

**MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Seventy-ninth Session
May 8, 2017**

The Senate Committee on Health and Human Services was called to order by Chair Pat Spearman at 3:39 p.m. on Monday, May 8, 2017, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator Scott Hammond

COMMITTEE MEMBERS ABSENT:

Senator Julia Ratti, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Lesley E. Cohen, Assembly District No. 29
Assemblyman Edgar Flores, Assembly District No. 28
Assemblyman Michael C. Sprinkle, Assembly District No. 30

STAFF MEMBERS PRESENT:

Megan Comlossy, Policy Analyst
Eric Robbins, Counsel
Debbie Carmichael, Committee Secretary

OTHERS PRESENT:

Dan Musgrove, The Valley Health System
David M. Greer, M.D., Vice Chairman, Department of Neurology, Yale School of Medicine

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Paul H. Janda, D.O.
Donna Feliz-Barrows
Virginia Gigi Bautista, Nevada Donor Network
Jason Guinasso, Donor Network West
Yolanda T. King, County Manager, Office of the County Manager, Clark County
Cody L. Phinney, Administrator, Division of Public and Behavioral Health
Services, Department of Health and Human Services
Vicki McVeigh, President, Northern Nevada Mental Health Providers Association;
Pride House LLC
Mike Dyer, Nevada Catholic Conference
Helen Foley, Nevada Assisted Living Association
Barry Gold, AARP Nevada
Cara Paoli, Deputy Administrator, Developmental Services, Aging and Disability
Services Division, Department of Health and Human Services
John Piro, Public Defender's Office, Clark County
Sean Sullivan, Public Defender's Office, Washoe County
John Jones, Nevada District Attorneys Association
Melissa Exline, Nevada Justice Association

CHAIR SPEARMAN:

I will open the hearing on Assembly Bill (A.B.) 424.

ASSEMBLY BILL 424 (1st Reprint): Revises provisions governing the
determination of death. (BDR 40-1025)

ASSEMBLYMAN MICHAEL C. SPRINKLE (Assembly District No. 30):

Assembly Bill 424 stems from a case that came out of northern Nevada where
there was controversy on a Nevada Supreme Court decision on the
determination of death. Assembly Bill 424 establishes the determination of
death to be a clinical one, provides updates and the accepted medical
standards. This will be a trendsetting piece of Legislation should A.B. 424 pass
and be signed by the Governor as Nevada will be the first state in the Nation to
pass a bill like this.

DAN MUSGROVE (The Valley Health System):

Assembly Bill 424 focuses on an issue addressed by the Nevada Supreme Court
in the case of *In re Guardianship of Hailu*, 131 Nev. Adv. Op. 89, 361 P.3d 5s4
(2015). That case involved University of Nevada, Reno, student Aden Hailu. The
hospital determined Ms. Hailu was brain-dead. The family was not satisfied with

the determination and wanted Ms. Hailu to remain on life support. The family took the case to court. The lower court ruled that the hospital had declared the determination of death properly. The family then took the case to the Nevada Supreme Court. The Supreme Court did not feel that the *Nevada Revised Statutes* (NRS) were specific enough. The Supreme Court remanded the case back to the lower court, but tragically Ms. Hailu's heart stopped and the family did not pursue the case further.

The Valley Health System has an ethics policy committee that takes on issues like this. The ethics policy committee wanted to take this to the Legislature and debate whether the Valley Health System wants to revamp its regulations to meet Supreme Court muster. The Valley Health System has put into its regulations the American Academy of Neurology standards for determining brain death.

Section 1, subsection 1 of A.B. 424 establishes the determination of death to be a clinical one. Section 1, subsection 2 establishes life-sustaining treatment must not be withheld or withdrawn from a person determined to be dead if the person is pregnant, and the fetus can survive or if the person is a donor or potential donor of an anatomical gift. Section 2, subsection 1 spells out that a person is dead if the person has sustained an irreversible cessation of circulatory and respiratory functions or all functions of the person's entire brain, including his or her brain stem. Section 2, subsection 2 is the important area Nevada is addressing and that is the accepted medical standards for brain death. Those guidelines are: "Evidence-based Guideline Update: Determining Brain Death in Adults: Report of the Quality Standards Subcommittee of the American Academy of Neurology," published June 8, 2010, by the American Academy of Neurology, or any subsequent revisions approved by the American Academy of Neurology or its successor organization or "Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations," published January 27, 2012, by the Pediatric Section of the Society of Critical Care Medicine, or any subsequent revisions approved by the Pediatric Section of the Society of Critical Care Medicine or its successor organization.

