

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

**Seventy-Fifth Session
February 9, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:35 a.m. on Monday, February 9, 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 web site 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
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:

Assemblyman John C. Carpenter (excused)
Assemblyman Ty O. Cobb (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Katherine Malzahn-Bass, Committee Manager
Kyle McAfee, Committee Secretary
Nicole Bailey, Committee Assistant

OTHERS PRESENT:

P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety
Lisa Young, Chief Fiscal Officer, Records and Technology Division, Department of Public Safety
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada
Kristin Erickson, Chief Deputy District Attorney, Washoe County, Reno, Nevada
Julie Butler, Records Bureau Manager, Records and Technology Division Nevada Department of Public Safety
Dennis Neilander, Chairman, State Gaming Control Board, Minden, Nevada

Chairman Anderson:

[Roll call was taken. The Committee rules were stated to those present.]

[Assembly Bill 88](#): Establishes a civil remedy for a person who was a victim of a sexual offense which was used to promote child pornography. (BDR 15-267)

Jennifer M. Chisel, Committee Policy Analyst:

During the hearing on February 4, 2009, on Assembly Bill 88, Assemblyman Gustavson had some questions about Nevada law and whether or not there were provisions that addressed minors receiving civil judgments. A memorandum is before you ([Exhibit C](#)) from my office that discusses the response to those questions. I will not go through it in detail, but you can read it as you see fit. If there are any concerns or questions that you have regarding that bill, it would be a good idea to let us know prior to the work session if there is anything that you want to have added to that work session document.

P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety:

Before we get started with my official presentation, let me say that we actually enjoyed the Legislative Counsel Bureau (LCB) audit, and we found the various findings very beneficial.

[Read in part from PowerPoint Presentation. See ([Exhibit D](#)), pages 1 through 5.]

Chairman Anderson:

This has been a long standing concern relative to background checks for volunteers of little league sports and other kinds of smaller groups. How much did it cost us, over the last biennium, to operate these kinds of programs? Has the \$25,000 been enough?

Lisa Young, Chief Fiscal Officer, Records and Technology Division, Department of Public Safety:

For the first year of the biennium of 2008, we did not exhaust all of the \$25,000, and it looks like 2009 will be pretty close. Those funds are otherwise used to offset the Division's expense for those background checks. In 2008 about \$18,892 was used.

Chairman Anderson:

Do you ask for or encourage some kind of dollar participation from 501(c)(3) organizations, if they can? I know that there was a time when it looked like we had some people coming in that probably could have paid for it on their own. Are we doing a better job of keeping that separate? Are there some people taking advantage of our generosity who can otherwise afford to do it?

Lisa Young:

If we identify an organization that we feel would qualify for the trust account, or if somebody comes to us and says that they feel that they would qualify for the trust account, we automatically take them as long as they complete the application and present the information that we request. We do not ask for those people to determine whether or not they meet the qualifying standards. We are finding that as we ask for that information, the ones who do not qualify are weeding themselves out.

Chairman Anderson:

So, we are making a distinction between regular paid staff and people who are operating as volunteers and working with children?

Lisa Young:

That is correct. In the last legislative session there was an amendment to the statute that clarified that this particular program is only for volunteers or prospective volunteers working with children.

Chairman Anderson:

So, in other words, that particular amendment did take care of some of the problems that were experienced in the past.

Lisa Young:

That is correct. We had some entities that were nonprofit organizations that felt their employee background checks would qualify for this program. The statute eliminated that possibility.

Assemblywoman Dondero Loop:

Is there any follow up on this? How do we know that a particular organization is actually having the volunteers go through background checks?

P.K. O'Neill:

Are you asking whether we follow up to ensure that any volunteer that comes along, with an agency that would qualify, is undergoing background checks by their organization?

Assemblywoman Dondero Loop:

Yes. For example, the Girl Scouts may have a big enough organization that they may have somebody in place, but you can have a smaller organization of some sort, maybe even just a small church, that does not have anybody in place. So, how do we know that they are actually getting background checks?

