

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY  
Seventy-Fourth Session  
May 9, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:14 a.m., on Wednesday, May 9, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Ty Cobb (Excused)  
Assemblyman Garn Mabey (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1  
Assemblywoman Debbie Smith, Assembly District No. 30

Minutes ID: 1237



Senator Stephen Horsford, Clark County Senatorial District No. 4  
Senator John Lee, Clark County Senatorial District No. 1  
Senator Bernice Mathews, Washoe County Senatorial District No. 1

**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Danielle Mayabb, Committee Secretary  
Matt Mowbray, Committee Assistant

**OTHERS PRESENT:**

Lora Myles, Attorney for RSVP Carson and Rural Elder Law Program  
Susan Swenson, Public Guardian, Carson City Public Guardian's Office  
Susan DeBoer, MSW, Master Guardian, Washoe County Public Guardian  
Shelly Register, Registered Guardian, Guardianship Services of Nevada,  
Reno  
Dennis Travers, Master Guardian, Guardianship Services of Nevada, Reno  
Brian O'Callaghan, Detective, Office of Intergovernmental Services,  
Las Vegas Metropolitan Police Department  
Bryn Lapenta, Interim Assistant Superintendent, Washoe County School  
District  
Craig Kadlub, Director, Government Affairs, Clark County School District  
Charles Burnett, Private Citizen, Las Vegas  
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'  
Association  
David Schumann, representing the Nevada Committee for Full Statehood  
Janine Hansen, President, Nevada Eagle Forum  
John Wagner, representing The Burke Consortium  
Don Ashworth, Private Citizen, Las Vegas

**Chairman Anderson:**

[Roll was called.] Let us open the hearing on Senate Bill 157 (1st Reprint).

**Senate Bill 157 (1st Reprint): Revises provisions governing the appointment of a public guardian and the management of the office and cases of a public guardian. (BDR 20-272)**

**Senator Bernice Mathews, Washoe County Senatorial District No. 1:**

I am here today to talk about a bill that is going to clean up a lot of things for public guardians. This bill is revised and has been amended. This bill will revise

the provision governing the appointments of public guardians and the management of the office and cases of the public guardian.

**Lora Myles, Attorney for RSVP Carson and Rural Elder Law Program:**

I am representing the public guardians. This bill has been worked on for over two years. There are other bills regarding guardianships, but this is the only one that addresses Chapter 253 of *Nevada Revised Statutes* (NRS), which is the public guardianship statute. This bill is looking at mandating public guardians in every county, creating means for appointment of public guardians in the counties, establishing of funding and accounts for the public guardians, defining how public guardians are to be appointed, and allowing public guardians to search for family and assets of their wards without having to hire a private investigator. There are currently seven counties that do not have a public guardian. One judicial district in particular, which involves Nye, Mineral, and Esmeralda Counties, does not have a public guardian anywhere in the district. This has created a problem with seniors who are at risk. Public guardians' cases involve mostly seniors, especially those who do not have family or anyone else to handle their affairs for them. Public guardians get many referrals from elder protective services and handle a lot of elder abuse cases.

The main changes are in Sections 2 and 3 of the bill, which create a system for creating public guardian accounting and for public guardian budgets. We are not dictating how the public guardians are paid or how much money must be set aside to support them; that is up to the individual county commissioners. Most of the next few sections are simply removing the status of the public administrator as public guardian. The public administrator in several counties is no longer handling any public guardianship cases, so the bill takes that language out of the public administrator section of the bill. Section 9 creates a mandatory public guardian position in each county. We are not dictating how the counties create that position. We are offering four different alternatives. They can have the public administrator also act as public guardian. They can contract with the county commissioners in a neighboring county within the same judicial district to hire a public guardian who will handle the counties within that district. In the smaller counties, they could also hire a private fiduciary service to act as the public guardian. They can also appoint any other person who is currently employed by the county to be a public guardian. In Lincoln County, the district attorney is also the public guardian. The three counties that have a separate public guardian office from any other office are Washoe, Clark, and Carson City; those counties have specifically set aside the public guardian's duties to an appointed public guardian in each of those counties. It is an appointed, not elected, position.

Section 11 defines how the public guardian is appointed. It states that the public guardian in a temporary instance can be appointed regardless of what the ward situation is. In most situations involving temporary guardians, they do not know where the ward is from, they do not know what assets the wards have, and sometimes they do not even know if the ward has any family in the State of Nevada. For a permanent appointment, the ward must have no relative or friend able or willing to serve as their guardian and be a resident of the county where the public guardian is. If the ward is a resident of Clark County and someone is trying to have the ward appointed to the public guardian of Carson City, it would not be able to happen. The ward would have to be appointed the public guardian of Clark County. Section 11 also defines how the petitions are to be filed for appointment of the public guardian. In the main part, any petition for the public guardian must be signed by the public guardian or a deputy public guardian in that office stating that the public guardian has received a copy of the petition and any other papers that are being filed with the court in relationship to the case.

Recently, we have found that the private investigator statute has been read very strictly by some attorneys. It states that the public guardian cannot search for assets or family of the ward without being a private investigator or hiring a private investigator. The public guardian is an officer of the court, so we are asking that the public guardian be able to search for assets and family without having to hire a private investigator or to be licensed as a private investigator. In many of the cases a public guardian gets—about 85 percent in most counties—the ward has no assets. They are on Medicaid or in a nursing home, and to hire a private investigator to search for family members or assets is prohibitive.

This bill is supported by the guardianship commissioner in Clark County. We have other people in support who have testified on this bill.

**Susan Swenson, Public Guardian, Carson City Public Guardian's Office:**

I am here to let the Committee know that I support this bill. It is a good bill and will help my office.

**Assemblyman Horne:**

Could you explain again the repeal of the investigation section?

**Lora Myles:**

Sections 4–8 take the language about the public administrator acting as public guardian out of the public administrator section of the statute. The statute is broken into two sections. The first is about the public administrator's office and how that office deals with the estates of decedents. The second section is

about the public guardian who deals with living individuals who need assistance. We have removed the language dealing with the public guardians from the section about public administrators so that there is no confusion. Eventually, we are looking at completely dividing the statute into two chapters so that one chapter would deal solely with the public administrator and the other with the public guardian. Public administrators are elected positions and public guardians are appointed positions.

**Assemblyman Horne:**

These particular provisions on investigating financial status, et cetera, are still...

**Lora Myles:**

They are under the public guardian section of the statute, but not under the public administrator section.

**Assemblyman Carpenter:**

What about the county commissioners? Do they have any problems with this bill?

