MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
April 10, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:07 a.m. on Monday, April 10, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman Tyrone Thompson (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Michael C. Sprinkle, Assembly District No. 30
Assemblywoman Jill Tolles, Assembly District No. 25

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

James W. Hardesty, Justice, Supreme Court of Nevada
Christine Miller, Attorney, Legal Aid Center of Southern Nevada
John Yacenda, President, Nevada Silver Haired Legislative Forum
Michael James, Public Guardian, Mineral County
Susan B. DeBoer, Public Guardian, Washoe County
Egan Walker, Judge, Family Division, Second Judicial District Court
Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office
Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
Shelly A. Register, National Certified Guardian, Guardianship Services of Nevada, Inc.
Terri L. Miller, President, Stop Educator Sexual Abuse, Misconduct and Exploitation
Chester C. Kent, Board Advisor, Stop Educator Sexual Abuse, Misconduct and Exploitation
Robert T. Eglet, Attorney; and representing Nevada Justice Association
Nicole Rourke, Associate Superintendent, Clark County School District
Jennifer Noble, Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Ronald P. Dreher, representing Peace Officers Research Association of Nevada; Nevada Law Enforcement Coalition; and Washoe School Principals' Association
Mary Pierczynski, representing Nevada Association of School Administrators; Nevada Association of School Superintendents; and Nevada Association of School Boards
Anna Slighting, representing HOPE for Nevada
Jared Busker, Policy Analyst, Children's Advocacy Alliance
Lindsey Anderson, representing Washoe County School District
Michael Sean Giurlani, President, Nevada State Law Enforcement Officers' Association; and Nevada Law Enforcement Coalition
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers; and representing Nevada Law Enforcement Coalition
Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence
Amanda Haboush-Deloye, Associate Director, Nevada Institute for Children's Research and Policy, University of Nevada, Las Vegas

Chairman Yeager:
[Roll was called and protocol was explained.] Good morning. We have four bills on the agenda today, and the order in which we will proceed is Assembly Bill 130, Assembly Bill 319, Assembly Bill 254, and Assembly Bill 362. At this time, I will formally open the hearing on Assembly Bill 130.

Assembly Bill 130: Revises various provisions relating to guardianships. (BDR 13-524)

Assemblyman Michael C. Sprinkle, Assembly District No. 30:
I am happy to be here on this wonderful Monday morning to present to you 16 months of really hard work by a lot of very dedicated individuals. You are going to hear a breakdown of not only just the bill, but what the Supreme Court commission on revisions of guardianship did during the interim to get to where we are able to sit in front of you today.

The first bill you are going to be hearing, Assembly Bill 130, is about half of the legislative recommendations that came from this Committee. The other half are embedded in other bills, primarily out of the Senate and also in the second bill that you will be hearing today. I want to express to you the gratitude I have to have been part of a really difficult—sometimes—but certainly detailed process in looking at guardianship in the state of Nevada and how it potentially affects all of us at some point in our lives. With that, I will turn the presentation over to Justice Hardesty, who will talk to you a little more about the commission that he put together and chaired and then get into the basics of A.B. 130.

James W. Hardesty, Justice, Supreme Court of Nevada:
I had the privilege of creating and chairing the Commission to Study the Administration of Guardianships in Nevada. The Commission was initiated in 2015 as a result of a petition that was filed by myself, then Chief Judge David Barker in Clark County, and Chief Judge David Hardy in Washoe County, to examine various issues that had been reported in the press but, quite frankly, those two judges and others of us around the state already knew were a concern, at least with respect to the sufficiency of resources and data concerning the status of guardianship proceedings. The Supreme Court authorized the creation of the Commission. I appointed its members. It was a very diverse group of people including several district court judges along with juvenile court judges—themselves very active on the Commission, representatives from the State Bar of Nevada and the Legal Aid Center of Southern Nevada. I want to express my sincere gratitude to Assemblyman Sprinkle, who was a key participant in the meeting. I know that legislators oftentimes get drawn into these interim study commissions and, with their schedules, it is difficult for them to attend and participate in the meetings. Mr. Sprinkle attended every single meeting, read all of the material, and was frequently pestering me with a lot of questions.

I also want to extend my appreciation to Assemblyman Glenn Trowbridge, a member of this body in the last session, who was an active participant in the Commission and to whom I owe a great deal for his participation in the program and in the Commission's study. I also want to thank Senator Becky Harris, who was very active in this process. She is carrying a few of the bills in the Senate. Many of the recommendations that were made by the Commission for

legislative changes were divided into what essentially turned out to be six different bills. One of the weightiest bills is the one that you have before you today, A.B. 130. It is weighty in the number of changes it makes to statutes; and then there is the bill you will hear Judge Walker present later in Assembly Bill 319. It is weighty in both its significance and its paper, but it is not as bad as it looks. I am sure he will be gentle to you in his presentation.

I know you have a lot to cover, so what I would like to do is give you an overview of A.B. 130 and what it addresses. Just by way of background, the Commission's conclusion, after studying best practices from around the country as well as looking at the status of our dockets throughout the state, was there was a need for a major reform in the way in which we approach guardianships in this state. We should make no mistake about the fact that this is a serious problem for our Legislature to address and consider. In many states throughout the country, this issue has been characterized as the "Silver Tsunami." As many of us grow older and, regrettably, some people have problems with respect to their capacity to deal with certain issues, a guardianship becomes an increasing remedy for those situations. It is how the state approaches guardianship that is so important. Sometimes guardianship results in solving a problem greater than the problem really is. So the first step in this process is to change the mindset and the approach to use the least restrictive means that address those incapacities that are clearly identified.

What has happened in the past is that you end up with full guardianships over people who have much capacity to handle a number of decisions in their life, and yet the role of a guardian is more restrictive and more invasive than the situation which a person who is charged with a crime finds himself in, because that person who is charged with a crime, the worst that happens to him is he is incarcerated or in a very few limited cases may have the death penalty imposed. But in the case of people who are subjected to a guardianship, they lose all control of their life and every aspect of their life is turned over to a third party.

Best practices would call for the reform of that approach. A number of these recommendations do just that and incorporate the best practices that are under study by states throughout the country.

By the way, this process is a work in progress. Much has been accomplished by the Conference of State Court Administrators, the Conference of Chief Justices, and the National Center for State Courts. I think this is an evolving process. I am very confident that recommendations made by this Commission—which are contained in a 235-page report with over 1,000 pages of appendices and testimony that encompasses hours and hours of deliberation by Commission members, and more than 9 1/2 hours of public testimony—reflect a real advancement in this area. I think many states in the country are looking at Nevada to say, Wow, what did they do and what is their Legislature about to do that could be such a critical piece to how we approach this problem going forward.

I asked Assemblyman Sprinkle to carry the laboring oar on some of the biggest changes offered by the bill, and he agreed to do so. Let me summarize from the Commission's 16 legislative recommendations as to which ones have been incorporated in A.B. 130 and what they do.

To begin with, there is a disconnect in our current statutes between what the medical community uses as language and what the legal community uses as language. It is not a surprise. We tried to reconcile that, so the first recommendation of the Commission, that it recommend revisions to *Nevada Revised Statutes* (NRS) Chapter 115 to incorporate the concept of "incapacitated person," is being done for the express purpose of connecting how physicians and psychiatrists speak in terms of an individual who might be subject to guardianship as opposed to the way our statute speaks, which is "incompetency." There is a tremendous difference in the way those words are used in the legal and medical community. Recommendation four and A.B. 130 makes that suggested change.

We were very concerned and heard a lot of testimony about the compensation of attorneys in guardianship cases. I can give you some specifics. Our record is substantial from representations that were made to the Commission. I will give you two. One, an attorney billed for a day of work, but the bill included 29 1/2 hours for one day. Most people would find that you are not going to be able to bill 29 1/2 hours for one day. We also found another attorney had billed $800 and charged the ward for about a half an hour to deliver their mail. That is excessive and unreasonable.

There are other examples that were offered to the Commission. Without making judgments in specific cases about whether that should be revisited, the Commission did use that evidence to make a point that the analysis by judges in approving requests for attorney's fees needs to be more thorough than the analysis which was currently being given to attorney's fees requests and, frankly, fees from other professionals that a guardian would retain. So A.B. 130 carries substantial revisions in the manner in which judges are expected to evaluate a fee request, makes specific findings with respect to those, and they would then be subject to review by an appellate court.

Also, critical to that piece is to make sure that everyone in the process receives notice of those requested fees and those fee requests. If you do not have notice, you cannot object, and oftentimes we learn that judges were approving fee requests because there was no objector. You cannot have objections if people do not know about it. Getting notices out to everyone impacted by a fee request is critical in this bill.

The next section is notice itself. These were recommendations nine and ten of the Commission, which directed a change in the notice in adult guardianship proceedings. It also required affidavits of service of process that are served on the person who is the subject of the guardianship. We heard testimony from the public where someone had had a guardian appointed for them and they never even knew they were subject to the guardianship application. There was more than one case—I assure you—where that occurred. It is troubling about how such a situation could even happen.

A corollary to this is a requirement in the bill that the person who is subject to guardianship must be in court when that decision is being considered by the judge. Too frequently, the person who is the subject of the guardianship application is not even there, and what we learn from the testimony we received and numerous other examples is that, had the person who was subject to guardianship been present, the judge most likely would never have even considered it in the first place. There are exceptions in the bill to take into account those persons who are incapacitated to a point—either physically or mentally—that they cannot be present in court, and humanely, that is certainly going to occur. But that has to be demonstrated to the judge in an affidavit provided by a physician that documents that particular situation.

Recommendation 11 makes significant changes to the standards of investigation, administration, and accounting that are expected prior to the time that guardianships are created and during the course of their administration, and creates what has been characterized in the initial draft of the bill as a Statewide Office of Public Guardian. Since this bill was presented, Ms. Miles has offered some edits to the bills, and I think one of her suggestions is excellent. It renames this office as Statewide Office of Public Guardian Compliance. It is really a compliance position.

The source of this approach came from Florida. Florida has taken a number of its judicial districts and hires an accountant or investigators who provide services to support guardianship proceedings in a number of collected groups of judicial districts. If they are aware of problem areas or they need expertise in viewing certain petitions or applications, those investigators or accountants provide support services to the judge—who currently lacks those support services—to look at very intricate details associated with a guardianship proceeding, a petition for accounting, or petitions for fees or other related matters that come up in the course of that proceeding.

As we all know in Nevada, rural services are very limited and, in many instances, nonexistent. We propose to locate the compliance officer in the Administrative Office of the Courts (AOC). This would provide to the rural counties—as well as additional support services through Clark and Washoe—accountant and investigative services that are proposed in this measure.

Recommendation 15 also makes recommendations concerning the filing of a guardianship action. There is no reason—none—that the parties who are starting a guardianship proceeding cannot tell the judge—at least at the beginning—what is the proposed plan for this individual. If they are going to be in a guardianship, what is it that we are trying to accomplish in this guardianship? How far will their resources go? Where will they live? How will they be supported? What kind of care will they receive? Those kinds of things can be addressed in a preliminary plan at the commencement of the guardianship proceeding, and what the bill also provides is that the Supreme Court will, by court rule, adopt precisely what the nature and forms look like with respect to that preliminary plan.

There are a number of changes following up on recommendation 16 in A.B. 130, which address management and administration changes to the person's estate and personal property. Once again, since this bill was tendered, Ms. Miles received an amendment over the weekend, which is an excellent amendment that points out that several of the people who are subject to guardianship are indigent and have very limited property, usually not very valuable personal property except valuable to them. She has proposed an amendment that would exempt some of the requirements for estates that are under a value of $10,000. That makes sense. Many of these cases would not be able to be administered under these additional restrictions from a cost standpoint because they simply do not have the value and you do not want to be charging the money against that estate when it is not necessary. You need that money to support the guardian subjects, especially those who are indigent. That group makes up a large part of the people who we are dealing with.

