MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
April 10, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:18 p.m. on Monday, April 10, 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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

John Cahill, Public Administrator, Clark County
Steven R. Scow
Preston Cochrane, American Research Bureau
The Honorable James W. Hardesty, Justice, Nevada Supreme Court
James E. Dzurenda, Director, Department of Corrections
Chuck Callaway, Las Vegas Metropolitan Police Department
Holly Welborn, American Civil Liberties Union of Nevada
Eric Spratley, Washoe County Sheriff's Office
Jennifer Noble, Nevada District Attorneys Association

Julie Butler, Division Administrator, General Services Division, Department of Public Safety
Jon Sasser, Washoe Legal Services; Legal Aid Center of Southern Nevada
Aaron D. MacDonald, Consumer Rights Project, Legal Aid Center of Southern Nevada
Malcolm Doctors
Michael R. Brooks, United Trustees Association
Greg Gemignani, Nevada Credit Union League
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
John T. Jones, Jr., Nevada District Attorneys Association
Lorne Malkiewich, U-Haul International Inc.

CHAIR SEGERBLOM:
I will open the hearing on Senate Bill (S.B.) 376.

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

JOHN CAHILL (Public Administrator, Clark County):
Nevada Revised Statutes (NRS) 139.135 was added to the NRS during the Seventy-sixth Session in 2011. It provides that an agreement between an heir finder and an apparent heir to locate, recover or assist in the recovery of an estate for which the public administrator has petitioned for letters of administration is void and unenforceable if the agreement is entered into during the period beginning with the death of the person whose estate is in probate until 90 days thereafter. Senate Bill 376 would change the period from 90 days to 1 year. I have provided written testimony and exhibits (Exhibit C).

Since the enactment of NRS 139.135, the Clark County Public Administrator has not had a case that excluded an heir-hunting firm under the timelines set forth in section 1, subsection 1 of S.B. 376. The Public Administrators in both Clark and Washoe Counties investigate, secure assets, locate assets and file for legal status. Performing these tasks takes many months.

You will hear opposition testimony from Steven Scow that a year is too long. Mr. Scow uses the example that probate could be opened, heard by the court and assets distributed within less than one year thereby precluding the use of an heir finder. Mr. Scow's position is that if the distribution were incorrect,

there would be no way to correct the erroneous distribution. I want to remind the Committee that this bill is exclusively for Nevada's Public Administrators. Our offices do not work with the kind of speed that would allow final distribution in less than one year. I wish we could. I wish we had the resources to do it faster.

In the example used by Mr. Scow, the individual died on March 17, 2013. I received the referral in September 2013. The letters of administration were issued with special status in September 2014. The estate was converted to a general status in April 2015. We searched for heirs. We secured assets. Mr. Scow brought us the heirs in July 2015. Had the one year been in place, the heir finder would have been prevented from being involved.

CHAIR SEGERBLOM:
When does the period start?

MR. CAHILL:
The period starts on the date of death.

CHAIR SEGERBLOM:
The case you just referred to took more than one year to administer.

MR. CAHILL:
Yes.

CHAIR SEGERBLOM:
We understand your position. You would like to increase the 90 days to 1 year. You do not want to have heir finders getting money that they do not deserve.

STEVEN R. SCOW:
I am an attorney, and over a period of approximately 20 years, I represented beneficiaries in estates in a dozen cases. It is my understanding that the Public Administrator wants to change the restriction period for heir finders in Public Administrator cases from 90 days to 1 year. I do not doubt his good faith. I do not doubt his sincerity. My concern is the unintended consequences. The Public Administrator typically hires an heir finder on an hourly basis. I am familiar with the one the Public Administrator uses in Clark County. He is a good researcher. He often finds the people. In the case we are talking about, he did not. It is possible to have a final distribution of an estate within one year. It is

also possible that some, but not all, heirs would be found prior to final distribution. The typical administration of an estate takes six to eight months.

CHAIR SEGERBLOM:
You prefer 90 days to 1 year.

MR. SCOW:
The 90 days needs to stay. Without the shorter time, you lose the check and balance.

CHAIR SEGERBLOM:
What are you paid? Do you get a percentage of the heir's distribution?

MR. SCOW:
No. I am paid strictly as an attorney through the arrangements I have with my clients.

CHAIR SEGERBLOM:
Are your clients heir-finders firms or heirs?

MR. SCOW:
My clients are the heirs. I represent the beneficiaries.

CHAIR SEGERBLOM:
Do your clients have a contract with an heir finder too?

MR. SCOW:
Yes. The beneficiaries have their own contract with the heir hunter.

CHAIR SEGERBLOM:
Do heir finders charge a percentage or by the hour?

MR. SCOW:
The check and balance takes place when an heir finder is taking a free look at every case filed. No one is charging, but the facts are being double-checked. Many times, even when one brother says he is the only heir, there are others. One brother does not identify his own brothers. That is where there is benefit from having someone take a look, whether it is a public administrator case or not.

CHAIR SEGERBLOM:
Will heir finders sign a contract that provides that they will not take a percentage until after the one-year period is over?

MR. SCOW:
The law is that no one can enter into a contract in a public administrator case during the 90-day period following the date of death.

CHAIR SEGERBLOM:
If the period were extended to 1 year, could the heir finder sign the contract after 90 days but not actually collect until the 1-year period had expired?

MR. SCOW:
No. My understanding is that the heir finder could not legally sign a contract until after the one-year period.

CHAIR SEGERBLOM:
Senate Bill 376 could be amended to do that.

PRESTON COCHRANE (American Research Bureau):
We oppose S.B. 376. We have been researching estates for over 82 years. We work in many states throughout the Country and throughout the world. Heir finders provide a critical check and balance to the probate process. Nevada is the only state with a law that has a time-period prohibition. Assembly Bill No. 291 of the 76th Session proposed 1 year. After several hearings, a compromise was reached on the 90 days. Nothing has changed since then to justify one year. We believe 90 days is sufficient. Increasing the requirement from 90 days to 1 year would erode consumer protections, increase staff workloads, which Mr. Cahill indicated he does not have the resources to do, and exacerbate government inefficiencies. In addition, the typical estate is distributed in six to eight months. If the one-year prohibition was put in place, it could put many estates into the distribution category without any double-check from a professional heir finder.

We are professionals. We are professional genealogists. We have the resources to locate heirs worldwide, not just within the U.S., to confirm who the proper heirs are. In the case Mr. Scow referred to, we found the additional heirs. If it were not for us, they would not have been notified or known that they were entitled to a share of their inheritance. The one-year period would open the door

for potential fraudulent claims from unlawful claimants. It would add further delays for aging beneficiaries, and it would deny legitimate heirs their constitutional right to a speedy trial.

Legitimate heirs should not have to wait 12 months before they have any influence on estate assets that by law they are entitled to receive. We respect and appreciate the role that public administrators play in the process. We continue to support them in their jobs, which they are elected and entrusted to do. That is why we work together. We never try to take the administration of an estate away from the public administrator. We are in support of a more reasonable solution.

CHAIR SEGERBLOM:
Do you sign a contract with potential heirs?

MR. COCHRANE:
Yes. Heirs sign contracts with us. Sometimes, public administrators hire us. Sometimes, financial institutions or insurance companies hire us. Sometimes, we locate individuals who would not otherwise know about an estate to which they are entitled.

CHAIR SEGERBLOM:
Do you see that someone has died and start looking before you sign a contract?

MR. COCHRANE:
No. We would have to know there had been a death.

CHAIR SEGERBLOM:
You look at the obituaries. You know someone has died. Do you start researching to see if that person has heirs?

