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

## Seventy-Ninth Session
## April 26, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:33 a.m. on Wednesday, April 26, 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:**

Senator Tick Segerblom, Senate District No. 3

**STAFF MEMBERS PRESENT:**

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Erin McHam, Committee Secretary
Melissa Loomis, Committee Assistant

**OTHERS PRESENT:**

Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office
Jennifer Kuhlman, Chief Deputy District Attorney, Child Welfare Division, Clark County District Attorney's Office
The Honorable Frank P. Sullivan, Private Citizen, Las Vegas, Nevada
Christopher R. Tilman, Private Citizen, Las Vegas, Nevada
Frank J. Toti, Private Citizen, Las Vegas, Nevada
Bill Hart, Alternate Public Defender, Washoe County Public Defender's Office
Jennifer H. Rains, Chief Deputy Public Defender, Washoe County Public Defender's Office
John J. Cahill, Public Administrator, Clark County
Steven Scow, Private Citizen, Las Vegas, Nevada
Chris Ferrari, representing American Research Bureau
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services; and representing Legal Aid Center of Southern Nevada
Nick Vassiliadis, representing Nevada Collectors Association
Lauren A. Peña, Directing Attorney, Civil Law Self-Help Center, Legal Aid Center of Southern Nevada
Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada

**Chairman Yeager:**
[Roll was called and Committee protocol was explained.] We have three bills on the agenda today. We are going to take the bills in reverse order. We will begin with Senate Bill 432 (1st Reprint).

**Senate Bill 432 (1st Reprint): Authorizes the filing of a motion for the termination of parental rights as part of a proceeding relating to the abuse or neglect of a child. (BDR 38-475)**

**Senator Tick Segerblom, Senate District No. 3:**
As a matter of policy, I have asked my staff to let me know of any bills that come to you from the Senate Committee on Judiciary. At this point, they are the Senate Judiciary Committee's as opposed to the sponsors' bills. Most of them will be presented on behalf of other people. I just want to say that I am here, and this is a good bill. The Senate is not

nearly as thorough as your Committee because we do not have your criminal expertise. Feel free to analyze all of these bills we are sending you, particularly with the criminal penalties. Often in the Senate, we are trying to jack everything up, and I hope you are trying to jack everything down. It is a great bill, and I am proud to be here with Brigid Duffy.

**Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office:**
Thank you, Senator Segerblom, for being with us today on behalf of Senate Bill 432 (1st Reprint). This is a procedural bill. I have with me one of my Chief Deputy District Attorneys, Jennifer Kuhlman. She drafted the language that was turned over to the Legislative Counsel Bureau. She worked with the stakeholders in our communities across the state to bring the best bill that we could to support the children in our foster care system. I would like to ask Ms. Kuhlman to walk the Committee through the bill since she has it memorized.

**Jennifer Kuhlman, Chief Deputy District Attorney, Child Welfare Division, Clark County District Attorney's Office:**
I have been a practitioner in the Child Welfare Division of the Clark County District Attorney's Office for approximately ten years. This is a procedural bill to move the termination of parental rights (TPR) from *Nevada Revised Statutes* (NRS) Chapter 128 to be incorporated in Chapter 432B. We did something similar in 2003 [Assembly Bill 273 of the 72nd Session] regarding moving guardianships from Chapter 159 into Chapter 432B. There are no substantive changes to the termination of parental rights. The burden of proof remains the same. The grounds remain the same; this is simply a procedural bill. We had statewide cooperation with all of our community stakeholders including parents' attorneys, children's attorneys, and the judges in the northern, southern, and rural communities. We all believe that this is important to the system and the families that our system serves.

I would like to go quickly through the sections of the bill as currently written and passed unanimously by the Senate. Section 1 provides for the amendment of Chapter 432B. Section 2 ties Chapter 128 into the Chapter 432B abuse and neglect statute. It also allows the filing of a motion rather than a petition in an abuse and neglect case. It also requires the filing of a motion if a child has been out of the home for more than 12 months. Section 3 addresses the service of a motion. It adds the requirement of personal service, regardless of where the person resides, as well as allowing personal service and service by publication to be done simultaneously.

Section 4 defines the rights of parties at the initial termination hearing. Section 5 adds a court ordered mediation in the event that a parent wishes to relinquish their parental rights. It allows the court to order mediation between the prospective adoptive parents and the biological parents to negotiate an open adoption agreement within 20 days of the initial hearing. Section 6 allows the admission of reports at trials as long as the parties have an opportunity to cross-examine the person making the report.

Section 7 requires the district court to use its best efforts to render a decision within 30 days of the close of evidence. Section 8 similarly sets up timelines for the appellate courts—specifically the Nevada Supreme Court—to render a decision in appeals if there are any. Section 9 requires the juvenile court to retain jurisdiction over any requests to restore parental rights. Section 10 adds a provision clarifying that all of Chapter 128 applies to the extent that it does not conflict with the new sections added to Chapter 432B.

After this bill was amended and approved by the Senate, we continued to work with our community partners, and we have agreed to make some changes at their request. Section 2, subsection 3, regarding the mandatory filing of a motion at 12 months—we have agreed to strike that section. Additionally, section 5, subsection 3 changes the time frame of the mediation. It is currently written at 20 days. We would like to address that at 60 days to accommodate all of the counties. Finally, section 6, subsection 1 only, will be stricken in its entirety.

We believe that this is an extremely important procedural bill. It is going to make the process more efficient. Our number one goal is always to reunify children with their families. However, when that is no longer able to occur and the court determines it is appropriate to proceed with a termination of parental rights, this bill will enable the state to do that process in a more efficient manner to get kids into their permanent homes in a more timely fashion. I would like to note that we do have the Honorable Frank Sullivan in Clark County, as well as Christopher Tilman and Frank Toti, two of our parents' attorneys in Clark County. They are here to testify in support of this bill.

**The Honorable Frank P. Sullivan, Private Citizen, Las Vegas, Nevada:**
I am here to testify in support of this bill on my own behalf as a juvenile dependency judge for many years. I am not speaking on behalf of the Eighth Judicial District Court; I am speaking on behalf of myself as a family court judge. I do support the bill, especially with the modifications that Deputy District Attorney Kuhlman indicated.

Making the termination of parental rights as a motion under the juvenile neglect and abuse case under juvenile dependency makes sense. The purpose of termination of parental rights is to achieve permanency through adoption. Reunification with the family is the primary goal, which happens through the juvenile case. The guardianship option for permanency comes to the juvenile case. If the children are aged-out through foster care, that also comes through the juvenile court. Putting the termination of parental rights under the juvenile neglect and abuse case makes perfect sense because that is one of the four options of permanency.

I also like the way the bill addresses personal service. They clarify that personal service is to be made on the parents whether they are in the state of Nevada or not. It also provides that if the parents are unknown or their location is unknown they do still have to try personal service at any last known address that is located through their due diligence. That is a good provision as well. I also like the provisions that talk about the notice of hearing, to make sure everyone gets noticed—all the attorneys, the guardians ad litem, the court appointed special

advocates. It addresses service to the Native American tribes (if the Indian Child Welfare Act applies). It is a key provision that makes it clear that the prospective adoptive parents are to get notice of the proceedings. Many times, they will be there to testify in a termination of parental rights proceeding anyway, but this makes it clear that they are entitled to notice of these proceedings to make sure that their voice can be heard.

It also addresses mediation in termination of parental rights cases for relinquishment with open adoption. We are already doing mediation statewide through the Court Improvement Program, which is developing statewide mediation in all juvenile dependency cases. Washoe County has been doing it for several years. Clark County is already doing it as well. We refer the matters to mediation if the parties are open to it in order to resolve the matter with open adoption, so the parents can maintain some type of contact with the children, even if their rights are terminated. That is an important provision because many times the adoptive resource is family. It is important to get them to the table. When you have notice to the prospective adoptive parents, that brings them in too, so they can be involved in that mediation as well. Maybe they can open up an open adoption agreement in the best interest of the children and maintain their relationship with the family.

