

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

**Eighty-Second Session  
April 11, 2023**

The Committee on Judiciary was called to order by Chair Brittney Miller at 8:03 a.m. on Tuesday, April 11, 2023, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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.state.nv.us/App/NELIS/REL/82nd2023](http://www.state.nv.us/App/NELIS/REL/82nd2023).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Brittney Miller, Chair  
Assemblywoman Elaine Marzola, Vice Chair  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblywoman Lesley E. Cohen  
Assemblywoman Venicia Considine  
Assemblywoman Danielle Gallant  
Assemblyman Ken Gray  
Assemblywoman Alexis Hansen  
Assemblywoman Melissa Hardy  
Assemblywoman Selena La Rue Hatch  
Assemblywoman Erica Mosca  
Assemblywoman Sabra Newby  
Assemblyman David Orentlicher  
Assemblywoman Shondra Summers-Armstrong  
Assemblyman Toby Yurek

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Shea Backus, Assembly District No. 37

Minutes ID: 755



**STAFF MEMBERS PRESENT:**

Diane C. Thornton, Committee Policy Analyst  
Bradley A. Wilkinson, Committee Counsel  
Devon Kajatt, Committee Manager  
Connor Schmitz, Committee Secretary  
Ashley Torres, Committee Assistant

**OTHERS PRESENT:**

Kimberly M. Surratt, Private Citizen, Reno, Nevada  
Jonathan Norman, Statewide Advocacy, Outreach, and Policy Director, Nevada  
Coalition of Legal Service Providers  
Felicia Quinlan, Chief Deputy District Attorney, Clark County Department of Family  
Services  
Jennifer Lanahan, representing Reno-Sparks Indian Colony; and Las Vegas Paiute  
Tribe  
Annalise Porter, Private Citizen, Las Vegas, Nevada  
Will Adler, representing Pyramid Lake Paiute Tribe; Duck Valley Indian  
Reservation; and Duckwater Indian Reservation  
Teresa Melendez, representing Nevada Native Solutions  
Mathilda Guerrero, Digital Manager, Battle Born Progress  
Andrea J. Martinez, Treasurer, Walker River Paiute Tribe  
Patrick Burt, Vice Chairman, Washoe Tribe of Nevada and California  
Cadence Matijevich, Government Affairs Liaison, Office of the County Manager,  
Washoe County  
Stacey Montooth, Executive Director, Nevada Indian Commission

**Chair Miller:**

[Roll was called. Rules and protocol of the Committee were reviewed.] We have two bills on the agenda for today. The first one is [Assembly Bill 414](#) presented by Assemblywoman Backus. With that, Assemblywoman, your hearing is open; please proceed when you are ready.

**[Assembly Bill 414](#): Revises provisions governing powers of attorney. (BDR 13-797)**

**Assemblywoman Shea Backus, Assembly District No. 37:**

I hope the Committee was able to get the amendment to [Assembly Bill 414](#) [\[Exhibit C\]](#) as well as a nice little cheat sheet to [A.B. 414](#) [\[Exhibit D\]](#). I will go ahead and commence my remarks. Thank you for the opportunity to present [Assembly Bill 414](#), which revises the power of attorney for health care decisions. Prior to getting started, I want to make sure that you know we are working off of the amendment and the little cheat sheet as well.

In 2019, I brought Assembly Bill 299 of the 80th Session to revise the durable power of attorney for health care decisions. I did this due to personal and professional reasons. When my father-in-law suffered from vascular dementia, his durable power of attorney for health care decisions assisted me and my husband with his end-of-life care. As an attorney, I knew that the form contained in *Nevada Revised Statutes* (NRS) Chapter 162A was not that great. Often I would find clients agreeing to various end-of-life decisions that ultimately contradicted their decision based on how the form is drafted. Also, there were additional forms that had to be filled out. While I started to update Nevada's power of attorney for health care decisions, I knew the form needed more revamping to make it user-friendly.

My interest was in making sure that a person's wishes for their health care decisions could involve fewer barriers and work on a law that could be generally accepted; I continued working with the Uniform Law Commission and actually looked to do a uniform health care directive that could be accepted in various states. I have been working on that for nearly two years now. I was appointed to the committee two years ago, and it will be this summer that we look to whether to adopt it as a uniform law. One of my main corrections is that the bill before you is not a uniform law at this point.

Since the drafted model laws are still getting refined, I elected not to move forward with an interim change to our existing laws under NRS Chapter 162A and NRS Chapter 449A governing health care decisions. While the power of attorney regarding health care decisions is under NRS Chapter 162A, there are a lot of laws governing what is to occur for end-of-life decisions or if a patient is incapacitated, which are found under NRS Chapter 449A.

Since there is still a need for a more simplified form for the health care decisions and appointment of an agent, I have included in the amendment the revised form along with a few amendments where terms or other provisions in the form require amendment to our existing laws.

I will now walk the Committee through the proposed amendment [[Exhibit C](#)]. First, sections 1, 57 through 60, 62, 63, 65, 66, 71, 74, and 75 have been restored to their original statutory provisions. Likewise, the numerous provisions that were to be repealed are no longer being repealed. This is with the exception of NRS 162A.860, because that is what contained the prior form. Second, sections 3, 4, 6, 7, 8, 10, 12 through 18, 20 through 33, 34, 35, and 37 through 56 have been deleted from the original bill.

