MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
March 29, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:35 p.m. on Wednesday, March 29, 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

COMMITTEE MEMBERS ABSENT:

Senator Aaron D. Ford (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Kate Ely, Committee Secretary

OTHERS PRESENT:

The Honorable James Hardesty, Justice, Nevada Supreme Court
Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada
Barry Gold, AARP Nevada
Gail J. Anderson, Deputy Secretary for Southern Nevada, Office of the Secretary of State
Scott Anderson, Chief Deputy, Office of the Secretary of State

Rana Goodman, Political Editor, *The Vegas Voice*
Jay P. Raman, Office of the District Attorney, Clark County
Dan Roberts, Publisher/Editor, *The Vegas Voice*
Lora E. Myles, Carson and Rural Elder Law Program
Kim Spoon, Nevada Guardianship Association
Karen Kelly, Public Guardian, Clark County
Larry Burtness, Recorder, Washoe County
John T. Jones, Nevada District Attorneys Association
Sean B. Sullivan, Office of the Public Defender, Washoe County
John J. Piro, Office of the Public Defender, Clark County
Lisa Rasmussen, Nevada Attorneys for Criminal Justice

CHAIR SEGERBLOM:
I will open the hearing on Senate Bill (S.B.) 158, S.B. 168, S.B. 229 and S.B. 433.

SENATE BILL 158: Revises provisions governing guardianships. (BDR 13-468)

SENATE BILL 168: Establishes the Wards' Bill of Rights. (BDR 13-6)

SENATE BILL 229: Revises provisions relating to guardianships. (BDR 13-87)

SENATE BILL 433: Revises provisions relating to guardianships. (BDR 13-487)

THE HONORABLE JAMES HARDESTY (Justice, Nevada Supreme Court):
This subject area is a complex area. Essentially, what we are asking the Legislature to do is adopt the recommendations that were made by a commission formed by the Nevada Supreme Court that studied this matter extensively. There are many areas in need of repair from the point of view of the Commission.

It has been a challenge and enlightening, but it is apparent, from the testimony the Committee received, as well as from some events that occurred both in the criminal area and in the civil area, there is a need for this work.

Briefly, on May 21, 2015, I asked Chief District Judges David Barker of the Eighth Judicial District and David Hardy of the Second Judicial District to file with me a petition with the Nevada Supreme Court to create a commission that would study guardianship, the Commission to Study the Administration of

Guardianships in Nevada's Courts. The premise derived not only from news stories and news accounts regarding certain problem areas in guardianship administration in Clark County, Washoe County and in some of our rural counties, but it also stemmed from an article District Judge Hardy had done in 2008 which stated that the guardianship process is a legal proceeding in which a person is divested of legal autonomy and subjugated to the control of another person or entity. He noted what was also at issue: who is watching the guardians? This is what this matter is fundamentally about.

At about that same time, in 2008 and again in 2010, I attended conferences with the Conference of Chief Justices who were studying the effect of guardianship administration throughout the Country. What was learned is that Nevada is not alone in its problems in administering guardianship.

Here are a couple of numbers to put this in perspective. When the Guardianship Commission began in the Eighth Judicial District Court in Clark County, there were 8,737 open adult guardianship cases. What was interesting is that the Court had not reviewed the status of a number of those files in many years. Some dated back to the late 1950s in which the only piece of paper in the file was the order appointing the guardian. In Washoe County, there were 892 open adult guardianship cases and what struck me was that there were 6,741 minor guardianship cases in Clark County and 1,095 minor guardianship cases in Washoe County. Other judicial districts around the State had similar open pending cases.

At the time the Commission began, the Clark County guardianship process was being handled primarily by a court master and supervised by the presiding judge of the family court. As a result, there were various concerns expressed about the ability of the court system to properly manage a docket that had been its responsibility ever since *Nevada Revised Statutes* (NRS) 159 had been enacted and since its amendment.

The Nevada Supreme Court agreed with our petition and on June 8, 2015, issued an order creating the Commission. I appointed the membership to that Commission. It included district court judges from the Second, Fourth and Eighth Judicial Districts. The Commission included Senator Becky Harris, Assemblyman Michael C. Sprinkle and former Assemblyman Glenn Trowbridge, representatives from Nevada Aging and Disability Services, the Senior Law Project, Legal Aid of Southern Nevada, Washoe Legal Services, attorneys who

specialize in the practice of guardianship, public and private guardians, representatives from facilities that regularly provide assisted care for prospective persons, and victims' advocates. I thought it was important and unique to this Commission to invite two members of the press, reporters from Clark County and Washoe County, to serve. Ms. Goodman from *The Vegas Voice* and Ms. Terry Russell, Channel 8 KOLO News, agreed to serve as voting members on the Commission. It is not very often we have policy commissions that have members of the press who are voting members and have a say-so in this issue. From this group of people, I am sure the Judiciary can see there were no shrinking violets. Many had opinions, and it took a long time for us to work through the various issues that existed here.

The Commission conducted 15 meetings. We took more than 9.5 hours of public testimony. We studied best practices from around the Country and those proposed by many national organizations. From all of that data, the Commission developed 14 recommendations for new court rules to be considered and adopted by the Nevada Supreme Court for the management of guardianship practice in the State. There were 16 recommendations for legislative amendments to NRS 159 and to a couple of other statutes that would reform the way in which we manage and approach guardianship in Nevada.

We also urged the Attorney General's Office and law enforcement to change their approach to complaints about elder abuse from treating elder abuse as a civil complaint to a criminal investigation. The Commission unanimously voted to urge a task force be formed with law enforcement to undertake investigations in those areas. Attorney General Adam Laxalt, Steven B. Wolfson, Clark County District Attorney, and Christopher J. Hicks, Washoe County District Attorney formed a task force to commence those kinds of investigations and changed the way law enforcement would approach these kinds of complaints when they were presented to police officers at the station or on the street. We also urged a number of other policy changes.

Let me get to the bills that are before the Judiciary Committee today. What we tried to do was to take the 16 recommendations for legislative changes and, with those that relate to one another, combined them to result in 6 separate bills. Two are residing in the Assembly and four reside in the Senate.

One of the bills in the Assembly is an omnibus bill that covers a number of sections of the guardianship statutes assuming these other bills would pass. The

omnibus bill would track a number of changes to the statute and deal with the language used in the statute, such as notices and so forth. The other bill in Assembly modifies minor guardianship and segregates minor guardianship proceedings from what is currently a mix of adult and minor guardianship processes in the existing statutes.

The four bills in front of the Committee address some meaty areas that the Commission worked on. By the way, at the end of the day we ended up with 36 people on the Commission, a rather large group, representing every stakeholder connected with this process. It is not very often for a Commission this big dealing with this kind of agenda and this type of topic, that one would expect to get a unanimous vote. But the report, when it was first issued in September 2015 to the Nevada Supreme Court with 235 pages and over 1,000 pages of appendix, *Final Report: Nevada Supreme Court's Commission to Study the Administration of Guardianships in Nevada's Courts*, September 2016, received the unanimous vote of every member of the Commission. The recommendations that the Committee is considering is the unanimous recommendation of every member of the Commission who served. I will take up each of the bills briefly and open for questions.