I also like the timeliness. When dealing with children and child welfare, it is a safety, well-being, and permanency issue. The key is permanency in a timely manner. This promotes that by requiring the court to make their best effort to get a decision within 30 days, any appeals within 6 months, or a full briefing within 12 months. That serves the best interests of these children by trying to get these matters done in a timely manner, so children can receive permanency throughout. With the modifications made by Ms. Kuhlman, I support this bill.

**Christopher R. Tilman, Private Citizen, Las Vegas, Nevada:**
I am a parents' defense attorney. Frank Toti and I were asked to look at the original language in this bill. We suggested some changes, and Ms. Duffy and Ms. Kuhlman made those changes. I support the bill as it is amended today, especially with the amendment of section 2 where we have the mandatory filing of a motion within 12 months. I thought that was problematic. The reason is that a lot of parents are actively working their case plans and doing what they should, and 12 months is just not enough time. Section 6 being amended is also very helpful. We had a due process problem and a hearsay problem with section 6. I am pleased to see that coming out. As it is currently written, I support the bill.

**Frank J. Toti, Private Citizen, Las Vegas, Nevada:**
I am a parents' defense attorney. Mr. Tilman summed up almost everything that I wanted to say. From the perspective of both the state and the defense, this is much fairer, and it should be implemented.

**Assemblyman Thompson:**
Ms. Duffy, in your introduction you talked about all of the different stakeholders who were involved. Nevada's Foster Youth Bill of Rights was key legislation passed years ago. Were the youth advocacy groups at the table? Was the Foster and Adopted Youth Together (FAAYT) group involved in this process? I believe there is another youth council with children who are in the system. Were they involved in this? I hear you say children, so I want to define who were the children's representatives involved.

**Brigid Duffy:**
The stakeholders were the Legal Aid Center of Southern Nevada, the two parents' attorneys down south who were given the opportunity to send it out to other parents' attorneys in Clark County, the Department of Child and Family Services, and the Office of the Attorney General for the rural counties. There were not specific advocacy groups for children. Denise Tanata's group [Children's' Advocacy Alliance] was made aware of it, but not when we were working on it in the interim.

**Assemblyman Thompson:**
I would like to see them involved. I know that it is a procedural change, but the group—and many of the youth who are now young adults—should be invited to the table. They were the ones who helped craft the bill of rights for themselves. They would have the keen set of eyes that knows that this is on target with the deletions and additions. They need to look out for those below them—their younger siblings and so forth.

**Brigid Duffy:**
Absolutely, I wrote down the FAAYT group.

**Assemblyman Thompson:**
I can get you connected with them.

**Brigid Duffy:**
I will reach out to you.

**Assemblyman Pickard:**
I have a question with respect to how we approach termination of parental rights. The United States Supreme Court has deemed this the civil death penalty because it permanently terminates a relationship between parent and child. They take it very seriously. In these types of cases, a lot is done to try to put a plan in place for reunification, correcting the issues, and treating the issues that may result in an abusive situation. Could you talk a bit about what steps have to happen before we go to a point of termination of rights? It is important for the Committee to understand that there are a lot of opportunities. We are talking about placement for more than 12 months, and a parent still has not taken whatever steps are necessary. If you could go through that and inform the Committee, that is important for us to know.

**Brigid Duffy:**
I would like Judge Sullivan to field that question. He is the neutral, nonbiased arbiter of termination of parental rights. Maybe it will give the Committee a better overview than only hearing from a state's attorney or a parent's attorney what is the process.

**Judge Sullivan:**
When we come into a case like this, the number one goal is reunification with the parents. There are some circumstances where that would not be the primary goal. For example, if rights have been terminated before, that could be grounds to pursue reunification as a concurrent plan but not the primary plan. If children have been severely injured or died, siblings could then have grounds not to pursue reunification as the initial plan. I would estimate that 90 percent of the time the permanency plan is reunification when we begin. It is identified with services that can help this family. The majority of our cases are neglect, not abuse. I would say 75 percent of our cases are neglect cases. I would guess that 80 percent of those neglect cases are drug related. The primary plan is to get services for their family. We have instituted a safety intervention and permanency system plan, which addresses the safety of the children to see if we are able to keep those children home safely with services in place while we are working on addressing the family's behavioral changes—be it drugs or some other issue. We are trying to keep those children home safely to minimize the trauma on the children.

If they cannot remain at home safely, we do have services in place for that family with conditions for the return to the home—what needs to happen to get the children home. They are provided services. It could be substance abuse, mental health counseling, or violence in the home. Many times, we will address those issues to give the parents a chance to get those children home. Statistically, children do better when they are home with family. We do try to maintain that relationship.

If the parents are not making progress and it is not viable for these children to be returned home, then they will proceed after a 12-month review. By law, these cases must be reviewed every six months. At the second six-month review, the permanency review, we then look to see what the permanency plan is. If the permanency plan is reunification or termination of parental rights with an adoption or guardianship, we then focus on reasonable efforts to pursue permanency within a timely manner. If it is termination of parental rights, the burden of proof is parental fault by clear and convincing evidence; a higher standard than normal cases under the juvenile neglect and abuse case (preponderance of the evidence). You have to show that the best interests of these children will be promoted by termination of parental rights. That is clear and convincing evidence.

We come to the one-year review and the children have been in the system for 12 months. If it looks like reunification is viable in the near future, we can make compelling reasons to maintain reunification as the permanency plan. If it looks like we can get these children home in the next 30, 60, or 90 days, we will monitor that.

I do not have the most recent Nevada statistics, but I do have the national numbers. Across the country, about two-thirds of children are reunified through the child welfare system. About 22 percent end up in adoption through a termination of parental rights. Nationally, two out of three children do go home. I imagine Nevada might have a higher percentage than that.

We make best efforts to get these children home because they do better in their homes and raised by their families. Number one is we have to make sure the children are safe and will not be subject to any abuse or neglect. We take the termination of parental rights very seriously. The Adoptions and Safe Families Act of 1997 made it clear that the overarching cause should be the best interests of the child. We would not pursue termination of parental rights or adoption unless it was determined that would be in the best interest of the child, while respecting the parental rights of the children as an important right to the parents. The Supreme Court has indicated that it is a civil death penalty. We take that very seriously. We make every effort to get those children home safely, but safety is the paramount interest.

**Assemblyman Pickard:**
Is it fair to say that the termination of parental rights is used only as a last resort after the parent cannot or will not, over a long period, correct the problems preventing reunification?

**Judge Sullivan:**
I would say yes. We are now trying to pursue guardianship in cases. Many times, with the termination of parental rights, a family member is adopting. One of the barriers to getting a guardianship was funding. If a grandma is adopting three of her grandchildren, she can get subsidized help through adoptions. We did have subsidized guardianships, but it was not funded until the last year. We do have some money. The barrier to that is that you must show that adoption is not a viable option in order to get the kinship guardianship funding.

We need to rethink that because it is another way to maintain the relationship with the parent. If you get a guardianship that is subsidized, so a family can raise a child without a need for state intervention, it can maintain those ties and keep the children safe. Right now, one of the barriers is to show that adoption is not viable to get the subsidized guardianship. That is another option as we are looking for an alternative to termination of parental rights within a family placement.

**Assemblyman Ohrenschall:**
Does the department have any statistics as to percentage of service by publication versus personal service? How often is it requested and granted in these termination of parental rights cases?