I have submitted to the Committee a proposed amendment ([Exhibit C](#)) to A.B. 424. Assembly Bill 424 uses the term "life-sustaining treatment" three separate times. The reality is that once determination of brain death has occurred, then the person is no longer alive and any treatment beyond that

determination is organ-sustaining and not life-sustaining. [Exhibit C](#) defines what organ-sustaining treatment means.

DAVID M. GREER, M.D. (Vice Chairman, Department of Neurology, Yale School of Medicine):

I have submitted a letter of support ([Exhibit D](#)) for A.B. 424. I was one of the senior authors for the 2010 article "Evidence-based Guideline Update: Determining Brain Death in Adults: Report of the Quality Standards Subcommittee of the American Academy of Neurology." This is considered the authoritative and current statement regarding the declaration or determination of death by brain criteria. This was an exhaustive project. It is an update to the 1995 guidelines, which established when someone is determined brain dead according to the guidelines. There has never been a legitimate case of someone who regained any brain function after the determination of brain death. This guideline is 100 percent specific for determining death. The guidelines were made proscriptive so anyone versed in taking care of an intensive care patient, and who had to perform a neurological exam had step-by-step guidelines to follow. It makes it very clear where anything could go wrong so there would never be any case where someone was inappropriately or inaccurately determined to be dead. The 2010 guidelines remain the standard in this Country and there is nothing that competes with those guidelines from another organization or body, and there is no other country that has a comparable set of guidelines that is more applicable to what is done in the U.S.

The term organ-sustaining treatment is much more appropriate in this population rather than life-sustaining treatment because, in fact, the patient is dead once they have been declared brain dead. Whether a person is deemed brain dead or cardiac dead, the person is dead unless any treatment where simply sustaining the organs that Mr. Musgrove spoke about is applied.

ASSEMBLYMAN SPRINKLE:

The reprinted bill, A.B. 424 that you see before you is collaborative work from questions that came out of the Assembly hearing. Many people had questions and concerns and what you see today has taken in most, if not all, of the concerns.

CHAIR SPEARMAN:

I just received a proposed amendment ([Exhibit E](#)) from the Nevada Donor Network that I am not sure that Assemblyman Sprinkle is aware of or has

looked at. I will not entertain this amendment until Assemblyman Sprinkle has given the go ahead.

ASSEMBLYMAN SPRINKLE:

I received an email three hours ago regarding this proposed amendment and I have not spoken to the individual proposing it. At this point, I do not feel comfortable agreeing or disagreeing with the proposed amendment.

MR. MUSGROVE:

I did not talk about two pieces of A.B. 424 that the proposed amendment from the Nevada Donor Network addresses. There are two provisions concerning notification that are very important. Once the determination of death has been made under the brain death standards and the health care provider is contemplating pulling the patient off organ-sustaining treatment, there should be a reasonable effort made to notify the family of the action. If the family of a patient is looking at prolonging the organ-sustaining treatment beyond the determination of death, there is a possibility the cost of prolonging the treatment could fall upon the family or the patient's estate. Usually insurance companies will no longer provide any reimbursement after the determination of death. The proposed amendment from the Nevada Donor Network deals with other types of notification it would like added.

PAUL H. JANDA, D.O.:

I am a board certified neurologist, attorney, Program Director of the Neurology Residency Program at the Valley Hospital Medical Center in Las Vegas and President of the Las Vegas Chapter of the American Heart Association. Independently, when reviewing all the data that was presented today, I fully agree and support A.B. 424.

DONNA FELIZ-BARROWS:

I am the mother of an organ donor. I want to thank Assemblyman Sprinkle for taking into consideration the things I brought up last time. It is important to have different guidelines for adults and children when determining brain death. I support A.B. 424.

CHAIRMAN SPEARMAN:

I received a letter of support ([Exhibit F](#)) from Dr. Panayiotis N. Varelas on A.B. 424.

VIRGINIA GIGI BAUTISTA (Nevada Donor Network):

The Nevada Donor Network stands neutral on A.B. 424. The Nevada Donor Network supports the concept and appreciates the standardization of the determination of brain death. The Nevada Donor Network has concerns with A.B. 424 as it is written, in particular, section 1, subsection 3, paragraph (b). The proposed amendment, [Exhibit E](#), that was submitted to the Committee is an addition to the bill. The Network would like the following statement added: "The federally designated organ procurement organization (OPO) will be responsible for all hospital charges upon death when donation is authorized, and the potential organ meets criteria for donation."

CHAIR SPEARMAN:

I would encourage you to reach out to the sponsor of A.B. 424.

