MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eighty-first Session
April 27, 2021

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:01 p.m. on Tuesday, April 27, 2021, Online and in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Assemblywoman Sandra Jauregui, Assembly District No. 41

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Rocky Finseth, Nevada Realtors
Joel Just, President, Community Association Management Company Executive Officers, Inc.
Brad Spires, President, Nevada Realtors
Maggie O'Flaherty, Real Property Section, State Bar of Nevada
Michael Buckley, Chair, Executive Committee, Real Property Section, State Bar of Nevada

Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry
Teresa McKee, CEO, Nevada Realtors
David Dazlich, Vegas Chamber
Christopher DeRicco, Chair, State Board of Parole Commissioners, Department of Public Safety
Jennifer Noble, Nevada District Attorneys Association
Kendra Bertschy, Offices of the Public Defender, Washoe County and Clark County
Jim Hoffman, Nevada Attorneys for Criminal Justice
Tom Lawson, Chief, Division of Parole and Probation, Department of Public Safety
Holly Welborn, American Civil Liberties Union of Nevada
Marcos Lopez, Americans For Prosperity-Nevada
Victoria Gonzalez, Executive Director, Department of Sentencing Policy
John Jones, Nevada District Attorneys Association

CHAIR SCHEIBLE:
We will open the hearing on Assembly Bill (A.B.) 237.

ASSEMBLY BILL 237 (1st Reprint): Revises various provisions relating to real property. (BDR 10-22)

ASSEMBLYWOMAN SANDRA JAUREGUI (Assembly District No. 41):
The genesis of A.B. 237 was A.B. No. 335 of the 80th Session, produced in partnership with the Community Association Management Company Executive Officers, Inc. (CAMEO) and Nevada Realtors. Assembly Bill No. 335 of the 80th Session streamlined the residential selling process for organizations that do behind-the-scenes paperwork like title searches and escrow. The bill also established timelines and uniform speed caps for homeowners' association (HOA) resale packages, demands and transfer fees.

Assembly Bill 237 would clean up language in *Nevada Revised Statutes* (NRS) 116 regarding HOA fees. The bill adds language clarifying HOA companies cannot charge resale closing fees on top of those specified in NRS 116. After A.B. No. 335 of the 80th Session passed, fees never charged before began showing up. Assembly Bill 237 adds a Consumer Price Index increase of no more than 3 percent to transfer fees. We all agreed to add that transfer fee, but it was left out during bill drafting.

New to the provisions of A.B. No. 335 of the 80th Session is an endorsement mechanism. Assembly Bill 237 will also give the Commission for Common-Interest Communities and Condominium Hotels the ability to impose a fine of not more than $250 on HOAs violating the fee structure. We added that because HOAs continue to charge more than that in violation of NRS 116. I have seen two HOAs charge homebuyers $100 to $150 more than the statutory limit for transfer fees. Assembly Bill 237 would grant the ability to enforce existing law.

ROCKY FINSETH (Nevada Realtors):
Assembly Bill 237 is important for State real estate agents and HOA homebuyers.

JOEL JUST (President, Community Association Management Company Executive Officers, Inc.):
The concerns of the HOA industry are included in Assemblywoman Jauregui's proposed amendment (Exhibit B). It will continue to help weed out bad actors in the HOA management rolls and allow organizations like CAMEO whose members play by the rules to continue to make HOAs the best they can be for homeowners.

BRAD SPIRES (President, Nevada Realtors):
Nevada Realtors strongly supports A.B. 237 because it will protect the HOA industry and consumers. We have had compliance issues with smaller HOA managers. One such manager in Gardnerville with monthly fees of $100 charged $600 in transfer fees. When homebuyers closed sales, they had no other option but to pay the extra fee. Enforcing the fee structure would be a powerful step toward fixing the problem.

MAGGIE O'FLAHERTY (Real Property Section, State Bar of Nevada):
You have a memo (Exhibit C) from Michael Buckley, Chair, Executive Committee, Real Property Section, State Bar of Nevada, concerning the proposed amendment, Exhibit B, to Assembly Bill 237. Sections 2, 4 and 5 provide the same correction to extend the provisions to all of NRS 116. Section 6 is a conforming change mirroring A.B. No. 335 of the 80th Session. Section 7 revises the requirement that certificates of resale be included in HOA resale packets. Over the years, NRS 116 was amended to refer to resale packets, but it does not reflect current practices.

Section 8 of A.B. 237 adds language to NRS 107.090 concerning nonjudicial foreclosure sales and adding provisions to NRS 21 as it relates to notification requirements and who must be notified in case of sale. The intent is to ensure the proper people who are entitled to be notified in foreclosure sales are indeed notified. Section 9, subsection 1 through subsection 5 provide minor clarifications. Section 9, subsection 6 provides when multiple properties are owned, in the event of foreclosure, the judgment debtor would lack the authority to direct the order on which the properties are sold. In a previous session, reference to nonjudicial sales was removed; we are putting it back in.