Now onto the portions of the bill that will address the revisions to the power of attorney for health care decisions: sections 5, 9, 11, and 19 add definitions for certain terms. Section 33.5, incorrectly set forth as section 4.5 on page 9 [[Exhibit C](#)], updates the requirements for witnesses to the principal's signing of a health care directive and removes the mandate that if the principal resides in a hospital or other specific medical facility, the principal does not need to attach a certificate of competency to the power of attorney. The reason for these changes was to make the form more accessible. The key is to encourage

people, if they choose to have a health care decision form, so that it is easy to fill out and there are no barriers. The existing law had all of these different requirements for witnesses and added barriers. With the revamp, I tried to back that off some.

Section 36 [page 11] sets forth the revised form. Some highlights and differences from the current form are that it is in plain language for a person who is filling it out to have ease of doing so. Additionally, it not only provides one's instructions about life-sustaining treatment, but it also sets forth the principal's priorities. This allows the agent to have an understanding as to the principal's desires if the instructions are not clear and the decision may have to be made by the agent. This form further provides a variety of optional instructions and special powers given to the agent. Of course, these are all optional, and it states it in there so that a person would not feel obligated to have to set forth too much information.

Sections 61, 64, 67 through 70, and 72 make conforming changes to existing statutes. Section 78 [page 58, [Exhibit C](#)] provides that NRS 162A.860 will be repealed. This act would become effective January 1, 2024. In closing, I would like to thank Chair Miller and members of the Committee for hearing this bill today. I urge your support of [A.B. 414](#). With that, I am available to take questions from the Committee.

**Chair Miller:**

Thank you for your presentation and for your concise, thorough, and specific amendment chart [[Exhibit D](#)]. Very helpful. We do have questions from the Committee.

**Assemblywoman Bilbray-Axelrod:**

So many of us have had to deal with this, especially as we are aging and dealing with our parents or in-laws. My question is in the amendment, section 36 [[Exhibit C](#)], the Advance Health-Care Directive form, part 3, when you say to figure out what is in the person's best interest, consider the person's values, preferences, and goals, and what you know or can learn from them. In practicality, how do you see that working?

**Assemblywoman Backus:**

Section 36 is the form, and you are saying under part 3, which expresses one's priorities. In reality, sometimes decisions have to be made, and I understand you probably are someone who is quite familiar with this situation. It is tough. I just dealt with this with my legal assistant. Her daughter had a cardiac arrest, was hooked up to a ventilator, and they did not know what was going to happen. They did imaging of her brain, which completely showed that her brain was not functioning fully and had a lot of white matter on the circumference. The family had to make a really hard decision and kept her on life-sustaining equipment because they did not know what her wishes were.

Then there is the other situation where someone's brain is completely functioning and they are in a state of a permanent coma. This will guide you as to what is important to them. One thing that is always interesting, and this was something I had to also deal with, when you have someone who has vascular dementia, they may not be fully eating. Part of the first instructions will tell you how to deal with food. In this section, it is what is important,

talking to friends and family of their condition. There are a lot of different examples to tell you what is important to them. On the decision-making, you have physical limitations and mental limitations, and will they want to be in that situation. My secretary's daughter, if they had this information, they would have known if it was important to her daughter to stay alive as long as possible if she had mental limitations, like the situation with her brain. If she said it was not important to her, then her mom probably would have had the comfort to say, I am going to take her off the ventilator. If it was important for her to stay on the ventilator, then that could have been a very important decision.

The provision that I like in this is, everyone who has ever experienced someone who is in a condition where they are facing very difficult decisions—someone may be in a coma or someone may be hooked up to various machines that are helping them stay alive—is whom to talk to about decisions of care. The other thing—for example, my father-in-law who had vascular dementia—is the level of independence. If someone wants to be able to stay in his home as long as possible—that is important; independence is important—those kinds of weird decisions that maybe the instructions at the beginning do not provide guidelines for, this also provides that assistance. Hopefully I answered your question along the way.

**Assemblyman Gray:**

I have not had a chance to synthesize all of the amendments, obviously, but I think this is in the original text. On the form and throughout the document it says, I wish to nominate somebody to be a guardian. Why is it "nominate" and not "appoint"? To me when you use nominate, it sounds like somebody else is going to have the final decision.

**Assemblywoman Backus:**

With the guardian aspect, it is a little different. The agent is whom you are appointing to make your health care decisions. This form allows you the ability to say whom you would want as a guardian. Normally, there is a more formal procedure that you would do if you were appointing a guardian, such as a court procedure, but this would provide someone with some guidelines if you wanted to say, This is whom I want to nominate as my guardian, and this could be used in a guardianship.

**Assemblyman Gray:**

The nomination kicks in once you become incapacitated. You are nominating them in the event you become incapacitated; is that the way to look at it?

**Assemblywoman Backus:**

I am glad you asked because we are talking two different things. The agent is the person you are basically appointing in case you become incapacitated to deal with your health care decisions. The guardian is a little separate. A guardian may be someone else who may have to go to court, or depending on the paperwork that you have, a guardian could be dealing with other aspects of your care.

**Chair Miller:**

I would like to follow up to Assemblyman Gray's question about the "nominating." In many instances, appointing or nominating someone to have power of attorney over you should not be a surprise to that individual; however, sometimes it may be a surprise to that individual. What would happen in the case where an individual had nominated someone to have power of attorney, and then when this needs to be invoked, that individual says, No, thank you, I am not able, capable, interested, whatever?

