

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

**Eightieth Session  
May 20, 2019**

The Senate Committee on Health and Human Services was called to order by Chair Julia Ratti at 4:12 p.m. on Monday, May 20, 2019, in Room 2135 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 Julia Ratti, Chair  
Senator Pat Spearman, Vice Chair  
Senator Joyce Woodhouse  
Senator Joseph P. Hardy  
Senator Scott Hammond

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1

**STAFF MEMBERS PRESENT:**

Megan Comlossy, Committee Policy Analyst  
Eric Robbins, Committee Counsel  
Vickie Polzien, Committee Secretary

**OTHERS PRESENT:**

Ross Armstrong, Administrator, Division of Child and Family Services,  
Department of Health and Human Services

CHAIR RATTI:

I will open the work session on Senate Bill (S.B.) 544.

[SENATE BILL 544](#): Creates the Patient Protection Commission. (BDR 40-1221)

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MEGAN COMLOSSY (Committee Policy Analyst):  
I will read the summary of the bill and amendments from the work session document ([Exhibit C](#)).

CHAIR RATTI:  
I will entertain a motion on S.B. 544.

SENATOR SPEARMAN MOVED TO AMEND AND DO PASS S.B. 544.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR RATTI:  
I will open the work session on Assembly Bill (A.B.) 151.

**ASSEMBLY BILL 151**: Provides for the protection of children who are victims of commercial sexual exploitation. (BDR 38-457)

Ms. COMLOSSY:  
I will read the summary of the bill and amendments from the work session document ([Exhibit D](#)).

SENATOR HAMMOND:  
The attorney who testified during the hearing on this bill was worried about conflicting information. Does this bill clarify their concerns?

CHAIR RATTI:  
My understanding is that the bill sponsor met with the gentleman who brought the concerns forward; this is the language they agreed on.

SENATOR HAMMOND:  
Thank you. However, the concern I wanted to ensure we are addressing is as attorneys, they may sometimes be conflicted by listening to their client protecting their confidentiality and then having to report a situation.

CHAIR RATTI:

This language covers that concern.

SENATOR HARDY:

It goes against my grain having someone who says I did something to this child, and I have an attorney who does not have to report anything. The attorney knows that someone did something to a child and is not obligated to save the child.

CHAIR RATTI:

I will ask Mr. Ross Armstrong to come to the table to help us with this and ask our legal counsel to be prepared to answer any questions if necessary. We are well within the pre-established constitutional rights when you talk about someone who is being defended by an attorney in a criminal case.

SENATOR HARDY:

If the attorney is the only person finding out for the first time that a child is being sexually exploited, what do we do with the child? We have a child who is being sexually exploited, which the attorney knows about but is in no way obligated to protect that child.

If I were going to be artful about it, the attorney could say, with a veil of confidentiality, someone needs to protect the child. The child is not protected, because the person exploiting the child is safe under attorney-client privilege.

ROSS ARMSTRONG (Administrator, Division of Child and Family Services, Department of Health and Human Services):

There were concerns raised at the hearing for A.B. 151. When you have an attorney who has a client who is alleged to have committed the sexual exploitation of a child, there is attorney-client privilege that is well established to protect the individual. There is still an obligation for attorneys to report if they know there is a crime that is about to occur. They would be relieved of confidentiality in that matter if it meets that threshold.

There was a section in the child abuse and neglect statutes we took most of the confidentiality language from but was inadvertently left out when we drafted the bill. Section 12.5 of the amendment mirrors the language in the child abuse and neglect statutes that do not create a situation for the attorney in which

they would be violating their ethical responsibilities to maintain confidentiality. At the same time, it would allow for reporting in certain circumstances.

SENATOR HARDY:

I believe there is an order to things. This amendment seems to allow an abuser to go to an attorney and say I did this, but now it is confidential, so I am off the hook unless someone else says this child has been abused. It is against everything I believe to say that there is a child at risk and I am going to let that child continue to be at risk without doing something. That is not right.

