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ASSEMBLY COMMITTEE ON JUDICIARY



WORK SESSION DOCUMENT

APRIL 9, 2003

ASSEMBLY JUDICIARY

DATE: 4/9/03 ROOM: 3138 EXHIBIT

SUBMITTED BY: ALLISON COMBS

D of 35

WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

April 9, 2003

(Please note the list of speakers and summary of the discussion on each measure contained within this document do not represent an official record of the referenced meetings. For an official record, please see the minutes from the meetings of the Assembly Committee on Judiciary, which are available through the Legislative Counsel Bureau.)

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

- ASSEMBLY BILL 156** (BDR 14-131 was requested by the Assembly Committee on Judiciary). The bill was heard in Committee on March 31, 2003, and no action was taken. A subcommittee composed of Assemblyman Bernie Anderson and Assemblyman Garn Mabey was appointed, but this subcommittee has not met.

Assembly Bill 156 abolishes the plea of guilty but mentally ill and reinstates exculpation by reason of insanity.

Proponents/those testifying in support of the bill: Elizabeth Neighbors, Lakes Crossing Center; Ed Irvin, Office of the Attorney General, representing the Division of Mental Health and Developmental Services, Nevada's Department of Human Resources; Ben Graham, Nevada District Attorneys' Association; Howard Brooks and James Jackson, Nevada Attorneys' for Criminal Justice.

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

Those testifying with a neutral position on the bill: Dr. Richard Siegel, American Civil Liberties Union of Nevada.

Discussion: Testimony indicated the measure was requested to reinstate the exculpation by reason of insanity following a recent decision of the Nevada Supreme Court that the abolishment of the insanity defense was unconstitutional. The measure returns Nevada law to the provisions that were in place prior to 1995 when the Legislature adopted the plea of guilty but mentally ill.

Proposed Amendments: Following is a summary of all of the amendments that have been proposed. The first four amendments presented are without objection from the Nevada District Attorneys' Association and the Nevada Attorneys' for Criminal Justice.

1. **Specify the time frame prior to trial for entering into a plea of not guilty by reason of insanity**, proposed by the Nevada District Attorneys' Association (attached on blue paper). The amendment would provide that a plea of not guilty by reason of insanity must be entered into no less than 21 days prior to trial. (See Section 4, subsection 4, on page 3 at lines 20 through 26.)

(Representatives of the Nevada District Attorneys' Association and the Nevada Attorneys' for Criminal Justice are in agreement on this proposal.)

2. **Standard for proving insanity.** The bill currently provides that the burden of proof is "preponderance of the evidence." A suggestion was submitted originally by the Nevada District Attorneys' Association to raise the burden of proof to "clear and convincing evidence." However, this suggestion was later withdrawn and the Association indicated an intent to retain the standard under the bill.

(Representatives of the Nevada District Attorneys' Association and the Nevada Attorneys' for Criminal Justice are in agreement on this proposal.)

3. **Delete Section 25 of the bill,** proposed by the Nevada District Attorneys' Association. Section 25 of the bill amends NRS 178.400, which currently specifies that an incompetent person cannot be tried or adjudged to punishment for public offense. The Association's documentation suggests that the changes to this section are not necessary and:

. . .if included would have unintended consequences. Under the above-amended statute a dangerous person who has been duly convicted and sentenced, who becomes "incompetent" while incarcerated would have to be released because his incarceration is punishment. This language is not required by the U.S. Supreme Court in *Atkins*. Such persons already have available the remedy of executive clemency—A remedy, which is evaluated on a case-by-case basis.

(Representatives of the Nevada District Attorneys' Association and the Nevada Attorneys' for Criminal Justice are in agreement on this proposal.)

4. **Revise Section 9 (Procedures following acquittal by reason of insanity),** proposed by Ms. Neighbors. A copy of Ms. Neighbors' proposal is attached on green paper. Ms. Neighbors proposes the following:
 - a. **Delete the reference to a "mental health facility or hospital" and specify "Lakes Crossing Center" as the detention facility; and**
 - b. **Require that the mandatory examination be performed by persons employed by a facility of the Division of Mental Health and Developmental Services of Nevada's Department of Human Resources.**
5. **Update the language in NRS 194.010,** proposed by the Nevada District Attorneys' Association. Revise Section 37 of the bill, which amends NRS 194.010 (Persons capable of committing crimes). The proposal would amend subsection 7 of NRS 194.010 (existing law) with regard to a person who is not liable to punishment:

Persons, unless ~~the crime is punishable with death~~ *charged with the crime of murder or attempted murder*, who committed the act or made the omission charged under *immediate* threats or menaces *to themselves or others* sufficient to show that they had reasonable cause to believe, and did believe, their lives *or the life of another* would be endangered if they refused, or that they *or the other person* would suffer great bodily harm.

6. **Adopt the Model Penal Code's test for a plea of not guilty by reason of insanity**, proposed by Dr. Siegel. Attached on pink paper is a request by Dr. Siegel to substitute the McNaughten rule (currently in the bill) for the American Law Institute Model Penal Code's test for the plea of not guilty by reason of insanity.

ASSEMBLY BILL 274 (BDR 3-1128 was requested by Assemblyman David Goldwater). The bill was heard in committee on March 21, 2003, and no action was taken.

Assembly Bill 274 increases the length of notice before persons 55 years of age or older may be evicted from certain periodic tenancies under certain circumstances.

Proponents/those testifying in support of the bill: Assemblyman Goldwater; Anthony M. Goldstein, attorney; Larry Spitler, AARP.

Opponents/those testifying in opposition of the bill: Joe Guild and Steve Marzullo, Manufactured Home Community Owners; Dave Howard, Misty Davies and Vicky Young, Northern Nevada Apartment Association and Southern Nevada Multi-Housing Association; Shelly Baker, ERGS Inc.; Roberta Ross, Ross Manor Residential Hotel and Apartments; Natasha Larsen, Carefree Senior Living.