JASON GUINASSO (Donor Network West):

The Donor Network West stands neutral on A.B. 424. Ms. Bautista had an email exchange with Assemblyman Sprinkle as early as May 3, 2017. What the Nevada Donor Network proposed with the amendment is important because the families need to understand that once they decide to provide the gift of life they will not be financially responsible for the charges. The OPO is responsible for covering those costs and it needs to be made clear in the legislation. If the family thinks they will be financially responsible for organ-sustaining treatment, they will be less likely to make the decision because of the financial cost. The Donor Network West is the federally mandated OPO for this area, and we have funding just for this circumstance. The only clarification that the Nevada Donor Network in the south would like to make is clarifying this issue to make sure families are not responsible for the costs. Assembly Bill 424 is a great bill and policy.

I was one of the attorneys that was initially approached by the Hailu family to represent them in this matter. I took them through all the medical records and the NRS and introduced them to the standards the doctors were using to make the brain death determination. The difficult thing for the family to accept was that their daughter was, in fact, dead. It was hard to help them understand the standards when the standards were not codified in the NRS. They discounted what I was trying to advise them on. Having this aspect of death clarified will make my job as an attorney easier when individuals are concerned about what decision to make at this juncture of a person's care and treatment.

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SENATOR HARDY:

Has the OPO ever turned down an organ donation?

MR. GUINASSO:

Never.

SENATOR HARDY:

Will the OPO take an organ donation and accept the financial responsibility from a person that had AIDS, hepatitis B, leprosy or the like?

MR. GUINASSO:

Once the family has decided to give the gift of life, under no circumstances are they responsible for the cost incurred as a result of the gift. The OPO covers all the costs.

SENATOR HARDY:

After the organ has been harvested and it is discovered there is a problem with it, does the OPO eat the cost?

MR. GUINASSO:

Yes, that is correct. The OPO carries the risk. The OPO is in the position of educating the family that the gift of life is important and it wants the family to provide that gift. If the organ is somehow defective or has a problem, the OPO never holds the family responsible or backs out of the commitment to pay for the process that leads to the OPO obtaining the organ.

SENATOR HARDY:

You can do all of that now and the OPO does not have any problem with the bill. Is that correct?

MR. GUINASSO:

Yes, that is correct. The Donor Network West just wants it to be clear on who is responsible for the bill. The way A.B. 424 reads would lead the family to believe they are responsible for the bill.

SENATOR HARDY:

The family would be responsible for the bill unless they give the gift of life. Is that correct?

MR. GUINASSO:

Yes, that is correct.

ASSEMBLYMAN SPRINKLE:

I do not agree or disagree with the proposed amendment from the Nevada Donor Network. I have had conversations in the past with the individual, but this is the first time I have seen the language in the proposed amendment. Looking at the language of the amendment in regards to the last question from Senator Hardy, the language says the potential organ donor meets the criteria for donation. That language seems to counter the testimony that was just given. That is why it is important for me to go through the proposed amendment and have discussions. Donors have to meet criteria, which I do not believe is what they were intending. If we were to adopt this language, that could very well happen. That would be one of the unintended consequences we talk about all the time. I am happy to work with the individuals proposing the amendment as I am a very strong supporter of organ donation, and I will do anything I can to help promote it within the State.

CHAIRMAN SPEARMAN:

I will close the hearing on A.B. 424 and open the hearing on A.B. 65.

ASSEMBLY BILL 65 (1st Reprint): Revises provisions relating to medical care for indigent persons. (BDR 38-438)

YOLANDA T. KING (County Manager, Office of the County Manager, Clark County):

I have provided a copy of my presentation ([Exhibit G](#)) to the Committee. Assembly Bill 65 expands the purpose for which the money for medical assistance to indigent persons may be used. NRS 428.285 and 428.295 require the board of county commissioners of each county to establish a property tax rate of 6 cents to 10 cents to be used for the assistance of indigent persons. Clark County assesses a property tax of 10 cents per \$100 of assessed value. Of the 10 cents collected, 1 cent is remitted to the State, and the remaining 9 cents stay in Clark County. The 9 cents that Clark County receives are used to provide for intergovernmental transfers (IGT). Intergovernmental transfers are required to be made by the County. The 9 cents Clark County receives can be used for the disproportionate share hospital (DSH) payment. Assembly Bill 65 allows the use of the property tax levy to pay the DSH payments, but also the upper payment limit (UPL). In addition, the ability to use the property tax levy

for the UPL payment, 2 cents of the current 9 cents that Clark County receives can be used for capital renovation or new construction for the public hospital. In Clark County, the public hospital is the University Medical Center (UMC). By statute, the UMC is not required to make the IGT payment to the State, it is the County's responsibility.

