

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
February 11, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:05 a.m. on Monday, February 11, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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 nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Paul Andricopulos, Planner, Community Development and Services Department, City of Henderson
Kyle Davis, Political Director, Nevada Conservation League & Education Fund
Garrett D. Gordon, representing Southern Highlands Homeowners Association and Olympia Companies
Pamela Scott, General Manager, Summerlin Association Management, The Howard Hughes Corporation
Bob Robey, Private Citizen, Las Vegas, Nevada
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
John T. Jones, Jr., representing Nevada District Attorneys Association
Jon Sasser, representing Legal Aid Center of Southern Nevada and Washoe Legal Services
Candace Barr, Children's Attorneys Project, Legal Aid Center of Southern Nevada
Buffy Brown, Washoe Legal Services

Chairman Frierson:

[The roll was taken.] Today we have a couple of bills and I think we will be able to adequately cover both of them. I have learned in just a week not to characterize any bill as a simple one. Given the emails that the Committee has received over the weekend, today is no exception. We are going to stay in order. We have Assembly Bill 44 and Assembly Bill 82. Assembly Bill 82 is my bill, so I will be presenting it and Mr. Ohrenschall will chair that portion of the meeting on A.B. 82. Today we are starting with A.B. 44 and I invite the sponsors of A.B. 44 to come forward and present it.

Assembly Bill 44: Requires associations of planned communities to allow the outdoor storage of trash and recycling containers under certain circumstances. (BDR 10-262)

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities: Assembly Bill 44 was introduced on behalf of the Nevada League of Cities and Municipalities. This bill would require that homeowners' associations (HOA) in communities where there is curbside garbage or recycling pickups allow for the outside storage of the containers. The measure provides that the associations may require that any containers stored outside be screened from view so that they are not visible from the street or sidewalk. [Continued to read from prepared text ([Exhibit C](#)).]

Chairman Frierson:

I realize that you might not necessarily be in charge of the pickups, but are you aware when that is scheduled to commence?

Wes Henderson:

No, sir, I am not. I do not know the specifics. I believe it is determined by each individual franchise agreement.

Chairman Frierson:

Would you describe a screen to hide the containers and what that might look like?

Wes Henderson:

With the removal of the provision that the Commission for Common-Interest Communities and Condominium Hotels adopt regulations, I would assume the material and the specifications of the screen would be left up to each individual homeowners' association.

Chairman Frierson:

So the bill is designed to allow outdoor storage of these bins, both trash and recyclables, all week long as opposed to just the day before the scheduled pickup day?

Wes Henderson:

Yes, sir. Instead of having to store these containers inside your garage, this would allow them to be stored outside your house.

Chairman Frierson:

I believe this bill was introduced last session, or something extremely similar. Was the introduction of this bill at all related to the cutting back to once-a-week pickups, or was it simply an issue of convenience for municipalities? I am curious if they were related, since I know they recently proposed to change the schedule.

Wes Henderson:

I am not familiar with the bill from the last session. I believe that it is a combination of the largest storage container for the single-stream recycling and the fact that trash collections changed from twice a week to once a week. As a resident of southern Nevada, you know it gets kind of hot down there and items stored in the garage for a week at a time could get a little odorous.

Chairman Frierson:

Are there any questions for Mr. Henderson? [There were none.]

**Paul Andricopulos, Planner, Community Development and Services Department,
City of Henderson:**

As Wes mentioned, A.B. 44 deals with the outdoor storage of trash and recycling containers. With the implementation of single-stream recycling in certain communities, the collection of trash and recyclables has been consolidated to once a week in the City of Henderson as well as other communities in Nevada. In 2011, the City of Henderson launched a single-stream recycling pilot program to approximately 25,000 households. [Continued to read from prepared text ([Exhibit D](#)).]

Chairman Frierson:

I think the Committee received some communications over the weekend from individuals concerned about the bill. One of the concerns was shared entryway homes in certain communities where there is not necessarily a convenient location to place a screen outside of their home, such as four homes sharing one driveway. Does this bill take into consideration patio homes or homes with limited yard space that might not be able to accommodate a screening option of some sort? Could you also describe a type of screen that you could contemplate for those patio-style homes or shared entryway homes and how they would be able to make this work?

Paul Andricopulos:

I believe the language of the bill has been drafted in such a way that it allows flexibility, depending on the situation. The language really leaves it to the homeowners' association to determine how that screening would look in their particular community.

Assemblywoman Spiegel:

I know that it used to be against city code in Henderson to have a nonscreened trash bin in the front yard. Has city code changed?

Paul Andricopulos:

No, I do not believe city code has changed at this time. Again, the intent would be that if someone would need to be able to store their trash bin outside their garage, they could do so as long as it was screened per their HOA, whether that is behind a side gate or some other mechanism.

Assemblywoman Spiegel:

If they are not in an HOA, what would happen?