Section 10 and section 11 of A.B. 237 deal with abstracted titles in NRS 39.180 and NRS 39.190 respectively, which have not been revised since 1911. Partition actions occur when multiple people who own a property agree this is the process to which it defaults. The language changes a reference to abstracted title to a guarantee, which is the modern practice not reflected in NRS. Section 12 extends references to additional articles in the Uniform Commercial Code and adds articles. Section 13 cleans up two references to personal property or crops recorded prior to 1935. In 1965, the Uniform Commercial Code was adopted to govern all personal property, including agricultural liens.

Section 14 of A.B. 237 carries forward that change and adds language to create parity with other areas of NRS. Section 15 simply corrects the word "trustees" from plural to singular. Section 16 clarifies that, as per a 2019 statute, a person can waive protection for a landlord of real property. Notice must be given to applicable parties, and the change in the notice may be given later.

MICHAEL BUCKLEY (Chair, Executive Committee, Real Property Section, State Bar of Nevada):
I have nothing to add to Ms. O'Flaherty's testimony.

ASSEMBLYWOMAN JAUREGUI:
My proposed amendment, Exhibit B, makes four minor changes to A.B. 237. In section 5.5, subsection 1, paragraph (o), subparagraph (2), a monetary action is changed from "must" to "may." A transfer fee cannot exceed $350, but as of January 1, 2022, that amount may be adjusted for each calendar year to add flexibility. The next two changes are the same: changing "enumerated" to "required" in section 5.5, subsection 6, paragraph (a); and in section 7.2,

subsection 8, paragraph (a). To make the latter paragraph uniform, we are also changing "charge" to "impose" any fee.

SHARATH CHANDRA (Administrator, Real Estate Division, Department of Business and Industry):
The Real Estate Division, Department of Business and Industry, is neutral on A.B. 237. The Division has some technical questions about authority indicated in section 1.5 and other sections. We will work with Assemblywoman Jauregui to resolve them with further amendments.

CHAIR SCHEIBLE:
We will close the hearing on A.B. 237 and open the hearing on A.B. 398.

ASSEMBLY BILL 398 (1st Reprint): Revises provisions relating to sales of residential property. (BDR 10-812)

ASSEMBLYWOMAN SANDRA JAUREGUI (Assembly District No. 41):
There are areas in NRS that need cleanup regarding the seller's real property disclosure (SRPD).

TERESA MCKEE (CEO, Nevada Realtors):
Under NRS 113, the seller must complete and give the buyer the SRPD at least ten days before a property is conveyed. This is important so the buyer knows exactly what the seller knows about the property. The SRPD contains a comprehensive list of items to be considered defects or things that have been fixed of which the buyer should be aware. Most buyers' agents tend their offers in the contract before the ten-day limit prior to conveyance so they can schedule an inspection to find out what is truly wrong and whether it affects the value of the property.

There has been a long-standing, clear understanding the agent never fills out the SRPD on behalf of the client. It is designed to let the client know about the state of the property. Agents have their own requirements for disclosure as per NRS 645.252. They must disclose all relevant facts they know about the condition of the property.

A growing number of lawsuits name licensees as defendants in issues concerning SRPDs. Assembly Bill 398 seeks to limit those suits by statutorily forbidding agents from filling out SRPDs on behalf of sellers. The agent has no

way of being aware of what is on the SRPD until the sale. Section 1, subsection 1, paragraph (a), subparagraph (2) of A.B. 398 explicitly states, "A seller's agent shall not complete a disclosure form regarding the residential property on behalf of the seller." The bill seeks to limit lawsuits filed after the buyer has accepted the SRPD. Section 1, subsection 1, paragraph (c), subparagraph (1) provides the seller is not liable if he or she is aware of a defect and fails to disclose it to the buyer. Section 1, subsection 1, paragraph (c), subparagraph (2) states agents must comply with their duties to disclose to each party facts they know or should have known relating to the condition of the property.

MR. SPIRES:
Assembly Bill 398 would codify what real estate agents already do. Clients look to us as trusted advisors about what may be the most impactful purchase they make in their lives. When agents approach conveyance, they make it clear to buyers they must complete their own SRPDs. Agents lack necessary knowledge about houses occupied by their owners for decades. Sellers give the SRPDs to buyers, who then make decisions based on them. It allows buyers to make further investigations into identified items.

There are an increasing number of real estate agents named in lawsuits regarding lack of disclosure, even though the SRPD has nothing to do with agents. They are forced to defend themselves over actions with which they had no involvement. Nevertheless, the bill does not relieve realtors of responsibilities under NRS 645.252 to disclose knowledge of defects.

SENATOR PICKARD:
Neither the broker nor agent makes any representation as to a property's condition. I am intrigued that the bill has anything to do with naming them in lawsuits. Theoretically, anyone can be named in a lawsuit whether that person has any culpability or liability for damages. How would A.B. 398 interact with the existing lawsuits you mentioned? The bill does not put agents on or off the hook; it would require a proper motion for summary judgment to remove them from a suit. The general rule is Legislators do not effect legislation that will affect active litigation.

