

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Ninth Session
February 10, 2017**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:05 a.m. on Friday, February 10, 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:

Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General
Nicholas Trutanich, Chief of Staff, Office of the Attorney General
A.G. Burnett, Chairman, Nevada Gaming Control Board
Sally Elloyan, Chief, Administration Division, Nevada Gaming Control Board
Jaime K. Black, Senior Research Specialist, Administration Division, Nevada Gaming Control Board
Tony Alamo, M.D., Chair, Nevada Gaming Commission
Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
David Castagnola, Child Support Program Specialist, Division of Welfare and Supportive Services, Department of Health and Human Services
Robert Cerceo, Attorney, Surratt Law Practice
Tonja Brown, Private Citizen, Carson City, Nevada

Chairman Yeager:

[Roll was called and protocol was explained.] The first thing we are going to do this morning is move for the introduction of a committee bill draft request (BDR). I know we have not done this process yet in this Committee, but it is simply a procedural manner in which we get a committee BDR to the floor to be drafted and then sent back here for a hearing. Agreeing to move the BDR to the floor does not commit you to supporting that BDR, and it is in our Assembly Standing Rules, Rule No. 57, subsection 7.

BDR 43-598—Revises provisions related to prohibited acts concerning the use of marijuana and the operation of a vehicle or vessel. (Later introduced as [Assembly Bill 135](#).)

Is there a motion for introduction of BDR 43-598?

ASSEMBLYMAN OHRENSCHALL MOVED FOR COMMITTEE
INTRODUCTION OF BILL DRAFT REQUEST 43-598.

ASSEMBLYMAN THOMPSON SECONDED THE MOTION.

Chairman Yeager:

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

THE MOTION PASSED UNANIMOUSLY.

It will most likely go to the floor today, be drafted, and then it will be scheduled in the next few weeks, and we will have a chance to hear it.

If you have a copy of the agenda, you will see that we have three items today. We have a presentation from the Office of the Attorney General and then two bills that we are going to hear. I would like to invite Mr. Brett Kandt from the Attorney General's Office to the table.

Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General:

I appreciate the invitation to have our office come and give you a brief overview of the Office of the Attorney General, which is the largest law firm in the state ([Exhibit C](#)). It consists of approximately 370 hard-working individuals who are committed to enforcing Nevada law for the protection and benefit of our citizens. As the state's chief law enforcement officer, the Attorney General represents the people of Nevada before state and federal trial and appellate courts in criminal and civil matters. It serves as legal counsel to state officers, state departments, most state boards and commissions, and assists the 17 district attorneys of the state. Based on 2016 litigation figures, we currently defend the state from approximately \$662,078,449 in potential liabilities. Because of significant victories, favorable settlements, and proactive management within the Office of the Attorney General, that number has fallen from \$1.27 billion since last session.

The Office of the Attorney General is committed to ensuring that all actions taken by the state are lawful and legally defensible, enforcing transparency and accountability in government, seeking justice for our victims of crime, and keeping our families and communities safe by holding criminals accountable for their actions.

In 2015, Attorney General Laxalt advocated for, and the Legislature approved, an office reorganization. By increasing management oversight on complex cases as well as staff and client trainings, the reorganization has made the office more effective, efficient, and proactive in providing services to the state. The Attorney General's (A.G.) Office is now organized into five major bureaus: (1) the Bureau of Criminal Justice; (2) the Bureau of Litigation; (3) the Bureau of Consumer Protection; (4) the Bureau of Gaming and Government Affairs; and (5) the Bureau of Business and State Services. These five bureaus are composed of divisions and/or units with specific assignments related to the Attorney General's statutory responsibilities.

Our administration division is responsible for all administrative matters pertaining to the office, including personnel and fiscal matters, information technology, grant administration, constituent services, and media relations.

The Bureau of Criminal Justice includes our Criminal Prosecution and Post-Conviction Units. This Bureau investigates and prosecutes Medicaid fraud, insurance fraud, workers' compensation fraud, securities fraud, mortgage fraud, sex trafficking, cybercrime, and public integrity cases. This Bureau also contains our new financial fraud prosecutors, who work to combat instances of financial fraud and elder exploitation. The Bureau of Criminal Justice also prosecutes crimes that occur in the Department of Corrections' facilities and cases in which local prosecutorial agencies have to recuse themselves due to conflicts of interest.

During the past biennium, the Criminal Prosecution Unit opened 375 cases and resolved 403 cases. The Unit filed 331 cases, obtained 140 felony convictions, 28 gross misdemeanor convictions, and 7 misdemeanor convictions. It also obtained restitution orders in the amount of \$2,472,976.04. Among the Office of the Attorney General's investigations and prosecutions in the last two years, the Unit obtained the first-ever illegal online gaming prosecution, as well as its first-ever human trafficking conviction. Additionally, despite the fact the primary jurisdiction rests with local district attorneys, the Unit obtained its first guardianship abuse conviction and handled multiple guardianship abuse cases.

Within the Bureau of Criminal Justice, the Medicaid Fraud Control Unit investigates and prosecutes fraud by health care providers in Nevada's Medicaid program. For the past biennium, our Medicaid Fraud Control Unit opened 115 investigations, closed 67 investigations, and successfully prosecuted 27 criminal cases involving fraudulent activities by companies scamming the Medicaid system. In the process, the Unit recovered \$5,449,658.01 for fiscal year (FY) 2015 and \$4,883,176.42 for fiscal year (FY) 2016.

In the Workers' Compensation Fraud Unit, for FY 2015, we filed charges in 152 cases, and recovered \$389,993.12 in restitution costs and fees for the state. For FY 2016, we filed charges in 111 cases and recovered \$482,498.98 for the state. In the Insurance Fraud Unit, for FY 2015, we filed charges in 28 cases and had \$439,585.49 in restitution ordered. For FY 2016, we filed charges in 53 cases and recovered \$292,504.39 for the state.

In addition to our prosecutors, the Office maintains an investigative division, consisting of approximately 60 sworn peace officers. Our investigators work hand in hand with our prosecutors and local law enforcement, and investigate a wide array of crimes, including financial fraud, cyber security, human trafficking, child exploitation, and terrorism. They also work on multijurisdictional task forces such as the Internet Crimes Against Children Task Force, and investigators working on the Federal Bureau of Investigation's Joint Terrorism Task Forces and the National Cyber Investigative Joint Task Force.

Finally, the Bureau of Criminal Justice maintains the Post-Conviction Unit, which handles petitions for habeas corpus in state and federal courts. By the end of 2016, the Unit was handling 556 federal habeas cases, including 52 death penalty cases, as well as 498 state habeas cases.

The Bureau of Litigation is composed of two divisions: the Public Safety Division and the Transportation Division. In its representation of these clients, the Bureau of Litigation defends executive and judicial officers in the litigation of cases and advises Executive Branch departments in all aspects of applicable law. This Bureau also oversees appeals before the Nevada Court of Appeals, the Nevada Supreme Court, and the Ninth Circuit Court of Appeals. Specifically, the Public Safety Division advises the Nevada Department of Corrections and provides representation in all inmate-related litigation, including property and constitutional claims. The Public Safety Division further provides day-to-day transactional advice to the Department in all aspects of correctional operations. The Transportation Division of the Bureau of Litigation provides these same

litigation and transaction services to the Department of Motor Vehicles, the Department of Public Safety, and the Department of Transportation in such areas as the manner and type of use of the state highways by the public, the licensing of motor vehicles and trailers, emergency management, parole and probation, the transportation of hazardous materials, eminent domain, and inverse condemnation actions.

The Bureau of Governmental Affairs includes the Gaming Division, Government and Natural Resources Division, and Boards and Open Government Division. The Bureau of Governmental Affairs represents all constitutional offices, the Department of Administration, and all state Executive Branch agencies. In addition, it provides legal advice and representation to the boards and commissions that enforce statutory provisions regulating various industries, occupations, and professions for the protection and benefit of the public. The Bureau also enforces Nevada's Open Meeting Law and provides training and legal advice regarding the Nevada Public Records Act, both of which ensure transparency in state and local government. In addition, upon request, the Bureau provides legal opinions on questions of law to district attorneys and city attorneys.

The Bureau of Business and State Services (BBSS) represents and provides daily legal advice to the Department of Taxation, the Department of Business and Industry, the Department of Health and Human Services, the Treasurer, the Secretary of State, the Public Employees' Benefits Program, and the Department of Agriculture. Additionally, the BBSS represents and advises all the state's boards, commissions, and Executive Branch departments in connection with personnel matters and employee discipline. The BBSS prosecutes a variety of regulatory and tax matters before administrative tribunals and on appeal before the district and appellate courts, and defends its agency clients in state and federal court when they are sued. The attorneys within the BBSS have a broad range of expertise, including expertise in the fields of state and local taxation, government finance, business law, regulatory law, election law, employment law, constitutional law, and civil litigation.

