MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eightieth Session
February 26, 2019

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:04 a.m. on Tuesday, February 26, 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 Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Committee Counsel
Jenny Harbor, Committee Secretary

GUEST LEGISLATORS PRESENT:

Senator Joyce Woodhouse, Senatorial District No. 5

OTHERS PRESENT:

Sarah Coffman, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau
Homa S. Woodrum, Chief Advocacy Attorney, Aging and Disability Services Division, Department of Health and Human Services
Barry Gold, AARP Nevada

Nicole Thomas, Public Guardian, Douglas County
Mackenzie Baysinger, Intern, Human Services Network
Valerie Wiener, Chair, Task Force on Alzheimer's Disease
Mary Liveratti
Steven Hockenberry, Deputy Public Guardian, Office of the Public Guardian, Washoe County
Sue Weyl, Deputy Public Guardian, Office of the Public Guardian, Washoe County
Marla McDade Williams, Churchill County
Scott Anderson, Chief Deputy, Office of the Secretary of State
Alex Ortiz, Clark County
Karen Kelly, Public Guardian, Clark County
Jennifer Richards, Washoe Legal Services
Bailey Bortolin, Legal Aid Center of Southern Nevada
Marleen Lockard, Retired Public Employees of Nevada
Helen Foley, Nevada Assisted Living Association

CHAIR CANNIZZARO:
I will open the hearing with Senate Bill (S.B.) 121.

SENATE BILL 121: Revises provisions relating to fiduciaries. (BDR 13-99)

SENATOR JOYCE WOODHOUSE (Senatorial District No. 5):
I have written testimony in regard to S.B. 121 (Exhibit C). Last Session, I sponsored S.B. No. 121 of the 79th Session, which provided for an Interim study concerning the needs related to the behavioral and cognitive care of older persons. The bill passed and an Interim committee was formed. Senate Bill 121 is a result of recommendations by that committee.

SARAH COFFMAN (Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):
I will walk the Committee through sections of S.B. 121 while referencing my written testimony on page 3, Exhibit C.

As nonpartisan fiscal staff to the Legislature, I am neither for nor against any piece of legislation.

There are two distinct issues S.B. 121 seeks to address. The first issue relates to a durable power of attorney. Section 1 provides a durable power of attorney

for healthcare decisions form for adults with intellectual disabilities. This form provides for the designation of an agent to help the principal make healthcare decisions. Section 1 also provides for an end-of-life decisions addendum to identify the principal's desires should he or she become very sick and cannot speak for himself or herself.

Section 2, subsection 7 gives the principal the authority to act on his or her behalf after executing a power of attorney.

Sections 4, 5 and 6 make conforming changes related to a durable power of attorney.

The second issue addressed in S.B. 121 begins in section 7 and expands the means by which a person is referred to a public guardian to investigate his or her financial status, assets, and personal and family history. Section 7 also clarifies which entities can make referrals for public guardianship assistance.

HOMA S. WOODRUM (Chief Advocacy Attorney, Aging and Disability Services Division, Department of Health and Human Services):
I am the attorney for the rights of older persons, persons with a physical disability, intellectual disability or a related condition with the Aging and Disability Services Division (ADSD). I will provide educational testimony and information consistent with what we provided during the Interim.

There are two components to S.B. 121, one relating to the rights associated with powers of attorney and the other relating to public guardians. I will start with the subject of powers of attorney.

Senators Ohrenschall, Hansen and Hammond were involved with 2015 legislation that created a durable power of attorney for healthcare decisions for persons with intellectual disabilities. There was testimony about the importance of simplified language for individuals whose capacity may be compromised. The bill was successful.

The utility of the power of attorney for an adult with an intellectual disability form is incredibly useful in the field of Alzheimer's disease and dementia. When somebody realizes there is an issue or receives a diagnosis of dementia, he or she may want to take advantage of planning options that would head that person off from unnecessary guardianship. Unfortunately, because of that

diagnosis, attorneys, doctors and others may not want to deal with these individuals directly, even though the law states capacity is presumed until a judge determines it is not.

Providers tell people, "I do not believe you have capacity to consent to this dental procedure or to receive this important healthcare service," and it inappropriately diverts people to unnecessary guardianship. Though there have been significant reforms in the field of guardianship, the goal is still to direct people away from unnecessary and intrusive measures that open up their lives to court scrutiny.

The power of attorney for health care for an adult with any form of dementia is similar to the power of attorney for an adult with an intellectual disability and is meant to allow individuals who have received a dementia diagnosis to avail themselves of services from which they may otherwise be inappropriately barred. Capacity is often defined when a contract or circumstance is challenged. This creates a dichotomy between presuming capacity and the issue of liability for providers concerned with the reliability of a power of attorney assigned by someone with a recent dementia diagnosis. Senate Bill 121 provides individuals with a stopgap and options.

The average span from diagnosis to passing for dementia is about eight years. That is a lot of living and a lot of choice.

As an attorney operating in the social services field, I have learned there is a huge difference between memory and executive function. The ability to know how to balance a checkbook or to remember what someone had for breakfast is very different from the ability to know whom to trust and who matters to that individual.

Senate Bill No. 121 of the 79th Session created an Interim committee that looked at roles caregivers and supporters play. Guardianship is an expensive and unduly burdensome measure for caregivers who just want to help their loved ones make choices they are still able to make. This leads me to the provision of S.B. 121 that emphasizes when someone delegates to a fiduciary the option of being supported, he or she does not give away the right to make that decision.

I had a case in Elder Protective Services where the principal's power of attorney agent forced him or her to drink saltwater—and the facility allowed it. The

agent, who was suffering from mental health issues, believed the ocean had healing properties. Based on statute, the provider relied on the agent's direction in the face of the objection of the principal. This is contrary to fiduciary rights legislation because a fiduciary must act consistent with the wishes of the principal. The second part of this bill addresses this issue.

Finally, from an educational standpoint, there is an inconsistency across the State regarding how public guardians are permitted to participate in the option of guardianship as a piece of a plan of care for an individual. For example, some rural public guardians are able to work with social services agencies to identify if a person in their community is struggling and in need of support. A family member may be needed to fill out a power of attorney form but he or she is not ready to file for guardianship.