Clark County makes payments for three supplemental type of programs, which are the disproportionate share hospital, upper payment limit and managed care organization (MCO). The total county payments for the three supplemental programs for Fiscal Year 2017-2018 will be \$113 million and \$60.9 million of the \$113 million is paid out of the Clark County General Fund. The remaining amount is paid out of the property tax levy that Clark County is allowed to use to make the DSH payments. Page 6 of [Exhibit G](#) explains the supplemental payment programs and page 7 explains the total IGT payments and supplemental payments received.

The UMC does not have a dedicated funding source for capital and expensive medical equipment replacement needs. The UMC solely relies on Clark County to provide funding for any type of capital improvements that are needed. Over the last three years, Clark County has provided a subsidy to UMC, and Clark County has made the subsidy specific to capital. The UMC will require a major renovation or rebuild of its oldest tower over the next 3 to 5 years with an estimated cost of \$150 to \$200 million. Clark County is requesting the authority to expand the use of the 10-cent property tax levy and allow up to 2 cents per fiscal year to be used for the construction and renovation of new or existing facilities, and replacement of high-priced medical equipment for a public hospital in Clark County.

SENATOR HARDY:

We appreciate Clark County and its sharing, which has drawn down more federal funds with Medicaid. Will A.B. 65 put at risk the drawing down of the federal money because the money will be used for something other than Medicaid?

MS. KING:

It would not. It is a requirement for Clark County to pay the IGT payments and whatever is not provided for would come from the County General Fund. Assembly Bill 65 would allow Clark County to use excess dollars from the property tax to make the UPL and IGT payments and would free up dollars in

the general fund. Clark County would take money out of the general fund if there was not enough money collected and additional IGT payments were needed. The obligation for Clark County to make the IGT payments is still there, it would depend on what bucket the payments come out of.

SENATOR HARDY:

Clark County has had a generous federal match with Medicaid. You will need to look at your crystal ball for the next question I will be asking. If for some reason the match decreases, will Clark County be able to float the dollars? What would happen if Clark County did block grants instead of the federal medical assistance percentages? How would Clark County leverage the federal money?

MS. KING:

I do not have an answer for those questions. It would be a juggling match. We are in uncertain times. What the IGT looks like today may not be what it looks like tomorrow.

CHAIR SPEARMAN:

I will close the hearing on A.B. 65 and open the hearing on A.B. 46.

ASSEMBLY BILL 46 (1st Reprint): Revises provisions governing services provided to persons with mental illness and other disabilities. (BDR 39-132)

CODY L. PHINNEY (Administrator, Division of Public and Behavioral Health Services, Department of Health and Human Services):

Assembly Bill 46 provides for the certification of community-based living arrangements (CBLA) through the Division of Public and Behavioral Health Services (DPBH). These living arrangements are somewhat similar to an existing model referred to as supported living arrangements that is used for individuals with intellectual disabilities. Individuals residing in the CBLA live in a natural community setting designed to support their independence, their progression to increased independence and the ability to live in a community. The homes generally have three to four people. The services include assistance with their daily routine, skilled development and assistance with appointments and benefits.

Sections 1 through 3 of A.B. 46 provide definitions. Section 4 defines CBLA as a flexible individualized service provided in a home to a person with mental

illness or related condition and who is served by the DPBH or another entity responsible for serving people who meet that definition. These services are designed to be coordinated and to assist in maximizing a person's independence. The providers receive compensation. At times, people who receive these services receive them for a number of years. The progress to independence varies greatly by individual and can take considerable time to achieve. Section 5 requires a person or entity to be certified by the DPBH before providing these services. Section 6 requires the State Board of Health to adopt regulations governing CBLA, including standards of care, requirements for issuing and renewing a certificate, and the rights of an individual to file a complaint regarding the provider if he or she finds the services to be unsatisfactory. The Board is authorized to impose a fee for the issuance of the renewal of the certificate. Section 7 indicates the requirements to renew a certificate. Section 8 authorizes the DPBH to investigate complaints that might be filed in accordance with section 6 against a provider of a CBLA. Section 9 authorizes the DPBH to bring an action against a person or entity who provides a CBLA without a certificate or after a certificate has been suspended or revoked. Sections 10 through 12 pertain to the compliance with federal law regarding child support obligations of those people receiving a certificate. Sections 18 through 20 clarify that a CBLA is not the same thing as a residential facility for groups or a home for individual residential care. Those facilities provide different levels of care than the CBLA and are regulated elsewhere in the NRS.

