MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
April 11, 2005

The Committee on Judiciary was called to order at 8:22 a.m., on Monday, April 11, 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:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst

Risa Lang, Committee Counsel
Carole Snider, Committee Attaché

OTHERS PRESENT:

Ben Graham, Legislative Representative, Clark County District Attorney's Office, and Nevada District Attorneys Association
Karen Van De Pol, Chief Deputy District Attorney, Clark County District Attorney's Office, Nevada
Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney; and, Nevada District Attorneys Association
David Watts-Vial, Deputy District Attorney, Washoe County District Attorneys Office, Nevada
James Wadhams, Attorney at Law, representing Blackjack Bail Bonds
Madelyn Shipman, Legislative Advocate, representing Nevada District Attorneys Association
Susan Hallahan, Chief Deputy District Attorney, Family Support Division, Washoe County District Attorney's Office, Nevada
Kim Surratt, Legislative Advocate, representing Nevada Trial Lawyers Association
Louise Bush, Chief, Child Support Enforcement, Welfare Division, Nevada Department of Human Resources
Donald W. Winne, Jr., Deputy Attorney General, Nevada Department of Human Resources
Marshal S. Willick, Attorney at Law, Willick Law Group
Ron Thompson, Attorney at Law, Santoro, Driggs, Walch, Kearney, Johnson and Thompson
Keith Kizer, Chief Deputy Attorney General, Nevada Athletic Commission, Nevada Department of Business and Industry
Raymond Avansino, Jr., Chairman, Nevada Athletic Commission, Nevada Department of Business and Industry
Gerald Gillock, Legislative Advocate, representing Nevada Trial Lawyers Association
Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections
Bob Romer, Senior Employee Representative, State of Nevada Employees Association; and American Federation on State, County, and Municipal Employees, Local 4041
Gary Peck, Executive Director, American Civil Liberties Union of Nevada

Chairman Anderson:
[Meeting called to order and roll called.] Let's turn our attention to A.B. 469.

Assembly Bill 469: Revises certain provisions governing forfeiture of bail. (BDR 14-909)

Ben Graham, Legislative Representative, Clark County District Attorney's Office, and Nevada District Attorneys Association:
As we are aware, bail is constitutionally mandated in most criminal matters where a person who is charged with a criminal offense actually either posts the bail himself, a family member posts it, or a bonding company will post an insurance bond for a fee. The purpose of an insurance bond is, if the defendant doesn't show up after a period of time, they are given an opportunity to locate the defendant and bring him back into court or to turn him into the authorities. If the defendant reoffends and is caught by law enforcement, he is brought back to the authorities. The insurance company has at least 6 months to do that without forfeiting bail.

Traditionally, if I post bail on myself, I know that if I don't appear in court at a certain time and place, I will ultimately lose that money and a warrant would be issued for my arrest. If a family member or a friend posts it on behalf of someone, they make an effort to make sure the defendant shows up in court so they won't lose their money.

What happens after a period of time is a bonding company may ultimately have to pay what they promised, if the defendant does not appear in court. There are many provisions that extend the period of time for which the bonding company may recover their bond that they have paid for the forfeiture.

In the past, we have worked with the bonding companies in a cooperative effort to get people into court. They have extended periods of time to bring these people in. Once a bail bond is forfeited, you have to try and get the defendant back into court. If you don't come back to court, there are consequences for the person who posted the bail money. This money goes to the municipalities, county jurisdictions, state, and the victims' compensation fund. Last year the state of Nevada spent $500,000 bringing people back from other jurisdictions, including some from overseas.

An amendment appeared in a bill from another committee and it changed the structure of the bail bond system. It changed "and" to "or". I think with a healthy debate it might not have happened. Of this consequence of an "and" to

an "or," there have been motions filed for more than 30 recoveries of bail bonds. Some have been paid back from as long as 4 or 5 years ago by forfeited people who were brought back by the state. The expense was borne by the state and there was no effort by the bail bond company.

[Ben Graham, continued.] Even if we prevail in justice court, the bonding companies appeal. Of the 25 to 30 that are on appeal, about 28 are from the company or the attorney's firm that got this bill through, in 2003. I have a great deal of respect for counsel in this situation, but we are asking this Committee to take another look at what happened in another committee. It makes it extremely difficult for local entities to keep and recover the bail money that was properly forfeited to the detriment of the people of the state of Nevada, particularly the victims' fund.

Chairman Anderson:
I tell people that big bills tend to be so heavily discussed that things are usually fairly well laid out. Every once in awhile something happens that is fairly simple in nature such as changing one word. So what you are asking us to do is to go back and change "or" back to "and." Is that correct?

Ben Graham:
That is correct.

Chairman Anderson:
So this bill eliminates the defendants appearing before the court after the date of the forfeiture and presenting satisfactory evidence that the surety did not in any way cause or aid the absence of the person. In order for the court to set aside the forfeiture, it is still necessary for the court to have a hearing on the matter and determine whether other grounds as described in the bill exist. That had been the practice for a long period of time prior to this small change that took place 2 years ago.

Ben Graham:
That is correct. Of course, part of the argument from people who supported the change is that the defendant came back. Generally, the defendant didn't come back and the state expended hundreds of thousands of dollars to bring the defendant back. The insurance companies have reached back years to try and recover bonds that they had already forfeited and rightfully so.

Chairman Anderson:
Under the way this has been changed, the courts were prohibited from setting aside the forfeiture of the bail unless the defendant was dead, ill, insane, detained by civil or military authorities, and the surety did not aid in any way.

Ben Graham:
That is correct.

Karen Van De Pol, Chief Deputy District Attorney, Clark County District Attorney's Office, Clark County, Nevada:
Nevada Revised Statutes 178.512 is the statute which governs the setting aside of a forfeiture and the return of monies that are paid. Prior to the 2003 legislative change, it was a three-prong test. The bail bond company, or the surety, had to find one of the grounds that the defendant had appeared with a satisfactory excuse for his absence, which rarely happens, such as, that he was dead, ill, insane, detained by civil or military authorities, or had been deported. You had to find one of those grounds that the surety had in no way caused or aided the absence of the defendant, and that justice did not require the enforcement of the forfeiture.

What happened from the statute change, between the first and second prong of the three-prong test, it became "or" and not "and". So the grounds became somewhat unimportant. The surety only had to show that it hadn't been responsible for the defendant's absence, did not cause or aid in the defendant's absence, and that the justice did not require the enforcement.

What has happened is one specific bonding company went back for years and, went through all the cases which they had paid a forfeited bond but subsequently the defendant was located. In every instance of those that are presently on appeal, it was law enforcement that located the defendant and it was the state of Nevada's extradition fund which returned the defendant to Clark County to face the consequences of his criminal acts.

There are two reasons that it is important to return the statute to that pre-2003 status. Most importantly, we must recognize that bonding companies really are very effective in locating defendants out of state. They are very effective in apprehending those defendants and bringing them back to the jurisdiction. However, there must be a financial incentive for them to do so. We don't want to make it so easy that they can sit back, do virtually nothing and just wait for the state to go through the effort of locating and paying for the defendants' return. Then after all that, the bonding company can just simply demand their money back. We are really undermining and severely dampening the incentive for them to go looking for the absconding defendant to begin with. The very

basis of the bail bond system, using bail bond companies, is to provide them incentive so they will locate defendants and bring them back to the jurisdiction.

Ben Graham:
This is a problem that is very manifest in Clark County. It's not up north yet so we need to correct this.

Assemblyman Mortenson:
Let's say a person doesn't appear for a trial because he dies and grandma has put the house up against his appearing. Under the present law with the "or" in it, there would be no forfeiture. Grandma wouldn't lose her house.

Ben Graham:
Even under the law prior to 2003, grandma would not lose her house. She would lose her house under the way the law was changed in 2003. We are not talking about grandma's house. We are talking about bonding companies.

Assemblyman Mortenson:
But grandma could have put her house up against his appearing and the rules would still apply. Is this correct?

Ben Graham:
Yes, and grandmother would not lose her house.

Chairman Anderson:
Although Mr. Graham maintains it is a bigger problem in Clark County, apparently the northern bonding market is different? I thought we all fit in the same boat.

Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney; and Nevada District Attorneys Association:
Not entirely different. I have with me Deputy District Attorney David Watts-Vial from Washoe County. He is the Deputy District Attorney that deals with bail and bonding issues on a regular basis in Washoe County. He is here today to make a brief statement and answer any questions you may have as well.

David Watts-Vial, Deputy District Attorney, Washoe County District Attorney's Office, Nevada:
I have been doing the bail bonds in Washoe County for the last 6 to 7 years. I'm here to testify in support of this bill. As Ms. Van De Pol pointed out, sometimes the only people who are out actually looking for defendants are the bail bondsman. If the bondsmen aren't out there looking, then it is going to be pure happenstance if the defendant happens to get caught by the police. If this

change is made to this bill as proposed, the bondsmen now have incentive again to go chase down defendants.