The difficulty ADSD faces is this inconsistency. In the summer of 2017, after reading *Nevada Revised Statutes* (NRS) 253, we determined the Clark County Public Guardian could not have these discussions or receive this information, which directly contradicts other sections of NRS 253 that require public guardians to receive petitions before they are filed.

Legislative intent is an important issue for the Committee to address. Where does the balance of supporting vulnerable persons fall? If it does not belong with the public guardian, then ADSD can look at other options.

SENATOR WOODHOUSE:
I have heard from two different parties about some possible issues, one of which Ms. Woodrum just mentioned. The language in section 3, top of page 16, seems to be problematic as I believe it is in conflict with one of the Chair's bills.

Secondly, Clark County has a proposed amendment to section 7. We are happy to work with anyone who has issues with various parts of this bill because we want to take the steps needed to pass this bill for individuals and caregivers who are suffering from Alzheimer's disease or other forms of dementia.

SENATOR PICKARD:
Ms. Woodrum, you mentioned the principal's ability to control the situation extending past the execution of the power of attorney. Since we are talking about people with diminishing capacity, would this undermine the principal purpose of this bill—which is to allow a competent person to step into the

shoes of the principal in order to make sure decisions are being made in his or her best interest?

There is a point at which decision making by the principal will become problematic. I ran into this issue when I handled guardianship cases. At what point do we terminate a power of attorney and move to a guardianship? There is statute where a fiduciary must adhere to the wishes of the principal, but there is no language in this bill that defines the timeline for transitioning to a guardianship proceeding. Can you explain how S.B. 121 works in that regard?

MS. WOODRUM:
I will discuss the disparity of power and the burden of proof. In the current model, the burden of proving an agent is not acting appropriately rests with the vulnerable person. The only mechanisms to resolve the issue is to perform an investigation and obtain a referral for an independent guardian to step in, terminate the power of attorney and act consistently with the rights of the individual. The goal is to turn that circumstance on its head where the person with the knowledge and the capacity would seek declaratory or other relief from the court. If the individual at the center of this situation is saying "I am not happy; I trusted my son, but now he has a gambling addiction and is making poor choices for me and I want out," statute requires providers to rely on the poor decision maker over the decisions of the person asking for help. The only way to trigger guardianship is through a third party filing versus forcing the caregiver to identify whether the individual has declined to a point where he or she is not accepting help.

This model is not working, and the reason guardianship is crucial in these situations is due to the Protected Person's Bill of Rights from S.B. No. 360 of the 79th Session, NRS 159.327. We also have independent, free legal counsel for these individuals. Guardianship becomes part of a continuum of support where there are options.

In the perfect scenario, a family comes together to help an individual, and everybody is happy. I do not get those cases, but I know they are out there. This legislation would be a boon in cases where we need to act quickly or are trying to force the bad actor to go to court.

SENATOR PICKARD:
Just to clarify, is S.B. 121 meant to create a point at which the agent—the person acting on someone's behalf—must bring the guardianship action? It is forced to the forefront when the agent says "This is really in your best interest," and the healthcare provider or other professional must follow his or her instruction. I am in favor of the bill if that is its intent.

I do not agree that only one witnesses must be unrelated to the situation. While a situation where a beneficiary whose spouse is the unrelated person could be problematic, it should be transparent to the people involved.

In regard to notaries needed for the end-of-life decisions addendum, there is a statement where the notary must declare that the people who are signing are competent. Is this a necessary provision and, if so, why?

MS. WOODRUM:
A notary is supposed to attest that the person who appeared before him or her is the person who appeared before him or her; no assessment about an individual's authenticity is to be made beyond that. Senate Bill 223 addresses this issue as well, and we are happy to entertain amendments to S.B. 121 at Senator Woodhouse's discretion.

SENATE BILL 223: Revises provisions relating to persons in need of care or assistance. (BDR 13-67)

SENATOR PICKARD:
I am concerned that neither bill addresses that attestation.

My second question relates to public guardians. Does Senate Bill 121 authorize them to perform investigations without the necessary training? Does this go beyond the scope of what they are currently prepared to take on?

MS. WOODRUM:
I cannot speak on behalf of public guardians. I can provide educational information about the nuances of NRS 253. I read all the testimony for all prior amendments to NRS 253, and I could not find anything that clearly cut one way or the other.

To your point about investigations, in 2007 there was a bill that removed a provision requiring public guardians to hire private investigators to perform this work. At the time, public guardians gave strong testimony about their ability and the need to do these investigations when determining whether there was a need for a guardian. An unnecessary guardianship makes a county liable for the expenses and needs of the individual who was unnecessarily placed in that system.

In 2009, there was an additional bill. We are asking for consistent guidance and clarity from the Committee because there are inconsistencies in NRS 253.

For purposes of disclosure, I represented the Clark County Public Guardian for ten years in Las Vegas and I was the attorney petitioning in many of these cases.

SENATOR PICKARD:
Is this bill going to authorize public guardians to hire a professional to perform investigations, or is it going to require the office to perform investigations?

MS. WOODRUM:
In the past, public guardians were required to use private investigators. They requested a change that would allow them to perform investigations regarding the circumstances of an individual. This was scaled back in 2007 to include proposed protected persons and persons for whom a guardian had already been appointed. In 2009 the word "proposed" was struck; there is no testimony explaining why that happened.

In Washoe County, the court does, at times, order public guardians to be investigators with the assistance of the District Attorney's Office. These are potentially pricey circumstances, and the question becomes "Who is going to bear the cost?" Aging and Disability Services Division has been communicating and working with public guardians about possibly providing Victims of Crime Act dollars through temporary assistance to fund attorneys to assist in investigations—it would be consistent with mandates of the Victims of Crime Act. The potential adult protective services expansion that will be coming through as a budget bill draft report may also provide funding.

The investigation piece deals mainly with individuals who have already been appointed a guardian because there is language in NRS 159 that allows recovery actions for the assets of someone who has been exploited.

