

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-second Session
May 3, 2023**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:03 p.m. on Wednesday, May 3, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Assemblywoman Shea Backus, Assembly District No. 37

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Karly O'Krent, Counsel
Kelsey DeLozier, Deputy Counsel
Jan Brase, Committee Secretary

OTHERS PRESENT:

James Dzurenda, Director, Nevada Department of Corrections
John Sande, Pearson Education
Alejandro Rodriguez, Nevada System of Higher Education
Jonathan Norman, Nevada Coalition of Legal Service Providers

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Erica Roth, Washoe County Public Defender's Office
Jodi Hocking, Return Strong!
Kent M. Ervin, Nevada Faculty Alliance
John J. Piro, Clark County Public Defender's Office
Andrew LePeilbet, United Veterans Legislative Council
James Palombo, Nevada Prison Education Project
Karen Bach
Tonja Brown, Advocates for the Inmates and the Innocent
Pamela Browning
Melissa Duna
Unidentified Testifier
Millie Booth
Nicole Williams
Ashley Gaddis
Betty Guess
Nick Shepack, Fines and Fees Justice Center
Kimberly M. Surratt, Nevada Justice Association
Melissa Clement, Nevada Right to Life
Felicia Quinlan, Clark County District Attorney's Office
Jennifer Lanahan, Reno-Sparks Indian Colony; Las Vegas Paiute Tribe
Will Adler, Pyramid Lake Paiute Tribe; Duck Valley Indian Reservation;
Duckwater Indian Reservation
Annalise Porter
Tammi Tiger

CHAIR SCHEIBLE:

I will open the hearing on Assembly Bill (A.B.) 35.

ASSEMBLY BILL 35 (1st Reprint): Revises provisions governing the access of offenders to telecommunications devices. (BDR 16-261)

JAMES DZURENDA (Director, Nevada Department of Corrections):

Originally, A.B. 35 was meant to allow the Nevada Department of Corrections (NDOC) to introduce wireless devices into the correctional facilities, but the concept has been expanded. Wireless devices have a range of uses. I have provided a list (Exhibit C) of those possible in the NDOC setting. As a next step, we would need to present this information through a public hearing and discuss how these tools would be important to the success of offenders and to reduce crime and victimization in the community. These are the goals of A.B. 35.

With wireless or telecommunication devices, we can reach every offender interested in programs currently available intermittently and only to a few such as job training, GED preparation and testing, and college courses. Wireless devices, which we will refer to as tablets, will allow inmates to continue programs without interruption in the event they are transferred for classification reasons. This is a valuable benefit of the system.

Another important benefit we have seen across the Country is improvements to inmates' mental health in segregation or solitary confinement. When individuals are in the correctional system because of antisocial behavior, there is always the possibility they will be involved in incidents, fights or assaults requiring disciplinary segregation and isolation. The tablets can provide programming for those with behavior problems while in segregation. It is no different than what high schools and colleges were doing during COVID-19 with long-distance learning.

Assembly Bill 35 will allow access to libraries for all 10,000 inmates. College courses will be funded with Pell Grants at no cost to inmates. Strictly regulated entertainment options will be available at a cost. When inmates discharge and go into community, anything they purchased or have on the tablets will continue to be accessible, whether it is music, movies, GED courses or college classes and tests still in progress. It all remains in the cloud.

This is a long-term evolution or LTE-based system, meaning there is no direct access to the outside. Included in the handout, [Exhibit C](#), is a list of correctional agencies that issue wireless devices to offenders throughout the United States utilizing two major vendors—Securus and ViaPath. These states issue tablets to all offenders in their custody. Only two states do not issue wireless tablets: North Dakota and Nevada. North Carolina Department of Corrections has reported a 35 percent reduction in violent incidents since implementing this policy and distributing tablets. When inmates have a valuable product, that means something; they are not going to want to lose it. Wireless devices could be an alternative to sanctions so that segregation does not have to be used on all cases. This could be an avenue to take offenders out of segregation sooner by having these devices as either a tool for good behavior or a tool to be taken away for bad behavior.

When inmates are preparing for discharge, they can begin the process for Medicaid and veterans' services. Nevada has the highest number of incarcerated

veterans in the U.S. We need to do something about that. This is one avenue to start connecting them to services while incarcerated. We need to keep them out of prison in the future.

Inmates can file grievances electronically rather than in paper form. The old-school system requires five color-coded copies for every grievance. With the new system, grievances will continue to be documented, logged and tracked for NDOC responses. An effective tracking process is important in reducing civil lawsuits relating to grievances and access to services.

The system offers a closed-captioned option in approximately 65 languages. Offenders will be able to utilize the telephone from the tablet. The calls will be secure and not go directly from the tablet to a cellphone or to another phone. It goes to our PBX system, no different than a hardwired telephone. The LTE system provides additional security. As I mentioned, 48 states have been operating and testing the system for years without security issues.

Inmates can talk with their attorneys in confidence without being recorded. When an officer is given a note known as a kite, because of the system in place, it may not be properly processed. With the proposed system, kites, including medical requests, will be logged and documented. Offenders will be able to use tablets to issue an emergency service notification. It does not have to be for themselves. Their cell partner may be talking about suicide or having other mental health issues. Services will be immediately contacted. The tracking process is essential to protecting offenders and providing information for potential legal action.

Through NDOC overview, offenders will be able to send email messages as they do paper mail. Attorneys, parole officers and court officials will have confidential access to offenders through video contact while tablets are docked in visiting rooms. It will save on the many costs and challenges involved in transporting offenders to outside facilities.

I have talked with the Clark County Library system, and it will offer electronic books at no cost. As I mentioned, all offenders will have access to the law library, which under the existing system is limited. Lack of access is an ongoing issue; complaints sometimes result in legal action against the Department.