**Jennifer Kuhlman:**
I can try to obtain the statistics, but I do not have them to present to the Committee today. In Clark County, we attempt to personally serve parents as well as with publication. The way the statute is currently written in Chapter 128 it is confusing and is being interpreted differently by different judicial officers. This bill will ultimately make it more difficult

for us. It will ensure a better chance of notice. We will attempt to personally serve not just within the state, but also, wherever the parent is residing as long as we can identify a last known address. We do that through our due diligence search. The idea behind this amendment is to allow us to not only personally serve, but also, do the publication simultaneously. If we cannot personally serve them, the publication notice would not become effective until we have proven to the court that we did attempt to provide that personal service. We are trying to wrap a tighter blanket around the service to make sure that we can notify everyone possible.

**Assemblyman Ohrenschall:**
That publication would be in addition to personal service, not in lieu of personal service?

**Jennifer Kuhlman:**
Yes.

**Assemblywoman Cohen:**
Are attorneys allowed in the mediation?

**Jennifer Kuhlman:**
Absolutely, the parents' attorneys would be involved in that. The way the informal process is being done now outside of mediation is that the parents' attorneys will contact the prospective adoptive resource—by phone or email—and will try to negotiate it over the phone. We are just trying to make that process more formal. The parents' attorneys would be able to guide them through the process. The prospective adoptive parent is not appointed an attorney by the court. However, they are told that they can obtain an attorney or seek legal advice should they wish to do so. They would be welcome to bring an attorney to that proceeding as well. The child's attorney would also be involved in that process and present at the table.

**Assemblywoman Cohen:**
Are we not talking about a new program set up—similar to a Family Mediation Center program?

**Jennifer Kuhlman:**
It would not be a new process. We are already doing this in Clark County, and I believe Washoe County is doing it as well to an extent. This would make it a requirement, so when that occurs, it would happen sooner in the process rather than later. What is currently happening is that parents will come in for an initial hearing, they will enter a denial, and it will be set for trial two, three, or four months out, depending on the given court's calendar. They come in the day of the trial and say, "We want to relinquish our parental rights." The idea behind this is to identify when a parent wants to relinquish sooner and to facilitate that process, so we can get the child adopted sooner rather than later if the ultimate wishes of the parents are to relinquish.

**Assemblywoman Cohen:**
I have a question about the service in section 4, subsections 4 and 5. If service has been attempted, the party does not appear, and there is a postponement, does there need to be another attempt at service? Are there no more attempts at service; once the attempt is made, the proceeding will continue without further attempts.

**Jennifer Kuhlman:**
That is correct. We publish, with an expense to us, and we have attempted the personal service. Where this comes into play a lot is for our John Does. We have many children in our system where we originally identified a man as the father. He did DNA testing and he turned out not to be the father, and we do not know who the father is. Without that requirement, the net effect would be, because there is nowhere to personally serve them, we would notice by publication.

When we come in for the initial hearing, if the mom says, "We want to enter a denial. Set this matter for a trial." That is a continuance of the hearing. Without this subsection as to John Doe, we would have to republish, incurring additional expenses, to notify a person we do not know of that continued date. This section prevents against that situation of having to republish. If they do not appear at the initial hearing, they do not appear. If there was a father who did not appear at the initial hearing and somehow did appear at the continued hearing, we would appoint an attorney if appropriate and be a part of the proceeding. He would not be excluded in any way.

**Assemblywoman Cohen:**
If the father finds out later on that there has been a trial set and termination has not yet happened, can he get a continuance, and get the matter taken off calendar, so he can get an attorney appointed, even if it is at the last moment before the proceeding goes any further?

**Jennifer Kuhlman:**
Absolutely, the idea is not to deny someone his or her due process rights. We always want to have matters heard on the merits. I have seen situations where a dad has been missing for a period of time. We have had the initial hearing, have a trial date set, and the dad will contact the caseworker in the interim. We have even gone as far as to put that matter on calendar in the interim to advise the court, "We have located the father. Rather than continuing that again, can we get an attorney appointed for him now?" We want to make sure they have a voice and an opportunity to be heard.

**Assemblyman Pickard:**
Will the district court judge hear these TPRs, or is the hearing master who is hearing the abuse and neglect case also eligible to adjudicate this?

**Brigid Duffy:**
In consultation with our colleagues from Washoe County, we learned that it is a little different in Washoe than it is in Clark County. In Clark County, the hearing masters are hearing these matters. That all grew out of the Blue Ribbon for Kids Commission that put Clark County's abuse and neglect under the microscope. In Washoe County, only district court judges hear them, but it is not just the district court judge who hears the underlying juvenile case. It is sent out to all of the district court judges. I am just summarizing what they have taught me as of late yesterday and early this morning; they are here if they want to clarify that. It is different in Clark and Washoe.

**Chairman Yeager:**
Is there anyone who would like to testify in support?

**Bill Hart, Alternate Public Defender, Washoe County Public Defender's Office:**
We are in support of this bill based on the changes. It is important, when we are talking about the civil death penalty in section 6, to make sure the proper safeguards are in place for termination of parental rights—the constitutional rights of the parents. The elimination of section 2, subsection 3, was another sticking point for us. With those changes, we can support this bill. We understand the purpose of it and have no objection to it.

I want to clarify for Washoe County. We understand that the statute states that the district courts are the only ones that have the jurisdiction to terminate parental rights. When a termination petition is filed, it is sent to all of the family district courts, and it would rotate on that basis. We do not have any family masters hearing any terminations. We do not think this bill will change that.

**Jennifer H. Rains, Chief Deputy Public Defender, Washoe County Public Defender's Office:**
I have been practicing in this area for approximately ten years. I would echo what my colleague, Mr. Hart, just said. With these changes, we are able to support this legislation. With regard to the fundamental liberty interests and families, we had some concerns. We appreciate the willingness of the proponents to work with and through Sean Sullivan, so we could address those concerns.

[All items submitted but not discussed will become part of the record: (Exhibit C).]

**Chairman Yeager:**
Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I would invite the presenter back up for any concluding remarks. [Waived.] We will formally close the hearing on Senate Bill 432. I will now formally open the hearing on Senate Bill 376.

**Senate Bill 376: Revises provisions relating to certain agreements between heir finders and apparent heirs. (BDR 12-480)**

**Senator Tick Segerblom, Senate District No. 3:**
This bill represents something that you will hear several times during the course of the next month—that is, back in 2013, I was the Chair of the Judiciary Committee in the Senate. We flipped last time, and now I am back again. Some of the ideas that have been out there may have been squashed or modified. Now we are back trying to do the final trifecta. In this bill, Mr. Cahill came to us and said that his office looks for heirs and there is no charge for that. He found that there are private attorneys who are going out and signing contracts with people, saying, "If we find that you are an heir, we are going to take a big piece of the action." Mr. Cahill can do the same thing for free, although he would ask for a period of time when he could have an exclusive right to deal with those people. If he could not find somebody within a period of time, they would turn it over to private attorneys. The original proposal was a year. We negotiated for 45 days. This bill brings it back to the one year he originally proposed. We passed that out of the Senate. Mr. Cahill can explain it better.

**John J. Cahill, Public Administrator, Clark County:**
[Supplemented with written testimony (Exhibit D).] We first had this passed in 2011 [Assembly Bill 291 of the 76th Session]. It was a bipartisan bill. This change has the support of Washoe County Public Administrator, Donald Cavallo (Exhibit E), who is an elected Republican, so this is still a bipartisan effort. I do not paint all of the heir finders as guilty based on the findings in the indictments and plea agreements involving three of the largest firms in the United States, but it shines a light on the process. In one of the examples on the Nevada Electronic Legislative Information System (NELIS), Brandenburger & Davis agreed to an almost $1 million fine and agreed to plead guilty for their actions (Exhibit F). That gives you some insight into what this process does to families.

I noticed that in the opposition they have a chart (Exhibit G) showing Nevada as the only state that puts a limitation on this. I appreciate them pointing out that Nevada is a leader in reforming this process. The time limit is going to be the greatest debate in regard to this. We have asked for a year; we believe that is reasonable. This only applies to public administrators. There are no examples that I know of where a public administrator has distributed to the wrong heirs or distributed sooner than a year. Because of the volume of the work, it takes much longer in public administrator offices to complete an estate. The statute gives us 18 months in a general probate to complete the process.