VICKI McVEIGH (President, Northern Nevada Mental Health Providers Association; Pride House LLC):

The Northern Nevada Mental Health Providers Association is a newly formed association of CBLA providers. The association owns a number of group homes in the Reno, Sparks and Carson City areas. The Northern Nevada Mental Health Providers Association supports A.B. 46 because it has asked for regulations to protect the client as well as the industry for a number of years. By providing CBLA services, we give individuals the right to live independently in our community. The individuals have a right to choose where they want to live and a right to deny services. When placed in a home, the individual has input about treatment plans and individualized care. The individual is able to participate in activities in the community. The CBLA services are very helpful to individuals. The homes that are secured for individuals are not just houses, but homes where the individuals can live independently. There are about 14 different business providers and 75 homes in the Reno, Sparks and Carson City areas.

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MIKE DYER (Nevada Catholic Conference):
The Nevada Catholic Conference supports A.B. 46.

HELEN FOLEY (Nevada Assisted Living Association):
The Nevada Assisted Living Association (NALA) supports the concept A.B. 46. The NALA worked with Assemblyman Sprinkle, Ms. Phinney, Ms. McVeigh and a CBLA team of people on a proposed amendment. The proposed amendment addresses individuals who live in a CBLA that are not ambulatory and need assistance getting out of the home in case of a fire and if there are individuals who need daily assistance with the administration of medications or a treatment plan. I worked with Brenda Erdoes and Eric Robbins in the legal department of the Legislative Counsel Bureau (LCB) to make sure this amendment was not in violation of the *Olmstead v. L.C.* (98-536) 527 U.S. 581 (1999) decision. I have submitted the proposed amendment ([Exhibit H](#)) to the Committee.

ERIC ROBBINS (Counsel):
Yes, the amendment is in accordance with the Americans with Disabilities Act and the *Olmstead* Supreme Court decision.

MS. FOLEY:
I have provided the amendment to Ms. Phinney and the CBLA members.

MS. PHINNEY:
Assembly Bill 46 is a vital piece of the continuum of care for people with mental illness that we want to support, make sure those people are safe and have choices where they can live in the community.

CHAIR SPEARMAN:
I will close the hearing on A.B. 46 and open the hearing on A.B. 299.

ASSEMBLY BILL 299 (1st Reprint): Requires the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs to conduct a study concerning training standards for unlicensed persons providing care at certain facilities or homes or through certain agencies. (BDR S-985)

ASSEMBLYWOMAN LESLEY E. COHEN (Assembly District No. 29):
Assembly Bill 299 helps take care of some of our most vulnerable citizens in Nevada. Over the last few years, many states have taken legislative action to protect seniors and other vulnerable populations from physical abuse, financial

exploitation and negligent care. The goal of A.B. 299 is to ensure that individuals that are hired or employed to provide care have the pertinent training to assist these populations despite the differences in training across the facilities. It is important to have the basic standard of care in our statutes. The idea for this bill was derived from HF 1233, a 2013 omnibus bill in Minnesota. The HF 1233 established requirements for instructors, training content and competency evaluations for unlicensed personnel. The training includes prevention instruction for providers working with the elderly or individuals at risk of falls.

Assembly Bill 299 does not apply to any licensed professionals who are listed in NRS 629.031, which includes, but is not limited to, some of the following licensed or certified professionals: physician's assistants, licensed nurses, emergency medical technicians, paramedics, registered physical therapists, chiropractors and licensed dieticians. Assembly Bill 299 is addressing people who work with vulnerable citizens, but are not licensed themselves. We worked diligently with many stakeholders to make A.B. 299 what it is today. Conversations with the stakeholders examined federal regulations, State standards and surveys among facilities for variances between our city and rural facilities of care. Ultimately, we realized there was too much to accomplish during this Session. We agreed to have a study done with the Legislative Commission on Senior Citizens, Veterans and Adults with Special Needs. I have submitted a conceptual amendment ([Exhibit I](#)) to the Committee. The proposed amendment includes the supported living arrangements (SLA) and the community-based living arrangements.

Assembly Bill 299 will help to make sure that people who are working with citizens in the different facilities have some modicum of training.

BARRY GOLD (AARP Nevada):

I have worked for over 30 years in the aging network. I was a case manager for the Older Americans Act case management program. I have been in over 1,000 homes of older adults and seniors. I have been in residential facilities, day-care centers, senior centers and group homes. Most of them are very good and provide good care, but what I have seen is a wide variety of staff and training in many of the different facilities. Many of the facilities do not have licensed staff. There are many new facilities like the CBLA and the SLA. For those of us that have been in the aging business, we know what those facilities are, but there are many different facilities that are not like the assisted living or

nursing homes. In the assisted living or nursing homes the majority of the staff are nurses or certified nursing assistants (CNA) and they are licensed and have training programs. Some of the CBLAs and SLAs are small and have introductory level workers and they often have turnover. We need to be sure there is a minimum training standard. Nevada requires workers who work with the frail and vulnerable adults or children to be fingerprinted and have background checks.

