MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-Second Session
May 3, 2023

The Committee on Judiciary was called to order by Chair Brittney Miller at 8:02 a.m. on Wednesday, May 3, 2023, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda [Exhibit A], the Attendance Roster [Exhibit B], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Elaine Marzola, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Venicia Considine
Assemblywoman Danielle Gallant
Assemblyman Ken Gray
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Selena La Rue Hatch
Assemblywoman Erica Mosca
Assemblywoman Sabra Newby
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Devon Kajatt, Committee Manager
Traci Dory, Committee Secretary
Ashley Torres, Committee Assistant
Natalie Dean, Committee Assistant

OTHERS PRESENT:

Kirk D. Hendrick, Chair and Executive Director, Nevada Gaming Control Board
Jim Barbee, Chief, Technology Division, Nevada Gaming Control Board
Virginia Valentine, President, Nevada Resort Association
Kabrina Feser, Operations Officer, Public Employees' Retirement System
Marcie E. Ryba, Executive Director, Department of Indigent Defense Services
Thomas Qualls, Deputy Director, Department of Indigent Defense Services
Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts

Chair Miller:
[Roll was called. Committee protocol was explained.] I am going to open up the first hearing that we have on our agenda today, which is Senate Bill 14 (1st Reprint), presented by Kirk Hendrick in Las Vegas. With that, Mr. Hendrick, please proceed when you are ready.

Senate Bill 14 (1st Reprint): Makes various changes related to gaming. (BDR 41-259)

Kirk D. Hendrick, Chair and Executive Director, Nevada Gaming Control Board:
First of all, I want to thank Chair Miller for allowing me to appear via videoconferencing from Las Vegas this morning. I very much appreciate it because I will be chairing the Nevada Gaming Control Board's regular monthly meeting this morning here in Las Vegas. I would like to introduce with me here in the room today, Kristi Torgersen, chief of the Enforcement Division; Jim Barbee, chief of the Technology Division; and Nathan Riggle, deputy chief of the Administration Division. They are available for any questions the Committee may have. Additionally, I want to recognize Mr. Michael Morton, special assistant attorney general, who is in Carson City with you, and acknowledge him for all of his help on this bill.

As stated, I am here today to present Senate Bill 14 (1st Reprint). Senate Bill 14 (1st Reprint) seeks to make various minor changes to Chapter 463 of the *Nevada Revised Statutes* (NRS) and to make it more efficient to handle the Board's licensing process, which

is essential for the strict regulation and success of the gaming industry. With the Chair's permission. I will first go through the bill by topic area and then present one proposed amendment [Exhibit C] to the bill.

The first topic the Board would like to present is section 1. Under the current statutory and regulatory framework, if a licensee were to pass away or become disabled, the estate of the deceased individual has 30 days to notify the Board of such death or disability and to file an application with the Board for temporary licensure to operate the gaming establishment owned and operated by the deceased or disabled licensee. That application then goes through the Board's standard licensing investigatory process just like any other application that would come before the Board. As you can imagine, when a family loses a loved one, filing gaming paperwork is certainly not the first thing that comes to their mind. During public Board and Nevada Gaming Commission meetings, members are often expressing their sympathy to families of their loved one while at the same time having to explain the possibility of disciplinary action for late filings of temporary license applications. Therefore, section 1 would authorize the chair of the Board to administratively approve the continuation of the gaming establishment by select individuals while the application is being processed by the Board. This would allow the licensee's estate to more efficiently administer the disposition and closing of the estate while still complying with all applicable gaming laws and not having an unlicensed individual conducting gaming operations in the state.

Sections 3, 4, and 9 make conforming changes to NRS based on the proposal in section 1. Section 1.5 of the bill addresses necessary changes to the definition of "gaming employee." As the Committee is probably well aware, dating back to when the definition of "gaming employee" was added to the *Nevada Revised Statutes* back in 1981, the definition has been amended 18 times. The definition has been amended in nearly every session since its original enactment because of the speed at which the gaming industry evolves. As the industry grows and changes, there are new types of employees who the Board and Commission believe are necessary to be registered or in some cases actually not registered with the Board. Between legislative sessions, however, the Board's Enforcement Division often finds itself trying to fit new types of gaming employees in existing statutory framework, which sometimes leads to confusion for both the industry and for Board staff. This proposed change of the definition of "gaming employee" in section 1.5 seeks to do two things: one, update outdated terms that are no longer used in the gaming industry; and two, provide enough of a framework within the statutory definition so the Commission, if deemed necessary, may adopt regulations relating to who is and who is not a gaming employee if the need arises during a legislative interim.

Currently, if the Board determines that a debt is owed to the state by a licensee or former licensee and it is impossible or impractical to collect, the Board must make a request to the State Board of Examiners to designate such a debt as a bad debt. Upon a vote by the Board of Examiners to designate such an amount as a bad debt, the Office of the State Controller is directed to remove the bad debt from the books of the state, although it remains a legal obligation owed to Nevada. Section 2 of S.B. 14 (R1) would streamline the process of designating bad debt by reorganizing the steps of the process. The proposal would allow the

Board to determine if a delinquent debt is impossible and impractical to collect and would authorize the chair of the Board to notify the State Controller of such a determination and remove the debt from the books of the Board. The State Controller would then seek to remove the debt from the books of the state before the Board of Examiners.

Section 11 makes a conforming change to effectuate this proposal. The Board is requesting this change to close out its books more efficiently each fiscal year. It is important to note that the Board rarely utilizes the bad debt removal process. The last time the Gaming Control Board went before the Board of Examiners was in 2021 for the designation of approximately $1,655 as a bad debt. For fiscal year 2022, the Board collected nearly $1.2 billion in taxes and fees and is only attempting to collect $1,035. This amounts to a collection rate of over 99.99 percent. Because a gaming license is a privileged license, the Board has broad authority and tools to collect gaming taxes and fees. Therefore, by the time the Board is seeking a bad debt determination from the Board of Examiners, it means there is practically nothing else the state can do to collect that debt. Consequently, section 2 efficiently administers the Board's internal accounting with the state and streamlines the process.

Turning to sections 5 and 6, the Board seeks to make consistent language in two statutes that both address the venue for judicial review of gaming matters. As written in S.B. 14 (R1), these proposals are technical revisions and do not make any substantive changes to the venue statutes, rather the revisions will simply make both provisions read the same way.

In NRS 463.373, the statute imposes a quarterly slot tax on restricted licensees on the number of slot machines being operated. The new language in section 7, subsection 5 requires those who receive a share of the revenue from the operation of slot machines to pay that person's proportionate share of the quarterly slot tax. This proposal would make consistent various statutes regarding quarterly fees and annual slot taxes when proportional shares of license fees are involved. The newly proposed language already exists in NRS 463.375, which imposes nonrestricted quarterly fees; and NRS 463.385, which imposes the annual slot tax. Therefore, this proposal would make consistent the imposition and collection of all slot taxes imposed by the state. The proposal would not change the amount of quarterly slot tax collected by the state but would ensure that each licensee is paying its accurate share of the tax.

Moving to section 8 of the bill: Currently, NRS 463.386 authorizes the chairs of the Nevada Gaming Commission and the Nevada Gaming Control Board to administratively deem certain licenses upon transfer as a continuing operation which allows the transferee to collect prepaid taxes and fees from the transferor. For consistency, the Board is proposing the addition of the following license types to administratively authorize the following taxes and fees: the disseminator's license in NRS 463.450 is 4.25 percent monthly tax; the manufacturing distributor license in NRS 463.660 is a $500 annual fee; the interactive gaming service provider license in NRS 463.667 is $1,000 annual fee; the license of a manufacturer of an interactive gaming system in NRS 463.760 is a $125,000 initial fee and

a $25,000 annual fee thereafter; the interactive gaming license in NRS 463.765 is a $500,000 initial two-year fee with a $250,000 annual fee thereafter; and a license to operate a pari-mutuel system in NRS 464.015 is a $500 annual fee.

Because these fees are not refundable, the state may occasionally experience a slight loss in revenue because of the transfer of taxes. But that would only happen if existing operations were purchased by another individual or entity and then only if the chairs of the Board and Commission deemed there to be a continuing operation. This change is important to know it would treat all licenses and relevant licenses for a licensee in the same manner and would save the Board time and resources. Currently, multiple licenses held by a licensee could be treated differently. These companies are reviewed and audited by either the Board's Audit Division or Tax and License Division on a regular basis. Consequently, the Board and Commission are confident that only deemed transfer licenses of continuing operations would happen when appropriate.