That is an overview of A.B. 130. I hope to be able to transmit later today, with the assistance of Ms. Miles and Assemblyman Sprinkle, those amendments that we found which would improve the bill that she has suggested (Exhibit C). There were some other amendments that were offered by some other people, and I want to go back and make sure they were incorporated in the bill before we got to this stage. I want to assure the Committee that the suggestions that have been made with respect to some amendments are completely consistent with testimony and recommendations made by this 32-person Commission. I am happy to answer any questions or provide additional specifics on any of the provisions of the bill.

Chairman Yeager:
Thank you for your work on this issue. I know it was a labor of love, and I remember tuning in to some of those meetings myself in the interim. Assemblyman Sprinkle, did you want to provide any additional comments, or would you like us to open it up for questions?

Assemblyman Sprinkle:
No, I think that was a good overview of this bill and what we were hoping to accomplish with it.

Assemblyman Elliot T. Anderson:
I have to admit I was surprised to see something like this written in statute, and I started thinking why the Nevada Rules of Professional Conduct Rule 1.5 is not sufficient to protect clients from bad attorneys. I also wondered about the factors in section 3, subsection 4 and where they came from. When I started thinking about the factors and determining compensation, it reminded me of the Lodestar method and the factors that are applied when courts apply the Lodestar to requests for reasonable attorney's fees. Would you comment on why the existing process does not work and why it cannot be done by court rule? It is usually the court regulating the practice of law. Would you comment on where those factors came from?

Justice Hardesty:
With respect to the issue concerning regulating lawyers and the rules of professional conduct, how we regulate lawyers and their discipline is different from the adjudication of fee requests

in district court or, in those limited cases, in limited jurisdiction courts. If someone were to take a fee without approval or were to charge for a fee that a court had ordered, that might provide a basis for the court to revisit the previous decision if, under the Nevada Rules of Civil Procedure, appropriate motions and the like are filed to correct those actions. That is much different than a consideration of a violation of the Rules of Professional Conduct by a lawyer by the State Bar and ultimately the Supreme Court, which can result in the lawyer's suspension, disbarment, or reprimand. In the context of the lawyer discipline, the client does not necessarily receive a remedy, so the remedy needs to be proactive in the first instance. The reason these provisions are put into statute is to compel all judges to follow the approach that the Nevada Supreme Court has enunciated in, principally, the case of *Brunzell v. Golden State National Bank*, [455 P.2d 31 (1969)]. It sets out factors that are to be considered under a Lodestar fee request.

For the benefit of nonlawyers on the Committee, a Lodestar fee request is basically a comparison of hourly rate versus hours that comes to a calculated fee. Under *Brunzell*, the judge is supposed to make an analysis of whether the fee request is reasonable, not only with respect to amount, but also timing, and about four other factors that are enunciated in the statute. In this context, it is important for the lawyers to know in advance by statute that this is a requirement when you submit your fee request. All too often, the fee request was submitted without any support or Lodestar explanation. Judges approved those because there was no objection. By the way, Assemblyman Anderson, this was urged on the Commission actively by the district court judges who considered these fee requests and had seen many of these, including Judges Steel and Dougherty. These requirements are known by all before you even start. We are trying to be proactive and hopefully avoid an improper request in the first instance. It also provides information to family members or others who are interested so they can come into court and say, Wait a minute. I have looked at this fee request and some of the factors that are listed here are not acceptable. The source of the factors in section 3, subsection 3, principally come from the approach taken in *Brunzell*; there is a lot more specificity and those were also taken from fee approaches that we studied from a number of states throughout the United States and we collected those together in what we thought was the best approach.

Assemblyman Pickard:
Having handled several juvenile guardianships, I am very much aware of the activity that has been swirling around this. Justice Hardesty, to your point where we were talking about the requirement for a preliminary plan and budget, I am wondering why we made that permissive and not a mandate from the court that every guardianship would require that, even though some would be very simple just to set a baseline. Would you comment on that?

Justice Hardesty:
The purpose is to give the judge discretion, but the rules will be very restrictive on it. There needs to be some flexibility in the development of the opening plan. Be aware of this—I will repeat the point I made earlier—a substantial number of people in the guardianship process are indigent. So a preliminary plan for them is taking a look at what kind of resources—whether it be social security or some other supplemental income they

may have—will help get them by or deal with their particular issues or provide a place for them to live. The statutory language is permissive, but the rules will be much more specific, and that is why we deferred to the Supreme Court to develop it so the judges can exercise discretion in the formulation of those plans.

Assemblyman Pickard:
I see the utility of these plans on both sides—the indigent as well as those with assets that need to be protected. That was the basis of the question. I recognize we are a policy committee, but to the extent that budgets inform our policy decisions. One of the things we heard early on in the process was that the guardianship courts and the system in general was woefully underfunded. They could not keep up with the number of cases and the administrative review that was required. The recommendations did not really speak much to it, although we have a fiscal note from the Administrative Office of the Courts. I am wondering if this is a piece that is coming later. How do we fix the resource problem?

Justice Hardesty:
Those of you who know me know that where there is a fiscal problem, I am trying to find a fiscal solution, and we have offered it in Senate Bill 433 partially. Senate Bill 433 proposes to increase the recording fee by a sum of $3. We are proposing $4. That would address the appointment of counsel. Arrangements have been made to connect legal aid organizations throughout the state where they are present to provide legal assistance for those persons who would be subject to adult guardianship, and mandate legal representation for those persons who would be subject to this situation. Those fees would provide resources to be able to compensate legal aid organizations and, where they are present, counsel in those jurisdictions that do not have legal aid handling these kinds of cases.

As some of you know, I am the co-chairman with Justice Douglas on the Access to Justice Commission. We have done a lot to try to connect legal aid organizations and provide expanded services in the rural counties. That is an ongoing effort. To the extent that it is not available—Judge Porter in Elko, Judge Stockard in Fallon, and others—we have a resource available through them to hire lawyers. I suspect this policy committee will likely see Senate Bill 433 if it gets out of the Senate.

Another part of this is the investigative piece. One dollar of it is intended to be used for that purpose and to be used at the discretion of the judge. Not all investigative services are required in every instance; this is in the juvenile area, so that is dedicated for those types of services when you are doing investigations for juveniles. Critical to this piece is the support that is requested by the Administrative Office of the Courts. At the end of the day—and I hate to repeat this because I have said it in the context of other issues—the state woefully underfunds these kinds of issues.

Quite frankly, if we are going to provide services to adult guardianships and minor guardianships, you are going to have to increase resources. I would anticipate—as we learn more from what these statutes do—that we will try to look at ways to try to increase resources to help support this. The first start is to get better case management and to get

better rules that surround this whole issue and to better understand how we are going to prepare for the problem going forward so you can better calculate this. The resources we are talking about in this legislative session address counsel services and investigative services.

Assemblyman Sprinkle:
As a follow up, Justice Hardesty referred to some of the questions I asked during our meetings. At the time, I was the only legislative member who served on the money committee, and those were a lot of the questions I asked. One of the fundamental policy decisions we made that was extremely important to me was the representation part. I need to give Justice Hardesty a lot of credit for being able to come up with a creative way to help fund what was a good policy decision, but the immediate question begged was, How are we going to pay for it? They came up with a good mechanism—which I hope you see in the Senate bill. That being said, I want to give you the assurance that I asked a lot of those questions.

Part of the process we are seeing here today and during this session is to get these rules and plans in place—as Justice Hardesty just mentioned—and that then is going to spawn further debate about how we are going to pay for this going into the future. It is not a simple measure to just come up with these policies and say, Okay, we will allocate this amount of money. Obviously, we cannot do that. By putting these bills forward to you and implementing all of them, I think that is going to show the immediacy and the necessity for coming up with the funding behind it.

Assemblyman Pickard:
Because we have broken this into many bills, I am wondering if there is a concern that if some do not get out, the others do not work. Has that been worked into the structure of the separation of the bills?

Justice Hardesty:
No, this is all or nothing. You either decide to fix this thing or you do not. It is quite simple. If you do not fix one piece, the rest of it probably falls apart. I do not know what else to say besides that. I do not mean to be rude or insult anyone, but the fact of the matter is that this is a complex matter. It had to be presented in differing bills. I am happy to share with you the overview of the other bills and what they cover. I would be delighted to meet with any of you individually to address what those bills' objectives are. I think that it is necessary for all of those recommendations to be approved if you are going to make meaningful steps going forward.

One final point about the fiscal note that you made. Make no mistake about it, particularly in the juvenile area, we have very poor resources. These kids do not have resources available to them and support services available to them. A person like Judge Walker and Judge Voy before, and now the chief judge of the Eighth District Judicial Court is running the minor guardianship in Clark County. That is just way too much on her plate. We are going to try to resolve that problem by using senior judges to help address that docket. It is a critical problem and resources will continue to be an issue.

Assemblyman Pickard:
Thank you for your indulgence. I thought that was an important point to make.

Assemblywoman Cohen:
In section 3, subsections 3 and 4, paragraphs (k) and (l), I want to make sure we have a clear record. I am really concerned about the burden we may be placing on judges. I know you said this section came from what judges asked for. I have never practiced contested guardianships; I have done a few uncontested, easy cases. If I, as a practitioner, am trying to prove to a judge that I tried to reduce and minimize any issues and then I tried to be efficient and that it was opposing counsel who was causing problems, I am going to end up submitting all of my emails to opposing counsel, my phone logs that showed I tried to get ahold of opposing counsel and did not get return calls, and all the letters. It concerns me that we are going to end up with our judges and hearing masters having inches of piles full of attorney emails, letters, and phone logs to prove that I was the good attorney and I was the one trying to get things resolved. That is just going to clog up the system even more because we are requiring the judges to go through those piles of paper. Would you address that?

Justice Hardesty:
What you are talking about is currently occurring. It just is not occurring in the context of a fee request. The judges are having to deal with this—what I will characterize in many instances as frivolous to and fro. Family members are fighting over their future inheritance while the ward—and we are proposing to change the name from "ward" to "protected person"—is in the middle. It is sort of like a divorce case. Husband and wife start off with a certain estate and the only thing that diminishes that estate are their respective attorney's fees and investigative services. It is also true in guardianship proceedings, except it is really finite because the protected person does not have the ability to generate more income. So what happens is you have family members fighting each other, and then everyone is asking that mom's estate or dad's estate pay for their lawyer fees, which are just getting completely out of hand.

The purpose for this provision is to try to give the judge some leeway and some ability to say, No, you charged all these fees. By the way, the judges listen to this all this time. So the emails and the exchanges and the mean-spirited behavior in the course of the case has already been presented to the judge. Now the question is who is going to pay for all of this? Is it going to be mom's estate or dad's estate if they are the subject of the guardianship? Or is it going to be on the person who created all this problem in the first place?

What we found in a number of cases that the Commission heard testimony from was that by the time all the dust settled, the estate was virtually gone because of the attorney's fees that had been requested by the warring parties and it produced nothing for the benefit of the person who was the protected person. The judges have already seen this, and they will have to address it in the context of fees. But they already get this to and fro leading up to it. I wish we did not have the to and fro. I hope the Supreme Court will enact rules that put a stop to some of this.

Assemblywoman Cohen:
In your opening statement, you mentioned some proposed protected people can do some things, and I know in particular that made me think of people who suffer from sundowning. If you communicate with them at the beginning of the day, there is competency, but by the evening time, there is not. I know that section 7 is our definition of incapacitated. I am not sure where we are accounting for people who do have the capacity for some things or at certain times. Would you also address that?