Lisa Young:

Our statutory requirement is to administer the fund. We do not have any oversight as to whether or not organizations that are required to do background checks on their volunteers actually do so.

Chairman Anderson:

The question relates to the monitoring of organizations such as the Boys and Girls Club or Little League sports. Is there a way to make sure that coaches and other volunteers who work directly with kids are undergoing background investigations?

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

To my knowledge, no one is doing that type of follow up. It is a voluntary thing on the part of the people requesting that record. I am not aware of any agency that goes out and checks the records of those 501(c)(3) organizations to see if they have done background checks. I will put the word out to see if anybody does. That would be a big operation for us to take on.

Chairman Anderson:

Ms. Erickson, how about the District Attorneys Association? Are you aware of any county district attorneys that are following through on background checks?

Kristin Erickson, Chief Deputy District Attorney, Washoe County, Reno, Nevada:

I am not aware of any such information. If I find that out, I will forward it to you.

Assemblyman Hambrick:

Speaking from my personal background, I was involved in Little League baseball for 32 years. They monitor themselves because most organized sports activities have to report back to a parent organization. If they fail to do so, they risk losing charters, insurance, and things like that. Most youth organizations have a self-reporting system which eliminates the burden from the local law enforcement agency.

Chairman Anderson:

I presume Ms. Dondero Loop's question is based upon her experience as a teacher, where background investigations are a requirement. You have to file that paperwork before you are even considered for employment. I believe that what Mr. Hambrick is saying is that most professional youth organizations usually do a background check in a similar fashion. Ms. Dondero Loop, does that answer your question?

Assemblywoman Dondero Loop:

Yes. The concern is that I feel that we do not have any teeth in this.

Chairman Anderson:

That is a question we may want to hand to one of the law enforcement agencies rather than the Technology Division. That task is not relevant to the nature of that particular organization.

P.K. O'Neill:

[Read in part from PowerPoint Presentation. See ([Exhibit D](#)), pages 6 through 9.]

The civil applicant response time, considering the state responses only, has been reduced from one month, from when I saw you in 2007, to less than one week. We have eliminated the criminal fingerprint backlog of some 35,000 adult arrests. We have reduced backlogged dispositions by 40 percent from 307,000 as of December 31, 2007, to 185,000 as of January 18, 2009. By the end of this fiscal year, we anticipate that number to be down to

approximately 80,000. We also reassessed all active sex offenders' case files, of which there were 5,870 at that time, in preparation for the state Adam Walsh Act implementation, which was Assembly Bill No. 579 of the 74th Session. This act has been placed on indefinite hold because there was an injunction by the federal district court.

Chairman Anderson:

As part of the application process, when people file an application to use the system do they assure you that they have an overall policy in place to ensure that everyone is regularly tested?

Lisa Young:

No, they do not. The application asks if you are a 501(c)(3). If you are a 501(c)(3), do you have volunteers? If you have volunteers, do those volunteers work with children? Again, those questions are asked in order to determine if someone is eligible for the trust account. I think that the trust account allows for those background checks to be provided to those organizations at no charge, but I am not aware of a statute that requires each individual agency, that has volunteers working with children, to perform background checks on all of their volunteers.

Assemblyman Segerblom:

I wanted to ask some questions about sex offender registration and the processes that are being used to allow sex offenders to find out what tier they are and to appeal to modify their tier.

Assemblywoman Dondero Loop:

I just wanted some clarification on the permanent injunction that was imposed.

P.K. O'Neill:

The American Civil Liberties Union (ACLU) and various organizations filed for an injunction in federal court, claiming that the Adam Walsh Act was unconstitutional and violated certain constitutional rights. The federal judge agreed. He issued an order preventing the state from enacting the Adam Walsh Act on July 1, 2008. It is my understanding that the state is currently appealing to the 9th Circuit Court of Appeals.