Section 9.3 of the bill seeks to modernize the statutes of governing evolving forms of gaming. As certain gaming licensees and service providers utilize cloud services, the Board and Commission need to have the ability and the agility to properly regulate such services. Section 9.3 gives the Board and Commission the regulatory authority to do just that, while sections 2.5, 9.5, and 9.7 make conforming changes to effectuate that purpose. Essentially what that does is allows the ever-evolving change of cloud services to be utilized by licensees when approved by the Board.

Lastly, section 10.5 seeks to address an issue unique to the Nevada Gaming Commission and state employment. Currently, unless certain limited exceptions apply, a former state employee who is collecting benefits from the Public Employees' Retirement System (PERS) cannot be concurrently employed by the state. While understanding justification for such a prohibition, it has posed a unique problem based on the gaming regulatory structure here in Nevada. As all of you know, gaming in Nevada is regulated by a two-tier system, the Gaming Control Board and the Nevada Gaming Commission. While the three members of the Board are full-time employees, the members of the Commission are part-time employees entitled to a statutory salary pursuant to NRS 463.026. Pursuant to the prohibition I mentioned, the former state employee who may be appointed to the Commission would be unable to keep collecting his or her PERS benefits while also earning the statutory salary for a commissioner. In finding the most qualified people to serve on the Nevada Gaming Commission, one place the Governor may look to is a former government employee; those who have vast amounts of experience in gaming, accounting, or law enforcement, for example. However, due to the salary prohibition against earning while also being part of PERS, it is not feasible for a retired state or local government employee to pause PERS benefits to earn the statutorily allowed $40,000 per year. Section 10.5 seeks to eliminate this problem for the very narrow purpose of appointment to the Nevada Gaming Commission. The Board thanks the staff at PERS for their help in finding the solution to the issue.

Finally, I would like to bring up the one small amendment [Exhibit C] that the Board has in front of you. Today, the Board has submitted a minor amendment to S.B. 14 (R1), which seeks to revert section 3 of the bill back to the way it was drafted when the bill was introduced. After continuing conversations with stakeholders, it was determined that the matter needs further vetting and will be best considered through the regulatory process, so that section was put back to as originally proposed.

This completes the Board's presentation of S.B. 14 (R1), and I am happy to answer any questions that members of the Committee may have.

Chair Miller:
Are there any questions from Committee members?

Assemblywoman Cohen:
My question is in section 1, about "temporarily engage." There is no language there about any kind of limits. Was or is there any consideration into putting in some sort of guidelines about how long this can go on, or under what circumstances this can happen? It does seem like it is very broadly drafted.

Kirk Hendrick:
Yes, there is language that the chair may condition or limit any administrative approval pursuant to the section in subsection 2 of section 1. The idea is this is a temporary procedure. The applications still need to be filed, and usually the estate is moving very quickly. The probate attorneys are doing everything they can. The process generally does not take very long, but it is that interim piece where someone is finding out that they are not licensed, and we have an unlicensed entity being run in Nevada without anybody having proper authority to do so.

Assemblywoman Cohen:
I am sorry, I did not ask that very clearly. I was more concerned about the fact that the chair is given the sole and absolute discretion and there are no guidelines on the chair's ability to approve the spouse or the personal representative. Was there any consideration made to putting some guidelines on the chair so that the chair has to work within the time of the probate or six months, something like that, to put some guidelines into the statute?

Kirk Hendrick:
As we were drafting this, it did not come up. The language that you see about sole and absolute discretion of the chair is used, I think, six or seven times in NRS Chapters 463 and 462. It is used dozens of times throughout the Nevada Gaming Commission regulations. It does not limit it as you are speaking about, but again, the process, the application process, is moving forward, and the matter would end up on the public agenda in front of the Board and Commission in due time.

Assemblywoman Cohen:
You mentioned this happening before, and I think of our gaming industry as being very corporate now. Can you tell me approximately how many times this has happened where you have had families before you and they do have issues? Are we talking about people with restricted licenses or are these some people with unrestricted licenses? Can you give us the example of what is going on now in more detail?

Kirk Hendrick:
Yes, I would be pleased to do that. I have been chair of the Board for three months and I have already seen three of these examples. To your point, no, this is not the large hotel casinos that you would be seeing with nonrestricted licenses. Generally, these are families who have owned a restricted location such as a bar, possibly a convenience store, a laundromat, the type of people who do not have a compliance committee, the type of people who sometimes have not done their estate planning properly. As I mentioned during my presentation, this will come up and the family will not even know about it. They are just not thinking about it. To answer your question specifically, yeah, it is happening almost monthly at this point, but it is generally the small locations.

Chair Miller:
I would like to follow up on the Assemblywoman's question. As you are saying "temporary," and we understand the reasoning behind providing for temporary, but I guess I am trying to figure out what temporary is. When we talk about interim and temporary in a real-life application, I have seen someone put in as an interim leader and that interim can sometimes last a month, and then sometimes it is three years later and we are still in the interim and it is still temporary. Could you just specify what would be considered "temporary" and why there are not definitive parameters around what temporary is?

Kirk Hendrick:
The temporariness of this is just while the estate is having filed their application and going through the process of somebody being licensed. A lot of times, as I mentioned, these are small locations, and the estate is generally trying to sell the property. The application may be to sell it through the estate, or it may be—as mentioned in section 1, subsection 1—it is usually a spouse, next of kin, personal representative, or guardian. And the "temporary" is so that somebody can be administratively approved immediately rather than waiting on a normal application process to happen, which could take several months, assuming even if they were to properly file the application within 30 days as required by the law.

Chair Miller:
Are you suggesting that the temporary is usually only about 30 days? Because again, we know these proceedings and this process can go on for quite a while as well. And if that is the case, why is there not some type of parameter in this suggesting what temporary would be?

Kirk Hendrick:
No, it is not the temporary being 30 days, it is the fact that they have to file an application in 30 days, which is where they usually run afoul of the statutes. The "temporary" would be that the chair could approve a temporary while the application process is going on. That could still take several months. If the Committee needs more specifics on the average amount of time with that, I would need to probably have the chief of the Investigations Division work up a memo to explain to you how long these normally take. But this is so that there is not an unlicensed location while the process is happening, and that is generally what happens here. A lot of times people do not file the application, which is a violation of the law and the regulations. But even when they do file an application, you are still talking about a "temporary" time period while they are not licensed. This would solve that by allowing the chair to temporarily license somebody while the application process proceeds.

Chair Miller:
Maybe I should ask the question this way. What is the obligation or requirement? How much time does the chair have in order to do that? Is this something that happens immediately upon notification? We call our next meeting; we jump into action. Can you explain that process?

Kirk Hendrick:
It would be administratively handled. Assuming you have a licensee who files notice that a licensee has either died or become disabled, this will become an administrative matter handled through the Investigation Division and the application process. The chair would approve it probably within a matter of days because, again, it is the list of people that you would expect it to be, spouse, next of kin, executor, those type of people; that would happen very fast.

Assemblywoman Newby:
I have a question on section 9.3, subsection 6, on the regulations to be adopted and in extension, I guess subsection 5. I am curious, it seems like the current law already allows for regulations to be adopted in that area. I am wondering how interactive gaming and the cloud services are regulated right now. Are there already regulations? Are you seeking the opportunity to be able to develop those?

Kirk Hendrick:
With the Chair's permission, I would like to ask Jim Barbee, chief of the Technology Division to come forward and answer that question.

Jim Barbee, Chief, Technology Division, Nevada Gaming Control Board:
Currently there is enabling language in the statute that the Commission adopt regulations regarding service providers. However, that language is very specific in that it requires the regulations adopted by the Commission to state that the Board and Commission have absolute authority over the premises on which certain service providers operate. This proposed change would allow the Commission some discretion on where to apply that absolute authority.

Assemblyman Yurek:
At the end you talked about a decision to present this again today with this amendment that is dealing with section 3, subsection 4. I was looking it up here and trying to make sense of it. Can you just talk a little bit more about the timing and the purpose behind the decision to go back?

Kirk Hendrick:
When this was proposed, the bill would have been drafted last summer by the prior administration and prior chair. The thought behind that, from my understanding, is the Board wanted some greater definition and control over who was running a sports pool. And the idea is, as the sports industry is evolving as you see across the country, there is becoming a lot of cobranding and coaffiliate relationships; and the Board wants to be sure the actual licensee is the one who is running the book and making the most responsible decisions when it comes to finances, advertising, who is the responsible employees that has the gaming employees. We believe the industry is doing that. But there was some question about whether or not it should be better defined in statute. Some conversations came up with the industry over the last several weeks, and quite frankly, the amendment started to get so big that I did not want to bring it in front of the Committee and bog down this bill. I just thought it made more sense to take it back to regulation, give the industry time to vet it along with Board staff, and see if we can make sense through it with regulation.

