

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

**Seventy-Fifth Session
April 1, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:21 a.m. on Wednesday, April 1, 2009, 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/75th2009/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; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn D. Stewart, Clark County Assembly District No. 22
Assemblyman Joseph (Joe) P. Hardy, M.D., Clark County
Assembly District No. 20
Assemblyman Chad Christensen, Clark County Assembly District No. 13

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Mark Sprinkle, Attaché to Assemblyman Chad Christensen
Sean McDonald, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Dr. Joe Heck, Private Citizen, Henderson, Nevada
Joseph (Joe) Tyler, President, National Alliance on Mental Illness,
Nevada Chapter, Reno, Nevada
Kristina Ragosta, JD, Legislative and Policy Counsel, Treatment Advocacy
Center, Arlington, Virginia
The Honorable William Voy, Judge, Eighth Judicial District Court,
Las Vegas, Nevada
Marjorie Bull, Private Citizen, Las Vegas, Nevada
Orrin Johnson, Washoe County Public Defender's Office, Reno, Nevada
Harold Cook, PhD., Administrator, Division of Mental Health and
Developmental Services, Department of Health and Human
Services
Kathleen O'Leary, Chief Deputy Public Defender, Washoe County Public
Defender's Office, Reno, Nevada
Chuck Calloway, Sergeant, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada
Lois Lee, Founder and President, Children of the Night, Los Angeles,
California
Victor Vigna, Sergeant, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada
Dr. Alexis Kennedy, Professor of Criminal Justice, University of Nevada,
Las Vegas, Las Vegas, Nevada, representing Protection of Sexually
Exploited Children Nevada Foundation, Las Vegas, Nevada
Sam Bateman, representing the Nevada District Attorneys Association,
Las Vegas, Nevada

Ronald Dreher, Governmental Affairs Director, Peace Officers Research Association of Nevada, Reno, Nevada

Susan Roske, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada, representing Protection of Sexually Exploited Children Nevada Foundation, Las Vegas, Nevada

Stephanie Parker, Executive Director, Nevada Child Seekers, Las Vegas, Nevada

Ben Graham, Carson City, Nevada, representing Judge William Voy

Joe Murrin, Private Citizen, Las Vegas, Nevada

John McGrath, Lieutenant, Las Vegas Metropolitan Police Department, Las Vegas, Nevada

Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada

Alexander Loglia, Extern, American Civil Liberties Union of Nevada, Las Vegas, Nevada

Jesse Wadhams, Attorney, Jones Vargas, Reno, Nevada, representing Black Jack Bail Bonds, Las Vegas, Nevada

Bernard Little, Assistant City Attorney, City of Las Vegas, Las Vegas, Nevada

Chairman Anderson:

[Roll called. Protocol on testifying before the Committee.]

**[Assembly Bill 475](#): Makes various changes concerning the revision of statutes.
(BDR 20-47)**

On Monday, this Committee passed a motion to Do Pass Assembly Bill 475. I would ask the Committee's indulgence to rescind its action whereby we passed the motion and to bring the bill back to the Committee. By rescinding our action, it will give us an opportunity to examine an additional issue. It has come to the Chairman's attention that this bill provides an opportunity, because of the nature of the chapter that it opens, to solve another problem bill drafting has. As a courtesy to both bill drafting and the member who is requesting the issue, I would ask Mr. Carpenter, who made the original motion, and Mr. Segerblom, who seconded it, if they would consider rescinding their action.

ASSEMBLYMAN CARPENTER MOVED TO RESCIND THE MOTION TO DO PASS ASSEMBLY BILL 475.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN MORTENSON WAS ABSENT FOR THE VOTE.)

Let us turn our attention to Assembly Bill 368.

Assembly Bill 368: Authorizes courts to admit involuntarily certain persons to programs for community-based or outpatient services under certain circumstances. (BDR 39-155)

Assemblyman Lynn D. Stewart, Clark County Assembly District No. 22:

Before we start, I would like to thank Dr. Joe Heck, Dr. Joe Hardy, Marjorie Bull, and Christina Ragosta for their help and expertise in preparing this legislation.

Assembly Bill 368 would allow court-ordered outpatient treatment for individuals with severe mental illnesses, such as schizophrenia and bipolar disorder, as an alternative to commitment to an inpatient psychiatric facility. This bill is patterned after Kendra's Law [New York Mental Hygiene Law §9.60], a very successful law which has been used in New York for a number of years.

Nevada is one of only eight states which does not have an assisted outpatient treatment law, also known as court-ordered or involuntary outpatient commitment. Nevada law essentially forces people who lack insight into their illness to hit rock bottom before they can be helped.

By the way, studies show about 40 percent of people with a mental illness do not admit or recognize that they have it. Many studies of individuals with schizophrenia report that approximately half of them have moderate to severe impairment of awareness of their illness. Studies of bipolar disorder suggest that approximately 40 percent of individuals with the disease also have impaired awareness of the illness. We will have an individual today who will testify to that fact.

Forty-two states permit the use of assisted outpatient treatment, also called outpatient commitment. Assisted outpatient treatment is court-ordered treatment, including medication as a condition for remaining in the community for individuals who have a history of medication noncompliance.

Studies and data from states using assisted outpatient treatment prove that assisted outpatient treatment is effective in reducing the following: hospitalization, homelessness, arrests, incarcerations, victimization, and violent episodes. It also increases treatment compliance and promotes long term

voluntary compliance. I have given you a handout with some of the statistics from New York ([Exhibit C](#)). I will quickly go over those. Of mentally ill patients, 74 percent fewer experienced homelessness, 77 percent fewer experienced psychiatric hospitalization, 83 percent fewer experienced arrests, and 87 percent fewer experienced incarceration. We have other statistics we could give to you from North Carolina that show fewer experiences in all of these areas because of the implementation of Kendra's Law.

We will now have testimony from the people that I mentioned, if it is your pleasure, to fortify some of the things that we have discussed here. Once again, this is an alternative which has worked very successfully in other states. We are only one of eight states that do not give judges the opportunity to use an alternative method that is less expensive and more effective than placing mentally ill people in inpatient psychiatric facilities.

Chairman Anderson:

Mr. Stewart, your handout will be made a part of the record.

Dr. Joe Heck, Private Citizen, Henderson, Nevada:

As Assemblyman Stewart just discussed, what we are going to call Arabella's Law in Nevada is a copy of Kendra's Law in New York, which provides for assisted outpatient therapy. I am appearing as myself and as an emergency department physician who spends a considerable amount of time with patients with mental health issues, who have increased utilization of the emergency department. Right now in Nevada, we have no middle ground: you are either an inpatient under involuntary commitment or you have been released to outpatient therapy. We find that many people do well while they are in inpatient, under the commitment, but once they are released do not follow up with the outpatient therapy that has been prescribed. Subsequently, they return to the emergency department in crisis.

I see so many psychiatric patients at the emergency department where I work that I actually feel like I have a psychiatric practice. I know many of them personally, as I see them repeatedly every six to eight weeks. In a nine-hour shift, it is not uncommon for an emergency department physician to process two to four "Legal 2000" cases per day. This certainly jams up the emergency department and prevents those with medical problems and emergent other needs from getting the care that they need. In addition, those "Legal 2000" patients now sit in an emergency department anywhere from 24 to 72 hours, waiting for transfer to an inpatient psychiatric facility and not getting the psychiatric treatment that they need and deserve.

Kendra's Law, or assisted outpatient therapy, is in keeping with the 1999 Supreme Court *Olmstead* decision [*Olmstead v. L. C.*, 527 U.S. 581 (1999)] in that an individual with mental illness should be taken care of in the least restrictive and most integrated environment possible. By instituting assisted outpatient therapy, we will be able to get more people out of inpatient care faster, make sure that they comply with their therapy and remain safe for themselves and others, and, eventually, help them become integrated back into the community without having to use the costly inpatient services. It is for these reasons that I urge your support of this bill. I would be happy to answer any questions.

Assemblyman Carpenter:

Are these facilities available in Nevada?

Joe Heck:

This bill would require those individuals, who are now being released from inpatient therapy and being referred to outpatient therapy, to go the same outpatient therapy but under a court order. There would be a treatment plan that would be prescribed by the psychiatrist or psychologist and the judge, which would require the patient to follow up with the outpatient therapy that the patient would already most likely be referred to. So the facilities are there. Although, with the current economic climate and the possible closing of rural mental health clinics, there may be some difficulty. This does not require any additional outpatient facilities.

