

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

**Seventy-Third Session
March 1, 2005**

The Committee on Judiciary was called to order at 8:09 a.m., on Tuesday, March 1, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka,
Pershing and White Pine, parts of Humboldt, Churchill, Lander and
Washoe
Senator Maggie Carlton, Clark County Senatorial District No. 2

STAFF MEMBERS PRESENT:

René Yeckley, Committee Counsel
Allison Combs, Committee Policy Analyst
Jane Oliver, Committee Attaché

OTHERS PRESENT:

John Warner, Private Citizen, Fallon, Nevada
Tom Lammel, Private Citizen, Fallon, Nevada
Mick Gillins, Legislative Advocate, representing Las Vegas Metropolitan
Police Department and Nevada Sheriffs' and Chiefs' Association
Michelle M. Youngs, Deputy, Public Information Officer, Washoe County
Sheriff's Office, Reno, Nevada
Edward Dannan, Justice of the Peace, Reno Justice Court, representing
Nevada State Judicial Council
James Jackson, Legislative Advocate, representing Nevada Attorneys' for
Criminal Justice
Lucille Lusk, Chairman, Nevada Concerned Citizens
Helen Foley, Private Citizen, Las Vegas, Nevada
Richard Rinker, Nevada Open
Ron Titus, Nevada Court Administrator, Supreme Court of Nevada

Chairman Anderson:

[Meeting called to order and roll called.]

I want to clarify an issue that came up yesterday for a couple of people. The Open Meeting Law is a very, very important part of the process here. When trying to keep to the five-day notification we follow our own Standing Rules, "Notices of Bills, Topics and Public Hearings," under Rule 92.

That means that you do not talk about a piece of legislation that is in the other House because Mason's Manual under Chapter 11, Section 2 talks about the debate. Under section 101, "Debate on a bill is confined to the bill under consideration and does not extend to criticism of other bills before the House or the Committee even though they relate to the same subject." If there's a bill that has yet to be introduced it would be improper to conduct the discussion here in committee because it has not been publicly noticed that is what the debate is about.

Seeing that relationship doesn't mean that you don't get to be concerned about an issue that you feel very, very passionately about, that may be in another piece of legislation. Let me make sure that we all understand that the primary

objective here is making sure that the public knows what we're talking about. When you say, "No you can't talk about this issue because we don't have it under consideration." That's why when we go to work sessions, as we will later this week, we have the opportunity to bring in front of you those things that we previously discussed.

Do any members of the Committee need to further clarify or muddy the waters on this issue. Please don't feel that this is a closed issue.

Let us turn our attention to Assembly Bill 88.

Assembly Bill 88: Allows possession of certain rifles or shotguns that have been determined to be collector's items, curios or relics pursuant to federal law. (BDR 15-983)

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing and White Pine, parts of Humboldt, Churchill, Lander and Washoe:

At the risk of damaging the bill, I will say this is a fairly short bill if not somewhat complex.

[Read from prepared testimony ([Exhibit B](#)).]

Assembly Bill 88 allows for the possession of rifles and shotguns determined to be collector's items, curios or relics under federal law. What this bill does is, it brings NRS 202.275 into line with the federal statutes and regulations that allow for the possession of firearms that qualify as curios, relics, or collector's items under 26 U.S.C. Chapter 53.

You have to understand that the Gun Control Act of 1968 required that all rifles had to have a barrel length of at least 16 inches and all shotguns had to have at least an 18 inch barrel. Clearly, over the 150 years we've been manufacturing firearms there were thousands of these older firearms that were in the hands of private citizens. Now the Fire and Gun Control Act require that they be registered.

While most of us started shooting, especially in rural Nevada, with these little short .22 [caliber] single shots, you cock it ... and many of them don't meet that requirement. Today, in Nevada, you're guilty of a Class D Felony if you have one in your possession. It doesn't matter if it belonged to your grandfather, your great grandfather, or whatever.

I have the proponents of the bill that requested I bring this bill forward, John Warner and Tom Lammel. They clearly will be able to provide a lot more expert testimony. I know they have the complete list on the federal list.

[Assemblyman Goicoechea, continued.] In closing, I would say we do have the support of the National Rifle Association as well as a number of police agencies in the state of Nevada. Again, we're talking about short-barreled rifles and shotguns that are relics, curios, and antiques. With that, any questions?

Chairman Anderson:

Mr. Goicoechea, you kind of worry me. I'm thinking about the old .22 [caliber] that I have in my closet now, and I'm thinking to myself that I don't recall getting out a tape measure and checking its barrel length, and quite frankly I was surprised to see that it was still in there. It's got to be over 20 years since the last time I shot it. I think I'd probably take it to a gunsmith before I wanted to utilize it. Questions? Mr. Horne.

Assemblyman Horne:

The problem I have with this is that if we bring this in line with federal law, I'm looking at your definition of "curios and relics" under Section 478.11, Part C [Code of Federal Regulations, Title 27, Chapter 2, Section 478.11], it also includes "any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre or because of their association with some historical figure, period or event." That seems really broad to me and it doesn't necessarily just encompass a short-barreled rifle that my great-great-grandfather may have owned. It could encompass a new firearm that was recently built in, let's say, some third-block country or Russia or whatever, but it fits in novel or rare. Am I mistaken?