MS. MCKEE:
The bill would not affect outstanding lawsuits. After we worked with the Nevada Trial Lawyers Association, it became more apparent agents cannot and should not fill out SRPDs. In the past, the issue has been handled differently. I

am also baffled that NRS 113.130 could be interpreted as agents should fill out SRPDs. That said, there are agents being held liable for violating NRS 113.130. The goal of the bill is to make it absolutely clear sellers' agents cannot fill out the form. All the seller's agent duties are under NRS 645; NRS 113 is reserved for the sellers themselves and their disclosure obligations. Punishments for violating NRS 645 are imposed on the seller's agent.

SENATOR PICKARD:
I agree. Do we really need to add the language in the bill's section 1, subsection 1, paragraph (a), subparagraph (2) to NRS 113.130? We might consider removing the requirement for disclosure under NRS 645. If the agent has a duty to disclose anything, that is what lawsuits will be predicated on.

DAVID DAZLICH (Vegas Chamber):
The Vegas Chamber supports A.B. 398 on behalf of our realtor members. It provides legal clarification and protection for buyers and sellers.

CHAIR SCHEIBLE:
We will close the hearing on A.B. 398 and open the hearing on A.B. 342.

ASSEMBLY BILL 342 (1st Reprint): Makes various changes relating to offenders. (BDR 16-511)

CHRISTOPHER DERICCO (Chair, State Board of Parole Commissioners, Department of Public Safety):
Section 1, subsection 6 of A.B. 342 requires the State Board of Parole Commissioners to review their adopted standards on or before January 1 of odd-numbered years. The Board has used a valuated risk instrument since 2003, based on a recidivism measure of a new felony conviction within three years of release.

To properly assess the standards, at least three years of data review is necessary. The Board contracts with an outside consultant to perform the revalidation of the standards. The consultant must review at least three years of data, perform the assessment, analyze the results and prepare recommendations to the Board. The Board reviews the standards recommendations and approves them at a meeting. From there, the Board works with the Department of Corrections (DOC) to make appropriate changes to the revalidated instrument in

the Nevada Offender Tracking Information System. This process can take four to five years and cost $20,000 to $25,000.

Assembly Bill 342, section I, subsection 6 would replace "On or before January 1 of each odd numbered year" with "At least once every 5 years" for how often the Board must review the adopted standards. As per section 2, subsection 1,

> The Board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any period of release on parole.

The Board sets the conditions of lifetime supervision for qualifying offenders about 90 days before the person is to be released. The conditions may not be imposed for up to ten or more years after sentencing. In general, that is the final interaction the Board has with offenders unless there is a request to modify the supervision terms.

Section 2, subsection 8 of A.B. 342 provides, "a sex offender who commits a violation of a condition imposed on him or her pursuant to the program of lifetime supervision is guilty of a category B felony." There is no provision for a parole or probation violation. Violations of lifetime supervision are considered a new crime and ruled upon by a district court judge, not the Board.

We can make imposition of lifetime supervision conditions better. When a district court judge imposes probation and it is violated, the offender goes back before the same judge. It works the same way for parole: the Board sets a condition of release and subsequent violations are heard by the Board. With lifetime supervision of sex offenders, the court does not impose the conditions at sentencing. The Board imposes the conditions of release approximately 90 days before completion of the underlying sentence. If a person violates the supervision conditions, it is a new criminal defense and the determination is made by a district court judge.

Section 3 of A.B. 342 would have conditions imposed at the sentencing hearing, as is done in the federal court system. A person is sentenced for the underlying sex offense and put on record at the same sentencing hearing that upon completion of the underlying sentence, he or she enters lifetime

supervision with conditions based on the underlying term. This would streamline the process.

The Board will continue to set conditions for anyone sentenced before July 1 for years to come. However, the Board does want district courts to have to hold additional hearings to set conditions. Section 3 of A.B. 342 contains new language mirroring the current language in section 2 to maintain continuity.

The proposed amendment from the Nevada District Attorneys Association (Exhibit D) is appropriate, with a few exceptions. In section 3, the amendment would remove subsection 9. If so, the same language should be removed in section 2, subsection 9 of the bill for consistency. Section 2, subsection 14 of the proposed amendment, Exhibit D, should be added to section 3 for consistency.

CHAIR SCHEIBLE:
Did you say lifetime supervision is imposed after sentencing?

MR. DERICCO:
The court imposes lifetime supervision at the sentencing hearing. The conditions of supervision are not imposed then.

CHAIR SCHEIBLE:
Would A.B. 342 include the terms of supervision at the time of sentencing?

MR. DERICCO:
Yes—it would be a one-stop shop: adding a couple of minutes to the sentencing hearing and everything is included. The best thing about the change would be the judge, district attorney, public defenders and defendants are all present at that hearing.

CHAIR SCHEIBLE:
A violation of lifetime supervision conditions is a criminal act. Are you requesting any change in that statutory scheme?

MR. DERICCO:
No.

JENNIFER NOBLE (Nevada District Attorneys Association):
The Nevada District Attorneys Association's proposed amendment to A.B. 342, Exhibit D, reinstates the requirement for courts to notify the Central Repository for Nevada Records of Criminal History about arrest warrants for violations of lifetime conditions in section 2, subsection 14. The amendment takes into account extraordinary circumstances that might warrant imposition of lifetime supervision out of the adversarial setting of a district court sentencing and keeps that responsibility with the Board. We would like the offender to go back to the Board for adjustment of those conditions in a postconviction context. We do not want public defenders and district attorneys litigating special circumstances after the offender is released. Section 2, subsection 9 of the bill should be retained or replaced with modifying language.

