MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
March 27, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:32 a.m. on Monday, March 27, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen

Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Scott J. Shick, Chief Juvenile Probation Officer, Douglas County Juvenile Probation Department; and representing Nevada Association of Juvenile Justice Administrators
Brigid J. Duffy, Director, Juvenile Division, Office of the Clark County District Attorney
Susan Roske, Private Citizen, Las Vegas, Nevada
Dave Doyle, Director of Operations, Eagle Quest, Las Vegas, Nevada
John (Jack) Martin, Director, Clark County Department of Juvenile Justice Services
Frank W. Cervantes, Director, Washoe County Department of Juvenile Services
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Deputy Public Defender, Clark County Public Defender's Office
Neal Tomlinson, representing Probate and Trust Law Section, State Bar of Nevada
Julia S. Gold, Co-Chair, Probate and Trust Law Section, State Bar of Nevada
Alan D. Freer, Co-Chair, Probate and Trust Law Section, State Bar of Nevada

Chairman Yeager:
[Roll was called and protocol was explained.] The first thing I would like to do is seek introduction of several Committee bills. The first bill draft request (BDR) I am seeking introduction of is BDR 18-366.

BDR 18-366—Provides for the acceptance of a tribal identification card in certain circumstances. (Later introduced as Assembly Bill 415.)

ASSEMBLYMAN OHRENSCHALL MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUEST 18-366.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

Chairman Yeager:
Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Chairman Yeager:
Our next bill draft request (BDR) is BDR 14-600.

BDR 14-600—Requires the electronic recording of interrogations under certain circumstances. (Later introduced as Assembly Bill 414.)

ASSEMBLYMAN OHRENSCHALL MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUEST 14-600.

ASSEMBLYWOMAN MILLER SECONDED THE MOTION.

Chairman Yeager:
Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Chairman Yeager:
Our next bill draft request (BDR) is BDR 12-597.

BDR 12-597—Makes various changes relating to electronic documents and electronic signatures. (Later introduced as Assembly Bill 413.)

ASSEMBLYMAN THOMPSON MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUEST 12-597.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

Chairman Yeager:
Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Chairman Yeager:
Our next bill draft request (BDR) is BDR 14-601.

BDR 14-601—Revises provisions relating to the jurisdictions of courts over certain criminal charges. (Later introduced as Assembly Bill 412.)

ASSEMBLYMAN OHRENSCHALL MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUEST 14-601.

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

Chairman Yeager:
Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Chairman Yeager:
Our final bill draft request (BDR) introduction this morning is BDR 5-1029.

BDR 5-1029—Revises provisions governing employment with the Department of Juvenile Justice Services. (Later introduced as Assembly Bill 411.)

ASSEMBLYWOMAN TOLLES MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUEST 5-1029.

ASSEMBLYWOMAN MILLER SECONDED THE MOTION.

Chairman Yeager:
Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Chairman Yeager:
We have two items on the agenda today, and we will take them out of order. At this time, I will formally open the hearing on Assembly Bill 395.

Assembly Bill 395: Revises provisions governing juvenile justice. (BDR 5-853)

Scott J. Shick, Chief Juvenile Probation Officer, Douglas County Juvenile Probation Department; and representing Nevada Association of Juvenile Justice Administrators:
I have also sat on the Attorney General's Advisory Committee to Study Laws Concerning Sex Offender Registration for the past 10 years. The Adam Walsh Act was implemented by the State of Nevada in 2007, by a unanimous vote of both sides, based on the merit of what was trying to be accomplished federally with respect to sex offenders, tracking of sex offenders, and the ability of sex offenders across our nation to fly under the radar. The Act was to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography and other child crimes, to promote Internet safety, and to honor the memory of Adam Walsh. It was enacted by the 109th United States Congress. That was passed onto the states and Nevada implemented it. Since that time, there have been contests in federal and state courts until 2016, when it was finally deemed feasible and legal for us to implement it. I will defer to Ms. Duffy.

Brigid J. Duffy, Director, Juvenile Division, Office of the Clark County District Attorney:
I was not expecting to present the bill this morning. I do not know who we were expecting to present this bill, but there is a lot of support for it. I am going to do my best to wing it and present the bill and walk the Committee through what it means and why we need it.

Chairman Yeager:
Thank you for being willing to step in and present the bill. We appreciate it, and we are sure you are going to do just fine.

Brigid Duffy:
As an overview, if you are a child and you are convicted of certain sexual offenses, you must register as a sex offender if you committed those offenses at the age of 14 or above. There has been ongoing litigation in the Nevada Supreme Court regarding it. Currently, there is a stay across the state for juveniles having to register. This bill creates some mechanism for the court to have the discretion on whether or not a child would have to register as a sex offender if they are adjudicated under certain sex offenses, which are defined in section 8 of the bill. Aggravated sex offenses are defined in section 5, and they mirror the federal Adam Walsh Act. This is in line with what the Adam Walsh Act is, and we are taking it and putting it into our juvenile law. Now the court will have the discretion—after looking at certain factors—as to whether or not the juvenile would have to initially register and whether or not they would have to continue to register after they turned 21. The initial registration is under section 9 of the bill. If a child is adjudicated, they have to go immediately down with an order of the court; the court has to notify the Central Repository; and they are placed into the sex offender website.

There is a mechanism to remove them from the website if the court finds that they have rehabilitated themselves and that the community would be safe. When they turn 21, there is another mandated court hearing to determine if they would need to continue—because the juvenile court jurisdiction ends at 21—to register as sex offenders after they reached the age of 21. The factors for determining whether or not they would continue to register are factors that we all weigh now, as we do this at the district attorney's discretion. We had the same bill last session, Senate Bill 99 of the 78th Session. During my testimony at that time, we all wanted this to pass, but it ended up being vetoed by the Governor. It was mixed together with the adult registration, and our kids ended up paying that price.

For the past two years, we have been using the district attorney's discretion, or my discretion, to determine whether or not kids have to register. As I told the Senate two years ago, it is a pretty heavy burden to carry. When they lifted the stay from the Nevada Supreme Court over the past two years, once again, on my own, I renegotiated about 30 cases to help kids avoid registration as adults. These were kids who have gone through treatment; kids who were low risk to reoffend; kids who were moving on and applying for jobs and going to college. This bill—we often do not like to give courts discretion—makes it the court's determination on whether or not a child has to register, which helps me sleep better at night because I am tired of making that determination myself. That is what this bill does. We look at factors.

As policymakers, these are the factors we think are important, and we hope you find them important. It is the number, date, nature, gravity of the sex acts that were committed, and whether there is repeated or compulsive behavior. When using my discretion, if a child is one time versus two times versus three times, there is a big wait if you are a repeat offender. There is the extent to which a child receives counseling, therapy, and treatment—all of our juvenile sex offenders go through a treatment program and are evaluated as to whether or not they are high risk or low risk to reoffend. What are the psychological or psychiatric profiles that indicate recidivism? I look at the behavior of a child while subject to the jurisdiction of the juvenile court. I look at things such as if they have lewdness with a minor adjudication, but then in between all the times they were on probation, are they picking up all of these other offenses—burglaries or robberies? We weigh all of that.

Is there more compulsive behavior—not necessarily sex offense behavior—but other behavior, such as breaking into people's houses; whether the child has any reason for acts against a person or expressed any intent to commit any crimes in the future; any physical conditions that minimize the risk of recidivism, physical disabilities or illness that impact the unlawful act on the victim; and any statements made by the victims. I am always a little bummed out when they push out our community safety and victim stuff down to letters (g) and (h) [section 11, subsection 3(g) and (h)] because we, as prosecutors, think that is the most important thing. They are in there and they are extremely important to ensure that the victim's voice is heard. The safety of the community and the need to protect the public, and of course, that throw-in at section 11, subsection 3(j) that states "Any other factor that the juvenile court finds relevant . . . ." Those are the things that we hope you will find, as policymakers, are important when the court is using its discretion to determine whether or not to have a child register.

There are a few other issues tacked onto this bill; sections that do not deal with sex offender registration. Section 15 is a juvenile records statute. During the interim, the Legislative Committee on Child Welfare and Juvenile Justice took testimony and had a lot of discussion around the need to include the availability of juvenile justice information to law enforcement agencies that are conducting a criminal investigation, or if there is a child who is subject to the jurisdiction of the juvenile court and who poses a threat to himself or herself or the safety or wellbeing of others. We fixed the current record-sharing statute over the past couple of sessions, but we missed a part where we can share this with law enforcement. If the juvenile system gets a call about an active situation, we cannot tell the officers at the scene whether or not that child has a probation officer or is under any psychiatric care with the juvenile justice system. This would amend the statement to allow us to share that information during an active criminal investigation.

Section 25 through the end of the bill is a request for funding for various services related to the juvenile justice system. I know you have heard me mention The Harbor many times. This is the monetary path for Clark County to obtain funding from the state for that program and for the programs that help us with our girls. There is funding for every county across the state for all of the programs they deem to be significant to help their communities and their children. That is the final section of the bill.

Assemblyman Elliot T. Anderson:
I can appreciate the situation that you are in, but this is obviously a bill that could be litigated. There could be a fair bit of litigation around this, so I think it is important we develop a good record as to what some of these provisions mean, so we will lean on your expertise.

In section 11, subsection 2, it talks about a standard of evidence. I have seen that provision in a couple of different places. It is also in section 12, subsection 2. The phrase that I am curious about is "relevant and helpful." I know what "relevant" means, but what does "helpful" mean? Does it mean prohibitive? What exactly is that standard of evidence?

Brigid Duffy:
That is a very good question, because "helpful" is not really a standard of evidence at all. Not being the drafter, I am really not sure. I think it is an extremely significant question.

Assemblyman Elliot T. Anderson:
I agree; I think we are going to need to figure it out. I take it to mean "prohibitive," and maybe not unduly prejudicial, although I am not sure if prejudicial would apply in this context because it is in the context of guilt. I think that if we cannot come up with a better word, it would be prohibitive.

My next question is in regard to section 11, subsection 3, subparagraph (b), where it talks about the family control in place over the child. Does that mean the capacity of the family to supervise? For example, might there be a difference with a parent at home with the kid full-time versus two parents who are working two jobs? Is that what it is trying to get at?

Brigid Duffy:
Yes, that is absolutely correct: family controls in place over a child. When we look at the risk a child poses for any offense and what level of supervision we need to put into place, we have to look at the family as a whole and how much—especially in the world of juvenile sex offenders—supervision they can give that child. It makes a difference whether or not you have parents who are not home or if they are able to bring in someone from the outside to be at home. That is exactly it. It is the control of the family over the child.

Assemblyman Elliot T. Anderson:
I would like to do a comparison between section 11 and section 12, which are different procedural points talking about whether to exempt someone from the community notification requirement. Section 11 is upon sentencing, and section 12 is when the child turns 21. In section 12, subsection 6, there is a requirement that the juvenile court "shall file written findings of fact and conclusions of law" upon the twenty-first birthday. That requirement is not in a similar section, section 11. What is the purpose of not having written findings of fact from the juvenile court in section 11? It seems like a strange distinction. Considering the stakes of this, it seems like it could be useful in both contexts.

Brigid Duffy:
Yes, I completely agree. It should be in both sections. Oftentimes, we are frustrated that we do not get written findings, so both sides can file any writs or appeals that we may need.