As the exhibits [(Exhibit F), (Exhibit H), (Exhibit I), and (Exhibit J)] show, there are problems with the process. All we are asking for is time to do the job—for us to locate the heirs and prevent the families of Nevada decedents from losing a third or more of their inheritance because we do not have the time to go out and find them. That is the essence of the change. The change is one numeral and one word—pretty simple stuff.

**Chairman Yeager:**
We do have exhibits on NELIS referencing some of the conduct you were talking about. So that we have it on the record, could you give us a brief rundown of some of the conduct you are speaking of, where these individuals either pleaded or were found guilty in court? What kind of conduct was it to which they pleaded guilty or were found guilty?

**John Cahill:**
I am referring to collusion among the firms; working with each other in a manner that did a great disservice to the customers. One of the first things I found out when becoming involved in this business was that there were some firms that, if hired on an hourly basis to locate heirs (which we do if we are unable to use our resources to find the heirs—I use heir hunter firms and forensic genealogists who will perform searches all over the world), they will find the heirs, hand that information off to another firm to sign them up for a percentage, then they come back. The other firms will file a notice that there is an attorney representing these heirs. They always say that the attorneys represent the heirs; in fact, the attorney is connected to the heirs by the heir finder firm.

When these cases go through court, by order of the court and petition of the attorneys representing the heir, the distribution of the assets is made to the attorney. The attorney deducts his fees—5 percent; the attorney pays the heir finder firm the remainder of their fees—typically one third; and the attorney will pay the balance to the heirs. The heirs are not told who in their family may be deceased, or that there may be someone looking for them who will not charge them anything. They are not told what jurisdiction it is in, although they should be able to figure it out when the connection is made to the attorney. They are kept in the dark.

It is very hard for us to get some of the information that we get from every heir. We want an affidavit, and we want them to swear as a matter of their testimony that they are who they say they are, and that they are presenting all of the information they have about other possible heirs. These heir-hunting firms hand that information off to another firm that would sign up the heirs. They would then come around and collect their hourly fee, confirming these heirs who are brought to us by another group that is getting the big payoff. They do these things back and forth, and there was no competition. You did not have anyone advertising, "We will find your heirs for 25 percent," or "We will find your heirs for 20 percent." There was no competition in the business.

These were some of the charges brought by the United States Department of Justice. It gives some insight into how difficult it was for them to investigate. I am sure that what happened was that there was some insider, some disgruntled or discharged employee, who finally brought all of this up. We who work in the business knew a lot about what was going on, but it is very difficult to get proof that they did it. The three largest firms were indicted. There were plea agreements from two of them with these large fines and agreements to face the criminal charges. There are a lot of questions that were brought up.

In Pennsylvania there was a sitting state senator, an attorney, who was charged by the American Bar Association. In the hearing in front of the state Supreme Court, they said, "You cannot claim to represent the heirs and the heir finders. That is a conflict of interest." The way that relationship is established—where the heir finder firm guides these heirs, who

are being kept in the dark, to an attorney to represent them—is not a fair relationship for the heir, the person they are identifying as the client. In that case, the 35-year state legislator took retirement from his position at the legislature, agreed to the discipline, and was able to keep his law license. Other charges that were dropped included fraud.

Those who have had a close look at how these businesses operate, the Justice Department and other places have said this is not a good working business on behalf of the family members who are due to collect an inheritance.

**Assemblyman Wheeler:**
Mr. Cahill, you said it passed unanimously. I am looking at NELIS and maybe we are looking at different bills because I am looking at A.B. 291 of the 76th Session. What I see here is completely partisan—Yea 27, Nay 15 in the Assembly; and Yea 11, Nay 10 in the Senate. That was exactly down party lines. I am wondering if that is the same bill.

**John Cahill:**
In 2011, the sponsorship was bipartisan.

**Assemblyman Wheeler:**
I thought you said that it passed on a bipartisan basis. Why do we want to extend this period? Would we not rather find the heirs as quickly as possible so that the estate can be settled?

**John Cahill:**
We do try to find the heirs as quickly as possible. In the majority of cases, we are successful. There is no delay in looking for the heirs. The one year period is significant in some regards; this is my eleventh year at the Clark County Public Administrator's Office and my experience has been that families who are somewhat disconnected may not become aware of a family member passing until they do not get a holiday card from their aunt in Las Vegas. They think, "That is odd; she has always sent a card. I wonder if she is unwell." They will start looking. Those things revolve around birthdays, anniversaries, holidays, and times when families who are geographically separated will get in communication with each other. If the heirs are not quickly found, one of our strategies is to start our search and to wait because we know that the family will connect with us. We do not wait to start the search—that is begun immediately. Many of our cases are referred by the coroner's office, and the first office responsible to locate and notify heirs by law is the coroner. It begins immediately. It is only when they cannot be found that we get into these circumstances with greater searching and heir finders. We hire heir finders to do our work, but we are very careful about who we select. We have found that the smaller firms are much more reliable.

**Assemblyman Watkins:**
In response to the Chairman's questions about some of the abuses that may have gone on in this practice, were any of those abuses or alleged abuses going on in the state of Nevada?

**John Cahill:**
The abuse of keeping the heirs in the dark does go on here. We have had considerable difficulty working with some of the heir finder firms, including one of the firms that was indicted and going to trial in July. We have had difficulty getting Form W-9's from them. Those must be filled out by the heirs themselves. Some of the attorneys, not all because we work with some great attorneys who represent heir finder firms, maybe they think I am going to step in and get in direct communication with their clients, which I would never do. They represent the clients, and I accept that even though I have concerns about how that relationship is established. Getting information directly from the heirs has been a problem because they hide how we can communicate with them. They do not give us the addresses; they do not give us information about who they are.

The other problem that we have is that the heir finder firms will give us a chart, and the chart will show the relationship of the heirs they have found to the decedent. For example, if they find heirs on the maternal side and we will say, "What about the paternal side?" They will say, "There were no heirs of equal standing on the paternal side." I will say, "Great, give me your documentation on that." The documentation used to back up the found heirs always has to include birth records, death records, obituary records, and a considerable amount of information to establish that these are the true and correct heirs. If they say there is nobody on the paternal side, I will say, "Give me your findings and show me the documentation on that." We have some difficulty getting that, which leaves us with the feeling that as soon as they find one heir or a couple of heirs and those heirs sign up, they have no motivation to go on looking. If they find more heirs who do not sign and we become aware of those heirs, it cuts into their percentage of the distribution to the individual heirs. The more heirs that show up—the smaller that pot of money to the individual heirs is.

I got into a great argument with an attorney. I said, "Will you stand in front of the court and say to the court that, to the best of your knowledge, these are the correct and only heirs that you and your heir finder firm is aware of?" That attorney said, "We really cannot do that. We cannot represent the heirs who have not signed because they are not our clients. To identify those persons to the court would work against the interests of our clients because it is going to cut their inheritance." I said, "That is perfect. That is the argument I want you to give the court. I want you to tell the court that you or the heir finder firm may know of other heirs, but you are not going to disclose that information." The attorney backed off because, as an officer of the court, he knew you could not and should not hide that information from the court. We moved on to get better information and charts.

**Assemblyman Watkins:**
I appreciate your answer, but what I am trying to get at is that we are the only state that has any sort of waiting period, as I understand it. Is there any evidence that practices in the state of Nevada are going smoother than in other states because of our 90-day waiting period? Are the abuses you were discussing in Nevada as they are in every other state that has no waiting period?

**John Cahill:**
Yes, they go on here. The 90-day waiting period has not blocked a single case that I know of in my office. I cannot think of any cases that have been shared with me by the Washoe County Public Administrator where that 90-day waiting period has actually blocked an heir finder firm from becoming involved in the case.