Senate Bill 158 addresses the Commission's recommendations 3 and 6. Recommendation 3 deals with changing the terminology concerning how we approach and address what we have previously referred to as "wards."

CHAIR SEGERBLOM:
Looking at the bills, they still refer to ward, but with this one bill we go back and change all that and replace ward with protected person?

JUSTICE HARDESTY:
Yes. That is correct. After extensive debate, the Commission changed the reference to ward to "proposed protected person," and if a guardianship is appointed, the person is to be referred to as a "protected person." The same is true with respect to proposed protected minor. This terminology has been used in S.B. 158 but would have to be incorporated in other sections, and the Legislative Counsel Bureau (LCB) is good at that.

The other piece of S.B. 158 is really important with respect to what we learned during the public hearings—that is access to people for whom guardianship had been established. Many, by their testimony, had never wanted to be a part of a

guardianship, did not know they were part of guardianship, had been segregated and separated from their family members, who were never represented by lawyers and never appeared in court when a guardianship was established for them. This portion of the bill assures communication in the future with those for whom a guardianship has been established. As the bill recites, first there is a presumption made that the protected person shall have access to family and friends and that the guardian shall not prevent that access, except after court proceedings that allow for all parties to have their case heard dealing with whether access should be permitted. There are a couple of other provisions in the bill, but essentially these are related to the wordsmithing associated with the changes in the use of "protected person."

Senate Bill 168 is perhaps the most significant recommendation the Commission made. It creates, as has happened in several other states and is recommended as best practices throughout the Country, a proposed Bill of Rights for Protected Persons. The bill enumerates the Protected Persons' Bill of Rights in section 3, subsection 1, paragraphs (a) through (s), based on the recommendations from the report.

A subcommittee of the Commission spent a tremendous amount of time working on the Bill of Rights. This could be one of the more significant measures the Legislature would consider and provide. Not only is this Bill of Rights to be made known to someone who might be the subject of a guardianship proceedings and to his or her lawyer, but these rights are also to be made known to the public and posted and supplied at the guardianship proceedings. They are also enforceable through civil actions, unlike some provisions in Nevada statutes that are not enforceable through civil actions. Abridgement of this Bill of Rights would be enforceable by civil action.

I note, by way of reference, that there is also pending before the Senate S.B. 360. That bill also has a provision in it that includes a Bill of Rights. We have gone through both bills and made extensive comparisons of the two provisions. I hope to have the opportunity to visit with the sponsor of S.B. 360 to discuss some of the differences between what the Commission had recommended and what is contained in S.B. 360. From my point of view, the provisions are easily reconcilable and frankly, most of the language is quite similar.

SENATE BILL 360: Revises provisions relating to the protection of older persons, vulnerable persons and persons in need of a guardian. (BDR 15-965)

Speaking to Senate Bill 229, this bill addresses a provision that was addressed in the 2015 Legislative Session, one in which an out-of-state person who might be appointed to serve as guardian would be required to have a resident agent for purposes of service of process.

The premise was that an out-of-state person, a family member, sister or brother, could just as easily be appointed to guardianship, but that was prohibited under the previous statute. Permitting an out-of-state person to serve as guardian presented a service issue. What the 2015 Legislature passed was a requirement that a person appointed to be a guardian, who is a nonresident Nevadan, would have to be designated and have filed with the Secretary of State as a resident agent. The problem was that the language in the 2015 bill created some difficulty about who was to enforce the resident agent requirement.

The Secretary of State's Office did not have resources available to track that requirement in the statute. This bill makes clear that the resident agent designation is going to be tracked by the Court, not by the Secretary of State. The same resident agent process will be used in the Secretary of State's Office as is used for LLCs, corporations, limited partnerships and trusts. Everyone is handled in the same way, and the Secretary of State's Office does not have to revamp its internal processes and computer systems. We spent a lot of time with Secretary of State Barbara Cevagske working through this process. Her staff has looked at this bill and they are on board with how this change would work.

The second component of S.B. 229, advocated by one of our press members of the Commission, Ms. Goodman, was the use and access to the Nevada Lockbox program. As you know, the Nevada Lockbox program is available for people to place important papers and wills and the like in the possession of the Secretary of State's Office. Even though I had done some estate practice, I was not that familiar with the program or its internal operation. One of the things I learned from this Commission is just how effective and impressive the Secretary of State's operation is in running the Lockbox program and that it is really a successful program. I hope more Nevadans will take advantage of the program.

What we would like to do, though, and what was discovered in the guardianship process, is many Nevadans would like to designate someone to be their guardian before they are incapacitated and before someone else chooses a guardian for them. What we propose in this piece of legislation is the designation of a guardian, and that designation would be placed in the Lockbox program just as wills, trusts and other important papers are. Once again, the Secretary of State and her staff were very helpful in reviewing this program. I urge the Legislature to seriously consider that opportunity for Nevadans to take advantage of.

Senate Bill 433 is perhaps is the biggest recommendation made by the Commission. It is the one that all the Commissioners feel the most strongly about.

Many alleged abuses in the guardianship arena would not have occurred if we had treated proposed protected persons at least as well as we treat indigent criminal defendants. The process did not have lawyers or notice, and individuals did not know what was happening to them, according to their testimony.

The Commission strongly urges the Legislature to follow the dictates that are already in NRS 159.0485, which assures the appointment of a lawyer on behalf of any person who is a proposed protected person. That statute already exists. That authority can already be enforced by district court judges. The problem is we do not have resources, or did not have resources, to be able to accomplish that objective.

What we propose, as a second component of this bill, is a resource for that purpose. We offer an increase to the recording fees that are used in this State to fund the support for legal aid in those cases in which defendants are indigent and in need of counsel. For those cases in the rural communities primarily where legal aid may not be functioning, we could provide a resource where counsel can be appointed and be paid for at statutory rates as we would pay someone who is appointed to represent an indigent criminal defendant.

The thing that struck me most about all of this is that the vast majority of the individuals who are coming into the guardianship arena are indigent. Their resources are extremely limited. Many rely solely on social security and Medicare. The challenge for paying for counsel is difficult, but we should not treat these people as second class citizens. You will also see other bills that will

come from the Assembly. We want to address this area using a guardianship only for the purposes that are necessary for the nature of the incapacitation of a proposed protected person. Not everyone is in need of a full guardianship. When you go to full guardianship, it has tremendous implications. However, it may be that mom only needs help writing her checks. She can still decide whether she wants to remarry, vote and who she wants to vote for. Dad may have trouble with his medication and only needs assistance in that area.

What we are urging the judges to do, as you will see in legislation coming to you from the Assembly, is choosing the least restricted means be used when considering guardianship appointments. I think this process, when guided with properly appointed and trained counsel, will make a big difference. There is another aspect to the guardianship problem, and that is the resources of the judicial system itself.

Our judges need to be better trained across the board. I applaud the efforts that have taken place in the Eighth Judicial District in the way they have set up their latest assignment of judges and dockets. Chief District Judge Elizabeth Gonzalez has done a terrific job of laying out a plan to increase judicial resources. However, we still need some additional effort with respect to the minor guardianship program in the Eighth Judicial District.