[David Watts, continued.] Under the current version of this statute, as Ms. Van De Pol pointed out, bondsmen can simply sit back and wait *ad infinitum* and hope that the defendant is caught and then file a motion to set aside. It is also important to note that this money has already been forfeited by the time the bondsmen are filing a motion under this section. The money has already been paid to the counties or, in many circumstances, to the victims of crime fund within the state. The effect of this is to have bondsmen come in many years later and say, "You now have the defendant so we want our money back." It pulls money out of the victims of crime fund and gives it back to the bondsmen.

Chairman Anderson:
I think that is part of the confusion here. If the police have arrested the person, brought him back to the jurisdiction, and he is in jail, he obviously can't appear in court for his previous offense. If he commits a crime in Clark County, then commits a crime in Washoe County, and he is put in the Washoe County jail, he obviously can't make his appearance in Clark County. Why would the bail bondsman lose his bail, when it is not any fault of his?

David Watts-Vial:
In that circumstance, a bondsman in advance of the bonding forfeit could actually file a motion under NRS 178.509 to have the bond exonerated because the defendant is incarcerated. Under either version of this bill, they could file a motion to set aside after the forfeiture on the basis that the defendant was incarcerated. Under the current version, the bondsman would have to show that they could not reasonably have known the defendant was incarcerated. So they are still covered on that.

Chairman Anderson:
So even under the old law, they would have been able to get their money back.

David Watts-Vial:
Correct, in that circumstance.

Chairman Anderson:
You see this as a financial incentive for the bail bondsmen to make sure they have the responsibility for which they put up their bond.

David Watts-Vial:
That is correct.

Chairman Anderson:
Without this financial incentive being dangled over their head, you are of the opinion that they wouldn't follow through.

David Watts-Vial:
I'm not going to say that all bondsmen wouldn't. There are a lot of very good bondsmen out there. I do think that this creates an incentive for some bondsmen to think that it may cost too much to look for a defendant, so we will just take our chances that eventually the person will get caught. Generally, when somebody fails to appear, an all points bulletin does not go out for the defendant. A warrant is created and issued through some different information systems. If the police happen to pick-up this person for some other crime or for probable cause, then the defendant would be arrested.

The bondsmen know 180 days after that person fails to appear they are going to lose their money. So bondsmen, in theory, immediately receive notice that there has been a failure to appear and hunt the person down. We would like the police to be able to do this, but the police have too many other jobs to perform.

Assemblyman Carpenter:
I don't understand how the change in this law is going to affect the bail bondsman. You say he is going to forfeit the bail after 180 days. I don't understand why a change in this law is going to have any affect on that.

David Watts-Vial:
The way the current version is written, there is no reason for the bondsman necessarily to immediately go out and get somebody. They know, even if the bond is forfeited 180 days later and they have to pay the money, they can make a motion to set aside the bond and get their money back. This means they don't need to go out and find people in the initial 180 days. That 180 days is a crucial time because the sooner in time they start to look for somebody, the more effective they are going to be at finding somebody. They don't need to get the notice and head out immediately. They can wait and sit back and hope that the police get them. Then anytime down the line, they can simply file a motion under the current version of the law and have the bond exonerated.

The new law puts an additional hurdle up and makes it more difficult for bondsmen to get the bond exonerated. The defendant is now going to have to show some sort of satisfactory reason for their absence.

Assemblyman Carpenter:
It seems to me that it is to the bail bondsman's advantage to try and find this guy before he has to give the money away. I don't see where this changes anything.

Chairman Anderson:
The financial incentive has been lost with the change from "and" to "or." This puts the responsibility back on the surety company to collect on their bond. They have a 6-month window of opportunity.

Assemblywoman Buckley:
Prior to 2003, the court would not set aside the forfeiture unless the defendant had since appeared, there was a satisfactory excuse, and the surety didn't aid and abet. Now it was changed to "or." It is so different now because all the surety has to say is somebody caught him, like law enforcement, and the surety didn't aid and abet, so it changes the complete bail concept and doesn't require a forfeiture if they don't get the person back.

Ben Graham:
That is very well put. We'd like to make an amendment effective upon passage and approval.

James Wadhams, Attorney at Law, representing Blackjack Bail Bonds:
I am the counsel that did this. In 2003, the chair of Assembly Commerce and Labor actually called the word to my attention. My inability at that time to correctly answer the question is what led to this discussion of "and" and "or." I should also point out that it is contrary to fact that that was a simple change from "and" to "or." The bill suggests adding the language that is in place today. The prior legislation did not have either the conjunctive or disjunctive, nor did they have the other language that the surety did not in any way aid or cause the absence of the defendant.

I think at the outset it is important to go back and reset the stage. The reason that section was asked to be added with the disjunctive "or" was to make it parallel to an already existing statute dealing with the exoneration, NRS 178.509. This statute provides that the defendant must appear before the court and the court, upon hearing the matter, determines that the defendant has presented a satisfactory excuse or was in the existing law in NRS 178.509. The attempt to change NRS 178.512 was to conform the two statutes, not to create some new law and turn the concept of bail on its head. So the existing law in a parallel section had the "or" and the language regarding the surety did in any way cause or aid the absence of the defendant. The amendment in 2003

did not change the "or" to "and" or the "and" to "or." It simply added the parallel phrase to make the statutes consistent one to the other.

[James Wadhams, continued.] I would like to confirm from the opponent's standpoint the proponents are absolutely correct. The Supreme Court of the United States has indicated that the purpose of bail is to get the defendant back to the bar of justice. We have no quibble with that. That is correct. I think that is the underlying principle of some of the questions that have already been asked today that raised the issue. I would like to engage at the outset this distinction that has been made. Well, if it's granny's house, somehow we will deal with that differently than if it is the corporate empire putting up their property. I don't think our *Constitution* nor this Body allows the distinction to be made between somebody's personal property and the property of a third party being offered to secure a reappearance.

The other problem is who gets the benefit? The purpose of the bail is to secure the reappearance. If the defendant has reappeared, what is the purpose of the bail? It is not, to quote the United States Supreme Court, to enrich the local government. That is not why it is there. This is not a tax. This is not a fee. It is not payment for a service. It is security for an appearance. Once the appearance has been made, the security should be released whether it is granny's or the giant corporation's.

I think it is important that both of the statutes, NRS 178.512 which A.B. 469 would gut, and the other existing parallel statute, NRS 178.512, require the defendant be back in front of the bar of justice. So the first condition has to be met in both cases. The suggestion has been made that the current language takes the incentive away from either granny or the corporate surety to secure the appearance. I would suggest to you that it's silly.

Chairman Anderson:
In NRS 178.509, it appears this is set up for prior to the court actually hearing what is going on. You are re-arrested for a separate charge and this event is clearly known. Therefore, those things are fairly well laid out. The statute that we are dealing with here is outside the jurisdictional area so the incentive here is how do we present the surety for the obligation that we, as a society, expect them to do. How do we know they are going to collect?

James Wadhams:
That is the perfect question for where I was heading. You shortened what I have been trying to say dramatically. Under NRS 178.512, the issue is exoneration within the 180-day period. What A.B. 469 would do is eliminate the incentive after 180 days. The suggestion here is somehow the surety will make

more money by not trying to find that person and wait for the happenstance of him being captured otherwise. The 180 days or the alternative theories are available for excusing the returning of the collateral to the person who posted it. What the bill last session did is create that same incentive after 180 days to continue the incentive on the surety for a chance to get its money back. It allows granny to still get her house back if, after 180 days, she can get the defendant to appear in the courthouse.

[James Wadhams, continued.] The point your questions raises is precisely the point why this bill should not be passed, because it eliminates the incentive after 180 days. The economics of letting all bailed defendants run wild and just hope that the police catch them runs contrary to the whole economics of this. You heard two deputy district attorneys say that the skip tracers, the bail enforcement agents in more polite terms, are fairly effective. Why terminate that effectiveness for those people that don't appear after 180 days?

Assemblywoman Buckley:
We dealt with this issue in the Assembly Commerce and Labor Committee last session. You worked with us and changed wording and then you went over to the Senate and changed it back again. My question is why did you do that?

James Wadhams:
This is not an area in which I practice. My inability to answer that question at that moment does not mean my answer was either right or wrong. I had to go learn what the right answer was. The policy question seems to be very clear upon further inquiry, and the detail basis of that change was indeed presented to the Senate based upon the *State of Nevada v. American Bankers Insurance Company* [106 Nev. 880 (1990)]. None of this is triggered unless the defendant comes back. The simple difference is the time frame of 180 days. If you don't have this provision, you have cut off the incentive to chase defendants after the 180 days.

