

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-ninth Session  
April 13, 2017**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 12:27 p.m. on Thursday, April 13, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Tick Segerblom, Chair  
Senator Nicole J. Cannizzaro, Vice Chair  
Senator Moises Denis  
Senator Aaron D. Ford  
Senator Don Gustavson  
Senator Michael Roberson  
Senator Becky Harris

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Lesley E. Cohen, Assembly District No. 29  
Assemblyman James Ohrenschall, Assembly District No. 12

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Melissa Exline  
Cathy Erskine, Policy Analyst, Office of the Lieutenant Governor  
Chuck Callaway, Las Vegas Metropolitan Police Department

Senate Committee on Judiciary  
April 13, 2017  
Page 2

CHAIR SEGERBLOM:

I will open the hearing on Senate Bill (S.B.) 454.

**SENATE BILL 454**: Enacts the Uniform Powers of Appointment Act. (BDR 12-1070)

ASSEMBLYWOMAN LESLEY E. COHEN (Assembly District No. 29):

I serve as a Uniform Law Commissioner for Nevada. I am a member of the Uniform Law Commission Parentage Redrafting Committee. Uniform law drafting committee members are the top practitioners in the Country in a given field as well as professors, judges and legislators who work to craft laws that will not only be adopted throughout the Country but are the best they can be. Once a uniform law has been drafted, it is reviewed by the Uniform Law Commissioners from all 50 states and debated line by line.

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):

Senate Bill 454 addresses powers of appointment, which are used across the Country but for which there is little statutory guidance. The National Conference of Commissioners on Uniform State Laws promulgated the Uniform Powers of Appointment Act in 2013. It has been endorsed by the American Bar Association. It relies heavily on various states' common law decisions as well as the *Restatement of the Law, Third, Property: Wills and Other Donative Transfers* published by the American Law Institute. To date, seven states have enacted the Uniform Powers of Appointment Act: Colorado, Montana, Missouri, New Mexico, North Carolina, Utah and Virginia. Three states, including Nevada, are considering adoption.

A power of appointment is a helpful estate-planning tool that permits a property owner to grant a third party the power to distribute property among permissible beneficiaries, called appointees. Estate attorneys mostly rely on a patchwork of state court decisions in creating and utilizing powers of appointment. The intent of S.B. 454 is not to change existing law so much as to codify common law. I consulted with the Legislative Counsel Bureau Legal Division as to whether S.B. 454 would change any existing precedent in Nevada regarding powers of appointment. The answer was that there is no precedent in Nevada. If this bill is enacted, the Uniform Act would become the law in Nevada. Most attorneys who practice in this specialized area are familiar with the provisions of this bill and will be pleased with the consistency it affords.

A quick example will illustrate the usefulness of a power of appointment. John and Jane Doe have three minor children and want to write a will to ensure that their children will be provided for in the event of their early death. The parents could leave their assets to the children in equal shares, but that type of simple will does not take into consideration future uncertainties. What if one of the children shows great academic promise and another develops a serious illness requiring extensive medical care? The parents might wish the children not inherit equal shares based on their circumstances. John and Jane Doe could give a power of appointment to a trusted adult relative and allow that relative, called "the power holder," to allocate the parents' funds among the children according to their needs. This tool allows the parents to defer the allocation decision to a future date when the children's individual needs and circumstances will be known.

The various sections of S.B. 454 mirror the six articles of the Uniform Act. Sections 1 through 22 contain general provisions and definitions. Sections 23 through 29 govern the creation, revocation and amendment of powers of appointment. Sections 30 through 43 govern the exercise of powers of appointment. Sections 44 through 50 govern the disclaimer or release of powers of appointment. Sections 51 through 54 govern the rights of a creditor of a holder of a power of appointment with respect to property subject to that power. Jeremy Cooper, a wills and trust attorney in Las Vegas, has provided a letter of support ([Exhibit C.](#))

CHAIR SEGERBLOM:

How is a power of appointment different from a trustee? Has the Probate and Trust Law Section of the State Bar of Nevada looked at S.B. 454?