**Lora Myles:**

No. The county commissioners whom we have spoken with are in support of this. In the Senate, we had lobbyists for about nine counties coming in and supporting the bill. It is up to the county commissioners to choose who they appoint and to determine how they fund the public guardian's office.

**Assemblyman Carpenter:**

The public administrator can be the public guardian if the commissioners appoint him, right?

**Lora Myles:**

Yes. The public administrator may act in that capacity if the county commissioners want that.

**Chairman Anderson:**

I want some clarification on Section 9. In the counties with populations of 100,000, they can contract with a private professional guardian, is that correct?

**Lora Myles:**

Yes. That is one of the four ways they can get a public guardian. They can either appoint their public administrator to that position, they could appoint another employee of the county, or they can contract with a private fiduciary to act as public guardian for the county. They can also contract with another county. In White Pine County, the public guardian is acting as the public

guardian for Eureka County since it is in the same judicial district. Eureka County does not have a public guardian.

**Chairman Anderson:**

Section 9 is aimed at the two counties with populations over 100,000.

**Lora Myles:**

It is aimed at all counties. In the counties under 100,000 in population, they can hire a private fiduciary for the public guardian position. The other provisions apply to all counties.

**Chairman Anderson:**

As I read line 12 in the document on page 4...

**Lore Myles:**

I apologize. I do see that is different from what the amendment was that we put in on the Senate side. We will reword that language.

**Chairman Anderson:**

How is it that you think it should read? Should it be "except in the counties with a population of 100,000 or more with a private professional guardian"? So, the smaller counties get to do this, but the two large counties do not?

**Lora Myles:**

Correct.

**Risa Lang:**

The way this is worded, it would mean that the smaller counties—those other than Clark and Washoe—could contract with private professional guardians.

**Chairman Anderson:**

In Clark and Washoe Counties, they would not be able to do this?

**Lora Myles:**

That is the way it should read.

**Chairman Anderson:**

A private professional guardian would not be allowed to be contracted in either Clark or Washoe Counties?

**Lora Myles:**

No. They would be able to handle cases, but they would not be able to handle the public guardian's cases. If they wish to apply for appointment as public guardian, they could do so.

**Chairman Anderson:**

Is there anyone else in support?

**Susan DeBoer, MSW, Master Guardian, Washoe County Public Guardian:**

I want to offer my support to this bill.

**Chairman Anderson:**

Let us turn to the opposition of the bill.

**Shelly Register, Registered Guardian, Guardianship Services of Nevada, Reno:**

Senate Bill 157(R1) was initially introduced as a cleanup bill and it is our opinion that it is not. There are substantial changes of law that are being made in this bill. Some of them may be well-intentioned, but they are not without costs to the citizens of the State of Nevada. Some of my concerns include what is on page 6, lines 28–31 in Section 9. There is some concern that while this measure creates the office of the public guardians, the counties do not necessarily have the funds. I am more concerned about the line that the Chairman had referenced in restricting the ability of the two largest counties in the State to contract with a private guardian, if they wish, to operate their offices. I am not sure I understand why the Legislature would want to restrict the manner in which the county would meet its burden. Should those counties for some reason wish to contract those positions at some time in the future, I believe that should be left to those counties. The way that portion of the bill is written causes me concern. On line 37, it would prohibit the hiring of private guardians to serve cases rather than having to hire more guardian case managers to meet the needs along with the attendant cost that employment would provide.

Our major concern is on page 7 at line 40 through page 8 on line 2, where it changes who can be appointed a public guardian. This is the part that is a substantive change in the law. Traditionally, the public guardian in the county is the guardian of last resort. The change proposed in this statute proposes to push private guardians out of the business even when the proposed ward has sufficient funds to pay for a private guardian. This is a major change that is opposed by most private guardians and some others. I am aware that the counties are enabled in this way to recoup their costs for indigent wards by charging the wards with funds. Given the overburdened nature of most public guardian offices, it hardly seems logical for them to take cases that could be

addressed by private entities. As taxpayers, we do not provide attorneys to citizens who cannot afford their own counsel in civil cases, so why are we providing limited government resources to citizens who can acquire private guardianship services? There is another problem with this section on page 7 on line 44. If the intention is to require a person to be eligible for a public guardian only—if there is no friend or relative to serve and the person is a resident of the county—you need to change that word "or" on line 44 to "and." That was the problem with the statute before—it said "or" instead of "and." The judges had told us if the person does not have someone to represent them or any other family member, then the public guardian could be appointed. If that is the way this reads in this statute now, then they do not have to be a resident of that county because the "or" should be an "and." I believe I heard Ms. Myles say that they should have to meet both criteria before the public guardian can serve. Of course, we would like to see that section not change at all, but if it is going to be changed, I would like to see that cleared up in the spirit of good legislation.

I have no problem with the clarification of the requirement of service on page 8, lines 11–19. Maybe it is not clear to some attorneys that the public guardian should be served before they file an action. I have an objection in subsection 4 about the part that requires the service. I have an objection to requiring a deputy or public guardian to have to sign a certificate of service because if that public guardian is not available, they do not have a deputy, or the deputy is not available, then the court is delayed in giving attention to a person who is at risk and in need in order to get a signature. I am not sure why public guardians cannot be served like anyone else in a lawsuit where certificate of service is sworn to by the attorneys. If indeed there is a problem, then the court should handle that. This will not stop the courts from accepting cases where somebody is at risk even if the service requirements are not met. It will cause them to ask counsel if they serve the public guardian. If you do require a signed certificate of service, there is no way for the petitioner to explain to the court that the public guardian was not available or there was no deputy. Certainly, it is good practice to notify the public guardian in advance, but this is a flawed section because it does not provide for adequate protection of the wards.

I would like to be able to support this bill in general because I believe that counties should have public guardians or someone who serves as the public guardian. We do have at least one county that is not appointed ex officio, and their public administrator is leaving people at risk; however, there are too many problems with S.B. 157 (R1) and I ask that you vote "no" on it.

[Chairman Anderson leaves.]



**Vice Chairman Horne:**

Are there any questions from the Committee? [There were none.] We have lost our quorum so we cannot take any action if we were inclined to. This will be pulled back to the Committee. Is there anyone else in opposition?