There is a good insight into the idea of getting involved in this business. In *Nevada Revised Statutes* (NRS) 120A.740, we already have an "Agreement to locate property." This applies to the Nevada State Treasurer's Office Unclaimed Property Division. The first sentence states, "An agreement by an owner, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Administrator." In unclaimed property, we already have precedent in Nevada regarding the time period.

It goes on to say that in this case, the heir or asset finder cannot get more than 10 percent, the agreement is between the owner of the property and the firm, and the state does not pay it—the owner of the property can pay it. It goes on to say that if that owner has agreed to a higher amount, they can challenge that amount and, "The court may award reasonable attorney's fees to an owner who prevails in the action."

I understand that this has been pursued more in other states, but the way it operates for heir finders on estates, there is no process, because the attorney who is representing the heirs is also the attorney representing the heir finders. The heirs who paid that third of their inheritance, not knowing there are people out there looking for them who would charge them nothing if they have the time to find them, cannot use the attorney they believe represented them to challenge the percentage being paid to the heir-hunting firm. In Nevada, this is a great example of the relationship between the owner of property and an heir finder in our laws on unclaimed property. It has not extended down.

We wanted to keep it as simple as possible; that is why we went for the time period. We did not get involved in the percentage that they could earn. We did not get involved in the relationship between the attorney, the heirs, and the heir finders. We left all of that alone and said, "Just give us enough time for us to do our due diligence in finding the heirs." That is all we are asking for.

**Assemblywoman Cohen:**
Can you please tell me the difference in the fees that your office charges compared to the fees that the private heir finders charge?

**John Cahill:**
When we are looking, that would be time spent by my staff members that are assigned to do the administration of the estate. Even though we record that on an hourly basis, so we have a record, most often when we collect for states, we collect the statutory percentage. That percentage does not change. There is no hourly cost for our looking. If we engage the services of an heir finder—and I have cases right now where I am working with an heir finder firm—then that is paid as a cost to the administration. That cost is approved by the court.

I do not have an average of what we may spend, but the cost for the heir finder firm that we are using is $175 an hour with a minimum of ten hours; although, if they are successful in finding an heir in less than ten hours, they will charge us a lower fee, but they ask for the ten hour guarantee up front to begin their work. We go from there in blocks of ten hours. If they believe they have a good lead but they need more time, we will extend it another ten hours. I do not know of a case that has ever exceeded 40 hours. Cases can get very complicated when they get overseas. I have a case that we are anticipating engaging an heir finder in Taiwan. I have an active case with an heir finder working in Argentina. There are a lot of difficulties regarding documents and the processes once you get overseas, but we always do our best to find the heirs. Finding the heirs and signing that check for distribution is the most fun part of the job, so we are always anxious to do that.

**Assemblywoman Cohen:**
Do the heir-finding services have any fiduciary requirements? Are they bonded or anything to protect the public?

**John Cahill:**
The time period becomes important because it will be represented that cases can close in less than a year. I wish we could do that. That may be true when a family member is named as the administrator or executor/executrix in the case. That personal representative has one case to work on, and they can work on it every day. They can go to the banks personally with their documentation and collect assets. They have the same duty that we would have in finding all of the heirs and presenting that information to the court. They may be able to get it done in a shorter period of time. Unfortunately, that is never true, and you will never hear any examples of a public administrator's office in Clark or Washoe Counties having distributed to the wrong heirs because the heir-hunting firms did not get an opportunity to be involved. There are no examples of that.

**Assemblyman Ohrenschall:**
Currently, does the office contract out to any heir finder services or do you do it all in-house? If you do contract out, what kind of arrangements do you have with those heir finders? In the case of heirs that are never found and the state has distributed the assets, is there any remedy for them if they are found after the fact?

**John Cahill:**
We do use heir finders. Their knowledge and expertise is useful. We pay on an hourly basis. We have agreed to sign the heir finder firms up for a percentage, which is what we try to avoid with this. I have only had two cases that I authorized that were overseas cases. What we have found is that the overseas heir finders are unwilling to work for an hourly rate—they want the big rate. If I am looking at the possibility of giving the money to the state and there could be heirs out there, in two cases authorized by the court, as a last resort, we have said you can sign them up for a percentage. If they find them, we will bring them in front of the court. Other than that, it is an hourly rate at $175 an hour. I cannot recall the second part of your question.

**Assemblyman Ohrenschall:**
It has to do with if heirs are not found. The estate has been distributed, and they want to object. Is there anything your office can help them with or do they just have to get an attorney?

**John Cahill:**
If we believe there is an heir out there and we have been unable to locate them (that is very rare) based on the age and the belief they are out there, or perhaps based on the fact that the heir refuses to provide the W-9 information required by the Internal Revenue Service, we would send that distribution first to the county treasurer in that heir's name to be held. That heir can collect it then—they will just have to present the same information that we asked for. If an estate escheats to the State of Nevada, the only way it can be reopened is in the court in Carson City, but they do have recourse. If somebody finds out that after all of the work that we did and were unable to find heirs, but an heir does show up, the court in Carson City reopens the case. There may be a time limit on that; I am not sure because we do not escheat very often, but it does happen. That goes into the state education fund. That fund holds a considerable amount of money and is always able to repay in the event an heir comes forward.

**Assemblyman Elliot T. Anderson:**
You mentioned something around conflicts among attorneys. I am trying to get my head around how this bill gets into that. When you have that sort of arrangement where it is a conflict of interest, is not the correct forum to deal with that the State Bar of Nevada? There are stringent ethical rules on those conflicts of interest.

**John Cahill:**
In forming this legislation the first time and getting the time period extended this time, we did not want to argue through all of those things. As you said, it is an issue for the State Bar or for the Nevada Supreme Court to discuss how this arrangement is made and what the true relationship is between the attorney and who the client is since it is the heir finder firm that connects and guides the heirs to the attorneys. They do not make an independent selection. We wanted to avoid all of that argument, and even with the precedent that has been in law that has guidance about limiting the percentage—we felt like if we were going to the Legislature—we would accomplish what we wanted if we could just have that one year that we are allowed to search before heir hunting firms are allowed to get involved. We avoided the question you are bringing up and thought this would be a good first step to try to protect the family and heirs of Nevada decedents.

**Assemblyman Elliot T. Anderson:**
Not to belabor the point, but it is a significant issue for the Bar if there are these conflicts of interest. I understand that the clients are being directed there. However, if you are aware of attorneys who sign up clients and who have interests that would limit their remedies in court, or lead to a situation where that attorney has conflicting duties of loyalty or a private interest, those folks should be reported to the Bar. You are talking about us getting involved in contracts. There is maybe a less-significant remedy for the problem that you are trying to seek.

**John Cahill:**
Attorney Steve Scow is here. We work with attorney Scow in the office on a variety of cases. He is well-known and well-respected. We work successfully with him. We are, in essence, friends, being both from Henderson. It would be best if he explained from the attorney's point of view why he feels this is not a conflict. I believe that if he felt it was a conflict then he would not do it. There is an explanation out there, and attorney Scow will give you his views of how this stands right now.

Until it is addressed, there is not a problem with it. It has been addressed in other jurisdictions. It seems to me that there is a problem in the appearance of how this connection is made—how the distribution is paid out through the attorney to the heir hunting firms and then to the heirs. We sought to keep our solution as simple as possible, and that is what you have before you today.

**Assemblyman Pickard:**
We are going from 90 days to 365 days. It is a huge step. Is this arbitrary, or is there empirical data to show that one year is the right amount of time?

**John Cahill:**
I do not have statistics that would support that, but we are often not involved in a case for a couple of months until a referral is made to the office. I may not know that there is a decedent out there. It is not unusual that within a couple of months after someone passes away we will get a call from a family member who is out of state saying, "One of the elders in my family passed away in Las Vegas. We do not know what is going on. They owned real property. We do not know if there is a will. What do we do?" We say, "Make a referral, and we will begin the investigation."

