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# ASSEMBLY COMMITTEE ON JUDICIARY



## WORK SESSION DOCUMENT MARCH 11, 2003

Original on file in the Research Library

ASSEMBLY JUDICIARY

DATE: 3-11-03 ROOM 3138 EXHIBIT D

SUBMITTED BY: Allison Combs

*D 10614*

WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

March 11, 2003

The following measures will be considered for action during the work session:

- ASSEMBLY BILL 59** (BDR 15-277 was requested by the Assembly Committee on Judiciary on behalf of Clark County). The bill was heard in Committee on February 21, 2003, and no action was taken.

**Assembly Bill 59 permits a law enforcement agency to inspect certain records pertaining to abuse, neglect, exploitation or isolation of older persons.**

Proponents/those testifying in support of the bill: Ben Graham, Nevada District Attorneys' Association.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to assist law enforcement in the investigation of elder abuse crimes. Concerns were raised regarding the need for law enforcement to first obtain a warrant.

Proposed Amendments: None.

- ASSEMBLY BILL 60** (BDR 5-280 was requested by the Assembly Committee on Judiciary on behalf of the District Attorneys' Association). The bill was heard in Committee on February 19, 2003, and no action was taken.

**Assembly Bill 60 provides that a decision of the juvenile court to deny certification of a child for criminal proceedings as an adult may be appealed.**

Proponents/those testifying in support of the bill: Bob Teuton, Clark County District Attorney's Office.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated currently, a decision to certify a child as an adult can be appealed immediately, but the decision not to certify a child as an adult cannot be appealed. Under the bill, either decision is a final judgment, and thus, may be appealed.

Proposed Amendments: None.

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- ASSEMBLY BILL 61** (BDR 14-281 was requested by the Assembly Committee on Judiciary on behalf of the District Attorneys' Association). The bill was heard in Committee on February 19, 2003, and no action was taken.

**Assembly Bill 61 makes various changes to provisions governing testimony and evidence of a witness who is granted immunity in criminal proceedings.**

Proponents/those testifying in support of the bill: Ben Graham, Nevada District Attorneys' Association; and Dan Grecco, Washoe County District Attorney's Office.

Opponents/those testifying in opposition of the bill: Richard Wright, private attorney.

Discussion: Testimony indicated that this measure would adopt provisions similar to those under the federal law and in other states regarding immunity for certain testimony. Nevada currently has "transactional" immunity under which a witness granted immunity is given "complete and absolute" immunity even if evidence of a crime can be gathered from other sources. According to testimony, language in a bill adopts "derivative use immunity," under which evidence gathered from sources independent of the testimony may be admissible.

Proposed Amendments: None.

- ASSEMBLY BILL 95** (BDR 14-284 was requested by the Assembly Committee on Judiciary on behalf of the Office of the Attorney General). The bill was heard in Committee on February 24, 2003, and no action was taken.

**Assembly Bill 95 makes various changes to the provisions pertaining to the authority and discretion of the court to suspend a sentence and grant probation in cases involving category E felonies.**

Proponents/those testifying in support of the bill: Kristin Erickson, Nevada District Attorneys' Association; Leon Aberasturi, Lyon County District Attorney's Office; Arthur Mallory, Churchill County District Attorney; and Mike Ebright, Nevada Division of Parole and Probation.

Opponents/those testifying in opposition of the bill: Benjamin Blinn, citizen.

Discussion: Testimony indicated the measure was requested to provide judges with the option of sentencing certain persons convicted of a category E felony to prison, as appropriate. Testimony noted that it is important for persons participating in the drug court to know that if they do not complete the program successfully, the judge may impose a prison sentence.

Proposed Amendments: The following amendment was proposed:

- **Include persons on parole**, proposed by Mike Ebright, District Administrator, Division of Parole and Probation, Nevada's Department of Public Safety. Amend the bill on page 2, lines 8 and 11, to include a reference to people who are on parole, in addition to those on probation who are currently included under the statute.

A copy of Mr. Ebright's proposal is attached on blue paper.

**ASSEMBLY BILL 108** (BDR 15-436 was requested on behalf of the Office of the Attorney General). The bill was heard in Committee on March 4, 2003, and no action was taken.