The Bureau of Consumer Protection has three primary areas of focus: advocacy for ratepayers before the Public Utilities Commission and the Federal Energy Regulatory Commission (*Nevada Revised Statutes* (NRS) 228.300, NRS Chapter 704); Antitrust (NRS Chapter 598A); and civil enforcement of NRS Chapter 598, Deceptive Trade Practices. During the biennium of FY 2016 and FY 2017, the office participated in approximately nine multistate consumer protection settlements. Most notably, a \$1.7 million consumer protection settlement was approved by the Interim Finance Committee to be allocated to reduce Nevada's decades-in-the-making rape kit backlog.

In addition to the activities of the five bureaus in our office, we also have a number of additional functions. In the current fiscal year, our Grants Unit has been awarded nearly \$6 million in federal grant program awards. Approximately \$3 million in funding has been received under the Violence Against Women Act (VAWA) and provided grant resources to over 50 law enforcement and victim services recipients at the state and local level. In addition to VAWA funding, Attorney General Laxalt secured funding from the 2015 and 2016 Sexual Assault Kit Initiative (SAKI) grants to help reduce the backlog of nearly

8,000 untested sexual assault kits in the state. The total of these two awards is over \$3 million. The Office of the Attorney General was also awarded the Sexual Assault Forensic Evidence-Inventory, Tracking, and Reporting grant, which will help the state establish a tracking system for sexual assault kits, which is vital to preventing future backlogs.

This year, two other awards were received by our office for the first time. An Office of Traffic Safety grant was awarded to our office to help train local prosecutors on driving under the influence (DUI) prosecution. In light of the recent passage of the recreational use of marijuana, this grant will have an emphasis on prosecuting marijuana DUI offenders. We anticipate this funding to continue into the next biennium. The Attorney General's Office also received the Stop Abuse in Later Life grant, which will assist Nevada in developing the necessary knowledge and organization to improve collaborative state and local responses to elder abuse and elder exploitation.

In the summer of 2015, the Office of the Attorney General obtained a federal grant to assist rural law enforcement agencies with sex offender registration, location monitoring, and compliance checks to make our communities safer from sexual predators. We have also secured federal grants to embed our prosecutors with district attorneys in six counties to prosecute domestic violence and sexual assault cases under the supervision of the appropriate district attorney.

Domestic violence continues to tear at the fabric of our society and, unfortunately, Nevada has consistently placed at or near the top of states in the number of women killed by men for many years. Nevada also consistently ranks among the worst states for domestic violence. The A.G.'s Office performs many essential statutory functions in the fight against domestic violence in Nevada. As detailed above, the A.G.'s Office administers federal VAWA grant programs that provide critical funding at the state and local level.

The A.G.'s Office also provides several domestic violence prosecutors with special expertise to prosecute cases in rural counties on behalf of district attorneys. In addition, we implemented and manage the Nevada Victim Information and Notification Everyday (VINE) network, a statewide automated system which allows victims to receive timely, accurate information on the custody status of offenders and notice of any changes in an offender's custody status in order to take any steps they deem necessary to protect themselves and their families.

The A.G.'s Office also administers four statutory boards that perform important and, in some instances, overlapping functions: the VINE Governance Committee (NRS 228.205); the Committee on Domestic Violence (NRS 228.470); the Nevada Council for the Prevention of Domestic Violence (NRS 228.480); and the domestic violence fatality review statewide team (NRS 228.495).

During the past two years, our office has twice convened domestic violence fatality review statewide teams that reviewed domestic violence homicide cases in two different rural communities and made recommendations for system improvement to hopefully save lives in the future.

Finally, the A.G.'s Office also has an ombudsman on staff who serves as a liaison with all state and local partners on issues related to domestic and intimate partner violence, sexual assault, and human trafficking. The ombudsman serves as a state-level coordinator with oversight of the programs and initiatives I have described.

To further our commitment to "good government" and to better effectuate the ultimate goals of reducing domestic violence, saving lives, and ensuring safe and healthy homes and families, this session we have proposed four bills related to domestic violence that, if signed into law, would consolidate the office's duties within one statewide committee, enhance penalties for repeat offenders, provide additional protections for survivors, and require notification to family members for domestic partner homicides.

As provided by the *Nevada Constitution* and NRS, the Attorney General is a member of several state boards, including the State Board of Examiners, the Board of State Prison Commissioners, the State Board of Pardons Commissioners, the Executive Branch Audit Committee, the Advisory Commission on the Administration of Justice, the Domestic Violence Prevention Council, the Substance Abuse Working Group, the Prosecution Advisory Council, and the Technological Crime Advisory Board. In addition to these mandated boards and commissions, Attorney General Laxalt has undertaken several initiatives in service of the state.

Attorney General Laxalt chairs the Sexual Assault Kit Backlog Working Group, which he established two years ago. Attorney General Laxalt and that committee have met diligently for the last two years in order to complete the work necessary to fund testing of the state's decades-old rape kit backlog. Together with members of the Working Group, we will present Assembly Bill 55, a bill that puts policies and procedures in place to help prevent future backlogs of untested sexual assault kits in this state. This bill would require mandatory submission of sexual assault kits to crime labs within 30 days, the mandatory testing of submitted sexual assault kits within 180 days of receipt, and an annual reporting requirement to crime labs of submissions and testing.

In the past fiscal year, our Extraditions Unit handled 548 transfers of criminal defendants to or from Nevada. As is clear from the above recitation of duties, the breadth and depth of the legal issues that the A.G.'s Office addresses on a daily, weekly, and yearly basis is substantial. There are, however, three additional initiatives that I want to highlight.

Under Attorney General Laxalt's leadership, we are committed to making Nevada as safe as possible. Part of that mission includes outreach to local law enforcement and our rural communities. Since his inauguration, Attorney General Laxalt has hosted two Law Enforcement Summits each year. During the summits, the Attorney General's Office

interfaces with Nevada's local sheriffs, police chiefs, and district attorneys from our 17 counties to discuss emerging law enforcement trends in Nevada and identify the most effective strategies law enforcement can take to address them. Because of participation in the Law Enforcement Summits, we have assisted local and federal law enforcement partners with investigations and joined several taskforces. For instance, we have been assisting local jurisdictions throughout the state on guardianship investigations and prosecutions and created a southern Nevada guardianship taskforce. Additionally, through the summits, we have provided training and created policy on important law enforcement issues such as body cameras. Finally, we have been able to better prioritize resources, including augmenting our resources to address increased financial fraud and elder exploitation.

Protecting Nevada's most vulnerable populations is a core mission of the A.G.'s Office. That mission includes investigating and prosecuting crimes committed against the elderly, especially those that involve financial fraud. In order to fulfill our public safety mission, we identified nontaxpayer settlement monies to assist in the investigation and prosecution of financial fraud matters in the state. On June 30, 2016, the Interim Finance Committee unanimously approved our proposal to create a new financial fraud unit in the office, consisting of additional investigators and prosecutors. The fledgling unit has already been a success, and has made the A.G.'s Office more flexible, effective, and efficient in executing its law enforcement mission.

Attorney General Laxalt, a former lieutenant in the U.S. Navy, has a demonstrated commitment to our military and veteran communities, and created the first-of-its-kind Office of Military Legal Assistance (OMLA) to address Nevada's need of legal advice and representation in civil matters for our military. The OMLA acts as a conduit and single point of contact for military veterans, reservists, and active duty personnel who need assistance in civil legal matters. Since the program's launch in November 2015, and with the assistance of our pro bono legal aid partners, the OMLA has helped nearly 1,000 service members and veterans. Our office is proud to be able to assist Nevada's military members and veterans who have sacrificed so much in service to our state and country.

That concludes my overview. I am happy to answer any questions. It is possible that I may need to refer you to, or link you with, some of the chiefs of our various divisions and units for some specific questions. The A.G.'s Office has legislative bill packages, and many of our proposals, which we believe are sound policy proposals, will be before this Committee. I look forward to the opportunity to present those proposals when the time arises.

Assemblyman Watkins:

You gave us a lot of information and a lot of data. Can you or the A.G.'s Office provide the data for everything you presented today?

Brett Kandt:

That is a good point. The presentation will be left with the staff so you can each receive a copy of it. My contact information is on it, so if you want to follow up with me or have any questions, please do not hesitate to do so.

Assemblyman Watkins:

A little broader than that; all of the data to support everything that was in your presentation.

Brett Kandt:

I will work with staff to pull together all the data, and if there is any question once you receive it, please reach out to me, and I will get you anything you need.

Assemblywoman Miller:

Could you restate the number of prosecutions and convictions in that timeline again?

Brett Kandt:

These are the various units within our Bureau of Criminal Justice. Our Prosecutions Unit, which is the general prosecutions unit, opened 375 cases, resolved 403 cases, and filed 331 cases. We obtained 140 felony convictions, 28 gross misdemeanor convictions, and 7 misdemeanor convictions. The restitution numbers amounted to \$2,472,976.04.

Next is the Medicaid Fraud Control Unit. For the past biennium, that unit opened 115 investigations, closed 67 investigations, and successfully prosecuted 27 criminal cases. Those involved fraudulent activities in our Medicaid system. Their recoveries were for FY 2015, \$5,449,658.01 and FY 2016, \$4,883,176.42.