The other thing is that even if a case is referred from the coroner's office, which happens regularly, we will begin the investigation and may not become legal in that case until we have investigated and found out that there are assets that need to be probated; that it needs to go in front of the court; and what the value of the assets is, so we know if it can be handled by an affidavit (under $250,000), set aside (a summary), or a general (over $300,000). We investigate all of that, and then we file with the court. That filing with the court averages two to three months after the case is referred to us.

During that time, we are looking for heirs. They may be contacting us. That period was picked out as a matter of practical experience in the office. If we have a year, we are going to be successful in the largest percentage of cases in finding heirs without them having to suffer by losing a significant portion of their distribution.

**Chairman Yeager:**
Is there anyone who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition?

**Steven Scow, Private Citizen, Las Vegas, Nevada:**
I have been practicing law for close to 40 years. Mr. Cahill is correct; we work on a friendly basis on a number of matters not involving heir hunters and on matters that involve my clients who have been found by heir hunters, specifically American Research Bureau (ARB). He is also right that we both live in Henderson, and we both drive convertible Mustangs, so we are on a friendly basis.

To answer the question that was just asked about how the cases come to an attorney, the answer is the same way as all lawyers get cases that come to them. The cases are given to them through word-of-mouth by someone who knows the attorney and will suggest, "You ought to hire this lawyer, or that lawyer." Over a period of 20 years, I have had 15 cases that have come to me (I represent the clients, not ARB in these cases) that have been found by the American Research Bureau. I have never had a client complain that they were found or about the fee.

I need to back up and give an example. There have been some abuses, and some companies that have gotten into trouble. I am not speaking for them or about them. In the first case that I worked on, I was contacted by four brothers, and there was another brother. There was a total of five brothers surviving a sixth brother who died. The one brother petitioned to

probate the court. He told the court that there were no other family members—there are no other brothers. There is nobody. I was contacted by the four brothers, and they asked me to represent them. I said, "Yes; how did you find me?" They said, "American Research Bureau." They were the brothers of the brother who died and of the other brother who was representing that they did not exist.

At that point, I instantly recognized that there is a huge value conferred by professional genealogical research companies that verify the pleadings in cases, and do this generally. They do this as a matter of fact in many cases, so it becomes a check and balance on the system, whether by mistake or by an intentional misrepresentation, like the one I just mentioned. A professional heir searcher provides a huge benefit and a protection to the system. That has been my experience.

I want to comment on why the one year. Mr. Cahill is correct. It is kind of arbitrary, but it is convenient. I am going to argue today that you should consider passing Assembly Bill 314, which is a comprehensive bill proposed by the Nevada State Bar, Probate and Trust Section.

**Chairman Yeager:**
We did pass that bill out of the Assembly yesterday. It is on its way to the Senate Committee on Judiciary. If you could keep your comments to the content of this bill, it makes the record more clear.

**Steven Scow:**
Your bill calls for a maximum of 180 days. There is currently a 90-day period and that bill would extend it another 90 days on a case-by-case basis on petition to the court. To me that is fair and reasonable. That is how this should be dealt with, not this flat one year.

It is true that a private administrator can administer a case within a year. The concern is that, if you have a full year, there could be cases that are administered. If heirs are not found, or one or two of the heirs are found and there is no check and balance, the problem then becomes a petition for distribution is made. Once it is made, the only way to set it aside is if you can show fraud and then try to get the money back. I would never accuse the Public Administrator of doing anything fraudulent, but mistakes can be made. Once they are made, and the money is passed out, it is gone. What I am saying is that the 90-day period as supplemented by another 90-day period is a much more reasonable and appropriate time.

**Chris Ferrari, representing American Research Bureau:**
I am here today in opposition to Senate Bill 376. I hate to put it on the record, but I know that everyone can access it from his or her computers. When you talk about companies that do this type of work, they are not fly-by-night businesses that just started up and are going to try to find some "victims." The American Research Bureau has been in business for more than 80 years—ARB.com is the website—employing people who are research assistants,

probate experts, and others. In some of the cases mentioned previously, these folks are flying all over the world to identify heirs. This is a professional and sophisticated business. My client is based in Salt Lake City, which is the national and international home of many genealogical studies for exactly that reason—to ensure they can do the best work possible and quickly identify heirs.

I do want to apologize to Mr. Cahill and the other proponents to the bill. I was not present in the Senate and did not oppose this bill in the Senate, which is why you saw a clean passage—I do not believe there was any opposition on that side. My client found out about the bill midway through the process. I cannot fathom that businesses across the country are not first and foremost concerned with Nevada legislative matters. It came up on their radar, and they reached out to me yesterday. My apologies to Mr. Cahill and the Committee members.

I appreciate Assemblyman Anderson's and Mr. Scow's clarification as it pertains to attorney conflicts and otherwise. I am not here to talk from the estate factor or otherwise. I do want this Committee to know that from an unclaimed property perspective, which I know the Treasurer's Office does some advertising on, these folks do not touch that at all. This is not their bailiwick in any way.

When somebody dies without leaving a valid will, there are probate laws that clearly define the order of entitlement among blood relatives. In these situations, the decedent's estate may be opened by individuals who have limited knowledge of the decedent's extended family and lack the expertise and skills necessary to locate the next-of-kin. By law, all reasonable steps must be taken by the estate administrator to identify and locate all missing or unknown heirs before estate assets can be distributed (Exhibit K). For clarification, no heir is ever required to sign a contract with an heir finder.

If I am talking to you, Mr. Chairman, and I may want to surprise you that your great-aunt Mildred has passed and has left an estate to you. Passage of this bill would say that even though you want this professional firm that specializes in this type of work to help you expedite the product—perhaps there is stock involved—you want to get control of that asset to which you are entitled to make a financial decision. Perhaps you are going to sell for the best benefit of your family. If you cannot do that for a year because you have to wait for the public process to take its course and are statutorily limited from doing so, you are not going to be able to make your own decisions there.

I put the map that Mr. Cahill referenced into NELIS (Exhibit G) not for any purpose other than to demonstrate that Nevada is a bit of an anomaly. Are we blazing a trail? Perhaps, depending on the eye of the beholder, but we are the only state in the country that has any type of limitation. To Assemblyman Pickard's point, going from 90 days to a whole year without scientific or evidentiary purposes is of concern.

Working with these folks in 2011, the same argument was made. I believe that Assemblyman Wheeler pointed out that it was not found to be a reasonable solution, so it went from zero to 90 days. There have not been any problems with that since that time of

which I am aware. As Mr. Cahill indicated, a lot of the time his office does not have the resources to do a one-on-one-type of overview of these scenarios. As somebody who is a prospective recipient, I think we all want Nevadans to have the opportunity to hire the best possible person to represent their interests.

There has been a lot of discussion about compensation and how heir locators are funded. Much like many of you on the Committee, they are funded by a contingency agreement. There is also an hourly rate, as Mr. Cahill indicated. If there is no recovery and no assets are identified, the heir has no liability and no financial obligation (Exhibit G).

**Assemblywoman Tolles:**
Are there any amendments that you would recommend, or are you in straight opposition?

**Chris Ferrari:**
I have just been brought in in the last 36 hours, so I am not able to comment to that. At this point, I would say that we are in direct opposition based on the lack of evidence to show that the 90-day period granted six years ago is in any way not functioning correctly.

**Chairman Yeager:**
Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I would invite the presenter back up for any concluding remarks.

**Senator Segerblom:**
My point in this case is, to those of you who are new, do not ever give up and keep coming back. These are good ideas. You just have to keep pounding them, and sometimes good things happen.

