and why should it change by way of the proposed amendments?

Mr. McNutt:
The bill and proposed amendments, Exhibit D, are neither proplaintiff nor prodefendant. They are proimpartiality. The desire is to allow more remedies for litigants in arbitration. The first option is to remove an arbitrator during the dependency of an arbitration. Additionally, we want courts to remain vested with the authority to determine things like evident impartiality. The proposed amendment, Exhibit D, amends NRS 38.227.

Chair Brower:
What is a typical scenario? This bill changes the Nevada version of the Uniform Arbitration Act. What is a situation implicating that Act and an arbitration? This is not court-annexed arbitration. This bill contemplates a dispute between two parties who have agreed to arbitrate a dispute pursuant to NRS 38.206. Walk us through a scenario and a problem you have discovered with the scenario. How would this bill remedy that problem?

Mr. McNutt:
Two private businesses may elect to have arbitration in their contract to avoid court systems. Under NRS and arbitral organization rules, there is a requirement for arbitrators to disclose instances where his or her impartiality could be questioned. If a fact comes out during the course of arbitration—leading a reasonable person to question an arbitrator's impartiality—there is no opportunity for either of the litigants to object to the arbitrator hearing the case. The arbitrator could not be removed until an award from the arbitration has been entered. The proposed amendment, Exhibit D, allows either party to bring a motion to the court and remove an arbitrator within 90 days of learning of such an event.

Char Brower:
Parties select an arbitrator at the outset of litigation. The arbitrator appears to be unbiased and impartial. Litigation commences and some fact becomes known to either party that the arbitrator is not as unbiased or impartial as thought. Does the law not allow for one or both parties to remove the arbitrator?

Mr. McNutt:
Yes. During dependency of the arbitration, an arbitrator cannot be removed. That is a waste of time, money and effort because you have to conclude the arbitration and enter an award. Then you must return to court to remove an arbitrator.

Chair Brower:
If one party decided a new fact had emerged calling into question the impartiality of an arbitrator, that party could ask the other party if they would stipulate to a request to remove the arbitrator. If that happens, an arbitrator could disagree on the grounds that this new fact is false or does not call into question his or her impartiality. The arbitration would proceed and the parties would not be able to do anything about that.

Mr. McNutt:
Yes. We need the ability to go to a court to remove an arbitrator during dependency of an arbitration.

Chair Brower:
How does the bill do that?

Mr. McNutt:
The bill states it is a court, not an arbitrator, that determines whether a nondisclosed fact would lead a reasonable person to question the impartiality of an arbitrator. Either party can bring this motion during dependency of an arbitration.

Chair Brower:
Who is the court? Was litigation commenced by way of a complaint filed in court and put into arbitration pursuant to the parties agreement? What if that did not happen?

Mr. McNutt:
It would be the court with jurisdiction. Almost all contracts have jurisdiction on venue clauses, which we default to.

Chair Brower:
Would the court of jurisdiction where the original litigation commenced be the court this issue would go to? If the parties—recognizing the contract provided for binding arbitration—did not file a complaint, would a court of jurisdiction hear a dispute such as this?

Mr. McNutt:
Yes.

We have also proposed inserting "expressly" into subsection 6 of NRS 38.227. The language would read, "If the parties to an arbitral proceeding expressly agree to the procedures ... ." That is to ensure a default—and an arbitrator and arbitral organization control everything—only if the parties expressly agree to that. If not, going through the arbitral organization is not a preceding condition to filing the motion.

The proposed amendment Exhibit D amends NRS 38.241, subsection 2 by inserting "evident impartiality." That language is already in subsection 1, paragraph (b), subparagraph (1). We want to ensure clear language because this is the statute people use to remove an arbitrator.

We have proposed adding subsection 4 to NRS 38.224 stating:

> Unless all parties have expressly agreed that an arbitrator shall have the authority granted herein to the court to consolidate separate arbitral proceedings or separate individual claims, no arbitrator may exercise such authority.

If multiple arbitrations occur in front of multiple arbitrators, either party has to consent to consolidation, or a court of competent jurisdiction has to order it.

Senator Harris:
The statute presupposes parties would be unhappy with the award if there is an undisclosed conflict. That is not always the case. When someone reached an agreement after lengthy and contentious arbitration, should the aggrieved party have the ability either to decide to ratify the award which has already been given or have that award vacated, continuing with additional arbitration?

Mr. McNutt:
You said if there is an event of impartiality, it is up to the parties to determine …

Senator Harris:
A fact is discovered implying an arbitrator was not impartial after contentious, long and difficult arbitration. Under statute, the parties can vacate the award when that fact is disclosed. You now have multiparty arbitration, and some parties impacted by a lack of impartiality are okay with the award.

Mr. McNutt:
Only if they win.

Senator Harris:
Whether you win is in the eye of the beholder. Maybe the award is not so far off from what the parties thought they should get, and the parties do not want to go through that process again. Should the parties have a process where they could ratify that award?

Mr. McNutt:
Nothing forces any litigant to move under this statute. A client can choose not to move if a fact surfaces that he or she would have objected to at the beginning of an arbitration. This modification preserves time, cost and expense

in litigation. Should there be an adverse award and you know you will vacate it based on this disclosure of evident impartiality, you still have to finish the arbitration to get to an award entered. This means spending more time, money and effort …

Senator Harris:
I was looking for a third option where parties could ratify or have some kind of arbitrator censure. I do not see a statute that would penalize an arbitrator for continuing an arbitration when he or she has a conflict.

Mr. McNutt:
The third option is to not bring the motion.

Chair Brower:
The party who discovered a new conflict not previously disclosed would make a request to an arbitrator based on the newly discovered conflict to withdraw. If the arbitrator does not do so, the party would decide to litigate further, motion postaward or remove an arbitrator through the court.

Mr. McNutt:
Correct.