MR. COCHRANE:
No. We do not look at obituaries.

CHAIR SEGERBLOM:
Do you have a signed contract before you start looking?

MR. COCHRANE:
No. We start looking beforehand. We do all the research beforehand to identify if there are missing or unknown heirs to an estate.

CHAIR SEGERBLOM:
Do you find potential heirs?

MR. COCHRANE:
Yes.

CHAIR SEGERBLOM:
What does your contract with the heir say?

MR. COCHRANE:
The contract can range from an hourly fee to a contingency fee. It is a competitive industry. Contingency fees can vary from 5 percent up to 33.33 percent depending on the complexity or difficulty of the case.

CHAIR SEGERBLOM:
You find out someone has died. You start looking for heirs. Can you wait one year to sign a contract? You could be looking during that year.

MR. COCHRANE:
We could not enter into a contract with that individual during the one-year prohibition. We could do all the work. Then the estate may distribute assets before the one year is up.

CHAIR SEGERBLOM:
Mr. Cahill just said they never distribute before the year is up.

MR. SCOW:
In general, the typical administration of an estate can easily be six to eight months. Is it often six to eight months? Yes. In my experience, it is. Is it always six to eight months? No.

CHAIR SEGERBLOM:
Is that true of probate? Is it true when the public administrator is involved?

MR. SCOW:
Yes. The statutory requirement for probate is five months. The procedural requirements can be met in five months.

CHAIR SEGERBLOM:
The question is whether in Clark County the probate office closes an estate in less than one year.

MR. SCOW:
Are you asking about the probate administrator?

CHAIR SEGERBLOM:
I am asking about the public administrator.

MR. CAHILL:
Not once in the ten years that I have been Public Administrator have we finished an estate in six to eight months. The statute allows 18 months for a general administration. We rarely make that. We keep the court notified. We file the annual accountings. If I send the distribution to the State Treasurer as unclaimed property, NRS 120A.740 says that any agreement with a property owner entered into during the period commencing on the date the property was presumed to be abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Administrator is void and unenforceable. Compensation is limited to 10 percent of the total value of the property. The agreement is between the person claiming ownership and the heir finder. The State Treasurer sends the check to the person claiming ownership, and then it is up to the heir finder or asset hunter to collect and enforce the contract.

You should ask those testifying in opposition what would happen if they signed one heir up and then found another heir who does not sign a contract. If I find the second heir, the first heir will want to get out of his or her heir-finder contract because the second heir will not have to pay the heir-finder's fee.

CHAIR SEGERBLOM:
I will close the hearing on S.B. 376 and open the hearing on S.B. 277 and S.B. 451.

SENATE BILL 277: Revises provisions relating to criminal justice information. (BDR 14-1004)

SENATE BILL 451: Makes various changes relating to criminal justice. (BDR 14-1007)

THE HONORABLE JAMES W. HARDESTY (Justice, Nevada Supreme Court):
I am here to report to you on the recommendations of the Advisory Commission on the Administration of Justice. *The Advisory Commission on the Administration of Justice Final Report February 2017* is available at <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/9887>.

I want to express my sincere appreciation to Counsel Nick Anthony for his research and assistance to the Advisory Commission. Policy Analyst Patrick Guinan also provided support to the Advisory Commission. We are grateful to the Legislative Counsel Bureau staff for assisting this important Commission.

I have provided the Committee a presentation (Exhibit D) and a Summary of Final Recommendations of the Advisory Commission (Exhibit E). Pages 2 and 3 of Exhibit D list the 18 members of the Advisory Commission. It was a diverse group with strong opinions on the various topics with which the Advisory Commission was charged. I want to thank all of these people. All attended all of the meetings. There were eight meetings and many went most of the day. We had thorough discussions and debates.

The statutory duties assigned to the Advisory Commission are listed on pages 4 and 5 of Exhibit D. The list of responsibilities statutorily placed on the Advisory Commission exceeds its capacity to reasonably produce a good work product in in the time allotted and with the staff provided. Some of these responsibilities should be eliminated either because they no longer exist or because they are irrelevant to the primary mission established in 1995 of truth in sentencing. Since that time, a potpourri of subject matters has been placed on the agenda of the Advisory Commission. I would be happy to share my personal recommendation of which duties could be eliminated.

CHAIR SEGERBLOM:
If you would send an email to the Committee, we will have a bill draft request tomorrow.

JUSTICE HARDESTY:
Page 6 of Exhibit D lists the subcommittees the Advisory Commission has established pursuant to statutory requirements to study various issues. I would draw your attention to the Subcommittee on Juvenile Justice. There is a plethora of juvenile justice committees. The Legislature has a Juvenile Justice Committee. There is a Subcommittee on Juvenile Justice within the Advisory Committee. Assembly Bill (A.B.) 472, proposed this Session by a task force chaired by First Lady Kathleen Sandoval and retired Supreme Court Justice Nancy Saitta, creates a Statewide Juvenile Justice Oversight Commission. This subcommittee should be eliminated.

ASSEMBLY BILL 472: Establishes policies for reducing recidivism rates and improving other outcomes for youth in the juvenile justice system. (BDR 5-918)

The Advisory Commission also has a statutorily required Subcommittee to Review Arrestee DNA. This subcommittee was created following the enactment of S.B. No. 243 of the 77th Session, known as Brianna's Law. That issue has been mostly resolved. The law is in place. There is no necessity for this subcommittee. While it is important to maintain the Subcommittee on Victims of Crime because that perspective is critical to the Advisory Commission, the Subcommittee on Medical Use of Marijuana has no business being in the Advisory Commission.

CHAIR SEGERBLOM:
I agree.

JUSTICE HARDESTY:
The Advisory Commission conducted eight substantive meetings from February to November 2016. The meetings addressed the Advisory Commission's statutory duties, subcommittees were appointed and recommendations were made in certain areas. The topics covered in the eight meetings are listed on page 7 of Exhibit D.

Early on, at the urging of Advisory Commission member Chuck Callaway, we discussed how to approach this rather significant agenda. We agreed to focus on where we could target a systematic change in the criminal justice process. That resulted in essentially seven recommendations for legislative changes. A couple are small, and a couple are big and critical to the future of the State.

Senate Bill 277 reflects two of the recommendations made by the Advisory Commission. At pages 122 and 123 of the *Final Report*, there is a summary of the first recommendation made by the Advisory Commission. This recommendation is section 3 of S.B. 277. The recommendation was to provide notification on medical marijuana. Commissioner Jorge Pierrott, a representative from the Division of Parole and Probation of the Department of Public Safety, requested this. The Parole and Probation sought legislation to amend NRS 453A.700 to allow the Division of Public and Behavioral Health of the Department of Health and Human Services to provide information to Parole and Probation when requested for the purpose of determining whether someone under supervision in the criminal justice system either by way of parole or probation was seeking a medical marijuana registry identification card. The information is not necessarily being sought to find a violation or punishment but rather to reconcile that use with prohibitions against the use of a controlled substance as a condition of parole or probation.

CHAIR SEGERBLOM:
Did Parole and Probation specifically say that it wanted to be sure that, if someone tested positive, it was all right?

JUSTICE HARDESTY:
Precisely. The report says that Commissioner Pierrott clarified that Parole and Probation is requesting notification so that it can speak with the offender and, if need be, refer the offender back to the court or to the Board of Parole Commissioners. If the use is consistent with Nevada law and the offender has a card, then Parole and Probation would work that out with the offender. If on the other hand controlled substance use constitutes a violation because the quantities are too high, the offender does not possess a card or does not qualify for a card, that would be a different story. This increases information sharing between Parole and Probation and Public and Behavioral Health.