**John Cahill:**
The reason we need to extend the time period is that the 90 days has been unsuccessful in blocking a single case from an heir finder firm signing someone up. The 90 days has not been successful in protecting families of Nevada decedents. The example that Mr. Scow brought up was not a public administrator case—it was a private case. Those kinds of things do go on. We work on cases where, for example, there is a sibling of our decedent still alive, and the rest of the family said, "Uncle Buck does not need it because he is in an elder care home. He has no need for this." That is not how this works. Those things do go on.

Mr. Ferrari pointed out that nobody has to sign a contract, but if the apparent heirs do not sign, they are not going to lead them to the inheritance. We have had cases where, with heirs of equal standing, some signed and some did not. They do not want us talking to those persons who signed because they might tell us they have other cousins of equal standing.

That spreads out the inheritance and decreases the percentage that will be collected by the heir-hunting firm. That has actually happened. We have had cases where the people who did not sign, successfully talked among family members, and the only thing they could figure out was, "Did mom have a relative in Las Vegas that she talked about? Let us check that out." We have had a lot of interesting circumstances on this.

As for them not being involved in unclaimed property and uniting the owners of the unclaimed property with the State Treasurer's Office, that is true. They do not do that. I believe the reason they do not do it is that they are limited to 10 percent, and they are not going to be paid up front. They are going to be paid by the person who makes the agreement, and that can be litigated in court. They do not do unclaimed property in Nevada, but I do not know about other states.

**Chairman Yeager:**
We will formally close the hearing on Senate Bill 376. I will now formally open the hearing on Senate Bill 230.

**Senate Bill 230: Makes various changes relating to judgments. (BDR 2-512)**

**Senator Tick Segerblom, Senate District No. 3:**
This is another example of if you do not succeed the first time, try, and try again. In 2013, we passed this bill and the Governor vetoed it. Last year, it came back. We tried to modify it, and it died due to a change in control. This time we are back again, but we have both sides at the table agreeing. It is a compromise, but I think it is a good compromise.

**Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services; and representing Legal Aid Center of Southern Nevada:**
[Supplemented with written testimony (Exhibit L).] What I would like to do is give you a history of the bill. What I would like to do is have Mr. Vassiliadis join in, and then my subject matter experts in the south will take a couple of minutes each on the aspects of the bill that deals with garnishments and the aspects that deal with the domestication of judgments.

This bill is a new version of Senate Bill 373 of the 77th Session that was vetoed by the Governor. The bill did a couple of things at that time. It reduced the amount of the paycheck that can be taken if someone has a judgment against them, and it is being garnished. Under federal law, a collector can get 25 percent of that check. The bill that was passed then limited it to 15 percent. There were a number of other provisions in the bill. We were not able to reach a compromise, but the Governor vetoed it. After that session, we got back together with the collectors and reached an agreement on a bill that was brought in the last session, Assembly Bill 129 of the 78th Session. Under that agreement, instead of being able to protect 85 percent of your income, you would be able to protect 82 percent. We also took out a number of other provisions in the bill that the collectors had some heartburn over. We extended the time period that a garnishment is good for from 120 to 180 days.

With all of those changes, we have now been in agreement for four years with the Nevada Collectors Association. Senate Bill 230 went through the Senate with no opposition, and it passed 20 to 1. We are coming before you today with this compromise. The bill actually affects a very narrow range of people. Under Nevada law, if you make less than $18,000 a year, there is a floor, so that anything below that cannot be garnished. This would establish a ceiling of $770 a month, right at $40,000 a year. Only people within that narrow range would be affected by this. Anyone making more than the $770 would be subject to the regular 25 percent. This does not involve child support, so that is not on the table. We are talking about collections of judgments against people for things other than child support.

**Nick Vassiliadis, representing Nevada Collectors Association:**
Mr. Sasser walked through everything, but I want to reiterate the fact that this was a bill that was originally vetoed by the Governor in 2013. All throughout 2014, the two groups worked together on consensus language. We brought it forward in 2015, and it was unable to secure the support needed. We agreed again that no matter what happened in the election cycle our two organizations think this is good language. Regardless of the composition of the Legislature, we were committed to bringing back this identical language because this is something on which we have worked hard to find consensus.

**Lauren A. Peña, Directing Attorney, Civil Law Self-Help Center, Legal Aid Center of Southern Nevada:**
[Supplemented with written testimony (Exhibit M).] I work at the Civil Law Self-Help Center operated by the Legal Aid Center of Southern Nevada under contract with the Clark County courts. We provide free information, services, and referrals to any customer who is self-represented in the Clark County court system. Last year we saw over 58,000 people. One of the things I do on a nearly daily basis is assist people with wage garnishment issues, particularly low-income Nevadans. I am here today in support of S.B. 230. I want to touch upon a couple of things that Mr. Sasser spoke about earlier, particularly the 18 percent.

What S.B. 230 does is take down the 25 percent garnishment percentage to a more realistic rate of 18 percent for those making $40,000 or less. To illustrate, under current law any Nevada citizen who makes over $25,133 per year can be garnished at the full 25 percent. The median household income in Nevada is $51,857. A single mother with three children who is earning $25,133, half of the median income in Nevada, is garnishable up to 25 percent. That is approximately $6,200 of her money per year. If you take $25,133 and subtract that $6,200, she is left with an $18,800 yearly income, which puts her below the federal poverty level.

While it does affect a narrow population, the effects are vast for the working poor population of Nevada. I would say that being garnished 25 percent for any of us would be hurtful, but for the working poor making under $40,000, it is absolutely crippling. Unfortunately, I see the effects of that every day. I encourage your support for S.B. 230.

**Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada:**
I am going to briefly address the domestication piece of this bill. What section 6 does is require out of state creditors to domesticate the foreign judgments here in Nevada. Currently, when this is not done, it causes multiple complications, not only for people who are being garnished, but also for attorneys trying to help them, because without a Nevada case number, they cannot claim any exemptions under Nevada law. I have submitted written testimony (Exhibit N) that is rather lengthy on this, but I will give the Committee a couple of brief examples.

I have five clients in the last few weeks alone who would be greatly helped by this bill, but one client in particular stands out. She is a 73-year-old woman who lived in California. She has lived in Nevada for the last six or seven years. A California judgment was entered against her—it is almost a ten-year-old judgment. Her social security income was recently taken from her bank account. Even though she is a Nevada resident, there is no Nevada case number, so she cannot file a claim of exemption here in Nevada. She cannot travel to try to protect her social security or get it back. As most everyone knows, social security is one of the most protected forms of income because people are on fixed incomes. She had approximately $4,000 of the social security she had saved taken. Unless the firm that took her money voluntarily gives it back, it is nearly impossible for her to get that money back.

Not only does this affect bank accounts, but this also affects wage garnishments. I have had a couple of other clients who are being garnished on out-of-state judgments. One of them was being garnished on a Utah judgment that was served on his employers. That was another ten-year-old judgment. It was not domesticated in Nevada, and even though I tried to get the opposing counsel to domesticate in Nevada, so he could file the Nevada claims of exemption, they did not see any necessity for them to do so. What ended up happening is that client had to file bankruptcy in order to protect himself from the garnishment, even though he made less than the amount needed to be garnished.

Those are just a couple of client stories; I have more in my written testimony. I wanted to give the Committee a bit of background on how this affects clients on a daily basis.

**Jon Sasser:**
If I may, before the Committee moves to questions, I would like to go over the sections in the bill. Sections 2 through 4, 8, 11, and 12 deal with a change to protect 82 percent of income. Sections 1, 7, and 11 explain how the gross salary or wage is determined. Section 6 is the domestication of judgment piece referred to by Ms. Romero. Section 13 makes the change from 120 to 180 days. I also have written testimony on Nevada Electronic Legislative Information System (Exhibit L). There are two attached documents with that. One is still called "The Effect of A.B. 129." I apologize for that. It shows at different wage ranges how much money could be available for a garnishment for a judgment of $2,000 and how much difference the time makes in being able to collect. Finally, there is a summary of the laws of the 50 states, about half of which, have a more generous protection than the 25 percent.