Assemblyman Elliot T. Anderson:
I also want to take a look at section 11, subsection 5. It is the motion for reconsideration for the denial or granting of a motion pursuant to this section. I think the traditional standard for a motion to reconsider is usually newly discovered evidence. Is that what you take to be good cause under that subsection? Is there any other intent beyond what the courts traditionally do with motions to reconsider?

Brigid Duffy:
Usually new facts are discovered after the previous hearing, and we would file a motion to reconsider. In a circumstance like this, perhaps the child has been relieved of having to register while they are on probation and pending the close of probation. If they committed another offense, we might file that motion to reconsider at that time to then go back and talk about registration.

Assemblyman Elliot T. Anderson:
Section 12, subsection 1 talks about the juvenile court ". . . shall hold a hearing when the child reaches 21 years of age . . . ." Do you envision that being the juvenile court's responsibility to set that hearing, or is it on the litigants?

Brigid Duffy:
The court sets that hearing years in advance. What has occurred recently where I renegotiated cases was a whole lot of now-adults were coming up on their 21st birthdays for registration, and the cases were from when they were 15. The cases were six years old, so they are old cases. The court sets that hearing way in advance.

Assemblyman Elliot T. Anderson:
Section 8 defines what a sexual offense is. A number of the substantive provisions that are used to define the predicate offenses that would feed into this sexual offense definition may or may not still have the liability, just on the statutory basis, in a different way. I did not have the ability to go back and review all the statutes that feed into this section. Is there a possibility that you could have someone who has liability, say a 17-year-old having sex consensually with a 13-year-old and having liability on the statutory basis, but then somehow still not being subject to the community notification provisions of this bill?

Brigid Duffy:
Everyone has heard the horror stories where kids are on sex offender registries because they send a naked picture of themselves. That is not a horror story in Nevada. I hear that, but it does not happen. We do not put kids on sex offender registry because they sexted. There is a provision in section 8, subsection 2, paragraph (b), "At least 13 years of age and the

offender was not more than 4 years older . . . ." That is where we are trying to get away from this, like it was consensual. We are putting that age gap in there, so they are a little farther apart in age when committing the crime.

Assemblyman Elliot T. Anderson:
Let me clarify my question. I understand what the bill does, and I think it is a good provision. I am curious about the predicate offenses—there may still be liability for the predicate offenses even though they would not be subject to the notification provisions. I think some of the substance of law in terms of guilt versus the notification, you would still have people who would be potentially roped up in the substantive in guilt. Does that make sense?

Brigid Duffy:
Yes. There are other offenses outside of this where they will still go through the system and still have their classes and probation and still get better and not ever be subject to this provision.

Assemblyman Elliot T. Anderson:
I want to make it clear for the record that this does not get into guilt.

Assemblywoman Cohen:
Section 12, subsection 5, paragraph (c) discusses the psychiatric profiles. Would you give us some information about those psychiatric profiles? Do we have data to show how accurate they are?

Brigid Duffy:
Yes. We in Clark County—and I have colleagues from Washoe County, and I can speak on behalf of the rurals—have specialists who do a certain type of risk assessment tool on any child who is alleged to have committed or adjudicated for having committed a sexual offense. That assessment comes out with a risk level—high, medium, or low. It is based on pretty much every factor that we already listed as things we want the court to consider: the age of the victim and/or the sexual history of the subject minor. We do not call them defendants, so when I say subject minor I am talking about the child who is alleged to have committed an offense. We look at the sexual history of the subject minor, the parenting of that subject minor, the prior offenses—they look at all of it to come up with this risk. They are all evidence-based tools.

As far as recidivism, it is very low. I know we have a study going on right now to see how accurate the recidivism rates are, but I know it is pretty low. If we get a high-risk level—a child who may be a high risk because potentially they have disclosed some things during that assessment—we continue to treat them to try to bring that risk level down. At the end, we hope to bring them down. A lot of our kids start out even low risk, and some of our kids who start out medium risk end up low risk at the end with treatment. I do not really have those numbers. I will be happy to get you a redacted copy of what those look like.

Assemblywoman Cohen:
Is there an estimate as to when those studies are going to be done?

Brigid Duffy:
We had it placed into the statute last session so we could allow the sharing of juvenile information so they could run this study. I would have to ask Judge Voy how close we are to completing it. I will be happy to get you that information also.

Assemblywoman Cohen:
In section 11, subsection 1, in the community notice section, will notice still go to the victim even if there is not going to be a community notice?

Scott Shick:
Yes. I would like to differentiate between a public registry—which is available to the public—and a community notification, which would not necessarily be available to the public. It is more for the lesser sex offense. If there is a victim at the same school as the perpetrator, after treatment, the victim, the school officials, and the Sheriff's department is notified. For Douglas County we have the Spillman process. You can activate it, and see where every sex offender in the county is located. Juveniles are not available to the public whereas adults are. The public registration is federal, which would be for those aggravated sexual offenses. If a juvenile was adjudicated for that, currently Assembly Bill 579 of the 74th Session requires that they report on that public website, and it is available to the public. Robert Stuyvesant, a licensed clinical social worker from Nevada, did a study. I will get it to you so you can see what some of the dispositions, personality types, and typologies are for particular sex offenders. It will be an eye-opener in respect to some of your questions.

We have a low-level sex offender in treatment, and he is responding extremely well. He is low function. Based on certain circumstances in his life, circumstances in his family, and his cognitive ability and aptitude, he is prospering; however, it is a long-term situation for him. This is not a young man who needs to be on a public registry when the day is done. We give him our best and hopefully as he matures into a young adult, we can help him along his path of getting things right and getting into the work force and learning about his impulses. That is some of the irony of the Adam Walsh Act that when it was implemented, it was pretty firm on kids like that. This unwinds it and gives the court discretion. The forensic experts, the probation department, public defenders, and district attorneys are involved, and our courts are involved in making a decision around what to do with a sex offender on a month-to-month basis in our communities. People are paying attention to the details. When it comes to serious, aggravated sex offenses, there are victims involved, and we are very aware of it, and to a certain degree, we need to put the hammer on those individuals.

Assemblywoman Miller:
In section 5, subsections 2 and 3, from what I can see, when we are talking about drugs and controlled substances, it does not appear that alcohol is included in it. They are naming all

types of very fancy drugs, and it would be my assumption, especially dealing with kids, that the most accessible drug is alcohol. Would you tell me how many alcohol-related offenses there are compared to other controlled substances?

Scott Shick:
I have been a licensed drug and alcohol counselor in the state for over 20 years. Alcohol is involved in many different situations, but I do not think we have the numbers specifically in respect to sex offenses. I can imagine in high-level aggressive sex offenses, including rape, that alcohol is involved and other drugs might be involved. There might be some peer involvement and gang "sets" being activated. Yes, alcohol is a part of it, and if you are going to use alcohol to intoxicate a victim and then take advantage of him or her, that is a crime. When the day is done, it needs to be looked at accordingly, even though alcohol was involved. That is why we have the courts and that is why our district attorneys weed it out. Sometimes they file reluctantly, but based on the circumstances, that is the law.

Assemblywoman Miller:
In section 12, subsection 5, paragraph (g), one of the considerations given says, "The impact of the unlawful act on the victim and any statements made by the victim." When it comes to sexual offenses, sometimes the impact is not necessarily recognized until years later. How do we accommodate for the victim? To me, it feels like we are putting a judgment on the impact instead of just recognizing that this crime, assault, and the violation happened. It is like we are putting degrees on it, saying it was not that bad, and if the victim says, "Oh, it is okay, it was not that bad," then it is not that bad, but we have a victim who may not feel the effect of the trauma until a decade later. Would you speak to that?

Brigid Duffy:
I appreciate your words because it is absolutely true a lot of times, especially for our really young victims, when our victims are a 5-, 6-, or 7-year-old cousin. We are not seeing that impact until they become teenagers. Sometimes, unfortunately, we are seeing the impact in the subject minor we are prosecuting, because that 14-year-old was that 5-, 6-, or 7-year-old victim and now they are the subject minor perpetrator. We often do not see the impact for years. Unfortunately, laws cannot be written to come back years later and say, "Now I am in therapy, and all this is coming out and I cannot hold a job and am having relationship problems and now I am a sexually exploited youth because of my victimization." We have until 21 to make these determinations, and I am thankful that the victim's voice is heard and can be here as best as we can. I am thankful for this body and people like you who think it is important, too.

Scott Shick:
It is a horrendous crime when rape happens under whatever conditions. The victim is a primary concern. Those long-term traumatic events get buried and come out in relationships and in the workplace later on. I think at the time, the courts, to the best of their ability, take into consideration all of the circumstances and follow that offender three years, five years, whatever it takes. Even after an event like a serious sex offense, offenses that lack conscience and have antisocial tendencies, those things are taken into consideration and that

individual is going to have to report for the rest of their life. It is case-by-case; it is judicial discretion; and it is great monitoring by the juvenile probation department in conjunction with the district attorney to monitor those kids as they progress through the system.

Assemblywoman Miller:
In section 15, subsection 2, it states, ". . . a juvenile justice agency may release juvenile justice information to . . . ." Then we jump down to paragraph (k) and it mentions "A school district if . . . ." I understand protection for kids and their rights for protections, but I also understand that when we place kids back into the school setting, the onus is on the school to also protect all the kids. I know that while youth violate adults, the majority of violations would be against youth or younger youth. The words "may" and "if" just seem like—as someone in the schools—this is information that I would want to know. For kids, so much activity happens—they are sexting, calling, partying, hanging out, and schools have thousands of people that we need to protect.

Brigid Duffy:
Section 15 is not specific to just the juvenile sex offender. It is in the beginning. This is all juvenile justice. We already have a requirement in statute to notify the schools—it is community and school notification for the juvenile sex offenders. This section is dealing with the general juvenile justice population. If a child is arrested for weapons offenses and they are on probation, the school district wants to know if they have a child who may be potentially dangerous to the school. The juvenile justice agencies could not share that information with the school because juvenile justice information is confidential.

During the 78th Session, we added the ability to share information, and we made it a "may," so that our directors of each of the juvenile justice agencies can use their discretion to determine whether or not the school is going to use it for good or evil. We know the schools could label that child and that child could pay for it. "Oh, he is on a GPS; he is on probation." We made it using discretion and for the purposes of safety, permanency, rehabilitation, educational success, and well-being. It was not just getting information to be nosy about what is going on with the kid. During the 78th Session, we hammered out that there needed to be a written agreement, because we need information back. The probation department needs information back from the school in order to make good planning for the child. That is where the memorandum of understanding comes in for the sharing of information. This section is total general juvenile justice information.

Scott Shick:
I would add good supervision to that. We want to know what the kids' grades are and whether they are getting homework done. That leads to success for the kids we deal with. That is the nature of this language on a need-to-know basis in conjunction with a written agreement with our jurisdictions across the state. Our jurisdictions across the state will accomplish that and understand how important education is to all of the kids we deal with.

Assemblywoman Miller:
I appreciate that. There are a lot of situations—there is travel, games, and locker rooms.

Scott Shick:
If this was a sex offender, the school would be notified. The victim would also be notified that the perpetrator would be located in school. They have an avenue to report to the school administration privately and confidentially if anything were to evolve as a result of them crossing paths in the hallway.