Justice Hardesty:
This goes to the initial plan. For those of you who may not be familiar with the overall guardianship statutes, there is a requirement that, at the commencement of the guardianship proceeding, there be an affidavit or a certification from a physician, psychiatrist, or other professional that outlines the nature of the incapacity. Before we were talking about incompetence. Many times, that was a word not generally used in the medical community. We are talking about the incapacity—what is the nature of that incapacity, and what is necessary. This is the approach being taken by judges through this legislation as well as the Supreme Court rules that are anticipated. What are the incapacities we are trying to address? Can the person still vote? In many cases, yes. Can they take care of their finances? Sometimes, not so. Do they need care with respect to their medications? Not everyone who is subject to guardianship has full-stage Alzheimer's. Or as you point out, in a sundowner-type of situation; they have the capacity. Those are the things the judge needs to assess at the commencement of the case to determine the scope and nature of the powers being given to the guardian. That is why this requirement for this plan is at the front end and also connects the nature of incapacity to the type of affidavit or certification we expect from the professional.

Assemblywoman Cohen:
As a proposed protected person's needs change once they become the protected person, we account for that so when we start, they are able to do certain things, but as time changes, the bill accounts for that as well?

Justice Hardesty:
Yes. As you may know, in guardianship proceedings, statutory requirements require follow-up reports. One of the biggest concerns the Commission uncovered is the status of the situation. The best example—and the worst example—in Clark County was that they had 8,000-plus pending adult guardianship cases, some dating back to the 1950s, in which the only document in the file was the paper appointing the guardian. We need to be on top of this so that we are regularly monitoring, as the statute requires, precisely what is taking place in those cases.

Assemblywoman Krasner:
In section 4, we are creating the Office of the State Public Guardian, and then a new position called the State Public Guardian within that office. What are the duties of that person and who is performing the duties now? I am also wondering about the two accountants and the two investigators that are proposed. Who is performing those duties currently?

Justice Hardesty:
No one is performing these duties currently, which is part of the problem that we face in Nevada. As I mentioned earlier, this model was taken from what is being done in Florida. First of all, at the suggestion of Ms. Miles, which I appreciate, we are renaming this person. It is a compliance officer, not a state guardian. None of these positions exist. These are new positions. It assures the Administrative Office of the Courts the ability to monitor the compliance that is expected by these statutes throughout the state and makes available a resource in accountants and investigators to undertake a review of these cases where the judges currently have no services available to them to do that. Similar to what is done in Florida, we would collect a number of judicial districts. We do not need an investigator or an accountant in Yerington or Elko, but we probably need a full investigator and an accountant in Washoe County. The Administrative Office of the Courts would hire the appropriate staff to help when a guardian judge in a district needs an investigator for a given case or an accountant needs to look at a particular file. All of the judges throughout the state would benefit greatly from access to these services. It also allows us to start keeping statewide statistics on this to keep track of what is happening.

Part of the reason we are in this pickle in terms of the status of the caseloads and records is because we did not know. We need to know. We are responsible for this, and we need to have the resources to be able to follow the status of these cases, and that is the purpose of these people.

Assemblywoman Krasner:
I am also looking at section 7, where the *Nevada Revised Statutes* 159.019 is amended to change "incompetent" to "incapacitated" and then it gives the definition. Is it ever the case where it is just a temporary incapacity? Can the rights be restored? If someone is deemed incapacitated, are their rights forever taken away and there is no possibility that it is temporary or can they be restored?

Justice Hardesty:
That is exactly the point. By determining the nature of incapacity, which may be limited, the judge is in a position to terminate the guardianship as soon as that incapacity is addressed. A really good example of this is—let us say that someone is injured in a car accident and is severely incapacitated, but they are restored to health. They are restored to capacity. There is no reason to continue to maintain that guardianship. There are other examples I can provide you which support that point. District Court Judge Dougherty in Washoe County—who is responsible for this docket—requested the Commission's support with a grant request. It is not a substantial grant, but she currently has under study how we approach least restricted means when appointing these guardianships. From her study, I hope much will come that we can incorporate into Supreme Court rules which will deal with those least restricted means requirements. A guardianship can be created, but it can also be terminated, and all of it should revolve around the nature of the incapacity of the protected person.

Chairman Yeager:
I had a chance to watch the hearing on the Senate side on video. I think you noted earlier that you were proposing to change the phrase "ward" to either "proposed protected person" or "protected person." I did not see it in this bill, but would it be your preference that this bill be processed with that change being made?

Justice Hardesty:
I will defer to Assemblyman Sprinkle.

Assemblyman Sprinkle:
It was the recommendation from the Committee. That recommendation, I believe, is embedded in a different bill coming through, as you heard testimony earlier. Most of this is incumbent upon all of these different bills actually seeing success in the Legislature, so I do not necessarily see a need to amend this bill to make sure that that is incorporated, because once all of these bills are signed by the Governor, then that will be fixed through legal mechanisms.

Chairman Yeager:
Thank you for your work on this issue and for being here this morning to present. I will open it up for testimony in support of A.B. 130.

Christine Miller, Attorney, Legal Aid Center of Southern Nevada:
Our office participated in the guardianship commission, and we fully support A.B. 130.

John Yacenda, President, Nevada Silver Haired Legislative Forum:
We officially endorse the work of this Commission. I had the privilege of attending Commission meetings; participating and testifying at the Commission. We endorsed this in our report to the Legislative Commission and in our report to the Governor. We support this bill and the other bills on guardianship amendments and additional changes. We think it is very insightful, and it has our full endorsement.

Chairman Yeager:
Is there anyone else in support of A.B. 130? [There was no one.] Is there anyone who would like to offer testimony in opposition to A.B. 130?

Michael James, Public Guardian, Mineral County:
I was initially against the proposed bill due to some specific issues. I believe Ms. Miles has produced a really good amendment to this bill that will solve a lot of our problems. The first one was the lack of specificity in the proposed office of State Public Guardian. We believe there needs to be a compliance office statewide for the public guardianship process, and the proposed amendments do address it very well. We were mainly concerned that that office would become the de facto guardian for the whole state, and we really believe, in the rural counties, that public guardianships are best administered by people in the communities where the protected individuals reside.

Our other concerns were some specific issues with the way that the personal properties were addressed. When we take on a case, most of our individuals are indigent. They really do not have any assets to speak of, so we would not be able to store the protected assets of individuals for the proposed time. I believe there was a 90-day period in which the bill was recommending that we store tangible personal property. Frankly, our wards do not have those assets to store the tangible assets. Let us say someone goes under guardianship. More often than not, they need to go into a long-term care facility. We cannot pay their rent for several months while the process goes through the courts, so oftentimes we need to liquidate their personal property as soon as we can in order to get their assets protected and get them into long-term care.

I believe that the amendments that Ms. Miles has produced will fix our issues with the bill, and I urge the Committee to act on those.

Chairman Yeager:
Is there anyone else in opposition to A.B. 130? [There was no one.] Is there any neutral testimony on A.B. 130?

Susan B. DeBoer, Public Guardian, Washoe County:
I serve as the Washoe County Public Guardian. I wholeheartedly support the policy changes this brings about; however, I have numerous concerns about the fiscal impact. We have presented testimony about that fiscal note (Exhibit D).

Chairman Yeager:
We will make sure to look at that. Is there anyone else in the neutral position? [There was no one.] I would like to invite Assemblyman Sprinkle and Justice Hardesty to come back to make concluding remarks.

Justice Hardesty:
We will submit amendments that were referenced in this testimony and provided by Ms. Miles. I do not have much more to offer, unless there are questions from the Committee. I would urge the Committee to endorse this measure.

Assemblyman Sprinkle:
I would like to thank the Committee for hearing this bill today. I think it bears my reiterating the amount of work and many hours that dedicated people put into the recommendations that you are now seeing come forward in A.B. 130. I thank Judge Hardesty and all those on the Commission for addressing what started off over two years ago as an incredibly important social issue in the state of Nevada, and I think we have come with good recommendations that I hope this body will embrace.

Justice Hardesty:
I would like to put on the record my sincere appreciation and thanks and the thanks of the entire Commission for the staff services by Stephanie Heying. She is a former member of the Administrative Office of the Courts. We do not often recognize the staff people who help

elected people make good policy decisions, and Ms. Heying's work in support of this Commission was extraordinary. We are very grateful for all that she did to bring this forward.

Assemblyman Wheeler:
The way I read this bill, and thinking of a comment that came up in opposition, this is about the administration of guardianship. The actual guardians themselves would still be—for instance, in the rurals—from that rural community. Is that correct?

Justice Hardesty:
Absolutely that is correct. It was never the intention to remove the activities of the rural guardians. I will say—not specifically about Mineral County or anyone else for that matter—that I am concerned about the approach taken by county commissioners to the creation of rural guardians and the adequacy or insufficiency of the support in those counties. I think that is a serious problem, but it is a different issue. It was never the intent to create the office in the AOC to take over those. It is the intent to provide support assistance to those guardians who can now reach out and say, Okay, I need an investigator or an accountant to help me understand this mess I have been handed.

Chairman Yeager:
Thank you. We will close the hearing on Assembly Bill 130 and open the hearing on Assembly Bill 319.

Assembly Bill 319: Revises provisions governing the guardianship of minors. (BDR 13-502)

Egan Walker, Judge, Family Division, Second Judicial District Court:
I am responsible for the minor guardianship caseload in Washoe County. Let me make a small aside and say what a great legislative session this is for kids. I had the pleasure of appearing in front of this Committee on Friday. This is another bill like the bill you heard on Friday that really protects kids and vulnerable persons in Nevada.

You might ask why over 200 sections and 127 pages are necessary. Let me tell you why. First, we—the Commission—undertook to examine laws in all of the states in the United States and how different states handle issues related to minor protected persons or minor wards. There is a hodge-podge of ways states deal with laws, but the best we saw was sort of a hybridized system—recognition that children are not just small adults, but instead have unique and, in some cases, different needs and circumstances than adults who would be in need of a guardian or in need of protection. This was a giant task, I must say. It began with drafting an entire chapter and then a retrenchment from drafting an entire chapter and then a reinvigoration as *Nevada Revised Statutes* (NRS) Chapter 159A that draws into a chapter dealing specifically with children. Many of the provisions of NRS Chapter 159 add to those provisions.

There were multiple players involved. I must recognize Judge Porter, Judge Steel, and Judge Voy. All of us sat in the subcommittee and really hammered hard at the product you see in front of you. At its heart, there are three themes to this bill. Those themes are to define, identify, and recognize, and then give effect to a system to meet the needs of minor protected persons which are similar in ways to the needs of protected persons who are adults, but different, and to discriminate between the two and to specifically offer tools to courts to address those needs. I believe you have some friendly amendments to sections 26 and 27 on the Nevada Electronic Legislative Information System (Exhibit E). This is an example of an area where we have been able to finesse the proposed statutory language to give judges three tools in minor guardianship or minor protected persons cases: the ability to appoint an attorney for the child, whose job, of course, is to advocate for the interests or desires of the child; a guardian ad litem for the child, and to really discriminate so that that person cannot be the same person, because a guardian ad litem's duties and responsibilities are so much different than and not always aligned with the advocacy an attorney might offer—a guardian ad litem will advocate on the best interest of the child; and then, to have an investigative tool.

Minor guardianship cases are really foster care cases without the resources. What I mean by that is the prototypical minor guardianship is Grandma and Grandpa called upon to step forward to raise their grandchildren in circumstances where Mom and Dad are—for whatever reason—not available. That might otherwise be a foster care case, but for Grandma and Grandpa. Without a tool to appoint an investigator to give the independent third-party information in those cases, I am really making decisions in the dark and blind.

The final theme of this chapter is that the tools in the chapter support active case management. When we began this process in Washoe County, we had 2,400 minor guardianship cases. We have winnowed that down to about 1,100 cases; however, and this is worrisome, I do not know where between 150 and 200 kids of those 1,100 cases are. This legislation gives me some tools to go find them and make sure they are okay.

In a nutshell, notwithstanding your burning desire to go page by page and line by line through this legislation, that is the thematic basis for Assembly Bill 319.

I have been so impressed with the legislators who were involved in this process. When Justice Hardesty pointed out that Assemblyman Sprinkle made all 14 meetings, there are few Commission members, other than him, who made all 14 meetings. I, for one, while finding this a sleep aide, am deeply impressed that he was able to be as engaged as he was for the entire period of time.