Assemblyman Goicoechea:

I agree that could happen but for the most part they are listed and I would recommend to the Committee again that we let Mr. Warner do his presentation; he's far more qualified than I to address those issues, Assemblyman Horne and I would appreciate that. From my perspective, I'm talking about the old double-barreled Parker that somebody shot it when it was in the "crick" and the barrel now looks like this, you know trying to kill a fish with it. It didn't do much good for the Parker. Again, if we could, with your permission, Mr. Chair.

Chairman Anderson:

Mr. Goicoechea, I want to make sure that we all understand here. Mr. Warner and Mr. Lammel desire to speak. I noticed they came forward in support and signed in but forgot that other part of that little box there. And your desire, Mr. Goicoechea, is to have Mr. Warner speak next, or Mr. Lammel?

Assemblyman Goicoechea:

I think Mr. Warner is probably the expert in the field.

Chairman Anderson:

Mr. Warner.

John Warner, Private Citizen, Fallon, Nevada:

I believe all of you got an email from me, except perhaps Mr. Ocegüera over here whose email got bounced and I apologize for that.

There was an article that appeared in yesterday's *Lahontan Valley News* there in Fallon that said A.B. 88 was going to authorize the possession of sawed-off rifles and shotguns and so forth. I'm here to assure you that nothing is further from the truth.

Assembly Bill 88 simply tries to bring Nevada law into conformance with federal law where it once was, but somehow got out of sync regarding certain weapons. It might help if you had a little bit of background. The Gun Control Act of 1968 required the registration, among other things, of all short-barreled rifles and short-barreled shotguns. It was pretty much of a knee-jerk piece of legislation not too well thought out. As a result, it was amended several times.

NRS [*Nevada Revised Statutes*] literally quotes verbatim the Gun Control Act of 1968 in that regard. Within a couple of years after the Gun Control Act of 1968 was passed, a collector was arrested by ATF [Bureau of Alcohol, Tobacco and Firearms], his firearms confiscated, and he was hauled into federal court because he had in his collection that very firearm that you see on the front of that piece of paper ([Exhibit C](#)), which I hope you have in front of you here. This was the gun that started it all.

The judge hearing the case dismissed all charges and said, "Hell, I had one of those when I was kid." He directed ATF [Bureau of Alcohol, Tobacco and Firearms] to make up a list of nonconforming firearms that were unlikely to be used in the commission of a crime, and they would be exempted from the Gun Control Act of 1968 which, by the way, require these things to be treated in the same manner as submachine guns and so forth under the National Firearms Act, NFA, which was enacted in 1932. ATF did so and I have a copy

of their list right here ([Exhibit D](#)) in that regards. They say here in Section 3, "Weapons removed from the National Firearms Act as collector's items and classified as curios or relics under the GCA (Gun Control Act of 1968). The Bureau has determined that by reason of the date of manufacture, value, design, and other characteristics, the following firearms are primarily collector's items and are not likely to be used as weapons and, therefore, are excluded from the provisions of the National Firearms Act."

[John Warner, continued.] These weapons are listed specifically by make, by model, and in many cases such as Winchester's Marlin, simply by serial number. They are very clearly defined precisely which weapons are excepted from the provisions from the Gun Control Act of 1968. There are no modified weapons on this list, they are all curios and relics. The list is basically a dynamic list. It can change. Anyone can petition to have a firearm added to the list should one appear somewhere that should qualify but isn't on it.

I'm like most people who just never knew that their gun came under this thing. I never even thought about it.

I only learned about it about 10 years ago reading another magazine article, and I was very relieved to learn that it was only for a period of about four years that I should have had it registered and now it was legal again. A couple of years ago looking through NRS for something else, I discovered that Nevada law was out of sync with the federal law. It had never been updated to reflect the contents of this list, and though I can possess the gun most anywhere else in this great United States, if I have it in Nevada I'm a felon. I appreciate your consideration in this matter.

Chairman Anderson:

For the record we will enter the document itself. There's no need to enter the bill itself into the record since it's already in the record, but we will enter Mr. Warner's page relative to "modifying the purpose and background and problem and solution" that he perceived in his writing as part of the record, and the front page for auspicious purposes ([Exhibit C](#)).

Mr. Lammel, did you have some particular thing within the bill that you need to get in the record?

Tom Lammel, Private Citizen, Fallon, Nevada:

I think Mr. Warner has done a great job. The only thing that I would add, in this particular situation, is that it was asked earlier how many people in this state may have one and obviously we don't know. I personally know that I have one

and I didn't know I had one until about 15 minutes ago, when I was reading Mr. Warner's list.

[Tom Lammel, continued.] I have a handgun that has a stock that's attached to it that I knew was exempt from federal code. I knew that all along, but I never realized it was something that would leave me in violation. It's in a case in the front of my living room where it's been for the last 20 years. It was given to me by my Dad probably 40 years ago, and I think his step-dad gave it to him probably a long time before any of us in this room were around. I'm simply a violator if I turn around and give that to my grandson down the road. For whatever reason, somebody wants to take issue with that. All of the sudden with absolutely no intent to violate any laws whatsoever in the state of Nevada or anywhere else, he could be in violation of a Class D Felony, and I think that needs to be fixed. We certainly would appreciate all your support and Do Pass out of this Committee to the full Assembly so we can move forward with this. Thank you.

