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ASSEMBLY COMMITTEE ON JUDICIARY



WORK SESSION DOCUMENT

MARCH 20, 2003

Original on file in the Research Library

ASSEMBLY JUDICIARY

DATE: 3-20-02 ROOM 3138 EXHIBIT C

SUBMITTED BY: Allison Combs

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WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

March 20, 2003

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

- ASSEMBLY BILL 16** (BDR 14-200 was requested by the Assembly Committee on Judiciary on behalf of the Legislative Commission's Subcommittee to Study the Death Penalty and Related DNA Testing). The bill was heard in Committee on March 17, 2003, and no action was taken.

Assembly Bill 16 provides for genetic market analysis of certain evidence related to conviction of certain offenders sentenced to death.

Proponents/those testifying in support of the bill: Stan Olsen, Nevada Sheriffs' and Chiefs' Association; Assistant Sheriff Don Means, Washoe County Sheriff's Office; Benjamin Blinn, citizen; Michael Pescetta, attorney.

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

Discussion: Testimony indicated the measure requested by the interim study mirrors Assembly Bill 354, which was proposed during the 2001 Session.

Proposed Amendments: The following amendments have been proposed:

- Assistant Sheriff Means and Mr. Pescetta proposed various amendments to the measure. Attached on white paper is a compilation of these amendments, as proposed by the sponsors. For reference, also attached on blue paper is the original proposal from Assistant Sheriff Means. The original proposal from Mr. Pescetta is attached on green paper.

- ASSEMBLY BILL 106** (BDR 43-606 was requested on behalf of the Nevada Supreme Court). The bill was heard in Committee on March 6, 2003, and no action was taken.

Assembly Bill 106 revises the penalty for driving under the influence of intoxicating liquor or a controlled or prohibited substance and revises the qualifications of a person who may apply to the court to undergo a program of treatment for alcoholism or drug abuse.

Proponents/those testifying in support of the bill: Judge Robey B. Willis, Justice and Municipal Court of Carson Township; Judge John Tatro, Justice and Municipal Court of Carson Township.

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

Those testifying with a neutral position on the bill: Laurel Stadler, Mothers Against Drunk Driving.

Discussion: Testimony indicated the measure was requested on behalf of the Supreme Court's Mandatory Minimum Sentencing Review Commission. The Commission recommended the changes in the number of community service hours to provide a greater incentive to offenders to complete the treatment programs. The changes to allow the judge the discretion to impose a fine or community service were requested to encourage greater compliance with the multiple penalties imposed for the crime of driving under the influence.

Proposed Amendments: None.

Research Requested: **Potential conflict with federal law.**

During the hearing, Laurel Stadler, Mothers Against Drug Driving, asked the Committee to research whether the changes under the bill would conflict with federal law and potentially endanger federal funding relating to enforcement of laws regarding driving under the influence.

In response, the Office of Traffic Safety, Nevada's Department of Public Safety, contacted the National Highway Traffic Safety Administration and received a preliminary response indicating that Nevada's laws would remain in compliance under the changes proposed in Assembly Bill 106. A copy of the electronic mail correspondence regarding this question is attached on pink paper.

- ASSEMBLY BILL 107** (BDR 15-285 was requested by the Assembly Committee on Judiciary on behalf of the Office of the Attorney General). The bill was heard in Committee on March 10, 2003, and no action was taken.

Assembly Bill 107 provides an additional penalty for committing certain crimes in violation of a temporary or extended order for protection.

Proponents/those testifying in support of the bill: Ben Graham, Nevada District Attorneys' Association; Cheryl Kosewicz, Clark County District Attorney's Office; Abbi Silver; Clark County District Attorney's Office.

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

Discussion: Testimony indicated the measure is designed to target the most violent offenders when the course of conduct continues after the initial restraining order is issued.

Proposed Amendments: The following amendments have been proposed:

- **Add “attempted murder,”** proposed by Ms. Silver. Amend Section 1, subsection 2 of the bill on page 2 to add “attempted murder” to the list of crimes for which the court is prohibited from granting probation or a suspended sentence.
- **Delete existing penalties for violations of temporary or extended protective orders under NRS 33.100 and NRS 125.560,** proposed by Ms. Silver. These two sections of NRS are included in the bill under Sections 3 and 4, respectively.

A copy of the amendment request submitted by Ms. Silver is provided on yellow paper.

- ASSEMBLY BILL 163** (BDR 7-383 was requested by Assemblyman David Goldwater). The bill was heard in Committee on March 12, 2003, and no action was taken.

