MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
May 24, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 2:07 p.m. on Wednesday, May 24, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

GUEST LEGISLATORS PRESENT:

Assemblyman John Ellison, Assembly District No. 33
Assemblyman Jason Frierson, Assembly District No. 8
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Connie Westadt, Committee Secretary

OTHERS PRESENT:

Chuck Callaway, Las Vegas Metropolitan Police Department
Mike Ramirez, Las Vegas Police Protective Association Metro, Inc.; Nevada Law Enforcement Coalition
Rick McCann, Nevada Association of Public Safety Officers

Todd Ingalsbee, Professional Fire Fighters of Nevada
Ron Dreher, Peace Officers Research Association of Nevada; Nevada Law Enforcement Coalition
Tom Dunn, Professional Fire Fighters of Nevada
Michael Giurlani, Nevada State Law Enforcement Officers' Association
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Corey Solferino, Washoe County Sheriff's Office
John T. Jones, Jr., Nevada District Attorneys Association
Priscilla Maloney, American Federation of State, County and Municipal Employees Retirees Local 4041
Peggy Lear Bowen
Jim Hoffman, Nevada Attorneys for Criminal Justice
Holly Welborn, American Civil Liberties Union of Nevada
Elliot Malin, Generation Opportunity
Stacey Shinn, Progressive Leadership Alliance of Nevada
Sean B. Sullivan, Office of the Public Defender, Washoe County
Wendy Stolyarov, Libertarian Party of Nevada
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Mike Dyer, Nevada Catholic Conference
Erika Washington, Make It Work Campaign; Make It Work Action
The Honorable James W. Hardesty, Justice, Nevada Supreme Court
Kimberly Surratt, Nevada Justice Association
Susan Hallahan, Chief Deputy District Attorney, Family Support Division, Office of the District Attorney, Washoe County
Kristin Erickson, Nevada District Attorneys Association
Matthew Sharp, Nevada Justice Association
Bill Bradley, Nevada Justice Association
James L. Wadhams, Nevada Hospital Association
Michael D. Hillerby, Renown Health
Paul J. Moradkhan, Las Vegas Metro Chamber of Commerce

CHAIR SEGERBLOM:
I will open the hearing on Senate Bill (S.B.) 541.

SENATE BILL 541: Enhances the criminal penalty for certain crimes committed against first responders. (BDR 15-1219)

SENATOR AARON D. FORD (Senatorial District No. 11):
I am here to present S.B. 541, which enhances the criminal penalty for certain crimes committed against first responders. Section 1, subsection 4 defines a "first responder" as any police, fire or emergency medical personnel acting in the normal course of duty. The bill authorizes an additional term of imprisonment of up to 20 years for any person who willfully commits certain crimes because of the fact that the victim is a first responder. Senate Bill 541 sends a message loud and clear that Nevada will not tolerate attacks on our brave first responders who work to protect and defend our liberties, and if you commit such a crime, you will face enhanced penalties.

Why is this important? It is important because across the Country we have seen many cases of violent offenders targeting first responders. Imagine a person setting a fire in his home and vehicle to lure firefighters in an attempt to ambush them. This is what happened on December 24, 2012, in Webster, New York. Two firefighters died, a police officer who volunteered as a firefighter and a 19-year-old who had been named Firefighter of the Year just 2 weeks before. Ambush killings such as these are no longer uncommon. According to law enforcement groups, the number of officers killed in 2016 reached its highest level in 5 years.

On July 7, 2016, in my home town of Dallas, Texas, 5 law enforcement officers were killed and 7 others were injured in a sniper attack. A sniper shot the officers at the end of a protest against officer-involved shootings in other states. This attack is considered the deadliest to police officers in the United States since the 9/11 terrorist attacks. Because of what happened in Dallas, I was able to retrieve and receive from Governor Brian Sandoval, then-Majority Leader Michael Roberson, Senatorial District No. 20, and Speaker John Hambrick, Assembly District No. 2, a proclamation issued to the City of Dallas showing our appreciation of the work of the fallen officers and our condolences. Condolences do not go far enough. That is why this bill is necessary.

On July 17, 2016, officers responded to a call of shots fired in Baton Rouge, Louisiana. They were gunned down in an ambush. Three officers were killed. On November 2, 2016, 2 officers sitting in their squad cars in Des Moines, Iowa, were killed in an ambush-style attack. On November 20, 2016, 50-year-old Detective Benjamin Marconi was sitting in his patrol car writing a ticket after pulling over a vehicle outside the San Antonio, Texas, police headquarters.

Another vehicle pulled up behind Detective Marconi. A man walked up and shot through Detective Marconi's window, hitting him twice in the head.

How does S.B. 541 address such grievous occurrences? Senate Bill 541 will require the court in determining the length of any additional penalty to consider the facts and circumstances of the crime, the criminal history of the person, the impact of the crime on any victim and any mitigating factors presented by the person. Any enhanced punishment cannot exceed the sentence imposed for the crime itself and must run consecutively to the sentence for the primary crime. Consecutively, not concurrently. This bill applies to an offense committed on or after October 1. We are offering Proposed Amendment 4978 (Exhibit C) to ensure we are covering all first responders.

Nevada's first responders put on their uniforms and go to work every day with the goal of keeping our streets safe. They go to work every day with the goal of providing life-saving assistance in emergencies. They go to work every day with the goal of protecting our families. They go to work every day with the goal of going home to their own families. It is time we let them know that we will do everything in our power to protect them as they protect us.

CHAIR SEGERBLOM:
What does the amendment do?

SENATOR FORD:
It adds "emergency medical provider" and defines "firefighter" and "peace officer."

ASSEMBLYMAN JOHN ELLISON (Assembly District No. 33):
I am here in support of S.B. 541. Senator Ford eloquently spoke to the problem facing our Country, and it is so important to hear what he is saying. This bill is important. The first responders, peace officers, firefighters and emergency medical providers play a critical role in our local communities. They keep us safe and protect our freedom. I am proud to be a cosponsor of this bill.