Chairman Anderson:

Mr. Goicoechea, I'm not sure that we got to Mr. Horne's original question. Mr. Warner, have you ever utilized the federal statute for an inspection? Have you submitted a weapon for inspection as required under federal code? If so, I'm trying to find out what happens. You send a description of the weapon, is that one of the choices? One of them may be that you have to make it available for the actual inspection by somebody who comes out and looks at the firearm to make a determination as to whether it fits into the curio or relic, and/or is going to be put on display by a museum, a municipal museum. The museum question in the federal statute I thought was a little open, as the more restrictive nature of Nevada, in trying to do this.

If I were a collector of firearms, other than collecting them in the dust in my closet, how would I go about this and would I be willing to surrender my firearm, my priceless firearm that was given to me by my step-father or great-grandfather or whomever?

John Warner:

Mr. Chairman, I don't think I can answer that question. I have never had occasion to submit a firearm for inclusion on this list. Over the years this list has come to include most all, I believe, items that you might generally find that fall into this curio and relics list; certainly the old Winchester Trapper guns, the Marlin Trapper guns are listed by serial number. The little Hamiltons like you see there, the models are listed. The little Stevens children's rifles are listed by model. Most things that would appear on here probably do. I simply have not had any occasion to personally ask that anything be entered onto that.

Chairman Anderson:

Mr. Horne, you had a question. Do you want to make sure you're satisfied and then I'll call on Ms. Buckley.

Assemblyman Horne:

I don't think my question has been fully answered on the scope of the federal statute. This is my concern: it allows more than what is on your list, which I haven't had an opportunity to review, or even see these types of guns. From the description in the federal statute, it would allow much more than what you're describing in testimony today. That's what concerns me. From what I remember in school, there was a reason why we eventually outlawed short-barreled rifles to begin with, I think it was crime. I don't want to state that somebody wants to do that but bad people are using these for concealment purposes. They are powerful weapons. Whether your weapon got wrapped up into that description is another point of contention. I'm concerned about whether or not this federal statute is going to encompass weapons that we don't intend them to encompass, and that is what we're trying to protect the public from.

John Warner:

I hope I can answer this properly. The Gun Control Act of 1968 requires the register of certain weapons, including short-barreled rifles and short-barreled shotguns. This state currently allows registered firearms to be possessed and they're already exempt. The problem here is that caught up in this is the requirement to register all short-barreled rifles and short-barreled shotguns. If you go back to the original wording of the NRS [202.275], and there's no federal provision to do so. The items on this list simply aren't registerable because the federal government doesn't do it anymore. They've determined that these particular firearms, appearing on this list, aren't likely to be used as weapons, that they're basically collector items.

I quoted directly from this beforehand; the reason for putting them on this list in the first place is that they aren't likely to be used as weapons. They aren't the kind of firearms that you should be particularly concerned about. I will repeat again, "The Bureau has determined that by reason of date of their manufacture, value, design, and other characteristics, the following firearms are primarily collector's items and are not likely to be used as weapons and are therefore excluded from the provisions of the National Firearms Act."

There is nothing on here that hasn't already been determined federally to be rather benign. Does that answer your question, I'm sorry?

Assemblyman Horne:

It would, if we were confining this to that list. If everything you said is true, that those weapons aren't registerable ... My concern is weapons that aren't on that list but meet the definition that's in the federal statute. That's what I'm concerned about.

Chairman Anderson:

Mr. Warner, let me try to point out to you that I think Mr. Horne is concerned about the broadness of the federal statute. Whereas our bill—because of its cross-reference nature—we need to probably clear up some questions there. Mr. Lammel, having heard this bill now for a half hour, we're going to have to hear from a couple of other people who indicated a desire to speak. If you want to help Mr. Horne understand the bill, that would be most helpful.

Tom Lammel:

I think the point of the situation that something could be added to the list is that it hasn't been. I don't think that a short-barreled automatic, semi-automatic weapon from "xyz" has been added to the list. I think that the only things that are added to the list are collectors and curios. Certainly, that would not preclude somebody buying a shotgun on the street and saw the barrel off of it and have that as ... and it's obviously not in that situation. I don't understand that there is a problem in the federal legislation, that there has not been anything added to it that would seem to be a problem. By track record, I don't think the likelihood of that happening would be very good.

Chairman Anderson:

Any other questions for these gentlemen? Seeing none, thank you very much sir.

Mick Gillins, Legislative Advocate, representing Las Vegas Metropolitan Police Department, and Nevada Sheriffs' and Chiefs' Association:

For the record, we do not oppose this bill. We feel that what has been added in this definitely outlines, according to the federal codes, specifically the weapons that should be considered outside of the bounds of the previous statute, as it was.

Back in the last session we tried to address the gun laws to bring them into line with the federal laws that were in existence. Apparently, this was one of those laws that was kind of overlooked at that particular time. This proposed change would basically bring it into line with the other changes that we previously made, so we don't have any opposition to it at this time.

Michelle M. Youngs, Deputy Public Information Officer, Washoe County Sheriff's Office, Reno, Nevada:

The Sheriff's Office is not generally opposed to this as well. Of course we do appreciate Assemblyman Horne's concerns but at this point, the intent of this, we are not opposed to that.

Chairman Anderson:

Do you, Mr. Gillins, or Ms. Youngs, in the conferences that you've gone to with other agencies relative to the enforcement of firearms—I presume occasionally you get the opportunity to attend conferences that deal with this issue—has this come up as an issue with other jurisdictions who have a broader reference, cross-reference, to relics and museum pieces and historic figures? Have they found a difficulty in this area?