Assemblyman Pickard:
I want to make sure I understand, as the bill is fairly dense. The intent of the bill is to restrict the requirement for sex registration for juvenile offenders to the aggravated offenses only.

Brigid Duffy:
Those are already the offenses for which a child has to register. We are not changing it. That is what federal law already requires. We are now putting it all in one section within our statute, and we have not changed or added any of those offenses. We are now putting into place a process by which a court determines whether that child has to register and when they have to register or when a community notification has to go out. Instead of what we do now, which is a lot of fancy negotiations to keep kids from having to register initially, we stay adjudications. They will plead to the gross misdemeanor, and we will hold open the felony to see if they come out low risk to reoffend. Once we adjudicate on that felony sex offense that is listed in section 8 or section 5, they have to be registered automatically. Now I do not have to do that anymore. Now the court will decide. They can be adjudicated on that felony, and the court will decide whether or not we impose that requirement now, instead of a lot of fancy negotiations to give kids an opportunity to come out on the other end okay without already being labeled.

Once you are out there, it is hard to pull it back. It also impacts our foster homes. A lot of our children cannot go home once they have been adjudicated on a sex offense because oftentimes the victim is in the home, so we have to go into foster homes. Now the foster homes are worried because if their address has to be on a website somewhere, they are all going to know they have a group home for sex offenders next door which is going to cause a lot of problems in that community. Or not. Maybe it would be good to know it. But we have a problem. We would lose foster homes. They are treatment homes, and they are actively treating our children in these homes. It is making sure that we are allowing the court to decide whether or not this is the time and when is the time to register, based upon our statute.

Scott Shick:
Based on the Adam Walsh Act, that young man would have had to report a low-level sex offense and register for 10 or 15 years based on the nature of his offense no matter what. It is tiered out and locked in. This gives the court discretion for the low-level offenses to make those kinds of decisions and monitor them over a three-year period for progress, or longer if necessary, based on other circumstances in the case.

Assemblyman Pickard:
Thank you for that. Mr. Chair, I apologize; I should have disclosed—as I mentioned last week—my wife is a hearing master and this happens to be her calendar. She is the hearing master over juvenile sex offenses, and I want the Committee to hear it as a matter of full disclosure.

The second part of my question has to do with the nature of the registry and the evidence. I struggle with this. Personally, I think we need to make sure that we alert everyone who needs to hear about the existence of a sex offender. That said, I think we are setting our children up for failure. Parents try to teach kids a good foundation of moral and social behavior. Some are more engaged than others. We are kind of talking out of both sides of our mouths where we say, "You need to keep this in check." Everyone knows that when you are entering the puberty time frame, hormones start to kick in. By the time you are 13 or 14 years old, they are fully raging.

Then we say, "Okay, Johnny, do not act on that." Then we give them access to pornography. It is a $100 billion worldwide industry. What is frightening is that 90 percent of it is free. Then we see hypersexualized television shows on every channel. So we are out there telling everyone, "Hey, this is great stuff; go do it," and then, "Oh, but do not do it." I feel like we are setting them up for failure. We mention clear and convincing evidence as the standard. That is a really high standard. Is that the appropriate standard? Do we have to have it rise to that level? I think discretion in the court is a good thing. Is that really the right level?

Brigid Duffy:
I do. I do not know whether my colleagues from the other side of the table may have a different opinion. Even your own words—the community should know to some extent. If a kid is out at the park playing with other kids, if this child is a danger, other families need to know that. That is why I think the evidentiary standard is the most appropriate one. We are saying that we know this child committed a sex offense against—more likely than not—another child. Now we are deciding whether or not we have to tell the people in his or her community. If we are going to relieve them of that, I think the highest evidentiary standard is appropriate to protect other victims. At this point in the proceedings—I am pretty sure it is section 11—they have not necessarily gone through all the treatment yet. They are still in the middle of treatment, bringing down that risk level, but the court is allowing them not to register right now because they initially potentially met some factors. They were complying, and they had good parental control; and they had all of those things. I think it is an absolutely appropriate standard, and I would wait to hear from my colleagues if you ask them that question.

Scott Shick:
I agree with Ms. Duffy. The standard is high, and we are looking at broken families, divorced families, and a lot of unsupervised time for kids who are sex offenders. Dr. Stuyvesant shared some statistics with us in a training. All of those things need to be taken into consideration, but if the kid is making a positive effort—put him in residential treatment. Again, let us cite that case that I brought forward earlier. Now we are going to

bring that boy back into the community. We are going to watch him closely. Maybe we will put him on intensive supervision and see how he is adjusting in school. He does have a right to get back in there despite the nature of his offense, and if he is showing good faith and is dealing with it, and—in conjunction with the district attorney and putting him in front of the judge—we would make those recommendations to put that kid back into the community and keep a close track on it: notifying the school, notifying the sheriff's department, notifying those persons who can be notified. As soon as you put out that boy's name—say the Record Courier in Douglas County—he is going to be ostracized and that is not the nature of the juvenile justice system. We give every kid a chance. If they want to get it right, they want to put their cards on the table and put the effort in, and they are not a violent, assaultive, antisocial individual, then they are going to be given credence.

Assemblyman Pickard:
I think that is driving to my point. We are concerned that we are essentially pushing this youth out to registration and ostracism and all of the downside effects of this, and yet we are trying to rehabilitate the child. The requirement in section 11 is clear and convincing evidence that they need to be registered. I am wondering if that is not counterproductive.

Scott Shick:
I believe that, based on what I said with the sex offender clinician's testimony, other mental health professionals along with the probation department and district attorney, that individual would not be forced into that public reporting under certain conditions. Yet if they had incidents or events, that potentially, we would have to put them back in residential play based on the nature of their behavior—it does not necessarily have to be a sex offense after they have been convicted of one. It could be a violent burglary or an assault or something domestic. All of those things are taken into consideration as factors that address this individual's propensity to reoffend.

Assemblyman Ohrenschall:
While I practice in delinquency court, I do not represent these children regularly, so I have a couple of questions about how you envision the bill working if it does pass and is signed into law by the Governor. Let us say you have a 14-year-old juvenile sex offender who completes the treatment and is not considered a risk to reoffend, but he either violates probation or gets a dirty drug test or goes out and commits graffiti. Do you envision anything that is not a juvenile sex offense perhaps affecting the judge's decision as to community notification? Would it simply be that the juvenile judge would look at how the child did in terms of the treatment and whether the experts think the child would be at risk to reoffend? Let us say they do very well with their juvenile sex offender (JSO) treatment, but then get into trouble on juvenile probation in other ways not related to anything JSO.

Brigid Duffy:
Yes, those things are considered. I think that specifically falls into the history of the child with the juvenile court. We talk about things like the safety of the community. Your examples, such as violations of probation or positive for marijuana: those would be considered, but weighed differently. If now this subject minor is committing hot prowl

burglaries and also has a propensity to commit sex acts while breaking into houses, those things would be weighed differently. That is what I did when I was using my discretion. Oftentimes, the district attorneys and the public defenders will negotiate such things as they will not lose their right to reduce if they have one week. I know you want to believe we really do not give them a million chances, but we do. We will negotiate things, like one positive marijuana test is not going to mess up your prior negotiations, one loss of placement—we get down to the minutia, because we know kids are going to mess up. There are some nonstarters. I think the court is going to consider all of those things.

Assemblyman Ohrenschall:
I am the only one who was here in 2007 and voted for the initial legislation, and I do not think any of us envisioned these collateral consequences for kids in the past who had taken a deal on a JSO charge and then stayed out of trouble the rest of their teenage years, adult life, and then suddenly being told they would have to register. Again, I think this is very important legislation. What kind of numbers do you think we will be looking at in terms of will those people have to go before the juvenile court or will they just not be subject to the registration if this bill passes and the stay is lifted?

Brigid Duffy:
We have some youth who are hitting their 21st birthdays, and we keep waiting for legislation to pass or waiting for the Supreme Court to give us an answer. We will have a handful. In Clark County, for most cases—once the stay was lifted, I took all of those cases off the shelf, and only what we at the district attorney's discretion saw, I said I could not renegotiate this at the time. I called the victim and the victim's parents—just the nature of the offense. There are the opportunity ones, which I call "basements" because I am from the east coast, and we do not really have basements here.

As Assemblyman Pickard said, we are handing these kids all these devices with all this pornography on them. Or grabbing a kid at a store and pulling him into the bathroom and sexually assaulting him. Those cases, grabbing a kid in a store and sexually assaulting him, are still sitting on my shelf hoping for a bill, so the judge will make the call. We have a handful left in Clark County that are going to have to get pulled. Other than that, I do not think there are that many left.

Assemblyman Ohrenschall:
Your work in clearing up the calendar for that first group is commendable.

Assemblyman Watkins:
I do not want this to be interpreted as a loaded question. I do not practice in this area; I do not understand a lot of the aspects of it, but when we are looking at section 12, subsection 5, and we are determining whether or not the child has been rehabilitated or poses a threat of safety to others, I am having a hard time figuring out why a victim impact statement would in any way be a factor as to whether or not that child has been rehabilitated. I certainly understand it on sentencing because the impact of the crime certainly should weigh on what this ultimate sentence would be. But if the sentence has happened and we are looking at this

child now and saying, "Are you rehabilitated," whether or not someone gives a victim impact statement does not seem like those two match up. You are in the trenches, so I would love to hear your thoughts on it.

Brigid Duffy:
A majority of our cases are intra-familial, so while I understand your point completely that it is post-sentencing, and victim impact statements are given at the time of sentencing, for most of our intra-familial cases, I would think that the victim statement would still carry weight because they are within that family potentially, and they still have some knowledge of issues that have gone on that maybe criminal justice or juvenile justice do not know about. I am trying to think of some examples off the top of my head. In my mind, I envision that they are so intertwined that usually the victims and the subject minors that the victims' voices should be heard at all stages of the proceedings. I feel that we are giving them this opportunity—since we are going through all this, we should never just let the victim be forgotten.

Assemblyman Watkins:
Would a "may" rather than "shall" in regards to that particular element make more sense? We are telling the court they must listen to the victim impact statement and consider it as a factor in deciding whether or not this kid is rehabilitated or not. I think there are other factors here where that would fall in place as public health and safety in talking about it. But to say that it is a must every time seems to me an overreach. Maybe we should give some discretion to the court; but again, you are there.

Brigid Duffy:
You are the policymakers, and I am the surprise presenter of the bill. I sit here from the district attorney's office, and it is my job, above all, to protect victims in the community. Here I am, presenting a bill to tell the other side of my table, my juvenile sex offenders, that we are going to give them these opportunities. I am in a bit of an odd situation. I would fight to keep that "shall" in there. I do not know what my partners on the other side would say to it. I am trying to be a neutral presenter, and I did not create the language in this statute. For me, as a prosecutor, if we are considering all of these things and any other relevant factors that the court wants to hear, I am going to fight to make sure we do not forget the victims on those cases in which there are victims that will even come out to say anything. Sometimes they just want to move on.

