MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
March 3, 2005

The Committee on Judiciary was called to order at 8:08 a.m., on Thursday, March 3, 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 Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Chad Christensen, Assembly District No. 13, Clark County

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst

René Yeckley, Committee Counsel
Katie Miles, Committee Policy Analyst
Carole Snider, Committee Attaché

OTHERS PRESENT:

Bill Uffelman, President and CEO, Strategic Planning Manager, Nevada Bankers Association
John Slaughter, Strategic Planning Manager, Office of Washoe County Manager, Washoe County, Nevada
Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office, Clark County, Nevada
Michael Trudell, Manager, Caughlin Ranch Homeowners Association
Jim Nadeau, Legislative Advocate, representing Nevada Association of Realtors
Rocky Finseth, Legislative Advocate, representing Nevada Association of Realtors; and Nevada Land Title Association
Alisa Vyenielo, Co-Chair, Cameo Committee; and President and Owner, Real Properties Management Group

Chairman Anderson:
[Meeting was called to order and roll called.] In front of you there is a work session document (Exhibit B) prepared by Allison Combs, Committee Policy Analyst. The first bill I am going to hear is Assembly Bill 6, then Assembly Bill 55, Assembly Bill 78, Assembly Bill 47, and the last to be heard is Assembly Bill 71. There are still some questions that remain on Assembly Bill 71 so just because it is in the work session document does not mean we won't discover additional problems.

Let's turn our attention to A.B. 6.

Assembly Bill 6: Prohibits imposition of sentence of death upon person for crime committed while person was under age of 18 years. (BDR 14-124)

Allison Combs, Committee Policy Analyst:
Assembly Bill 6 is the first bill on the work session document, page 1 (Exhibit B). This measure was heard on February 25, 2005. It increases the threshold age for imposing a death sentence from 16 to 18 years. There were

no amendments proposed for the bill. There was considerable testimony but since the time of the hearing, the United States Supreme Court made a decision that the death penalty for juveniles was unconstitutional. There is a summary of that case *Roper v. Simmons*, [112 S. W. 3d 397 (2005)] on page 10 of the handout. If there are any legal questions regarding this case, Mr. Chairman, I would defer them to our legal counsel.

Chairman Anderson:
If you are looking in your bill book at A.B. 6, you may note there is an asterisk which indicates an updated version of the printed format. That was to accomplish a reference in the Legislative Counsel Digest Summary.

René Yeckley, Committee Counsel:
Yes, that was to update the digest to reflect the decision recently handed down by the United States Supreme Court.

Chairman Anderson:
Any questions from members of the Committee?

Assemblywoman Buckley:
It seems to me whether you agree with the Supreme Court decision or not, it is now the law of the land. There is not much to debate so I move do pass.

ASSEMBLYWOMAN BUCKLEY MOVED TO DO PASS ASSEMBLY BILL 6.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Angle abstained from the vote.)

Chairman Anderson:
This was a bill introduced by Assemblywoman Giunchigliani. We will make the assumption that Ms. Giunchigliani will make the floor presentation of the bill. Allow me to ask Ms. Buckley to be her backup.

Let's turn our attention to Assembly Bill 55.

Assembly Bill 55: Revises provisions relating to bonding of justices of the peace. (BDR 1-221)

Allison Combs:
If you turn to page 5 of the work session document (Exhibit B), A.B. 55 relates to the bonding of justices of the peace. The current statute requires a bond in a range from $1,000 to $5,000. The bill provides a new range of $10,000 to $50,000. The bill also requires the county to pay for the bond rather than the justices of the peace. There was a question raised during the hearing on the bill as to the impact of the bill as analyzed by the Nevada Association of Counties (NACO). Since the time of the hearing, the Committee has received a letter from Andrew List on behalf of NACO. This letter is on page 22 of the work session document. The letter notes NACO supports A.B. 55 for the reason they believe the resulting fiscal impact on the counties, as a result of the bill, is minimal.

There is one amendment proposed for the bill by [Judge] John Tatro [Justice Court II, Carson City, Nevada] during the hearing. The proposal was to allow the counties the option of covering the justices of the peace through a blanket fidelity bond. Apparently the counties are using this for other officers and they suggested this would be an option for the counties to use in this situation as well.

Chairman Anderson:
Could you go over the amendment again?

Allison Combs:
The amendment is on page 5 of the work session document. If you look at A.B. 55 on the bottom of the first page at line 6, it requires the justice of the peace to execute the bond, be approved by the county commissioners and furnished at the county expense. The recommendation was to also allow, within that section, the county to cover the justice of the peace within a blanket fidelity bond that some counties are currently using. So it would be an additional option within that section.

Chairman Anderson:
Ms. Yeckley, would this provide any problems with bill drafting in the wording that is suggested here? We are dealing with the concept of it and you are going to put it in the *Nevada Revised Statutes* (NRS).

René Yeckley:
I think we can work with this concept and put it into language that is consistent with the other statutes.

Assemblyman Carpenter:
I was wondering if this amendment is necessary. It seems like it is covered in the original bill. It seems like it will be left up to the county commissioners how

to fund the bond and this is what they are going to do in reality. If the bill is passed, I don't feel we would need an amendment on it.

Chairman Anderson:
Ms. Yeckley, could you please respond whether this amendment is needed or not, in terms of bringing clarity.