Next is our Workers' Compensation Fraud Unit which, as the name implies, involves fraudulent activities regarding workers' compensation, and false claims involving workers' compensation, both on behalf of employees and employers. For FY 2015, we filed charges in 152 cases and recovered \$389,993.12 in restitutions, costs, and fees for the state. For FY 2016, we filed charges in 111 cases and received \$482,498.98.

Next is our Insurance Fraud Unit which, as the name implies, investigates and prosecutes instances of insurance fraud. For FY 2015, we filed charges in 28 cases and had \$439,585.49 in restitution ordered. For FY 2016, we filed charges in 53 cases and recovered \$292,504.39.

We will be presenting our budget to the money committees, so perhaps some of the data you are interested in will be part of our budget presentation. I may derive some of the additional data you have requested out of what we are drawing together for our budget presentation.

I want to emphasize that after you review the presentation, if you have any questions about any of the information I have covered today, please do not hesitate to reach out to me and we will get you answers.

Assemblyman Fumo:

What is the caseload per attorney in your office?

Brett Kandt:

It depends in large part upon the type of law you are talking about. We have the civil side and the criminal side. On the criminal side, we obviously have the various units that deal

with different types of criminal activity. Depending upon the type of criminal activity, they could have a different caseload per attorney. On the civil side, it depends upon the type of law they practice and the types of cases they are handling as well. I do not know if we have a per caseload officewide, but I can certainly follow up with our office if we have any sort of a breakdown by unit.

Assemblyman Fumo:

I am more interested in the criminal side, because you are talking about the prosecutions you file, which are 111, 28, and 53. We heard testimony yesterday from the Public Defender's Office in Clark County and Washoe County where they are handling hundreds of cases per attorney per year, two times as many as what the American Bar Association recommends. I am interested in the criminal convictions that you are doing, what the caseload is per attorney for the past five years, how many post-conviction cases you handle, and how many of those post-convictions claim ineffective assistance of counsel. Could you get a separate number for that?

Brett Kandt:

I have one additional comment. Looking at the cases we prosecute—primarily white-collar crime—they often tend to be very complex cases.

Assemblyman Fumo:

That is exactly my concern. Are the same public defenders handling those complex cases without the necessary resources? I just want to know if the numbers are equal.

Assemblyman Hansen:

I have been super happy with the performance of the Attorney General's Office with one exception. As you mentioned in your testimony, you are about protecting and helping the public. I have heard several cases where there were issues for people who were having trouble with government agencies. I contacted the Attorney General's Office, and I generally ended up getting a response from a deputy attorney general. In fact, I have many emails regarding this. It almost always ends up dying very quickly because the other deputy attorney general that represents that government agency in the Attorney General's Office meets up with him and they basically squash any efforts to resolve things for ordinary citizens. Consequently, an ordinary citizen has to hire an attorney and then effectively sue the government agency that they are dealing with.

Consequently, there will be a bill coming before this Committee because the gentleman I am talking about had a long train of emails and exchanges between him, me, the deputy attorney general, and Attorney General Adam Laxalt, trying to get some resolution for his problem. Frankly, it is going to look very embarrassing for the Attorney General's Office when these email exchanges are brought before this Committee when my bill shows up. Is there some mechanism such as a consumer advocates office or something in the Attorney General's Office to allow some sort of recourse for ordinary citizens who are having difficulties with government agencies, short of suing the agency? In most cases, these are small matters and end up costing the private citizen.

In the case I am referring to, this gentleman has already spent over \$10,000 to resolve a problem that was originally supposed to be handled quickly and internally. It is as if the Attorney General's Office has a conflict of interest. On one hand, you are trying to help people who are members of the Nevada public, but then you also have in your agency, the responsibility to be the deputy attorney general for those same agencies. How do you resolve that, and is there something that we need to do legislatively to create some kind of consumer advocate? I do not know what the title would be, but it has been very frustrating for me because I feel for these people and they are getting the runaround by various government agencies and then again by the Attorney General's Office, who they have turned to for help. I cannot seem to get a resolution.

Nicholas Trutanich, Chief of Staff, Office of the Attorney General:

Thank you first for the compliment about the wide range of things that our office does. With respect to the issue that you brought up, I think you hit the nail on the head on the last part of your question, which is that the Attorney General's Office is just that. It is an attorney's office. Not only do we represent the people of the state of Nevada, but we also represent clients, which are agencies. We can provide legal advice to our clients and a path forward that may result in a constituent being ultimately happy, but that decision rests with our clients. In order to be a functioning law firm, we provide legal advice about what the law is and we provide it in an honest, professional, and independent way, but we leave the decision making on policy to our clients. When someone comes to the Attorney General's Office with an issue, we are happy to help that constituent in any way we can but, ultimately in instances such as you are bringing up, we have a client who has made a decision and we cannot overrule that decision.

Assemblyman Hansen:

I understand that, but I wonder if there is some mechanism to resolve this. As you said, you really represent the citizens of the state of Nevada, not just your clients, which are the government agencies. Consequently, when an ordinary citizen walks through your doors trying to get some legal help with a government agency, there is a tremendous conflict. By your own admission, you are supposed to represent the citizens yet, in fact, the reality is that you are a law firm representing clients, which are the bureaucracies in the state of Nevada. I would like to see some resolution. I wonder if Mr. Kandt or someone had some ideas on it. Maybe other states handle it a certain way, but I wanted to bring it up because I do not want to blind side the Attorney General's Office in future hearings on my bill.

Nicholas Trutanich:

When providing advice, we—just like those constituents—are bound by the NRS, bound by the applicable law, and our advice is consistent with the applicable NRS. I understand the tension. We deal with it every day in the office, and if there are some solutions to that tension that you are willing to present or we can discuss, I am happy to do so.

Brett Kandt:

It is also important to remember that we cannot interfere with the policy decisions that are made at the local or state level. Oftentimes, constituents come to us and they are unhappy

with the policy decisions that were made by an agency at the state or local level, but those were made in a lawful manner. It is not our role to interfere with those policy decisions.

Chairman Yeager:

Do you do any legal work for the state of Nevada?

Nicholas Trutanich:

Not currently.

Chairman Yeager:

Are you a member of the bar here in the state of Nevada?

Nicholas Trutanich:

I had a two-year applicable license. I am not going to comment on a matter pursuant to Rule 70.5 of the Nevada Supreme Court. I cannot comment on that particular instance.

Chairman Yeager:

Are you able to comment on whether you have taken the Nevada bar since you have been here in the state?

Nicholas Trutanich:

I have not taken the Nevada bar since I have been here in the state. Before becoming barred in California, I went to Georgetown Law School and started at Kirkland and Ellis, which is a large international law firm in Los Angeles. I left that, clerked for a federal district court judge, and then worked as a supervisor at the U.S. Attorney's Office in Los Angeles. I came to Nevada two years ago and was licensed to practice under Rule 49.8 of the Supreme Court Rules of Practice for a period of two years. I came to help my friend, Adam Laxalt, run the office, which I feel we have done a great job during the past two years.

Assemblyman Thompson:

You have talked about a lot of prosecutions, and I want to talk specifically about welfare fraud. Help me understand the process which your agency uses regarding welfare fraud. I know the Division of Welfare and Supportive Services has a welfare fraud investigation unit. I am looking at efficiencies and how that connection is with your office. I heard you say that you had 115 cases, of which 67 were closed, and 27 were criminal cases. Again, I am talking about consumer protection. Can you tell us how many of those criminal prosecutions involved individuals, and to what extent? Are those individuals in prison for these prosecutions?

Brett Kandt:

I will have to go back to our Bureau of Criminal Justice to get a breakdown for you. I will be happy to get that information and follow up with you.

Assemblyman Thompson:

Do you at least know the handoff? I know the Division of Welfare and Supportive Services, which is covered under the Department of Health and Human Services, has an investigation and fraud unit in all their offices. How does that relate with your office? Are we duplicating some services or does it have to derive from Welfare and then it goes to your staff?

Nicholas Trutanich:

I cannot address the Welfare Division's issues specifically. I know that the A.G.'s Office and our prosecutors take referrals from other state agencies. For example, the Investigation Division of the Department of Public Safety might refer an investigation to us to prosecute. That may happen in the welfare context, but I would have to confirm it.

Assemblyman Thompson:

When you get the report, would you please give me a ten-year history? There are 27 criminal prosecutions, and I would like to know how many prosecutions there were for welfare fraud each year and to what extent. I think it is really important to see if it was actually fraud or if it was a situation where a person thought they were being compliant, but you are saying they were fraudulent.

Nicholas Trutanich:

I am looking at the statistics we provided. We provided statistics with regard to workers' compensation fraud and insurance fraud. I do not see anything with respect to welfare fraud. You have mentioned 27 cases. I see a statistic here with 28 cases with respect to insurance fraud. Is that what you are referring to?

Assemblyman Thompson:

I heard 115 overall cases, of which 67 were closed, 27 were criminal prosecutions, and about \$5 million was recouped. Where does that money go? Does it go back into the state coffers? I know we are the policy committee, but I want to know where those dollars go.