Mick Gillins:

I can tell you from personal experience that in my time as a patrol officer, I early on recognized that there was a discrepancy between the ability of those people to collect the curios and things like that, and to maintain those weapons due to them being outside of Nevada law. That was a lot of the reason why we did make the changes previously. It is to give Nevada law enforcement the opportunity to be in-line and to take action themselves, as opposed to being outside of what was being allowed in federal law, and having ATF take those actions on our behalf instead. This really kind of opens up that opportunity for those people who have those type of weapons who previously were outside of the law, to be able to do so legally.

Chairman Anderson:

I see no questions from members of the Committee. Anybody else who wishes to get on record in support of the piece of legislation? Questions or concerns for those who might be in opposition to A.B. 88? Neutral on A.B. 88? Let me close the hearing on Assembly Bill 88 and bring it back to Committee and indicate to the members that I will put it on the board and wait and see how it's going to cook for a few days.

Assemblyman Carpenter:

I'd like to get some clarification. I couldn't quite understand by the testimony or Assemblyman Horne's question ... Apparently, there is a list out there that the feds have, where they've determined that there are certain guns and that they are relics. If you want to put another gun on this list you go to the feds and they classify it yes or no. I need some clarification on what the procedure is to get a gun on this list. I think that would help me a lot because I didn't understand exactly how that is handled.

Chairman Anderson:

We'll ask Ms. Combs and the Research Department to check with Mr. Warner who has the list and make sure that it's given to Ms. Combs. Then we'll ask Ms. Combs to do some of the background material along with Legal who provided the Chairman with the necessary cross-references on federal statute. We'll make sure that you have that, Mr. Carpenter.

Are there other members of the Committee that desire other information on this bill before we proceed, besides Mr. Carpenter? I want to make sure that we have enough material to move when we're ready to move.

Let's then move to Assembly Bill 92.

Assembly Bill 92: Revises provisions governing suspension of sentence of person convicted of misdemeanor. (BDR 1-529)

Edward Dannan, Justice of the Peace, Reno Justice Court, representing Nevada State Judicial Council:

I'm here to speak on A. B. 92 on behalf of the State Judicial Council. A little bit of background on the laws that exist under NRS [*Nevada Revised Statutes*] 4.373 and NRS 5.055, "A justice of the peace or a municipal court judge may suspend the sentence of person for not to exceed one year" and then as those statutes reference in subsection 1 of each of those statutes, the judge can require them to do the things set forth in the various paragraphs of that subsection.

Increasingly, what we've found is because of legislative requirements for DUIs, for example, some people are participating in a one- to three-year program or other programs of that type. As a practical matter, a lot of defendants do not complete everything that we sentence them to do within a year period of time, we're faced with a situation of either putting them in jail because that's the end of the suspension of their sentence, or agreeing to go beyond the one-year period to allow them to finish which is our goal in the first place.

What we're asking the Legislature to do is allow for a three-year period for persons convicted of misdemeanors to complete all conditions of sentence, and while they remain under a suspended sentence. That's the gist of the bill.

Chairman Anderson:

Judge [Dannan], believe it or not, I think this came about from a study that was done relative to the drug courts and recidivism and it was one of the major elements. We were concerned at the time that a year's time would not be sufficient for people to make it through those kinds of programs because of

their relapses, and that more properly 15 months was probably how long it normally took a person to end up with six months drug free.

[Chairman Anderson, continued.] Why the three years rather than two years I guess would be the big question that I would be concerned about and the expansion of course for these kind of treatment programs over to municipal court and out of ... And I know that has become kind of a question whether the big hammer really kind of rests in "you could go to prison." Since you can only send somebody off to jail for a year, now we're going to go to three. I think it sends a mixed message and I'm kind of curious how we can deal with that.

Edward Dannan:

I'm not sure exactly how to answer your question except that our experience has shown that sometimes people, for whatever reason, cannot finish their sentence within a year and frequently even as long as two years. We end up sending them to jail imposing part of a suspended sentence. The goal, regardless of how long it takes, is not to necessarily give up and just put them in jail for the balance of their sentence and then be done with them. We would rather see them comply and do the programs and other things that change their behavior patterns and change their lives.

As the Chairman points out, for example, in drug court—and I sit in drug court sometimes for Judge [Peter] Breen—we'll see defendants who are within 90 days of finishing a one-year program and graduating from the drug court and they relapse, and then they are back in and so additional time is added for them to complete because it's better to have them finish the sentence than to just incarcerate them.

As to the three-year period, we felt as limited-jurisdiction court judges that somewhere between two and three years, in some cases. It takes that long for a person to finish doing what he or she is supposed to do as part of a sentence in our court.

Chairman Anderson:

So this is in reality giving you a consistency that is not different than we currently do in domestic violence issues, which you currently have the ability to suspend for up to three years. This would bring a certain level of consistency to the overall opportunity. My concern still rests in how you go from a one year to a three year, relative to jail questions. That, in part, is my concern. Mr. Carpenter.

Assemblyman Carpenter:

You mentioned the situation with domestic violence where you now have the authority or opportunity to allow for a three-year suspended sentence. I was just wondering if you have any experience in the domestic violence area, how the three years has worked.

Edward Dannan:

I don't think that we've really had a problem given the fact that it is a three-year period that we have jurisdiction over persons who are charged and convicted of domestic violence. I can't remember a case in which a person has not completed a domestic violence counseling program within the three-year period, if that answers your question.

Chairman Anderson:

The question here is not in terms of the domestic violence question Mr. Carpenter addressed but rather in terms of these other kinds of programs, particularly drug and alcohol programs and other special programs, where people may have other kinds of issues.

