

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

**Seventy-Third Session  
April 4, 2005**

The Committee on Judiciary was called to order at 8:19 a.m., on Monday, April 4, 2005. Chairman William Horne 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. 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:**

Mr. Bernie Anderson, Chairman (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Heidi Gansert, Assembly District No. 25 Washoe  
County (part)  
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1  
Clark County (part)

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Angelique Clark, Trustee, United States Bankruptcy Court, Northern Nevada  
Bridget Robb Peck, Attorney at Law, Beesley, Peck and Matteoni, LTD., Reno, Nevada  
Barry Solomon, Trustee, United States Bankruptcy Court, Northern Nevada  
Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada  
Philip Goldstein, Private Citizen, Las Vegas, Nevada  
David Olshan, Managing Attorney, Nevada Fair Housing Center  
William Voy, District Judge, Family Division, Nevada Eighth Judicial District Court  
Ben Graham, Legislative Representative, Nevada District Attorneys Association  
Teresa Lowry, Chief Deputy District Attorney, Juvenile Division, Clark County District Attorney's Office, Nevada  
Kirby Burgess, Director, Clark County Juvenile Justice Services  
Robert McLellan, Deputy Administrator, Juvenile Services, Division of Child and Family Services, Nevada Department of Human Resources  
Gary Peck, Executive Director, Nevada American Civil Liberties Union  
James Jackson, Legislative Advocate, representing Nevada Attorneys for Criminal Justice  
Jim Nadeau, Government Affairs Director, Nevada Association of Realtors, Reno, Nevada  
Jon Sasser, Legislative Advocate, representing Washoe County Senior Law Project, Reno, Nevada  
Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Nevada  
Gil Shannon, Sergeant, Vice Section, Las Vegas Metropolitan Police Department, Nevada  
Don Fieselman, Detective, Vice Section, Las Vegas Metropolitan Police Department, Nevada  
Lucille Lusk, Chairman, Nevada Concerned Citizens, Las Vegas, Nevada

**Chairman Horne:**

[Called the meeting to order and roll called.]

**Assembly Bill 428: Makes various changes relating to property that is exempt from execution by creditors and revises certain provisions relating to homestead exemption. (BDR 2-966)**

**Assemblywoman Heidi Gansert, Assembly District No. 25 Washoe County, (part):**

[Read from prepared testimony.] With me I have Angie Clark who is a United States Panel Bankruptcy Trustee. She asked me to introduce this bill. I'll give you a brief review of what the bill is and then I'll turn it over to Angie.

I am pleased to appear before you today as sponsor of A.B. 428. Assembly Bill 428 does two things. It amends provisions of *Nevada Revised Statutes* relating to property that is exempt from execution by creditors, as well as revises the requirements for obtaining a homestead exemption. Assembly Bill 428, among other things, revises the property exemption from execution as follows:

It requires that if you are exempting a homestead or mobile home, you are required to have resided there for at least 180 days before entry of judgment against you, or before you filed a petition in bankruptcy.

- It requires money held in a retirement arrangement, employee pension plan, cash or deferred arrangement or a trust, must be held in the arrangement for at least 180 days before the judgment also, or before you file petition in bankruptcy, and the money is held in the arrangement for not less than one year after judgment is entered or the petition is filed.
- It decreases the amount of the exemption for a vehicle from \$15,000 to \$10,000 and provides the vehicle must be in operable condition.
- It allows payments received as compensation for personal injury to be exempt if you've not discharged a debt which was incurred to treat, correct, or repair the personal injury or the property related to the personal injury, including debts for medical and legal services.

- [Heidi Gansert, continued.] Expands the property exempt from execution to include keepsakes not exceeding \$100 in value, computer systems and related equipment not exceeding \$500 in value, and judgment debtors who are jointly liable on a judgment may apply his exemption to his choice of vehicle, provided more than one exemption is not applied to the same vehicle.
- Revises the definition of homestead by clarifying that it must be a contiguous quantity of land that is used solely as the location of the dwelling house and its appurtenances, together with the dwelling house.
- Requires the revisions to be provided in the content of the notice of the execution that is served upon the judgment debtor pursuant to statute.

Angie Clark requested this because there have been some problems as far as bankruptcies and so I am going to go ahead and turn it over to her.

**Angelique Clark, Trustee, United States Bankruptcy Court, Northern Nevada:**

This was a cooperative by all parties that administer the laws that you've enacted in your last Legislative Body. We are requesting these changes.

We will be addressing the issues that we've presented in this bill but we will also, and we were advised, that we should have a war chest to give you examples as to the abuses that are taking place within the bankruptcy community based on these exemption laws.

This was an effort of the bankruptcy community to bring to your attention issues we believe need to be fine-tuned within the law that was passed last year.

We are not intending to change the intent of the law that was passed. We're asking for fine-tuning to close up those loopholes that have allowed parties to create abuse, mainly the wealthy parties. Our law will not change that of the honest debtor. The honest debtor will still fit within the confines of the law, but we're trying to close up those areas that we have found have been abused, time and time again on a daily basis, through our case administration.

There are in excess of 4,000 cases filed in northern Nevada bankruptcy courts every year. The parties here today administer 75 percent of those cases. We are speaking from experience. We are not a special interest but an overall party requesting permission to provide information to you as to what we see when we're administering those cases.

[Angelique Clark, continued.] We are speaking out of 80 years of experience collectively. We are asking that the law be changed for the majority of the cases and not the few isolated incidences that occur.

In meeting with Senator Raggio we were provided with two large books and I've read the legislative history on the exemption laws. The one thing that we noticed is that there were no safeguards or limitations to protect the honest debtor and hinder and delay those parties who are abusing the systems.

When I first read the title of the bill that was being presented here today, I was concerned that it might be a little bit misleading. We are here to fine-tune and clarify the points. We are open to suggestions and would like to request, if possible, and I do not know if this is out of the ordinary, the title of the bill be changed to show that it is for fine-tuning and clarification, more so than for formal or substance alteration. I don't know if that's a possibility or not, Sir.

**Chairman Horne:**  
Not particularly.

**Angelique Clark:**  
We're stuck with the title?

**Chairman Horne:**  
Yes, you're going to have to get that explanation out there in your testimony, and if it happens to make it to the Floor, there too. Make your pitch then.

**Angelique Clark:**  
In speaking with other distinguished members of your Assembly, and the Senate, we were told to bring a war chest of stories to explain to you why we're here today and the abuses we've seen within the bankruptcy community. There were so many of them but we knew that we had to limit our time here today.

I've taken the opportunity to write a few of them out so that you could see the abuses that we are seeing. Not on a periodic basis, but on a daily basis through our administration.

In the Wayne Newton case there were large quantities of memorabilia that was cataloged and claimed under the keepsake exemption and the collection exemption. As you know, there is no limit on that collection. Therefore, the creditors were harmed countless tens of thousands of dollars. I wish I could say that this was a one-time issue, but on the keepsake issue, since there is no limitation, we are finding now that attorneys are placing anything that is of

value that will not fit in another exemption, into that keepsake or collection format.

[Angelique Clark, continued.] We put the amount of \$100. It has been brought to my attention today that \$100 may be low. We're open to change; we're open to a higher amount. For example, if the parties have a pearl ring or a diamond ring from a mother, we have no problem with that. We just believe that it should be designated as an heirloom and be something that is passed down. Under the keepsakes and collectibles format, we've had numerous parties claim works of art as collections to the detriment of the creditors.

Another problem that we have is the unlimited amount on guns. We believe that an amount should be placed on those guns. We've given suggestions but we're open to any reviews that the Committee may find. We have assault rifles valued from \$1,000 to \$3,000. We have guns from the Civil War that are not used for the protection of the home but placed on a mantle as a display. I could go on and on, but those are just a few of the small cases that we have.

One of our biggest abuses right now is vehicle exemptions. With the increase of the vehicles to \$30,000, we have found that parties can stack these exemptions. We have them stacking exemptions and claiming Hummers and Suburbans and luxury items as exempt, while the vehicles that they actually drive to and from work are over-encumbered and have very small amounts which would fall under our administration guidelines. We're asking that it be defined that the vehicles being used as their exemption are for the purpose of transportation to and from work.