The original financial language in the legislative history seems to be tied to the fact that public guardians were only to help people who were indigent, so they needed to determine the financial circumstances of those individuals. We have moved away from that model because someone may have money and still not have appropriate support or impartial individuals to assist them.

SENATOR PICKARD:
My concern is that public guardians, if they are not equipped or trained, could be held liable if an inadequate investigation is performed. If amendments are being proposed, we might consider strengthening the language that requires adequate training in this area.

SENATOR OHRENSCHALL:
Ms. Woodrum, you mentioned the term "related conditions" and that A.B. No. 224 of the 79th Session tried to change that term to developmental disabilities. Would this bill apply equally to those cases?

MS. WOODRUM:
Some of the interplay between the language of "related conditions" versus "disability" versus "dementia" depends on the context of the section you are in. The statute covering my role includes related conditions because it is meant to allow me to advocate for the rights of all vulnerable Nevadans whatever their age or circumstance.

The power of attorney for an adult with an intellectual disability is a very specific provision, as is the power of attorney for health care for an adult with any form of dementia. That does not mean a person with other conditions could not use this form, as forms and statutes are meant to be instructive and useful. I have often recommended people use the intellectual disability power of attorney form because it is clearer, more informative and has the same or similar legal effect. My understanding of A.B. No. 224 of the 79th Session was that it covered a fix for an entire chapter to address "or related condition" and convert that to what they believed was intended, so we would have to be specific and look section by section. I respect that you want to be sure any changes here are consistent with other bills, including A.B. No. 224 of the 79th Session.

SENATOR OHRENSCHALL:
Ms. Coffman, under NRS 253.220, if a public guardian is appointed to a ward through a guardianship action, he or she has the power to investigate the ward's financial status, assets and personal family history. The proposed language in section 7 appears to expand this investigative authority to include a potential ward. You mentioned there had been an issue with one public guardian refusing to perform those duties. Does statute allow public guardians to conduct investigations on potential wards for which there has been no appointment or no official guardianship and there is a problem with just this one county public guardian, or is there is truly a need for this expansion of authority?

MS. WOODRUM:
When Aging and Disability Services Division and Elder Protective Services met with the Clark County Public Guardian, the indication was that NRS 253.220 prohibited the receipt of an investigation already completed by Elder Protective Services for the purposes of determining whether a guardianship might be necessary. The referral process was not intended to trigger an unmitigated investigation into somebody's affairs, but to allow free communication between protective services and others. Due to continued amendments and changes in NRS 253, it is unclear what the ultimate role of the public guardian is and why some counties interpret the statute as allowing them to coordinate and assist before a guardianship is filed and other counties say it does not. This proposed language is meant to allow communication between law enforcement, the courts and ADSD with the public guardian as a very narrow focus. Whatever the Committee decides, clear direction is needed; there is not a particular advocacy for one outcome as much as the need to have this discussion.

SENATOR OHRENSCHALL:
Do you know if a public guardian in Clark County has to go to court to obtain a court order to conduct an investigation of someone's finances and assets before he or she has been appointed guardianship of a ward?

MS. WOODRUM:
As a stopgap since the summer of 2017, I have been the petitioner in all public guardian cases where we are attempting to bring services to an individual who is abused, neglected or exploited. I am represented by the deputy attorney general in those matters; we draft the petitions, I sign them under penalty of perjury and it triggers the court order that puts the public guardian in place.

The risk is that it puts me at odds with my obligation to advocate for these people their rights of independence. The way I have told myself this works is that it is merely a stopgap until we have legislative instruction; I would not want there to be a human cost if somebody was in dire need of assistance. We have people who need teeth pulled and cannot get services from dentists, and people who do not have someone in their lives and need the lifesaving services the public guardian provides. I do want to make it clear that we appreciate our partners—they do an amazing job.

We need know whether this law is as the Legislature intended or there is an inadvertent restriction regarding the ability of State protective agencies to communicate with their county partners.

BARRY GOLD (AARP Nevada):
There is a need to look at protecting the rights of not just the most vulnerable individuals among us but those who are on the journey to becoming vulnerable. How do we allow those individuals to be involved in decision making when appropriate while providing a safety net that has appropriate oversight, protects their rights and gives access to people who they want to help them? This bill addresses that delicate balance. The 348,000 members of AARP Nevada across the State support S.B. 121.

I realize this is not a hearing for the other bill but, for the record, we are also in support.

NICOLE THOMAS (Public Guardian, Douglas County):
I will speak on behalf of the importance of passing S.B. 121, section 7, regarding the investigatory powers of public guardians in the State. We already conduct these investigations.

I am testifying as an expert in my field. I have served as a public guardian for Douglas County since my appointment in November 2015. I am a national certified guardian. I have over ten years of experience in public mental health, including targeted high-fidelity wraparound case management, substance abuse, adult mental health and geriatrics. I have a master of science degree in clinical professional counseling, a master's degree in education with a focus on developmental disabilities and a bachelor of arts degree in political science with a minor in psychology. I also serve on the Office of the Attorney General's End Abuse in Later Life Project Coordinated Community Response.

I will discuss the importance of referral systems and investigatory powers of the public guardian for exploitation and abuse cases. Senate Bill 121 speaks specifically about referral information from ADSD, law enforcement or the court.

As a proactive guardian, my caseload limits for guardianship are between 30 to 50 annually—most of these clients are indigent. I work in a small office consisting of three full-time employees, and we often receive phone calls from community partners who are unable to intervene on behalf of potential protected persons because information cannot be disseminated until guardianship is established.

By receiving referrals prior to guardianship, we are able determine if a guardianship is appropriate, if lower levels of care can be established and if a guardianship is of the least restrictive environment for the protected person. Without receipt of this vital information, unnecessary legal fees and time are spent filing guardianships that are dissolved after that guardianship is deemed inappropriate.

A rural guardian is limited by resources. By working with law enforcement, the courts and ADSD, we are given the ability to protect clients with the least restrictive measures. Investigation prior to guardianship being enacted allows us to determine needs, make assessments and ensure the measures to protect a client is of the utmost priority. By reducing hurdles and obtaining this information, the public guardian can help community partners and families administer a better delivery of service.

