

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

**Seventy-Third Session
May 6, 2005**

The Committee on Judiciary was called to order at 8:07 a.m., on Friday, May 6, 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
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:

Ms. Barbara Buckley (excused)

GUEST LEGISLATORS PRESENT:

Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel
Allison Combs, Committee Policy Analyst

Carole Snider, Committee Attaché

OTHERS PRESENT:

Bill Bradley, Legislative Advocate, representing Nevada Trial Lawyers Association

Sergeant Michelle Youngs, Public Information Officer, Washoe County Sheriff's Department, Washoe County, Nevada

Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections

Kristin Erickson, Legislative Advocate, representing Nevada District Attorneys Association

Rob Buonamici, Chief Game Warden, Law Enforcement Bureau, Nevada Department of Wildlife

Lieutenant Stan Olsen, Executive Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada

Kim Spoon, Guardianship Services of Nevada, Reno, Nevada

Dennis Travers, Guardianship Services of Nevada, Reno, Nevada

Kathleen Buchanan, County Public Guardian, Clark County, Nevada

Patricia Trent, Attorney at Law, Las Vegas, Nevada

Chairman Anderson:

[Meeting was called to order and roll taken.] Let's turn out attention to S.B. 287.

Senate Bill 287 (1st Reprint): Prohibits person from leaving child who is 7 years of age or younger in motor vehicle without certain supervision. (BDR 15-14)

Senator Valerie Wiener, Clark County Senatorial District No. 3:

[Submitted [Exhibit B](#).] I sit before you today urging your support for S.B. 287, which deals with adults leaving children unattended in cars. I want to thank Assemblyman Horne for being the primary Assembly co-sponsor on this bill. He was very kind to say yes and has been the motivating spirit behind moving this bill forward. He was involved before I asked him to co-sponsor it.

We had a media event at Wiener Elementary many months ago, and Assemblyman Horne was there. It was to kick off an information campaign about leaving children alone in cars. Wiener Elementary was selected because

the motivation for bringing this bill last time was that Miss Jodi Esposito had called me and shared her very painful story about her son, Michael, who had been playing hide-and-seek at the speedway in the south. In his efforts to hide well, he had climbed into the car and through the car into the trunk while he was locked into the car. At the same time he was struggling and scraping with his fingernails against the trunk to get out of the car, his mother was driving that car around the speedway looking for him. That was the genesis of the bill. The media conference for the kids in cars campaign at Wiener Elementary had second graders at the event to experience it. Mr. Horne was there, and from the microphone I nudged him to be the co-sponsor, and he very willingly agreed to do that.

[Senator Wiener, continued.] As many of you remember, I did bring this bill last session in a different form. That bill was S.B. 17 of the 72nd Legislative Session, which addressed the same concerns, but again we are addressing them a little differently in this bill. That legislation did get through the Senate and moved over here but did not make it through the Assembly.

Your note from the Legislative Counsel's Digest that, like the bill 2 years ago, this bill does hold certain adults responsible for children 7 and younger who are left alone in a motor vehicle. As I did 2 years ago, I chose the age 7. We searched laws all over the country—and there are many—and with each law there are different ages. Initially, when I brought this bill forward, I chose under 7, because in Nevada criminal law, a child 8 and over is presumed to know right from wrong. Therefore, under the age of 7, they do not know right from wrong. It is a presumption, unless there is a person 14 or older in the car with that child. That age was selected because in our criminal statutes, a 14-year-old or older is presumed to know right from wrong and would have the ability to supervise. At the request of one of the people who sat at the table with me in drafting this version, that age was reduced to 12 based on request, because 12 years old is an age where young people start babysitting, so I changed the age to 12.

Two years ago we imposed a fine up to \$300. This time you will see that we provide for a misdemeanor, which can be suspended or dismissed by the court if the person who is cited presents proof of successful completion of an educational program. You will find an email from Erin Breen ([Exhibit C](#)). She and her program will create the statewide educational program to satisfy this requirement. I believe there might be another one. The BEST [Bringing Everyone's Strengths Together] Coalition told me several months ago that they had also created an education program to address the needs of this bill.

[Senator Wiener, continued.] I want to stress that the entire intention of this bill is education. The reason that there is a misdemeanor component is to get people in front of the court so they can send them to an education program. I'm not here to pass judgment. I'm not here to point fingers. This is to address people who make a mistake and—maybe through ignorance—do something that they just don't know could injure their children, for whom they are providing care. I am, however, trying to provide a necessary solution to a profound concern, and that is to protect children who are left unattended.

This is how I see it. We have on this side vehicular manslaughter, and on the other side we have child endangerment. We hope we can stop the vehicular manslaughter by getting people when they are reckless drivers with a lesser penalty, but with a wakeup call. With the child endangerment, my hope is that we will get the people down here when it is just bad behavior through ignorance or mistake, so that we don't rise to the level that is already in law. Child endangerment is when someone knows that a child may die if they leave the child alone in the car. My hope for this bill is to get people at a much lesser stage, so that this never happens.

An example of what I am talking about is that if you drive by any elementary school—certainly, in southern Nevada—at the beginning of the day or at the end of the day, you will find parents who either parked at the curb or double-parked. I would suggest in many of those cars there would be a child and a mom or dad or whoever is dropping the other child off, who isn't a bad parent but is a loving parent. They run into the classroom for that few minutes, leaving a child in the car unattended. The car may be running and that child is at risk. But what is interesting with that is that other children are at risk also, because it doesn't take anything to disengage that car.

We found statistically that there are more children killed by children in cars who disengage the gear and running over or hitting other children. Again, I'm trying to get the behavior early and change behaviors. It is my hope that this bill will pass so that we can do that. The focus again is education, redirecting behaviors, and I'm certainly willing to work with the Committee to help address this concern before another child is substantially injured or killed because of these incidents. These are statutory solutions. We provide statutory solutions for protecting animals, so I hope we could provide this statutory solution for protecting children. We also have a letter from Judge [Gerald] Hardcastle ([Exhibit D](#)) in support of the bill. I would like to turn this over to Assemblyman Horne for his comments on this bill.