Scott Shick:
Jurisprudence calls for putting all those things on the table, including the victim, and recognizing them—I think it is a must—not for the potential to elongate that particular offender's sentence, but to bring to everyone's attention the trauma that the victim went through and that it is not forgotten. If they do show up, it can be mentioned. I give our judges more credence and respect for the decisions that they would make on the progress of a particular juvenile sex offender based on the nature of the crime and then what they are

doing. Are they functioning in the community well? Are they operating well? Are clinicians giving them a clean bill of health in respect to their mental status, impulses, family system, and education?

Yes, I think victims have a right—it needs to be out there. That is coming from a juvenile probation officer's standpoint, because I think it is good for the victim to hear it frequently, specifically the maturity factor of some of these kids—they need to understand the impact they have on others, not only in that particular circumstance, but other circumstances in their life.

Assemblyman Watkins:
From a practical standpoint, if we are going to entrust our judges to make these types of determinations, as we are, then by giving them a list of factors and a "shall," we are tying their hands. Maybe they are all "mays." If we are going to put in this section, they have to provide findings of fact, conclusions of law—which I agree with—now every order has to go through each of these factors. While I appreciate the answer that we have great judges doing great things, and I agree with that we are pigeonholing their decision-making into a certain set of factors—acknowledging that we have one there that says "or any other factors," but they all hit (a) through (h) first. Do you think that all of them as a "may" makes more sense, or would you still stick with "shall?"

Brigid Duffy:
This is the exact same language from Senate Bill 99 of the 78th Session two years ago. The factors that were determined were all factors that were discussed when we sat down as a multidisciplinary team, including the probation department, public defenders, district attorneys, and our hearing master—who regularly heard the cases—to come up with what we already pretty much negotiated, as a community, to be the important things. Ultimately, you are the policymakers. I would say with confidence that these factors were all previously vetted with a multidisciplinary team and we said, "We all agree. This is what the court shall consider." We want the court to consider these things. That is the team from a couple of years ago, and these are all the same factors.

Assemblywoman Krasner:
I am glad you would fight to make sure the victim's statement is in there. When a judge is considering factors, we cannot forget about victims. That is what it is all about.

It is good that we treat juveniles differently than adults. We want to give them every chance to rehabilitate, but with this bill, would there be no difference between a 15-year-old who urinates in public and a 14-year-old who is nearby and sees that person doing it? Or a 15-year-old who rapes a 14-year-old student as part of his gang initiation?

Brigid Duffy:
The urinating in public with a child nearby would not fall under this bill, but gang raping someone would. That is a sex assault. The age of the perpetrator you said was how old?

Assemblywoman Krasner:
A 15-year-old boy who rapes a 14-year-old student as part of his gang initiation.

Brigid Duffy:
The sex assault would fall under the sexual offense, and then being at least 13 years of age, and the offender was not more than 4 years older than the victim. I believe it would still fall in—it would also potentially be an aggravated because of the battery with the intent to commit the sex assault if it was part of a gang rape situation. Then you would up that to the aggravated sexual offense. I would be confident under the statute that they would be required to register at the discretion of the court.

Assemblywoman Krasner:
Would you give me a similar scenario when they would not be required to register as a sex offender at the discretion of the court if it is a gang initiation rape?

Brigid Duffy:
Would you please repeat that question?

Assemblywoman Krasner:
We are talking about the scenario when, as in this bill, the court has discretion as to whether they have to register as a sex offender or not. Would you give me a scenario where, as a gang initiation, someone under 18 years old rapes someone else, and the court would be allowed to decide that they do not have to register?

Brigid Duffy:
If I am standing in the shoes of a defense attorney, I guess the argument they would make not to register is if he is being provoked by the older gang members to do this. It was not necessarily voluntary, so they would consider that. Potentially the child may come back as a low risk to reoffend or the psychological or psychiatric profile would come back with a low recidivism rate. The court would have to look at the child's history. If we are talking about gang involvement, he might have a violent history.

The court would weigh all of those things and ultimately decide whether or not that child would have to register. On the other side, we would be arguing that they are a high risk to the community, and they would have to register because of the nature and gravity of the offense. The fact that they are using rape as a form of gang initiation, the violence of it—we would all be arguing different things at that point under the factors. It would be up to the judge and that is why we would have appellate work. I cannot really put myself in the shoes of the court at that moment to decide how they would handle it.

Assemblywoman Krasner:
With this bill, if it passes, there would be a situation where someone under 18 years old rapes someone else, but the judge gets discretion as to whether they have to register or not?

Brigid Duffy:
Yes. That is what this bill does. It gives the court the discretion to determine whether or not they have to register.

Assemblyman Fumo:
First of all, I want to compliment you for the job you are doing today and for not being prepared to do this. I think it is tremendous.

I am looking at sections 5 and 6 and the definition of "aggregated offense." How difficult or easy is it, or what is the definition of being adjudicated a delinquent? Do you have statistics that show once you are an adjudicated delinquent, we need to monitor you more closely so that any sex offense, once you are an adjudicated delinquent, would make it an aggravated offense?

Brigid Duffy:
What this is referring to in section 5, subsection 6, applies if you have already been adjudicated for a prior sex offense. It is aggravated if you are already adjudicated on one of these other sexual offenses.

Assemblyman Fumo:
It is not just being a delinquent; any sexual offense makes you an aggravated sexual offense. It is having a prior sexual offense, period.

Brigid Duffy:
Correct. The distinction is ". . . placed under the supervision of the juvenile court . . . ." I believe that refers to if they are incompetent. There are times we may not have been able to adjudicate a child initially, but they had to be under supervision of the juvenile court because they could not enter a plea. When they cannot enter a plea, they cannot be adjudicated. If they have prior sex offenses, they may not have been guilty or adjudicated, but they would still be under supervision because they were not at competent stages. We arrest and bring in children who are 8 and 9 years old for certain sex offenses—lewdness and sex assault—but they are not competent, but we get them services, so they are under supervision of the juvenile court. They were 9, 10, or 11 at that time and now maybe they are 16 or 17, and they have committed a subsequent sex act after treatment. That would make it aggravated. That is sex act aggravated.

Assemblyman Hansen:
Senate Bill 99 of the 78th Session passed this Committee unanimously, passed the Assembly floor unanimously, passed the Senate unanimously, and the part that was in the bill that the Governor objected to has been removed, correct?

Brigid Duffy:
Yes.

Assemblyman Elliot T. Anderson:
You said something about the precedence of factors based upon the victim being an unknown, in paragraph (g). I just want to clarify for the record that those factors have equal weight under the provision, so it is clear we are not trying to tell the court which one to weigh more or not, and that it is up to the court. That is your understanding as well, correct?

Brigid Duffy:
Yes. I hope that the fact we did not have someone of your stature down here presenting this bill does not take away from how important this bill is to your juvenile justice community. I hope my presentation did not completely mess it up. It is a really awkward situation for the district attorneys to be in. I think my American Civil Liberties Union of Nevada (ACLU) or public defender partners should have been up here presenting it, and I could have agreed. This bill is really important, and I do not know why we did not have a presenter for it. We have all been waiting for it to come out. Please forgive me for fumbling through it this morning.

Scott Shick:
I would like to mirror the same apology. I thought someone would be up here presenting it, and we would be a liaison to them and support them. I want to share with the Committee that the juvenile justice administrators across the state support this legislation and feel it is necessary in order for us effectively to deal with the sex offenders that walk into our jurisdictions.

I would like to speak to the funding portion briefly. We worked on it as did the Supreme Court Commission on Juvenile Justice Reform. That funding is the result of what the jurisdictions requested for front-end programming, which would improve their capacity to implement the juvenile justice system in their particular jurisdictions. It could be the mental health-clearing house in Clark County, The Harbor. Those are very important to the jurisdictions, and I am not quite sure why it was piggy-backed onto this, but potentially, I think it would be passed onto a finance committee. It is important, and the juvenile justice administrators are working hard on the front end to keep kids out of the system and exercise due process on their behalf.

Chairman Yeager:
Thank you for being willing to present the bill this morning. That was very worthwhile for the Committee. We will open it up for testimony in support of A.B. 395.

Susan Roske, Private Citizen, Las Vegas, Nevada:
I previously worked for the Clark County Public Defender's Office. I recently retired from the county where I worked in juvenile defense for almost 30 years in Clark County, and I have lived with this law for the past 10 years with many sleepless nights caring for the impact this is going to have on my young clients. Prior to 1997, juveniles adjudicated for these offenses had their records sealed automatically when they were 24. In 1997, legislation passed for the first time, carving out juvenile sex offenders. The law was put into place where a child who was an adjudicated delinquent for certain sex offenses, upon turning

21 would have a juvenile court hearing to determine whether they should register and be subject to community notification as if they were an adult offender. That system was in place at the time Assembly Bill 579 of the 74th Session passed in 2007.

What Assembly Bill 579 of the 74th Session did was say to all the children who were adjudicated under previous laws—those that went to a hearing at 21 and were told, "You have been great. You do not have to register. All is forgiven. Go on with your life," to all those whose records have been sealed when they turned 24 all the way back to 1956, "Now you are going to have to register as an adult sex offender. All is not forgiven after all."

I have had calls from people in the community. What stands out most is a gentleman now in his 70s asking me, in tears after reading the paper, if he is going to have to register as a sex offender. He is about to move in with his son and grandchildren, and just could not put his family through that if he is going to have to register as a sex offender for something he did when he was 15 years old. This is the law that is presently on the books. If this body does nothing today, this law will go into effect. Every child who has been adjudicated for certain sex offenses back to 1956 will be subject to registration and community notification.

I want to emphasize that the narrow offenses which are listed that are subject to registration and community notification will be either tier 2 or tier 3. No juvenile offender will ever be labeled a tier 1. They are either tier 2 or tier 3. That means children 14, 15, 16, and 17 years old will have to go down to the sheriff's office every 90 days or 120 days; update their information; get their fingerprints taken; get their picture taken; update their address and school; if they are driving, their car information, et cetera. These are children who are responsible for getting themselves down to the sheriff's office for this registration every 90 days or 120 days.

The legislation you have before you today is so extremely important. It says that all children who are adjudicated as a sex offender must register, but the juvenile court can decide to relieve them of the registration and community notification if they show, as pointed out, by clear and convincing evidence and all those factors. If they are an aggravated juvenile sex offender—a very, very narrow category—that takes the definition straight out of the Adam Walsh Act. The Adam Walsh Act out of Congress said, "If you are 14 years of age or older and you commit an aggravated sex offense or render a victim unconscious in order to commit a violent sex offense, you must register." So the aggravated sex offender is carved out to match Adam Walsh and add repeat offenders. If you have been previously adjudicated delinquent—that is basically saying "convicted of the offense," and you commit a new prior sex offense, you are going to have to register and that aggravated category cannot be relieved by the juvenile court. That is mandatory.

There are some protections for kids in here that are very important. I agree with some of the comments that maybe a "shall" should be a "may." Maybe it should be by a preponderance of the evidence and not clear and convincing. But this is so important, even with the more

stringent language, I urge you to pass this legislation. We cannot go on indefinitely getting stays out of the Supreme Court. If Assembly Bill 579 of the 74th Session goes into effect, and this is not passed, lives are going to be ruined.