The housing unit has only five hardwired telephones because of a shortage of trunk lines. We do not have the ability to add additional lines; as a result, telephone time is a valuable commodity which is exploited by aggressive offenders. Gangs will often charge offenders to use telephones, listen to their conversations, use the information against them or force them to convince outside contacts to engage in illegal activities. These confrontations can often be violent with serious consequences for offenders and staff. When offenders can hold conversations in their cells on their tablets, they have more access and cannot be overheard or extorted for telephone time or telephones and prevent a variety of negative outcomes.

Though the service will not be available in cells, when tablets are connected to docking stations, offenders will have access to video conferences. We have offenders from other countries who will be able to see and talk with family members for the first time since incarceration.

Offenders will have contact with more than 72 religious denominations, either live or recorded. This access is not possible through NDOC in the existing system. It is logistically impossible to provide these services without telecommunications devices. Beyond the advantages to offenders, NDOC and the State can provide religious access and reduce the number of related lawsuits.

Another benefit is future employment. Offenders can write resumes, cover letters and job applications, all of which will be saved in computer data storage and available after release. We will be able to electronically inform offenders of rules and regulations, visitor lists and the means of navigating the system for grievances and court assistance.

The tablet system will provide access to an evidence-based process known as moral reconnection therapy used nationally for behavior problems in prison systems. The therapy is delivered almost exclusively through wireless devices and will be available to all offenders without impact on NDOC's limited resources.

I expect questions regarding security. As one of only two states without the system, we can draw on the experience of others in the Country. According to ViaPath, 85 percent of offenders in the Country have been issued tablets. In

Nevada, 10,000 inmates do not have this access. Without approval of A.B. 35, we are not authorized to provide any type of wireless device.

SENATOR OHRENSCHALL:

If A.B. 35 is enacted, will inmates in NDOC facilities who cannot leave their cells be able to participate in education or therapy via the tablet when they are not able to attend a group setting?

MR. DZURENDA:

That is why I want them. The tablets will allow everyone at any given time to access services and programs, even by those who are discipline problems or confined in in-patient hospital settings. Access will be available through voice imprint and a four-digit personal identification number anywhere in the facility. When tablets are collected at the end of the day for charging, they are reset to factory settings. In the morning, offenders are issued a tablet and will need to reprogram their personal information.

SENATOR OHRENSCHALL:

Do you envision inmates being charged for using the devices or doing legal research with the tablet?

MR. DZURENDA:

Some charges will be assessed but not for legal research. Law library and e-book access are free of charge. We will need to go through the Board of State Prisons Commissioners' process before finalizing services available for a fee, but it is my intent to charge for certain gaming applications, movie rentals and similar services. Telephone calls will continue to incur a charge, but with full access and increased volume, the cost may be reduced from 12 cents per minute to as little as 9 cents per minute. This would be a benefit to inmates.

SENATOR OHRENSCHALL:

While inmates will be able to have video visits with their attorneys, will their attorneys still be allowed to have in-person visits at all NDOC facilities?

MR. DZURENDA:

The system will not replace in-person visits of any kind but will facilitate families who find it difficult to take time from work to travel to NDOC facilities.

SENATOR KRASNER:

This reminds me of a bill that came before us during the Seventy-ninth Session. If this is a good system, why has it not already been instituted in Nevada?

MR. DZURENDA:

Statute does not allow for issuance of wireless devices to incarcerated individuals. Even staff members are not allowed wireless devices. Past legislation allowed for wireless device access only in release centers for job search and education.

SENATOR KRASNER:

That seems reasonable, but why should we do this for people who have broken the law and are in prison? Why not do this for students?

MR. DZURENDA:

It may seem the benefits are geared toward inmates, but I am not doing this for offenders. I am doing this for the community. If we can reduce recidivism by providing tools for education, veterans services and Medicaid, we can reduce community victimization. The most successful system is to reach out to everyone with wireless devices. Released offenders will have better tools and availability to services, and our kids and families will be safer.

SENATOR KRASNER:

Who will pay for college courses?

MR. DZURENDA:

College courses will be funded with the Federal Pell Grant Program at 100 percent.

SENATOR KRASNER:

Inmates will have Internet access, and it is concerning. How do we know an inmate will not access the victim, the person who put them behind bars?

MR. DZURENDA:

Internet access is not available on cell phones or tablets. The LTE system connects all tablet activity to NDOC PBX which allows for Internet access. It is a closed system that does not go directly to the tablet. It is not possible for an inmate to have access to any Internet services direct without going through our

system. We are in control. No state utilizing the system has reported security breaches.

SENATOR KRASNER:

One of my concerns during the Seventy-ninth Session was security. Even some young people can rewire handheld devices for direct Internet access. How can you guarantee that that will not happen?

MR. DZURENDA:

New updated systems prevent breaches, and those capabilities are no longer available. Tablets no longer go through the Internet or Wi-Fi. As I have mentioned, the LTE system has proven secure across the Country.

SENATOR KRASNER:

What about telephone calls then? How do we prevent offenders from calling and harassing their victims?

MR. DZURENDA:

Telephone security is identical to hardwired telephone protocol. Calls go directly to PBX. We maintain a database of approved telephone numbers. When a call is initiated through a tablet, it goes through LTE and then to PBX. If the number is not approved, it is not connected. Offenders may contact someone on an approved number and include an unauthorized person. This happens with hardwired telephone calls. We cannot prevent this but can record the call. When we detect violations, we can prosecute and/or suspend privileges for misuse.

SENATOR HANSEN:

You mentioned that 48 other states issue tablets. Have all the bugs been worked out? Have other states had significant issues or breaches? What in this bill provides for security protections?