When a family of an individual who needs assistance is looking at a facility and is considering placing the individual there, the family wants assurance that the people working in the facility know what they are doing. The family wants to know the people working there have a level of training to provide care. We know that CNAs are trained and nurses are trained, but the average person working in the facility may not be trained. We heard Ms. Foley talk about a treatment plan. Who is going to help the individual with the treatment plan? Does the individual helping have any training to understand the treatment plan? Assembly Bill 299 requires the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs to conduct a study concerning training standards for unlicensed persons providing care at certain facilities, homes or through certain agencies. The CBLAs and the SLAs want to provide the best care they can and we need to help them achieve that. The AARP Nevada supports A.B. 299 and urge you to support it too.

SENATOR HARDY:

How many studies will be allowed? Will this count in the number of studies funded by the Legislature?

ASSEMBLYWOMAN COHEN:

Because A.B. 299 is using an existing committee to perform the study it will not count against the new studies. There is a bill that may terminate the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs. I have done the research and talked to the LCB and if for some reason the Committee is terminated, the study will go forward and transfer to another committee.

SENATOR HARDY:

How is the study done?

MR. GOLD:

Assembly Bill 299 asks or directs one of the Interim committees to look at the training standard issues.

CHAIR SPEARMAN:

Currently, there are people who open up facilities and say they are caring for senior citizens, veterans or adults with special needs. The people who open up the facilities are not trained or licensed and we do not know how many of these facilities exist. This is a rhetorical question, how did that happen?

MR. GOLD:

The facilities may be certified or licensed, but many of the staff may not be trained or licensed. They may have had background checks and been fingerprinted. There are no training standards for the staff working in the facility helping the resident cook dinner, eat dinner, take his or her medication, catch the bus in the morning or whatever the worker may be doing for the individual living in the facility. The facilities may have internal training standards, but the staff are not nurses or CNAs, they are just workers. They are direct-care workers. There is probably a record somewhere stating who the workers are and how many there are because background checks and fingerprinting are required on many of them, but that is the extent of what is legally required.

CHAIR SPEARMAN:

These workers are taking care of people who have given the best of their lives in military service and I am just floored. I cannot believe that there is not something in place right now that will protect this vulnerable community. It is beyond my comprehension. That is like a person walking into Walmart and putting on a smock and that person does not even work there.

ASSEMBLYWOMAN COHEN:

This is not my area of expertise, but I have learned a lot. There are licensed facilities and there are CNAs working there and licensed nursing staff. They are licensed and trained, but maybe there is someone working in the facility that is not licensed or trained. Someone who is helping an individual bathe, get dressed or helping with a medical exam. There are licensed people around them, but we want to make sure the workers around the individual are trained in the right way to perform certain steps of care. There is a right way to perform these tasks and we want to make sure those workers are trained. We want the bare minimum standard set through the State.

We do not want to imply that all the people working in those facilities are not trained. We just want the helpers to have a standard and training to help the individuals in the best possible way. There is a list in the statutes of trained personnel that are working in these facilities.

CHAIR SPEARMAN:

If there is just one untrained worker, it is putting a person in one of those categories at risk.

MR. GOLD:

Some of the smaller facilities do not have nearly as many licensed people, if any, on staff. Some smaller facilities have their own training requirements, but it is up to them to decide what the requirements are.

CHAIR SPEARMAN:

Did you want to address the fiscal note on A.B. 299?

CARA PAOLI (Deputy Administrator, Aging and Disability Services Division, Department of Health and Human Services):

The fiscal note was related to the original version of A.B. 299, when it addressed hiring nurses. The Aging and Disability Services Division (ADSD) operates an intermediate care facility in Las Vegas and the fiscal note was related to hiring nurses to provide the services named in the bill.

CHAIR SPEARMAN:

Hypothetically speaking, if the Committee were to do the study and recommend that training needed to be done, that would mean someone has to make sure it is done. Is that correct?

MS. PAOLI:

I would hope the ADSD could be a part of the study and could give input. Because there are some different types of homes we are talking about, ADSD is specifically focused on developmental services for people with intellectual disabilities and related conditions. Many of those individuals just need support. They do not want to come home and have someone help them in the home, as they can go into the community to get help. The ADSD would like input into the study as to what the individuals served require. The ADSD has quality assurance staff that monitor and certify homes, so there are quality measures and provider standards in place. There are different levels and different facilities

in the community, so I understand the need for A.B. 299 and the assurance of good training.