Assemblyman Joseph (Joe) P. Hardy, M.D., Clark County Assembly District No. 20:

As Rick Loop pointed out to me, I do not have any props or visual aids, and I think that is important to recognize because the visual aid that does not exist is the person who is not in the emergency room. When you go into an emergency room, you see people who are literally stacked up. One of the challenges that we have is to treat the mentally ill so they can have normal, productive lives and be able to avoid the crises that happen in their lives.

When I look at emergency rooms, I recognize the people who waited for the crises to happen, and many times that is when they decided they were not going to take their medication or were coming off of their medication. Medication works. That is, in essence, the challenge that we have: to make sure that people have the opportunity to continue taking their medicines and have the medications they need. The concept of Kendra's Law, or Arabella's Law, is to allow people the opportunity to be treated, and it works. As far as I know from my research, I have not found any state that has repealed Kendra's Law nor has it been found to be unconstitutional, and that is important

because the law works. We recognize that when people get treated, they get better, recognize reality, and feel better, their families feel better, and they have an opportunity to have a normal and stable life.

Chairman Anderson:

Who would you like to go next, Mr. Stewart?

Assemblyman Stewart:

Perhaps Mr. Tyler should go next. I met him by an inspired accident last night. I was at Glen Eagles Restaurant, happened to sit by him, and found out his story, and he volunteered to come in and testify this morning. If it would be your pleasure, I would like to hear from him at this point.

Joseph (Joe) Tyler, President, National Alliance on Mental Illness, Nevada Chapter, Reno, Nevada:

I come to you to support A.B. 368. Back in 1992, we had tremendous budget cuts. This month, Nevada received a D-grade on the report done by the National Alliance on Mental Illness (NAMI). This report points to the fact that compared with other states we have next to the lowest per capita spending as well as the lowest number of psychiatric beds per 100,000, at 6—the national average is 22. The grade reflects that this is due, at least in part, to the massive population growth, especially in the Latino community. Where I live, in the third largest city in Nevada, Reno, most of my neighbors are now Hispanic.

Mental illnesses are the most debilitating illnesses of any disability that anyone can experience. I know. I almost died, I hallucinated for days, I went homeless, I wrecked my car and my house, and I burned all of my relationships, all due to the fact that the illness robs the mind of the ability to think clear, rational thoughts.

In 1994, a new atypical medication came onto the market. There were only two of those atypical medications at that time; now, there are eight or nine of them. My life improved dramatically, and I was able to go back to work. But why, you say, is it not easier for those of us with mental illnesses to get back on these medications and go on with our lives? The answer is simply that our lack of insight is knocked out totally—KO'd. We get punchy like a boxer. We do not even think there is anything wrong with us. You see, when your logic is down, like a computer your mind does not compute. We need reminders, like support groups and family court judges. I know there are mental health courts in both southern and northern Nevada. If this was expanded to family courts, they could do the job themselves.

I am trying to sell you on support groups, as well. We are doing NAMI connection support groups in Elko, Carson City, and southern Nevada. We are trying to get people to stay on their medications. We are doing it anyway that we can. I urge you to strengthen commitment laws, especially this assisted outpatient commitment. We have got to do better.

Chairman Anderson:

Mr. Tyler, you might want to explain to the members of the Committee what NAMI is.

Joe Tyler:

NAMI is the National Alliance on Mental Illness. We are a grassroots support organization which represents about 15 percent of the population who cannot speak for themselves. We have 1,100 affiliates across the nation. We have affiliates in Carson City, Elko, Reno, and Las Vegas.

Kristina Ragosta, JD, Legislative and Policy Counsel, Treatment Advocacy Center, Arlington, Virginia:

We are a national nonprofit located just outside of Washington, D.C. Our focus and expertise is on civil commitment laws such as A.B. 368. The mission of the Treatment Advocacy Center is to eliminate barriers to treatment for individuals with severe mental illnesses such as schizophrenia and bipolar disorder. Rather than read my written testimony ([Exhibit D](#)), I would like to highlight a few key points regarding this legislation and address some of the commonly raised questions and misperceptions on this legislation, specifically on outpatient or assisted outpatient treatment.

As you have heard, assisted outpatient treatment is court-ordered treatment for individuals who have a history of medication noncompliance, which is used as a condition of remaining in the community. This bill addresses the most common reason for refusing treatment: lack of insight. I know Assemblyman Stewart mentioned some statistics related to lack of insight. The fact of the matter is the most common reason people with severe mental illnesses are not being treated is that they do not believe they need treatment for a mental illness. Roughly half of individuals with severe mental illness—that typically includes schizophrenia and bipolar disorder—at some point do not recognize they are ill as a symptom of their illness.

You have heard numerous times already this morning that Nevada is one of only eight states in the country that does not provide for assisted outpatient treatment, sometimes called involuntary outpatient commitment. It has different names in different states. Nevada does not have assisted outpatient treatment as an alternative to involuntary hospitalization. As Drs. Heck and

Hardy both mentioned, the practical result of Nevada's failure to do so is that community mental health services are currently available only to people who are able to accept them voluntarily. Every day, you hear of the consequences of nontreatment. I have included some specific statistics in my written testimony, but essentially the common consequences are homelessness, incarceration, violence, victimization, and suicide, not to mention the fiscal cost associated with all of those.

Assisted outpatient treatment works. Forty-two states have recognized this gap in their law and have passed and implemented these laws. If Nevada were to pass this law and allow for assisted outpatient treatment, and use it effectively, it could start to address some of these terrible consequences of nontreatment and help to save resources. You heard from Dr. Heck about the individuals he sees in his emergency room. One of the statistics you will see in my written testimony, and that Assemblyman Stewart referred to, is that in New York—the statistics that he read are from a report that the state of New York released after the first five years of implementation of its law, which is commonly referred to as Kendra's Law—77 percent fewer individuals, who had been under an order of outpatient treatment, experience psychiatric hospitalization, which in and of itself is a huge cost savings.

As far as misperceptions and questions that I hear across the county when talking about this type of legislation, and that I have heard in Nevada in relation to A.B. 368, the first is whether this law will bust the budget, and whether a significant amount of resources need to be invested in order for this law to work? I think anyone familiar with the mental health system will agree that more services are needed. However, as far as this law is concerned, many legislatures passing measures for assisted outpatient treatment, and differently named but similarly functioning mechanisms, have rarely included specific funding allocations with the authorizing legislation. Typical of this practice, no funding was attached in two recent states that adopted similar legislation, Florida and Michigan. I think the decision to not directly fund these laws in most states stems from the view that, rather than a discrete program that cannot operate without funding, it is a tool for the application and most efficient use of existing services for those individuals who fit the law's eligibility standard.

Another misperception and question raised is whether this is going to cast a huge net and encompass a significant number of individuals who will be placed under orders? Based on New York's experience in implementing their law—they have probably implemented it the most vigorously—if Nevada were to use the law as robustly as New York has, you could expect at most 99 individuals in the first year. This assumes that these individuals are new to the system. I think

the reality is that the individuals who will benefit from assisted outpatient treatment are already in your emergency rooms and jails, and this law does not mandate any services for which those individuals with severe mental illnesses are not already eligible.

I believe Assemblyman Hardy raised the issue of constitutionality. As he mentioned, 42 states have this type of law and have had for them for over two decades, in some cases. The U.S. Supreme Court has never overturned any of these laws, and at the state level these laws have been upheld whenever challenged on constitutional grounds.

Chairman Anderson:

How many of the 42 states have mental health courts?

Kristina Ragosta:

I do not know the number off the top of my head. I know that is a more recent initiative in many states. My understanding is that the states that have mental health courts are successful in using them. I think the difference with this law versus the mental health court is that one of the goals behind this law is to avoid sending people to jail in the first place, whereas in order to be in a mental health court, you have to first commit a crime.

Chairman Anderson:

How about drug and treatment courts, which we have had in this state for some time?

Kristina Ragosta:

What is the question, how many other states have...?

Chairman Anderson:

How does it work with the diversion courts in those states, or do they have diversion courts like drug court?

Kristina Ragosta:

I am sure that many of them do. Many times individuals with severe mental illness have dual diagnoses, and often the statutes incorporate substance abuse within their law.

Assemblyman Horne:

How is it that these individuals would be involuntarily committed? How are they intercepted? As you noted with mental health court, a law has been broken, and that person has been identified as a person in need of mental health care. If we are going for people who do not break any laws, how are they

typically identified? Is it by family members who get them involuntarily committed? Somebody mentioned the percentage of homelessness among the mentally ill. Do we have people identify homeless persons on the street and involuntarily commit them?