Assemblyman Mortenson:

If a person does what he is required to do under your terms and he completes it within a year and a half, does your jurisdiction over him end at that year and a half or does it continue on for another year and a half, if he does everything he is supposed to?

Edward Dannan:

Once his sentence is completed then the case is closed. I suppose you could have jurisdiction but there would be no reason to continue jurisdiction because the case has been concluded. The way we view it is when the person has complied with all conditions of sentence, the court ceases any activity with that person and then the case is closed.

Chairman Anderson:

Other questions for the Judge? Mr. Titus, anything you need to get on the record other than your presence here?

Ron Titus:

No, sir, you covered my comments by the specialty court comments you made.

Chairman Anderson:

Anyone else wishing to testify on Assembly Bill 92? In opposition to A.B. 92?

James Jackson, Legislative Advocate, representing Nevada Attorneys' for Criminal Justice:

I think the Chairman pointed out a concern that we have. Currently, district court judges have a maximum jurisdiction over gross misdemeanor offenders of two years, and this bill would extend jurisdiction over misdemeanor offenses to the lower courts to three years, which we think is excessive.

Chairman Anderson:

Relative to drug treatment programs, Mr. Jackson, of which you know I have a long supportive position, how do we allow those kinds of treatment modalities to take place in longer time frames? And I understand the concern of Attorneys' for Criminal Justice relative to extending the question the other way. I thought the criminal justice groups were supportive of drug treatment programs.

James Jackson:

We're certainly not saying that we're opposed to drug treatment programs or getting people into programs that help them. Our concern is that this exceeds the jurisdiction that even the district court has. It's changing the whole balance of jurisdiction on misdemeanor offenses. I'm just wondering out loud what this might do constitutionally to other concerns with respect to misdemeanor offenses, currently, in the state of Nevada, jury trials are not allowed, and how that may change that balance as well?

Chairman Anderson:

As was noted, they clearly have this power in domestic violence issues currently, from two to three years. Your concern is relative to the different nature of domestic violence issues as concerned with otherailable offenses?

James Jackson:

I suppose that's one way you could put it, Mr. Chairman.

Chairman Anderson:

Questions for Mr. Jackson? Anybody else wishing to testify in opposition to A.B. 92 or to raise other issues relative to this particular issue? Neutral on A.B. 92?

Close the hearing on Assembly Bill 92.

[Chairman called a recess at 8:56 a.m.]

Chairman Anderson:

[Called the meeting back to order at 9:16 a.m.] During the last session I was concerned about the criminal penalties for misdemeanors and gross

misdemeanors and the ambiguity in the law that seems to exist. I asked for a bill draft request for Legal to take a look at it.

Bill Draft Request 2 came from this Committee. This is now 15-2 [BDR 15-2] on behalf of the Committee. The Chair will entertain a motion for Bill Draft Request 2 [BDR 15-2].

- BDR 15-2—Revises criminal penalties to create consistency in statutes. (Assembly Bill 155)

ASSEMBLYWOMAN BUCKLEY MOVED FOR
COMMITTEE INTRODUCTION OF BDR 15-2.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We'll have that introduced on the Floor today, hopefully.

Let us turn our attention to A.C.R. 2.

Assembly Concurrent Resolution 2 is a result of your committee that you served on along with Ms. Buckley and other members here. Ms. Buckley, Senator Carlton, and Mr. Carpenter from this Committee, and Mr. Sherer who was also from this Committee served on it in the interim, and it was chaired by Senator Rawson.

Assembly Concurrent Resolution 2: Requests Nevada Supreme Court to review manner in which district courts receive and decide petitions to open files and records of courts in adoption proceedings and report its findings to Legislature. (BDR R-883)

This is a resolution. Ms. Yeckley, would you clarify why this is a resolution in terms of the study.

René Yeckley:

Mr. Chairman, a subcommittee was appointed during the interim to look at this issue and the recommendation that came from the subcommittee to the main committee was that a bill draft request be submitted to essentially require the court to act as a conduit between the adoptive parents and the natural parents and the adoptees, for them to have contact with each other. Our office looked at this issue and found that it was not feasible to draft this recommendation as

requested because it raised separation of powers issues. In lieu of that, this resolution was drafted in the form that you see before you.

Chairman Anderson:

So, the purpose of this is to clarify the separation of powers. To do so in law form would be to cross that line, and before we didn't do that. Would that be a correct interpretation relative to why we have a resolution here requesting to bring to the attention of the court our concerns about the need for their due process in their area?

René Yeckley:

That is correct, Mr. Chairman. We felt that as requested, what the recommendation would be doing would be to require the court to perform duties and powers that are properly with the executive department, not with the judiciary.

Chairman Anderson:

I know my Committee has already heard a presentation. We have a book, *Legislative Committee on Children, Youth and Families* [Legislative Counsel Bureau Bulletin No. 05-17], and I would call their attention to the very discussion that was just mentioned, under pages 20 and 21 of the document, which makes reference to that on Recommendation 19.

Senator Maggie Carlton, Clark County Senatorial District No. 2:

Thank you for inviting me up to talk to you about this very important issue in serving on the Committee that the Majority Leader and I were on. I was the volunteer draftee subcommittee chairman on adoption issues. I was more than willing to sit and have a whole Saturday morning hearing on the concerns that many people had about the adoption issues. Some of the most heart-breaking testimony that we heard was about medical records. About being able to get very important medical information from the birth parent to the adoptive parent so that children and those parents could be aware of what might be out there.