Senator Harris:
Sometimes, there are multiple parties to an arbitration. Is it fair if a party wants to ratify an award when there is that conflict? Should a party have the ability to do that so as to not have to litigate or rearbitrate?

Chair Brower:
The party has a right to make a request if one party thinks there is a conflict and an arbitrator cannot be fair as a result.

Mr. McNutt:
Almost everything the Committee does is designed to protect at least one party, which this bill does.

Chair Brower:
I will close the hearing on S.B. 442 and open the hearing on S.B. 444.

SENATE BILL 444: Revises provisions governing civil actions. (BDR 3-1137)

Todd Mason (Wynn Resorts):
This issue is complex and we will propose amendments.

Chair Brower:
I do not see any proposed amendments.

Mr. Mason:
We have not proffered any amendments.

Chair Brower:
Do you anticipate needing to amend the bill?

Mr. Mason:
We will correct a couple errors of omission with proposed amendments.

Our intent is to improve existing law, make clarifications, and continue to protect the right of free speech and the right to petition. It is not to roll back the Strategic Lawsuits Against Public Participation (SLAPP) statute.

Mitch Langberg:
The bill is self-explanatory so understanding the problems with the statute would explain why the changes are being proposed.

Chair Brower:
We changed relevant sections of NRS 41 in the 77th Session. Why is the statutory scheme not working? How can it be improved? How does this bill make the scheme work or improve it?

Mr. Langberg:
Prior to the 77th Session, the anti-SLAPP statute in Nevada was a narrow statute, protecting people in the course of exercising their right to petition. Last Session, the Legislature recognized certain First Amendment free speech rights are being exercised and people are being sued as an intimidation process. The anti-SLAPP statute in the State missed that. The goal of last Session's legislation was to identify meritless or frivolous lawsuits impinging on people's First Amendment rights. However, the text of the statute goes far beyond that.

It allows for meritorious lawsuits to be dismissed because of timing restrictions on discovery, and a plaintiff's burden of proof is far beyond what is necessary to identify meritless or frivolous statutes.

Chair Brower:
The old statute was too narrow, and the revised statute passed last Session is overbroad in terms of its scope to the types of speech that should be affected. Does this bill bring us to the middle?

Mr. Langberg:
Yes. I am here to help you find a middle ground and address issues found in the practice of other State statutes. While we are protecting First Amendment rights of defendants, a plaintiff's right to file a lawsuit is a First Amendment right to petition the government to redress grievances. The Nevada Constitution recognizes free speech rights, noting the importance of people who—abusing that free speech right—answer for that abuse. An overlybroad statute impinges the First Amendment rights of potential plaintiffs, just as too narrow a statute impinges defendant rights.

There are two prongs to an anti-SLAPP statute. First is speech claiming to be subject to the anti-SLAPP statute. In this circumstance, the plaintiff must show the claim is not meritless or frivolous. The biggest flaw in the statute is the second prong. Statute requires a plaintiff subject to an anti-SLAPP motion prove each element of the claim by clear and convincing evidence. He or she must do so without any discovery and quickly enough so a court can make a ruling within 7 days of the motion being served to the plaintiff. This is different from the California statute, although the Nevada Supreme Court and Legislature indicate the Nevada statute is modeled after California's wherein a plaintiff must show prima fascie evidence of each element of the claim. That is evidence considered sufficient to carry the cause of action. That is the biggest flaw in the statute.

I respect people's First Amendment rights and have been on both sides of defamation cases. Nothing is so special about the First Amendment that the burden on the plaintiff in a defamation case should be higher than the burden on the government in a death penalty case. The government must only show probable cause in a death penalty case before proceeding to trial.

Senate Bill 444 makes this issue more reasonable. It spreads out the period of time so a court does not have to rule within 7 days. In my experience litigating anti-SLAPP motions, the plaintiff is put to an enormous task of arguing in opposition to the motion that the speech issue is not the type of speech protected by the SLAPP motion and put on his or her entire case to meet even a prima fascie standard. That can be expensive. Experts are often involved, witness declarations have to be collected and internal document discovery has to be done.

This bill breaks the motion into two pieces. A defendant asserting the lawsuit as a SLAPP suit intended to stop speech would make his or her motion on the issue of whether the speech at issue qualifies under the SLAPP statute. If the court determines it does not, the motion is dismissed and the plaintiff is not put to the task of showing his or her proof in a way unlike any other plaintiff in a similar case. If the court determines it is a SLAPP-qualified motion, the plaintiff will then be put to documenting proof of his or her case.

Statute does not give the court power to grant discovery when appropriate. In this case, a plaintiff is tasked with proving his or her case through clear and convincing evidence and may need discovery to prove falsity in a defamation case. In California, a court can allow discovery for good cause shown when discovery is necessary for the plaintiff. Such is not the case in Nevada.

The other major change recognizes defamation and speech-based cases often include elements of a claim requiring proof-subjective knowledge or intent of a defendant. It can be almost impossible to obtain prima fascie evidence, even with discovery, because one can only put together circumstantial evidence of a person's intent after discovery. The U.S. Court of Appeals for the Ninth Circuit said it had never seen a defendant admit knowledge of what he or she said was false. This bill eliminates any element requiring proof of the subjective intent or knowledge of the defendant for a plaintiff in a potential SLAPP case.

Chair Brower:
This is not a simple concept. Is the criticism the statutory scheme defines speech too broadly? Is the definition of the phrase "a communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" broader than that?

Mr. Langberg:
It was more broad, and we have made an effort to define public concern. It is like nailing Jell-O to a tree. We are talking about a statute that imposes heavy burdens, including the threat of attorney's fees on a litigant. It is important to narrow it closely to First Amendment speech.

Chair Brower:
What type of speech could be subject to an anti-SLAPP motion under the law that is too broad and should not be part of S.B. 444?