I have two slides: one is a slide on the Legislative Counsel Bureau audit, and the other slide deals with the Sex Offender Registry. I am willing to answer questions at any time.

[Read in part from PowerPoint Presentation. See ([Exhibit D](#)), pages 10 through 11.]

Chairman Anderson:

Has there been something controversial relative to the numbering of this?

P.K. O'Neill:

No, we have had issues with the Nevada Offense Code (NOC) for some time. I know that this was one of the points you first brought to my attention when I became assigned to the Division in October 2005: the backlog and the dispositions. One of the issues that arose is we had to review our business process of what a court disposition is regarding the R#84 form. Courts were submitting to us their adjudications or judgment of convictions requiring the administrative aide II staff to read through them and decipher what the conviction was, what the judgment was, and what the sentencing was. Then they were trying to match it up to what the criminal arrest was initially. Some of the other law enforcement agencies, in booking, were hand writing in the various codes, and we were not able to read their 7s, 4s, 9s, 3s, or 8s. There was quite a bit of confusion, which culminated in this huge backlog that was pushed over to the side and never properly addressed. Your emphasis on us and the availability of the National Criminal History Improvement Program (NCHIP) Grant enabled us to really sit down and hire the additional staff to decipher and work with law enforcement in the Nevada Sheriffs' and Chiefs' Association, along with the Administrative Office of the Courts (AOC), to identify the issues. We are now looking at actually developing a standardized form that everyone can be in agreement with, which will electronically solve the problem for us. The NOC codes are just small components that identify subsections of each NRS. I am trying to give you a very brief summation of the NOC codes.

Chairman Anderson:

I am concerned about one of the issues from the Sheriffs' and Chiefs' Association, and that is the cost of Brady Bill background checks. Is the Brady Bill paying for itself? In other words, are you able to do the background checks within the cost that has been supplied?

P.K. O'Neill:

We have a slide coming up that discusses the point of sales on the Brady Unit. If the current numbers of sales that they are experiencing continued on and became the set pattern, they probably would be able to be self-sufficient; however, if the historic numbers that we have had were brought in on our base budget, then the unit is truly not self-supporting. We take part of our reserves in some of the other units, and we spread the wealth around.

Chairman Anderson:

I realize that there was a spike of firearm purchases in November and December of 2008 that was above normal. Is it now beginning to settle out?

P.K. O'Neill:

The numbers are still staying above what we experienced in January 2008. We have exceeded it in January 2009 and even this month. We are having almost constant days of 300 transactions, which usually drop down in January. February is usually also low, but our numbers are higher than previous years. If you look at what we did in November, which was a record-setting month, they are decreasing. They are still not back to what the 2008 or 2007 levels were.

[Read in part from PowerPoint Presentation. See ([Exhibit D](#)), pages 12 through 13, paragraph 3.]

Chairman Anderson:

I just want to point out to members of the Committee that traditionally, teachers, nurses, gaming employees, and police personnel have been required by state law to have fingerprint-based background checks. Those four professions come to mind. We have added in realtors and volunteer groups. You might consider that to be in the civil area rather than the criminal area. Are there any other groups that I should mention?

P.K. O'Neill:

Nurses, doctors, and even attorneys now have to submit fingerprints. The state licensing bar is one of our accounts.

**Julie Butler, Records Bureau Manager, Records and Technology Division,
Department of Public Safety:**

There is a whole list of occupations that require background checks, such as accountants, realtors, insurance brokers, insurance salesmen, physical therapists, nurses, doctors, physician's assistants, gaming applicants, 449 health bureau license insurance certification, individuals working in health care facilities, and pretty much any of those occupational boards listed in the *Nevada Revised Statutes* (NRS). There are a whole slew of occupations that require a fingerprint-based background check.

P.K. O'Neill:

The cost of a civil applicant fingerprint background check is \$21 for the state information, with the Federal Bureau of Investigation (FBI) charging either \$19.25 for an electronic submission or \$30.25 for a hard card submission.