Discussion: Testimony noted the measure involves "no cause evictions" and the hardship on older persons who have unique challenges if one of the specified defenses is not available to them. Concerns focused on the possibility of constitutional challenges based upon the proposal under the bill and potential problems for property owners and managers, including determining the age of the tenant.

Proposed Amendments: Subsequent to the hearing, the sponsor submitted proposed amendments and documentation to address the concerns raised during the hearing. The first document on yellow paper is an analysis of Assembly Bill 274 from the Nevada Fair Housing Center concerning the questions raised regarding the federal Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

The second document (attached on lilac paper) proposes two options, which are summarized below.

1. **Instead of requiring a 60-day notice to all seniors, revise the bill to require that the 30-day notice must contain language stating that the tenant may notify a landlord that the tenant is 55 years or older or has a disability and wishes to exercise the tenant's right to remain for an additional 30 days.**

As noted in Assemblyman Goldwater's attached memorandum:

The advantage is that the landlord would only have to provide the extra 30 days if requested in writing by the tenant. Could require the tenant to include some proof of disability or age in order to obtain the extra days. The landlord should not have any discretion to say no, but could be some mechanism to challenge the age/disability in the court.

2. **Amend NRS 70.010 to authorize the justice court the discretion to grant a stay of up to 30 days to a senior or person with a disability.**

As noted in Assemblyman Goldwater's attached memorandum:

Currently, if a justice court orders an eviction, it can be executed under NRS 40.253.5(a) 'within 24 hours'. N.R.S. 70.010 gives the justice court the ability to stay the execution of an eviction order for up to 10 days. You could broaden that power to state that the court has the discretion to grant a stay of up to 30 days to a senior or person with a disability.

Additional Considerations: Assemblyman Goldwater also suggests that an additional provision could be added to require that the court first find that the tenant would suffer a hardship without the extra days. An additional consideration may be to require that the rent be paid during the 30 days.

- ASSEMBLY BILL 337** (BDR 14-63 was requested by Assemblywoman Chris Giunchigliani). The bill was heard in Committee on March 26, 2003, and no action was taken.

Assembly Bill 337 makes various changes concerning rights of ex-felons.

Proponents/those testifying in support of the bill: Assemblywoman Giunchigliani; Assemblywoman Sheila Leslie; Dennis J. McMullen; Eric Garner; Gene Mummings; Jan Gilbert, Liz Moore, and Peggy Maze Johnson, Progressive Leadership Alliance of Nevada; Laura Mijanovich and Gary Peck, American Civil Liberties Union of Nevada.

Opponents/those testifying in opposition of the bill: Jim Nadeau, Washoe County Sheriffs' Office; Stan Olsen, Nevada Sheriffs' and Chiefs' Association and Las Vegas

Metropolitan Police Department; Kristin Erickson, Washoe County District Attorney's Office and Nevada District Attorneys' Association.

Those testifying with a neutral position on the bill: Dennis Neilander and Scott Scherer, Nevada Gaming Control Board.

Discussion: Testimony focused on the importance of a citizen's ability to vote and hold public office. Proponents also noted that despite efforts to improve the process for restoration of civil rights in the past, existing laws still are cumbersome. Concerns were raised regarding the automatic sealing of records and the potential fiscal impact on agencies involved.

Proposed Amendments: During the hearing, multiple amendments and concerns were raised. The sponsor of the bill offered to compile all of the amendments and present a comprehensive approach for the Committee's consideration. Following are the amendments submitted after the hearing by Assemblywoman Giunchigliani:

1. **Revise procedures for restoration of civil right to vote or hold office:** The proposed amendment provides that when a person receives an honorable discharge from probation or parole, is released from prison after being granted a pardon or is released from prison after having served the length of his sentence, the person is automatically restored to his right to vote and may use his discharge or release documents as proof of his right to vote. The requirement that a person obtain an order from the court or the board restoring the civil rights is deleted.

In addition, the proposal *deletes* the role of the court and the Division of Parole and Probation (depending upon the situation) with regard to providing written notice to the registrar of voters and the individual that the civil rights have been restored.

This proposal applies to persons convicted in Nevada prior to and after the effective date of the bill and to persons convicted in another state. For those convicted in Nevada prior to the effective date or in another state, the option of seeking a court order restoring civil rights will be available if there are problems recognizing the restoration of civil rights (such as problems with the individual's paperwork).

Applicability: The bill and this proposal apply to those who have been:

- a. Honorably discharged from probation or parole;
- b. Pardoned and no longer in custody; or
- c. Released from prison and not subject to probation or parole.

The intent is to place the responsibility on the individuals to take the paperwork received upon their discharge or release to the registrar of voters in order to vote. The paperwork must indicate that the individual's civil rights are restored.

2. **Right to serve on a jury:** Revise the bill to provide that a person convicted of a felony who qualifies for restoration of civil rights is eligible to serve on a jury *two years* after the date on which he:
 - a. Received an honorable discharge from probation or parole;
 - b. Was released from prison and was not subject to probation or parole; or
 - c. Received a pardon and, as a result, is no longer in custody.

3. **Registration as a convicted felon:** Currently Section 5 of the bill revises the provisions of Chapter 179C of NRS to provide that persons are only required to register pursuant to this chapter if convicted:
 - a. *Of three or more offenses as felonies which involved the use or threatened use of force or violence against the victim; or*
 - b. *As a habitual felon as defined in NRS 207.012.*

The proposed amendment would:

- a. *Delete* the phrase “*which involved the use or threatened use of force or violence against the victim,*” and thus require *any* person convicted of three or more felonies to register as a convicted person. However, the requirement would not apply with regard to any felony for which the record has been sealed. Thus, for example, if a person has been convicted of only three felonies but the record of one of those felonies had been sealed, the person is not required to register.