Chair Miller:
With that, I do not see any additional questions. We will open it up for testimony in support of Senate Bill 14 (1st Reprint). Is there anyone here in Carson City who would like to approach and testify in support? Not seeing anyone, is there anyone there in Las Vegas who would like to testify in support?

Virginia Valentine, President, Nevada Resort Association:
I am here to speak in support of S.B. 14 (R1) with the amendment to section 3 to revert to original language for the Board, and to thank Chair Hendrick and the chiefs at the Gaming Control Board for working with us on the amendment for cloud computing. We see this as a modernization effort. When you are looking at data on a server with cloud computing and the whole volume of the activity that goes on now with service providers, you have a combination of both encrypted and unencrypted data. What we want to do is continue to work with the Gaming Control Board to get a regulation that will allow us to work with them to provide the data they need when they are doing an investigation. Thank you again. We urge your support of S.B. 14 (R1).

[Exhibit D was not discussed during the hearing but was submitted in support of Senate Bill 14 (1st Reprint) and will become part of the record.]

Chair Miller:
Is there anyone else in Las Vegas who would like to testify in support? [There was no one.] Is there anyone on the phone who would like to testify in support? [There was no one.] I will open it up for opposition testimony in Carson City. Not seeing anyone, is there anyone

in Las Vegas who would like to testify in opposition? Also not seeing anyone, is there anyone on the phone who would like to testify in opposition? [There was no one.] I will open it up for testimony in neutral, beginning here in Carson City.

Kabrina Feser, Operations Officer, Public Employees' Retirement System:
At the February 16, 2023, meeting, the retirement board voted to be neutral on section 10.5 of Senate Bill 14 (1st Reprint) if there was an amendment to only provide a very limited reemployment exemption to the Gaming Commission members. The current language satisfies this requirement. As Chair Hendrick spoke of, there is a salary limitation for reemployed retirees. It is currently at $27,495.50. As Chair Hendrick stated, the commissioners, which is a small group of a five-member commission, their part-time salary is $40,000 per year. It is in excess of that earnings limitation, which brings us to this amendment.

Chair Miller:
It was also said during testimony, alluding to the fact of how cumbersome it would be for PERS to stop and start someone's benefits. I am wondering, because I know with my own mother's experience, who took three times to officially retire, she would do it for a year and then go back to work. I am sure that is pretty normal now for many people. During that time, she would start her social security, and go back to work and stop her social security. I had no idea that you could literally just stop and start your social security like that. I am thinking of other examples of people who stopped and started or paid back social security. Where social security is a massive, bureaucratic federal program in this nation and often cumbersome for the recipient, if people are able to do that federally, is it really that challenging then for the State of Nevada, especially if you are speaking about a handful of people?

Kabrina Feser:
As far as social security goes, we always say we are not social security experts by any means. There is a dual notification for any reemployed retiree who is going to work for a public employer. They are required to notify the PERS staff within ten business days of accepting employment in a PERS-eligible position. Where this gets complicated is there are PERS-eligible positions, non-PERS-eligible positions, and there are these few exemptions for elected officials, our members of the Legislative Counsel Bureau, the Assembly or the Senate, senior judges. This would add this for the gaming commissioner members. It is complex because it is a start and stop, and it is a very complicated benefit calculation because there are different rules that apply, whether or not you come back. You have to be back at least six months in order to get a recalculation. If you are back less than five years, it is an additional benefit rather than after five years, where you have the ability to combine the benefits if you so choose. There are just different provisions. Reemployment and the calculations that go into account with it are very complicated, but we are seeing more and more individuals coming back and joining the workforce after a short stint in retirement. I hope that answers your question, but if you have anything further, I am here to assist.

Chair Miller:
Thank you for that. Yes, I think, retirement is not what we all think it is going to be. You get out there and you are like, wait, I am too young, I need to do something. With that, it also sounds like this would actually just have those commissioners in line with a caveat that we already have.

Kabrina Feser:
Yes. Under the current language in the draft, there is already that exemption for either house of the Legislature or the Legislative Counsel Bureau and also for senior judges. It is just another little, small subgroup, and the PERS board was neutral on this because of the small group rather than opening up to the masses, because that would have a significant cost associated with it.

Chair Miller:
That is helpful. Thank you so much. Is there anyone else who would like to testify in neutral? [There was no one.] Is there anyone in Las Vegas who would like to testify in neutral? [There was no one.] Is there anyone on the phone to testify in neutral? [There was no one.] Then I will welcome Mr. Hendrick back up if you would like to make any final comments.

Kirk Hendrick:
I just want to thank you again for allowing me to testify via videoconferencing. I certainly mean no disrespect by not being there in the room with you today, which I generally prefer to do. Also, I want to thank all the Committee members for your attention, and we are always available to answer any questions you may have about this bill or anything regarding Nevada's gaming industry. Thank you.

Chair Miller:
Thank you so much and we appreciate that. We all prefer in person, but we also love the benefits of technology enabling us to do multiple things in our day. I also would like to acknowledge Mr. Morton, who is in the room; we are happy to always see him back in the building. I will close the hearing on Senate Bill 14 (1st Reprint).

I will open the hearing on Senate Bill 39 (1st Reprint), presented by Marcie Ryba, executive director of the Department of Indigent Defense Services. Please proceed when you are ready.

Senate Bill 39 (1st Reprint): Provides that certain records received, obtained and compiled by the Board on Indigent Defense Services in the Department of Indigent Defense Services and the Department are confidential under certain circumstances. (BDR 14-215)

Marcie E. Ryba, Executive Director, Department of Indigent Defense Services:
We are excited to present Senate Bill 39 (1st Reprint) to you today. Just a little bit of background: as you may recall, we sit under the Board of Indigent Defense Services.

In *Nevada Revised Statutes* (NRS) 180.320, the Legislature asked the Board to establish minimum standards that our indigent defense providers have to comply with. They also asked that our Board establish procedures to receive complaints and recommendations so that members of the community, judges, fellow attorneys, and clients can write complaints or recommendations if they feel that an attorney is not necessarily complying with those minimum standards, or if they feel there are issues that need to be addressed. And then with our Department, we are supposed to develop resolutions or go and discuss those complaints with those attorneys.

Part of the purpose of S.B. 39 (R1) before you, in section 1, is to provide that any of those complaints are confidential. We want to ensure that people feel comfortable to bring those complaints forward to us and address those issues. This is so important to our Board that they also allow individuals to submit those complaints anonymously. But if we have that ability to contact the person who submits the complaints because they know their name will remain confidential, maybe we will get more feedback in our goal to try and make sure that these attorneys are complying with those minimum standards and addressing any issues we are seeing in indigent defense. Excuse me, that is actually part two.

The first part is to have all records received by the Board or the Department that are protected by the attorney-client privilege to remain confidential. I will get more into that in section 2 when we discuss that. Finally, it does allow us that if, in our discretion, we need to communicate with a licensing board or other government agency that is investigating a complaint against an attorney, we can cooperate with that. Again, we are not the bar. We do not step into the shoes of the bar. What we do is, we try and address any sort of complaints that come up and just go and talk to that attorney to make sure they are complying with minimum standards or a slight reminder of what minimum standards are. We do not take any steps that the bar would take. It is just to make sure that these indigent defense services are complying with the minimum standards.

Section 2 provides that there are certain records which need to be provided to the Department. As you all may remember, we have a stipulated consent judgment with the American Civil Liberties Union (ACLU) from the *Davis v. State* case, and they have asked the Department to collect certain information. Feedback that we have received from attorneys is that they feel that this is protected by the attorney-client privilege, so they have not really wanted to provide information that is required to be collected by the *Davis* stipulated consent judgment. Section 2 of Senate Bill 39 (1st Reprint) provides that that information remains confidential.

We also recently had the law change in NRS Chapter 7, when attorneys are requesting expert or investigator expenses, instead of having to go through the judiciary, they can now submit those requests to the Department. When you are submitting a request for an expert, we need to look at it to determine: Is this a reasonable and necessary expert? On the form, an attorney is required to say what they are thinking about the case, why they need this expert, and what they think the expert will show, so that we can review and approve those funds, if appropriate. They also are required to submit their compensation expenses, and we need to

review those as well to make sure that it is reasonable and necessary with regard to what they are doing, looking at when they are contacting the client, and those bills may contain information which is protected by the attorney-client privilege. With the creation of section 2, it does protect that information. If we get a request for that information, we do not need to turn it over because it is protected by the attorney-client privilege. We are hoping that with these protections, attorneys will be more open to providing that data we are required to collect.