Holding onto guardianship referrals until we are able to obtain the necessary information means our clients continue to be in a position of exploitation or abuse.

I have heard prior testimony stating public guardians should not be in receipt of this information, but there is no safer or more appropriate venue for it. Judges hold me to my obligation as an ambassador to the court to work within my statutes and perform due diligence to protect those who are in need.

We must fill the gaps in service when it comes to the needs of clients, and we need to be proactive in gathering the appropriate information that protects our clients from harm and abuse.

I made it a mission within my office to investigate and pursue these cases to the utmost and ethical delivery. I work closely with law enforcement, court advocacy programs, community partners and victims of crime programs within my community to serve as a community response to the underserved population.

We are not the solution every time, but when all other community support has failed and when proposed protected persons are exploited and abused, we need to be able to step in and do what we vowed, which is to serve and protect ethically, appropriately, and in a timely fashion.

By continuing to dance around "program silos" and block appropriate community referrals from being executed in a timely manner, we are failing our communities and our vulnerable population. The public guardian is not an isolated entity; we are an integral part of the social services model. I urge the Committee to think about rural public guardians and the effect S.B. 121 will have on our rural communities. I support the amendments to NRS 253.020 because I already perform investigations.

SENATOR PICKARD:
Performing investigations is an activity your office would not typically have as part of a curriculum of training. What training is required? If no training is required, how do you make sure you are adequately investigating those issues?

MS. THOMAS:
Investigation was trial by fire when I first became a public guardian, but it is an integral part of my position. We do not have much information about an individual when we are handed a case, so administrators and public guardians perform investigations—including family members. Social services regularly facilitate case managers to perform investigations and develop plans of care.

I was not prepared for investigations in financial exploitation cases when I came into this position. Financial exploitation classes are offered through the National Guardianship Association and are required as a fiduciary to investigate, so those classes are a part of the normal course of our certification and education.

SENATOR PICKARD:
Is that the extent of the training?

MS. THOMAS:
In Nevada, there is no required training for public guardians, so yes, that is the extent of the training.

MACKENZIE BAYSINGER (Intern, Human Services Network):
I am the social work intern for the Human Services Network. We support S.B. 121.

VALERIE WIENER (Chair, Task Force on Alzheimer's Disease):
I am bifurcated. As an individual I support the measure. I am also here in neutral as Chair of the Task Force on Alzheimer's Disease (TFAD) because we did not have the opportunity to review the bill.

MARY LIVERATTI:
I attended the Interim committee on S.B. No. 121 of the 79th Session, and I support S.B. 121.

STEVEN HOCKENBERRY (Deputy Public Guardian, Office of the Public Guardian, Washoe County):
I am going to read a joint statement that Susan Weyl and I have written (Exhibit D) which states the Washoe County Public Guardian's Office objects to the expansion of the investigatory authority for public guardians as proposed in section 7 of S.B. 121.

Additional staffing will be required at an annual cost to the county of equal or greater than $269,995.62.

The purpose of this legislation is not clear and the term "potential protected person" is not defined.

Additionally, Elder Protective Services has authority to access financial and medical records.

Law enforcement and Elder Protective Services investigate allegations of abuse and neglect. We are not hired as criminal investigators and do not have staff qualified to perform investigations relating to allegations of abuse and neglect.

The courts already have the power to appoint a public guardian to determine the scope of a guardianship, and the Second Judicial District Court does so regularly.

In addition, investigations as proposed in S.B. 121 would not be performed in a timely manner due to current workloads; existing clients would be given priority.

We also have concern regarding the authority provided in section 7 of S.B. 121 to invade an individual's liberty, interests and privacy based on a third party referral. Given the recent challenges to guardianships, it would seem that more judicial oversight would be needed, not less.

With the additional "personal and family history" language in S.B. 121, a public guardian would be authorized to investigate the affairs of family and friends based solely on the referral of a third party. In addition, the records of a public guardian are public while those of other State agencies are confidential. This creates a significant liability to counties.

The broadening authorities of S.B. 121, section 7, are a breach of the liberty interests of Nevadans. It is an overreach of the authority of a public guardian and will tax the budgets of public guardian offices Statewide.

SENATOR OHRENSCHALL:
Regarding the language in NRS 253.220, has it been difficult for the Washoe County Public Guardian's Office to obtain a court order to review these types of records?

MR. HOCKENBERRY:
We do not obtain records ourselves; we are given authority by the court. A judge will regularly give an order allowing us to delve into somebody's finances, personal history, medical records, etc.

SENATOR PICKARD:
Does your office perform independent investigations, do you reach out to others, or do you wait until that information is provided to you?

MR. HOCKENBERRY:
We act on a court order, so we do wait for the legal authority for us review those records. Agencies regularly ask for us to be given that authority; we do not ask for that information.

SENATOR PICKARD:
And that is on the proposed protected person's behalf?

MR. HOCKENBERRY:
Sometimes it is. Sometimes a guardianship already exists where there are difficulties in the guardianship, and we are appointed to investigate.

CHAIR CANNIZZARO:
Did Senator Pickard just ask about a potential protected person and you already investigate if you have a referral?

MR. HOCKENBERRY:
We act on court orders for proposed protected persons. The definition of a potential protected person is unclear—I am assuming it is somebody for whom a referral may or may not be made for guardianship.

CHAIR CANNIZZARO:
It appears the language in section 7 would be in relation to a criminal or civil matter that a referral from either law enforcement, a court or ADSD was issued. There is some conflict between the language in this bill versus your testimony regarding a third party and the lack of authority to investigate.

SUE WEYL (Deputy Public Guardian, Office of the Public Guardian, Washoe County):
A public guardian in Washoe County does not act as a petitioner. We have third parties who petition for us, which gives us the authority to act on an individual's behalf. In order for us to access any sort of information about a person, there has to be an order directly from the court. If we receive information from ADSD or law enforcement, we suggest they utilize their counsel to petition the court to grant us authority to act as an investigator.