Assembly Bill 163 makes various changes to provisions concerning financial practices.

Proponents/those testifying in support of the bill: Assemblyman Goldwater; Dean Heller, Nevada Secretary of State; Rene Parker, Chief Deputy Secretary of State.

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

Discussion: Testimony indicated the measure was requested to strengthen Nevada’s laws with regard to illegal corporate practices.

Proposed Amendments: The following amendments have been proposed:

- **Clarify that the illegal action includes acts performed “personally or through another,”** proposed by Assemblyman David Brown. Amend Section 1, subsection 2 of the bill on page 2 (lines 7 and 8) to clarify that the illegal action of destroying, altering, erasing, obliterating, or concealing any book, paper, document, or record includes acts performed personally or through another.
- **Clarify that a “record” includes electronic records,** proposed by Assemblyman John Ocegüera. Amend the reference to a “record” on page 2, line 8, to ensure that the record includes items sent electronically.
- **Clarify a reference to the governing documents used by the Nevada Gaming Control Board,** proposed by Dennis Neilander, Chairman of the Nevada Gaming Control Board. Mr. Neilander indicated that the Board has the authority not only to adopt regulations, but also guidelines and checklists with regard to provisions governing internal audits. To ensure that the appropriate

documents are referenced, Mr. Neilander suggests the following change to the language on page 3, lines 31 through 34:

The regulations Such provisions must preclude internal audits by the same independent accountant hired to provide audits, compiled statements or reviews of the financial statements required by NRS 463.159.

- ASSEMBLY BILL 189** (BDR 15-960 was requested by Assemblyman David Parks).
The bill was heard in Committee on March 14, 2003, and no action was taken.

Assembly Bill 189 makes various changes to the provisions concerning false imprisonment.

Proponents/those testifying in support of the bill: Assemblyman Parks; Stan Olsen, Nevada Sheriffs' and Chiefs' Association; Kristen Erickson, Nevada District Attorneys' Association.

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

Discussion: Testimony indicated the measure was requested to address situations in which an offender uses a person as a "human shield" as there are no laws currently to allow prosecution for this type of action.

Proposed Amendments: The following amendment was proposed.

- **Revise the penalty under the bill**, proposed by Assemblyman Marcus Conklin, who discussed several options, including a penalty enhancement or mandatory imposition of a consecutive sentence.

PROPOSED AMENDMENT TO
ASSEMBLY BILL NO. 16

PREPARED FOR ASSEMBLY COMMITTEE ON JUDICIARY
MARCH 17, 2003

PREPARED BY THE RESEARCH DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~green bold double strikethrough~~ is language proposed to be deleted in this amendment and (5) ~~green bold dashed underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment.

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

1 **Section 1.** Chapter 176 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *A person convicted of a crime and under sentence of*
4 *death who meets the requirements of this section may file a*
5 *postconviction petition requesting a genetic marker analysis of evidence*
6 *within the possession or custody of the State which may contain genetic*
7 *marker information relating to the investigation or prosecution that*
8 *resulted in the judgment of conviction and sentence of death. The*
9 *petition must include, without limitation, the date scheduled for the*
10 *execution, if it has been scheduled. The remedy provide by this section is*
11 *in addition to any remedy the inmate may have under other provisions of*
12 *law to obtain testing of evidence for genetic market analysis.*

13 **2.** *Such a petition must be filed with the clerk of the district court*
14 *for the county in which the petitioner was convicted on a form prescribed*
15 *by the Department of Corrections. A copy of the petition must be served*
16 *by registered mail upon:*

17 (a) *The Attorney General; and*

Section 2(1) - Proposed by Mr. Pescetta, who references existing methods in non-capital cases to obtain testing through other legal proceedings, which are currently possible under NRS 34.780(2).

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PROPOSED AMENDMENT TO AB16

1 (b) The district attorney in the county in which the petitioner was
2 convicted.

3 3. If a petition is filed pursuant to this section, the court shall
4 immediately issue an order requiring, during the pendency of the
5 proceeding, the prosecuting attorney to preserve all evidence within the
6 possession or custody of the State that may be subjected to genetic
7 marker analysis pursuant to this section.

8 4. Within 30 days after receiving notice of a petition pursuant to this
9 section, the prosecuting attorney:

10 (a) Shall prepare an inventory of all available ~~the~~ evidence within the
11 possession or custody of the State, an investigating agency and the court
12 that may be subjected to analysis pursuant to this section;

13 (b) Shall submit a copy of the inventory to the petitioner and the
14 court; and

15 (c) May file a written response to the petition with the court.