SENATOR SPEARMAN:

I think that particular conundrum has been mitigated when you look at section 12.5, subsection 2, paragraphs (a) and (b) in the work session document. It states "nothing in this section shall be construed as relieving an attorney from ... except as otherwise provided in subsection 1 ... complying with any ethical duties of attorneys". We may want to confirm with legal on this.

I think this section is actually addressing the issue that Senator Hardy is concerned about with respect to an attorney finding out a child is being sexually exploited. The client, who is actually the exploiter, would tie the hands of the attorney. I believe there are provisions for this.

CHAIR RATTI:

There is an issue we are trying to balance here which is the protection of the child balanced by the attorney-client privilege in a criminal case.

ERIC ROBBINS (Committee Counsel):

As Senator Spearman noted, in section 12.5, subsection 2, paragraph (b) it states "Nothing in this section shall be construed as relieving an attorney from ... Complying with any ethical duties of an attorney as set forth in the Rules of Professional Conduct".

Nevada Rules of Professional Conduct, section 1.6(a) is the confidentiality rule and states:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure

is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraphs (b) and (d).

Paragraph (d) states:

A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent a criminal act that the lawyer believes is likely to result in reasonably certain death or substantial bodily harm.

I believe you could certainly argue that commercial sexual exploitation is reasonably likely to result in substantial bodily harm. In that case, if the child is still being commercially sexually exploited, the attorney would have a duty to reveal that information to the extent necessary to protect the child.

SENATOR HARDY:

As we well know, there is more than bodily harm that takes place. When we consider the ramifications that are ongoing, which are mental and emotional that are not bodily and are not in danger of death, we have a loophole. We have to make sure we protect the child. I am not sure paragraph (d) convinces me that we have protected the child.

Again, it goes to the order of things. If the attorney is the first one who finds out about this, I have to question the motive of the perpetrator to go to the attorney so no one else can find out. What happens if someone else finds out and the perpetrator goes to the attorney and is protected by confidentiality? The attorney does not have an obligation to protect the child unless bodily harm or death happens.

CHAIR RATTI:

I would like to invite the sponsor of the bill to be part of this conversation.

ASSEMBLYWOMAN DANIELE MONROE-MORENO (Assembly District No. 1):

I chaired the Interim Committee on Child Welfare and Juvenile Justice. I have worked in law enforcement for almost 30 years, and I have never met anyone who went to an attorney and told them they had committed a crime. What this bill would address is if someone has knowledge of a crime being committed and this person is charged or about to be charged and they hire an attorney. At least 98 percent of the time, the child has been removed from the situation. The

conversation that is happening is between that suspect who is probably in custody, and his attorney, and that is already protected attorney-client privilege. The attorney cannot say anything about that situation unless compelled by the courts. The child is already in a protective state at this point. There is nothing in this bill or the amendment as written that speaks to a person telling an attorney I committed a crime and I want you to protect me. In my 30 years of experience in law enforcement, I have never seen that happen.

This bill covers when someone has been suspected of committing that crime. They are probably in the custody of police and in jail. The child is put in a protective situation whether it is with Child Protective Services or in a foster home.

As the bill was originally written, we were forcing the attorney who testified, or any attorney, to disclose what he or she got out of the conversation with the suspect who is in custody. That is the intent of this bill.

SENATOR HARDY:

I like the intent; I do not trust people who break laws and do things to children. Let us imagine a scenario where you happen to be an attorney and are at a friend's house who shows you child pornography they have. You, the attorney, know this is not legal. Your friend says you are my attorney now, and you cannot say anything.

CHAIR RATTI:

I think this is a legal question. I would like to defer to our legal counsel specifically pointing to the language in the amendment as to what is important is not just intent, but what it actually states.

I am looking at section 12.5, which states:

... an attorney shall not make a report of the commercial sexual exploitation of a child if the attorney acquired knowledge of the commercial sexual exploitation from a client during a privileged communication if the client has been or may be accused of committing the commercial sexual exploitation.

This is the exemption, when an attorney shall not report a situation, and it has to be a client, not just a friend. It has to be privileged communication, not just a casual conversation with their attorney and not just any attorney.

To me, the moment that attorney finds out someone has done something to a child and knows the person may or may not have been accused, all three of these boxes have to be checked in order to be exempted from having to report the situation. Otherwise, the way this is written they would have to report a situation, correct?

