

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
February 8, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8 a.m. on Thursday, February 8, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

GUEST LEGISLATORS PRESENT:

Senator Joseph J. Heck, Clark County Senatorial District No. 5
Senator Barbara K. Cegavske, Clark County Senatorial District No. 8

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Lawrence P. Matheis, Executive Director, Nevada State Medical Association
Carolyn S. Ross, Ed.D., Superintendent, Churchill County School District
Lou Buckmaster, Board of Trustees, Churchill County School District
Richard Gent, Board of Trustees, Churchill County School District
Emily Allison, Douglas County Teens Against Tobacco

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Rebecca Schweigert, Douglas County Teens Against Tobacco
John O'Connor

Ernest Adler, Former Senator; Reno-Sparks Indian Colony
Glenn Campbell, *Family Court Chronicles.com*

Peter D. Krueger, Nevada Petroleum Marketers & Convenience Store
Association

Cotter C. Conway, Washoe County Public Defender

Scott J. Shick, Chief Juvenile Probation Officer, Juvenile Probation Department,
Douglas County

George Ross, Philip Morris USA, Incorporated, Altria Group Incorporated

Steve McIntyre, General Manager, *ampm*

Jason M. Frierson, Clark County

Lee Rowland, Staff Attorney, American Civil Liberties Union of Nevada

Charles Ross

Raylynn Peel

John R. Johansen, Highway Safety Representative, Office of Traffic Safety,
Department of Public Safety

Michael D. Geeser, American Automobile Association Nevada

Robert L. Compan, Farmers Insurance

Robert R. Jensen, President, Nevada Trial Lawyers Association

Kathlyn Bartosz, Juvenile Justice Specialist, Division of Child and Family
Services, Department of Health and Human Services

Kevin Quint, Executive Director, Join Together Northern Nevada

Sandy Heverly, Executive Director, Stop Driving Under the Influence

Laurel A. Stadler, President, Mothers Against Drunk Driving-Lyon County
Chapter

Robert Roshak, Sergeant, Las Vegas Metropolitan Police Department; Nevada
Sheriffs' and Chiefs' Association

Timothy Kuzanek, Lieutenant, Washoe County Sheriff's Office; Nevada Sheriffs'
and Chiefs' Association

J. Rick Whimple, Nevada Association of Code Enforcement, Churchill County

David K. Schumann, Nevada Committee for Full Statehood

Janine Hansen, Nevada Eagle Forum

Lynn Chapman, Nevada Families

John L. Wagner, The Burke Consortium

Richard P. Clark, Executive Director, Commission on Peace Officers' Standards
and Training

Raymond J. Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department

Ronald P. Dreher, Nevada Peace Officers Research Association

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Bjorn Selinder, Churchill County; Eureka County
Lisa Rasmussen, President, Nevada Attorneys for Criminal Justice
Stan Olsen, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and
Chiefs' Association
Barry Smith, Nevada Press Association

CHAIR AMODEI:

The hearing is open on Senate Bill (S.B.) 9.

SENATE BILL 9: Provides that the provisions related to obtaining the informed consent of patients apply to osteopathic physicians. (BDR 3-728)

SENATOR JOSEPH J. HECK (Clark County Senatorial District No. 5):

I am present on behalf of S.B. 9. In 1975, the Legislature revised the *Nevada Revised Statute* (NRS) 41A by adding two provisions regarding consent for medical or surgical procedures. *Nevada Revised Statute* 41A describes when consent was conclusively established, and NRS 41A.120 describes when consent was implied. In NRS 41A.110, the provision specifically referred to physicians licensed under NRS 630. Those sections were further amended in 1997 and 1999 to include dentists. However, physicians licensed under NRS 633 have not been included.

I am uncertain whether this oversight was due to the fact the original provision in 1975 was not placed in NRS 633 until 1977. Other definitions in the chapter describe and define a physician as a person licensed under NRS 630 or 633. Throughout the rest of the chapter, physicians licensed under NRS 633 are included. Senate Bill 9 adds physicians licensed under NRS 633 for the section involving informed consent when conclusively obtained.

LAWRENCE P. MATHEIS (Executive Director, Nevada State Medical Association):

The Nevada State Medical Association supports S.B. 9. Omitting physicians from the provision was an oversight due to the different dates various parts of the chapter created. Physicians licensed under NRS 633, and doctors of osteopathy, have always been held to that standard when it applies to a case of medical malpractice, which is the subject of that NRS chapter.

SENATOR CARE MOVED TO DO PASS S.B. 9.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS HORSFORD, NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:

The hearing is open on S.B. 14.

SENATE BILL 14: Provides that a minor who possesses tobacco products or falsely represents his age to obtain tobacco products is subject to the jurisdiction of the juvenile court as a child in need of supervision. (BDR 5-76)

SENATOR MIKE MCGINNESS (Central Nevada Senatorial District):

I am joined by the Superintendent of Schools and two members of the Board of Trustees of Churchill County. Senate Bill 14 would clear up what is lacking in Nevada law which prohibits minors from purchasing tobacco products but allows a minor to possess tobacco products. Page 2, line 17 of S.B. 14 states the provision excludes a child who assists in an inspection pursuant to NRS 202.2496.

I was asked to introduce S.B. 14 by the Churchill County School District whose concern is a smoker's corner across from the high school. I was told that every high school around the State of Nevada has an area used by smokers, and this has become a problem in Churchill County. We cannot discount health issues related to smoking by minors and older individuals.

CAROLYN S. ROSS (Ed.D., Superintendent, Churchill County School District):

Students who congregate across the street from the high school and smoke need to be educated. Although there is a law against purchasing tobacco, there is no law against possessing tobacco. This creates an awkward, helpless and hopeless situation in enforcement for employees and law enforcement personnel. Education on smoking is first and foremost. Many students smoke, but are not yet addicted. They view it as a social activity and a sign of authority and maturity. We ask the Legislature give us the opportunity to educate and

inform students, as well as encourage parents to tighten supervision. Everyone involved is prepared to enforce restriction of smoking by minors should S.B. 14 pass.

LOU BUCKMASTER (Board of Trustees, Churchill County School District):

I have been a member of the Churchill County School District Board of Trustees for 42 years, and I am aware of the smoking problem with our students. School districts have no authority to ban or control student smoking. Law enforcement could help educate students and parents regarding the ramifications of smoking.

RICHARD GENT (Board of Trustees, Churchill County School District):

I asked my son whether S.B. 14 would make a difference to students at Churchill County High School. He answered, "Probably not," and suggested education and enforcement. My son added, "Most students who smoke are not yet addicted. If provided information regarding that little speed bump in life, it would give them time to make a conscientious decision."