16 5. The court, in its sole discretion, ~~may~~ shall order a hearing on the
17 petition.

18 6. The court shall order a genetic marker analysis if the court finds
19 that:

20 (a) A reasonable ~~probability~~ possibility exists that the petitioner
21 would not have been prosecuted or convicted if exculpatory results had
22 been obtained through a genetic marker analysis of the evidence
23 identified in the petition;

24 (b) The evidence to be analyzed exists ~~and is in a condition that~~
25 ~~allows genetic marker analysis to be conducted as requested in the~~
26 ~~petition;~~ and

27 (c) The evidence was not previously subjected to:

28 (1) A genetic marker analysis involving the petitioner; or

29 (2) The method of analysis requested in the petition, and the
30 method of additional analysis may resolve an issue not resolved by a
31 previous analysis.

32 7. If the court orders a genetic marker analysis pursuant to
33 subsection 6, the court shall:

34 (a) Order the analysis to be conducted ~~promptly~~ under reasonable
35 conditions designed to protect the interest of the State in the integrity of
36 the evidence and the analysis process.

37 (b) Select a forensic laboratory to conduct or oversee the analysis.
38 The forensic laboratory selected by the court must:

39 (1) Be operated by this state or one of its political subdivisions;
40 and

41 (2) Satisfy or exceed the Quality Assurance Standards for
42 Forensic DNA Testing Laboratories and Convicted Offender DNA
43 Databasing Laboratories, issued by the FBI Director ~~standards for~~

Section 2(4)(a) - Proposed by Washoe County Sheriffs Office and Las Vegas Metro, who note other agencies may possess evidence relating to the case.

Section 2(5) - Proposed by Mr. Pescetta to ensure a hearing occurs. A related amendment is proposed to Section 2(10).

Section 2(6)(a) Proposed by Mr. Pescetta to allow testing if there is any possibility of an exculpatory finding.

Section 2(6)(b) - Proposed by Washoe County Sheriffs Office and Las Vegas Metro, who note that it is not possible to know the condition until the evidence is in the lab and analysis is attempted.

Section 2(7)(a) - Proposed by Washoe County Sheriffs Office and Las Vegas Metro, who note "promptly" may imply the request is a "rush analysis in the eyes of the court."

Section 2(7)(b)(2) - Proposed by Washoe County Sheriffs Office and Las Vegas Metro, who note that the "reference to CODIS needs to be removed because if either Nevada lab decides that the sample warrants another type of DNA analysis which cannot be performed in house, we want the ability to send it to an external laboratory. However, this external lab must be one that meets the quality assurance guidelines established by the FBI."

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PROPOSED AMENDMENT TO AB16

1 ~~quality assurance that are established by the Federal Bureau of~~
2 ~~Investigation for participation in CODIS. As used in this subparagraph,~~
3 ~~"CODIS" has the meaning ascribed to it in NRS 176.0911.~~

4 (c) Order the forensic laboratory selected pursuant to paragraph (b)
5 to perform an evidence review and then a genetic marker analysis of
6 evidence. The analysis to be performed and evidence to be analyzed
7 must:

Section 2(7)(c) - Proposed by Washoe County Sheriffs Office and Las Vegas Metro. (No explanation was noted.)

8 (1) Be specified in the order; and

9 (2) Include such analysis, testing and comparison of genetic
10 marker information contained in the evidence and the genetic marker
11 information of the petitioner as the court determines appropriate under
12 the circumstances.

13 (d) Order the production of any reports that are prepared by a
14 forensic laboratory in connection with the analysis and any data and
15 notes upon which the report is based.

Section 2(7)(d) - The Washoe County Sheriffs Office and Las Vegas Metro question who will be the recipient of the reports.

16 (e) Order the preservation of evidence used in a genetic marker
17 analysis performed pursuant to this section for purposes of a subsequent
18 proceeding or analysis, if any.

19 8. If the results of a genetic marker analysis performed pursuant to
20 this section are favorable to the petitioner, the court shall arrest
21 judgment as provided in NRS 176.525.

22 9. The court shall dismiss a petition filed pursuant to this section if:

23 (a) The requirements for ordering a genetic marker analysis
24 pursuant to this section are not satisfied; or

25 (b) The results of a genetic marker analysis performed pursuant to
26 this section are not favorable to the petitioner.