CHAIR SPEARMAN:

I will close the hearing on A.B. 299 and open the hearing on A.B. 438.

ASSEMBLY BILL 438 (1st Reprint): Revises provisions relating to offenses involving controlled substances. (BDR 40-1071)

ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):

It is time we assess what the war on drugs is and accept the reality that it has not been working. It has been 45 years, over a trillion dollars spent and unfortunately, the largest prison system in the U.S. I read a report from the United Nations Office on Drugs and Crime concerning drug trafficking. The data in the report is not good news. Even though the penalties for illicit drugs and possession have gone up and are much harsher, the use of illicit drugs has maintained at a stable level. I am not minimizing that illicit drugs are a problem in our community. Is the approach to the illicit drug use problem working? Do we need to reassess how we approach the problem?

I grew up behind the Stratosphere Hotel in Las Vegas, an area called Naked City. I grew up with a bunch of kids who, for a host of reasons, did not have role models in their homes, did not have parents and were raised by their older siblings. Some were raised by friends or family members who were one or two or three levels disconnected from them. Those friends came from dysfunctional broken homes. Many of those friends are very close friends of mine and people I care about. Some I share correspondence with as they sit in a jail cell. Growing up in that situation, desperate for something different, looking up to individuals who were leading them down a path that we all agree is not good. Some of these individuals would get paid \$500 to \$1,000 to move a vehicle from point A to point B and some of them served many years in jail. Some of these individuals are in their late twenties and still on probation. Through those personal lenses, I am forced to ask the question, is this war on drugs working? This is not to minimize law enforcement because they are doing everything they can. We have been approaching this problem with the same method. We put people in jail and increase the penalties, and unfortunately the data shows it is not working.

When looking at Nevada and how a crime is penalized in comparison to the federal level, Nevada is harsher. In Nevada, you do not need to prove the element of distribution in the crime of trafficking. There is a disconnect in how we approach the conversation.

When A.B. 438 came out in its original form on the Assembly side, it was an ambitious bill. It tried to address many issues. The stakeholders and I narrowed it down and came up with the bill you see today.

JOHN PIRO (Public Defender's Office, Clark County):

Assembly Bill 438 is a modest reform that starts to create a more sensible drug policy. It puts discretion back where it belongs with the judge thereby giving the judge the opportunity to decide on a case-by-case basis when it comes to low-level drug possession, which is now defined in A.B. 438 as level 1 drug possession. Additionally, the provisions in A.B. 438 make being under the influence of a controlled substance a crime that deals with drug use, on its own, a misdemeanor rather than a felony. That way we can treat an addict like an addict and get the individual into services without punishing the individual with a felony. It is important to note with A.B. 438, that we are not going to let drug dealers off the hook. The penalty for sale of controlled substances is unchanged and remains a one-to six-year penalty and a category B felony. The penalty for possession of a controlled substance with the intent to sell still remains the same no matter how small the intent to sell actually is. Selling to a minor, or any type of drug crime that involves minors, carry very harsh penalties. The laws on the books to punish drug dealers will still be very harsh. It is important to note that A.B. 438 does not lower the penalty for the gamma-hydroxybutyrate, the date rape drug, which would not be an addict problem, but a community problem.

Assembly Bill 438 defines the drug trafficking penalties for schedule 1 and schedule 2 drugs as level 1 and level 2 drug possession while retaining the nomenclature of trafficking for the high level amount of possession. Assembly Bill 438 does not change the amount or potential penalties that were attached to those crimes as the bill was originally proposed. It will keep the statutory language the same. Nevada's trafficking amount will remain substantially lower than the trafficking amount for our federal counterparts. This is a consensus bill, and this is how the bill came out. At least we are getting some progress done on the drug war issue. The level 2 drug possession and trafficking will still be mandatory prison unless the possessor offers substantial

assistance to the police, which oftentimes occurs at great danger to his or her own personal safety. Assembly Bill 438 will allow the judge the opportunity to give the possessor probation on a level 1 drug possession, which is 4 grams to 14 grams. People who possess four grams, which equates to four sugar packets, are drug users on a downward spiral. Instead of penalizing a drug user or person under the influence with a felony, the penalty will be a misdemeanor in hopes of getting the person classes and get his or her life back on track.