Kristina Ragosta:

If I understand your question correctly, you are inquiring about the petition process. Essentially in Nevada, if I understand the law correctly as it currently exists, as well as the amendment that this bill would make, an individual, including a family member, could petition the court for an order of outpatient commitment. As far as identifying those individuals with severe mental illness, there are very specific criteria listed in the statute, and in this bill in particular, which mirrors New York's law in some aspects. For instance, one of the requirements of the statute is that, before someone would be placed under an order of outpatient commitment, they have a history of noncompliance with treatment, which either is a significant factor in the need for hospitalization or has resulted in one or more acts of violent behavior. As I said, the goal of the statute is to keep people out of jail and psychiatric hospitals. The reality is that many of the individuals who will benefit from this law are probably already known by law enforcement and the mental health service providers. It operates differently than a mental health court in the sense that a criminal offense is not a prerequisite to mandated treatment.

The Honorable William Voy, Judge, Eighth Judicial District Court, Las Vegas, Nevada:

I totally agree with everything that has been said by the doctors who have testified here today. I am in total support of the concept and agree wholeheartedly. I have some concerns, however. First, there is a financial impact on the county. Right now, the way the bill is written, those court proceedings would be at the county's cost. We are running about 7,000 petitions a year in Clark County. In order to implement this program, I will need to convert a position that we are just basically covering on a part-time basis to a full-time court. That is a minimum \$500,000 yearly expense. I am noting for the record that this is an expense that would have to be incurred if we implement this.

Second, I have some difficulty with the language of the bill. I do not believe that the bill is written in such a way that it will promote the purpose for which it has been brought forward. The standard of placing someone in outpatient versus inpatient appears to be the same. Some amendments would have to be made to the bill in order for it to make sense and be implemented. Those are my concerns with the language of the bill as written. I have not had a chance—and I apologize but I am a little busy—to actually sit down and try to figure out

how I would propose those amendments. My main concern is that all of the players involved in implementing this program are on board, that all issues be vetted, and that anything in the bill as proposed would not make it difficult for us to carry out.

I would love to see it happen. I agree wholeheartedly with everything that has been said about how in the long run this would be best for our community, for the State of Nevada, and for the people who suffer from those illnesses. I am not opposed to the concept. I just have some difficulty with the language, and there is definitely a cost impact for the county.

I think there is an initial cost impact for law enforcement, but over time they will come to understand that they are dealing with the same individuals, and what we are trying to do with an outpatient program is to intervene before that patient decompensates off his medication. In the long run, from the law enforcement standpoint, the cost is going to be the same, if not less, but the risk involved in encountering individuals who are off their medication will be lower.

Assemblyman Horne:

You touched on a concern of mine: the standard of involuntary commitment in this bill, as opposed to the outpatient standard, is whether a person is deemed to be danger to himself or others. Typically, if someone has reached that condition, would a judge not be required to place him in an inpatient facility as opposed to an outpatient or community-based facility?

William Voy:

Yes, sir. If they clearly present a danger to themselves or others due to mental illness, at that point in time, based upon the standards of review, they should be committed. First of all, a patient should always be in the least restrictive environment. That being said, if you come to that conclusion, yes, in order to protect the patient and the public safety the patient should be in an inpatient facility. The unfortunate part is in Clark County the period of stabilization that occurs right now is only a matter of days. They are on their medication, stabilize, the danger is lessened, and they are released with the understanding that a good 40 percent of these patients are going to be back within a matter of months, if not weeks, because as soon as they were released and began to stabilize they stopped taking their medication. The statistics in Clark County show that out of the 7,000 cases I had in 2008, about 45 percent were called reopened cases, meaning that they already had previous petitions and they are now coming back again. That is the real issue. The language problem I have with the bill is that it does not clearly spell out that when the patients reach that stabilization level, they no longer present a clear and present danger to

themselves or others. That language needs to be tweaked so that when you do release them, they can be converted to an outpatient commitment. As long as they are on their medication and stabilized, they do not present that risk, but there is always a risk of them going off of their medications. The risk that they will go off their medications and decompensate is the real factor a judge would look at in making a determination as to whether a patient should be in outpatient commitment. The provisions that allow law enforcement to bring them in to get their medication before they decompensate is the carrot to make this all work. Without that, the outpatient commitment law has no teeth and is a waste of time.

Assemblyman Horne:

For the bill's sponsor, is this bill a carbon copy of New York's law? I understand what outpatient services are, but what would be the community-based program that you would be sending them to?

Assemblyman Stewart:

It was our intent to make it a carbon copy. Evidently there were some parts of the bill that were not exactly the same as New York's law. I finally talked with Judge Voy on the phone yesterday. I realize there are some things we need to work out on the bill, and I am willing to do that with the Judge and law enforcement. The facilities are already in place, as Dr. Heck mentioned. It would be on an outpatient basis rather than an inpatient basis.

Marjorie Bull, Private Citizen, Las Vegas, Nevada:

One of the things that has not been brought up about the bill is the situation that happened to my daughter. She was bipolar, obviously mentally ill, and hooked on prescription drugs because of a kidney condition that she had. Within a 2 1/2 month period she had checked herself into two separate hospitals for rehab. If this law was in effect when she went to the first hospital, they would have had a central database that would have noted that this woman is bipolar, she really has a problem, et cetera. When she got out of the second hospital, they would have noted from that same central database that she had been in a hospital a couple of months before, which falls under the criteria in the proposed law. The law is very explicit about the number of things that have to apply for outpatient commitment.

Chairman Anderson:

We have a writing from you, Ms. Bull, and it will be entered into the record ([Exhibit E](#)).

Assemblyman Manendo:

I wanted to make a quick comment. I appreciate your correspondence with me over the last year and a half, Ms. Bull, and I appreciate your persistence in working on this legislation, Mr. Chairman. I think I have been back and forth with Ms. Bull more than any other person in the last couple of years. Thank you for your work, Ms. Bull.

Marjorie Bull:

I thought the interesting part was the news article by Supreme Court Justice Hardesty. If we are paying \$200,000-\$320,000 per year per prisoner, I think supporting Arabella's Law would be quite easy.

Chairman Anderson:

I would just point out that this is a policy committee, and it always seems easy for the policy committee to do the right thing. The money committee is in the room down the hall. I appreciate that what appears to be an easy fix never seems to be that way when money becomes involved.

Mr. Stewart, is there anybody else you felt had to be heard on the issue before I turn to those who are in opposition?

Assemblyman Stewart:

Not that I am aware of. I think we have covered everything, and I appreciate your indulgence.

Chairman Anderson:

Is there anyone else in support of the bill? [There was none.]

Orrin Johnson, Washoe County Public Defender's Office, Reno, Nevada:

Before I begin, it might be better to hear first from Dr. Harold Cook, the director of the Division of Mental Health and Developmental Services, who has some numbers and more knowledgeable testimony, and then I can follow up briefly with the specific impact on our office.

Harold Cook, PhD., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services:

I am here to provide information regarding the impact on the Division of Mental Health and Developmental Services potentially created by A.B. 368. The program described in the bill provides that, if an individual is not compliant with the treatment program, the police may be called by the mental health provider managing the case and bring the person into services. There is no provision, as is provided in other states, to hospitalize the individual as a consequence of noncompliance. The concern here is just the logistics of having the mental

health provider notify the police that the person is noncompliant with treatment and then having law enforcement apprehend the individual and bring him into the treatment provider. Our treatment providers are booked 40 hours a week with appointments. We would need to coordinate with law enforcement a time and date certain for that individual to be brought in to be seen by the treatment provider. I think the logistics here are quite complicated.

While the ultimate goal of this bill is admirable and, in other states, has reduced hospital admissions and helped mentally ill patients who would not have normally participated in mental health treatment, the program must reasonably provide adequate resources and be appropriately structured to maintain consistent participation in treatment. These goals can be expensive to maintain, as has been demonstrated in other states with outpatient commitment statutes. For example, New York, which has been brought up a lot this morning, has reduced hospital stays and arrests of mentally ill offenders with Kendra's Law. The cost of that law approaches \$32 million a year to treat somewhere between 1,400 and 1,500 people, at any given time. The law has apparently produced some very nice results, but it has been reasonably expensive to implement.

The implementation of civil commitment laws across the United States has come with mixed results. Those states that have invested resources when implementing the law have had some success, while those that have not invested resources have tended not to move forward with implementation. An example would be California, which passed Laura's Law, I think, four to six years ago. Laura's Law [California Welfare & Institution Code §§5345-5349.5] has been implemented in only one or two jurisdictions in the state as a result of lack of the resources needed to implement the law.