Assemblywoman Buckley:
I don't get that at all. In almost every single case, the surety does not cause or aid the absence of the defendant. There might be one case in the history of mankind so that's why it's in there, but a surety doesn't do that normally. Correct?

James Wadhams:
That's correct.

Assemblywoman Buckley:
So being able to just satisfy the standard that they did not cause, aid, or abet is somewhat useless because in 99 percent of the cases, they are not evil folks trying to hide people and not have them appear before the court. They are not in business to do that. So if you make that the standard, instead of the bail being used to get the defendant to justice and to be motivated to get the defendant back to justice, that's pretty much no standard at all. Right?

James Wadhams:
I disagree with at least a couple of the assumptions built into the question. I think the first issue is the surety was not involved in the nonappearance. It would not have been so cited by the Supreme Court in this decision were it only a theoretical possibility. I think that is precisely the point. It probably comes in the reverse. You heard two deputy district attorneys that practice routinely in this area say that skip tracers are effective at bringing people back. First of all, there is an economic incentive for them to do so. That is what we are talking about. If the skip tracer doesn't work and the bail bondsmen does not attempt to recover that person, has that not aided in the absence in the nonappearance of the defendant?

Assemblywoman Buckley:
That just means they aren't working. It doesn't mean they are aiding, abetting or hiding them. It's okay if we disagree. I just want to get to the truth here without the long explanations that don't seem on point.

James Wadhams:
The drop dead date is 180 days. Granny either produces the defendant to the courthouse in 180 days or she loses her house. Under A.B. 469, as it is proposed here, if she can get the defendant to come back in after 180 days for whatever reason, she ought to be able to petition the court for return of her house. That's the difference between NRS 178.509 and NRS 178.512. One is before 180 days and the other is after 180 days. Assembly Bill 469 cuts off the incentive. The house is gone after 180 days. It doesn't matter if the defendant comes back or not as granny has lost her house. It makes it a purely revenue issue and the incentive, quite frankly, is for the revenue. That's the issue here.

Assemblywoman Buckley:
If granny doesn't want to lose her house, all she has to do is talk to the surety and tell them where he is. The surety presents that information to the court and then the bond company gets their money back and granny gets her house back.

James Wadhams:
After 180 days, I don't believe she has the right to get the return of the house. That is the problem here. That is what the proponent's testimony said. We don't want to entertain these issues after 180 days.

Assemblywoman Buckley:
I don't think they said that. I think they said that they want to keep the incentive for the surety to find this person, bring them back to court, and not let the surety get the benefit of having the bond released if they found the person.

James Wadhams:
I think that is the point. I'm not communicating this correctly. Assembly Bill 469 does not allow me to request the return of the house, or whatever other collateral has been posted, after 180 days, if the defendant reappears. In fact, the testimony was what if he just shows up in cuffs from some other cop? That's okay. The question is what is the purpose of the bail? If we can petition the court after 180 days for return, that creates an incentive whether we do it actively, passively, or otherwise. The purpose of bail is to return the person to the bar of justice.

Assemblyman Mabey:
I'm just curious how other states deal with this issue. Is it the same way as it is in our law?

James Wadhams:
It has taken me about 15 months to master this policy question. I'm afraid I can't tell you what other states are doing. I do think that in some respects this is compelled by the *United States Constitution* on due process of the property rights of granny, or a corporate surety.

Chairman Anderson:
The hearing on A.B. 469 is closed. I'm pretty comfortable with the bill but some of you may still have difficulties with the issue. I would like Research to look at what would happen in making a comparison between the circumstances that affect NRS 178.509, as compared to NRS 178.512, and how the changes affected the behavior of the bonding issues. If we could have a small summary on that, we can all understand what the effect would be where we were before 2003. I think it's a good piece of legislation and we should move with it, but I want to make sure that granny's house is not being endangered as it is not our intent to do that.

Ben Graham:
I just want it to be on the record that the 180-day drop dead date is frequently extended probably more times than not. The counsel for the surety can come in, illustrate that they are making efforts to find this person, and that they are using due diligence. It is not unusual to extend this 180 day period way beyond that period of time. It is flexible.

Chairman Anderson:
I would imagine they are anxious to have that happen because they don't want to lose their money or take grandma's house because of various reasons which may be costly to do.

Let's turn to A.B. 472.

Assembly Bill 472: Revises provisions governing whether to deem juvenile sex offender as adult sex offender. (BDR 5-1369)

Chairman Anderson:
Assembly Bill 472 is a bill that we requested as a Committee based upon the Supreme Court discussion that existing law provides that, under certain circumstances when a juvenile turns 21, the juvenile court is required to conduct a hearing to determine if the juvenile should be deemed an adult. This is the Supreme Court case *In the Matter of T.R v. Nevada Division of Child and Family Services.,* [119 Nev. 646 (2003)]. They considered the constitutionality that required a juvenile to submit to a hearing to determine whether the juvenile would be required to complete the adult sex offenders registry and notification provisions. This statute requires the juvenile courts make that decision to consider whether the juvenile had been rehabilitated and whether he was likely to propose a threat and safety to others. The court held the statute was unconstitutionally vague because it failed to give sufficient notice of what conduct is prohibited and because it authorizes or encourages arbitrary and discriminatory enforcement. In reaching its decision, the court explained a two-part test for evaluating the law for vagueness.

First, to overcome the vagueness challenge, the law must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that they may act accordingly. Second, the law must provide explicit standards for those to apply them to avoid arbitrary discrimination enforcement. The court found that the provisions of the NRS 62F.250 provided no guidance with respect to how a child should conduct himself to avoid lifetime registration, and further, the court stated that the provisions of NRS 62F.250 were subject to

arbitrary and discriminatory application. It lacked explicit standards to guide the district court in reaching a decision, and accordingly, the court held that this statute provided no guidance for a child to act accordingly. This bill addresses the constitutional issue in *T.R.* by providing standards for juvenile courts to consider determining whether the juvenile sex offender, who has turned 21 years old, should be required to comply with the adult sex offenders. The bill further notes that the provisions of NRS 62F.250 were unclear with regard to what standards the others apply. The state bears the burden of proof considering whether the juvenile has been rehabilitated or, is likely to pose a threat to the safety of others and should be deemed to be and adult sex offender.

[Chairman Anderson, continued.] The bill clarifies the district attorney bears the burden of proof by providing a preponderance of evidence that the court should find that the juvenile had not been rehabilitated and is likely to pose a threat or should be deemed an adult offender. This tries to set that aside.

[Chairman Anderson left, turning the meeting over to Vice Chairman Horne.]

Vice Chairman Horne:
On page 2, line 11, the bill addresses those items which the courts can consider whether or not a juvenile is rehabilitated and the like. Line 11 says, "Any history of delinquent or criminal acts committed by the child," and this is very wrong. I think all delinquent acts or criminal acts don't necessarily go to the crime of a sexual nature. If the kid has a delinquent or criminal act of joyriding in his car, that should not be weighed against him whether or not he is rehabilitated. I don't think it is necessarily relevant. I think a change is needed there saying "sexual criminal acts." That would show their true history and would be more in order.

There is an email from Howard Brooks from Nevada Attorneys Criminal Justice dated April 10, 2005 which I will read into the record (Exhibit B):

> I have been asked by a legislator about what happened before at the Nevada Supreme Court that made A.B. 472 necessary. Here's the history, as related to me by others. The Legislature passed a bill a few years ago providing that a juvenile court could require a juvenile sex offender to register as an adult sex offender. But there was no criteria for determining whether a juvenile should register. So the Clark County Public Defender's Office, through the Deputy Public Defender Susan Roske, challenged the constitutionality of the process, arguing two points: 1. The statute was unconstitutionally vague and overbroad and violates due process

> because a juvenile has no notice of what he should do to avoid having to register as an adult sex offender, because there were no criteria. 2. The statute violates due process because the court has no jurisdiction, or power, to order a juvenile to do something when the juvenile becomes an adult. The really easy question was number one. And the Nevada Supreme Court reversed the conviction and held the statute unconstitutional. But the Nevada Supreme Court never addressed the second issue, which is a more difficult issue. That's the history, as I understand it.

Assemblywoman Allen:
I have a question for Legal. Did this law require that the juvenile register prior to becoming an adult or is this something that was suppose to take place as a child to be added onto the list?

Risa Lang, Committee Counsel:
You're asking whether they had to register before they became an adult?

Assemblywoman Allen:
Correct. If they are a sex offender, then as a child they should be added onto the list which includes primarily adults.

Risa Lang:
I don't believe that juveniles register until they become adults unless they have been taken out of the juvenile system.