SENATOR HARRIS:
I just compared Assembly Bill (A.B. 88) to S.B. 541. I noted that spouses and children are not included in S.B. 541. Why are they not included?

ASSEMBLY BILL 88: Provides additional protection against certain crimes for a peace officer, firefighter or emergency medical provider or the spouse or child of such a person. (BDR 15-156)

SENATOR FORD:
Assembly Bill 88 and S.B. 541 are not related. I had no knowledge of A.B. 88 until I was asked to present S.B. 541. The distinctions are the result of two original ideas occurring at two separate times.

SENATOR HARRIS:
Are you open to extending protections to spouses and children? I would like to see this protection because public information about our first responders and where they live is easily accessible.

SENATOR FORD:
I would be happy to talk to you about an extension of the protections.

ASSEMBLYMAN ELLISON:
I did not know about there being two similar bills until recently. I contacted Senator Ford and asked him if I could cosponsor his bill. He was not aware of A.B. 88. These are important bills to both of us. We see the same problem needing to be addressed. I would like to see the protections extended.

SENATOR CANNIZZARO:
I want to thank Senator Ford for sponsoring this bill. I know the importance of the job our first responders do. My sister-in-law is a police officer outside Detroit. We are constantly hoping she will return home safely every night.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
Let us not forget what happened on our own doorstep in 2014 to Officer Alyn Beck, Officer Igor Soldo and citizen Joseph Wilcox and, in 2006, to Sergeant Henry Prendes who was responding to a domestic violence call. We have 1,700 uniformed officers on the street every day running toward the gunfire when others are running away. We support S.B. 541.

MIKE RAMIREZ (Las Vegas Police Protective Association Metro, Inc.; Nevada Law Enforcement Coalition):
We support S.B. 541.

RICK MCCANN (Nevada Association of Public Safety Officers):
We support S.B. 541. We need this bill, and we need it now.

TODD INGALSBEE (Professional Fire Fighters of Nevada):
We support S.B. 541. This bill is long overdue. We need to make sure we are protecting the men and women who protect Nevadans and guests to our State.

RON DREHER (Peace Officers Research Association of Nevada; Nevada Law Enforcement Coalition):
We support S.B. 541. Sergeant George Sullivan, University of Nevada, Reno, Police Department was sitting in his patrol car January 19, 1998, when he was slaughtered. Carson City Deputy Sheriff Carl Howell was killed on August 15, 2015, responding to a domestic dispute.

TOM DUNN (Professional Fire Fighters of Nevada):
Just this month, a Dallas firefighter paramedic was shot while on duty. Just this week, Chelsea, Massachusetts, police officers and firefighters were shot at when a man threatening to kill his wife set fire to his house. In November 2006, my fire crew was shot at by a 14-year-old with a gun when it stopped to prevent a crime in progress. Luckily, no one was hurt. In December 2012, my fire crew was nearly assaulted while performing its duties during a special event in downtown Reno. In March, Reno Police Office Rand Hutson was shot during a traffic stop while looking for a wanted subject. Rand is the son of a retired Truckee Meadows and Reno Fire Department operator. We support S.B. 541. For those of us working in the public-safety sector, times are changing and getting more dangerous and adversarial. Our job is becoming more difficult.

MICHAEL GIURLANI (Nevada State Law Enforcement Officers' Association)
I am a 25-year retired veteran of the Nevada Highway Patrol. It is unfortunate that we have to address the issue of hostile acts committed against our law enforcement officers, firefighters and first responders. We need to take a stand and send a firm message to anyone who might commit such criminal acts that Nevada will not tolerate it and will send you to prison for a long time. We support S.B. 541.

ROBERT ROSHAK (Executive Director, Nevada Sheriffs' and Chiefs' Association):
We support S.B. 541.

COREY SOLFERINO (Washoe County Sheriff's Office):
We support S.B. 541. We appreciate the Legislature coming together to protect our State's first responders. Violent crime is rising. According to the FBI's Uniform Crime Reporting Program, an estimated 507,000 violent crimes occurred last year, an increase of 5.3 percent from the previous year. Statistical data shows over 51,000 felonious assaults against law enforcement officers resulted in over 14,000 injuries in 2015. Law enforcement fatalities nationwide rose to the highest level in five years in 2016 with 135 officers killed in the line of duty. The 135 officer fatalities in 2016 represents a 10 percent increase over the 123 who died in the line of duty in 2015. Sixty-four officers were shot and killed in 2016, the No. 1 cause of death.

No other profession in this Country is targeted like first responders, not because of the job we perform but because of the badge and uniform we wear. When the chaos and sounds of violence occur in our everyday lives, we first responders run toward that sound, attempting to eliminate the threat and protect the sanctity of life. We appreciate the Nevada Legislature setting the national standard in recognizing the inherent risk of our job and offering stricter penalties for those who choose to inflict harm on our State's first responders for no reason other than the badge and uniform they wear and what they represent.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
We support S.B. 541.

PRISCILLA MALONEY (American Federation of State, County and Municipal Employees Retirees Local 4041):
We support S.B. 541.

PEGGY LEAR BOWEN:
Educators should be included in this bill. There have been shooters and bombs on campuses. In northern Nevada, a teacher was killed while protecting children.

JIM HOFFMAN:
I am here in my capacity as a private criminal defense attorney. I oppose this bill. I support the goal of keeping first responders safe, but this bill is not a good way to do it. The reason is that this bill is retroactive; it is not proactive. The kinds of people who attack police officers are often on drugs, or they have mental health problems. They are not rationally deterred by an increased

penalty, especially when murder is already a crime. A person can already get the death penalty for killing a police officer. In fact, that is specifically an aggregator that gets a person the death penalty. If someone is facing the death penalty, the prospect of an extra 20 years is not going to do anything to deter his or her acts.

This bill is not just about murder. This bill adds the enhancement to a wide range of offenses. Some of them are similar to murder, such as mayhem. On the other hand, there are things like theft and assault and battery. If a prisoner spits on a prison guard, he or she will get an extra one to six years of imprisonment under this bill. That is not reasonable. That does not address the real problem that police officers face. A better stance would be to do something proactive, such as more money for body armor, police officers, mental health treatment, etc. That would be a better way to keep first responders safe.