**Assemblywoman Backus:**

Under Nevada law you can appoint an agent, and then you can also have a successor agent. Some people have just one, but sometimes it is good to have two because of that situation—maybe someone is not available. It is always nice to have the successor. Also, under NRS Chapter 449, if you did not do this or you just had one person, we do have laws in place where someone can look to next if someone was unavailable.

**Assemblywoman Cohen:**

Thank you for making things more accessible for our constituents. In reviewing the form, I find it is a little difficult with the different colors. Do you have a version that we can look at that is what the final forms are going to look like without the different color changes?

**Assemblywoman Backus:**

I can definitely get that to you. I thought I should really do that. This is really hard to read. It is just how we do our amendments with the different color coding, but I would be more than happy to get the Committee, or you directly, a copy of the final form.

**Assemblywoman La Rue Hatch:**

My question is on the organ donation. I see on part 4 [\[Exhibit C\]](#), it allows you to say you want to donate your organs. But it seems to say, "Even if it requires maintaining treatments that could prolong my dying process, and may be in conflict with other instructions I have put in this form, upon my death." There does not seem to be an option where you can donate without doing that. Do you have to prolong your life regardless of your other wishes to donate, or is there an option where you could donate without doing that?

**Assemblywoman Backus:**

You can always list yourself as an organ donor. This probably is not the best place to have that. Obviously, it is better on a driver's license and things like that. The whole purpose of that in part 4 is so that if someone has your health care directive and if you are an organ donor and you do want to express that, I am okay setting aside disconnecting me from a ventilator, or whatever the life-sustaining treatment may be so that my organs could be donated. It is just making sure that everybody knows your intent and that you are okay with that. If it was not in there, then obviously that would not be your intent.

**Assemblywoman La Rue Hatch:**

Since this is obviously to direct the agent with end-of-life stuff, is it possible to put an option in there that says, Yes, I want to donate my organs but not if you have to prolong my life? Could we add another option on there? I just think if there is nothing on there, even if you are an organ donor on your driver's license, there might be some confusion.

**Assemblywoman Backus:**

It is so funny, this form has been looked at by so many different eyes over the last couple of years. That is why we had a lot of different parts that were optional. It does say under there that you may also leave any item blank. It made sense to us if you leave it blank, obviously you are not agreeing, and you do not want that. I did not think about it, but that was not clear. That is something I would totally think about.

**Chair Miller:**

I appreciate Assemblywoman La Rue Hatch's question, too, because it is literally asking the opposite. If I have a do-not-resuscitate or other things in place that say, Do not prolong; but then if I am an organ donor, medically speaking, the doctors may say, Yes, in order to donate certain parts, we need them healthy, alive, full of oxygen, whatever the case is, so we need to prolong your life in order to have healthy, viable organs to donate. I see that conflict or contradiction in there. It is kind of the opposite. It is not, End life-saving support in order for me to donate; it is literally, Prolong my life in order to donate, which is quite a specific scenario for individuals to think of.

**Assemblywoman Hardy:**

These are very important forms. I think the more people we can get to fill these out, the better. As you said, when they are faced with these situations, they do not have to make these decisions then. My question is about section 36 and the instructions about the life-sustaining treatment. There were three parts that you are going to delete. I am wondering, the one that says, I have a condition that is not curable. The next question is, I am unconscious, and then the part about communicating. I am curious why you deleted those. Do you feel they are contained in one of the other sections you are keeping, or were they too subjective?

**Assemblywoman Backus:**

I am going to share how the cake gets made. When I submitted the more updated form, I did not realize that when I was updating it, what happened was when I submitted it, I had the new form, so both forms were in here. I did not realize when I was going through correcting, I corrected the old form. What had happened was the original form—we have been working on this for two years—was a prior form. The green new language is the plain language. It is saying the same things, but the green language that is going to be included is now the "plainer" language than the different language that was used. I think the best one to use is "incurable" versus "other medical treatment needed to keep me alive." That is the reason.

**Assemblywoman Hardy:**

Thank you. That is what I was gathering from reading it and comparing it. I just wanted to make sure.

**Chair Miller:**

Not seeing any additional questions, I will open it up for testimony. Is there anyone in Carson City who would like to testify in support of Assembly Bill 414?

**Kimberly M. Surratt, Private Citizen, Reno, Nevada:**

I am a family law attorney, but I also have an estate planning practice within my law firm. I want to thank Assemblywoman Backus for this bill. I cannot tell you how difficult it is to go through a consultation with the current language in our statutes with somebody and try to help him fill out the power of attorney form and decide between the options because the language is not clear. I also very much appreciate the amendment [[Exhibit C](#)] because I was getting stressed out that a one-hour appointment was going to turn into a four-hour appointment under the prior language. The new amendment has significantly improved that for our practice and for the people whom we assist.

**Jonathan Norman, Statewide Advocacy, Outreach, and Policy Director, Nevada Coalition of Legal Service Providers:**

The Southern Nevada Senior Law Program is one of the organizations that I represent, and they train volunteer attorneys. It is not their practice area to help people fill out these forms, and they were using the forms in the statute. They were getting an error rate of 25 percent with an attorney involved. I think it is great to take a look at this form, because people should be able to fill this out on their own without an attorney. If with an attorney you are having a 25 percent error rate, it is probably higher when it is just people addressing that form by themselves. I really appreciate the bill and Assemblywoman Backus's work.