Paul Andricopulos:

If they are not in an HOA, they would just have to be in compliance with city codes.

Chairman Frierson:

I am still a little challenged by the notion that an HOA patio home could come up with a mechanism if there is none. How do we deal with it if the HOA simply says that they do not have a place for it? Is it going to be sitting out on the street all week long if there is no other place for it? I am curious about how to accommodate those types of communities. For example, is there an option for a community to have certain conditions where they just cannot make it work?

Paul Andricopulos:

There are obviously a lot of different communities, patio homes like you mentioned, and some people will have the opportunity to store these in the garage or some other structure. Unfortunately, there is such a wide variety of different situations that we will have to look at these on a case-by-case basis. Again, I believe the language of the bill has been kept pretty flexible to allow different communities to look at this individually.

Chairman Frierson:

I notice that the bill contemplates the HOA being able to come up with reasonable restrictions. Section 3 of the bill provides that the HOA may reasonably restrict the conditions regarding the boundaries and the time that the containers can be placed in the collection area. Currently, many HOAs limit it to maybe 12 or 24 hours before collection day. Would this be a conflict with an HOA allowing that to still take place?

Paul Andricopulos:

I think you have caught onto something very important there: the word "reasonable." Depending on the HOA, they would have the ability to determine what works best for their particular situation. I think in most cases there is a time frame where they can have the bins out for collection and where it would

be stored otherwise. It would depend on the situation. I hate to be so vague, but I think that is part of the strength of this. It has flexibility in that language to address a wide variety of situations.

Chairman Frierson:

Are there any questions? [There were none.] Is there anyone in Carson City prepared to testify in support of A.B. 44?

Kyle Davis, Political Director, Nevada Conservation League & Education Fund:

We are here today in support of A.B. 44. There has been recent news where Clark County has moved toward single-stream recycling, joining some of the municipalities down there. We are hopeful that the movement toward single-stream recycling will continue throughout the state because it is a proven way to increase the recycling rate in our state. We see this bill as a way to help make it easier for homeowners so that we can continue to take advantage of these opportunities.

Chairman Frierson:

Are there any questions for Mr. Davis? [There were none.] Is there anyone else in Carson City here to testify in support of A.B. 44?

Garrett D. Gordon, representing Southern Highlands Homeowners' Association and Olympia Companies:

Southern Highlands is located in Las Vegas with approximately 7,000 homes; full build-out will be 10,000 homes. There are five board members and an annual budget of approximately \$7.5 million. We support this bill.

We also had a chance to review the amendment from The Howard Hughes Corporation and support that amendment as well. Currently the rule at Southern Highlands is that you can bring out your trash 12 hours before the scheduled pickup time and then have the bin removed within 12 hours after pickup. As the Chairman alluded to, there is a 24-hour time frame that the garbage containers can be located out on the street.

Chairman Frierson:

Are there any questions for Mr. Gordon? [There were none.] Is there anyone else in Carson City testifying in favor of A.B. 44? [There was no one.] I have several people in Las Vegas signed in to testify in support of A.B. 44.

Pamela Scott, General Manager, Summerlin Association Management, The Howard Hughes Corporation:

I am here to discuss the amendment that The Howard Hughes Corporation has put forward ([Exhibit E](#)). The Howard Hughes Corporation is the developer of

Summerlin, which is the largest master-plan community in the state at the present time with over 100,000 residents. We understand the purpose of the bill; we understand the environmental friendliness of recycling; and we want to support that in any way we can. Currently at Summerlin you may store your trash can outside your garage, but it must be in an enclosure of some type that is screened from view. At present, I would say that 99.9 percent of the homeowners choose to store the trash can in their garage.

We have some communities that take part in single-stream recycling and some that are simply unfinished streets and they do not. We have vetted this amendment with the City of Henderson and they are in support of it. It is a rather minor amendment to deal with a situation because one size does not fit all, and I think that is what is being discussed here. There are a number of properties these days that are built with side-entry courtyards where your garage face could be forward of that person's courtyard. As that person is sitting in the courtyard, entering their front door, or sitting on their front porch, they could be looking directly at a trash can that may be screened from view of the street, but it is not screened from view of their front door. It is our intent to add in "or adjacent property" to address those types of situations. That is also why we are asking to delete the language where the Commission tried to come up with a single device that works for everyone because, as Chairman Frierson has indicated, it is not going to work for everyone. The key is that an association needs to have reasonable accommodations.

In the case of patio homes that have four persons sharing that common area of that association, it would be up to that association to determine what works for the collection point of those four homes; perhaps have something designed that works with the architecture of their patio homes where the trash cans could be stored in a common area. I think it would be very difficult for the Commission to come up with one thing that works for both northern Nevada and southern Nevada. The key is to be reasonable. Depending on the association, these devices could be small pony walls, they could be wood enclosures depending on your association, or they could be iron enclosures. They do not have to be more than one-sided if that is all it takes to screen it from the street. With this amendment, they might have to be two-sided if you need to screen it from a neighbor's property. With that said, we are in support of the bill.