Assemblyman Carpenter:
How hard is it going to be for the district attorney to prove the preponderance of the evidence? My other question is on page 2, line 30 through 35. It seems to me that it says that the "Juvenile court determines at the hearing that the child has not been rehabilitated to the satisfaction of the juvenile court or that the child is likely to pose a threat to the safety of others, the juvenile court shall relieve the child of being subject to the community notification." To me, that's wrong.

Chairman Horne:
That was pointed out to me this morning.

Risa Lang:
I believe that was just a drafting error so we should correct it so that we take out "not" on line 31 and add "that the child is not likely to pose a threat" on line 32. Also, to correct myself from before, they do notify local law

enforcement when a child has been adjudicated delinquent for a sexual offense. This would extend that to the adult type community notification.

Chairman Horne:
The hearing on A.B. 472 is closed. Any suggestions from the Committee on this bill?

Assemblywoman Buckley:
I think it is a complicated issue that needs some work with pros and cons to fix it up. Without a proponent or opponent, I'd say we should let it go until next session even though it's important, unless there is a similar measure in the Senate and they have worked it out. It just requires a lot of work to make it constitutional.

Chairman Horne:
We won't move this piece of legislation as we have to work more on cleaning it up. Let's open the hearing on Assembly Bill 473.

Assembly Bill 473: Revises certain provisions governing payment of child support. (BDR 11-1373)

Madelyn Shipman, Legislative Advocate, representing Nevada District Attorneys Association:
We have worked on this bill which we thought was a simple bill. There is no such thing in the Legislature. Upon arriving this morning, I found that there were some issues that we have worked out. We have submitted an amendment which is written on the original bill (Exhibit C). The original intent of A.B. 473 was to do just two things. One was to put in the waiver language to be the same as it is with interest and to essentially allow a court to waive for undue hardship the penalties imposed. We thought it was a fairly simple change and consistent with the language in NRS 125B.140 on interest.

The other change was to simply correlate the language as to how the penalty is imposed as to the informal Attorney General's opinion that had been issued regarding how that was going to be done, after the regulatory process was complete. We all have agreed on that language for the penalty. We are all in agreement that the way it was drafted, to have "if imposed" at the beginning of the second paragraph, implied there has to be a hearing prior to the imposition of the penalty. As you may or may not be aware, that is automatically imposed through the NOMADS [Nevada Operations of Multi-Automated Data Systems]

Program at the end of the month on that portion of payment that has not been made and that constitutes a delinquency.

[Madelyn Shipman, continued.] Additional concerns were raised that undue hardship was allowed too much leeway by a court. To actually go back and revisit the ability of a person to pay when a penalty is not intended to be as such. After talking about what our intent was, we drafted another amendment that may not be the right words for bill drafters so they may need to rewrite it. Essentially, the intent is to only have a waiver under this section in NRS 125B.140 for reasons that are outside, essentially, the control of the responsible parent. We would appreciate your support.

Susan Hallahan, Chief Deputy District Attorney, Family Support Division, Washoe County District Attorney's Office, Nevada:
I am here today to testify in support A.B. 473. Currently, NRS 125B.140 authorizes the court to waive interest on child support if the court makes a finding that the charging of that interest would create an undue hardship. Similarly, pursuant to NRS 125B.095, the court is required to charge a penalty, but the court at this time does not have the authority to waive that penalty in an undue hardship situation. We are supporting the language change that would provide that authority.

The Washoe County District Attorney's Office has charged interest on child support debt for about 10 years. We have had some issues with respect to the court interpreting what an undue hardship is. To give you an example of a potential undue hardship finding, most noncustodial parents are ordered to pay their child support via an income withholding. The employers, however, can honor that income withholding notice according to their payroll schedule. So if a parent is ordered to pay, for example, $100 per month in ongoing child support and their employer has a weekly payroll, that employer can send a child support check to the child support division every week. That weekly check would be $23.08. During those months when there are only 4 pay periods in a month, the child support division would receive $92.32 versus $115.40 per month in the months that have 5 pay periods. Yet, over a calendar year, the full $1,200 per year in child support would be paid. So in the calendar months in which $100 is not received, which is generally 10 months out of the year, a noncustodial parent could be assessed interest and penalties. Those are the types of situations where a court would waive interest and would, likewise, waive a penalty.

In addition, an obligor can come into the local district attorney's office and pay their child support over the counter. If they pay that payment on the last day of the month, by the time it gets deposited into the state collection unit and

posted in the collection unit, usually a day or two into the following month has elapsed. So, likewise, an obligor could potentially be charged interest and penalties in that situation as well.

[Susan Hallahan, continued.] We have also had situations where an obligor is in an industrial accident or a car accident and is hospitalized for several months. They don't have the ability to pay their support. The court would waive interest in that scenario as well.

Finally, subsection 2 has been amended to simply clarify the language with respect as to how the penalty is calculated. If someone owes $100 in ongoing child support but only pays $50.00, they are assessed a 10 percent penalty on that remaining $50.00 balance. If they thereafter stay current in their ongoing support obligation, they would incur no further penalties. It is, in essence, a late fee that is intended to encourage a timely payment of child support. The charging of continued interest on that remaining $50.00, until it is paid in full, however, would make the custodial parent whole for the value of her money.

We would support the amendment according to the Trial Lawyers' Association to more specifically define undue hardship to give the court some guidance with respect to the finding to ensure that our intent is followed. That being, interest and penalties should only be waived in a situation where a noncustodial parent is unable to pay their support or is unable to pay that monthly payment for various reasons.

Assemblyman Carpenter:
I have a concern about the amount of interest that you are going to be charging. You are charging 10 percent every month so in a year that adds up to 120 percent. If they couldn't pay whatever was due at the end of that first month, they certainly are not going to be able to pay the amount at the end of the year. I didn't see anything wrong with the way it was written before when it was 10 percent a year. But at 10 percent a month, a lot of these people will never be able to pay that amount. I'm probably one of the biggest sticklers that people ought to pay their child support, but they can't pay something that is impossible to pay, and you keep adding penalty upon penalty or interest upon interest. It really defeats the whole situation.

Susan Hallahan:
This bill does not purport to change how penalties are calculated. The penalty statute as it states right now is 10 percent per annum or a portion thereof. It has to be added to the portion of the monthly payment that was not paid. If you were to, for example, charge the penalty at the end of the year, then there could be a noncustodial parent that doesn't pay anything from January through

November and then in December pays $1,200 to satisfy their annual child support obligation. Interest and penalties are separate. The purpose of interest is to make the custodial parent whole for the value of her money that she should have received or he should have received today but doesn't receive until 6 months from now. The purpose of the penalty is to encourage the obligor to pay each and every month as he is ordered to pay. This penalty is a one-time snapshot and is charged only during that calendar month for any delinquency you have. So if the obligor pays each month, he or she would not accrue an additional penalty.

Assemblyman Carpenter:
It says a 10 percent penalty must be applied at the end of each calendar month against the amount of an installment or a portion of the installment that remains unpaid in the month in which it was due. So it seems to me if they owed $100 and there is a 10 percent penalty that month, it would make it $110. Then the next month it is going to be another 10 percent of $110 so that's $111. Simple interest would be 120 percent at the end of the year, so instead of owing $100, they would owe way over $200. It's contradictory in trying to get them to pay, because there is no way they can pay it.

Susan Hallahan:
Logically, you would think that would be the way it would work out. But if I owe $100 and I don't pay it this month, I am assessed $10 at the end of the month. If I don't pay $100, I have another $10 and now it's $20. If I don't pay anything for the whole year and I owe $1,200, I am assessed 10 percent penalty which is $120. Whether you calculate it at the end of the month or at the end of the year, it still is $120.

Kim Surratt, Legislative Advocate, representing Nevada Trial Lawyers Association:
I came here in opposition of this amendment of A.B. 473 on behalf of the Nevada Trial Lawyers Association (NTLA). I have been working carefully with Ms. Madelyn Shipman and Ms. Susan Hallahan to work on those concerns. The concerns we had were mainly with opening the door wide open for the district court judges on undue hardship without any explanation or definition of what undue hardship is.

Our concern was that the party that is responsible for paying child support would suddenly have a million excuses in front of the court being able to say they were unable to pay their child support. As the penalty becomes larger, it becomes more of a hardship just because it is growing exponentially. It was explained to me this morning this is really meant for some very specialized circumstances, in which the parties are having these penalties beyond their

control, in circumstances, where they are using best efforts to pay their child support. But because of over the counter payments or the way the computer system is working and the wage withholdings are working, then the penalty is being attached in circumstances which are unfair. We worked on the definition adding language about defining undue hardship, and I am not necessarily of the position that it is the appropriate language yet. It definitely needs some bill drafting, and, perhaps, we can work with the bill drafters on this language so that it actually addresses those special circumstances, instead of opening the door wide open.