MR. DZURENDA:

Other states have experienced security breaches, but it is important to look at the dates. The older generations of tablets and technologies were vulnerable. In 2004, there were instances of breaches when individuals left cell phones on rooftops that connected to inmates' mobile devices. That does not happen anymore. The system is safe enough for the Texas Department of Corrections to feel comfortable in issuing tablets for the 483 offenders on death row. The

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state has issued 62,000 tablets without security issues. Forty-eight states have experience and expertise to determine the benefits greatly outweigh the risks.

SENATOR HANSEN:

When an attorney meets with a client in prison, is NDOC allowed to screen the visits? If so, do you also plan to screen interactions through the new system?

MR. DZURENDA:

We only screen to confirm the visitor is an attorney on record. We do not listen to or have staff present during conversations. We must have visual contact in case the attorney is assaulted. We do not get involved unless we are asked to attend as witnesses. The tablets will allow for video visits outside of normal business hours. We will make it clear that when an attorney video visit is with an inmate in a housing unit, the call will be monitored and recorded. The calls will not be confidential.

SENATOR HANSEN:

You screen and monitor telephone calls with people who are not attorneys of record. Is that correct?

MR. DZURENDA:

Every phone call of that type is recorded. Tablets will be no different. All calls involving attorneys in the visiting room will automatically shut the system off.

SENATOR HANSEN:

Is there any difference between A.B. 35 and a similar Senate bill?

MR. DZURENDA:

There is no difference.

SENATOR NGUYEN:

This is a great program and sounds like it improves your job. It will help with inmate transition into society. I am supportive.

SENATOR STONE:

This is a wonderful program. I cannot imagine being in a small cell for 24 hours a day and 7 days a week. The tablets allow for religious fulfillment, family contact and education, which are important to reducing recidivism. That is

certainly the goal of NDOC. Do you expect a time limit on use of tablets? Will you vet the people inmates call in advance?

MR. DZURENDA:

The tablets need to be charged for eight hours and because there is no electricity in the cells, inmates will not have access during those hours. While inmates will not have 24 hours of access to tablets, they will continue to have access to telephone calls. I would note, after being charged, the tablets return to factory settings.

We will have the option of restricting the types of programs inmates with behavior problems can access. This can be accomplished individually and could be an alternative to segregation. These are privileges inmates would work to maintain. North Carolina corrections has reported a reduction in violence, and we are optimistic the system in Nevada will also be successful in reducing violent episodes.

SENATOR STONE:

Will this system allow inmates to have communication with other prisoners in the prison system? You said emails are monitored before being sent. Do you also monitor incoming emails?

MR. DZURENDA:

We can give permission for access to offenders in an emergency. The tablets do not allow access to other correctional facilities without authorization. Every time offenders use a phone, the conversation is recorded. Even though inmates want to call somebody, they do not have access unless we approve it.

SENATOR STONE:

What are these devices made of? How durable are they, and can they be used as weapons? I am sure these tablets are not inexpensive. Can you tell me how they are funded and whether inmates will be required to pay for a device if they break it?

MR. DZURENDA:

The tablets are supposed to be indestructible, but nothing is indestructible. They have been tested, dropped out of ten-story windows and driven over by tractor trailers and bulldozers. The material is hard with a rubber frame and the tablets are smaller than a standard tablet. If an inmate throws one, it will

bounce off the wall. They could be used as a weapon, though it would not be effective. Inmates can use a lot of items in prisons as weapons. This type of activity would result in the loss of tablet privileges. The problem would likely resolve itself.

SENATOR KRASNER:

A prisoner would be able to access anyone on their phone, a victim or a fellow gang member if they make a three-way call. Can that be prevented?

MR. DZURENDA:

We recognize this can happen and cannot prevent it. However, we do record calls and can press criminal charges.

SENATOR KRASNER:

If the worst scenario occurs and somebody is raped or murdered because of that telephone call and a lawsuit is brought by the surviving family, can they name the NDOC as a codefendant?

MR. DZURENDA:

Not a codefendant, but all the evidence is controlled by us. We are subpoenaed now without the tablets. Law enforcement agencies subpoena NDOC when possible criminal activity is evident on recordings or anything else they may need for a criminal case.

SENATOR KRASNER:

If NDOC is not vigilant, the agency could be sued and required to pay damages.

MR. DZURENDA:

The NDOC could be sued for anything. We do not listen to every phone call but do record those we do not hear.

In response to Senator Stone's question, the State does not pay for the tablets. The supplying company provides them at no cost and charges for gaming, video and other services and applications. The company replaces disabled or damaged tablets.

CHAIR SCHEIBLE:

I am trying to envision how this would work. Is the idea for the tablets that offenders can take them to dinner or when they go in the yard? Or are they supposed to stay in a certain location like the library or the cell?

MR. DZURENDA:

The contract has not been completed with ViaPath. We have yet to identify those areas where we want to have LTE capabilities.

CHAIR SCHEIBLE:

I wanted to clarify the parameters when it comes to sanctions for offenders who do not behave appropriately. Control settings for the tablets would be centralized and associated with the offender's profile, which you describe as using a PIN and voice print. This is a sophisticated system.

MR. DZURENDA:

That is exactly how it works. Tablet access is specific to the inmates themselves. Personal identification numbers are connected to offender numbers, though we will not have access to inmates' PINs.

CHAIR SCHEIBLE:

One last question that does not affect my support of the bill. Will the system allow for electronic signatures of documents inmates' families might need or court papers?

MR. DZURENDA:

That is not available in any state I am aware of. It does not mean it is not possible in the future.

JOHN SANDE (Pearson Education):

Pearson Education is a provider of curriculum for education and has worked successfully with several states and their corrections departments. Education is an important component of the rehabilitation process. We definitely support A.B. 35.

ALEJANDRO RODRIGUEZ (Nevada System of Higher Education):

We support A.B. 35. Access is instrumental to our campuses in expanding and accommodating a larger number of students, particularly with the upcoming availability of Pell Grants for incarcerated individuals.