**Assembly Bill 108 provides that the Office of the Attorney General has concurrent jurisdiction with certain agencies to investigate and prosecute the sale or distribution of an alcoholic beverage to a person under 21 years of age.**

Proponents/those testifying in support of the bill: John Albrecht, Nevada's Office of the Attorney General; Stan Olsen, Nevada Sheriffs' and Chiefs' Association; Peter Kruger, Nevada Petroleum Marketers & Convenience Store Association; and Paul Enos, Retail Association of Nevada.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony indicated the measure was requested to allow the Office of the Attorney General to conduct compliance checks in jurisdictions in which local law enforcement agencies were reluctant to conduct the checks, for various reasons. Testimony also indicated that grant money is available for any agency authorized to conduct such checks through the Office of Juvenile Justice Programs.

Proposed Amendments: The following amendments are proposed:

1. **Clarify applicability of the bill**, proposed by the Nevada Sheriffs' and Chiefs' Association. To incorporate the intention of the Office of the Attorney General to only conduct compliance checks in jurisdictions in which the local law enforcement agency is not conducting such checks, add the following language to the bill:

*The Attorney General shall not exercise his authority under this subsection in any jurisdiction unless the appropriate law enforcement agency files with the Attorney General a declaration permitting the Attorney General to do so.*

2. **Establish the protocols for conducting compliance checks**, proposed by Assemblyman John Carpenter and Assemblyman Bernie Anderson. Include provisions in the law for compliance checks for sale of alcohol to minors similar to those under NRS 202.2496 for sale of tobacco products to minors. A copy of NRS 202.2496 is on green paper.

**ASSEMBLY BILL 132** (BDR 38-689 was requested on behalf of the Legislative Committee on Children, Youth and Families). The bill was heard in Committee on March 3, 2003, and no action was taken.

**Assembly Bill 132 provides that proceedings concerning abuse or neglect of children are presumptively open to the public.**

Proponents/those testifying in support of the bill: Assemblywoman Barbara Buckley; Judge Gerald Hardcastle, Eighth Judicial District; and Susan Klein-Rothschild, Clark County Family Services.

Those testifying in support of the bill with the amendment proposed by Washoe County: Judge Chuck McGee; Second Judicial District; Mike Capello, Washoe County Department of Social Services; Cindi Heron, Washoe County Family Court; and Myra Sheehan, Nevada Trial Lawyers Association.

Opponents/those testifying in opposition to the bill: Ed Cotton, Administrator, Division of Child and Family Services, Department of Human Resources; and Katherine MacKenzi, Washoe County Public Defenders Office.

Discussion: Testimony indicated the measure was requested to presumptively open child abuse and neglect hearings for multiple reasons, including educating the public about child welfare, allowing the public to serve as a "watchdog," and making everyone involved exercising greater care and professionalism. Concerns were raised regarding the potential impact on a child and the inability for judges to determine ahead of the hearing who should be excluded from the courtroom in the best interests of the child and the proceedings.

Proposed Amendments: The following amendments were proposed:

1. **Keep the protective custody hearing ("72-hour hearing") confidential. Authorize the judge to open subsequent hearings**, proposed by Washoe County. A copy of Washoe County's proposed language for the amendment and chart describing the impact of the amendment are included on ivory paper.
2. **Provide that proceedings prior to and including the protective custody hearing ("72-hour hearing") are presumptively closed. Provide that all subsequent proceedings are presumptively open**, proposed by Assemblywoman Buckley.

- ASSEMBLY BILL 133** (BDR 1-602 was requested on behalf of the Nevada District Judges Association). The bill was heard in Committee on March 6, 2003, and no action was taken.

**Assembly Bill 133 revises the provisions governing the duties that may be performed by masters in district court.**

Proponents/those testifying in support of the bill: Justice Mark Gibbons, Nevada Supreme Court; Judge Nancy Saitta, Eighth Judicial District Court; and Judge James Hardesty, Second Judicial District Court.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony indicated the measure was requested to assist with judicial caseloads and decrease the amount of waiting time for jurors, if county commissioners chose to authorize the use of the masters under rules to be adopted by the Nevada Supreme Court. Speakers indicated the masters' duties may include accepting pleas and setting dates for revocation hearings.

Proposed Amendments: The following amendment was proposed:

- **Establish duties of masters in statute**, proposed by Assemblywoman Sharron Angle and Assemblyman Don Gustavson. Concerns were expressed for allowing the Nevada Supreme Court to adopt the rules governing the masters' duties. A suggestion was raised to place these duties into statute instead.

- ASSEMBLY BILL 151** (BDR 20-580 was requested on behalf of Washoe County). The bill was heard in Committee on March 3, 2003, and no action was taken.