The majority of the debtors that need the benefits provided by bankruptcy do not drive \$30,000 vehicles that they own free and clear; they drive a Taurus or Explorers and they usually have a loan on them that falls well within the exemption. We knocked that down to protect the stacking of exemptions but, again, are open to suggestions. I believe that was the only one that we asked to be decreased.

For example, I had a situation where a debtor claimed a Quad [all-terrain vehicle] as their vehicle since their other vehicles were encumbered. Our court, the Bankruptcy Court, ruled that it was an abuse, that the vehicle should be used for transportation to and from work and not for off-road recreational vehicles for the debtor's enjoyment. The case was taken up to the BAP [bankruptcy appellate panel], wherein issues in bankruptcy that have been decided, if a party disagrees, can take it up. One of the judges on the BAP stated, "Given Nevada exemption law, you can have a gold-plated golf cart and claim it exempt under the *Nevada Revised Statutes*." In this particular case the debtor had three other

vehicles that had minimal excess equity so they used that exemption for this recreational vehicle.

[Angelique Clark, continued.] In another case, I had a party claim a \$25,000 exemption on a Harley Davidson motorcycle. Testimony was given at the hearings that the motorcycle remained in his garage and was only used for special excursions, but because of the exemption statute that exemption was allowed, and we could not set it aside.

In another format we had a debtor claim a skip loader. When we lost the appeal at the BAP as to what defined a vehicle, he would have been allowed the exemption of the skip loader since the exemption is now \$30,000, and where a wife and a husband can both stack their exemptions, he was allowed to take a skip loader as an exemption.

In another case we had a sailboat that was claimed as exempt.

**Assemblywoman Buckley:**

What I'm most curious about is your horror stories don't match the bill. For example, if we go to the vehicle section, we chose \$15,000 last session because \$10,000 did not seem to keep up with inflation. If you want to get at Hummers and skip loaders why don't you just request that recreational vehicles not be allowed to be utilized under the vehicle exemption?

The way it is right now, you're also getting at Hondas or brand new Tauruses or year-old Tauruses. That's my question on almost everything you say. The same with the keepsakes; if you want to try to get at entertainers and paintings worth over a certain amount of dollars, or keepsakes of a certain nature, I think you should try to say that. The way it is right now, keepsakes over \$100, you're also getting at someone who is declaring a medical bankruptcy for circumstances beyond their control, and wants to keep something passed down from their mother and father.

I have no problem getting at abuses, which I think we should, but I think you're painting a really, really broad brush and I don't think the bill in each circumstance is drafted very well. I think it gets at everybody, including someone who's just in debt over their head beyond their control.

**Bridget Robb Peck, Attorney at Law, Beesley, Peck and Matteoni, LTD., Reno, Nevada:**

I've practiced bankruptcy law for about 17 years in Nevada. I have practiced for debtors and creditors, so I've seen the application of this law from both sides.

[Bridget Robb Peck, continued.] To address the first part of your question with regard to the definition of a vehicle, with due respect, I believe that issue has been dealt with in the bill draft. If you'll turn to page 9 of the bill draft, paragraph 6, I believe that section of the bill draft does attempt to tighten up the definition of "vehicle."

**Assemblywoman Buckley:**

Then why do you need to get at the amount on page 2? If the story is people are declaring off-road vehicles, then why are you trying to limit the amount of vehicles? Who has a car that was used to go to and from work at \$10,000? You're not just getting at Hummers, you're getting at modest-priced cars as well.

**Bridget Robb Peck:**

With respect, I do. I traveled to this hearing today in a car that I've used for some time, which I booked last week just for the sake of knowing what it was worth.

**Assemblywoman Buckley:**

So do I, I have a 1997 Altima, but the point is that you're getting at vehicles valued and used by the middle class, right?

**Bridget Robb Peck:**

They are, but in most circumstances vehicles that are valued and used by the middle class do not have \$15,000 equity in them. Usually, there is a secured loan that is being paid down.

**Assemblywoman Buckley:**

I just find it beyond belief that in light of Congress passing this bankruptcy law, which makes it virtually impossible for the middle-class and lower-middle-class to file bankruptcy following a medical crisis, we're going to take a car away from them. I just find that unbelievable.

**Bridget Robb Peck:**

This particular bill draft is attempting to deal with loopholes that are currently in our law, which have caused problems with judicial decisions, and that's why we're coming back to the Legislature to try and deal with that.

I am aware of the Bankruptcy Reform Act of 2001 and wrote to Senator Harry Reid on behalf of your problem with regard to the pro bono issues that are involved in that particular bill. I do not disagree that the bill is probably a bad lie and shouldn't be enacted. Unfortunately, I think that's going to happen.

[Bridget Robb Peck, continued.] What we have here are problems that we're seeing in Nevada, rather than on a national scope. I do have my own quibbles with the draft. For example, I believe, and have discussed this with the trustees, that probably the \$100 threshold for keepsakes is too low. The honest debtor should be able to keep their mother's wedding ring and they should be able to keep their grandmother's china set. I don't think they need to keep the Hummers that they've been collecting and are collecting dust on a shelf somewhere. The distinction here is: what is a keepsake and a collectible?

A keepsake is something that is an heirloom that you aren't going to part with unless you are absolutely forced to. In this particular case, that is not what is occurring.

One of the other things that has not been discussed in this bill draft, and I would like to bring to the attention of the Assembly, is the fact that there are abuses that are happening with regard to pension plans.

What occurs, and believe me this is something that is not illegal, is something that is difficult to deal with. People with larger amounts of money in bank accounts, when they know they are going to be filing bankruptcy, do some bankruptcy planning, and they put that money into a qualified pension plan. As soon as they've filed bankruptcy, a Chapter 7 [*United States Code*, Title 11], which means there are no payments being made back to their creditors except for the amount of their property that the trustees gather and then can then give to creditors. Once they've received their discharge in bankruptcy, they pay the tax penalty and pull that money right out of the pension fund, and it's not there for the use that was intended, I would respectfully assert by this Body.

As I understand it, the protection for pensions was to make sure that people had the ability to carry on their life after they were unable to work any further. Unfortunately, that is not what is occurring. That's not what we're seeing in real life when these exemptions are being used.

I would stress what we have here is a circumstance where people are getting in over their heads, but these are times when people have legitimate debts that are owed to creditors. The Legislature has determined that these exemptions should be there to make sure that there's no person in Nevada that is unable to support themselves. They have a roof over their head, they have a car to be able to get to work, and they have a pension that will support them in their old age.

[Bridget Robb Peck, continued.] What should not be occurring is that someone gets a step ahead, after they have filed bankruptcy or after a judgment has been filed against them, because they've been able to abuse these exemptions.

With due respect, I believe what the bill proponent is attempting to do is simply tie up those abuses they see that have occurred.

**Angelique Clark:**

You brought up the question about medical bankruptcy. We are only seeing medical bankruptcy as 2 percent of the cases that are being filed. The majority of our cases are credit card abuse. The other portion is businesses that have failed. I'm not speaking, like I said, out of just a few isolated incidences. We have sat for many years stating that the exemption laws need to be fine-tuned. They need to be defined. They need to give clarity to what it is we're looking at.

The trustees and the bankruptcy court are spending countless hours filing objections and trying to understand the intent of the Legislature. This was a community effort. The \$100 was put in by one person. We would be more than amenable to saying that a keepsake has to be something that has been passed down year, after year, after year. We are getting golf clubs, and china that the husband gave to the wife; it is phenomenal. The abuses are greater than those that are claiming the legitimate exemptions for a keepsake or a collectible item. They are far more the rule of thumb than the other.

With regard to homesteads ...

**Chairman Horne:**

Since the Majority Leader opened it up for questions, I think that's good, to throw it out there. You have in here that you provide for personal injury compensation as well.

**Angelique Clark:**

Correct.

**Chairman Horne:**

I'm curious on how or why you would draw a distinction between personal injury compensation and life insurance policy amounts. Currently in law, there is an exemption for proceeds from policies of life insurance.