Brett Kandt:

One thing I should have mentioned that you may not know is that our criminal jurisdiction is limited. The district attorneys in the 17 counties have general responsibility for prosecuting crime in their respective counties. There are certain areas in which the A.G.'s Office has been granted either concurrent jurisdiction with the district attorneys, or we actually have exclusive jurisdiction and responsibility to prosecute certain types of crime. That includes workers' compensation fraud, insurance fraud, and Medicaid fraud. We are the exclusive agency for investigating and prosecuting those types of fraud.

When it comes to welfare fraud, it is likely that if the Department of Health and Human Services has examples through their investigations where welfare fraud has occurred, those get referred to the appropriate district attorney for prosecution. I will confirm that, but it is probably the case. It is important to note as well that the A.G.'s Office has limited, not broad,

criminal jurisdiction. If a district attorney requests the assistance of our office, or if a district attorney refuses to prosecute a case that has been referred to him or her by their sheriff, or if they have a conflict of interest and have to conflict out of prosecuting a case, we can step in those instances as well.

Assemblyman Thompson:

I was following the flow. I was on the Nevada Attorney General's website and it is listed that you have all these units.

Assemblyman Ohrenschall:

Very often, I will read in the papers about the Nevada Board of Examiners approving a certain amount of funds to hire outside counsel for a state agency or a board. It might be an area of specialized expertise that may be going forward in litigation. Does the Attorney General's Office have any data about how frequently agencies and boards have to hire private attorneys or private law firms instead of using the Attorney General's Office or their own counsel? Could you explain when and why that happens? How much do we spend in hiring outside attorneys versus the counsel for the agency or the board or the Attorney General's Office?

Brett Kandt:

There are generally three instances in which we may need to have outside counsel hired. One is conflict of interest and we are conflicted out. We make great efforts to ensure within the A.G.'s Office that we maintain separation to the extent necessary to avoid conflicting the entire office out in a particular matter, but there are certainly instances where, from an ethical standpoint, we simply have to conflict out. In that instance, outside counsel may need to be hired.

There are certain areas of law that are so specialized that it is appropriate to hire outside counsel. The best example is bond counsel for the office of the State Treasurer. When debt is issued, it requires bond counsel. That is a special area where the State has always retained outside bond counsel.

The third example is when a matter is being litigated outside a state or federal court in Nevada. If, for some reason, we find ourselves litigating another matter in another state and in another jurisdiction, and we simply do not have anyone licensed from a geographic standpoint, it makes more sense economically to retain local counsel to litigate that matter. Those are the three examples of when we can find ourselves retaining outside counsel. In terms of getting you some figures on the use of outside counsel, I can go back to the office and get that information to you.

Assemblyman Elliot T. Anderson:

I want to inquire as to whether your office has taken a position on the recently reviewed executive order over the Ninth Circuit Court of Appeals yesterday?

Brett Kandt:

I would have to check on it and get back to you.

Assemblyman Elliot T. Anderson:

I would appreciate your getting back to us. Travel in the United States has always been a big bipartisan priority, especially in Washington, due to the nature of our economy. Obviously, I do not need to explain that to you, but it is something that is acutely in my mind, having worked on the Strip for tips and wanting to make sure that we are not being too overly restrictive. I would appreciate it if your office could review that and come to a decision.

Assemblyman Pickard:

You talked about a restitution order, and I would be interested to know if it is possible to get a comparison on restitution order versus restitution collected. I would like to see how effective our collection side of that is. My question surrounds the brief presentation on the domestic violence component of the office. I do not handle a lot of domestic violence cases in my practice, but I do a fair amount. I represent both the applicant and the adverse party. Something that I cringe at when we talk about domestic violence is when it is referred to as a male-on-female type of issue. In my practice and experience, I have seen it go both ways. I wonder if it would be appropriate—and I would like you to comment on that—whether or not you think the woman-on-man side of it is worthy of attention, and whether or not you believe it is because we do not spend much time on it, that it tends to get short shrift in the courts.

Brett Kandt:

I think you are all well aware of the fact that domestic violence continues to be a significant problem in our state. Despite the efforts that we have made, we are still on the wrong side of the list in terms of the incidences of domestic violence and the incidences of women killed by men in domestic homicides. Family violence can go both ways in terms of violence perpetrated by the female on the male but, statistically, in the majority of incidences of domestic violence, the violence is perpetrated by the male upon the female.

Let me give you some numbers to highlight the magnitude of the problem. Studies have shown that approximately 22 percent of women will experience at least one instance of significant physical violence by their intimate partner during their life. You can look at the Department of Public Safety (DPS) crime report and when you see the numbers in Nevada for 2015, there were over 26,000 cases of domestic violence that law enforcement responded to. Over 10,000 of those cases had children present in the home. That is very significant, because children who witness domestic violence in their homes tend to replicate that violence in their adult relationships, so it perpetuates a cycle of violence. There were 41,000 victims and their children who required domestic violence support services last year. According to a report by DPS, one domestic violence incident is committed every 19 minutes and 32 seconds in our state. While I have had the opportunity to be with you this morning, there has been at least one domestic violence incident somewhere in our state. I wanted to give you some figures about the extent of the problem. You are right; it is not always a male-on-female crime, but we find that the majority of instances are a male-on-female crime.

Assemblyman Pickard:

I certainly do not want to come across as disputing the heinous nature of domestic violence male-on-female and the problem that it is. I am trying to expand the view a little. In my experience, there is no question domestic violence from man to woman is a significant problem. It far outnumbers the other direction. My concern is if we are losing sight of the other side of the coin and what might we do about it?

Brett Kandt:

It is one thing that our Council for the Prevention of Domestic Violence focuses on. It is what we call underserved populations, which includes our rural communities, where resources are scarce. It includes immigrant communities with different ethnic groups in which there are certain challenges in addressing the problem of domestic violence. It also includes the underserved male population who are victims of domestic violence. It is a very good point.

Assemblywoman Jauregui:

I would like to go back to the Sexual Assault Kit Initiative (SAKI). When was that grant received, how much was it for, and how much of the backlog has it helped clear up?

Brett Kandt:

I will have to go back to my presentation, which I will be providing everyone. We secured funding from the SAKI grant for both 2015 and 2016. The total of those two awards was over \$3 million. We are working on the backlog of 8,000 untested kits. I know that we have already sent several thousand kits out of state for testing. Part of the problem is the capacity of labs to test those kits and the cost of testing those kits. On average, it costs about \$1,500 to test a kit, and we were able to procure a reduced rate of less than half of that for testing of the first batch of kits we sent out of state. I do not have the exact status of getting all those kits tested, but I will follow up and get you that information.

Assemblywoman Jauregui:

We do not know if any arrests have been made?

Nicholas Trutanich:

I do not want to guess off the top of my head, but I know that there have been arrests made based upon the kits that have been tested. I want to make one important point to this Committee with respect to the rape kit backlog. This backlog existed for many years before Attorney General Laxalt's leadership on this issue. The kits themselves are housed at the county level. The grant and the leadership that we have taken on is basically getting the funding from the federal government, and also using settlement monies to then fund the backlog of the various counties. Over the past two years, Attorney General Laxalt, through the SAKI committee, has been able to do an accounting of the kits that are housed at the county level. He then figures out where funding needs to be sent and prioritizes which kits need to be tested.

Assemblywoman Jauregui:

How many human trafficking prosecutions has your office had, and how many convictions?

Nicholas Trutanich:

The A.G.'s Office had their first human trafficking conviction in the summer of 2015. We submit a report to the Insurance Fraud Control Unit (IFC) every six months that details our work on human trafficking. That report generally consists of ten pages and has been submitted for the past couple of years. It details the information about what we have done with regard to human trafficking. This information is not just about criminal prosecutions and convictions, but also the work we do in the community to raise awareness about human trafficking and the funds used to relocate victims and survivors where the cases might be handled at the local or federal level.

Assemblywoman Tolles:

Could you help distinguish what falls under concurrent jurisdiction versus exclusive jurisdiction? There are certain cases that naturally fall under the Attorney General's jurisdiction, but others that are most often dealt with at the local municipality level, and then end up elevating to the A.G.'s level?

Brett Kandt:

Exclusive jurisdiction means we have the exclusive jurisdiction to prosecute, which includes workers' compensation fraud, insurance fraud, and Medicaid fraud. Concurrent jurisdiction means that either the district attorney or the A.G.'s Office could prosecute a particular offense. I want to emphasize the collaborative relationship we have with local prosecutors in ensuring that whichever office takes it forward, we have a conversation with them and make a mutual decision as to who is in the best position to prosecute a particular case.

Assemblywoman Tolles:

What types of crimes would fall under concurrent? I heard human trafficking, elder abuse, domestic violence and, if I understand you correctly, it is a negotiation with the local jurisdiction as to who is going to take the case. Would you help clarify that?

Brett Kandt:

The vast majority of crime is prosecuted at the local level by our district attorneys. It is the way our system is set up. As I indicated, there can be some instances where they need our assistance or have a conflict issue, and we will assist at that point in time. There are certain areas in which our office has been granted concurrent jurisdiction, such as human trafficking, cybercrimes, and some types of financial fraud. The domestic violence office does not have jurisdiction per se to prosecute a domestic violence case short of a conflict of interest. In our rural communities, they needed assistance when it came to prosecuting domestic violence and sexual assault cases. We funded prosecutors—what we call tri-county prosecutors because they were working across a three-county circuit—and embedded them with those three district attorney's offices. They were deputized as deputy district attorneys and then prosecuted domestic violence and sexual assault cases in the courts of those three counties. That is how we assist rural counties in that respect.