When sex offenders live outside the State and seek relief from lifetime supervision, they would not have to return to the State to do so. Instead, they could be evaluated by a qualified person in their jurisdiction of residence. The person would have qualifications similar to those outlined in NRS 176.133.

KENDRA BERTSCHY (Offices of the Public Defender, Washoe and Clark Counties):
The Offices of the Public Defender, Washoe and Clark Counties, oppose A.B. 342. While we appreciate Mr. DeRicco's attempts to streamline the lifetime supervision process, this could confuse and complicate some issues. We are fine with section 1 of A.B. 342. In section 2, we find it inappropriate to impose conditions before sentencing, which will take additional time. We are unclear if those conditions can be modified later through the court or the Board. Section 3, subsection 9 should allow that. We agree with Mr. DeRicco that warrants for supervision violations should not be reported to the Central Repository. We will work with him on provisions regarding offender requests to be removed from lifetime supervision. Our Offices would be required to produce documentation for such requests, which would have a fiscal impact.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):
Nevada Attorneys for Criminal Justice oppose A.B. 342 for the reasons listed by Ms. Bertschy.

CHAIR SCHEIBLE:
We will close the hearing on A.B. 342 and open the hearing on A.B. 17.

ASSEMBLY BILL 17 (1st Reprint): Revises provisions relating to the discharge of certain persons from probation or parole. (BDR 14-334)

TOM LAWSON (Chief, Division of Parole and Probation, Department of Public Safety):
You have my presentation (Exhibit E) on A.B. 17. The Division of Parole and Probation (P&P) is required to recommend an honorable or dishonorable discharge from probation to a sentencing district court. Historically, there has been a distinction between the two discharges related to restoration of offenders' civil rights. After modifications made to NRS 176A during the Seventy-ninth and Eightieth Sessions, there is no longer a distinction between the civil rights restored, regardless of which discharge. Under NRS 176A.850, the court issues honorable or dishonorable discharges upon the recommendation of P&P.

Assembly Bill 17, section 1, subsection 1, paragraph (b), subparagraph (1), sub-subparagraph (V) would remove the reference to courts determining if discharges are honorable or dishonorable. Under NRS 213.154, the bill would remove references to P&P and dictate a simple discharge. In NRS 213.155, P&P is required to provide documentation identifying a discharge as honorable or dishonorable to restore civil rights.

The continued classification of discharges as honorable and dishonorable could be misleading to prosecutors or the courts as to who should make those prosecutorial and sentencing decisions. Some offenders who are relatively compliant, according to NRS, receive dishonorable discharges; the opposite is also true. That one-syllable distinction is not an accurate gauge of an offender's supervision performance. There are ways P&P can ensure prosecutors have information needed regarding future eligibility for parole programs and prosecution and sentencing decisions without the discharge distinction.

Delays in the resolution of probation cases caused by disagreements over the distinction in turn cause delays in signing the discharge and increased numbers of hearings. Sometimes, people have expired from supervision, but courts elect not to sign the discharge based on the distinction. This puts people in limbo: P&P can no longer exercise control over them under conditions of supervision. However, we cannot issue a discharge because the court has not ordered it as honorable or dishonorable. This impacts offenders' restoration of civil rights

because they have not been discharged, even though they are no longer supervised.

In the current environment of criminal justice reform, it is incumbent on states to examine all processes to ensure optimal continued rehabilitation and access to assistance. An honorable versus dishonorable discharge is an obstacle to that. Elimination of the requirement will allow offenders to be assessed on their factual compliance with supervision, not on their criminal records or potentially erroneous or misleading information in their supervision history. For example, if people do not adapt well to supervision, have violations and are not paying restitution, they cannot find a steady job or housing. If the supervision performance improves, the totality of their circumstances during the entire supervision period should be how success is measured. If the early performance during supervision is considered, they may receive a dishonorable discharge.

The language changes P&P is requesting in A.B. 17 do not in any way alter provisions of early discharge of offenders from probation under A.B. No. 236 of the 80th Session. Those early-discharge provisions do not distinguish between honorable or dishonorable discharges.

The proposed amendment in Exhibit E by the Department of Sentencing Policy, Nevada Sentencing Commission, was included in the reprint of A.B. 17. It changes reporting of statistics in the Department's biennial report to the Legislature and removes "honorable" and "dishonorable" discharges. For example, a man now involved in a diversion program was told an honorable discharge meant his sentence would be reduced or term amended. If he received a dishonorable discharge, other consequences would result. The court decides the status of the discharge. If a diversion program is expecting an honorable discharge, the court can merely say the discharge is deemed honorable or dishonorable. That should not be a hurdle to the passage of A.B. 17 because there are ways to accommodate the distinction for cases with a deferral status.

SENATOR CANNIZZARO:
Is your concern that putting people into honorable or dishonorable discharge categories becomes problematic because they do not always fall directly within one or the other category?

