

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
May 10, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:25 a.m. on Friday, May 10, 2019, in Room 2135 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 Nicole J. Cannizzaro, Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

COMMITTEE MEMBERS ABSENT:

Senator Dallas Harris, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Shea Backus, Assembly District No. 37
Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Eileen Church, Committee Secretary

OTHERS PRESENT:

Alan Freer, State Bar of Nevada

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Michaëlle D. Rafferty, State Bar of Nevada
Katherine Provost, Nevada Justice Association
Jorge Padilla
Alanna Bondy, Nevada Attorneys for Criminal Justice
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender,
Washoe County
John T. Jones, Jr., Nevada District Attorneys Association
Weldon Havins
Graham Lambert
Savannah Reid
Dagen Downard
Jared Busker, Children's Advocacy Alliance
Jamie Rodriguez, Washoe County
Frank W. Cervantes, Director, Department of Juvenile Services, Washoe County
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark
County

CHAIR CANNIZZARO:

I will open the hearing of the Senate Committee on Judiciary. We will first consider A.B. 15 and then move to the consent agenda. Assembly Bill 301, which has an amendment, will not be on the consent agenda.

ASSEMBLY BILL 15 (1st Reprint): Revises provisions governing crimes.
(BDR 15-409)

ASSEMBLY BILL 301 (1st Reprint): Revises provisions relating to jails. (BDR 16-769)

PATRICK GUINAN (Committee Policy Analyst):

Assembly Bill 15 has a minor amendment proposed by the Attorney General's Office (Exhibit C). The bill was heard on May 2. The work session document (Exhibit D) summarizes the bill. The amendment simply changes the word crypto currency to virtual currency.

SENATOR SCHEIBLE MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 15.

SENATOR PICKARD SECONDED THE MOTION.

SENATOR OHRENSCHALL:

I have some concerns, but I will vote to support it out to the Floor and reserve my right to change my vote on the Floor.

THE MOTION CARRIED UNANIMOUSLY.

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MR. GUINAN:

When we have bills with no amendments, we put them on a single calendar with one do pass motion. Today we have A.B. 117, A.B. 140, A.B. 272, A.B. 299, A.B. 347, A.B. 410 and A.B. 432.

ASSEMBLY BILL 117 (1st Reprint): Revises provisions relating to charitable gaming. (BDR 41-715)

Assembly Bill 117 was heard on May 8. The work session document ([Exhibit E](#)) summarizes the bill.

ASSEMBLY BILL 140 (1st Reprint): Prohibits discrimination against persons with a physical disability in certain proceedings relating to children. (BDR 11-172)

Assembly Bill 140 was heard on May 3. The work session document ([Exhibit F](#)) summarizes the bill.

ASSEMBLY BILL 272 (1st Reprint): Requires law enforcement agencies in certain counties to participate in the National Integrated Ballistic Information Network. (BDR 15-603)

Assembly Bill 272 was heard on May 7. The work session document ([Exhibit G](#)) summarizes the bill.

ASSEMBLY BILL 299 (1st Reprint): Revises provisions governing certain powers of attorney. (BDR 13-691)

Assembly Bill 299 was heard on May 9. The work session document ([Exhibit H](#)) summarizes the bill.

ASSEMBLY BILL 347 (1st Reprint): Revises provisions governing business associations. (BDR 7-554)

Assembly Bill 347 was heard on May 8. The work session document ([Exhibit I](#)) summarizes the bill.

ASSEMBLY BILL 410: Revises provisions relating to orders for protection. (BDR 3-176)

Assembly Bill 410 was heard on May 9. The work session document ([Exhibit J](#)) summarizes the bill.

ASSEMBLY BILL 432 (1st Reprint): Establishes provisions governing worker cooperative corporations. (BDR 7-1026)

Assembly Bill 432 was heard on May 6. The work session document ([Exhibit K](#)) summarizes the bill.

SENATOR PICKARD MOVED TO DO PASS A.B. 117, A.B. 140, A.B. 272, A.B. 299, A.B. 347, A.B. 410 and A.B. 432.

SENATOR DONDERO LOOP SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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MR. GUINAN:

Assembly Bill 301 was heard on May 9. The work session document ([Exhibit L](#)) summarizes the bill. The amendment proposed by Assemblywoman Teresa Benitez-Thompson is to remove the population cap in subsection 8 of *Nevada Revised Statutes* (NRS) 211.140.