CHAIR CANNIZZARO:
The language in section 7 reads "in connection with a criminal or civil matter relating to the potential protected person." It seems as though the language in

this bill does not change the process, it just changes whether investigatory authority is given for individuals for whom guardianships have already been granted or may be sought.

MR. HOCKENBERRY:
Yes, and that is part of the problem. In order to protect everyone's privacy, we should not have the right to investigate a potential ward or protected person's medical and financial affairs without a court order.

CHAIR CANNIZZARO:
Would including the language "if there is a court order" solve that issue?

MS. WEYL:
The language is overly broad so it is difficult for us to be able to do that. Our office hires and trains people as guardian case managers to provide the services of a guardian. We are not trained as investigators, and there are no classes we can attend. We are capable of sifting through information and identifying things that may be anomalous, but we do not have any authority to act—we report those issues to the court.

In terms of the burden on the office, we are not trained as investigators. The district attorney's office that we work with has those skills, but our focus is advocating for an individual to be in the least-restrictive environment available. We are not forensic accountants who dig through people's documents, although that has been requested of us.

CHAIR CANNIZZARO:
Your testimony suggesting public guardians would be given broad investigative authority under this bill is problematic. As I read this statutory language, an investigation has to be in connection with a criminal or civil matter wherein a referral has taken place. This seems to be the same process you are using for individuals who are subject to a guardianship.

MR. HOCKENBERRY:
We receive our court orders from Judge Egan Walker of the Second Judicial District Court. It has been many years since we have received court orders or referrals from any other court. This legislation contemplates those referrals also coming from ADSD and law enforcement.

CHAIR CANNIZZARO:
Maybe we can work out some clarifying language in this regard.

SENATOR PICKARD:
I have concern regarding the difference between "proposed" and "potential" because "potential" is a much broader class of person. However, the Clark County proposed amendment (Exhibit E) might resolve this issue.

MARLA MCDADE WILLIAMS (Churchill County):
I am representing Churchill County. We have submitted an amendment (Exhibit F) to expand the parties that are able to make referrals.

We recognize that Clark County's amendment is much different than ours, but we do want to go on record in support of the provisions of S.B. 121 as it will be helpful for small counties like Churchill County that perform investigations.

SCOTT ANDERSON (Chief Deputy, Office of the Secretary of State):
I have concerns for the notarial language in S.B. 121, although it appears it is going to be addressed similarly to the way it is addressed in S.B. 223 and in Assembly Bill 65.

ASSEMBLY BILL 65: Revises provisions relating to notaries public. (BDR 19-472)

This is problematic language as it does not meet the definition of an acknowledgment. We are in support of the removal of that language.

CHAIR CANNIZZARO:
It does appear some of the amendatory language in S.B. 121 addresses that issue, but we can discuss and change that should the Committee wish to adopt the proposed changes we will hear about in S.B. 223.

MR. ANDERSON:
There are areas of concern within S.B. 121 other than the language on page 16 that we brought to Senator Woodhouse's attention.

ALEX ORTIZ (Clark County):
I am here with Karen Kelly in regard to S.B. 121 and spoke with the sponsor regarding our concerns and our proposed amendment.

KAREN KELLY (Public Guardian, Clark County):
I will be reading from my written testimony (Exhibit G). We are here today to testify as neutral and to work with all stakeholders to come up with an amendment that will benefit everyone.

The Clark County Public Guardian's Office does not have access to a protected person's financial and personal information until after a judge has reviewed a guardianship petition and adjudicated that person as incapacitated and in need of a guardian. Our office should not have access to this private information before a judicial review of the evidence.

The language in NRS 253.220 changed in 2007. It is important to note the language regarding the ability to conduct an investigation changed from being able to access information before an appointment is made to after.

In 2009, an additional change to NRS was made restricting access to information before the appointment of guardianship when a person is considered a "proposed protected person," to after appointment when the person is considered a "protected person."

We believe the intent of S.B. 121 is to give the Public Guardian's Office the ability to conduct investigations to determine if a guardianship is necessary, then to petition the court for the appointment of the office. We do not petition for the initial appointment of a guardian as it is a conflict of interest for a public agency to determine who requires the services of a guardian and then request that same agency be appointed as that guardian.

While Nevada's guardianship system has made changes to provide safeguards in a guardianship, this legislation is a step backwards as it allows other agencies and more people access to private information before a person has been deemed incompetent.

In addition, this bill will result in increased workload at a cost of approximately $240,000 to the Clark County Public Guardian's Office.

MS. WIENER:
As mentioned earlier, I appear before you both as an individual and as Chair of the Task Force on Alzheimer's Disease. While I support S.B. 121 as an

individual, I cannot provide a TFAD position on this bill. I have prepared written testimony (Exhibit H).

I would like explain the work TFAD has done in relation to guardianship for Nevadans with Alzheimer's disease and other forms of dementia. We meet six times a year and update the State Plan every two years as opposed to the "as needed" requirement in statute. On February 1, Governor Sisolak and Legislators received "The Nevada State Plan to Address Alzheimer's Disease" (Exhibit I) for 2019. This is the fourth produced on behalf of TFAD.

Within this plan, we address recommendations that we have reviewed as well as recommendations that were addressed in prior plans and are listed in the appendix. Past recommendations are reviewed each cycle to determine if they should be brought back.

The 2019 State Plan includes a new recommendation that complements the intention and substance of S.B. 121. Recommendation #12: Guardianship (2019), page 13, Exhibit I, also supports the highest level of implementation. It encourages essential education for legal professionals who, in direct or indirect capacities, work with guardianship issues that involve persons with Alzheimer's disease and other forms of dementia.

As Recommendation #12 states, persons with Alzheimer's disease and other forms of dementia should have both access to legal counsel and the confidence that these legal professionals will provide equitable, reliable, responsible and unexploited services.

The importance and value of ongoing education are immeasurable and essential. Licensed professionals are urged to continue legal education in the area of Alzheimer's disease and other forms of dementia through a variety of agencies. This information would help legal professionals stay current with dementia and how it affects a person's independence, decision-making and—as addressed in S.B. 121—advanced care planning.