As many of you have noted, kids are different, and we need to treat them differently. Juvenile sex offenders are so highly treatable. For the most part, they are great kids that did one bad thing, but their prognosis for rehabilitation is very, very good. If we were to put them on the community notification website, not only do they lose any motivation to go to treatment, they will probably be ostracized and bullied, they will probably drop out of school, and many will commit suicide. We have seen in other states what happens to kids who are on the registry, and it can be horrific. With the flaws, I urge you to pass this legislation. If you see fit to make some minor changes, I would be pleased to see some "mays" instead of "shalls."

Dave Doyle, Director of Operations, Eagle Quest, Las Vegas, Nevada:
I am a foster parent of 13 years. I have four juvenile sex offenders who actually physically reside in my home with my wife and me and our small child. I am in a unique position. This is very near and dear to my heart. I am also the director of Eagle Quest. We probably have the largest programming in-group homes and foster homes for juvenile sex offenders throughout the state of Nevada. I am highly supportive of A.B. 395. These are the kids who eat at my table at night. These are the kids who sleep in my home and reside with me personally. They are some of the most amazing young men you would ever meet. Many of these kids were sexually molested themselves at a young age, and they were sexually reactive. They definitely do not need lifetime registration or registration for an extended period of time. We have a high rate of success treating juvenile sex offenders. Typically the rate of recidivism, based on different studies, is between 3 and 7 percent, indicating that these children are highly amenable towards treatment.

I am highly concerned for the juvenile justice department when it comes to resources. There is not a group of people standing in line to become foster parents for sex offenders, as you can imagine. We have difficulty just getting regular foster parents in our town, so I do not want my home on a map with a little red blip indicating where I live. I am also concerned about the safety of my biological children, who could easily be mistaken. This is just a sentence for these kids if they were to register, so I truly appreciate A.B. 395 and want to verbalize my support for it.

Chairman Yeager:
Thank you for being a foster parent. It sounds like quite a challenge. As everyone on this Committee knows, we simply do not have enough people who are willing to step up and be foster parents. Thank you so much for what you do and for your testimony this morning.

John (Jack) Martin, Director, Clark County Department of Juvenile Justice Services:
I appreciate the opportunity to show my support for A.B. 395. I want to thank Director Duffy and Chief Shick for taking the lead. There are three very distinct parts of this bill. One being the sex offender portion; the other being the ability to share information; and

the third part being the funding for front-end services. I do not want to repeat any of what my colleagues are saying, but I will say that Clark County Department of Juvenile Justice Services is completely supportive of all three portions of the bill, and I think all three of those parts will allow us as directors, chiefs, and proprietors in the juvenile justice field in Nevada to really move us forward and allow us to do the things necessary to help children and keep our community safe.

Frank W. Cervantes, Director, Washoe County Department of Juvenile Services:
I would like to register my endorsement for this bill. I think it strikes a reasonable balance between public safety and rehabilitation specific to this population. We have been working on this project for a while, and I think it is a good time.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
I would like to give a huge silent applause to Ms. Duffy for her excellent job running through this bill. We are here in support of this today. I worked with Mr. Shick over the summer as a member of the Supreme Court Commission on Statewide Juvenile Justice Reform on this piece of legislation. Many of those conversations were sometimes emotionally elevated, but we came to great consensus on this bill, and we believe this maintains the status quo as far as juveniles are concerned and allows for an assessment of particular factors that we all came to the table to decide on.

The factors that we are looking at—perhaps Mr. Shick can provide some more clarity—but those factors mimic what is present in Megan's Law, the status quo of sex offender laws in the state and how that is applicable to juveniles within the state. Those factors, as Assemblyman Anderson mentioned, are to be weighed equally. One should not outweigh the other so it is an appropriate assessment. While our goal at the American Civil Liberties Union of Nevada is to end Adam Walsh in the Adam Walsh Act because it is a due process nightmare, we have to take appropriate steps forward; otherwise, our juveniles are going to suffer. For these reasons, we support A.B. 395, and we ask that you do too.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
We also want to be on the record registering our support for A.B. 395. I also want to applaud Ms. Duffy's efforts this morning. I think she did a fantastic job in outlining this bill. For full disclosure, I am not a practitioner in this area. I just started juvenile law in my office in January before the session started, and I have yet to handle one of these types of cases, but I will after the session.

I can tell you, as an adult practitioner with 14 years of experience handling adults that may be placed on a registry, how arduous, cumbersome, and awful it was. They would all tell me that "It was the beginning of the end for me, Mr. Sullivan, when I was placed on the registry pursuant to *Nevada Revised Statutes* 179D. That is when my life really started to go down the tubes. I could not follow the mandates, even though I tried." It became a snowballing effect for the adults, so juxtapose that with children. I offer my full support for A.B. 395.

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:
We echo the comments of our colleagues and support the bill as well.

Chairman Yeager:
Is there anyone else in support of A.B. 395? [There was no one.] Is there anyone who would like to testify in opposition to A.B. 395? [There was no one.] Is there anyone in the neutral position? [There was no one.] I would like to invite our presenters back if you would like to make any concluding remarks or you can waive. I think the concluding remarks have been waived. I appreciate the efforts of bringing this bill forward. I know people worked very hard on Senate Bill 99 of the 78th Session and thought they had something that was workable, and I think it came as a disappointment with the fate that that bill suffered. I am encouraged that we are back at it again. I would like to thank both of you for pinch-hitting this morning; it was very helpful to the Committee. At this time, we will close the hearing on A.B. 395, give people a moment to leave the room, and we will get to our next bill in just a minute.

We will formally open the hearing on Assembly Bill 314.

Assembly Bill 314: Revises various provisions relating to estates. (BDR 2-738)

Neal Tomlinson, representing Probate and Trust Law Section, State Bar of Nevada:
I have two distinguished members of the State Bar with me today. They are also co-chairs of the Probate and Trust Law Section. In Carson City, I have Ms. Julia Gold with me. She is an AV-rated tax and estate-planning attorney from Reno and has been practicing for 25 years. She has a law degree from Northwestern School of Law and a master of laws in taxation with honors from Golden Gate University. She is also a certified specialist in estate planning, probate, and trust law. In Las Vegas, we have Mr. Alan Freer. He is a partner in the law firm Solomon Dwiggins and Freer. He is also an AV-rated attorney. He has been practicing in all areas of probate and trust law for 16 years, and has a juris doctor degree from the University of Utah College of Law. With that, I will turn over the first half of the presentation to Ms. Gold, who will present section by section very briefly, and then Mr. Freer will pick up the remaining half of the bill.

Julia S. Gold, Co-Chair, Probate and Trust Law Section, State Bar of Nevada:
The Probate and Trust Section of the State Bar of Nevada is comprised of attorneys throughout the state. We have worked together since 2007, and the goal is to try to improve the legislation in Nevada that deals with trusts and estates, primarily titles 12 and 13, to reduce any ambiguities, hopefully reducing the impact on the courts and litigation. We are all headed for some sort of administration, whether it is trust or estate administration, so it benefits members of the state of Nevada to have laws on this as clear as possible.

Assembly Bill 314 does not provide any substantial new legislation. Most of the sections just address ambiguities that we, as practitioners, have run into. Most of the sections are really clarifications. For clarification for the members of the Committee, this bill was vetted by all

the other sections of the State Bar. It has also been approved by the Board of Governors, so we have the approval of the State Bar Board of Governors to proceed as a section with this bill.

We are prepared to go through the bill section by section (Exhibit C), but because of the prior bill and the length of time it took to go through it, if people would prefer that we address questions, we can do that, or I can go as quickly as possible through the sections. Do you have a preference?

Chairman Yeager:
Thank you for asking, Ms. Gold. I think it would be helpful to go through the sections as quickly as you can. I know it is quite a long bill. I think between the presentation and testimony, we have a good 45 minutes or so to be able to get through everything, so if you would not mind doing that, I think it would be helpful.

Julia Gold:
Section 1 is a small amendment to *Nevada Revised Statutes* (NRS) 21.090. It addresses a change with what is exempt (Exhibit C). *Nevada Revised Statutes* 21.090 sets forth what assets are exempt from a creditor, and this bill changes the amount for individual retirement accounts and similar retirement accounts. Instead of $500,000, it would allow for a $1 million exemption. It was relayed to me that there was a question with respect to why that change was made. Understanding that that question is out there, I want to bring to the Committee's attention that 401k plans are 100 percent exempt from creditors. Once you get over into IRAs or similar plans, those plans are no longer exempt for the full amount. Because we no longer really have employer-sponsored pensions and because a lot of times IRAs can make up an individual's entire retirement account, and because people are living longer, we thought it was appropriate to make this change and increase the exemption amount. Hopefully that answers the question that was out there, but that was why the Committee increased the exemption amount.

Sections 2 and 3 address NRS 111.721, which deals with nonprobate transfers. Those are transfers that pass through beneficiary designations or titling, and they do not go through a probate. One of the reasons why so many of these sections have been drafted is because there was a substantial amount of litigation with respect to the meaning of the bill. Section 2 clarifies that a trust or estate that gives a power of appointment is not subject to the nonprobate transfer provisions. Section 3 addresses that certain plans—such as pension plans, retirement accounts, qualified tuition programs, and life insurance proceeds—are also exempt from nonprobate transfers.

Sections 4 and 5 are two new sections that were also drafted with the Family Law Section. There have been some issues over the past with irrevocable trusts and funding of those trusts. These sections were drafted to address some of the Family Law Section's concerns with respect to irrevocable trusts, and these clarify that the trust can specify that property

transferred into the trust is community property, and in the event of divorce, that the court in a divorce proceeding may make equal disposition of those assets that were transferred into the irrevocable trust.

Section 6 deals with NRS 132.135 and it addresses the expenses of administration and clarifies that expenditures properly incurred by the personal representative for the maintenance or preservation of an estate include expenses of administration. The reason this is necessary is that when someone prepares an estate tax return—(Internal Revenue Service Form 706)—we can deduct expenses that are necessary for administration, and oftentimes, the Internal Revenue Service looks to state law and the state law is silent on it. Sometimes we will not get those deductions, so that is why the clarification was made.

Section 7 clarifies the definition of a fiduciary. It specifically exempts trust protectors and trust advisors unless the term is otherwise included as a fiduciary within the trust document. These provisions were added in 2009, and there has been a lot of ambiguity whether those people are put in the trust as a fiduciary or whether they just have a very limited role. This clarifies that they are not acting as a fiduciary unless the terms of the trust so specifies.

Section 8 clarifies the scope of the application of NRS 133.130 and allows extrinsic evidence to be introduced concerning the manner in which a testator may revoke a will and ascertain whether the revocation of that will revive a prior will. It allows the court to determine what is going to be taken into account for the revival of a prior will.

Section 9 clarifies NRS 136.240. It essentially conforms with what common law is on this provision. It states specifically what information is needed to probate a lost or destroyed will. It clarifies the information that must be presented in the petition and that there must be two witnesses to prove the content of the will. I saw that there was one typo in our summary. It says, "A lost or stolen will," and it should say, "a destroyed will."

Sections 10 and 41 deal with our no-contest clause. This was also enacted in 2011. What happened was the legislature enacted legislation that essentially affirmed that a no-contest clause would be respected in a testator's will or in a settlor's trust. All this section says is that public policy shall be taken into account, and that the public policy in the state of Nevada has been to respect the no-contest clause, but there is also public policy that is against forfeiture. This section specifically states that the no-contest clause will be strictly construed. There are exceptions to the no-contest clause, so it allows a beneficiary to file an action to make a fiduciary perform the acts for which they are appointed. There are exceptions to the no-contest clause.