Assemblyman William Horne, Assembly District No. 34, Clark County:

I was very pleased when Senator Wiener asked me to jointly sponsor this bill with her. I remember last session when this was brought up. Fortunately, the former law firm I worked for took a very active role in the bill as well. It was always with the understanding that the primary focus was education. I would ask the Committee to ask yourself: how many of you, when you get in the car to go somewhere, fasten your seatbelts? I would venture a guess that probably all of you do. All of us remember a time when that wasn't the case. We remember a time we got in the car and drove off. It wasn't that the seatbelts weren't there, but it was a nationwide effort to educate the public on the importance of fastening your seatbelts. We had commercials constantly tell you to buckle up for safety. It was over and over again until it eventually became a habit. That is what we are trying to get here.

Many of you have been on airplanes before. If you notice, they tell you they are going to be dimming the cabin lights for takeoff. They do this even when it is daylight out. I was a flight attendant for 15 years and a flight attendant instructor. The reason why it is done—even in the daytime—is so the flight attendants have the habit of doing it all the time, so it is never forgotten. If there is an accident and you have to make an emergency landing, if it's at night and the cabin lights are on, the emergency lights come on for you to find the exits. If the lights aren't set right, your eyes are not adjusted, and you will have difficulty in finding the exits. That's why they do it during the daytime and the nighttime—out of habit—so it is never forgotten.

We hope to get to a point where people treat their children the same way when making decisions on not leaving them in the car—because it is habit. Not because it is inconvenient to take them out of the car seat, but it needs to become a habit, because we need to stop children from dying in cars.

Chairman Anderson:

This does speak to one of our very major concerns in our society. While the southern part of the state has to worry about heat, the northern part is often concerned about the weather conditions of snow and rain. In front of the elementary schools, you will see children who are being dropped off. The parents are concerned and they want to get as close to the school as possible. But oftentimes, that child has to cross a street, so the parent will park the car across from the school, making sure the child safely crosses the street, and leaving their younger child in the car where it is warm. We are concerned about children in car seats. I think all of us agree that is the primary threat, greater than almost anything.

[Chairman Anderson, continued.] If there is a young family and there is not much differentiation in the age of the children, the parent has to make stops at the gas station and mailbox. On a practical basis, the parent does not want to get the child out of the car in the cold weather while doing these chores. They would feel they would be endangering the child crossing the street without supervision. It is a real difficulty making sure the younger child is in the child's seat properly. How do you think this is going to operate in the real world? We have to raise people's level of awareness.

Senator Wiener:

My hope is common sense also. Unattended doesn't mean that you can't be near the car to get to the child. I know there is a concern about the locked car. There has to be some common sense here also. One of my concerns is the parent who, absolutely without thinking, leaves the child in the car without any supervision, with the possibility that the car could be disengaged or working the power windows, putting the child at risk. The forethought is, what behaviors put the child at risk? We don't think it can happen, but it can happen in a split second.

I will work with the Committee to address additional language for specific concerns. When I brought this 2 years ago at the request of a mother who lost her child, I approached the district attorney's office and I approached Metro [Las Vegas Metropolitan Police Department]. I asked them to tell me what tools they had, because if they had them, I wouldn't bring the bill. Law enforcement told me, as well as the district attorney's office, that in the prior dozen years, they had a small handful of cases that they did anything with, which surprised me. They said that it wasn't because warrants weren't issued, but the current law for child endangerment is substantial, because it is felony. With only a child endangerment law in place, law enforcement was reluctant to do anything unless they saw a child dying in a car or they thought that child may be damaged. They wouldn't do anything because they knew it would rise to the level of a felony, and they didn't want to impose that on the parent or guardian who was responsible. I am more than eager to help the Committee come to terms with that. This is the tool that will allow us to change to the behavior without having to rise to the level of a felony and, possibly, the level of irreversible damage or death of the child.

Chairman Anderson:

I don't doubt that, and I applaud the effort. Those are concerns we hear about from people who want to know how much a child has to weigh to be in a child seat. Regarding Mr. Horne's example of the seatbelt, we note that it is a secondary offense, rather than a primary offense. People are not pulled over for

not wearing their seatbelts. Most of us have changed our behavior regarding seatbelts. Do you see this as a secondary offense?

Senator Wiener:

I will work with the Committee in any way that will assist you in helping create some avenue for passage of this bill. I am committed to finding an additional tool to the child endangerment penalty, so that we can change the behavior so we can save children.

Assemblyman Horne:

I don't anticipate officers patrolling school zones and checking to see what parents leave their children in the car while they run another child into the school. I think what this will do is catch the parent at the 7-Eleven playing the slot machine while their kid is sitting in the car. If the patrol officer sees the child in the car and the parent playing a slot machine, I think a citation should be issued.

Chairman Anderson:

Do you think the police officer should give a warning to the parent prior to a citation, as I think there are some issues to be raised here?

Assemblyman Carpenter:

I agree with the concept of this. There has to be some way so it will work in the real world. The way it is worded now, it says "shall not leave," so it doesn't leave any wiggle room at all. Maybe we need to have a greater campaign like we did with seat belts. That would probably help more than anything. I certainly do agree with the concept, but I think we have to change the wording somewhat so that it just doesn't catch everybody.

Senator Wiener:

I would be more than happy to sit down with counsel or any members of the Committee to address concerns, because of the importance of the issue.