Chairman Frierson:

Just to make sure that the record is clear—I had asked the presenters, and I am going to ask you the same thing—is it your understanding that this bill would still allow for an HOA to limit the timing so that the current HOAs that limit 24 hours or 12 hours before the pickup time would still allow for an HOA to provide for those limitations?

Pamela Scott:

Yes, Mr. Chairman, I believe that it does. Section 2 of the bill is calling out where you would store your trash can other than on the pickup days. Section 3 calls out what is an acceptable collection area. For most of us, that is the curb in front of our homes, but that might be something different in the case of a patio home, et cetera. Yes, I think there is flexibility.

Chairman Frierson:

Are there any questions for Ms. Scott? [There were none.] Do we have someone else in Las Vegas prepared to testify in support of A.B. 44?

Bob Robey, Private Citizen, Las Vegas, Nevada:

I live in Sun City Summerlin. I am speaking as an individual. I rise today because two years ago I spoke against the idea that a screen for trash cans from an adjacent property is necessary. In my testimony two years ago, which I can supply again to this Committee, Reno forbids storage of garbage cans in the garage. In Reno, if a person objects to where their neighbor has placed their garbage can, a person from the City comes out and makes the final decision. It is my opinion, and the reason I am here today, that the bill as written is excellent.

The amendment by The Howard Hughes Corporation is going to cause an economic hardship on residents of Las Vegas and I do not know how Reno will deal with it. My problem is, if a person lives in a home and they have to screen their garbage can from all adjacent property, that is absurd. It is not usually done. I could find nowhere in this country where that is a requirement. I am 74 years old; I have lived in El Paso and Kansas City; I have lived in two Sun Cities in California; I was born in New Jersey, and neither I nor my family have ever had a problem with putting our garbage cans outside.

I thought that this bill as introduced by the League of Cities was fantastic and wonderful and I came down here to applaud the unity of the people of Nevada. The League of Cities did a marvelous job in constructing this bill. Now I am one voice against the multimillion dollar Howard Hughes Corporation; and the homeowners' associations run by the community association management; and the management companies who will love to fine people for this infraction of not having their garbage cans screened from adjacent properties. How do you screen a property if your neighbor has a three-story home?

I thank the Committee, and I will be glad to answer any questions. I hope I can resubmit my written testimony from two years ago ([Exhibit F](#)).

Chairman Frierson:

I believe that we can reference your testimony from the last session and review it. If you would like to resubmit it, that would be fine.

The language in the bill seems to me to be permissive and the sentence that is being proposed in the amendment by The Howard Hughes Corporation says that the rules "may provide" as opposed to "shall" or "must." It seems to me the permissive nature of it means that they probably could if "deemed to be reasonable" provides some limitations already.

With the example you gave of a three-story adjacent property, I can certainly see the frustration of trying to shield not only the side but, presumably, you are talking about the top also so that a neighbor three stories up could not necessarily see it. Would you be willing to submit any thoughts or suggestions to the Committee or to the sponsor of the amendment that might alleviate the concern, particularly for the view from the top so that it does not frustrate the intention? It seems that everyone is on the same page about what they are trying to accomplish. It is just a matter of doing it reasonably.

Bob Robey:

For those of us who have been watching it for the past 15 years, sometimes reasonableness in the HOA industry does not seem to exist in many places. That is my concern. I was talking with Mrs. Scott and she said that a bush would not be a screening device because the bush might die. So it would be unacceptable to place a bush in the front yard to screen the trash can at the side of the house from the street and sidewalk. It is universal that trash cans should not be visible from the street and sidewalk. I really thought we had a great bill here, and it has been destroyed by this amendment.

Chairman Frierson:

Are there any questions for Mr. Robey? [There were none.] Thank you again, Mr. Robey, for providing your insight and continuing to be concerned about this issue through multiple sessions. I appreciate it.

Is there anyone else in Las Vegas prepared to testify in favor of A.B. 44? [There was no one.] We are going to hear from those in Carson City wishing to testify in opposition of A.B. 44.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

I am here speaking as a private citizen and only as a private citizen in that capacity. This bill has good intentions, but it is flawed. It will add additional costs to homeowners, especially in southern Nevada. Most of the homes there have very narrow side yards. My home has a 35-inch-wide side yard between

the house and the party block wall. Republic Services is going to be going to a one-day-a-week pickup. They want to use a 96-gallon container. Here are some of the problems. The garages in many instances are too narrow, so the homeowner would be forced to put the container outside. You have a narrow side yard. Many of these side yards have gravel. You have a couple hundred thousand elderly people living between the large homeowners' associations dealing with those who are 55 or older. They are not going to be able to drag a 96-gallon barrel with a week's worth of garbage through that gravel. They are now going to have to bear the cost of a concrete pad. If a screen or a gate is required, there are many homeowners' associations that charge a fee.