René Yeckley:
I think Mr. Carpenter brings up a good point. I believe that the language currently provided in the bill just states the county is to furnish a bond which could include a blanket fidelity bond. However, to me it looks like the difference is the proposed amendment would add the element that this bond would be commensurate with the bond that the counties provide for other officers which may be more than $50,000. This is the restriction of the bill as it is currently written.

Chairman Anderson:
What is the pleasure of the Committee?

> ASSEMBLYMAN CARPENTER MOVED TO DO PASS ASSEMBLY BILL 55 AS PRESENTED WITHOUT AMENDMENT.
>
> ASSEMBLYWOMAN ANGLE SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Mr. Carpenter will be backup on this bill. Let's turn our attention to Assembly Bill 78.

Assembly Bill 78: Makes various changes concerning administration of estates.

Allison Combs:
Page 8 of the work session document (Exhibit B) contains the information on A.B. 78. It was heard on February 24, 2005. This measure relates to the administration of estates and has a few different components involving the removal of the 10 percent limitation on commission fees for the sale of personal property other than the sale of a manufactured home. It also expands the manner in which the public administrator may provide proof of death to a financial institution. Finally, the bill increases the value of the estate that the public administrator can administrate without obtaining certain documentation from $5,000 to $20,000.

There was testimony the increase mirrors existing authority of the public administrator under a separate statute dealing broadly with small estates that do not exceed $20,000. A copy of that statute, which is NRS 146.080, can be found on page 24 of the work session document.

[Allison Combs, continued.] There were some issues raised on the bill by the Committee members. Page 9 of the document lists the two areas of concern. One was the complete removal of the limitation on commission fees for the sale of personal property. There was testimony that auctioneers, for example, charge a fee that may range from 20 to 25 percent so there was some discussion of reinstating a 25 percent limitation on the commission fees for the sale of the personal property.

The second issue raised by the Nevada Bankers Association was the removal in the bill of the ability of the financial institution to charge a fee when providing the documentation on account statements in the event of someone's death. On page 26 of the work session document is an amendment proposed jointly by the Nevada Association of Counties, Washoe County, and the Nevada Bankers Association to address both of these concerns. If you will look at page 26, you will notice that Section 1 of the bill is amended to add a new proposed subsection 5 stating the limitation would be reinstated at 25 percent for the sale of personal property. Section 2 would be amended in the bill to remove the "without charge" language and insert some new language saying that the charge for the statement, if any, shall not exceed $2.

Bill Uffelman, President and CEO, Nevada Bankers Association:
We support the amendment as indicated.

John Slaughter, Strategic Planning Manager, Office of Washoe County Manager, Washoe County, Nevada:
We also support the amendment.

Chairman Anderson:
Do any of the members of the Committee have questions relative to the effect of this amendment that is being proposed?

Assemblyman Conklin:
Is it currently lower than 25 percent for the sale of all other personal property? Twenty-five percent sounds kind of high and I'm trying to figure out where that number came from.

Chairman Anderson:
Mr. [Donald] Cavallo [Washoe County Public Administrator] told us at the time of testimony that it was close to what they were currently charging. Mr. Slaughter, I am not an expert in this area nor do I wish to be.

John Slaughter:
Mr. Cavallo is in court this morning so was not available to attend this meeting, although I did speak with him. There was discussion at the hearing where the percentage should be and 25 percent floated to the top. We have since sent letters to all auction companies in Washoe County and have heard back from one. They did indicate that 25 percent did seem reasonable to them. They typically will look for 10 percent for automobiles and 25 percent for other personal property.

Assemblywoman Angle:
I was wondering what the fiscal impact would be of this new fee insertion. My bill reads right now that there is no fiscal impact but wouldn't this change if the amendment were added?

John Slaughter:
I don't believe there would be a fiscal change. This was discussed during the hearing that the financial impact is really on the estates. The public administrator tries to keep the amount of money that they are handling for the estates low so the funds for the estates are protected as much as possible. So I don't believe there is any fiscal impact to the county.

Assemblyman Anderson:
So the dollar loss is to the estate itself. Then the problem is they could not find auctioneers that would come in for 10 percent.

Assemblywoman Buckley:
My area of concern is the 10 and 25 percent. For example, if you can't get an auctioneer for personal property of boxes for 10 percent then if you have a car or an item of higher value, 25 percent seems really high.

John Slaughter:
Mr. Cavallo indicated to me and, I believe, during the testimony that he does have the interest of the estate in mind at all times. He will seek the best possible deal at all times. The auctioneers have indicated they typically will seek 10 percent. I don't have any indication for higher-priced items. I believe Mr. Cavallo and other public administrators throughout the state would look for the best deal in all cases because their interest is in protecting the estate.

Assemblywoman Buckley:
That is our interest also.

Assemblyman Horne:
My concern is they want the rate at 25 percent but it was stated 20 to 25 percent. Why can't we just do 20?

Chairman Anderson:
That is what we have to decide in our discussion. Any questions for these people?

Assemblyman Horne:
No.

Chairman Anderson:
Let's bring this back to the Committee then. We can decide here what the rates are going to be. You see the suggested amendments in front of us and now we can deal with the percentage that we think is appropriate. I believe Mrs. Angle, Ms. Buckley, Mr. Horne, and Mr. Carpenter were originally concerned what these numbers were going to be. So we still don't like 25 percent but we would be willing to go to 20 percent. Remember we are dealing with conceptual language that we are giving to the bill drafter to put into the NRS. On the other hand, we do not want to tie the hands of the public administrator so that he cannot find an auctioneer. That is the issue he brought forth initially and that was the reason given for the range.