Assemblyman Ocegueda:

I just echo the comments of Assemblyman Carpenter. I looked this up, and I think we went on over 500 of these calls last year in my department. That is a considerable amount of calls for service for accidental lock-in. I can tell you from my experience that I have dealt with dead children in cars, and 95 percent of them have been accidental lock-in. I'm supportive of the idea but would like to see something that would rule out the accidental situation.

I can give you an example of the neglect part. I was on a call with an eight-year-old who had been left home alone, who started a cooking fire in her

home. The officers said they couldn't charge this woman with any type of neglect, and I'm sure this young child had been home alone for 4 or 5 years. The officer talked to the child, and the child said that she cooked her own dinner every day, and that day, she took a nap. I appreciate the intent of this bill but would like some additional language.

Senator Wiener:

Again, I will work with the Committee.

Assemblyman Horne:

Last year my wife and my teenage niece locked my son in the car while they were getting balloons for a party. They were loading it in the back, they closed the door, and the keys were in the car. My wife called me to unlock the car. It was a warm day. My son was never unsupervised while in the car, as it was an accidental lock-in. This bill would cover that, because it does say "unless the child is being supervised." I will be happy to work with the Committee.

Assemblyman Mortenson:

I think the intent of the bill is great, but I agree. Some of the language should be changed.

Assemblywoman Angle:

This has been my concern all along. I have no problems with the bill either, except when you drive to a gas pump and you have to get out of the car to pump gas. You are not in the car with the child. As I read the bill, if you are out of the car, you are not supervising your child. It is really difficult to address all circumstances where things might happen.

Senator Wiener:

My intent was that they did not have to be sitting in the car with the child. That is an accidental lock-in, if that's the interpretation of counsel. Supervision could be that the car could be accidentally locked and still be with the child. My hope would be that they get to the child some way. What I would not hope, and I dealt with this last time more than this time, would be exactly what my colleague said. Supervision does not mean leaving the child with the window down and playing slots at 7-Eleven—even though they have line of sight—because they won't be watching the child. If they need to make a cell phone call to get the car unlocked, they are still there. If they need to get into that car to protect that child, they will break a window if necessary. They are still with the child. My intent was that they did not have to be sitting next to them on the seat as long as that child could be protected by that custodial adult. If they lock the child in and leave for an hour, that would be child endangerment, especially in the south in the summer.

Assemblywoman Gerhardt:

I am going to illustrate a personal story that will show exactly why this bill is needed. My son was 5 years old, and my ex-husband had him. My son was in the car, and my ex-husband went back into the house for something. My son got out of his seat and disengaged the brake. The car was on the hill and went down the hill. Somebody caught the car so there wasn't a tragic result. It literally just takes seconds. Even small children know how to get out of a car seat. I would have no problem with him being issued a citation under those circumstances or anyone else being issued a citation under those circumstances.

Assemblyman Horne:

This is just a reminder for the Committee that this is a citation to get them before a judge and to get them into a class to point out the dangers. They can then go back to the judge, tell him they took the class, and say, "Now I am educated on the dangers of leaving children unattended in a vehicle." The judge can dismiss those charges and the fine. The sole purpose of this is education. We are not trying to incarcerate anyone or make criminals out of parents under these circumstances.

Chairman Anderson:

Are they going to have to pay fines and go to court? Will they be charged and then fined in addition to the counseling program, which they obviously will have to pay for?

Senator Wiener:

Judge Hardcastle sat in on some of the drafting meetings on this. The intent would be that they pick up the costs. I have added the words "successfully completed," working with the drafters. "Completed" means when it is done. My thought is that "successfully completed" would mean, in somebody's wisdom, they know they got it once they finished the program. You will also notice that there is a sealed record provision, which we didn't have before. Last time was a \$300 fine. Once they have completed the program, it would be the hope that this is behind them. If they are brought back in for the same kind of offense, the district attorney has the ability to go back and review the prior records. There is a little flexibility for repeat behaviors where it didn't work, but the intent is that once the person learns the wisdom of not doing this, then that person is more alert to being responsible for that child or those children.

Chairman Anderson:

You have your car parked in the driveway and the child gets into the car. Because of the modern locking system, the child plays with the buttons on the door and doesn't know what has happened, but the door's locked and now the

child cannot escape, or the child crawls into the trunk of a car on his own volition. The parent would not be affected by this particular bill, because the parent or guardian did not open the door for the child or did not put the child in the car. The child entered the car on his own. His actions were such that he put himself in danger. He is under 18 years of age and theoretically doesn't have the opportunity to make a responsible choice.

Assemblyman Horne:

I believe this bill is directed at the conduct of the parent.

Chairman Anderson:

I just want to make sure the scenario of the child being left at a convenience store could still take place.

Senator Wiener:

We still have in place child endangerment and neglect laws. That is tiered. If the parent were irresponsible for the child, like the drowning in the backyard pool because the parent was on the phone, that is something of the finding of fact that the district attorney's office does. That is not what this bill is to address.

Chairman Anderson:

So, this is specifically relative to the control that you have placed the child in the car, and now knowing the child is in the car, the child has been put at risk.

Assemblyman Manendo:

I heard a story where a five-year-old child snuck out of the house, got into the car, and started the car. The child was unable to reach the pedals but was able to coast the car to Blockbuster Video at 3:00 a.m. Blockbuster was closed, so the child drove back home. A police officer couldn't see anybody in the car, so he thought the car was drifting. Finally, the car bumped into the police car; then the policeman finally realized it was a five-year-old child. I was wondering if this scenario would go into this area, but maybe it might belong to child endangerment.

Bill Bradley, Legislative Advocate, representing Nevada Trial Lawyers Association:

In listening to the comments, we might want to consider in Section 1, paragraph 1, line 5—which states “a motor vehicle, unless the child is being supervised in the motor vehicle”—if we had “or around,” that would address some of the Committee's concerns—coupled with the discretion of the officers—knowing that someone who is getting the mail is “in or around” the vehicle. The child is being supervised, although the adult is not in the car.