EMILY ALLISON (Douglas County Teens Against Tobacco):

I represent students from Douglas County. Tobacco is a gateway drug which allows underage people to get into heroin and cocaine.

REBECCA SCHWEIGERT (Douglas County Teens Against Tobacco):

I support S.B. 14 because I have seen the effects of tobacco and how difficult it is to quit once addicted. In the United States, 12,000 people die every day due to the use of nicotine. The tobacco industry targets young people to get more money over a longer period of time. I do not want to see people I care about hurt and dying because of tobacco addiction.

Ms. ALLISON:

We are part of Douglas County Teens Against Tobacco, an organization that visits elementary and middle schools to warn young students about the dangers of smoking.

SENATOR MCGINNESS:

Are elementary and middle school students smoking?

Ms. ALLISON:

Studies have shown fourth grade is the age children try smoking to see whether they like it.

JOHN O'CONNOR:

I am concerned S.B. 14 will distance young people from law enforcement rather than bring them closer.

ERNEST ADLER (Former Senator; Reno-Sparks Indian Colony):

The Reno-Sparks Indian Colony is a large retailer of tobacco products and only sells to people of legal age; however, once a sale is made, the cigarettes may end up in the hands of children. The Reno-Sparks Indian Colony would like the state to eliminate the problem and S.B. 14 would address that concern. This bill was introduced in the mid-1990s with little success.

MR. MATHEIS:

I represent the Nevada Tobacco Prevention Coalition. The Nevada State Medical Association and the Nevada Tobacco Prevention Coalition strongly opposed this measure in the past; at this time, they are not in opposition. There are several reasons this issue is of concern to the tobacco-controlled community and public health. More appropriate intervention with smoking youngsters is needed to seek cessation and treatment. Significant efforts have been made by the American Cancer Society, the American Lung Association and the Nevada Tobacco Users Helpline through the University Of Nevada School Of Medicine. In the past, Nevada's laws were pro-tobacco and encouraged behavior that had significant health consequences. There is no longer debate whether the use of tobacco is good or bad.

Due to changes in Nevada law, both groups have moved to a position which builds behavior accountability. The law should not be excessively punitive. Our goal is to develop an approach to change behavior before it becomes a health problem for smokers and nonsmokers alike. We do not oppose this legislation.

GLENN CAMPBELL (*Family Court Chronicles.com*):

I submitted my article for the Committee from the *Family Court Chronicles.com*, entitled "Smoking Kills Brain Cells" ([Exhibit C](#)).

I have observed family court in Las Vegas for a period of time. I am against smoking. There is no greater tragedy than youths of 12 or 13 years of age who light up, think it is cool and then become addicted. Nicotine is as addictive as methamphetamine, crack or pot.

I know how juvenile court functions and question whether S.B. 14 will help or hinder. We must consider the negative effect of good intention. Although a law looks good on the surface, we must ask how it will be implemented. How will it work in the real world? Will it accomplish what is expected? Every good law has ripple-down side effects. Youths smoke because their parents smoke, and homes in which cigarettes are available are unstable. Young people who smoke come from homes where parents have no control; good moral parents in control of their family do not have smoking problems.

Senate Bill 14 applies to minors who have tobacco, as well as tobacco paraphernalia of any amount, in their possession. How many people have tried tobacco during their teen years? Ninety percent of us have taken a drag off a cigarette. I tried it twice as a teen. I took a drag, it was disgusting and I threw it out. According to this bill, trying tobacco would justify my entry into family court. This means 90 percent of youths in Las Vegas are subject to this law. What good is a law that applies to everybody? At some point, it raises civil liberties issues.

Nothing in S.B. 14 focuses on habitual users or people at real risk of addiction. Anybody caught twice with cigarettes will be apprehended. A youth who picks up a cigarette butt in the street and puts it in his pocket can be brought in and receive a tongue-lashing. If he does it again, he is subject to 180 days of probation. What happens during probation? Probation requires a person to perform community service, a letter of apology or whatever is needed. In this event, a youth cited for smoking would be required to attend a smoking program which does not exist. What will be done with a youth who is assigned probation? Will he receive a second probation if he smokes again? What services will a youth receive when assigned probation? Is there money for those services? Are there enough probation personnel to handle smoking discipline? More probation officers will be needed if all youths smoking on the street are cited. Public defenders will be needed to defend them when they go to court. Hearing masters will be needed to hear the cases.

In conclusion, S.B. 14 will not be viewed seriously. Word will spread among students to ignore smoking court; they will lose respect for the juvenile justice system, which will lead to more serious crimes.

CHAIR AMODEI:

What is the present trend on teen smoking in the state and/or the nation?

SENATOR ADLER:

Teen smoking is on a downward trend. Previous measures had a penalty which included a cessation program the student was required to attend.

MR. MATHEIS:

The Nevada State Health Division with the Centers for Disease Control and Prevention conduct a periodic youth risk behavior survey and percentages have dropped approximately 30 percent.

CHAIR AMODEI:

I request Linda J. Eissmann, Committee Policy Analyst, obtain statistics on teen-smoking trends and what other states are doing. To my knowledge, Nevada does nothing regarding underage smoking.

SENATOR ADLER:

That is correct.

SENATOR HORSFORD:

The Legislative Counsel's Digest of S.B. 14 refers to NRS 62E.410, which says, "If a petition is filed alleging that a child is in need of supervision and the child previously has not been found to be within the purview of this title, the juvenile court shall" Please explain the meaning of "a child in need of supervision."

BRAD WILKINSON (Chief Deputy Legislative Counsel):

Page 2, section 1 of S.B. 14 indicates that NRS 62B.320 describes the different acts that bring a child within the purview of the juvenile court as a child in need of supervision, which is a term used in the juvenile chapter. There are two ways a person comes within the jurisdiction of the juvenile court for committing a delinquent act: One, something that would be a crime if committed by an adult; and two, being in need of supervision, which is something only a child is prohibited from doing, such as truancy, not obeying parents and running away. Senate Bill 14 would make smoking the equivalent of one of those acts.

SENATOR HORSFORD:

Does that infer juvenile court takes temporary responsibility for the child?

MR. WILKINSON

The court has jurisdiction over the child to take whatever action it deems appropriate. It is qualitatively different from a delinquent act, and the child would not be placed in a state detention facility.

SENATOR HORSFORD:

Is it limited to subsection 1, paragraphs (a) through (d) of NRS 62E.410? I want to ensure courts maintain discretion and S.B. 14 not open an issue of children being removed from their homes for smoking cigarettes.