SENATOR PICKARD MOVED TO AMEND AND DO PASS AS AMENDED A.B. 301.

SENATOR DONDERO LOOP SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CANNIZZARO:

I will close the work session and open the hearing with A.B. 286.

ASSEMBLY BILL 286 (1st Reprint): Makes various changes relating to trusts and estates. (BDR 2-1028)

ASSEMBLYWOMAN SHEA BACKUS (Assembly District No. 37):

Assembly Bill 286 pertains to trusts and estates.

ALAN FREER (State Bar of Nevada):

Nevada is one of the top five states in the Nation with respect to the rapidly evolving laws governing trusts and estates. Assembly Bill 286 was drafted with the primary intent of keeping pace with this evolution to clarify the law and streamline the administration process of trusts in Nevada and to ensure a person's wishes set forth, when completing an estate plan, are honored to the greatest extent permitted by law.

The Probate and Trust Law Section of the State Bar of Nevada worked on the concepts of the language in A.B. 286 for the past 18 months that were submitted to the Nevada State Bar in July 2018. After receiving no objection by any of the State Bar sections, the bill received unanimous approval by the Nevada State Bar Board of Governors to be endorsed and advanced by the State Bar Probate and Trust Law Section. I have submitted a summary of the specific amendments and proposed legislation ([Exhibit M](#)).

SENATOR DONDERO LOOP:

We have not put anything in this bill preventing children from getting any of their due support in a divorce case through a trust when a trust is involved, specifically, when we have self-settled spendthrift trusts. People have been known to put money in those and then not pay support.

MR. FREER:

There are no changes with respect to self-settled spendthrift trust statutes.

SENATOR PICKARD:

Section 8, subsection 2 says:

"A spouse or other party in a case must establish by clear and convincing evidence the transmutation of community property or separate property that is transferred into a trust from, as applicable: (a) Community property to separate property; or (b) separate property to community property." My concern is if we have a sophisticated spouse who moves community property into a separate property trust, absent any other document, that can act as evidence of an intent to transmute.

MICHAELLE D. RAFFERTY (State Bar of Nevada):

Correct. The intent is to make it more difficult for one spouse to transmute property without the consent of the other spouse.

ASSEMBLYWOMAN BACKUS:

The language we added is on page 30, lines 27 to 32.

SENATOR PICKARD:

We want to make sure the disadvantaged spouse is not inadvertently losing out on community property.

The issue I have is with section 1.5, page 9, line 19. I understand other states are moving to the idea we are to protect proceeds of a sale under the homestead exemption. My concern with this is as written, this is an unlimited deferral. You could sell the house and sit on the proceeds from the sale for an indefinite period of time. There are people who do not pay child support. They will do whatever they can to avoid it. In this case, they could sell a house, quit their job, sit back and live on the proceeds which are now unavailable to attachment for any purpose, including child support. There is no limitation on this. I would suggest we look at limiting this to a period of time in which you would reinvest the money, similar to an IRS 1031 exchange. Would it make sense to limit that and make sure the money is protected for the purposes of the homestead exemption?

MR. FREER:

Yes. The Nevada State Bar Probate and Trust Law Section would remain neutral with respect to the proposed amendment in section 8. The intent from this section was to protect the proceeds for the purposes of allowing the family to repurchase another house. It was not intended to be a shelter for assets. Other

jurisdictions do have a period of time limitation with respect to the reinvestment of the proceeds.

SENATOR PICKARD:
I will be proposing an amendment.

KATHERINE PROVOST (Nevada Justice Association):
We support A.B. 286.

CHAIR CANNIZZARO:
I will close the hearing on A.B. 286 and open the hearing on A.B. 416.

ASSEMBLY BILL 416 (1st Reprint): Revises provisions relating to the collection of delinquent fines, administrative assessments, fees or restitution.
(BDR 14-429)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):
Assembly Bill 416 originates from the Interim committee I chaired, which was tasked with looking at traffic violations in our State and deciding whether minor traffic violations should be civil rather than criminal violations. Minor traffic infractions in Nevada are criminal. Nonmoving violations such as parking tickets are not criminal.