[Bill Bradley, continued.] The gentleman from Parole and Probation mentioned that they would like to see this as a non-revocable offense. I think that is a good idea. If you have someone out on probation and they get in trouble under this law, I don't think any of us would expect to see that person's probation revoked, assuming they complete their training.

This is not an insignificant event ([Exhibit E](#) and [Exhibit F](#)). Unfortunately, in this particular specialty, this is something we see from time to time. It is not a southern Nevada or a northern Nevada issue, but a national issue. As you can see, because of the heat in Las Vegas, there are a lot of problems. We happen to be very familiar with a case in northern Nevada who lost a child in similar circumstances. These are videos from kids in cars. [Video was not submitted as an exhibit.]

Chairman Anderson:

The need for this legislation is very clear, and we thank you for continuing to pursue this issue.

Sergeant Michelle Youngs, Public Information Officer, Washoe County Sheriff's Department, Washoe County, Nevada:

We are in support of this bill, and we would like to thank the proponents of this bill, Senator Wiener and Assemblyman Horne. As far as the way it is written, at this point we do feel it does allow for our discretion. We just would like to voice our support.

We see this as a tool for corrective action, similar to the seatbelt laws we have in place for children. It is a misdemeanor that we can use to encourage corrective action for parents who are not doing their jobs. In the situation that Mr. Manendo spoke of, we would probably look towards having a nice strong chat with the child, rather than charging the parent with any type of violation. I can think of some similar situations where their child just wandered or simply took it upon themselves to explore. This isn't what we see the intent of this bill.

Concerning the Parole and Probation comment about making this a non-revocable charge, we would like to possibly see that as revocable in the case of an original sentence being child endangerment. That is something we would think would be appropriate, but others should debate it to see if it is appropriate thing to do.

Chairman Anderson:

I believe that is the reason why the bill, unless there is a prosecutable event, would give other provisions of the law in lines 21 through 23 of page 2, so that

the child endangerment question would be approachable with this new bill, if we would move forward with it.

Michelle Youngs:

That was the part we looked at as being the critical element that does allow us to charge in different circumstances—the difference between leaving your child in a car for a moment when you stop to get your mail, and that not being a violation, but then leaving them completely out of your sight in very warm weather in southern Nevada, where they are completely unattended.

Chairman Anderson:

I don't want to be overly sensitive to the question, like warm weather only happens in the south or cold weather only happens to the north, because it is a statewide problem. Believe it not, we have hot weather up here also, especially in this particular instance, where the windows are up in a vehicle and the interior temperature in the vehicle rises well above whatever the ambient temperature is outside. I think we all understand what it is going to do to the child's brain, even if he or she lives. It is not a north-south issue. That is the point I'm trying to make here. It is a statewide and a national issue.

I presume that you are also speaking for the Sheriffs' and Chiefs' Association and are in support of this bill.

Michelle Youngs:

Yes, I am.

Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections:

The Department of Administration asked us to look at this bill for a fiscal note. We indicated that we didn't think there was any. The reason for that indication was that we think that prosecutors' and district attorneys' associations and people involved will use sufficient judgment not to revoke parole or probation based on someone accidentally locking their child in the car and going into a convenience store.

Chairman Anderson:

Are you of the opinion that if we are to move with the bill, we need to make that clear, or that you would prefer we did?

Fritz Schlottman:

I think the Committee has better discretion than I could indicate. I think that is up to the Committee.

Kristin Erickson, Legislative Advocate, Nevada District Attorneys Association:

I would just like to go on record that we support this bill.

Chairman Anderson:

We continually recognize that there is an opportunity for the officers to cite. They are going to be required to use some discretion. That discretion alone will get the parent to court. What will the district attorney's burden then be in that particular case?

Kristin Erickson:

Basically, the police have the initial discretion as to whether or not to arrest, to make the charge, or cite the person. Once that decision is made, the case then comes to the district attorney's office, where the district attorney's office has a level of discretion to either pursue the charge or not pursue the charge. So, there are two levels of discretion before the case would ever get to court.

Chairman Anderson:

If the officers cited the parent under a higher statute for child endangerment, would this be a plea bargain position to move to?

Kristin Erickson:

It's always a possibility to charge a lower charge in exchange for a plea bargain. I think most prosecutors try to charge the appropriate charge, whatever that is. If a child neglect charge, which is a gross misdemeanor, or child neglect causing substantially body harm or death, which is a felony, is more appropriate, then the most appropriate charge would be used. If it was this statute before us today in the bill, I would like to think most prosecutors would, in fact, charge this.

Chairman Anderson:

So, if they found their way to court, would the district attorney have the discretion to move it up to recharge them with a higher charge? They would have to do a review of these cases in order to make that determination.

Kristin Erickson:

Yes. Just as the district attorneys can choose not to charge a case or lessen a charge, they may also choose to charge the higher charge if the facts are there and it is an appropriate thing to do.

Chairman Anderson:

Since many of these misdemeanor events are going to appear in municipal and justice of the peace courts, which is generally where a district attorney does not have a presence, do you see this as a problem?

Kristin Erickson:

If a case raises an alarm with a city attorney, they will typically call the district attorney's office. We have very good working relationships with our city attorneys in both Sparks and Reno. They will typically call us and either review the case over the phone or submit the case reports to us before any sort of charging decision is made.

Assemblyman Holcomb:

My wife has 2 four-year-old grandchildren, and she is extremely responsible. She goes into a gas station and she has them both belted in a children's seat. She goes into the station to pay for the gas and comes right out. But according to the way this law is written, once she gets out of the car and goes in to pay the cost of the gas, she has just violated the law because she did not go into the back seat, take the two children out of seatbelts, and take them into the gas station to pay the bill. Basically, it is up to the discretion of the police officer, and a police officer seeing that would probably just look the other way. But in reality and according to the way this is written, she has just broken the law. She has never been arrested and never broken any law. The fact is, she went in to pay the bill for the gas, but as soon as she stepped out of the car and started walking into the gas station, she has just broken the law. Is that correct?