[Kim Surratt, continued.] In addition, perhaps beyond working with bill drafters, the testimony is taken, and statements on the floor would assist in making sure we are not going in the direction of having all these parents having an excuse, who are just simply not paying their child support.

Assemblywoman Buckley:
I think this needs a lot of work besides paragraph 2. It says that unless the court finds that the responsible parent will experience an undue hardship, then "undue" is defined as "based on an action outside the control." That is worded very unclearly because you are talking about two different things. You are talking about circumstances outside of the control of the parent and just an undue hardship in general.

If you step back and look at this, it could create more problems than it would solve. If you want to say that the court can waive penalties where the parent paid it on time, but it was not credited to the appropriate account, is really what you are trying to do. Otherwise, this area of law is just open to change the standard from the best interests of the child and the support of a child, to claims of undue hardship. It will turn it into the type of legislative hearings where we have discussions regarding a man on trial for support and where the room is packed with people who don't want to pay their child support. I think this would just create more problems than we would solve.

Chairman Horne:
I would caution the drafting of specific instances so that if you had an instance that was not listed, you are not barred. Just be cautious of that as I'm sure we can't think of every particular scenario that could arise that would probably qualify to do that.

Louise Bush, Chief, Child Support Enforcement, Welfare Division, Nevada Department of Human Resources:
[Submitted Exhibit D.] I am here to offer my support of A.B. 473. Nevada law requires delinquent child support obligors be assessed interest and penalties.

NRS 125B.095 states that a penalty of 10 percent per annum must be assessed when an obligation for child support is delinquent. The common usage of "per annum" means "by the year" and in common application means a fractional interest calculation. The phrase "per annum" contained in the penalty statute suggests that the late payment penalty should be calculated like interest. However, according to the legislative history from the Sixty-Seventh Session and an Attorney General's opinion, legislators intended the penalty to be a one time late fee, akin to a late fee one would pay for a delinquent credit card payment rather than another interest assessment.

[Louise Bush, continued.] Typically, late payment penalties are designed to encourage timely payment while interest charges are intended to compensate creditors for the loss of use of their money. This concept is highlighted by the comments then Assemblyman Robert Sader made during the Sixty-Seventh Session while addressing the intent of a child support late payment penalty.

Mr. Sader said, "It should be clear in the statutes that there is a penalty for not paying on time. You want to motivate somebody to pay on time and have an enforceable penalty. That is what this is about." Mr. Sader further commented that the purpose of the penalty was intended to be motivational, such as a late payment fee attached to any billing.

This bill removes the ambiguous language currently found in NRS 125B.095 clearly aligning the statutory language with the legislative intent of assessing a one-time late fee. Assembly Bill 473 also allows the court to waive the penalty if the penalty will cause an undue hardship for the obligor. This is consistent with the waiver provisions of the interest statute, NRS 125B.140, and, as such, is sound public policy. Accordingly, the Welfare Division supports A.B. 473.

Donald W. Winne, Jr., Deputy Attorney General, Nevada Department of Human Resources:
I was neutral on this bill, but after what I heard from Assemblyman Carpenter, I realized in order to help explain the position of the Division, I needed to come forward and give you a copy of the actual opinion which was requested by Nancy K. Ford, Administrator, of the Welfare Division (Exhibit E). It was a formal opinion from our office; however, it was not published as it was deemed something that was requested by an agency which would impact the agency. At least it would probably address some of Assemblyman Carpenter's questions.

Assemblyman Conklin:
The way the bill reads now, with this particular piece of legislation, you would be charged $10 on the $100 per month. Isn't that correct?

Donald Winne:
I don't necessarily agree with the draft language in the bill. But my experience, over the years of dealing with legislative drafters, is that they have a certain way of drafting language which they think is most appropriate. I, frankly, think it leaves some question as to whether or not this is a one-time late payment fee. I can just tell you that when this bill was originally passed, it was clear that they wanted us to be like a credit card. If you don't pay on time, this is your one-time late fee. I'm not personally comfortable with the current language as it exists. I don't represent the agency. You asked me here as a person who got involved in this because I drafted this opinion. I would agree with you, Mr. Conklin, the language as it appears still needs work in order for me to feel comfortable, after going through this exercise and making sure they get the intent correct, that this is just a one-time late fee and it won't be adding up like Mr. Carpenter was worried about.

Marshal S. Willick, Attorney at Law, Willick Law Group:
[Referred to prepared testimony (Exhibit F).] I was somewhat involved in the original legislation leading to the penalty. I have been working fairly closely for the last couple decades both as to interest and penalties. I'm pretty familiar with the calculation methodologies. I have some specific criticisms and an explanation as to why the change is being sought.

By way of background, everything is now clocked in accordance with how the court sets the child support obligation. Specifically, courts have a great deal of leeway and exercise a great deal of discretion as to how support should be paid. For example, all due on the first of the month, due on the 10th and 25th, or all due on the last day of the month, et cetera. There are all kinds of untold variations on that throughout the child support orders currently in effect.

I will start with subsection 2 because it is the bigger problem. If subsection 2 is altered as stated, it would treat similarly situated people differently. For example, if Person A had a child support order due on the 1st and Person B had a child support obligation due on the 25th, Person A would basically have 29 days within which to pay child support without incurring a penalty. Person B would only have 5 days. That difference, in my opinion, would rise to the level of a constitutional concern because it would treat similarly situated people differently. The problem is shifting the focus from a child support due date clock to a month-end due date clock. It leads to a great deal of problems. It would also cause a differential in the calculation date and the due date for how much should be paid between those 2 individuals causing a great deal of confusion, as a practical matter, in the family courts of this state. It would be very difficult to calculate in the real world, although I suppose it would be possible. It would lead to an appearance of greater unfairness to similarly situated people.

[Marshal Willick, continued.] As to the first section, I had no real problem with mirroring the penalty to the interest hardship provision. That is a matter of public policy and appropriate for this Committee to consider. The usual considerations are there. The more options you give the district court, theoretically, the fairer the results can be. The difficulty is that the more options that are available, the more likely it is people will choose to litigate. Therefore, they fight about matters they otherwise might have chosen not to fight about. Consequently, the net costs are increased to all the litigants and to the system itself for having a fight that otherwise might be avoided. That is a policy choice for this Committee. It seems appropriate that if interest is waivable in cases of undue hardship, then the penalty should be waivable in cases of undue hardship. I would suggest that you should not insert a definition of undue hardship in one section without conforming the other section or it will lead to a deferential in standard evolution. It might be better to leave this one to the courts and let the courts evolve a standard of undue hardship. Then correct it if you feel the courts have gone awry. To date, there are no case opinions on this point.

Finally, the problem here with due respect to the district attorneys and the Attorney General's Office, is one of the tail wagging the dog. They are attempting to solve a calculation methodology problem left over from legacy hardware and software which is inadequate to any modern calculation task. It is a particularly difficult calculation problem. We have solved it with a microcomputer program for a couple thousand dollars years ago. I have given both the software and the source code to the state repeatedly. They have this legacy software, NOMADS, that they are trying make do a job that it is not suited to do. They are attempting to conform the law to conform how their computer works. I would suggest that this is a bad basis for altering public policy and altering statutes. I suggest it may be time that they just face up to the fact that they have wasted a huge amount of money on trying to fix something which may or may not ever be fixable. But certainly they should not start amending the law to conform to the problems that we know are built into that hardware system.

Chairman Horne:
The hearing on A.B. 473 is closed.

[Chairman Anderson returned.]

Chairman Anderson:
Let's turn our attention to A.B. 474.

Assembly Bill 474: Revises various provisions relating to sports officials. (BDR 3-1374)

Assemblyman William Horne, District No. 34, Clark County:
I bring before the Committee today A.B. 474. The primary purpose of bringing this piece of legislation is to address some of the problems we have with sporting officials being assaulted on our playing fields. We have all seen them with the out-of-control parent or fan. This bill drafted to address those concerns.

Page 1, paragraph 2, deals with liability for physicians so they are not liable for any civil damages except for gross negligence in their duties in sporting events. I asked the Committee to delete this as it was not intended to be there.

Chairman Anderson:
So, it is your suggestion that we move forward with A.B. 474 and we amend the bill by deleting this section relative to civil damages, for acts of omission in lines 8 through 13?

Assemblyman Horne:
That is correct. It continues on to page 2, lines 1 through 6. Initially, I was going to have physicians who were volunteering for sports events to have this limited liability, but they are already covered under Good Samaritan laws and the like. The other physicians are paid physicians and in some sporting venues are paid handsomely for the time they spend on the court or field for their duties. So, it really wasn't appropriate to provide them a shield from civil liability.

Chairman Anderson:
In essence, you are suggesting that the only thing this bill will do is add the term "judge" to sports officials.