Section 1.3 provides for the presumption of indigence in certain circumstances. This is a problem we had when courts were trying to decide whether someone was indigent to determine whether he or she could pay fines or fees. We listed three areas a court can look at that would be presumptive tests for indigence.

Section 1.7 of the bill indicates if any fine or fee owed by a defendant in justice court or municipal court has not been paid or cannot be collected within eight years, it would be deemed to be uncollectible. Eight years comes from how long a driver's license is valid in Nevada. If you do not pay your fees and fines, your driver's license is going to be suspended, and you would learn about that when it is time to renew your driver's license. This is the practice Las Vegas Municipal Court is using. There is no uniform standard in Nevada.

Section 2 deals with how local governments can seek to collect delinquent fines and fees. It removes the ability to report the delinquency to a collection agency because it is already illegal. It also removes the ability of the local government

or the court to ask a prosecuting agency to undertake collection efforts. Prosecutors are not in the business of collecting delinquent payments nor should they be.

Section 2 indicates a driver's license can only be suspended for delinquent fines and fees in situations where the person has the money and is willfully not paying, or if the offender has been given an opportunity to perform community service but has refused to do so. In addition, section 2 requires the court make a finding that a person has the money to pay—meaning that he or she is not poor or indigent—and is willfully not paying before someone can be put in jail.

JORGE PADILLA:

Existing statute allows the court to suspend the driver's license of individuals with overdue delinquent fees. The suspension of a driver's license is an oppressive way for courts to force payment of delinquent fees. The license-for-payment system creates a divide between the low-income driver and the wealthy driver. For some, paying off delinquent fees is as easy as writing a check. Whereas, for the low-income driver who lives paycheck to paycheck paying off many monthly bills such as rent, utilities or groceries, he or she has to pick between those monthly bills versus the delinquent fee. The law as it exists now may violate a citizen's constitutional right to equal protection. Nevada law should not perpetuate a gap between low-income citizens and wealthy citizens.

Deleting current statutory language in section 2, subsection 3, paragraph (b) will end the unjust license-for-payment system. This bill will not make it so the person who cannot pay or afford the delinquent fee will be forgiven.

This bill does not take away the court's ability to suspend the driver's license of a defendant. It makes it so the needs and situations of the defendant are considered when making determinations.

Louisiana, New Hampshire, Minnesota and Oklahoma are the only four states that require evaluation of the ability to pay, and there is no reason why Nevada has not taken a step in the right direction.

SENATOR PICKARD:

Is the current practice that the court will consider whether an individual is indigent? Does it have the ability to order only community service?

ASSEMBLYMAN YEAGER:

Most courts do allow community service to be performed for the entirety of fees and fines. The intent of this bill is to not suspend the license if the person does not pay because he or she is not able to and not given the secondary option of doing community service. We do not want to send the message you can speed or commit traffic infractions with no penalty.

SENATOR SCHEIBLE:

If someone has a speeding ticket that is nine years old, would it automatically be considered paid or would he or she still have to pay it off? If it is no longer collectable, can the person still clean up the record or is that not a concern?

ASSEMBLYMAN YEAGER:

Under the bill as proposed, there would be an analysis made after eight years that it is deemed uncollectable. This means the court wipes it off the books—the amount owed, not the actual infraction—because we are talking about people who have already been adjudicated guilty. In that case, the money part would be wiped off the books. The person would be able to petition to have a record sealed, and the court would determine how to analyze that.

SENATOR HAMMOND:

How much time before someone pays up, is asked to do community service or make payments?

ASSEMBLYMAN YEAGER:

Our courts around the State have low collection rates. This bill should make it easier for the courts to determine if someone before them has the ability to pay the fees and fines.

SENATOR HAMMOND:

Do our judges have the latitude to make determinations based on the testimony they receive in court?

ASSEMBLYMAN YEAGER:

Some courts feel they do have latitude and do it already, and some courts do not. I hope this bill clearly expresses to our municipal court and justice court judges that they do have the ability to be flexible. We do not want courts spending inordinate amounts of time and money to get no return. In those

situations, we would value having people doing community service. We do not want to give the message that you do not have a penalty.