Sections 1 and 2 of S.B. 277 are discussed at pages 123 and 125 of the *Final Report*. Senate Bill 35 creates a Subcommittee on Criminal Justice Information Sharing of the Advisory Commission on the Administration of Justice.

SENATE BILL 35: Creates the Subcommittee on Criminal Justice Information Sharing of the Advisory Commission on the Administration of Justice. (BDR 14-261)

The provisions in S.B. 35 are consistent with the provisions of S.B. 277 with two exceptions. Senate Bill 35 creates the same Subcommittee recommended by the Advisory Commission and sets up the same structure. There are two areas contained in section 1 of S.B. 277, subsection 4, paragraphs (a) and (b) that are critical to the Advisory Commission's consideration of information sharing reform in this State. We urge that these two paragraphs be included as part of whichever bill is adopted.

The Advisory Commission received important testimony regarding significant weaknesses in Nevada's criminal history information sharing systems. As discussed on page 124 of the *Final Report*, the Advisory Commission identified a number of issues. For example, there are multiple criminal justice information systems being used throughout the State. A reasonable person would ask if this is economically effective. There are potential overlaps and, more significantly, loopholes in services within each of the three primary information exchange services. There is a backlog of reported dispositions. This Legislature and prior Legislatures have had to address this issue from an economic standpoint to eliminate the backlog. Arrest records in criminal justice reports are also delayed and backlogged. Because of all of these issues, one of the most significant recommendations made by the Advisory Commission was to create this Subcommittee to study the issues raised in section 1, subsection 4 of S.B. 277.

Why do not these criminal justice information systems talk to one another? What information is available to the beat cop on the street about the person he or she has pulled over at 2:00 a.m.? If our criminal history information is not sufficient to be able to tell the beat cop about that person, that is a problem. We need to get this fixed, and we need to get it fixed in the next two years.

How can the State make effective criminal justice decisions if the criminal history systems have weaknesses that create problems? There are three independent systems for criminal justice information: the Central Repository for Nevada Records of Criminal History, Shared Computer Operations for Protection and Enforcement (SCOPE), and Tiberon. These systems need to be connected and to work together. This will provide both information and economic benefit. Senate Bill 277 and S.B. 35 are similar and I ask that they be reconciled.

The work of the Subcommittee must have a deadline. A work product needs to be produced. The Subcommittee needs to be compelled to produce

recommendations, not just drag things on so that ten Legislative Sessions from now somebody is still talking about what the Subcommittee is supposed to study.

Senate Bill 451 contains three recommendations from the Advisory Commission. The first is in sections 2, 13, 14, 15 and 16. For those of you who were involved in the Seventy-eighth Session, this bill represents a recommendation regarding the right of defendants to pay for their own DNA testing through postconviction relief. This was requested by Denise Brown and a majority of the Advisory Commission endorsed her request. That is what is contained in these sections.

I would like to discuss Advisory Commission recommendations 5 and 7 in Exhibit E. Recommendation 5 asks the Legislature to adopt a set of policies and principles from the "Report of the National Conference of State Legislatures Sentencing and Corrections Work Group" from August 2011 which outlines seven principles of effective state sentencing and corrections policy. Nevada does not have a set of policies that give guidance to the Legislature for assessing the variety of topics that should be considered when developing an approach to determine whether to criminalize and punish something. One of the things always missing is an assessment of fiscal impact.

The 2011 Report was presented to the Advisory Commission. It is the work product of an 18-member group that worked with the Pew Research Center. Seven principles were developed to guide the decision making of state lawmakers as they review and enact policies and make budgetary decisions that affect community safety, management of criminal offenders and allocation of correction resources. We urge the adoption of section 3 of S.B. 451, which are policies refined by the Advisory Commission to guide future decisions by the Legislature regarding criminal justice policy. Three examples are of this are: one, sentencing and corrections policies should embody fairness, consistency, proportionality and opportunity; two, a continuum of sentencing and corrections options should be available with imprisonment reserved for the most serious offenders and adequate community programs for diversion and supervision of other offenders; and three, criminal justice information should be a foundation for effective data-driven sentencing and correction policies. What we hope to achieve is true truth in sentencing.

The next and perhaps the most important recommendation of the Advisory Commission is a proposal to create the Nevada Sentencing Commission. This recommendation is No. 7 on page 2 of Exhibit E and in the *Final Report* on pages 128 to 131. It is contained in sections 4 through 12 and 17 and 18 of S.B. 451.

CHAIR SEGERBLOM:
If we adopt this recommendation, could we find funding through the Pew Research Center, the National Conference of State Legislatures or the Council of State Governments?

JUSTICE HARDESTY:
Perhaps. We will certainly make that request. The bill provides that the Sentencing Commission can receive such grants. I believe that you will hear from others that states undertaking sentencing commissions have done it on their own. The resources we have available in our State would allow us to accomplish many of the objectives of the Sentencing Commission without assistance from outside agencies.

I refer the Committee to the summary pages contained in the *Final Report* that explain what a sentencing commission is. It is not a new animal. It is present in 20 states. There are different permutations. The one before you is the one the Advisory Commission unanimously recommends. Nevada has five categories of crimes, A through E. Tell me what the definitions are for those categories. No one on the Advisory Commission was able to define these five categories. When these categories were first developed, they were supposed to range from the least problematic crime to the most egregious. So what are the differences? What are the separations? Over time, these distinctions have been completely lost. The point of the categories has been completely lost as we criminalized behavior over the past two decades since truth in sentencing was enacted.

In order to deal with prison overcrowding, we have to address credits. Assembly Bill No. 510 of the 74th Session created credits, this kind of credit and that kind of credit. The purpose of credits was to deal with prison overcrowding, which is costing this State a lot. The State is facing prison overcrowding again. Are these credits diminishing truth in sentencing when a judge sentences somebody to prison and the prosecutor, the victim and the defendant do not know how credits are calculated or when the defendant will actually be eligible to get out of prison or to apply for parole?

Length of stay is a huge issue when dealing with prison overcrowding and when dealing with prison budgets. We have a wide disparity in the sentencing practices of the district judges across the State. Some judges will sentence a certain percentage of offenders charged with the same or similar offense with similar criminal histories at a higher rate. Other judges will sentence at a lower rate. The differences will be prison versus probation. Category B sentences account for two-thirds of the prison population; however, the sentencing ranges within Category B offenses are all over the map. They range from one-to-six to life. Such a disparity makes no sense. Nevada's criminal justice sentencing practices using five undefined categories is not working. This is why the Advisory Commission studied quite thoroughly the use of sentencing commissions.

Sentencing commissions have been successful in the states where they have been enacted. What are the primary objectives of sentencing commissions? One, they achieve certainty in sentencing. When someone gets a sentence, he or she knows what the sentence is and everyone in court knows what the sentence is as well. Two, it promotes fairness. Three, it reduces disparity. Four, it secures public safety by retaining the people that should stay in prison and providing for community services and probation for those who are rehabilitatable. Five, it helps the Department of Corrections manage the correctional capacity.

How does a sentencing commission work? The Sentencing Commission would look at every crime in our criminal code. The sentencing ranges for each crime would be examined. Based on a study of defendants sentenced for each particular crime, their criminal histories and backgrounds, the Sentencing Commission would establish sentencing guidelines and ranges. Some states develop sentencing grids. Other states develop ranges within ranges based on criminal history or the nature of the offense. A judge is provided with the recommended sentence based on the guidelines. The judge can deviate, but if he or she does, a statement is placed on the record of the basis for the deviation. The deviation would be subject to review on appeal.