MR. LAWSON:
The elimination of the distinction will impact restoration of people's civil rights. The need for the distinction no longer exists after the Seventy-ninth and Eightieth Sessions. We give the circumstances of offenders' supervision to the court in the discharge document. That will not change under A.B. 17.

SENATOR CANNIZZARO:
The civil rights argument makes sense irrespective of the different discharges. In practice, there are people on probation or parole who do not comply with supervision who can be reinstated absent certain circumstances. That decision is up to the court, even if they do not comply with the probation conditions. Often, that can entail imposition of additional requirements. In the end, if that helps a person get back on track, we consider giving an honorable discharge, even if there were some bumps along the way. There is a clear distinction between someone like that and someone who complied with all the terms. Then there are people who abscond for a while, commit additional offenses yet are not arrested and continually violate the probation conditions. Under A.B. 17, once the probation is complete, can that offender be discharged without question?

MR. LAWSON:
That offender would be discharged, no matter what; the sentencing parameter is defined, and the probation could actually be shortened. If someone absconds for more than 60 days, that is a different situation because if he or she is gone, he or she is brought before the court to decide if supervision is reinstated or probation is revoked. If so, the offender must complete the original sentence incarcerated. Whether or not offenders are compliant, at some point their terms will expire. The descriptor does not change the facts of the case: all incidents will be in the discharge report. Court reviewers have offenders' actions precisely spelled out, and prosecutors use that data to make charging decisions.

SENATOR CANNIZZARO:
I am somewhat uneasy because, let us say, someone comes before the court on a probationable offense and the defense or State argues he or she is eligible for supervision. If the person has been on probation twice before with honorable discharges, that implies he or she can abide by supervision provisions, perhaps with additional services. However, if someone has two dishonorable discharges based on prior crimes, that is a very different circumstance for the court to consider.

Sometimes in presentence investigation (PSI) reports, not all factors in prior conduct on probation are delineated, except if someone has been revoked or given a dishonorable discharge. Will P&P ensure the full details of every probation grant are in every PSI? Often, prosecutors see offenders have been revoked or given dishonorable discharges and know why; otherwise, it is paradoxical to say, "This person was compliant with this, this and this term of their probation." In terms of giving the court the right evidence as to whether someone is supervisable, the distinction between honorable and dishonorable is important and plays into the ultimate sentence.

MR. LAWSON:
With that distinction in NRS, it is easy for the PSI drafter to refer to the blanket "honorable" or "dishonorable" to paint the picture. That is the point of the bill: we do not want to rely purely on that, rather listing the facts and circumstances of each case. An example is the man who owed hundreds of thousands of dollars of restitution, but his probation was only 12 months. When we amortized that over 12 months, what was his earning potential if he paid more than $8,000 a month toward restitution? He could not pay it so was given a dishonorable discharge even though he complied with every other term of supervision.

Nevada Revised Statutes has provisions about whether people can demonstrate economic hardship. That is not defined, so some courts will say, "Sorry, you didn't amortize that. Pay off the entire amount" of restitution, then order a dishonorable discharge. In A.B. 17, we are offering what needs to change in the discharge report to ensure courts and prosecutors have information from the PSI or previous discharge reports to make decisions.

SENATOR CANNIZZARO:
It is common that people cannot pay restitution and are subject to civil judgments. *Nevada Revised Statutes* provides for economic hardship as verified by P&P. If people cannot pay restitution, their parole may be extended. We are talking about changing the law allowing for those cases to not automatically receive dishonorable discharges. Often in PSI and discharge reports, not all details are included nor are instances of honorable conduct. Are we talking about moving to wholesale discharge without further distinction? A lot more information needs to be given to courts about performance under supervision in discharge orders or PSIs. Courts cannot rely on PSIs concerning gross misdemeanors because PSIs are not required for that.

You said courts could still assign diversion courts. Assembly Bill 17 would not necessarily allow for such programs, just discharges. When offenders complete drug or mental health courts, courts contemplate during sentencing negotiations whether they stayed with the treatment or fell by the wayside. How would you envision that contractual agreement between the parties— dependent upon successful program completion—enabling a sentence reduction or dismissal of charges?

MR. LAWSON:
Determination of successful completion of supervision is up to the court. A judge could say, "OK, I ordered you to do X, Y and Z. You performed in this manner." What are the standards for those conditions? The contract was successfully completed, and the judge stamps the discharging document as "honorable."

SENATOR CANNIZZARO:
I am concerned this could lead to situations in which treatment courts could be beneficial and lead to reductions or dismissals; however, for pending cases, A.B. 17 works around negotiation language.

SENATOR OHRENSCHALL:
An attorney with whom I work in Las Vegas told me about a client who was on supervised probation and ordered to attend an inpatient drug treatment program. He had an argument with a fellow participant resulting in a fight. Both men were kicked out of the program, despite the client testing cleanly. What I like about A.B. 17 is whoever would have reviewed that man's time under supervision would be able to weigh both factors: the fight and clean test. There would be more than the honorable or dishonorable discharge label. A reviewer might say, "Oh, wow, this guy tested clean for 12 months. He got kicked out of his inpatient drug treatment program, but it was because of a personal issue with another person." Is that a correct interpretation, that things like that would be weighed and taken into account?