For instance, I know Siena charges an architectural review committee (ARC) fee to make any changes, even a change in a shrub. You have to pay them because it is exterior. It talks about meeting applicable codes and regulations. Does that now mean that the homeowner has to go to an architect or an engineer and get a design, which means additional costs? This would then have to be approved by the ARC. As I said earlier, many of these side yards are so narrow the screening would have to be hinged. Again, we are talking about a substantial amount of money to the homeowner. As Mr. Robey asked, what is the definition of the word "reasonable"? You have board members that have varying ideas of what reasonable is. You have to match the palate of whatever color scheme they want. If it is a metal screen, it is now going to have to be painted every two years. It is a maintenance item.

As far as the times for collection goes, that is usually stated in the covenants, conditions, and restrictions of that HOA. It is usually that the trash cans can be set out 12 hours before and 12 hours after the scheduled pickup time. As far as the Commission for Common-Interest Communities and Condominium Hotels creating a regulation, from what I have seen in the past, nothing will happen until this session is over and the Legislative Counsel Bureau gets finished doing what they have to do to codify all the statutes. So we are probably talking at least a year before anything would be adopted by the Commission.

Chairman Frierson:

Are there questions for Mr. Friedrich?

Assemblywoman Diaz:

Are there any suggestions you can make in order to clean this bill up to make it better or is it just not going to work at all any way we try to rework it? Is there going to be a loophole or something that we are leaving? I would like your thoughts on that.

Jonathan Friedrich:

Let me flip that around and say, "What is so bad about seeing a garbage can?" Is it going to devalue our homes in Las Vegas? That has already happened. Homes are worth 50 percent of what they were a few years ago. Is it so terrible to look at a garbage can? I mean, let us be practical, people.

Assemblywoman Diaz:

Thank you. You took some of the words out of my head as I was reading the bill. Is there really a need for section 2 and section 3? Is it enough to just have section 1?

Jonathan Friedrich:

That is music to my ears.

Chairman Frierson:

Is it your position that you are not against section 1, but your concern is regarding the screening?

Jonathan Friedrich:

That is correct, yes. I attended the hearing last week in Clark County when Republic presented the once-a-week pickup plan. The auditorium was filled with Republic employees. As an unintended consequence, there are going to be hundreds of employees either laid off or with fewer hours because of this.

Chairman Frierson:

I want to be careful unless I am mistaken. You are not here on behalf of Republic or those employees, correct?

Jonathan Friedrich:

No, I am not. That was just an aside.

Chairman Frierson:

That is not regarding this measure necessarily, but regarding the notion of going to one pickup day per week?

Jonathan Friedrich:

Correct.

Chairman Frierson:

So whether this measure passes or not, if the local governments decide to go forward with one pickup per week, as they apparently plan to, that pickup plan would still be a concern regardless of this bill?

Jonathan Friedrich:

Correct. I think this bill would just exacerbate the whole problem.

Chairman Frierson:

Are there any other questions for Mr. Friedrich? [There were none.] Is there anyone in Carson City to testify in opposition to A.B. 44? Is there anyone in Las Vegas to testify in opposition to A.B. 44? [There was no one.] Is there anyone in Carson City to testify neutral with respect to A.B. 44? Is there anyone in Las Vegas to testify neutral to A.B. 44? [There was no one.] Thank you for your input on A.B. 44. There will obviously need to be communication with some of the parties, in particular about the proposed amendment and any other concerns, before this matter is prepared for any potential work session. I will close the hearing on A.B. 44.

If you will indulge me for a few minutes, I will prepare to present Assembly Bill 82 and have Mr. Ohrenschall chair that portion of the meeting.

[Assemblyman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:

I will open the hearing on Assembly Bill 82. Please present your bill.

Assembly Bill 82: Revises provisions governing evidence in certain court proceedings. (BDR 5-78)

Assemblyman Jason M. Frierson, Clark County Assembly District No. 8:

Assembly Bill 82 is not necessarily a simple bill, but a fairly straightforward bill that proposes to apply Nevada's rape shield law in its current form to juvenile delinquency proceedings as well as dependency proceedings. Nevada's rape shield statute is codified in *Nevada Revised Statutes* (NRS) 50.090. I will not read it to you verbatim, but essentially NRS 50.090 provides that in any prosecution for sexual assault or statutory sexual seduction, the accused may not present evidence regarding the victim's sexual history unless the prosecution raises it as an issue or unless it comes up in a cross-examination of that witness. That provision has been interpreted by the Nevada Supreme Court to apply only to criminal cases. The language codified in NRS 50.090 provides that in any prosecution for sexual assault or statutory sexual seduction, the accused may not present evidence of any previous sexual conduct of the victim. The Nevada Supreme Court has interpreted that language as applied only to criminal law.