James W. Hardesty, Justice, Supreme Court of Nevada:
To supplement what Judge Walker indicated, we are going to have a resource issue throughout the state in order to fulfill the requirements of this bill. One of the areas is to get lawyers representing kids, and that is a key component to Senate Bill 433 as well. The bill is this size because we took a number of provisions that would otherwise apply to adult guardianships and addressed those in a repeat fashion in a separate guardianship section. It is

not as if a lot of additional provisions were added, but where applicable, we took existing provisions and segregated them in the guardianship section, which had not existed before now.

Assemblywoman Cohen:
Section 46, subsection 4, paragraph (a), has to do with a parent who is unable to provide basic needs for a proposed protected minor. I was somewhat concerned because you can have a parent who is working really hard to try to protect their children, but maybe is in a shelter or even living in a car, but they are still making sure that their child is getting food and getting to school. I am a little concerned in this section that we might be making parents afraid to seek public help because they are afraid if they go to the state or a county agency, the children might be taken away from them because they fit this list. They are not providing the basic needs if they are living in their car or having some other difficulties.

Judge Walker:
We imported the parental fault matrices from *Nevada Revised Statutes* (NRS) Chapter 432B, so actually this section and that description is designed to do exactly the opposite. We can push children into foster care very easily. Likewise, we can push children into guardianship out of their parent's care very easily if we were inclined to do that. Getting some specific criteria to consider the circumstances of a parent and whether or not those circumstances frankly can be aided to avoid interference with parental custody is the purpose behind this entire section.

I can tell you that Judge Porter, who does dependency cases, Judge Voy, who is very familiar with them, and I all felt strongly that we needed to invigorate some sort of evaluation of—as it were—parental capacity. Without it, as the statute currently exists, any interested person can seek to interfere with that parental custody. If you have a poor parent of limited means as you described, they are often literally absent from the proceeding and we end up with a guardianship in a circumstance where we should not. I hope that addresses your question.

Assemblywoman Cohen:
Yes, it does. Section 46 seems to be a section having to do with when there is an existing family law case between the parents. It concerns me that there might be some timeline conflicts between the time it takes to do things in a family law case and the time it takes to do things in a guardianship case and how that interplays with one family, one judge and if it is still the rule when there is a guardianship case involved.

Judge Walker:
Yes, there is a one-family, one-judge policy. Throughout the state—I always smile because if you are Tom Stockard in Fallon, you are the one judge for any family in the county. Notwithstanding that, in Clark and Washoe Counties we have multiple cases across families—Washoe County in particular. I have a project called Project One, which is exactly one family, one judge, no wrong door, equal access to justice.

This section is actually addressed to and is meant to handle circumstances where, for example, a minor is involved in an auto accident and there is a personal injury settlement out of that accident. One or the other parent, or both, need to be guardians over the child's estate in order to capture that. There are also unaccompanied minor cases, so there are some circumstances where mom and a child have come from another country and dad is in the third-world country. In order to support mom's or dad's status in this country or the child's status in this country, they need to seek guardianship. It is not an addition to, or in opposition to, existing custody law, it is simply to address those circumstances. This kind of language is common in many jurisdictions across the country.

Assemblyman Elliot T. Anderson:
I would like to follow up on what Assemblywoman Cohen mentioned. I will admit that I am confused about when there would be a minor guardianship. You talked about how foster care would be the proper route in that instance. Would you describe in what circumstances a minor guardianship would be appropriate? Would you also go on a 10,000-foot overview and explain where the differences are from current laws as it relates to guardianship for adults and how you changed those with this bill?

Judge Walker:
Several of the existing parts of NRS Chapter 159—in the same paragraph—refer to a ward, or what we are going to call a protected person, as though that person were an adult or a child, and they are inconsistent. Another example of the existing challenge is that NRS Chapter 159 allows the court to appoint a guardian ad litem, but the rule of a guardian ad litem for an adult—say my 75-year-old mom, if she became incapacitated—versus the rule of a guardian ad litem for a 5-year-old child are very different and nowhere defined. This is breaking them out—meaning Chapter 159A from Chapter 159—and appreciating that, while children are of course small human beings and therefore similar to adults, their needs and circumstances in life are fundamentally different. That is why we broke it out.

Some of the circumstances in which people need guardians are quite surprising. I have given you an example of the traditional circumstance: Mom and Dad, often because of drug addiction or other issues in their own lives, become unavailable. But there are some very tragic circumstances that happen in all of our lives. I have had a number of cases where both parents die. Mom dies, and a year later Dad dies—both suddenly and unexpectedly within a family. Those cases can become particularly acrimonious—the back and forth that Justice Hardesty describes in adult cases where people are basically fighting over their inheritance. You get weird permutations of that in minor guardianship cases where one set of grandparents wants control as opposed to the other set of grandparents. I do not know if those are the kinds of examples you are referring to, Assemblyman, but that comes to mind.

Assemblyman Elliot T. Anderson:
If I am understanding you correctly, maybe foster care is not appropriate because there are family members who are willing to step in. Is that the long and short of why there are minor guardianships?

Judge Walker:
Yes. The state does not make a good parent. I am the foster care judge in Washoe County. Although guardianship is one of the five permanency plans acknowledged by the Adoptions and Safe Families Act of 1997, the purpose is to get children out of foster care and in the care of their parents or their families. So if Grandma and Grandpa are available and able to care for a child, that is a much better outcome than having the child in the foster care system.

Chairman Yeager:
Are there any other questions from the Committee? [There were none.] Is there anyone in Carson City or Las Vegas who would like to testify in support of A.B. 319?

Christine Miller, Attorney, Legal Aid Center of Southern Nevada:
I would like to express our full support for A.B. 319.

Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office:
I am here today on behalf of the Department of Family Services. We support the policy. Our children—during the vulnerable times—deserve to have protections around them, and they deserve to make sure someone is ensuring oversight and accountability for people who are caring for them. Understanding you are the policy committee, Clark County has put a fiscal note in based upon section 28, subsection 1, paragraph (d), and subsection 2. The requirement of the child welfare agency to investigate at the request of the court in Clark County could bring on average about 920 additional child welfare investigations a year. Currently, we have 114 investigators, and last year, in 2016, we investigated 12,314 cases of abuse and neglect. Our fiscal note is in response to the additional staff we will need in order to support the court if we are intended to be the investigators for these guardianships.

Chairman Yeager:
Is there anyone else in support of A.B. 319? [There was no one.] Is there anyone who would like to give testimony in opposition to A.B. 319? [There was no one.] Is there any neutral testimony on A.B. 319?

Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services:
We had a couple of points that we wanted to make for the Committee. Section 41 requires the court to order the assignment of a court-ordered child support payment to the court-appointed guardian of the child. Existing law creates an assignment of child support through the Division of Welfare and Supportive Services (DWSS) whenever a person, including guardians, accept public assistance on behalf of a child. That can be found in NRS 425.350.

Existing law also provides a mechanism for a child support order to follow the child support to subsequent caretakers who have lawful physical custody of the child in NRS 125B.040.

We have a concern with the way section 4 is written that it could be construed to mean that the guardian's right to receive child support supersedes DWSS's right to recover that child support.

Chairman Yeager:
Is there any other testimony in the neutral position on A.B. 319? [There was none.] I will invite our sponsors back to the table for concluding remarks.

Judge Walker:
In response to the last concern raised by DWSS—I hope my response will demonstrate the interconnectedness of the foster care system in minor guardianship cases in some ways. I am the judge responsible for foster care cases in Washoe County. In those foster care cases, there is supposed to be a child support enforcement order in every case. In calendar year 2016 or 2017, the amount collected was around $50,000 for every case in the county, and to collect that amount there were two full-time state employees. As a consequence, in our model court program we simply stopped that collection because the amount collected was so minimal. The concern that the guardians—Grandma and Grandpa—might get money that DWSS is otherwise entitled to is a fairly de minimis concern, speaking from experience. I do not mean to denigrate the concern, but it is a very minor concern.

Justice Hardesty:
With respect to the comment by Ms. Duffy on behalf of Clark County, that is specifically why we added a dollar to the recording fee in the S.B. 433 provision, which addresses that issue. I respect the point. I have gone further and suggested that the bill be amended so that the investigators are appointed by the judges and that they designate those investigators rather than using Clark County investigators at all. We do not need investigators in every case, and the judge should be making those decisions and allocating those resources from that designated fund, not Clark County. I understand Ms. Duffy agrees with that point. You might ask her.

Assemblyman Sprinkle:
To wrap this all up, what you saw in A.B. 319 was an issue that was identified very early on in the process, which is why the subcommittee was formed. It was incredibly hard work by that subcommittee to come up with such a large and, to an extent, cumbersome bill, but it also makes a lot of sense when you are looking at differentiating between adult and minor guardianships. I cannot applaud them enough for getting us to this point.

You have heard two of six bills that have gotten to the core of an issue that I think is important for the state. I will also point out that it is important for the nation, too, because we have many other states that continue to look upon the actions this body will take on all of these different bills on this issue. I cannot thank you enough for your time and attention today, and I hope that you look favorably upon A.B. 319.

Chairman Yeager:
Thank you to the three of you for your work on this issue and for being here this morning to share with us. I will invite the Committee members, if there are any lingering questions, to reach out to any of these three individuals to get those questions answered. We will likely see this bill on a work session in the very near future. With that being said, we will close the hearing on A.B. 319. I will turn the gavel over to our Vice Chairman.

[Assemblyman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:
We will open the hearing on Assembly Bill 254.

Assembly Bill 254: Revises provisions governing guardianships. (BDR 13-595)

Assemblyman Steve Yeager, Assembly District No. 9:
I am going to make some brief opening remarks on Assembly Bill 254, and then I will turn it over to Ms. Christine Miller from Legal Aid Center of Southern Nevada, who is in Las Vegas. You have heard from her on the previous two bills. She is the expert on this subject matter and will take you through the various sections of the bill.

Assembly Bill 254, in companion with the bills we just heard, deals with trusts in the guardianship context. The problem we are trying to solve with this bill is that, as the law stands now, a guardianship court does not have jurisdiction over a trust that is in place for the benefit of the protected person. This lack of oversight can lead to situations where a trustee could be depleting the assets of the trust or forcing a protected person to live in poverty when there are ample resources in a trust for that person to live comfortably. This bill allows the guardianship court to take jurisdiction of the trust, which will lead to greater transparency and also ensure that the protected persons are not being taken advantage of, but instead are being taken care of as envisioned by the trust.

With those remarks, I would like to turn the presentation over to Ms. Miller, who is in Las Vegas.

Christine Miller, Attorney, Legal Aid Center of Southern Nevada:
I am here to express our support for A.B. 254. I would like to give you a little background into my work and how I have come to be familiar with issues with respect to trusts and adult guardianship cases.

About 16 months ago, Legal Aid Center of Southern Nevada implemented the Guardianship Advocacy Project, providing free legal representation to adults under guardianship. That is when I began my work representing adults or protected persons in guardianship cases. As their lawyer, I am their voice in court when they can no longer express their own voice. I also advocate and protect their legal rights in the guardianship case. It is very important to remember and to understand that these protected persons or adults lose the ability to control and manage their own finances and they can no longer make their own decisions once

a guardian is appointed. This is also why it is very important to offer these people legal representation in the case. It is also very important for the parties in the case—including the protected person themselves, their attorney, the guardian, and the court—to have full knowledge and full awareness of all the assets that are available to go toward the care and benefit of the protected person as well as to have knowledge as to how those assets are being used or spent for the protected person.

Over the past 16 months in my personal experience, many of my clients have had their assets held in trust. The trust is managed by a third party, called the trustee. Sadly, I have seen too many cases where the trustee has either mismanaged the funds or simply stolen the funds and used those funds for their own benefit. This means that the assets held in the trust have not been used for my client's care and benefit as they should be.