 - b. *Delete* the habitual offender language because offenders convicted of three or more felonies will have to register, regardless of whether they had been convicted as a habitual offender.
4. **Requirement for repeat offenders to register after civil rights are restored:** In addition, the proposed amendment deletes the new language on lines 30 and 31 of page 5, which specifies that a person whose civil rights have been restored is not required to register.

The intent of this amendment is to require persons convicted of three or more felonies to register with law enforcement under Chapter 179C of NRS regardless of whether their civil rights have been restored. (With the exception, as noted above, for any felonies for which the records have been sealed.)

5. **Deletion of Section 6—**The proposed amendment deletes the changes under Section 6 of the bill, which revises NRS 179C.170 to require law enforcement to notify convicted persons when information from the registration database concerning them has been requested and transmitted.

6. **Eligibility to serve as a peace officer**— Specify that restoration of civil rights does not qualify an individual convicted of a felony to serve as a Category 1, 2 or 3 peace officer.
7. **Gaming Control Board**— Attached on gray paper is an amendment from the State Gaming Control Board to Sections 3, 6, and 21 of the bill. Following are the proposed changes:

- a. **Section 3**—Reinstate the deleted language on page 4 (lines 13 through 25) under subsection 1 allowing the State Gaming Control Board and the Nevada Gaming Commission to inspect sealed records. Insert new language at the end of subsection 1 to read as follows:

Any application for a work permit shall not be objected to or denied based upon events or convictions which are the subject of an order sealing records, unless such events or convictions relate to the applicant's fitness to work as a gaming employee.

- b. **Section 6**—Reinstate the deleted language on page 7 (lines 12 through 14) allowing the Commission and the Board to request information from the data base of information on convicted persons who are required to register under Chapter 179C of NRS.

(Note, this amendment will not be necessary if Section 6 is deleted from the bill in its entirety, as recommended.)

- c. **Section 21**—Reinstate the deleted language on page 20 (lines 8 through 12) authorizing the Board to object to the issuance of a work permit if a person has been convicted of a felony or a gross misdemeanor.

Insert new language at the end of subparagraph (d) to provide that the Board may only object to the issuance of a work permit of a person who has been convicted of a felony or gross misdemeanor "*if the offense is related to the applicant's fitness to act as a gaming employee.*"

- ASSEMBLY BILL 536** (BDR 7-454 was requested by the Committee on behalf of the Secretary of State). The bill was heard in Committee on April 2, 2003, and no action was taken.

Assembly Bill 536 makes various changes to the filing requirements for business entities.

Proponents/those testifying in support of the bill: Rene Parker and Scott Anderson, Office of the Secretary of State.

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

Discussion: Testimony indicated the measure is requested to standardize the filing process within the Office of the Secretary of State and allow for a smooth transition to e-commerce in the office.

Proposed Amendments: The following amendments are submitted for consideration:

1. **Revisions consistent with purpose of the bill**—During the hearing on the bill, Ms. Parker and Mr. Anderson submitted the attached document on salmon paper, indicating the proposed changes revise the bill's provisions to more effectively address their original intent.

Additional changes—Attached on buff paper are two additional amendments from the Secretary of State's Office based upon a review of the bill and its proposed amendments by John Fowler, Section Chair for the Business Law Section of the State Bar Association.

2. **Addition of reference to thrift companies to NRS 78.045**, proposed by Bob Barengo. Attached on blue paper is a document submitted by Mr. Barengo requesting a change to Subsection 1 of NRS 78.045 (Articles of incorporation: Approval or certification required before filing of certain articles or amendments), which is under Section 5 of the bill (page 3).

Subsection 1 of NRS 78.045 prohibits the Secretary of State from accepting for filing articles of incorporation or any certificate of amendment to the articles of incorporation of any corporation which provides that the name of the corporation contain the word "bank" or "trust," unless (1) the documents are first approved by the Commissioner of Financial Institutions and (2) it appears from the documents that the corporation proposes to carry on business as a banking or trust company, exclusively or in connection with its business as a "bank or savings and loan association."

Proposed Amendment—Mr. Barengo proposes to add thrifts (thrift companies) to the phrase “bank or savings and loan association” on page 5 at line 22.

In relation to the proposal, Mr. Barengo has provided a copy of NRS 669.095 which prohibits a person from using the word “trust” when doing business in Nevada unless the person or organization is supervised by the Commissioner of Financial Institutions under the NRS chapters relating to Banks (Chapters 657 to 668), Savings and Loan Associations (Chapter 673) or Thrift Companies (Chapter 677).

AJWS-04-09-03



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CLARK COUNTY, NEVADA**

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CHRISTOPHER LAURENT
Chief Deputy District Attorney

MEMORANDUM

TO Ben Graham

FROM Christopher Laurent, David Barker, Chris Owens

DATE March 7, 2003

SUBJECT A.B. 156

After reviewing discussing the bill draft for A.B. 156 on insanity, the Clark County District Attorney's Office proposes the following amendments.

FIRST - NRS 174.035

To NRS 174.035 which A.B. 156 proposes as follows:

3-18 4. [~~A plea of guilty but mentally ill is not a defense to the~~
 3-19 ~~alleged offense. A defendant who enters such a plea is subject to the~~
 3-20 ~~same penalties as a defendant who pleads guilty.] *The defendant*
 3-21 *may, in the alternative or in addition to any one of the pleas*
 3-22 *permitted by subsection 1, plead not guilty by reason of insanity. A*
 3-23 *defendant who has not so pleaded may offer the defense of*
 3-24 *insanity during trial upon good cause shown. Under such a plea*
 3-25 *or defense, the burden of proof is upon the defendant to establish*
 3-26 *his insanity by a preponderance of the evidence.*~~

The District Attorneys Office would amend to be:

4. *The defendant may, in the alternative or in addition to any one of the pleas permitted by subsection 1, plead not guilty by reason of insanity.*

(a) plea of not guilty by reason of insanity must be entered into no less than 21 days prior to trial.

