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SENATE COMMITTEE ON JUDICIARY



WORK SESSION DOCUMENT

APRIL 9, 2003

EXHIBIT C Senate Committee on Judiciary

Date: 4-9-03 Page 1 of 11

WORK SESSION DOCUMENT

SENATE COMMITTEE ON JUDICIARY

APRIL 9, 2003

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

- **SENATE BILL 90** (BDR 14-511 was requested by the Senate Committee on Judiciary).

This bill authorizes certain governmental entities to share certain records in their possession concerning defendants and offenders.

Committee Action: The bill was heard in Committee on February 18, 2003, and no action was taken.

Proponents: Dr. Betsy Neighbors, Lakes Crossing and Division of Mental Health and Developmental Services, Nevada's Department of Human Resources; Dr. Ted D'Amico, Nevada's Department of Corrections; Dorothy Nash Holmes, Nevada's Department of Corrections.

Neutral/Opposition: No opposition.

Discussion: Testimony indicated that the Division of Mental Health and Developmental Services submitted this bill in an effort to facilitate services between the Division and the Department of Corrections, and to allow for the sharing of information. Dr. Neighbors indicated that, essentially, S.B. 90 would allow the two agencies to request access to certain mental health and medical records from one another. Presently the Division is required to obtain releases of information from defendants or clients. In addition, as introduced S.B. 90 includes a provision whereby the court could restrict access by order; otherwise unlimited access would be allowed.

Senator Terry Care raised some concerns on page 2, line 33 of the bill on the patient being "deemed to have waived all rights." Chairman Amodei expressed some concerns on the "designees" in the bill. Senator Valerie Wiener questioned the amount of access to "any such records" on page 2, line 8 of the bill.

Proposed Amendments: Dorothy Nash Holmes submitted an amendment to address the concerns stated above (TAB A).

- **SENATE BILL 218** (BDR 14-159 was requested by Senator Raymond D. Rawson).

This bill revises certain provisions relating to program that provides public with access to certain information in statewide registry concerning certain sex offenders and offenders convicted of crime against child.

Committee Action: The bill was heard in Committee on March 12, 2003, and no action was taken. The bill was also heard in work session on March 21, 2003, and no action was taken.

Proponents: Senator Raymond D. Rawson; Senator Barbara K. Cegavske; Donna Coleman, Children's Advocacy Alliance; Daryl Riersgard and Tisha Johnson, Central Repository for Nevada Records of Criminal History.

Neutral: Richard Siegel, ACLU.

Discussion: Testimony indicated that 33 other states have Web sites identifying sex offenders, and that information has been recently upheld. Further, such information would only be available on Tier II and III offenders. Senator Care expressed some concerns on the information that is required of someone who wishes to access the sex offender registry.

Proposed Amendments: Legal Counsel suggested that a minor amendment may be needed to make the bill retroactive, as it was drafted prior to the recent court rulings.

- **SENATE BILL 303** (BDR 14-967 was requested by Senator Dennis Nolan).

This bill makes various changes concerning dissemination of records of criminal history by Central Repository for Nevada Records of Criminal History.

Committee Action: The bill was heard in Committee on April 7, 2003, and no action was taken. The bill was also called up for discussion by Chairman Amodei on April 8, 2003, and no action was taken.

Proponents: Senator Nolan, Daryl Riersgard, Central Repository for Nevada Records of Criminal History.

Neutral/Opposition: None.

Discussion: Testimony indicated that this measure is a housekeeping bill and that it has no fiscal impact. Senator Nolan stated that he had a similar measure last session that failed to pass at the deadline. Senator Care expressed some concerns on volunteers and the level of background checks under the bill.

Proposed Amendments: None.

- **SENATE BILL 316** (BDR 14-1278 was requested by the Senate Committee on Judiciary).

This bill revises provisions pertaining to issuance of search warrants.

Committee Action: The bill was heard in Committee on March 27, 2003, and in work session on April 2, 2003, and no action was taken.

Proponents: Ben Graham, Clark County District Attorney's Office, Nevada District Attorneys' Association; Kristen Erickson, Washoe County District Attorney's Office; Jim Nadeau, Washoe County Sheriff's Office.

Neutral: Juanita Cox, Citizens in Action; Janine Hansen, Nevada Eagle Forum.

Discussion: Testimony indicated that this bill was brought forth to help ensure utmost protection to witnesses who provide probable cause information for search warrants. The bill would delete the requirement that probable cause search warrants be left at the location being searched. During the hearing, Senator Care expressed some level of concern on the federal and constitutional requirements and surrounding case law.