**Angelique Clark:**

I'm sorry. I did not believe that life insurance policies were in there. The only thing we were trying to address is the fact that within the new

\$16,500 exemption for personal injury suits, the parties are filing bankruptcy, discharging the debt to the medical providers and walking out with windfalls. Most personal injury suits are based on what the medical bills are, and yet the medical bills are not being paid for. We're only asking that the law be defined to state that those medical bills are not removed and that they have to be paid through the bankruptcy, or whatever means is provided. To the extent that they do discharge them, they need to come into the bankruptcy so that those providers can be paid those monetary amounts.

**Chairman Horne:**

Aren't medical bills paid for from life insurance policies?

**Bridget Robb Peck:**

The reason the life insurance policies have not been dealt with in this particular exemption bill draft is because they didn't exist in the previous law. This is attempting to clear up the problems that exist with the current law, as opposed to trying to expand things. Since the life insurance issue was not previously addressed, it was not addressed at this point.

**Chairman Horne:**

I'm looking on page 2, line 20. One of the exemptions has proceeds from a policy of life insurance.

**Bridget Robb Peck:**

The proceeds from the policy of life insurance, generally, do not go to pay off medical bills.

**Chairman Horne:**

I think that's where we have the difference. In my experience with the passing of my loved ones, we've used it to pay off medical bills.

**Bridget Robb Peck:**

You've used it, but the hospital is not the beneficiary. Do you understand what I'm saying?

**Angelique Clark:**

Those usually are not addressed within a bankruptcy forum. We only made the changes with regard to bankruptcy administration of cases; therefore, we did not change that, we left it the same.

**Barry Solomon, Trustee, United States Bankruptcy Court, Northern Nevada:**

If a debtor is deceased, he still has the right to his discharge. I've had numerous cases where the debtor has filed bankruptcy and passed away pending the

bankruptcy. The estate of the debtor still gets the benefit of the bankruptcy, and the discharge of all the debts. So, there would be really no reason for the deceased's estate to even pay the medical bills because they've been discharged.

**Chairman Horne:**

So, if that same decedent had personal injury compensation proceeds, you're saying that's different because that money is being used to pay off, or often isn't used to pay off their medical care and the like, but it's not being used for that?

**Barry Solomon:**

That's correct. They are not using that money to pay off the medical bills. That's really the problem and that's what I wanted to talk about today, the personal injury claims, because I have a number of cases going on right now, with this problem. The situation is—and I think it's amplified by what we just discussed with respect to somebody dying—the debtor, assuming he isn't dying, walks away and doesn't pay any of his bills. We're the ones that deal with all the creditors calling wanting to know, "Well, how come he's getting the \$16,000 and we don't get our money?" One of the problems we're dealing with is from the creditors' standpoint, they don't understand why they provided the medical services to the debtor, and they have no right to repay.

That's why we wanted to clarify in this bill that says if you're not going to discharge monies from medical services that were provided to you during this personal injury claim to all the medical bills ... That's where the problem is.

**Angelique Clark:**

The other issue we have is homestead exemptions. We believe that the debtors are entitled to homesteads. If I haven't told you, bankruptcy court is a court of equity. We do not represent the debtors; we do not represent the creditors; we represent the estates.

Here are a few examples that we've seen recently. One particular debtor had a very large piece of undeveloped real estate. In order to take advantage of the homestead exemptions, he purchased a travel trailer and moved the travel trailer onto the vacant land right in the middle. He lived there within days of filing bankruptcy so he could claim a homestead exemption on it. We have every reason to believe that after the bankruptcy is closed, he will move off and sell the property for profit.

I had one just recently that liquidated numerous properties that could have gone to pay his debt. He put it into a retirement plan. We know that he had every

intention—and we can't prove it—as time goes on, of removing those funds and putting them back into his investments.

[Angelique Clark, continued.] We're seeing that the wealthy are using the exemptions as a form of getting ahead, and financial planning. The only thing we're asking through the law, and it was very hard to draft this, is that we close up those loopholes. We're willing to work with the Committee. We're not here to change the intent of your law, but to refine and clarify it, and close up those loopholes.

The honest debtor is usually going through a bankruptcy in the method that it was intended, but we're seeing a lot more abuse of the system and using it for financial profit to eliminate their debt, get fresh new starts, and go on. It's the wealthy debtors that are benefiting from these loopholes, and we are seeing more and more of them filing bankruptcy.

This is having an effect on our community. The owners of businesses call us on a daily basis saying, "This isn't fair, I gave these people my product, and I gave these people my services. I know that they have these large assets and they're liquidating them and putting them into exempt assets. Then they're turning around, after the fact, and liquidating them, and they're right back where they started."

The bankruptcy is to give the honest debtor a fair start, not to allow the wealthy to save and protect their assets.

The Supreme Court has passed a ruling, and I will let Ms. Peck address this since she's an attorney, where bankruptcy planning is not only allowed but it is encouraged. Attorneys can be held at risk if they do not advise their clients to do this. You no longer have the debtors out there deciding, "Well, this is what I want to keep." You have attorneys advising them that they have to take advantage of these exemptions. They're telling them what the loopholes are. They are showing them how to implement them. At this point, I'll turn it over to Ms. Peck to address that.

**Bridget Robb Peck:**

Representing individual debtors, as opposed to companies that file bankruptcy, is now to the point where the state of the law is, if you do not tell your debtor how to maximize his exemptions you could be liable for malpractice. That means all of the things that we've told you about liquidating assets that may not be exempt, and putting them into a pension to be drawn after the discharge is obtained. Also, liquidating assets and putting them into a homestead, to then be drawn down after a discharge is obtained.

[Bridget Robb Peck, continued.] All of those are things that attorneys are now required to tell the debtors how to accomplish, so they can maximize their exemptions. Most of these exemptions are at a limit where they are not available to the normal debtor. That is what we're coming here today to try and stress. Some of these exemptions are very, very generous. Notwithstanding the Bankruptcy Reform Act that is pending in Congress right now, these exemptions are things that we have to deal with on the state level. It doesn't just occur in bankruptcy, it also occurs when we're talking about collections in a state court action.

The only time these exemptions come into play is when a bankruptcy has been filed, which is a voluntary act on behalf of the debtor, or at a time when a judgment has been awarded by a court of competent jurisdiction here in Nevada, and the judgment debtor has been determined to owe money to a creditor. So, this isn't something where people can just come in off the street and try and take someone's property away. There's already been some kind of due process that's awarded to the debtor at the time these exemptions come into play.

**Angelique Clark:**

Since we see both the small businesses and the debtors coming to our area, we believe that each party should get a fair shake; the small business as well as the debtor. Many of these small businesses, when unable to collect a debt for the product they've turned over will go to the district court and obtain a judgment. They will follow the course and hire attorneys, and pay the cost to do everything they can to collect. In the meantime, the debtor will file bankruptcy. We are then saying that all of your efforts have been in vain, and you're no longer going to be paid these funds.

As you well know, the majority of the bankruptcy cases produce no funds for the creditors. They are now coming to us saying, "This isn't fair, our side isn't being heard, we're not receiving our benefits." They don't say it on the small cases, but given the substantial abuse, they are now coming to us more and more and saying that they are being damaged because we are not properly administering the cases.

We explain to them the exemption laws and how they have been able to protect it. They don't understand what our statements are to them, so we've opted to come to you and ask for you to change these laws and close these loopholes so this abuse no longer takes place, and our businesses can be assured that they will get the same fair treatment as the debtors.

**Chairman Horne:**

On the IRAs (individual retirement accounts), you're making changes there too? It seems to me that people who are filing bankruptcy, generally, aren't making contributions to IRAs, they're cash strapped.

**Barry Solomon:**

You'd be amazed how many IRAs we get in bankruptcy. You have to remember that the government has been pushing the IRAs for sometime. In terms of a tax-planning tool, in order to save money on their annual tax filings, people are contributing to IRAs and we do get them.

**Chairman Horne:**

What if contributions are made by employers instead of employees? In those scenarios the debtor is not trying to necessarily hide money. It seems like that's encompassed in this.