Assemblywoman Cohen:

I want to go back to the information about the veterans pro bono program. Obviously, former Speaker Buckley's pro bono program for veterans that she has with Legal Aid Center of Southern Nevada is not a state entity, but is there a way for you to work with her and combine your efforts?

Brett Kandt:

Former Speaker Buckley has been an essential partner in our effort from the very beginning. The A.G.'s Office works very closely with her and the Legal Aid Center in this endeavor.

Assemblyman Watkins:

Can you provide us with the IFC reports over the course of the past five years, if they go back that far? If they do not, then send us the ones from as far back as they go. Can we also receive a report of all the cases in which the A.G.'s Office has retained outside counsel, what those cases were, and the legal fees paid on those cases? For each of the categories of fraud that we have discussed today, can we have a report that indicates the number of investigations, number of prosecutions, number of convictions, amount of restitution ordered, and the amount of restitution paid? I know you indicated that on workers' compensation fraud, you go after the employer and the employee on the fraudulent side to the extent that that dichotomy exists in Medicaid fraud or insurance fraud. If we are going after the insurance company—if they defrauded the individuals or the individuals defrauded the insurance company—we would like to have those cases broken out in that fashion. Is that something we can do?

Brett Kandt:

When you said "reports submitted to IFC," was there a specific report that you are referring to? I know that Mr. Trutanich referred to the human trafficking report. Is that what you are referring to?

Assemblyman Watkins:

I do not know when we started doing that reporting, but as far back as five years would be helpful.

Nicholas Trutanich:

It goes back about two years. I think it started at the end of last session.

Assemblyman Watkins:

Then from the beginning.

Assemblywoman Miller:

How many people are actually in the fraud unit? Does the Attorney General's Office prosecute public officials for misconduct, specifically under NRS Chapter 284?

Brett Kandt:

I will have to break it down by each of our fraud units. I will get you numbers on how many attorneys and how many investigators are in each fraud unit.

Assemblywoman Miller:

Does your office prosecute misconduct of public officials?

Brett Kandt:

We do. We prosecute crimes committed by state officials.

Chairman Yeager:

Since the 2015 Legislative Session, how much money has the Attorney General's Office spent on outside counsel in defending the Education Savings Account that was passed in 2015? Could you identify who was hired as outside counsel and what process was enacted to decide who to hire and how much money to spend?

Brett Kandt:

We will get you that information. Whenever we obtain outside counsel, that is subject to approval by the State Board of Examiners.

Chairman Yeager:

Did you say earlier that Attorney General Laxalt is a member of the State Board of Examiners?

Brett Kandt:

Yes, the State Board of Examiners is chaired by the Governor and includes the Attorney General and the Secretary of State.

Chairman Yeager:

Thank you for presenting to the Committee. We will now move to the next portion of the agenda and formally open the hearing on Assembly Bill 75.

Assembly Bill 75: Revises provisions governing the licensing and control of gaming. (BDR 41-264)

A.G. Burnett, Chairman, Nevada Gaming Control Board:

Assembly Bill 75 has to do with manufacturers and distributors of gaming devices and associated equipment. We are proposing something that will primarily be there for clarification. Those of you who may have been around for the 2011 Legislative Session may recall an amendment that was placed into *Nevada Revised Statutes* (NRS) 463.01715, which has to do with manufacturing and distributing of gaming devices. In 2011, the Legislature heard testimony from manufacturers and from regulators in terms of allowing manufacturers to have certain third-party independent contractors assume responsibility for certain actions that were taking place in the manufacturing space. That, quite simply, is manufacturers do not do everything in their business. They may use consultants or even other companies in

certain cases to produce, manufacture, or create certain items for them to include in the gaming device that eventually makes its way to a gaming floor after we have vetted it.

If you look at NRS 463.01715, the Legislature amended subsection 1, paragraph (b), which dealt with directing or controlling the methods and processes used to design, develop, program, and assemble certain items related to gaming devices. They carved in the exception for assuming responsibility on that, but what we have found in the intervening several years, both as regulators and with the gaming industry, is that the manufacturing community also wanted to enable their use of outside sources to perform the acts that are contained in paragraphs (a) and (c) of that portion.

As I may have remarked to the Committee earlier in one of my presentations, over the last two years we have really worked with the manufacturers of gaming devices to enable them to bring product to the slot floors in casinos so they can be more attractive to younger demographics. You have heard of skill hybrid-based games and things of that nature. Over the course of the last year, the Nevada Gaming Control Board and the Nevada Gaming Commission have made a record number of regulatory changes, all keeping fast to our two guiding principles, which are strict regulation of the gaming industry, and that goes toward ensuring patron protection, the integrity of the state, the state's reputation, and also ensuring our ability to collect taxable revenues. While holding fast to those two standards, we have issued a record number of regulatory changes, and I would say that this is really our last step. It comes before you, the statutory creators, to say, "We think that the manufacturing community should be allowed to have others perform some of those tasks for them."

If you go to page 3, lines 1 through 5 of the bill, you will see the most important part for me, which is subparagraph (2). It means that, at the end of the day, the responsibility rests with the licensed manufacturer. They accept continuing legal responsibility for that equipment, which goes to you and to us as regulators. That is the first change and I hope some good history for you. If I can, I will skip ahead to page 8, which is a change to section 6, subsection 2, paragraph (a) of NRS 463.665 ([Exhibit D](#)).

Chairman Yeager:

Are you referring to the original bill or the amendment that was provided?

A.G. Burnett:

We are looking at a proposed amendment to NRS 463.650. Section 5 would amend NRS 463.650 in accordance with the comments that I previously laid out for you. You will see on page 7, lines 20 through 34 of A.B. 75, the changes that we would propose in terms of manufacturers and independent contractors. We see changing those two statutory regulatory requirements just to clarify what is meant by "assuming responsibility" in the definition of manufacturer and licensure requirements. Again, the current language only permits a licensed manufacturer to assume responsibility for a controlled program and not hardware. The risk with hardware manufacturing is much less than with the design of controlled programs, which are really the brains or the true software of a device. To sum up, these

amendments will allow a licensed manufacturer to "assume responsibility" for any of the manufacturing activities listed in NRS 463.01715 when they are performed by an unlicensed entity.

Nevada Revised Statutes (NRS) 463.162 is one of our guiding statutes and that indicates it is unlawful for anyone to do any of the items that are found in section 2, subsection 1, paragraphs (a), (b), and (c) of the bill. Those are lending, leasing, delivering, furnishing equipment, games, et cetera, for an interest percentage or share of the money or property played, to do those same activities regarding slot machines under any type of agreement, and furnish services or property, real or personal, on the basis of an arrangement where one receives payments based on earnings or profits from a game or gambling device.

A core principle in gaming law is that you have to have a license to do those things. Over the years, we have run into entities that are already licensed in another capacity who end up accidentally running afoul of this requirement. The best example to give is someone who is licensed as a manufacturer or distributor and they enter into an arrangement, such as a slot route operators arrangement, or they are going to receive a percentage of revenue from a gaming device. They are already licensed and are not aware of this statute. We call them up and say, "Are you aware that you need to file an extra application to get approved to do this?" After some deliberation over the past two years, we ultimately concluded that the regulatory risks are minimal when there is already a licensed entity who wishes to engage in one of these three activities.

We have proposed a change to section 2, subsection 2 of the bill so that if one is already licensed as a manufacturer or distributor, they can go ahead and enter into those types of arrangements. The licensees we have encountered that have run into an issue here have not meant to run afoul of this. They simply were not aware of the requirement. As regulators, after much deliberation, we determined there really is not a regulatory risk with an entity that is licensed, found to be suitable, and in good standing in Nevada entering into that type of arrangement.

The Legislature has created NRS 463.175 to exempt banks from certain activities. I think the reasoning is sound in that banks act as fiduciaries in certain types of activities in gaming. What you see in section 3 of the bill is an exemption for banks that act in certain capacities. In the past two years, we have run into instances where there are other types of entities that act in a similar fashion. After some deliberation, we determined that it might be appropriate to amend the statute to allow for an employee stock ownership plan (ESOP) in the case of a profit sharing plan investing primarily in an employer stock. We felt it might be appropriate and acceptable to go ahead and amend NRS 463.175 to allow an ESOP—which are becoming more and more popular, usually with smaller, closely held companies—and they use those stock option plans as a means of rewarding and benefiting employees. The safety and security for us is that the ESOP has a trustee which acts in a fiduciary capacity, much like what we have seen previously with banks, and the employees in those instances have no control or voting rights. Because of those fiduciary duties and safeguards, we believe that an ESOP should likewise be exempt from certain licensing requirements under the act.