SENATOR CANNIZZARO:
Section 1 of S.B. 541 provides the enhanced penalty only on felonies. Some of the crimes mentioned by Mr. Hoffman are misdemeanors or gross misdemeanors and would not fall under S.B. 541.

MR. HOFFMAN:
That is true. If you spit on a cop before you are arrested, that is a misdemeanor. If you spit on a cop after you have been arrested and you are a prisoner, that is a felony.

SENATOR FORD:
Condolences are not enough. They are woefully insufficient to the sacrifice these men and women take on every day to protect us. Senate Bill 541 goes a long way to show our appreciation and our gratitude. It sends a message to those who would harm a first responder that Nevada will take serious action.

ASSEMBLYMAN ELLISON:
This is so important. We pay those to serve and protect us. We need to protect them.

> SENATOR CANNIZZARO MOVED TO AMEND AND DO PASS AS AMENDED S.B. 541.
>
> SENATOR DENIS SECONDED THE MOTION.

SENATOR HARRIS:
I look forward to discussing the adding of spouses and children to this bill. First responders do well when they know things are good at home.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:
I will open the hearing on A.B. 181.

ASSEMBLY BILL 181 (2nd Reprint): Revises provisions governing the restoration of civil rights for certain ex-felons. (BDR 14-720)

ASSEMBLYMAN JASON FRIERSON (Assembly District No. 8):
Assembly Bill 181 revises provisions regarding the restoration of civil rights to persons who have been convicted of felonies. The bill attempts to specifically address disenfranchisement of the right to vote. Assembly Bill 181 is not designed to be soft on crime or cut anyone a break. To the contrary, it is designed to acknowledge that in our criminal justice system we have a set of punishments that are intended to reflect the appropriate consequences for particular acts. However, at the end of the punishment, we expect a person to reintegrate into society, to be productive and to conform to society's rules. There are consequences if a person does not do so. A person is expected to get a job and care for loved ones. What better way to encourage people to reintegrate into society than to make sure that, when they have paid their debt to society, the matter is complete.

Measures brought to the Legislature in previous years have failed because of questions such as whether the punishment fits the crime. Assembly Bill 181 is an attempt to revisit the subject taking into account that there are some crimes that are worse than others. The bill leaves the requirement that a person convicted of those crimes petition the court for an order granting restoration of civil rights after the expiration of a certain period of time. The bill allows those convicted of nonviolent crimes that do not result in substantial bodily harm to a victim to regain civil rights.

In Nevada, the estimated percentage of disenfranchised individuals is approximately 4.02 percent of the population or just under 90,000 offenders.

The notion of addressing this issue is not new. In 2013, Delaware removed its 5-year waiting period for most offenses. In 2016, Alabama eased the restoration process for persons not convicted of a crime of moral turpitude. Rhode Island and Maryland now restrict voting rights only for those who are in prison. In 2016, California restored voting rights to people convicted of felony offenses if housed in jail but not in prison. In 2015, Wyoming required its department of corrections to issue a certification of restoration of voting rights to certain nonviolent felons after sentence completion. Nevada is one of only 12 states that bars voting postsentence. Eighteen states do what A.B. 181 proposes. Assembly Bill 181 will bring Nevada into the mainstream, not ahead of the curve or behind. We will be in the heart of what other states are doing.

Assembly Bill 181 proposes to allow those who have completed either their sentence of incarceration or their term of probation or parole to be restored their right to vote. The exceptions are Category A felonies and Category B felonies that result in substantial bodily harm. The bill removes the distinction between honorable and dishonorable discharge that is intended to take into account the situation of a person violating the terms of probation in a serious way, resulting in a revocation. That person will not be eligible for voting right restoration until the sentence is completed. When a judge is looking at a defendant and making a judgment call about whether that person is worthy of an opportunity, the judge is making that assessment at that time. What we do not want is for someone to get probation, be on probation for four years and toward the end have a slipup, get a dishonorable discharge and be treated worse than the person who was not worthy of probation in the first place. For example, a person violates probation because he or she is not able to pay the monthly $30 supervision fee and gets a dishonorable discharge. That is not something contemplated when a person is being sentenced for the crime he or she committed.

The bill proposes to have a delay for the restoration of rights to those who commit more serious offenses. The theory behind that is to recognize the concern about whether they have learned their lessons. They are given a two-year period to show that they have learned their lessons. They are given a light at the end of the tunnel.

Assembly Bill 181 is not a partisan matter. We have talked about being smart on crime. That has now become being right on crime. It does not matter what you call it. What matters is that we are being responsible with the limited dollars we have, we are incarcerating dangerous offenders, but we are using our

resources in a way that allows those offenders who do not pose a risk to have an opportunity to reintegrate into society. This will lead to a lower recidivism rate. We have been in a polarizing political atmosphere, and folks are in tune more than ever with the political process. This is the best way to have somebody come out of prison, reembrace the rules of society and be given an opportunity to not recidivate. It will pass a benefit on to the community and to the individual and will provide a cost benefit as well.

CHAIR SEGERBLOM:
I agree with you wholeheartedly.

SENATOR HARRIS:
Do other states distinguish between honorable and dishonorable discharge?

ASSEMBLYMAN FRIERSON:
I was unable to find another state that does so.

SENATOR HARRIS:
Are other states concerned about whether restitution has been paid? Are they more concerned with whether an individual has completed probation or parole?

ASSEMBLYMAN FRIERSON:
Other than for the most serious offenses, I have not found a state that makes that distinction. There are a couple of reasons. If you have an outstanding restitution order, you are required to sign a civil confession of judgment. That means that you are required to pay, and your bank account or your paycheck can be linked. That is the law in Nevada.