**Bridget Robb Peck:**

I don't believe it is. This change encompasses a look-back for six months so that you aren't able to, six months before you file bankruptcy, take a large amount of cash and plop it into some kind of qualified pension plan. However, the normal circumstance, and what I think everyone thinks about when you think about a pension plan, is something that's been accrued over time, not just the six months prior to bankruptcy. The corporate contributions, for example a 401(k) match or something like that, where a corporation is funding on behalf of a debtor in bankruptcy. That's something that you're going to be able to take a look at and say, that's not going to be a problem.

Also, your normal debtor who has a pension plan isn't doing this type of bankruptcy planning that is a problem. That money is going to remain in the pension plan for more than a year after the bankruptcy has been filed, and after that debtor has received a discharge. That's going to be, in the normal course of affairs, handled the way it ought to be, and that is going to remain unchanged.

**Chairman Horne:**

If someone cashes out one of their retirement plans, isn't that now a nondischargeable tax obligation?

**Bridget Robb Peck:**

The tax obligation would be nondischargeable, I believe. However, that is a small percentage of the amount that would be put into the pension plan. So, a debtor can choose to place, for example, \$200,000 in a pension plan, park it there before they file bankruptcy, then remove it after they've received their discharge with the idea they are going to take whatever that penalty is. That is

better, in their mind, than turning that money over so it can satisfy creditors. That's what's occurring right now. They are making the choice to pay the penalty for the taxes because that still gives them more in their pocket, in the long run, than they would have had if they turned the money over to a trustee, the way the bankruptcy system is supposed to work, so that creditors can be paid some small percentage of the amount that is owed.

**Angelique Clark:**

Most of the employers are in ERISA [Employee Retirement Income Security Act of 1974] plans, which are qualified. The Supreme Court of the United States has ruled that ERISA plans never become property of the estate. Those are not at issue here. They would never come under our administration to begin with. Most employers have set the money under these plans through their insurance provider, so we're not addressing those issues. Those would be your standard employee accounts that they go through. The self-funded or the IRAs, where they put them in at their local bank, would be affected the most.

**Assemblyman Carpenter:**

Why are you reducing the value of a vehicle?

**Angelique Clark:**

We're open to increase that, we really are. At the time, I was trying to figure out a way to stop skip loaders, sailboats, and gold-plated golf carts from becoming exempt. The thought was that if you only had \$10,000 per person, you couldn't do that. If you take the exemption back up to \$15,000 and you do not allow stacking, that problem would be solved. We have no problem with the debtor having the \$15,000 in the car, as long as they don't stack two together to obtain a \$30,000 exemption, and then apply it to one vehicle.

**Assemblyman Horne:**

Mr. Carpenter, Ms. Buckley covered that and held them to task on that very issue. As soon as the Committee starts working on this we'll address that very issue.

**Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:**

With respect to A.B. 428, we were supporting the concepts of A.B. 428, it's the other two. You have three homestead exemption type bills here in front of you, and the issue has been well covered. It's a good faith issue and it's the notion, as expressed in A.B. 428, that bankruptcy as a means of financial planning has become popular in some quarters. The idea that these things had to have occurred more than 6 months prior to filing bankruptcy in order to use makes a lot of sense, particularly, when taken in light of the other two bills that

increase the homestead exemption, so you start stacking these things. You can exclude some fairly significant amounts of money from your creditors so that life after bankruptcy can be very good because you don't owe anybody any money, and you still have a rather large estate because you took advantage of the current situation. That was our reason for supporting this bill.

[Bill Uffelman, continued.] The amounts are the policy of the Legislature, but it's the idea that you can plan right up to the last day how you're going to maximize your estate after it's done, as opposed to the good faith effort of trying to pay off your creditors.

**Chairman Horne:**

That was Mr. Uffelman in favor of the bill. Anyone in opposition to the bill?

**Philip Goldstein, Private Citizen, Las Vegas, Nevada:**

I don't know if your camera could check out the front half of the room to my left, but you'll notice it's empty. I'd like you to think of that as all the debtors in bankruptcies who are too embarrassed to be here.

Bankruptcy isn't something that people are planning, at least not in my experience. Yes, I will grant that there are people who plan. Yes, I will admit that there are people who move from state to state, buy property, transfer, and sell and hide assets, but guess what?: The law already covers that. Bankruptcy law allows a one-year look-back period to avoid transfers when a person seems to have suddenly hid, or placed an asset in a position that seems to be away from the creditors. The United States Trustees' Office, in addition with the bankruptcy court judges, has the power to make those reversals.

Additionally, state law has a four-year fraudulent conveyance law. The power already exists to deal with the bad guys. Yes, they are out there, but the last thing I want to see is that everybody gets punished.

Since many people are not planning bankruptcy, at least in my experience, we're finding that if you're going to put a six-month limitation on the homestead, you're assuming that things don't happen. There's a bumper sticker I'll paraphrase, that basically says, "Stuff happens."

The bottom line is someone can lose their job, someone can die, and someone can get sick after buying a house. If we want to punish them and make them feel that they've got to be in there for the first 6 months to be safe, we're not getting at the bad guys.

[Philip Goldstein, continued.] Additionally, you're looking at limiting the time people can safely put money into retirement accounts. From what I've seen, people are putting \$20, \$30, \$40, maybe \$100 a paycheck into an IRA, into a pension account. Are we now going to tell them that for the last 6 months, the savings they were trying to put in for their retirement years is no longer safe? If we're looking to get the lump-sum amount, the people who are truly planning this out, this bill isn't doing it. This bill is punishing the little guy.

My concern is that there is an assumption in our society that we look at the WorldCom and Enron scandals, and we figure out everyone else is doing it. What we don't realize is that people are going through hard times. It may not look like many of these bankruptcies are medical bankruptcies because most of the time, in my experience, the people have been using the credit cards to pay the hospital bills. Is it still a medical bankruptcy? A recent Harvard study of bankruptcies in general found that 40 percent were related to bankruptcy. Sometimes it takes just a little bit, that last straw, to push someone over the edge.

I've had clients who are actually collectors for the banks. The first thing they said to me was, "I never knew how easy it was to slip from being a have to a have not." Again, if we're looking to get the bad guys, let's get the bad guys. Let's not go after the little folks.

Frequently, I'll see a senior couple where one of the spouses passes away. The first thing that person does with their insurance money is pay off the car. Yes, it's not going to be a very expensive one but there's not much on the market for \$10,000. If the other side is worried about protecting the golf carts, I don't know the price of golf carts, but I'm sure they're less than \$10,000.

It's interesting to me that we're worried about the medical providers in this bill. Last I checked, in speaking with personal injury attorneys, there are medical liens. Doctors who provide services in face of a personal injury suit file a lien. That lien takes precedent. When there is a recovery, they get paid. If you want to start asking the Legislature and the judges and the trustees to start sorting out the medical bills, and figuring out which bill is directly related to the personal injury claims, well, if we've got the time for it I guess we'll just have to fund a lot more trustees, and a lot more judges, and a lot more legislators to go through this analysis.

Interestingly enough, if you look at the personal injury exemption as written and as interpreted, the \$16,000 exemption does not exempt pecuniary losses. It does not exempt pain and suffering. It does not exempt lost wages. The law, for what it's worth, exempts almost nothing. The only thing that can be

determined based on the federal interpretation of this exemption, which is where the state language came from, verbatim, is a bodily loss. In other words, the only true exempt amount under the law, as written today, is a lost leg, a lost arm, loss of sight, and loss of hearing. Do we really want to start taking away the \$16,000 from the individual who probably can't work anymore? Do we want to increase the welfare rolls by taking this last \$16,000? If their creditors total \$50,000 or \$100,000 in credit cards, in medical bills, and utilities and loans, and all these other expenses, how much are they really going to share? The United States Trustees' Office allows its trustees to take fees based on collected assets. Therefore, the whole \$16,000 is not all that big a number when you look at the other side.

[Philip Goldstein, continued.] Another thing that struck me as very interesting in this bill—and I actually had to look in my calendar to make sure we were in the year 2005—it attempts to remove spouses' exemptions. In other words, if the husband claims the spouse, the wife doesn't get one. I don't know about property rights, but I know that Nevada is a community-property law state. Therefore, women, equal to men, have rights to property. They are allowed to protect their property.