Section 11 clarifies the post-probate will contest procedure, and it conforms the post-probate will procedures to pre-probate with respect to the issuance of a citation. It is a very small change.

Section 12 amends NRS 139.135 and extends a 90-day moratorium on heir finders to 180 days. I do not know if any of you are familiar with heir finders, but they can be very

expensive. They get people to sign away a big portion of the estate to which they would be able to receive. This allows the extension of time before an heir finder can come into play.

Section 13 amends NRS 140.010 and it expressly allows a special administrator to be appointed to protect the rights and privileges of a decedent in addition to preserving the decedent's estate. In the past, we have had to state very specifically what powers will be included and this will include a general power.

Section 14 conforms the express language of NRS 140.030 to current practice by expressly authorizing a court to dispense with a personal representative's bond in lieu of a blocked account or waive the bond upon other conditions. What has happened in the past is that bonds have become more costly and time-consuming to obtain. We are usually trying to get special administrators appointed for some necessary reason that is quicker than we would otherwise have to get them appointed for a personal representative. That is why we came up with an alternative. This is what the courts have been doing, but this confirms that they have that power.

Section 15 clarifies the procedures in NRS 142.020 for depositing estate assets in a blocked account in lieu of posting a bond.

Section 16 clarifies NRS 143.020 to expressly recognize that a personal representative is authorized to maintain and preserve all estate assets as opposed to real property under the control of the personal representative. There are exceptions in there for estates subject to a guardian's control or that are subject to a homestead.

Sections 17 and 18 deal with general time frames for closing an estate. Usually, you have to either submit a report, and you are required to close an estate within a fairly limited period of time. This gives an extension when you have litigation occurring or when you have an estate tax return. Oftentimes, you do not even get your estate tax returns audited for up to three years.

Section 19 clarifies the provisions of NRS 143.050 to apply active business operations of the decedent and prohibits the personal representative from receiving separate compensation for the operation of such businesses absent order of the court or the terms of the instrument. What I have seen on several occasions is you have a personal representative taking their statutory fees, but then they are also double-dipping and getting fees for offering them business. The fees can get pretty extravagant. This is trying to make sure that they are not getting paid two fees for doing the same thing.

Section 20 clarifies the court's authority and procedure for entering restraining orders against the personal representative if the personal representative is not doing their job. It is subject to the appointment and/or property over which it exercises in rem jurisdiction. It is generally going to be any petition that is brought before the court where the estate is administered in the state of Nevada.

Section 21 amends NRS 144.010 to afford additional time to file an inventory and appraisement or record of value. This says, ". . . for estates exceeding $1 million." We had that in there and then it was deleted. It gives the ability to extend the time to file the inventory and appraisal. It is very rare that someone can get an inventory and appraisal. The old law used to be 60 days and now we have it at 120 days. Especially in larger estates, it is actually pretty hard to get an inventory and appraisal on file within that short period of time.

Section 22 amends NRS 144.020 and reduces the administrative expenses by allowing a personal representative to provide a verified record in lieu of appraisement for household furniture and furnishings less than $30,000. That is being proposed in order to cut down on the expenses. It can be expensive to appraise tangible personal property, so if the value is going to be less than $30,000, they do not have to undertake that expense.

Section 23 amends NRS 144.080 to address the situation where the personal representative failed to file an inventory. This section expressly authorizes the court to order the personal representative to pay the fees and costs that an interested person incurs to enforce the filing of an inventory and appraisal when the personal representative has failed to do so.

Section 24 amends NRS 147.030 to afford all creditors the option of filing a petition for summary determination of a rejected creditor's claim in the probate court in lieu of filing a civil lawsuit. Right now, if a creditor's claim is rejected in the probate court, then they have to go to prove their claim up; they have to go and file a separate action under a complaint in the regular district court. This is trying to provide a summary proceeding to prove up their claim.

Section 25 amends NRS 147.050. This section currently permits a mortgage holder to enforce a mortgage against estate property without filing a creditor's claim if the holder of the mortgage expressly waives all recourse against any other property of the estate. This amendment also affords the same for a lienholder, so you have the same procedure if they are going to forgo against any other claim to the estate.

Alan D. Freer, Co-Chair, Probate and Trust Law Section, State Bar of Nevada:
Sections 26 through 28 amend NRS Chapter 148 regarding the sale procedures for real property. Section 26 allows for the posting of a notice of sale in an alternate listing service, such as a public listing service as opposed to just the newspaper. The purpose for that is the vast majority of real property sales in probate occur from public property listings, not from newspaper notices, and this also provides a thirty-day public listing as opposed to the two-week newspaper listing.

Section 27 allows the court to waive the requirement of an annual appraisal on real property for good cause shown. This is to reduce the cost of the estate in property-rich or cash-poor estates. Section 28 clarifies that in an overbid process, the winning bid takes subject to the exact contract that was proposed and brought to the court, accepting the price and the buyer information. It also omits short sale purchases from the overbid process. So the first part of

section 28 conforms expressly by statute with what has been occurring for a number of years in the probate court with regard to substituting a contract.

The second part actually covers new issues that have arisen in the probate court on account of the recent property crash. Banks will preapprove a certain buyer who has already been qualified for credit purposes, and we have had situations where someone attempts to overbid on a short sale process and then the bank subsequently refuses to honor that buyer, thereby requiring the estate to go through a whole new process to sell the property.

Sections 29 through 33 are grouped together. During the last session, we overhauled the trust accounting requirements for both testamentary and non-testamentary trusts. There were some cross-references and loopholes that we needed to close up, so these sections do that, in addition to bringing testamentary trusts more in line with non-testamentary trusts.

The current practice of section 29 allows non-testamentary trusts not to be under constant court jurisdiction, but on an as-needed basis when the trustee or beneficiary has a problem where the trustee requires instruction. This section brings that same procedure in line for testamentary trusts in live estates; however, subsection 2 of section 29 does allow the old current system of being under constant court supervision to be in place as requested by a trustee or beneficiary. The purpose for this was that it was costly and oftentimes needless to require constant court intervention for testamentary trusts. Especially since this process has been working fine for non-testamentary trusts, we felt that we would bring it in line as to the testamentary trusts.

Sections 30 and 31 cross-reference NRS Chapter 165 requirements regarding the accounting. The lack of a cross-reference to NRS Chapter 165 created a legal loophole where it could be argued that since NRS Chapter 153 refers back to the accounting requirements, that a testamentary trust would be under a different accounting requirement, and that was not the intent of the bill during the last session.

Section 32 clarifies the trustee's fee process for testamentary trusts and brings it into line with that of non-testamentary trusts to avoid legal loopholes and ensure that the court retains ultimate supervisory control as needed. Section 33 clarifies the procedure in which a trustee of a testamentary trust may resign and receive court confirmation. This was needed for clarity to allow a trustee to resign and further expressly authorizes procedures of NRS Chapter 164 to be used in situations where a court blessing or resignation was required. For a little background, NRS Chapter 153 creates these loopholes because NRS 164.005 expressly incorporates NRS Chapter 153 into non-testamentary trusts, so the interplay between NRS Chapter 164 and 153 is very important, and that is why we went through and included these cross-references.

Section 34 adds a new provision in NRS Chapter 155 governing general probate and trust procedures to expressly allow the court to shorten or lengthen deadlines upon a showing of good cause. This gives the court flexibility when handling administrations of trusts, and the state's current civil practice allows the court the same power with respect to the rules of civil

procedure and criminal practice. Examples for allowing extensions of deadline would be time to serve a citation if a person could not be located or, more common, is moving an accounting period where a trustee died in the middle of the year to allow that accounting to be brought within a calendar year. For example, if a decedent died in September, it would allow the court to have an accounting in 15 months to bring it in line so it is a calendar year to match up with tax returns.

Section 35 amends service of citation provisions of NRS Chapter 155 to allow for a service by certified mail with a return receipt requested. That is similar to what is occurring under NRS Chapter 159. This eases administration costs by avoiding process servers in situations where addresses are known.

Section 36 amends NRS 162.280 to codify the common law doctrine of offset as a basis for withholding distributions from a beneficiary. Common law allows a trustee to offset a beneficiary's distribution for such things as loans payable to the decedent or the trust. This codifies that concept, so the issues do not have to be litigated over and over again.

Section 37 amends NRS 162.300, which permits fiduciaries to form entities to hold money or assets within their care. This amendment incorporates the ability to create trusts along with those other entities and gives the fiduciary more flexibility.

Section 39 amends NRS Chapter 163 to create a new section allowing for the creation of special purpose trusts. I know there was a question about purpose trusts, so I will spend a little more time describing the purpose for this. Purpose trust laws have already been passed in Delaware, South Dakota, and Wyoming. These purposes, instead of having an ascertainable beneficiary, which is a person, these purpose trusts are designed for a specific purpose. The examples of these are primarily used for maintenance of gravesites, family property such as memorabilia, collections, family homes or long-term buildings, property, or maintenance. This allows trusts to be created for those specific purposes as opposed to giving the money to a beneficiary or a trustee and requiring them to do that.

Section 40 adds a new section to NRS Chapter 163 to recognize that ex-spouses and domestic partners of a settlor's descendants are cut off from receiving benefits or administering the trust the same way that a settlor's ex-spouse would be. This brings it into line with laws already in place with respect to settlors of trust and passes it down the line as to the settlor's descendants.

Section 41 was already discussed by Ms. Gold, which is the same as section 10. Section 42 amends NRS 163.002 to allow a declaration by a property owner that someone else will hold that property as trustee and clarifies the types of declarations that are acceptable. This expressly incorporates the California case of *In re Heggstad* [16 Cal. App. 4th 943] and its progeny. Nevada has been following this in the lower courts with respect to declarations of trust and this further clarifies by statute that common law.

Section 43 amends NRS 163.006 to cross reference the special purpose trust discussed in section 39. Section 44 amends NRS 163.008 to clarify the statute of frauds regarding declarations of property and trust. There is ambiguity involving the statute of frauds with respect to oral declarations of trust or declarations of trust in writing. We have had situations where a piece of real property was not specifically identified on a schedule of assets within a trust, so it identifies a piece of property where all the assets are in writing. The courts will not recognize that as a proper transfer under the statute of frauds for the trust, so this fixes that.

Section 45 amends NRS 163.027 to recognize situations where non-pro rata distributions from a trust may be withheld where authorized by law. Section 46 amends NRS 163.115 to clarify the court's authority to enter restraining orders to preserve trusts and estate property. This is basically similar to section 20, which was discussed by Ms. Gold. This is essentially a trustee temporary restraining order (TRO) provision for the court, and it is provided there to recognize the court's inherent inequitable authority to make those types of orders expressly by statute. Under current statute, one of the problems we have is that under current TRO standards, having cash in a bank account is often considered a factor against issuing a TRO. This just fixes that because oftentimes, money held by trustees is a significant asset and gives the court the basis to enter a ten-day TRO to get things sorted out to make sure we do not have bad trustees stealing money.