ASSEMBLYMAN OHRENSCHALL:

The difference between a power of appointment and a trustee is that a power of appointment is a quicker and cheaper method and can be used with a holographic will. The power holder has no fiduciary duty. It is a different method of allocating property to beneficiaries. There are pros and cons to both methods.

I forwarded S.B. 454 to the Probate and Trust Law Section, and I understand it has been distributed to the members.

MELISSA EXLINE:

I am an estate-planning attorney. I also practice family law. Senate Bill 454 is beneficial because powers of appointment exist in Nevada and are utilized by Nevada estate-planning practitioners. We rely heavily on common law and the *Restatement* to fully vet and explain terms and powers. *Nevada Revised Statutes* (NRS) 162A addresses power of attorney for financial matters and durable power of attorney for health care decisions and uses the term “power of appointment.” The term is also used in NRS 164 regarding the administration of trusts. These statutes are vague.

The Uniform Act provides Nevada with clear definitions and clarification of a power of appointment. It was vetted through the Uniform Law Committee and Commission. It gives us tools that we currently do not have. It clarifies the roles of who is getting what power and how the power is exercised.

A power of appointment looks like a trustee, sounds like a trustee but is not a trustee. The important difference is that a power of appointment lacks the fiduciary obligation. Powers of appointment are utilized every day without a fiduciary obligation. Why would someone want to give this kind of power without requiring a fiduciary obligation? I could create a testamentary trust in a will or a trust that springs to life at the death of the maker. A testamentary trust is a trust with important safeguards, such as fiduciary obligation. It becomes an irrevocable trust. It will have a tax ID number. It will conform to the requirements of being the trustee of the sub-trust. Alternatively, I could create a power of appointment.

A power of appointment has more flexibility. Sometimes a person will want to give flexibility to someone that he or she trusts to make decisions regarding the distribution of property. It does not require creating a sub-trust, filing taxes, etc. This can and does make sense under certain circumstances. It makes sense from the practitioner’s point of view to clarify what a power of appointment is and to give Nevada practitioners another tool.

CHAIR SEGERBLOM:

Does this bill cover existing powers of appointment?

MS. EXLINE:

Yes. It does not alter existing powers of appointment. It provides clarification.

Senate Committee on Judiciary  
April 13, 2017  
Page 5

ASSEMBLYMAN OHRENSCHALL:

There is no precedent in Nevada regarding powers of appointment.

CHAIR SEGERBLOM:

I will close the hearing on S.B. 454 and open the work session on S.B. 32.

**SENATE BILL 32**: Makes various changes to provisions governing investment advisers and securities. (BDR 7-417)

PATRICK GUINAN (Policy Analyst):

The work session document ([Exhibit D](#)) summarizes S.B. 32 and a proposed amendment.

CATHY ERSKINE (Policy Analyst, Office of the Lieutenant Governor):

We have worked with the Office of the Secretary of State, and we agree with the amendment to S.B. 32.

SENATOR CANNIZZARO MOVED TO AMEND AND DO PASS AS AMENDED S.B. 32.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:

I will open the work session on S.B. 177.

**SENATE BILL 177**: Revises provisions governing the assignment of certain defendants to a program for treatment of mental illness. (BDR 14-754)

MR. GUINAN:

The work session document ([Exhibit E](#)) summarizes S.B. 177.

SENATOR HARRIS:

The sponsor of the bill indicated to me that originally this bill was intended to deal with individuals who hoard animals. The bill was drafted broadly enough to include all hoarding disorders. I would like a clarification.

Senate Committee on Judiciary  
April 13, 2017  
Page 6

NICK ANTHONY (Counsel):  
The bill as written covers all hoarding disorders.

SENATOR ROBERSON:  
What is law enforcements' position on this bill?