This change would bring this statute inline with NRS 174.234, which requires the parties to a criminal action to provide 21 day notice of expert witnesses. This amendment is intended to prevent trial by ambush and will prevent unnecessary delays and expenditures that would arise if a defendant were allowed to raise this issue untimely or perhaps in the middle of trial.

Utah code of criminal procedure 77-14-4 (1) directs written notice as soon after arraignment a practicable but not fewer that 30 days before trial.

(b) The defendant bears the burden of proving his insanity by clear and convincing evidence.

This change would bring this statute in line our sister state of Arizona. As stated in Arizona Revised Statutes ARS 13-502 (C) "The defendant shall prove the defendant's insanity by **clear and convincing evidence**.

Our sister state of Tennessee under TRS 39-11-501

Our sister state of Alaska under ARS 12.47.090.

Our sister state of Alabama under ARS 13-A-3-1.

Our sister state of Illinois under IRS 38.3-2; 38.6-2

Our sister state of South Dakota under SDRS 22-5-10

The proposed standard is not as high a burden as the state must prove in order for a jury to find the defendant guilty

California, New Mexico, Utah have codified different definitions of insanity other that our M'Naghten language.

Montana and Idaho passed laws that abolish the insanity defense just as Nevada did in 1995.

SECOND – NRS 178.400

NRS 178.400 which A.B. 156 proposes is as follows:

19-6 Sec. 25. NRS 178.400 is hereby amended to read as follows:

19-7 178.400 1. A person may not be tried , [or] adjudged to

19-8 punishment *or punished* for a public offense while he is

19-9 incompetent.

19-10 2. For the purposes of this section, "incompetent" means that

19-11 the person is not of sufficient mentality to be able to understand the

19-12 nature of the criminal charges against him, and because of that

19-13 insufficiency, is not able to aid and assist his counsel in the defense

19-14 interposed upon the trial or against the pronouncement of the

19-15 judgment thereafter.

The District Attorneys Office is of the opinion that the proposed amendments are not need and in fact if included would have unintended consequences. Under the above amended statute a dangerous person who has been duly convicted and sentenced, who becomes "incompetent" while incarcerated would have to be released because his incarceration is punishment. This language is not required by the US Supreme Court decision in *Atkins*. Such persons already have available the remedy of executive clemency--A remedy, which is evaluated on a case by case basis.

THIRD - NRS 194.010

To NRS 194.010 which A.B. 156 proposes as follows:

- 30-25 Sec. 37. NRS 194.010 is hereby amended to read as follows:
30-26 194.010 All persons are liable to punishment except those
30-27 belonging to the following classes:
30-28 1. Children under the age of 8 years.
30-29 2. Children between the ages of 8 years and 14 years, in the
30-30 absence of clear proof that at the time of committing the act charged
30-31 against them they knew its wrongfulness.
30-32 3. *Persons who committed the act charged or made the*
30-33 *omission charged in a state of insanity.*
30-34 4. Persons who committed the act or made the omission
30-35 charged under an ignorance or mistake of fact, which disproves any
30-36 criminal intent, where a specific intent is required to constitute the
30-37 offense.
30-38 [4.] 5. Persons who committed the act charged without being
30-39 conscious thereof.
30-40 [5.] 6. Persons who committed the act or made the omission
30-41 charged, through misfortune or by accident, when it appears that
30-42 there was no evil design, intention or culpable negligence.
30-43 [6.] 7. Persons, unless the crime is punishable with death, who
30-44 committed the act or made the omission charged under threats or
30-45 menaces sufficient to show that they had reasonable cause to
31-1 believe, and did believe, their lives would be endangered if they
31-2 refused, or that they would suffer great bodily harm.

The District Attorneys Office recommends the following amendment beginning at line
30-43:

7. Persons, unless ~~the crime is punishable with death~~ charged with the crime of murder or attempt murder, who committed the act or made the omission charged under *immediate* threats or menaces *to themselves or others* sufficient to show that they had reasonable cause to believe, and did believe, that their lives *or the life of another* would be endangered if they refused, or that they *the other person* would suffer great bodily harm.

The amendment proposed by the District Attorneys Office brings this section up to date with current law. NRS 194.010 was initially passed in 1911. At that time there were many crimes that were punishable by death. Now not even every murder is punishable by death. It is clear that this defense should not be available where the in circumstances where one placed in a position of trading someone else's life for their own.

Furthermore, the statute as written would not protect a mother from committing a crime to protect her child.

Analysis of the "Finger" decision

The intent of the Nevada Supreme Court in *Finger* toward the legislature is as follows:

[7][8] The Legislature is free to decide what method to use in presenting the issue of legal insanity to a trier of fact, i.e., as an affirmative defense or rebuttal presumption of sanity. It may also determine that legal insanity be proven by the defendant by any one of the established standards. But it cannot abolish legal insanity or define it in such a way that it undermines a fundamental principle of our system of justice. (Emphasis added)

J. Leavitt, in his concurring opinion recommended that the original statutory scheme be reinstated:

The legislative scheme as set forth in S.B. 314 [FN10] must be set aside, and the law as it existed prior to its enactment be reinstated.

FN10. S.B. 314, 67th Leg. (Nev.1995), amending NRS 174.035, 193.220 and 194.010 and repealing 175.521.

The established standards or burden of proof are delineated in the opinion as follows:

Under M'Naghten, insanity is considered an affirmative defense, which must be proven by the defendant. **The burden of proof can be either: (1) by a preponderance of the evidence, (2) by clear and convincing evidence or (3) beyond a reasonable doubt.** See *Leland v. Oregon*, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed. 1302 (1952). In contrast, other jurisdictions have determined that insanity is not an affirmative defense, but an issue of presumptions. A person is presumed to be sane. This presumption can be rebutted by the introduction of evidence tending to show that the defendant is legally insane. Once such evidence is presented, the prosecution has the burden of proving the defendant's sanity beyond a reasonable doubt. See *Davis v. United States*, 160 U.S. 469, 16 S.Ct. 353, 40 L.Ed. 499 (1895). (Emphasis added)

Conclusion

Based upon the reasons stated, we support the re-adoption on the old M'Naghten definition of insanity. So long as the proposed procedural changes are also adopted.