Section 4 has to do with NRS 463.330, which is a legislatively-created revolving account to assist the Board in confidential investigations. You will see that that amount is found in subsection 2 at \$10,000. Under the current structure, the Board may not exceed that amount. With the amendment, the Board simply wants to utilize the revolving account to facilitate the Board's enforcement division's confidential investigations. The plan is to use the forfeiture funds that do not come out of the State General Fund as a means of doing so. Even though these funds are non-General Fund monies, the amount that will pass through the revolving account via forfeiture funds will inevitably exceed that \$10,000. The amendment will allow the Board to deposit and withdraw said forfeiture funds from the revolving account to fund our enforcement division's confidential investigations. By way of background, the Board, in addition to federal agencies, is able to utilize forfeiture funds. Funds are forfeited after conviction of a crime, but we are only able to do that under certain limited circumstances in conjunction with the federal government and law enforcement activities. We would like to have the ability to pass those funds through this revolving account. The language change would show that we would be able to do that only if the revolving account is used to pass through expenses incurred by the Board while engaged in confidential investigations concerning the enforcement of NRS Chapter 463.

I went over section 5 already. Again, that is the assumed responsibility portion going to subsection 1. Our last item is section 6, which is regarding associated equipment. Associated equipment is considered to be things such as card shufflers; not gaming devices, but things used in conjunction with gaming. We also regulate those to a certain extent. The associated equipment approvals have to come through the Board and then the Commission, and it makes for a more lengthy process. You have multiple public hearings. What we propose to do here is to take out the language regarding those going to the Commission and have them go to the Board as part and parcel of our streamlining, and the efficiencies for manufacturers and distributors and associated equipment manufacturers. That concludes my affirmative remarks. I know there are some other changes and minor amendments regarding spelling and typography. With your leave, I will turn it over to the chairman of the Nevada Gaming Commission, who has a friendly amendment.

Assemblyman Watkins:

In section 3, when we are talking about the ESOP exemption along with the banks, are those intended to be on a temporary basis or permanent basis, and the fact there is no concern on the permanent basis is because they have fiduciary duties?

A.G. Burnett:

Yes, these are permanent and are waivers and the trust that we have is that it is actually held in a trustee type of capacity with fiduciary duty. Of course, there are certain approvals that have to be made. When we see one of these items, we have to vet it internally and make sure that we are comfortable with it and that it meets those requirements.

Assemblyman Watkins:

Section 5 is in regard to the manufacturer whose license is assuming responsibility for an unlicensed manufacturer or independent contractor. Forgive my ignorance on this, but are

licenses held by an individual as a qualified employee or are they typically held by an organization, or can they be either?

A.G. Burnett:

They can be held by anyone. However, typically in this context, they are held by a large corporation.

Assemblyman Watkins:

Would there be a concern with this provision that you could end up with professional license holders who just contract out their license to as many different unlicensed manufacturers as possible and use that as a means of income rather than actual oversight?

A.G. Burnett:

When you say, "professional license holders," do you mean gaming licensees?

Assemblyman Watkins:

The manufactured license holder.

A.G. Burnett:

Absolutely. You are correct in that. The responsibility rests with that licensee. We would absolutely not allow someone who is just obtaining a license as a front or a shell to enable a whole global group to come and start bringing product into Nevada. We always have the power to call anyone forward for licensure, so if we became uncomfortable with an arrangement that you see contemplated here, we could call those entities, individuals, or consultants forward to get them licensed to do what they are going to do. I would not anticipate that circumstance occurring.

I can give a good example of why we did this. We encountered one instance recently where we had a licensed manufacturer in good standing. All of you are familiar with this manufacturer. They wanted to do a deal with a company outside of the United States that is also reputable and also licensed to do what it does in all the jurisdictions that it does it; however, they were not licensed in Nevada. They did not have the finances to do it. What the manufacturer here wanted to do was simply—for lack of a better term—purchase a piece of their software for utilization in their product. Because of the way the laws were written, we said, "No, this other company has to come in." When we do internal debate and, in light of the mandates that we have in terms of enabling games to hit floors quicker and in a more efficient fashion and bring new ideas and technology to the gaming floor, from a regulator's standpoint, we determined that we can let that manufacturer who was licensed and liable with us in the state contractually utilize someone else's software or program that we will look at and vet, and an independent test lab will also look at and vet. The assumed responsibility language is crucial and that manufacturer will be liable to us if there is an issue.

Assemblyman Watkins:

My concern is that you have one license holder spread his license amongst so many different unlicensed manufacturers that if one person goes belly up, there is not enough accountability to be spread across the people who are harmed.

My question goes to section 4 in regards to the revolving account. Where do forfeiture funds currently go?

Sally Elloyan, Chief, Administration Division, Nevada Gaming Control Board:

When we receive forfeiture funds at the resolution of a criminal case, they are held in a fund, and we have a forfeiture committee that meets quarterly. We are restricted in the use of the funds for our enforcement division in criminal investigations. We are presently budgeted for \$30,000 in this revolving fund, and that has to cover covert operations by our Audit Division, our Tax and License Division, our Investigations Division, and our Enforcement Division. We have an opportunity to pursue other covert cases with our Enforcement Division; however, we do not have a means of keeping those funds confidential that we are utilizing. If we are allowed to use this pass-through account—because covert operations are an approved use of the federal forfeiture funds—then we have a way to remove the money. It is confidential, we can use it in a case, we have internal controls, and we report monthly on the utilization of those funds. That is how we use the funds and how we account for them.

Assemblyman Elliot T. Anderson:

On page 8, line 20 of the bill, you define "assume responsibility" through an internal reference to a different statute. When I looked at that statute, it defined "assume responsibility" basically as assuming legal responsibility. It seemed a bit circular to me. I am looking for more clarity as to what is happening under the existing statute with that internal reference. Is it a sort of indemnification between the entities? Is it something like an employee/employer relationship in their agreement?

A.G. Burnett:

No, it would not be in an employer/employee context. That would mean it is in-house with the manufacturer. What we look to and take care in observing and going over is the contractual relationship itself, whether or not it is some kind of a lease. In some cases, we have required an outright purchase; however, in the case of a lot of software manufacturers, it is more of a licensing agreement. Staff and I will dig into that licensing agreement of the software to ensure that the manufacturer who is licensed with us here in Nevada has full and complete control over whatever that piece is, however large or small, that they are going to put on the floor in Nevada. Again, I think the most important part for us is the fact that in terms of regulatory disciplinary actions, that licensee is beholden to us at the end of the day.

We operate in a fashion where, if there is an issue with a device or a game on the floor, theoretically, we are notified immediately. We will shut it down and pull it off the floor so it can be taken back to our lab and vetted to make sure that it is safe for patron usage. Hopefully, we would never come to that, but if we did and a manufacturer had assumed the

responsibility for that technology, we will look to that manufacturer. They are subject to substantial fines and even relocation of a gaming license if there is a problem in terms of how they handled themselves with the regulation.

As a lawyer, you understand that the liability of the licensed manufacturer to whoever they have contracted with or licensed with, there is going to be some potential litigation between the two.

Assemblyman Elliot T. Anderson:

My second question is in regard to section 4, subsection 4, which is your amendment as to the revolving account. By reading it, it was clear what your intent was. The only thought I had was regarding the broadness of the language in line 24. It says, "derived from sources other than the State General Fund" While I understand what your intent is, that language feels a little broad to me. Under that language, other sources could potentially pay for a rival to be investigated or someone who held a grudge. I wonder if there might be ways to tighten it up to talk about forfeiture funds or something else.

A.G. Burnett:

Absolutely. That is a very good point, and we are happy to work with you and your staff accordingly.

Assemblyman Elliot T. Anderson:

You have a very technical amendment. In section 2, subsection 2, paragraph (d), you are putting in a reference "pursuant to NRS 463.650 and 463.660." I initially had the same thought that NRS 463.660 looked like an unnecessary section to cite because it refers to fees, but then I looked at the rest of the chapter and that language is used with both sections repeatedly. I wanted to mention that because I thought that maybe the Legal Division kept it that way to keep it consistent with the chapter. I thought we should try to figure out exactly how that might affect the interpretation of the statute if it is done differently.

A.G. Burnett:

I will turn that over to Ms. Black and to legal counsel as well, because it is something that has been noticed and I think rectified.

Jaime K. Black, Senior Research Specialist, Administration Division, Nevada Gaming Control Board:

Initially, when we drafted this provision for the bill draft request, the language was taken from the definition of manufacturer and we did conclude that the reference to NRS 463.660 was unnecessary as it discussed fees. In discussion with your committee counsel, Brad Wilkinson, we noticed there were several other sections of NRS 463.660 that were erroneously referenced. Those will be stricken in our amendments ([Exhibit D](#)).

Brad Wilkinson, Committee Counsel:

That is correct. There were four instances, and they existed for 50 years until we discovered them yesterday.

Chairman Yeager:

Certainly the Committee can see the importance of thoroughly vetting these bills. We will make sure that it gets fixed prior to moving the bill.

Assemblywoman Cohen:

In section 6, page 8, line 38 ([Exhibit D](#)), it changed from "Commission" to "Board" by adding intent to make registration fully administrative. Can you explain why that is desired?