CHAIR CANNIZZARO:
We have work to do on the bill, and I know the bill sponsor will be amenable to discussions.

I will close the hearing on S.B. 121.

VICE CHAIR HARRIS:
I will open the hearing on S.B. 223.

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):
I am here introducing S.B. 223, which sets forth additional protections for some of our most vulnerable individuals, those who are in need of care or assistance and are subject to a power of attorney.

Last Session, we addressed a number of issues in the adult guardian system. The impetus for a lot of those changes came as a result of several reports from families, neighbors and friends regarding loved ones who were subjected to numerous abuses in the adult guardianship court system. These issues ranged from cases where individuals were placed unknowingly under a guardianship where a professional guardian, rather than a family member who had been bypassed, was appointed and given full rein over the estate and the health and well-being of that individual. Some of these professional guardians wiped out estates of individuals, profiting from the sale of assets, including heirlooms and homes. These guardians placed the individuals for whom they were responsible in assisted living facilities, isolating them from friends and family. These abuses were widespread and common subjects of conversations I had at the door with constituents throughout my district, particularly in the Sun City Summerlin area.

To address and remedy these abuses, a number of bills were passed last Session to ensure individuals who were subjects of guardianships had proper representation. We included requirements for guardians to submit documentation of accounting to the court on a regular basis, protections in the law were put in place to ensure the least-restrictive alternatives to guardianship were considered first, and as part of S.B. No. 360 of the 79th Session, we placed into law the rights of individuals who are subject to a guardianship order.

These rights include the right for individuals to communicate with loved ones, the right to know what is happening with their court cases and to make their wishes heard, the right to have access to their money and bank accounts, and the right to stay in their homes or live where they are most comfortable.

Efforts to protect our most vulnerable individuals are ongoing, and we have an obligation to make changes in the law when needed to ensure those protections. In speaking with a number of community partners since last Session, it became apparent that some needs are still unmet.

There is a need to strengthen some of the protections governing the residency and placement of individuals in assisted living facilities, skilled nursing facilities, or secured residential homes, especially in cases involving powers of attorney.

I was also made aware of several issues involving instances where individuals were residing in such facilities but were transferred to medical facilities and lost their placement without any opportunity to be made aware of any such transfers, to discuss it, to consider options to those transfers or what would happen subsequent to the transfers.

Senate Bill 223 attempts to address several areas wherein our guardianship system is affected and the parameters for when, where and how a person may be placed in an assisted living facility, a facility for skilled nursing, or a secured residential long-term care facility where a power of attorney is in place. Senate Bill 223 also seeks to define notice requirements surrounding the transfer from a facility for intermediate care or residential facility to a medical facility or facility for the dependent.

Finally, S.B. 223 corrects errors in wording surrounding the language of a notary declaration that was amended during last Session's work to provide a lockbox resource for personal documents with the Office of the Secretary of State.

I will review some of the sections of the bill and describe what this bill attempts to do.

Section 2 of S.B. 223 requires a power of attorney to expressly grant authority to place an individual in an assisted living facility, a facility for skilled nursing, or a secured residential long-term care facility.

The requirement to expressly grant this authority is critical to ensuring the needs and wishes of the person granting the power of attorney are met and to prevent the types of abuses we have seen in the past.

Section 6 of S.B. 223 amends NRS 449A to include certain notice provisions to an individual who is currently in a facility for intermediate care or a group residential facility before that individual may be moved and placed into another medical facility, a facility for the dependent or when that individual may be discharged from that facility.

Specifically, section 6 requires the facility where an individual resides to provide written notice of the intent to transfer to that person 30 days prior to any such transfer or discharge.

Ten days after providing such notice, the individual—the patient—or their authorized representative must be given an opportunity to meet with the administrator of the facility to discuss the transfer.

These notice requirements are not applicable where there is a voluntary discharge or transfer of a patient to another medical facility at the request of the patient, or where there is an immediate or necessary need for transfer to another medical facility for the health and well-being of that individual.

Finally, sections 1 and sections 3 through 5 make changes to the notary declarations used in applying for a guardianship. In S.B. No. 229 of the 79th Session as was encoded in NRS 159.0753, the Secretary of State was tasked with preparing a notary form for use in the guardianship application and was responsible for making that form available on the Nevada Secretary of State website.

As written, the certificate of acknowledgment of notary public contains a statement that is different from standard acknowledgment language and has created a problem for notaries to execute. This language includes a statement from the notary that he or she declares under penalty of perjury that the persons whose names are subscribed in the instrument appear to be of sound mind and under no duress, fraud or undue influence. Notaries have refused to notarize those documents because this additional language requires them to make assumptions and determinations of competency for the persons appearing in front of them. Typically, a notary will make a declaration under penalty of perjury that the individual appearing in front of them is in fact the person who is signing that document, but other parts of the statute do not require them to make such a declaration. Senate Bill 223 seeks to strike this additional language to better align the guardianship process with the duties and responsibilities of notaries.

Additionally, I was asked by Ms. Woodrum to include language in section 6 of this bill that requires notice of the discharge of an individual from a facility also be given to the Office of the State Long-Term Care Ombudsman. We will work on an amendment to that effect for Senate Bill 223.

This bill is another critical piece that ensures there are protections in statute for our most vulnerable people in statute. When someone is the subject of a power of attorney, it is important he or she is aware and is okay with being moved or transferred to a particular living facility. Senate Bill 223 seeks to address that issue as well as having guardianship orders placed with proper notaries.

JENNIFER RICHARDS (Washoe Legal Services):
I work at Washoe Legal Services; our sister organization is Legal Aid Center of Southern Nevada. I am in the guardianship unit, and my entire practice is focused on representing protected persons who are undergoing proceedings. I submitted written testimony (Exhibit J).