It is likely under the present economic climate that many communities will not have the resources to implement a program with the intense supervision that this law could require. We have projected a broad estimate of what such a program would cost in Nevada. Such a program would require the services of what we are anticipating would be a Program for Assertive Community Treatment (PACT) to be successful.

The kinds of individuals that we are talking about have multiple needs. I know that people have focused on medication in this hearing, but many of these people will be homeless. It does not do any good to provide a homeless person with a course of medication. They need a place to live. We would have to provide some measure of housing support. They need vocational training. They need service coordination. They need a lot of intensive services, at least initially, to get them stable. Then, we can back off on the services. The initial

course of treatment, in order to be successful, is going to need to be fairly intense. This could run into the millions of dollars as our fiscal note indicates.

In addition, as Judge Voy indicated, there is a need for the legal infrastructure to adjudicate these cases. Part of the law states that the Division would be responsible for providing clinical staff to do the assessments for individuals who are petitioned under this law. Our clinicians are scheduled to provide treatment 8 to 5, Monday through Friday. In order to implement this law, I would have to reduce treatment, to some extent, to provide the necessary court-ordered assessments.

I would be happy to answer any questions regarding this bill and the complexities of implementing this law for the Division of Mental Health and Developmental Services.

Chairman Anderson:

I do not notice a fiscal note in my green book. When I look on the face of the bill, I see it as an unfunded mandate to local governments. I do not perceive the state cost. In fact, it says very plainly "no."

Harold Cook:

Yes, sir, I saw that. Most of the people who would be adjudicated under this law are indigent and have no insurance. Where else are they going to get the treatment but the Division of Mental Health and Developmental Services?

Chairman Anderson:

The difficulty with implementing this is the lack of statewide mental health services. Since we are without the basic infrastructure, it leads to many of the counties shifting the problem to the state.

Harold Cook:

That is my assessment.

Assemblywoman Dondero Loop:

When you first spoke, you said that it would be difficult to coordinate with law enforcement. How are these other states doing it, if it is difficult?

Harold Cook:

Assisted outpatient treatment laws in other states provide for individuals to be hospitalized on an involuntary basis if they are noncompliant with treatment. There is no provision in this bill to do that. The only provision in this bill is to notify law enforcement to apprehend the individual and bring him in for outpatient treatment. Just as an aside, while the individuals who would be

adjudicated are mentally ill, they are not stupid. Since most of them would be dependent on either public transportation or walking to get to their appointments, I could see a number of them figuring out how to manipulate the system to get a free ride for their treatment.

The coordination here is essential. If somebody misses a series of group therapy, which, for example, is scheduled from 11 to 1 on a Friday, we would have to notify law enforcement that the next group therapy session that the individual needs to attend is from 11 to 1 on the following Friday. Law enforcement would then somehow need to coordinate picking up that individual and bringing him in. That is the logistical issue I am talking about. I am not sure, but I have not seen this sort of provision in any other law across the nation.

Chairman Anderson:

I was under the impression, from Mr. Stewart, that this was modeled after the New York law and several other states that apparently have been able to do it. Perhaps they have developed it as part of their procedures. Northern Nevada is very different from metropolitan New York.

Harold Cook:

I would also like to remind the Committee that New York budgets \$32 million per year specifically for this program. They have specific staffing and resources allocated, and that may make a difference in how those provisions are implemented.

Assemblyman Carpenter:

What is the fiscal note?

Harold Cook:

The fiscal note was just completed yesterday. I am sorry for the delay. It took us a little while to do it.

Chairman Anderson:

This is the state's fiscal note?

Harold Cook:

This is the state's fiscal note. It was submitted just yesterday. For fiscal year 2010, we anticipate approximately \$1,200,000; for fiscal year 2011, approximately \$2.5 million. That is based on the experience in New York, which we are following. The average cost of treating an individual under Kendra's Law is about \$25,000 per year. We took that figure and looked at the

resources that we think we would need to allocate, and it came out to be about the same.

Orrin Johnson:

I would like to introduce, sitting to my right, Kathy O'Leary, Chief Deputy Public Defender in our office, who deals specifically with these cases. She is here to answer any specific questions about the practical impact and how it works in the real world.

We absolutely admire the goals. I spoke with Assemblyman Stewart for quite a while yesterday, and we appreciate the idea of providing more tools and some intermediary ability, rather than sending somebody straight to commitment, even if commitment realistically ends up only being three or four weeks of inpatient. Unfortunately, these are not flush times, and our resources are extremely limited. Under the bill, a person who is the subject of a petition is entitled to a public defender if he cannot afford an attorney. As Dr. Cook testified, most of these folks are indigent and often homeless. Our office would be substantially impacted. We would potentially have more clients and more petitions to deal with. We fear that family members who are concerned about aging parents or kids for whom this program may not be appropriate, will still bring a petition. Even if we are able to defend successfully that a person should not be in this program, the bottom line is that the expense is still fronted by us because we are representing that client. We are still defending the client. We are really on the front end of the potential investment because, before anybody can participate in this program they wind up going through a court proceeding, and more than likely they are going to use us to defend them in that court proceeding.

In light of Nevada Supreme Court Order ADKT No. 411, which is already requiring us to limit substantially the number of clients we can have—in terms of how much time we are able to spend with each client under the new caseload standards, standards which the Supreme Court has recently refused to delay—we are extremely concerned that any additional increase in the number of petitions, even if it is small, could have a substantial impact on our ability to adequately deal with the rest of our caseload. We are concerned about being forced to triage, to turn people away, and to limit adequate service for the people that are most in need. Certainly, people who do not need to be fully committed but need to be taking their medication are a concern. It would be ideal if we could help them, but in an age of limited resources for our office we believe we must deal, first, with the people that are most in need, most in danger, and most in need of commitment. By expanding the program to allow some of the middle ground, we fear that we are watering down our ability to adequately represent all of our clients.

There is one other issue I want to note for the record. In the bill, on page 11, section 16, subsection 2, there is a specific provision that a peace officer does not need a warrant to take a person into custody. We would oppose that. Right now, under the current scheme of involuntary commitment, which you can see on the next page in subsection 3, a peace officer does need a warrant. We are concerned about the broad language.

If this bill is likely to go forward, I am certainly willing to work with the bill's sponsor and propose some amended language that deals with our concerns.

Chairman Anderson:

Regarding that particular section on page 11, this is someone who has been judicially admitted and is under a court-mandated treatment program. I am thinking of a program that is set up like the mental health courts and a couple of others. Has not the court always been able to reach out and pull that person in?

Orrin Johnson:

The court, absolutely. The concern is not with the court; it is with a provider who says that the person is failing to participate: if the provider makes that determination, he can call the police and have the person taken in. Failing to participate does not necessarily mean that they do not show up; it could mean that they are not talking as much as the provider thinks is important in group therapy or that sort of thing. All we are asking is that the treatment provider must ask the court to issue a warrant to go pick somebody up, so there is a neutral observer to say that it is appropriate to bring that person in.

Chairman Anderson:

Does the court not, in selecting the person responsible for operating that program, anticipate that the person is operating underneath his order as a provider of treatment? Is that not an extension of the court's order?

Orrin Johnson:

In reality, I do not know that it works that way. The bill certainly envisions a lot of different private organizations, but there are not many out there. You heard testimony about the lack of resources, generally, and about the available services. When we work with those treatment programs—the drug and alcohol service providers and everybody else—they are great folks, they do a tremendous job, but the issue is making sure that they are not getting too close to it. Right now, in the current scheme under the current statute, that treatment provider has to go get a warrant. We think that is constitutionally necessary in order that there be some review before you go to somebody's

house, because they are not taking their medication, bring them in, restrict their liberty, and confine them, even if it is to a hospital.

Chairman Anderson:

I would not want to take away the ability of a judge in the drug courts or mental health courts to rely upon the treatment providers to do their part under the judge's order.

Kathleen O'Leary, Chief Deputy Public Defender, Washoe County Public Defender's Office, Reno, Nevada:

I have been representing involuntarily-civilly-committed patients for the past 12 years through the Washoe County Public Defender's Office. The difference between mental health court and the drug court—the specialty courts—and outpatient commitment is that the Division has committed specific staff members to those courts to provide, integrate, and coordinate the services for the defendants who are under the court's jurisdiction. It is a very tight hand-in-glove service. An outpatient commitment statute has to contemplate that level of coordination, but as Dr. Cook has indicated, it is very expensive.