Finally, subsection 3, declares these records as confidential for public records requests. We want to ensure our public defenders that if they are sending us a request to try and hire an expert, that a prosecuting attorney cannot do a public records request and see what they are thinking about the case or see who they are hiring. Those are the three sections of the bill, and I am available to answer any questions.

Chair Miller:
Are there any questions from Committee members?

Assemblywoman Cohen:
My question is about section 1, subsection 3, the discretion language. When I read it, it had me a little confused or concerned because attorneys have an obligation to the bar, and I wanted to make sure that this was not superseding or trying to supersede that obligation. I just want to make sure that we are clear that you still have that obligation to the bar. Okay, I see you nodding your head. I think if you could explain that a little so we have that clear on the record.

Thomas Qualls, Deputy Director, Department of Indigent Defense Services:
Yes, that is exactly what section 1, subsection 3 is designed to do; to codify that we do have the obligation to cooperate with the bar or any other professional organizations regarding these complaints that would otherwise be confidential under this section.

Assemblywoman Cohen:
It does say "at its discretion." That is the language that confuses me. It makes it sound like the Board has discretion, as opposed to is "required," to follow the requirements of the bar that all attorneys are required to follow.

Thomas Qualls:
Correct, and I do not know if there is some splitting hairs here or not, but it is also that a complaint to our Department is not the same thing as a complaint to the State Bar of Nevada, and whenever we receive those, that is part of the communication that we get back in return. It is our understanding, ethically, that if we have personal knowledge of misconduct of another attorney or a judge, we have an obligation to report that, but secondhand complaints I do not think rise to the level of our having personal knowledge either.

Assemblywoman Cohen:
To be clear, that discretion, though, still does not—or maybe it is the way it is drafted—it says it does "not prohibit the Board or the Department, at its discretion, from communicating or cooperating with, or providing any records to, any professional licensing board"—this almost makes it sound like it is your choice. Whereas, under the rules that attorneys follow, you are obligated to provide that information to the bar if you have the firsthand knowledge; it is not discretionary.

Marcie Ryba:
I think the purpose of the complaints and recommendations portal is for individuals to let us know whether attorneys are following minimum standards that have been established by the Board. These minimum standards are not necessarily adopted by the bar in something where they could take steps to look at whether or not you are in compliance. These arise to whether or not you are communicating with a client within seven days or whether or not you are making bail hearings or certain hearings. The purpose of these complaints is to make sure that these minimum standards are being followed. If there is a complaint that arises to the level where it needs to be referred to the bar, we generally do encourage the client or the person who is making those complaints of the process to be able to do that, and we would cooperate in those proceedings if we had that knowledge.

We do not want to misrepresent what the purpose of these complaints and recommendations are because they are again, solely around indigent defense services; what our board is looking at is to make sure they are in compliance. These may be things that the bar does not necessarily regulate or look at, those specific minimum standards, because they apply to our indigent defense providers, but they may not apply to a civil attorney.

Thomas Qualls:
I would say the only distinction there is that this section governs complaints that come to our office for which we do not have any personal knowledge. I think the personal knowledge requirement for our reporting to the bar would supersede this. I think that is the distinction, and the specificity of this is that this is about complaints coming into our office that we do not have personal firsthand knowledge of.

Assemblywoman Mosca:
While I was reading this, it made me think to ask how many complaints are you getting? Is this out of the genesis of your getting a lot of complaints and now you need to have it set up, or is it because of that court case that you had referenced as well?

Thomas Qualls:
The volume of complaints is not very high at this point. We do get one or two a week, generally, and we address those. The primary reason that this was drafted to begin with had to do with the reporting requirements. We are required under *Davis* and under the regulations to collect certain data from all of our indigent defense providers about the numbers and types of cases and what they are doing in those cases. In the beginning when we rolled out this case management system to collect that data, because we have access to

every office's case management system, there was concern that conscientious attorneys did not want to be subjecting that information to a third party, which would breach confidentiality. That was the primary reason for doing this, to ensure that whatever came into our office, whatever we had access to, remained confidential. The complaint part was an add-on that has taken out more language than the original intent, but it is to cover all of the bases.

Assemblywoman Summers-Armstrong:
I am always a little bit taken aback when I hear that there has been a court case that requires something and then people decide that they are not going to comply, which is I think what I am hearing you say about the ACLU case and about submitting information. Can you explain how that happens? How do we not do anything?

Thomas Qualls:
It is my understanding in talking with these attorneys when we were rolling out this process, this is almost like a law school ethics question. The ACLU lawsuit and our regulations require the collecting of this. But there were attorneys who felt that there were aspects of this legal requirement that also required them to potentially violate their ethical duties or their duty to their client as far as confidentiality. You have got this tension between the two. That, in essence, is the genesis of this bill draft, which is to try to make sure that they could comply with the requirements of the law and of the *Davis* settlement, as well as their ethical obligations as their attorney. The attorney-client privilege is considered sacrosanct in indigent defense. It is just to make sure that those two things are not mutually exclusive and that they can coexist comfortably.

Assemblywoman Summers-Armstrong:
When these attorneys were having this conflict of conscience, did they get permission from any judicial branch or any judge or court that said they could wait to provide this information until this was determined? And if they did not, what was the penalty for basically ignoring a court order?

Thomas Qualls:
There was not any judicial permission for their hesitancy. I can say that all of them are cooperating and reporting all of this information now. We did do some extensive research on this, including consulting with the Office of the Attorney General as well as ethics professors at the University of Nevada, Las Vegas William S. Boyd School of Law. This was the path we took in order to, again, ensure that these two things could coexist. But in the meantime, they have been complying. It is not that there are any attorneys out there right now refusing to comply with this legal requirement, but it was a conversation we had in the beginning.

Assemblywoman Summers-Armstrong:
I just find it sickeningly hilarious that nobody else gets to do this, that regular people have to follow regulations and laws that are set by this legislative body and that the court hands down. We do not get to have a conflict of conscience when we are required to follow the law—there is always, for us, especially people in the community that I represent, when we do

not comply. But because folks have a "JD" behind their name, they can play around and skirt around the edges about what they comply with and what they do not. It just gets on my nerves. I think that it is disingenuous that here we are having discretion about how we report people's behavior. I think that is also a little bit disingenuous. If somebody is not representing their client, they should be reported. If they are not following a court order, they should be reported because nobody else gets to get away with this. It is really, really frustrating. I understand what you are trying to accomplish here, but nobody, whether they have a "JD" behind their name or not, should have a better position to skirt around the edges than I do because I do not have one. The gall. It just gets on my nerves, but thank you and I will give this due consideration.

Chair Miller:
Can you just clarify again in two or three sentences what the issue is that is trying to be resolved about the attorney-client privilege. I feel it is more than just legal. It literally is fundamental to our legal system. What is the conflict as the attorneys are trying to comply, but they already have an additional, foremost obligation for attorney-client privilege—this is often discussed in the Assembly Committee on Education about data collection and privacy versus information—could you respond to that?

Thomas Qualls:
In a nutshell I would say that to an attorney, attorney-client privilege is sacrosanct. It is of the highest importance. If a law is passed that infringes upon that, I think that most attorneys would say that their first obligation is to their client and to the confidentiality. There are many attorneys who would risk contempt charges to protect that. That was the nature of the complaint, was that exposing this data to a third party, namely our Department, could potentially cause them to waive that confidentiality. This bill, in its origin, was designed to make sure we were protecting that primary obligation of the attorneys while they were complying with the requirements of *Davis*.

Marcie Ryba:
The other purpose of the bill is, we want to put our indigent defense providers on the same step as prosecutors. When prosecutors have their budgets built, they have budgets for experts and investigators, and they can go and retain those experts and investigators, and not have to tell anyone. We are heavily reliant in Nevada on appointed counsel. They do not have separate budgets from the county to be able to go and hire experts and investigators and most public defender offices, including the Nevada State Public Defender, do not have a budget at all to be able to provide experts and investigators. That means that for our attorneys to be able to access these funds for experts and investigators, they need to apply to a separate department and set out, What is my thinking with this case? Why is this necessary and why should we spend public funds on this expert and investigator? Then a separate entity, generally us, reviews it to make sure that it is appropriate to hire.

We want to ensure that that information remains confidential, that a prosecutor cannot just do a public records request to us, and say, I would like to have a copy of all expert investigator requests made by this attorney. We want to make sure that those thoughts of that attorney,

the reason that they are hiring these experts and investigators, is confidential and remains confidential, because the prosecutor does not have to come to us to ask for funds. They have those funds in their budget, but a defense attorney does because we are so reliant on so many individual attorneys. That is that main part of the purpose there.