MR. LAWSON:
On the parole side, P&P is the finder of facts needed to determine an honorable or dishonorable discharge. Yes, we look at the totality of circumstances, and I hope the courts would do the same on the probation side. We expect there will be a period of adjustment to supervision, which is why we have graduated sanctions and differentiate between technical violations and nontechnical new

offenses. We make sure the supervision is appropriate and wraparound services and programs are offered. We see speed bumps at the beginning go away and longer-term success by the end of supervision. A violent crime right out the gate is a classifying event during that time of supervision but would not be the only factor weighed.

SENATOR SETTELMEYER:
What percent of offenders receive dishonorable discharges?

MR. LAWSON:
I can let the Committee know that figure.

SENATOR SETTELMEYER:
I am asking because if this is such a big issue, it is odd that you do not know that percentage, Mr. Lawson. The distinction is a question of accountability. Assembly Bill 17 says a discharge is only dishonorable if probationers fail to meet the conditions of supervision, pay restitution—unless they have an economic hardship—or abscond. I need data to determine how widespread the problem is. If P&P does not know the percentage, I am concerned.

MR. LAWSON:
As far as probation, P&P looks at the overall success rate of how many people complete their supervision terms without revocation. The status of the discharge is beyond our control.

SENATOR SETTELMEYER:
What is the recidivism rate?

MR. LAWSON:
The definition of recidivism is the number of individuals who return to incarceration within three years after discharge from supervision. Our recidivism rate calculation is different from that of DOC.

SENATOR SETTELMEYER:
What is your matrix of success or failure?

MR. LAWSON:
Nevada's discharge success rate is well above the national average; our latest rate is 86 percent.

SENATOR PICKARD:
The judge sets the probation conditions then P&P decides if the offender has adequately adhered to them. Even though P&P may add performance details to discharge reports that determine honorable or dishonorable, by removing that with A.B. 17, will critical information for the court be lost? If we remove the discharge appellations, will probationers no longer be held accountable for following the supervision conditions?

MR. LAWSON:
On the parole side, the Board establishes the terms and conditions of release. After the parole term is completed, P&P determines if the discharge should be honorable or dishonorable, and the Board follows that recommendation. On the probation side, district courts sentence offenders to incarceration, which may be deferred or suspended. Courts impose conditions of supervision with the probation term in lieu of incarceration. The Division of Parole and Probation monitors an offender's performance and, at the completion of the term, sends a discharge report defining and outlining the supervision performance. If a person has violated all conditions, the court knows that and imposes intermediate sanctions. Ultimately, the court determines which discharge is granted.

As Senator Cannizzaro noted, sometimes in a subsequent PSI report, supervision violation incidents are specifically identified. If the discharge distinction is removed, P&P must do a better job to ensure violation information is in PSI reports. Not every subsequent conviction requires a new PSI report. If the court accepts the previous PSI report, and the conviction is within five years of the PSI, a second PSI report is not ordered. We would ensure the court has access to the first PSI report.

SENATOR PICKARD:
Each time Legislators have dealt with restoration of civil rights, discussions revolve around accountability: whether someone is committed to honoring the conditions of his or her probation. Assembly Bill 17 will remove an important label. As you said, at some point, probationers' terms expire and the determination must be made as to whether they did or did not follow the rules. Is it not the discretion of P&P to determine whether early probation violations, particularly involving addiction recovery, can be disregarded when granting honorable or dishonorable discharges?

MR. LAWSON:
On the parole side, yes, that is our practice. On the probation side, P&P is merely the agency that reports and makes recommendations to the district courts. If a discharge report lists early hiccups but later someone successfully completes his or her term, that would merit an honorable discharge.

SENATOR HARRIS:
How does P&P determine whether economic hardship precludes paying of restitution?

MR. LAWSON:
As part of the supervision terms, we look at the conviction judgment to determine what if any restitution has been ordered. About 30 percent of our supervised offenders have some level of restitution. We take into account the NRS requiring offenders to pay a monthly supervision fee to the State, court-ordered DNA collection fees and the person's earning potential. If the supervision term is a year and the offender owes $100,000, we determine how much the amortized monthly payment would be. Realistically, less than 0.10 percent of supervised people can afford that in addition to housing, food, clothing for their children and other normal health and safety elements for a family. We are not bill collectors; we work with people to pay the fees because our long-term goal is reintroduction to society. Even if they can only afford $50 per month, P&P deems that a successful attempt at repayment. The civil conviction judgment no longer necessarily applies to new convictions. Even if someone is discharged, P&P still works with him or her to make monthly payments toward restitution.

SENATOR HARRIS:
Why are people still getting dishonorable discharges because they cannot pay restitution if the economic hardship element is being applied correctly? Are some people falling through the cracks or do not apply for economic hardship relief?

MR. LAWSON:
That is due to individual interpretations by the courts. Some judges look at a $50 payment and say, "OK, you gave us what you could. To me, that amount qualifies for an honorable discharge." Other judges would give you a dishonorable if you did not pay 100 percent.

SENATOR HARRIS:
In section 2 of A.B. 17, economic hardship must be verified by P&P. Are you saying courts can override that and give dishonorable discharges due to nonpayment of restitution?