**Chair Miller:**

Is there anyone else in Carson City who would like to testify in support? Seeing no one, is there anyone in Las Vegas who would like to testify in support of Assembly Bill 414? [There was no one.] Is there anyone on the phone? Hearing no one, I will open it up for testimony in opposition. Is there anyone here in Carson City or Las Vegas who would like to testify in opposition? Not seeing anyone, is there anyone on the phone? Hearing no one, is there anyone in Carson City or Las Vegas who would like to testify in neutral? Not seeing anyone, is there anyone on the phone? Hearing no one, I welcome Assemblywoman Backus to make any final remarks.

**Assemblywoman Backus:**

I appreciate your time this morning. I just want one quick follow-up from the Chair. If I do provide a clean form, would you like me to send that to the committee secretary to share with everybody?

**Chair Miller:**

Yes, please.



**Assemblywoman Backus:**

With that, I am done. Thank you.

**Chair Miller:**

I will close the hearing on Assembly Bill 414 and open the hearing on Assembly Bill 444, which is also sponsored and presented by Assemblywoman Backus. With that, the hearing is officially open.

**Assembly Bill 444: Revises provisions concerning child welfare. (BDR 11-614)**

**Assemblywoman Shea Backus, Assembly District No. 37:**

Thank you for the opportunity to present Assembly Bill 444, which establishes various provisions governing proceedings relating to custody, adoption, or protection of Indian children or the termination of parental rights. I will give you some quick history of where this bill came from.

I want to give some background on the Indian Child Welfare Act (ICWA). It was enacted in 1978 in response to a crisis affecting American Indian and Alaskan native children, families, and tribes. Studies revealed that large numbers of native children were being separated from their parents, extended families, and communities by state child welfare and private adoption agencies. In fact, research found that 25 percent to 35 percent of all native children were being removed. Of those, 85 percent were placed outside of their families and communities even when fit and willing relatives were available. Congressional testimony documented the devastating impact this was having upon native children, families, and tribes. The intent of Congress under ICWA was to protect the best interests of the Indian children and to promote stability and security of Indian tribes and families.

The Indian Child Welfare Act sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe. At the time, not only was ICWA vitally needed, but it was crafted to address some of the most long-standing and egregious removal practices specifically targeting native children. Among its added protections for native children, ICWA requires caseworkers to make several considerations when handling ICWA cases, including providing active efforts to the family, identifying a placement that fits under ICWA preference provisions, notifying the child's tribe and child's parents of the child custody proceeding, and working actively to involve the child's tribe and child's parents in proceedings.

Even though we are now several decades later, issues still remain. There are cases right now before the U.S. Supreme Court questioning whether or not ICWA should be more appropriately handled in the state versus federal. In light of different Supreme Court cases looking at state versus federal laws, I believe it is really important to bring this bill before our state to start looking at state laws that codify what ICWA does. Already the state laws govern situations under *Nevada Revised Statutes* (NRS) Chapter 432B where we have children who are being removed due to being subject to abuse and neglect.

With that, I brought A.B. 444. There are several reasons why Nevada should incorporate ICWA into state law. First, Nevada has a significant Native American population, and these communities have a unique history and cultural heritage that should be respected and preserved. Assembly Bill 444 will help to ensure that Native American children in Nevada are able to maintain connections with their families, communities, and cultural traditions, which is critical to their well-being and long-term success.

Second, establishing provisions governing proceedings relating to the custody, adoption, or protection of Indian children or the termination of parental rights will provide additional protections for Native American children in state law. These protections include specific standards for child welfare proceedings, including Native American children, and placement preferences that prioritize keeping children with their families or within their communities. Assembly Bill 444 will ensure that these protections are applied consistently and uniformly in child welfare cases involving Native American children across the state.

Finally, incorporating ICWA into state law will help to address historical injustices and trauma experienced by Native American communities in Nevada and across the country. By recognizing the unique cultural heritage and history of Native American communities, Nevada can take an important step toward promoting healing, justice, and respect for all individuals and communities in the state. One thing I want to add in here, if you have not had the opportunity to go to the Stewart Indian School, which is our boarding school in Nevada, I would encourage you to go. If you stand in the grass and look around at each of the buildings and see the big boulders, children built those buildings with their hands. If you walk through the museum, it was not that long ago that Indian children were sent there and pulled away from their families and communities to attend school. It is really eye-opening, and the history is still really close in time. With that, I would be happy to walk everybody through the lengthy bill.

Following the amendment [[Exhibit E](#)], section 2 provides the legislative intent, specifically that Nevada recognizes the special legal status of Indian tribes and their members and the inherent jurisdiction of Indian tribes to make decisions regarding the custody of Indian children. Sections 4 through 17 [pages 3-4] provide definitions of terms in the bill. I had the privilege of being before this Committee on another bill, which was a sort of criminal federal Indian law 101. It is interesting because section 9 defines who is an Indian child. This is pertinent for the entire bill. An Indian child under section 9 would either be a child who is a member or citizen of a federally recognized tribe, or he could be a biological child of a member of a federally recognized tribe and could be entitled to membership. That is how an Indian child is defined.

Section 18 [page 5] defines custody over an Indian child. Sections 20 to 38 establish provisions concerning proceedings in which the legal or physical custody of an Indian child is an issue. Section 37 [page 26] sets forth the placement preferences. Section 40 [page 30] makes conforming changes to provisions of existing law to reflect the changes made in sections 2 through 39.

Sections 42 through 50 establish provisions specifically relating to the adoption of an Indian child. Section 51.5 was added in error; we are going to take that back out, it was not meant to be in there. Sections 51 to 70 make conforming changes to provisions of existing law. Section 71 [page 69] pertains to when tribal state agreements can go into effect. Section 72 pertains to reporting regarding Indian children and, obviously, removals and adoptions.