A.G. Burnett:

When you look through NRS 463.665, you see requirements for registration of those who create and produce associated equipment and other types of determinations and requirements that can occur after that. We propose streamlining the process. When you look through it, it requires both bodies to do those activities. Over the years, we found the registration—we have this in other context with licensing and suitability—is in front of the Board. If you are an associated equipment producer, you register with us, and then after that we can call you forward and continue reviews and audits as we routinely do. Taking out the Commission streamlines the process. It does not exclude them from the regulatory process by any means, but in these specific instances it means that that associated equipment manufacturer does not necessarily have to come through both bodies for approvals.

I may have touched on this when I presented to the Committee earlier, but both bodies meet every month in Nevada. We go between Carson City and Las Vegas. The Board traditionally meets during the first section of the month, and the Commission routinely meets two weeks after. Anyone who is seeking these types of approvals, or any licensing approval of any context, has to come through twice. That is a very good process. However, in this context of associated equipment, we felt it would streamline it more to have that registration come through the Board. The regulation is still done the same way by both the Board and the Commission.

Chairman Yeager:

We have Dr. Alamo, Chair of the Nevada Gaming Commission, who has a friendly amendment to present.

Tony Alamo, M.D., Chair, Nevada Gaming Commission:

Before I begin, I would like to thank the Chairman for allowing me to testify via video from Las Vegas. I know that I prefer to see people in front of us when I do the State's work, but I was made aware of this yesterday, and my day job would not allow me to cancel out my entire clinic day today, so I apologize and thank you for allowing me to testify here. I also want to thank Chairman Burnett for my introduction and allowing this friendly amendment to his gaming bill, thus giving his support.

This will be very quick. It is a minor change to the current statute NRS 463.220 ([Exhibit E](#)). This change allows the Commission another alternative, which can be very useful for us when those applicants may not be worthy of suitability, but yet it would not be appropriate to deem them "a denied applicant." That is because "denial" has overwhelming connotations

and stigma. This gives us another option and tool for our tool chest to do our job. Because of the simplicity of the change, this concludes my small presentation and I thank you.

Chairman Yeager:

Are there any questions? [There were none.] Is there anyone to testify in support of this bill, either in Carson City or Las Vegas? [There was no one.] Is there anyone who would like to testify in opposition to this bill, either in Carson City or Las Vegas? [There was no one.] Is there anyone in the neutral position, either in Carson City or Las Vegas? [There was no one.] Are there any concluding remarks?

A.G. Burnett:

No, we do not have anything further. Thank you and the Committee for your time. As we go forward, if anyone has any questions, please feel free to reach out to us.

Chairman Yeager:

We will close the hearing on A.B. 75 and open the hearing on Assembly Bill 4.

Assembly Bill 4: Repeals provisions relating to reciprocal enforcement of support orders with foreign countries or political subdivisions. (BDR 11-175)

Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services:

I am bringing forward an agency bill to clean up legislation that was intended to be repealed last session. It affects *Nevada Revised Statutes* (NRS) 130.035. It was obsolete with the adoption of the Uniform Interstate Family Support Act (UIFSA) legislation in 2008. It establishes the procedures and jurisdictional requirements regarding the establishment, modification, and enforcement of interstate and international child support orders. As a condition for our agency to receive federal funding for child support programs, the states are required to enact the 2008 amendments of the UIFSA, and they are required to do it verbatim. There is no allowance for change. Nevada adopted UIFSA 2008 changes in the 2015 Legislative Session, and this piece of the legislation was overlooked and needs to be repealed.

For more information, the 2008 amendment made certain changes to international support procedures. It added a definition for the term "foreign country." Countries that have a reciprocal agreement with the state were previously defined as "states" in prior language and UIFSA changed that to make the countries "foreign countries" in legislation. We are asking to repeal NRS 130.035 as it is currently obsolete.

Assemblyman Pickard:

My question probably stems from the apparent circular argument in the Legislative Counsel's Digest where it talks about the U.S. requiring the Attorney General to determine whether or not the foreign country has a reciprocal agreement. The second paragraph of the Legislative Counsel's Digest states, "This bill repeals the provisions governing the declaration of a foreign country or political subdivision as a state because once the Attorney General

determines that a foreign country has established a reciprocal agreement for child support with this State, the Uniform Interstate Family Support Act requires such countries to be treated as foreign countries and not states." To me that seems circular. It is probably because I do international custody enforcement. Do I understand your testimony to be that the recently amended Hague Convention requirements have changed the definition so that now we are never treating foreign countries as states, and we need to amend this similarly?

Nova Murray:

That is correct.

Assemblyman Elliot T. Anderson:

This looks to be a relatively straightforward cleanup bill. In 1969, there was a lot of new law adopted and it looks like this was added in 1973. I am curious if you are aware of what happened during that time in 1969 with the Uniform Reciprocal Enforcement of Support Act and maybe the changing of the previous iteration of the Uniform Act. Do you know what happened between that time as to why that statute was necessary in the first place in 1973?

Nova Murray:

I do not have an answer to that question. I can find out if we have tracking back to that date and get back to you.

Assemblyman Elliot T. Anderson:

It is really not that important. I was curious.

Assemblyman Pickard:

Under the new regime, are foreign countries and how they are treated substantially different from how we would treat a state in the enforcement? What protections does it provide that this repeal would not undo? If we have an enforcement mechanism at the state level and now we are removing the foreign country as a state actor for purposes of enforcement, does the new convention then replace those enforcement mechanisms so that we can get these enforced? How are the states and the foreign governments treated differently now under the new paradigm?

David Castagnola, Child Support Program Specialist, Division of Welfare and Supportive Services, Department of Health and Human Services:

The Uniform Reciprocal Enforcement of Support Act (URESAs) was the older statute that existed back in the 1973 era. That was replaced by UIFSA, which is an updated version. The original statute that allowed the Attorney General to recognize foreign countries as states has been replaced under the UIFSA 2008 amendments. It is really a change of definition, where foreign countries could be determined to be a state. That has now been defined as a foreign country in NRS 130.10116. You will find the definition that still recognizes the reciprocal arrangements with a handful of countries that the Attorney General's Office has going back to 1969 to 1973. The difference in the 2008 amendments is that there are certain things that foreign countries cannot do that states can do under UIFSA. That is why foreign countries are not considered states anymore, because there are some things that they cannot

do. Before any foreign order in a child support case—and this is not in reference to child custody; a child support program does not have jurisdiction in child custody matters—all the due process requirements have to be met before we can recognize an order in another country. If that country did not provide due process in establishing the order under their laws, we will not recognize or enforce it in our country.

Chairman Yeager:

Are there any questions? [There were none.] Would anyone in Carson City like to testify in support of this bill? [There was no one.] Is there anyone in Las Vegas in support of this bill? [There was no one.] Is there anyone in Carson City in opposition to this bill? [There was no one.] Is there anyone in Las Vegas in opposition to this bill?

Robert Cerceo, Attorney, Surratt Law Practice:

I have been asked by several of my peers to come today to challenge the bill. I believe Assemblyman Pickard has identified our main concern: if there would be, by the suggested proposal, some sort of limitation on going forward with collection. I am not sure how much of a background the Committee requires on Uniform Acts and why they exist as opposed to federal laws. The Uniform Acts are prepared by committees, usually with the involvement of the American Bar Association and getting all of the states to work together in trying to come up with, as close as possible, laws that can be passed in all 50 states so there is consistency of enforcement. Where the federal government starts to interplay with this, it is not only with the welfare and the Title IV-D agency contributions to the local courts for funding, it is also with the Hague Conventions, the international treaties for the collection of child support. Our concern, as relayed to me from a collection of family lawyers who practice similarly to me, is that by restricting the definition we start to lose the ability to enforce in certain situations. As we look at it, it seems facially inconsistent between country and state. I think it sounds like it was addressed earlier. Our concern is that the definition of state is still used in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which has its own separate Hague Convention for enforcement. The rules between UIFSA and the UCCJEA, while not identical, are substantially similar, and the words used in the UCCJEA still refer to "state," as a more overly inclusive view.

The other problem we are concerned with when removing "state," is that, down the road, you may require what would appear to be almost duplicative statutes in order to capture the jurisdictions that are lost with this amendment.

Finally, our concern is we might endanger ourselves with Title IV-D funding by making changes in one state as opposed to the other states.

Assemblyman Pickard:

You addressed my initial concern. Since you practice in this area, would you comment on the interaction between UIFSA and the UCCJEA and where we might see some gaps appear by dropping this definition?

Robert Cerceo:

The UCCJEA is located in NRS Chapter 125A. Are you asking for specific citations at this moment?

Assemblyman Pickard:

No, I am not looking for citations as much as just from your experience, do you foresee potential problems with the interaction between UIFSA requirements and UCCJEA requirements as they have to do with the interaction between child support and custody enforcement actions?

Robert Cerceo:

No, we see those as running concurrently. The custody portions are handled by the family court judges, the district court judges, and the general jurisdiction courts in the rural counties. The UIFSA cases are handled by administrative proceedings with hearing masters and the district attorney's office. Those are cases that usually generate an "R" designation rather than a "D" designation for divorce. Those are considered subservient to the district court orders; however, I note that the findings by the hearing master, once adopted by the court, or rather, the court is permitted to adopt the findings of fact by the hearing masters for child support. Where it does come in to interplay might be in postdivorce or later postdecree modifications for a custody where child support is reviewed. That would be the most frequent interplay between the two.