Things have changed significantly in the last 20 to 30 years. We know that genetics plays a much greater role in how our lives spin out through the years, and we'd like to be able to make sure that the adoptive parents have that very important information about the children that they've adopted. As your staff so aptly put in the recommendation, we realized that there might be some issues as far as us trying to be able to resolve this. I also felt it was very important for the parents themselves to be able to share the information.

We had numerous telephone discussions about how we could handle this and this was the resolution that we came to. We would really like to be able to

figure out a way for these parents to be able to share that information, and we'd like the courts to help us help the parents accomplish this. This was the recommendation that was made to me as far as the best way to resolve this very important issue, and thank you for allowing me the time to come before the committee.

Chairman Anderson:

Senator Carlton chaired the subcommittee of the main committee dealing with this issue. Ms. Combs was a part of the legislative research element.

Senator Carlton:

She's my backup.

Chairman Anderson:

Serves as the gun for all those scattered issues to try to bring focus to it. We appreciate that.

The concern of the Committee on Children, Youth, and Families on this particular issue was that the court needed to review its own procedures, to clarify, and that seems to be an ongoing kind of question because of the nature, and whether we could be doing a better job of this. Is that what you basically think the intent was?

Senator Carlton:

Yes, Mr. Chairman, that is our intent.

Chairman Anderson:

Questions from members of the Committee?

Allison Combs, Committee Policy Analyst, Legislative Counsel Bureau:

If I can help respond to any questions, I'm happy to do so.

Chairman Anderson:

Ms. Lusk, I see that you've signed-in, in support of A.C.R. 2.

Lucille Lusk, Chairman, Nevada Concerned Citizens:

We are here in support of A.C.R. 2 as it is written. I've participated, this and last session, in many discussions surrounding the issue of adoption, adoption records, and opening adoption records. The testimony has often seemed to be in conflict as to what actually happens when someone does go and petition the court.

[Lucille Lusk, continued.] You all know how important this issue is to a great many people. It seems that it would be greatly valuable for you and for the participating public to have valid information as to what really does happen, so we're all starting on the same page with the same understanding. We support A.C.R. 2.

Chairman Anderson:

Anybody else wishing to speak in support of A.C.R. 2?

Helen Foley, Private Citizen, Las Vegas, Nevada:

I really appreciate the Committee on Children, Youth, and Families taking a full day, during the interim to discuss these issues.

I support this because there needs to be some consistency within the court system in providing these medical records. One concern I have about this, however, is that on the first page it looks great that they "may include important medical history and other medical information," but then when you turn to the second page on line 2, it talks about "to open files and records of courts in adoption proceedings."

The beginning of the bill clearly states that much of that is confidential. I wholly support the notion of providing medical records, any and all medical records should be provided, but when you talk about opening files and records of the courts it seems to be a little too broad. I think that it should specifically mention "medical records" at that point.

With the court, in looking at it, it should be a procedural issue and not a policy issue because that is up to you to decide policy. Right now the policy is that everything is confidential.

By way of background, when I adopted my babies, the birth mother, when she relinquished her rights, filled out a very extensive form. In fact, she did that when she first came in talking to the agency about giving the baby to an adoptive family. On the pages they talked about her medical history, the father's medical history, how many other children they had, if there were any medical problems, and their grandparents, and so it all comes from that individual. Rarely do you get a father coming in providing information.

Sometimes, especially if she doesn't really know him and just had an evening with him, we may not know anything about the father, so it wouldn't be in the files. If the adoption agency hasn't provided all of that information to the birth mother, and it is made part of the record, it certainly should be provided at any time to adoptive families and to the adopted person.

Chairman Anderson:

Your concern is that because it doesn't mention medical files specifically here in this resolution, that the language is not broad enough to allow the court to review broader issues? You're looking for an amendment here?

Helen Foley:

I am, and I think it's because it's too broad, not because it's broad enough. If the Supreme Court is to review the manner in which district courts receive and decide petitions filed by adoptive persons and their adopted families and to open files and records of courts in adoption proceedings for the purpose of providing medical history.

Chairman Anderson:

So, you're going to limit it only to medical history questions and not other ...? That would be your preference?

Helen Foley:

It would, Mr. Chairman, for two reasons. I don't believe that they should provide identifying information. And also, when we, as you discussed yesterday and during the previous session, have to fill out and write a 10 to 20 page autobiography about everything we've done in our life good, bad, what have you. There has to be at least six people that send letters of recommendation but also very seriously discuss your ability to parent.

Also with the birth family side, if that mother is a prostitute, if the father has been in and out of prison, all sorts of things about those individuals could be opened up because they are part of that record and so I would like to narrow it to medical, if we could. Although, I do have to say that I believe that every adopted child once they turn 18, should be able to receive information about who they are.

Chairman Anderson:

I guess that would be my concern, not having served on this particular subcommittee between the two sessions this time, but having a long ongoing discussion about this issue in its broadest sense. I thought that the purpose of this resolution, in point of fact, was to try to say we want to make sure that we have a clear picture of what the court process is, not just with medical records but with all these other records where there are quite a few different groups out there who are concerned about. We want to make sure that when final legislation does come forward that we're not leaving out some element that needs to be addressed. I'm putting words in the Committee and I don't want to do that, but when I read this resolution that's what I thought it was trying to accomplish.