I would welcome an opportunity for a thorough conversation about the distinction between honorable and dishonorable discharges. We have a lifetime of people who have gotten a dishonorable discharge and not realized the consequences. For example, a person was on probation for five years and was completely compliant. Two months before he was set to expire, he used marijuana. He tested dirty and got a dishonorable discharge. Had he tested dirty the first year of probation, he would have gotten treatment, rehabilitation and an honorable discharge. The reasons for a dishonorable discharge include failure to pay a $30 fee or a blown curfew. A former client of mine was 18 years of age when he got a dishonorable discharge because of a curfew violation. I do not know of an 18-year-old who has not had a curfew violation. Until we have a

way to distinguish between the more serious and less serious violations, we will have a generation of folks living with dishonorable discharges that were not serious enough to have resulted in a revocation or a new offense.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
We support A.B. 181. There are 89,267 disenfranchised Nevadans. This bill will allow a significant portion of those individuals to be reenfranchised and live lives as full citizens after serving their prison terms. Voting is a fundamental right. Without the vote, citizens have no voice. Restoring an individual's right to vote not only upholds the principles of democracy but also fosters a safer community. Studies indicate that voting encourages good forms of citizenship. People who vote are more likely to give to charity, volunteer, attend school board meetings, serve on juries, be interested in politics, participate in public demonstrations and cooperate with fellow citizens in community affairs. People who voted after release from supervision were half as likely to be rearrested as those who did not vote. Similar effects were found among people with prior arrests. Twenty-seven percent of nonvoters were rearrested compared to 12 percent of people who had voted. Reenfranchisement has significant impact on our community.

ELLIOT MALIN (Generation Opportunity)
There has been bipartisan support for this in Congress. In 2015, Senator Rand Paul and Senator Harry Reid cosponsored the Civil Rights Voting Restoration Act of 2015. Winston Churchill once said:

> We cannot impose these serious penalties upon individuals unless we make a great effort and a new effort to rehabilitate men who have been in prison and to cure their having a chance to resume their places in the ranks of honourable industry.

It is not every day that you see me testifying alongside the ACLU and the Progressive Leadership Alliance of Nevada. We all feel deeply about this issue. This is an issue that will help many Nevadans get back on their feet and move toward rehabilitation with employment.

STACEY SHINN (Progressive Leadership Alliance of Nevada)
I am a social worker. My profession has a policy platform that states that social workers support full restoration of voting rights for all felons who have completed their sentences. An astonishing 6.1 percent of people have been

disenfranchised in our Country because of felony convictions, including 1 in 13 black voters versus 1 in 56 nonblack voters. This is a racial justice issue. Studies show formerly incarcerated persons who have voting rights restored are less likely to return to prison. There are also multiple community benefits as well, including higher levels of physical health, mental health and better employment outcomes.

SEAN B. SULLIVAN (Office of the Public Defender, Washoe County):
We support A.B. 181. It helps people reintegrate into society and become productive members.

WENDY STOLYAROV (Libertarian Party of Nevada):
According to estimates from The Sentencing Project, approximately 4 percent of Nevadans are ineligible to vote because of felony disenfranchisement. Nevada is one of the 12 states in the Country with the harshest felony disenfranchisement laws. Since 1997, 24 states, including Nevada, have revisited their penalties and reduced or eliminated the scope of felony disenfranchisement. In 2001, Nevada repealed the 5-year waiting period, and in 2003, Nevada restored voting rights to those convicted of first-time nonviolent offenses.

We encourage Nevada to take the next step in a reform that could improve the lives of thousands of people, especially in economically disadvantaged or majority-minority communities. Given that implicit bias in the criminal justice system results in the disproportionate conviction of people of color, minority communities are particularly severely affected by harsh felony disenfranchisement laws. The result is a cycle of poverty, crime and disengagement from society for those who believe they are not wanted. We believe that Nevadans who have served their sentences or have been discharged honorably from probation or parole deserve a second chance. Assembly Bill 181 gives them that chance.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
We support A.B. 181. Because Nevada's laws are so harsh, even if a person got a dishonorable discharge 20 years ago and has completely changed his or her life, that person would not be able to seal his or her record. Assembly Bill 181 corrects that injustice. When I taught the record sealing class, people would cry at the end of the class because they are not eligible to seal their records, even though their crime occurred a long time ago because they messed up on

probation. Because of a dishonorable discharge, they are unable to seal their records even though they are totally different people. They are prevented from moving on with their lives. This bill in great measure lets them get their rights back and take a bigger part in society.

MR. JONES:
We support A.B. 181. This bill puts Nevada on par with the majority of states that have restored the right to vote to felons after completion of their sentences. There is a carveout in this bill for persons who have been convicted of violent crimes. Assembly Bill 181 strikes the right balance.

MIKE DYER (Nevada Catholic Conference):
We support restorative justice and A.B. 181.

ERIKA WASHINGTON (Make It Work Campaign; Make It Work Action):
We support A.B. 181 on behalf of single mothers who are trying to restore their families and restore their rights.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
We support A.B. 181. I want to highlight the jury service provisions in A.B. 181. Jury service is a civil right. The premise of the jury system is that we have a fair cross section of the community. If disproportionately poor and nonwhite people have their right to serve on a jury taken away, there is no fair cross section. We get inaccurate jury results. It is not fair. Assembly Bill 181 will fix this problem.

CHAIR SEGERBLOM:
I will close the hearing on A.B. 181 and open the hearing on A.B. 278.

ASSEMBLY BILL 278 (1st Reprint): Revises provisions relating to the support of children. (BDR 11-892)

THE HONORABLE JAMES W. HARDESTY (Justice, Nevada Supreme Court):
I testified on this subject on S.B. 34 before this Committee.

SENATE BILL 34: Makes various changes relating to the support of children. (BDR 11-256)

JUSTICE HARDESTY:
The issue is reforming guidelines for setting child support. You will recall that I mentioned that Nevada was out of compliance under federal statutes and regulations by about 22 years in its requirement to conduct a child support guideline review every 3 years. Consequently, Nevada needs to get into compliance or be seriously at risk of losing federal dollars that support that effort. Assembly Bill 278 has the support of the Commission to Study Child Support Guideline Review and Reform. This bill comes to you through the unanimous work of the Commission, which included representatives of every stakeholder in the child support guideline area. I have provided the September 1, 2016, Report of the Commission to Study Child Support Guideline Review and Reform (Exhibit D).