I would now like to briefly address a couple of real stories and real cases that highlight this problem and hopefully will demonstrate to you why A.B. 254 is much needed. One of my clients was born with a physical disability that has left him wheelchair-bound. Nonetheless, he is a vibrant young man. He is an adult. He had an interest in school and, following high school, he wanted to attend a local college. A relative of his left him a decent inheritance to be used for my client's care and eventually his college education. The family members all knew about this inheritance and what it was to be used for.

As my client became an adult, his guardian received permission to set up a trust, and a trustee was appointed to manage this trust. The inheritance that was held in a bank account was to be switched over and titled the name of the trust such that they would become trust assets. Once that was completed, however, my client heard nothing further from the trustee about the whereabouts or the existence of those funds. In fact, those funds were never used for my client's care and well-being, and certainly were not used to pay for his college education. He took a couple of classes and that was it. He never heard anything from the trustee because the trustee failed to provide an accounting to the court in the guardianship case, nor did the trustee even communicate with my client, the beneficiary under the trust. It is believed that the trustee actually spent those funds for the trustee's own benefit.

I have another case that is very similar. When he was a teenager, my client was injured in a severe accident that left him with a traumatic brain injury for life. He is also wheelchair-bound and requires a guardian. My client's father passed away and left a modest piece of property. My client is the sole heir, so the deceased father's estate was going to be put into a trust. So a trust was set up, my client's guardian requested to become the trustee and to take care of selling that property and using the proceeds and putting it into the trust, again to be used for the care and benefit of my client. Did that happen? No. Unfortunately and sadly, it did not. Once again, this is another case where the trustee failed to provide any accounting or bank statements in the guardianship case. No information was provided to the court as to how the trustee spent those funds. When the lawyer was finally appointed for the protected person and we discovered that there was a trust set up and a piece of property was

sold, that is when we began digging into the case and realized, What happened to the funds? The trustee now says the funds were spent. I know those funds were not spent on my client, but rather wasted or spent or stolen by the guardian. These types of actions must stop.

I would like to go through portions of A.B. 254, which will hopefully identify how the court having jurisdiction over these trusts and the requirement for filing accountings in the case will provide for transparency in the case with respect to trust funds and trust assets as well as provide protections to the people who need it most.

One of the first important items in section 1 of this bill is that an inventory that is filed in the case must be served on the trustee. This is the person who manages the trust, so the trustee will have notice that the court can assume jurisdiction over the trust. There is also a mechanism in place that would allow any party, including the trustee, to file an opposition or an objection to the court taking jurisdiction over the trust if that party feels it is necessary. This bill also allows the guardian, the protected person, or the attorney or any other interested person to demand that a copy of a trust accounting be filed with the court. This is crucial. In the cases that I just highlighted, no accountings were ever filed with the court. If an initial accounting had been filed, then perhaps that would put the parties on notice that there were a certain amount of assets at stake and then we could have followed up on the whereabouts of those assets and how they were being spent over time.

I do not want to go line by line, but this bill is very short, so I am happy to take questions about the bill afterward. I will highlight a couple of other important points. This bill also requires that the inventory—which is filed under *Nevada Revised Statutes* (NRS) 159.085—identify the existence of a trust so that from the outset of the case, the parties are aware that a trust is involved. Just as importantly, this bill also allows for the court to take jurisdiction of this trust if it has not already done so. At this time I am happy to take any questions or address any comments.

Assemblyman Wheeler:
Section 1, subsection 2 says, ". . . any interested person may demand that a copy of the trust and an accounting of the assets of the trust be filed with the court." I am wondering how you define "any interested person" and if there is a propensity for someone to run attorney fees by being an "interested person" demanding all of this information.

Christine Miller:
To address your concerns, the court certainly has discretion as to whether or not a person is deemed an interested person or not in the case. I believe that it does express the definition of an interested person in the statute. I apologize that I do not have that definition right on the top of my head to refer you to the NRS section in Chapter 159 [NRS 159.078, subsection 5, paragraph (c)] that defines it. It is important to be able to open up the accounting and be able to request the accounting by the guardian, by the guardian's attorney, by the protected person, and by the protected person's attorney. The trustee is also allowed to not conform with the

demand. This bill also incorporates Chapters 162 through 167, which are probate sections. If a demand is not met—for example, if the trustee believes that they do not have to file an accounting, then there are measures to address that in court.

Vice Chairman Ohrenschall:
That was one of my questions as well, and I was trying to find it in Chapter 159. Regarding the two examples you mentioned, did the guardianship master or the family court judge make any attempt to get an accounting from the trustees? Were those trusts set up in Nevada or out of state? If this bill passes and you have a ward who has a trust set up in Connecticut and the trustee is perhaps not taking care of the ward, I wonder how you think this would work and what your experience has been in the past.

Christine Miller:
In the two cases that I highlighted, the trusts were both set up in the state of Nevada. For out-of-state trusts, there is a provision that the court may assume jurisdiction of an out-of-state trust.

Would you please repeat the first question you asked me?

Vice Chairman Ohrenschall:
Regarding the two examples you gave, did the guardianship master make any attempts to get an accounting from the trust?

Christine Miller:
In those two cases, they fell off the court's radar. Once the trust was established and the trustee appointed, unfortunately there were no more documents filed with the court. It was not until an attorney was appointed for the protected person that it became evident that there was no accounting filed in the case. Presently, NRS Chapter 159 requires that guardians of the estate file annual accountings in cases that are over a certain dollar amount. In these cases, because there was a trust established, that trust worked to set aside this pocket of money such that it was not deemed as part of the guardianship case. There was no guardian of the estate; rather, there was a trustee. That is why, in those cases, no accounting was ever filed. That is what A.B. 254 seeks to address and remediate. In the two cases that I highlighted, it was the legal counsel for the protected person who actually filed paperwork, with the guardianship judge pointing out the history of the case, the fact that a trust is in existence and making the demand that way for the trustee to come to court and to account for the funds.

Assemblyman Elliot T. Anderson:
"Interested person" is defined in NRS 132.185 for the wills in estates title. It might be worthwhile adapting that definition. But certainly family courts are familiar with "interested person" in that title, so I think it would be good to consider defining that in the same fashion. I do not know why it would be any different. A trust is simply another form of a product used to distribute an estate, so I do not know why it would be any different.

Assemblywoman Cohen:
It looks like the interested person is defined by how the interested person is affected by what is happening, and I want to make sure that we are capturing people who might be concerned for the sake of the protected person or the proposed protected person. Is that definition broad enough to cover an interested party who may be concerned for the sake of the proposed protected party but is not personally affected by what happens to them or their estate?

Christine Miller:
Yes, I believe that definition would be sufficient. I personally have not experienced any so-called interested persons in any of the cases that I have been involved with where there is a trust. Essentially, these people who are under guardianship might have one or two family members, but for the most part it is a guardian, and the guardian may also be the trustee. I have not seen where other people who might fall into this definition of interested persons are actually trying to come into the case. I do not think it is going to be that great of a concern.

Assemblywoman Cohen:
There are not a lot of family members around, but there are neighbors who are concerned about what they are seeing happening. They are not personally affected but do show a concern and may have important information for the court or a reason to be involved. I just wanted to make sure we have that on the record.

Vice Chairman Ohrenschall:
Are there any other questions? [There were none.] Is there anyone who wants to speak in support of A.B. 254 in Carson City or Las Vegas?

Shelly A. Register, National Certified Guardian, Guardianship Services of Nevada, Inc.:
I wanted to speak in support of A.B. 254 for a number of reasons, one of which is I believe this codifies and specifically authorizes what some courts are already doing. There may not be an objection; there are trusts that are being taken under the jurisdiction of the guardianship court. It has been official for the protected persons because then there is transparency. However, some of our attorneys have made comments, in our bench bar, that trusts are sometimes set up so that there is some privacy protecting the person's assets and that estate planning that they provide. There may be some concerns in there. I have had other courts who have questioned whether they can take jurisdiction over an asset.

In one court—I had counsel who sent me an email that said that the beneficiary of a trust may request an accounting once per year under NRS 165.135. We have asked that, and in that particular case, the trustee had concerns that the guardian should not know what is in the trust. If we are to plan for that person's life and care as they spend down those funds, we may have to then apply for benefits for them someday, and those funds will have to be accounted for. I do not know all the ins and outs of the trust world, but I think it would be beneficial for all courts and parties to be able to know that it is within the guardianship

court's purview to take jurisdiction over the trust and to know what is available to that protected person.

Vice Chairman Ohrenschall:
In your experience as a private professional guardian, have you had many wards who have been income beneficiaries of a trust but are unable to receive any benefits?

Shelly Register:
I have not had many where they have not been able to receive benefits. There are discretionary trusts where we sometimes have to request the access or we do not always know what the trust provides or what the provisions of the trust are. We have to be denied access, and if the person is in need of services, we have to be able to provide that to the Medicaid authorities. I have only had one situation where there are funds but there are some questions, sometimes about why the guardian is asking. As long as someone is providing for that person and their needs are being met, I do not always push getting an official accounting from them. In one case I had, the court ordered an attorney—who was acting as a Special Advocate for Elders advocate—to access those funds and review it with the trustee to make sure that those funds were there and being used for the ward's needs.

Vice Chairman Ohrenschall:
Is there anyone else who is supportive of A.B. 254? [There was no one.] Is there anyone opposed to A.B. 254? [There was no one.] Is there anyone who is neutral on the measure? [There was no one.] Assemblyman Yeager, are there any closing comments you would like to make?

Assemblyman Yeager:
I think this is a good complement to the other two bills that we were talking about this morning. The goal is to make the guardianship court aware of the existence of a trust and then to take that into account when planning how to best care for that protected person. The goal is to avoid exploitation and to make sure that the assets that are in the trust are being used appropriately for the benefit of the protected person. I think this bill accomplishes both of those objectives. I would like to publicly thank Ms. Miller for her time this morning and presentation of the bill.

Vice Chairman Ohrenschall:
I will close the hearing on A.B. 254.

[Assemblyman Yeager reassumed the Chair.]

Chairman Yeager:
We will open the hearing on our fourth and final bill on the agenda today, which is Assembly Bill 362.

Assembly Bill 362: Revises provisions relating to educational personnel. (BDR 34-1144)

Assemblywoman Jill Tolles, Assembly District No. 25:
For the one in four, and for the one in six, this is for you. The Center for Disease Control estimates that one in four girls and one in six boys will be sexually abused before the age of 18. Ninety-three percent of abuse survivors knew their abusers, oftentimes a close family member, friend, or trusted adult, such as a teacher, coach, or mentor. Ninety percent of the time children do not report. In the first quarter of 2017, there have already been ten cases in Clark County School District (CCSD) alone of educators sexually abusing or exploiting a student. Before the session started, I sat in a county courthouse with a good friend, holding her hand, while her daughter testified against her music teacher. When the arrest hit the news, dozens of other reports came forward on social media or calls to the department, spanning the last 20 years.

Assembly Bill 362 (Exhibit F) seeks to close certain reporting and communication loopholes between schools and districts so a teacher, administrator or other school personnel cannot move from one school to another to sexually exploit or abuse children. This bill also seeks to define information-sharing responsibilities and align with current federal policies found in the Every Student Succeeds Act (ESSA). It would apply to all teachers, administrators, substitutes, and personnel who interact with children in public schools, including charter schools.

With your permission, I would like to go through the bill (Exhibit G) section by section. I would also like to introduce Terri Miller, who is with Stop Educator Sexual Abuse, Misconduct and Exploitation (SESAME). She has joined us from Las Vegas. We should also have Dr. Chester Kent on the phone, who has extensive experience in testifying as an expert witness. He has studied this issue, as well as being the original contributing author, along with Terri Miller, on the Pass the Trash legislation, which was first adopted in Pennsylvania and is being adopted in states across the nation. Mr. Robert Eglet from the Nevada Justice Association has a friendly amendment that I would like to share at the end of the presentation. I would also like to make note that the Nevada Department of Education as well as the school districts have some suggestions for an amendment, and I am friendly towards them. We have not had the time to work out the details, but I welcome their input.