Kristin Erickson:

There can always be technical violations. I suppose the guard against technical violations is the three levels of discretion that are utilized before any person is ever convicted of a crime. There is the discretion of the police officer as to whether or not to arrest or cite the person. After that, there is the discretion of the prosecutor as to whether or not this is justice and the right thing to do or not. If it gets that far, then of course it is up to the judge to make the final decision as to whether a conviction is appropriate or not. So there are three levels of discretion. In that particular case, I would find it hard to believe that it would ever get to the third level of discretion.

Assemblyman Holcomb:

So you're saying it is not a violation until the judge says it is a violation of the law.

Kristin Erickson:

There are many instances where there are violations of the law, but due to the nature and circumstances, it is not seen as a case that should go forward with the full force and effect of the law.

Senator Wiener:

There is a situation in southern Nevada based on current law—because it is child endangerment, abuse, and neglect—where a loving father left his child in a car in front of a Starbucks in the early morning just to get a quick cup of coffee and a muffin for the child. It just happened, because child endangerment was the only law in place, he was arrested, handcuffed, and spent the night in jail, because the police had no discretion to do anything when they found the child in the car alone. This would give another tool that law enforcement had requested 2 years ago and again, the discretion of a lesser tool not to do anything. That is all they had to work with at the time, and this would give them another option.

Assemblyman Holcomb:

Could this be amended or written to cover a situation—like my wife with 2 grandchildren—so that she would not be violating the law as it is written here?

Chairman Anderson:

I think the line was suggested—“in or around”—by Mr. Bradley.

Bill Bradley:

I don't think you can write the law in the way you're looking for, Mr. Holcomb, without taking out the intent of the law. I think what we are looking for is a combination. The suggestion that a good officer would make to your wife is, perhaps next time, use a credit card to pay at the pump or pull your car around to the front of the gas station where you are still around the car as you walk in to pay the bill. I think we are looking for some behavior changes here in combination with education, especially considering some of the large corner stations in Las Vegas, where you're walking 100 to 150 feet from your car. I don't think that is appropriate, to be perfectly honest with you. On the other hand, around the mailbox or in front of a store, I think we are looking at some behavior changes also to protect these children.

Chairman Anderson:

If you think of one of the examples in the video, a lady pulls in, gets out of the car, and gives an opportunity to somebody to drive away with the vehicle. There is a bigger issue here, and we need to see that. We need to be concerned about the child that is left in the vehicle. Just as the person who pulls up to a stoplight and has somebody get in and steal their car, we can think of all sorts of scenarios concerning someone stealing a car with a child in the backseat. The guy finally realizes there is a child in the backseat and leaves the child in the middle of the freeway. It is a difficult issue. Possibly, with the amendment of “in and around,” we can give a little more discretion if we decide to do this.

Bill Bradley:

I also think the accidental lock that Mr. Oceguera brought up is something we need to address. I think we can deal with the situation when a person accidentally hits the lock with their keys in the car and the child is left alone in the car.

Chairman Anderson:

When they are all standing outside trying to get in?

Bill Bradley:

Yes.

Chairman Anderson:

This obviously is going to need a little bit of work. It would appear that if we are going to be moving with the bill, Legal and Research need to solve the question of "in or around" as Mr. Bradley suggested, as well as the issue Mr. Oceguera brought up concerning people who have accidentally locked their car with the child in it. We need to make it very clear if the child gains access to the vehicle on his own, there is no intent by the parents.

Assemblyman Carpenter:

I was wondering if we could use the words "knowingly" and "willingly."

Chairman Anderson:

We could have some discussion about "knowingly" and "willingly," but it seems to me that it is apparent whoever gets out of the vehicle knows the child is in there, and they are willingly leaving the child alone. They may not recognize the fact that they are endangering the child, and that is what the whole purpose of this, as was made clear from the example of the video. I don't think a parent would think about putting their child into a warm oven, but many children are drowned by leaving them unsupervised in the bathtub. It is an educational question. "Knowingly" and "willingly" is a real difficult standard. We can discuss this in the work session. Would you like Legal and Research to look at that also?

Assemblyman Carpenter:

They could look at that or something else. In other areas where there are no educational programs, it looks like the judge would have to educate them in some areas.

Chairman Anderson:

I don't believe there are educational programs throughout the state, but there will be by the time the legislation goes into effect.

Assemblywoman Gerhardt:

I think as a mom, my standard is the visual standard. If you can't see them, you're not supervising them. If you are going to get your mail out of the mailbox or pump gas, you need to have visual contact with the children. If you are going into the convenience store, you can't see them anymore, so that's where I would draw the line.

Chairman Anderson:

This is in regard to instructions to Legal and Research.

Assemblyman Holcomb:

I feel the definition of "unreasonably dangerous" would be a parent going into a convenience store to play the slot machines and leaving the child in the car.

Chairman Anderson:

We will add that suggestion to Legal's and Research's burden of discovery. The hearing on S.B. 287 is closed. Let's turn our attention to S.B. 136.

Senate Bill 136 (1st Reprint): Revises provisions of Interstate Compact for Jurisdiction on the Colorado River. (BDR 14-402)

Ron Buonamici, Chief Game Warden, Law Enforcement Bureau, Nevada Department of Wildlife:

We are in support of S.B. 136. Basically, S.B. 136 addresses a problem we have encountered during our patrols on the Colorado River, Lake Mohave, and Lake Mead. The current language states concurrent jurisdiction on the body of water. During the course of our activities, you can liken us to highway patrol on the water. We're making stops and investigating accidents.