**Assemblyman Pickard:**
We speak of this in terms of the judgment debtor. If they are a judgment debtor then they have been subject to a lawsuit—someone has sued them for money that was owed and won. This is someone who owes money. We speak of this in terms of "their money." Arguably, at least some of it belongs to the person who sued them and won. My concern is that we are setting up a haven in Nevada for those who want to move here and get out from under debt. Ultimately, does this not make it harder for businesses and individuals to get what they should have received, presumably under a contract or some kind of agreement, in the first place?

**Jon Sasser:**
This bill talks about not that debtors do not owe the money, or that people cannot collect the money, it is a question of how fast they can collect it. The concern is that for people in that income range to be able to protect that extra 7 percent makes a huge difference to other people who they owe money to, such as their landlords and the utility companies. They have enough money to continue to put food on the table. Does this make Nevada a haven for workers in that income range to move here? I do not know that they have that flexibility. People may point out that Nevada is a generous state already for people who are judgment debtors, but mostly at the higher income range. We allow people to protect $500,000 in equity of their home and $550,000 of their annuities. We are a generous state for the higher income folks, and this would make little difference for the people in that narrow income range.

**Nick Vassiliadis:**
From our perspective, especially when we are focusing on the less than $40,000-a-year income earners, the businesses that are owed that money hire my clients to collect that money. In our opinion, having someone go all the way to bankruptcy is a lose-lose situation for the company who is owed the money, the individual, and the state. We look at it as yes, there will be a slightly longer payout period, but a higher likelihood that that business will get the full payout, versus whatever they can get on a shorter payout with that debtor going to bankruptcy. We are looking at it from the perspective that people have a higher likelihood of getting a full return on what they are owed if they allow these folks who are making a little less than the rest of the population to have some more time to pay off that debt.

**Assemblyman Pickard:**
The typical collector gets a piece of the collection. Is that usually a percentage of the total collected, or are they paid each time they get something garnished?

**Nick Vassiliadis:**
We have a large association. I would venture to guess that that is different from collector business to collector business, but I will find out specifically what the majority of our Association does and get back to you.

**Assemblyman Pickard:**
That would be interesting to me. If collectors are paid a piece of each collection, maybe a flat rate, it may create a disincentive to collect quickly. It may be that they are paid more if they are paid out over a longer period. I would love to get that information.

**Assemblywoman Cohen:**
In section 6, subsection 2, there is language about prevailing parties receiving damages. Could you give examples of what those damages would be?

**Jon Sasser:**
Section 6 deals with the person who ignored Nevada law and comes after a Nevada worker's wages or bank accounts without first domesticating the judgment in Nevada and not giving the worker the chance to claim our exemptions in Nevada. They have a right to bring a lawsuit against that out-of-state creditor. That is the purpose.

**Sophia Romero:**
What Mr. Sasser said is correct. Take the example of my 73-year-old client who had her social security garnished. Social security is federally protected. Because that company failed to domesticate in Nevada, she has no way to claim that her income was exempt. Being elderly, she does not have the ability to travel to California to try to protect her rights. This would especially help someone in that situation because she would have a right of action against that judgment creditor who failed to domesticate in Nevada to give her back her social security and to help her recover any damages she incurred because of their failure to follow Nevada law.

**Assemblywoman Cohen:**
When you have the determination of someone's income and you consider how many weeks they have worked in a given year to come up with their income, what if someone is under-employed? Did you consider if someone could be working more weeks during a year but he or she is not? Does that play into this, or is it just being taken at face value that if they worked half of the year, that is what you are going with?

**Jon Sasser:**
We set this up at $770 a week. If you work that week, your income can be based under $770, and if you do not work that week, then you are under the floor. We do not get into averaging income; why you are working; or why you are not working—primarily for administrative ease to the payroll department and the folks who would have to deal with this. There are other ways of collecting judgments—bringing in a debtor for an examination, et cetera. I am not an expert in that area of the law, but I know there are other methods.

**Nick Vassiliadis:**
There are other ways that we could bring a judgment forward. If you would like me to follow up offline, I can go over those various ways. I will have to do the same thing as with Assemblyman Pickard's question and ask the different associations about the various ways they do their business. The reason why we focused on this was to draw a clear line at that $40,000 a year or $770 a week. This was the simplest way of getting at this issue without overcomplicating the process for those who have to do the administrative implementations.

**Assemblyman Pickard:**
Is the business community on board with this? Have you talked with them; were they at the table? Are they all saying they are okay with putting this out this much longer?

**Nick Vassiliadis:**
Last session, the Las Vegas Metro Chamber of Commerce was neutral on the bill; the Reno-Sparks Chamber of Commerce was opposed to the bill. I worked with the Reno-Sparks Chamber and the Retail Association of Nevada in the early months of this session. I was able to have conversations with them explaining the same thing that we explained here today about why we reached the consensus. It made enough sense to them that they decided this was not a bill worth opposing anymore. If we were able to get this consensus package agreed upon and approved by the Legislature, in subsequent sessions, we would not have to keep coming back to have the same argument.

**Chairman Yeager:**
Is there anyone who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] I would invite the presenter back up for any concluding remarks. [Waived.] We will formally close the hearing on Senate Bill 230. Would anyone like to give public comment? [There was no one.]

This meeting is adjourned [at 10:26 a.m.].

RESPECTFULLY SUBMITTED:

_____
Erin McHam
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 letter in opposition to Senate Bill 432 to Chairman Yeager and members of the Assembly Committee on Judiciary, authored and submitted by Sean T. McCoy, Private Citizen, Reno, Nevada.

Exhibit D is written testimony in support of Senate Bill 376, submitted by John J. Cahill, Public Administrator, Clark County.

Exhibit E is a copy of an email in support of Senate Bill 376, dated April 25, 2017, from Donald L. Cavallo, Public Administrator, Washoe County, to Bonnie Hoffecker, Committee Manager, Legislative Counsel Bureau.

Exhibit F is a copy of a news release titled "First Charges Brought in Investigation of Collusion Among Heir Location Services Firms," dated December 23, 2015, submitted by John J. Cahill, Public Administrator, Clark County, regarding Senate Bill 376.

Exhibit G is a map titled "States With a Waiting Period Provision Between Heir Finders and Apparent Heirs," in opposition to Senate Bill 376, submitted by Chris Ferrari, representing American Research Bureau.

Exhibit H is a copy of a news release dated January 14, 2016, titled "President of Heir Location Services Provider to Plead Guilty for Agreement Not to Compete," submitted by John J. Cahill, Public Administrator, Clark County, regarding Senate Bill 376.

Exhibit I is a copy of a news release dated August 17, 2016, titled "Heir Location Services Company and Co-Owner Charged with Customer Allocation Scheme," submitted by John J. Cahill, Public Administrator, Clark County, regarding Senate Bill 376.

Exhibit J is a copy of an article from *HeirSearch.com* titled "The Dark Side of the Heir-Tracing Industry Exposed," dated January 27, 2016, available at www.http://heirsearch.com/the-heir-tracing-industry-explained. This copy was submitted by John J. Cahill, Public Administrator, Clark County, regarding Senate Bill 376.

Exhibit K is a document titled "Heir Location Services," submitted by Chris Ferrari, representing American Research Bureau, regarding opposition to Senate Bill 376.

Exhibit L is written testimony authored by Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services; and representing Legal Aid Center of Southern Nevada, dated April 26, 2017, regarding Senate Bill 230.

Exhibit M is written testimony authored by Lauren A. Peña, Directing Attorney, Civil Law Self-Help Center, Legal Aid Center of Southern Nevada, dated April 26, 2017, in support of Senate Bill 230.

Exhibit N is written testimony authored by Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, dated April 26, 2017, in support of Senate Bill 230.