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):  
The Las Vegas Metropolitan Police Department (LVMDP) did not take a position on S.B. 177. Hoarding is sometimes a mental health issue and sometimes a code enforcement issue.

SENATOR CANNIZZARO:  
My understanding is that this would apply to defendants assigned to mental health court for a treatment program.

SENATOR HARRIS:  
Is this one more tool to address this affliction once a person is already in the criminal justice system?

SENATOR CANNIZZARO:  
Yes. There would already need to be a criminal charge.

MR. CALLOWAY:  
The hoarding cases we see related to animals are animal abuse cases. The Southern Nevada Animal Response Liaison team investigates animal abuse cases and has indicated that this would help prevent future charges by getting the person treatment. We support what Senator Parks is trying to do with S.B. 177.

SENATOR DENIS MOVED TO DO PASS S.B. 177.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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

Senate Committee on Judiciary  
April 13, 2017  
Page 7

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

MR. GUINAN:

The work session document ([Exhibit F](#)) summarizes S.B. 264 and the proposed amendments.

SENATOR ROBERSON:

I do not support this bill.

SENATOR FORD:

I had misgivings when this bill was presented. I am interested in hearing Senator Roberson's concerns.

SENATOR ROBERSON:

I am growing increasingly frustrated with the Business Law Section of the State Bar of Nevada bringing omnibus bills every two years and tinkering with laws. I hear from transactional attorneys in the community that every two years the Business Law Section tries to change laws that are working and have been on the books for decades. Specifically, I am concerned about an effort that may not be intentional but would result in making Nevada a less attractive state for companies to relocate to or incorporate or organize in. The Henderson Chamber sent a letter of opposition for that very reason. It is difficult to look at the various amendments and the handwritten-cross outs and understand what this bill will do. I do not think the Business Law Section has addressed all the issues. Yes, they took out sections 2 and 20. That is a good start. I do not think this bill is necessary. I will be voting no.

SENATOR FORD:

I appreciate that. My concerns gave rise to my questions about the composition of the Executive Committee of the Business Law Section. My recollection is that there were no litigators. They are all transactional lawyers.

CHAIR SEGERBLOM:

If there are concerns, we should kill the bill. I will close the work session on S.B. 264 and open the work session on S.B. 341.

**SENATE BILL 341**: Revises provisions relating to marijuana establishments and medical marijuana establishments. (BDR 40-1110)

Senate Committee on Judiciary  
April 13, 2017  
Page 8

MR. GUINAN:

The work session document ([Exhibit G](#)) summarizes S.B. 341 and the proposed amendments.

CHAIR SEGERBLOM:

Senate Bill 341 is intended to be a research bill and create medical marijuana research facilities.

SENATOR HARRIS:

Now that we have recreational marijuana, what is the benefit of allowing local governments to request additional medical marijuana dispensary registrations?

CHAIR SEGERBLOM:

That provision has been removed from the bill. What remains are research facilities.

SENATOR HARRIS:

Bullet one of [Exhibit G](#) says that the bill allows local governments to request additional medical marijuana dispensary registrations.

CHAIR SEGERBLOM:

That has been taken out of the bill. It is in S.B. 329.

**SENATE BILL 329**: Revises various provisions relating to marijuana concerning health and regulation. (BDR 40-361)

SENATOR HARRIS:

Is S.B. 341 only allowing research for educational and scientific purposes?

CHAIR SEGERBLOM:

Yes. Senate Bill 341 allows any institution of the Nevada System of Higher Education to seek approval and establish a research program related to the medical use of marijuana, thereby clarifying the opportunity for the University of Nevada, Las Vegas, School of Medicine to have a research program.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 341.

SENATOR DENIS SECONDED THE MOTION.



THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:  
I will open the work session on S.B. 362.

**SENATE BILL 362**: Revises provisions relating to racketeering. (BDR 15-966)

MR. GUINAN:  
The work session document ([Exhibit H](#)) summarizes S.B. 362.