We do not have this process in Nevada. If a sentence is imposed that fits within a sentencing range of one to ten years, for example, that sentence is not reversed unless there is a consideration by the trial judge of impalpable or extrinsic evidence outside the nature of the crime. Sentencing guidelines would stabilize the sentencing process and lengths of stay. Sentencing guidelines

would have the effect of reducing the population of the prison rather than increasing it and would assist in helping Legislators develop a better understanding of how to approach the prison population from a financial and fiscal standpoint.

The Sentencing Commission proposed in S.B. 451 is put on a strict leash. It would start right after July 1, and it must provide recommendations through the one bill draft afforded to it establishing a set of guidelines that would be adopted by the 2019 Legislature. It is a broad-based representative Commission. It has prosecutors, defense lawyers, victims' advocates and the like.

CHAIR SEGERBLOM:
We are going to pass it.

JUSTICE HARDESTY:
I would ask the Committee to hear from the Director of Corrections, James E. Dzurenda, who is familiar with the sentencing commission operation in Connecticut. Connecticut is the state from which we modeled our proposed legislation.

CHAIR SEGERBLOM:
My concern is that when you do this, you will find out there is a lot of money saved but that money does not go back into corrections. I wondered if you have thought about having language in the legislation requiring part of the money saved go back to the Department of Corrections or to other underfunded functions.

JUSTICE HARDESTY:
The sentencing commission experience in other states has produced some savings. That is not the most important reason why we should do this. One savings that has occurred in several states is the complete abolition of the parole board. I do not know what that number is, but it is probably $3 million or $4 million. A parole board is not needed when you have a sentencing commission. We are a long way away from that decision. State Board of Parole Commission Chair Connie Bisbee is a supporter of this initiative.

JAMES E. DZURENDA (Director, Department of Corrections):
Connecticut had significant savings directly related to its sentencing commission. All those savings were directly assigned and reinvested into community wraparound services for addiction, mental health and other services lacking in the community. More savings are created by reducing recidivism.

The Department of Corrections is neutral on S.B. 451. I want to address the Advisory Commission's recommendation No. 7 to create a sentencing commission. My experience while serving as a legislatively appointed member of the Sentencing Commission in the State of Connecticut may help in understanding the benefits derived from a state sentencing commission.

I have submitted written testimony (Exhibit F). I have included in Exhibit F a copy of minutes from the Connecticut Sentencing Commission dated June 20, 2013. This is a sample of what is discussed and done by a sentencing commission. There is a difference between advisory commissions and sentencing commissions. The advisory commission in Connecticut is called the Criminal Justice Policy Advisory Commission. The difference between it and the Connecticut Sentencing Commission is that one develops and discusses policies and procedures and the other discusses matters directly related to sentencing.

Bail was included in sentencing in Connecticut. What is the appropriate bail amount for a lower economic society that will not exceed that which obviously cannot be afforded? What is the appropriate length of sentences for juveniles as they move from being treated as juveniles to adults? These matters were discussed in the Connecticut Sentencing Commission.

The Connecticut Criminal Justice Policy Advisory Commission discussed policies. It established statewide policies on matters such as the appropriate length of time for a police chase based on public safety. Other areas such as DNA consistency were defined so that all cities and towns acted in a consistent manner.

The Connecticut statutory language is also included in Exhibit F. It gives the purpose, mission and vision of the Connecticut Sentencing Commission as well as its mandatory members. Not only does the Connecticut Sentencing Commission evaluate existing statutes, policies and practices, it also develops and maintains a statewide sentencing database in collaboration with state and local agencies to provide a cost-benefit analysis identifying positive and negative

trends in the community related to crime. The Connecticut Sentencing Commission also preserves judicial discretion, provides individualized sentencing and evaluates the impact of pretrial, sentence diversion, incarceration and postrelease supervision programs.

The Connecticut Sentencing Commission identifies potential areas of sentencing disparity related to racial, ethnic, gender and socioeconomic status. The Connecticut Sentencing Commission is deemed a Criminal Justice Agency allowing it to serve warrants, meet quarterly and produce reports directly to the governor, legislature and supreme court.

JUSTICE HARDESTY:
I would like to read from Mr. Dzurenda's statement to the Advisory Commission at our November 1, 2016, meeting.

> In 2011, when I was Deputy Commissioner for the Connecticut Department of Corrections, the prison population was about 19,000 inmates. Today, based on the change of statutes relating to the recommendations of the Sentencing Commission, the population is about the same as Nevada's is now, having dropped by 5,000 offenders in less than 5 years.

CHAIR SEGERBLOM:
That is huge, and I am sure we can do it too. You have our commitment. We are going to pass this bill.

SENATOR GUSTAVSON:
You mentioned in your testimony that you would like to see this not only pass but be implemented as soon as possible. The way the bill is written, there is a two-year term for each Commission member. Members may be reappointed for an additional term of two years. I did not see a date by which the Commission must act, but there is a biennial report to be given to the Legislative Counsel Bureau on odd-numbered years. Do you have any idea how long it will take to complete the studies?

JUSTICE HARDESTY:
Section 17 of S.B. 451 provides:

> For a regular session, the Nevada Sentencing Commission created by section 5 of this act may request the drafting of not more than 1 legislative measure which relates to matters within the scope of the Commission. The request must be submitted to the Legislative Counsel on or before September 1 preceding the regular session.

There are other provisions about the legislative measure. The expectation is that the 2019 Legislature will receive a bill draft request (BDR) with the sentencing guideline work product of the Commission. Any Senator serving here who does not get that BDR should ask the chair of the Sentencing Commission where it is.

SENATOR CANNIZZARO:
You mentioned that there would be an appeal of any sentencing deviation. The trial court judge that sits through an entire trial has an understanding of everything that happened in the case, why the jury came to the decision it did and what sorts of factors are relevant in sentencing. Our caselaw establishes that sentencing judges have wide discretion based on facts and circumstances. How will that change with this appellate process, and do you worry that this will create frivolous appeals? How will we ensure our trial court judges have discretion to make these kinds of decisions?

JUSTICE HARDESTY:
Nothing in the Sentencing Commission guidelines changes the fact that these are recommendations. What does change is that the judge, if he or she is going to deviate from the recommendations, has to put on the record the reason for the deviation. Unfortunately, in many instances when a sentence is too long or too short, there is no explanation whatsoever. If the sentence is within the range, the victim and the defendant are deprived of an explanation. The standard of review is that, if the sentence is within the range, deference is given to the judge. Senate Bill 451 changes that. From a legislative standpoint, I think the question is, should we sentence people who commit the same or similar offense whose criminal history is the same or similar to the same length of sentence?

What we found in a study done by the Advisory Commission in 2011 is that there are judges sentencing two-thirds of the cases they hear to prison. Other judges sentence at a rate of 30 percent. The net effect on the prison is a substantial length of incarceration for people for the same crime with the same criminal history as someone who is given probation. This system flattens that

out. It at least provides some level of review. As for the workload of the appellate courts, so be it. To me that is justice. Why should we not expect defendants to be treated fairly and equally and victims to expect the same thing from the system?

SENATOR CANNIZZARO:
I appreciate that. I know exactly what you are talking about. There can be very different ranges. My concern is that we are going to be second-guessing every decision made by a trial court judge versus giving him or her discretion that, unless abused, would not result in an appeal. Can the State appeal if it believes the sentence is too low?