JONATHAN NORMAN (Nevada Coalition of Legal Service Providers):

We represent kids in foster care. A lot of parents are incarcerated. Being able to participate and have a relationship with their kids when appropriate is important. We also work with the Federal Pro Bono Project and match inmates with attorneys. Having the ability to easily communicate with legal counsel is important. We offered a friendly amendment ([Exhibit D](#)) but support A.B. 35 regardless of the amendment outcome. The amendment proposes to add attorneys in both civil and criminal matters to the enumerated list of uses for a telecommunications device in section 1.

ERICA ROTH (Washoe County Public Defender's Office):

We support A.B. 35. Concerning three-way telephone calls, this is not a situation exacerbated by tablets. It is an existing problem addressed by NDOC disciplinary protocols. The tablets do not provide a new opportunity to commit a crime.

Regarding the question of spending money on people who are incarcerated when it could be better spent elsewhere, it is important to remember it is not just the people who are incarcerated affected by this legislation, it is their family members. They are the Committee's constituents. We are thinking about how to make our community stronger and ensure that when people are released into the community, we have done so with a generous support system.

JODI HOCKING (Return Strong!):

We support A.B. 35. We work with incarcerated families, and I am part of an impacted family. My husband is incarcerated. The concerns mentioned today are not new. They are dealt with through the disciplinary process and the court system. As an example, if I send an email to my loved one, it goes to something like an electronic mail room. It is reviewed and responded to. It is then released to him. The same thing would happen with a tablet system.

I have been involved in many discussions concerning A.B. 35 and would like to break down some of the concerns we have heard. The costs for telephone calls and emails will be determined through vendor negotiations with NDOC. I have

heard concerns about inmates' inability to pay for premium services. This will be a problem. We are talking about people who cannot buy food and hygiene products. With tablets, they would have access to a variety of free services including e-books, religious content and education. They would have simplified access to the grievance process and ensure institutional accountability. Kites, or grievances, are written notes which are folded and put in a box with a slot on the top. They disappear into nowhere all the time, which is why we have all those lawsuits.

The system would relieve some staffing shortage issues. This system creates hope and opportunity. People do not always make good choices. When our prisons are filled with people who do not get an opportunity to make good choices, they are going to default to not having choices. Nobody makes good decisions with their back against the wall.

KENT M. ERVIN (Nevada Faculty Alliance):

Our members are actively involved in prison education programs. Educational advancement for incarcerated citizens is one of the best ways to reduce recidivism. Prisons have encountered obstacles to participating in university and college programs under the existing system, including a lack of classroom space, few educational materials and staff shortages. Access to tablets will address many of these concerns. We fully support A.B. 35.

JOHN J. PIRO (Clark County Public Defender's Office):

Assembly Bill 35 will move this State forward. In response to Senator Hansen's question regarding visitation, when I visit an incarcerated client at some institutions, I sit at a table in an open environment. It is not ideal for discussing private and case-related issues. Telecommunications devices would improve the ability to confer with clients. We regularly communicate with people by video in the Clark County Detention Center. It speeds up the process by saving driving time which can be as long as one and a half hours. I would advocate allowing video court appearances from prison because they can be scheduled any time, day or night.

A library card is one of the best things a person can have. Access to e-books and online classes will put people ahead. While incarcerated, they will experience a measure of reform, which is the goal of corrections. The way people are treated while they are in affects how they come out. This a bill will support inmates and keep our communities safer when they are released.

CHAIR SCHEIBLE:

In your experience, have you seen the self-consciousness and shame for those seeking an education while incarcerated where they are required to study in a classroom setting with other inmates? Would tablets provide a level of privacy?

MR. PIRO:

Yes, inmates will have privacy. When a problematic person makes it difficult for inmates to concentrate in group settings, some inmates tend to avoid going to class.

ANDREW LEPEILBET (United Veterans Legislative Council):

Our organization represents the 279,000 veterans in our State. We previously testified in neutral to this measure but now support A.B. 35.

JAMES PALOMBO (Nevada Prison Education Project):

We support A.B. 35. I received my education through University of Nevada, Las Vegas, while incarcerated in NDOC in 1970. During that time, it was a struggle to authorize outside education, particularly postsecondary education, for inmates. A former NDOC director opposed the program, and I am grateful for Director Dzurenda's support. It can be a complicated issue, but it is time to modernize our corrections system. Prison education speaks for itself in terms of what it does for the offender, the exoffender and potential victims. Recidivism and public harm come from ignorance.

KAREN BACH:

I support A.B. 35. Regarding telephone calls, there are a limited number of telephones in prisons, and inmates are forced to wait to use them. It would be beneficial to use a tablet for calls. My loved one is incarcerated in Texas, and I would normally send a book every month. Now, he has a tablet and access to the library. Not only is he enjoying a variety of books, but I am saving money.

TONJA BROWN (Advocates for the Inmates and the Innocent):

We support A.B. 35. It is a win-win situation, not just for NDOC, the inmates and their families but also for the taxpayers. It will mean fewer lawsuits against NDOC and will save taxpayers millions of dollars. Inmates will be able to complete their programming, resulting in favorable parole hearings. When inmates are released on parole, taxpayers save money.

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PAMELA BROWNING:
I support A.B. 35.

MELISSA DUNA:
I support A.B. 35. It is important to have communication with families and allow for education. Inmates will have a chance to be successful.

UNIDENTIFIED TESTIFIER:
I support A.B. 35.

MILLIE BOOTH:
I support A.B. 35 for all of the reasons already stated.

NICOLE WILLIAMS:
I support A.B. 35.

ASHLEY GADDIS:
I was incarcerated at Florence McClure Women's Correctional Center. I experienced a lack of programming, legal access and education. The tablets would be a game changer. I support A.B. 35.