**Dennis Travers, Master Guardian, Guardianship Services of Nevada, Reno:**

I am here in opposition to the bill. From the perspective of our group of stakeholders here—the private and professional guardians—we are experiencing a strange disconnect in this current legislative session between S.B. 157 (R1) and A.B. 522. Assembly Bill 522 is a bill being jointly developed by Nevada Division of Aging Services, the professional guardians practicing in Nevada, and other interested parties. It creates a State board to license and oversee professional guardians in Nevada. At the same time, the public guardian's offices in the current bill, S.B. 157 (R1)—Section 11, page 8, lines 1 and 2—are seeking to change the existing law to allow them, the taxpayer-supported government agency, to directly compete with the private guardians. This is essentially the government competing with the private sector on a very uneven playing field. Judging from testimony from the Clark County public guardian's office in the Senate, this has been an ongoing issue in Clark County despite the intent of the existing law. This is a county business where certain individuals with resources are expected to pay for the county services and others get the same services at no charge. I do not believe it is justified to change existing State law to bring one relatively small county agency into compliance with the law. People are not entitled to have a guardian; it is an unfortunate but necessary service. It is an essential component of the support system for many disabled individuals, just like the legal, medical, and social services components. Historically, the public guardian's offices have been the guardian of last resort to provide this service to the indigent citizens of their counties. The overall effect of S.B. 157 (R1) as currently drafted is to start to move the public guardian's office out of this essential role as the guardian of last resort. Section 11, subsections 4 through 6, creates an unnecessary barrier to the public accessing the services of this critical government agency, and provides an opportunity for the public guardian's offices to serve as gatekeeper. This can effectively delay a guardianship intervention that is often an emergency, or in the worst case, even completely deny access to the courts. Current law requires them to be noticed like any other party to the case. Why create a special situation for the public guardian's office and another barrier to services for the public? The components of S.B. 157 (R1), other than those mandating the creation of rural public guardian's offices, are essentially a barrier-building and featherbedding effort by the existing public guardian's offices. Additionally, the bulk of this bill creates an unfunded mandate for Nevada's rural counties, thereby removing pressure on the existing public guardian's offices in the larger counties. I question whether this is the right way to do this. This bill creates

special treatment for the public guardian's offices at the expense of the public they are supposed to serve.

**Vice Chairman Horne:**

Did you express these concerns on the Senate side?

**Dennis Travers:**

We did.

**Vice Chairman Horne:**

Ms. Register, is it your testimony today that this is not an amendable bill? In your testimony, I heard you make a few statements on possible language changes? Did you propose those in the Senate? Do you have written proposed amendments that you can submit to the Committee?

**Shelly Register:**

We had made proposed changes on the Senate side. Some of them were for clarification. I do not have any changes today, but I could propose some. With some of these provisions, especially Section 9, I am not sure that it is amendable at this point to the satisfaction of all the stakeholders involved. I would be willing to provide those suggested changes, if that would be of assistance.

[Chairman Anderson returns.]

**Vice Chairman Horne:**

In addition to speaking on the bill in the Senate, did you also speak with the bill's sponsor, Senator Mathews?

**Shelly Register:**

I did not speak to Senator Mathews in depth about this bill. I did provide her with information relating to our concerns about the changes that were presented as cleanup changes. I did not follow up with the conversation with her.

**Vice Chairman Horne:**

If you believe this bill is amendable, get those suggestions to us in writing. We can get together and flesh out some of these issues.

**Lora Myles:**

Section 5, where they are requiring the public guardian to sign a confirmation that they have received notice, was addressed with amendments in the Senate and was worked on quite extensively. In Section 10, they made it mandatory

that the public guardian does appoint a deputy public guardian so that somebody would be available at all times to sign on any petition that they have received. There was concern that it was not funded. It is up to the county commissioners how much they want to pay the public guardian. In some counties, for instance, the public guardian receives \$150 a month to handle approximately 25 cases. In other counties they receive approximately \$40,000 a month to handle the same number of cases. It is up to the county commissioners. The public guardians are still the guardians of last resort; that is still quite clear in Chapters 159 and 253 of NRS.

**Vice Chairman Horne:**

Anyone else? [There was no one.] We will close the hearing on S.B. 157 (R1).

**Chairman Anderson:**

Let us open the hearing on Senate Bill 354 (1st Reprint).

**Senate Bill 354 (1st Reprint): Makes various changes to provisions relating to the safety of children. (BDR 15-1062)**

**Senator Stephen Horsford, Clark County Senatorial District No. 4:**

I am here to present S.B. 354 (R1), which was introduced and passed unanimously by the members of the Senate. This bill increases the penalty for the unlawful possession of a firearm on a Nevada System of Higher Education campus or public school property. Currently, it is a gross misdemeanor to illegally possess a firearm on school property. Senate Bill 354 (R1) would make it a category E felony. Mr. Chairman, I know you are aware of the shooting that occurred at Pine Middle School in Reno last year. I do not have to tell my colleagues from southern Nevada how many times a firearm is illegally brought to a school. While I am typically not a big supporter of legislation that increases incarceration rates, for some criminal activity there must be a strong message that crime will not be tolerated. Schools are a place for learning and it is one place where children should feel safe. Senate Bill 354 (R1) seeks to make that possible. I want to make it clear that this bill was submitted last year well before the events at Virginia Tech, where 32 victims lost their lives and the gunman shot himself. With the passage of S.B. 354 (R1), Nevada can take the necessary steps to prevent a Columbine or Virginia Tech event from occurring. The provisions in S.B. 354 (R1) require that if a person is taken into custody for possessing an illegal firearm on school property, they submit to a drug test and a mental evaluation by a qualified professional as ordered by the court. This provision seeks to provide help to the person who has a problem, while being tough on crime for carrying an illegal weapon on campus. The bill was amended in the Senate, at the request of law enforcement, to revise the definition of

"illegal firearm" concerning paint guns, so that would not be a category E felony.

Senate Bill 354 (R1) expands the scope and authority of a school police officer to include the authority to issue traffic citations on streets adjacent to public schools. This is a public safety concern because currently school police cannot issue traffic citations for violations committed on streets adjacent to school property. They only have jurisdiction on school campus. This issue was identified by several school principals and members of the Parent Teacher Association (PTA) who were frustrated by the number of traffic violations that are committed on streets adjacent to schools. I have witnessed individuals who double-park to drop off their kids at school and individuals who speed. With the increased number of crimes occurring, many in law enforcement are not school police, and they are not always able to properly cover or respond, so many of these issues go unaddressed.

Finally, the measure requires that a facility housing four or more sex offenders must be a facility for transitional living licensed by the State of Nevada. Currently, there is a loophole in NRS 176A.410 that allows convicted sex offenders to live in a transitional living facility that is not properly licensed by the State. This issue was brought forward after it was identified that there were six unlicensed transitional living facilities for offenders operating in North Las Vegas with no public notification, no approval, and no licensure. They were living within blocks of schools and parks where children congregate. We believe this statute needs to be clarified. The provision in the bill would require that they reside in licensed facilities.

There is a friendly amendment being brought forward by Assemblywoman Smith to add a provision related to child care facilities, and I am in support of that amendment.

**Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1:**

We have worked tirelessly on these issues to try to address all the loopholes. There is a companion bill that addresses how the facilities will be licensed, but that bill does not address sex offenders, so we wanted to specifically talk about those types of homes and what their provisions are. In Clark County there are transitional living facilities that are handing out information on a paper that says someone can rent a room for \$100. They are renting this room to six to ten folks at a time and they are not licensed. There was also an issue with nonprofit organizations that did not have to register with the State. I presented my bill recently to the Senate. When I laid out where all of these homes were, senators were amazed that there would be only two that were licensed by the State, but there might be 27 that were in that same area. Local government

cannot do their job if we do not have full licensing. The Department of Licensing has agreed to put them all on the website together so we can protect our children who are living within the area. Some sex offenders are living within 100 feet of schools.

**Senator Horsford:**

I had said four or more sex offenders, but it is three or more.

**Chairman Anderson:**

Three of the members of this Committee are on the Select Committee dealing with problems of overcrowding in the prison system. One of the issues that comes in front of that Committee on a regular basis is the difficulty for sex offenders to fulfill their requirement to register as a sex offender, their need to have a location to go to, and to put together their documents to get out of prison. Overcrowding is a major issue. Transitional housing for sex offenders is also a huge issue, the lack of which oftentimes results in denial of parole. We end up holding people in prison who would otherwise be able to be in society with supervision, of course. They finish their sentence, they get out, and there is no supervision. We have sex offenders coming out of prison with no one watching them. What happens then? Are we limiting our ability in some way to deal with our overcrowding issue and the safety of children because we are allowing offenders to finish their sentences rather than go through a transitional housing program?

**Senator Horsford:**

You raise the bottom-line issue of how we are going to properly address not only the housing needs, but the transitional needs in general of sex offenders upon release. It is something that I have been working on with a committee from Parole and Probation and Corrections and they have also raised the same questions. We already have statutes in place that were passed in 2005 that require the licensing of transitional facilities for sex offenders. The problem is that there is a loophole. There are three sections of that statute—A, B, and C. Section A says if you only provide residence, you do not have to be licensed. Sections B and C say if you provide drug and alcohol or other counseling or supportive services, then you do have to be licensed. As you know, Mr. Chairman, there is a whole process in the Division of Licensure for becoming a licensed facility. It includes ensuring the safety of the offenders who will live in that transitional living facility. It includes requiring bonding and insurance, ensuring that there are sprinklers in the facilities. While that might seem like a hardship, we want individuals who are released to be placed in safe environments so they do not commit crimes and return to prison.

We have to balance the interest of the community and public safety of law abiding citizens to those who have committed crimes. The public deserves to know when they buy or rent in a neighborhood whether there is a licensed facility in the area.

What I would like to suggest is that we continue to work on other recommendations which address the long-term housing needs of all offenders, including sex offenders.

[Chairman Anderson leaves.]

**Vice Chairman Horne:**

I am a concealed carry weapon (CCW) permit holder. In my daily practice, I sometimes find a need to carry in places I have to go to do interviews of witnesses or clients. I also find myself having to pick up my child at school or teach at the university. I do not drive home and drop my firearm off, so it is either in my car or it is on my person. If I was pulled over coming out of my child's school and I had my weapon on me, I could be charged with a felony. It seems like an unlikely scenario to happen, but one that is out there. How would you address that concern because there may be others who will say the same thing?

**Senator Horsford:**

I understand the dilemma. There are processes where firearms are permitted, and through permission you are allowed to have them. What this bill gets to is the illegal possession of a firearm and bringing those on campus. The intent is not to take away an individual's right to carry, but to clearly state that school campuses are not a place for guns, unless they are otherwise permitted by administration for a purpose that is otherwise required.

**Assemblywoman Allen:**

I applaud you for bringing this piece of legislation forward. I had a situation in my district two years ago where a residence that was used as a rental property was turned into one of these transitional living homes without any notice to the neighborhood. My constituent did not know about the facility until he had a screaming young woman come to his door saying that she had just been sexually assaulted. In your disclosure portion, how does the notice work? Do you notify the homeowners' association or the residents directly by mail, do you notify the schools, what procedure is laid out?

[Chairman Anderson returns.]

**Senator Horsford:**

Chapter 449 of NRS deals with the licensure process through the Division of Licensure. The companion bill to this one tightens that process and provides more clarity than what was already on the books. A facility that wants to become licensed has to submit an application. There are criteria that have to be met. Local government has asked for some review or approval process of their own because the issue is not just about the State approving the facilities without local government knowing where they are located. Assemblywoman Kirkpatrick's companion bill addresses that provision. It improves the public notice process. There is not enough public notice even in the licensure part of it. With the loophole, we have facilities that were getting around being licensed all together. The State did not even know they existed. That was a tremendous problem. We had one particular residence in my district where there were 12 individuals living and eight of them were sex offenders, one of which was a Tier 3.

**Assemblyman Manendo:**

I have a bit of concern with making this a category E felony. What happens if a principal or childcare facility does not give permission even for a CCW holder?

**Senator Horsford:**

Law enforcement would look at the intent on a case-by-case basis. We may need language that clarifies that. I understand the concern. When there are five instances of students carrying firearms at one particular school, something has to change. The message has to be stronger than it currently is. A gross misdemeanor is nothing more than a slap on the wrist and will not change behavior. If we have to make some examples of students carrying illegal firearms by making them felons, then that is the message that needs to be sent.

**Assemblyman Manendo:**

Maybe we can put in an age limit or something.

**Senator Horsford:**

We had an incident at Western High School in Las Vegas involving road rage. An individual had a firearm in his car, followed students from a 7-11 to the high school, and threatened them. He was later detained and the police found the firearm. I would not feel comfortable putting in an age requirement because there are 18- to 20-year olds who like to hang out at high schools. If they are carrying weapons and they are intimidating or causing direct harm to individuals, then I think they need to pay the price.

**Assemblyman Horne:**

I primarily bring up the issue because it has been brought up in other bills over the years. I also want to make sure the record is clear in terms of legislative intent. It is difficult to make perfect legislation. I hope to have that record in case it is ever needed if this measure is ever abused. If I am pulled over for reckless driving while I am leaving my child's school and I have a gun, the officer will assume I had the gun while I was on school property and want to charge me with a felony. I do not think that is what this bill is intended to do. Under this, they could technically charge me with a felony. I do not know how to craft that out and still provide the same protections that we are trying to get into the bill.

**Brian O'Callaghan, Detective, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**

Senator Horsford is correct. If you come in with a weapon and it is legal, it is evaluated on a case-by-case basis. An officer would not make that charge. If you have been stopped and there is an illegal weapon in the car, that is another issue. If it is legal, you would be released.