Amend A.B. 156 Section 9 as follows:

1. Where on a trial a defense of insanity is interposed by the defendant and he is acquitted by reason of that defense, the finding of the jury pending the judicial determination pursuant to subsection 2 has the same effect as if he were regularly adjudged insane, and the judge must:

(a) Order a peace officer to take the person into protective custody and transport him to *Lakes Crossing center* [~~a mental health facility or hospital~~] for detention pending a hearing to determine his mental health;

(b) [~~Appoint~~] *Order the examination of the person by two psychiatrists, two psychologists, or one psychiatrist and one psychologist, [to examine the person.] employed by a division facility, as defined by NRS 433.094 and designated by 433.233. NRS 178.435 and NRS 178.440 will apply; and*

(c) At a hearing in open court, receive the report of the examining advisers and allow counsel for the State and for the person to examine the advisers, introduce other evidence and cross-examine witnesses.

2. If the court finds, after the hearing:

(a) That there is not clear and convincing evidence that the person is a mentally ill person, the court must order his discharge;

or

(b) That there is clear and convincing evidence that the person is a mentally ill person, the court must order that he be committed to the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Human

Resources until he is regularly discharged therefrom in accordance with law. The court shall issue its finding within 90 days after the defendant is acquitted.

3. The Administrator shall make the same reports and the court shall proceed in the same manner in the case of a person committed to the custody of the Division of Mental Health and Developmental Services pursuant to this section as of a person committed because he is incompetent to stand trial pursuant to NRS 178.400 to 178.460, inclusive, except that the determination to be made by the Administrator and the district judge on the question of release is whether the person has recovered from his mental illness or has improved to such an extent that he is no longer a mentally ill person.

4. As used in this section, unless the context otherwise requires, "mentally ill person" has the meaning ascribed to it in NRS 433A.115.

ACLU of Nevada

American Civil Liberties Union of Nevada
325 South Third Street
Las Vegas, NV 89101
775- 786-3827 (Reno contact)

To: Bernie Anderson, Chairperson, and Assembly Judiciary Committee
From: Richard Siegel, President, ACLU of Nevada *Richard Siegel*
RE: AB 156

Dear Chairman Anderson,

The American Civil Liberties Union of Nevada requests the Assembly Judiciary Committee's Subcommittee on AB156 to substitute the American Law Institute Model Penal Code's test for the plea of Not Guilty by Reason of Insanity. As indicated by the enclosed document, this rule is essentially identical to the American Bar Association's Criminal Justice Mental Health Standard 7-6.2. The Model Penal Code reference would replace the McNaghton Rule that is presently in this bill, a nineteenth century rule that provides no practical means to have severely mentally ill defendants obtain the verdict of Not Guilty By Reason of Insanity. If this is not possible to change at this time, please consider taking the earliest opportunity to have a legislative interim study of this important issue.

Analysis of AB 274 Under The Fair Housing Amendments Act of 1988

The question has been asked whether AB 274, which would extend the time period for seniors in the eviction process, violates the Fair Housing Act. Nevada Fair Housing Center supports this bill in as much as it does not violate Fair Housing but seeks to further the availability of housing for a frail population. Three key points are important.

Fair Housing Scope

The Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601, et. seq. prohibits discrimination based on race, color, religion, sex, national origin, familial status or handicap. Unlike federal lending statutes, *age is not* a protected class. Discrimination may be proven in two major ways, namely disparate treatment or disparate impact.

Disparate treatment occurs where similarly situated individuals in a protected class are treated differently. Disparate impact involves a specific policy or practice that statistically adversely affects a demographic population in a protected class. In these types of cases a key point of analysis is whether a sufficient business justification exists for the practice.

Applicability In This Case

Opponents to AB 274 have argued that the Fair Housing Act would prevent an inquiry into a person's age, unless the community is age restricted. This is a misstatement of the law.

The Fair Housing Act, as amended, exempts from coverage three types of senior housing, namely, (1) housing designed for seniors; (2) housing built for persons fifty years of age or older and; (3) housing where one hundred percent of the population is sixty two years of age or older. Clearly, age becomes a question for purposes of determining eligibility.

Nevada's AB 274 is analogous to states that have added additional protections under state Fair Housing Laws. For example, Urbana, Illinois¹ prohibits discrimination against an individual based on their source of income. Other states, such as Massachusetts² and New Jersey³ prohibit discrimination against individuals that receive rental payments or rental assistance.

¹ Code of Ordinances City of Urbana, Illinois Section 17-3.

² M.G.L.A. 151B Section 4(10).

³ N.J.S.A. 2A:42-100

Allowing Seniors different terms and conditions in the eviction process, **so long as it is offered to all Seniors without regard to race, color, religion, national origin, sex or handicap does not violate** either the Federal Fair Housing Act as amended or N.R.S. Section 118. If a person who belongs to a protected class of persons whom the Act seeks to protect from unlawful discrimination, consistent with the terms and conditions applicable to all persons who were qualified or eligible for the services, requests and receives the service, then the spirit and letter of the law is met.

Examples of Special Programs

There are numerous federal programs that allow differences in treatment in order to affirmatively further Fair Housing. Examples include the affordable housing tax credit program. Housing financed with these dollars must remain affordable. If the housing is built with federal dollars for seniors, then landlords are required to keep on file information regarding eligibility, such as age and income. These programs, standing alone, do not violate Fair Housing unless administered improperly.

Nevada Fair Housing Center urges your support for AB 274.