MR. WILKINSON:

Nevada Revised Statute 62E.410 specifically limits the authority and discretion of the court for a first-time offense requiring supervision. That could be the case if other delinquent acts are involved, but not smoking itself.

SENATOR HORSFORD:

Under NRS 62E.410, the words "shall," not "may," are used; and it says, "Shall refer the child to services available in the community for counseling, behavioral modification and social adjustment" Senator McGinness, what are your thoughts in that regard? Are adequate services available in the communities to meet the requirements of that NRS section?

SENATOR MCGINNESS:

There are probably no adequate services in many of the communities I represent. In many rural counties, there are no provisions for driving under the influence (DUI) or domestic abuse offenders. Churchill County is ready to take it on; other counties may not. Enforcement would be up to individual counties.

MR. MATHEIS:

The Health Division Tobacco Control Program has a list of all cessation and support programs in the state. I will investigate whether the Nevada Tobacco Prevention Coalition has collected that information.

SENATOR CARE:

There may be a presumption that every child is subject to a search at any given time. A 17-year-old walking down the sidewalk cannot be halted by school police or law enforcement and required to submit to a search. If a child is carrying contraband, it will be concealed. There must be some pretext to stop the youth and commence a search. In the case of a backpack or locker search

on school grounds, a different standard applies. I would like to hear testimony in regard to when someone is: one, suspected of being a juvenile; and two, asked to show what is in his pockets or her purse.

MR. CAMPBELL:

The law should be consistently enforced throughout the counties.

PETER D. KRUEGER (Nevada Petroleum Marketers & Convenience Store Association):

This is our fourth or fifth session supporting this type of legislation. Things have changed regarding tobacco usage, and S.B. 14 is excellent legislation. There are those who suggest bills of this nature criminalize this behavior. We see it as putting responsibility where it belongs. Near Carson High School, a group of young people stand around smoking every day, and there is no consequence for that behavior. Senate Bill 14 provides a vehicle for intervention, education and putting responsibility where it belongs, not only for Churchill County but other counties. We support S.B. 14.

COTTER C. CONWAY (Washoe County Public Defender):

Juvenile attorneys in the Washoe County Public Defender's Office oppose S.B. 14 due to cost concerns. We commend Senator McGinness on the bill and issues it raises. Youth smoking is a health problem that should be addressed; making it the responsibility of the juvenile system is inappropriate.

SCOTT J. SHICK (Chief Juvenile Probation Officer, Juvenile Probation Department, Douglas County):

The Policy/Legislation Committee of the State of Nevada Juvenile Justice Commission met yesterday regarding S.B. 14. We agree with the public defender from Washoe County. All juvenile justice administrators feel strongly about smoking and the health consequences to children. We feel obligated to provide smoking cessation programs to juveniles, as well as working with their families. It is cost-prohibitive to put this into the offender category, which subsequently requires enforcement. We oppose S.B. 14.

CHAIR AMODEI:

Mr. Krueger, as a representative of convenience stores, you mentioned consequences. The Attorney General's Office and others perform stings on tobacco product sales. What are the consequences for a retailer selling tobacco products to an underage person?

MR. KRUEGER:

A fine is imposed on the offending clerk caught in a sting operation.

CHAIR AMODEI:

Do repeat offenses raise the consequence or is it a fine every time?

MR. KRUEGER:

It is a fine every time, but employment consequences are the ultimate determiner because the employer's business license could be at risk.

MR. SHICK:

Douglas County responds in a progressive manner to repetitive offenses and could suspend a business license as a result of selling tobacco or alcohol to underage persons.

CHAIR AMODEI:

Is it an administrative consequence with no petty or criminal offense charge to the individual?

MR. SHICK:

I have not seen it in court.

CHAIR AMODEI:

Will a retailer face a petty offense sanction if he sells tobacco three times to a minor? Is it dealt with through business licenses and out of the criminal system?

MR. WILKINSON:

It is a criminal offense with a fine of \$500 and a civil penalty of not more than \$500.

CHAIR AMODEI:

It is like a traffic ticket with no jail time.

MR. WILKINSON:

That is correct.

CHAIR AMODEI:

I appreciate the tenor of your testimony; the concept of prohibited conduct with no consequence is interesting. Can something other than the status quo be done with minimal resource?

MR. CONWAY:

In earlier discussions regarding current trends, smoking has been reduced and attitudes changed. The Health Division and other entities are educating and providing treatment. Should we pass the problem to the criminal justice system or try other available resources? I do not know the answer, but it will be a burden on us. I am not sure whether S.B. 14 will solve the problem of underage smoking. Agencies in the state can determine which programs work to reduce teen smoking and smoking in general.

CHAIR AMODEI:

Prevention programs are not the same as breaking-the-rule programs. We have anger management programs, but some people still break the law when they get angry.

MR. SHICK:

Accountability should be built into the process, perhaps in the status offense category such as youth endangering themselves by smoking. I would like to return to this Committee with recommendations on how to answer your concerns on S.B. 14.

CHAIR AMODEI:

Something is needed that will inconvenience a person without creating new workload and resource issues.

MR. SHICK:

We do not support juvenile smoking because nicotine addiction is ugly, long-term and tragic.

CHAIR AMODEI:

Please work with Mr. Wilkinson researching programs elsewhere that do not require building a new empire to deal with the problem. Mr. Conway, you are welcome to participate as well.

SENATOR CARE:

When is it appropriate for a teacher on school grounds or school police off premise to detain a youth and search for tobacco products?

MR. CONWAY:

An off-campus student has the same right of privacy as any citizen, unless they are on probation, which places them under different rules. Students on school grounds are under a lesser standard of privacy; I defer to those who deal with juveniles in a school setting.

SENATOR CARE:

Does anything in S.B. 14 prohibit an 18-year-old high school senior from possessing cigarettes on school grounds?

MR. CONWAY:

It depends on what the school allows. There are rules regarding people over the age of 18 on campus if they are not students.

SENATOR CARE:

A person could be over 18 and a student.

MR. CONWAY:

I defer to the school district to answer that question.

MR. SHICK:

Lacking a court order of search and seizure, police or juvenile probation officers are not authorized to search students off campus. To my knowledge, possession of cigarettes is not restricted on campus; however, smoking on campus is restricted. Perhaps the law could be crafted to speak to that issue. We could work with district court judges regarding criteria for possession and/or smoking tobacco, as well as testing as is done for other controlled substances.