JUSTICE HARDESTY:
That is something the Sentencing Commission will have to talk about.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
We support S.B. 277. Information sharing is exactly as described by Justice Hardesty. It is the ability of a police officer in the field 24/7 on a highway between Ely and Elko to get information real time. We talk about the three primary systems: the Central Repository for Nevada Records of Criminal History, SCOPE and Tiberon. Three independent systems have criminal justice information. The analogy I use are iBooks on an iPad versus the library. You may have the same book in the library as you have on your iPad, but you cannot go into the library at 2:00 a.m. and read the book. You can read it on your iPad. There is redundancy and overlap. The creation of a subcommittee to look at these issues and provide recommendations on how we can all be on the same page and how these systems can communicate with each other for officer safety in the field is critical.

With regard to S.B. 451, we support the Sentencing Commission. There are a number of unanswered questions. For example, if the Sentencing Commission determines that certain crimes should be Category C, but a bill is introduced recommending that these crimes be Category B, how is that reconciled? I would like to see a member from the Las Vegas Metropolitan Police Department (LVMPD) added to the Sentencing Commission. The Sheriffs' and Chief's Association has a member. The Advisory Commission has members from both of the Sheriff's and Chiefs' Association and LVMPD because the Sheriffs' and Chiefs' Association represents 17 predominantly rural counties whereas the LVMPD represents the urban areas.

We oppose the first part of S.B. 451. We oppose the DNA testing portion of the bill. It is the same language included in A.B. 268 sponsored by Assemblyman Justin Watkins, Assembly District No. 35.

ASSEMBLY BILL 268: Authorizes certain persons to file a postconviction petition to pay the cost of a genetic marker analysis. (BDR 14-638)

There is a system in place that allows petitions to be filed with the court to review potential DNA evidence that might be relevant to a case but is untested. The process outlined in the bill creates a system in which, if you have money, you can have DNA tested, but if you are indigent, you cannot. It will impact our laboratories. We already have several bills this Session which will impact our laboratories for the testing of sexual assault kits. Throw into the mix allowing offenders to petition and fish for evidence.

For example, a person murders his wife, and during the murder, he gets blood and DNA on his fingernails and shirt. He runs out of the house with the murder weapon, witnesses see him, he jumps in a car, flees and is caught. He is convicted, but there was a cigarette butt in the front yard of that house dropped by someone walking a dog. Now the defendant, even though all the evidence that convicted him was shown to the jury, petitions the court to have the cigarette butt tested so that his attorney can find some reasonable doubt to get him out of prison. This will create a lot of work for the crime laboratories when there is a system already in place that works. I know of no evidence that the system does not work.

SENATOR ROBERSON:
Chair Segerblom, I have heard similar concerns from the District Attorneys Association. Are you willing to accommodate those concerns in this bill?

CHAIR SEGERBLOM:
I had not heard this last concern until now. I am willing to add LVMPD to the Advisory Committee.

SENATOR ROBERSON:
All the concerns.

CHAIR SEGERBLOM:
I had not thought about this DNA issue. Mr. Callaway said there is another bill coming from the Assembly. We can take it out of S.B. 451 and let this issue be heard in Assembly Bill 268.

SENATOR FORD:
We will take the DNA component out of S.B. 451, and we can pass the Sentencing Commission with the addition of the LVMPD member.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
The Sentencing Commission is the single most important piece of legislation this Session. The ACLU has been advocating for proportionate, individualized assessments for sentencing forever. It is critical that this legislation be enacted. The Sentencing Commission can decide many of the concerns raised. Last Session, 71 bills were passed providing for increased penalties or sentence enhancements without any guidance on appropriate proportionate sentencing. Bills have been heard this Session imposing heftier sentences on money laundering than sex trafficking.

We are neutral on section 3 of S.B. 277 now that it is clear that the intent on accessing the information for patients with medical marijuana cards is to establish whether a person has a lawful license. If the intent was to determine whether the offender or parolee was violating a condition of parole, it would not likely hold up in court. In Arizona, there was a case under its medical marijuana law that prohibited parole and probation from being able to access that information. A California case was decided under patient privacy laws.

SENATOR FORD:
I want to acknowledge Justice Hardesty for leading the Advisory Commission during the Interim. He has done a yeoman's job bringing this all together to ensure that we could make unanimous recommendations to this Legislative Body. I have been known to say that criminal justice reform has become a bipartisan issue. I am looking forward to working with my colleagues to ensure that things like this are done.

I agree the Sentencing Commission is the most important piece of criminal justice reform legislation we are passing this Session. It will ensure that we are fair, not just to those who are currently incarcerated but to those who will go into the system. The issue about similarly situated individuals being charged

with the same crime but getting a disproportionately different sentence is something we all can understand, acknowledge and appreciate. We need to fix that. This is an opportunity to do that. I support Mr. Callaway's recommendation to add the LVMPD to the Sentencing Commission. I want to remove any impediment to our ability to proceed with this.

ERIC SPRATLEY (Washoe County Sheriff's Office):
I am a commissioner on the Advisory Commission. I echo the comments of Mr. Callaway in support for S.B. 277. With Senator Ford's comments that the DNA petition process will be removed, we support S.B. 451.

JENNIFER NOBLE (Nevada District Attorneys Association):
With the understanding that the DNA testing will be removed, we support S.B. 451.

JULIE BUTLER (Division Administrator, General Services Division, Department of Public Safety):
The Central Repository for Nevada Records of Criminal History prefers S.B. 35 to S.B. 277 because S.B. 35 includes provision for the Criminal History Repository's local-user community working groups. They give us input into our system's design, which is critical to our operations. Senate Bill 277 does not include this provision. Further, S.B. 35 would include a member of the Central Repository on the Advisory Commission for the Administration of Justice. That is important if our advisory group is reconstituted as a subcommittee. We are open to amending either S.B. 35 or S.B. 277.

CHAIR SEGERBLOM:
I would like to hear a motion on S.B. 451.

> SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 451 BY ADDING THE LVMPD TO THE SENTENCING COMMISSION AND STRIKING SECTIONS 1, 2, 14 AND 15.

SENATOR CANNIZZARO:
I would like clarification that we are striking the portions of S.B. 451 that deal with genetic marking.

NICK ANTHONY (Counsel):
The amendment would strike sections 1, 2, 14 and 15 that relate to genetic marker analysis. The Las Vegas Metropolitan Police Department would be added as a member to the Nevada Sentencing Commission.

SENATOR DENIS SECONDED THE MOTION.

SENATOR ROBERSON:
I think Republicans would be willing to vote in favor of S.B. 451, but we would like to see the amendment. There were many changes discussed today. There is no reason to vote today and make it partisan. Give it a day or so. Let us see the proposed language, and you will probably get a unanimous vote. Mr. Chair, you can have a partisan vote today, or you can have a unanimous vote if you wait so we can see the changes. It is your call.

SENATOR FORD:
I will, contrary to what has been done in the past, acquiesce to the request for an additional day, and we can bring this back for a work session. I withdraw my motion.

SENATOR DENIS:
I withdraw my second.

CHAIR SEGERBLOM:
The motion is withdrawn. I will close the hearing on S.B. 277 and S.B. 451. I will open the work session on S.B. 10.

SENATE BILL 10: Revises provisions governing the publication of information concerning unclaimed and abandoned property. (BDR 10-407)

PATRICK GUINAN (Policy Analyst):
The work session document (Exhibit G) summarizes S.B. 10 and the proposed amendments.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 10.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR SEGERBLOM:
I will open the work session on S.B. 230.

SENATE BILL 230: Makes various changes relating to judgments. (BDR 2-512)

MR. GUINAN:
The work session document (Exhibit H) summarizes S.B. 230.

SENATOR FORD MOVED TO DO PASS S.B. 230.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR GUSTAVSON VOTED NO.)

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CHAIR SEGERBLOM:
I will open the work session on S.B. 255.