There have been issues in family court, in particular, termination of parental right proceedings which are by definition civil, where there are allegations of

sexual assault. The Nevada Supreme Court has found that that provision did not apply, so there was no limitation to going into that victim's sexual conduct as a way to cross-examine that victim or question that victim's credibility. I can provide the citation and the actual case if the Committee would so desire. The case is *Sonia F. v. Dist. Ct.*, 125 Nev. 495, 215 P.3d 705 (2009) where there was a civil case against an accused, and the court concluded that rape shield was not applicable in that civil proceeding. The court did analogize Nevada's statutory language to those in the Federal Rules of Evidence, but the Federal Rules of Evidence provide language regarding rape shield that is different from the Nevada statutory structure. The Federal Rules of Evidence provide that evidence is not admissible in any civil or criminal proceeding that is offered to prove that any alleged victim engaged in any other sexual behavior. That is the language in the federal statute that makes it clear this is criminal or civil.

The Nevada statute does not provide for that same inclusion of both civil and criminal language. The Nevada Supreme Court by analogy concluded that rape shield does not apply in any proceedings in Nevada other than criminal proceedings. The Nevada Supreme Court did acknowledge that there are other states that do apply the rape shield provisions from their criminal proceedings to civil proceedings; however, the exact language from the Nevada Supreme Court says, "There are those jurisdictions that have held that the policy underlying the criminal rape shield law has similar import in civil cases. . . . However, we defer to the Legislature to determine whether the public policy underlying the criminal rape shield law should be extended to include civil cases."

It is my position, and the intention of this bill, to do just that: to apply rape shield law to civil cases as a matter of public policy. I will go through the bill for the edification of the Committee and ask for any questions afterward. I am in receipt of a letter from the Nevada Attorneys for Criminal Justice ([Exhibit G](#)); however, I will let them present their concerns first without trying to preempt them. We have had some discussions over the weekend about their concerns and then addressing any questions that might arise out of that.

Section 1, subsection 2 of the bill adds language to NRS 62D.420 that applies the rape shield law to delinquency proceedings, or juvenile proceedings, for all practical purposes. I will inform the Committee that when I submitted this bill, it was not my intention to necessarily have it apply to delinquency proceedings. It is my understanding that to some extent, while it may not be required, juvenile proceedings already adopt these same policies. It was my intention to add what is in the bill, section 2, that amends Chapter 432B of NRS and specifically regards dependency proceedings that essentially lead to termination of parental rights. These are cases where a child has alleged, or someone has alleged, that there has been some sexual conduct regarding a child that led to

the involvement of the Division of Child and Family Services. The initial proceedings for a hearing on those matters would then have the rape shield provisions apply to it. To the extent that section 1, subsection 2, may not be necessary, I have informed the stakeholders who have contacted me that that section, whether it is in the bill or not, is not as important to me as the section dealing with NRS Chapter 432B. I do believe there are some folks here that can answer any questions related to how the rape shield may be used in juvenile proceedings and delinquency proceedings under NRS Chapter 62D, but for now, at the very least, it is my intention for it to be applied to NRS Chapter 432B.

Assemblyman Carrillo:

For my own knowledge, what is rape shield?

Assemblyman Frierson:

In NRS 50.090, rape shield provides that evidence of previous sexual conduct of victims of sexual assault or statutory sexual seduction is inadmissible to challenge a victim's credibility. I was summarizing it, but in any prosecution for those offenses, or attempts of conspiracy to commit those offenses, the accused may not present evidence of any previous sexual conduct of the victim of the crime to challenge that victim's credibility unless the prosecutor first brings it up or it comes up in cross-examination. It is saying that if there is an allegation of sexual assault, conspiracy, or statutory sexual seduction, you cannot simply say to the victim, "You are not telling the truth and we know you are not telling the truth because of your sexual history," unless the prosecutor opens the door by questioning the victim about their sexual history. But if the prosecution says the victim would never make this up, and the victim has never engaged in this type of behavior before, then they have opened the door and the defense would have an opportunity to respond to that. In the absence of introducing that type of evidence, the accused would not be able to question the credibility of that victim based on their previous sexual conduct.

In NRS Chapter 432B, we are talking about minors. My feeling in introducing this bill is, if we provide that sort of protection to an adult, why would we not provide the same protection to someone we consider to be a minor and less able to defend themselves? Regardless of anyone's feelings about rape shield for adults, that is the state law, and if we are going to afford that protection to adults, I think it is only fair to afford the same level of protection to minors.

Vice Chairman Ohrenschall:

If your amendment to the NRS is passed, would you give us an example of how section 2 might protect a victim or how it would work?

Assemblyman Frierson:

If there is an allegation of a sexual nature regarding a minor and someone responsible for that minor's care, then that would trigger the involvement of NRS Chapter 432B. The minor would either be removed from the home and placed in foster care or in the home of a relative, or the minor may stay in the home. If the minor stays in the home, the alleged person would leave the home, and that is often the case. Within ten days of the minor's removal, a petition is filed alleging abuse and neglect of the child. If the case is not resolved, the matter is set for an adjudicatory hearing where it is not criminal; it is civil. The standards are different and it is simply a hearing where witnesses would ultimately be questioned and cross-examined to help a hearing master or a district court judge determine whether or not that child is in need of protection. That is where the accused would be precluded from going into the sexual history of the alleged victim.