Amendments: Ben Graham submitted a minor amendment to page 2, line 18 of the bill to add "pursuant to Sections 1 and 2 above." A copy of the amendment is attached as **TAB B**.

- **SENATE BILL 339** (BDR 15-1126 was requested by Senator Barbara K. Cegavske).

This bill makes various changes relating to use of tobacco products.

Committee Action: The bill was heard in Committee on March 28, 2003, and no action was taken.

Neutral: John Albrecht, Office of the Attorney General; Peter Kreuger, Nevada Petroleum Mktrs. & Convenience Store Assn; Ron Drehr, Peace Officers of Nevada; Helen Foley, Clark County Health District.

Discussion: All testimony indicated that parties were neutral on the bill; however, they each agreed that Section 3 of the bill should be deleted, and they could then support the legislation. Senator Care had some concerns on whether there would be a defense for store personnel.

Proposed Amendments: TAB C is an amendment submitted by John Albrecht to exclude children used in tobacco compliance sting operations from the bill. In addition, Peter Kreuger orally suggested that Section 3 should be deleted, as he does not want to put a clerk in a position of having to physically restrain an individual.

The policy choice the Committee would be making by deleting Section 3 of the bill would be to remove merchants of the ability to take a child into custody and detain the child. The remainder of the bill would provide that a child (under 18 years of age) who falsely represents his age for the purpose of purchasing of cigarettes or tobacco products would fall under the jurisdiction of the juvenile court. For the first offense, the juvenile court shall admonish the child to obey the law, and refer the child to counseling, behavioral modification, or social adjustment. In addition, a juvenile court may also order the child to perform community service. Repeat violations of this law would be under the jurisdiction of the juvenile court under Chapter 62 of NRS.

- **SENATE BILL 435** (BDR 3-434 was requested by the Senate Committee on Judiciary).

This bill requires leave of district court to be obtained before filing of certain subsequent post-conviction petitions for writ of habeas corpus.

Committee Action: The bill was heard in Committee on April 2, 2003, and no action was taken.

Proponents: Vic Schulze, Office of the Attorney General.

Opposition: Michael Pescetta, Nevada Attorneys for Criminal Justice; JoNell Thomas, Nevada Attorneys for Criminal Justice; Nancy Hart, Nevada Coalition Against the Death Penalty and Amnesty International; Ben Blinn, citizen.

Discussion: Testimony indicated that this measure was brought forward by the Office of the Attorney General in an attempt to streamline the habeas corpus process. Mr. Schulze indicated that the bill only impacts subsequent filings of habeas petitions and not the first filed. Opponents suggested that the bill is unnecessary and that it adds one more level of appeal, and would actually complicate, delay and increase the expense of proceedings.

At the direction of Chairman Amodei, staff contacted the courts to garner the judicial branch's perspective on the bill. According to Nevada Supreme Court Chief Justice Deborah Agosti and Rick Loop of the Eighth Judicial District, the courts are officially neutral on this measure.

Proposed Amendments: None.

SJWS-04-09-03

MOCK-UP

PROPOSED AMENDMENT TO
SENATE BILL NO. 90

PREPARED FOR COMMITTEE ON JUDICIARY
APRIL 8, 2003

PREPARED BY THE LEGAL 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 178 of NRS is hereby amended by adding thereto a new section to read as
2 follows:

3 1. *The Administrator of the Division of Mental Health and Developmental Services of the*
4 *Department of Human Resources or his designee may request from the Department of Corrections*
5 *access to any records in its possession which contain information that may assist in evaluating and*
6 *treating a defendant who previously has served a term of imprisonment under the supervision of the*
7 *Department of Corrections and who is committed to the custody of or ordered to report to the*
8 *Administrator or his designee pursuant to NRS 178.425 or 178.460.*

9 2. *Unless otherwise ordered by a court, upon request of the Administrator or his designee for*
10 *access to records of a defendant pursuant to subsection 1, the Department of Corrections through the*
11 *designated medical director, shall provide access to any such records, including, without limitation,*
12 *relevant medical and mental health records, and the defendant shall be deemed to have waived all*
13 *rights of confidentiality and all privileges relating to those records for the limited purpose of allowing*
14 *the Administrator or his designee to evaluate and treat the defendant.*

15 3. *No oral or written consent of the defendant is required for the Administrator or his designee to*
16 *obtain access to records from the Department of Corrections pursuant to this section.*