BETTY GUESS:
I support A.B. 35.

NICK SHEPACK (Fines and Fees Justice Center):
We deal with costs incurred in the criminal legal system. We do not take a position on electronics or new devices given to people while incarcerated. Our many conversations with Director Dzurenda concerning tablets have led us to believe the program will be implemented in this State in a responsible manner. We have seen the process played out in other states. In some cases, the financial costs to inmates have been extreme. Some states have been more responsible. As an organization, we continue to monitor costs to incarcerated individuals and their families. If at any time, we determine consumer protections are necessary, we will bring those concerns to this Body.

MR. DZURENDA:
This is not a new policy. It has been vetted throughout the U.S. in every state except North Dakota and Nevada. It is a system I trust. If A.B. 35 is enacted

and the system implemented, it is important to remember changes can be made to accommodate needed adjustments.

SENATOR DONDERO LOOP:

I would like to state for the record I support A.B. 35.

CHAIR SCHEIBLE:

I will close the hearing on A.B. 35 and open the hearing on A.B. 414.

ASSEMBLY BILL 414 (1st Reprint): Revises provisions governing powers of attorney. (BDR 13-797)

ASSEMBLYWOMAN SHEA BACKUS (Assembly District No. 37):

Assembly Bill 414 revises the power of attorney for healthcare decisions. I brought A.B. No. 299 of the 80th Session to revise the durable power of attorney for healthcare decisions. My reasons were both personal and professional. When my father-in-law suffered from vascular dementia, my husband and I utilized his durable power of attorney for healthcare decisions for his end-of-life care.

As an attorney, I knew the form found in NRS 162A needed to be updated and revamped to make it more user-friendly. Often, I would find clients agreeing to various end-of-life decisions that ultimately contradicted their intended decision. Unfortunately, the statutory form still is commonly filled out incorrectly. My intent is to make sure a person's wishes for healthcare decisions involve fewer barriers. I wanted to present a bill that could be generally accepted. Continuing work with the Uniform Law Commission, I had the pleasure for nearly two years to work on a potential uniform law governing healthcare decisions. The anticipated model law will provide guidance and a legal framework for an individual to make decisions about medical care in the event he or she is unable to do so. The model law will not be ready for a vote until the summer of 2023. With A.B. 414, the expectation is to update the form as soon as practicable.

Sections 5, 9, 11 and 19 add definitions that may not have been in the original NRS 162A. Section 36 is the bulk of the bill. The proposed form differs from the existing form in that it is in plain and easily understood language. It not only provides one's instruction about life-sustaining treatment, 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 a 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.

Section 57.7 updates the requirements for those who witness the principal's signing of the healthcare directive and removes the mandates when an individual resides in a hospital or other specific medical facility so the principal does not need to attach a certificate of competency to the power of attorney.

Sections 57.3, 61, 64, 67 through 70 and 72 make conforming changes to existing statutes. Section 78 provides that NRS 162A.860 will be repealed.

I want to update the Committee on some requested amendments. This bill originally did pass out of the Assembly unanimously, but since it passed out, I have been contacted by the Probate Section of the Nevada State Bar seeking to either hold off on updating the form until the Eighty-third Session following the Uniform Law Commission hearing and decision on enacting a uniform law or to not change the statutory form. While I will always work with stakeholders, I want to stress the changes made in 2019 were minimal, and the form continues to cause confusion. It is time to update the form in statute.

MR. NORMAN:

One of the members of the Coalition is the Southern Nevada Senior Law Program, which is a small legal service provider in Clark County that only helps seniors. The Program holds law clinics to train lawyers whose practice area does not include completing forms for power of attorney for healthcare decisions. The trainers were finding that among attorneys, even after receiving training, the forms were filled out incorrectly around 25 percent of the time.

People should be able to complete this form without an attorney; it certainly should not be so complicated that trained attorneys have a 25 percent error rate. We have an opportunity to make changes now; waiting until next Session would mean two more years of errors and confusion.

SENATOR DONDERO LOOP:

As a member of the Senate Committee on Judiciary, I have heard many uniform law bills over the years, and I appreciate your work on A.B. 414.

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ASSEMBLYWOMAN BACKUS:

I want to make clear this is not yet a uniform law. I do sit on the Uniform Law Commission and am fairly confident it will become law in July 2023. Assembly Bill 414 will provide a user-friendly and easily accessed form.

SENATOR KRASNER:

The State Bar of Nevada asked you to hold off on this proposal until next Session, but you are still going to bring it. Should we wait to address this issue?

ASSEMBLYWOMAN BACKUS:

The request came from the Probate Section of the Nevada State Bar. Upon review, the Probate Section was concerned there would not be enough time to effect the required changes. I welcomed them to speak in opposition to A.B. 414 as they did not have an opportunity to oppose it in Assembly. Some in the Probate Section were comfortable with the existing statutory form and were concerned the form had recently been amended. Because I was the bill sponsor, I can state the bill did not accomplish all I hoped for. What I envisioned is the bill I have brought this Session. If A.B. 414 is enacted, during the Eighty-third Session, the Legislature could consider whether NRS 162A can be accepted uniformly throughout the U.S.

SENATOR KRASNER:

The Nevada State Bar might be opposing the bill. You still advocate passing A.B. 414 this Session?

ASSEMBLYWOMAN BACKUS:

Yes. Licensed attorneys have different memberships. I participated in the Construction Law Section of the State Bar. I want to stress the form is not statutorily mandated; it is optional. A person could create whatever type of healthcare directive he or she desires as long as it is consistent with NRS 162A. This form is a good substitute for self-authored directives because it is in plain language.

I am a board member of the Senior Law Project within Nevada Legal Services and have been discussing problems inherent in the existing form and the challenges seniors face in finding legal assistance to complete the form. We do provide legal services throughout southern Nevada.