Assemblyman Martin:

I would like to clarify something. The way the current law is written almost sounds backwards to me, and what you are trying to do seems to be common sense. It seems as if there are more protections in the current law for adults who are accused versus juveniles, and you are trying to bring the law in line with the federal law. Am I understanding this correctly?

Assemblyman Frierson:

I am not necessarily trying to make our law comport with the federal law; I am trying to make our law apply to minors the same as it would apply to adults. I do not know if this was contemplated at any point with respect to the rules of evidence, because they apply to criminal proceedings in most instances, and this particular section expressly addresses criminal proceedings. I think your original question is correct; I am trying to afford minors the same protection that adults currently have under Nevada law.

Assemblyman Wheeler:

You were talking about civil law versus criminal law. Since civil law is basically a preponderance of the evidence and criminal law is beyond a reasonable doubt, should it not by necessity be a fact that the evidentiary allowances in civil law be a little more lax than in criminal law?

Assemblyman Frierson:

The standard is different. The standard is beyond a reasonable doubt in criminal law, but not at the preliminary hearing stage. The appellate standard is a slight of marginal evidence for a preliminary hearing on the appellate level, whereas in family court and juvenile court the standard is lower. The consequences are significant. A person's liberty is not necessarily at stake, but we are talking

about the best interest of the child. I recognize that the standard is lower in family proceedings, but the consequences are also different. I think that it evens out as far as the adjustment and burden because there is not so much liberty at stake. The juvenile proceedings and the child welfare proceedings are for the best interest of the child, and at this stage the safety of the child. This ultimately leads to the possibility of termination of parental rights, but this initial stage of adjudicatory hearings is set up to protect the child so that we can determine what is actually going on and to try to come up with a plan to reunify the family if possible.

Vice Chairman Ohrenschall:

Let us say you have a mom with a teenage daughter and the boyfriend is arrested and accused of molesting her. The State then brings a termination of parental rights case against the mom. Would there be a scenario right now under the existing law where the mom, in terms of trying to keep custody of her child, might try to bring up the child's sexual history? Is that what you are trying to protect?

Assemblyman Frierson:

That is a possibility. More frequently it is the boyfriend or a representative of the boyfriend, or sometimes a relative—father, uncle, cousin, or older sibling. That individual or their attorney would attempt to raise the sexual history of the victim in order to question the victim's credibility. I suppose a mother who is essentially deciding whether or not she believes the child or the accused would possibly do the same thing, and this would contemplate that as well. My theory of rape shield is a person could be the most promiscuous person in the world but it does not prohibit them from being violated.

Assemblyman Hansen:

Could this also mean that if a person had led a completely clean life without any sexual activity whatsoever, they could not bring that up as well?

Assemblyman Frierson:

That is addressed in the bill and, if that were to happen, it would open the door for the accused to question the sexual history if they had evidence to present on that individual.

Assemblyman Hansen:

So it is covered. Thank you.

Assemblyman Frierson:

That is the purpose and the basis behind the bill. I will be glad to answer any questions the Committee may have or to answer any questions that may come up by those that are testifying for or against.

Vice Chairman Ohrenschall:

Thank you, Mr. Frierson. Is there anyone in Carson City who would like to speak in favor of A.B. 82?

John T. Jones, Jr., representing Nevada District Attorneys Association:

We are here in support of A.B. 82. I would like to make a few comments. I think Chairman Frierson did a great job presenting the bill. Juvenile dependency proceedings or child welfare cases are analogous to criminal and delinquency proceedings in that the child has absolutely no decision on whether or not to file a petition and whether or not to proceed to trial with the petition. In other words, the direction of the case in many ways is controlled by me, unlike the case of *Sonia F.* that Assemblyman Frierson brought up where the child and her mother started and initiated the lawsuit themselves. In child welfare, the district attorney files a petition and the district attorney controls the flow of the case. So in that respect, this bill would bring child welfare cases in line with criminal and juvenile delinquency proceedings.

Vice Chairman Ohrenschall:

Are there any questions for Mr. Jones? [There were none.] Is there anyone else who would like to speak in favor of the bill?

Jon Sasser, representing Legal Aid Center of Southern Nevada and Washoe Legal Services:

Both of our organizations contain units of attorneys that represent children in dependency and neglect cases under NRS Chapter 432B that we have been discussing. We are here in support of the bill and I brought with me today two of the practitioners, one from each program, who actually have the day-to-day experience in the court representing the children: Ms. Candace Barr, who is at the table in Las Vegas, and Ms. Buffy Brown, who is an attorney at Washoe Legal Services.