In the Second Judicial District, similar demands exist for District Judge Frances Doherty and District Judge Egan Walker. We are going to have to address that through the Senior Judge Program and the use of senior judges to help provide backup for those judges when dealing with these dockets.

In a nutshell that covers the purpose and scope of these bills. We have a lot of statistical information for the Committee's review.

BARBARA BUCKLEY (Executive Director, Legal Aid Center of Southern Nevada):
I had the honor of participating in many of the guardianship hearings. I want to put a human face on this issue. Imagine you are an elderly woman living alone in the home that you have lived in all your life. Your kids are gone and your spouse has died, but you are still hanging in there. You go to have your hair done once a week. Your neighbors look out for you.

One day there is a knock on the door. It is the police doing a well check. You say, "I'm just fine, get the heck out of my house!" You are a little combative.

You are a little feisty. They are concerned. They take you to a geriatric facility for observation. Pretty soon, Medicare runs out. What do they do? They cannot dump that woman on the street. They do not return her to her home. They call a private professional guardian.

Before you can turn your head, a guardianship action is filed. There is no notice to the senior. There is no notice to the family, although there should be. The guardianship order is granted. Before you know it, the home is up for sale. The house is stripped of all belongings and the senior does not even get to keep his or her beloved afghan or pictures because all of the belongings were sold. This is a true story.

Imagine then you are the son of this elderly woman living out of state. You say "Oh no, I should be taking care of my own mother." The guardian has access to your mother's funds and hires a lawyer who spends every dime fighting you to help your own mother. True story.

At the Legal Aid Center of Southern Nevada this year we began, at the request of the courts, the Attorney General and a series of stakeholders, taking a look at some of these cases. We have seen cases where there is a private professional guardian and money has been transferred to that guardian for his or her own personal use. There were individuals who had their rights trampled upon and were conscripted into guardianship without notice. The system was neglected.

The system inside our courts is sometimes reactive. When one party files a document, the court often will grant an order unless someone else opposes it. Well, if you do not know about it, you do not oppose it. When you skip providing notice to people, bad things happen. Our landscape, and this is not just a Clark County problem, has resulted in our elderly and people with disabilities, some of the most vulnerable people in our community, being preyed upon by people who knew how to work the system. It is alarming. It is shameful.

I was very pleased to be part of the Commission that issued these recommendations in the form of bill drafts to work with both Houses on solutions, as well as being willing to step up and provide legal representation for some of the most vulnerable through an emergency appropriation unanimously approved by the Interim Finance Committee (IFC) in June.

Justice Hardesty covered the need for the bills. All of the provisions of the bills cover real stories we heard. In the first case, I told you about a neighbor who had lived in the cul-de-sac with this elderly woman for decades and went to the group home and said, "I'm a neighbor of that person, I want to see her." "No. You are not on the list." Can you imagine just being pulled from your home, separated from all of your familiar belongings, the food you are used to eating, your neighbors who used to check in on you—and your neighbor cannot even come in to say hello? That was the status quo before. With the passage of this bill, it will no longer be the status quo.

Regarding the Bill of Rights, I had the honor of chairing the subcommittee that wrote it.

CHAIR SEGERBLOM:
Could you quickly explain the funding process?

JUSTICE HARDESTY:
The recording fee would be increased by the sum of $4.00. Three dollars would be directed to support the hiring of either legal aid in districts that have it or hiring lawyers in other districts where there are no legal aid services or even in districts where there are legal aid services, but there are conflicts. The judge would be able to appoint counsel, and there would be a resource to be able to pay for that counsel.

The amount was initially set by the Commission at $1.50. After further discussions and analysis, certainly in the rural counties, that amount was not considered nearly adequate. Quite frankly, I would like to offer a couple of technical amendments to a few of these bills before you actually consider this because there are some words that we would like to suggest to the sponsor and the Committee be changed.

One of the issues, though, is the amount of that fee. It may be marginally increased only to address an issue I was not aware of when we came into this and has developed since the Commission was working on it. It has to do with the fact that we may need judicial services for minor guardianships in Las Vegas. Right now the Chief District Judge has taken over that docket in addition to her duties as Chief District Judge. I urged her not to do that, but she does not have a choice at the moment. We would like to backfill that docket with senior judges, so that might be a small resource.

The shorter answer would have been $3.00 would go on the recording fee and be transferred to the judicial district that generates it. It would either go to the legal aid organization that has been set up to provide appointed counsel or to appoint counsel when there are conflicts. In districts in which there are no legal aid organizations, we will propose language that would allow the judge in the district to designate the use of those funds, just as the judge does with respect to the payment of indigent defense cases.

CHAIR SEGERBLOM:
Do you have that language?

JUSTICE HARDESTY:
We are working on it now.

CHAIR SEGERBLOM:
Would the money come directly to you and you have staff attorneys that do this?

MS. BUCKLEY:
Yes. What we would do is dedicate staff to do it. Right now with the emergency money we received through IFC, we hired two full-time attorneys. We currently have about 100 pending cases. Interestingly enough, out of the first 19 or so that we closed, 7 did not need a guardianship. They were actions being filed by someone to take away the individuals' civil liberties and property. Guardianship was not needed.

We will also be able to reduce the stress on the judiciary by getting rid of cases that should not be there in the first place.

We will also likely offer a pro bono component. We usually do that with all of our programs. It engages the communities' lawyers in seeing the real problems involving poor people. It is a better bang for the buck. It adds more manpower and womanpower to solving what is usually a huge problem, especially in Clark County where the problems are just so large.

SENATOR DENIS:
As I read through the Bill of Rights, on page 2, section 3, subsection 1, paragraphs (k) and (l), it talks about being treated "with respect and dignity"

and "being treated fairly" by his or her guardian. How is that determined? How do you know if someone being treated fairly? Who determines that?

MS. BUCKLEY:
We have a number of other bills of rights and statutes. There is one for individuals who are the subject of mental health commitments. There is a Foster Child Bill of Rights. That language is in all of the other bills of rights. Those types of rights are for those who feel they are being treated unfairly. It causes them to speak up. Those rights in general, as the lawyer for example who would represent an elderly person: If an elderly person were to say "My guardian is mean to me." You would say "Well, why? What is the situation?" If does not rise to a level a judge would think is of concern. You are going to counsel them. You are going to say "Well, let's talk to this person about that. Let's try to resolve why you are getting your mail so late, for example. Let's see if we can get your mail sooner." And that's the end of it. That is in a practical sense how an issue is resolved.

SENATOR DENIS:
Yes, and that is what I thought, that this was the common language used. I had not ever thought about who determines that. It sounds like it would probably be the judge who would be the one ultimately to determine if he or she feels whether someone has been treated fairly.

MS. BUCKLEY:
Yes, that is right. It would have to be part of a pattern and practice. As a practical matter, the situations we are seeing are embezzlement and not seeing the protected person at all. We had one case where the guardian was receiving the payment for the group home but not passing it on to the group home. The situations we are seeing are really, really serious.