Assemblyman Horne:
There will be another amendment but as for what I am presenting this morning, that is correct.

Chairman Anderson:
So we are going to expand it to provide enhanced penalties for a person convicted of assaulting a sports official and for penalties of such an assault. So when somebody does something to a sporting official or judge, the penalty for that person convicted is defined on page 5 of the bill. The penalty will be enhanced because of the nature of their crime. A sports official, under the new definition, is going to be entitled to this protection not only at the sports event, but on his way to the playing surface and in leaving the playing surface of a sporting event. Is that the intent is of this legislation?

Assemblyman Horne:
Yes, before, during, and after a sporting event.

Ron Thompson, Attorney at Law, Santoro, Driggs, Walch, Kearney, Johnson and Thompson:
I am a basketball official. I officiate at both collegiate and high school basketball in the state of Nevada. I am a member of the Southern Nevada Officials Association which is the group in the Las Vegas area that officiates at all types of sporting events primarily on the scholastic level. There are other organizations throughout the state. In northern Nevada, there is the Northern Nevada Officials Association in Reno. In northeast Nevada, there is the Northeast Officials Association in Ely. All three groups are in support of this bill.

I am sad to report to you what you already know by watching sports. Assaults on sporting officials in all sports are a nationwide phenomena that have caused a great deal of problems on our playing fields. Unfortunately, it has also occurred in Nevada as well. Each year we have an incident of some sort that occurs in every level of sporting events—youth leagues, recreational leagues, et cetera. Some of these actually involve a physical altercation by a fan, parent, or sometimes a player on a sporting official. That is what caused me to approach Marc Ratner, Executive Director, Nevada Athletic Commission, regarding this problem and what could be done about it. I inquired of the National Association of Sports Officials, which provided me with a great deal of material regarding instances that have occurred nationwide and the actions by state legislatures across the country to address assaults and batteries on sports officials (Exhibit G and Exhibit H).

I am aware of at least 19 states that have taken action enacting legislation in providing for enhanced penalties for assaults and batteries on sports officials. With Mr. Ratner's input, as well as from Keith Kizer, Chief Deputy Attorney General, Nevada Gaming Division and Legislative Advocate for the Nevada Athletic Commission, an initial draft to revise NRS 200.471 and NRS 200.481 has been completed. NRS 200.471 and NRS 200.481 appeared to be a logical

place to put this change. You'll see in the existing statute that there are already certain types of individuals that are protected including police officers, taxicab drivers, school employees, and health care providers, et cetera. Sports officials, like those classes of individuals I have already mentioned, are in some way vulnerable more than normal people. Unfortunately, every time one of us blows a whistle or makes a call, usually half the crowd thinks we are wrong. Some people are unable to handle responsibility of losing or having a call made against them. I urge you to consider this bill in all earnest. Nevada would join a growing list of states who have already acted.

Raymond Avansino, Jr., Chairman, Nevada Athletic Commission:
Our proposed amendment (Exhibit I) appears to dovetail well with A.B. 474. Basically, this has to be with the proposed revisions that you have considered: adding judges, physicians, timekeepers, and inspectors to the same areas of limited liability that other officials receive. Also, it covers some housekeeping on acceleration of payments to the state as required, and granting of immunity to our officials within the boxing and armed combat world, that are also enjoyed by other state officials.

Chairman Anderson:
This is a good time to get on board since the Nevada Athletic Commission saw this as an opportune piece of legislation.

Assemblyman Mabey:
I'm just curious why you feel physicians should be in here from your perspective.

Keith Kizer, Chief Deputy Attorney General, Nevada Athletic Commission, Nevada Department of Business and Industry:
As far as the first proposed revision to the definition of sports official, a physician plays a big part at least in the boxing world, especially in light of the main purpose of this bill, and that is the deterrent to assault or punishment for assault. They come into the ring, they check out the boxer to see if he or she has had too much punishment, or a cut and if that should be cause for a bout to be stopped. Thankfully, we have had no such assaults against any of our ring officials yet. There have been several boxers in the past who have gotten quite upset by the ringside physician coming in and suggesting to the referee that the bout be stopped for one of the reasons I mentioned. That is why we would like to have that added. You also see the word "inspector" added, because they play a large role as well with the physician coming in and checking the cuts. They are the ones who provide the protection in case something did go wrong. Thankfully it has not occurred here, but it has occurred in other states.

[Keith Kizer, continued.] As far as the proposed adoption of an additional provision in Chapter 467, that would apply to all ringside officials, and not be limited to referees, judges, physicians, timekeepers, and inspectors. Really what they are is an arm of the Nevada Athletic Commission, when they are in there. They are not employees of the state and, therefore, they are not covered by Chapter 41 as written. But they really do play the role of the Commission while the event is in place, and they all play a very major role making sure the boxing event occurs properly. Actually this language is pretty much a mirrored version of California's statute that provides for the same immunity to their ringside officials as their government employees have. I believe our officials deserve the same sort of protection as California has given so graciously to theirs.

Raymond Avansino:
Certainly the physicians play an integral part in the conduct of a boxing match, and it is not always popular what they do. So the same protection should be afforded to them as well.

Chairman Anderson:
Let me ask Legal if, in your drafting, the original request were to include both judges and physicians. Are the provisions on page 1, line 13, and page 2, lines 1 through 6, relative to physician, specifically needed or did it fall into some special class when they are acting as an official of an athletic event outside the scope of their medical practice.

Risa Lang, Committee Counsel:
I think the way it is drafted now, where we have some statutes that address the Good Samaritan laws and physicians who provide services under those statutes, would cover the physician acting in this capacity. If that was the intent to cover all physicians, then this language would still be needed. The language being proposed here to be added to Chapter 467 would also provide limited liability. It would tie it to the provisions of Chapter 41 for state employees, which would actually be $50,000, rather than full immunity, which is what the bill currently provides.

Chairman Anderson:
If we added in subsection (b) on page 2, where it refers to "judge," would that take care of it?

Risa Lang:
NRS 41.630 again would provide the immunity from any civil damages as a result of unintended act or omission. So if you add it there, it is total immunity versus what is being proposed on the next page. So I think they probably need

to select which one they want to go with. They seem in conflict unless it is just with relation to Chapter 467.

Assemblywoman Buckley:
That was the issue I was going to address. I have some real concerns saying that referees, physicians, timekeepers, inspectors, and people that work at a boxing event are state employees so they would only get $50,000 cap. I have lots of concerns with that. I have concerns that $50,000 has become the cap amount for 15 years. It is out of date and we can't seem to update it. I have a concern when you give blanket immunity a $50,000 cap. I think we have negligence laws for a reason and you are able to shape behavior. People are more thoughtful and they are more caring. A blanket cap to protect taxpayer dollars is a much different situation than a boxing event. So I would have some real concern with that section on page 2. It's late to add that in, and it's a fairly radical concept and a lot different than trying to get tougher on sports fans that get out of control at an event.

Assemblywoman Ohrenschall:
I wonder if Legal could just separate the two documents out. I would like to fully understand what the bill does by itself and then what the amendment that has been proposed does to the bill.

Chairman Anderson:
First we will hear from any others that are in opposition to the bill, and maybe from that discussion, we will find out whether the amendment alleviates some of those fears or doesn't. Then I will ask Legal to respond.

I think Mr. Thompson tried to take us through the bill as did Mr. Horne. The existing law provides that a person who is convicted of assault shall be punished by gross misdemeanor. Assault upon an officer, provider of health care, school employees, taxicab drivers, or transient operators while performing their duties would now be Category B felony. If that person happens to be on probation, that raises it to a Category D. So what this does is raise that standard to the same for sports officials as exists for school employees and other individuals.

Assemblywoman Ohrenschall:
You stated it very clearly.

Gerald Gillock, Legislative Advocate, representing Nevada Trial Lawyers Association:
Specifically, with the removal of Section 2 out of the proposed amendment by Vice Chairman Horne, we would not object to the increasing of the penalties if

the Committee found that in the best interest. The proposed amendment, however, which Mr. Avansino says mirrors California law, would not be acceptable because it only affects boxing. Where it says "sports official," we are talking about all sporting events and not just boxing. We are talking about events where a physician may be hired to actually render medical care. I would also point out to this Committee that if he wants to mirror California, I'm sure he would support a $1 million cap for sovereign immunity because that is what California's cap is. Their sovereign immunity is up to $1 million versus $50,000 in the state of Nevada. Our $50,000 cap is archaic, a medieval term would adequately describe it.

[Gerald Gillock, continued.] I think if the Committee is interested in protecting the official from abuse by fans or from assault and battery, then we should narrow the scope of the bill to that. I would certainly support that based upon the fact that we have tried to increase the immunities under NRS 41.630. I think we are cautiously destroying a protection that people need. On behalf of the Nevada Trial Lawyers Association, we would object to those words being in there.