17 4. *As used in this section, "designated medical director" means the designated administrative*
18 *officer of the Department of Corrections who is responsible for the medical treatment of offenders.*

19 *Dorothy Nash Holmes from NDOC recommended that section 2 be incorporated into NRS 209.381.*

20
21
22 Sec. 2. Chapter 209 of NRS is hereby amended by adding thereto a new section to read as follows:

23 1. *The Director, of the Department of Corrections or his designee through the designated medical*
24 *director, may request from the Division of Mental Health and Developmental Services of the*
25 *Department of Human Resources access to any records in its possession which contain information*
26 *that may assist in evaluating, caring for and providing treatment to an offender who previously was*
27 *committed to the custody of or ordered to report to the Administrator or his designee pursuant to NRS*
28 *178.425 or 178.460.*

29 2. *Unless otherwise ordered by a court, upon a request of the Director of the Department of*
30 *Corrections for access to records of an offender pursuant to subsection 1, the Division of Mental*
31 *Health and Developmental Services of the Department of Human Resources shall provide access to*
32 *any such records, including, without limitation, relevant medical and mental health records, and the*
33 *offender shall be deemed to have waived all rights of confidentiality and all privileges relating to those*
34 *records for the limited purpose of allowing the Director or his designee the designated medical director*
35 *to evaluate, care for and provide treatment to the offender.*

PROPOSED AMENDMENT TO SB90

CB

- 1 3. The Director, through the designated medical director, may provide to the Division of Mental
2 Health and Developmental Services of the Department of Human Resources or to other community
3 medical or mental health care providers, relevant medical and mental health records of an offender
4 serving a term of imprisonment under the custody of the Department of Corrections, for the purposes
5 of planning the discharge of the offender and assuring the continuity of evaluation, care and treatment
6 of the offender in the community after release from incarceration.
7 4. No oral or written consent of the offender is required for the Director or his designee to obtain
8 access to records from the Division of Mental Health and Developmental Services of the Department of
9 Human Resources pursuant to this section.
10 5. As used in this section, "designated medical director" means the designated administrative
11 officer of the Department who is responsible for the medical treatment of offenders.
12 Sec. 3. This act becomes effective upon passage and approval.

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Bene G

RE: SB 316-SEARCH WARRANT PROCEDURERS/SAFETY
CONSIDERATIONS

THE CONSTITUTION MANDATES THAT NO WARRANT SHALL ISSUE EXCEPT BASED UPON PROBABLY CAUSE. PROBABLE CAUSE IS GENERALLY PRESENTED TO A MAGISTRATE VIA A WRITTEN AFFIDAVIT, OR FROM TIME TO TIME A SWORN STATEMENT OVER A TELEPHONE TO THE JUDGE, LATER THE ORAL STATEMENT IS REDUCED TO WRITING.

ONCE THE JUDGE DETERMINES THAT THERE IS PROBABLE CAUSE, IN THIS CASE, TO SEARCH A CERTAIN LOCATION, THE POLICE EXECUTE THE WARRANT. LEAVE A COPY OF THE WARRANT WHICH CONTAINS RELEVANT INFORMATION AS TO WHO SIGNED THE AFFIDAVITS OF PROBABLE CAUSE, THE LOCATION TO BE SEARCHED AND THE ITEMS TO BE SEIZED. A COPY OF THE WARRANT SIGNED BY THE JUDGE AND AN INVENTORY OF WHAT WAS SEIZED IS LEFT AT THE LOCATION SEARCHED.

AT SUCH TIME THAT THE VALIDITY OF THE SEARCH BECOMES AN ISSUE, THE DEFENDANT IS ENTITLED TO GET A COMPLETE COPY OF ITEMS RELIED UPON BY THE COURT IN ESTABLISHING PROBABLE CAUSE. THERE ARE TIMES WHEN IT IS IMPORTANT NOT TO REVEAL NAMES OF THE PEOPLE PROVIDING INFORMATION FOR PROBABLE CAUSE PREMATURELY. EARLY DISCLOSURE HAS LEAD TO SERIOUS HARM AND EVEN DEATH OF WITNESSES.

WE ARE ASKING THIS COMMITTEE TO HELP INSURE AS MUCH PROTECTION TO WITNESSES AS POSSIBLE BY MAKING IT CLEAR THAT THE PROBABLE CAUSE AFFIDAVITS DO NOT NEED TO BE LEFT AT THE LOCATION. THESE ARE DISCOVERABLE SHORTLY AFTER THE SEARCH, FAR IN ADVANCE OF ANY PRE-PRELIMINARY OR PRE-TRIAL PROCEEDINGS.