**Assemblyman Carpenter:**

In these transitional living facilities, are they licensed to have six to ten sex offenders in a residence?

**Senator Horsford:**

Part of the licensure process involves looking at the square footage of the residence and determining what is a reasonable amount of individuals to reside in that dwelling. If they are not licensed, that is not followed. They look at everything, including whether there is a washer and dryer in the residence, how many bathroom accommodations there are, et cetera. It is a pretty thorough process when they go through licensure. If it is a large building, then there could be more individuals living there

**Assemblyman Carpenter:**

Do they look at whether they are near schools?

**Senator Horsford:**

Nevada is one of the few states that do not have distance requirements. There are bills that would create distance requirements from schools, parks, and other places where children congregate. The standard that we approved was 1,000 feet. It was 1,000 feet for residence and 500 feet for loitering. If the bill is passed and signed by the Governor, then that would be a consideration.



**Chairman Anderson:**

Are there any other questions for Senator Horsford? [There were none.]

**Assemblywoman Debbie Smith, Assembly District No. 30:**

I am presenting an amendment to S.B. 354 (R1) after asking permission from the sponsor of the bill ([Exhibit C](#)). I work with a group called the Nevada Association for the Education of Young Children and help them with their public policy issues. After session started, I was contacted by a daycare provider who is a member of that organization regarding something that had taken place at her facility. She was very upset because some bounty hunters came into her facility with guns drawn, looking for someone. They were actually looking for the mother of one of the children being cared for, and the mother was not the person they were ultimately after, but they were trying to get some information. The daycare provider was dismayed to find that their actions were not illegal. It was a horrible thing that they endured over a significant period of time; it did not just take place in a few moments. I was surprised when I contacted our Research staff and found that child-care facilities are not in the statute as areas where guns cannot be carried. I talked to the Chairman and the sponsor of the bill when we knew that this bill was a place where we may be able to correct this. I would ask for your support of this amendment. If we think that other types of school systems—including higher education and K–12 public school systems—are places where we should not have guns, then child care facilities should be the same.

Mr. Horne, I heard your concern about your issue. If I can work on resolving that in this regard, I would be happy to.

**Chairman Anderson:**

Mr. Horsford, we want to make sure that you are in support of the additional language.

If I am a police officer and I need to drop by and pick up my child from daycare, am I going to get charged?

**Senator Horsford:**

With the amendment being brought forward, we could work with your Committee to add the provision about legal possession and the motive or intent policy that law enforcement would follow.

**Assemblyman Carpenter:**

A number of these daycare facilities might be private homes. If someone is in that home and has a weapon, then this would apply, would it not? It seems to

me we need some kind of exception here so that people who are using their private home to care for children do not get caught up in this situation.

**Assemblywoman Smith:**

I will investigate that. You are correct. While you could still have an issue, there would be no intention of invading the privacy of someone's home. I will work on the definition.

**Assemblywoman Gerhardt:**

If we are going to go down that road and start putting in some provisions about child care in the home, we might want to consider folks who do have weapons in a home with children. Yes, I understand that you have a right, but if you are taking care of children, those weapons you have a right to own need to be secure if you have little kids running around.

**Assemblywoman Smith:**

I agree. I am relatively certain that those are already in the provisions of licensing, but I will follow up on that.

**Chairman Anderson:**

Is there anyone else who wants to speak in support?

**Bryn Lapenta, Interim Assistant Superintendent, Washoe County School District:**

We were able to work with the sponsor on an amendment to the bill and we are here to offer our support.

**Chairman Anderson:**

You feel the School District was concerned about the opportunity to give traffic citations on adjacent streets.

**Bryn Lapenta:**

Correct. The amendment we offered was to be able to have jurisdiction in places where we hold off-site events, such as prom or graduation.

**Craig Kadlub, Director, Government Affairs, Clark County School District:**

The bill summary is very clear. This is about child safety. We support appropriate penalties, keeping track of offenders, and the expanded use of school police, as well as the amendment offered by Washoe County.

**Chairman Anderson:**

Clark County has had some issues with this in the past. Do you perceive that this gives school police the authority to follow school buses and give out citations along the bus route, also?

**Craig Kadlub:**

The School District submitted a bill with comparable language. This is slightly different. In addition to the amendment, this says "when in hot pursuit of a violator leaving such property." If this language is accepted, I would think that would mean only in the event of an offense. I do not believe that we would just have officers following school buses. The officers can enforce things at school bus stops or if there is an incident reported on a school bus. The intent of our legislation is to improve safety wherever students are gathered.

**Chairman Anderson:**

I appreciate that. We dealt with the issue of school police jurisdiction several sessions ago. There was a crime committed on school property. The school police arrived and did not secure the site, leaving it for other criminal investigators. Evidence was lost, so there was not a proper prosecution. Is this a slippery slope?

**Craig Kadlub:**

With respect to the bill the School District introduced, our position was primarily related to traffic control. Our concern was parents making illegal U-turns, stopping in crosswalks, parking three cars deep, and the sort of thing that would endanger students.

**Chairman Anderson:**

Let us say the principal comes out and sees violations happening. He calls the nearest high school where there is a regular school police officer in a vehicle. The principal's school may only be a few blocks away, but by the time the officer arrives on the scene, the person committing the violation has fled. The officer got the license plate number from a witness. Since the violation did not take place in his sight, is he going to be able to do anything, or is that a matter for the city police?

**Craig Kadlub:**

The intent is that the officer would be issuing a citation to the vehicle not the driver, just as officers currently issue parking citations. It follows the exact same process. It is not a money-maker for the District. If they refuse to pay it, it ultimately ends up at the Department of Motor Vehicles (DMV) and they cannot reregister their vehicle.

[Chairman Anderson leaves.]

**Brian O'Callaghan:**

If a school police officer stopped a vehicle in front of the school and there was a dead body in the back—which is a category A felony—he would be able to secure the scene and wait for other law enforcement to come in and handle that situation.

**Assemblyman Carpenter:**

Are all school police Category I police officers?

**Brian O'Callaghan:**

They are Category II officers.

**Assemblyman Carpenter:**

In the real world, what does that give them the authority to do?

**Brian O'Callaghan:**

By law, Category II officers can issue citations now, but school policy does not allow them to do so. All Category II officers can enforce most traffic violations.

**Assemblyman Carpenter:**

You mentioned that you want them to be present when there are off-campus activities. Are you going to run into any problems with the local police when having your officers where they have the jurisdiction?

**Craig Kadlub:**

We already do that. There is a cooperative relationship. If there is an event at the Rio Hotel for high school students, we will send a school police officer to that event. In that case, there is hotel security, local law enforcement, and school police.