We also want to make sure that people are comfortable in bringing complaints to us. Sometimes clients may not want to tell the name of themselves because they do not want anything to happen to them with their attorney, or maybe a judge does not want it to be known that their name is the one making the complaint. But in the end, what we are all looking for is, we want to make sure that these minimum standards are being complied with for our attorneys, and we want to make sure that these attorneys have access to the same resources as our prosecutors, and that we keep that information just as confidential as it would be if they had been in that prosecutor's office.

Chair Miller:
Thank you for that. Because you do reference the lawsuit from the ACLU, have you had any kind of communication with them regarding this bill?

Marcie Ryba:
Yes, I have reached out to the ACLU. I believe they were in support of it at the last hearing in front of the Senate. I have talked to them about this bill, and they believe that it is important to have that separation from the judiciary where it was previously, where the judiciary would review these claims. It is also important for us to be able to collect the data that we are required to collect and that we can process those claims for compensation or those expert requests. I believe that they did testify in support of it at the Senate hearing.

Assemblywoman Newby:
I had a question regarding the interaction and then complaint process vis-à-vis the State Bar of Nevada. I bring it up because I think most of the clients probably would not necessarily think that the place where they would go to complain about their legal service would be the Department. I think, they more likely think you would bring something to the bar. I was wondering—similarly to reporting or communication between the Department and the bar—is there another communication between the bar to the Department, if say, a client makes a complaint to the bar and it does not quite reach the level of what a bar complaint should be, it does not really qualify, but it is still a service issue? Would the bar then notify you about the complaint in terms of service of that attorney so that you could take it on as the contractor?

Thomas Qualls:
There is not a process in place right now for that information to come to us from the bar. It is an interesting conversation that you bring up that we should have with the bar. I do not know what the bar's confidentiality requirements are regarding that and whether they would be open to or if they are able to be open to share that with us, but there is not a process for that right now.

Assemblywoman Considine:
My question is along the same lines of both of my colleagues. You mentioned earlier about a secondhand complaint, and I guess I am just looking for some clarification on that. I understand if there is a client who calls your office or contacts you to complain because they feel that their attorney is not communicating with them in a way that they want to communicate with them. In that respect, it is potentially a training issue, more of a personnel issue between them that would not rise to a level of alerting the State Bar. But if it is a breach of ethics, if it is a client who says, The attorney did not show up at my hearing; or The attorney showed up and was obviously on something and did not do anything for my trial; or something that breaches that ethic requirement or the responsibility of an attorney who is barred by the state. In those situations, is there an alert to the State Bar or is there a conversation with a client about their ability to file a complaint with the State Bar? I want to make sure that there is a clarification of what you mean by "secondhand" complaint and knowing and not knowing in that context.

Thomas Qualls:
I am speaking about this from an evidentiary standpoint in court, in which one either has firsthand, personal knowledge, they witnessed it, they are aware of it firsthand, personally, eyewitness or otherwise versus that information coming from a second or third source in which it would be, in legal terminology, hearsay. It would not be something that we had personal knowledge of. That is the first distinction. If we get a complaint on paper, even alleging an ethical violation, it is not something that we still witnessed or have firsthand knowledge of. We have secondhand knowledge of that.

The second part of the answer is that we are careful when we communicate back to the client, or whoever the complainer is, to explain our role in sort of overseeing the systemic processes and the individual attorneys versus the function of the State Bar or potentially a petition for writ of habeas corpus alleging ineffective assistance of counsel. Those are two different avenues that are available to any criminal defendant. We make sure we lay those out and communicate that to whoever has complained to say, We will address this in this way, and we are not the bar or a court of law, and these are your other options if you feel that the performance has fallen below a reasonableness standard, or if you believe that you have been provided ineffective assistance, or if you think that there is an ethical obligation—these are the paths that you must take.

Assemblywoman Considine:
That leads to my next question. When you are working with those clients, is there an agreement that a client has to read or agree to, a contract, between this department and the client? Or is that left to the attorney representing the client. In that agreement, would there be any information, if they had an issue or something, of the steps that they could take? Is that through you or is that just left up to the attorney who is directly representing the client?

Thomas Qualls:
Can you clarify your question? I am not sure I understand it, sorry.

Assemblywoman Considine:
Yes. Typically, in a retainer agreement or some sort of an agreement between the attorney and the client, it would include information about what to do if you are unhappy with the service. I guess what I am trying to figure out is if there is anything in writing or notification given to the clients through your office, or is that left to the attorney who is directly representing the client?

Thomas Qualls:
Any type of agreement like that would be between the client and the attorney. We have no attorney-client relationship with the clients. In fact, we always say that we are not permitted to give them legal advice because they are represented at the time. We also have notice on the website of what I was saying, that we are not the State Bar, et cetera. Yes, that would be between the attorney and the client.

Chair Miller:
Not seeing any additional questions right now, I will open it up for testimony in support of S.B. 39 (R1) beginning here in Carson City.

Erica Roth, Government Affairs Liaison, Deputy Public Defender, Washoe County Public Defender's Office:
We are in support. I want to clarify a few things. I think there might be some kind of misconception about what complaints we are really talking about and why it is so important that this bill keeps this communication confidential. Prior to the Department of Indigent Defense Services being formed, if a private attorney, conflict attorney, or a panel attorney was requesting funds for an investigator, they would file a motion under seal with the court. It is that kind of information that we want to keep confidential because it is now going to the Department instead of a judge. It is to ensure that the information that is provided in that motion, for example, that lays out why an investigator is so important to a case; facts about a case that we do not want to pass over to a district attorney; or our theory of the case that we do not want to pass over to the district attorney prior to trial. We need to make sure that that information is kept confidential because now those requests, instead of being filed under seal, are going to the Department.

It is also important for the benefit of the client that if a client makes a complaint against their attorney, it is inevitable that that complaint is going to contain facts about their case that also need to be kept confidential from the prosecuting attorney. When we say that a prosecuting attorney is having a conflict between the law, the ethics, that binds them to ensure that they do not disclose any confidential communication between them and their client, that is sacrosanct. We are ensuring that if a complaint against that attorney—it does not mean that there are no repercussions. It is insurance, it is for the benefit of the person making that complaint that that information is not now subject to a public records request, is not available to the prosecution and could somehow be a detriment to their case. It is for the benefit of the person making the complaint.

It does not mean that that complaint does not go to the State Bar. It does not mean that there are not repercussions if they fall behind on their case. There are already legal mechanisms put in place with ineffective assistance of counsel claims, but it is to ensure that that confidentiality remains intact now that we do have this new system with the Department set up. This bill is essential to that. It is essential. It is a benefit to the clients of indigent defense services, and I really urge your support.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
I want to echo the comments of my colleague, Ms. Roth from the north. The Department of Indigent Defense Services exists because Nevada was doing such a terrible job with defense in the rural parts of the state. They are here to organize us, get us on the same page, make sure that people in Elko and Ely get the same type of defense that people in Clark and Washoe are receiving. One of the things that is most important with our job that the United States Supreme Court and the Nevada Supreme Court have recognized is that attorney-client privilege is one of the bedrock principles of our job. It allows us to communicate with our clients in an honest fashion and our clients to communicate with us in an honest fashion. A savvy prosecutor may use a Freedom of Information Act request to get documents from the Department of Indigent Defense Services because they are a public agency. What this bill seeks to do is to protect those documents, as Ms. Roth has said.

When I am formulating investigation requests, I have to send those through my supervisor. The rural attorneys have to send them through the Department of Indigent Defense Services. Oftentimes I have to justify why I want this expense, whether it be an expert, or we are going out and doing a site visit, or whatever we are tending to do. I will put case strategy in that request or any communication between me and my investigator personally. We do not want that discoverable by the prosecution. That is why this bill is necessary. I think some of the presentation went off the rails just a little bit, but I am just trying to rein it in and say, this is the purpose of that bill and that is why these things should be protected by the attorney-client privilege and not discoverable by the prosecution.

Chair Miller:
If you both could just wait a moment. Members, I will open it up if you have any questions for the public defenders.

Assemblywoman Hansen:
Thank you for coming to the table to clarify. Mr. Piro, regarding the rurals, you said that historically they had to put the request in—if you could reiterate it again. It sounded like there is a different process that existed for the rurals versus other areas. Is that what you were getting at? It has to go through indigent defense. Could you clarify that one more time for me on the record because I was taking notes when you were clarifying it.