Assemblyman Horne:
My concern is that their take is typically 20 to 25 percent. I recognize the balance we are trying to strike but I didn't understand why we had to go with the high end of it. I think we accomplish both by eliminating the 10 percent limitation and have one fee of 20 percent. This way we would protect the estate by not taking such a large chunk out.

Assemblyman Mortenson:
Can an auctioneer make a big difference in what an item is sold for if you chose an auctioneer who will go for 20 percent rather than 25 percent? Is it possible he won't be able to raise as much money as a better auctioneer who charges 25 percent and can get the prices considerably higher?

Chairman Anderson:
There are several auction houses that hold auctions weekly and they advertise in the newspaper. Then there are those auctions that are done by the county for public equipment that is being auctioned off, and there are traveling

auctions. Mr. Cavallo indicated they bring in whoever they can find who does the very best job.

John Slaughter:
My understanding from Mr. Cavallo is that he will seek the best auction company that he can. He has typically one or two that he will turn to because he knows they do the best job. In the case of a special estate or special property, he will seek the ones he knows will do the best job for that type of auction.

Chairman Anderson:
They will put a catalog that is on the Internet. They publish in newspapers and they also have telephone auctioneers. There are established houses throughout the United States and we have several in northern Nevada that have regular monthly auctions. Typically, the auction house collects the commission from who is selling the goods and who is buying the goods. Mr. Cavallo's indication was typically that 10 percent is very rare and the current law was not able to meet the needs.

Assemblyman Mortenson:
Do local governments have enough auctions that we have considerable power in trying to persuade an auctioneer to take a lesser commission simply because we have so many auctions?

Chairman Anderson:
It is my understanding from Mr. Cavallo's statement, that he tries to find the best deal he can make with the auctioneers when they come to town. That is why we are setting the ceiling that he is allowed to go to, not the floor on which it starts.

Assemblywoman Buckley:
I was wondering about paragraph 1, which is not being changed, whether there is an exclusive contract with one auction company or whether they can put it out to bid. Maybe by putting it out to bid you would have some competition with that price. Now I'm hearing from the testimony that the exclusive right is on an estate-by-estate basis so you do utilize different companies depending upon the needs. That is where my thought process was going.

Assemblyman Conklin:
When you set a ceiling for something, everyone that is lower than that typically moves their price up to the ceiling. If it's operating fine now, I'm a little uncomfortable setting a ceiling on it if the market is being allowed to play itself out, and we have somebody who is truly looking out for the best interests of

the estate in getting competitive bids for the lowest possible rate. If we set a cap on that rate then everybody is going to move closer to that cap.

Chairman Anderson:
I disagree with your concerns. From Mr. Cavallo's discussion, they were having difficulty in finding auction houses to take a lower fee and this bill would provide a broader market.

Assemblyman Holcomb:
I wonder if any of the other Committee members have been to an auction and know what is involved in an auction. They have a number of employees that take each item and research it for pricing. They do the advertising. There is a lot of work. I have been to almost every estate auction they have. I personally think a 25 percent cap is reasonable.

Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office, Clark County, Nevada:
Generally, in these estates we are speaking of small estates with small assets. It is hard sometimes to get an auction house to do anything on these. In talking with Clark County's public administrator, we do have a fiduciary duty to the estate to do the best they can. They need some flexibility to get people in on these things. I don't think it is unreasonable to give them that flexibility by a higher percentage.

Chairman Anderson:
Mr. Graham, it is not necessary to argue the merits of the bill but thank you for broadening our understanding.

Assemblywoman Buckley:
This statute doesn't apply just to small estates. It applies to all estates so maybe what we should do is determine the fair market value of an estate and if it is lower than $5,000, then it could be a higher amount. If it's a really big estate, 25 percent is a lot of money. So maybe we need to give the flexibility when the fair market value of everything combined is under some number that makes sense.

Chairman Anderson:
Then we would be anticipating that amount would be based upon the public administrator's determining the asset value of the total estate, not just the book value of the bonds and other issues in front of him. It would include the furniture, the clothing, the small jewelry items and other materials which he would rate one way and the automobile a different way. Manufactured homes

would still be 10 percent. I'm curious as to what the reality would be in terms of the ability of the public administrator to make that determination.

Assemblywoman Buckley:
Maybe it wouldn't work at all but I just wanted to throw out an idea. Maybe the public administrator makes a determination of the fair market value. If it is a car, you take blue book value. If it is a manufactured home, they have their own blue book. If it is a couch, it is the value they think it is that day. It just seems if it is a really huge estate, it might too much of a windfall. But if it is ten boxes, it might be hard to get anybody to do it.

Chairman Anderson:
Of course it will include books and family mementos that have greater value to the people who owned them than they would in the real marketplace.

Assemblyman Mabey:
Just so the Chair knows, I'm very comfortable with the 25 percent.

Assemblyman Carpenter:
I think the 25 percent is okay but maybe we should put automobiles in the same category as mobile homes. There are a lot of people around that sell automobiles. I understand fully what the other members of the Committee are feeling. I would be comfortable with the 25 percent and see what happens. If there are some situations out there where somebody gets a windfall, we will hear about it.