If this law were enacted, my interpretation is, the first spouse gets to keep their clothes, their furniture, and their household effects, and the second spouse gets nothing. I don't know if that's the goal of this bill, but like all the other provisions of this bill it seems to do more damage than assist. If we're trying to get the bad guy who's putting his money into a piece of property and putting his home on it that means he's got no other home. If we're looking for someone who's putting money into a pension account and withdrawing it as identified previously by another Assemblyman, they get fees and fines from the IRS. I think it's 10 percent based of penalty, plus the income tax missed or avoided, and so it's going to take a good 25 or 35 percent of that deposit in a tax penalty. I don't know if you want to do that to the average citizen.

What's also interesting is that we want to protect \$100 in a keepsake. That one's ludicrous. I didn't know we want to put people in barrels by making sure the last thing they have is a picture frame of grandma, and anything above that gets taken. If you want to go after Wayne Newton's collectibles, go after Wayne Newton's collectibles; don't pick on the average citizen.

I recognize that creditors are harmed. I also know that individuals can be harmed as well. What we're not looking at is the fact that the average home in Las Vegas is \$300,000. I have had seniors pay off their homes when it was worth \$100,000 and now suddenly find themselves in trouble because the home is worth more than expected. I have clients that come in with 20, 30, 90,

300, and 700 percent interest rates from creditors. Yes, 700 percent interest rates. Just as all the debtors are not guilty, not all the creditors are greedy. We have a very big problem with creditors collecting 20 to 50, and more percent, and they're getting paid back their principal.

[Philip Goldstein, continued.] My concern with this bill is it's the wrong bill for the wrong time. If we want to hurt people, this is the bill. If we want to get the bad guys, this is not the bill.

**David Olshan, Managing Attorney, Nevada Fair Housing Center:**

We are opposed to A.B. 428. The reasons articulated by Mr. Goldstein are similar to the reasons I have. We see a lot of abuses, not abuses by debtors, but by creditors charging exorbitant interest rates. I think we all can identify with solicitations, unwarranted solicitations, from credit card companies. We see excessive fees charged by credit card companies.

This isn't just a one-sided issue. Without going too far into the specific facts, we just oppose A.B. 428.

**Assemblyman Horne:**

I'm going to close the hearing on Assembly Bill 428. We will move this bill back for consideration.

**Assembly Bill 359: Revises certain provisions relating to juvenile justice.  
(BDR 5-833)**

**Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1, Clark County  
(part):**

This bill authorizes juvenile courts to impose certain penalties on a child who disobeys the terms of certain orders in the juvenile court system. With that, I would like to turn it over to Judge William Voy in Las Vegas.

**William Voy, District Judge, Family Division, Nevada Eighth Judicial District  
Court:**

Currently, if I have a kid who's on probation and over the age of 18, and they have violated the terms of their probation, I have the ability as a juvenile judge, to have them spend a little time in the Clark County Detention Center for adults. It's an attention-getting device.

Our more serious offenders who are committed to the State and then come out of their commitment on parole, the statute is silent as to parole. On one hand, I

have the ability to do that with a probationer, but I cannot do that with a parolee.

[Judge Voy, continued.] Historically, judges, and even myself, have gotten around that by interpreting the language of the statute very broadly, probably too broadly I must admit, to allow the terms to mean supervision in general, which would cover a parole status. One of the other games that is played is you're standing there, you have the 18- or 19-year-old in front of you with their counsel, and you say, "Counsel, you have a few choices: I can either recommit your client to the State and they can spend 9 months in one of the training camps, or maybe a week in the detention center, or closing the case out is the other option. What would you like to do? Would you like to waive any defects in the proceedings?"

The game's being played, and I have too much respect for the law to keep playing that game. I would like the Legislature to fix what I think was an error of omission in the first place.

The second portion of the bill would allow juvenile court judges to hold a juvenile in contempt. Nowhere else in the law that I'm aware of does the judiciary lack the ability to hold someone in contempt for failing to obey the lawful orders of the court. Without the ultimate power of contempt, the court lacks any real substance and really has no being.

Traditionally, juvenile court judges and referees have gotten around the lack of statutory authorization to hold a child in contempt by what I call, "smoke and mirrors." If a kid acts up in court and you haven't adjudicated them yet, you have the ability to pass a disposition on them. You can continue holding them in detention at that point in time and say, "You know what, why don't you come back next week when the attitude changes. In the meantime, you can sit in the detention center."

Or, I'll put a kid on probation, which is one of the worst situations. I have a kid where the first offense is shoplifting, and I want them to do some community service. In order to enforce that order, ordering them to do community service, I have to put them on formal probation, which is absurd because all I want them to do is 20 hours of community service, report back, and the case is over with. The only way I can enforce that order is to put them on probation.

Having the contempt power in place would allow the court to adjudicate the child, have them go do what you've asked them to do, have them report back, and the case is closed. The administrative burden placed on probation by having

to put kids unnecessarily on probation just to enforce orders, is self-explanatory. Mr. Kirby Burgess may testify on that in a moment.

[Judge Voy, continued.] That's essentially, in a nutshell, what this is all about. In my opinion, it's a matter of giving the court the authority, and the authority it has, which is not intended, by the way, to have some new burgeoning of holding kids in detention. As some of you may be aware, the latest out there in the juvenile justice world is this concept that use of detention is overused and that we should limit these detentions. I have, along with my colleagues here in Clark County, been spearheading that effort ever since I took over the juvenile judge position, a year and a half ago.

This has nothing whatsoever to do with any change in philosophy; quite the contrary. In my opinion, this is consistency, rule of law, and it is making sense out of statutes that have holes in them that need to be fixed. That is really the purpose behind this bill. I have here also, just so the record is clear, Teresa Lowry, who is the Deputy District Attorney for Clark County in charge of the Juvenile Division, along with Mr. Kirby Burgess from Juvenile Justice Services.

**Assemblyman Conklin:**

On the second part of this bill and the ability to offer contempt, I want to make sure that I understand clearly your intent here. Are you suggesting that under current law you have to put them under probation in order to get them to do community service? What you'd like to be able to do is use contempt as a penalty should they not follow through; therefore, you wouldn't have to put them on probation?

**Judge Voy:**

Yes. The other thing is that we also enter into in a situation where we continue the adjudication of the charge. For example, they appear in front of me and I'll take their plea on the misdemeanor. I will then continue the proceedings and not adjudicate them. In the real world that would be called sentencing, then delaying the sentence. So, they go out to do the community service, and I'm retaining my jurisdiction that way. If they fail to do the community service and they come back, I still haven't done the final adjudication, in which case the statute allows me to throw them into detention center, for example, if that's what I choose to do to enforce the order. Or, I can put them on formal probation to get the order enforced and have more supervision of the kid, to enforce what I originally ordered done. That's basically what we do to get around that right now, which is a complicated proceeding.

**Assemblyman Conklin:**

What is the downside of allowing you to use contempt of court since it's something that's not in the statute currently? Obviously, I'm going to ask your opposition this question as well.

**Judge Voy:**

The downside would be the fear that it would be used to put kids in detention unnecessarily. Just like any other tool the court has, the court can wield great power. For example, in the juvenile statute there's a provision that allows the juvenile court, and this is unheard of in the law as far as I know, at its own behest, that can modify any of its orders at any time. It's just like a naked, blanket statement in the statute.

We've obviously used that when we get in a pinch. Wanting to actually do something with a kid, and not being able to figure out how to do it, we always have that fallback provision that the court can modify its orders anytime it sees fit. That's a great power, if it's used. So, what I'm saying is I think the only downside would be the fear that this could lead to judges throwing kids in jail on contempt because they just don't like their attitude. That fear already exists, and it's been done without the power of contempt. The judicial powers can be abused no matter what you have there. This is just another tool in order to, in my opinion, be consistent with the rest of the judiciary, and a more efficient way of handling cases. In the long run, everyone benefits. I deplore the inconsistencies and the show game that we have to play sometimes to get our orders enforced.