Erica Roth:
Prior to the Department of Indigent Defense Services, and this was true in the rural counties and the urban counties, the request would go through the county. Now, the state is funding

these services, and that request goes to their Department, who oversees this. Previously, that request would be filed under seal with the court. A defense attorney would draft a motion that would not be available to the prosecution, and that motion would have to include facts and theory of the case; your theory of defense; why you needed funds for an investigator to find certain evidence or to hire an expert witness. It is sacrosanct; essentially, it is the bedrock that that information is not provided to the prosecuting attorney prior to trial. All this does is ensure that what was previously filed under seal with the court and funded by the county—because it is now funded through the Department with the state—that that same request with that same information still remains confidential and is not subject to any public records request or any formal request.

Assemblywoman Hansen:
Thank you. That really helps to clarify.

Assemblywoman Summers-Armstrong:
I appreciate the clarification, and I absolutely understand the attorney-client privilege and that part of it. But my understanding from the testimony was that there was a lawsuit. The American Civil Liberties Union required certain information to be gathered. That information was supposed to be collected and kept some place. I understand the confidentiality portion of it. I guess what I am just kind of struggling with—and I truly appreciate your clarification; I get it. I guess my question is, for the information that was supposed to be provided, if the portal gave them pause, do you just not provide the information that was required by the lawsuit, or is it the appropriate thing to ask the judge if we can collect it but hold it until we can get this cleared up about the portal and whether or not it is discoverable, or whether or not the portal is secure so that this data is not released. Is that completely different from what we are talking about, the investigation, or are they all one and the same?

John Piro:
I think this question would probably be most appropriate for Ms. Ryba from the Department of Indigent Defense Services. I do think there are two separate issues that we are talking about here: the confidentiality issue to defend what is going on in our investigation and making sure that that is not disclosed to the prosecution; and the parameters that we need to meet to deal with the consent decree from the ACLU lawsuit. I do not think that they conflict in this bill. I do not think the ACLU and the court will not be able to get the information that they need to say, Hey, we are actually fixing indigent defense services and the rules. I do not think the confidentiality provisions are going to prevent that part of it.

Assemblywoman Mosca:
Has this happened before, or is this being proactive? Has somebody asked for the public records request?

John Piro:
This is a proactive measure to protect, because now we are in a new state of being with a public agency. Prior to this, you would have to go through the county to get your

information or through a judge. What we have been trying to do is insulate the attorney-client relationship from interference by the judiciary or the larger county, to give those rural attorneys who are providing indigent defense services some manner of independence but supported by the Department of Indigent Defense Services.

Chair Miller:
Are there any additional questions? [There were none.] We always appreciate it when people are able to come up and just respond in an impromptu manner. Thank you so much for that clarification. Is there anyone else here in Carson City who would like to testify in support of Senate Bill 39 (1st Reprint)? Not seeing anyone, is there anyone in Las Vegas? Not seeing anyone, is there anyone on the phone to provide support testimony? [There was no one.] Is there anyone here in Carson City who would like to testify in opposition of Senate Bill 39 (1st Reprint)? Not seeing anyone, is there anyone in Las Vegas? [There was no one.] Is there anyone on the phone to testify in opposition of Senate Bill 39 (1st Reprint)? [There was no one.] Is there anyone here in Carson City who would like to testify in neutral? Not seeing anyone, is there anyone in Las Vegas? [There was no one.] Is there anyone on the phone who would like to testify in neutral to Senate Bill 39 (1st Reprint)? [There was no one.] I would invite the presenters back to the table for any concluding remarks.

Marcie Ryba:
I want to thank this Committee for taking the time to listen to this bill. I would like to close with one of the biggest issues we have had is that change is hard; change is hard for rural attorneys who have not had to report time or to give information that we are asking them to give at this point in time. The purpose of this bill is to ensure those attorneys that we are protecting the information that they are giving. Even though they go through us, it is still protected by that attorney-client privilege, so they can provide that data so that we can comply with our lawsuit.

The reason this is so important is in those rural counties, they do not provide their indigent defense attorneys with a pool of funds to be able to provide experts and investigators. That is budgeted, but it is not necessarily budgeted exclusively for that one attorney. We provide a process so that they are able to access those funds. We want them to know that if they let us know their theme and theory of the case, that that is going to be protected from anyone doing a public records request to see what is going on in the case. We are always available for any questions you may have on this. If you have anything further for us, please let us know, and we will be happy to answer any questions.

Chair Miller:
I will close the hearing on Senate Bill 39 (1st Reprint). I will open the hearing on Senate Bill 63 (1st Reprint), presented by John McCormick from the Administrative Office of the Courts. Please proceed when you are ready, Mr. McCormick.

Senate Bill 63 (1st Reprint): Revises provisions relating to the Judicial Department of State Government. (BDR 1-435)

John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts:
I am here today to talk about Senate Bill 63 (1st Reprint), which does a lot of modernization and cleanup in some of the initial chapters of *Nevada Revised Statutes* (NRS) dealing with the Judicial Branch, as well as a fix in NRS Chapter 281. With the Committee's indulgence, I will attempt a quick run-through of the sections of the bill. Section 1 modernizes language regarding making the contact information of courts available. It must be made available to the public, not that the phone number must be published in the phone book. It is updating that language.

Chair Miller:
Mr. McCormick, could you please define phone book for our younger members?

John McCormick:
Back in the day, I hear there was a book, which had multiple sections—one for business, one for regular people—that the phone company put together and gave to everybody to have at their house. Now we use the Internet, so we want to put the phone number on the Internet, not a nonexistent book.

Section 2 modernizes the language around holding court during emergencies. While I personally am very fond of the phrase "war, pestilence, or other public calamity," we thought that perhaps was a bit antiquated and we are cleaning that up to say in case of public emergency, court may be held away from the county seat.

Section 3 is a technical cleanup and adds "location" in addition to "a place" where court can be held to make sure that is broad enough to handle modern technology, remote appearances, et cetera.

Section 4 is another old-timey section, dare I say. Currently, court proceedings must be open to the public, but minors can be excluded unless the minor is a party to the case—obviously, if the child has some interest in the case, they can go in—or current statute is a minor who is a law student studying to become licensed to practice law. In that case, with the way law licensure happens in this state, I think that person would have to start college at age ten to comply with that age-wise, because obviously you have to have a four-year degree, then a three-year degree, and then take the bar to pass. We are just removing that antiquated language that prevented the court from excluding minors who are studying to be lawyers from proceedings.

As I think I probably indicated before, the Administrative Office of the Courts is currently working on a statewide e-file system. In order to effectuate that, section 5 updates the language and requires the Supreme Court to have appropriate rules for e-filing in the state.

Courts must be open to take filings for protection orders 24/7, and section 6 updates that—it can be electronic communications, as we are working on a public portal to allow that application rather than just phone calls. Again, it is a modernization piece.

Section 7 is another modernization piece about possession of the court seal, because the court seal is more of a concept. You can electronically seal now. However all that works, I am not going to try to explain the information technology stuff I do not know, but it modernizes that language.

We amended section 8 in the other house, and it deals with disqualification of judges. Currently what can happen is a person, if they want to disqualify a judge assigned to their particular case, is allowed to file an affidavit to make that request. This keeps that provision the same and governed by statute, but it does add that the request for disqualification must not be filed to interpose delay, to harass a judge, for those sort of bad faith purposes. What we have experienced, particularly in the Eighth Judicial District Court, are serial disqualifiers who tried to disqualify the entire bench to stretch out their criminal prosecution. This just requires that those disqualifications attest they are being made in good faith. It also clarifies when an affidavit for disqualification is filed, the judge who is subject of the request has an ability to respond to that. I do not like Judge A; I say, Judge A cannot be fair. Judge A has a chance to say, No, I can be fair for these reasons. This changes the time frame on that from when the judge who is subject to the request is served rather than when it is filed so the judge has adequate time to assess the request and make sure if they need to file that reply or however it is going to be handled.

Section 9 modernizes language regarding the duties of the state court administrator and just takes out some antiquated references. Section 10—and you will see this throughout several sections—changes requiring the Administrative Office of the Courts to make "regulations" into "rules" because on the courtside, we tend to make rules, we do not make regulations. That is a language difference that was important for us to ask to put in statute.

Section 11 modernizes language on interpreter fees that we suggest courts pay to use the services of interpreters. Just by way of a news note, our guideline recommendation was recently upped to $49 an hour from $25, which puts us commensurate with a lot of other states. Section 12 modernizes language regarding that interpreter program, again, recognizing the court makes "rules," not "regulations." It is the same for section 13. Section 14 updates the language in the statute around interpreters to use the term "limited English proficiency," which is the preferred terminology we use in the court system when a person requires interpretation services. It also allows the court administrator to appoint a vice chair of the statutory advisory committee regarding the court interpreter program.