Currently, and over the years, we have had cases where persons have remained hospitalized longer than necessary because less restrictive services were not available to them in the community. I have seen patients benefit from intensive services. The PACT program enhances their well-being and quality of life. It is a voluntary program, and this statute contemplates an involuntary program.

Yesterday, while meeting with clients and staff at Northern Nevada Adult Mental Health Services, I was told that there was a waiting list of 120 persons waiting for a service coordinator. The service coordinator is the first step in getting outpatient services. They are the gateway. For every person under this statute who might be court-ordered and given priority, unless full funding is provided, they would probably be bumping somebody else in the community who also needs those services.

Chairman Anderson:

I hesitate to do anything opposed to expanding outpatient services in any way for people who fall into this category. First, we are trying to make sure that they can put themselves back on the road to recovery. We want to get them back to work and productive in society. The additional benefit to the community is making sure that the people in jail are the people who should be in jail, because they are a threat to society. For those with the mental health problems, taking their medication is the solution. It seems to me we would want to foster that solution as much as possible. The problem is the cost.

Kathleen O'Leary:

We are the beneficiaries in northern Nevada of crisis-intervention-trained law enforcement officers who have special training for the mentally ill. In fact, at this time they do divert a fair number of persons from the jails directly into the inpatient mental health services. If this bill becomes law, I have a concern that families and persons, who are concerned about their mentally ill loved ones, would expect that their loved ones would receive services. This proposed statute would be creating an expectation that we may not be able to fulfill with actual services.

Assemblyman Carpenter:

It seems to me you are already seeing a lot of these people on a rotating basis. I guess I am having a hard time understanding the extra work that this would put upon your office.

Kathleen O'Leary:

This statute would allow petitions for review of individuals who are not participating in outpatient treatment. They may not rise to the level of needing inpatient and full restriction of their liberty. The outpatient liberty would be infringed upon by mandating them to these services. Those, in fact, would generate new petitions. They are, as has been described before, the middle ground. They are not decompensated and ill enough to require full-time hospitalization. In northern Nevada we have seen an increase in petitions of probably 50 percent over the past 2 1/2 years for involuntary civil commitment. I would also note that a fair number of those involve individuals coming into our state from out of state. We help them and contemplate their returning to their home state, but that is not always the case. An outpatient commitment statute, if it was a less restrictive environment, may require us to provide services to those individuals as well.

Assemblyman Carpenter:

If we had this kind of a program, maybe it is going to prevent these people from needing to be committed to a facility. I think there is going to be a real savings to the counties and the state if we can somehow institute this kind of a program.

Kathleen O'Leary:

I would note that the PACT program, which Dr. Cook mentioned, is the intensive outpatient services currently being provided. We still see that a fair number of those individuals need inpatient hospitalization because the state of the art of medications, through no fault of the individual even if they are complying with medication, is such that they may still decompensate. While you may not see them in a severely decompensated state, we may catch them

earlier. I am not certain that we can say that we would eliminate the possibility of inpatient treatment for them under this bill.

Assemblyman Carpenter:

I do not think you are going to eliminate inpatient treatment, but I think you are going to catch a fair, maybe even substantial, number of them. Some statistics were provided, from states that have this type of law, about all the people that were kept out of prison and inpatient facilities. Really, when you look at the whole scheme of things, the fiscal note that Dr. Cook mentioned is not a great deal of money compared with what I see might be the benefits.

Kathleen O'Leary:

I would hope that you are correct, and it may provide some savings. However, the legal infrastructure, with the very short time lines that due process requires in the statute, does not exist at this point. The resources for our office, the courts, the district attorneys, and independent court-appointed clinicians are not currently in place. That is a factor that also needs to be accounted for.

Orrin Johnson:

The concern is that we are the front end of that investment. We are the investment. The savings do not come to our office; they come afterwards. If we had increased funding, if we had more people, if we had more resources, then that is fine. The goal is admirable, and we do not dispute that there are potential savings down the road. The problem is it is going to represent a front-end increase, we believe, in our caseload, which is problematic right now in terms of both resources and dealing with ADKT No. 411 and the caseload standards that we are implementing now.

**Chuck Calloway, Sergeant, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada:**

We believe that the goal of the bill is a noble one, and we support trying to fill that gap in the mental health system. However, our concerns are logistical. A couple of them were briefly touched upon by Dr. Cook and Judge Voy. Our primary concern comes specifically in section 16, subsection 2, where a law enforcement officer would be required to apprehend, take into custody, and return a person to an outpatient facility upon written request of the doctor. This could prove to be a logistical problem because sometimes these individuals are homeless and it may be difficult to locate them. They may not be at their residence, and it may be hard to track them down and return them to the facility. Our current policy is we do not transport patients in a black and white patrol car. In a "Legal 2000" situation, we call for an ambulance. In this case, we would probably be required to rewrite our policy or figure out if we are going to transport these patients in a patrol car or by ambulance.

Another concern is, because these are not secure facilities, once we return the person there is nothing to keep him from walking right back out the door. We could be in a loop where we are constantly going and picking this person up and returning him to this facility.

I would like to thank Assemblyman Hardy for having an open door policy. I spoke to him at length about this and took up a considerable amount of his time. Those are our concerns, Mr. Chairman.

Chairman Anderson:

Let me close the hearing on A.B. 368.

[The Committee stood in recess at 9:50 a.m. and was called back to order at 10:03 a.m.]

Let me open the hearing on A.B. 380 and ask for your presentation, Mr. Hambrick.

Assembly Bill 380: Makes various changes relating to the sexual exploitation of children. (BDR 15-727)

Assemblyman John Hambrick, Clark County Assembly District No. 2:

April is Child Abuse Awareness Month. I can remember the days when I was quite a bit younger and still living at home. If I started talking about a topic that was not polite, my parents would look at me and say, "We do not talk about things like that in polite society." Well, ladies and gentlemen of the Committee, we are going into some very impolite society and discussions on this bill. As a preview, if the Chairman would indulge me, I would like to start with the video and set the stage.

[Played excerpt from video "I Just Keep Quiet: Voices of Human Trafficking," Refugee Women's Alliance and the Seattle Police Department, 2006 ([Exhibit F](#)).]

I will go through the bill very quickly, and should there be questions please do not hesitate to ask. This bill is a civil bill, not criminal. The provisions of this bill, should they be enacted, come into play after a criminal conviction of those who have been found guilty of trafficking. This is not aimed at individual pimps but, rather, traffickers. The statistics and monetary involvement are staggering, which will be touched on by others who will speak to the issue far more eloquently than I will.

Section 2 of this bill provides for the freezing of assets after an arrest and/or conviction. We have seen in southern Nevada, in another area, where a defendant in the Hepatitis C case tried to dispose of his assets. I want to make sure that will not happen in these instances. We are talking about potentially millions of dollars in this industry. I want the court to have the capability to freeze these assets pending the criminal case and then going into the civil case.

Section 3 of the bill goes into civil penalties. I will mention some of those, and I am sure there are going to be some questions. Should an individual be found guilty in criminal court of one of these offenses and the victim was under the age of 18, I am proposing a civil penalty or fine of not more than \$100,000; if, at the time of the occurrence, the victim was under the age of 14, a \$500,000 fine or penalty; and, if there was a conspiracy involved, a fine or penalty not to exceed \$1 million.

I will not address section 4 at this time because there will be an amendment to delete that section. Mr. Bateman, from the district attorney's office, will be coming up to offer some clarifying language on the bill.

Assemblyman Horne:

You said that this is only addressing trafficking, but I believe the bill says pandering. Is there an amendment that will address that more specifically?

Assemblyman Hambrick:

There will be language addressing some of that more specifically, but I wanted to make sure I got legislative intent on the record. Many times, as these things go into court, attorneys on both sides of these issues occasionally forget to look at the legislative intent of these bills and where we want to go with it. Not that simple pandering or a single pimp is not important, but it is my intent to aim this bill at the trafficking aspect. The teen sex trafficking in southern Nevada is horrendous. I am trying to address that specifically.

Assemblyman Horne:

In section 3, where it provides for the distribution of the civil penalties, I am concerned about the distribution that you have: 60 percent to the district attorney's office and 40 percent for programs for victims. The problem I have is that it sets up a financial incentive, so to speak, for a district attorney's office. I think it should avoid that appearance of impropriety and, if nothing else, the clear lion's share should probably go to a victim's program. Typically the courts impose fines and penalties after a conviction has been handed down.