**Assembly Bill 151 authorizes the public guardian to appoint deputies and revises the provisions relating to the term of office of the appointed public guardian.**

Proponents/those testifying in support of the bill: Maddy Shipman, Washoe County; Dan Musgrove, Clark County; and Kathleen Buchanan, Clark County Public Guardian.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony indicated this measure was requested to provide uniformity in the operation of the office of the public guardian with other appointed department heads. A concern was raised for changing the appointed position from a 4-year term to one that serves at the pleasure of the board of county commissioners.

Proposed Amendments: None.

KENNY C. GUINN  
Governor

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RICHARD KIRKLAND  
Director  
Amy Wright  
Chief

February 26, 2003

Nevada Assembly  
401 S. Carson St  
Carson City, NV 89701  
Attn: Chairman Bernie Anderson

Re: Proposed Amendment to AB 95

Dear Chairman Anderson:

On Monday February 24, 2003, the undersigned appeared before the Assembly Judiciary Committee to testify on AB 95. The undersigned verbally proposed an amendment to the bill and apologized for not having the proposal in writing at that time. You requested the proposed amendment be submitted in writing. The following is therefore attached.

It is proposed that the wording "*or parole*" be added to Page 2, Lines 8 and 11, to provide additional discretion to the District Court Judges during sentencing.

A copy of AB 95 is attached and the proposed wording has been highlighted for clarification purposes.

If you have any additional questions or comments, please feel free to contact me at 684-2604.

Thank you in advance for your consideration in this matter.

Sincerely,

Mike Ebright, District Administrator  
Nevada Division of Parole and Probation

cc. Legislature File

D-7814



Assembly Bill No. 95--Committee on Judiciary  
(On Behalf of the Attorney General)

February 13, 2003

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Referred to Committee on Judiciary

SUMMARY—Makes various changes to provision pertaining to authority and discretion of court to suspend sentence and grant probation in certain cases. (BDR 14 -284)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Yes.

EXPLANATION -- Matter in *bolded italics* is new; matter between brackets ~~{omitted material}~~ is material to be omitted.

Green numbers along left margin indicate location on the printed bill (e.g., 5-15 indicates page 5, line 15).

AN ACT relating to sentencing; making various changes to the provision pertaining to the authority and discretion of the court to suspend a sentence and grant probation in certain cases; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1-1 **Section 1.** NRS 176A.100 is hereby amended to read as

1-2 follows:

1-3 176A.100 1. Except as otherwise provided in this section and

1-4 NRS 176A.110 and 176A.120, if a person is found guilty in a

1-5 district court upon verdict or plea of:

1-6 (a) Murder of the first or second degree, kidnapping in the first

1-7 degree, sexual assault, attempted sexual assault of a child who is

1-8 less than 16 years of age, an offense for which the suspension of

1-9 sentence or the granting of probation is expressly forbidden, or if the

1-10 person is found to be a habitual criminal pursuant to NRS 207.010, a

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1-11 habitually fraudulent felon pursuant to NRS 207.014 or a habitual  
1-12 felon pursuant to NRS 207.012, the court shall not suspend the  
1-13 execution of the sentence imposed or grant probation to the person.

2-1 (b) A category E felony, except as otherwise provided in this  
2-2 paragraph, the court shall suspend the execution of the sentence  
2-3 imposed and grant probation to the person. The court may, as it  
2-4 deems advisable, decide not to suspend the execution of the  
2-5 sentence imposed and grant probation to the person if, at the time  
2-6 ~~[the crime was committed,]~~ *of sentencing, it is established that the*  
2-7 person:

2-8 (1) Was serving a term of probation or parole ~~{}~~ *at the time the crime*  
2-9 *was committed*, whether in this state or elsewhere, for a felony  
2-10 conviction;

2-11 (2) Had previously had his probation or parole revoked, whether in  
2-12 this state or elsewhere, for a felony conviction; ~~{or}~~

2-13 (3) *Had previously been assigned to a program of treatment*  
2-14 *and rehabilitation pursuant to NRS 453.580 and failed to*  
2-15 *successfully complete that program; or*

2-16 (4) Had previously been two times convicted, whether in this  
2-17 state or elsewhere, of a crime that under the laws of the situs of the  
2-18 crime or of this state would amount to a felony.

2-19 If the person denies the existence of a previous conviction, the court  
2-20 shall determine the issue of the previous conviction after hearing all  
2-21 relevant evidence presented on the issue by the prosecution and the  
2-22 person. At such a hearing, the person may not challenge the validity

2-23 of a previous conviction. For the purposes of this paragraph, a  
2-24 certified copy of a felony conviction is prima facie evidence of  
2-25 conviction of a prior felony.