In terms of enforcement, the district court judge enters the order. That order can then be turned over to the district attorney and that puts us into the system for the "R" case number and then for enforcement. It is ethically prohibited to condition money and visitation upon each other, so we would not run into an instance where if one did not pay child support that the parent with the child support obligation would not be penalized for visitation. We try to keep those as mutually exclusive as possible.

Assemblyman Pickard:

My concern is in any potential disagreement between the Hague Convention on custody and the Hague Convention on child support enforcement and how a change in one place might affect the operation of the other. Since this is specific to child support and how we may enforce it, would that then have some overlap or interaction with the enforcement by creating a different set of definitions?

Robert Cerceo:

That is precisely our concern. If there is a drift between the enforcement of the two coexisting, very similar, almost identical jurisdictional rules, we could potentially see some difference in application. When I say application, what I am really talking about are children and the receivers of child support in our state who are receiving the child support from the foreign jurisdiction and the concern of private practitioners is that we do not want to foreclose the opportunity for those in need to collect the child support.

Assemblyman Pickard:

In preparing the existing bill, was that comparison made? Do we know whether or not the definitions could pose a problem to enforce custody matters in the future?

Nova Murray:

In the Nevada Electronic Legislative Information System, there is a letter from the Administration for Children and Family Services ([Exhibit F](#)). It is the federal agency that oversees our program directing us to remove this legislation. In order for our agency to be aligned with UIFSA 2008, we must remove this language. We are at risk of the Title IV-D funding for the program.

Assemblyman Pickard:

I would think that if we have a directive, because I recognize the interaction with federal law and federal requirements, maybe we turn that around and go from "This is a necessary requirement for us to be compliant," but then do we need to make a similar change in our child custody statutory scheme so we are not running afoul? All I am interested in doing is making sure we are not creating problems for other enforcement actions and whether or not that has been fully vetted.

David Castagnola:

The gentleman in Las Vegas made reference to funding concerns, and I would like to explain that the child support program receives 66 percent of its funding from the federal government and the state provides 34 percent. As a condition for that funding, we have to follow federal regulations to the letter. Furthermore, for Temporary Assistance for Needy Families, Hannah funding, a requirement is that states have a compliant child support program. If a state's child support program is not compliant with federal regulations, the state risks losing its funding for both the child support or Title IV-D under the Social Security Act program as well as funding for the Title IV-A program.

In September 2014, Public Law 113-183 was passed, and, among other things, it requires that states adopt UIFSA 2008 verbatim. In the information that we will provide you, the federal office notes that the removal of the repeal of the statute that we are requesting does not impact the ability of enforcement of child support cases. In NRS 130.10116, there is language that recognizes reciprocal arrangements that a state may have. We are taking the definition of a foreign country out of one statute and we are relocating it into another, but the effects are the same. I would like to underscore that. We have a requirement to guarantee our funding that we complied verbatim.

Assemblyman Pickard:

I certainly understand the need to maintain the Title IV-D funding, and I am sensitive to it. To me, as a practitioner in this area, enforcement is more important than funding. We need to make sure that children maintain their relationships with their parents. I do not want to miss an opportunity to both comply with federal law—I understand that requirement—but if we have not looked at how this might affect the enforcement side on the custodial side, then we are missing an opportunity. We are creating problems for those relationships. Maybe it

would be appropriate to do that analysis, determine whether or not changes need to be made with respect to the custodial side, and include that in this legislation so that we are not doing what we used to do, which is amend one section over here but not mirror it in another section and create a conflict within the law.

Chairman Yeager:

Did you have a chance to speak with the sponsors before today about your concerns with the bill?

Robert Cerceo:

Unfortunately, no. I received the phone call at 11:30 last night from one of my partners, Ms. Kimberly Surratt. She, Marshal Willick, and a few other high-level practitioners in family law asked me to step in today. I am very willing to help Assemblyman Pickard and the presenters of the bill in whatever capacity I can to work through our concerns.

Before I sign off, I will note that we were not aware of the letter received from the government requiring the change to the UIFSA. I do not know if that would have changed much in my presentation, but it does relieve one of the main concerns that I expressed today.

Assemblyman Pickard:

I am not trying to oppose the bill; I just want to make sure I understand what the unintended consequences might be and whether or not they have been addressed.

Chairman Yeager:

I understand that. I invite all interested parties to continue to work on this and see if there is some kind of consensus that can be reached and let me or my staff know what the outcome of it is. I would ask the presenters today if you could make sure we get a copy of the letter you are referencing so we can have it online for people to look at.

Nova Murray:

Thank you so much for your concern for our program and the job that you do. I brought the letter, so I will leave it here and have copies distributed.

Chairman Yeager:

Is there anyone else who wishes to testify in opposition to the bill? [There was no one.]
Is there anyone here in Carson City who wants to testify neutrally? [There was no one.]
Is there anyone in Las Vegas who wants to testify in the neutral position? [There was no one.]

Assemblyman Pickard:

I want to commend the Division and particularly the various enforcement offices for the wonderful work that they do. They do a great job.

Chairman Yeager:

Are there any final comments before we close the hearing on the bill?

Nova Murray:

Thank you. It means a lot to our program.

Chairman Yeager:

We will close the hearing on A.B. 4. We will now move to the public comment portion of the meeting.

Tonja Brown, Private Citizen, Carson City, Nevada:

Mr. Kandt testified earlier and gave some information regarding some of the litigation. I want to fill you in on some information that he did not provide to this Committee, which is dealing with the Department of Corrections (NDOC) and the civil lawsuits that are filed by inmates. The last I recall there were approximately 1,700 inmate civil litigations. Most of the inmates—they are in pro se—sometimes they use outside agencies. Over the years, I have seen for myself through inmates, personal and otherwise, where NDOC will retaliate against certain inmates and then litigation will take place. I have personally seen where the Attorney General's Office has and does breach settlement agreements made with those within NDOC and the private citizens, leading to more litigation. The question was asked about the Attorney General's Office prosecuting other agencies. I can tell you personally that when it comes to looking into their own individuals on violations, the Attorney General's Office does not. In fact, what they will do is, if you present information during a public comment or have evidence to show things that are happening, they will have everything stricken and removed from the public record.

It was also touched on by Assemblyman Fumo regarding post-conviction and ineffective assistance of counsel. A lot of people do not realize that inmates usually have to do this by themselves during pro se than their appointed counsel. In most cases, the courts will dismiss a lot of the grounds, mostly those that are reversible, leaving the person to proceed forward and then the higher courts will uphold it and never reach the merits on it. Most of those are reversible.

I would like to bring up transparency in local government. Some years ago, about 2009 or 2011, the Legislature passed an ombudsman bill for NDOC. To this day, it has never been filled. The Attorney General's Office says they cannot find the funding. I think we really need to look at that, get the funding for it, and it will cut down on the litigation filed by inmates.

In 2007, Assemblyman Harvey Munford specifically wrote a letter to the Attorney General's Office asking basically what you are asking for, except he was asking for them to provide the information dealing with the inmates' lawsuits, and how much it cost to defend some of these lawsuits. Some of them cost quite a bit because they have had outside counsel. They have had college students represent them, and some of these became published opinions.

I would also like to add that on September 12, I made a presentation to the Advisory Commission on the Administration of Justice. They had concerns about why the parole board was not paroling their inmates and granting more paroles. You will see a lot of

the litigation that came out against NDOC and the parole board in different inmate cases. It defines pretty much what goes on within the NDOC and the parole board and that the state has to represent in litigation. These are areas that Mr. Kandt did not even touch on.

I am personally involved in a breach of settlement agreement with the state in a wrongful death suit. There was a settlement agreement we agreed to, and when I learned that the Attorney General's Office had withheld some evidence in a federal case, and I brought it to the attention of the Attorney General's Office, the Governor, and the Secretary of State some years ago, they breached the terms of the settlement agreement when they had my public records stricken and removed from the record. They did not want people to know that the Attorney General's Office was withholding evidence favorable to the plaintiffs in federal cases. I would like you to take a reference, go to the Advisory Commission, and look at the information that I have provided. It is an eye-opener.

Chairman Yeager:

Thank you. Is there any public comment in Las Vegas? [There was none.] Are there any comments from the members this morning before we adjourn? [There were none.] Thank you for a productive meeting. This meeting is adjourned [at 10:19 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 a document titled "Attorney General's Office Overview Presentation," presented by Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General.

[Exhibit D](#) is a proposed amendment to Assembly Bill 75, presented by A.G. Burnett, Chairman, Nevada Gaming Control Board.

[Exhibit E](#) is a proposed amendment to Assembly Bill 75, presented by Tony Alamo, M.D., Chair, Nevada Gaming Commission.

[Exhibit F](#) is a letter dated January 28, 2015, from the Administration for Children and Families, in support of Assembly Bill 4, presented by Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services.