Section 47 amends NRS 163.130 to recognize that a trust instrument may provide for the exoneration, indemnity, and reimbursement of a trustee in addition to other grounds. Current law allows for such exoneration, indemnity, and reimbursement, and this allows the trust specifically to recognize it. This is important because in Nevada, trusts are sued by bringing suit by and through the trustee as opposed to estates or corporations. With respect to allowing the trust to indemnify that trustee who is being sued in such capacity, it is important for the trust document to be able to do so.

Section 48 amends NRS 163.4185 to amend definitions regarding trust beneficiary distribution standards. The purpose for this was making sure that state law does not disqualify federal tax deductions or exemptions, primarily the marital deduction. This statute makes sure that the definitions of state law are in line with federal tax law.

Section 49 amends Nevada law regarding decanting of trusts to expressly authorize decanting of special needs, pooled, or third-party trusts. Nevada seems to be the national leader in decanting statutes. California state planners are increasingly domesticating California trusts in Nevada to allow for decanting under Nevada law. Statutes such as this keep us in the forefront, and the reason for these changes specifically is that it allows for instances where next generation beneficiaries require special needs through disabilities, et cetera, and it allows these trusts to be decanted, so they still qualify for assistance and still have access to those trust funds without violating federal law.

Section 50 amends NRS 163.610 to authorize a fiduciary to classify gains from the sale or exchange of trust assets as income for tax purposes. This is primarily a taxation

classification. It specifically clarifies capital gains as opposed to general sale of assets already recognized under that section and this ties in with the Uniform Principal and Income Act and the powers associated with that under NRS 164.795 and similar statutes.

Sections 51 and 52 clean up NRS 164.010 and 164.045 to clarify situations in which a trust is domiciled in Nevada and venue purposes and instances where a court acquires in rem jurisdiction. Section 51 is now amended to keep all the venue domicile and jurisdiction elements within one statute as opposed to having to flip back and forth between the two. It was previously split between NRS 164.010 and NRS 16.045, which caused some confusion. Section 52 deletes the language from NRS 164.045 that now appears in NRS 164.010. It also adds in the constitutional protection in subsection 3 regarding the rule against perpetuities. I was made aware that this rule against perpetuities may have been a question as to why we included it. Without including a rule against perpetuities provision, trusts created in another jurisdiction and then subsequently moved to Nevada could be determined to have unwittingly violated the rule against perpetuities and become void if it had an original perpetuities period longer than what Nevada allows. *Nevada Revised Statutes* 111.1031 allows 365-year statutes, so the odds of that violating the statute are small, but the protection there is necessary because what we do not want to have are trusts coming into Nevada and suddenly self-destructing because they unwittingly violated our rule against perpetuities.

Section 53 amends NRS 165.030 to switch from requiring a trustee to automatically serve an inventory in 75 days to a situation where a beneficiary request triggers that request for an inventory, and that request can be made within 60 days after the trustee appointment. This generally affords the trustee more time and minimizes the reporting requirements in instances where the beneficiary and trustee are in close contact while conversely affording a beneficiary an absolute right to request information on a 60-day period in situations where the beneficiary may be less trusting of the trustee.

Section 54 amends NRS 451.024 to expressly allow for cremation to be requested in a valid will or a power of attorney. Currently, that provision requesting cremation is only in express statutory form, so mortuaries are not recognizing requests for cremation unless it is within that form. This allows determination without requiring a separate document. Primarily in handwritten wills, decedents can now request cremation.

Assemblyman Elliot T. Anderson:
I think that going forward, the State Bar needs to do—since there are two titles being amended—one bill per title; that would be a good way to start splitting this up in the future. These are serious and deal with serious rights. It can be difficult with putting it all into one, certainly. Everyone on this Committee has done their due diligence and read this, but I think it would be more easily digestible and lead to better consideration if these were to be split up into two bills. I understand that these are things that the Section really wants and needs. I am not trying to stop changes, but I think it would be better to split these up in the future.

In section 2, you talked about a non-probate transfer. I understand that as to a trust when it defines a trust and property transferred from a trust. Can you help me understand—it is counterintuitive to talk about a will under a nonprobate transfer. Is that just for the power of appointment to manage a trust under a will?

Julia Gold:
I think it is easier to understand the amendment with looking at what constitutes a nonprobate transfer. A nonprobate transfer is any transfer that was done through a beneficiary designation. If you have a retirement account and you name someone who is a beneficiary or if you have a transfer on death account or a pay on death account, those are all going to constitute nonprobate transfers, and the same with joint tenancy with right to survivorship. Within the context of these sections—NRS 111.779 and NRS 111.721—it specifies certain transfers that do not constitute a nonprobate transfer.

With your question, we are clarifying that if a will or trust gives the beneficiary the power to appoint assets which is commonly given, especially because we have such long-lasting trusts, those powers of appointment, if not included in the beneficiary's estate—so if it is a limited power of appointment—those would not constitute a nonprobate transfer. It is an asset where a beneficiary received a beneficial interest by a trust document or a will, and they had just a beneficial interest in the asset, meaning they were the beneficiary under a trust. They were given the ability to say, "I am going to exercise my power of appointment" and designate that it goes to an ascertainable class that is limited by the original transferor, but it does not pull it into that person's estate, so it would not be available for a creditor, which follows our trust law. So it just clarifies that if the asset is subject to a power of appointment, it is not subject to the creditors.

Assemblyman Elliot T. Anderson:
Thank you for clearing that up, because wills are normally thought of as probatable. I think it is important to get that on the record. In section 8, proposed subsection 1, you add the language, ". . . or the manner in which the revocation occurred." Are you contemplating physical destruction? Maybe scratching it out with a pen? What exactly are you trying to get at? I am thinking of a physical destruction in terms of revoking as why you would need that. Obviously, an express revocation in writing would be substantially different.

Julia Gold:
Section 8 addresses the time where someone made a will. They have executed a valid second will, and it includes provisions that revoke the first will. Then, if the testator later revokes the second will, it looks at what is going to essentially bring back the first will. Usually, when you revoke, anytime that I do a new will for a client, I am always stating on the face of the new will that they revoke all prior wills. If, at some time, they do a second will and they are saying, "I am revoking this will but I expressly want the first will to be brought back," it shows how this occurs. It has to appear on the terms of the revocation the manner in which the revocation occurred, what the intent was—if it is going to revive and give a fact to the first will. It has to be within the language. If you are trying to revoke your second will and bring back the first will—frankly, I have never had this occur. I would not try to bring back

a prior will, but I am guessing that some of the litigators have had this issue, and Mr. Freer might be able to speak on this if he has had experience with this specific section. Generally, in practice, I do not bring back a prior will as it would lead to too much confusion.

Assemblyman Elliot T. Anderson:
I understand that. I just wanted to get clarity on the manner that this is being contemplated. What you are referring to is an express revocation, and that is pretty clear. When you say, "The manner in which the revocation occurred," it seems like it was a physical manner that is contemplated.

Julia Gold:
It has to be clear on the face that they are trying to bring back the first will. Otherwise, it does not make a lot of sense to bring it back.

Alan Freer:
In response to your question as to the manner in which the revocation occurred, that can occur in situations of self-help or oftentimes someone has gone to a planner to create a first or second will, but then later in life, maybe without the assistance of an estate planner, they destroy the second will thinking that the first will is revived. We have seen cases where that actually has happened. A testator tells a relative, "I had my second will. I did not like it so I threw it away or I burned it, and I want you to follow my first will." The problem is, if there is evidence of that second will having been executed and if a copy is found, and it says that that first will is no longer valid, then you have an issue of reviving the first will. This just allows for those self-help situations and follows what the testator's intention was.

Assemblyman Elliot T. Anderson:
Section 18, proposed subsection 3, says that the court shall not enter an order distributing the assets, and then, if it would affect the claims of tax liability and claims of creditors. I think it contemplates that the assets can be distributed to pay off the tax liability and the creditors. It is just saying that the different bequests could not be distributed to the beneficiaries until those liabilities are settled against the estate. Is that what you are trying to get at with that language?

Julia Gold:
Yes. You have tension with estates where you are supposed to be administering the estate as quickly as possible and getting the estate assets out to the beneficiaries, yet you have to safeguard creditors of the estate as well. This gives the ability and specific statutory ability to not have to distribute all of the assets in order to safeguard the creditors or to make sure you have sufficient assets to pay the taxes.

Assemblyman Elliot T. Anderson:
That is what I thought. There is one interpretation of it, but that could be prohibiting actual settlements to creditors and tax liabilities, so I wanted to clarify that for the record. I could see how someone could take that language to preclude all distribution even to creditors. Now that we have that intent, I think that it is fairly clear if it ends up being litigated.

Several times throughout the bill, you use "good cause shown." One example is in section 21, and it is defined in several places. I am not going to ask you about each section, but in this area of law, what generally is "good cause shown," so there is some guidance?

Julia Gold:
The evidence that we provide to the court almost seems like unreasonableness. As far as in this particular section, when we are talking about the timeline that gives an inventory and the executor additional time to file an inventory and appraisement, if you are showing to the court that this is a very substantial estate and it takes a significant amount of time to appraise all the assets or other difficulties, that is going to constitute reasonable cause or "good cause shown" because it is just not reasonable. It is almost impossible sometimes to get your appraisals all in order, especially with large estates. What we present are just the facts and circumstances of that particular case that would essentially prevent the personal representative from filing or having the complete inventory.

Alan Freer:
Just to clarify and crystallize Julia's comments, I would just put forth that just cause is basically reasonable or permissible under the circumstances of that case. It is just something that needs to be taken with the facts and circumstances by the court in that particular manner.

Assemblyman Elliot T. Anderson:
That makes sense. It is sort of an equitable concept as the court is looking at the different scenarios that come up. We just try not to tie it down too much in order to do justice to the parties. That works for me. There is some guidance there.

I also want to get into the purpose trust because I cannot resist the urge when we are talking about the rule against perpetuities. The whole point of the rule, and having an ascertainable beneficiary saying, "We have a dead hand problem that we are trying to avoid" is that we are trying to avoid assets—at least traditionally—from being tied up too long. I understand that we live in a different world, and I am not saying that it should ever just be there because of the sake of having the rule, but I wondered if we would be more specific in making sure that when these purpose trusts are created, that we have a particular amount of clarity about the trusts of the settlor's intent so that we can effectuate the intent of the settlor and make sure that the beneficiary—in this case, the purpose—is well provided for. Obviously, when that person passes away, we need to ensure that there is clear evidence as to what their intent was, which is always the purpose in this type of law. Is there any way that we can make that section more specific to ensure that we require a more articulate purpose? I do not see anything that requires any real specificity on that. Is there any way that we can firm it up?

Alan Freer:
We probably could provide a definition for valid purpose under subsection 1. In response to the concerns, NRS 111.1031 ties in our rule against perpetuities now to a 365-year standard as opposed to ascertainable beneficiaries. That is why we are able to do a valid purpose for a trust without violating the rule against perpetuities.

The second protection against these types of trusts is if you look at the bottom of subsection 3, it talks about the concept that the special purpose trust is only permitted to hold funds for that particular purpose. What we wanted to avoid was a situation where they are trying to use a special purpose trust as a tax shelter, et cetera. If, for example, you create a trust for the purpose of a gravesite, then that trust is only entitled to hold enough funds for the preservation of that gravesite during the perpetuities period, or for some other time period specified in the instrument. We have those protections, but I do not think I see any objection to actually defining some rules or guidelines with a valid purpose. One of the issues is that we would not want to restrict it so much that we lose sight of the reason for these trusts being permitted in Nevada, which would be to create primarily the preservation of properties or family collections. It would allow those types of things to proceed.