MR. NORMAN:

The Probate Section is addressing people who have an attorney. Most people cannot afford an attorney. This form will be accessible to the majority of our population. Attorneys will continue to have the option to create forms independent of A.B. 414 or to continue using the form in statute. This will help seniors, not only those at the Senior Law Project but those who do not have an attorney and are getting forms from one of the self-help centers.

SENATOR STONE:

One of my children is an attorney in California specializing in wills and trusts. We have talked about his work, and I am surprised to learn how many people do not have a will or a medical directive, including people with comorbidities who are vulnerable to situations when their children do not know their wishes. The proposed form is written without legalese and allows a layperson to read and understand it. This is just a template; anyone can write an advanced healthcare directive. While it follows regulations, it would be helpful if the State Bar recognizes the utility of an updated form. The bar will see the utility in this. This will be helpful to a lot of people who cannot afford an attorney. Those who want a medical directive should have a medical directive.

SENATOR OHRENSCHALL:

Before my biological father passed away, he and I became close though we did not talk about his end-of-life healthcare preferences because he had always enjoyed good health. Assembly Bill 414 would have been a help to him. Will the advance healthcare directive need to be notarized or witnessed?

ASSEMBLYWOMAN BACKUS:

Nevada law requires either witnesses or a notary public. The proposed form requires two witnesses. The proposed uniform law requires one witness and provides exclusions for those who can be the witness. We updated statute requiring residents of skilled nursing facilities to include a signed certificate verifying competence to complete the form. We need to remove those barriers because with them, people are not likely to complete these important healthcare directives.

KIMBERLY M. SURRATT (Nevada Justice Association):

I am a family law attorney, but my practice is also in estate planning. I, along with my law partners, support A.B. 414. I cannot tell you what a nightmare it is to sit down with clients to fill out the current form. It is a jumbled mess of

words that do not make sense. After an hour of trying to explain it to clients, a lawyer finds clients never quite understand. They are never quite sure you told them the truth about what is in the form.

In defense of the State Bar system, I am a former president of the Family Law Section. Not having support from an individual section of the Bar is not necessarily negative. The individual sections cannot speak on behalf of other bar sections without vetting it through the full State Bar. In order to do that, we give our bills to the entire State Bar in July before Session. The State Bar shares bills with all sections, and section chairs signal approval or disapproval before members are allowed to take a position before the Board of Trustees. Sections whose position is approved following a vote are required to provide a disclaimer stating the position is not that of the entire State Bar. It is difficult for the various sections to assert a position quickly during Session. Presidents of sections are constantly asked to provide the State Bar's position on legislation but are restricted from doing so.

MELISSA CLEMENT (Nevada Right to Life):

We are reservedly opposed to A.B. 414. We did not have the opportunity to address the bill in the Assembly but appreciate the sponsor's willingness to discuss the issues with us.

ASSEMBLYWOMAN BACKUS:

I was able to share with Ms. Clements the reasons for developing the form. We responded to individuals who are right-to-life advocates and were concerned the form did not include neutral language by updating the form accordingly. I look forward to continuing those discussions. I ask for your support of A.B. 414.

CHAIR SCHEIBLE:

I will close the hearing on A.B. 414 and open the hearing on A.B. 444.

ASSEMBLY BILL 444 (1st Reprint): Revises provisions concerning child welfare.
(BDR 11-614)

ASSEMBLYWOMAN SHEA BACKUS (Assembly District No. 37):

Assembly Bill 444 establishes various provisions governing proceedings relating to custody, adoption or protection of Indian children or the termination of parental rights. I will present the bill with attorneys who have experience in related cases: Felicia Quinlan, who is with the Office of the Clark County

District Attorney, and Jonathan Norman, who has not only practiced before the Navajo Nation courts but has experience with Childrens' Attorneys Project (CAP) cases at the Legal Aid Center of Southern Nevada.

In 1978, the U.S. Congress passed the Indian Child Welfare Act (ICWA) to protect the rights of Native American children and families in child welfare proceedings. The Act recognizes the unique cultural heritage of Native American tribes and seeks to preserve cultural integrity of Native American communities. Adopting ICWA in Nevada law will help to ensure Native American children and families in Nevada are afforded the same protections and considerations as those under federal law. Nevada should incorporate equal protections into State law for several reasons. First, Nevada has significant Native American populations, and these communities have unique history and cultural heritage that should be respected and preserved. Assembly Bill 444 will help to ensure that Native American children in Nevada maintain connections with their families, communities and cultural traditions which are critical to their well-being and long-term success. Although progress has been made as a result of ICWA, out-of-home placement still occurs more frequently for Native children than for the general population. Recent research on systemic bias in the child welfare system yielded shocking results. Native families are four times more likely to have their children removed and placed in foster care than their White counterparts. In spite of advances achieved since 1978, equal protections are still needed.

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

In the late 1800s, what we refer to as the assimilation era of federal policy toward native nations, the U.S. took native children away from their families

and put them in government-run boarding schools aimed at erasing their tribal identities and ties to their communities. It is important to visit the Stewart Indian School in Carson City that was in operation as recently as the 1980s. It is chilling to see the big boulders used to create the buildings. The work was done by children. Stonemasons came from Arizona to teach the children to make the stone materials for the outside of the buildings.

The early 1950s were known as the termination era for federal policy of explicitly terminating the political rights and identities of Indian tribes. The federal government promoted removing native children from their families. This was accomplished with the help of churches and adoption agencies. The federal government, through what is known as the Indian Adoption Project, encouraged the removal of native children from their families and their adoption by nonnative families. 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 individuals and communities in the State.