Assemblyman Hambrick:

I appreciate the question. My purpose in making this split is to make sure that the district attorneys have the resources available to continue these prosecutions because, should this bill be enacted, the traffickers will get very high-powered attorneys. We are talking about millions of dollars being potentially at risk. Going to jail is the cost of doing business. When we start going after their pocketbooks, they will be reacting a little bit differently. I wanted to make sure the district attorney had enough resources to specialize and go after these cases; then the other 40 percent would be for the care and well-being of the victims. Should that be reversed, it would not bother me in the least. I wanted to make sure that no one gets off for lack of resources. That was my intent.

Chairman Anderson:

I think his question was why those dollars will not go to the county general fund and then be allocated out, rather than directly to the district attorney's office, so that this does not become an engine for the financing of the district attorney's office.

Assemblyman Hambrick:

That appears to be more of a political question. Sometimes the money can be diluted if goes into the general fund. I wanted to make sure that we would have the resources available to go toward the care of these youngsters.

Chairman Anderson:

I always have a concern whenever a judge or a district attorney's office has a nexus to money and fines that come in, when it is not a direct correlation.

Lois Lee, Founder and President, Children of the Night, Los Angeles, California:

We are a privately supported, 24-bed shelter home with an on-site school specifically for children between the ages of 11 and 17 who are victimized by prostitution. This year we are celebrating our 30th anniversary.

New York provides nine beds for young women and girls who are victimized by prostitution, Atlanta provides six beds, and just recently a Christian home opened five beds for young women in North Carolina. Nevada embarrassingly lacks programs for girls. In fact, Nevada is the only state in the Union that is without a YWCA. Prostitution has risen to be the most prominent characteristic in Las Vegas, even more prominent than gambling. In fact, most Americans believe that prostitution is legal in Las Vegas. A.B. 380 is an obvious step in the right direction to begin to address the plight of young people—women and girls—who are victimized by prostitution and have nowhere to turn for help.

Chairman Anderson:

There was a YWCA in Washoe County for many years. I guess it is closed now.

Victor Vigna, Sergeant, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

I am assigned to the vice section, Innocence Lost Task Force. The task force detectives are responsible for the investigation of all identified child victims involved in prostitution. The Federal Bureau of Investigation (FBI) established task forces in 14 cities with the highest incidence of child prostitution. Las Vegas was named as a participating city. In 2008, the Las Vegas Metropolitan Police Department (Metro) vice section investigated and identified 150 cases of child prostitution. To date in 2009, detectives have encountered 47 victims, 24 in the month of March alone. After my testimony was drafted, we encountered six more victims, so we are actually up to 30 for the month, one as recent as 3:30 this morning.

I agree with Dr. Lee that A.B. 380 is an obvious and positive step in the right direction and that the State of Nevada lacks programs for victimized girls. We have a responsibility to protect America's children. The collection of civil penalties in addition to criminal penalties is a step forward to assist in defraying the cost of operational expenses for the district attorney's office, but, more importantly, they will be used to address the needs of our child victims. Although the civil penalties seem staggering, the amount of money that these panderers are generating is even more staggering. In a recent case that our unit handled, a panderer had \$400,000 in cash in his house. I totally support A.B. 380.

Dr. Alexis Kennedy, Professor of Criminal Justice, University of Nevada, Las Vegas, Las Vegas, Nevada, representing Protection of Sexually Exploited Children Nevada Foundation, Las Vegas, Nevada:

I am not going to talk today. I am going to hand it over to Susan Roske. She will discuss the organization Protection of Sexually Exploited Children (PSEC) Nevada that Judge Voy and I helped organize here in Las Vegas. There is a fact sheet we sent up north explaining our ideas ([Exhibit G](#)). I wanted to provide that as background information. It is an organization that intends to provide services to this population. We have an incredible issue that we are facing here in Nevada and a serious lack of services for these exploited youth.

Sam Bateman, representing the Nevada District Attorneys Association, Las Vegas, Nevada:

We have been working with Mr. Hambrick for some time now on trying to address what he wants to achieve in a way that we think will work

procedurally. I have discussed the proposed amendments ([Exhibit H](#)) with Mr. Hambrick, and I believe he is in agreement. I have also talked with other parties, including the public defenders' offices, so we could have their concerns addressed before we came to the hearing today.

After consulting with the Attorney General's Office and other parties, one of the concerns is having a civil penalty that is contingent on either criminal conviction or arrest. It poses some potential legal issues with double jeopardy. We do not have that kind of a structure set up in most of our criminal statutes in Nevada. I think Mr. Hambrick was probably looking for guidance in this arena to the federal statutes, which I am not entirely familiar with. We have proposed to bring the concept more in line with what we do in Nevada, which is to fine an individual in addition to the criminal sentence. This provides that the fine and sentencing occur within the criminal case, which does not pose those double jeopardy issues that may occur under the procedure outlined in this bill. The numbers are the same. We have included a part in the amendment that allows either the Attorney General's Office or a district attorney's office to try to recover those fines. It is essentially the same, but it incorporates those penalties into the actual criminal case.

I think all parties have agreed to eliminate section 4, which reduces or eliminates prosecutorial discretion. After some discussion with the public defenders' offices, I spoke with Mr. Hambrick earlier about that section, and I do not believe it is what Mr. Hambrick intended to have in the bill in the first place. I think he was more concerned that the civil penalties would not be governed by any negotiations in the criminal case.

These are really legal issues. I would defer to the Legislative Counsel Bureau (LCB) and counsel for the Committee to go through the amendment, see what I have done, and see if they agree or not. But I think it still gets at the same point that Mr. Hambrick's original bill aimed to address.

Chairman Anderson:

Mr. Bateman's amendment is to modify section 3 of the bill and remove section 4. Is that correct?

Sam Bateman:

Yes, it is.

Ronald Dreher, Governmental Affairs Director, Peace Officers Research Association of Nevada, Reno, Nevada:

We are here to offer our support for A.B. 380 and the concept behind the bill. It is definitely needed, and we will do whatever we can to help Assemblyman Hambrick get this passed.

Susan Roske, Chief Deputy Public Defender, Clark County Public Defender's Office, Las Vegas, Nevada, representing Protection of Sexually Exploited Children Nevada Foundation, Las Vegas, Nevada:

The attorneys in our office represent children who are arrested on prostitution-related charges in Clark County. I am here to tell you that the commercial sexual exploitation of children in southern Nevada is an urgent issue and services for these children are desperately needed. The children we see in juvenile court are, for the most part, girls who have been arrested for soliciting an undercover police officer. It is easy to label these children as whores, prostitutes, or other negative descriptors, but these children are not responsible for the circumstances, and I urge you to see them as they truly are: abused and traumatized children. They are not involved in prostitution of their own free will but are forced into modern-day slavery. Many are literally tortured by their pimps. Although we in the juvenile justice system recognize that they are victims, unfortunately we are still treating them as criminals. They are arrested, placed in handcuffs, placed into a cell, and brought to court in shackles. No other group of victims in our society is treated this way.

The current process for prosecuting these children is actually a revolving door, sort of a catch-and-release, where they are returning immediately to their commercial sexual exploitation upon release. Nevada is not in alignment with the federal government in designating these children as victims under the Trafficking Victim Protection Act (*United States Code*, Title 22, Section 7101 et seq.). Recognizing this, in an effort to try to find a solution, Teresa Lowry with the Clark County District Attorney's Office, Judge William Voy, juvenile court judge for Clark County, and I along with others have formed a nonprofit corporation, PSEC Nevada, to increase public awareness and to develop services and shelters to assist these children. Part of the PSEC Nevada Foundation mission is to build a safe house for this population to initiate a therapeutic process in lieu of holding these children in juvenile detention. The funds received from this bill could be used for programs, such as PSEC Nevada, to help sustain a safe house to provide housing and treatment for these children.

I recognize that this is a very difficult population to work with and provide services to. The vast majority of these children suffer post-traumatic stress disorder and come from extremely abusive backgrounds. A major feature of

post-traumatic stress disorder is avoidance of trauma and running away. Running away is a major theme we see repeatedly with these girls in the juvenile court system. It is very difficult to hold on to the children and convince them that they are victims and would benefit from the painful process of therapeutic intervention. Many are the product of the child welfare system: they have no family to return to and no one to love them. I hate to say it, but they are society's throw-away children. They have no family, they run from foster care, and they are trying to find a place to fit in and be accepted for who they are. Unfortunately, these children are found by pimps who sell them a dream of their future, the beautiful future they could have together, and make them feel loved. In fact, this pimp may be the only person in their lives who makes them feel like they are loved. Many do not believe that they are victims, and they do not succeed on their first intervention. Each one needs an individualized program uniquely tailored to her individual needs. Traditional programs do not work for these children. They need programs with individuals who can build a relationship of trust with them.