Section 73 [page 70, [Exhibit E](#)] requires the Division of Child and Family Services, Department of Health and Human Services, to submit a report to the Assembly and Senate Standing Committees on Judiciary describing the implementation of tribal customary adoptions as an alternative permanent option for wards who are Indian children and the Division's recommendation for proposed legislation to improve the tribal customary adoption process. This would be if the state was doing the adoption, because as a state we do not have jurisdiction over the tribes.

Section 74 [page 71] is basically a full-faith-and-credit clause to the tribal court's decisions. Section 75 is when state and federal law interact, because we obviously still have the Indian Child Welfare Act on the books. Section 76 authorizes the court administrator to adopt any rules necessary to implement this law. Section 78 repeals certain provisions of existing law that are no longer necessary because of the provisions set forth in sections 2 through 39. Section 79 is the effective date of certain provisions.

While this is a policy committee, I would like to note that I have been working with the district attorneys. We have one of our district attorneys in the Las Vegas room right now, someone who specializes in handling ICWA cases. The amendment [\[Exhibit E\]](#) is a product of her work and her expertise, and I am so grateful to her. I am referring to Ms. Quinlan of Clark County. I understand she may have also worked with Washoe County a little bit to make sure that the state law matches what they do in practice. Right now I do not think I have a fiscal note.

In closing, I would like to thank Chair Miller and the members of the Committee for hearing this bill today. Incorporating ICWA into state law is an important step toward promoting cultural awareness in the child welfare system and ensuring that Native American children are protected and treated fairly. I would urge your support of [Assembly Bill 444](#). I also have another friend here today, Mr. Norman. He has a history of working at Legal Aid Center of Southern Nevada and has handled cases as a Children's Attorney Project attorney. With that, I am ready and hopefully my specialists are also ready to answer questions.

**Assemblywoman Summers-Armstrong:**

Thank you for bringing this really sensitive and kind of emotional bill. Can you talk to us about where this issue is with the Supreme Court and how their decision can affect what you are asking the state to do?

**Assemblywoman Backus:**

That is a pretty thick question. The case is *Deb Haaland, Secretary of the Interior, et al., Petitioners v. Chad Everet Brackeen, et al.* The oral arguments were a while ago, and we are waiting on the opinion. It could do a majority of things; I am not an expert in *Brackeen*. There are a variety of issues. My focus is basically on whether the court is going to say, The states are in a better position to be making these rules. The court could also completely roll back everything I know about federal Indian law—I pray that does not happen—and stop looking at tribes as sovereign nations and start looking at it as a race issue versus the geopolitical status. That could be very problematic. There are a lot of issues before the court.

**Assemblywoman Summers-Armstrong:**

I was afraid that was the direction, and I am hoping you are right and it does not go that way. Just for our own purposes, since we are mobile people, we do not always stick with our tribes. We marry and intermarry. If we have these rules here and other states do not adopt similar rules until this is decided, we will be working on a similar process. If we have a child who could be Washoe or Paiute here and intermarries with someone who is with another tribe, these rules will set us up to handle things from another state, for example, from California to here. I am trying to make sure we are clear that even though we are trying to adopt this, the federal rules are so similar that we will be able to have continuity until something else is determined.

**Assemblywoman Backus:**

Right now, ICWA is a federal law and there are guidelines in place that address ICWA. However, because I thought people were going to ask how many states are doing this, I think there are more than 11, but I am trying to get all the resources. I believe 11 states right now have some sort of codification of the Indian Child Welfare Act. When I submitted this, one person said this bill was completely on steroids; I believe that came from Oregon. Each state has their own differences in how they are adopting or incorporating ICWA into their state law. What you are asking, and I think the hypothetical would be if there were no ICWA, California would be a bad example because they do have a law. If there were a state such as Texas, obviously Nevada would not have control over that situation. Whereas in our state, the Navajo Tribe does not touch Nevada, they are only in Arizona and New Mexico, but we do have a lot of Navajo children in Las Vegas. In that situation, our courts in southern Nevada would follow our proceedings if this bill were in place. Hopefully nothing happens to ICWA. I think the legislative history on that will keep it viable.

**Assemblywoman Mosca:**

When I was reading the bill, I thought section 32 is really interesting about the qualified expert witness, and I was hoping you could just talk more about that and the purpose of that.

**Assemblywoman Backus:**

I do not know if Ms. Quinlan has ever used a qualified expert, but I want to turn it over to her because I am grateful for the help she has given me.

**Felicia Quinlan, Chief Deputy District Attorney, Clark County Department of Family Services:**

I have indeed used a qualified expert witness in my proceedings. I handle all the ICWA cases for the Clark County Department of Family Services. The point behind the qualified expert witness, as Assemblywoman Backus explained some of the history behind it, is to ensure that these children are being removed from their parents for a reason of abuse and neglect and not simply because they may have cultural or traditional practices that are different than a typical traditional person would have. One example I have is there is a tribe in the northeast that when there is a death in the family, they mark their children's cheeks. Those markings could be considered abusive if you did not know that was the tradition of the tribe to honor the elder who had passed away. Having a qualified expert witness would be able to take away that confusion of, is this practice that you are removing the child for something that is abusive or neglectful and not consistent with the cultures or traditions of the tribe.