Sections 1 through 5 of the bill [page 3, (Exhibit F)] provide initial definitions and introductory provisions. It defines local educational agency, sexual misconduct, and sexual offense according to *Nevada Revised Statutes* (NRS) 179D.097.

Sections 6 through 7 (page 4) make changes to conform with the ESSA. It requires that local educational agencies and their employees, contractors, and agents may not help someone who works at a school to obtain new employment if they know or have probable cause to believe that the individual has engaged in sexual misconduct with a minor or a student. Exceptions are made for the routine transmission of administrative and personnel files, and for situations in which the individual has been exonerated of the alleged misconduct, law enforcement has investigated and found insufficient information or closed the matter, or the case or investigation remains open with no charges filed within four years after the reporting date. There were some concerns initially that this would be too cumbersome. This makes

those exemptions. There were also concerns about if the teacher was found to be innocent, and this addresses those concerns. It additionally bans local educational agencies and public schools from entering into agreements to keep sex offense convictions confidential.

Section 8 requires job applicants for school districts, charter schools, or university schools for profoundly gifted students to submit information as to whether they have been the subject of an investigation concerning sexual misconduct unless the allegations were proved false; been disciplined or separated from employment while allegations were pending or found true; or had a license suspended or revoked while allegations were pending or found true. Also, it requires applicants to identify current and past employers and to authorize those employers to release similar information regarding investigations regarding to sexual misconduct.

Sections 9 and 10 distinguish the responsibilities for the school or independent contractor and for current and past employers. Upon receipt of the applicant's information described above, sections 9 and 10 require the governing body of a school or independent contractor to contact the applicant's current and past employers for provision of employment dates and information—standard practice—regarding investigations of sexual misconduct. It also requires current and past employers of the applicant to comply with requests for such information—creating that two-way communication—and provides them with immunity from civil and criminal liability for sharing that information. That addressed another concern which was brought up in regard to this bill. It also requires the governing body or independent contractor to ensure appropriate licensure and to verify that the Department of Education has not received notice that the applicant is a defendant in a criminal case.

Section 11 authorizes governing bodies and independent contractors to use the information collected through sections 8 through 10 in determining whether to employ a person; and to report such information to licensing, law enforcement, and child welfare agencies. Section 12 moves on to require independent contractors who employ a person who may have direct contact with students to maintain records about information collected under sections 8 and 9, and to provide that information to the governing body of a school upon request and before assigning an employee to work at a location where the employee may have direct contact with students.

Section 13 goes on to authorize governing bodies to allow temporary employment in certain situations pending the review of information. Section 14 permits governing bodies and independent contractors to conduct further investigations of a prospective employee and to require more information than is required in sections 8 through 10. It permits a person to disclose more information than required in sections 8 through 10 if there were concerns present.

Section 15 prohibits governing bodies and independent contractors from entering into agreements that would limit the information sharing required in sections 8 through 10, affect the ability of the governing body or contractor to report suspected abuse or sexual misconduct to the appropriate authorities, or require the governing body or contractor

to expunge information about allegations or findings of sexual suspected abuse or sexual misconduct unless the allegations were proven false.

Section 16 requires the information collected through sections 8 through 10 remain confidential and not be considered a public record. Sections 17 and 19 provide penalties for willfully violating sections 2 through 17, and makes provisions for tracking and refusing to contract with independent contractors who are violators of sections 2 through 17. Section 18 requires that a notice of the denial of a license application must be provided to the school district or charter school that employs the applicant if the applicant is so employed. Sections 20 through 22 make various conforming changes to keep it consistent. Section 23 specifies that the provisions of section 15 do not apply to any agreement entered into before July 1, 2017 until the agreement is extended or renewed.

With that, I would like to pass it over to Terri Miller, who has her prepared testimony, and then invite Dr. Kent to join as well.

[Assemblyman Ohrenschall assumed the Chair.]

Terri L. Miller, President, Stop Educator Sexual Abuse, Misconduct and Exploitation:
In 1983, I learned of a teacher in my district who was caught in bed with a high school student. To ensure my children's safety, I began pursuing action against the teacher and, to my surprise, against a strong current of other forces including the school administrators, school district officials, law enforcement, and the community. After 11 years of struggle, in 1994, unsatisfied with the follow-up by school officials and law enforcement, I conducted my own investigation. What I found astonished and terrified me: I identified 60 victims willing to come forward to speak to authorities. It was then that I realized we were not dealing with an isolated predator; we were dealing with a deeply flawed system that protects pedophiles rather than children.

In 1995, another case came to light wherein the teacher groomed a 17-year-old student and engaged her in sexual conduct. That teacher was not prosecuted, benefiting from the consent defense afforded him by law at that time. His resignation was swiftly approved by the school board and fear set in that he would find his way into another school elsewhere. I led a parental effort to ensure that teacher would not be passed from that district, as others had, resulting in his voluntary surrender of his teaching certificate. Both cases were the impetus for my lobbying efforts to criminalize educator sexual conduct with students in our state under Senate Bill 122 of the 69th Session and worked to end "Passing the Trash," which is now prohibited by federal law in the 2015 ESSA, Section 8546, Prohibition on Aiding and Abetting Sexual Abuse.

Several sexual predators disguised as educators have been passed in and out of Nevada; two of the worst we have heard are those of Mark Zana and Melvin Sprowson, Jr.

In 1992, elementary school teacher Mark Zana was accused of molesting four little girls in Pennsylvania. In 1998, his next victim, a second-grader, would come forward

in southern Nevada. Zana managed to get both of those records sealed. With his teaching credential in hand, he found his way into two more Clark County, Nevada, elementary schools where he molested at least six more little girls. In 2007, six of his victims testified at his trial and finally stopped his reign of predation. Mark Zana now resides in the Nevada state prison for the rest of his life.

In 2013, kindergarten teacher, Melvyn Sprowson, Jr., was arrested. He was convicted ten days ago in Clark County District Court on kidnapping and child pornography charges. Sprowson encountered the 16-year-old girl who answered his Craigslist ad for a roommate. The girl, being a missing teen, was kept at his home for two months without her parents' knowledge or consent. It turns out, before Sprowson was hired by CCSD, he had a history of sexual abuse allegations during his employment with the Los Angeles Unified School District. As reported in the *Las Vegas Sun* on January 8, 2014, "He resigned as a fifth-grade teacher in the Los Angeles Unified School District in January 2013. During his nearly decade-long tenure in California, Sprowson faced allegations of sexual abuse involving female students in fourth and fifth grade. Sprowson was investigated but never charged and did not lose his teaching license."

Our state has had far too many cases of teachers betraying our trust by sexually abusing our children. In Clark County alone, CCSD records show 30 teachers since 2014 have been arrested for such offenses, 9 of them since January 1 of this year. That is two per week. Many of these predators could have and should have been stopped long ago when the first suspicions of abuse came to light.

A Government Accountability Office report, *K-12 Education: Selected Cases of Public and Private Schools That Hired or Retained Individuals with Histories of Sexual Misconduct*, found that one child molester can have as many as 73 victims in a lifetime. The accumulation of victims comes from passing them—the offenders—from school to school, district to district, and state to state. One in ten K-12 students suffer some form of educator sexual misconduct in their school career, amounting to approximately 4.5 million children in the United States, according to *Educator Sexual Misconduct: A Synthesis of Existing Literature*, a report done for the United States Department of Education in 2004. It is the pool of mobile molesters in public, private, and parochial schools that proliferate such drastic numbers.

Assembly Bill 362 is the adoption of the SESAME Bill (Pennsylvania's Act 168 of 2014), the most comprehensive model together with the ESSA prohibitive language for states to adopt. What this bill does is address sexual misconduct with a proactive approach from the front end of misconduct. It mandates thorough vetting of school personnel, bans the use of confidentiality, collective bargaining, or separation agreements in instances of sexual misconduct or physical abuse, and defines grooming behaviors as reportable disciplinary offenses. Our experts tell us that once grooming begins, physical sexual abuse will happen within two to three months. If we address this problem early and get reports made early, we can prevent this from happening to children. Currently, there are five states that have this type of legislation: Washington passed their ban that prohibits those confidentiality

agreements in 2004; Oregon followed in 2010; Missouri, with the Amy Hestir Student Protection Act, was passed in 2011; Pennsylvania came on board with the SESAME bill in 2014; and Connecticut was the very first state to fulfil the mandate under ESSA and adopt the SESAME bill with Connecticut House Bill 5400 in 2016. Nevada, New Jersey, and Massachusetts are the next in line to comply and adopt the SESAME bill. We can stop child endangerment in schools right here, right now with the passage of A.B. 362. We must stop Passing the Trash, so children, parents, and teachers can be assured our classrooms are predator-free zones.

Again, I thank Assemblywoman Tolles for her leadership on A.B. 362. I thank you, Mr. Chairman and the Committee members, for your attention to this vitally important bill. On behalf of Nevada's children, I ask for your protection by passing A.B. 362.

[Assemblyman Yeager reassumed the Chair.]

Chairman Yeager:
Do we have Mr. Kent on the phone now?

Chester C. Kent, Board Advisor, Stop Educator Sexual Abuse, Misconduct and Exploitation:
Yes, I am here. Thank you very much for allowing me this opportunity to participate.

Chairman Yeager:
Please go ahead and provide any testimony you want to give in support of A.B. 362.

Chester Kent:
My purpose is to assist Terri Miller. By way of explanation, I was appointed to be the expert witness by state Senator Anthony H. Williams in Pennsylvania who was responsible for developing and shepherding this bill through the legislature that began in 2012, and by 2014 we had overcome all of the hurdles and formed a team of groups that included not only education associations, except the Pennsylvania State Education Association—which was neutral because they allowed the legislators to vote their conscience—but all of the other school-related organizations in Pennsylvania and in the 67-county Pennsylvania District Attorneys Association. Over a three-year period, we were able to overcome all opposition and pass the bill.

March of 2017 will mark two years that the bill has been effective. It was a movement in the right direction in that the problem was—after my extensive experience in dealing with sexual abuse cases for the past 35 years—school districts spent time training to prevent this problem, but the types of training and the types of law that were on the books at the state level were not conducive to really address the problem from a legal, criminal, and even a school statutory point of view. By that I mean that perpetrators were only caught after the fact and they went on to victimize kids until they were stopped.

The type of SESAME bill that was passed in Pennsylvania—much of which is included in this bill in Nevada—focuses on prevention from the perspective of stopping the perpetrator by recognizing the types of grooming practices called sexual misconduct, most of which are criminal in nature and should be investigated, and through the process of stopping this problem up front and making everyone in the school system—especially the teachers and administrators aware. That type of approach has much more promise. The way you do that is to—as your bill states—define sexual misconduct as a series of operational terms and operational statements. In every case I have ever been involved with, most of those factors have occurred where teachers select students with a malevolent intent and seek to groom them by getting close to them and using their authority to build their trust and build a relationship where they eventually co-opt the student and prepare the student for sexual abuse. Sexual abuse occurs in all kinds of situations where grooming is allowed to go on.

Your bill—the SESAME bill—will help to provide kind of a prehistory that is different from what exists now—a preemployment history—of any applicant, that must be checked through thoroughly. I guess I would call that—since that term is somewhat in vogue today—a form of comprehensive or extreme vetting to try to curb these teachers from entering your system. I fully understand that approximately one-half of your new teachers coming in every year are coming from out of state. We do not have numbers anywhere near that in Pennsylvania, and I hesitate to give you a number, but we are surrounded by states that produce a lot of teachers—Ohio, New York, New Jersey, Virginia and Delaware—and they come into Philadelphia and Pittsburgh and along our borders into those towns.