BARRY GOLD (AARP Nevada):
AARP is very pleased with the results of the Commission and what these bills do. These are the most frail and vulnerable people. We are not talking about just seniors, we are talking about people with disabilities and people who need help. The stories that Ms. Buckley told are all true and happen all too often. If they happen even just one time, that is one time too many. While these bills address a lot of different things, these are all things that will help our most frail and vulnerable citizens. We urge this Committee to pass these bills.

GAIL J. ANDERSON (Deputy Secretary for Southern Nevada, Office of the Secretary of State)
I am here in support of S.B. 229 specifically. The Nevada Lockbox is managed in the Las Vegas Office of the Secretary of State. We will be setting up a parallel but separate secure guardianship lockbox for the filing of the guardianship nominations as proposed in S.B. 229.

We currently have the Living Will Lockbox, which is a repository for advance health care directives. Those are medical directives which contain information that must be kept separate and secure. Hospitals, hospices and assisted living facilities that provide medical care have access to those advance care directives. The guardianship nomination will have different provider access, which is addressed in S.B. 229, section 12. Of course, the courts will have any and all access and other entities as designated. We will work with the court regarding the kind of access and how to make that most readily available to the providers electronically. It will be parallel to but separate from what we do with the Living Will Lockbox.

CHAIR SEGERBLOM:
I was not aware of the Lockbox program. Could you describe it?

MS. ANDERSON:
For the record, the living will is a filing of advance health care directives. It is an electronic filing on a secure Website. The registrants fill out the registration forms and submits the documents they wish to have filed. They receive a password, and access is issued to them, any family members and primary and secondary contacts they identify for the Lockbox filing. The providers also go through an application process to become medical providers; the hospitals and hospices are primary providers that have access. They have access to search to see if an advance health care directive is filed. It is electronically Web-based in a secure environment with password access for the registrant. The providers have a more versatile mechanism for a search, unless the registrants have their cards in their wallets, but the providers still can search to see if someone has an advance directive filed.

CHAIR SEGERBLOM:
Are the forms available at your office? Can they be downloaded?

MS. ANDERSON:
We do not provide the forms for an advance directive or power of attorney for health care decisions. We provide links to resources that provide those forms. We just have a registration form the registrant needs to complete and sign.

CHAIR SEGERBLOM:
That would be true for guardianship forms?

MS. ANDERSON:
We will work with the court as to how they want that part administered. But yes, we will provide, according to this bill, the particular forms set out in S.B. 229. These will be made available on our Website for the guardianship nomination filing as set forth in this bill.

SCOTT ANDERSON (Chief Deputy, Office of the Secretary of State):
We worked with the Commission and Justice Hardesty to come up with a correct way to administer this. We have the registered resident agent for the nonresident guardian. We had submitted amendatory language which I trust is in the amendatory language that Justice Hardesty had talked about. If not, we will provide it. The language changes where the statutory citation for the registered agent registration is located. It was put in an area used for a listing of registered agents. The fee for that was $500. It really did not belong there. The language relates to the registration of a guardianship registered agent and has a $60 filing fee like all other resident agents.

SENATOR HARRIS:
I was going to testify after others had a chance to testify in support and let the Committee know that there will an amendment for each of the bills as a separate amendment, not as one large amendment. The Secretary of State's Office so kindly offered some amendatory language that I will bring to the Committee's attention to correct that housekeeping matter.

RANA GOODMAN (*The Vegas Voice*):
Senate Bill 229 establishes a form by which Nevada residents can nominate persons they wish to serve as their guardians should the need arise regardless of where the persons live. Originally, in 2015 when we first passed this bill, if you were not a resident of Nevada, you could not be appointed guardian. What we neglected to do was find a way that anyone would know who that guardian was going to be.

In serving on the Commission, we came up with this idea of putting it in the Nevada Lockbox so the court would have a way of finding out whether a guardian had been nominated. The Lockbox is a fabulous idea for living wills, and that seemed like a natural course of events to put the nominated guardian form into the Lockbox. We put the form into the *The Vegas Voice*, and immediately individuals who completed the nominated guardian form we developed started sending forms to us and asked what do we do with it. We put them in a safe deposit box for safekeeping. *The Vegas Voice* had the individuals send one of the forms to their nominated guardians and keep one for their records; the *Voice* has another one in the *Voice's* safe deposit box. Now, the forms are in legal form with two signatures of witnesses and a notary. Hopefully, when the bill is passed and it becomes legal, we will take all 800 we have sitting in our safe deposit box and send them to the Secretary of State's Office.

As far as the resident agent registration, there are new ways to signify what a resident agent is and explain what the duties are, and that too is in S.B. 229. I volunteered as a resident agent and am listed with the Secretary of State. I did not know what my duties were other than forwarding documents. Those are now in S.B. 229. We support S.B. 229.

With the indictments that came down last week, we all thought the bad parts of guardianship had gone away, and they have not. Even though there are very few public guardians or private guardians still out there practicing, there are still fears from the Public Guardian's Office we must address. One, because we made a lot of noise in our paper, the public guardian dropped the case that she was going after with one very tiny little lady who called us for help. The danger is still out there, which is another reason these bills need to be passed.

JAY P. RAMAN (Office of the District Attorney, Clark County):
We support S.B. 168, S.B. 229, S.B. 158 and S.B. 433. I was a member of the Guardianship Commission where we studied how to resolve these problems and put forth many of the suggestions encompassed in these bills. There are really important issues that seek to address the problems in the guardianship system. I believe good symbolic changes are meant by changing the name of "ward" to "protected person." It is extremely important getting the protection of an attorney to represent wards who otherwise would have no legal representation during a proceeding that could strip them of all financial and medical decision-making and have a huge effect on their rights as human beings.

The Bill of Rights which, in large part, was constructed by Barbara Buckley with the input of all of the membership, is an extremely powerful piece in getting commonsense language to people who could use it—maybe not the wards but their family members. Obviously, the rest of the protections in the process are encompassed in these bills as well as in the Assembly bills. Our Commission was a diverse group and ultimately, as Justice Hardesty indicated, the voting was unanimous on these changes. We heard enough problems, and these are commonsense solutions the Legislature can enact to hopefully fix the problems. We and many other entities are working on the rest of that puzzle in fixing the problems, but legislatively these are important and proper remedies for the situation.

As a Commission member and district attorney, I approve of all these measures.

DAN ROBERTS (Publisher/Editor, *The Vegas Voice*):
The Vegas Voice is the largest senior magazine in southern Nevada. Over the past two and a half years, *The Vegas Voice* has investigated, caught and exposed the guardianship problems in Nevada. Many among us have heard the horror stories. Such abuses have taken the issue to another level. We have seen firsthand the greed and evil in people. We have met many more who simply closed their eyes and walked away, knowing full well the financial and emotional hardship that resulted against these totally innocent people.