Chairman Anderson:
You're suggesting that we not only look at section 1, subsection 3 of the bill for manufactured homes but also for automobiles we retain the 10 percent ceiling for commission. I'm trying to find a neutral ground of 20 percent. I'm not quite ready to go to 25 percent. I believe it may come that way, but I agree with Mr. Conklin's position that there is a tendency to see how deep the well is and it will rise to the height of the well. So this might be a good middle ground for us. Ms. Buckley is concerned regarding the size of the estate but that would almost make us seem like we were micromanaging. We already do that, in part, by the way they address the estates. In looking back over this, there are different responsibilities for different kinds of estates already. Ms. Yeckley, do you see any problems here?

René Yeckley:
I think we can find language to accommodate any of these proposals we have heard so far. I think if we went with Ms. Buckley's idea, I would just need more details as to what would be the threshold distinction. I would guess you

might want to use $25,000 threshold since that is being used in other statutes. Then I would need to know exactly what percentage you would want to use for the caps depending on whether they were below or above that threshold. I think we can draft this.

Chairman Anderson:
Looking at the bill itself in Section 1, subsection 3, line 17 of page 2, "if a manufactured home was sold pursuant to the provisions of this section," we would be expanding in some way both the definition of automobiles to be included in the 10 percent cap and not just a manufactured home. Motor vehicles would also be included which would mean a bit of a drafting problem. We clearly understand this intent will satisfy the needs of Mr. Carpenter who agreed to the $2.00 in the language that has been proposed relative to the cap and proof of death specificity in language, as suggested by the [Nevada] Bankers Association when they made their presentation.

We would further limit the percentage of commission on any personal property other than manufactured homes or automobiles to 20 percent. The advantage of this does make the relationship between the banking industry and the auctioneers a matter of statute rather than the courtesy of the action.

Ms. Buckley has given further thought to this and I would be happy to entertain further discussion regarding value.

Assemblywoman Buckley:
Whatever everybody wants is fine with me. The lower the percentage the more I like it, about differentiating between them. I still feel 20 percent is a little high for me but I will go along with the Committee.

Chairman Anderson:
What is the pleasure of the Committee? Have we reached a consensus yet?

> ASSEMBLYMAN CARPENTER MOVED TO DO PASS ASSEMBLY BILL 78 WITH THE PROPOSED AMENDMENTS TO ADD A REFERENCE:
> - THAT AUTOMOBILES WOULD STAY WITHIN THE 10 PERCENT CAP, AND
> - THE PERCENTAGE IN SUBSECTION 5 OF NRS 148.105(3) OF PERSONAL PROPERTY WOULD NOT EXCEED 20 PERCENT.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION CARRIED WITH MS. BUCKLEY, MR. CONKLIN, MR. MANENDO, AND MS. OHRENSCHALL VOTING NO. (Mr. Holcomb was not present for the vote.)

Chairman Anderson:
I will give A.B. 78 to Mr. Oceguera.

Now we will discuss Assembly Bill 47 which is in regard to screening of delinquent children for mental health and substance abuse problems. This is an important piece of legislation that came from the juvenile justice study. I served on this study and Assemblywoman Leslie served as the chair.

Assembly Bill 47: Requires screening of certain delinquent children for mental health and substance abuse problems. (BDR 5-194)

Allison Combs:
Assembly Bill 47 is on page 3 of the work session document (Exhibit B). It is a bill requiring the juvenile court to order a delinquent child to undergo screening when the court commits the child to a detention facility or correctional care facility to determine whether the child is in need of mental health services.

Several issues were raised on this bill by the Division of Child and Family Services (DCFS) and Leonard Pugh on behalf of the Nevada Association of Juvenile Justice Administrators. There was testimony that this screening is now using MAYSI-2 [Massachusetts Youth Screening Instrument] at both the DCFS facilities and the juvenile detention centers throughout Nevada.

There was a concern raised by Mr. Pugh in an amendment at the bottom of page 3. Mr. Pugh did provide his testimony which included the proposed amendment and concerns on page 13. Mr. Pugh, rather than ordering in statute the screening when a child is committed to a local detention facility, wished to reflect the current practice and order the screening for the children who are detained at the facilities. There was an exception noted by Mr. Pugh that the youth who are released to parental custody within a few hours after booking do not currently receive this screening. So there was a proposal to change that language to require children detained at the juvenile facilities rather than children committed. That language is on page 2 of the bill at lines 3 and 4.

[Allison Combs, continued.] There was a second issue raised with regard to the regulations. The bill requires the Division of Child and Family Services to adopt regulations to carry out the bill's provisions. There was some concern noted by Mr. Pugh with regard to the potential future impact of those regulations depending on what they may be. There is a fiscal note on this bill for both the Division of Child and Family Services and the local governments. That fiscal note is attached for your review on page 15.

With regard to the regulations and the fiscal impact and concerns raised by Mr. Pugh, there were no specific amendments proposed to that. Considerations may include requiring the development of the regulations, consultations with the counties, or providing the detention centers the determination as to the type of personnel necessary to conduct the screenings. That was an area he indicated in the future, if specific parameters were placed on who could do the testing, that may incur additional impact to the counties.

Chairman Anderson:
First of all, let me indicate to the members of the Committee if they decide to move with the bill, the motion will have to be amended and re-referred or bar it with a do pass and re-refer, because the bill has to go to the Ways and Means Committee anyway.

When serving on the Committee, let me indicate our concern that there would be uniformity of instruments used on testing children that were coming in the door. When one agency was talking to another agency, they would all have the common language to speak from and that would be number one.