Nevada's rate of incarceration is higher than the national average and we are the fifteenth highest out of the 50 states. Whenever an opponent talks about criminal justice reform they state, why not let them all out or why not decriminalize everything. That is not what we are saying with A.B. 438. Mr. Sullivan and I live in the community and we want safe communities. We are incarcerating at higher rates and for longer terms than the federal government and other states surrounding us. It is time to admit that higher penalties for the sake of higher penalties for claiming deterrents is not working.

SEAN SULLIVAN (Public Defender's Office, Washoe County):

The Washoe County Public Defender's Office appreciates Assemblyman Flores bringing A.B. 438 forward. Assembly Bill 438 takes a measured approach and gives the judge the discretion for the low-level offenders. It does not guarantee they will get probation but it does mean the judge will look at the case if the offender is worthy of probation or treatment. Judges can still impose up to a six-month jail term on a misdemeanor, and provide treatment and assistance to various addicts. Assembly Bill 438 is a modest approach to combatting the war on drugs; it will be a step in the right direction for reform in this area.

JOHN JONES (Nevada District Attorneys Association):

The Nevada District Attorneys Association supports A.B. 438. Prosecutors take their jobs very seriously in terms of cutting people a break who deserve a break. Just because somebody has four grams of drugs and is charged with a trafficking level offense does not mean a prosecutor is not going to negotiate with the individual and possibly work it to a lower level offense with drug treatment.

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CHAIR SPEARMAN:

The Committee received a letter of support ([Exhibit J](#)) from the Nevada Attorneys for Criminal Justice.

I will close the hearing on A.B. 438 and open the hearing on A.B. 459.

ASSEMBLY BILL 459 (1st Reprint): Authorizes a court to order certain blood and genetic testing concerning a child in need of protection. (BDR 38-1026)

MELISSA EXLINE (Nevada Justice Association):

Assembly Bill 459 makes an addition to the chapter of the NRS relating to the protection of a child under NRS 432B cases. It adds language that is not found elsewhere under NRS 432B. The Washoe County Department of Social Services or the district attorney's office working on NRS 432B cases can confirm paternity. It comes into play more specifically when social services is looking to a permanent placement for a child. Social Services needs to make sense of whose parental rights are being terminated and to make sure the paternity and parentage is in place.

SENATOR HARDY:

What is done with the information? Does Social Services look for the father?

MS. EXLINE:

The information is used for the termination of parental rights. If the paternity is not confirmed, then the termination goes against John Doe or anyone who could potentially be the father of the child. Generally, we do not have the same issue with maternity but it is not as clear as it once was. It is to make sure that we are addressing and giving due process for termination cases where a child goes to a permanent placement and adoption is possible in the future. The case goes through the NRS 432B process, then the terminating parental rights process and then the adoption. As each stage is worked through, A.B. 459 addresses who has to get notice and the opportunity to be heard.

SENATOR HARDY:

If this process terminates John Doe's parental rights and John Doe never knew he had a child but later finds out that he did and the mother says she gave up his child for adoption; John Doe has no rights. Is that correct?

Ms. EXLINE:

It is not that straightforward. There is always the potential, depending on exactly what happened, to unwind things. It becomes a question of fact as to whether or not the termination was handled appropriately and it does not undo an adoption just because someone says he did not know. It is not that clear-cut. I am not well-versed in this situation. It does not happen every day. There are cases where there has been a request set aside and there is still the ability of a person who claims to be a parent to say an adoption should be set aside.

SENATOR HARDY:

Does the set aside adoption have a statute that takes in the best interest of the child?

Ms. EXLINE:

I am not the best person to address this specific issue. I can get the information to you. As a long standing family law attorney who has done various aspects of these kinds of cases, it gets down to the specifics of what you knew when you knew it, how you knew it and how much facts come into play.

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CHAIR SPEARMAN:

I will close the hearing on A.B. 459. Seeing no further business, I adjourn the meeting at 5:14 p.m.

RESPECTFULLY SUBMITTED:

Debbie Carmichael,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	2		Agenda
	B	10		Attendance Roster
A.B. 424	C	1	Assemblyman Michael C. Sprinkle	Proposed Amendment
A.B. 424	D	3	David M. Greer	Letter of Support
A.B. 424	E	1	Virginia Gigi Bautista / Nevada Donor Network	Proposed Amendment
A.B. 424	F	2	Panayiotis N. Varelas / Henry Ford Hospital	Letter of Support
A.B. 65	G	9	Yolanda T. King / Office of the County Manager, Clark County	Presentation
A.B. 46	H	1	Helen Foley / Nevada Assisted Living Association	Proposed Amendment
A.B. 299	I	1	Assemblywoman Lesley E. Cohen	Conceptual Amendment
A.B. 438	J	1	Jim Hoffman / Nevada Attorneys for Criminal Justice	Letter of Support