Mr. Langberg:
A tabloid Website publishing a story about a celebrity having an affair with another celebrity is arguably subject to the anti-SLAPP motion under the statute.

Chair Brower:
Is that because it is a matter of public concern even though it deals with private behavior between two private individuals?

Mr. Langberg:
The statute uses the word public interest.

Chair Brower:
As opposed to public concern? Arguably, anything we Legislators do in our private lives is a matter of public interest because we are public officials.

Mr. Langberg:
Yes—if the public would be interested. There is more in U.S. Supreme Court cases and various circuit courts around the Country about what constitutes public concern. Public concern is considered something that lends itself to political, social or other legitimate concerns of a community. We tried to distinguish between public concern, public curiosity or general interest. That is not to say that a defendant in those cases would be unable to have a defense and assert First Amendment rights, but he or she should not benefit from special protections given to those involved in core First Amendment free speech issues.

Chair Brower:
Let us say a Legislator was accused of stealing from the government by cheating on his or her travel documentation. Exposing that would be protected because it is a matter of public concern. But a Legislator believed to be cheating on a spouse is not a matter of public concern, only public interest.

Mr. Langberg:
Yes. We might litigate that particular issue because somebody may assert a Senator's faithfulness might impact his or her ability to do the job. Suppose somebody published an article claiming you burned down a farm building in the middle of nowhere when you were 20 years old or shoplifted when you were the age of 16. There is no legitimate public concern in that, just a matter of public interest.

Chair Brower:
Criticism of the statute has stemmed not from the public official context but the business context when a high-profile business person is a quasi-celebrity. That person believes he or she has been defamed and finds it difficult to file a defamation suit under the statutory scheme lest it be portrayed as a SLAPP suit.

Mr. Langberg:
Yes, and it is twofold. The first issue is whether it is a matter of public concern. Perhaps for a business leader, much of what is said about the products or services the entity provides would be a matter of public concern. The burden in the second prong is so high as to make it impossible.

Chair Brower:
I would disagree with you because in the business context, what a CEO does is a matter of public interest. It is not a matter of public concern because he or she is not a public official, dealing with public funds in a public office. Concern is not the same as interest

Mr. Langberg:
I agree. A college student accused of cheating on an exam in an online chat room or a physician accused of violating homeowners' association rules is not a matter of public concern. But they could arguably be required to show by clear and convincing evidence each element of their claims. In the Wild West of the Internet, former employees or competitors use Yelp and other review sites to

attack competitors under the guise of consumers. The reviews say the worst-of-the-worst things. Although those issues may be of public concern, the business owner is still faced with the obligation to prove his or her case on a standard and time frame that is impossible to meet.

Chair Brower:
That gives us a good hypothetical because it is intentionally false and arguably defamatory. If that review results in a defamation lawsuit by a company, does the statutory scheme make it difficult for a plaintiff to succeed with a defamation claim?

Mr. Langberg:
Yes. Online businesses such as Yelp would not come to California because of lack of protections. However, there are so many protections. For example, Yelp cannot be sued because of federal immunity under the Communications Decency Act. Yelp cannot be sued for reviews on the Website, even if the review is false. The only recourse a business holder has in these situations is to identify the person who posted the review, which can be hard because of anonymity. In Nevada, a disgruntled student of a doctor claimed the doctor had his or her medical license withdrawn in another state and was successfully sued for malpractice. The doctor could not bring a defamation claim in this case.

Chair Brower:
Despite those facts being false?

Mr. Langberg:
Yes, because he would have to prove the person who made the statements knew they were false by clear and convincing evidence in less than 7 days.

Chair Brower:
Are the procedural requirements unreasonably harsh for a plaintiff to effectively deal with?

Mr. Langberg:
Yes.

With the first prong of the bill, a discovery stay is put in place. It does not exist on the second prong. We are working on amendments to include it in the

second prong or create a separate section saying there will be a stay, but a leave of court can be granted until the whole case is resolved.

Most SLAPP statutes in the bill allow for immediate interlocutory appeal by a defendant who loses his or her motion. We are working on an amendment to give the defendant that right.

Chair Brower:
I will close the hearing on S.B. 444 and open the hearing on S.B. 447.

SENATE BILL 447: Makes various changes relating to marijuana. (BDR 15-85)

Brett Kandt (Special Assistant Attorney General, Office of the Attorney General):
Senate Bill 447 contains recommendations from law enforcement based on experiences since the passage of S.B. No. 374 of the 77th Session. It clarifies law, fills gaps and furthers voters' intent in enacting Article 4, section 38 of the Nevada Constitution. The possession, use and sale of marijuana remains illegal under the federal Controlled Substances Act. Nevada has a compelling interest in preventing the diversion of medical marijuana for unlawful purposes.

Law enforcement agencies across Nevada made these recommendations after identifying common enforcement issues in efforts to prevent the unlawful cultivation, sale or use of medical marijuana. They were discussed at length at a law enforcement summit hosted by the Attorney General on February 5.

Chuck Callaway (Las Vegas Metropolitan Police Department):
Section 1 addresses counterfeiting a medical marijuana card. It is illegal to counterfeit a medical marijuana card but not to use or possess one. Section 1 adds paragraph (b) to subsection 1, stating, "Have in his or her possession with the intent to use any counterfeit or forged registry identification card."

Section 2 may be confusing to some. There is a trend of people extracting tetrahydrocannabinol (THC) resin. The extraction process is very dangerous. People are using different types of torches and devices to extract THC. Once extracted, a person could have a mason jar full of pure extract. Although the definition of marijuana lists THC, you could not charge that person with trafficking a controlled substance even though he or she may have enough pure

THC equaling hundreds of plants. Because THC goes by weight and is considered under the definition of marijuana, we are prohibited from filing a charge for trafficking a controlled substance. Section 2 creates a separate definition for THC outside the marijuana definition.