2-26 (c) Another felony, a gross misdemeanor or a misdemeanor, the  
2-27 court may suspend the execution of the sentence imposed and grant  
2-28 probation as the court deems advisable.

2-29 2. In determining whether to grant probation to a person, the  
2-30 court shall not consider whether the person has the financial ability  
2-31 to participate in a program of probation secured by a surety bond  
2-32 established pursuant to NRS 176A.300 to 176A.370, inclusive.

2-33 3. The court shall consider the standards adopted pursuant to  
2-34 NRS 213.10988 and the recommendation of the chief parole and  
2-35 probation officer, if any, in determining whether to grant probation  
2-36 to a person.

2-37 4. If the court determines that a person is otherwise eligible for  
2-38 probation but requires more supervision than would normally be  
2-39 provided to a person granted probation, the court may, in lieu of  
2-40 sentencing him to a term of imprisonment, grant him probation  
2-41 pursuant to the program of intensive supervision established  
2-42 pursuant to NRS 176A.440.

2-43 5. Except as otherwise provided in this subsection, if a person  
2-44 is convicted of a felony and the division is required to make a  
2-45 presentence investigation and report to the court pursuant to NRS  
3-1 176.135, the court shall not grant probation to the person until the  
3-2 court receives the report of the presentence investigation from the  
3-3 chief parole and probation officer. The chief parole and probation

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3-4 officer shall submit the report of the presentence investigation to the  
3-5 court not later than 45 days after receiving a request for a  
3-6 presentence investigation from the county clerk. If the report of the  
3-7 presentence investigation is not submitted by the chief parole and  
3-8 probation officer within 45 days, the court may grant probation  
3-9 without the report.

3-10 6. If the court determines that a person is otherwise eligible for  
3-11 probation, the court shall, when determining the conditions of that  
3-12 probation, consider the imposition of such conditions as would  
3-13 facilitate timely payments by the person of his obligation, if any, for  
3-14 the support of a child and the payment of any such obligation which  
3-15 is in arrears.

3-16 H

## ASSEMBLY BILL 108

**NRS 202.2496 Random inspections to enforce compliance with NRS 202.2493 and 202.2494; assistance of child in conducting inspection.**

1. As necessary to comply with applicable federal law, the attorney general shall conduct random, unannounced inspections at locations where tobacco and products made from tobacco are sold, distributed or offered for sale to inspect for and enforce compliance with NRS 202.2493 and 202.2494. For assistance in conducting any such inspection, the attorney general may contract with:

(a) Any sheriff's department;

(b) Any police department; or

(c) Any other person who will, in the opinion of the attorney general, perform the inspection in a fair and impartial manner.

2. If the inspector desires to enlist the assistance of a child under the age of 18 for such an inspection, the inspector shall obtain the written consent of the child's parent for such assistance.

3. A child assisting in an inspection pursuant to this section shall, if questioned about his age, state his true age and that he is under 18 years of age.

4. If a child is assisting in an inspection pursuant to this section, the person supervising the inspection shall:

(a) Refrain from altering or attempting to alter the child's appearance to make him appear to be 18 years of age or older.

(b) Photograph the child immediately before the inspection is to occur and retain any photographs taken of the child pursuant to this paragraph.

5. The person supervising an inspection using the assistance of a child shall, within a reasonable time after the inspection is completed:

(a) Inform a representative of the business establishment from which the child attempted to purchase tobacco or products made from tobacco that an inspection has been performed and the results of that inspection.

(b) Prepare a report regarding the inspection. The report must include the following information:

(1) The name of the person who supervised the inspection and the position held by him;

(2) The age and date of birth of the child who assisted in the inspection;

(3) The name and position of the person from whom the child attempted to purchase tobacco or products made from tobacco;

(4) The name and address of the establishment at which the child attempted to purchase tobacco or products made from tobacco;

(5) The date and time of the inspection; and

(6) The result of the inspection, including whether the inspection resulted in the sale, distribution or offering for sale of tobacco or products made from tobacco to the child.

6. No civil or criminal action based upon an alleged violation of NRS 202.2493 or 202.2494 may be brought as a result of an inspection for compliance in which the assistance of a child has been enlisted unless the inspection has been conducted in accordance with the provisions of this section.