1500 6.

1 4. After a magistrate has issued a search warrant, whether [it]
2 *the warrant* is based on an affidavit or an oral statement given under
3 oath, he may orally authorize a peace officer to sign the name of the
4 magistrate on a duplicate original warrant. A duplicate original
5 search warrant shall be deemed to be a search warrant. [It] *The*
6 *warrant* must be returned to the magistrate who authorized the
7 signing of his name on [it.] *the warrant*. The magistrate shall
8 endorse his name and enter the date on the warrant when it is
9 returned to him. Any failure of the magistrate to make such an
10 endorsement and entry does not in itself invalidate the warrant.

11 5. The warrant must [be]:
12 (a) *Be* directed to a peace officer in the county where the
13 warrant is to be executed. [It must:

14 ~~(a) State the grounds or probable cause for its issuance and the]~~
15 (b) *Set forth:*

16 (1) *The criminal offenses alleged to have been committed;*
17 (2) *The names of the persons whose affidavits or oral*
18 *statements have been taken in support thereof.* [or

19 ~~(b) Incorporate by reference the affidavit or oral statement upon~~
20 ~~which it is based.~~
21 ~~The warrant must command]~~

22 (3) *The persons and places to be searched; and*
23 (4) *The property to be seized.*

24 (c) *Command* the officer to search forthwith the person or place
25 named for the property specified.

26 [6. ~~The warrant must direct that it]~~
27 (d) *Direct that the warrant* be served between the hours of
28 7 a.m. and 7 p.m., unless the magistrate, upon a showing of good
29 cause therefor, inserts a direction that [it] *the warrant* be served at
30 any time.

31 [7. ~~The warrant must designate]~~
32 (e) *Designate* the magistrate to whom [it] *the warrant* is to be
33 returned.

34 6. *An affidavit or recording of an oral statement:*

35 (a) *Is not required to be attached to a warrant or left at any*
36 *place searched.*

37 (b) *Not later than 10 days after the execution of the warrant,*
38 *must be filed with the issuing court, except upon good cause*
39 *shown, and must be made available to any person searched or*
40 *whose place was searched, unless the magistrate orders that the*
41 *affidavit or recording of an oral statement be sealed pursuant to*
42 *subsection 3.*

43 Sec. 2. This act becomes effective upon passage and approval.

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Amend Adding ✓

(b) Set forth:
2-16 (1) The criminal offenses alleged to have been committed;
2-17 (2) The names of the persons whose affidavits or oral
2-18 statements have been taken in support thereof pursuant to sections 1 and 2 above; [or
2-19 (b) Incorporate by reference the affidavit or oral statement upon
2-20 which it is based.
2-21 The warrant must command]

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ANN WILKINSON
Assistant Attorney General

March 25, 2003

Via facsimile (702-222-9909) and regular mail

Senator Barbara Cegvaske
Nevada State Senate
State Capitol Building
Carson City, NV 89701

RE: SB 339

Dear Senator Cegvaske:

I want to begin by thanking you for your work to reduce the access that under age youth have to both beverage alcohol and tobacco products over the years. You have been very helpful in bringing these issues to the attention of the Nevada State Legislature.

The Attorney General's office wants to support SB 316 that prohibits children under the age of 18 from falsely representing their age to be 18 or over. In addition, the Attorney General wants to propose an amendment that would clarify that a child assisting in a tobacco compliance check under NRS 202.2496 may not be charged with violating Section 2 of SB 339. The Attorney General wants to propose the following text be added as a second sentence of Section 2.

A child assisting in an inspection under Nev. Rev. Stat. 202.2496 may not be charged with or found guilty of violating this section or detained by a merchant under Section 3 of SB 316.

This language would clarify that a child assisting in a tobacco compliance check may not be charged, found guilty of, or detained under SB 316. If Section 316 were passed without this amendment, the retail clerk may try to detain the youth assisting in a compliance check. If a youth employed by the Attorney General did misrepresent his or her age, the Attorney General's office would prefer to manage that youth's behavior as a personnel problem and not a disagreement at trial over who should be charged with violating the law.


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I hope this amendment meets your approval. I look forward to seeing you at the hearing on SB 339.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: 

JOHN ALBRECHT
Chief Deputy Attorney General
Human Resources Division
(775) 688-1818

CH