GEORGE ROSS (Philip Morris USA, Incorporated, Altria Group Incorporated):

Philip Morris agrees with the overwhelming scientific evidence that cigarettes are addictive and lead to a greater occurrence of serious disease among smokers than nonsmokers. Philip Morris agrees laws prohibiting the sale and distribution of tobacco products to minors and laws prohibiting the use and purchase of tobacco products by minors make common sense. Philip Morris

supports S.B. 14 and laws prohibiting the use and purchase of tobacco products by minors and penalizing them for purchase or possession of cigarettes.

CHAIR AMODEI:

If Philip Morris has programs dealing with this issue, please contact Mr. Wilkinson with that information.

MR. ROSS:

I suggest accessing the Philip Morris USA Website which provides information about what other states are doing in terms of youth access prevention.

STEVE MCINTYRE (General Manager, *am/pm*):

As a retailer for 20 years, I know sting operations are effective. Although S.B. 14 is a good beginning, I urge you to place harsher consequences such as a fine or loss of a driver's license into the legislation. Putting a juvenile on probation is not a deterrent.

JASON M. FRIERSON (Clark County):

Although we support the concept of dealing with juvenile use of tobacco products, we oppose S.B. 14 due to enforcement resources required. Juvenile Justice Services provided a study from the University of Michigan, entitled "Monitoring the Future," which surveyed school children who used tobacco products during the past month. The study showed: 8.7 percent of 8th graders, 14.5 percent of 10th graders and 21.6 percent of 12th graders reported using tobacco products in the past month; Clark County reported 302,763 students this year, 119,000 in Grades 7 through 12. Based on percentages in the study, approximately 8,883 students in the Clark County School District would fall under the percentages of having used tobacco the previous month. If 25 percent of those students were cited, an additional 2,220 students would fall under S.B. 14 and require probation officers, monthly visits, education programs and community service. Students would have to work to pay for their participation in the program; if unable to work, they must do additional community service.

Clark County is concerned about juvenile smoking and would support a measure that addresses educating both juveniles and their families about tobacco use. Resources required by the public defender's office, district attorney's office, the courts and probation would be tremendous given current loads on the juvenile system.

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CHAIR AMODEI:

Mr. Frierson, would you be willing to work with Mr. Shick to find positive ways to amend S.B. 14?

MR. FRIERSON:

I would be willing to work with Mr. Shick.

LEE ROWLAND (Staff Attorney, American Civil Liberties Union of Nevada):

I submitted my written testimony ([Exhibit D](#)) regarding the American Civil Liberties Union (ACLU) opposition to S.B. 14. I will address two issues of concern. First is the probable cause element of violating this law. Senate Bill 14 could be a potential nightmare for young-looking people. Police officers should identify people before search to avoid violations of the Fourth Amendment. Law enforcement would need guidance to enforce this law.

Entering juveniles into the criminal justice system without a clear treatment plan appears more punitive than therapeutic. We support creative ways to enforce the law, like requiring a fine or community service rather than entry into the juvenile justice system.

CHAIR AMODEI:

Please provide any alternative ideas to Mr. Wilkinson.

CHARLES ROSS:

I am a nonsmoking Washoe High School senior concerned about juveniles held accountable for smoking on campus. Eighteen-year-old individuals who are allowed cigarettes should be held accountable for contributing and enabling younger students to smoke. More educational programs regarding tobacco use would help prevent and dissuade students from smoking.

RAYLYNN PEEL:

I am an 18-year-old Washoe High School student who smokes and supports S.B. 14. We who smoke provide younger students with cigarettes and should be held accountable. I am in the Teens Against Tobacco Use program and attempting to quit. Teens 17 and 18 years of age are not affected by probation. I was on probation in the past, ignored it and continued to smoke. I suggest retail stores place cigarettes where juveniles cannot see them.

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CHAIR AMODEI:

The hearing is closed on S.B. 14 and opened on S.B. 7.

SENATE BILL 7: Establishes civil liability for certain acts involving the use of controlled substances and the consumption of alcoholic beverages. (BDR 3-53)

SENATOR VALERIE WIENER (Clark County, Senatorial District No. 3):

I submitted my written testimony ([Exhibit E](#)). I sent a memorandum dated February 8, 2007 ([Exhibit F](#)) to Senator Amodei and the Senate Committee on Judiciary on legislation that would impose certain liabilities related to social hosting with the following attachments: a chart which shows risky youth behavior related to alcohol consumption; a survey which shows adult attitudes toward underage drinking; a chart which indicates states that have social-hosting laws and a letter in support of S.B. 7. In addition, I submitted Proposed Amendment 3125 to Senate Bill No. 7 ([Exhibit G](#)).

JOHN R. JOHANSEN (Highway Safety Representative, Office of Traffic Safety, Department of Public Safety):

I submitted a packet of information relative to social hosting ([Exhibit H](#)). As a federally funded state employee involved in traffic safety, I am neutral and take neither a pro or con position on S.B. 7.

I will explain the information contained in [Exhibit H](#). The "National Survey of Accountability, Norms and Judgments" was done by the School of Public Health at the University of Minnesota. The "National Survey of American Attitudes on Substance Abuse IX: Teen Dating Practices and Sexual Activity" is the eleventh survey of teens and parents done by the National Center on Addiction and Substance Abuse at Columbia University. The study for "Reducing Harmful Alcohol-Related Behaviors: Effective Regulatory Methods" was done by the Center for Health Policy, Law and Management from Duke University. Liability laws of other states were obtained from the Mothers Against Drunk Driving (MADD) Website. Age groups in the Department of Education 2005 Nevada Youth Risk Behavior survey were typically middle and high school students. Information contained herein is relative to the high school age group. Finally, data on teens involved in traffic fatalities is from the Office of Traffic Safety.

The "National Survey of Accountability, Norms and Judgments" was a national survey of approximately 7,000 civilian adults. Vignettes were described in

which the server could be a bartender or parent who served an adult or juvenile resulting in an automobile accident or property damage. They were trying to determine the degree of culpability of each individual involved—the server and the guest. Bars were held to a higher standard than individuals. Bars are licensed, must obey certain laws and require training. Both parents and bars that condone drinking by minors were held to a higher standard when a teen was involved. The degree of damage caused by an automobile accident did not change with the degree of culpability by either party; they were able to distinguish between a horrific crash and knocking down a fence.

The survey by Columbia University of American Attitudes on Substance Abuse included 1,297 teens and 562 parents. We were looking at what teens were telling us and what their parents thought was happening. Eighty percent of parents believed marijuana or alcohol was available at parties attended by their teens. Half the teens said they attended parties where alcohol and drugs were available. Ninety-eight percent of parents said they were normally present at parties allowed in their home. Thirty-one percent of teens reported parents were rarely or never present at parties they attended. Ninety-nine percent of parents said they would not serve alcohol at their teen's party, and 28 percent of teen partygoers went to parties where alcohol was consumed and parents were present.