MR. ROBBINS:

That is correct. All three boxes would have to be checked. It is important to note that you do not have representation just because someone comes to an attorney and states they have committed a crime. The attorney must agree to be that person's attorney. Someone could not avoid the reporting obligation just by going to an attorney they know and telling them they have committed a crime. The attorney would have to agree to represent them prior to the communication happening. There would have to be a previous attorney-client relationship formed before the communication happened for it to be a privileged communication.

SENATOR HARDY:

If you read the amendment, it states "or may be accused of committing the commercial sexual exploitation"; that is a "may." It is not a "has been," but a "may" be accused. Let us say I have spoken with an attorney, asked them to be my attorney, and he says yes. I tell him something I know about a situation and now the attorney cannot say anything to anyone else about what I told him. I have established attorney-client privilege and fortunately have not been in a position where I may be accused of a crime, but I have established a relationship with an attorney. It does not take a written contract. It simply states will you represent me, yes I will be your attorney, and it is done.

I understand the intent and that 99.9 percent of the time someone has been accused and everyone knows they have been accused. Now we are going to represent you for your accusation that did not come to the attorney first, but through someone else. If it comes to the attorney first, and the attorney's hands are tied because we allow them to be tied, we still have a vulnerable child who needs protection.

MR. ROBBINS:

Another exception in Rule 1.6 that may be applicable here is that an attorney is authorized to reveal information relating to the representation of a client in order to prevent a client from committing a criminal or fraudulent act in furtherance of which the client has used or is using the attorney's services. If the client goes to the attorney with the express intent of furthering and concealing ongoing commercial sexual exploitation, it seems that would be covered by that exception to the confidentiality requirement.

SENATOR HAMMOND:

You are saying that, I as an individual who may have committed a crime, can go to an attorney and disclose this crime and have some shield of protection. I can continue to act in that manner and commit that crime over and over again. As long as I confess to an attorney, I am good regardless of whatever evidence or ethical standards the attorney has.

I also understood you to say that within ethical standards the attorney would have to report the situation.

MR. ROBBINS:

The attorney would be required to say something if the attorney believes the criminal action is likely to result in reasonably certain death or substantial bodily harm, which I believe would generally be the case for commercial sexual exploitation. Even if the attorney did not feel those things were true, the attorney would be authorized to disclose to prevent the client from committing the commercial sexual exploitation if the client is using the attorney's services to further that. If the whole purpose of the client going to the attorney is to help him conceal what the client has been doing, the attorney would be authorized to make a report.

CHAIR RATTI:

What I hear from this conversation is that the likelihood of this happening is probably rare, as the vast majority of people speaking with an attorney are under some sort of likelihood that they will be accused of a crime.

I hear Senator Hardy's concern. I think the concept here was mandatory reporting, which was the original concept of the bill. The mandatory reporting piece under the Rules of Professional Conduct 1.6 is the attorney must report it



if they believe there is a risk of bodily harm or death moving forward. Is that correct?

MR. ROBBINS:  
That is correct.

CHAIR RATTI:

We have two weeks to review this; we have a Committee member who is concerned. I would like to remove this from work session today and have one more conversation with our legal counsel, giving them a little more time to review the bill and amendment to see if there is a way to strengthen this in some way to point to Rule 1.6. Cases of commercial sexual exploitation of children can be called out specifically as a mandatory reporting within those exceptions.

I would like to see this tightened up a little bit more. The case has been well made that this would be a rare exception, but I also understand the concern that if there is a child at risk, we want to ensure we are doing everything we can to take care of that child.

We will remove this from work session and see if we can get more clarity on real-world scenarios about how this might take place and if there is any way for us to put a little more pressure on the reporting side.

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CHAIR RATTI:

Seeing no further business, we are adjourned at 5:38 p.m.

RESPECTFULLY SUBMITTED:

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Vickie Polzien,  
Committee Secretary

APPROVED BY:

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Senator Julia Ratti, Chair

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

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 544	C	1	Megan Comlossy	Work Session Document
A.B. 151	D	2	Megan Comlossy	Work Session Document