The goal of this bill has devolved from a lot of cases where persons are placed in secured, long-term residential facilities—we call them locked facilities. These are facilities where freedom is restricted and residents cannot come and go as they please—they are locked in the facility. Some facilities have outside courtyards, others do not. It is a huge restriction, and when persons are placed there under a power of attorney that makes no mention of their desire or willingness to be placed in such a facility, it is very concerning. This is especially true when that person makes such comments to me as "Why am I here? I do not want to be here, I want to go home, I want to smell the flowers, I want to have my dog or my pet." We need to do a better job with advanced care planning by including language in the power of attorney to allow families to plan for these events and for an individual to express his or her wishes.

In contrast, we allow exploitation or we allow facilities to accept powers of attorney without making clear the agent has that authority. I have had many clients who were placed in locked facilities, and the agent under the power of attorney was the subject of a law enforcement or elder protective services investigation, had been financially exploiting, abusing, neglecting or isolating the individual, and used that power of attorney as a means to dump them in a placement.

The language in this bill will have a positive impact on both sides of the aisle. Families will be allowed to plan for and avoid unnecessary guardianship and litigation, and powers of attorney will be strengthened to avoid its exploitation and abuse.

If a guardianship does need to be sought for placement authority, it is for a succinct purpose and is clear to hospitals and facilities.

The second part of the bill came about through cases we have seen at our office, at our senior law center and in the community. There is statute under the *Code of Federal Regulations* that governs discharges and transfers for certain types of facilities, but the ones mentioned in this bill do not fall under any oversight or regulation. They do not fall under the landlord and tenant statute. A person living in an apartment has more protections than if he or she lives in a group home or assisted living facility. This bill cleans up that language and creates a standardized notice requirement.

I support adding an ombudsman provision to this bill. A wider array of this vulnerable population who are unaware of their rights and are not able to speak up because of their predicament may be helped if ombudsmen receive notices.

BAILEY BORTOLIN (Legal Aid Center of Southern Nevada):
Both Washoe Legal Services and Legal Aid Center of Southern Nevada have been intimately involved with the guardianship reforms that have taken place during the last two Interims and last Session. We have worked hard to make sure guardianship is a means of last resort, and we take steps to respect and protect somebody's due process rights. There may be workarounds in that regard.

As we try to encourage people, where appropriate, to obtain a power of attorney prior to a guardianship, additional protections for the abuses we see in that system may be needed.

SENATOR PICKARD:
Having had some experience in this area helps me to understand the intent of the bill and clarify some issues. The questions I have relate back to S.B. 121.

First, in section 2, subsection 3, I understand the intent is to require the agent to be given express authority in the power of attorney, and I agree. What is not addressed is the ability of the principal to retain the authority that was addressed in S.B. 121. I want to make sure the intent is consistent. Even though we are saying the power of attorney must include express language, we do not address the ability of the principal to override that as was discussed in

the hearing for S.B. 121. Is that the intent of the bill? Do you think the language here is sufficient?

SENATOR CANNIZZARO:
The language in S.B. 121 and S.B. 223 are not mutually exclusive per se. Should the changes outlined in S.B. 121 as they apply to durable powers of attorney be adopted, those powers and duties would apply equally to any other power of attorney.

Senate Bill 223 is more specific in that, when a power of attorney is formed, it expressly includes the wishes of the principal as to whether he or she would want to be placed in a facility and under what circumstances. Senate Bill 121 addresses more so the circumstances once a power of attorney is in place.

SENATOR PICKARD:
It is about clarity. I want it to be on the record if not in the language of the bill. The notice requirements in section 6 could be interpreted as no transfer can take place for any reason until this notice is given. This would help protect the protected person's interests from abusive agents, but what if there is a facility that is less interested in the care of the protected person and the agent wants to immediately move him or her? Maybe the agent just wants a cheaper place. These situations are not covered under section 6, subsection 2, paragraph (b) which allows for a faster transfer to a level of higher care.

Is there language that can be added to clarify that this notice requirement will not undermine the ability of an agent to make an immediate transfer with or without cause?

MS. RICHARDS:
This is separate from the power of attorney amendments, so language regarding discharge and transfer would not necessarily be under a power of attorney. We are talking about a group of Nevadans who may live in either a residential group home or a type of assisted living facility and, under Nevada law, they fall into a loophole of receiving no notice if they are evicted from the facility. Certain types of facilities are governed under federal law, but these types are not and do not fall under regular landlord and tenant law.

The language in the statute does clarify cases where there is a medical emergency that requires transfer or if there is a voluntary agreement. It is not

any-and-all transfers; it is meant to put in a standardized notice requirement for individuals residing in facilities.

Discharges and transfers from facilities vary depending on the contract that was signed. This has led to clients calling our office after being told to leave within a week, sometimes because they have expressed displeasure or disagreement with management at the facility. They have a right to be heard.

With the amendment to include notices to ombudsmen that Senator Cannizzaro mentioned, we could also have some advocacy for individuals in those instances as well.

These are two separate situations, and the intent of the provision is not to bar all transfers but to provide notice.

VICE CHAIR HARRIS:
Senator Pickard, section 6, subsection 2, paragraph (a) may address your concern about when a patient chooses to leave. I believe there is a carveout for not requiring the notice.

SENATOR PICKARD:
Section 6, subsection 2, paragraph (a) applies if the patient elects to transfer; it does not appear to apply to an agent who acts on behalf of an incapacitated or impaired principal.

Regarding powers of attorney, one of the things I saw as we addressed this issue last Session was that people appeared to act inappropriately or were not competent to act as agents. This was a protection for the protected person, so we made sure there was no appearance of undue influence or manipulation on the part of those asking for this power of attorney.

Power of attorney statutes and the forms that we have used in all sorts of different instances sometimes do and sometimes do not require this, so I did not view this as language that was apart from an expectation of notaries in certain circumstances. Is the intent to delete this from all notarial acknowledgments or just in the context of guardianships?

SENATOR CANNIZZARO:
The bill has specific sections in which that language would be stricken, so those would be the sections where that language would be amended out, not outside of the sections that are not in this bill.

With respect to notary declarations, I agree that Mr. Anderson could provide additional perspective, but typically a notary attests that the person standing in front of him or her is the actual person signing that document. The additional language that ensures people are not under duress creates problems for individuals who are trying to have those documents notarized—which they are required to do.