Regarding reducing harmful behaviors, a great number of different laws were reviewed with respect to traffic fatalities and crashes. The report concludes, although several criminal and administrative regulations are also effective in reducing episodic drinking and drunk driving, the imposition of tort liability represents a useful addition to the arsenal of alcohol-control policies.

MR. JOHANSEN:

The other states category in [Exhibit H](#) includes 50 states and Washington, District of Columbia. Of these, 42 have dramshop laws specifically targeting the licensed providers; 32 have social host laws similar to [S.B. 7](#); 31 have both; and 8 states, including Nevada, have neither.

Senator Wiener's data on the youth risk behavior survey agreed with data in [Exhibit H](#) that 41 percent of the youth surveyed used alcohol within 30 days; 24.8 percent did binge drinking—5 drinks in a short period of time on one occasion; 36 percent obtained alcohol from home and 10.4 percent drove after drinking.

The final two charts encompass teen involvement in traffic crashes with fatalities; teens are not always the ones that die. In the Teen Traffic Crashes chart, the total for 2003 requires explanation. Of 53 teen drivers involved in fatal crashes in 2003, 25 tested negative for alcohol, 21 were unknown, 7 tested positive for alcohol and 5 of these tested above 0.08 blood alcohol content (BAC). Of the 144 teens involved in fatal crashes between 2003 and 2005, 20 tested positive for alcohol, and 14–70 percent—were above the 0.08 BAC limit.

The chart BAC by Age: 2003-2005 showed no fatalities due to alcohol for age 15. There was 1 fatality for age 16 with a BAC above 0.08. Ages 17 and 19 were responsible for 12 percent of alcohol-related crashes. Age 18 showed 1 out of 4 fatal crashes. The danger area is clearly 17, 18 and 19 years of age, which is the age teens attend parties.

MICHAEL D. GEESER (American Automobile Association Nevada):

I worked with Senator Wiener on S.B. 7 and will support it as long as the word "knowingly" is added. Senator Wiener asked me to address the issue of punitive damages and its effect on insurance companies. Punitive damages punish an individual who cannot be covered under an insurance policy. The problem is the policy and the law require a carrier to defend an insurer and the duty to defend is broader than the duty to provide coverage. Even though there is no coverage for punitive damages, there is still a duty to defend and protect the insured against a punitive damage claim. While supporting S.B. 7, we are asked to defend a person, which puts the insurance company in an awkward position. As long as the word "knowingly" is present, punitive damages punish the offender. The question is whether punitive damages are part of this bill.

ROBERT L. COMPAN (Farmers Insurance):

I echo Mr. Geeser's sentiments. We also spoke with Senator Wiener on this issue. As long as the word "knowingly" is added to section 1, subsections 1 and 2 of S.B. 7, we support the bill.

Punitive damages are an issue with our insurance contract. We have a duty to defend when a lawsuit is filed on behalf of our insured for a claim made against civil tort liability in the same case.

CHAIR AMODEI:

Should S.B. 7 pass, what impact would punitive damages have on insurance rates?

MR. COMPAN:

Punitive damages may impact insurance rates in the future. If it becomes an issue, it would be a rated item and the factor would be whether a minor is in the home. I have no idea how the rates would be affected.

CHAIR AMODEI:

For purposes of homeowner or automobile insurance, if there is minor involvement and a statute with a punitive damage provision, would insurance companies take that into account when crunching numbers for Nevada?

MR. GEESER:

It would be a rating factor on homeowner policies on a case-by-case basis.

SENATOR CARE:

Can insurance companies issue a policy that covers certain conducts and not others?

MR. COMPAN:

There are exclusions in policies, such as intentional acts. If an adult intentionally provides alcoholic beverages, the insurance company has the right to deny the claim based on that premise. The inclusion of the term "knowingly" provides the opportunity to deny claims on intentional acts; however, cases will exist in which minors enter the house unintentionally, even though it is spelled out in the statute under "knowingly." Ambiguous language may trigger the mechanism of the policy-to-defend cases should there be punitive damages involved.

ROBERT R. JENSEN (President, Nevada Trial Lawyers Association):

I speak in favor of S.B. 7, which is a well-tailored, carefully considered bill. Dramshop liability is imposed on people for furnishing alcohol or controlled substances. The concept of not imposing liability on someone who furnishes alcohol to a minor, particularly in a situation where people are driving, is abhorrent. Minors should not drink and parents and/or other adults should not furnish alcohol to minors. Adults should be made responsible if they are allowing minors to drink. With Senator Wiener's amendment, [Exhibit G](#), and the addition

of the word "knowingly," I see no reason for not imposing liability on an adult in this event.

I am concerned by comments that the term "knowingly" could trigger insurance companies to deny coverage in this case and victims of this unnecessary conduct receive compensation for severe or significant injury. The purpose of tort law is to deter wrong conduct and provide an avenue of justice for people to receive compensation for medical expenses, lost wages, injuries, and pain and suffering endured as a result of that conduct.

I will speak about increasing expenses for insurers in this situation. I am involved in a suit for a client where a drunk individual, driving 80 miles per hour, rear-ended my client who was driving 40 miles per hour within the speed limit. The insurance company had a duty to defend under their policy and provided a defense counsel. Additional work by the defense counsel defending the punitive damage claim is fairly minor; it would not cause a dramatic increase in expenses for insurers just because they defend a punitive damage claim.

KATHLYN BARTOSZ (Juvenile Justice Specialist, Division of Child and Family Services, Department of Health and Human Services):

I will read my prepared testimony ([Exhibit I](#)). A brochure entitled, "Nevada's Enforcing Underage Drinking Laws (EUDL) Project" ([Exhibit J](#)) demonstrates examples of environmental strategies. One of the more highlighted strategies is limiting access through business sources. Peter Krueger and the Nevada Petroleum Marketers & Convenience Store Association were one of the first to work with law enforcement.

The survey entitled "The Nevada State Department of Education's Office of Child Nutrition and School Health, Nevada Youth Risk Behavior Survey Results" ([Exhibit K](#)) shows the number of youths reporting having a drink in the past 30 days was 53 percent in 1999 and is presently 41 percent. Although still high, a decrease of 11 percent is significant in a short period of time. Two trends that worsened are parents and social access to alcohol.