By and large, the vetting system that could be placed into practice as a result of this bill is one whereby all of the teachers coming into the schools and the ones there start to embrace these kinds of ideas that this sexual impropriety with students and the safety of students is not allowed. Even if the people are from out of state and you lack the ability to garner the cooperation of school districts outside of the state, it is important from the viewpoint of establishing a culture within Nevada in the schools which has to change. As a result of that, if you engage in such behavior, because of the cross checks we have placed into the system, we have a good chance of stopping that type of behavior. Generally, just like how you stop an embezzler, you provide as many cross checks as possible. In the SESAME bill, one of the cross checks is the extensive prevetting that goes on, and if there are any questions and you are not getting cooperation, you do not necessarily have to hire the person or you can hire the person provisionally and through a series of self-affidavits in the hiring process, if you are satisfied with the supervision of this person after a period of time, you might be able to hire that person permanently. But if there are red flags raised because of gaps in a person's experience or a refusal to cooperate by prior districts in other states, that should be a red flag to you. Do you really want to hire this person? From there, what you are looking at doing is teacher training, which in the past has been highly ineffective.

I am not saying to you that the training you are now doing in Nevada with teachers is ineffective, but I do have a son who went out to Clark County, Nevada, 20 years ago and he has been a math teacher in the Clark County middle school system for the past 20 years, and I have three grandchildren in the system. His experience has been the type of training that

goes on is very bureaucratic in that teachers are given things to fill out and the training does not make an impact on the teachers.

As far as the complex web that you have to weave to change the culture, you have to start establishing a type of training program where principals take much more responsibility once they are trained for providing scenarios about how teachers begin to groom kids and prepare them for sexual abuse and through a process of having teachers respond to scenarios on a periodic basis during the school year in each school. You start to train the teachers to be more aware of the people around them. I am not saying that everyone is abusing—99.5 percent of the teachers are good and upstanding people who have the best interest of the students at heart. There are always certain individuals who make their way into the school system. As Willie Sutton, the famous bank robber, once said, "Where's the money? It's in the bank. That's why you rob banks." Well, schools are full of kids, and if you have a predilection to sexually abuse kids, you go to schools and youth agencies and youth groups where students and young people are present.

Developing a process where the teachers become acclimated to how teachers with ill intent, who seek to victimize students, go about doing this, you create a scenario where sooner or later people in each school realize that they are not going to get away with it for very long. As part of adopting a different nonbureaucratic process to train your teachers, you also should involve the parents in each school and your parent-teacher organizations and get them involved and have a group or committee who gets trained and participates in this training. You start a process of applying this training through the parents and also through students in middle school and above.

After two years in Pennsylvania, we are now starting to see if this process that we set into motion here is effective. I would say I see these cultures slowly changing after two years. I see more and more reports coming from school districts where teachers are reporting and notifying that they are highly suspicious of a situation and it should be investigated further. That process is going on; it goes on the state hotline. The hotline informs the child protective services in 67 counties and within 24 hours they conduct an investigation. Or the local school administrators could notify the police. I think your system within your bill is better than Pennsylvania's, because it automatically bypasses any bureaucracy and goes right to the police to determine if there is probable cause to initiate action. Police are the people who really should be investigating, so I think your bill is excellent in that regard. In Pennsylvania, administrators are asked to also notify the police if necessary.

To carry that one step further, even if the police find that no criminal law has been violated, clearly, moral turpitude may be an issue and there may be many reasons why a teacher should be disciplined or dismissed or have their license revoked or challenged because with certain behavior, they should not be around kids. There are a number of reasons for disciplining a teacher, and I think sexual misconduct is a prime one which you are attempting to add into this bill. Even if a teacher is not convicted of a crime, it does not necessarily mean that he should be allowed to be around children and not have disciplinary action.

I think that is the extent of my comments unless you have individual questions, which I would be happy to take.

Chairman Yeager:
Thank you for your testimony, Dr. Kent. We do not have questions at this time, but if you would not mind staying on the line and muting and when we open it up for questions, if we have one for you we will let you know.

Robert T. Eglet, Attorney; and representing Nevada Justice Association:
I would like to begin my comments by starting with a story that I told my friend, Senator Roberson, at the very beginning of this session. In 2008, there was a music teacher by the name of Mr. Mazo in Clark County at an elementary school in North Las Vegas. He was teaching music to eight-, nine-, and ten-year-old kids. During that time, a number of children came forward through their parents with claims that Mr. Mazo had sexually molested them. Criminal charges were brought and there was a preliminary hearing. Because of difficulty with either the parents or the children giving testimony about this, the charges were ultimately dropped because the justice court judge determined there was not sufficient evidence to be able to prove beyond a reasonable doubt that Mr. Mazo committed these crimes.

During this period of time, the school district had opened up an investigation and was investigating Mr. Mazo. When the criminal charges were dropped, the school district closed the investigation, scrubbed Mr. Mazo's file, and transferred him to another elementary school in North Las Vegas, where he was then exposed to teaching other eight-, nine-, and ten-year-old children. Moreover, the school district did not tell the principal, the vice principal, or any of the teachers about these prior charges. He was given unfettered access to these kids with no supervision and the investigation had been closed. Unsurprisingly, in 2015, better than a dozen children and their parents came forward with the same accusations at this school against Mr. Mazo for sexually molesting eight-, nine-, and ten-year-old kids. I should disclose that I am the attorney in Las Vegas who is representing the majority of those families in a case against the school district. What happened in discovery in that case is that we took a look at the teachers' union contract with the school district.

I am not here today to bash on unions and I hope that the clause I am about to read to you, the intended effects were not this, but it has had these intended effects from what we have seen in our discovery. It is from Article 12, section 10 of the collective bargaining agreement (Exhibit H) between the Clark County School District and the Clark County Education Association. It provides that:

> In the event civil or criminal proceedings are brought against a teacher and the teacher is cleared of said charge, all written reports, comments or reprimands concerning actions which the courts found not to have occurred, shall be removed from the teacher's personnel file. No reference to criminal charges as described above shall be included in the personnel file. Entries into said

> file as they relate to civil or criminal proceedings described above shall be limited to violations of School District policy or administrative regulations, which are known beyond a reasonable doubt to have occurred.

Because of this clause in the collective bargaining agreement, the school district closed their investigation and nothing further happened. This teacher was allowed to be transferred—or as you have heard, the trash was passed—to another school in our district.

I know there are several lawyers on the Committee who practice criminal law. You know that beyond a reasonable doubt is the highest standard of proof there is. In almost all civil and administrative proceedings, the standard of proof is simply by a preponderance of the evidence. Even if you are bringing a claim for punitive damages in Nevada, the standard of proof is simply clear and convincing evidence, not beyond a reasonable doubt. I told Senator Roberson this story in the hopes that he would be willing to present a bill that would address this particular clause in the teacher's union contract with the school district.

From our investigation so far, it is our belief that the exponential increase in sexual molestation cases in Clark County may be somewhat related to this very clause that was inserted a number of years ago into the collective bargaining agreement. We have seen an exponential rise in these types of cases in Clark County. While I believe in unions, including the teachers' union, this clause is simply a bridge too far. I believe, as Senator Roberson promised me, that there would be other legislation that would address this and it would have amendments added to address this issue, and I believe this legislation offered by Assemblywoman Tolles and Assemblyman Watkins does that.

For 25 of the last 30 years of my practice, a small part of my practice has been handling these types of cases, but over the last few years I have seen a disturbing trend that there is an increase in these cases exponentially in Clark County. I would tell you that just through the first week of April of this year, there have been ten cases where teachers or staff have been charged with sexual misconduct with students. There were at least ten cases in 2016 and at least ten cases in 2015. I would like this part of my practice not to increase, but to be eliminated so these things do not occur any longer. As a number of people have said, most of these cases go unreported. Ninety percent or more of these students or their parents do not report these cases, so you can do the math as to how many cases there are likely going on in Clark County where this has occurred when you add the unreported cases to the reported cases.

In my experience handling these cases and from the experts I have used, I know that this type of thing has a profound negative effect on children that is often immeasurable and takes decades to realize. This causes these children to lose interest in school, it increases the dropout rate of these victims, and it denies them the education they are entitled to. Many of these people carry this burden for their entire life, and in adult life have complete psychological breakdowns as a result. It changes their entire education process and their opportunity to receive a good education. The number one goal of the school district and the teachers and their union is to provide a safe and secure environment to learn.

The Governor and this legislative body have taken—in my view—heroic steps over the past legislative sessions and this session to improve the quality of education in our state. If a child is not or does not feel safe and secure while at school, the quality of the teachers or the school will not make a difference to that child. If the child does not feel safe or secure, he or she will not be able to learn while they are at school. I urge this Committee to pass this bill.

I have proposed some friendly amendments that Assemblywoman Tolles asked me to discuss, and I believe they are on the Nevada Electronic Legislative Information System (NELIS). I provided a handout for the members of the Committee today (Exhibit I). One of the concerns I have in the bill is the phrase "knows or has probable cause to believe." There are a number of lawyers on your Committee who practice criminal law; you know that "probable cause" has different definitions, and it can be argued over what is the standard of probable cause. I have asked that as a friendly amendment it be replaced with "either actual or constructive knowledge." Actual or constructive knowledge is very well defined in Nevada under our common law, and it means that the person actually knows—in this case, that this teacher has molested children in the past or is in possession of sufficient facts that a reasonable person would believe that this person likely has engaged in that type of activity in the past.

In section 7, we have asked for an amendment. In its current draft, this legislation goes a long way to preventing these types of clauses in a collective bargaining agreement to be enforceable when it comes to these issues, and our proposed amendment to section 7 (Exhibit I) buttons it up even tighter where it provides that "or to keep the conviction or the circumstances surrounding the sexual offense or sexual misconduct by an employee, contractor or agent involving minors confidential." In other words, they cannot be kept confidential, which is what the current Article 12, section 10 of the teachers' collective bargaining agreement with the school district does. I am happy to answer any questions that this Committee has.

Assemblywoman Cohen:
My question is regarding the use of the term "employee." So we are going back and asking the other districts to give us information about teachers who were employees? I am wondering if by using the term "employee," we are leaving out teachers who at the time were working on their practicums or internships, so there might have been a problem but they were not technically considered employees. Does this cover them, or are we leaving those people out?

Assemblywoman Tolles:
It is my understanding that this does not apply to, for example, student teachers, who are still in process. But in regard to those who might be taking a leave of absence to pursue a practicum, is that what I understand you saying? I might defer to legal to answer that question.

Brad Wilkinson, Committee Counsel:
I do not believe those people would be considered employees and covered under the provisions of the bill.

Assemblywoman Cohen:
My concern is because sometimes patterns start very early on in someone's career, and we have heard stories throughout the country of someone shuffling from district to district. It may be important information to know that when someone started off their career as a student teacher doing a practicum, there were issues.

Assemblywoman Tolles:
I am open to that feedback and perhaps clarifying the language if the Committee so desires.

Assemblywoman Jauregui:
Unfortunately, I heard this story, as I was canvassing over the summer, of a mother who shared her daughter's story with me. Her teacher had moved from a public school to a charter school and victimized her daughter, so I appreciate your bringing this bill forward. I know we are talking about teachers, educators, and employees of the school or school district. Many schools have after-school programs immediately on their campus, such as the cafeteria like the after-school arts, All Stars, and Aces. Those people would not be categorized as teachers or educators. Would this cover them as well?

Assemblywoman Tolles:
Yes, it does cover teachers, administrative personnel, bus drivers, independent contractors, whether that is occupational therapists who might be coming in or after-school programs or some of the mentor programs that are coming alongside, such as our social workers. All of those would be covered under this bill.

Assemblyman Pickard:
I have a question on the amendment to section 7 where we are making sure that those records are not confidential. I certainly understand that, from the perspective of the bill and I am supportive of the bill, I want to make sure that the names and identifying information of the minors are redacted or at least that portion would be kept confidential.