Helen Foley:

Mr. Chairman, certainly Assemblywoman Buckley having served on the committee would have a clear understanding of what her subcommittee wanted. I do believe that the Supreme Court would look very clearly at what the current law is and then take a look at whether or not there's consistency throughout district court. I doubt very seriously that they would go beyond what current statute says about confidentiality so I don't have a great fear of it. I just see where, in that third "whereas" they talk specifically about medical history and then when we go to the second page, it talks about opening of files and records.

Chairman Anderson:

That was the reason why I thought that was it. Anybody else in support of the legislation?

Let me turn to those who have indicated an opposition to the legislation. Let me mention my earlier admonition relative to bills that are being considered in the other House or in other ... really inappropriate to bring the concerns here of those because those will have a hearing on their own and it's a violation of Rule 100 of our Standing Rules.

Richard Rinker, Nevada Open, against, in Las Vegas. Mr. Rinker, I didn't see you in the room earlier this morning when we started. I presume you heard the question referencing material that is not in the bill.

Richard Rinker, representing Nevada Open:

I'm a Nevada-born adoptee. I am here to urge a no vote on A.C.R. 2 for the following reasons ([Exhibit E](#)).

This resolution is an attempt to side step the constitutional separation of powers and remove from the Legislature their mandated task of creating laws. If this resolution passes, it will place the courts in the position of legislating from the bench. This is not their role in government.

This resolution, if enacted, will place an undue burden on the adult adoptees it purports to help. It will require a significant investment of funds to hire a confidential intermediary and also a private investigator to locate the people involved. This expense can run into several hundreds of dollars. We've heard other witnesses who talked about the necessity for understanding what the process is. I've been through the process. I've been through the process twice here in Clark County. I have run into about \$600 in fees trying to find my birth parents. I found them. I found out a lot of information about my birth parents.

[Richard Rinker, continued.] We've heard testimony that there may be shocking things in their histories. That has not been my case, that has not been the case of any of the adoptees that I've spoken to who have been able to find their parents. It's presumptuous to assume that every adoptee who undertakes this search is even interested in finding their parents. Most of them are just looking for information.

Currently, there is no "Good Cause" requirement in the law here in Nevada under [*Nevada Revised Statute*] 127.140 defining when the records may be opened. That was the problem that I ran into the first time I went through the courts here in Nevada. I got conflicting rulings from the judge. The first time I went the judge, she said that if I could show her laws that would allow her to grant me my petition, she'd do so. I came back and I showed her [NRS] 127.140 which authorizes her to release the information. I also pointed her towards the Indian Child Welfare Act [of 1978], because I have Indian heritage in my genealogy.

When presented with these two laws her decision was that she saw no good reason to change public policy, which is an interesting comment since she doesn't really set public policy.

"Good Cause" has been adjudicated around the country over the last 30 years. It ranges from "because I want it" to "I have to have this information for a dire medical need." All that's really required is for the courts here in Nevada to recognize what has already been done elsewhere and apply the laws that have already been decided.

I was going to get into the history of A.C.R. 2, but that has already been discussed and I don't want to come into a violation of your rules.

Essentially, Mr. Chair, Nevada Open urges the Assembly to step up to the plate and do the job to which you were elected. Do not pass the buck to the judiciary. Vote no on A.C.R. 2. Thank you.

Chairman Anderson:

Sir, in trying to respect the other branch, they don't like us to ask them a lot of questions either. They get very, very upset about it, as I'm sure you're going to hear in a little while, when we tell judges that we want to know what your court load is, or when we want to know how come these kinds of cases are being decided in this fashion, or when we take judicial discretion away from them to make certain kind of things open or closed.

My reading of this resolution, being mindful of the fact that, and I presume that you followed the Legislative Commission on Children, Youth and Families fairly closely during this time period, when it was hearing over the last two years. This resolution merely recognizes that the court procedures are doing one thing and we in the Legislature are about to do something else. We want to make sure that where we're going to be crossed with each other that we try to do it in a civil manner. Do you understand that it's kind of a subtle play on the question about whether the bills pass this time or not? This is an issue we wish to deal with and the Legislature needs to make the court aware of that. That's what this resolution does, I hope.

Richard Rinker:

I understand that, Mr. Chairman. My understanding of the legal procedure is that bills are enacted into laws, court cases result from those laws. It's the role of the judiciary to interpret legislative intent behind those laws. I think it would be inappropriate to request of the Supreme Court a decision on a case that has not yet been appealed. There are other avenues available to you. You can go to the Attorney General's Office and ask for a legal opinion. That would seem to be the most logical to me.

Chairman Anderson:

I know this is hard to believe, sir, but we do not rely upon the Attorney General's Office because that would be a part of the Executive Branch of government. We have our own attorney who has their own standing and acts in the name of the Legislature and the people of the state when we so behave. And of course we're representative of the neighborhoods and Assembly Districts. Therefore, we consider that to be a very, very important power of this Body and it's one that we all ... It's kind of a turf battle. Clearly, this is an issue that we want to find a resolution to and we need to rattle somebody's cage every once in awhile to say, "Hey, we're concerned about this" and that's what we're doing to the judges, saying, "Hey, you need to pay attention to us."

Richard Rinker:

Again, I appreciate that. You raise a couple of interesting points. You talked about your constituents. I had a chance to look at the opinion poll on the Legislature's website this morning before I left. There is not a single opposition statement posted there. If I can speak briefly to history, without discussing any pending legislation, opinion polls have been posted regarding these issues in the past. The most recent one had, thinking off the top of my head, 130-some positions posted. Of that 130-some positions, there were two or three, maybe five, that were opposed to the legislation. Your constituents want a change in access to adoption records. They want the adult adoptees to have access to that information.