Unfortunately, the chart entitled "The Nevada State Department of Education's Office of Child Nutrition and School Health, Nevada Youth Risk Behavior Survey Results—Alcohol Related, 2001 to 2005 MIDDLE SCHOOL SURVEYS" ([Exhibit L](#)) demonstrates no changes in this age group.

KEVIN QUINT (Executive Director, Join Together Northern Nevada):
I will read my prepared testimony ([Exhibit M](#)), which addresses prevention of underage drinking and access to alcohol.

SENATOR CARE:

Does the language in the amendment to [S.B. 7](#), [Exhibit G](#), change the standard of care? As originally written, the bill addresses parents who leave the house for three days and tell their child it is permissible to throw a party. The amendment states a parent is present in the house and knows consumption of alcohol is taking place. Would passage of [S.B. 7](#) with the proposed amendment and the word "knowingly" preclude an action where the parent is not present?

MR. JENSEN:

Nevada case law on negligent entrustment indicates liability may be imposed on somebody who negligently entrusts a vehicle to a person they know is incompetent or reckless. The bar is set high under case law for imposing liability for negligent entrustment. In the original bill without the word "knowingly," if the parents were gone, alcohol was available and somebody drove a vehicle—or was shoved—into the swimming pool, there probably would be no liability imposed. If the parents left, the children had a party, something happened and the parents told the children not to do it again, it still would not impose liability. If the situation happened a second or third time, the court would attempt to reasonably apply the law handed down by the Legislature. A jury would view the case in a reasonable setting and, under those circumstances, there would be potential for liability. Including the word "knowingly" in [S.B. 7](#) increases immunity from liability.

I was comfortable with the bill as originally written without the word "knowingly." The object of tort law is to provide compensation under just circumstances. It is a just circumstance to hold parents or other adults accountable for giving minors alcohol and allowing them to injure people while driving or under other circumstances. I originally thought there would be insurance coverage because the parent's conduct in serving alcoholic beverages to underage people is an intentional act; however, I am not sure it is an act in which they intend a person to sustain injury. Another concern about adding the word "knowingly" was from the standpoint of the families of people killed or seriously injured, such as in the event of a paraplegic, loss of an arm or leg, or chronic pain for the remainder of their life.

As an attorney, I have observed seriously injured people with no source of recovery or compensation. I hoped this bill would be tailored to provide insurance coverage and not impose a high standard for recovery. It must be viewed with common sense. Parents should not necessarily be held responsible if they leave the house for an hour or two and their teenage son drinks alcohol and inadvertently injures someone. That is not the intent of S.B. 7; on the contrary, this bill targets parents or adults who know they are providing alcohol to teens and aware there is potential to harm.

SENATOR CARE:

If adding the word "knowingly" is the sponsor's wish, I am comfortable with it.

SANDY HEVERLY (Executive Director, Stop Driving Under the Influence):

I have been involved in the anti-drunk driving movement for 23 years and worked with thousands of innocent DUI victims throughout Nevada and across the country. Stop DUI believes S.B. 7 will encourage civil liability, accountability and a conscience for those with no compunction about providing or allowing alcohol or other drugs to be consumed by minors. Senate Bill 7 would also help diffuse the myth that consumption of alcohol by minors is an acceptable rite of passage. Social drinking norms in today's society do not view underage alcohol consumption as a rite of passage or socially acceptable behavior. A national survey showed 83 percent of adults are in favor of laws that impose fines on adults who provide alcohol to minors. Stop DUI concurs with that survey and supports passage of S.B. 7.

LAUREL A. STADLER (President, Mothers Against Drunk Driving-Lyon County Chapter):

The mission of MADD is to stop drunken driving, support victims of this violent crime and prevent underage drinking. We would rather see the crimes of DUI and underage drinking not happen than sanction offenders and console victims. We see the social host law as a deterrent to parents and other adults from providing alcohol to minors. Many times, adults are not inspired to do things because they are right or wrong; they are often inspired to do the right thing when dollars are associated with their behavior.

We have worked with many victims over the years. At present, a case is pending in which juveniles were at an underage drinking party, two of them left the party, the driver caused a crash and the passenger was killed. It is sad to see parents of an 18-year-old high school student killed in a car crash after

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drinking at a party. Parents who receive money due to the social-hosting law know it never replaces their lost child, but it may act as a deterrent to future party hosts allowing alcohol.

ROBERT ROSHAK (Sergeant, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):
Law enforcement considers S.B. 7 another tool of great benefit to help reduce juvenile drinking and driving.

TIMOTHY KUZANEK (Lieutenant, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association):
We support S.B. 7 as a means to deter things happening in our area on an ongoing basis to which we must respond.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 7.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR AMODEI:
The hearing is opened on S.B. 15.

SENATE BILL 15: Provides that certain governmental employees who enforce local ordinances may be designated as peace officers. (BDR 23-254)

SENATOR MIKE MCGINNESS (Central Nevada Senatorial District):
Senate Bill 15 would designate government employees who enforce local ordinances as peace officers. Section 4 of S.B. 15 specifies the city or governmental entity that designates the person as having the powers; page 2, line 3 outlines persons who may be designated. This bill is the result of efforts by J. Rick Whimple, who is a code enforcement officer in Churchill County. Two e-mails support S.B. 15 from Rhonda Knox of Sparks ([Exhibit N](#)) and Joe Rodriguez of Carson City ([Exhibit O](#)). A fax ([Exhibit P](#)) from Theodore Beutel, Eureka County District Attorney, indicates the Board of Eureka County Commissioners oppose S.B. 15.

J. RICK WHIMPLE (Nevada Association of Code Enforcement, Churchill County):
Code enforcement is specialized law enforcement. Under NRS 289, different professions are categorized as category II peace officer positions and code enforcement should be included. Local jurisdictions should decide if code enforcement officers have peace officer status. It should not be mandated.

Most encounters experienced by code enforcement officers do not result in difficulties. Unfortunately, code enforcement officers are sometimes threatened, assaulted and killed. As with police officers, code enforcement officers deal with good citizens, felons, people with warrants and drug users. There are no statistics regarding numbers of assaults or killings of code enforcement officers.

Some local jurisdictions and law enforcement-governing associations oppose S.B. 15. Code enforcement officers do not have the means to access the same information as law enforcement, as well as to defend themselves. The definition of a code enforcement officer may be too broad and require fine-tuning.

There is also concern anyone working behind a counter in a government facility be appointed as a peace officer. Local jurisdictions should be required to perform background checks as is done when hiring a deputy sheriff or regular police officer. I realize the seriousness of placing unqualified individuals carrying guns in the community with peace officer status. There is potential for people to abuse the position; this could be avoided with psychological testing and background checks.