Assemblyman Elliot T. Anderson:
I would appreciate a better definition. Certainly I am not looking to close everything off, but just practically, we do not have the evidence potentially anymore because, as you are talking about, it is a gravesite. The person who is giving the money to maintain that gravesite cannot testify as to what their intent is. We need to try to get that right on the front-end and I appreciate it.

Section 51 gets into the jurisdiction of the court and venue provisions. I am looking at the proposed subsection 2. Since you are saying when the court has jurisdiction, might it be better to not use the phrase "a trust is domiciled in this state"? Why do we not just say, "The court has jurisdiction over a trust"? Domicile is such a legally defined term of art that it seems to be unnecessary confusion—it comes across like domicile is being redefined rather than just expressing when the court has jurisdiction over a trust. It seems like that would be a good way to avoid some confusion.

Alan Freer:
In this case, domicile is a term of art used in trust in estate law where the domiciliary jurisdiction is what is the controlling cite. For purposes of domiciliary jurisdiction where those provisions come into play, you have a whole set of legal standards that apply if it is a domiciliary jurisdiction. So here, domicile just does not mean located in Nevada or jurisdiction. It has, depending on the substantive law or the procedural law, different applications and intentions.

Assemblyman Elliot T. Anderson:
I am looking forward to seeing any potential changes you might have based on our conversation.

Assemblyman Ohrenschall:
In section 21, subsections 4 and 5 state, ". . . a personal representative may file a redacted inventory to protect the decedent or his or her estate or an interested person. Such an inventory may redact any account numbers, social security numbers and values. Upon request by the court or an interested person . . . [but not the potential interested heir used at the top of the page] shall make the full inventory . . . ." I am wondering who would

be an interested person that might make this request where they have to make the request to the court if they want to find out the value that has been redacted. In what scenarios would you see the personal representative redacting these values? Let us say that the decedent's estate is going to be probated, and the value of what is in those accounts is actually very important to an heir who might have a claim. Will it just be up to the personal representative if they make those values known to the heir or not? Will it have to go before a judge?

Julia Gold:
Any time you file an inventory and appraisal, it is going to be a public document. If you are trying to do a sale of a piece of property, you could have an inventory and appraisal that has one value, but you might be selling it for a different value. You do not want that value to become known to the potential purchaser. That is one situation where you would want to have that value redacted for the file, but what happens is whenever you file an inventory and appraisal, you are going to be sending that inventory and appraisal to interested persons. Interested persons is a term of art. Essentially, it is specifically defined in our statutes. Once you get to this stage, you are an interested person. You have some sort of interest in the financial outcome of the estate. "Heirs at law" is a very broad definition and you might not—even though you might be an heir at law—have an interest in the estate because you are not named under the will or the document at issue. That is why it is not going to include heirs at law.

An interested person is someone who has actually been determined to have an interest in that specific estate. Going back to why would you ever want to redact it as far as the file document, it is to keep the privacy; it is usually going to involve that you have someone who is going to be purchasing property, and you do not want that value out there. You also do not want to obviously have social security numbers filed at the court. I cannot think of a situation if they truly are an interested person that they are not going to receive the actual numbers. So those actual numbers would be available to the court itself and to an interested person who is actually a beneficiary of the estate.

Assemblyman Ohrenschall:
So then the power does not exist now to redact that information, or does it?

Julia Gold:
Not without getting specific permission from the court. You actually have a couple of situations where you do not have to file an inventory and appraisal, and that is if you have a waiver of all interested persons. That waiver is filed with the court, or you have done a petition. This gives statutory permission to redact that information. You are still going to give the reasoning for doing that if you are required to file an inventory and appraisal. Right now, essentially through common law and through practice, we have been able, if it was necessary, to redact that information for privacy purposes.

Alan Freer:
Without allowing this redaction provision, we would have to follow the Nevada Supreme Court rules on redaction or redacting filings, and that is a cumbersome process and requires a

separate petition and stating forth reasons why the redaction needs to occur. By statute, because this occurs so frequently, the vast majority of larger estates own real property—like Ms. Gold was saying—and there are sales of real property that are affected. This would just save the estate needless petitions.

Assemblyman Ohrenschall:
If this passes and an interested person is concerned with the value of those accounts, assets, or real property—I am completely with you in protecting people's social security numbers and account numbers—but let us say that the personal representative refuses. What would be the next step the interested person is going to have to take to try to get those values?

Julia Gold:
If you are in fact an interested person under our statutes, you are generally going to be entitled to get those numbers. This is really dealing with the filing and being able to redact the information that is submitted with the inventory. It does say specifically that the interested person may provide a written request to the personal representative at any time to seek the list of assets and to get that information, but generally speaking, the redaction is going to happen in the filing. It is not going to happen with respect to what the interested person is requesting; the beneficiary generally has to know what the values are in order for the proper settling of an estate. There are also a lot of other reasons for basis purposes that they need to know the actual values that were reported to the court. Again, it is usually just what we are filing with the court and keeping people who can just run down to the court and look at what is on file.

Chairman Yeager:
When we talk about redacting, I am wondering if perhaps rather than a full redaction we could not have something where the last four digits of the account number or something like that are in the filing, much like they do in bankruptcy, just so it is not a full redaction in the actual filing. Would that be something you would be open to discussing?

Julia Gold:
Yes. Actually, that is what part of this statute does allow, providing the last four digits. Any filing that we make or the court does, for privacy purposes we generally do just include the last four digits of the account numbers. The main impact of this is to be able to redact the actual values. I want this because of sales.

Assemblywoman Cohen:
To follow up on that line of questioning, just to be clear because we have been very much concerned about identity theft over the last few years and sometimes that happens within families, the court always has the authority to order redaction of files within a case, correct?

Julia Gold:
Yes. As Mr. Freer was noting, it has been cumbersome.

Assemblywoman Cohen:
When we are discussing community property in a trust, the way I am reading section 4 is that it looks like it is saying that when community property is coming out of a trust, unless there is a writing, the community property cannot be transmuted into separate property. Am I misreading that? I can see a scenario where the community property comes out of the trust and the proceeds are put into a separate property account, but there is no writing. It makes it sounds like it is not going to be transmuted. I would like some clarification on that.

Julia Gold:
Generally speaking, in order for spouses who do not have a prenuptial agreement to transmute property from community to separate, you do need to have a writing. I think you are asking if you have essentially community property and it is held in a trust and it comes out and then the spouses decide they are going to separate that and put it in separate accounts, will that qualify to make that property now separate as opposed to community without an additional writing. I would say, under our law, generally speaking, you are going to have to have some sort of a written agreement that is going to transmute property that would otherwise qualify as community to be separate property. Titling is definitely one aspect, and I am not a divorce attorney, but generally speaking, if you did have a divorce and did not have a writing that specifies it is separate property, it is still going to be considered community property.

Alan Freer:
The main purpose of section 4 is to have the same type of law applied to an irrevocable trust for property, and basically with revocable trust, community property that goes into a trust does not become separate property by nature of that transaction; and then when it comes out of the trust, it goes in the same way it came in. What we are trying to really accomplish here with irrevocable trusts is the nature of the property that goes in the community retains that community property nature when it comes out, and then any subsequent transfers into perhaps a separate property account, that all gets into NRS Chapter 123 in terms of whether that constitutes as an act of transmutation in and of itself.

Assemblywoman Cohen:
I am somewhat concerned. I think it is kind of setting up a tracing nightmare. You can have some property that may need to be traced for decades if we are saying that this property is going to be earmarked as a separate property based on that trust having been in that trust and it is going to remain separate with that title as separate property forever.

In section 19, subsection 3, the personal representative not receiving any separate compensation for continuing the operation of the decedent's business: that struck me as a little odd. I would think that that is asking the personal representative to do more work and maybe not receive compensation. Are they being compensated in another way that I am missing, because we are asking them to do more work and maybe not encouraging them to do that work?

Julia Gold:
I think that is a very valid question with respect to what the personal representative's job is and how much they are being paid. What this section is trying to address is where you have had personal representatives who have been taking compensation through the business and as a personal representative and as the accountant, wearing all these multiple hats, and it is not all easily ascertainable just by the accounting. A lot of times, the accounting is going to show what is coming in and out just of the estate, and it does not necessarily go into a full accounting of each business. This specifically says that they can get authorization through the will or by the court to receive separate compensation, but it has to be fully disclosed. This then makes it where it is not something that can be hidden through just the administration of a decedent's business.

I have actually had this situation come up a couple of times where you really had to dig to figure out what compensation the personal representative was actually receiving, and it was not clear on its face; this now would make it clear that in order to get compensated, both as the personal representative and for running a business and for whatever else the personal representative might be doing, it has to be disclosed. That is not to say they cannot be fully compensated, so we have a statutory framework for compensated and personal representative. In addition to the statutory compensation, they can receive reasonable compensation for extra work that has to be done. Running a decedent's business could be somewhat of an onerous task and require a significant amount of time for which they can be adequately compensated based on the statutes, but they cannot hide it. This would prevent them from hiding it.

Assemblywoman Cohen:
I understand that it would be through the court.

Julia Gold:
Yes.

Assemblywoman Cohen:
They would not be hired as a new manager at the business?

Julia Gold:
Right, they would get the authorization.

Assemblywoman Cohen:
Section 23, subsection 2, has a fees and costs provision. Besides attorney's fees, are there other fees and costs imagined with that provision?

Julia Gold:
This provision specifically addresses the personal representative's failure to file the inventory and appraisal and essentially their lack of willingness to file the appraisal. Then you have an interested person who is actually having to spend time and money to petition the court and force them to file it. It is a very limited circumstance where the fees and costs would be

awarded against the personal representative. In practice, there are a lot of times when the personal representative may be late in filing the inventory and appraisal for a variety of reasons. Generally speaking, if they are requested to do so, they get right on it and file it, but if they are still negligent in filing that inventory and appraisal, this just gives the interested person a way to get reimbursed for their out-of-pocket expenses for having to force the personal representative to act.

Assemblywoman Cohen:
What other kind of expenses would that be?

Julia Gold:
It would only be, as far as I know, attorney's fees for the beneficiary.

Alan Freer:
It could also be court-filing costs.

[(Exhibit D) was submitted but not discussed.]

Chairman Yeager:
Is there anyone else in support of A.B. 314? [There was no one.] Is there any opposition to A.B. 314? [There was no one.] Is there anyone in the neutral position on A.B. 314? [There was no one.] Thank you for being here this morning and presenting the bill. If the members have any other questions, I would encourage you to take those offline in the interest of time. We will close the hearing on A.B. 314. Is there any public comment? [There was none.] This meeting is adjourned [at 11:16 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is an executive summary to Assembly Bill 314, presented by Julia S. Gold and Alan D. Freer, Co-Chairs, Probate and Trust Law Section, State Bar of Nevada.

Exhibit D is a proposed amendment to Assembly Bill 314, presented by Julia S. Gold, Co-Chair, Probate and Trust Law Section, State Bar of Nevada.