Memorandum

To: Chairman Anderson
 CC: Judiciary Members
 From: David Goldwater
 Date: 4/8/2003
 Re: AB 274 Landlord Tenant-60 day No Cause Eviction for Seniors

The hearing on AB 274 identified two main objections: a violation of the federal or state Fair Housing Act, and that seniors need to be protected by getting evicted in 30 days rather than 60 days. I have attached a letter from Gail Burks, the director of the Nevada Fair Housing Center, supporting the bill and outlining the fallacy of opponents who say it violated the law. Additionally, it is counterintuitive to say that a 30 day no cause eviction protects seniors more than a 60 day no cause eviction. If that were true, I would be before your committee making it a 1 day no cause. If seniors are a threat to themselves or others, we need to address that problem directly. I do not believe we should address that problem through the no cause eviction statutes.

I do not believe opponents offered very effective rebuttal to the bill. I will present two options to you that would be less effective, but acceptable as a means of compromise. Please contact me if I can provide further information and I appreciate your consideration.

(1) Instead of requiring a 60 day notice to all seniors, instead require that a 30 day notice must contain language stating that the tenant may notify a landlord that the tenant is 55+ and/or has a disability and wishes to exercise the tenant's right to remain for an additional 30 days. The advantage is that the landlord would only have to provide the extra 30 days if requested in writing by the tenant. Could require the tenant to include some proof of disability or age in order to obtain the extra days. The landlord should not have any discretion to say no, but could be some mechanism to challenge age/disability in the court.

(2) Currently if a justice court orders an eviction it can be executed under NRS 40.253.5(a) "within 24 hours". N.R.S. 70.010 gives the justice court the ability to stay the execution of an eviction order for up to 10 days. You could broaden

April 8, 2003

that power to state that the court has the discretion to grant a stay of up to 30 days to a senior or person with a disability. To make landlords happier, you could additionally require that the Court first find that the tenant would suffer a hardship w/o the extra days. To make landlords even happier you could require that rent be kept current during the 30 days.

PROPOSED AMENDMENTS TO AB 337

Amend section 3, page 4, lines 13 through 25, by re-inserting the existing language of NRS 179.301(1) and adding a sentence at the end of the existing language on line 24 that would read: "An application for a work permit shall not be objected to or denied based upon events or convictions which are the subject of an order sealing records, unless such events or convictions relate to the applicant's fitness to work as a gaming employee."

Amend section 6, page 7, lines 12 through 14, by re-inserting the deleted language.

Amend section 21, page 20, lines 8 through 12, by re-inserting the existing language of NRS 463.335(12)(d) and adding the following language on line 11, after the word "state": "if the offense is related to the applicant's fitness to act as a gaming employee".

DEAN HELLER
Secretary of State

STATE OF NEVADA

SALMON

CHARLES E. MOORE
Securities Administrator

RENEE L. PARKER
Chief Deputy Secretary
of State



SCOTT W. ANDERSON
Deputy Secretary
for Commercial Recordings

AMELA A. ASHWORTH
Deputy Secretary for
Southern Nevada

SUSAN MORANDI
Deputy Secretary
for Elections

OFFICE OF THE
SECRETARY OF STATE

April 1, 2003

Assemblyman Bernie Anderson, Chair
Assembly Judiciary Committee
Capitol Complex
Carson City, NV 89701

Re: Proposed Amendments to Assembly Bill 536

Dear Chairman Anderson,

In preparation for our testimony at your April 2, 2003 hearing on Assembly Bill 536, we enclose a copy of our proposed amendments to Assembly Bill 536. The bill in its present form varies significantly from the form and intent from the BDR submitted. The attached amendments attempt to restore this bill to its intended form.

Specifically, Assembly Bill 536, including the proposed amendment, will allow the Secretary of State to further standardize the filing processes in his office and allow for the smooth transition to E-Commerce in the office.

If you have any questions concerning the foregoing or require additional information, please do not hesitate to contact me at 684-5711. We remain available to answer any questions posed by the members of the Committee concerning the above.

Respectfully Submitted,

DEAN HELLER
Secretary of State

A handwritten signature in black ink, appearing to read "Scott W. Anderson".

Scott W. Anderson
Deputy, Commercial Recordings Division

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PROPOSED AMENDMENT TO A.B. 536

OFFERED BY SECRETARY OF STATE DEAN HELLER

April 1, 2003

Amend Section 1, page 1, Subsection 3, lines 9 – 15, Section 17, page 12, Subsection 3, lines 22 – 28; Section 19, Pages 12 and 13, Subsection 3 lines 40 – 45 and line 1; Section 32, Page 19, Subsection 3, lines 33 – 39; Section 36, Page 21, Subsection 3, lines 16 – 22; Section 51, Page 28, Subsection 3, lines 30 – 36; Section 55, Page 30, Subsection 3, lines 12 – 18; Section 73, Page 40, Subsection 3, lines 34 – 40; Section 88, Page 50, Subsection 3, lines 21 – 27; Section 106, Page 60, Subsection 3, lines 37 – 43; Section 124, Pages 68 and 69, Subsection 3, lines 44, 45 and 1 – 5; Section 126, Page 70, Subsection 3, lines 9 - 15 to replace current wording with the following:

If the provisions of the prescribed form conflict with the provisions of any accompanying documents, unless otherwise provided in the accompanying documents, the provisions of the accompanying documents control for all purposes except the determination by the Secretary of State as to whether the document can be filed or will be rejected.

Amend Section 6, Page 5, Subsection 1(e), line 9; Section 38, Page 22, Subsection 1(e), line 20; Section 56, Page 30, Subsection 1(e), line 37; Section 73, Page 41, Subsection 1(e), line 13; Section 89, Page 51, Subsection 1(e), line 1; Section 100, Page 57, Subsection 1(e), line 19; Section 107, Page 61, Subsection 1(e), line 17 to delete the word [street].