SENATOR OHRENSCHALL:

The system of demerits on someone's driver's license would not be affected by this bill. Even if someone could not afford to pay the fines, if this bill passes, there is still the possibility of demerits and loss of license if they are moving violations.

SENATOR HANSEN:

Most judges in traffic court deal with this at the initial hearing. They inquire whether the violator can pay the fine and if not, can the person make arrangements. What does this bill change as far as actual practice? If you cannot afford to pay a basic fine, can you afford the insurance you are supposed to maintain to drive? Should these people even be driving if they cannot afford fundamental requirements like insurance?

ASSEMBLYMAN YEAGER:

No one should be driving without insurance. Most of what the bill does is taking what is happening in practice and putting those elements into statute. We are repealing things on the books not used by any court.

One of the most significant parts of the bill is section 1.3. It gives three different elements to look at when deciding whether someone is indigent; if one of these elements is met, the person is presumed to be indigent. That would then trigger the need to offer community service to the person before you take actions like suspending a driver's license or putting the person into jail.

CHAIR CANNIZZARO:

It seems as though it is implicit that the judge, in lieu of a fine, could order community service. If the community service had been ordered and the person had failed to perform, the judge could then order the suspension of the driver's license. I do not see that in the bill, and I think it needs to be in there.

ASSEMBLYMAN YEAGER:

I do agree that is the intent of the bill. If it is not clear that the court can order community service and you or Committee Counsel feel like that is an appropriate addition to the bill, I would be fine with that.

CHAIR CANNIZZARO:

Oftentimes, courts do not know that is something they can do, especially in the context of traffic tickets. The intent seems to be if you have a traffic ticket, you can do community service in lieu of a fine.

ASSEMBLYMAN YEAGER:

Correct. There is definitely a difference of opinion among judges about whether community service can be offered to satisfy fees versus fines. Most judges agree you can convert fines to community service. Some judges think you can convert fees, and some think you cannot. The better practice would be to convert them if the person is indigent.

I would ask for that addition if the bill is amended to make clear fees can be covered by community service as well.

CHAIR CANNIZZARO:

In section 2, subsection 3, a new paragraph (c) says "If the court determines that the defendant has the ability to pay the amount due and is willfully avoiding payment" That language does not have the reference to community service. Is there a reason why it is not in there?

ASSEMBLYMAN YEAGER:

There is not a good reason. A court would deal with that under a contempt of court because the community service would be a court order in lieu of a fine. If the Committee desires to make sure community service is in that provision as well, that would be appropriate.

CHAIR CANNIZZARO:

We have been talking a lot about traffic. When I read through this, it seems as though this would apply likewise to other cases since it references appropriate prison, jail or detention facility, and it would allow the court to order confinement. Is this supposed to apply to traffic and would be satisfied by the previous section, or is this supposed to apply to all cases?

ASSEMBLYMAN YEAGER:

It does apply to all cases. It is a little odd because we do not have the reference. The two statutes referenced in NRS 176.064 deal with orders of confinement which is interesting because courts do not tend to do orders of confinement. When you owe money, a court would say "well, you owe \$1,000,

so I'm going to do this order of confinement; if you do not pay the \$1,000 within so many days, then you are going to be confined for x number of days at \$150 a day." In talking with Las Vegas Justice Court, I do not know if it has ever used an order of confinement. What they tend to do is use contempt. I want to make clear that this order of confinement—which seems rare—should not be used against an indigent person because it would be based solely on an amount of money owed. I am not sure it makes sense to put community service there because the order of confinement deals with money owed.

SENATOR HAMMOND:

You are supposed to maintain insurance when you register your vehicle. However, we know people tend to drop their insurance quickly after the vehicle is registered. Perhaps, we can add something which says you are not eligible if you fail to have insurance or the levels of community service must go up considerably if you fail to have insurance when an infraction happens.

ASSEMBLYMAN YEAGER:

Not having insurance is one of the provisions in law which comes with a mandatory financial penalty that cannot be reduced by the judge. Driving without insurance is somewhere around a \$1,000 infraction, so that does carry its own penalty and a judge is not allowed to reduce that. They can give community service for it, but at a \$1,000 fine, you would be looking at 100 hours minimum of community service. We could keep the bill as is but realize if someone does not have insurance, that is the first charge tacked on, they are going to have to address that.