More important, we have befriended and helped those who were victims. We can cite, case by case, individuals and their families who were destroyed. What we cannot convey is the fear, the all-consuming fear in their eyes and desperate pleas begging us to help them. There are no words that I can use to adequately address such fear, such hopelessness and total disbelief as to how this happened to them. There have been changes—wards free, families reunited and bad guys under indictment—but there is still more to do. Senate Bill 229 is the single most important bill for those who have not been caught up in the guardianship system. It is the magic document for those who will be proactive to protect themselves, their loved ones, and their friends and neighbors. The model form in this bill will alleviate any question as to what that person wanted should it become necessary. We unconditionally endorsed the Secretary of State's Lockbox program for the placement of these forms.

The Vegas Voice has been using its own version of such a form since the previous Nevada Legislature authorized a document last Session. Along with our

system, a nonprofit company, the Nevada Association to Stop Guardian and Elder Abuse, even established our own temporary lockbox. As of today, we have over 800 forms.

Senate Bill 229 will assure that seniors will never be placed in the guardianship system as long as they take the simple efforts of executing this model form and using the Lockbox.

We support S.B. 229 and urge you to pass S.B. 229.

LORA E. MYLES (Carson and Rural Elder Law Program):
We are here on behalf of mostly public guardians and some family guardians. We fully support S.B. 229. In the forms that we use in our rural counties, we have long had a provision in the power of attorney forms nominating guardians. In amending NRS 162A several years ago, we also put in that powers of attorney contain provisions nominating guardians and stating that the person nominated as the power of attorney is the person that should be nominated as a guardian if the senior ever requires a guardian.

We fully support S.B. 360. The only concern we have is there are minor differences between S.B. 360 and the Bill of Rights in S.B. 168. We believe the Bill of Rights is long overdue. We fully support S.B. 433.

We do have changes to S.B. 158 and have presented those to Senator Harris. They deal with procedural practicalities and language repetition in the bill, and we are trying to combine several provisions into the part of the statute where they should be instead of having separate clauses created.

KIM SPOON (Nevada Guardianship Association):
I am testifying on behalf of the Nevada Guardianship Association, which has several members of public rural guardians and private guardians throughout the State. There are some issues with proposed changes in S.B. 158 we have not really had a chance to review since they just came out. As far as we can see, we are on board with those changes. Our concerns have been addressed, but we would like to reserve the fact that we have not really had a chance to, as a group, review them in detail. There may be some practical issues for people out there having to work through the statutes, and there may be some other changes we would like to look at and ask to have done.

Senate Bill 168 was a very arduous effort, and we approve the issues that were included. Both S.B. 168 and S.B. 360 have a Bill of Rights section. Senate Bill 360 is closer to what the Commission members provided in their end result. Senate Bill 168 has provisions we are concerned about, and we are not exactly sure why those additions were made. Between those two bills, there needs to be some type of recommendation as to which one is going to pass. We support S.B. 360 as the Bill of Rights being closest to the one the Commission decided upon. We support these bills and look forward to their passing with revisions.

SENATOR HARRIS:
Senate Bill 168 is a bill of rights for people who are under proposed guardianships who are looking at having some of their civil liberties taken away because it would be deemed that they could not function independently on their own. The changes I made were in section 3, subsection 1, paragraph (h), adding the language "remain as independent as possible." In section 3, subsection 1, paragraph (j), I thought it was critical for people who are vulnerable to understand that just because they might be subject to a guardianship, they do not lose their fundamental civil rights, such as the ability to vote, marry, enter into a domestic partnership, travel, have a driver's license and work if it is appropriate to work.

I know that goes beyond the scope of the Commission's work, but I just feel so passionate that people who are looking at having their rights impaired be put on notice as to what their rights are that I elected to add that language into the Bill of Rights. As I understand it, those are the few changes that were made that went beyond the work of the Commission, and I take responsibility and ownership for that. Those rights and civil liberties are so important they need to be part of a Bill of Rights.

I would also like to tender an amendment under section 3, subsection 1, paragraph (d) where we talk about people who are able to raise issues of concern. It reads now that they have a right to have a family member and interested party or medical provider speak or raise issues of concern on their behalf during a court hearing. I would also like to add the term "person of natural affection." Often, people do not have a family member. Perhaps they have a doctor, but they might have a neighbor they have a friendship with or a friend who would come and naturally advocate on their behalf and would have an opportunity to prove their worthiness to the court to be able to act on behalf

of a person that is in proposed need of protection. I would like to add that term "person of natural affection" so those who have been robbed of family, or do not have an ability to have a living family member care for them, would have an opportunity to have someone they have a relationship with advocate on their behalf.

CHAIR SEGERBLOM:
I am sure that Justice Hardesty and Ms. Buckley will look at those also and let us know their pleasure.

KAREN KELLY (Public Guardian, Clark County):
I am in support of the bills. I wanted to speak to specifically S.B. 158. We are in support of the amendments presented by Lora Myles. However, we would request that the language in the original bill, section 11, subsection 5, be added to section 25 of the amendments (Exhibit C). These sections relate to the notice that must be provided to the court ten days before moving the protected person from his or her residence.

When the amendments were made, section 11, subsection 5 was omitted, and we would ask that this section that was in the original bill be added back in its entirety. I believe it is on page 7. Section 11, subsection 5 states,

> If an emergency condition exists, including, without limitation, the health or safety of the protected person ... or if the protected person has been hospitalized and is unable to return to his or her residence, the guardian may take any temporary action needed without the permission of the court and shall file notice with the court ... .

In those very limited situations, the guardian would not have to serve the ten-day notice ahead of time. The language is vital in that it allows the guardian to act quickly in emergency situations and does not cause a protected person to remain in the hospital unnecessarily. The guardian would be required to serve notice to all interested persons as soon as practicable after taking such action.

CHAIR SEGERBLOM:
That language is in here. Do you want to put it in other places?

MS. KELLY:
It was in the original bill. In the amendments that we agree upon with Lora Myles, that section was actually removed by the amendments. We want to keep that section in.

CHAIR SEGERBLOM:
Ms. Myles, do you have a problem with that?

MS. MYLES:
We will present that language to Senator Harris along with the other amendment we provided to her.

LARRY BURTNESS (Recorder, Washoe County):
I am one of the 17 county recorders that gets to collect the fee that is provided for in S.B. 433. While I am neutral, specifically to S.B. 433 I would suggest a friendly amendment for your consideration. The amendment would change the effective date of S.B. 433 from July 1 to October 1 in order to allow adequate time for recorders to notify the public of the fee increase and to program the systems with the adjusted fees.

JUSTICE HARDESTY:
As indicated, apparently there are a couple of amendments that have been suggested to the Committee and to the extent that we can, the Committee would be a resource to Senator Harris to assist in reconciling the amendment and bill language.

CHAIR SEGERBLOM:
We will close the hearing on S.B. 158, S.B. 168, S.B. 229 and S.B. 433 and open the hearing on S.B. 360.

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):
Senate Bill 360 sets forth additional protections for those who are most vulnerable, older persons and those who suffer from physical conditions, developmental disabilities and other limitations that impact their ability to perform the normal activities of daily living.