**Vice Chairman Horne:**

Is there anyone else in favor? [There was no one.] Let us move to the opposition.

**Charles Burnett, Private Citizen, Las Vegas:**

I have heard a few times that our goal is to make the children and the people in the schools feel safe. I would like to differentiate between feeling safe and being safe. I have no issue with higher penalties, but it concerns me if we think that higher penalties will deter someone who is considering murder and suicide. My concern is one of a CCW holder—one who often has business at or near schools. I certainly do not want to get a misdemeanor or a felony for having a firearm near a school with no intent. Having law enforcement say they are going to evaluate intent on a case-by-case basis is uncomfortably vague. I

wonder if it might not be wise to consider wording that would exempt CCW holders specifically from the felony charge. Subsection 4 would perhaps be a logical place to insert such an exemption for CCW holders. If that is too liberal, then perhaps it could be in Section 1, paragraph 1, where it says "except as otherwise provided."

I am confused about another section. On page 3 of the bill as amended, in the concealed firearm section of the law it says where a permittee may not carry and it mentions "a public building on the property of a public school or property of the Nevada System of Higher Education." Then it says that anyone who violates that subsection is guilty of a misdemeanor. Is that enough to say that a CCW holder would just face a misdemeanor or does the felony provision override that?

**Risa Lang, Committee Counsel:**

It is saying that someone cannot carry in those locations listed unless he has permission. If he falls within the provisions of NRS 202.265 listed in Section 1, he could be held to a category E felony.

**Vice Chairman Horne:**

Mr. Burnett, the section it refers to, NRS 202.265, is being changed. It would not be a misdemeanor. It could be charged as a category E felony unless one has permission.

**Charles Burnett:**

That law has been a little inconsistent before because it has been a gross misdemeanor to have a weapon on the premises of a public or private school. Section 2 does mention a misdemeanor penalty for those with a CCW.

An unintended consequence of this is that we will not have responsible adults with a means to prevent bad things when they happen.

**Vice Chairman Horne:**

I understand your concerns, and others here have expressed the same concerns. I am not certain if they can be completely addressed. We will look at it in work session.

Any other questions? [There were none.] Anyone else in opposition? [There was no one.] I am going to close the hearing on S.B. 354 (R1).

We will open the hearing on Senate Bill 237 (1st Reprint).

**Senate Bill 237 (1st Reprint): Revises certain provisions governing permits to carry concealed firearms. (BDR 15-47)**

**Senator John Lee, Clark County Senatorial District No. 1:**

This Committee probably knows more about this issue than I do. Assembly Bill 268, which you previously heard, required the Attorney General to designate other states that meet Nevada CCW requirements each year and enter reciprocity with each state that meets those requirements. Senate Bill 237 (R1) has taken a different avenue for the CCW licensing in Nevada. This bill is asking to require the Department of Public Safety (DPS) to examine the CCW requirements of each state once a year to determine which states are substantially similar to or more stringent than Nevada, and determine which states have an electronic database that is available for 24-hour access through national law enforcement telecommunications. Assembly Bill 268 asked for that, but also had a provision for access to the database by telephone. We are not allowing that to happen. If they do not have the 24-hour national law enforcement telecommunication system, we are not allowing that state to have reciprocity with us. We are also asking DPS to prepare a list of states that meet our requirements and bring that to the Nevada Sheriffs' and Chiefs' Association (NSCA) to make sure it is vetted again. We are not removing the civil penalty of \$25 for each violation of carrying a CCW of a nonreciprocal state in Nevada, even if the CCW is valid in that other state. We are allowing the police to realize that people travel through areas and allow them some discretion.

I have reached an agreement with the NSCA to hold, once a year, a CCW open meeting with residents to discuss the education requirements, training, and reciprocity. Each year, they meet in either the north or south, and this will give both parts of the State a chance to visit personally with the NSCA to discuss this issue in an open forum.

People who get CCWs for the most part are excited. They go to class, they finally qualify, they get the CCW, they get their holster and gun, and they feel pretty secure. After the change of season comes, they have to change clothes and how they handle this gun. After three to six months, they finally start putting it in their glove compartment box because they are tired of carrying it. After it is in their glove compartment for about three months, they figure someone could steal their gun, so they take out their gun and put it in the safe at home. They will take it out when go traveling somewhere, but they really do not carry this gun with them after about six months. Most people who have CCWs are just people who want a little added protection in an area they are not as familiar with.

**Assemblywoman Gerhardt:**

This is long overdue. We really need reciprocity with other states. I appreciate you bringing this forward.

**Vice Chairman Horne:**

An issue that I have always had with reciprocity is the recognition of other states' CCW permits, not knowing the standards they follow, and if they are going to meet our standards. Do you believe this bill addresses that?

**Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:**

We have worked hard in crafting this bill and we feel very comfortable with it. Before a state can be considered for reciprocity with Nevada, it must have an online database of CCW holders in the state so that we can have access to it 24 hours a day. If an officer in Las Vegas stops someone with a gun and they have a CCW permit from Utah, we can go online and see if that permit is active.

The DPS would look at the CCW requirements in those states that do have online databases and wish to have reciprocal agreements. The Attorney General's office would look to see who matches Nevada's requirements in training, background investigation, and other requirements. At that point, the Attorney General's office will come to the NSCA and tell us which states have online databases, similar or stricter requirements, and meet our requirements for reciprocity. Then we would approve that and sign an agreement with those states for reciprocity.

**Vice Chairman Horne:**

So, you do look at those states' actual requirements?

**Frank Adams:**

Yes. We would look at their actual statutes and compare them to ours to make sure they have requirements greater than or equal to Nevada's CCW requirements.

**Vice Chairman Horne:**

Currently, do you know which states currently have an online database?

**Frank Adams:**

The DPS did a study and determined there are 17 states with an online database. As states come online, they could be reconsidered for participation.

**Vice Chairman Horne:**

Are any of those states western states?

**Frank Adams:**

They are. I will get that data for you.

**Vice Chairman Horne:**

Do you believe that Nevada's requirements to obtain a CCW are adequate?

**Frank Adams:**

I have had the opportunity to read many CCW laws. We have one of the better laws with regards to CCWs. Even when you consider the changes this bill would make, we are still better than most states in how we look at the person and how he is qualified and trained. There are some states in which for \$35 anyone can get a card without a background check.

**Assemblyman Goedhart:**

Is there another bill this session dealing with reciprocity between Las Vegas and the rest of the State? Is that being addressed in this bill or elsewhere?

**Senator Lee:**

No, sir. That is Senate Bill 192.

**Assemblyman Segerblom:**

Did we not hear that there was an issue about the Brady exemption? Would this bill impact that?