SENATOR HARRIS:
Is this the same as S.B. 34? It does not include some of provisions that the Committee had difficulty with earlier in the Session.

JUSTICE HARDESTY:
That is correct. My testimony on S.B. 34 was directed only to those provisions in that bill that were the recommendations of the Commission. Assembly Bill 278 deals exclusively with the Commission's recommendations.

SENATOR HARRIS:
The insurance and car registration provisions are not part of this bill.

JUSTICE HARDESTY:
They are not.

KIMBERLY SURRATT (Nevada Justice Association):
I am the Vice Chair of the Family Law Section of the State Bar of Nevada, and I was a member of the Commission to Study Child Support Guideline Review and Reform. We support A.B. 278. The reason why A.B. 278 only contains the Commission's recommendations is because the intent of A.B. 278 is that the Committee to Review Child Support Guidelines created in section 7 will deal with those issues.

I have provided a number of documents: Child Support Final Rule Fact Sheets (Exhibit E); Compliance Dates for the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule (Exhibit F); Flexibility, Efficiency,

and Modernization in Child Support Enforcement Programs (Exhibit G); and *Review of the Nevada Child Support Guidelines* (Exhibit H). I do not intend that this Committee read all of this material. I have provided this information to demonstrate the breadth and depth of what the Review Committee created by A.B. 278 will have to do. There is a significant amount of work to be done. Deadlines have passed. The perspective of the federal government is to increase enforcement, increase collection of child support and to do so in accordance with all of the rules that have been adopted. The hope is that Nevada can get this work done.

SUSAN HALLAHAN (Chief Deputy District Attorney, Family Support Division, Office of the District Attorney, Washoe County):
I am so excited about A.B. 278 and to have been a member of the Commission to Study Child Support Guideline Review and Reform. I am the one in the trenches setting and modifying child support orders. I support A.B. 278.

KRISTIN ERICKSON (Nevada District Attorneys Association):
We support A.B. 278.

CHAIR SEGERBLOM:
I will close the hearing on A.B. 278 and open the hearing on A.B. 183.

ASSEMBLY BILL 183 (1st Reprint): Revises provisions governing the collection of a hospital bill. (BDR 40-694)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
This bill has had quite a few revisions since it was first introduced. We have been trying to find consensus. We are close. Assembly Bill 183 is a meritorious bill even though we do not have complete consensus. I introduced A.B. 183 because I learned about injured victims of car crashes, dog bites and other incidents who go to hospitals in our State. Many victims have insurance obtained privately or through employers or government programs. In most cases, their insurers have contracted rates with the hospital. However, in many cases a victim will find that a statutory lien had recorded in his or her name. In many cases, the lien is not for the contracted amount but for the entire billed amount.

When a person takes a trip to the emergency room, he or she gets a statement that shows the billed charges and the contracted amount. The billed amount is

higher than the contracted amount. A lien recorded for the billed amount has adverse consequences. The changes proposed in A.B. 183 will make sure that if there is health insurance to cover the charges, it will do so.

MATTHEW SHARP (Nevada Justice Association):
We have offered a proposed amendment (Exhibit I). I will provide an overview of the lien process and explain the content of the bill and the amendment passed by the Assembly. Many years ago, the Legislature passed a bill that allows a hospital to file a lien against a personal injury recovery. You are familiar with borrowing money to buy a car. The lender files a security interest. In the event of default, the lender collects the loan through the lien. The personal injury world has a similar concept. The asset of the person who has been injured is tort recovery, the amount of the injury. The hospital gets a lien for what is reasonable and necessary. The context of the process is to protect the hospital in the cases of uninsured people.

The issue addressed in A.B. 183 is injured people with insurance. The insurance company has a contract with the hospital. The person who has insurance should get the benefit of that contracted rate. For many years, hospitals have refused to bill the insurance company because they do not want to accept the contracted rate. The hospitals would rather collect billed charges, which are usually significantly higher than the contracted rate. We are trying to eliminate that practice. The Nevada Justice Association and the hospitals have reached an agreement that if an insured injured person goes to the hospital and the insurance company has a contract with the hospital, the injured person should get the benefit of the contracted rate. Our dispute involves Medicare and Medicaid.

Assembly Bill 183 confirms the process under the lien laws is that if the injured person has insurance and the insurance company has a contract with the hospital, the injured person will not pay more than the deductible and copay. Section 2, subsection 1, paragraphs (a) and (b) amend *Nevada Revised Statutes* (NRS) 449.758 to clarify the most that will be collected is the amount of the deductible or copay. Section 2, subsection 1, paragraph (c) specifies that collection is limited to health insurance coverage. Section 2, subsection 2 deals with automobile medical payment coverage. Most automobile insurance policies include medical payment coverage. If the insured is in an accident, regardless of fault, the policy pays the medical bills up to a certain amount.

What we have experienced with our clients is a practice by the hospitals to collect the medical payment benefits, the deductible from the patient and the contracted amount from the health insurance company. The hospital can collect more than it is entitled to. The injured person's liability is limited to the deductible. Section 2, subsection 2 provides that when the hospital has collected medical payment benefits and health insurance coverage, the hospital will send any overpayment back to the patient directly. To address the concerns of the automobile insurance industry, our proposed amendment in Exhibit I removed the phrase "or the person identified in the hospital bill as the responsible party."

Section 2, subsection 5 is a reiteration of existing legal definitions. Section 2.3 sets forth new provisions for the manner in which liens are filed. Hospitals have been filing liens before filing insurance claims. Under existing law, a hospital cannot begin collection efforts against a patient unless a claim has been filed with the health insurance company and the claim has been processed. Hospitals are concerned that they need to file the liens to protect their interests in the event that the health insurance company denies the claim. We have tried to create a solution that protects everyone. Sections 2.3 and 2.5 provide a notice of intent to lien. For example, a person is injured in an accident and goes to the hospital. Health insurance information is provided. The hospital files a notice of intent to lien, which is sent to the patient, his or her attorney and the liability insurance company. The point is to place everyone on notice that the hospital has provided service and is entitled to be reimbursed. Once the health insurance claim has been processed, there is a mechanism to amend the lien to reflect the true cost owed by the patient.