Chairman Anderson:
Several sessions ago, we tried to address the tort question relative to public liability by trying to come up with a more reasonable cap. In point of fact, one of the big groups objected to it. We all thought we had an agreement and the cap was going to go up, then Ways and Means decided it wasn't going to go up, as the State was too much at risk.

Gerald Gillock:
I'm aware of that, and I think what we may have needed to do, because of the nature of our state, was to have a bifurcated type of cap. There would be a smaller cap in rural areas that could possibly be devastated by a larger award, and maybe change the cap in the metropolitan areas that are now mirroring the larger metropolitan areas across the country. We have the lowest cap in the entire United States.

Chairman Anderson:
I was just going to say, strangely enough, the rural areas have worked a system by which they were going to be able to meet the obligation. The objection did not come from local governments but rather from the State itself. At the eleventh hour, it didn't happen although we had spent a good deal of time working out many of the issues. I guess our concern here is relative to sporting events.

[Chairman Anderson, continued.] Our concern, as a Committee, is relative to those people who are a necessary part of the athletic contest to take place, whether it is unarmed combat or the myriad of other sporting events that take place in the country and in our state. This particular one happens to be clearly a money maker for the tourism industry, and we are concerned about what happens with sports officials. That is what we want to focus on. How do we provide them with incentive to be a sports official, if we don't do something of this nature?

Gerald Gillock:
In response to your question, I think they already have the protection. Our Legislature passed a cap on medical malpractice damages of $350,000 and they removed all exceptions. To take the extreme, a doctor could even show up to a sporting event drunk, overlook the fixed pupils in a boxer's eyes, and allow a fight to continue. His insurance company would be liable for $350,000. I think the insurance companies cover the doctor for his services rendered and that would include his services rendered at a sporting event. I think the doctors have a wealth of protections in this state. I don't think they are at risk to such an extent that they would refuse the compensation they would receive to go to a sporting event and, for example, be an orthopedic surgeon at a bull riding event.

Keith Kizer:
If I could just explain briefly the role the physician plays, at least in boxing and mixed martial arts, which we have here in Nevada. They work hand in hand with the referee. The main goal, of course, is should a fight be stopped? We have the old saying here that we would rather stop a 100 fights too early than one fight too late. The referee, umpires, and linesman, et cetera, already have this protection under NRS 41.630.

Hopefully, you will be adding judges, timekeepers, and inspectors to that list. I'm not sure why physicians don't deserve the same respect and protection that those people do. In fact, they probably deserve more than that. These people make a couple hundred dollars for a two-day event. They do the weigh-in and they also do the event. I'm not really sure why physicians are less than worthy compared to the other officials here.

Chairman Anderson:
Currently, physicians, based upon a recently passed initiative petition here in the state, are protected to a certain dollar amount which is different than anybody else in society; at least anybody who is a health care provider unless you happen to be a school employee or a state employee. What we are going to be doing is offering everybody else, except for these folks, the $50,000 cap. Physicians already have a cap of $350,000. Therefore, they don't need our

protection in this regard. What we are trying to do is make sure that these other sports officials are covered. I am not unmindful of the criminal penalties for physicians that may not be there, so I am trying to figure out if we can move with the bill or not.

Keith Kizer:
Some of the examples I have heard from some of the distinguished speakers today have compared these physicians to other physicians. Really, the comparison is to compare them to referees. The role they play in boxing is perhaps different than they play in the other examples that were given.

Chairman Anderson:
Then we should only give it to the boxing physicians and no other physicians who go to rodeo contests, football games, or basketball games?

Keith Kizer:
If that's the concern that other physicians do different duties, then perhaps just go with them in Chapter 467.

Chairman Anderson:
So you think that boxing is so dramatically different that it should have its own statute?

Keith Kizer:
I don't know of any other sport where a physician can say this competitor can lose.

Chairman Anderson:
You might drop by the National Rodeo Finals sometime.

Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections:
The Department of Corrections was asked to prepare a fiscal note for this piece of legislation. Upon reviewing the database, we could find no crimes against sports officials in our current population. However, we did find 2 professional boxers that have been arrested for other reasons.

We don't anticipate a fiscal note on this piece of legislation just because the deterrent effect of a Category C felony for substantial bodily harm should deter the average sports fan from exceeding the limits of exuberance. We don't anticipate any increase in the prison population.

Chairman Anderson:
The hearing on A.B. 474 is closed. I will bring it back to Committee. I know there is some concern from Legal. If we remove Section 2 of the bill, how would physicians be treated, if we are to give them the same level of protection on the way in and out of the ring so they are not harassed as sports officials? Is there a necessity for Section 2?

Risa Lang:
In subsection 2 of Section 1, we have provided total immunity from liability for physicians who perform duties during a sporting event. By removing that, you wouldn't give them that additional protection from civil liability; however, the current law does apply the heightened penalties for assault and battery to physicians, currently, which is already contained in NRS 200.471 and NRS 200.481. They are the sections that were added to the bill to include sporting officials.

Chairman Anderson:
The Chair is of the opinion that we can amend and do pass A.B. 474. Ms. Ohrenschall, you had some concerns and I don't know whether they have been answered. If they have, I'll be happy to hold the bill until we work the clarity of the language with Mr. Gillock so that we don't have any law of unintended consequence.

Assemblywoman Ohrenschall:
I would appreciate that.

Chairman Anderson:
It is the intention of the Chair to hold this until April 13 or 14, 2005, and work out the differences.

Let's turn our attention to A.B. 528.

Assembly Bill 528: Revises crime of intimidating or threatening public officers and employees and certain other persons. (BDR 15-1371)

This is a Supreme Court decision also. The Court provided examples of constitutional protection speech that is covered by NRS 199.300. These examples occur when a person believes he was wrongfully pulled over for a traffic stop because of his race and threatened to file a complaint with the police officer or supervisor (Exhibit J).

[Chairman Anderson, continued.] In *Chaffee v. Roger,* [311 F.Supp.2d 962 (2004)], the United States District Court for the District of Nevada considered constitutional challenges based upon the doctrines of over breadth and vagueness set forth by the portion of the crime of intimidating or threatening public officers and employees. This applies when no physical force or immediate threat of physical force is used in the course of the intimidation or in the making of the threat.

Specifically, the Court stated that the term "threat" and "intimidation" are not defined in any way with regard to the doctrine of vagueness. The court stated that the test was whether the challenged law first failed to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits, and whether it authorized or even encouraged arbitrary and discriminatory enforcement. The Court had concern about the constitutionality under both prongs of the test. Concerning the first prong, the vagueness doctrine, the Court stated that because paragraph (b) of subsection 1 of NRS 199.300 does not apply to threats or intimidation involving physical force, an ordinary person would likely be confused. So this addresses the constitutional challenge raised by the Court in which a threat or intimidation is covered by the crimes with the list of circumstances modeled after a similar statute in Washington, which the Court included.

This is one of the constitutional bills we were told about in the very beginning of our legislative session this time. We were trying to solve a problem where the Court had indicated that there was a vagueness in the law in *Chaffee*, and hopefully, that we clarified a list of the threats modeled after the state of Washington, which the federal courts indicated was constitutional and, therefore, we would be able to take care of this problem. That basically is what we are trying to do with A.B. 528. This is the suggested language from Legal that would solve the problem.

Bob Romer, Senior Employee Representative, State of Nevada Employees Association; and American Federation on State, County, and Municipal Employees, Local 4041:

The reason we are in support of A.B. 528 is to protect state workers. It started many years ago when we brought these types of things before you. People at the Nevada Department of Motor Vehicles were threatened because the public would get impatient or they were unhappy with the policies or procedures. They would stand in line for a half hour and then find out they did not have the proper paperwork. Who do they take it out on but the poor employee standing there at the window? Our only concern is that we don't think any employees should be threatened, intimidated, or harassed. We certainly don't want to see the public lose their civil rights. We want to see that everybody is protected. I

think the bill your Committee has here accomplishes that. We are in favor of the bill.

Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections:
Part of being an employee for the Department of Corrections is having to deal with the threats from inmates. This is normal for correctional officers. I do the discipline for the Department of Corrections, and I deal with several threats to officers every week because of discovered contraband in someone's cell, someone didn't like a disciplinary ruling, and the reasons go on and on. These threats are not particularly idle threats. I think every member of the senior staff at the Department of Corrections in the Operations Division has had a contract out on their life at one point or another. I myself am currently having concerns made by the Inspector General's Office in regards to a particular gang. Director [Jackie] Crawford has had 2 or 3 occasions where she had credible contracts against her. The most serious incident was an actual car bomb that was directed to the home of the warden of the Ely State Prison that was intercepted by law enforcement. So there is real teeth behind this. In fact, in several other states, and one in particular, the director of corrections has a driver and two bodyguards with him wherever he goes. These are not idle threats against employees of the Department of Corrections.