MR. LAWSON:
Statute says economic hardship as established by P&P is the deciding factor in the discharge recommendation. Courts do not have to agree with our recommendation.

CHAIR SCHEIBLE:
I am concerned that people with economic hardships are getting dishonorable discharges; that should not be happening. Which jurisdictions do that and why? Could we fix that in statute? To me, this a philosophical proposition. We are talking about probationers not being sent to prison, despite an underlying sentence. Sometime before the end of the probation term, they come before judges for a determination as to whether they will stay on probation, be discharged or be revoked and the underlying sentence imposed.

Best-case scenario, the person is honorably discharged; worst case, he or she is revoked and sent to prison. The middle ground is a dishonorable discharge—Assembly Bill 17 would take that away. I understand that before the Eightieth Session there was a profound difference between the two discharges: the restoration of civil rights. That was wrong. No one's civil rights should be withheld because of a dishonorable discharge, and we fixed that in statute.

Why should we get rid of that middle ground and force every judge, prosecutor, defense attorney and defendant into the position of discharge and prison? I have seen cases in which the offender is given the choice of continued probation, completing WestCare Nevada or inpatient drug counseling or paying an additional $1,000 restitution to avoid prison. Or the person could take the dishonorable discharge, and the case will be closed. Under A.B. 17, that option will disappear. The person who gets the dishonorable discharge will walk out of court with his or her case closed. However, that signals to a future prosecutor, defense attorney or judge that the person did not fulfill all of the probation obligations. What are the collateral, unfair consequences of ending the discharge distinctions?

MR. LAWSON:
Yes, the worst-case scenario is revocation and imposition of the underlying sentence. Instead of the choice between honorable and dishonorable, the ultimate choice is discharge. Would that reward people for making the discharge choice in terms of future cases? The facts and circumstances are the same; in the future, the success factors in the previous supervision will still be weighed. We are seeking to codify those elements as part of the discharge recommendation. We want prosecutors to have the information to take previous probationary successes or failures into consideration when deciding future probation cases. That is a critical tool for the courts. The outline of facts and circumstances in P&P discharge reports, as factored into future PSIs, are the true foundation of decision-making.

CHAIR SCHEIBLE:
I understand the retrospective benefit seeing the facts and circumstances of a person's previous supervision experience and discharge. We want judges, prosecutors and defense attorneys to continue to be able to access information about how a person performed during previous probation. What we want to get rid of is the label, which is useful as the escape hatch for people facing revocation. They can get a dishonorable discharge, go home and not to prison, even after violating their terms of probation. If the court is given the information on people's history, why not leave them the option of a dishonorable discharge the day of their revocation hearings?

MR. LAWSON:
I do not understand your question.

CHAIR SCHEIBLE:
I attend revocation hearings with probation officers after discussing offenders' probation performance. Sometimes I am told, "This person is no longer supervisable." They might not be violent or engaging in serious criminal activities, but officers say, "They never call me back. They can't keep a job. They aren't paying their restitution. They've committed small, misdemeanor crimes and been arrested again." Maybe the person does not need his or her sentence imposed, but the Department of Public Safety no longer wants to supervise him or her. If people are no longer supervisable and cannot get a dishonorable discharge, are we going to supervise them anyway or implement programs that give P&P officers better supervising tools? Or are we going to accept such people will simply have their suspended sentences imposed?

MR. LAWSON:
Some of those tools you describe were implemented under A.B. No. 236 of the 80th Session. We now have temporary revocations, with some people on their third tier of such revocations. We began graduated sanctions in 2017. With temporary revocations, P&P worked them into an existing matrix. We tell offenders, "OK, you're not compliant. We tried curfew, extra counseling and additional check-ins." We work within the sanctions matrix, but now we take offenders back to court and lay it on the table: back to prison. The Board has imposed many third-tier, 30-day temporary revocations. If someone is truly unsupervisable, he or she is a candidate for revocation after graduated sanctions are imposed. I do not agree there should be an option for P&P for refusing further supervision. We do what the court orders. We must convince the court of why people are unsupervisable, so if we recommend revocation, the court can decide. We will use the tools at our disposal throughout our authority over offenders.

SENATOR OHRENSCHALL:
Regarding economic hardship, does P&P have set factors like income or steady work to determine if people get dishonorable discharges?

MR. LAWSON:
We look at a variety of factors. If people do not have steady jobs, we put them in touch with the Department of Employment, Training and Rehabilitation and work programs. If the jobs are not paying the bills, we help them find better positions. We ask if they qualify for veterans' benefits or programs for better job options. We try to find long-standing benefit solutions. We want to instill long-term success, which includes stable work. If people get better jobs, we reevaluate what they can pay in restitution. Part of taking responsibility is meeting financial obligations. We ask if people receive family support or have too much discretionary spending.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
We need to examine if the economic hardship provisions provide adequate cover and talk about the collateral consequences of a dishonorable discharge. The American Civil Liberties Union of Nevada had an intake of a man addicted to methamphetamines who made a lot of money. He was put in a drug court but dishonorably discharged because he made too much money. He was graduated out of drug court and sent back to the sentencing judge for discharge. Since he was discharged dishonorably, the consequences are, while he was off the hook

for restitution, he could not participate in after-school programs with his young daughter and take her on school trips. A dishonorable discharge also causes severe consequences for employment. The distinction between the two discharges has been minimal, given the restoration of civil rights.