**Chairman Horne:**

On page 2 of the bill, lines 13 through 17, "A child detained in a facility for the detention of children or imprisoned in the county jail pursuant to subsection 2 may be detained in a facility for detention of children or imprisoned in the county jail, as appropriate, until the child performs the act specified in the warrant of commitment." There's no timeframe there, it's indefinite.

**Judge Voy:**

Yes, that's basic contempt to perform the act, and when the Legislative Counsel Bureau drafted it they took standard contempt language. For example, if you've got someone that refuses to testify, you can hold him in jail until he testifies. That's the same kind of provision there. If that causes anyone heartburn it should go away because I really can't envision that ever being used. I was discussing this earlier with Ms. Teresa Lowry. If we had a kid and we wanted them to give up the name of their pimp, for example, you could technically use that if you wanted to, to be coercive. If that caused any member any kind of heartburn, I would clearly say it should drop because that's not

what we're trying to do here. It's the enforcement of the orders when we want kids to go out and do something, not to force them to testify and things like that.

**Ben Graham, Legislative Representative, Clark County District Attorney's Office:** Something that the Assemblywoman had discussed with Judge [Frances] Doherty, the open-endedness, is, I think, something that has concerned a number of us, and Judge Doherty mentioned this to Judge Voy. Initially, with regard to the number of days, it was felt by a number of people here—and I think Judge Voy would not have too much trouble with it—if, on line 9, page 1, we go to a maximum of 5 days, as opposed to 25 days. To check somebody's attitude, 5 days should do it, if it's going to work at all. That same change would then be on line 2 of page 2. Line 7 of page 2, would go from 25 to 5 days, and then the open-endedness, as Judge Voy indicated, lines 13 through 17, could appropriately be removed.

From our understanding, this will have a minimal effect with regard to the number of people involved. It just gives the judge a tool, a formalized tool with some restraint, which they haven't had.

**Assemblywoman Buckley:**

Judge Voy, when you brought up the matter of teenage prostitution, it raised a couple of questions in my mind. You said, if a court issues an order for a child to give you the name of a pimp, if the child refused, you could sentence them to jail for contempt? Is that what you were saying?

**Judge Voy:**

You could do that just like you would if you have the person refusing to testify in court, that's what that provision is; that's where they lifted it from. The standard provision is that you have to hold someone until they give up the information the court has ordered them to give up, for example. I just said you could remove that altogether. That was not what I envisioned when this was turned over to the Legislative Counsel Bureau to be drafted. They threw that one in there. That proposed subsection 3 could disappear as far as I'm concerned. Lines 13 through 17 on page 2, subsection 3, are not what we've asked to be done in this case.

**Assemblywoman Buckley:**

Going back to what this could be used for in terms of a child not following an order. In a situation like you described, where someone says, "tell me what you did," or "tell me who the pimp is," doesn't a child have the right not to testify?

**Judge Voy:**

That's what I'm saying; I have no problem with that and that's not the issue. The issue came up as to when you would use it, and Teresa Lowry and I were kicking that around earlier, because I couldn't imagine using it. Then I thought maybe you could use it in that scenario, but like I said, that's not what we want here. I'm asking for your consideration on this bill to consider the bill draft with lines 13 through 17 deleted, and we'll chalk that one up to the Legislative Counsel Bureau drafting, and not having these things reviewed by the person authoring them, which would be Assemblywoman Kirkpatrick.

**Assemblywoman Buckley:**

So you take away paragraph 3, but you still have the guts of the bill, Section 2 with the existing law with regard to "refusing an order." Is that where you're saying? An order of disposition is just if you don't do your community service. So, you're just trying to limit failure to comply with whatever dispositional order, meaning community service, fine, or whatever; is that what you're trying to do?

**Judge Voy:**

We're trying to limit to those same provisions that you would have in the provision for probation, which can be all kinds of dispositional orders. The contemptuous behavior in open court should be addressed this way, having the procedure in place. Every kid is represented by a competent attorney now, especially down in Clark County, where we have numerous public defenders. These kids are getting good representation, and the public defenders are getting more zealous in their advocacy of their children's due process rights, which I cannot oppose whatsoever. If we have a kid that is being contemptuous in court, and I want to teach them that there are consequences for that behavior, and if I don't have a provision that allows me to do that, either I'm doing it against the law, or I don't do it and then there are no consequences for the behavior. Neither one of those is a good thing.

The time is now to clean up what's been happening over the years in juvenile arenas. Judges kind of do what they think is best for the kid, meaning the kid needs a little time out so you send him into the detention center for a day or two, for the contemptuous behavior in court. The time is now. Let's call it what it is. Treat the procedure in the due process that is required in a contempt proceeding and give that to these kids and do it the right way. We can't just play the Father Flannigan-like judge position that we know what's best for kids, and look out for their best interest, and if I think a child needs to go in the detention center for 24 days, I can just willy-nilly do that. We can't do that anymore, and we shouldn't do it. It's time that we have a procedure in place when it is needed, to be done properly within the law.

**Assemblywoman Buckley:**

With regard to the 18- to 21-year-olds going to the adult county jail, presumably early on there was a decision that child should be treated as a juvenile. So, if a child wears baggy pants, his underwear are showing—not to use any specific inflammatory example—but let’s just say that happens. Could violating a contempt order on behavior in court, such as dress, land an 18-year-old, who was already judicially determined should be treated as a juvenile, in an adult jail?

**Judge Voy:**

Sure, just like what happens now. Yes, it could. It all depends on the circumstances. Right now, if you’ve violated the terms of your probation, I can put you there. For example, if the terms of a kid’s probation is not to wear baggy pants. I’m serious about that, not to wear his gang paraphernalia, that’s a violation of his probation. That’s where he could end up, yes.

**Teresa Lowry, Chief Deputy District Attorney, Juvenile Division, Clark County District Attorney’s Office, Nevada:**

I support this legislation as bringing into parity, parolees with probationers. It seems to have just been an oversight that parolees in our system are not explicitly named when it comes to violations of their parole. This gives the court additional options on how to sanction their violations of parole. If a youth has escalated to the position where they are on parole, it means we’re talking about our most serious offenders. The court should have as many options as possible to sanction them, including, if they’re over 18, the use of the detention center, which is the facility that they would go to if they committed any new offenses at that age anyway.

Additionally, I would support any additional tools or options that would be given to the juvenile court judge. It gives him the ability to treat each child in front of him with the full panoply of consequences. Some youth need to be escalated up to a violation of probation, some do not. The ability to hold them in contempt for a short number of days may get their attention, without escalating them to adjudication or more serious consequences.

Additionally, the ability to hold them in contempt for purposes of community accountability is important for victims and the prosecutor’s office to know that if a youth does not follow the court’s order there is a sanction. It makes the process more meaningful for all those involved.

**Chairman Horne:**

One of the things that gives us heartburn is that you have someone who’s been adjudicated as juvenile, has since turned 18, may have violated conditions of probation, and now we put him in the adult detention center. Either we’re

saying we're treating them as a juvenile or we're not. If you're putting someone deemed as a juvenile in a detention center, I think it violates the spirit of what was intended. It's different if now this 18-year-old has committed a new crime, and may now be seen as an adult for that crime and put into an adult detention center. If it's just a violation for baggy pants or gang clothing, they haven't committed a new crime, they've violated probation, but now we're going to treat them as an adult because they are over 18. I think that's what gives us a little concern.

**Kirby Burgess, Director, Clark County Juvenile Justice Services, Nevada:**

In addition to what's being said, I am here in support of this bill. It allows a level playing field for the court to address both probationers and parolees in the system. It gives the court another tool to address youth who are committing probation violations and are not complying with the terms of their probation. As Judge Voy indicated, the contempt portion of this bill will basically allow the court to address these issues appropriately, rather than extending the jurisdiction, which would increase our workload in probation services.

Lastly, I agree with the amendment proposed by Mr. Ben Graham, changing the terms from 25 days to 5 days. It is my belief that after a couple of days in detention the lesson is learned and the impact is made on youth. Extending that to a greater length of time, the whole scenario loses its impact on kids. The meaning is lost and the youngster starts to become institutionalized. I support this bill.