Secondly, regardless of whether you are taken to a facility in Washoe County or in Clark County, who are the two big counties that clearly are going to be utilizing the MAYSI-2 test, there had to be sufficient guidelines set up so the newer programs that are coming into place would have consistency. The advantage in having that kind of an instrument in place is when they move from the initial detention center to another, there would be a clear picture of what was taking place. This element seemed to be missing. Many of the institutions are currently using this instrument particularly in Clark and Washoe Counties. We would like to encourage that. I don't think it was our intention to handcuff their ability to do what is necessary. I think Mr. Pugh's point was that we are not just talking about when you have been found guilty but when you actually are going to be retained at the facility. I think his point was we are not going to do it for every child just because they were picked up for breaking curfew and they are going to be released to their parents.

[Chairman Anderson, continued.] There are all sorts of situations where police have to take children to a facility. We want to give them some sort of flexibility but we also want to make sure that we are utilizing a clear form here. I am mindful of what Mr. Pugh has requested from the Association of Juvenile Administrators. He happens to be from Washoe County so I think its proximity to Carson City brings him here on their behalf.

What is the pleasure of the Committee? I want the Division of Child and Family Services to adopt regulations in determining what battery of tests would be selected. I'm a little bit concerned about the specificity of using the same testing instrument again and again, because the child who is much more sophisticated than we often give him credit for and takes the test multiple times would remember that the last time I checked this, then this happened. If I check the other box this time or use a pattern to check boxes, we will see what happens. I have monitored many tests over my lifetime and I'm always concerned that the person who is administrating the test has to have some latitude in terms of the instrument that he is going to use. In consultation with the county, it does raise that spectrum. What happens if you have a very sophisticated group of young people versus one who infrequently utilizes the instrument? The county brought up a very good point that they need to do this at the very beginning, not just at the institutions.

The counties are concerned about the unfunded mandate question and the personnel question. It is not necessary to have a licensed psychologist to administer these tests but necessary for somebody who is familiar with proper testing procedures. That would best be determined by the people at the site. I thought Mr. Pugh's recommendations were acceptable.

Assemblyman Carpenter:
Mr. Pugh recommended every child detained at a juvenile detention facility, so would this include the children that were picked up for a few hours?

Chairman Anderson:
I would suggest we put a time threshold in place when they take the child in. I don't want them sitting around saying we cannot release this child because I have to give him a test and I have to wait for somebody to come in and give him the test. The parent is exasperated over the fact that they have to wait at 3:00 or 4:00 in the morning waiting for somebody to show up at 8:00 a.m. They want their child out of this place and they want to have a few words with them regarding their conduct, which may be more meaningful than staying there at the facility.

On the other hand, the state and the agencies have a responsibility if this is the sixth time we have seen this kid, then he should be held for the test. We need to give them enough latitude to do what they have to do but we also have to recognize parental rights here. Not parental rights in the traditional sense, but oftentimes the parent may be able to have a more meaningful discussion with their child than the state agency will.

Assemblyman Carpenter:
I was just wondering if the legal people can come up with something that might be acceptable.

Assemblywoman Gerhardt:
I would like clarification on how long does it really take to administer this test? My impression is that it is not very lengthy. In my experience, the process doesn't move real quickly. I am concerned for the violators, who in our estimation have not done something serious but their perception that this is the end of the world. I am concerned about that.

Chairman Anderson:
I think you are absolutely correct in terms of when you are brought in a police car to the juvenile facility, it is the end of the world. If it's the fourteenth time it has happened to you, it's a walk in the park. I am concerned that we make sure that the agencies have the ability to do this statutorily, what they are already doing in fact. What we are doing is putting back into law what is the current practice. The concern is that they have uniformity in doing this and recognize that they have a responsibility to do it.

My concern is that in setting a time question, how long do I have control of this child before I have to consider giving him a test. I want to make sure that they have the ability to say that they don't administer a test for every child. How do you determine that question? I wasn't sure in our initial hearing when they made the recommendation to the juvenile justice committee or in the presentation in this Committee of that particular answer. I'm sure that Mr. Pugh would be the right person to answer that question.

Assemblywoman Buckley:
I think we just have to pick which policy choice we want. If what we want is to make sure the screenings are being done but allow the local sites to determine which ones based on the circumstance, then we pick that one. If you want DCFS to have uniformity, I think you pick that one. I think it is one or the other.

[Assemblywoman Buckley, continued.] The one advantage allowing it to be done on site is you probably take away the fiscal note. Most of their fiscal note is for someone to oversee the regulation process. That always amazes me why you need to hire someone to oversee a regulation. I think it really depends on those who have been following this in the Committee and know right now they are all using the same instrument. If you are satisfied now and you want to give flexibility to the site, you could amend the first paragraph of the bill with regard to who gets it whether they are committed or whether they're just brought in and you could an amend and do pass. But if you want DCFS to be working on the uniformity issue, then leave that paragraph in on the regulations.

Chairman Anderson:
I see a certain advantage to putting in the consultation with the counties' language.

Assemblywoman Buckley:
If you took out the regulations in paragraph 2, just strike that entirely, then they would continue to use the system they have now. Right now they all use the same instrument and maybe your subcommittee raised enough awareness that they are going to be coordinating now and using the best instrument. If you don't think they are going to coordinate, then you need the regulation to make sure you have the hammer over their head for consistency and Ways and Means would cut down the fiscal note. I really think it is up to the people on the subcommittee who followed it as to what they think will happen in the field.