**Assemblywoman Cohen:**

My question is about section 34 and the representative from the tribe who is not an attorney. Can you go a little more into that? That section worries me because while we do want the tribes to be represented and have their say and participate, I do not ever want anyone to say something they should not in court or not understand the process because they are not an attorney.

**Assemblywoman Backus:**

I believe this is now a new provision being added to this that is under Nevada law. A corporation or state government has to be represented by a licensed attorney in court because they are entities, they are not people, and they cannot represent themselves. This lowers the barrier. I will tell you I have actually had to be retained by a tribe. Their legal counsel was in another state. The tribe was brought into an ICWA proceeding in Clark County and the tribe had to not only have their own counsel, but they had to hire me to appear in family court to talk. The tribe at that point was saying, We are going to trust the Clark County Department of Family Services to handle the situation, and we are not going to take it internally to our tribe. They did not have social services and the support to end up addressing the supervision. In a situation like that, you could almost have someone who is from the tribe get on the phone and talk to the court as opposed to going there. I did not have as much connection to the tribe as they could have on the phone and be just as effective or have a representative.

**Assemblywoman La Rue Hatch:**

I agree with my colleague that it is important; historically it is important, and I am glad that we are recognizing what has been going on for a long time. You mentioned that we have a lot of Navajo children in Las Vegas, but that is not necessarily where the tribe is from. That got me thinking, what happens if a child is a member of the Navajo tribe in New Mexico but he is in Las Vegas. He is removed from his parents, and his entire support system is in Las Vegas. Is he going to suddenly be moved to New Mexico, to a new place where he has never been, under this system?

**Assemblywoman Backus:**

I am going to turn this over to Ms. Quinlan because I bet that is a situation she probably sees more frequently and has practical experience with.

**Felicia Quinlan:**

Assemblywoman Backus is right; there are a lot of Navajo children in Las Vegas who come across the border. I hate to answer this in a very nebulous way, but it really depends on the situation. If you have family in Las Vegas who are also Navajo, we will place you with family here in Las Vegas. If you have family from one of the situations that maybe there is a nonnative parent and their family could be considered extended family under ICWA, we would place with that family. If there was absolutely no one here in Las Vegas but there was family back with the tribe, there are two ways to do it: either through the interstate compact for placement of children, or in cooperation with the tribe to do a home study and try to place the child with the tribe. If the child had never been to the tribe, then we consider the nature of the contacts and those types of things to see what is in the best interest of the child, because that is still a paramount consideration in our child welfare system. We would try to do what is best for that particular child in that particular circumstance. To answer your question from a practice standpoint, I have never sent a child in any child welfare proceeding out to someone whom they had never met before and with whom they had had no contact. That would not be in their best interest.

**Chair Miller:**

I would like to follow up on the Assemblywoman's question. This process that you are speaking of is not according to tribal courts. This is what you are saying with Nevada courts or Nevada programs, that we try to make sure we are placing the Navajo kids with other Navajo families.

**Felicia Quinlan:**

We always work in cooperation with the tribe. That was one of the amendments I made on the bill to specifically spell out that all efforts are made with the cooperation of the tribe. In practice, that is how I do every case; in every case I have tribal input. Sometimes they can provide resources. I have a tribal representative in meetings and things with the caseworkers to make sure that the tribe is one hundred percent not only cooperating but on board with some decision-making that we are doing.

**Chair Miller:**

I should ask specifically because that is something that you, as an individual, are doing. I want to make sure: will this legislation ensure this is something that everyone is doing, that this is our process for children that in every case we will cooperate with the tribal courts or tribal representatives?

**Felicia Quinlan:**

Yes, absolutely. I think that is part of the reason why this is so important because it is putting something that I practice into a statewide statutory scheme so that we can have the same treatment across the board.

**Chair Miller:**

I am not seeing any additional questions. I will open it up for testimony. If there is anyone in Carson City who would like to testify in support of Assembly Bill 444, please come forward.

**Jonathan Norman, Statewide Advocacy, Outreach, and Policy Director, Nevada Coalition of Legal Service Providers:**

I had the pleasure of working on the ICWA calendar with Ms. Quinlan. I was really happy she was here because she is the expert, and I would have been a poor substitute. I think this is so important. My background before I came to Nevada was as a legal aid attorney on the Navajo Nation Indian Reservation. It is the largest legal service provider in Indian country. About 75 percent of our staff of about 90 people were Navajo. The number of Navajos I worked with who themselves had been removed and put in a boarding school, it was well more than half of the Navajos over the age of 50. When we talk about recent memory, it is a really recent memory. Codifying ICWA into state law will go a long way to define what our relationship is with the people whose land we walk on and to recognize and try to maintain those cultural touchstones for the kids who come into the dependency system. I am very grateful to Assemblywoman Backus, and I am grateful to Ms. Quinlan for being here and getting me off the hook.

**Jennifer Lanahan, representing Reno-Sparks Indian Colony; and Las Vegas Paiute Tribe:**

Las Vegas Paiute Tribe supports the passage of A.B. 444. History shows that family and culture are of utmost importance to Indian children. The tribe supports legislative efforts to solidify the bond between those children and their tribes. Too often, tribal families are ignored and children end up placed in homes that know nothing of tribal cultural background. The Indian Child Welfare Act was a step in the right direction in protecting Indian children and their tribes. Assembly Bill 444 is a step further. We need to do the same on the state level. We urge your support of this most important bill that seeks to protect our most precious resource, our children.