During the course of those activities, many times boats pull over on the Arizona side just for safety purposes. We don't make them cross the river through traffic to go to the Nevada side. That has resulted in unpredictable and unavoidable events. We are on the shoreline and the subject runs from us. We are on the Arizona shoreline and a domestic dispute occurs, and we are summoned to assist. We have had cases of robbery with a shotgun. Searching for that individual on the river system could easily have taken us to the Arizona or Nevada side. There are also injuries, fatalities, and boat accidents that occur

on a routine basis. Many times individuals are transported to the Arizona side in Bullhead City for medical assistance to do blood draws and so forth. Our jurisdiction is in question in Arizona.

[Rob Buonamici, continued.] Currently, Arizona has a statute allowing jurisdiction for Arizona officers up to 25 air miles into the state of Nevada. We are just looking at 5 air miles into the state of Arizona. That should handle and address all our issues. Our patrol vessels are at Katherine's Landing above Davis Dam. When we make an arrest for OUI [operating under the influence], those people are transported to Katherine's Landing and then transported by patrol vehicle to Laughlin through the state of Arizona. This bill addresses and cleans up all those issues.

Chairman Anderson:

We let the Arizonans come 25 miles into Nevada, and we don't allow you to step off the boat on the other side?

Rob Buonamici:

Yes, that's pretty much how it is.

Chairman Anderson:

We want to make sure that the public feels safe, regardless of whether you see an incident on the Colorado River or its tributaries or the lakes that have formed from it, like Lake Powell and Lake Las Vegas.

Rob Buonamici:

This is basically for the bordering body of water. Lake Powell is in Utah. We're looking at Lake Mead, Lake Mohave, and the Colorado River in the Laughlin area.

Assemblyman Mabey:

I don't understand how Arizona can go 25 miles into Nevada. Don't we have to give them the right to do that? We can't go 25 miles into Mexico.

Rob Buonamici:

That's correct. We would have to enter an interlocal agreement. Arizona does have a statute on the books. They have been utilizing it currently, but there is no official interlocal agreement. Should this legislation pass, we would do an interlocal agreement with the state of Arizona. I do believe they have one with Metro [Las Vegas Metropolitan Police Department].

Chairman Anderson:

Since the jurisdictional area we are talking about falls within Clark County, would this responsibility fall on the sheriff of Clark County?

**Lieutenant Stan Olsen, Executive Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department, Las Vegas, Nevada:**

The Las Vegas Metropolitan Police Department has a substation in Laughlin, which is on the Colorado River. We have 50 officers assigned to the substation. We do have an interlocal agreement, and we work with the Arizona authorities who cross our border. This situation is a problem for the State authorities, and this bill would make it safer on the river.

Chairman Anderson:

How far can you go into Arizona?

Stan Olsen:

We can't.

Chairman Anderson:

Will this give you the opportunity to go into Arizona?

Stan Olsen:

My understanding is that it would for 5 miles.

Chairman Anderson:

Yet, we give them 25 miles.

Stan Olsen:

Correct.

Chairman Anderson:

It doesn't require congressional agreement, even though it is part of the Interstate Compact for Jurisdiction on the Colorado River?

Rob Buonamici:

I can't say it for a fact because I'm not a legal expert, but we do have concurrent jurisdiction on interstate bodies of water like Lake Tahoe and Topaz Lake.

Chairman Anderson:

So will this also extend 5 miles off of Lake Tahoe, or only the Colorado River?

Rob Buonamici:

This just addresses the Colorado River system.

Chairman Anderson:

Why didn't we go 25 miles?

Rob Buonamici:

We felt 25 miles was a little excessive, and 5 miles would address our needs. We just looked at what we realistically needed.

Assemblyman Horne:

Why do we need to go into Arizona for 5 miles, because a large part of the Colorado River and Lake Mead is federal land? Don't they have their own law enforcement officers who patrol that area?

Rob Buonamici:

Yes, you're correct. There is Lake Mead National Park. It constitutes a great portion of Lake Mead. There are National Park Service rangers that do patrol that. In addition, we patrol that same body of water. We end up in the same type situations where we end up on the Arizona shore. It is a concurrent jurisdiction that includes federal and state, as well as county.

In addition, to answer your question—as far as the need throughout the entire river system in general—the fact is that we do end up on the Arizona side through the normal course of doing business. I liken it to Interstate 80 and the median being the Utah/Nevada border. Imagine what that would pose to Highway Patrol if an eastbound traveler was on the Nevada side and a westbound traveler was on the Utah side and there is a vehicle accident that occurs in the median, or they make a vehicle stop and somebody runs. You need concurrent jurisdiction in those types of situations. That's the reason behind it.

Assemblyman Mortenson:

You can go into Arizona for 5 miles. What kind of authority do you have once you are in there? Can you arrest someone, or do you have the same authority that you do in Nevada?

Rob Buonamici:

We would have the same authority. This would be to follow-up on incidents that arise out of the state of Nevada. We do not do traffic stops in Arizona. We address issues that arise from our normal course of duties in the state of Nevada that lead us into Arizona, whether it be legal issues regarding blood draws out of the state of Arizona or boating fatalities, which are all too

common. It can also be a hot pursuit issue, where somebody is running, or a public safety issue, where we are on the shoreline when a domestic issue breaks out.

Chairman Anderson:

You're not expanding your patrol area to 5 miles inside the Arizona border.

Rob Buonamici:

No. We have plenty to do.

Chairman Anderson:

If, on the other hand, you saw an event taking place close enough to the shore on the Arizona side and there wasn't an Arizona wildlife or law enforcement agent, would you try to inform them of the impending problem that was apparent to you on their side of the river?

Rob Buonamici:

Yes, that is how we currently handle it, and also the domestic disputes we have been involved in. We try to summon an Arizona officer from Bullhead City to handle it, but many times it is impractical, especially if it's a situation that needs immediate action.