Many code enforcement officers were previously in law enforcement. I was employed for seven years in street law enforcement with the San Diego Police Department until 1986, and a sergeant at the Northern Nevada Correctional Center until 2000. As a code enforcement officer, I enforce codes that cover business licensing, health and safety violations and adult entertainment. These entities attract individuals not always on the right side of law.

SENATOR CARE:

Section 1, subsection 1 of S.B. 15 says, "A local code enforcement officer has the powers of a peace officer ..."; and section 1, subsection 1, paragraph (b) says, "He is enforcing an ordinance of the city or county by which he is employed within the field of enforcement in which he works." It is my understanding he is a peace officer only when on duty. He can never be an off

duty police officer who has the power to step in and effect an occurrence. Is that your understanding as well?

MR. WHIMPLE:

I agree with your understanding of those sections. I would not want to be in the same category as a law enforcement officer who is a law enforcement officer 24 hours a day, 7 days a week. That is not the purpose of my function or the intent of the bill.

SENATOR CARE:

Listed among the definitions of local code enforcement officer in section 1, subsection 2, paragraph (h) of S.B. 15 is "The health officer of each county, district or city" Could this be used, for example, to enforce an anti-smoking ordinance?

MR. WILKINSON:

Yes, as long as the position enforces criminal provisions. Under existing law, section 4 of S.B. 15 lists those people having authority to issue citations for violations of local ordinances.

SENATOR WIENER:

Although this is discretionary and a local jurisdiction decision, based on the list in section 1, subsection 2, paragraphs (a) through (j) of S.B. 15, do they also have discretion to determine which officials in the list have the powers? Once they make the decision to grant the powers, is it all inclusive of those listed?

SENATOR MCGINNESS:

My understanding is the local jurisdiction could pick and choose from the list.

MR. WILKINSON:

I agree with that understanding.

CHAIR AMODEI:

Section 1, subsection 1, paragraph (a) of S.B. 15 says "A local code enforcement officer has the powers of a peace officer if the city or county by which he is employed designates him as having the powers of a peace officer ...," which, by my understanding, means the local jurisdiction makes the decision, not the Legislature.

Section 1, subsection 1, paragraph (b) of S.B. 15 says, "He is enforcing an ordinance of the city or county by which he is employed within the field of enforcement in which he works," which, by my understanding, means the person would not have jurisdiction outside of, for instance, building code infractions. Is that your understanding?

MR. WHIMPLE:

Yes, it is my understanding as well. Some laws are enforced by code enforcement officers, such as NRS 487.290, which deals with unregistered or inoperable vehicles. We would not be category II peace officers writing citations or arresting people outside the area of our jurisdiction. We may arrest a person who assaults us while we are performing our duties; if we witness a crime out of our jurisdiction and function, we contact local law enforcement.

CHAIR AMODEI:

What is the source of the list in section 1, subsection 2, paragraphs (a) through (j)?

MR. WILKINSON:

Page 4, lines 12 through 22 of S.B. 15 indicate people currently authorized to issue citations; lines 23 through 27 list health officers.

CHAIR AMODEI:

That was a function of bill drafting, not a specific request pursuant to this situation.

MR. WILKINSON:

That is correct.

SENATOR CARE:

Should S.B. 15 pass and a local county designates a building code inspector as a peace officer, what powers would that peace officer have that he does not have at the present time?

MR. WHIMPLE:

The peace officer would have the power to run warrants on an individual and perform license plate checks and law enforcement work without the aid of a deputy. I am unsure how it would affect all people on the list. Code enforcement is misunderstood in many ways. There is a broad spectrum of code

enforcement, including building officials, land use, health and safety issues, business violations, NRS violations and adult entertainment.

SENATOR CARE:

Should you be assaulted in the performance of your duty, you have the right to defend yourself, but do you have the power to arrest as a result of that assault? It now raises the question of government immunity. We do not want to put the peace officer in jeopardy of being sued by doing something outside his scope of duties even though it seemed correct at the time.

MR. WHIMPLE:

In the event of an assault while performing within the scope of my duties, I may be able to effect an arrest. Counties make the decision whether to spend money to train peace officers. Many things would be dealt with on the local level to clarify these issues. Defending ourselves is a small issue. Most police officers do not pull their weapons or shoot anybody. This bill would open doors for code enforcement officers.

SENATOR WIENER:

Due to the expanded opportunities requested, would the Nevada Commission on Peace Officers' Standards and Training (P.O.S.T.) be included?

MR. WHIMPLE:

Anyone with peace officer status must meet P.O.S.T. requirements. It would be mandatory to attend the academy to obtain a category II certificate, maintain in-service training and semi-annual or annual firearms training, depending upon the department.

SENATOR WASHINGTON:

After passage of the no smoking amendment, would public health officers be considered local code enforcement officers? Is there a potential conflict?

MR. WILKINSON:

There is no potential conflict. Code enforcement officers already have the power to cite people for violations, but they do not have the power to effect arrests and other powers of a peace officer.

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SENATOR WASHINGTON:

Senate Bill 15 reflects local or county ordinances. This measure is a constitutional amendment; I want to be assured there is no conflict.

MR. WILKINSON:

Local jurisdictions could enact local ordinances to provide the same as state law.

DAVID K. SCHUMANN (Nevada Committee for Full Statehood):

Senate Bill 15 is a bad idea with an incorrect and misleading fiscal note. It is irresponsible to give people the power of armed police officers without full training, and training is expensive. Counties do not need more untrained employees authorized to carry guns. The liability issue should be more fully addressed. Will the state or county be responsible for misbehavior of untrained people? Code enforcements are better covered by a complaint to the district attorney who has the power to handle such problems. Code enforcement officers do not face the same type individuals law enforcement must handle. Turning code enforcement officers into police officers is the first step to the police state of George Orwell's *1984*.

JANINE HANSEN (Nevada Eagle Forum):

We oppose S.B. 15. Will there be recourse for people whose rights are abused by peace officers enforcing code? This brings forth images of gun-toting bureaucrats intimidating citizens and creating a police state. Code enforcement officers have the power to make an arrest under state law. What happens if an uninformed, overzealous, untrained code enforcement officer acts as a peace officer? We need to police bureaucrats who consistently violate the rules, regulations and law. This bill is costly, dangerous and brings tremendous liability. We do not need it.

LYNN CHAPMAN (Nevada Families):

I am a notary public for the State of Nevada. I notarized court documents for a man continually harassed by zoning code enforcement officers even though he sold his property years ago. He is now in jail. His new attorney was appalled at what happened to him. Code enforcement officers should be reined in, not given more power. Citizens do not have the means to protect themselves from code enforcement officers. Please do not pass S.B. 15.