Currently, under the penal code of justice, the sanction for making a threat is about 60 days loss of good time. Your legislation puts real teeth threats against officers and officials within the Department of Corrections. We stand in favor of this legislation.

Chairman Anderson:
Have we increased the penalty? I thought we merely clarified this.

Fritz Schlottman:
I think the language "shall be punished" supercedes our penal code of discipline which is relatively a minor infraction. I think that gives direction to the Department of Corrections to proceed with criminal prosecution when these threats arrive.

Chairman Anderson:
They consider them serious enough to be substantial. According to my notes, this is a drafter's clarification on page 2 in subsection (2), "A person who violates subsection 1 is guilty of …shall be punished." Apparently, the way it was drafted was a little ambiguous so now it is a little more specific.

Gary Peck, Executive Director, American Civil Liberties Union of Nevada:
We are not opposed to what is the apparent motivation behind the intent of the bill. We are very concerned about the precise language. I don't think it corrects the problems that it is meant to address. I'll direct the attention of the Committee in particular to Section 1, subsection 1, paragraph (e), (f), and (g) and just give one example. It is not at all clear that this law, as currently written, could not be used against a whistleblower, for example, who said to a government official "look, I know about corruption in government and either you are going to address that problem or I'm going to the press with information."

I would just ask the indulgence of the Committee to permit us to submit amending language by tomorrow morning for the consideration of the Committee to tighten up the language. That is all we are looking for, not to outright oppose the bill. It is very legitimate in intention.

Assemblywoman Gerhardt:
I just feel compelled to say a few words about my tenure at Metro [Las Vegas Metropolitan Police Department]. I was a corrections officer and I can tell you from first-hand experience that I personally was threatened on more than one occasion. My family was threatened. Although I don't know if a contract was taken out on my life, I certainly do know that my car had been identified. They knew where I parked and what my license number was. So this is a very serious problem for people who are serving the state, and I think that should be taken into consideration.

Chairman Anderson:
I am looking at page 2, line 15 in paragraph (j) of the bill. "To do any other act which is not authorized by law and is intended to harm substantially a person...," whistleblowers are authorized by law to provide information. You don't think that is their protection?

Gary Peck:
If you were to look at the case which is the genesis of all of this, I think it would underscore what some of the problems are. I heard what Assemblywoman Gerhardt said and I agree with her completely. We have no objection or problem whatsoever with a tightly drafted bill that would not remain unduly overbroad. I don't think that language addresses the problems, particularly in Section 1, subsection 1, paragraphs (e), (f), and (g). That is all we are looking to do. It would make no sense to pass a bill that would then immediately be challenged in court and again overturned. We are not interested in doing that. We would like to work with the Committee in a very timely, expeditious way and submit some proposed amending language for you and the Committee's consideration. That way you end up with a law that will not be

challenged and will address the problems that Assemblywoman Gerhardt and others have raised. I very much appreciate their concerns.

Assemblyman Carpenter:
Does this apply to legislators also?

Chairman Anderson:
I don't think it does. I think we are covered by a different statute that concerns public officials. We will have to ask Legal.

Risa Lang:
I think that you are covered as a public officer.

Chairman Anderson:
It is in the section that any person who performs public duties for compensation. City officials, county commissioners, and city councilman are all covered by this statute. Shall we leave the bill open so Mr. Peck can submit his proposed amendments so we can move forward with the bill? I am suggesting we leave it open until April 13, 2005, and put it on our agenda then.

Assemblywoman Ohrenschall:
That would be my sentiment also, to leave it open.

Chairman Anderson:
The hearing is closed on A.B. 528 and the hearing on A.B. 474 is reopened.

Raymond Avansino:
I am grateful for Assemblyman Horne and Chairman Anderson for considering our amendment. We have had a good discussion regarding wording. We are very willing to have the Nevada Athletic Commission delete a couple words, if it is appropriate for me to suggest it at this time. What we considered in A.B. 474 on page 2, Section 1, subsection 3(b), lines 11 and 12, is to include the words "timekeeper" and "inspector." Only those 2 additional state officials would be included and be defined as sports officials. We would delete the category of physicians. I understand from Mr. Gillock and others that there is adequate protection for physicians. There is a different symbiotic relationship between referees and physicians in boxing but that is for another day to have that discussion. We would be very pleased to have it adopted and considered in that fashion.

Gerald Gillock:
This portion of Section 1, subsection 2 that was suggested earlier to be deleted would come out of the bill beginning on page 1, line 8 through page 2, line 6. We agree to the addition of the 2 categories that are added to Section 3.

Raymond Avansino:
We are requesting amendments to both NRS 467.104 and NRS 467.109 in order to ensure payment to the state.

Chairman Anderson:
So we would be adding "timekeeper" and "inspector" and "judge" to NRS 406 and NRS 409?

Raymond Avansino:
I was referring to—in addition to—the language augmenting the definition of sports officials that you consider in the amendments to NRS 467.104 and NRS 467.109, regarding the time for payment within 20 days after an exhibition.

Chairman Anderson:
We would be looking at your original document and we would be striking the word "physician" so it would be "judge, timekeeper, and inspector." In addition, we would further amend the bill to clarify under NRS 467.104 that the payments in dollars or fraction thereof would be paid not later than 20 days after the exhibition and be referred to them. Further, under NRS 467.107, which is cross-referenced under NRS 467.109, that positions be dropped from the reference to "ring officials," and that would include "timekeepers, and inspectors appointed by the Commission," if that language is necessary with the discretion of the bill drafter.

Gerald Gillock:
That is correct. We would drop the item suggested as adoption in Chapter 467.

Risa Lang:
That is fine.

Assemblyman Mabey:
It seems to me, as a physician, that we have the protection of the $350,000 cap. That is adequate protection. The other people, if they weren't in this law, would have no protection at all. As a physician, it seems like we are treated differently in this matter. It just seems like the case with the boxers that they are part of the game. They had to make a call and I agree with that argument. The doctor at the rodeo is being paid and will attend to a person who breaks his

leg. He ought to be liable for that, since he is doing his job. But he is not a judge or making a decision that a player can no longer participate in the sport that day. In this case, the physician is being treated differently and I don't think that is correct.

Chairman Anderson:
I understand your argument. I also understand that we need to get all we can out of the bill relative to timekeepers, inspectors, and those sport officials who are judges at other kinds of athletic events. That is so we can have it very clear that they are covered and that we do give them a certain level of position based upon their expertise.

Assemblyman Horne:
I think it is important to draw the distinction between the other judges, timekeepers, and inspectors because they typically don't carry insurance for their conduct. Physicians typically do carry insurance because they are in a unique position to do harm not only by their actions but by their lack of actions. That is why it is different. It is important to note that.

Assemblyman Mabey:
I agree with that but I think the other issue is just that they have money.

Chairman Anderson:
It is my intention to move with the bill unless there are any problems.

> ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 474 AND TO STRIKE ON PAGE 1, SECTION 1, SUBSECTION 2 IN ITS ENTIRETY AND THEN ADD THE PROPOSED AMENDMENTS WITH THE EXCEPTION IN THE FIRST REVISION OF STRIKING THE WORD "PHYSICIAN." THEN ON THE BACK OF THAT PAGE, STRIKE THE AMENDMENT TO CHAPTER 467 WHICH STARTS WITH "RING OFFICIALS" AND GOES ALL THE WAY THROUGH.
>
> ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblywoman Buckley was not present for the vote.)

Chairman Anderson:
This bill and amendment is assigned to Mr. Horne since it is his bill. [Meeting was adjourned at 11:30 a.m.]

RESPECTFULLY SUBMITTED:

Carole Snider
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 11, 2005 **Time of Meeting: 8:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
A.B. 472	B	Howard Brooks, Nevada Attorneys for Criminal Justice	E-mail to Committee
A.B. 473	C	Madelyn Shipman, Nevada District Attorney's Association	Amendments to A.B. 473
A.B. 473	D	Louise Bush, Chief, Nevada Child Support Enforcement Program, Nevada State Welfare Division	Statement to Committee
A.B. 473	E	Donald Winne, Jr., Deputy Attorney General, Nevada Department of Justice	Letter to Nancy Ford, Administrator, Welfare Division
A.B. 473	F	Marshal S. Willick, Attorney	Letter to Committee
A.B. 474	G	Ronald Thompson	Special Report on Officials Under Assault
A.B. 474	H	Ronald Thompson	Article on Poor Sporting Behavior
A.B. 474	I	Nevada Athletic Commission's Proposed Legislative Changes	Proposed Legislative Changes
A.B. 528	J	Legislative Counsel Bureau	Summary of A.B. 528