**Annalise Porter, Private Citizen, Las Vegas, Nevada:**

I live in Assembly District 22, and I am representing myself today. I am proud to live in a state that is working to codify these protections. Having volunteered as guardian ad litem in states that do take it seriously and states that do not, I have seen it play out differently when the legislative body takes their tribal interests seriously. I urge the Committee's support, and I am thankful to Assemblywoman Backus for bringing it forward.

**Will Adler, representing Pyramid Lake Paiute Tribe; Duck Valley Indian Reservation; and Duckwater Indian Reservation:**

I want to thank Assemblywoman Backus for bringing Assembly Bill 444 forward. The value of ICWA was immeasurable in 1978 when it passed, and my dad and I went over it because he had a lot of cases in Nevada when it went into effect. Much like the Equal Rights Amendment, I think this should be codified in the Nevada statutes because the value of that could be taken away at any time with some federal policy changes. This feels like much the

same issue in much the same way to me. Nevada has a long and not very good history when it comes to the health, wellness, and cultural awareness of Nevada's Native American children and other states' children because they were housed here at the Stewart Indian School. This is something that we should recognize and own in our own way. This is another thing that I am going to say; we should pass A.B. 444 because Nevada has nothing to fear with supporting tribal communities today and supporting the cultural values that they value. I urge you to take this bill seriously and appreciate it for what it is.

**Teresa Melendez, representing Nevada Native Solutions:**

I am an indigenous organizer here in the state of Nevada. I am grateful to Assemblywoman Backus for carrying this bill, and really proud of her as the first Native American legislator elected to the Nevada State Assembly, and for the young people watching these videos and seeing leadership of indigenous women in the State Legislature. I just want to share a few thoughts.

We have heard several tribal impact bills this legislative session in different committees. One thing that we are continually reminded of is the difference between sovereign nations as political groups versus racial groups. I think that is a very important fact to consistently remember. Another thing that we are consistently reminded of is these are indigenous homelands of tribes all across this country and those people are still here. We are at a reckoning with history and the treatment of indigenous people. There are a lot of good policies and laws that are being presented to help right some of the historic wrongs; this is one of those bills.

I had the pleasure of working for the Supreme Court of Nevada in judicial education for a bit, and I was talking about some potential training for judges. There are a certain number of continuing education credits judges have to complete. When I brought up an ICWA training, I was told nobody wants to talk about that. It would be great to see a state law that reinforces our federal law, which a lot of times laws are overlooked when there is no oversight. We know there is not enough oversight when it comes to federal law. Maybe next session there could be some mandatory regulations as far as trainings for our judges; that would be great too.

In closing, I want to reiterate the point that we know native children are disproportionately represented in foster care. We also know through documented studies that removing children from their culture leaves another layer of trauma in these children who have already faced such disruptive circumstances. This law helps balance some of the inequities and disproportionate impact on native families and communities. Indian Child Welfare Act provisions are actually best practices in any child welfare case. Eventually, it would be wonderful to see systematic change that incorporates ICWA provisions for all children and families.

The Stewart Indian School is just down the street, and they have a beautiful museum and displays that talk about Nevada's history with the boarding school where children were kidnapped from their homes and forced to live in that environment in a time when the policy



was to "kill the Indian to save the man." That boarding school only closed in about 1980 or so—very recent history. On your lunch break or on your weekend, I encourage everybody to check out that boarding school and have a conversation with the executive director of the Nevada Indian Commission, Ms. Montooth. There is a lot we all have to learn about Nevada's history so we can continue the healing and moving things forward.

**Chair Miller:**

Thank you so much for that. I truly appreciate that the only way we make right past wrongs is to continue to talk about it and talk about it and talk about it and educate and learn about it. Is there anyone in Las Vegas who would like to testify in support of Assembly Bill 444?

**Felicia Quinlan:**

I truly appreciate Assemblywoman Backus, not only for bringing this bill but also working with me these last few days on the amendment [[Exhibit E](#)] and bringing it into how—I am really proud to say—we practice the federal law here in Clark County and to make that a statewide initiative so that we can protect our indigenous children. You have already heard from a number of people how important this law is, not only to honor the native tribes but to honor what they have been through and to honor family. I think that is really important for all of us. I do believe that as amended, this bill would be a great addition to our statutory scheme. I am in support on behalf of the Department of Family Services here in Clark County.

**Chair Miller:**

Is there anyone else in support in Las Vegas? Seeing no one, is there anyone on the phone?

**Mathilda Guerrero, Digital Manager, Battle Born Progress:**

We are in unwavering support of Assembly Bill 444, and we thank Assemblywoman Backus for spearheading this critical measure. It is important to me that ICWA recognizes tribal nations' sovereign rights to protect families and their children. The Indian Child Welfare Act recognizes the importance of maintaining the cultural identity and connection of indigenous children to their families and ancestors, which is critical for their overall well-being. This is accomplished by requiring agencies to make diligent efforts to identify and locate extended family members and members of the child's tribes who are willing and able to provide care for the child. We are calling on this body to support this bill because this is a powerful tool to empower and support indigenous children while allowing them to maintain strong connections with their culture and identity. We urge you to support this bill.

**Andrea J. Martinez, Treasurer, Walker River Paiute Tribe:**

I am in support of A.B. 444 to protect and support the best interest of our children and to continue to promote stability and security for our Native American family. I also thank Assemblywoman Backus for carrying this bill and thank you for the opportunity to speak.