Section 2.7 provides that the method of collection is the lien. For example, if someone is in a car accident and the hospital chooses to assert a lien against that person's personal injury claim, the hospital cannot then proceed separately to send the patient to collection. It is one or the other.

Section 2.9 is an issue that the Legislature has been dealing with for several Sessions regarding the mechanisms of how liens are filed and how hospitals collect bills against injured persons who have personal injury claims. Every time we try to correct something, the hospitals find a way to get around the correction. The way to ensure a patient is getting the benefit of the rate that his or her insurance company contracted for with the hospital is to provide a

penalty mechanism. If the hospital violates the lien statutes, it is going to be responsible for damages equal to twice the amount of the lien.

Section 3 of A.B. 183 provides that the amount of the lien that can be collected is no more than the contracted rate.

Section 3.7 deals with how a lien is perfected as to third parties to make sure that the insurance company is put on notice that there is a lien.

Section 4 of A.B. 183 confirms that when a person has health insurance and there is an accident that causes that person an injury, the amount of the lien is governed by the previous sections of the bill.

The remaining issue before this Committee concerns Medicare and Medicaid. Our position is that Medicare and Medicaid recipients should receive the benefit of the rates those entities provide. The hospital's position is that those rates are too low. Our position is that those rates are beyond our control, and it only makes sense that the elderly and the poorest among us get the benefit of the contracted rates. These people are the least able to afford paying the billed charges. They are probably the only people in the Country charged and paying billed charges.

BILL BRADLEY (Nevada Justice Association):
I would like to provide everyday examples of what we are talking about. One of our parents is involved in a car crash. The parent is on Medicare. The reason the parent is on Medicare is that he or she has worked for a lifetime and contributed into a system that promised a set of benefits at retirement age. The other driver is determined to be at fault for the automobile accident. Both the driver and the parent suffered a fractured hip. The driver is also on Medicare. Both the driver and the parent go to a large hospital in northern Nevada, and they receive the same treatment.

The hospital sends the driver's bills to Medicare, and Medicare pays the bills. Because there is liability insurance involved, the hospital decides that federal rules do not require the parent's bills to be sent to Medicare. The parent assigned all of his or her rights under the Medicare plan as a condition of admission to the hospital. That enables the hospital to bill Medicare, but it does not bill Medicare. Instead, the hospital files a lien against the parent and possibly the liability insurer of the driver. The hospital waits. The lien is filed for

the full amount of the hospital bill, i.e., the billed charges. The parent has a $70,000 bill from the hospital that the hospital expects will be paid from the personal injury claim proceeds. The driver received the benefit of Medicare rates. The parent does not. This is not respecting and treating our seniors on Medicare appropriately. Medicare benefits have been paid for over a working lifetime. When the benefit is needed, the hospital makes a unilateral decision that it does not have to bill Medicare. This same scenario applies to Medicaid patients.

There are several hospitals in the State that would bill both the parent and the driver the same amount in the example I have provided. These hospitals also bill both Medicare and Medicaid under this scenario. These hospitals are in southern Nevada. They do this well, particularly University Medical Center, which is the best. Unfortunately, other hospitals take a much more aggressive stand so that they can recover larger funds from the people least able to pay. These are seniors on fixed incomes and Medicaid recipients. A car crash disrupts their lives. They may not be able to pay their rent, and they end up on the street. These decisions by these large hospitals have significant consequences.

We try to resolve the third-party claim at the same time we are trying to resolve the hospital's claim. Where this really gets ugly is when it turns out that the wrongdoer driver only has a $15,000 insurance policy and the patient's bill is $150,000. Under this scenario, the hospital would be better off billing Medicare or Medicaid. Instead, it stubbornly waits for a share of the small $15,000 policy proceeds. This deprives the hospital of the increased recovery it would have had if it billed Medicare or Medicaid.

We have been coming to the Legislature with this problem since 2007. We thought we fixed it in 2011, and we obviously did not because the problem continues. In northern Nevada, we have had tremendous success with our large hospitals recognizing that when there is a contract with the health insurer, the hospital must bill the health insurer. That message has not yet gotten through to the southern Nevada hospitals. This is already the law in Nevada, and the southern Nevada hospitals will understand this reality soon.

The big issue is Medicare and Medicaid. The hospitals will tell you that those reimbursements rates are so low that it is not fair to limit them to those payments. We do not think it is fair to put the entire bill on the back of a senior

citizen or a Medicaid recipient. The process is being abused and needs to be corrected by the Legislature.

CHAIR SEGERBLOM:
This sounds similar to the problem the insurance companies experience when the hospitals will not take out-of-network patients.

MR. BRADLEY:
There is a segment of the population that does not have insurance. They do not have Medicare, Medicaid or private insurance. The law created a number of years ago gives the uninsured patient the opportunity to ask for a reduction of his or her bill. Initially, an uninsured patient gets the full bill. If the patient takes some steps under the law and jumps through a few hoops, the hospital is required to give a 30 percent discount.

JAMES L. WADHAMS (Nevada Hospital Association):
As a former insurance commissioner, I had to read A.B. 183 several times to sort out the insurance companies. It is written in a way that conflates first party with third party. There are three insurance policies, three insurance companies, two parties and a hospital. I would like to discuss the sections of the bill where there are opportunities for correction and clarification.

Section 2, subsection 1, paragraph (b), subparagraphs (1) and (2) of A.B. 183 provide that the hospital shall not collect or attempt to collect more than the lesser of two amounts: the amount the patient would pay as a deductible, copayment or coinsurance, or the amount the health insurance company is required to pay under the contract. The problem is that the collected amount should be a combination of the two because the total contracted amount under the health insurance policy would include the deductible, copayment or coinsurance with the balance of the contracted amount coming from the insurance company. This is a drafting error that can be corrected.

SENATOR ROBERSON:
That sounds correct to me. Does the other side agree?