Robert Eglet:
Yes, it is my understanding that that is always kept confidential. Even when we bring a lawsuit for these cases, the names of the children are always kept confidential in the pleadings so they are not disclosed. I believe they would continue to be kept confidential through this bill.

Assemblywoman Krasner:
I would love to sign on as a co-sponsor if you will have me. You mentioned that you have a current case regarding an issue that would be affected by this legislation. How will this bill affect your case?

Robert Eglet:
It is not going to have an effect on my current case. When we discovered the clause in the paragraph, we amended the complaint and included the teachers' union as a defendant in the litigation. It is a Title IX action pending in federal court. It would not have any effect on the current case whatsoever, but, in my view, it would go a long way to prevent these types of cases from occurring in the future. My practice in this area would hopefully be eliminated.

Chairman Yeager:
Are there any other questions from Committee members? [There were none.] Thank you for your presentation. Those of you who would like to testify in support of this bill today, please raise your hand. [Members of the audience raised their hands.] Is there anyone who is going to testify in opposition to the bill? [There was no one.] Is there anyone who is going to testify in the neutral position on the bill? [There was no one.] We will take testimony in support on A.B. 362, and I would encourage everyone to be as brief as possible.

Nicole Rourke, Associate Superintendent, Clark County School District:
We have been working with Assemblywoman Tolles on the bill for some technical reasons. We want to make sure that we can operationalize this bill to ensure the safety of children. We are definitely here in support.

I also wanted to let you know, in response to Dr. Kent's comments regarding training, we have updated our child abuse policy over the past two years. A lot of work went into it to ensure proper and immediate reporting on it. In addition to the training that we do with employees at the beginning of every year, we also offer a course for parents through our family and community engagement services department. We work in conjunction with the Rape Crisis Center to provide a course called " 'It's Not Just Jenna': Abuse Prevention" to help train parents to identify, to assist children, and to help with that prevention. We are here in support to ensure the safety of children. That is our primary goal.

Jennifer Noble, Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
This is a good effort to prevent sexual predators from gaining continued access to children by moving from school to school. We are in support.

Ronald P. Dreher, representing Peace Officers Research Association of Nevada; Nevada Law Enforcement Coalition; and Washoe School Principals' Association:
I do collective bargaining for the Washoe School Principals' Association, and I can tell you that in my past—I do a lot of collective bargaining—I have never seen, I mean, proof beyond a reasonable doubt, and it opened the discharge section or in that aspect, so that is a little new to me to see that type of testimony or hear that type of something to be in a collective bargaining agreement. Usually it is preponderance of evidence or clear and convincing. Very seldom do you have criminal. You usually have administrative protections which is what this bill talks about. On behalf of all of us, we support A.B. 362.

Mary Pierczynski, representing Nevada Association of School Administrators; Nevada Association of School Superintendents; and Nevada Association of School Boards:
Protection of our children in our schools is obviously paramount. We appreciate this bill. There may be a few mechanical issues that we know we can work with the sponsor to work out, but we very much appreciate her bringing this bill forward.

Anna Slighting, representing HOPE for Nevada:
I am representing Honoring Our Public Education for Nevada (HOPE). We represent nearly 1,000 families in support of public education in southern Nevada. The stories we heard today are hard to hear. I am testifying in support of A.B. 362 for the following reasons. First, we believe that most educators are dedicated to the betterment and safety of the students they work with. Most educators act ethically and do what is right naturally, and we believe A.B. 362 provides mechanisms to find those who do not before they are even hired. Second, Ms. Miller mentioned teachers; however, that is not the only group of educators where incidents of molestation occur. We appreciate that A.B. 362 includes all employees, including substitutes. Third, I am also a teacher at CCSD. We do receive training to recognize and report signs of abuse, including grooming. We are encouraged to do our part to act quickly and to report misconduct. Just last week, another video plea was sent by the Superintendent to all of the employees to be on the watch for suspicious behavior. Fourth, we believe this bill nicely complements Assembly Bill 124 regarding a code of conduct for educators. We see A.B. 362 as the first gateway for potential employees to pass through the hiring process and A.B. 124 as the pathway to keep current employees on track. With this combination, we hope to narrow the incidents of misconduct and hopefully eliminate them altogether.

There are only a few bills at HOPE that we jump up and down for with joy. This is one of them. Our board supported it unanimously, so we at HOPE are in favor of A.B. 362.

Jared Busker, Policy Analyst, Children's Advocacy Alliance:
We are in support of this legislation and would like to thank Assemblywoman Tolles for bringing it forward.

Lindsey Anderson, representing Washoe County School District:
We are here in support. We have been working with Assemblywoman Tolles to clarify a few of our concerns. I received the amendment today, so I think a lot is addressed in here, primarily, differentiating the roles of the school district versus the department versus the role of the independent contractor. We appreciate her willingness to work with us on it, and we are certainly in agreement that this is a serious problem that needs to be addressed.

Michael Sean Giurlani, President, Nevada State Law Enforcement Officers' Association; and Nevada Law Enforcement Coalition:
In the interest of time, I want to say ditto to the testimony of the sponsors and supporters. We definitely support this bill.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers; and representing Nevada Law Enforcement Coalition:
We support A.B. 362. Sexual offenses committed by those in the profession of education rank among the most despicable of conduct in our society. It is law enforcement who take those complaints and investigate these allegations. They meet the victims, they meet with the predators, and they know the details. Any loophole that permits sexual offenders and predators to move from one education position to another while there are criminal and/or administrative proceedings pending must be closed. Assembly Bill 362 is a wonderful attempt to do just that, and accordingly, we wholeheartedly support A.B. 362.

Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence:
According to the United States Bureau of Statistics, on average, child molesters have more than 75 victims before they are caught. Unfortunately, stories such as the United States Gymnastics Team and Penn State are the norm and not the exception to the rule. The reason this continues to happen is because it is easier to believe that things are misunderstood or it is easier to push it along to become someone else's problem. Child sexual abuse is never a misunderstanding, and it is never someone else's problem. It is all of ours. It is a life-long sentence for victims and has a ripple effect throughout all of our society. Because of this, we ask you to not only support A.B. 362, but specifically in regard to the amendment that was talked about today on the records of confidentiality.

On a personal note, the most powerful and life-changing thing you can ever say to a victim of sexual assault, and specifically to a child of molestation, is I believe you. It is the most powerful thing that anyone will ever say to any of us. Supporting this amendment and saying that, even if a court does not find sufficient evidence to bring charges against someone but those records can stay in that file, allows the victim to know that the story they had the strength to bring forward, if anything, at least it can possibly help protect the next child from being victimized. Sometimes that is the only thing we have in this life. Because of that, we ask that you support both the bill and the amendment.

Chairman Yeager:
Is there anyone else in support of A.B. 362, either here in Carson City or in Las Vegas? [There was no one.] Is there anyone who would like to testify in opposition to A.B. 362? [There was no one.] Is there anyone in Carson City who would like to testify in the neutral position to A.B. 362? [There was no one.] Is there anyone in Las Vegas who would like to testify in the neutral position?

Amanda Haboush-Deloye, Associate Director, Nevada Institute for Children's Research and Policy, University of Nevada, Las Vegas:
I work at the Nevada Institute for Children's Research and Policy at the University of Nevada, Las Vegas. We house the state chapter of Prevent Child Abuse America. We take several calls in our office that come in about help from all over the state for instances that are happening within our schools. While we have a lot of examples from Clark County, I wanted to mention that we also get calls from around the state from school employees who get

frustrated; they feel like they try to come forward about reporting abuse, but sometimes, in small communities, when you feel like you know people who may be claimed as the perpetrator, it can be hard to take those claims seriously because we do not want to believe that people we know can do such horrible things. It was mentioned that we need to work in Nevada to change our culture in the school system to recognize that people do not always look on the outside like these monsters we think that they might be to do these types of acts. To make sure that we take all of these claims seriously and so that people do not feel threatened to either lose their job or be dismissed by bringing forward these claims, I think it is really important to sustain this culture. This is a problem that happens statewide.

I also wanted to mention that our organization, along with the Rape Crisis Center, has several trainings that are targeted towards children and families and individuals and organizations about how to recognize child abuse and neglect and how to prevent child sexual abuse and other types of abuse and neglect. We are definitely willing to work with the school district statewide to make sure they have those resources to come in and bring trainings.

Chairman Yeager:
Is there anyone else who would like to testify in the neutral position on A.B. 362? [There was no one.]

Assemblywoman Tolles:
Thank you for hearing this important bill. I would also like to thank members of the Task Force for Child Sexual Abuse Prevention. We have been meeting since 2013 and have been working on this issue. Dr. Haboush-Deloye and many others have contributed to a comprehensive approach to helping keep kids safe. This is just the next step. In 2015, Senate Bill 394 of the 78th Session passed to implement content standards in K-12 education to help teach children that they have a right to be safe and who to go to if they need help. Out of that were also extended efforts upon the part of the school districts to teach the teachers, teach personnel, teach parents, and I want to thank them for all of that work over these past few years and applaud them on their efforts in regards to training children, parents, staff, and teachers.

What is exciting about this bill is that it takes it one step further to truly protect and prevent abusers from getting into the system, getting into our schools, and having access to our kids. I am incredibly proud of all of the efforts that were put into this legislation. I would like to thank Terri Miller for her decades of work on this issue with SESAME and Dr. Kent for joining us today. I would also like to thank the Nevada Department of Education for their input and cooperation in helping to form this bill, as well as the school districts and everyone who came forward in support. I would like to acknowledge and thank Assemblyman Watkins for cosponsoring with me, and in addition, Senator Gansert and Senator Spearman who have also signed on as cosponsors.

I would like to address that there have been some other requests to add in to amend and cosponsor. Thank you, Assemblywoman Krasner, Assemblywoman Teresa Benitez-

Thompson, Assemblyman Oscarson, and Assemblywoman Woodbury. I would welcome anyone else to step on board to cosponsor this legislation. Thank you, Assemblyman Wheeler. Thank you for this important day in keeping kids safe.

Terri Miller:
Thank you to all of you who came in support and all of the cosponsors of the bill. With regard to the confidentiality agreements, in ESSA section 9201, it is the sense of Congress that those confidentiality agreements should not be used in instances of sexual misconduct or physical abuse. I want to make that clear, and I think, through that federal mandate, that we not conceal these crimes in any way, shape, or form. I believe that would make the clause Mr. Eglet brought to our attention null and void. I am very glad to know that clause exists and I believe through the federal law we can get rid of it. Thank you so much for your time today.

Chairman Yeager:
Thank you for your testimony and your work on this issue. Thank you, Assemblywoman Tolles. I think the impressive coalition of supporters that you brought forth today shows that this is good policy. Please provide any amendments that you may still be working on to staff when you have them.

I will formally close the hearing on A.B. 362. Would anyone like to give public comment, either here in Carson City or Las Vegas? [There was no one.] We will close public comment. This meeting is adjourned [at 11:05 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed amendment to Assembly Bill 130, presented by James W. Hardesty, Justice, Supreme Court of Nevada.

Exhibit D is written testimony presented by Susan B. DeBoer, Public Guardian, Washoe County, in support of Assembly Bill 130.

Exhibit E is a proposed amendment to Assembly Bill 319 presented by Egan Walker, Judge, Family Division, Second Judicial District Court.

Exhibit F is a copy of a PowerPoint presentation titled "AB 362: Pertaining to the protection of children" presented by Assemblywoman Jill Tolles, Assembly District No. 25.

Exhibit G is written testimony regarding Assembly Bill 362, presented by Assemblywoman Jill Tolles, Assembly District No. 25.

Exhibit H is a copy of an excerpt from the Clark County School District Collective Bargaining Agreement, presented by Robert T. Eglet, Attorney; and representing Nevada Justice Association, in support of Assembly Bill 362.

Exhibit I is a proposed amendment to Assembly Bill 362, presented by Robert T. Eglet, Attorney; and representing Nevada Justice Association.