JOHN L. WAGNER (The Burke Consortium):

Senate Bill 15 would have a fiscal effect on the state. Code enforcement officers should not carry guns. If a person is threatened or assaulted, a legal complaint should be filed with the sheriff's office.

RICHARD P. CLARK (Executive Director, Commission on Peace Officers' Standards and Training):

I respect what Senator McGinness would like to accomplish, as well as individuals who strive to improve their position; however, there are realities to consider when gaining P.O.S.T. certification. *Nevada Revised Statute* 289.590 says a person with the power of a peace officer is required to be P.O.S.T.-certified. This includes background investigation, United States citizenship, age 21 requirements, Grade 12 education and a medical examination proving no existing physical condition that could adversely affect the ability to perform the duties of a peace officer. Criminality issues might come into play as well.

More specifically, P.O.S.T. certification candidates must pass a rigid physical fitness test and accomplish 10 weeks of intensive category II training academy, which costs approximately \$6,800 per individual. There are salary considerations during training as well as costs for continuing education. In reference to agencies, higher standard requirements would raise qualifications which could cause difficulty recruiting, hiring and retaining employees. In addition, the P.O.S.T. commission is not in favor of grandfathering in people who are not qualified as peace officers.

CHAIR AMODEI:

Senate Bill 15 says a person must comply with the requirements. Should the bill become law, is there capacity to process additional applicants for P.O.S.T. training?

MR. CLARK:

I would say no. There is room for perhaps 5 or 6 applicants in category II within a 25-person academy.

CHAIR AMODEI:

If S.B. 15 becomes law and all 17 jurisdictions decide to send those listed in section 1, subsection 2, paragraphs (a) through (j) of S.B. 15 through P.O.S.T., would they have to wait until there was an opening?

MR. CLARK:

That is accurate.

CHAIR AMODEI:

This is local empowerment at its best. This proposal does not give the state authorization to send anyone to P.O.S.T. academy in regard to code enforcement. It gives local control to cities and counties if they want to use it. Please inform the Committee if you are opposed to local control.

RAYMOND J. FLYNN (Assistant Sheriff, Las Vegas Metropolitan Police Department):

We are opposed to S.B. 15 and concerned other entities would rely on Las Vegas Metropolitan Police (METRO) for in-service training. Staff and facilities are maxed out. There is also concern regarding the internal affairs aspect. Would METRO be contacted in the event of a complaint against an officer? Additionally, METRO would have to handle scope and criminal history information and maintain audit trails for code enforcement peace officers.

RONALD P. DREHER (Nevada Peace Officers Research Association):

With all due respect to Senator McGinness, we oppose S.B. 15 and do not want code enforcement officers part of the system. Marshals are already covered under NRS 289.150 and listed in this bill.

BJORN SELINDER (Churchill County; Eureka County):

Eureka County is explicit in its opposition to S.B. 15 as shown in [Exhibit P](#). The biggest issue to Churchill County is the language in the bill. Although it is enabling, the issues of liability, public safety, costs and training are a concern.

LISA RASMUSSEN (President, Nevada Attorneys for Criminal Justice):

We are opposed to S.B. 15 for the reasons iterated. We are concerned about the Fourth Amendment issues it would raise. Peace officers, law enforcement officers and Las Vegas METRO are subject to Fourth Amendment provisions and familiar with what can be done with probable cause and/or reasonable suspicion. Senate Bill 15 proposes making local code enforcement officers, health district officers, animal control officers and law enforcement officers subject to the same problems.

The way the bill is framed gives carte blanche authority to local municipalities to determine who will be a peace officer and who will not. The manner in which

S.B. 15 is proposed reflects one code enforcement officer who wants to carry a gun.

There are also concerns about providing access, scope and potential National Crime Information Center data not available to the majority of the public. Criminal defense lawyers do not have access to that information defending our indigent clients. I see no reason to permit access to that database by an animal control officer, zoning officer or one who enforces building codes. There has not been enough thought to the widespread implications of S.B. 15. The fiscal note is disingenuous as it says there is no impact.

CHAIR AMODEI:

The hearing is closed on S.B. 15 and opened on S.B. 10.

SENATE BILL 10: Prohibits certain acts relating to capturing or distributing an image of the private area of another person under certain circumstances.
(BDR 15-5)

Ms. ROWLAND:

The ACLU of Nevada has significant concerns regarding S.B. 10 as it has in earlier sessions when different versions were presented. I will read my written testimony ([Exhibit Q](#)) which suggests elimination of section 1, subsection 8, paragraph (e) of S.B. 10; changes to section 1, subsections 2 and 3, and an objection to a nonviolent crime being made a felony.

Ms. RASMUSSEN:

I echo everything Ms. Rowland said outlining the difficulties with S.B. 10. Definitions on page 3, line 21 of S.B. 10 say, "'Private area' means the naked or undergarment clad ...," which could mean a low-cut top. Page 3, line 19 says, "'Female breast' means any portion of the female breast below the top of the areola," which could mean a low-cut top with cleavage showing. These definitions are excessive as written.

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):

Senate Bill 10 is warranted. I received a call from parents whose daughter was at a casino when she discovered a man with a camera on his shoe filming underneath the skirts of women and showing the pictures on the Internet. There is a right to privacy and S.B. 10 addresses that right.

There was another case of showgirls unknowingly filmed in their dressing room changing clothes. Those women had the right to privacy, which was violated. In the case of the young daughter, the parents had the man arrested. Unfortunately, he was released because such an activity is not a criminal act. This issue received legal scrutiny the last two times it was heard. Senate Bill 10 is an effort to protect people in places and areas in which they have the expectation and right to privacy.

STAN OLSEN (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):

We support S.B. 10. There was a case in northern Nevada where a person went under an outhouse and photographed women using the facility. In another case, the manager of a business placed a hidden camera in the only restroom and turned it on from his desk when women used the facility. There is a lack of legislation which could be used by law enforcement on these occasions.

There also was the case of Susan Wilson who rented a house where the landlord placed hidden cameras in the bedroom and bathroom filming her in various stages of nudity. Nothing could be done. A person has the right to privacy in the bathroom of their home.

BARRY SMITH (Nevada Press Association):

We have not opposed this legislation in the past and feel there is good reason for S.B. 10. There is concern it might be construed in such a way to interfere with legitimate news-gathering operations; we encourage a news gathering exception in the language.

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CHAIR AMODEI:
The hearing is closed on S.B. 10.

There being no further business to come before the Committee, the hearing is adjourned at 10:50 am.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____