SENATOR SCHEIBLE:

If indigent criminal masterminds knew they would not have to pay the fines if they got speeding tickets, they would still have to wait eight years for the fine to become uncollectable.

ASSEMBLYMAN YEAGER:

Correct. You would wait it out for eight years. You would know as long as you have a driver's license in the Country, when you try to register in another state and you have a hold here, you would not be able to register in the other state.

ALANNA BONDY (Nevada Attorneys for Criminal Justice):

We support A.B. 416, and I have submitted my testimony ([Exhibit N](#)).

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):

I am appearing in support of A.B. 416 on behalf of my office as well as John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County.

Regarding the potential amendment proposed by Assemblyman Yeager, that would be beneficial and we would support it.

SENATOR OHRENSCHALL:

I will close the hearing on A.B. 416 and open the hearing on A.B. 423.

ASSEMBLY BILL 423 (1st Reprint): Revises provisions relating to certain attempt crimes. (BDR 15-1117)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

Assembly Bill 423 allows a court, when a defendant is granted probation, to retain jurisdiction to reduce a charge once the defendant finishes his or her sentence. This bill only applies to crimes known as wobblers wherein when a person is sentenced, the judge can decide whether to adjudicate the person of a felony or a gross misdemeanor. The word wobbler does not appear anywhere in our statute—that is the common legal term. The rationale is because they can wobble between a felony and gross misdemeanor.

We are only talking about attempt crimes. If you attempt to commit a Category C, D or E felony, that is a wobbler. When you are charged, it does not designate whether it is a felony or misdemeanor; it says felony/gross misdemeanor.

If a judge decides to give the person the felony at sentencing, the judge can indicate at that time the court will retain jurisdiction to potentially reduce it to a gross misdemeanor. The court must tell the person exactly what he or she has to do while on probation to earn the reduction. The judge would inform the offender he or she has to come back to ask for the reduction; it will not happen automatically. This information has to be in the written judgment of conviction. The offender would have a copy of the judgment which would explain exactly what he or she must do.

The bill does not apply if through the negotiation process, the defendant has agreed the charge be treated as a felony. This option would not be available in those cases nor would it be available if you ever had a charge reduced before.

This is essentially a one-time deal. If you are successful and you get a charge reduced, you do not get to come back the next time around and ask for the same kind of treatment. This only applies to offenses committed after the effective date of October 1.

SENATOR SCHEIBLE:

I understand the purpose behind this bill. The more I consider it, I get hung up because for people to take advantage of this drop-down option, they have to cleave to the wobbler, be adjudicated of the felony and then come back to court, withdraw their plea and enter a plea to a gross misdemeanor. In order to do that, the district attorney has to file the gross misdemeanor charging document. I do not know how a judge can order the district attorney to essentially do the dropdown to file the gross misdemeanor if not agreed to it in the original negotiations.

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

We support A.B. 423. The list of crimes enumerated in this bill are already a felony or gross misdemeanor, so we would not need to file new information in this instance. A new judgment of conviction would be filed by the court, indicating it is a gross misdemeanor treatment.

SENATOR SCHEIBLE:

Would this apply in cases where the district attorney agrees not to make any recommendation?

MR. JONES:

Yes. The defendant could ask the judge to retain jurisdiction for purposes of the reduction or dropdown. The only situations where it would not apply are: if the defendant and district attorney agree felony treatment is what the charge should be treated as or if they already received the benefit of the reduction as contemplated in the statute.

SENATOR SCHEIBLE:

If the district attorney and the defense attorney wanted to craft a drop-down negotiation, would it still make sense to do it with an attempt crime, or would the procedure then be to plead to a Category D felony dropdown to a straight gross misdemeanor crime?

MR. JONES:

I do not see anything in this bill which would preclude us from pleading somebody to a nonattempt crime and then reducing it to a gross misdemeanor later. The practice could go on as it currently does.

SENATOR SCHEIBLE:

If in the past somebody would have pled to an attempt to be adjudicated as a felony and then dropped down to a gross misdemeanor, there would no longer be any incentive to do that because the defendant should always then opt for the right to argue. Go in, argue for the gross misdemeanor and he or she does not get it, ask for the dropdown.

MR. JONES:

The negotiation process will work that out. It has to be a negotiation to get to that point; otherwise, we are looking at a trial.