No one can argue that it is fundamentally our responsibility as a society to protect those who are vulnerable and provide them with a sense of purpose, belonging and hope. Nevada law, in fact, encourages those who observe abuse,

neglect, deprivation, isolation and harm to a vulnerable person to report those wrongdoings to the appropriate law enforcement agency, public or private agency or institution. The law extends immunity from civil and criminal liability to anyone who, in good faith, participates in making such a report, causes an investigation of alleged abuse, exploitation or neglect, or submits information contained in a report to a board that licenses certain medical and long-term facilities, medical professionals, psychologists or mental health professionals and social workers.

How far should this immunity go? That is one thing this particular bill will seek to solve. What about those who actually participate in the abuse, neglect or exploitation? Should these people be granted civil and criminal immunity just because they reported it? Are abusers attempting to go around the law by reporting such abuse just to avoid that? Finally, are the penalties enough of deterrent from such abuse and neglect?

This bill is an attempt to answer some of those very important questions. Additionally, as we have heard through testimony, there are also the rights of these protected persons, those who are vulnerable and may fall into a guardianship situation. Those people deserve to have these rights preserved in statute as we do for so many other individuals. One would think that we would also have those specific rights for these individuals, but surprisingly, we do not. This bill also attempts to address that.

Briefly, what does S.B. 360 do? To start with, it revises the definitions of the terms “abuse” and “exploitation” to include additional acts which constitute an offense. These include actually permitting or allowing an older or vulnerable person to be placed in a situation that constitutes abuse. As the bill relates to exploitation, exploitation would include denying the person food, shelter, clothing or services that are necessary to maintain the physical or mental health of the person.

As I mentioned earlier, this bill addresses the question of how far civil or criminal liability should go as it relates to the reporting of abuse, neglect and exploitation. Senate Bill 360 provides that such immunity does not extend to any person who abused, neglected, exploited, isolated or abandoned the older person or vulnerable person who is the subject of the reporter investigation nor does it extend to any person who committed certain other acts relating to such abuse, neglect, exploitation, isolation or abandonment.

The bill further addresses the penalties associated with abuse, neglect, and exploitation of older and vulnerable persons. As you know, existing law imposes a Category B felony for repeat offenders, which must be punished with a term of imprisonment in a State prison for a minimum term of two years and a maximum term of not more than six years for those violations causing substantial bodily harm or substantial mental harm or the death of the older or vulnerable person. For subsequent offenses, this bill increases the maximum term of imprisonment for the commission of such acts from 6 to 20 years.

Senate Bill 360 also revises the penalties for other offenses relating to the neglect or exploitation of an older or vulnerable person and provides that the commission of a second or subsequent offense is also punishable as a Category B felony.

Finally, if this bill is approved, Nevada will join a number of states, such as Minnesota and Texas, in adopting a Wards' Bill of Rights which sets forth specific rights of wards. Included among these are a ward's right to have an attorney before a guardianship is imposed and at any time during a guardianship have the right to have the attorney ask the court for relief; have a family member, interested party or medical providers speak or raise any issues of concerns on behalf of the ward during a court hearing; participate in developing a plan for his or her care, including managing his or her assets and personal property and determining the manner in which he or she will live; have due consideration given to his or her current and previously stated personal desires, preferences for health care and medical treatment, and religious beliefs; remain as independent as possible and be granted the greatest degree of freedom possible consistent with the reasons for guardianship; be treated with respect, dignity and fairness by his or her guardian and be granted privacy and confidentiality in personal matters.

Wards would be able to receive telephone calls and personal mail and have visitors unless such contact will cause harm to the ward; have all services provided by a guardian set at a reasonable rate of compensation and have a court review any request for payment to avoid excessive or unnecessary fees or duplicative billing. The ward has the right to ask the court to review the management activity of a guardian if a dispute cannot be resolved and terminate, if necessary, the guardianship.

I would note that each court must make the ward's bill of rights available to the public and ensure that those rights are posted on the court's Website.

This particular bill became something that I was interested in for a number of reasons. I distinctly remember one of the first cases that I ever had to deal with on my own involved the abuse and neglect of an older woman. She was suffering from dementia, and the hearing was extremely difficult and heartbreaking for me. To have somebody in that position suddenly have to come to court and give testimony was a difficult experience. I am acutely aware of this situation during my practice.

This bill is not just an effort to increase penalties, it is not just me as a prosecutor saying we just have to have higher penalties. That is not what this bill is about and not what this bill is designed to do. But when you look at some of the other statutes we have for similarly situated individuals, specifically NRS 200.508 which deals with the abuse and neglect of children, we treat those who have caused children to suffer from substantial bodily harm, substantial mental harm with a higher penalty. Yet, when we look at the statutes for elder abuse, we make no differentiation between someone who is being mildly neglected and someone who actually suffers substantial mental or bodily harm as a result, or even someone who is being severely exploited by someone who is charged with taking care of that individual. This bill is saying that we do value our older and vulnerable people in our community and that we want to hold those who are causing harm held accountable. We need to ensure that those who need protection have it.

I have knocked on many doors in my district and have had many conversations with people who are living in their homes who have told stories about the neighbor who lives across the street who was there one day and gone the next. No one was able to stand up for that person. No one was able to ask where did she go, was her family involved. My conversations with many of my constituents revealed they are afraid we are not looking out for them, that they will be exploited or abused by individuals, and there will not be any repercussions and no one to be held accountable. This bill is seeking to solve some of those issues. These people have a right to be free from that sort of threat of abuse and to know that if someone is committing subsequent offenses of elder abuse, we are going to hold them accountable. If that abuse results in substantial bodily harm or death, there is accountability.

The Bill of Rights is a really important piece. I met with some of the criminal defense bar to talk about additional penalties, and we are continuing to have those conversations. When we say treat child abuse in this manner, we should be treating the abuse of older and vulnerable persons in that manner.

MR. GOLD:
Elder abuse is an insidious crime that we must pay attention to. It often goes silent because elders are afraid to report. People think, I should have done something to prevent it. If I do report it, what could happen to me. Bills like this are very important in terms of protecting our elders. Our elders are a treasured resource. The immunity clause is important because it will keep perpetrators from trying to escape justice by filing a report. The increased penalties may be a deterrent. AARP, on behalf of our more than 300,000 members across the State, strongly supports this bill. A society is judged by how we treat our elders.

JOHN T. JONES (Nevada District Attorneys Association):
With me in Clark County is Jay P. Raman who is the Team Chief of our Elder Abuse Unit and will provide supporting testimony.

MR. RAMAN:
My testimony is in support of S.B. 360. I fully support S.B. 278 as well as Assembly Bill 288.

ASSEMBLY BILL 288: Revises provisions relating to the protection of older persons and vulnerable persons. (BDR 15-724)

All three of these bills do very good things for the elderly and vulnerable people who obviously need special protections. The people who seek to victimize those particular populations need higher penalties. Elderly and vulnerable people are extremely akin to becoming victims. Not only in Nevada, but every state in the union has created special statutes for the punishment of people who do these horrible things to these very vulnerable people.

With regard to S.B. 360, the changes being proposed are excellent. Each one of these bills that deal with this topic does something different. They are all great, and I would love to see them pass and be amalgamated into a perfect positive bill for seniors.