Chairman Anderson:

They will say, "Since you are there, you take care of it."

Rob Buonamici:

Yes.

Chairman Anderson:

The Sheriff of Clark County feels this is a good idea?

Rob Buonamici:

Yes, he does.

Chairman Anderson:

And the other sheriffs and chiefs are supportive of this?

Rob Buonamici:

Yes, they do support this.

Chairman Anderson:

Ms. Lang, could you clarify for me the ratification question, since it is an interstate compact issue?

Risa Lang, Committee Counsel:

You had a question about the effectiveness of it. I was just noticing in Article 4, which says the compact is ratified by an enactment of the language of the compact by at least 2 states. So, it doesn't need to go to Congress to become effective. Section 2 requires the Governor to notify the appropriate officers in the states that are parties to the Interstate Compact of the amendment in the ratification of the compact.

Chairman Anderson:

The hearing on S.B. 136 is closed.

ASSEMBLYMAN OCEGUERA MOVED TO DO PASS
SENATE BILL 136.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

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

Chairman Anderson:

Let's turn our attention to S.B. 353.

**Senate Bill 353 (1st Reprint): Makes various changes to provisions governing
guardianships. (BDR 13-462)**

Kim Spoon, Guardianship Services of Nevada, Reno, Nevada:

We are here to speak about S.B. 353. My business partner, Dennis Travers, and I have been doing guardianship work for approximately 12 years. We were with the public guardians in Washoe County for 6 years and now have done private practice in the northern Nevada area for the last 7 years.

We worked on this bill because private, professional guardianship is an emerging profession. There are not a lot of us in Nevada yet, but it is growing due to the vulnerable populations that we serve. The private guardianship, as far as a profession, is growing with that population. We have been concerned for quite a while because there is no criteria set in the law for private, professional guardians. Anybody who can meet the Chapter 159 guardianship requirements can put their name on a door and call themselves private, professional guardians. If you are putting yourself out as an expert and are expecting to be

paid for the services you provide, we feel that it needs to have a certain amount of criteria to be met. We would like to see that go into law.

[Kim Spoon, continued.] We have developed this bill, and I have to thank the bill drafters who helped us, because we are very new at this and I thought they did a very good job to help us. We have been working on this bill with members in the south, as well as members of the guardianship community in the rural communities. This is not just us here trying to do this.

We are very concerned because of the populations that we do serve. Most of the time private guardians and guardians who work in either the public or private sector normally work with adults. We do have some children as well, but the majority of the population is adults in the mental health field—developmentally disabled—and by far the largest group of vulnerable population work is with our seniors.

We take on a tremendous amount of liability as guardians to make sure that we are caring for these people, taking complete control of their well-being, and, most of the time, their assets as well. In doing this, and to meet certain criteria as a professional guardian, I think it is imperative, and so do many other people, that we have this criteria set in the laws.

Chairman Anderson:

Is this in relation to this new national group that has come into existence, in terms of setting up the training?

Kim Spoon:

To us, this is just a beginning. We just want to get something in the statutes—to start getting some criteria—so something doesn't happen in the future that is going to endanger our population that we serve. There is a national move to the National Guardianship Association and the National Guardianship Foundation, which are working with the states to try to standardize the education, the training, the accreditation, and licensing of guardians throughout the nation. In Nevada, we would like to work with the National Guardianship Association and Foundation in their program that they have throughout the United States. There have been three states that have joined with them: Florida, Illinois, and California. It's emerging. It's starting as a great program, but right now the best we can do is just get something in the laws at this point.

Chairman Anderson:

The difficulty here is that your professional standards require some knowledge of the inner workings of the State systems and the health care qualities of the state itself. So, from your background prior to coming here, you learned those

tools. How would this new guardianship group know that if they did not have your work experience?

Kim Spoon:

With the registered guardian criteria, you are required to have education that meets the standards of practice for the National Guardianship Association and Foundation. It is outlined what they require in terms of education. The state of Nevada does not have any of these guardianship classes for this educational requirement. So, the criteria they would have to meet in Nevada would be one year's experience in guardianship work. Once you have met that criteria, then you would take testing that is given by the National Guardianship Association and Foundation, which includes a class if you need to take it before the testing. It is very comprehensive about the standards of practice and general guardianship practice. It just makes sure that if you are working with these types of people, you have some idea of what you should be doing, because what you don't know can be just as dangerous as what you do know. So, that is the criteria for the registered guardian.

Chairman Anderson:

That is where my concern is. As a schoolteacher I went through a lot of courses in college, and after my second year of teaching, I wish I could have retaken those courses so I would have asked more meaningful questions at the time of instruction. The actual experiences were hardly the same as presented in the classroom setting. Work experience is often a greater teacher, so I am a little wary of somebody with a national stamp on them for class time. How are we going to make sure the guardians, who offer themselves for these professional responsibilities, are able to meet the professional responsibilities to be a guardian? Currently, we do that with attorneys and those people who work through State agencies. So, I have a certain level of concern.

Assemblyman Carpenter:

Did you say that the National Guardianship Association and Foundation are not active in Nevada?

Kim Spoon:

The National Guardianship Association is the association that deals with and for guardians throughout the United States. The foundation was set up to do the testing criteria and educational part of the foundation. We have a state organization, the Nevada Guardianship Association, which is affiliated with the National Guardianship Association. That is not needed, however, in order to be a registered guardian and to take the testing through the National Guardianship Foundation. Anybody who meets the criteria of the one-year work experience, according to their application process, can then take the test for the registered

guardian. We do not have the classes available, but we do have other work experience in Nevada so that someone can take the registered guardian class after a year of experience.

Assemblyman Carpenter:

Are there some lessons online that you could utilize to acquire the knowledge that would help you pass the test? Or if you have a year's experience, could you pass the test?