**Patrick Burt, Vice Chairman, Washoe Tribe of Nevada and California:**

I would like to begin with offering my gratitude to Assemblywoman Backus for bringing this very important bill forward. As we all know, the United States has this long history of the taking of indigenous children. More specifically, in the state of Nevada we hosted the Stewart Indian School that is also reflective of those same actions. More recently, there have been studies that show 25 percent to 35 percent of all native children were being removed from families, and of those children, 85 percent of them were being placed outside of indigenous families. I believe this bill is a mechanism that would allow for indigenous groups, especially in Nevada, to maintain our familial structures but also protect native children. We urge you to support A.B. 444.

**Chair Miller:**

Is there anyone else on the phone in support? Hearing no one, I will open it up for anyone who would like to testify in opposition to Assembly Bill 444, starting in Carson City. I am not seeing anyone, and I know there is no one else in Las Vegas. Is there anyone on the phone? Hearing no one, I will move to neutral.

**Kimberly M. Surratt, Private Citizen, Reno, Nevada:**

I am a family law attorney and as this body has heard from me before, I do a lot of parentage and adoption work as my primary practice. I am one hundred percent in favor of this. I am working hand in hand intensely with Assemblywoman Backus on some edits for consistency and language and things that I would like to see so that we do not have procedural issues once we get to utilizing our new statutes. I think for the purpose of shoring this up, in foresight of what may happen with our U.S. Supreme Court, we probably should not quote any of the United States Codes. Actually, when we do quote their definitions, we should put them in here in case they are overturned at the federal level, just to add some additional credence to this bill and give us what we need in Nevada; that we stand on our own feet as a state behind our Indian Child Welfare Act, our own version of it, as a Nevada version. Thank you.

**Cadence Matijevich, Government Affairs Liaison, Office of the County Manager, Washoe County:**

I am here in the neutral position trying to figure out how to interpret the rules. Yesterday we submitted a letter of opposition to this bill as introduced. I felt it was important to come forward and let you know that opposition is now withdrawn with the amendment [[Exhibit E](#)]. We are very appreciative of the work that Assemblywoman Backus did to address our concerns. We do still remain in the neutral position for some of the technical issues that Ms. Surratt brought up, but we remain committed to working with the Assemblywoman and would like to get to a position of support. At this time, we are neutral.

**Stacey Montooth, Executive Director, Nevada Indian Commission:**

Our agency was created to improve the quality of life for the 28 federally recognized tribal nations and about 62,000 urban Indians who have chosen to make Nevada their second home. As I am testifying in neutral, I will read my remarks. I want to thank the Chair, this entire Committee, and especially Assemblywoman Backus. The language in A.B. 444 ensures that

our tribal nations' sovereign governments continue to have a say in the child protective process. In fact, 11 states have codified the Indian Child Welfare Act, including Wyoming this week. The state of Utah is also considering ICWA.

In 2019, the National Indian Child Welfare Association reported what disproportionality is and provided statistics on the overrepresentation of American Indian children within the foster system. Nevada is one of the top 15 states in the nation with the highest amount of that disproportionality. Please know how important it is to maintain native children in their home and in their communities.

Since contact, arguably 1492, the first stewards of this land have suffered systematic, intentional removal of their children, from the Indian wars to boarding schools, with forced assimilation to, again, these disproportional members of our native youth being removed from their families. Further, in the 1950s, the Navajo Nation won litigation against the federal government for violating their federal trust responsibility to educate the Navajo children. Though the Navajo Nation won, they prevailed in that legal action, the United States' solution was to send thousands and thousands of Navajo children from their home to the Stewart Indian school. This stunning history is outlined at the Stewart Indian School Cultural Center and Museum, 5500 Snyder Avenue. All child welfare professionals, educators, and health care experts recognize the long-term effects of removing Native American children and the impact on their self-worth and their identity.

**Chair Miller:**

Not seeing anyone in Las Vegas who would like to testify in neutral, is there anyone on the phone? Hearing no one, I will welcome Assemblywoman Backus back up for any final remarks.

**Assemblywoman Backus:**

Thank you, Chair Miller and Committee. Obviously, I could not get this good piece of the bill finalized without the help of wonderful people, including Felicia Quinlan, but I am committed. I know we have committee deadlines, and I would ask, with the amendment, that this Committee consider passing it as is. I will continue to work on additional amendments to fine-tune it. The people who have been working with me, whom you heard come up in neutral, understand that. I think good legislation can continue to be worked and hopefully made perfect. But with that, I would ask for your support.

**Chair Miller:**

I will close the hearing on Assembly Bill 444. Our final activity we have today is public comment. Is there anyone wishing to make public comment in Carson City or Las Vegas? Not seeing anyone, is there anyone on the phone? Hearing no one, I will close public comment. Thank you, members, for your work today, and thank you to our presenters and everyone who came to view. Tomorrow, we will start back at 8 a.m. With that, this meeting is adjourned [at 9:15 a.m.].

RESPECTFULLY SUBMITTED:

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Connor Schmitz  
Recording Secretary

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Nancy Davis  
Transcribing Secretary

APPROVED BY:

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Assemblywoman Brittney Miller, Chair

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

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Assembly Bill 414, submitted and presented by Assemblywoman Shea Backus, Assembly District No. 37.

[Exhibit D](#) is a handout for Assembly Bill 414, presented by Assemblywoman Shea Backus, Assembly District No. 37.

[Exhibit E](#) is a proposed amendment to Assembly Bill 444, submitted and presented by Assemblywoman Shea Backus, Assembly District No. 37.