MR. SHARP:
Yes. Mr. Wadhams and I discussed some of these issues. Mr. Wadhams and I can figure out the best way to fix this. We were trying to make it clear that the

patient was responsible up to the deductible, and sometimes the contracted rate is below the deductible.

MR. WADHAMS:
Section 3, subsection 2, paragraphs (a) and (b) require a similar correction. Mr. Sharp and I agree that the contracted amount includes the deductible, copayment and the balance from the insurance company. Mr. Sharp wanted to make sure the patient is only responsible for the deductible and copayment. That is in the situation where there is a first-party health insurer, although the bill refers to the first-party health insurer as a third party. Perhaps, we can do some bill drafting to clarify the terms.

Section 2.5 of A.B. 183 requires the notice of intent to file the lien to contain certain information. Our issue is that there are two elements. One is the hospital must estimate the amount to be paid by the health insurance company. It may be possible to provide that estimate. The hospital might also be able to make a reasonable estimate of the copay, but an estimate of the deductible would be out of the realm of the hospital. It would be the province of the insurance company to know what other claims had been paid and how much of the deductible had been met. This needs to corrected. It is also worth evaluating whether that particular information should be sent to the tortfeasor and his or her liability insurer. The intent was that this information go to the patient and his or her lawyer but not to the adverse party.

MR. SHARP:
The intent of the provision is to provide some assurance to the hospital that the notice was also provided to the liability insurance company. The reason for that is that in order for the hospital to protect its interests, it needs to provide the liability insurance company notice of the lien. That was the idea. Mr. Wadhams raises some good points with regard to the specifics included in that notice. That is something we can work out.

MR. WADHAMS:
One of the key provisions is in section 3.3. The law says that no rights or claims for liens shall be allowed after a settlement has been effected. One of the reasons why the hospital has historically filed the lien is to not be cut off from its rights by a prompt settlement. I am not sure whether a prompt settlement is typical, but the statute provides an incentive to file the lien. We have talked about instead of filing the lien, filing an intention to lien. This is a

different animal, but it puts the tortfeasor and insurer on notice. The timing issue is important.

One of the elements that drives the opposition of the hospitals is a different take on the responsibilities of the parties. Nevada has a mandatory automobile insurance law. An increase of the minimum financial limits has been discussed. In order to register a vehicle, a person must prove financial responsibility. Why do you have to prove financial responsibility? It is because it is your obligation to take care of the expenses and the damages of a party you run into. It is important to note that the person who is run into did not go to the hospital because of a slip and fall or a health issue. The person goes to the hospital because of an accident that was someone else's fault. The notion of liability and responsibility for that liability is the predicate for the statute in the first place. Shifting the burden of the cost of that hospital care to the responsible party is the policy question this process is addressing.

One of the problems that Mr. Sharp and Mr. Bradley anticipated is that the hospitals have serious concerns about the application of Medicare and Medicaid. You are cognizant of the difficulties in adequately funding Medicaid. Funding currently runs at about 52 to 55 cents on a dollar of costs. The hospitals' concern about accepting Medicaid payment in full when there is a bad actor with liability insurance that could potentially pay that cost is considerable. It is a policy question at least worth considering to minimize the drain of Medicaid funds and the upward push on the commercial rates private insurance companies negotiate with hospitals.

The second problem that comes under Medicare is a fascinating issue. Under Medicare, the Medicare system does not identify the cost of services for trauma. It is a different method of compensation that recognizes nothing for trauma. We need to keep in mind that many times the person who needs services is not a person with a broken hip but the victim of a traumatic event. Several thousand dollars of costs can be incurred. Medicare does not recognize these services. It literally reimburses pennies on those dollars. That further adds to the cost to the community through the county-funded hospitals and commercial insurance rates.

We have difficulty with the application of this bill to Medicare and Medicaid systems. We have been in discussions with Mr. Sharp and Mr. Bradley. As Assemblyman Ohrenschall indicated, we may be close to finding a solution to

that problem, but we are not there yet. It is a critical element. Until it can be resolved, the hospitals will be opposed to A.B. 183.

MICHAEL D. HILLERBY (Renown Health):
I have provided a copy of a lien (Exhibit J) from the Washoe County Recorder's Website. It is a public document. The important information is in the upper right-hand corner. It includes the October 17, 2016, date of the filing. The first paragraph of the lien indicates that service of the lien was provided to the injured party on May 29, 2016. The reason for the time between the filing and the service of the lien was due to Renown having to assess whether there was third-party liability, was it an accident, was there another payor, did that patient have a contracted payor with Renown, etc. The lien was filed against State Farm Auto Insurance. State Farm was the insurer of the tortfeasor. The amount of the lien is $11,456. The invoice is on page 3. Page 4 is the Satisfaction and Release of Lien which is dated April 27 naming State Farm Auto Insurance as the tortfeasor. This is offered to show that the lien is not filed against the patient. Liens are filed in an attempt to preserve the hospital's right to gain access to the funds that are owed by the insurer for the party who was negligent and caused the injury and to follow State law that requires the hospital file a lien before payments are dispersed or lose the opportunity to lien.

I would like to provide a real-life example. A patient was admitted to the hospital. There was third-party liability. The total hospital bill was approximately $25,000. The bill was sent to Medicare. The bill was denied. The patient was represented by counsel. The negligent party had minimum coverage of $15,000. The hospital reached a settlement with the attorney for the patient for $9,000. That patient was eligible for Medicare. Had the hospital billed Medicare, the hospital would have been paid $950.

There are two important points. Medicare and Medicaid pay less and often far less than the actual cost of providing service. It is also important to note that both are paid for by taxpayers. Renown is a nonprofit and has an obligation to keeps its doors open to provide the highest quality care it can to the people of this community and to collect as much of the amount owed as it is legally entitled to. Otherwise, the State or the federal government becomes the payor of first resort.

I asked Renown to pull a representative sample of some of the liens filed last year. Last year, over 100,000 people were seen in the emergency room. There

were a total of 628 liens filed for third-party liability accidents. This is a tiny percentage of the patients. In approximately 10 percent of the 628 claims, Renown received payment from the third-party liability insurer. All of those claims were Medicare and Medicaid cases. Renown was able to get a payment for the hospital and keep the taxpayers from being the payors of first resort.