Amending that language out does not nullify the other protections we have placed into law that ensures individuals who are the subject of a guardianship have protections ranging from being entitled to legal counsel to having certain rights that are enshrined in statute.

Between those fixes, simply amending this language out of a notary authorization and attestation would not result in harmful actions that are being allowed to take place. There are many other protections within the law to ensure that is not the case.

SENATOR PICKARD:
One of the things we try to do is avoid inconsistencies across the entire statutory scheme, and I am concerned we may have language that differs from similar language elsewhere. Perhaps this is something we should look at on a broader scale.

SENATOR SCHEIBLE:
I have a basic question about powers of attorney. In a typical power of attorney, if a particular power is not specified, would the agent by default have the authority perform that function?

MS. RICHARDS:
In my legal opinion, powers of attorney are to be interpreted narrowly. This has been an ongoing discussion, and it is important to clarify the language in this bill because there are facilities that accept powers of attorney for placement of persons—including in locked facilities—with no mention of that specific power in the document.

Instead of operating in this vague area of law, it is important we provide the option for advanced care planning and the ability for persons to make their choices known through this bill. This could also help us avoid a lot of unnecessary guardianship petitions which can be lengthy, traumatic experiences.

We are seeking clarification from this Body so Nevadans can have the right to determine, through the document, how and where they want to live. Of course, one can hire an attorney to draft a specialized document that deviates from what is in the template, but regular folks are going to use the statutory form. If we can improve upon that, we will help everyday Nevadans who do not have a lot of money, who are not creating large trusts, and who are not doing huge estate planning packages.

VICE CHAIR HARRIS:
Does S.B. 223 provide the guidance you have been seeking?

MS. RICHARDS:
I certainly hope so.

Another issue regarding powers of attorney is compensation. In Nevada, an agent is entitled to reasonable compensation for acting as a power of attorney. I usually draft powers of attorney to exclude that when it involves family members.

The more specific we make the language in the template form, the better. It is difficult to go to a locked facility and have someone ask "Why am I here? What has happened? I do not want to be here. I want to go home," and you cannot locate in any of the legal paperwork a reason why he or she is there and who had the authority to place that individual there.

We will see happier individuals if we can strengthen their ability to make their own choices. I have cases where people passed away at home after I fought to get them there. That is difficult when they should not have been in a locked facility in the first place.

MARLEEN LOCKARD (Retired Public Employees of Nevada):
The Retired Public Employees of Nevada supports this measure.

MR. ANDERSON:
I want to thank Senator Cannizzaro for the consideration of the language in the sections in regard to the notarial language in the declaration and the Committee's consideration of its removal.

To answer an earlier question, the acknowledgment language in NRS 240 is inconsistent with this language. There is very specific language in NRS 240 that sets out what needs to be in an acknowledgment, and therefore this additional language causes some problems. It also requires a notary to make a declaration of his or her own statement—the acknowledgment is just a declaration that the person is sitting in front of him or her and is the person acknowledging the document.

MS. WOODRUM:
I am testifying in neutral on behalf of ADSD. Hearing both bills in the same meeting indicates many eyes are on these important Nevadans and the issues they face.

As Senator Cannizzaro mentioned, in terms of aligning federal discharge requirements with this bill, a minor amendment will be proposed from the Office of the State Long-Term Care Ombudsman. If ombudsmen receive a discharge notice, they will be able to act quickly and have delineated roles to advocate for a resident and assist him or her in dealing with what Ms. Richards identified as a gap in the eviction process.

SENATOR PICKARD:
I recognize, Mr. Anderson, that NRS 240 and the acknowledgment language placed there is for all acknowledgments. As I understood this last Session, we are not violating any rules by adding language. We are talking about an appearance issue where the notary is saying it does not appear an individual is under any undue influence. Is it your understanding that NRS 240 precludes this additional language, or do we not want to create additional burdens on notaries?

MR. ANDERSON:
In speaking with the National Notary Association and our deputy attorneys general, there was some inconsistency within that language, that the language within NRS 240 is specific, and the adding of that language was problematic. We discussed this issue with the Guardianship Commission and Chief Justice James W. Hardesty of the Nevada Supreme Court. We received numerous

complaints from notaries saying "I am not going to notarize this because it contains this additional declaration language."

While we will not penalize a notary who includes this language, those seeking to have their documents notarized were having a difficult time finding a notary who would actually notarize these documents.

SENATOR PICKARD:
That addresses a practical side I was considering.

HELEN FOLEY (Nevada Assisted Living Association):
These are very difficult issues. Some residents in assisted living may need a higher level of care. They are waiting for Medicaid to approve their movement from an assisted living center to a nursing facility, and there might be a delay with the family or other things. I have received suggestions for putting a temporary guardianship in place to assist with these issues. It is very confusing at times for residents, especially for those with Alzheimer's disease or other types of dementia, but we want to make sure they get into a facility and Medicaid follows them as quickly as possible. Neither assisted living centers nor nursing facilities should have to take someone pending a decision on whether they will even be paid. We are happy to work with both sponsors to make sure the language of the bills are as good as they possibly can be.

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VICE CHAIR HARRIS:
I will close the hearing on S.B. 223. The meeting is now adjourned at 9:59 a.m.

RESPECTFULLY SUBMITTED:

Jenny Harbor,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE:

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	6		Attendance Roster
S.B. 121	C	6	Senator Joyce Woodhouse	Testimony
S.B. 121	D	2	Washoe County Office of the Public Guardian	Testimony
S.B. 121	E	3	Clark County	Proposed Amendment
S.B. 121	F	1	Churchill County	Proposed Amendment
S.B. 121	G	2	Karen Kelly / Clark County	Testimony
S.B. 121	H	4	Valerie Wiener	Testimony
S.B. 121	I	24	Task Force on Alzheimer's Disease, Department of Health and Human Services	The Nevada State Plan to Address Alzheimer's Disease
S.B. 223	J	1	Jennifer Richards	Testimony