Chair Brower:
Can you explain section 2 of the bill?

Mr. Callaway:
We have stricken paragraph (c) from subsection 1 of section 2.

Section 3 clarifies the THC definition. The medical marijuana industry is concerned this may inhibit its ability to produce products in certified laboratories or production facilities.

> It's not our intent to hamper or disrupt the legitimate legal medical marijuana businesses in the State that are certified through the Department of Health and Human Services. This is strictly something we're seeing with illegal extractions and illegal marijuana users that we're trying to address.

Chair Brower:
Are we talking about section 3?

Mr. Callaway:
Sections 2 and 3 deal with the definition. Section 2 removes resin, and section 3 clarifies the THC definition.

Chair Brower:
We may need help with the science of that as we go along.

Mr. Callaway:
The rest of the bill is straightforward. Section 4 comes from a concern raised by law enforcement about how the law is written. An 18-year-old medical marijuana patient going to high school could receive his or her medical marijuana from a dispensary, take it to school, and potentially sell or share it with classmates. Section 4 prohibits the possession of marijuana or paraphernalia on school property.

We have provided Proposed Amendment 6140 for S.B. 447 (Exhibit E). Section 5, subsection 2, subparagraph (c) adds language stating "to the extent permitted by law." It was the opinion of the Clark County District Attorney that if we busted an illegal grow operation growing 100 or 1,000 plants in a garage or field, seizing the marijuana and equipment, the equipment may have chemicals, mold or other toxins involved which we store in our evidence vault. With dispensaries in Clark County opening in the next few months, there was a gray area because of no avenue for patients to get their product, and people were illegally growing marijuana. In cases being dismissed, the law requires returning all property, even if property was illegally possessed. A person could request all marijuana plants back. This helps legitimate medical marijuana facilities. If law enforcement raided a legitimate medical marijuana business because of allegations of wrongdoing and seized marijuana, we would be required to return it because the business is lawfully able to have the plants. The illegal grower would not be allowed to have the marijuana returned. Section 5 addresses that.

Another issue was the word "immediately." The person is required to prove the case had been adjudicated, providing proper paperwork. There may be a time lapse to search the vault and gather evidence for return. We requested "immediately" be stricken and replaced with "to the extent permitted by law."

Section 7 deals with the ability of a law enforcement agency to create policy and procedures prohibiting employees from using medical marijuana. The bill says "a peace officer," but Exhibit E says "an employee" of a law enforcement agency. Police officers carry weapons and make decisions at a split second that impact people's lives. It is important our officers are not under the influence of something impairing judgment. Marijuana is different from other types of drugs people take for medical reasons. Grant money coming to law enforcement agencies requires a drug-free workplace. Law enforcement personnel take an oath to uphold the Nevada Constitution and laws, as well as the U.S. Constitution and federal laws. Since marijuana is still illegal under federal law, we have policies and procedures prohibiting employees from using medical marijuana.

Chair Brower:
We seemed to skip from section 6 to section 7 quickly. Section 6, subsection 1, paragraph (a) deletes the words "creates or."

Eric Spratley (Lieutenant, Washoe County, Sheriff's Office):
Section 6 deletes the words "creates or" because when the Division of Public and Behavioral Health of the Department of Health and Human Services creates documents for registrants, it cannot share the information with counties at local or city levels. We want the Division to share information with counties while processing the dispensaries.

People trying to extract hash oil from marijuana plants are blowing places up. There is a huge market for this high-concentrated hash oil called dabs. You can get more money for it on the black market. People are trying this in homes and blowing things up. The goal is to keep the marijuana leafy substance separate so people can use it but make this hash oil an illegal substance.

We are receiving pushback from the medical marijuana industry about sections 2 and 3. We heard from the State Board of Pharmacy that Delta 9 may have something to do with the ability to prescribe Marinol. We are working with them because the lab says this bill would not affect that.

Mr. Jones:
The Nevada District Attorneys Association supports S.B. 477.

Christopher Boyd (City of Henderson):
The City of Henderson supports S.B. 447.

Shelly Capurro:
On behalf of Jennifer Lazovich, I offer a friendly amendment (Exhibit F) that we have worked on with Mr. Anthony and Mr. Callaway.

Chair Brower:
What is the nature of the proposed amendment?

Ms. Capurro:
The proposed amendment, Exhibit F, defines marijuana, adding it to NRS 453A.110. It is a cleanup amendment.

Chair Brower:
Does the proposed amendment further change the definition?

Nick Anthony (Counsel):
The intent is to clarify the definition of marijuana for purposes of NRS 453A which is the medical use of marijuana. This would be different from prohibited substances under NRS 453.096 in the bill.

Laurel Stadler (Northern Nevada DUI Task Force):
I have submitted statistical information (Exhibit G). The first page speaks to Medical Marijuana Program statistics from April 1, 2013. The information discloses what medical ailment the cardholder has—cancer, glaucoma, AIDS and so on. When I attempted to get that same information this Session, nothing was available. There was only the total number of patient cards and the counties from whence the applications came. Statistics showed the number of cards more than doubled.

I was told by Pam Graber from the Medical Marijuana Program that the Program could no longer give out that information because of NRS 453A.700—which section 6 of S.B. 447 addresses. I hope this change in section 6 allows the complete statistical information to be available to the public so they can see the conditions, ages and basic statistical information of cardholders. It does not disclose anything about specific individuals, so nothing personal or confidential is available. It is important to see the information of people obtaining medical marijuana cards to ensure the original legislative intent of the medical marijuana program is being followed.

Chair Brower:
Why was the information available in April 2013 but not now?

Ms. Stadler:
The second page of Exhibit G is the email from Ms. Graber explaining that. I did not understand it. Statute prohibits disclosing that because of confidentiality.

Mr. Anthony:
That is what section 6 of this bill addresses. It does not look like much in language but striking the words "creates or" allows the Division to release information it creates, not applicant-submitted information.