Approximately 10 percent of the 628 claims were denied by the third-party liability insurers. Another 7.5 percent were denied by the contracted health insurers because of lack of information from the patient, other payors or incomplete claims; 7.5 percent ultimately settled and were given large discounts off the original bills; and 7.5 percent were actually paid by the third-party liability insurers before Renown was able to file liens. It is complicated. We think we are doing our best to follow the law and do the right thing for the community and the patients, whether they are Medicare, Medicaid or victims of accidents. We need to recover as much of the cost of the service provided as possible because 79 percent of the patients in Nevada hospitals pay less than the cost of the care provided.

CHAIR SEGERBLOM:
Exhibit J shows a lien for $11,456. Is this the same amount an out-of-network patient would have to pay?

MR. HILLERBY:
Renown has a document it files with the State called a charge master. Every hospital makes this filing. These are the charges that are billed for all of the various services provided. Both federal and State law require the hospitals to bill everyone the same. A person's insurer negotiates a rate with the hospital. If the hospital is in-network, the charges to the patient are ultimately less than the charge master charges, but every patient is billed the same amount. The amount a patient is responsible for may be much lower depending on who the patient is insured by or if the patient is uninsured. Nevada law requires that if an uninsured patient contacts the hospital, his or her bill is automatically reduced by 30 percent discount. A payment plan is worked out. The plan is no longer than two years. Often the net result for the hospital is substantially lower than the discounted amount.

SENATOR ROBERSON:
I acknowledge this is a tough situation and a difficult problem. You have mentioned the problem is small in scope as far as the number of claims. I want

to acknowledge the difficult situation the hospitals are in because the hospitals are not properly compensated by a large portion of the patients seen. I am struggling with the other part of this system that seems inherently unfair. Individuals who are poor or elderly and who are on Medicare or Medicaid through no fault of their own end up in the emergency room. Because they are in the emergency room due to the fault of someone else, they are treated differently. If they had fallen in their backyard, the hospital would be required to accept Medicare or Medicaid coverage. I acknowledge that Medicare and Medicaid do not reimburse the true cost of service.

The case of a patient being injured by a tortfeasor is relatively small. It seems like the hospital is saying it does not want to accept the Medicare or Medicaid rates. It would rather go after the insurance policy of the tortfeasor, file a lien and pursue civil litigation. The settlement of the injured party will be eaten up by the charges from the hospital. I am not saying that is always inappropriate, but the rate charged the injured party is not the usual and customary rate negotiated with a private insurance payor. That negotiated rate is presumably lower than the list price.

I use the term "list price" because we have talked a lot this Session about insulin prices, pharmaceutical manufacturers and pharmacy benefit managers (PBM). This is like the list price for an insulin drug. There are rebates, contracts between PBMs and insurers, etc. No one pays the list price for hospitalization except the uninsured, if collection is possible, and people who are in the unfortunate situation of being poor on Medicaid or elderly on Medicare and in the hospital because someone else hurt them.

Given the predicate that this entire situation is unfair to hospitals, it is also a real injustice that the elderly and the poorest among us are bearing the list price because of how they got to the emergency room. I do not know what the answer is. I understand both perspectives. It would be great if we could find a middle ground. I have discussed trying to determine what that usual and customary price is. There is a middle ground between the list price and the Medicare and Medicaid rates. I would like to see if we can find that middle ground. Will you work with the proponents of this bill in the waning days of this Session to come up with a reasonable middle ground?

MR. WADHAMS:
We certainly will work with the bill proponents. It is important to note that this is not placing the burden on the gray-haired grandfather but on the bad driver who has auto liability insurance precisely for the purpose of paying for the damages he has caused. That middle ground is something we are all committed to looking for. A couple of other pieces are important. The skill of a trial lawyer is critical in this because the alleged tortfeasor is only alleged. Until the trial lawyer can either effectuate a settlement or win a court case, that opportunity is gone.

The third piece is that the federal law will allow the claim to go against Medicare or Medicaid but only after the exercise of due diligence by the provider to try to collect from the third-party liability insurer. They do not want primary liability. Due diligence must be exercised.

PAUL J. MORADKHAN (Las Vegas Metro Chamber of Commerce):
The hospitals are members of Chamber. I will echo the comments of Mr. Wadhams and Mr. Hillerby. We hope a middle ground can be found.

MS. BOWEN:
I have a suggestion for the hospitals. The hospitals should maintain such absolutely wonderful standards that there are no accidental misdiagnoses, wrong medications or somebody being dropped. A number of our hospitals in Nevada are not being paid a full share from Medicare, and they are being fined because of the number of incidents. There is a rating system of zero to ten.

CHAIR SEGERBLOM:
We are not here to debate the hospitals. We are talking about the bill.

ASSEMBLYMAN OHRENSCHALL:
I am committed to working with all the stakeholders. Hospitals provide an incredible service to our constituents, but the status quo has disincentives and actually can hurt constituents who work hard and pay taxes to have insurance through a government program, work at jobs that have insurance or buy insurance from the private insurance market. The status quo is not acceptable.

CHAIR SEGERBLOM:
The hearing is adjourned at 3:53 p.m.

RESPECTFULLY SUBMITTED:

Connie Westadt,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	6		Attendance Roster
S.B. 541	C	3	Senator Aaron D. Ford	Proposed Amendment 4978
A.B. 278	D	4	James W. Hardesty	Report of the Commission to Study Child Support Guideline Review and Reform
A.B. 278	E	2	Kimberly Surratt	Child Support Final Rule Fact Sheets
A.B. 278	F	2	Kimberly Surratt	Compliance Dates for the Flexibility, Efficiency, and Modernization in Child Enforcement Programs Final Rule
A.B. 278	G	78	Kimberly Surratt	Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs
A.B. 278	H	100	Kimberly Surratt	*Review of the Nevada Child Support Guidelines*
A.B. 183	I	1	Nevada Justice Association	Proposed Amendment
A.B. 183	J	4	Renown Health	Copy of Lien