**Ben Graham:**

I've spent considerable time touring our detention facility that Metro [Las Vegas Metropolitan Police Department] runs, and there is a whole separate unit where younger people are very, very carefully isolated and separated from the older population. It's not as severe as it might appear because they're very careful about this, and they are separated.

**Chairman Horne:**

I appreciate that. I've been in those jails and I don't care where you are in there, it's not pleasant.

**Ben Graham:**

It's not nice, and it doesn't smell very good.

**Assemblyman Carpenter:**

What about out in the rural areas where there's no detention center, how do we handle that? Do they have to go to the jail? What do we do?

**Ben Graham:**

They go to the detention center but there's a separate cell area where they are kept. From what I understand in talking with the district attorneys in the rurals, they make every effort to isolate them off at one end and separated from the adults. This is mandated under federal guidelines. They aren't intermingled and they are separated, even in the rurals.

**Robert McLellan, Deputy Administrator, Juvenile Services, Division of Child and Family Services, Nevada Department of Human Resources:**

Child and Family Services is in support of A.B. 359 which would provide additional remedies for the courts in handling youth who are in contempt, or are noncompliant with conditions of parole or probation.

In the interest of the Committee's time there is a brief case study in my written testimony ([Exhibit B](#)) which the Committee should have. It addresses some issues that have come up with regard to the omission of the parole language in Section 4 of the bill, specifically in NRS [*Nevada Revised Statutes*] 62E.710.

Passage of the bill would provide for accountability of the offender, as well as protection of the public, and that's why we are in support. I'd be happy to answer any questions.

**Gary Peck, Executive Director, Nevada American Civil Liberties Union:**

I've had the pleasure of working with and knowing Judge [William] Voy and Mr. Kirby Burgess, and have enormous respect for both of them. I know that they have worked very hard on a committee, which the ACLU is ably represented, looking for alternatives to incarceration for juveniles. I know that when Judge Voy and Mr. Burgess say they are in support of a philosophy and an approach that genuinely does look for such alternatives, they absolutely mean it.

Judge Voy knows better than anyone that there is always the capacity for judicial abuses of discretion in any event. I'm not here to criticize judges. I am here to say that when you look at this bill, and you hear what you, Mr. Chairman and Assemblywoman Buckley, have had to say, it's important to realize that we are dealing with kids. When I hear Judge Voy and others say that we're looking for consistency across the judicial system, I would argue that that's not what we're looking for. In point of fact, philosophically and as a matter of policy, there are important distinctions that are made between the way we treat juveniles and the way we treat adult offenders. I am not one who would advocate for consistency across the system.

[Gary Peck, continued.] I've also heard mixed messages from Chief Assistant District Attorney Lowry and from Judge Voy. On the one hand I'm hearing, "Well, judges can figure out under the current law ways to deal with juveniles who aren't complying with court orders, doing what they ought to be doing as a way of deterring them from further bad behavior and holding them accountable." On the other hand, I'm hearing, "No, this is an important change because it's going to make it easier, and give judges additional tools with which to punish kids."

My concern principally goes to many of the issues that you, Mr. Chairman, and Assemblywoman Buckley, have both implicitly and explicitly raised, and I am particularly concerned about putting 19- and 20-year-olds in the detention center. It has been the subject of federal investigations. There are all sorts of problems in that detention center, and putting kids in there is a bad idea.

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

I would simply echo all the comments and concerns that were raised by you and Ms. Buckley. We have grave concerns on behalf of the NACJ [Nevada Attorneys for Criminal Justice] with respect to the incarceration in the Clark County Jail provision. Let's face it, that's where it's coming from, and that's where the focus of this is. We are in support of Judge Voy's suggestion that lines 13 through 17 on page 2 be removed, and while we still have our concerns with respect to the incarceration and jail provision, I think that Mr. Graham's suggestion that we take this from 25 days to 5 days is a much more reasonable step, considering that we're talking about kids here.

**Chairman Horne:**

I'm going to close the hearing on A.B. 359.

I would like to reopen Assembly Bill 359 and introduce an email from Howard Brooks (Exhibit C), Deputy Public Defender in Clark County. [Read Howard Brooks email.]

This is Howard Brooks in Las Vegas. I'm a deputy public defender for Clark County, and I ask this question as a member of the Nevada Attorneys for Criminal Justice.

This bill creates additional powers for a judge to deal with contempt: what the judge can do when a juvenile has not complied with a court order.

Why is it necessary to send kids, 18 to 21, to an adult facility for contempt? Why can't they serve contempt time in a juvenile facility?

The criminal defense community believes the adult jail provision of this bill is unnecessary.

Thanks for your time, Howard Brooks.

[Closed hearing on A.B. 359.]

**Assembly Bill 344: Makes various changes relating to homestead exemption. (BDR 10-1267)**

Just in case some people are waiting for A.B. 344, which also deals in this area of homesteads, that bill has been pulled for now. Legal is looking at some language. There may have been a mistake, so we won't be hearing that.

**Assembly Bill 365: Increases amount of homestead exemption. (BDR 10-1026)**

**Assemblywoman Ohrenschall:**

Assembly Bill 365 changes from \$200,000 to \$400,000 the dollar amount under which a person can protect his or her home as a homestead exemption. This is the amount of your home that can be protected from creditors. You'll see these changes throughout the bill.

The second change is the date from 2003 to 2005 found on page 2, Section 1, subsection 6. This corresponds to the current year and updates everything.

Homestead exemptions have been with us since statehood in 1864. The Constitutional Convention thought it was important enough that they put it in the *Nevada Constitution*, Article 4, Section 30. The original value of the exemption in 1864 was set at \$5,000. As you can tell, a lot has changed since then. Thankfully, our founders decided that the actual amount of the exemption should be adjusted by the Legislature in response to changing circumstances.

Over the years, the amount has increased several times from the original \$5,000. Today the exemption is \$200,000, which was last set in the year 2003. However, \$200,000 no longer covers the value of most homes in

Nevada. Nevada's growth and rising home prices warrant another increase. Median home prices in northern and southern Nevada are now well above \$200,000.

[Assemblywoman Ohrenschall, continued.] In Clark and Washoe Counties, the median home price is approaching \$300,000. In Carson City and Douglas County, the amount now exceeds \$300,000. As I'm sure everyone is aware, a home is usually the largest investment that any person or family makes in their lifetime, so it's important to allow people to protect this one thing which is their largest investment. It keeps the roof over their heads and allows them to continue living as they face any possible adverse economic situation.

It's very important that the homestead exemption keep pace with these rising prices.

**Jim Nadeau, Government Affairs Director, Nevada Association of Realtors, Reno, Nevada:**

We have historically supported the raising of the homestead exemption. We must remember this is the equity portion of the home's value. With rapidly rising costs of homes this is a creditor protection, and we believe that we need to protect the person's private property and give them a place to stay and live. We support that and would be more than happy to provide local median price values, if the Committee would like that. We do support it.

**Jon Sasser, Legislative Advocate, representing Washoe County Senior Law Project, Reno, Nevada:**

I'm in favor of A.B. 344. That bill had two provisions. One was to increase the homestead provision to \$250,000, but the Senior Law Project would be happy to accept a higher amount if that's the will of the Committee. The other portion, as you mentioned on the automatic homestead, is being reviewed by the Legislative Counsel Bureau in terms of possible conflicts with the State *Constitution*, and I don't know if it will be back, so I wanted to take this opportunity to at least speak in favor of increasing the exemption.

**Chairman Horne:**

As I mentioned earlier, Assembly Bill 344 was pulled. The bill dealt with an increase in the homestead exemption from \$200,000 to \$250,000. Assembly Bill 365 increases it to \$400,000. Assembly Bill 344 also dealt with other parts of the Homestead Act of 1862. When that bill comes back and everything goes to work session, they will be discussed together.

**Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:**

As I mentioned earlier when I was up here, Mr. Chairman, the Bankers' interest in this was kind of the totality of the package of the three bills, this one in particular, the raising of the amount of equity that is shielded to \$400,000. The reality is we're not certain whether that is the appropriate number, or whether it's somewhere between \$250,000 and \$300,000. There is a number that should be protected, but whether \$400,000 is the appropriate number, I'm not a mathematician.