SENATE BILL 255: Revises provisions relating to common-interest communities. (BDR 10-789)

MR. GUINAN:
The work session document (Exhibit I) summarizes S.B. 255 and the proposed amendment.

SENATOR DENIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 255.

SENATOR FORD SECONDED THE MOTION.

SENATOR HARRIS:
I was not able to be here for the Committee hearing since I was testifying on another bill. I want to be sure that everyone is comfortable with cancellation by

email. Did you discuss what happened if it went into spam or for some other reason the intended recipient did not receive the electronic communication?

SENATOR DENIS:
The discussion was that email is allowed on other business transactions. Cancellation was the one thing that required hand delivery or mailing. Removing the hand delivery or mailing requirement for notice of cancellation made it consistent with all of the other electronic transactions. We did not talk about any specifics. Those provisions are there for other things already.

SENATOR HARRIS:
Are there consumer protections provisions somewhere for when an electronic notice does not reach where it needs to go? That is a hefty consequence.

SENATOR DENIS:
We did not have that discussion. I know that for the other electronic transactions there are those provisions.

SENATOR HARRIS:
I am going to vote yes today and follow up with the realtors about what their customary practices are to make sure there are consumer protections in place. I will let you know if I change my mind.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:
I will open the work session on S.B. 264.

SENATE BILL 264: Revises various provisions relating to business entities. (BDR 7-479)

MR. GUINAN:
The work session document (Exhibit J) summarizes S.B. 264 and the amendments.

CHAIR SEGERBLOM:
Senator Harris has an issue with this bill. We will take no action on S.B. 264 today. I will close the work session on S.B. 264 and open the work session on S.B. 267.

SENATE BILL 267: Revises provisions governing the expedited process for the foreclosure of abandoned residential property. (BDR S-822)

MR. GUINAN:
The work session document (Exhibit K) summarizes S.B. 267 and the proposed amendments.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 267.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:
I will open the work session on S.B. 306.

SENATE BILL 306: Revises provisions relating to offenders. (BDR 16-298)

MR. GUINAN:
The work session document (Exhibit L) summarizes S.B. 306 and the proposed amendments.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 306.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR GUSTAVSON VOTED NO.)

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CHAIR SEGERBLOM:
I will open the work session on S.B. 398.

SENATE BILL 398: Establishes various provisions relating to the use of blockchain technology. (BDR 59-158)

MR. GUINAN:
The work session document (Exhibit M) summarizes S.B. 398 and the proposed amendments.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 398.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:
I will open the work session on S.B. 438.

SENATE BILL 438: Revises provisions relating to time-shares. (BDR 10-992)

MR. GUINAN:
The work session document (Exhibit N) summarizes S.B. 438 and a proposed amendment.

SENATOR HARRIS:
I have consulted with legal counsel, and it has been determined that inducement or solicitation more accurately captures this activity as opposed to marketing. I propose to the Committee changing "marketing" to "inducement and solicitation."

CHAIR SEGERBLOM:
Mr. Callaway, can you arrest somebody for inducement and solicitation, or is this more complicated than that? The current language would prohibit marketing. It has been proposed to change "marketing" to "inducement and solicitation."

MR. CALLAWAY:
I cannot answer that question. I do not believe that was the intent of the proposal.

SENATOR HARRIS:
The reason for the language change is that legal counsel pointed out the term inducement and solicitation is more in alignment with the way the statute is currently written. "Sales" was the wrong word in the original bill. The sponsor proposed to change "sales" to "marketing." I think that "inducement" is certainly something that was contemplated. "Solicitation" may not be the correct word since it implies sales. Do you have other language to suggest?

MR. CALLAWAY:
Brian O'Callaghan and my office worked on the language for this bill. I was not at the hearing. I can find out if there is a better word to insert.

CHAIR SEGERBLOM:
We will talk about this some more. We will close the work session on S.B. 438 and open the hearing on S.B. 490.

SENATE BILL 490: Revises provisions relating to the Foreclosure Mediation Program. (BDR 9-488)

SENATOR HARRIS:
Senate Bill 490 is a bill to revive the Foreclosure Mediation Program with several differences. The first difference is that the Foreclosure Mediation Program will be moved from the Administrative Office of the Courts to the Housing Division of the Department of Business and Industry. Notices and the administration of the program would go through the Housing Division. Rather than have the Housing Division run the entire program, a petition will be filed with the district court. There will be a $25 filing fee. The matter will be assigned to a senior justice, judge, hearing master or other designee. It is anticipated that with funds left over from the program, an electronic system will be adopted so that all filings can be done electronically. That will save money because it eliminates the cost of staff and personnel to hand file and review all records. There will be an electronic Bate stamp when documents are exchanged in order to know of the exchange in real time. A district court judge will supervise the program. Another change is the mediation services costs will increase from $400 to $600. The money collected will only be expended for program purposes.

CHAIR SEGERBLOM:
How hard would it be to open this program to second and third mortgages?

SENATOR HARRIS:
There is a reluctance to deal with second mortgages because of the complexity of lien priorities. I think a process could be developed. It would have to address whether to mediate one or all mortgages, and what happens if there is a loan modification on the first mortgage but not on the second, but it is the second that is making the property unaffordable.

CHAIR SEGERBLOM:
I am thinking out loud. Many ten-year loans are resetting. The first mortgage is relatively low, but when the second resets, it can be dramatic.

SENATOR HARRIS:
I completely understand the concern and share it. I see people in my law practice with that problem. More thought needs to go into addressing that problem.

CHAIR SEGERBLOM:
I have been told that the mortgage crisis is over. Is it still a serious issue?

SENATOR HARRIS:
It is still a serious issue. Testimony has been presented this Session that Nevada is the fifth-highest state in terms of residential mortgage foreclosures. People are still struggling with housing stability. I will provide the number of foreclosures statewide.

CHAIR SEGERBLOM:
I was surprised by how few foreclosures the credit unions are experiencing. They are asking to be excluded from the program.

SENATOR HARRIS:
There are more foreclosures statewide than the credit unions are experiencing.

CHAIR SEGERBLOM:
Do credit unions have to pay to participate? Is there an annual fee?

SENATOR HARRIS:
If a homeowner elects mediation, the fee is $200 and the lender pays $200.

CHAIR SEGERBLOM:
Would the credit unions have to pay any sort of annual fee?

SENATOR HARRIS:
This bill changes the lender fee to $300.

CHAIR SEGERBLOM:
Do the credit unions pay only if called into court?

SENATOR HARRIS:
The credit union would pay only if the homeowner elects foreclosure mediation. While the program has been successful, we do not have even 50 percent participation of all homeowners that are in foreclosure. The last numbers I heard were around 18 percent. Not every homeowner who qualifies for foreclosure mediation is electing to participate in the program. Looking at this another way, banks and credit unions are not required to participate in foreclosure mediation for 80 percent of the foreclosures.

JON SASSER (Washoe Legal Services; Legal Aid Center of Southern Nevada):
Is the Foreclosure Mediation Program still needed? Yes. Is it needed at the same volume it was during the height of the housing crisis? No. There were some 80,000 notices of default in 2010. The number of defaults projected for 2017 is down to 6,305. Obviously, the volume is far less. On the other hand, the program ends on June 30. We are in the second half of the year of the program winding down. During the first half of the last year of the program, there were 662 mediations. That means that we have 600 or 700 homeowners electing mediation. The program remains valuable to them going forward.