Ms. BONDY:

We support A.B. 423, and I have submitted my testimony ([Exhibit O](#)).

Ms. BERTSCHY:

I am appearing in support of A.B. 423 on behalf of my office as well as John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County. This bill will help clarify the wobbler statute and help ensure justice is the same across the State.

SENATOR OHRENSCHALL:

I will close the hearing on A.B. 423 and open the hearing on A.B. 434.

ASSEMBLY BILL 434 (1st Reprint): Revises various provisions relating to offenses. (BDR 14-428)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

I will be working off of Proposed Amendment 5820 to A.B. 434 ([Exhibit P](#)).

WELDON HAVINS:

I support A.B. 434, in particular section 5.5 which will provide a level competitive playing field with students in other states where minor traffic violations are not misdemeanors but instead are civil infractions. This will allow students in Nevada to answer the question "no" when applying for residences

within and outside the State. Students from other states can check no because it is not a misdemeanor in other states.

We are in support of the new addition in [Exhibit P](#) of section 42, subsection 2, which, starting October 1, allows students to answer the question with a "no" retroactively. A student who had a speeding ticket would still be able to answer no on applications for audition rotations and residency positions.

GRAHAM LAMBERT:

As Nevada law currently stands, simple moving traffic violations are misdemeanors. This puts Nevada students at a great disadvantage as compared to those of surrounding states. While these offenses are misdemeanors in the State, they are civil infractions in California, Arizona, Utah, Idaho, Oregon and Washington. The significance being if two medical students with a speeding ticket apply for the same residency program, one being a Nevada student and other from one of the previously mentioned states, the Nevada student would declare a misdemeanor while the other student would not.

Criminal histories, such as a misdemeanor, can be detrimental when applying for residency. I am asking you to level the playing field for students of Nevada by passing [A.B. 434](#).

Section 5.5 of the Legislative Counsel's Digest provides certain convictions for traffic violations are not criminal convictions for the purpose of applying for employment, a professional license or any educational opportunities.

MS. BERTSCHY:

I am appearing in support of [A.B. 434](#) on behalf of my office as well as John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County. This bill is an important step in the right direction for our citizens.

SENATOR OHRENSCHALL:

I will close the hearing on [A.B. 434](#) and open the hearing on [A.B. 439](#).

[ASSEMBLY BILL 439 \(1st Reprint\)](#): Revises provisions relating to the imposition of certain fees, costs and administrative assessments in juvenile proceedings. (BDR 5-1093)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):

Assembly Bill 439 deals with fees, costs and administrative assessments in juvenile cases.

SAVANNAH REID:

The Policy Advocacy Clinic at the University of California, Berkeley. School of Law has been working on the issue of juvenile fees since 2013. With local, state and national stakeholders, we studied juvenile fee practices and outcomes across the Country. Today we are going to describe what we learned about the issue here in Nevada and present data we gathered over the last few months.

We categorize juvenile monetary sanctions into three categories. The first being juvenile fees which are typically authorized to permit local jurisdictions to charge youth and/or their families for costs incurred in the juvenile system.

The second are fines. Fines are meant to punish youth or their parents for the actions often in lieu of detention.

The third category of restitution is increasingly provided for in-state constitutions and is meant to make victims whole.

While restitution and fines are important issues today, we are only here to discuss juvenile fees. The issue of juvenile fees came to national attention in 2014, when the events in Ferguson, Missouri, brought to light the issue of fees and fines in the adult system.

In 2016, the Juvenile Law Center issued a national report cataloging the extent of juvenile fees in all 50 states. In a companion study to that report, research found juvenile fees imposed on system-involved youth increase recidivism. In our research, we found juvenile fees harm families and undermine youth rehabilitation. Across the State, many counties generate little or no net revenue from the fees after collection costs because the vast majority of families in the system are too poor to pay.

Nevada law authorizes, but does not require, local jurisdictions to charge juvenile fees. Courts are allowed to charge young people and their family fees. When young people are referred to juvenile court, they can face a host of court costs, including things like investigation, witness and transportation costs. Often, youth will then be assigned a free public defender to their cases and can

be charged a fee for representation by counsel. If youth are ordered to be held in a county or State detention facility, their families can be charged fees for detention costs, including costs of care. Courts can order evaluations and treatments such as drug testing and other medical testing which families can be required to pay for. If the youth is released on probation supervision or required to participate in a court program, a family can be assessed a fee for their child's participation in that program. As part of a court order, a youth may be automatically assessed a \$10 administrative assessment fee on top of any fine. Assembly Bill 439 would end the assessment of all these juvenile fees.