Section 15 is another "regulation" to "rule" change. Section 16 again replaces the statutory procedure for how a person may challenge. We do interpreter certifications. An individual has to take a workshop, pass a written test, then pass a three-part oral examination to get their certification. After that, they are subject to a background check. Currently, there is a statutory procedure to contest that if a result on the background check comes up that would

be disqualifying. This section puts that into rules. We have, I think, had that situation maybe once or twice, generally, where something has come up on a background check and the court administrator reviews that. I do not believe we have ever denied anyone certification based on that.

Section 17 clarifies when a judge who is appointed to fill a vacancy when their term begins and ends. That has had some confusion around it, and there are some court cases. This is just further clarification on that, hopefully to get the statute updated so it is more clear to everyone.

Section 18 removes the statutory requirement for the effective date of court rules. The court does that on their own with their own procedures. They do not make rules saying, Here is the new rule and it is effective tomorrow. It is almost always 30 days, but it removes that statutory requirement in the event we do have an emergent situation. For example, last fall, I think we put in a rule that deals with a child welfare issue that should have been in statute but going in a rule was the only place; like an emergent rule, you would have that become effective a little quicker than say otherwise.

Section 19 clarifies that it is the state's responsibility to fund the Supreme Court. This is again an old-timey statute that said the court could order the sheriff to provide them with a place to hold court. As much as I think Sheriff Furlong would enjoy getting drug into the middle of that, I think we want to clarify that and just make that clear.

Section 20 modernizes language around the use of digital signatures now that that is becoming more commonplace and we have the whole chain to prove that it really is the person who signed it. Section 21 modernizes language regarding the clerk of the Supreme Court who serves at the pleasure of the court. It actually looks like a statute that is a creature of its time because it dealt with someone who was appointed to the position before January 1, 1957. We are removing that old reference and again, trying to clean up that section. Section 22 removes unnecessary language regarding the employment of bailiffs or marshals at the Supreme Court. That is the same thing that section 23 does.

Section 24 modernizes language regarding court employees to reflect the purpose of staff in our modern state. Section 25 changes "shall" to "must" regarding the library. It is a modernization of language. Section 26 is a page-long section to remove "regulations" from the statute.

Section 27 is probably the most popular section of this bill, if I can make that assessment. Section 27 clarifies the responsibility of the county in terms of providing resources for the district court, and we spent a bit of time working on this with particularly the Eighth Judicial District Court and Clark County to get this to a place that everyone is comfortable with. You will note that there was an amendment [Exhibit E] I submitted yesterday that further clarifies this language in subsection 4, just reiterating that the county is responsible for providing suitable and sufficient resources to the court to perform its constitutionally mandated duties.

I would like to point out in section 27, subsection 3, the provision says that the county commission can require district courts to expend money appropriated for a specific purpose. The purpose of this section is to clarify that—say the county commission gives a judicial district money to buy computers, for example, to modernize to prepare for e-filing. Because that is a special appropriation for that purpose, the court cannot then say, No, we are not going to buy computers, we are going to buy telephone books. The intent of subsection 3 of section 27 is just to clarify that when there is a specific appropriation made, it should be used for the purpose for which it is made, and it does not necessarily apply to the regular operating budget of the court.

Section 28 removes "regulations," as do sections 29 and 30. Section 30.5 is a section we worked on in the other house at the request of the chair. What it does is it replicates the provisions regarding full faith and credit for protection orders that currently exist in NRS Chapter 33 for domestic violence protection orders. It takes those provisions and replicates them for our high-risk protection orders, or the red flag orders—you may be more familiar with that term. This language we did in cooperation with the Las Vegas Metropolitan Police Department just to ensure that they have all the tools they need when we do encounter a situation where a high-risk order is needed. As more states develop their own high-risk order process, this provides a statutory framework for recognizing an order from another state in that same manner.

Section 31 replaces "telephone" with "electronic means." Again, that is four pages of the bill for about four or five changes of "telephone" to "electronic." Sections 32, 33, and 34 all change "regulation" to "rule" again, as has been consistent throughout the bill. Section 35 removes a reference to five justices of the Supreme Court in NRS Chapter 281, because, I think, before 1997 it was a five-justice court. Then two were added, and then the court stayed at seven justices. We just want statute to conform and put "Justices of the Supreme Court." This body, obviously, has the constitutional authority to increase that number as they see fit.

Finally, this bill repeals a few sections of NRS. One section [NRS 1.060] is dealing with adjournment in the absence of a judge, which is no longer antiquated—when the judge is not in the county, then this is what you do to stop court. That is not really a thing we encounter anymore. It removes the section [NRS 1.150] dealing with what the court seal is and how you procure the physical stamp—we do not need that anymore with modernization. Custody of the seal—again, it is kept with the court [NRS 1.170]. Documents to which a seal may be affixed—the court applies the seal to documents filed with it [NRS 1.180].

Qualifications of the Clerk of the Supreme Court [NRS 2.210], and authorization of deputy clerks are other cleanups [NRS 2.230]. Our clerk of the court appreciates that she will no longer be fined $1,000 if she violates some of these statutes. I say that somewhat kiddingly, but it removes the $1,000 penalty for the Clerk of the Supreme Court, basically, if they charge unnecessary fees, which is obviously not something that would be done.

The bill removes NRS 2.270, which allowed the Clerk of the Supreme Court to destroy evidence, which I always thought was an interesting provision because the Supreme Court is an appellate court and generally does not receive nor store evidence. It removes that antiquated provision. It also removes the specific provisions [NRS 2.420] requiring the law library to be open to the public. Because the law library is part of the Supreme Court, it is open when our building is open from 8 a.m. to 5 p.m. The public may talk to library staff to access it at other times by special arrangement and will work that out with the marshal. It also cleans up the qualifications of the law librarian [NRS 2.440] and no longer requires the law library to make a biennial report to the Supreme Court because the law librarian is the department head within the court and regularly communicates with the court regarding library issues [NRS 2.450].

That is an attempt at a quick overview of this bill, and I am happy to answer questions.

Chair Miller:
Are there any questions from Committee members?

Assemblywoman Newby:
In section 27 of this bill, your most popular section, in subsection 4 and subsection 5, if the county disagrees with some request for funding or some "thing" that the district court wants, subsection 4 says that the court can order them to pay for it anyway. But then subsection 5 says you cannot actually take any money out unless it has been appropriated by the board of county commissioners in accordance with the budgeting process, which is a very specific and time-restricted process. I am wondering about the seeming conflict between those two subsections.

John McCormick:
This is where we get into that delicate balance under Article 3, Section 1 of the *Nevada Constitution* as far as separation of powers. The intent of subsection 4 is to say that if the county refuses to provide the court the resources that are suitable and sufficient to perform its constitutional functions—and that is why we are offering the amendment to clarify that—then it can be ordered. If it is a disagreement—we will just use the computer example. We want ten computers; the county only wants to pay for five. That is what we do in the budget process, unless the court determines, pursuant to the existing case law, that that denial is sufficient to inhibit its ability to carry out its core constitutional function, which is the only time the ordering comes into play. It is not intended to be, Well, if you do not give us the appropriation for what we want, we will order it. We do the budgeting process, and then you get to the crisis point where, say the county is just, No, we are not going to give you any staff, for example. That would be when the ordering comes into play because the absence of staff would inhibit the court's ability to carry out its core constitutional functions of deciding cases in a timely manner.

Those other sort of budgetary enhancement-type situations I do not think would necessarily fall under this, and that is consistent with the case law in the state. That is why we worked quite a bit with Clark County, in particular, to tweak this language and get it to their

satisfaction where it reflects the existing case law. For lack of a better term, the court ordering the county to do something is the nuclear option, and nobody ever wants to get there. This mirrors case law in statute. I hope that sort of rambling answer helped.

Assemblywoman La Rue Hatch:
I think you are probably not surprised that so far we are asking about that section. I am from Washoe County. The Second Judicial District Court has an aging building. There is radon in the basement, there was an open sewer issue, there is mold and flooding, and they have literally run out of room for their clerks and their filing staff. Would that rise to the level where under this, they could say, We need a new building because we literally cannot function in this one anymore?

John McCormick:
That becomes a determination that has to be made by the chief judge and the members of that bench in their negotiations with the county. That is something that potentially could rise to that level. But again, that would ultimately, if it rises to that level, that is provided in our case law, and this statute would just match the case law. I do not necessarily know that this statute would impact the calculation made by the court or the county in those budgetary discussions. Because, again, that would be the nuclear option, and I do not think anybody on the Washoe County Commission or the Second Judicial District Court would particularly be excited about that.