With the Vice Chairman's permission, I would like to start with Ms. Barr in Las Vegas and then move to Ms. Brown in Carson City.

Vice Chairman Ohrenschall:

I have personally seen the very good work that the Children's Attorneys Project (CAP) attorneys do for the kids I have represented. It would be great if Ms. Barr

could educate the Committee on what the CAP attorneys do and what their roles are in the proceedings in the court.

Candace Barr, Children's Attorneys Project, Legal Aid Center of Southern Nevada:

I am honored to be employed by the Legal Aid Center of Southern Nevada as an attorney with the Children's Attorneys Project, known as CAP. Representing children in foster care includes welfare, but we also do supportive services when children go through the criminal proceeding if it is necessary. [Continued to read from prepared text ([Exhibit H](#)).]

I am here today to support A.B. 82. This bill is important because it complies with adult actions and it will also protect victims of sexual abuse. The sexual abuse experience itself often produces intense negative emotions such as fear and shame. These emotions can become conditioned associations to memories of the abuse and can generalize to cues including specific circumstances or people that serve as reminders of the abuse. Avoidance of the memories and reminders is a common method of achieving temporary relief, but it can become maladaptive. Avoidance can take the form of active avoidance of situations and people, general numbing and restriction of emotional actions, and active behaviors such as substance abuse, self-harm, or risky behaviors. Other negative emotional states such as depression and anger can result from sexual abuse. These emotions are usually the result of beliefs about the meaning of the abuse such as that it was unfair, or that it represents the loss of a positive view of self and others. These emotional states are distressing to the child and can interfere with functioning.

Victims often get re-victimized emotionally by having to face their accusers and testify. They also face the destruction of their family because oftentimes they are placed in foster care. The family may have financial difficulties if the wage earner is removed from the family. The children suffer sibling disruptions and siblings being mad at each other because they have to move or things have changed in the home. Too often in these proceedings the defense strategy is to attack the victim, which serves to further traumatize the victim. Victims blame themselves instead of the perpetrator. One of the main ways to do this is by attacking the victim's credibility. By not allowing evidence of prior sexual conduct of the child, the effect on the child can be lessened. It is difficult enough for victims to have to testify against the perpetrator and face the person in court. Allowing the perpetrator to bring up past sexual conduct shames the victim even further.

This bill conforms with the adult system and protects the victim. The Legal Aid Center of Southern Nevada and the Children's Attorneys Project support this bill. I will be glad to answer any questions.

Vice Chairman Ohrenschall:

Would you give us an example of where you have seen this situation come about, either in the scenario of termination of parental rights or where a child is facing an allegation?

Candace Barr:

I think in all situations, particularly in the lower level where we have a neglect case, the standard is a fair preponderance of the evidence. It is hard enough for these children to have to testify at a hearing. They may also then have to testify at a preliminary criminal hearing and then at the criminal hearing as well. To victimize them by bringing up past sexual conduct only allows them to become more upset, more angry, and more withdrawn. In many cases they then recant their testimony. It is important that these children be given the opportunity to testify but not be attacked or have their credibility attacked. Does that answer your question?

Vice Chairman Ohrenschall:

It does. Are there any questions from the Committee?

Assemblyman Martin:

I am not sure who to direct this question to, but I am wondering why the law would have been that way. What was the rationale in allowing juveniles to be subjected to this process in the first place where adults would not be? Does anyone have any thoughts as to what the original rationale might have been to potentially expose the most vulnerable members of our society to this kind of testimony? It seems a long time in coming here, but if anyone could give me their thoughts on it, I would appreciate it.

Candace Barr:

I honestly do not know why, when the rape shield law was passed in Nevada, it did not apply to delinquencies as well. It should have been.

Vice Chairman Ohrenschall:

Are there any additional questions for Ms. Barr? [There were none.]

Buffy Brown, Washoe Legal Services:

I am also a CAP attorney in Washoe County for Washoe Legal Services. Obviously we support this bill as well, and with your permission I would like to address Assemblyman Martin's question, probably by speculation. I have been

involved in the child dependency system since 1997, and over the course of that time, I have noticed that what we see a lot is that laws are applied differently than regular criminal and civil cases because the system is an unfamiliar setting. Since it is a family court, it is a kind of a unique situation; it often gets overlooked with many of our statutes as they apply to evidence and other types of testimony.

One of the things that makes this bill perhaps a little complicated, particularly as it applies to the child dependency realm, is that it is not your traditional setting where you just have a prosecutor and an accused. In our cases, we sometimes have five parties to the case. We have the prosecutor, and sometimes we have one parent, sometimes two parents, and sometimes even three or more parents.

Vice Chairman Ohrenschall:

Pardon me for interrupting you, Ms. Brown, but I want to remind the Committee that when the testifiers are mentioning dependency, that is when the parent or legal guardian is accused of wrongdoing, abuse, or neglect. Delinquency is where the child is accused of doing something that would constitute a crime.