SENATOR CANNIZZARO MOVED TO DO PASS S.B. 362.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:  
I will open the work session on S.B. 368.

**SENATE BILL 368**: Revises provisions relating to search and seizure. (BDR 14-113)

MR. GUINAN:  
The work session document ([Exhibit I](#)) summarizes S.B. 368.

SENATOR FORD:  
I am going to request that we move the work session on S.B. 368 to tomorrow. I have had conversations with the Nevada District Attorneys Association, Chuck Callaway representing LVMPD and others to propose a conceptual amendment that would address concerns raised at the hearing. The amendment would clarify that the intent of S.B. 368 is to restore the rule announced in *Torres v. State of Nevada*, 131 Nev. Adv. Op 2, 341 P.3d 652 (2015), regarding unlawful stops and the subsequent use of evidence, without addressing or overruling any of the exceptions to the exclusionary rule, such as the good-faith exception, the independent-source doctrine, the

inevitable-discovery rule and the attenuation doctrine, to the extent *Torres* did not already determine the rule relative to the attenuation doctrine.

Mr. Callaway testified regarding an instance wherein a transposed license plate number led to a good-faith stop. It was the wrong person, but the officers found a child in the back seat or the trunk who had been kidnapped. The interpretation of the rule I proposed was that the kidnapping and other evidence discovered could not be used. The rule that I am attempting to put into statute would allow that evidence to be used under the good-faith exception. We will draft a conceptual amendment that clearly states the legislative intent not to erode any of the exceptions to the exclusionary rule but only to codify the Nevada Supreme Court ruling.

The Fourth Amendment protects citizens from the scenario in which an unlawful stop is retroactively justified by a subsequently discovered arrest warrant. That is a violation of the Fourth Amendment. This tailored bill is important to many people in the community.

CHAIR SEGERBLOM:

We will hear this bill on another day. I will close the work session on S.B. 368 and open the work session on S.B. 377.

**SENATE BILL 377**: Revises provisions relating to public defenders. (BDR 14-1005)

MR. GUINAN:

The work session document ([Exhibit J](#)) summarizes S.B. 377 and the proposed amendments.

CHAIR SEGERBLOM:

There is no fiscal note. I am going to ask for passage and re-refer to the Senate Committee on Finance. Many believe that the current system is going to result in large lawsuits. Senate Bill 377 allows a county to keep the system it has.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED  
AND RE-REFER S.B. 377 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HARRIS AND ROBERSON VOTED NO.)

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CHAIR SEGERBLOM:  
I will open the work session on S.B. 396.

**SENATE BILL 396**: Revises provisions relating to the medical use of marijuana or industrial hemp. (BDR 54-53)

MR. GUINAN:  
The work session document ([Exhibit K](#)) summarizes S.B. 396 and the proposed amendments.

CHAIR SEGERBLOM:  
Was topical marijuana a part of S.B. 374?

**SENATE BILL 374**: Prohibits certain entities from taking action against persons who engage in certain lawful activities relating to marijuana. (BDR 40-185)

CHAIR SEGERBLOM:  
I recommend we remove all references to topical products. Senate Bill 396 was intended to reflect the amendment requested by the State Department of Agriculture to allow people in the hemp program to sell into the medical marijuana program.

SENATOR HARRIS:  
If this were only a hemp bill, I could support it, but it addresses opioid addiction.

CHAIR SEGERBLOM:  
The section addressing opioid addiction has also been removed.

MR. GUINAN:  
The proposed amendment would add a program for the growth and cultivation of industrial hemp, authorize the use of hemp in the production of edible marijuana products and authorize dispensaries to sell industrial hemp.

Senate Committee on Judiciary  
April 13, 2017  
Page 12

CHAIR SEGERBLOM:  
Correct.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS  
AMENDED S.B. 396.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:  
I will open the work session on S.B. 416.