Specifically, the new theory of liability on permitting an older person or a vulnerable person to be placed in a situation being a crime, I think that is akin to the protections that we already afford individuals who are children and those who put children into circumstances where they become victimized have criminal liability. This would extend that protection into the sphere of elderly and vulnerable people. I wholeheartedly endorse that. The deprivation of food, shelter, clothing or services—obviously that would horrible. We have seen cases where that happens. It is an unfortunate reality here in Clark County. Additional protections and theories of liability for that are appropriate.

On page 5 of the proposal, the immunity provision in section 2, subsections 1 and 2, is something I have been advocating for a while. I would say commonly we see the immunity provision, not necessarily used in circumstances where we have perpetrators trying to seek immunity, although I have a grave fear that would occur. That is why I would seek clarity regarding those who abuse, neglect, exploit, isolate or abandon the older person, or aid and abet in that commission, or conspire with, or is an accessory after the fact. Anybody who has criminal liability under those theories of liability should not be afforded immunity.

Most commonly, immunity is given, and rightfully so, to banks. Banks are the No. 1 reporter of obvious financial exploitation. Banks report and get immunity because of that. What we have in the law is a provision that says "if you report in good faith." Good faith is broad and subjective. What this does is really clarify who is entitled to statutory immunity and who is not. Obviously, in some of my other questioning of similar provisions in other bills related to the question, "well, are we taking immunity off the table?" Of course we are not. We are saying statutorily, "you are not entitled to immunity if you are one of these people."

Obviously, if we have a circumstance where someone helped somebody after the fact and they may be an accessory after the fact, is pretty serious stuff. We as prosecutors always have the ability, just like any crime, to give somebody immunity, to cut a deal, to cut for leniency. Giving statutory immunity outright and defining who does not per se get it does not take off the table that we can always offer immunity to anybody, in any circumstance should it be justified and righteous. This is important to clarify who gets it and who does not.

What I really like about what this bill is also doing is giving subsequent offenses for similar conduct higher penalties. Obviously, if someone has been investigated, charged, prosecuted and convicted of any of these acts, be it the exploitation, abuse, neglect, isolation or abandonment of an individual and the person has not learned his or her lesson and recriminalizes in a similar way, I do not think anybody would feel sorry for that person. I do not believe anybody would feel he or she is not on notice that the penalties will much more severe for doing the same conduct again to the same vulnerable populations. I would wholeheartedly support enhanced penalties for those who recriminalize in the same way as much of this bill asks for.

When it comes to the Wards' Bill of Rights, I obviously endorse it as I testified for the four Senate bills that have come before this Committee earlier in the day. I have not gone line by line and compared the Wards' Bill of Rights in this bill versus the other bills, but I am sure that much of it is the same. Overall, I endorse a Wards' Bill of Rights, and both bills, and ultimately whatever version of a bill is passed and adopted, are correct for people who are facing guardianship, not only for proposed protected persons but for the family members and friends of people who become proposed protected persons. Obviously that situation will be squared out.

There is one other thing I want to briefly testify on, and I care deeply about this, is the fact that our statutes have a penalty of only two to six years for people who neglect an elder or vulnerable person and cause substantial bodily harm, mental harm or death. It is completely inappropriate to have a law like that on the books. We have actually had circumstances where, in cases that fall into those set of circumstances, a person is dead because of neglect. The most we can do to the person who caused that neglect is to give him or her a two- to six-year penalty. That penalty falls extremely short as far as justice goes. That penalty falls extremely short in comparative measure to what we afford abusers of children and people who neglect children that result in death. You can also compare that to DUIs. A DUI that causes somebody substantial bodily harm or death is a crime of recklessness, and some would say that is slightly more similar to neglect given that it is reckless conduct. A maximum penalty for reckless conduct would be 20 years.

It is much more responsible, and everyone owes a duty to have that kind of punishment on the table if someone is dead due to abuse. Clearly, we cannot treat broken wrists the same as we can death. We need to give our judges an

appropriate amount of discretion to say, "Well, you broke somebody's bones, maybe that's worth two to six years, but this person is dead because of your neglect. You were the caretaker. The person is dead because you neglected to do X, Y and Z, and your penalty has to be higher than that."

Everything that is being proposed in S.B. 360 is highly responsible. I support S.B. 360 as well as S.B. 278 and A.B. 288.

CHAIR SEGERBLOM:
You say elder abuse, even death, is six years. Would not there be other statutes that could also be used?

MR. RAMAN:
There are specifically enumerated crimes that fall under a first degree murder statute. There is a theory of abuse by willful deprivation of services such as food and shelter. If we are able to prove that somebody willfully abused somebody by depriving the person of certain things, that is a first degree murder charge. In order to get a first degree murder charge, we need an autopsy that provides cause and manner of death as homicide. We would need a very intact crime scene and very solid case. Also in a first degree murder case, we always need to prove malice. This is under an umbrella of many other circumstances where we may find somebody dead due to neglect.

Law enforcement has a learning curve. We are not used to dealing with these kinds of cases to the level we should be. We are all trying to improve. It is going to a long time until these crimes are investigated the way a regular murder would be. So sometimes, in many cases, all we are going to be stuck with is a crime of neglect that results in death. That is why it is important that we need to have a maximum 20-year penalty and not a maximum of 6 years where somebody would do 2 years and then become parole eligible for actions that led to the death of another.

SEAN B. SULLIVAN (Office of the Public Defender, Washoe County):
We certainly appreciate and understand what this bill is trying to get at. I do not want to marginalize or minimize the abuse that happens to older persons or our most vulnerable persons in this community. Everyone in this room certainly has people, loved ones in their lives, who may fall within this category. This is near and dear to all of our hearts.

We have a limited opposition concerning the immunity section. I did not have a chance to discuss this with Senator Cannizzaro, and I apologize. In section 2, I wonder if a person, like a caregiver, is granted either absolute or qualified immunity by this State who may have criminal liability or culpability but that caregiver is used as a witness in a criminal prosecution for a bigger target, a defendant who is really culpable. Should the caregiver be granted immunities? Maybe there should be language in this section that would allow the immunity section to apply to the caregiver, if absolute or qualified immunity was granted by the State for the caregiver's efforts in testifying against another codefendant.

In section 3, the penalty section, I did have a chance to discuss this with Senator Cannizzaro, and we are of the opinion that we should look at a more graduated punishment scheme from a gross misdemeanor to possibly a second offense being a Category C felony, one- to five-year punishment, a middle of the road as it were. A third, or any subsequent third offense would be either a Category B, two- to six-year, or a two- to ten-year punishment. In other areas of Nevada law, we do have graduated punishment schemes, and we think it would be appropriate to consider that within section 3.