FELICIA QUINLAN (Clark County District Attorney's Office):

Section 2 provides the legislative intent of the bill, specifically that Nevada recognizes the special legal status of Indian tribes and their members and the inherent jurisdiction of the tribes to make decisions regarding their children and the custody of those children.

Sections 3.5 through 17 define the terms in this bill. Specifically, section 9 defines Indian child. This is important to knowing when the act would apply. Section 18 defines custody over an Indian child.

Sections 20 through 38 of this bill establish provisions concerning proceedings in which the legal or physical custody of an Indian child is at issue. Section 31 provides for notice to Tribes that custody of an Indian child is at issue. Section 37 provides for placement preferences which are in line with federal law at this point. Section 40 makes conforming changes to the provisions of existing law to reflect the changes.

Sections 42 through 50 establish provisions specifically relating to the adoption of Indian children. Section 50 provides for tribal customary adoption which would be new for our State. Sections 51 through 70 make conforming changes to the provisions of existing law.

Section 71 outlines when this act would apply to tribal-State agreements. Section 72 provides reporting under this act by the Nevada Department of Health and Human Services, Division of Child and Family Services to the Legislative Standing Committees on Judiciary. Section 73 requires the Division of Child and Family Services to submit a report to the chairs of the Senate and Assembly Standing Committees on Judiciary describing the implementation of tribal customary adoption as an alternative to permanency option for wards who are Indian children and the Division's recommendations for proposed legislation to improve the tribal customary adoption process. Section 74 provides the Full Faith and Credit Clause would apply to records of judicial proceedings in tribal court. Section 75 addresses how State and federal law would interact with this act. Section 76 of this bill authorizes the court administrator to adopt any rules necessary to implement this law. Section 78 of this bill would repeal certain provisions of existing law that are no longer necessary because of the provisions of sections 2 through 39. Section 79 provides for the effective dates for provisions set forth in the act.

I handle ICWA cases for the Department of Family Services in Clark County. We would like State law to reflect issues we are facing.

MR. NORMAN:

When I came to Nevada, I had the pleasure of being assigned to the ICWA Court where Ms. Quinlan was our district attorney. I represented Native American children with a federally recognized tribe who were in foster care. Prior to moving to Nevada, my legal services career started on the Navajo Nation Indian reservation. I provided representation for Navajo, Hopi and Jicarilla Apache members on a variety of civil legal service issues. I worked at DNA People's Legal Services. We did not deal with normal DNA; it is attorneys who work for the revitalization of native people. About 60 percent of the staff was Native American. I worked with adults who had been removed from their parents. Now, because of laws like ICWA, they had their grandchildren in custody and were teaching them their native language. Without ICWA, the children may have been placed anywhere in the U.S.

In my work on child welfare, I have seen how important it is to preserve languages, customs and cultures and to maintain family units. I had two autistic boys who were tribal members. They were nonverbal and difficult to place. They were placed at Las Vegas Post Acute and Rehabilitation Hospital. Because of ICWA and the work of the Department of Family Services, our office and the

tribe's involvement in the case, we were able to find relatives who did not know these boys existed. They took them in and provided a comfortable home and preserved the tribal culture in their upbringing. The ICWA makes a difference for tribes and for the children.

ASSEMBLYWOMAN BACKUS:

We have proposed a conceptual amendment ([Exhibit E](#)) deleting section 51.5. We have been working with others to fine-tune the bill. We want to clarify that the provisions surrounding the termination or adoption of an Indian child do not extend to a voluntary relinquishment termination by a parent outside of NRS 432B when there is a subsequent adoption by a family member, next-of-kin or stepparent.

SENATOR KRASNER:

Federal law provides that Native American Indian tribes are sovereign and State law does not apply to them. How does that work within this legislation?

ASSEMBLYWOMAN BACKUS:

Our tribes are sovereign nations. In State law, we have codified recognition of their sovereign status. We have a government-to-government relationship, which is the intent in the proposal to conform with ICWA. Provisions in [A.B. 444](#) afford Full Faith and Credit to tribal courts for situations occurring off reservations. For example, the two children Mr. Norman discussed were probably in Clark County and may have been removed because their family was living there.

MR. NORMAN:

One way to think about it is this does not place an obligation on the tribes: the obligation is on our State. If the tribe chooses to engage in these cases, they can without obligation. We are providing protection to tribal citizens who may not be on the reservation.

MS. QUINLAN:

This bill does not apply to the tribes. It applies to child welfare agencies and how, as State agencies, we interact with tribes. Their sovereignty is part of the need for [A.B. 444](#). The bill provides instructions and guidelines for the government-to-government relationship. When we need to transfer a case to tribes' sovereign courts, the State will have direction. Only State law applies to State courts.

SENATOR KRASNER:

Has the U.S. Supreme Court case on Indian child welfare been settled? If so, how was it decided?

ASSEMBLYWOMAN BACKUS:

The Supreme Court case is the reason I am bringing A.B. 444. A pending case, *Brackeen et al v. Haaland et al*, 994 F.3d 249 (5th Cir. 2021), that questions whether the ICWA's placement preferences discriminate on the basis of race in violation of the U.S. Constitution has been heard by the sitting Supreme Court. States throughout the U.S. have enacted state-level laws supporting ICWA. The intent of A.B. 444 is to get ahead of the issue if *Brackeen* changes the federal ICWA. The case has not yet been decided.

SENATOR HANSEN:

Fairly recently, there was controversy surrounding placement of children in families of like races. Some people felt the policy represented a form of discrimination. It makes sense that Indian children should be placed with Indian families. Does that standard apply to children and families of all races?

ASSEMBLYWOMAN BACKUS:

Regarding the classification of Native Americans, it is a geopolitical status and not necessarily just a race status. I always make that distinction when having these conversations.

Ms. QUINLAN:

At this point, we have a placement crisis in Clark County. We are looking for foster homes. We look for family settings for children without regard to race. With ICWA, this issue is not driven by race but by citizenship. The goal is to place Indian children within their nation or tribe. In Clark County, we do not make race-driven placements.