Nevada is still No. 1 in terms of the percentage of underwater households. In addition, there are a number of loans scheduled to reset over the next four years. The question is whether the program is bringing in enough money to sustain itself. I think the answer is potentially yes. I assume that if you are interested in passing this bill, it would move on to the Senate Finance Committee for a detailed analysis of its financial feasibility. The program is financed by a couple of charges. Every notice of default issued—6,305 for 2017—pays a $45 Notice of Default fee. That goes to the administrative cost of

the program. I understand that there is $500,018 left over that would revert to the State General Fund and could be reappropriated to restart the program and develop the portal.

SENATOR HARRIS:
There is transitional language in the bill to allow those funds to travel to the administrative agency that would oversee the program. The starting balance would be about $500,000.

MR. SASSER:
The rest of the financing is in the bill. There is a $25 district court filing fee. The district court would oversee the mediation. The state agency would oversee the administrative part of the program. The mediators would be paid with the $300 paid by the homeowner and the lender.

AARON D. MACDONALD (Consumer Rights Project, Legal Aid Center of Southern Nevada):
I have provided a letter of support (Exhibit O). Homeowners need the Foreclosure Mediation Program. In my experience as a staff attorney at Nevada Legal Services and at Legal Aid Center of Southern Nevada, I have personally represented hundreds of homeowners in the Foreclosure Mediation Program. I have observed firsthand the success the program had in bringing the lender and the homeowner to the bargaining table. This program was designed to help distressed homeowners by having a person with decision-making authority present at the mediation table. We are looking for alternatives to having the homeowner being foreclosed on and thrown out in the street. The mediation program has been successful in preventing that outcome.

In my experience, it is exceptionally difficult to discuss loan modification or foreclosure alternatives with the bank representatives when you call outside of mediation. Typically, bank representatives have no decision-making authority, they lose documents, they misstate available relief or even outright lie to the homeowner. The Foreclosure Mediation Program remedies these issues by requiring the lender to have someone with decision-making authority present at mediation. It requires good-faith negotiation. Without the Foreclosure Mediation Program, homeowners have no redress.

CHAIR SEGERBLOM:
Is there one district court judge who would be assigned to this program?

SENATOR HARRIS:
Based on conversations I have had with Justice Hardesty and Barbara Buckley, it is anticipated that it would be spread across all the judges' dockets. At most, each district court judge would have one or two cases at a time.

CHAIR SEGERBLOM:
If there is a mediation and the bank does not come with the documents, can the homeowner go to the judge?

SENATOR HARRIS:
Yes. That is the point of filing with the district court.

MALCOM DOCTORS:
I am a Senior Certified Mediator. I have provided written testimony (Exhibit P). I am not an attorney, which is probably a good thing. I have been with the Foreclosure Mediation Program since its inception. I was with it until its demise at the end of the year. I also served on the program's Advisory Committee since its inception.

CHAIR SEGERBLOM:
Do you support S.B. 490?

MR. DOCTORS:
Yes.

MICHAEL R. BROOKS (United Trustees Association):
The United Trustees Association is neutral on S.B. 490 and has provided written testimony (Exhibit Q).

GREG GEMIGNANI (Nevada Credit Union League):
The Nevada Credit Union League has provided a proposed amendment (Exhibit R). We oppose S.B. 490.

CHAIR SEGERBLOM:
I will close the hearing on S.B. 490 and open the hearing on S.B. 453.

SENATE BILL 453: Revises provisions relating to criminal procedure. (BDR 14-84)

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
I will discuss the key provisions of the bill and the Nevada District Attorneys Association proposed amendments (Exhibit S).

CHAIR SEGERBLOM:
Do you agree with the proposed amendments?

MR. PIRO:
I imagine amending the bill would be the best way to get support.

Section 1, subsection 3 of S.B. 453 uses the term "dishonorable discharge." This is a key provision that would make a huge difference in the sealing of records. Normally, when defendants are dishonorably discharged, even if 20 years have passed and they have totally changed their lives, they are unable to seal their records.

CHAIR SEGERBLOM:
Could a dishonorable discharge be the result of failing to pay a court fee or something like that?

MR. PIRO:
Yes. This is a big change that the district attorneys (DAs) support it. Section 3 of S.B. 453 declares that the public policy of this State is to favor the giving of second chances. Section 4, subsection 1 creates a presumption. On page 3 of Exhibit S, the DAs change the presumption to a rebuttable presumption. That language is the result of debates in the Assembly on a similar bill, A.B. 327, sponsored by Assemblyman William McCurdy II, Assembly District No. 6.

ASSEMBLY BILL 327: Revises provisions relating to records of criminal history. (BDR 14-658)

CHAIR SEGERBLOM:
Is there anything in S.B. 453 that is not in A.B. 327? What is the status of the Assembly bill?

MR. PIRO:
Assembly Bill 327 has not had a work session yet. I think it does have wide support. Much of the language in S.B. 453 mirrors A.B. 327. Language similar

to that in sections 13 and 15 of S.B 453 was stripped from A.B. 327 because of the burden it would place on the Criminal History Repository. The language in sections 13 and 15 would put a fiscal note on S.B. 453. There are differences between S.B. 453 and A.B. 327; however, the DAs' proposals in Exhibit S mirror all of the accepted changes to A.B. 327.

CHAIR SEGERBLOM:
Ms. Butler, did you put a fiscal note on S.B. 453?

MS. BUTLER:
We put a fiscal note on A.B. 327. We did not put a fiscal note on S.B. 453. The fiscal note on A.B. 327 was $30,983. The concern was based on language identical to that in S.B. 453.

CHAIR SEGERBLOM:
Would S.B. 453 have the same impact?

MS. BUTLER:
Yes.

CHAIR SEGERBLOM:
How long would it take you to put a fiscal note on S.B. 453?

MS. BUTLER:
It has already been prepared.

Senator Harris:
Are the sealed record time frames in Exhibit S the same as those in S.B. 125?

SENATE BILL 125: Revises provisions governing the restoration of certain civil rights for ex-felons. (BDR 14-20)

JOHN T. JONES, JR. (Nevada District Attorneys Association):
Yes.

SENATOR HARRIS:
Do the felony penalty reduction from 5 years to 1 year and the misdemeanor reduction from 2 years to 1 year in section 7 mirror S.B. 125?

MR. JONES:
Yes. Exhibit S also includes the City of Henderson's amendment to S.B. 125. They are all combined into S.B. 453.

CHAIR SEGERBLOM:
I will ask for a motion to amend and re-refer to the Senate Committee on Finance.

> SENATOR FORD MOVED TO AMEND AND RE-REFER AS AMENDED S.B.453 TO THE SENATE COMMITTEE ON FINANCE.
>
> SENATOR CANNIZZARO SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATORS GUSTAVSON AND HARRIS VOTED NO.)

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CHAIR SEGERBLOM:
I will open the hearing on S.B. 203.

SENATE BILL 203: Revises provisions relating to domestic corporations. (BDR 7-71)

LORNE MALKIEWICH (U-Haul International Inc.):
U-Haul has been incorporated in Nevada since July 1990. Senate Bill 203 presents a unique drafting challenge. How does the Legislature say that it really means it? We seek to clarify the Nevada statutes and express the legislative intent that statutory law be followed. Nevada corporations should be governed by Nevada law. It is important that the businesses that have chosen to incorporate in Nevada be able to rely on Nevada law. We will be proposing an amendment to S.B. 203. We are working with interested parties to develop a consensus amendment.

CHAIR SEGERBLOM:
Friday is the deadline. The bill is quite simple. It raises some flags with me with regard to telling the Supreme Court what to do.

MR. MALKIEWICH:
The intent of S.B. 203 is to clarify the law to state that the laws of the State must govern the incorporation and internal affairs of a domestic corporation. We will work on the tone of the bill to make sure it is appropriate.