I would like to give you a few examples of children we have had recently in Clark County.

Chairman Anderson:

I would love to let you go on, but if I do so we will not be able to get to the other bills that we need to hear today.

Susan Roske:

That would be fine. I just wanted to put a face on the children that are here in Clark County, and I appreciate your time.

Stephanie Parker, Executive Director, Nevada Child Seekers, Las Vegas, Nevada:

I wanted to deliver my written statement ([Exhibit I](#)) and also thank Assemblyman Hambrick for the video he showed in the beginning to shed light on the fact that these children are indeed victims of human trafficking.

Ben Graham, Carson City, Nevada, representing Judge William Voy:

I want to express appreciation to this Committee on behalf of Judge Voy. We have seen a progression over the years from treating these young people as criminals to more of a realization that they are in fact victims. If at all possible, it would be a real opportunity to create funding for these safe houses that Judge Voy and others in the Las Vegas community have been working on.

Chairman Anderson:

I do not see any fiscal notes, either at the local or state level, according to the face of the bill. The question about money has to take place in the money committee. I anticipate that there is no money tied to this bill, is that correct, Mr. Hambrick?

Assemblyman Hambrick:

That is my impression. When I introduced the bill, I was asked if I wanted the fiscal impact looked into. I said take a look at it, I want everything to be on the board for consideration, and they came back with none.

Chairman Anderson:

My advice to everyone is always ask for the fiscal note because you do not want that to come up later in testimony.

Joe Murrin, Private Citizen, Las Vegas, Nevada:

My daughter was a victim of crimes of prostitution and pimps when she was only 17. This began about three years ago. As I explain my story, please keep in mind that there are hundreds of other parents and kids with similar stories. I personally know some of them and have heard from them. There are predators out there at this very moment while we sit here. They are looking for our kids. They want to put them on the street, pimp them, yours and mine.

The crime of prostitution does not discriminate. There are no barriers between rich and poor, educated and uneducated. I have been a resident of Las Vegas for 20 years. I am a small business owner and have strong ties to the community. When I was asked to speak this morning, I jumped at the opportunity. I am here to try to convince this Committee to pass the law to enable assistance for our children.

In Nevada, there is a serious lack of help at the moment for parents and friends trying to save our kids. This decision today could be groundbreaking and life-changing. It was done with drugs back in the 1980s, why not prostitution now? I have tracked my daughter through private investigators, friends, and law enforcement for several years now. I have filed police report after police report. Running away is not a crime, but pimping an underage child is. The new-age pimps have many tricks up their sleeves. They teach our children how to evade police and lead a life of crime. They give them drugs and hold them hostage. During these events, I have contacted the FBI, Immigration and Customs Enforcement (ICE), Metro, Team HOPE (Help Offering Parents Empowerment), FBI Internet, Nevada State Missing Children's Clearinghouse, and the list goes on and on. My daughter will go missing for months at a time.

At one point, I was asked for dental records and fingerprints. I thought the worst and cried for days—and yes, a grown man can cry.

While dealing with Nevada Child Seekers, I was referred to a private investigator. He wanted me to bring my daughter to a program in Arizona, for which he set up all the arrangements. The fees were \$4,000 a month. After recovering my daughter last Easter from Motel 6, out of desperation I took the investigator's advice. I drove 10 hours to Arizona. When I arrived, I stopped to talk to local police for further directions. They replied that they did not know where it was. I came to find out it was only a block away. I found this to be mysterious. I brushed it off. I was on a mission to save my daughter's life. When I arrived at the destination, it was an old, run-down hotel: no lights outside, it was dark, and I found this to be mysterious, too. There was no type of security around the building. Nothing but a run-down lot. The women who greeted me were filthy. There was no evidence of children at the home. All they were concerned with was the \$4,000. I did not let my daughter out of the vehicle, I investigated, and then I realized that I was undermined by the investigator who was referred to me.

What was supposed to be a reliable program turned out to be a scam by the look of things. I would not let my child stay there. I needed to find another option. I looked through my notes, and there it was: Children of the Night, a program I heard about through local police officers. I had their number. I had been hesitant to call. After all, there were underage prostitutes staying there. This is what I was trying to get my daughter away from. I called in the middle of the night. Keep in mind, this was at least another eight-hour ride from Arizona. I was exhausted. My decision was to go. At wit's end, I felt it was the very next best choice. While on the phone with them, they accepted my daughter, and my daughter spoke to them and agreed to go. We drove all night. Arriving the next morning, it was a much better facility by miles. I was impressed. We signed all the paperwork, walked the grounds, and then I was back to Vegas without my only child. I find it ironic that people I received help from asked me for nothing.

To this day, my daughter is suffering from back pain as the result of being thrown down the flight of stairs by the pimp. Also, she suffers from various other medical issues due to the nature of the crime.

Her pimp got a sentence of only one year. She has to live with this for a lifetime. If not for me, he would have been released after six months. I went to his parole hearing and because of my testimony they kept him for the full year. Surprisingly, I was the only witness to show up. The Parole Board said they were glad to see me and that they usually get no victims to testify. I was also

amazed at the lack of information they had about the case. On paper the pimp was a prince, if it had not been for my voice.

The laws need to be stiffened. These are not victimless crimes. I interact personally through business with hundreds of people throughout the year. I tell my story; I am not ashamed. Let us take a step in the right direction and pass this today. I put myself on the line, and now we need your support. Next time it may be somebody you love.

Chairman Anderson:

I will close the hearing on A.B. 380.

I will open the hearing on Assembly Bill 408.

Assembly Bill 408: Makes various changes relating to crimes. (BDR 15-522)

Assemblyman Chad Christensen, Clark County Assembly District No. 13:

I will jump into the more important points on A.B. 408, where the bill came from and what we are looking to address.

I have a proposed amendment ([Exhibit J](#)) that takes out section 1 of the bill. When the legal team was working on this, the bill came out a little differently than we were intending with respect to the definition of terrorism for a specific crime. As the bill reads, there are a lot of crimes that would be considered terrorist acts, and that was not my intent.

Specifically, there are two parts to the bill. The intent of section 1 is for gang-initiation killings, those who kill for the purpose of gang initiation, that those initiates be tried as terrorists. Section 2 of the bill should deal specifically with racketeer influenced and corrupt organizations (RICO)-charged racketeering as it relates to gang activity.

In the final bill draft, as we read this, and I include the Las Vegas Metropolitan Police Department, it seems a little loose: the specific gang-related activity as it relates to RICO did not quite come out in the bill as we initially intended. The amendment that you have deletes section 1 and addresses specifically gang-initiation killings.

I also want to share why and where this bill came from. About a year ago in my district, just outside of Palo Verde High School, one of the most horrific events that I can think of happened right after school when a 16-year-old was walking home. He was about a block away from the school. A group of kids, a couple of them students at the same high school, came driving by and, in a

senseless act of killing, pulled out a gun and took a shot at this 16-year-old student-constituent of mine. A bullet went right through his heart, killing him. The community was devastated—the entire Las Vegas valley, and in particular my district. Those parents, my wife, and other family members were devastated. I heard so many times that parents were not going to send their kids to public school. I realize that when an event like this takes place there is a lot of overreaction, but so many times I heard that they were going to take their kids out of public school, they were no longer letting their kids walk around outside, much less to and from school, and that they were now going to have to drive their kids. As I was discussing this issue with a New York State Senate colleague, he said that they had passed a provision identifying gang-initiation killings as a terrorist act. One of their district attorney's offices was currently trying a case under their law. That was the genesis of section 1. Killing is bad enough, but to go and take another's life for the purpose of getting into a gang, I cannot think of anything more horrific and sickening than that kind of activity. And because the effects of that activity absolutely terrorize a community, I thought this was something we should address in this body. That is my intent in section 1 of the bill.

With respect to section 2, regarding gang-related activity under RICO, I want, with your permission, to invite those from the Las Vegas Metropolitan Police Department (Metro) to address that specifically.

Chairman Anderson:

For the members of the Committee who may not be familiar with this issue, we took up this issue in a similar fashion when we dealt with the terrorist issue initially. In the incident you describe, were they not able to charge the people involved in that crime?

Assemblyman Christensen:

I am not sure. I know the individual was tried, but I do not have an answer about the outcome. I am sure somebody in the room would have an answer.

Chairman Anderson:

So they were charged with a crime and put on trial?

Assemblyman Christensen:

Yes.

Assemblyman Horne:

I am not sure what conduct you are trying to reach that we cannot get to with the existing laws—murder, possibly capital murder in this case. What do you

achieve by making it a terrorist act that you do not already get with existing law?