What is the impact of charging these fees to youth and their families? After speaking with stakeholders across the State, we found these fees generate low revenue, are racially disparate and cause high harm. Juvenile fee collection rates and net revenue are low because most families in the system cannot afford to pay. We spoke to stakeholders in each county and received data from approximately half of the counties. By way of example, in fiscal year 2017-2018, the Division of Child and Family Services (DCFS) collected less than \$8,000 in juvenile fees Statewide, Clark County reported less than \$24,000; the Eleventh Judicial District, which encompasses Lander, Mineral and Pershing counties, less than \$3,000; and Lyon County, less than \$2,000. The total amount of juvenile fees collected from these reporting counties was around \$100,000. Counties spend significant resources trying to collect these fees.

DAGEN DOWNARD:

Although we do not have fee collection data by race in Nevada, juvenile fees generally fall hardest on poor families and families of color. According to data from the DCFS Juvenile Justice Programs Office, black youth are overrepresented at every stage of the juvenile justice process. In 2017, black youth were 3 times more likely than white youth to be arrested and placed in county detention and 6 times more likely to be placed in State confinement.

Studies across the Country found juvenile fees harm families and increase recidivism, undermining youth rehabilitation and public safety. In Nevada, failure to pay fees exposes vulnerable families to a variety of statutorily created consequences. This can include collection actions, negative credit scores, contempt of court, driver's license suspension, prevention of record-sealing and criminal liability.

Some stakeholders suggested an ability to pay procedure, but we found this process is just as problematic. All jurisdictions which pursued juvenile fee reform have opted to repeal all fees and not institute ability to pay processes because in practice, counties end up either improperly charging low-income families and netting little revenue, or they spend significant resources to fairly assess families' inability to pay and net even less.

Nevada has been focused in recent years on juvenile justice reform. In 2016, the Kenny Guinn Center for Policy Priorities in Las Vegas documented the cost to youths and their families involved in the juvenile justice system. In March 2017, the Nevada Advisory Committee to the U.S. Commission on Civil Rights convened public meetings in both Las Vegas and Reno to hear testimony from juvenile justice stakeholders about the racially disparate impact of fees.

Nationally, many organizations focused on the negative impact of juvenile fees. As noted in my presentation ([Exhibit Q](#)), national associations of state court administrators, state chief justices, state legislatures, state public defenders and the American Bar Association have all called for the reduction or elimination of juvenile fees. The Reno-based National Council of Juvenile and Family Court Judges issued a resolution last year to encourage judges and legislators to eliminate fees and costs in juvenile courts which create unnecessary family hardship and undermine rehabilitation.

I have submitted letters of support from Joey Orduna Hastings ([Exhibit R](#)) and District Judge Egan Walker ([Exhibit S](#)).

It is for these reasons that jurisdictions which recently reformed practices eliminated juvenile fees. In 2017, the California State Legislature abolished all juvenile fees. Philadelphia, Pennsylvania, and Johnson County, Kansas, followed suit. This last year, New Orleans, Louisiana; Madison, Wisconsin; and Delaware County, Ohio, continued this national trend by ending juvenile fees.

Sections 1.5, 2, 3, 5, 11 and 17 eliminate fees for costs of support, representation by counsel and certain programs. Sections 4, 7, 8 and 12 eliminate fees for participation in work. Sections 1, 9, 13 and 15 eliminate fees for medical services, evaluations and treatment with specific language which allows for billing to public or private insurance and instructions for costs for nonapproved providers. Section 19 repeals sections in full for costs of support in local detention facilities and DCFS custody as well as administrative

assessments and juvenile proceeding expenses. Sections 6, 10, 16 and 18 make these conforming changes.

The Children's Advocacy Alliance submitted a friendly amendment ([Exhibit T](#)) repealing NRS 63.430 which permits fee assessment for placement in DCFS facilities.