Chairman Anderson:
Let me see if we can work a little bit more on this to come up with a cleaner bill. We need to get Mr. Pugh back here and a couple other people to work on it. I want DCFS to recognize that Ms. [Jone] Bosworth [DCFS] really felt, as did the juvenile justice administrators in the original hearings on this issue, very strongly about the need for in their requirements that there be a screening that takes place, when they go in. We, as a Committee, if you will recall, were terribly concerned that children going into our custody did not have such a screening instrument in place. Because we wanted to know what the mental health of that child was, his drug addiction, and his medical problems because of problems that took place in Elko [Nevada Youth Training Center] and Caliente [Youth Center]. The accusations and discussions were whether the state had the information. Mr. Pugh of the Nevada Association of Juvenile Justice Administrators was equally concerned about the local people. Part of their concern rests around who is going to pick the instrument and how much input they are going to have. Let me see if I can get both Mr. Pugh and Ms. Bosworth back to the witness table.

I'm uncomfortable in accepting a motion. At this time, however, this is an issue that I would like to resolve. Let me ask Ms. Combs if we could arrange a meeting with Mr. Pugh on behalf of their association and Ms. Bosworth or her designee from DCFS to come up with some better suggestions for us. Let's see if they can work out the limit so we could have it our next work session. Is there any other point that anybody else on the committee wishes to bring relative to this issue?

Assemblywoman Gerhardt:
If we could, I would like clarification. The studies I have read in the case of suicide in custody, it usually occurs within the first 48 hours. Can we get some kind of clarification on that when they come back?

Chairman Anderson:
You mean a time question of when the screening is going to take place?

Assemblywoman Gerhardt:
It is my understanding that most suicides in custody occur within the first 48 hours, so if they can clarify that for us? I believe that to be true but would like clarification first.

Chairman Anderson:
So it's an answer to your question and that is why we want the instrument to be conducted fairly quickly because we don't want some kid sitting in jail fretting when his dad is going to show up to talk to him sternly. He would then decide that the easy way out is one that both his father and the state would be upset about. Or he might wonder if his dad or mom is even going to show up.

Assemblywoman Gerhardt:
That is correct.

Chairman Anderson:
Does the Committee have any other concerns they wished to be discussed? I think it is an important piece of legislation.

Now we will discuss Assembly Bill 71 which brings up the problems in common interest communities.

Assembly Bill 71: Requires association of common-interest community to provide copy of declaration of covenants, conditions and restrictions to unit's owner upon request. (BDR 10-441)

Allison Combs:
The work session document (Exhibit B) contains A.B. 71 on page 6. This is a bill that requires the association of a common-interest community to provide copies of the declaration of covenants, conditions and restrictions [CC&Rs] to a unit owner upon request. The association is authorized to charge for copying of not more than $0.25 per page. There was a proposed amendment on this bill which is included on page 23 to extend this $0.25 maximum copying fee to another statute in NRS 116 which deals with the documents available for the resale of a unit. As you can see on page 23, the language similar to A.B. 71 is inserted in the middle of the paragraph.

There was also some discussion among the Committee of the time frame in which to provide these documents. Under NRS 116.4101 that deals with resale units, there is a requirement that the association provide those documents within a ten-day time frame. I just noted that on the document that there was some discussion of the general time for associations to provide documents requested by unit owners.

Chairman Anderson:
Assembly Bill 71 has presented some additional problems since our initial hearing. I thought we had done a pretty good job of advertising but apparently there have been some additional statements that have come forward recently relative to this. So I'm going to bring up the fact we are not having testimony on the bill. However, since this is not a noted piece of legislation, we are precluded from doing certain kinds of things on it. In looking at our agenda for the day, you will note at the bottom "matters continued from a previous meeting," so we can hear some information only if it concerns amendments or suggested amendments. The CC&Rs questions are always difficult to deal with because there are always those who maintain they wished they had known. As Chairman, it always causes me concern. I have asked Mr. [Michael] Trudell [Caughlin Ranch Homeowners Association] to appear here today and specifically share your concerns with the Committee. I felt your expertise with the Caughlin Ranch Homeowners Association would be helpful to the Committee. Mr. Trudell, let me indicate that this is not new testimony on the bill.

Michael Trudell, Manager, Caughlin Ranch Homeowners Association:
I have been a manager of a homeowners association for 15 years. Caughlin Ranch is one of the larger ones in northern Nevada. The issue is that the homeowners association in subsection 2 of the amendment, which is NRS 116.4109 [page 23 of Exhibit B], is required to furnish within 10 days the information necessary to comply with subsection 1 to the unit owner's responsibility to provide that information in subsections (a), (b), (c), and (d) to the purchaser. The bottom line is 95 percent or even higher of those cases, it is

not the unit's owner that makes the request but the title company that makes the request. It seems the problem with the current procedure is that there are no current restrictions on title companies and how they request the information. In most instances, we have less than 72 hours to provide the information when the law provides for 10 days. In some instances, there is a rush order placed on the close of escrow and I'm not sure that satisfies the intent of the law to provide accurate information to the purchaser.

Chairman Anderson:
Please note for the record that Assemblyman [Chad] Christensen is in attendance. In the original bill we heard testimony that it was not just the unit owner trying to get the information. So what you are suggesting is that we should amend so it is for ten days regardless whether it is from the unit owner or from a title company? You feel we need to be more specific and that it's not the unit owner who is requesting these copies. That is the extent of what you feel needs to be taken care of in the bill?