Ms. Stadler:
Was the same type of information available before?

Mr. Anthony:
I believe so, but you would have to ask the Division.

Laura Freed (Deputy Administrator, Division of Public and Behavioral Health, Department of Health and Human Services):
I am the deputy with oversight on the Medical Marijuana Program. As part of our processes, we look at every bill pertaining to us to determine if we have problems with it. *Nevada Revised Statute* 453A.700 prevents us from sharing information with local partners about applicants for medical marijuana establishment registration certificates. It was the advice of our deputy attorney general (AG) that pursuant to NRS 453A.700, the contents of any applications, records or other written documentation that the Division or its designee creates or receives must be maintained confidentially. This made sharing statistical information illegal. It was difficult to share the scoring of applicants with local jurisdictions to cross-check business license registration with scoring and to compare ownership records with theirs. We are grateful to have "creates or" deleted because it is more consistent with the other regulatory programs. The Division certifies and licenses health facilities, which is all public record, whereas this is not. It is not really consistent with the rest of our operations.

Chair Brower:
Why was this information public in 2013 but not in 2015?

Ms. Freed:
A different format for statistics was previously published with regard to medical marijuana patient registry. When we looked at it in light of S.B. No. 374 of the 77th Session, our deputy AG told us we should not be publishing patient registry statistics to that level of detail, so we stopped.

Chair Brower:
Is the deputy AG's opinion you should not have been doing it to begin with?

Ms. Freed:
Before S.B. No. 374 of the 77th Session passed, the law was silent. If the law is silent, does that make something prohibited or permissive?

Chair Brower:
Do you believe the two-word deletion in section 6 of S.B. 447 would change your deputy AG's mind?

Ms. Freed:
I am afraid to speak for my deputy AG, Linda Anderson.

Chair Brower:
Is she here?

Ms. Freed:
No.

Chair Brower:
We will find out.

Ms. Freed:
I would be happy to ask her.

Troy Dillard (Director, Department of Motor Vehicles):
The Department of Motor Vehicles (DMV) supports S.B. 447. We have submitted a proposed amendment (Exhibit H) giving permission for the Department of Health and Human Services to issue medical marijuana cards on its own or in cooperation with the DMV. It creates a section to allow children under 10 years old to obtain a letter from DHHS for a medical marijuana card rather than coming into an office. Although a caregiver must have a card in order to provide for the juvenile, this forgoes the identification necessary for juveniles under 10 years old.

Chair Brower:
Can you describe the practical problem you were having and what led you to S.B. 32 and the additional language?

SENATE BILL 32: Revises provisions governing medical marijuana. (BDR 40-333)

Mr. Dillard:
The DMV has unprecedented customer levels caused by many different issues, one of which is medical marijuana cardholders. We have had a 110 percent increase in individuals obtaining medical marijuana cards. That is prior to any State dispensaries opening. These cards are annual, requiring an in-person visit once a year. We have gone from 4,000 cards to 9,000 cards this year alone.

Chair Brower:
How would the proposed amendment, Exhibit H, alleviate that problem?

Mr. Dillard:
It provides DHHS the option to issue cards.

Chair Brower:
What if DHHS chooses not to?

Mr. Dillard:
It also provides a cooperative agreement between the DMV and DHHS for purposes of issuing medical marijuana cards. We have a system enabling acceptance of electronic transfers of information from DHHS for individuals approved for medical marijuana cards. We use information from the driver's license or identification card, which is already a requirement to obtain a medical marijuana card. We do this through an electronic batch process and continue producing cards without requiring individuals be physically present in our office.

Chair Brower:
Are you confident DHHS agrees with this approach?

Mr. Dillard:
Yes.

Chair Brower:
Are you confident this proposed amendment in Exhibit H would alleviate the problem?

Mr. Dillard:
Yes.

Chair Brower:
I am leaving it to you to tell us what you need. The Committee is sympathetic with the problem and wants to help fix it. If DMV and DHHS have come up with a workable solution, we will take your word for it.

William Horne (Nevada Alternative Solutions Inc.; CWNevada, LLC):
Alternative Solutions and CWNevada support S.B. 447 with the proposed amendment, Exhibit E. The definition stated in the original bill relegated the medical marijuana industry to a smoking-only industry. I appreciate Mr. Callaway working to find a suitable definition. We understand law enforcement's needs and what it is trying to achieve. Law enforcement officials conveyed to us that they were not changing the complexity of medical marijuana for legal users.

Chair Brower:
It is not the Committee's intent to do what you fear the unamended bill might do. The Committee may be interested in doing the opposite by eliminating smoking to focus on other sorts of ingestion. What are your thoughts on that?

Mr. Horne:
Patients have different methods to take medication. I would not want to put a limit on someone accustomed to smoking his or her medication. We prohibit smoking in certain areas in public. If an individual wants to smoke in his or her home, that is okay if it is how that person learned to ingest the medication. Being able to ingest medication in alternative forms is beneficial for some such as children. It is important the patient have options.

Chair Brower:
Ms. Birch, understanding we have not fully flushed out the definitional issues causing concern, have you heard anything that could be explained or clarified?

Tracy Birch (Las Vegas Metropolitan Police Department):
Identifying controlled substances in our chemistry unit is a challenge. Identifying plant material as marijuana requires the presence of unique botanical features on the plant. People extract the resin from the leaves, putting it in oil form. When we receive a submission that does not have any plant-like characteristics—such as extract from the flowering buds of a marijuana plant or leaf—we are required to do a complicated analysis using instrumental techniques. That identifies the

THC—not marijuana—component as the active ingredient in marijuana. Resin is contained in the definition of marijuana, making the level of trafficking equal 100 pounds of plant material from marijuana and 100 pounds of oil. I received information through the National Highway Traffic Safety Administration Drugs and Human Performance Fact Sheets indicating a drop or two of hash oil equals a single joint of marijuana. The federal sentencing guidelines state 1 gram of THC equals 167 grams of marijuana. In courts, THC is being treated as plant material.