(Added to NRS by 1995, 2602)



# WASHOE COUNTY

"Dedicated to Excellence in Public Service"

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ASSEMBLY JUDICIARY COMMITTEE HEARING ON AB132  
March 3, 2003

## Proposed Amendments to AB 132

432B.430 1. Except as otherwise provided in NRS 432B.457 and subsection ~~[3]~~ 2, any proceeding held pursuant to NRS 432B.410 to 432B.590, inclusive, ~~[must be open to the]~~ **must exclude the general public and only those persons having a direct interest in the case, as ordered by** ~~[unless]~~ the judge or master, ~~upon his own motion or upon the motion of another person,~~ determines that all or part of the proceeding must be closed to the general public because such closure is in the best interests of the child who is the subject of the proceeding. ~~In determining whether closing all or part of the proceeding is in the best interests of the child who is the subject of the proceeding, the judge or master must consider and give due weight to the desires of that child.~~ **may be admitted to the proceeding.**

New (formerly part of Subsection 1 above)

2. **Any proceeding held pursuant to NRS 432B.410 to 432B.590, except for hearings on protective custody pursuant to NRS 432B.470 and 432B.480, ~~[must]~~ may be open to the general public ~~[unless]~~ if the judge or master, upon his own motion or upon the motion of another person, determines that all or part of the proceeding ~~[must]~~ **should be ~~[closed]~~ open** to the general public because ~~[such closure]~~ **it is** in the best interests of the child who is the subject of the proceeding. In determining whether ~~[closing]~~ **opening** all or part of the proceeding is in the best interests of the child who is the subject of the proceeding, the judge or master must consider and give due weight to the desires of that child.**

~~[2]~~ 3. If the judge or master determines pursuant to subsection ~~[4]~~ 2 that all or part of a proceeding must be ~~[closed]~~ **open** to the general public:

(a) The judge or master must make specific findings of fact to support such a determination;  
and

~~[3]~~ (b) ~~[In conducting a proceeding held pursuant to NRS 432B.410 to 4432B.590, inclusive, a]~~ A judge or master shall keep information confidential to the extent necessary to obtain federal funds in the maximum amount available to this state.

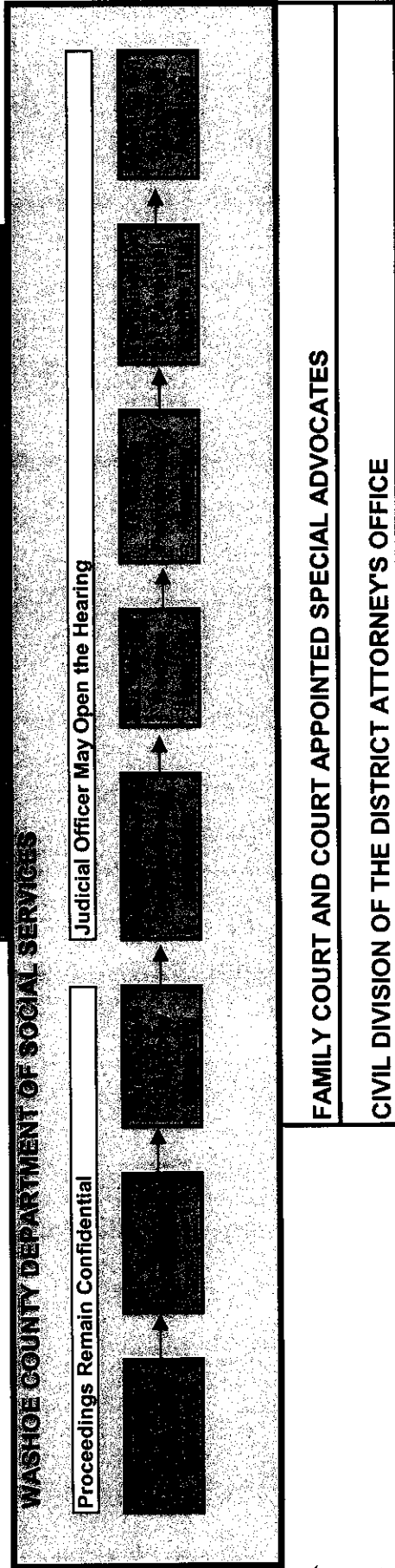
~~[(b) Except as otherwise provided in NRS 432B.457, the general public must be excluded and only those persons having a direct interest in the case, as determined by the judge or master may be admitted to the proceeding.]~~

~~3. In conducting a proceeding held pursuant to NRS 432B.410 to 4432B.590, inclusive, a judge or master shall keep information confidential to the extent necessary to obtain federal funds in the maximum amount available to this state.]~~

-00- D-13814

# WASHOE COUNTY DEPARTMENT OF SOCIAL SERVICES

## Child Welfare Hearing Process Overview



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