Assemblyman Christensen:

What I am introducing here today, the ideas and the approach, came from addressing this with the Research Division of the Legislative Counsel Bureau (LCB) as well as with the Legal Division. The advice was to approach this from the angle of addressing this specific, narrow act as an act of terrorism. Also, terrorism carries an additional 1- to 20-year sentence. It would be a harsher punishment for that specific gang-initiation killing.

Assemblyman Horne:

Well, noncapital murder already carries an additional 1-20 years because the enhancement laws already have a view to a killing with use. The judge has discretion to put that consecutive sentence on top of the underlying sentence. So if you commit a murder and you get 20 to life, if at any time you are paroled after that 20, you will then start the 1 to 20, or whatever the judge orders. We already have that, and that is why I was asking what would be done in addition. Typically, when we try to make a change in the law like this, we say something like, "This act only provides for punishment B, but we believe that as a matter of public policy it should provide punishment A instead of punishment B." I was just trying to find out what is missing that you get with the act of terrorism that you do not already get with a murder charge.

Assemblyman Christensen:

May I introduce those who are here from Metro to address section 2 of the bill?

**Chuck Calloway, Sergeant, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada:**

With the Chairman's permission, in Las Vegas I have Lieutenant McGrath with our gang unit. I would like him to speak so we do not duplicate our testimony.

Chairman Anderson:

Okay.

**John McGrath, Lieutenant, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada**

I am assigned to the gang crimes bureau of Metro. I am here to testify about changing the punishment in our state statute for RICO. I compared our RICO statute to the federal statute and statutes used in other states. The punishment in Florida is 30 to life for RICO sentences, and the federal statute provides 20 to life. I wanted to utilize this RICO statute against criminal gangs. The current law states that the punishment is 5 to 20 years with a \$25,000 fine, which is

unusable in its current wording because these investigations are complex and take a long time. If we were to target a gang, the investigation would take approximately two years to complete. We would not be putting our targeted criminal gang members in jail for a period of two to five years. This is a long process, it is a lot of work for us as a gang unit, and it is a lot of work for the prosecutors, so the "bang for the buck" that we are looking for is to impose a longer sentence and to be able to utilize this law, which exactly mirrors the federal statute in every way other than the punishment.

I am sure everyone knows we have a gang problem in Las Vegas and Clark County. We have 473 documented gangs and over 10,000 documented gang members. So far this year, we have had 42 gang-related shootings and 7 gang-related homicides. This is another tool that we want to utilize to target these criminal organizations, dismantle them, and hopefully lower these numbers. As the Assemblyman stated, these vicious and outrageous killings are getting out of control.

Chairman Anderson:

Category A felonies are at the top in terms of the seriousness of the offense. To move into that area at this particular time is somewhat unusual. I notice that it was not one of the questions brought in front of the Sentencing Commission. Is there a particular reason why this was not brought up during those discussions that went on for the last two years?

Assemblyman Christensen:

I do not have an answer for that, and I do not know if the officers do.

Chuck Calloway:

It is my understanding that it has been just within the last year or so that we realized the difference between the federal statute and our statute and how that causes difficulty in trying to get information from gang members at the street level because of the low sentencing. It was because of that we met and decided to try to get this legislation passed.

**Sam Bateman, representing the Nevada District Attorneys Association,
Las Vegas, Nevada:**

Regarding section 2, we generally support the concept to increase some of the penalties regarding racketeering.

Chairman Anderson:

It is a RICO increase across the board, not just in gangs. That raises a larger concern than the one that was raised by Lieutenant McGrath, because you are increasing the penalties for all RICO convictions.

Sam Bateman:

I think that at all times the bill was intended to be directed only at gang racketeering and not at all racketeering crimes. If the bill moves forward, that would need to be amended to be more specific to gangs.

Chairman Anderson:

Mr. Christensen, I see that this is Mr. Sprinkle's amendment. Did you have Legal take a look at it, or is this your amendment?

Mark Sprinkle, Attaché to Assemblyman Chad Christensen:

This is just the request by Mr. Christensen. When it came back from Legal, it was not what he had requested. He requested that it be amended to be specific.

Chairman Anderson:

So the answer is no?

Mark Sprinkle:

Right.

Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada:

We are in opposition to the bill, and I think our concerns have been adequately addressed in the hearing.

Chairman Anderson:

And those concerns are relative to...?

Jason Frierson:

In particular, the racketeering and the fact that it would apply across the board. This would include everything that is already included under racketeering and not simply the gang-related activity. Also, the thought that murder with the use of a deadly weapon with a gang enhancement, that those enhancements are not allowed to be compounded by law. There is only one enhancement. Our major concern was with respect to the application of the racketeering statute across the board.

Orrin Johnson, Washoe County Public Defender's Office, Reno, Nevada:

I will just give a "me too."

Chairman Anderson:

I am having passed out to the members of the Committee a letter from Alexander Loglia from the American Civil Liberties Union (ACLU) of Nevada that is dated today. We will make your letter a part of the record ([Exhibit K](#)).

Alexander Loglia, Extern, American Civil Liberties Union of Nevada, Las Vegas, Nevada:

I wanted to briefly mention that we are actually pleased that section 1 of the bill has been eliminated and that it has been clarified. We may have other issues. We have not had the chance to see the amendment down here. The gang-related question is one we will have to look at, but on the whole, we are happy that the change has been made.

Chairman Anderson:

I will close the hearing on A.B. 408. We will now turn our attention to the last bill of the day.

Assembly Bill 462: Revises the provisions governing sureties. (BDR 14-838)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:

With me at the witness table is Jesse Wadhams who is here to testify in support of the bill.

Jesse Wadhams, Attorney, Jones Vargas, Reno, Nevada, representing Black Jack Bail Bonds, Las Vegas, Nevada:

I will follow your lead, Mr. Chairman, and simply state a few things. This bill is fairly straightforward. It is about reducing the barriers to market entry for a Nevada-based domestic insurer in the area of surety bonds. There has been placed in the Las Vegas Municipal Court an artificial standard by A.M. Best Company of "B+ +" rating. These rating companies serve a purpose, but they are not regulators. We will be a fully-regulated, fully-accredited insurer to post bonds in this court.

Chairman Anderson:

This is a necessary piece of legislation in response to an issue that was raised in one of the courts in Clark County. While it is not the standard practice throughout the rest of the courts, the precedent still stands as the result of a court order that was entered in the south. While the judge is no longer on the bench and the likelihood of the order being enforced is slim to none, the precedent still stands. This bill clarifies the question of surety.

Jesse Wadhams:

You have hit it squarely on the head.

Chairman Anderson:

Is anybody here testifying in opposition? [There was none.]

We will get the writing from the City of Las Vegas on the record ([Exhibit L](#)).

Bernard Little, Assistant City Attorney, City of Las Vegas, Las Vegas, Nevada:
Mr. Chairman, can I offer a supplemental writing that lays out our reasoning for our standard?

Chairman Anderson:

We will make it a part of the record. Make sure it is to us within the day ([Exhibit M](#)).

Bert Brown:

I will. Thank you.

Chairman Anderson:

We are adjourned [at 11:10 a.m.].

RESPECTFULLY SUBMITTED:

Sean McDonald
Committee Secretary

RESPECTFULLY SUBMITTED:

Karyn Werner
Editing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 1, 2009

Time of Meeting: 8:21 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Guest list
<u>A.B. 368</u>	C	Assemblyman Lynn Stewart	Fact sheet
<u>A.B. 368</u>	D	Kristina Ragosta, Treatment Advocacy Center	Written testimony
<u>A.B. 368</u>	E	Marjorie Bull	Written testimony
<u>A.B. 380</u>	F	Assemblyman John Hambrick	"I Just Keep Quiet: Voices of Human Trafficking," DVD
<u>A.B. 380</u>	G	Alexis Kennedy, Protection of Sexually Exploited Children Nevada Foundation	Fact sheet
<u>A.B. 380</u>	H	Sam Bateman, Nevada District Attorneys Association	Proposed amendments
<u>A.B. 380</u>	I	Stephanie Parker, Nevada Child Seekers	Written testimony
<u>A.B. 408</u>	J	Assemblyman Chad Christensen	Proposed amendment
<u>A.B. 408</u>	K	Alexander Loglia, American Civil Liberties Union of Nevada	Written testimony
<u>A.B. 462</u>	L	Bernard Little, City Attorney's Office, Las Vegas	Letter
<u>A.B. 462</u>	M	Bernard Little, City Attorney's Office, Las Vegas	Letters