**Frank Adams:**

This would not affect the Brady exemption. This deals strictly with reciprocity.

**Assemblyman Segerblom:**

Was there not some evidence that we were going to lose the Brady exemption if we did not do something?

**Frank Adams:**

That is still a possibility because there has been no movement in resolving that issue.

**Vice Chairman Horne:**

That was the other bill that dealt with obtaining the CCW. This bill is about recognizing CCWs from other jurisdictions. It is our hope that if we recognize their CCW laws, they will recognize ours.



**Assemblyman Segerblom:**

If we have a Brady exemption, does the other state not have to have a Brady exemption? If we give them reciprocity and they do not have an exemption, does that not create a problem?

**Frank Adams:**

They are two separate issues. There are only 16 states that actually have Brady exemptions. I see no nexus between the Brady exemption and reciprocity.

**Brian O'Callaghan, Detective, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**

We are in support of this bill.

**David Schumann, representing the Nevada Committee for Full Statehood:**

I have provided some charts from a book called *More Guns, Less Crime* by John Lott ([Exhibit D](#)). This bill will make people with CCWs happy and the State safer. When the bad guys do not know who is armed, they are more hesitant about committing bad acts. We are in full support of this bill.

**Janine Hansen, President, Nevada Eagle Forum:**

We have long supported reciprocity ([Exhibit E](#)). We are happy to support this bill. On the average, murder rates in states without CCW laws are 127 percent higher than states having the broadest CCW laws. Guns are used to save lives almost five times as often as to commit crimes. I have a CCW permit. Because of my travels between Elko and Washoe Counties, I have carried my gun more than I ever have before.

We think the portion of the bill on page 3, lines 12 and 13 is very important because it says it will make the list of states available that have reciprocal agreements or are approved by the State of Nevada available to the public. This way the public will be able to know where they can carry. On that same page, line 17 talks about changing the law to approving individuals for a category of firearms, either revolvers, semi-automatics, or both. This is a very important change. When I renewed my permit, I had to qualify on four different handguns. In this way, someone would only have to qualify on a revolver or a semi-automatic, and that makes a tremendous amount of sense especially in the case of reciprocity where a category qualification requirement is utilized in those states.

It is scary for a woman stopping at a rest stop, for example, when I have my 91-year-old mother with me, where I am undefended. It is the same case as when traveling to other states, a person needs to feel that protected. In

98 percent of the situations where someone was accosted, they only had to show that they had a gun for the situation to be resolved; in only 2 percent of those situations did the person ever fire a gun and those were usually warning shots. This is a great deterrent for crime. As we know, guns for women are the great equalizer. This is a very important bill for personal safety. The *Nevada Constitution* specifically mentions in the article on guns the right to self defense. This is critical and I urge you to support this bill.

**Vice Chairman Horne:**

I often hear it said that guns can be an equalizer, particularly for women. What people often forget is how often guns are taken from people, particularly women, who are not trained with firearms or not prepared to use them. Then the gun is used against them. I find that unfortunate. There are women who carry guns because they feel safer, but they are not adequately trained or prepared to use them. I just wanted to clarify that blanket statement that if a woman has a gun that everything has been equalized because that is not always the case.

**Janine Hansen:**

I completely agree with you. I was so appreciative of the classes I took for my CCW permit which specifically concentrated on not just using the gun, but on self-defense and making sure I could handle the gun. I felt so much more secure after having those classes and the renewal class. It is critical that people know how to use guns. The classes have greatly contributed to the fact that the gun would not be taken away from me, and I would be prepared to use it the right way so that I would not be a hazard to myself.

**John Wagner, representing The Burke Consortium:**

I support this bill. I would like to see one change. Currently, a CCW expires five years from the date it is issued. I would prefer to see that expire on one's birthday.

I carry my gun when I travel on the highway. When I travel around town, I do not carry it with me. I do carry it when I walk my dog. There are coyotes. I keep it concealed because people might get jittery.

**Charles Burnett, Private Citizen, Las Vegas:**

Everyone has covered the points I was going to make. I strongly support this bill. I tell my students in the CCW class that if they have a fear that they may someday need to protect themselves, then they should carry their guns all the time. I know that it can sometimes be a burden.

When a woman is armed with a gun or a knife, only 3 percent of rape attacks are completed as compared to 32 percent when unarmed. That is from the U.S. Department of Justice rape victimization study. Armed citizens have a better chance against crime.

**Vice Chairman Horne:**

Are there any questions? [There were none.] Is there anyone in opposition to the bill? [There was no one.] Seeing no one else, we will close the hearing on S.B. 237 (R1). We will open the hearing on Senate Bill 420 (1st Reprint).

**Senate Bill 420 (1st Reprint): Makes various changes to provisions relating to property. (BDR 13-1305)**

**Senator John Lee, Clark County Senatorial District No. 1:**

About six years ago, Don Ashworth and I worked with the Committee and brought together a lot of the Uniform Probate Code issues. These are some cleanup issues that former Senator Don Ashworth would like to talk to you today about.

**Don Ashworth, Private Citizen, Las Vegas:**

This bill brings about two or three things. The very first part of this bill, at Section 1, under NRS 164.130, is dealing with the ability of a trustee and a beneficiary to do a petition rather than just somebody who is nominated by a trustee. In other words, it is opening that position up to include the trustee as well as the beneficiary. The beneficiary has always been there.

A spendthrift trust is a legal document which allows an individual to set up a trust or have a trust set up for their benefit that cannot be invaded by other individuals and that is what we have under that NRS 21.080, which is the section on the chapter of enforcement.

**Vice Chairman Horne:**

On page 3, line 9, I am reading that it does not require a distribution to the settler if the trust instrument provides that he may receive it only in the discretion of another person.

**Don Ashworth:**

If a trust is set up by another individual—your parents or grandparents—then that trust is a spendthrift trust and it cannot be invaded by another individual. You cannot set up a spendthrift trust for yourself, but a third party can set up a spendthrift trust for you. The reason for that is a third party can do anything with their money that they want to. If they want to give you a trust with certain limitations on it, that is exactly what they do rather than giving you the

specific right to deal with that trust in any way you choose. There are certain limitations placed upon that. At the bottom of Section 3, starting on line 24, all we are doing is giving a more precise definition of when the statute of limitations begins to run on certain transactions that happened for the spendthrift trust. One of them deals with whether there is a recording of a public document which would be a deed, recording of a conveyance of real property through a deed in the recorder's office, or a filing with the recorder under the Uniform Commercial Code (UCC). Both of those events start the period for your statute of limitations period.