Section 2(10) - Proposed by Mr. Pescetta. This change corresponds to the change proposed under Section 2(5).

27 10. An order of a court granting or dismissing a petition pursuant to
28 this section is ~~final and not~~ subject to judicial review pursuant to NRS
29 177.015(1)(b).

30 11. For the purposes of a genetic marker analysis pursuant to this
31 section, a person under sentence of death who files a petition pursuant to
32 this section shall be deemed to consent to the:

33 (a) Submission of a biological specimen from him to determine his
34 genetic marker information ~~Extraction of a specimen, including, without~~
35 ~~limitation, a sample of blood, from him to determine his genetic marker~~
36 ~~information; and~~

Section 2(11)(a) - Proposed by Washoe County Sheriffs Office and Las Vegas Metro, who note, "Very few labs are still collecting blood samples. Buccal swabs are a cleaner and easier mechanism, however we should leave it rather generic so that any biological fluid can be utilized but we don't want to specifv blood"

37 (b) Release and use of genetic marker information concerning the
38 petitioner into CODIS.

Section 2(11)(b) - Proposed by Washoe County Sheriffs Office and Las Vegas Metro, who note, "If this verbiage is referring to entry into CODIS, it should say so specifically."

39 12. The expense of an analysis ordered pursuant to this section is a
40 charge against the Department of Corrections and must be paid upon

Section 2(12) - Washoe County Sheriffs Office and Las Vegas Metro question how the labs will get money from the Department of Corrections.

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PROPOSED AMENDMENT TO AB16

1 approval by the Board of State Prison Commissioners as other claims
2 against the State are paid.

3 Sec. 3. 1. After a judge grants a petition requesting a genetic
4 marker analysis pursuant to section 2 of this act, if a judge determines
5 that the genetic marker analysis cannot be completed before the date of
6 the execution of the petitioner, the judge shall stay the execution of the
7 judgment of death pending the results of the analysis.

8 2. If the results of an analysis ordered and conducted pursuant to
9 section 2 of this act are not favorable to the petitioner:

10 (a) Except as otherwise provided in paragraph (b), the Director of the
11 Department of Corrections shall, in due course, execute the judgment of
12 death.

13 (b) If the judgment of death has been stayed pursuant to subsection
14 1, the judge shall cause a certified copy of his order staying the execution
15 of the judgment and a certified copy of the report of genetic marker
16 analysis that indicates results which are not favorable to the petitioner to
17 be immediately forwarded by the clerk of the court to the district
18 attorney. Upon receipt, the district attorney shall pursue the issuance of
19 a new warrant of execution of the judgment of death in the manner
20 provided in NRS 176.495.

21 Sec. 4. NRS 176.525 is hereby amended to read as follows:

22 176.525 The court shall arrest judgment if the indictment, information
23 or complaint does not charge an offense, ~~{or}~~ if the court was without
24 jurisdiction of the offense charged ~~{-The}~~ or if the results of a genetic
25 marker analysis performed pursuant to section 2 of this act are favorable
26 to the petitioner. Except when the motion is based upon the results of a
27 genetic marker analysis performed pursuant to section 2 of this act, the
28 motion in arrest of judgment ~~{shall}~~ must be made within 7 days after
29 determination of guilt or within such further time as the court may fix
30 during the 7-day period.

31 Sec. 5. 1. There is hereby appropriated from the State General Fund
32 to the Department of Corrections the sum of \$6,250 for the expense of
33 genetic marker analyses performed pursuant to section 2 of this act.

34 2. Any remaining balance of the appropriation made by subsection 1
35 must not be committed for expenditure after June 30, 2005, and reverts to
36 the State General Fund as soon as all payments of money committed have
37 been made.

**Section 5 - Washoe County Sheriffs
Office and Las Vegas Metro**
propose to delete the \$6,250 amount
and amend the bill to authorize
payment based upon the cost per
sample.

38 Sec. 6. The Department of Corrections, in consultation with the
39 Attorney General, shall, on or before August 1, 2003:

40 1. Prescribe the form for a petition requesting the genetic marker
41 analysis of evidence pursuant to section 2 of this act; and

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PROPOSED AMENDMENT TO AB16

- 1 2. Provide a copy of the form and a copy of the provisions of section
- 2 2 of this act to each person in the custody of the Department who is under
- 3 a sentence of death.
- 4 **Sec. 7.** This act becomes effective upon passage and approval.

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PROPOSED AMENDMENT TO AB16