Michael Trudell:
Yes, sir.

Assemblyman Oceguera:
In the work session document (Exhibit B), it is noted there is no opposition. However, I did get a few emails in the last few days voicing some opposition to the bill concerning some issues, not necessarily the $0.25 copy fee but what they actually put into the work—the hours, the liability, and the insurance. I don't think there was an issue providing copies of the CC&Rs. From my perspective, I would just like a little more information. Since there are people here who say this doesn't work for them, I would like to hear that.

Chairman Anderson:
Then they should have showed up. As Mr. Trudell is suggesting, the association has ten days to respond after receiving the unit owner's request. If we broaden it some way that it includes not just the unit owner but title companies and realtors, the bill would not be so narrow. When people decide to sell their unit and they thought they had this document already in their possession, do you have a problem if the potential length of time is extended?

Jim Nadeau, Legislative Advocate, representing Nevada Association of Realtors:
I just want to make sure I understand the concern. Is the concern that the statute says the "unit owner," and they would like it expanded to the "unit owner or his representative?" The statute says "unit owner" so if the title company requests the copies, they are not the unit owner so their request should be complied with in a shorter period of time?

Chairman Anderson:
It is my understanding that Mr. Trudell's concern is they often receive requests because it is the close of escrow and suddenly they need a particular document. It is not the unit owner that is upset because they do not have the document readily available. Are these your concerns, Mr. Trudell?

Michael Trudell:
Yes, it is the representatives of the unit's owner that either come to the office or make a fax request to the homeowner's association. A lot of times they state this is a rush because they are going to close escrow this afternoon at 2:00 and we need this information now.

Chairman Anderson:
If I was selling a piece of property and I had it down to the final wire with the buyer waiting to close escrow, I'd sure want it completed expeditiously. I would not want to wait for the homeowner's association because it was lunchtime. I would think most homeowner's associations are fairly stable.

Michael Trudell:
Subsection 1, paragraph (d) [of NRS 116.4109] says that the unit's owner must provide a statement of any unsatisfied judgment or pending litigations against the association and the status of any pending legal actions related to the common-interest community of which the unit's owner has actual knowledge. In many instances, we have improvement agreements recorded on these properties with unfinished improvements. So sometimes we need to go out to the site to make an inspection of the property before we can properly disclose that information that is required in subsection 1, paragraph (d).

We wish the title companies would give us a minimum of 72 hours to provide that information accurately. Also, we would like the title companies to be required to provide that information to the purchaser when it is provided by the association.

Rocky Finseth, Legislative Advocate, representing Nevada Association of Realtors; and Nevada Land Title Association:
The title companies really act as the facilitator in many instances for the transactions. If I am understanding what the proposed amendment is in terms of expanding the scope of NRS 116.4109 (2) to not only to the unit owners but their agents or designated agents, I think it goes back to legal counsel in terms of the scope of [NRS] 116 which deals with the responsibility of the unit owner as opposed to designated agents.

Chairman Anderson:
So then the minimum question that is clearly there in front of us is the 72-hour question. Some of these things can be done as it is a simple thing. It is like the auction question, if we say you can do it in 10 days and you do it in 9 days and 12 hours, or could you do it now? It depends upon how they prioritize their work and now somebody is asking them to put their paperwork at the top of the list. We often hear that discussion on a wide variety of issues here. It can be done in 10 minutes, but if given 72 hours, they can still go to lunch and that is a concern for me.

Michael Trudell:
It is not a matter in my mind that we are not putting them on a high enough priority because homeowners' associations do have board meetings and other items that we attend to. We usually have limited staff to be able to do these things. We have a really good working relationship with most of the title companies. This is an area of business where the realtors are very professional and most of the escrow officers are very professional and we have a very good working relationship. But because there is nothing in law that restricts a title company, we have had problems with certain title companies and certain escrow officers. That's where the rub is. Most of the title companies are very responsible. Most of the title companies have a good working relationship with us. The bottom line is there is no reference to any other entity in this section so when we do pass on information to a prospective buyer and it is ignored, it becomes the purchaser's liability.

Assemblywoman Buckley:
I think we are getting off the original intent of the bill which I was in favor of. When you're closing, you're always going to have title companies wanting it to move quicker. If you can get it done in 72 hours, that is great. If you can't, you can't. They are always going to want to close fast. That's all they're trying to do. I don't think we should muck up this bill with the issue of title companies.

Alisa Vyenielo, Co-Chair, Cameo Committee; and President and Owner, Real Properties Management Group:
I support the bill fully as it was originally written. I do have concerns with the amendment. My concern with the amendment goes beyond the copying process. I think it is extremely reasonable to charge $0.25 a page for CC&Rs, by-laws, rules and regulations, financial statements, and reserve studies. That is simply a matter of someone at a copy machine producing those documents. That is more than reasonable. In fact, as a company, we offer them free of charge on our website.

[Alisa Vyenielo, continued.] My concern goes to NRS 116.4109, subsections (b) and (d). They are part of what the realtors are asking to charge $0.25 a page for. Subsection (b) is basically a current law asking to produce a statement of what is owed on the owner's account as well as any pending litigation on the property. That is not a matter of standing at a copy machine and making a copy. It takes personnel and staff. Subsection (b) takes accounting staff to pull up the account and fill out a questionnaire for the title company as far as how much the monthly dues are, what is owed in violation on the properties, and there can be other questions. It is not a matter of reproduction.