Chair Brower:
We are dealing with complicated stuff that is over my head; I assume there are people in the room with a better understanding or background in this. From your scientific perspective, as the director of the lab for the largest law enforcement agency in the State, is the language in the bill satisfactory to accomplish the goal?

Ms. Birch:
Yes. We would like to separate resin that contains THC from plant material, marijuana, in statute. The charge for THC in a concentrated form can be a schedule I controlled substance. Marijuana would be treated as the plant material. This does not take away the capability of medical marijuana companies to use resin in their businesses.

Chair Brower:
Do the bill and amendment Exhibit E satisfactorily cover everything?

Ms. Birch:
Yes.

Kiera Sears (Black Rock Nutraceuticals LLC):
Black Rock Nutraceuticals support the spirit of S.B. 447. We support sections 1 and 4 through 7. We do not support sections 2 and 3, changing the definition of marijuana and THC. We are working with law enforcement agencies to help reach their goals without redefining marijuana and THC. Redefinition is unnecessary. Law enforcement's goal is to prohibit individuals—even if legally authorized to use medical marijuana—from extracting resinous substances from the cannabis plant.

Law enforcement representatives seek a solution to problems prosecuting individuals illegally manufacturing, possessing, trafficking, distributing or selling cannabis in concentrated forms. I canvased states with greater fines and penalties for crimes involving hash and concentrates from marijuana in its raw form. Concentrates, true to their definition, have a greater percentage of phytochemicals classified as schedule I substances. However, the penalties are disproportionate in Nevada statutes. I have attached my testimony as well as proposed amendments (Exhibit I and Exhibit J).

California addressed this issue, separately defining concentrated cannabis. I included a definition of concentrated cannabis in NRS 453 in our proposed amendment, Exhibit J. The definition is "the separated resin, whether crude or purified, contained from marijuana." I have also defined extraction as "the process or act of pulling or drawing out." We went through all the sections in NRS 453 that prohibited and provided penalties and fines for the manufacture, possession, trafficking, sale or distribution of a controlled substance. Each of the clauses exclude marijuana from schedule I controlled substances for the purposes of penalties and fines. The clauses also impose lesser penalties and fines. At the end of the clauses, I excluded concentrated cannabis.

Will Adler (Executive Director, Nevada Medical Marijuana Association):
The Nevada Medical Marijuana Association supports the nature of S.B. 447 but not its execution. We have worked to craft amendments clarifying the effect of this bill on the medical marijuana industry and people at large. From the medical marijuana point of view, we have allowed production licenses in Nevada explicitly for the extraction of resin from marijuana plants. This allows production of highly concentrated forms for medical purposes so children can avoid smoking medication. This is used to treat epileptic children with high-cannabidiol strands. The only logical way to treat these children is with a resin-extracted form of marijuana which can be used as drops. You said you wanted to get away from children smoking marijuana. The smokeless form of marijuana is the best way to take it for medical purposes …

Chair Brower:
I am not sure I said that.

Mr. Adler:
You said you wanted to get away from smoke.

Chair Brower:
I posed the question. It seems the largest percentage of abuses of the medical marijuana scheme is with smoking. Eliminating smoking would be the easiest way to put a dent in that.

Mr. Adler:
A lot of people have that thought process. Smoking is an ancient way of inhaling something. You can vape now or ingest marijuana without burning plant matter. Smoke is a carcinogen.

Senator Harris:
Is resin used for vaping?

Mr. Adler:
Yes. It is an extracted oil, not pure THC.

Senator Harris:
Is it diluted?

Mr. Adler:
Yes.

We support getting production out of the civilian population because of improper practices. Using high-pressure butane extraction processes on top of stoves is like a bomb. This is where you see explosions, house fires and deaths. The industry uses proper practices with higher standards and mandatory testing. We have institutions to bring resin extraction out of the black market and into the light. If this bill passes, it will ban resin extraction for individuals and the medical marijuana industry. This sends resin extraction back to the black market.

Chair Brower:
Your position is that the bill with the proposed amendment, Exhibit J, would ban resin. You think that is the wrong approach and would undermine the medical marijuana business.

Ms. Sears:
Yes. I wrote the implications of what this bill would do and sent it to the Legislative Counsel Bureau. It confirmed that removing resin from the definition of marijuana makes it unlawful for production facilities to be in business. Our whole process comes from extracting resin from the plant. Adding the definition of concentrated cannabis identifies resin in its separated form. By identifying extraction, we can prohibit extraction of resin by individuals other than production facilities. Several clauses in NRS 453 identify penalties and fines for having a controlled substance. The clauses do not include marijuana. Law enforcement wants harsher penalties for illegally possessing marijuana in its concentrated form. I propose adding subsection 5 to NRS 453.322 in Exhibit J on page 3 stating, "For purposes of this section, the exclusion of marijuana from schedule I shall not apply to concentrated cannabis, which remains a schedule I substance." That allows harsher penalties or fines for prosecution of people found with concentrated cannabis.

Mr. Adler:
The redefinition of marijuana into its chopped up form—the THC redefinition—causes conflict with the medical marijuana system in how it is not explicitly in marijuana. It is almost impossible to completely separate chemical components inside a plant from the plant because it will always be in the plant. You cannot say THC is separate when it is still inside the plant in question. You can say marijuana is illegal. Because THC is illegal on its own and still in a marijuana plant, it potentially causes legal conflict for medical marijuana patients and their ability to smoke plants with THC.

Chair Brower:
Not unlike the conflict with federal law making all of this illegal, but we are sort of ignoring that.

Ms. Sears:
The definition I submitted redefining THC in Exhibit J is in line with the federal definition.