Chairman Anderson:

Mr. Titus from the Supreme Court. Concerns of the court on neutral position on A.C.R. 2.

Ron Titus, Nevada Court Administrator, Supreme Court of Nevada:

We are a neutral position on this and we are more than happy to do a study on this. Now that I've heard the testimony I have a little better understanding of the need. It's my understanding that you are interested in the process that the courts take to make determinations, not necessarily interested in specific information contained in the adoptions. As such, we would hope that either Committee or staff members would be available to us to help us put this study together. Any additional information you may have for us to help us perform an adequate study would be appreciated.

Chairman Anderson:

The Committee on Children, Youth and Families, I believe, is an ongoing committee of the Legislature between sessions, is it not Ms. Buckley?

Assemblywoman Buckley:

It is set to sunset in 2005; however, there is a bill pending before the Health Care Committee to extend that time for two years.

Chairman Anderson:

Health Care Committee?

Assemblywoman Buckley:

Yes, Mr. Chairman, that is the chapter in which the study committee was housed and so that is why it ended up there. But you can feel free to grab it if you so choose.

Chairman Anderson:

You "betcha." Mr. Titus, I think the Legislature has clearly shown its concern over adoption issues over the last several sessions in trying to clarify the records issue, medical questions, and other kinds of things. While many states have laws that people wish that we had here in Nevada, there are an equal group of people who say, "Thank God we don't have those laws," particularly those to our western neighbor. I think our concern here is making sure the Court is aware of the ongoing issue in family courts, but particularly surrounding this particular element of the adoption process and what would be good judicial practice and good legislative practice trying to keep our two divisions of government at respectful distances.

Ron Titus:

Mr. Chairman, if I may, we are concerned that the Legislature feels that it takes a resolution to get information from the Court. We would prefer, of course, letters, and we apologize if there's been miscommunications in the past with letters not being answered. We are more than happy to do this study.

I would suggest two very, very slight amendments. Line 16 on the first page where it says, "request the Nevada Supreme Court," since the Administrative Office of the Courts will be the one doing this study it could say there, "requests the Administrative Office of the Court to review the manner." And then on the second page where it says on line 10, "Copy this resolution to the Chief Justice." It could say, "to the Court Administrator."

Chairman Anderson:

With all do respect, Mr. Titus, would that not set the precedent that the Legislature was directing the staff of the Supreme Court to do their work, rather than one body respectfully speaking to the others and thus allowing the Court the opportunity to direct its own staff in the direction it wishes to go.

Ron Titus:

That could be read that way, and I haven't talked this over of course with the Chief Justice. I also checked my responsibilities and NRS 1.360 and number 13 thus says, "to attend to other such matters as may be assigned by the Supreme Court or prescribed by law." My question is, I don't know if a resolution is considered law or not. I understand your concern.

Chairman Anderson:

Ms. Yeckley, tell me where we are here on this.

René Yeckley:

I think that this is up to the Committee to choose whether to reference the Nevada Supreme Court or the Administrative Office of the Court. I think that the reason why it was drafted in this way is because we were addressing the Nevada Supreme Court itself with, as you were saying before, the thought that the Nevada Supreme Court would be directing the Administrative Office of the Court to act.

Assemblywoman Buckley:

When can you have it done?

Ron Titus:

Originally, I was thinking it would be a relatively straightforward study before I heard some of the testimony this morning. But I also saw that it does have a

due date on here and we definitely can have it done by the due date. I was kind of surprised that the due date is September 1, 2006. We could probably have something done much sooner than that and if you have a preference on when it needs to be done by, let me know and I'll be sure to try and get it done by then.

Assemblywoman Buckley:

How about next week?

Ron Titus:

We can maybe get some preliminary information by next week. I have been talking with several family court judges and did get some information out of the Second District [Second Judicial District] of Washoe County. They get about three to four of these requests a month and to their recollection most of them are granted. Then again, we know there is some concern about consistency among the court. We could get some preliminary information. I know we did some work on some other information for this Committee. We were able to get that together relatively quickly. If you want it in a week then I don't know if this resolution would be useful.

Chairman Anderson:

Ms. Buckley, I think that the September 1, 2006 deadline was picked for bill drafting purposes, since that's when we usually anticipate the need for additional legislation for the next session and so the quicker you could do it, I'm sure we would all appreciate that. If it were made available to the provider, of course if the Child, Youth and Family would not sunset, then obviously there would be some issues. I think there are a couple of issues that have to be discussed, hopefully before that comes forward, about jurisdictional questions and other juvenile justice questions, and there are some cross-issues with the Health Committee that we also are concerned about.

I appreciate your questions and coming forth on behalf of the Court to raise our awareness here. Any other questions for the Administrative Office of the Court? This would be under those "other duties as assigned" role that he's playing today.

Anybody else who has a neutral position on A.C.R. 2? Let me close the hearing on A.C.R. 2.

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The Chair was of the opinion of taking a motion to pass the resolution without amendment but Mr. Titus raised an issue that I want to research just a bit further before we put it forward, so there's a possibility that we will put it in the work session document. Don't be surprised if it shows up there.

Any other issues that need to come in front of us?

[Adjourned meeting at 9:58 a.m.]

RESPECTFULLY SUBMITTED:

Jane Oliver
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