MARCOS LOPEZ (Americans For Prosperity-Nevada):
Americans For Prosperity-Nevada supports A.B. 17 because we support expanded access to record sealing. Under NRS 179.2445, a dishonorable discharge makes it more difficult to seal records in the long term. Individuals who have served time and prove to a court they have made an effort to rehabilitate their lives and become functioning members of society should have their records sealed.

MR. HOFFMAN:
Nevada Attorneys For Criminal Justice support A.B. 17. Chair Scheible's question is a helpful framework for thinking about the bill's issues. My high school friend became addicted to drugs in college and was convicted of possession. He got parole and probation and did everything asked of him. He went into treatment, got clean and obeyed all of his conditions. As he was still a student, he could not afford to pay all of his court-ordered fees. His probation officer told him, "I don't think there's any reason you'll reoffend, so I'm just going to dishonorably discharge you now and you can worry about paying the fees later."

My friend was discharged and paid his fines and fees, but he now had a felony record. When he applied to graduate schools, he was rejected several times. Eventually, he was accepted into an English graduate program. This is an example of how much trouble a dishonorable discharge can cause. My friend did everything right, but he was poor.

As the Chair said, dishonorable discharges are a middle ground. It is not a good indicator of an offender's fitness for probation. If people continually violate probation, they do not get honorable discharges; they get kicked off and go back to prison. What signal does a dishonorable discharge send? It is not an indicator of probation success because many probationers perform like my friend—yet are simply unable to pay the fees. The dishonorable discharge message to the judge is the person is too poor to pay the fine.

MS. BERTSCHY:
The Offices of the Public Defender, Washoe and Clark Counties, support A.B. 17 as adding conformity and consistency to NRS. The bill does not say people should not pay restitution and still receive a favorable probation outcome. If offenders cannot pay restitution by the end of the supervision period, they sign a civil confession of judgment.

Assembly Bill 17 would not remove accountability from people who are not totally compliant or unsuccessful with probation. Sanctions would be imposed and a revocation hearing held. The judge could reimpose the underlying sentence and sentence people to prison. That would become part of their record and any future discussions about their fitness for probation would be in the PSI report. Mr. Lawson is right in saying courts need access to that history, which sometimes we do not have. We do not have information about whether offenders failed or succeeded on probation or in inpatient treatment programs. As per today's conversation about prosecutors and defense attorneys requesting discharges, court personnel negotiate and handle cases differently in different jurisdictions. There are NRS tools to work with noncompliant individuals to get them back on board.

The honorable and dishonorable distinction greatly impacts our clients, especially with housing. Sometimes people must prove their discharge was honorable to get housing.

VICTORIA GONZALEZ (Executive Director, Department of Sentencing Policy):
The Department of Sentencing Policy supports A.B. 17. We assist the Nevada Sentencing Commission of the Supreme Court to develop data-driven sentencing recommendations. We have heard testimony about how A.B. No. 236 of the 80th Session dealt with additional technical violations and revocations, graduated sanctions that offer offenders additional opportunities. My agency agrees with Mr. Lawson that collecting data is key to evaluating the outcome and potential unintended consequences of legislation like A.B. 17. We study the fiscal, policy and practical impacts. We agree with Mr. Lawson the intent of A.B. 17 is to complement the provisions of A.B. No. 236 of the 80th Session.

JOHN JONES (Nevada District Attorneys Association):
The Nevada District Attorneys Association opposes A.B. 17 because it will remove a layer of accountability for offenders who consistently violate supervision. The distinction between the discharges is an incentive for

probationers to do their best under supervision. It serves as a reference point for courts should people reoffend and request probation again. While courts ultimately issue discharges, in virtually all cases they follow P&P's recommendation. Particularly in Clark County, plea negotiations are built around the distinction. We see offenders who have earned a reduction in charges by pleading guilty to a new, lesser plea. The trigger for that reduction, based on a guilty plea, is whether offenders received an honorable or dishonorable discharge. All parties agree probational acts of the third party determine success on probation. Losing the discharge designation would cause extensive litigation.

The Nevada District Attorneys Association has witnessed inconsistencies in implementation of discharges in the various areas of defense. A better solution would be to fix those inconsistencies by adding a general discharge option for people who do not precisely fit into an honorable or dishonorable discharge designation.

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CHAIR SCHEIBLE:
We will close the hearing on A.B. 17. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 3:27 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Begins on Page**	**Witness / Entity**	**Description**
	A	1		Agenda
A.B. 237	B	1	Assemblywoman Sandra Jauregui	Proposed Amendment
A.B. 237	C	1	Maggie O'Flaherty / Real Property Section, State Bar of Nevada	Michael Buckley Memo Concerning Proposed Amendment
A.B. 342	D	1	Nevada District Attorneys Association	Proposed Amendment
A.B. 17	E	1	Tom Lawson / Division of Parole and Probation, Department of Public Safety	Presentation