Mr. Callaway:
Over the past weeks, several individuals approached me and proposed three different amendments. Ms. Sears and Ms. Lazovich reached out, and I sent their language to be reviewed. We can work toward a resolution. My position is to

proffer the amendments to the Committee and support any particular proposed amendment. I do not want to create a loophole where someone claims he or she is a medical marijuana patient or cardholder, meaning that person can legally extract resin in his or her garage and possess pure marijuana extract. I want extraction done exclusively by professionals, certified by the State and DHHS, who have a license to open a production facility. We can include an exemption in the definition stating THC and marijuana do not apply to the medical marijuana facilities legally operating in the State.

Ms. Birch:
I understand the concerns that have been raised and think we can come to a resolution with these amendments. Some really good ideas were put forth. We are not opposed to making revisions to address our concerns. We want to control concentrated THC oil that does not have plant material characteristics.

Cindy Brown:
Vaping is not only done with an oil. You can vape the marijuana flower and leaves. It is called vaporization for a reason. You have been talking about prohibiting extraction by private individuals. Medical patients have been doing this for a long time, granted many people who do this illegally are doing it wrong. Those of us who know what we are doing know how to extract resin. We do it outdoors with a fan, not with butane or any harsh chemicals. We generally use Everclear or strong alcohols so we do not destroy our houses. We are not stupid. Do not prohibit extraction by private individuals. If it is an issue, we can go to a class, but we would be teaching the class.

You are not looking at changing section 4, which we have a problem with. Senate Bill 447, section 4, subsection 1 says:

> A person who holds a registry identification card issued to him or her pursuant to NRS 453A.220 or 453A.250 is not exempt from state prosecution for, nor may the person establish an affirmative defense to charges arising from, any of the following acts: (a) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

There is no blood test, urine test or look of the eye to tell if I am intoxicated. We have a problem with this because a medical marijuana patient wakes up with over 10 nanograms of marijuana in his or her blood every day before taking medication for the day. We need clarification or removal because we have a medical marijuana card. We are allowed to consume this. I can take four Percocets and nobody will say anything about how much of it is my blood, even though I may be high. It depends on your tolerance level. My tolerance level is high.

We also have a problem with a person with a medical marijuana card being prohibited from owning a firearm. Having a medical marijuana card should never be a reason to take our guns. It has happened to a number of patients who receive medical marijuana cards, do everything right and have the police take their guns. That is wrong.

Julie Monteiro:
I am a registered nurse and have followed the medical cannabis industry since 2010, advocating for my patients. There are many ways to consume cannabis. The definitions are extreme because many patients will become criminals if this bill passes. Patients are concerned about their rights.

You have talked about children selling their medicine at school. There are school nurses. Patients under the age of 18 in school could keep their medicine with a school nurse. Nurses lock up medicines, and the child could go to the office to consume his or her medicine on campus.

Medical marijuana patients usually test out with over 300 nanograms per deciliter. Subcommittee member John Watkins detailed the DUI laws at an Advisory Commission on the Administration of Justice's Subcommittee on the Medical Use of Marijuana. I do not agree with a lot of what the police force is trying to put through because it will make patients criminals. I have seen this happen. When you are exempting facilities that are able to make resin, I would like to see Nevada medical marijuana patients included. We, the people, voted for this in 2001, and have been doing this for 15 years. We are just fine, we have not blown up our houses, and some patients' homes have been utilized for extensive law enforcement training. Making resins and oils illegal substances for medical marijuana patients is discriminatory and should be addressed to avoid future legal ramifications. I support the intent of S.B. 447 but have concerns.

Mona Lisa Samuelson:
I understand problems have to do with an understanding of what medical marijuana patients face. As we are making exemptions for businesses, we have to know what we are doing. When you are talking about medical marijuana extracts made with the resins of oils, we are talking about olive oil, butter and food-grade solvents. We should not be talking about anything that blows up. The most explosive material you should be using is food-grade ethanol, which is basically Everclear. Creating new regulations for something covered through our fire code for food safety would be counterproductive.

Extracts make marijuana medical. We do not smoke it; we cook it to eat. It is a more effective form of ingestion for children and the elderly. We do not eat the plant whole; we are not animals. Humans attempt to make it more palatable. When you talk about THC extracts and oils, be aware that is oil on a heated plant. That is not going to blow up. When you do it cold, it is called kief, not an oil or extract. That natural, nonexplosive product is healthful. These food-grade elements make marijuana medical. It is how you ingest it and where it goes. The medicine has to have a vehicle to be effective.

I am adamant about this because of experiences at my city councils. A business tried to scare everybody into thinking homes would blow up unless you put its plant material through its extractor. There are reasons businesses might not want us to make our extracts. They would like it to be filtered through them. We have to be careful because these laws will hurt good people. We are good people. Trust me. You instilled a community to look out for each other. We had to be safe about our medication, so we did not hang out with recreational users; we hung out with the sick, injured and dying.

Vicki Higgins (ECONEVADA LLC):
I agree with all of the concerns stated. I have problems with section 4, subsection 1, paragraphs (a) through (d) when medical cannabis patients are not able to use an affirmative defense in charges against them. I do not commend prohibiting law enforcement agents from being medical cannabis patients. I would not want my law enforcement agent or any person in control to be intoxicated while on the job. As a medical cannabis patient, I wake up with more nanograms in my urine and blood than the casual user. I would like this to be a beneficial program to all employees, law enforcement or not. If a person takes oils or topicals, it does not indicate intoxication because he or she uses it

as a topical or ingests it. It depends on how the medicine is delivered. The group that helps us by giving a baseline of patients who medicate in different ways will give the Legislature an overview as to what patients have in their systems when they wake up in the morning. We do not medicate when we are out and about. If you were to test me, I would be higher than the limits for intoxication. If I medicated last week, I am prohibited from possessing a weapon because I am always considered intoxicated. I appreciate your concern with the amendments and think it is a good bill.