SENATOR HANSEN:

Fees are supposed to help offset some of the costs when a juvenile commits a criminal act and is drug into the system, and a lot of the costs are passed on to the rest of the taxpayers. If you cause the problem, it is not unfair to insist you pay restitution.

The only problem I have in the bill is with the low numbers you mentioned. In my mind, that indicates judges are probably already, at their own discretion, waiving a lot of these fees.

MS. REID:

These are discretionary, so judges have the discretion to waive the fees. Although money is being collected, the costs to collect are significant.

SENATOR HANSEN:

The issue I have with the bill is we are taking away judges' ability. There are cases where a judge may want to impose fines and where there may be a need to help pay the fines. While they do make certain thresholds, they do have the ability to pay. It looks to me by the numbers that most judges are already recognizing it costs more to collect. The elimination of the judges' discretion is the problem I have with the bill.

ASSEMBLYMAN YEAGER:

We are not trying to eliminate fines.

SENATOR OHRENSCHALL:

As I understand the bill, nothing in it would affect restitution.

JARED BUSKER (Children's Advocacy Alliance):

We are in support of A.B. 439.

MS. BERTSCHY:

I am appearing in support of A.B. 439 on behalf of my office as well as John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County.

JAMIE RODRIGUEZ (Washoe County):

We are in support of A.B. 439. We do understand the intent of this bill of removing the assessments and the fees charged at judicial discretion for juveniles who come into our system. We are trying to address the difference between fees and assessments and ensuring costs of care do not shift to the County. We have submitted a friendly amendment ([Exhibit U](#)).

We have one additional request outside of the amendment before you. The reprint of the bill has 2 sections—one on page 9, line 22 and the second on page 16, line 9—addressing children who are doing community service and that waiver of liability while they are doing that community service. In those lines, it says "program or the employer." It is unlikely juveniles would have an employer-employee relationship with any organization they may be doing community service through. We would like to request the word "employer" be stricken and replaced with the word "entity."

FRANK W. CERVANTES (Director, Department of Juvenile Services, Washoe County):

The amendment is not intended to deny children quality access to health care. Fees and fines are different than medical coverage.

SENATOR HAMMOND:

What are the fees and assessments used for?

MR. CERVANTES:

The fees and assessments in Washoe County go back to the general fund.

ALEX ORTIZ (Assistant Director, Department of Administrative Services, Clark County):

We are in support of Washoe County's proposed amendment.

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SENATOR OHRENSCHALL:

I will close the hearing on A.B. 439 and adjourn this meeting at 10:33 a.m.

RESPECTFULLY SUBMITTED:

Eileen Church,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	2		Agenda
	B	5		Attendance Roster
A.B. 15	C	3	Office of the Attorney General	Proposed Amendment
A.B. 15	D	1	Patrick Guinan	Work Session Document
A.B. 117	E	1	Patrick Guinan	Work Session Document
A.B. 140	F	1	Patrick Guinan	Work Session Document
A.B. 272	G	1	Patrick Guinan	Work Session Document
A.B. 299	H	1	Patrick Guinan	Work Session Document
A.B. 347	I	1	Patrick Guinan	Work Session Document
A.B. 410	J	1	Patrick Guinan	Work Session Document
A.B. 432	K	1	Patrick Guinan	Work Session Document
A.B. 301	L	1	Patrick Guinan	Work Session Document
A.B. 286	M	4	Alan Freer / State Bar of Nevada	Executive Summary Legislative Committee of the Probate and Trust Section of the State Bar of Nevada
A.B. 416	N	1	Alanna Bondy / Nevada Attorneys for Criminal Justice	Letter of Support
A.B. 423	O	1	Alanna Bondy / Nevada Attorneys for Criminal Justice	Letter of Support
A.B. 434	P	11	Assemblyman Steve Yeager	Proposed Amendment 5820
A.B. 439	Q	15	Dagen Downard	Juvenile Fees in Nevada
A.B. 439	R	12	National Council of Juvenile and Family Court Judges	Letter of Support and Resolution from Joey Orduna Hastings
A.B. 439	S	3	Dagen Downard	Letter of Support from District Judge Egan Walker

A.B. 439	T	1	Children's Advocacy Alliance	Proposed Amendment
A.B. 439	U	2	Washoe County	Proposed Amendment