JOHN J. PIRO (Office of the Public Defender, Clark County):
If we look at section 1, subsection 2, paragraph (f), we look at the new language about a caregiver permitting an older person or a vulnerable person to be placed in a situation in which any of the acts described in paragraphs (a) through (d) could occur, the language it is pretty broad. If you look at section 1, subsection 2, paragraph (f) and take it with paragraph (a), in tandem, permitting an older person to inflict pain or injury on themselves. For example, I am watching my grandma, and I am exhausted from working. I am watching my grandma in my off time, and she wanders to the stove and burns herself. Am I on the hook for this as a crime because I permitted her to be placed in that situation? I am concerned that the language in this part is a little bit broad and may bring criminal liability to situations that may not merit criminal liability.

If we move to page 7 of the bill, when we are talking about second or subsequent offenses, my colleague touched on part of the jump in the penalty that is a 14-year jump from the 2 to 6 years to 2 to 20 years. I agree there should be some debate about what type of penalties we want to impose on people who commit subsequent offenses. I feel that the language written in this

bill and, as written in some other bills such as A.B. 288, is so broad that it may allow for the stacking of charges.

We are looking at one, the same transaction of occurrence of exploitation, perhaps, that is happening over one time period and then it all comes to light at once. The district attorney (DA) charges the first one as a gross misdemeanor, but then the second one, the subsequent one that happened during that same transaction period this abuser exploitation was occurring, is charged as a Category B felony, 2 to 20 years. Maybe we can make the record clear and see if the intent of the bill sponsor to allow the stacking of charges to rise so fast and so quick. In that regard, that is part of our concern with some of the language in this bill.

Lastly, this bill is definitely expanding the definition of abuse to permitting that person to be placed in a situation where they are likely to be abused. Abuse is defined through this law as willful conduct. But exploitation is any act. So you are removing a little bit of the intent, the malicious intent, that we have talked about in front of this Committee before, having the intent to commit a crime here. Those are some of things that concern us with this bill as it is written. Obviously, elder abuse is a serious subject. It is something that this Body should take seriously and our community should take seriously. There are some concerns with the bill and we are more than willing to work with the bill sponsor to hammer out those concerns.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):
I do not want to be a killjoy in the face of a bunch of really wonderful legislation that was proposed this afternoon, but Nevada Attorneys for Criminal Justice (NACJ) has some serious concerns with the increased penalties in these bills. I would also tell the Committee that I testified against the Assembly version of this bill, A.B. 288, and I will keep my remarks similar to what I said there.

I know we sent a letter in opposition to Senator Harris's bill, which was S.B. 278. I was not able, due to my day job of having to be in court, to testify with regard to that bill. They all propose increased penalties, and that is really the one thing that NACJ opposes. It opposes this because we are actually trying to rein in some of these Category B felonies which seem to be a waterfall catchall for a whole host of penalties we are trying to make things sort of match with the severity of the conduct. By simply increasing penalties to 2 to 20 years without any kind of graduated in between, we are doing what we

were trying for several years to of correct through Justice Hardesty's Commission and in a variety of other contexts. I would certainly say that where death results I do not see that as being a problem, but the issue is that is not how these cases are charged by the DA's office. They are charged under open murder statutes. Mr. Chairman, you asked the correct question.

"Don't other, more severe penalties apply?" and in fact they do. We also have enhancements for people who abuse or neglect or physically harm someone who is an elder or a vulnerable person. We already have those on the books. I am really hard pressed to say we are okay with increasing penalties when we already have penalties that are really more than sufficient on the books to address these things. The enhancement that applies when there is physical harm done, I think, is a 1- to 20-year, or maybe a 2- to 20-year, consecutive enhancement added on to any sentence. Certainly where death results, a person can be charged with open murder, including second degree murder which does not require a showing of malice. Then the enhancement would be applicable. Those are more than sufficient penalties.

Finally, I would note on the permitting, as Mr. Piro was commenting, an older person or vulnerable person to be placed in a situation where exploitation could occur is essentially creating a strict liability offense. If it were amended to say "knowingly," that would probably solve that problem. The bill does a lot of wonderful things.

I do not want to sound negative and I said that about the other bills as well. We also oppose the restitution issues in Senator Harris's bill. I am not trying to suggest that we do not take this population of people seriously, but I also want to remind the Committee that in Nevada we define an elder as aged 60, and not all people aged 60 are vulnerable. We ought to be protecting the most vulnerable amongst us, and we certainly need to protect the people who meet the statutory definition of vulnerable, but when we also drop the age down in the elder category to aged 60, we are not necessarily addressing a population that is vulnerable at all. That is not very much older than I am. So these are our concerns. I would be happy to talk to Senator Cannizzaro, and I know that Mr. Sullivan and Mr. Piro have already done that. I would be happy to continue that conversation and see if we could make more reasonable graduated penalty increases that are not so all encompassing.

SENATOR CANNIZZARO:
One thing I want to point out about Ms. Rasmussen's point about trying to rein in Category B felonies, and the idea that we are trying to use some criminal justice reform, is that this is not a bill seeking to increase penalties for nonviolent offenses. Certainly we have crimes on the books now where if you have over four grams of a controlled substance, it is a mandatory prison sentence and the penalty is a one- to six-year Category B felony. We are treating that much more harshly than we are treating people who are abusing our older and vulnerable populations. It is an important part to me and goes to my initial comments to the Committee that this bill is not seeking to increase penalties for penalties' sake. It is trying to get at a population that does deserve to have the law treat them fairly.

To the extent that we are talking about the permitting language, I am happy to work on that. I think Ms. Rasmussen makes a fine point including the word "knowingly." What I would note is that this language, however, is also contained in NRS 200.508 when we are talking about child abuse. Certainly this is not a strict liability crime in any fashion. It certainly does not mean if you are at home with grandma and she injures herself and you all of sudden have some sort of criminal liability. This is putting someone in a position where he or she is likely to suffer that kind of harm and you are aware of it and you have some responsibility to that individual. That is a category of behavior that is not addressed by our statute when we talk about older persons and is addressed when we are talking about child abuse and frankly, it is addressed in the statutes when we talk about exploitation. So, it is just not in the abuse portion of the statute.

In terms of stacking charges: the reason for second and subsequent offense penalties would also require a conviction for this same type of offense. It would not be, if you did two acts in succession, it would automatically a Category B felony. We have many statutes that deal with criminal penalties where a second or subsequent offense is treated differently than a first offense. The reason for that is if you are going to continue to engage in this type of harmful behavior, there should be some sort of differentiation. That was one of the reasons for the amendments in these statutes. Frankly, it addresses a lot of the concerns that I heard from my constituents in Sun City, which is they are afraid if this happens, it goes unnoticed, it goes unaddressed and it just continues to happen and there is nothing to really prevent or stop it. That is what this bill is trying to do. I will continue to work on potential amendments so that this bill is doing

what it is intended to do, which is to protect those populations who are really deserving of our protection.

CHAIR SEGERBLOM:
The best part is we are proposing graduated penalties. We are trying to address this for people who do this abuse as a profession as opposed to the one-time incident.

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CHAIR SEGERBLOM:
We will close the hearing on S.B. 360 and close the hearing at 3:21 p.m.

RESPECTFULLY SUBMITTED:

Eileen Church,
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. 158	C	1	Karen Kelly / Clark County Public Guardian's Office	Proposed Amendment – Clark County Public Guardian's Office