Chair Brower:
I think we understand some of the concerns, despite the scientific jargon. I will close the hearing on S.B. 447 and open the work session on S.B. 225.

SENATE BILL 225: Revises provisions relating to the sale and distribution of tobacco products and liquid nicotine. (BDR 15-796)

Pat Guinan (Policy Analyst):
I have a work session document summarizing the bill and amendment offered on S.B. 225 (Exhibit K). The amendment offered by Senator Patricia Farley deletes the term "liquid nicotine" and provides definitions of "vapor product," "alternative nicotine product" and "consumable material." It has been approved by Chair Brower.

Chair Brower:
The amendment is considered friendly to the sponsors. It is in line with the intent of the bill.

> SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 225.
>
> SENATOR HAMMOND SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATORS FORD AND ROBERSON WERE ABSENT FOR THE VOTE.)

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Chair Brower:
Senate Bill 164 was pulled because the sponsor, Senator David R. Parks, is waiting for amended language. It will be back on the work session as soon as we can get that squared away. I open the work session on S.B. 260.

SENATE BILL 260: Revises provisions governing common-interest communities. (BDR 10-726)

Mr. Guinan:
I have a work session document summarizing the bill and amendment offered on S.B. 260 (Exhibit L). Senator Harris has offered a conceptual amendment.

Senator Harris:
This amendment would be prospective.

Chair Brower:
Would it not apply to existing loans?

Senator Harris:
Yes.

SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 260.

SENATOR SEGERBLOM SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS FORD AND ROBERSON WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on S.B. 262.

SENATE BILL 262: Revises provisions relating to guardians. (BDR 13-643)

Mr. Guinan:
I have a work session document summarizing the bill and amendments offered on S.B. 262 (Exhibit M). Senator Harris offered an amendment on April 2 and has another one revising two provisions.

> SENATOR SEGERBLOM MOVED TO AMEND AND DO PASS AS AMENDED S.B. 262.
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> SENATOR KIHUEN SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATORS FORD AND ROBERSON WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on S.B. 443.

SENATE BILL 443: Revises provisions governing the acceptance of race book and sports pool wagers. (BDR 41-1135)

Mr. Guinan:
I have a work session document summarizing the bill and amendment offered on S.B. 443 (Exhibit N). Chair Brower has offered a conceptual amendment.

> SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 443.
>
> SENATOR KIHUEN SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATORS FORD AND ROBERSON WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on S.B. 445.

SENATE BILL 445: Revises provisions relating to race books and sports pools. (BDR 41-1134)

Mr. Guinan:
I have a work session document summarizing the bill and amendments offered on S.B. 445 (Exhibit O). Chair Brower has offered a conceptual amendment deleting language.

Chair Brower:
The amendment is intended to correct a problem in the language.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 445.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS FORD AND ROBERSON WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I open the work session on S.B. 484.

SENATE BILL 484: Revises provisions concerning personal financial administration. (BDR 3-1087)

Mr. Guinan:
I have a work session document summarizing the bill and amendments offered on S.B. 484 (Exhibit P). The first amendment was proposed by the State Bar of Nevada, and the second was proposed by Senator Harris.

Chair Brower:
This is the biennial probate and trust section bill.

Senator Harris:
It came to my attention we do not have a great termination of unproductive trusts, so I am offering a conceptual amendment. It is not endorsed by the State

Bar because it did not go through the Bar's vetting process, but the Bar is willing to let me tack it onto the bill. For trusts of $100,000 or less, if the trust costs as much to administer as to let it be terminated and distributed, judicial discretion can allow that.

Chair Brower:
There were no objections by the Probate and Trust Law Section of the State Bar. The Section also has its own proposed amendment attached to Exhibit P proposed by Julia Gold, chair of the Probate and Trust Law Section.

Mr. Guinan:
The Bar's vetting process does not work under legislative time. The vetting process would have taken a week or two. If the Bar has a problem with Senator Harris's proposed amendment, it will have to deal with it another time.

Senator Harris:
We cannot claim the amendment is part of the State Bar's vetted amendment, but the Bar is not opposed to having the amendment.

Chair Brower:
Right. The Probate and Trust Law Section of the State Bar would take weeks to formally approve this addition, but there is no informal objection.

SENATOR SEGERBLOM MOVED TO AMEND AND DO PASS AS AMENDED S.B. 484.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS FORD AND ROBERSON WERE ABSENT FOR THE VOTE.)

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Chair Brower:
I adjourn the meeting of the Senate Committee on Judiciary at 7:11 p.m.

RESPECTFULLY SUBMITTED:

_____
Julia Barker,
Committee Secretary

APPROVED BY:

_____
Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	2		Agenda
	B	8		Attendance Roster
S.B. 255	C	20	Senator Scott Hammond	Proposed Amendment 6238
S.B. 442	D	4	Dan McNutt	Proposed Amendment
S.B. 447	E	3	Chuck Callaway	Proposed Amendment 6140
S.B. 447	F	1	Jennifer Lazovich	Proposed Amendment
S.B. 447	G	3	Laurel Stadler	Division of Public and Behavioral Health Medical Marijuana Program
S.B. 447	H	1	Department of Motor Vehicles	Proposed Amendment
S.B. 447	I	6	Kierra Sears	Written Testimony
S.B. 447	J	15	Black Rock Nutraceuticals	Proposed Amendment
S.B. 225	K	4	Patrick Guinan	Work Session Document
S.B. 260	L	3	Patrick Guinan	Work Session Document
S.B. 262	M	9	Patrick Guinan	Work Session Document
S.B. 443	N	5	Patrick Guinan	Work Session Document
S.B. 445	O	2	Patrick Guinan	Work Session Document
S.B. 484	P	16	Patrick Guinan	Work Session Document