Assemblywoman Cohen:
In section 30.5, the high-risk behavioral orders, is the first party given notice of the order because they could be coming from another state? They know about it in the other state, but do they know that it is following them to this state?

John McCormick:
Yes, in section 30.5, subsection 1, paragraph (b), the court has to determine that the adverse party was given reasonable notice and an opportunity to be heard before the order was issued in order for that order to become effective in Nevada. In allowing full faith and credit, that assessment has to be made that the adverse party received sufficient notice in the state of origin.

Assemblywoman Cohen:
The way I had read that, forgive me if I am wrong, but I am talking about that they know that it is following them to this state. Do they understand? Are they made aware that it is now in this state, not just in the original state?

John McCormick:
I do not believe that requirement is in here and it does not exist for the current protection orders when they come over from another state.

Assemblywoman Newby:
My question still is around the accoutrements for the courts and how did those negotiations work if a county believes that the request by the district court is unreasonable or may be out of line or not necessary. If you could just go into that a little bit more.

John McCormick:
Not necessarily speaking to any specific county process, but my understanding was it would be similar to any budget process. The court comes with a budget request. The county has a concern about some item in there and then however those negotiations happen between the county personnel and the court at that level. Because just like how the Supreme Court comes to the Legislature for our operating budget, it is the same thing. It just becomes a give and take and a negotiation. Generally, the only times we have ever seen something rise to the we-are-going-to-order-you-level, have been particularly difficult situations.

Thinking about three in particular where the situation in one was a municipality that wanted to control individual staff members of the court, set their pay, and tell them what their job duties were that rose to a case. Another one was where a district court made a request they considered reasonable regarding employing juvenile probation officers, and the county commission said no, and then after negotiating, they could not agree, and they came to the Supreme Court for resolution there. Another one was where the county, due to some decisions that were made about some other politically hot topics, attempted to tell the district court that they were being moved to an old gymnasium out of the current court building and that would be where they would have to hold court. Those are the types of situations that have risen to litigation. It has never been those situations about reasonable and necessary budgetary requests in the budgeting process where we go back and forth and decide what the appropriate resources are. Again, we are getting at the situations where the lack of resources or the refusal to provide those inhibit the ability of the court to carry out its constitutional functions of receiving filings and timely disposing of cases.

Assemblywoman Hansen:
In section 8.5, subsection 2, if I am looking at it right, this is new language, "A part-time judge may have a partner or associate who practices law in this State if the partner or associate does not engage in the practice of law before the part-time judge or in any court subject to the appellate jurisdiction of a court in which the part-time judge sits." I am trying to understand. I am trying to understand how in the rurals, in particular, where it is such a small, small world, how are you not going to have somebody come before you as a judge that you might have as a partner on a case?

John McCormick:
I do want to apologize for neglecting to include this section in my overview; it was not intentional. Thank you, Assemblywoman Hansen. It actually mirrors the existing requirement in the *Nevada Code of Judicial Conduct* as far as part-time judges and practicing law. For example, in some of the smaller jurisdictions, you have an attorney who is also a judge and they want to practice law, which is acceptable as long as people come before that attorney, he does not have judicial review over them. This situation would mean practically

that if there was an attorney who had a partner, was in a firm in a rural location, and was also the part-time judge, he would have to make that decision, Do I want to practice in this court, my court? Or do I want to be the judge here? This would allow that person to practice in other courts in the state, just not that court or where that individual sits to maintain that independence. The intent is actually to provide greater clarification here and marry up statute with the court rules, and we have very few of these continuing part-time judge situations. I can think of one in Washoe County where the judge has a practice, it is on the will, setting up trust stuff, so it is not really a practice where he would ever particularly appear in court. That is the genesis of this. And again, I do apologize for skipping over that one.

Assemblywoman Hansen:
I understand we are at a loss sometimes to have staffing for this. If we run into that situation, is there enough notice? It is not like you show up to court and you do not know this is going to happen. They are going to see who has been assigned to the case before it goes to the court so they can make other provisions if they were to run into a conflict.

John McCormick:
Exactly, and generally, these continuing part-time judges are one-judge shops. Obviously, if you know, Judge A's partner B was in a case in that court, we would all know that judge would then have a duty to recuse and then we could bring in a senior or pro tem judge, or have a judge from a different jurisdiction. Generally, that would happen with plenty of notice. I cannot think of a situation where a litigant would show up and run into this in terms of the judge not being able to sit.

Assemblywoman La Rue Hatch:
In section 5, which is about the electronic records, I appreciate the attempts at modernization. I also know a lot of the courts have their own e-filing systems and they have their own electronic records. I would like to know what impact this will have on those. Will they be forced to suddenly change to a different system? And if so, what supports will be offered on that?

John McCormick:
In terms of the rules that the Supreme Court creates, those will be publicly vetted through our administrative docket process. All jurisdictions will have an opportunity practically, as we have been working on those drafts—we have worked closely with staff at the Eighth Judicial District Court and the Second Judicial District Court so far to draft the draft that will come before the court when it happens. In terms of e-filing and supporting, if another court wants to stay with their existing system when we do eventually roll out the full state e-filing, there will be an interface. We are not going to force the Eighth Judicial District Court to suddenly abandon their system and use ours. Those type of things will be worked out as we roll out the project. That is the intent on that, and this just says the court shall adopt those rules through our general rulemaking process.

Assemblywoman Cohen:
Going to section 2, I really appreciate having hearings remotely, especially when they are procedural. It saves money for the client; it saves time for me. But do we have any guardrails for judges who just do not want to leave their office? Our counties have a lot of space, and we have judges that live more than 100 miles away from where the courthouse is or, even if they just live in a different neighborhood from the courthouse, that do not want to come into the courthouse. Do we have any guardrails for those instances where judges may just not want to come in or who want to maybe abuse—and I am not accusing anyone right now—but they just kind of want to abuse the language? In section 2, it talks about "emergency." What does emergency mean? I think we all know. We were all talking about COVID-19 or if any of the next type of emergency like that happens. But what if a judge looks at this and says, Well, I have an emergency. I broke my foot, so I am not coming into the courthouse, or I am going to say that now we are going to start to have our hearings in Laughlin instead of in the courthouse in Las Vegas. How do we prevent that from happening?

John McCormick:
We do have rules at the Supreme Court governing audiovisual appearance and remote hearings and all of those kinds of things. I am not familiar with those rules. Luckily, we have a team over there to deal with that, but those rules to avoid that kind of thing do exist—and I can get you a copy of them. It goes through and assesses this procedural motion. Sure, we can have that remote, but you know, the trial, that should probably be in person. It is trying to address that situation.

Chair Miller:
I will go ahead and open it up for testimony. Starting here in Carson City, is there anyone who would like to testify in support of Senate Bill 63 (1st Reprint)? Not seeing anyone, is there anyone in Las Vegas? [There was no one.] Is there anyone on the phone who would like to testify in support? [There was no one.]

Is there anyone here in Carson City who would like to testify in opposition? Not seeing anyone, and there is no one in Las Vegas, is there anyone on the phone who would like to testify in opposition to Senate Bill 63 (1st Reprint)? [There was no one.] Is there anyone here in Carson City who would like to testify in neutral? Not seeing anyone, is there anyone on the phone who would like to testify in neutral to Senate Bill 63 (1st Reprint)? [There was no one.] Mr. McCormick has indicated that he does not have any closing remarks. With that, I will close the hearing on Senate Bill 63 (1st Reprint).

I will open it for public comment. [There was none.] Thank you, members. We have multiple bills scheduled each day for the remainder of the time. I will see you all at 8 a.m. tomorrow morning. This meeting is adjourned [at 10:04 a.m.].

RESPECTFULLY SUBMITTED:

_____
Traci Dory
Committee Secretary

APPROVED BY:

_____
Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed amendment to Senate Bill 14 (1st Reprint), submitted and presented by Kirk D. Hendrick, Chair and Executive Director, Nevada Gaming Control Board.

Exhibit D is a letter dated May 2, 2023, signed by Aviva Gordon, Chair, Legislative Committee, Henderson Chamber of Commerce; and Emily Osterberg, Director of Government Affairs, Henderson Chamber of Commerce, in support of Senate Bill 14 (1st Reprint).

Exhibit E is a proposed amendment to Senate Bill 63 (1st Reprint), submitted and presented by John R. McCormick, Assistant Court Administrator, Administrative Office of the Courts.