**SENATE BILL 416**: Authorizes the formation of apprenticeship programs for  
medical marijuana establishment agents. (BDR 40-1140)

MR. GUINAN:  
The work session document ([Exhibit L](#)) summarizes S.B. 416 and the proposed  
amendment.

CHAIR SEGERBLOM:  
This is intended to create a voluntary apprenticeship program for marijuana  
establishment agents.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 416.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, HARRIS AND  
ROBERSON VOTED NO.)

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CHAIR SEGERBLOM:  
I will open the work session on S.B. 451.

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

MR. GUINAN:

The work session document ([Exhibit M](#)) summarizes S.B. 451 and a discussed amendment to remove sections of the bill pertaining to genetic marker analysis.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 451.

SENATOR HARRIS SECONDED THE MOTION.

SENATOR ROBERSON:

I expected that we would have an amendment today. That is why no vote was taken two days ago. I want to clarify on the record that not only do section 2 and sections 13 through 15 need to be removed ([Exhibit M](#)), but Chuck Callaway requested LVMPD be added to the membership of the Sentencing Commission. Does that cover everything?

CHAIR SEGERBLOM:

Holly Welborn, American Civil Liberties Union of Nevada, asked that the ACLU be added to the membership too. We can add them during the Assembly hearing on the bill. It was certainly our intent to add the LVMPD to the membership.

SENATOR FORD WITHDREW THE MOTION ON S.B. 451.

SENATOR HARRIS WITHDREW THE SECOND ON S.B. 451.

SENATOR FORD:

We have now tipped the balance of the Sentencing Commission. I think it is appropriate to consider adding another member to the Sentencing Commission.

CHAIR SEGERBLOM:

There is language we can add to do that. Senator Roberson, would you object to adding additional language?

SENATOR FORD:

If we are going to add a police officer, we should add someone on the other side to restore balance.

Senate Committee on Judiciary  
April 13, 2017  
Page 14

SENATOR ROBERSON:  
I will concede.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED S.B. 451, ADDING TO THE MEMBERSHIP OF THE SENTENCING COMMISSION ONE MEMBER REPRESENTING THE LVMPD AND ONE MEMBER REPRESENTING AN ORGANIZATION THAT ADVOCATES ON BEHALF OF INMATES.

SENATOR HARRIS SECONDED THE MOTION.

SENATOR ROBERSON:  
Let the record reflect that I am reasonable.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:  
I will open the work session on S.B. 476.

**SENATE BILL 476**: Makes changes relating to the Commission for Common-Interest Communities and Condominium Hotels. (BDR 10-554)

MR. GUINAN:  
The work session document ([Exhibit N](#)) summarizes S.B. 476.

SENATOR FORD MOVED TO DO PASS S.B. 476.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SEGERBLOM:  
I will move the work session on S.B. 490 to tomorrow.

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

Senate Committee on Judiciary  
April 13, 2017  
Page 15

CHAIR SEGERBLOM:  
The hearing is adjourned at 1:21 p.m.

RESPECTFULLY SUBMITTED:

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Connie Westadt,  
Committee Secretary

APPROVED BY:

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Senator Tick Segerblom, Chair

DATE: \_\_\_\_\_

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	2		Agenda
	B	4		Attendance Roster
S.B. 454	C	1	Jeremy Cooper	Letter of Support
S.B. 32	D	2	Patrick Guinan	Work Session Document
S.B. 177	E	1	Patrick Guinan	Work Session Document
S.B. 264	F	21	Patrick Guinan	Work Session Document
S.B. 341	G	6	Patrick Guinan	Work Session Document
S.B. 362	H	1	Patrick Guinan	Work Session Document
S.B. 368	I	1	Patrick Guinan	Work Session Document
S.B. 377	J	15	Patrick Guinan	Work Session Document
S.B. 396	K	8	Patrick Guinan	Work Session Document
S.B. 416	L	3	Patrick Guinan	Work Session Document
S.B. 451	M	1	Patrick Guinan	Work Session Document
S.B. 476	N	1	Patrick Guinan	Work Session Document