SENATOR HANSEN:

The bill reads like it is splitting hairs. I recognize an ethnic component, which is commendable. If I understand correctly, children are placed with the best family irrespective of the color of the foster family or the child.

MR. NORMAN:

As CAP attorneys, we want to make sure the children we represent are comfortable. That can be any number of factors. How do you take care of hair if

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you are White and have an African-American child in your home? Do you have the tools and the skills? I have had kids on my caseload who were Ethiopian immigrants and they struggled with changes in their food. Unfortunately, we have more pressing needs and focus on good safe homes.

SENATOR HANSEN:

Growing up in Nevada, I am aware of friction among tribes in Washoe County. I have several Indian reservations in my district, and there was controversy over the distribution of lands received from the U.S. Navy.

Does tribal friction factor into decision-making? The bill uses the term "member of a tribe." Do you provide any clarification?

MS. QUINLAN:

We do deal with specific tribes. For instance, there are 14 federally recognized Cherokee bands. We deal with each specific tribe, identify and treat them as their own entity. The definition is broad, but it encompasses all the tribes.

SENATOR HANSEN:

Obviously, our goal is to try to help kids who are in unfortunate circumstances, get them with the best families where they are comfortable with everything from food to grooming. It sounds like that is what A.B 444 is designed to do.

SENATOR OHRENSCHALL:

If A.B. 444 passes, do you think there will be more options and opportunities for children in foster care to be placed?

MS. QUINLAN:

I do not expect it will have an impact on the number of placements. The proposed legislation will help facilitate active efforts to recruit families and make more placements.

SENATOR OHRENSCHALL:

I appreciate and support this bill.

JENNIFER LANAHAN (Reno-Sparks Indian Colony; Las Vegas Paiute Tribe):
We support A.B. 444.

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WILL ADLER (Pyramid Lake Paiute Tribe; Duck Valley Indian Reservation;
Duckwater Indian Reservation):

Assembly Bill 444 looks to codify the ICWA in Nevada law. In 1978, when the ICWA passed, a sea change occurred in the way Indian children are processed through all state systems. Much like the Equal Rights Amendment, the ICWA could be removed by a change of administration or a change in federal policy. Nevada should codify this law. This should be something Nevada values. This policy has merit, and it belongs in Nevada law.

ANNALISE PORTER:

I have volunteered as a guardian *ad litem* for children in foster care in states that take ICWA seriously and in states that do not. I have seen the different attitudes, processes and outcomes that result in each situation. It makes a difference when the state and legislative body take tribal protections seriously. I am proud to live in a state that is considering codifying these protections. I urge the Committee support A.B. 444.

TAMMI TIGER:

I support A.B. 444 as legislation to protect ICWA in Nevada. I am a citizen of the Choctaw Nation of Oklahoma and the eldest of eight siblings. My family has been protected and kept together because of the ICWA law which allowed our tribe to grant me custody of my three younger siblings following the tragic death of my stepmother in 2009. Our father had passed away in 2003. Our family had been through so much. All we had was each other. The thought of their going into foster care in Oklahoma was inconceivable. The Choctaw Nation gave me custody within 90 days and helped me keep them in a tribally operated residential school in Oklahoma. They were in the environment that they had grown up in. The tribe helped me with their travel to Las Vegas for their breaks and summer vacations. This was the least disruptive option so they could graduate with their peers but still have the comfort and care of our family bonds. As parents we know that those relationships do not end at the age of 18. I have continued to support my siblings through college and through life struggles and celebrations. With me, they have learned how to thrive as tribal citizens and live within our cultural norms. I cannot emphasize enough how important it is that tribal nations' sovereignty be recognized in these decisions impacting our future generations. Please vote to support A.B. 444.

Ms. SURRETT:

I would like to have had the opportunity to sign up both in support and opposition to the bill; however, we need amendments to A.B. 444 for practical reasons. I do a good deal of alternative family formation work. I handle adoptions that do not involve children being removed from homes. They are not children within the child welfare services.

The bill references all of NRS 127 which is the adoption chapter in its totality. Even though NRS 127 defines child welfare services, the procedural requirements, notice to the tribe and placement preferences should not apply in a stepparent adoption, second-parent adoption, three-parent adoptions, confirmatory adoptions, assisted reproductive technology adoptions or adoptions where parents want to place their child intentionally. These parents understand they cannot take care of their child and want to go through profiles, select a family or go to couples at their church who have been supporting them. They should be able to select that family without being required to go through these requirements. At the federal level, there has always been recognition of parents' integrity and their ability to make voluntary choices such as choosing a family, choosing not to give notice to the tribe and choosing not to do the preferences. These choices apply to parents who do not fall under NRS 432B which is our abuse and neglect chapter. I am working with Assemblywoman Backus on a conceptual amendment that may be too narrow because it addresses a biological parent with a next-of-kin adoption but does not cover second-parent adoptions, LGBTQ families or the other alternative families I work with.

Remainder of page intentionally left blank; signature page to follow.

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CHAIR SCHEIBLE:

We have one letter ([Exhibit F](#)) from Eztli Amaya in support of A.B. 444. I will close the hearing on A.B. 444. The meeting is adjourned at 3:11 p.m.

RESPECTFULLY SUBMITTED:

Jan Brase,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 35	C	2	James Dzurenda / Nevada Department of Corrections	List of uses for wireless devices / Participating states
A.B. 35	D	13	Jonathan Norman / Nevada Coalition of Legal Service Providers	Proposed amendment
A.B. 444	E	25	Assemblywoman Shea Backus	Proposed conceptual amendment
A.B. 444	F	30	Senator Melanie Scheible	Letter of support / Eztli Amaya