Subsection (d) is the unsatisfied judgment in pending litigation. It is also a matter that takes research and update on the property manager's behalf. As we all know, one of the biggest litigation issues going on now is the proper disclosure of information and that is extremely important. It just doesn't come down to $0.25 a page.

Chairman Anderson:
Were you here for the original testimony on why this bill was necessary and why Assemblyman [Chad] Christensen felt this was an important issue?

Alisa Vyenielo:
I was not actually present but I did hear about the testimony and I do fully support the bill. I do think it is very reasonable to charge $0.25 for CC&Rs.

Chairman Anderson:
So you have no additional information to add other than your objections to the existing law?

Alisa Vyenielo:
Just the existing law with the language the realtors are using goes beyond the copying process, because it is talking about what you have to provide to a purchaser before the contract becomes binding. Those items are currently set out in an NRS. But now the board of realtors is trying to tell us how much we are going to charge for those items. Those items are beyond copying. Those are my issues.

Chairman Anderson:
Mr. Oceguera, you indicated to me that you had some concerns about what was going to be happening with this bill and there might be a necessity to open it up to a completely new hearing for additional information.

Assemblyman Oceguera:
No, I think we have heard the information we needed to hear.

Chairman Anderson:
These are the choices in front of the Committee. We can pass the bill as it was originally presented to us without amendment. We can modify the bill in some meaningful fashion to reflect the concerns of Mr. Trudell and others to provide copies within ten days after request. The association may charge the owner a fee of actual costs. We can further amend the bill as suggested by the association of realtors.

Assemblyman Conklin:
I feel compelled to tell you where I am at on this bill. I am in support of the bill pre-amendment. I understand the opposition to the proposed amendment, but I would like to point out that most homeowners association charge a fee and that fee goes to pay staff to keep records, etc. We are only talking about $0.25 per page for those pages being copied. I understand somebody may have to do a little research but they are being paid by the association to do that research in the first place. I can go without the amendment but I could also go with this amendment. It is the pleasure of the chair.

Chairman Anderson:
I'm concerned about the issue that the homeowner's association management has brought to us. Some are ready documents that should be there right in front of them. There are a few issues which I think Mr. Trudell clearly illustrated to us which the folks from the Cameo Committee also reinforced. These issues are some of these processes that require more than just walking to the file cabinet, picking up the file, and walking over to the copy machine. I think that is one of the concerns of the Committee. So maybe we need to take a harder look at this and come up with some better choices if we can delineate which kind of things would fit under the $0.25 charge, rather than everything like unsatisfied judgments and kitchen remodels.

Jim Nadeau:
I think the ten days is a concern for all records including the ones they may have to do some research. That was one of our concerns there. Additionally, there are homeowners' association fees that every homeowner has to pay which typically underwrites the cost of the management of that association.

Chairman Anderson:
I guess we could put a 72-hour window on a couple of these.

Assemblywoman Buckley:
I will support any motion that is made. I like the bill and I'm fine with the amendment as well. I feel like homeowners do pay association fees which support the operation. I also believe that copies of the declaration, the monthly assessment, and the current operating budget are already done. They are not requiring them to go out and do a budget as they already have a budget. The only one they may not have ready is a statement of judgments or pending legal actions and I would submit that there shouldn't be too many of them. All they have to do is write them down on a piece of paper. I don't see why it takes a lot of research and you should know if you have been sued or not. Either way, I think it's a good bill and a good amendment and I'll support either one of them.

Assemblyman Oceguera:
I would agree in part with Ms. Buckley. I think those folks don't have a problem making those copies at any time of the CC&Rs for $0.25. The issue might be five years from now you go to sell the home and you ask for all those documents again. I hope they are not asking you to pay an exorbitant amount for some of the documents that wouldn't be easily copied. I would be in favor of the bill without the amendment.

Chairman Anderson:
The telling part is the realtors that are opposed to the amendment. That is, the addition of identifying everything in [NRS 116.4109,] subsections 1(a), (b), (c) and (d). The original bill delineated those things that were more commonly held in the filing cabinet and were readily accessible. I still don't think we have addressed the concerns by Mr. Trudell of the well-disciplined nature of the title companies and I'm not sure we can do so in this particular piece of legislation. I don't want to speak for Assemblyman Christensen, but other people who are trying to sell their property need an opportunity and a level of expectation that these things are readily available to them at a reasonable cost. And $0.25 a page is a reasonable cost. Like Mr. Oceguera I'm more inclined to the original bill than to the amendment. But I will take a motion to see what flies if that is the will of the body.

> ASSEMBLYMAN MABEY MOVED TO DO PASS THE ORIGINAL ASSEMBLY BILL 71.
>
> ASSEMBLYMAN MORTENSON SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Mr. Holcomb was not present for the vote.)

Chairman Anderson:
Assemblyman Christensen will present his own bill and Assemblyman Mabey can be his backup on behalf of the Committee. [The meeting was adjourned at 10:06 a.m.]

RESPECTFULLY SUBMITTED:

_____
Carole Snider
Committee Attaché

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: **JUDICIARY**

Date: **MARCH 3, 2005** **Time of Meeting:** **8:08 A.M.**

Bill #	Exhibit ID	Witness	Dept.	Description
	B		LCB	Work Session Document