Section 2, subsections 1 to 6, of S.B. 203 is the declaration of legislative intent. The intent is that statutory law adopted by the Legislature should control over conflicting caselaw from other jurisdictions.

SENATOR FORD:
I have some heartburn about the legislative intent component. The general rule is that, if the Legislature puts something in a statute, it will be interpreted by our courts as the prevailing law. I would strongly encourage you to reconsider, especially with the strong language included in the bill. I am not comfortable with the way it is set up.

MR. MALKIEWICH:
Our dilemma is how to draft "and we really mean it" when you have the Legislature adopting statutes in response to cases but cannot rely on the court to apply the applicable law. Our intent is simply to clarify that Nevada law applies to Nevada corporations.

SENATOR HARRIS:
Is it the intent of S.B. 203 to supersede operating agreements, bylaws, etc., wherein companies validly contract to incorporate a different jurisdiction's laws or to be liable to suit in other jurisdictions?

MR. MALKIEWICH:
No, that is not the intent. There are two provisions in the bill that use the "except as otherwise provided in subsection 1 of NRS 78.139" language, which provides an exception for what is otherwise provided in the articles of incorporation. Our concern is with statutes that say this is the law with respect to the duties of an officer or director and litigation results in a reliance on a line of cases from another state that provide different duties.

SENATOR HARRIS:
Is it your intent to create a fallback framework, but parties are free to contract differently if that is what they want to do? If the bylaws, operating agreement, etc., are silent, is the default to Nevada law?

MR. MALKIEWICH:
That is my understanding. I am a bill drafter, not a corporate law expert. It is not the intent in the bill drafting to supersede any contracts.

SENATOR FORD:
Is there a case this bill is trying to overturn?

MR. MALKIEWICH:
There are a few cases that are examples. For example, there is a case concerning the constituency statute, *Hilton Hotels Corp. v. ITT Corp*., 962 F.Supp. 1309 (D.Nev.1997). In 1999, the Legislature adopted S.B. No. 61 of the 70th Session adding what is now section 4, subsection 5 of NRS 78.138. That provision says directors and officers are not required to consider the effect of a proposed corporate action upon any particular group having an interest in the corporation as a dominant factor. The *Hilton* case held that the interests of the stockholders needed to have priority even though our constituency statute allows various interests to be considered. Subsection 5 was adopted to try to make it clear that the directors and officers are not required to treat any particular interest as a dominant factor, but we still see language in cases that says the shareholders' best interest must be considered over the interests of anyone else.

We are trying to make the law clearer, and through the declaration, point to the statute and say the statute should control. The statute clearly allows directors and officers to consider other factors. Section 4, subsection 4 of NRS 78.138 says directors and officers are allowed to consider the economy of the State and the Nation, the interests of the community and society, the interests of the corporation's employees, suppliers and customers and the long-term and short-term interests of the corporation and its stockholders. The officers and directors are permitted to weigh these factors. There are a few other examples. The general idea is to emphasize that the statutes control. When the Nevada Legislature adopts a statute, that is the law. That seems like an obvious concept.

SENATOR FORD:
I hear what you are saying and you cited a 1997 case. Section 1, subsection 5 of S.B. 203 references cases out of Delaware that "have been, and are hereby, rejected by the Legislature." What is the most recent case in Nevada that you are attempting to address? What I have seen done, and I am not suggesting that

I am amenable to doing this either, is a specific mention of a case that we want to overturn by legislation. If there is such a case, I would like to know what it is so that I can get a better understanding, as opposed to this roundabout way of declaring legislative intent in a way that does in fact poke the Supreme Court in the eye. If there is a case, I would like to know what it is, or if there are cases, let me know what they are, so we can give those consideration as you are considering amendments with the interested parties.

MR. MALKIEWICH:
There is no case we are seeking to overturn. These decisions are over and done. There is nothing pending. The interest is to ensure that Nevada corporations in the future can rely upon statutes. These cases from the past are just examples of why there is a concern. The language I was referring to was from a 2006 case. The statute was first changed in 1997. There are other more recent examples of cases, but the intent of S.B. 203 is not to undo a particular case. The intent is simply to say that the Nevada statutes be applied whatever decision results from that application. The concern is that if the Legislature has adopted a statute, such as NRS 78.139, that conflicts with the cases mentioned in section 1, subsection 5 of S.B. 203, NRS 78.139 should be applied by the court—not Delaware cases that reflect a different law.

SENATOR FORD:
I would still recommend getting that point across without the declaration in this bill. I am not too keen on it.

MR. MALKIEWICH:
Section 3 of S.B. 203 is a verification requiring that that people have actually read the laws. Section 4 amends NRS 78.138 and clarifies the business judgment rule that simple negligence is not enough to rebut a presumption that directors and officers acted in good faith for purposes of personal liability. Personal liability requires particular bad acts. The constituency statute is also clarified. The combination of the constituency statute and the personal liability statute allow directors and officers to act in the best interest of the corporation without concern that they are going to be personally liable because someone disagreed with their decision.

Section 5 amends the rules concerning change of control. Little is changed. Subsection 4 of section 5 refers back to the constituency statute and clarifies that the directors have flexibility to consider any of the listed factors in a

change of control situation. *Nevada Revised Statutes* 78.139 is the change of control statute.

SENATOR HARRIS:
Section 3 requires the reading of particular statutes before commencing litigation. What is the reasoning behind this provision?

MR. MALKIEWICH:
Our concern is, if you have cases in which decisions are made, doctrines are adopted and there is no reference in the cases to the underlying controlling statute, perhaps it is because the statute was not brought to the court's attention. The court may be looking at a brief that says here is a case from another state that applies to this situation, and no one cites to the relevant Nevada law. Section 3 just says, if you are going to file a suit that involves NRS 78.138 and 78.139, each plaintiff must aver to having read these statutes and section 2 of S.B. 203.

SENATOR HARRIS:
Do you have an amendment?

MR. MALKIEWICH:
We are still working on a proposed amendment.

Remainder of page intentionally left blank; signature page to follow.

CHAIR SEGERBLOM:
I will close the hearing on S.B. 203. The hearing is adjourned at 3:31 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	2		Agenda
	B	8		Attendance Roster
S.B. 376	C	49	John Cahill / Clark County	Written Testimony and Exhibits
S.B. 277 and S.B. 451	D	14	James W. Hardesty / Advisory Commission on the Administration of Justice	Presentation
S.B. 277 and S.B. 451	E	4	James W. Hardesty / Advisory Commission on the Administration of Justice	Summary of Recommendations
S.B. 451	F	10	James E. Dzurenda / Department of Corrections	Written Testimony
S.B. 10	G	2	Patrick Guinan	Work Session Document
S.B. 230	H	1	Patrick Guinan	Work Session Document
S.B. 255	I	2	Patrick Guinan	Work Session Document
S.B. 264	J	21	Patrick Guinan	Work Session Document
S.B. 267	K	2	Patrick Guinan	Work Session Document
S.B. 306	L	1	Patrick Guinan	Work Session Document
S.B. 398	M	5	Patrick Guinan	Work Session Document
S.B. 438	N	1	Patrick Guinan	Work Session Document
S.B. 490	O	3	Aaron D. MacDonald	Letter of Support
S.B. 490	P	2	Malcom Doctors	Written Testimony
S.B. 490	Q	17	Michael R. Brooks / United Trustees Association	Written Testimony
S.B. 490	R	3	Greg Gemignani / Nevada Credit Union League	Proposed Amendment
S.B. 453	S	17	John T. Jones, Jr. / Nevada District Attorneys Association	Proposed Amendment