Buffy Brown:

In that dependency proceeding, we have multiple parties, and any one of those parties can call people as witnesses on direct examination, including the child. Mr. Vice Chair, I think you asked the question at one point as to whether the parent could be the one who is trying to attack the child's credibility. Unfortunately, over the course of my career, I have seen that far too many times. Sometimes we will have the parent align with the perpetrator, who might be a husband, a boyfriend, or a family member. Both of those persons will align against the child and try to dissuade the child's testimony, or just not even believe the child has been the subject of a sexual act.

Vice Chairman Ohrenschall:

Has that been in the setting of a termination of a parental rights proceeding, a criminal sexual assault proceeding against one of the adults, or a divorce custody proceeding? What kind of scenarios have you seen?

Buffy Brown:

Unfortunately, I have seen it in all scenarios, but NRS Chapter 432B does not govern the termination proceeding itself. It governs all the proceedings up to the termination, and this is where I have seen it the most. This is where my career has been primarily, other than in general family law. In these cases, I have had more than one case in all three of my roles. I was the prosecuting attorney, I was the juvenile master hearing the cases, and I am now representing the children. I have seen that same scenario in all of those roles.

What we have most often is the child being removed from the home because of a male figure engaging in inappropriate sexual conduct toward that child, and the mother aligning with the accused person.

I think one of the reasons behind the rape shield law was to prevent the child, or the victim, from being dissuaded from testifying, or testifying fully about the case for fear of past sexual conduct, truthful or untruthful, being brought up against them, and then being accused of being promiscuous. Thus they would not come forward with what has happened to them.

It is another thing entirely to take that into this child's setting where they are having to testify—oftentimes against their parents, their brother, their uncle, or someone who has raised them from childhood and has care and control of them. If it is bad in the realm of an adult against someone that they may or may not know, it is even worse for a child who is trying to testify against someone who has raised them. They have the additional fear of their parent telling them and telling the court that they have been promiscuous or other types of things in the past. In those types of cases, we think that this bill is particularly important.

We did not have the opportunity to prepare a written amendment and get that amendment to Chairman Frierson beforehand, but I would suggest making this bill, section 2 in particular, even stronger because we do not have just a district attorney and an accused in these cases. In the case where you have one parent of the alleged victim and the other parent for the accused in alignment, one of them could call the child on direct examination and elicit testimony. That would then open the door for the accused to jump in and be able to bring up the child's past sexual history.

I am interested in seeing a slight amendment to this bill to make it even stronger so that the only person who could elicit information about the child's past sexual history is either the district attorney or the child's own attorney. In the adult setting, the only person who is going to be eliciting that testimony—if it is favorable and not used to diminish the credibility—is the prosecuting attorney. We have a lot of parties in our cases, not just the prosecutor, who would be calling that child as a witness.

I can present my proposed amendment in writing or I could describe it with just a couple of additions in the bill.

Vice Chairman Ohrenschall:

If you could submit something in writing, then the Committee would have the chance to consider it and put it on for a work session.

Are there any questions for Ms. Brown? [There were none.] Mr. Sasser, is there anything else you would like to add?

Jon Sasser:

We appreciate being heard today and ask your support of the bill and your consideration of Ms. Brown's words that we think would strengthen the bill. I did bring that possibility to Mr. Frierson's attention and let him know that we would be mentioning it today.

Vice Chairman Ohrenschall:

Is there anyone else in Carson City or Las Vegas who would like to speak in favor of A.B. 82? [There was no one.] Is there anyone neutral on A.B. 82 either in Carson City or Las Vegas? [There was no one.] Is there anyone who would like to speak in opposition to A.B. 82? [There was no one.] I will close the hearing on A.B. 82.

[Chairman Frierson reassumed the Chair.]

Chairman Frierson:

I would like to point out there was opposition submitted by the Nevada Attorneys for Criminal Justice ([Exhibit G](#)) that I believe our Committee has received and I want to make sure that everyone is aware of it.

There is, as always, a public comment opportunity, so I would invite that at this time. Is there anyone in Carson City or Las Vegas who would like to make a public comment? [There was no one.]

Before we conclude today, I am seeking to introduce BDR 14-740. This is regarding programs of regimental discipline.

BDR 14-740—Revises certain provisions relating to programs of regimental discipline. (Later introduced as [Assembly Bill 91](#).)

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE
BDR 14-740.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chairman Frierson:

This concludes today's Assembly Committee on Judiciary.

Meeting adjourned [at 10:21 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 11, 2013

Time of Meeting: 9:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 44	C	Wes Henderson	Testimony
A.B. 44	D	Paul Andriopoulos	Testimony
A.B. 44	E	Howard Hughes Corporation	Amendment to Bill
A.B. 44	F	Bob Robey	Testimony
A.B. 82	G	Nevada Attorneys for Criminal Justice	Testimony
A.B. 82	H	Candace Barr	Testimony