On page 4, starting with line 1, we are talking about the spendthrift, then we get down to line 7 and the subsection does not apply to the interest of the beneficiary of a trust where the beneficiary is the settler of the trust and the trustee is a spendthrift trust that was created in compliance with Chapter 166 of NRS. Chapter 166 of NRS is the spendthrift trust provision itself.

Now we get under Title 12, the probate sections. That was the area I was in for fifteen years. I felt it was necessary to place another definition in Chapter 132 of NRS. I had attorneys coming to me saying, "Well, it states in the law that you can go to a court or district court. I am going to a district court in another state." I said, "You cannot do that. The statute is specific to our State." So there will be no question in anybody's mind, we went ahead and placed that definition, specifically stating that it is the district court of this State sitting in probate or otherwise adjudicating matters pursuant to this Title 12.

Section 7 beginning on line 24 is a provision for when someone dies intestate, meaning that he dies without a will. He dies with no issue, no spouse, no father or mother. The current bill provides that the estate goes to the brothers and sisters of the decedent and to the children of any deceased brother and sister by right of representation. Right of representation means that one could follow the bloodline down to nieces and nephews four or five generations below the individual he was actually taking from; that is why we changed the terminology of right of representation to the terminology "per capita." Per capita means "by the head," so what this means is the estate goes to the nieces and nephews of the brothers and sisters and then it stops. It does not go into any second, third, fourth, fifth, sixth nieces and nephews.

**Vice Chairman Horne:**

Let us say you die intestate and you have two brothers, two sisters. One of the brothers has passed and has two children. Each of the remaining two sisters and brother each get a quarter of the estate and the two children of the deceased brother would get an eighth a piece.

**Don Ashworth:**

That is exactly right. Let us suppose there were two children of the deceased brother and sister. One of those had a child, but that individual was also deceased. The inheritance of the eighth of the estate did not stop there; the eighth then went down to the second nephew or niece below. This bill cuts it off exactly where you were at in your example and does not go any further down than nieces and nephews. If in fact the individual dies and has no issue, then it flows back in and augments the interest of the other three living relatives.

**Vice Chairman Horne:**

So, we are stopping it at two levels of consanguinity?

**Don Ashworth:**

That is correct.

There is a triple penalty in NRS 143.100, and that is where a personal representative takes property of the estate that was really not their property. We have another statute that provides for a triple penalty and all we are doing is bringing this into conformity with that other probate statute.

**Vice Chairman Horne:**

Can you provide us with that statute?

**Don Ashworth:**

I do not have it with me, but I will get that to you.

Here is where the changes to the law are really meaningful. We are trying to bring some parallelism into the statute now. Let us say someone has a summary administration which is an estate that is \$200,000 or less. That only requires a 60-day notice to creditors. A general administration, which is over \$200,000, requires that a 90-day notice be given, but NRS 146.070 says that if the net estate is less than \$75,000, then it can be handled under NRS 146.070. Let us go to NRS 146.070.

**Vice Chairman Horne:**

Are you in Section 11, Mr. Ashworth?

**Don Ashworth:**

Yes. I am talking about in Section 11 on page 5, starting at line 9. The only thing we would like to do there is raise the amount from \$75,000 to \$100,000. You will see that the \$75,000 is computed by deducting the encumbrances. In the summary and the general administration, it is on the gross estate. I cannot

tell you how many estates I have had where the attorneys have gone through it with a net estate of, let us say, \$150,000, but a gross estate of \$300,000, and they tried to probate it as a summary administration. We tell them they have to go back and get an additional 30-day notice to creditors because this should have been, and needs to be, converted to a general administration.

**Vice Chairman Horne:**

Was that because they were going by the gross amount instead of the net amount?

**Don Ashworth:**

Exactly. They were thinking back to NRS 146.070. All we are doing is bringing statutes into conformity with one another so that the summary administration, the general administration, and the set-aside without administration—which is NRS 146.070—all have the same definition as to how to come up with the amount as being the total gross amount less any encumbrances.

**Vice Chairman Horne:**

That has been explained. Could you jump ahead to Section 12?

**Don Ashworth:**

The reason that I am of the opinion that NRS 146.070 is such a great section is because a set-aside without administration takes one notice of ten days and that is all and it is done. The disadvantage of it is that if you have a will, the will does not take effect if the estate is less than \$100,000 because the statute is set up where the first \$100,000 goes to the spouse and/or minor children. If you have no spouse or minor children, then it goes to the creditors and then it goes according to intestate succession.

The rest of this is bringing into conformity the \$100,000 from the \$75,000; that is what page 6 does. Page 7 is under the trust section, Title 12. Line 20 on page 7 has to do with granting relief for an individual who has brought an action against a trustee who has not done what he should have done under the trust. The court has the opportunity of having the trustee pay the cost and the attorney fees relating to that action, and that amount is not charged to the trust.

**Vice Chairman Horne:**

I am looking at the last sentence on page 7, where the trustee may not be held personally liable for payment of such cost unless the court determines that the trustee was negligent in the performance or breached their fiduciary duties. Typically in this area, or any profession that has a fiduciary responsibility,

should they breach that responsibility, is that standard typically a negligent standard, or is it a higher standard to find them personally liable?

**Don Ashworth:**

It would be a higher standard than negligence.

**Vice Chairman Horne:**

I would not want to have a different liability standard here for these fiduciaries than for others. An attorney has a fiduciary responsibility with trust accounts. Whatever the standard is that holds them personally liable for losses, it would seem logical that we may want to apply that same standard here, as well. I do not know if that is a negligent standard or if it is something higher.

**Don Ashworth:**

What line is that?

**Vice Chairman Horne:**

It is the very last sentence, starting at line 28 on page 7. This may be an answer that Legal can give to us later.

**Don Ashworth:**

This is a determination that is made by the court. I would agree with you that the standard ought to be the same that the higher fiduciaries would be required to abide by.

**Assemblyman Segerblom:**

Has the current Probate Commissioner reviewed these and approved all this?

**Don Ashworth:**

Yes.

**Assemblyman Ohrenschall:**

I want to commend Commissioner Ashworth on his long service to the State and to Clark County.

**Vice Chairman Horne:**

Are there any other questions about the bill? [There were none.] Is there anyone in opposition? [There was no one.] We will close the hearing on S.B. 420 (R1). We are adjourned [at 10:49 a.m.].

RESPECTFULLY SUBMITTED:

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Danielle Mayabb  
Committee Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

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



**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** May 9, 2007

**Time of Meeting:** 8:14 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
SB 354 (R1)	C	Assemblywoman Debbie Smith	Proposed amendment to SB 354.
SB 237 (R1)	D	David Schumann, Nevada Committee for Full Statehood	Charts
SB 237 (R1)	E	Janine Hansen, Nevada Eagle Forum	Article