Kim Spoon:

If you have the one-year's experience, you can take the test. Whether you have the exact knowledge to pass the test is another thing. It's pretty comprehensive, so you would have to have good basic knowledge of guardianships and the standards of practice or ethics for guardians in order to pass that test. If your experience is correct and you have learned correctly how to do guardianships, you should be able to pass the guardianship registered test. If you do not have enough in depth-experience, then you will not be able to pass it because you won't have the knowledge.

Assemblyman Carpenter:

Is it just strictly learning on the job?

Kim Spoon:

Anybody at this point can become a guardian. What we like to see is, if you are doing less than three guardianships that are not family wards, that you can get your experience in that way. Most of the people who gain guardianship experience in this state do it through the public guardian's office as a case manager through Clark County, Washoe County, and Carson City. Usually they have a year's probation there as well. It takes about a year to learn this work, or they have somebody mentoring them in the private guardianships. Because we are still pretty small, most of the people come out of the public guardian sector or some other type of profession to do this work.

Dennis Travers, Guardianship Services of Nevada, Reno, Nevada:

I would like to echo what Ms. Spoon just told you and point out we currently have nothing to protect our vulnerable population from individuals coming into this area who really don't have the experience, background, or have an interest to get a year's worth of experience to do the job.

Chairman Anderson:

So, this is a question of compensation. If you were doing this for a friend or somebody who has asked you to take over the management of their assets because their children are out of state for some reason for a short time period,

this would not preclude you from doing that. Would it preclude you from being compensated for your time if you were doing it in these kinds of situations? It becomes difficult, because oftentimes, these people are not adults, but children with physical limitations, so the person becoming the guardian needs to be aware of what responsibilities they are assuming. Would this preclude that from taking place?

Kim Spoon:

Not at all. What the statutes provide for is that any guardian has the right to ask for compensation, regardless of whether you are a friend, family, or public guardian. What this stands out for is if you are doing three or more guardianships of people who are not blood relatives. There is still also a provision that allows the judge to make an exception, if need be, if you have three children that you are guardian for. The judge does have leeway to decide whether or not they need to meet this private, professional guardianship statute or not, as far as the registered or master guardian criteria.

Kathleen Buchanan, County Public Guardian, Clark County, Nevada:

I would like to offer my support on S.B. 353. Kim Spoon and Dennis Travers did initiate this bill. It is a very good bill, and I'm very happy with the writing that came out of the Committee.

I would like to further address Mr. Carpenter's concern. The National Guardianship Foundation has also put out several books. One is the basic guardianship book that takes a beginning individual, who has come into the business, and acquaints them with different forms. It will also educate them in various sectors that they need to do in their jobs. There is also a standard book that has been released. I was part of that committee about five years ago and had input into the standards of guardianship. There is also a model code of ethics that the National Guardianship Foundation has put out. So, there is some very good written material for individuals coming into the business.

The National Guardianship Association was just established about a year ago, and this is just the beginning of strengthening the guardianship statutes that we are working to strive for.

Patricia Trent, Attorney at Law, Las Vegas, Nevada:

I have been practicing guardianship for quite a few years. I endorse this bill and echo all the comments that have been made. I am here to offer my support.

Chairman Anderson:

From your professional views in the state and in what you're doing, since this is a relatively new element with the National Guardianship Foundation, does it

have a long enough track record, in your opinion, to promote itself on a national basis? How many states are doing this? I heard Florida, California, and Illinois.

Patricia Trent:

Those are the three states.

Chairman Anderson:

Do you think this is an early step and we are on the cutting edge of this, or are we in the right place?

Kathleen Buchanan:

I do believe that we are in the correct place. The National Guardianship Association has been in existence for 15 years or so. It is a very strong association and is getting stronger all the time. Every year we have a national guardianship convention or conference and typically have two or three new states that are named as associates and are participating with the National Guardianship Association and the National Guardianship Foundation.

Kim Spoon:

Every October, the National Guardianship Association has their conference. They did a joint conference with the National Academy of Elder Law Attorneys and the National College of Probate Judges. So, they are very well founded and respected in the legal and guardianship communities, as well as with probate judges, around the United States.

Kathleen Buchanan:

The next National Guardianship conference will be held in Las Vegas in 2006. We are very proud to state that.

Patricia Trent:

I did offer my support before the Senate and offered a few suggestions that I see have been incorporated into the current draft, which I think is a good piece of legislation. I do support it.

Chairman Anderson:

The hearing on S.B. 353 is closed. We will be bringing this bill back to Committee and hold it for the work session document. I want to make sure Ms. Buckley is clear with it. She has not indicated a preference for it either way, but she usually asks some questions about guardianships, and I know it is an area we are terribly concerned about. We don't want to endanger the bill or do anything to make it fail, because that would not be the intent. Guardianships sometimes have loose ends in them that the guardians and administrators need to have fixed.

[The meeting was adjourned at 10:06 a.m.]

RESPECTFULLY SUBMITTED:

Carole Snider
Recording Attaché

Jane Oliver
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 6, 2005

Time of Meeting: 8:07 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 287	B	Senator Valerie Wiener, Clark County Senatorial District No. 3	Senator Wiener's Testimony on S.B. 287
S.B. 287	C	Erin Breen, Director, Safe Community Partnership	Email from Erin Breen, dated 5-5-05
S.B. 287	D	The Honorable Gerald Hardcastle, Eighth Judicial District Court	Letter to Chairman Anderson from Judge Hardcastle, dated 5-4-05, regarding S.B. 287
S.B. 287	E	Bill Bradley, Legislative Advocate, representing Nevada Trial Lawyers Association	PowerPoint Presentation
S.B. 287	F	Bill Bradley, Legislative Advocate, representing Nevada Trial Lawyers Association	Backup Material for S.B. 287