Amend Section 9, Page 6, Subsection 2, line 38 – 40; Section 46, Page 26, Subsection 2, lines 13 – 15; Section 84, Page 48, Subsection 2, lines 6 – 9; Section 101, Page 58, Subsection 3, lines 21 – 23; to read “*Upon notification of the Secretary of State by the Administrator of the Real Estate Division of the Department of Business and Industry that a corporation (or other entity) that is a unit-owners’ association as defined in NRS 116.110315 has failed to register pursuant to NRS 116.31158 or failed to pay the fees pursuant to NRS 116.31155,*”

Amend Section 10, Page 7, Subsection 2, lines 15 – 20; Section 69, Page 38, Subsection 2, lines 33 – 37; Section 120, Page 66, Subsection 2, lines, 39 – 44; to retain the original wording and strike “~~Immediately after the last day of the month in which the anniversary date of the incorporation occurs, the~~”

Amend Section 11, Page 8, Subsection 1(b)(3), line 18; Section 30, Page 19, Subsection 1(b)(3), line 8; by striking ~~(3) Any applicable fee pursuant to NRS 78.785.~~

Amend Section 11, Page 8, Subsection 2, lines 20; Section 30, Page 19, Subsection 2, line 10 to read “shall [-]” and Section 11, Page 8, Subsection 2(b), lines 24 and 25; Section 30, Page 19, Subsection 2, lines 15 and 16; to read “[~~(b) U~~]upon request and payment of certificate fee as provided in NRS 78.785(8), [~~demand,~~] issue to the corporation a [~~one or more copies of the~~] certificate of reinstatement.

Amend Section 12, Page 8, lines 40 and 41 to strike [~~78.385 and~~] and add *or between* 78.380 and 78.390.

Amend Section 20, Page 13, Subsection 1, lines 16 and 17 to read “*the Secretary of State shall reinstate the corporation under that new name. (Amend 78.185 for the same provision and other reinstatement under new name statutes.)*”

Amend Section 24, Page 16, lines 9 – 31 to delete the entire section as this change was not requested by the Secretary of State. We do not feel this change is necessary.

Amend Section 38, Page 22, Subsection 1(d), line 18 and 19 by striking [~~officer and~~].

Amend Section 43, Page 24, Subsection 1(b)(3), lines 24 and 25; by adding a period after reinstatement and striking [~~; and (3) Any applicable fee pursuant to NRS 82.531.~~]

Amend Section 43, Page 24, Subsection 2, lines 26 – 28 should be replaced with “2. *When the Secretary of State reinstates the corporation, he shall upon request and payment of certificate fee as provided in NRS 78.785(8), issue to the corporation a certificate of reinstatement.*”

Amend Section 44, Page 25, line 4 and 5 to read, “*the Secretary of State shall reinstate the foreign nonprofit corporation under that new name.*”

Amend Section 53, Page 29, Subsection 2, lines 32 - 36; to read “On the first day of the [~~ninth month~~] *first anniversary of the month following ...*” and strike “~~Immediately after the last day of the month in which the anniversary date of the incorporation occurs, the~~”

Amend Section 61, Page 32 Subsection 1(a), lines 44 and 45 by striking [~~for each year or portion thereof that its right to transact business was forfeited~~].

Amend Section 61, Page 33, Subsection 1(b)(3), lines 5 and 6 by adding a period after reinstatement and striking [~~; and (3) Any applicable fee pursuant to NRS 86.561.~~]

Amend Section 61, Page 33, Subsection 2, lines 7 - 10 should be replaced with “*2. When the Secretary of State reinstates the limited liability company, he shall upon request and payment of certificate fee as provided in NRS 86.561, issue to the limited liability company a certificate of reinstatement.*”

Amend Section 62, Page 33, Subsection 1, lines 30 – 32 to read “*otherwise on file the Secretary of State shall reinstate the foreign limited liability company under that new name.*” (Amend domestic LLC statute for same provision.)

Amend Section 70, Page 39, Subsection 1(b)(3), lines 35 and 36; by adding a period after reinstatement and striking [~~and (3) Any applicable fee pursuant to NRS 86.561.~~]

Amend Section 70, Page 39, Subsection 2, lines 37 - 43 should be replaced with “*2. When the Secretary of State reinstates the limited liability company, he shall upon request and payment of certificate fee as provided in NRS 86.561, issue to the limited liability company a certificate of reinstatement.*”

Amend Section 79, Page 43, Subsection 1(b)(3), lines 24 and 25; by adding a period after reinstatement and striking [~~and (3) Any applicable fee pursuant to NRS 87.550.~~]

Amend Section 79, Page 43, Subsection 2, lines 26 – 29 should be replaced with “*2. When the Secretary of State reinstates the foreign limited liability partnership, he shall upon request and payment of certificate fee as provided in NRS 87.550, issue to the foreign limited liability partnership a certificate of reinstatement.*”

Amend Section 80, Page 44, lines 5 – 7 to read “*reserved or otherwise on file, the Secretary of State Shall reinstate the foreign limited liability partnership under that new name.*” (Change domestic LLP statute to reflect the same provision.)

Amend Section 85, Page 49, Subsection 1(b)(3) and (4), lines 17 and 18; by adding a period after reinstatement and striking [~~and (3) Any applicable fee pursuant to NRS 87.550.~~]

Amend Section 85, Page 49, Subsection 2, lines 19 - 27 should be replaced with “*2. When the Secretary of State reinstates the certificate of registration of a registered limited liability partnership, he shall upon request and payment of certificate fee as provided in NRS 87.550, issue to the registered limited liability partnership a certificate of reinstatement.*”

Amend Section 94, Page 53, Subsection 1(b)(2) and (3), lines 7 and 8; by adding a period after reinstatement and striking [~~and (3) Any applicable fee pursuant to NRS 88.415.~~]

Amend Section 94, Page 53, Subsection 2, lines 9 - 12 should be replaced with “*2. When the Secretary of State reinstates the foreign limited partnership, he shall upon request and payment of certificate fee as provided in NRS 88.415, issue to the foreign limited partnership a certificate of reinstatement.*”

Amend Section 95, Page 53, lines 32 – 34 to read “*otherwise on file, the Secretary of State shall reinstate the foreign limited partnership under that new name.*” (Change domestic LP statute to reflect the same provision.)