The reality is that it is the equity that is being protected and not the value of the home. The reality is, if that house has doubled in price, that whole house at \$400,000 is probably protected. Whether that is appropriate, or whether, in fact, they should be using some of that gain, that paper gain at least, to put themselves right with their creditors is certainly a policy decision that you are burdened with. Whether the number is correct, I can't sit here today and tell you that \$400,000 is right, or whether it should be \$300,000. I wanted to get that on the record.

**Chairman Horne:**

Is your opposition to the bill just that it states a certain number?

**Bill Uffelman:**

I would suspect that \$400,000 is probably getting towards the outside amount, or the high-end of what ought to be the protected amount of equity. In 2003, \$200,000 was the appropriate number. Now, two years later doubling that seems to be excessive. Perhaps it ought to be down in the \$250,000 to \$300,000 range.

**Chairman Horne:**

[Closed the hearing on Assembly Bill 365.]

[Opened the hearing on Assembly Bill 470.]

**Assembly Bill 470: Removes provision which requires corroboration to prove certain crimes relating to prostitution. (BDR 14-1024)**

**Ben Graham, Legislative Representative, Nevada District Attorneys Association:**

We're talking about prostitution, and frequently we're talking about young prostitutes. This has nothing to do with putting anybody in custody until they give up any names.

[Ben Graham, continued.] In this situation, police officers and victims groups are working with prostitutes, and frequently young prostitutes. They are trying to help them get out of the system and prosecute people that are preying upon them. I'm not talking about clients so much as I am people that are pandering. Pandering is getting someone to go into prostitution, or to continue in prostitution.

Frequently, we have situations where the only real testimonies we have are these prostitutes. If you sit and watch, and deal with these prostitutes, many of them are really victims rather than criminals themselves, but the way the current statute is structured, without corroborating evidence they can't even testify against the panderer; the person that is utilizing them to do prostitution.

We're seeking the ability to prosecute panderers based upon the testimony of the victim—in this case the prostitute—which is part and parcel of what the panderer is doing. There really is no other crime where this type of evidence, corroboration, is required. From a practical standpoint, who are you going to believe beyond a reasonable doubt, the panderer, who says that they were not getting this person into prostitution, or the prostitute, or victim, really as I see them in many, many cases. They should be able to testify against the people that are preying upon them and getting them to go into, or continue in, prostitution.

This was brought to us by the [Las Vegas] Metropolitan Police Department and other law enforcement agencies that were experiencing frustration because we were not prosecuting these panderers based upon the status of the law. That's what we're essentially doing with regard to A.B. 470, on lines 3 through 5, taking out this requirement for prostitution, or aiding, or assisting them to go into prostitution. That's essentially where we are.

**Assemblyman Carpenter:**

There's another part of this statute which talks about abortion, how does that fit into your scenario?

**Ben Graham:**

That's existing law and we're not asking that be changed in any way. This strictly deals with someone going into prostitution, so we're not changing the corroboration requirement for an abortion situation.

**Chairman Horne:**

Just for clarification to make sure I understand. Current law states a person can't be convicted if this prostitute says this person was pandering me to solicit. You need corroborating evidence in order to move forward. You just

can't go by her word. This would take that out and now you'd be able to say, she said, "He was pimping me," and you'd say, "That's enough," and you're going to indict.

**Ben Graham:**

That would be sufficient evidence if the State, in their mind, feels that there could be evidence to prove the elements beyond a reasonable doubt. We would not be prohibited from proceeding if it was just based upon, under the current law, that accomplice's testimony. We could proceed, yes.

**Chairman Horne:**

Has history shown that it's been difficult to get this corroborating evidence? It seems to me that pimps usually leave a trail of evidence that they're pimping.

**Ben Graham:**

It has been extremely difficult to proceed against these people. Prostitution by itself is really something that's committed secretly, and that's one of the reasons why you really seldom, if ever, see any charge of prostitution. The only time you ever get any of these situations is where you use an undercover officer, and then it's a soliciting charge, as opposed to prostitution. Frequently, a younger prostitute is victimized. I think the police officers here today are going to have better factually-based scenarios that would play into your question.

**Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; and representing Nevada Sheriffs' and Chiefs' Association:**

We're very much in favor of this legislation. I have Sergeant Gil Shannon from our Vice Detail in Las Vegas, and I believe he can answer questions you may have with regard to this, and he'd like to do a brief testimony.

**Gil Shannon, Sergeant, Vice Section, Las Vegas Metropolitan Police Department, Nevada:**

We are here to support A.B. 470, which would remove the provision that requires corroboration for these reasons. There were 72 juvenile prostitutes arrested in Clark County in 2000. Last year we had 207 juvenile prostitutes from the ages of 11 to 17. This year our numbers are continuing to set records, and we are already at 54 juvenile prostitutes.

By removing that requirement, it will allow us to have an easier arrest and prosecution of the offenders, as opposed to the current status. Currently, if a juvenile is arrested for prostitution and identifies a pimp—case scenario being that, "He's been beating me, torturing me to work as a prostitute."—we have to rely on her word only if there was no one present during that torture and

beating. If there is a requirement of corroboration, her statement and testimony is not enough for us to move forward.

[Gil Shannon, continued.] The removal of this corroboration requirement will also minimize the trauma to the juvenile and the juveniles' families, which is ever increasingly frustrating when a juvenile comes forward requesting the assistance of law enforcement and the DA's Office [District Attorney's Office] to help protect them and their families from these pimps. Pimping is a very violent underworld that survives in the subculture that the majority of us are not aware of, or familiar with.

This will also allow a juvenile to come forward in her case requesting the assistance of law enforcement, and tell law enforcement what has happened, without the support of the corroboration as currently is required.

Because of the current structuring of NRS 175.301, we're unable to proceed and go forward with the 207 arrests we've submitted to the DA's office. Currently, we have had to resort to establishing a task force with the federal government which does not require corroboration, and we have been successful in all the cases that we have submitted.

We would like to handle those cases within the state of Nevada with the same success we're getting within the federal government.

**Don Fieselman, Detective, Vice Section, Las Vegas Metropolitan Police Department, Nevada:**

I would just echo what Sergeant Shannon said. This bill allows the victim to be heard in court without the presumption of a lack of credibility. The judge or jury still has to decide whether that's proof beyond a reasonable doubt. It raises it to the same level that sexual assault victims, child abuse victims, and victims of sexual exploitation receive in court.

**Lucille Lusk, Chairman, Nevada Concerned Citizens, Las Vegas, Nevada:**

We have no problem with what is proposed in this bill and support it for the reasons stated. However, what's left once this change is made is an obsolete statute, and in the interest of cleaning up the statutes, we would suggest that the Committee consider repealing NRS 175.301 entirely, eliminating the obsolete provisions as well as making the change that has been requested.

**Chairman Horne:**

It seems like a very straightforward, good bill and we might move it. Are you going to submit a proposed amendment to delete?

**Lucille Lusk:**

The amendment would be to repeal. I can put it in writing if you like. I would like to see the bill move whether or not you choose to repeal the rest. We never seem to want to clean up the obsolete portions of the statutes, and this is an opportunity to do so.

**Chairman Horne:**

The Chair would entertain a motion.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS  
ASSEMBLY BILL 470.

ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Anderson, Ms. Buckley, and  
Mr. Ocegüera were not present for the vote.)

[Meeting was adjourned at 10:34 a.m.]

RESPECTFULLY SUBMITTED:

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Jane Oliver  
Committee Attaché

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** April 4, 2005

**Time of Meeting:** 8:00 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Meeting Agenda
<u>A.B. 359</u>	B	Robert McLellan, Deputy Administrator, Juvenile Services, Division of Child and Family Services, State of Nevada Department of Human Resources	Prepared testimony in support of <u>A.B. 359</u>
<u>A.B. 359</u>	C	Howard Brooks (Not in attendance but emailed letter.)	Email with question regarding adult jail provision of <u>A.B. 359</u>