Amend Section 103, Page 59, Subsection 1(b), lines 40 and 41; by adding a period after reinstatement and striking [~~*and the fee required pursuant to subsection 6 of NRS 88.415, if applicable.*~~]

Amend Section 103, Page 59 and 60, Subsection 2, lines 42, 43 and 1 - 5 should be replaced with “*2. When the Secretary of State reinstates the limited partnership, he shall upon request and payment of certificate fee as provided in NRS 88.415, issue to the limited partnership a certificate of reinstatement.*”

Amend Section 111, Page 62, Subsection 2, line 44 by striking [~~*corporations*~~] and adding *foreign business trusts.*

Amend Section 112, Page 63, Subsection 1(b)(2) and (3), lines 21 and 22; by adding a period after reinstatement and striking [~~and (3) any applicable fee pursuant to NRS 88A.900.~~]

Amend Section 112, Page 63, Subsection 2, lines 23 - 26 should be replaced with
"2. When the Secretary of State reinstates the foreign business trust, he shall upon request and payment of certificate fee as provided in NRS 88A.900, issue to the foreign business trust a certificate of reinstatement."

Amend Section 113, Page 64, lines 2 and 3 to read, *".. the Secretary of State shall reinstate the foreign business trust under that new name."* (Change domestic BT statute to reflect the same provision.)

Amend Section 114, Page 64, Subsection 1, lines 15 - 33 by striking the entire section.

Amend Section 121, Page 67, Subsection 1(b)(2) and (3), lines 33 and 34; by adding a period after reinstatement and striking [~~and (3) Any applicable fee pursuant to NRS 88A.900.~~]

Amend Section 121, Page 67, Subsection 2, lines 35 - 41 should be replaced with
"2. When the Secretary of State reinstates the business trust, he shall upon request and payment of certificate fee as provided in NRS 88A.900, issue to the business trust a certificate of reinstatement."

Amend Section 121, Page 68, Subsection 4, line 3 by striking the word [~~charter~~] and replacing with *certificate*.

Amend NRS 78.795 by adding language to allow the Secretary of State to add to this list at any time during the year, upon payment of the same fee as provided by the Section.

Add provision to allow for the amendment of information contained in the list for a fee of \$50. Add language giving the Secretary of State regulatory authority as to the content, maintenance and presentation of the list.

DEAN HELLER
Secretary of State

STATE OF NEVADA

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RENEE L. PARKER
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OFFICE OF THE
SECRETARY OF STATE

April 7, 2003

Assemblyman Bernie Anderson, Chair
Assembly Judiciary Committee
Capitol Complex
Carson City, NV 89701

Re: Proposed Amendments to Assembly Bill 536

Dear Chairman Anderson,

Subsequent to your April 2, 2003 hearing on Assembly Bill 536, we were able to meet with John Fowler, Section Chair for the Business Law Section of the State Bar Association. Enclosed please find the resulting minimal changes to our proposed amendments to Assembly Bill 536.

If you have any questions concerning the foregoing or require additional information, please do not hesitate to contact me at 684-5711. We remain available to answer any questions posed by the members of the Committee concerning the above.

Respectfully Submitted,

DEAN HELLER
Secretary of State

A handwritten signature in black ink, appearing to read "Scott W. Anderson".

Scott W. Anderson
Deputy, Commercial Recordings Division

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D-32

**PROPOSED REVISION TO AMENDMENT TO A.B. 536
OFFERED BY SECRETARY OF STATE DEAN HELLER**

April 7, 2003

Please disregard amendment on Page 3 of original amendment dated April 1, 2003, that read, "Amend Section 12, Page 8, lines 40 and 41 to strike [~~78.385 and~~] and add or between 78.380 and 78.390." The Business Law Section of the State Bar Association asked that the reference to 78.385 remain. We do not have a problem with pulling this amendment.

The Business Law Section of the State Bar Association also suggested the following amendment:

Amend Section 12, Page 8, lines 41 – 45 by placing a period after the word "applicable," and striking the remaining verbiage following the period in lines 41 – 45.

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April 8, 2003

Allison Coombs
Legislative Counsel Bureau
Facsimile Number: 684-6400

Re: AB536

Dear Ms. Coombs,

In our conversation today, I explained that the "Trust Companies" Statute NRS 669.010 et. seq. was substantially amended in the 1999 session (SB465). NRS 669.095 addresses the use of the word trust.

NRS 669.095 Unlawful to use or advertise word "trust" as part of name; exceptions.

1. Except as otherwise provided in subsection 2, no person or organization formed and doing business under the laws of this state or any other state may:
 - (a) Use the word "trust" or any direct derivative of that word as a part of its name.
 - (b) Advertise or use any sign with the word "trust" used as a part of its name.
2. The provisions of subsection 1 do not apply to a person or organization which:
 - (a) Is supervised by the commissioner of financial institutions pursuant to this chapter or chapters 657 to 668, inclusive, 673 or 677 of NRS;
 - (b) Is doing business under the laws of the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies;

In NRS 669.095 2(a), the statute references are as follows:

657-688	Banks
673	Savings and Loan
677	Thrifts

Page two
AB536

My amendment would bring Sec. 5, p.3, Line 22 of AB536 into alignment with the trust laws as set forth in NRS 669-095 2(a) and (b).

Line 22 reads as follows:

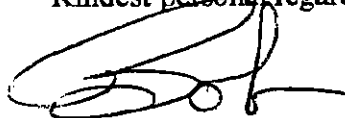
bank or savings and loan association; and

My amendment would delete line 22 and insert: bank, savings and loan association or thrift; and

As you can see, I am adding thrift in accord with NRS 669.095.

If this is not an adequate explanation, please call.

Kindest personal regards,

A handwritten signature in black ink, appearing to read 'R. Barengo', with a large, stylized flourish at the end.

Robert R. Barengo

RRB/jcm