Chairman Anderson:

Do the electronics cost less and work faster, and are they more accurate?

P.K. O'Neill:

The accuracy of the system would not matter. Either way we are looking at the fingerprints; they will stay the same. It is really the cost and the speed. The FBI has put a low priority on hard submissions, trying to get the states to go to electronic submissions. Right now hard submissions take six to eight weeks, and we have actually had some push out to ten weeks. They want electronics. If they use electronics, then there is less human involvement, so that is why they have been able to reduce their cost.

Chairman Anderson:

Do most sheriffs' offices have the ability to do that electronically in every county in the State of Nevada?

P.K. O'Neill:

The sheriffs' offices have that ability. Ninety-nine percent of all criminal submissions are submitted electronically. When a civil applicant comes to a sheriff, they may be tested electronically or by using a hard card, depending on their requirements. There are some licensing agencies or other employers that actually want to see the card come back to them. They want a hard card so they can check it off on a list and submit payment with it or comply with billing requirements. The billing procedures get a little confusing for some of the sheriffs' offices if the individual is not directly paying for it or if it is being charged back, but they do have the capability. We are trying to bring on more. We have purchased, or we are in the process of purchasing and deploying, what we call the "stored forward", which is a large server to receive civil applicant submissions along with the adjoining data of the identifiers, the date of birth, and why they are being printed, so we can properly bill and return the information to the correct individual, company, or agency.

[Read in part from PowerPoint Presentation. See ([Exhibit D](#)), page 14.]

Assemblyman Segerblom:

I have had a little bit of experience in dealing with the Sex Offender Registry and tier process: in particular, trying to reduce somebody in their tier level or trying to prevent somebody from being increased in their tier level. I am not sure if you feel that your department has a good administrative process to handle those types of questions or if you have some thoughts about how you could improve that. My experience was that it was an informal thing, where you talk to the Attorney General's Office, they talk to somebody in your office, and then somebody tells you whether or not that person can go down in tier

level. It seems like it would be much better to have a formal process, where someone could request to have their tier level reduced, and everyone would agree on the format, the process, and the requirements.

P.K. O'Neill:

We do currently have an appeals process. When a Sex Offender Registry package comes in, it is assigned to a case investigator who collects information, including criminal history, records entirely on the individual, victims' statements, and some other miscellaneous information. That information is assessed numerically. The tier level depends on how it adds up. If individuals feel that they were assessed incorrectly, they can appeal. There is a hearing committee that they can appear before to present their argument as to why they were assessed improperly. I do not have the statistics on those hearings with me. Sometimes individuals will actually be granted a lower tier. We have seen cases in which information has come forward that we have assessed incorrectly, and the individual's tier level was either raised or remained at the initial assessment level. This process is managed by the Parole Board. Our assessment program is under the advisement of the Attorney General's Office. It supplied that program to us for the assessment.

In the Adam Walsh Act, one of the issues that is contentious is that there is no tier level or assessment given. What the person is convicted of assigns their tier level.

[Read in part from PowerPoint Presentation. See ([Exhibit D](#)), pages 15 through 24.]

Chairman Anderson:

This is an issue that we are terribly concerned about. Police officers in the field, during a traffic stop, want to know about vehicle registrations and all the other pertinent information as well as whether there is a potential for a person to be in possession of a registered firearm. I presume that information has to come through you. Both of those searches relate to whether a certain individual could possibly have a criminal history relative to the vehicle, even though that person may not be the driver of the vehicle. Is that correct?

P.K. O'Neill:

When a law enforcement officer runs a check on Justice Link, he actually gets a composite of information. This is one of those things that we designed in harmony with our users, that it is a one-stop shop. When an officer stops me and runs my name, he will get back information as to my criminal history, and he will also receive a series of what we call "hot files." If I am a registered sex offender, that information will show up whether I am in compliance or out of

compliance. If I have a Concealed Carry Weapon (CCW) permit, that information will show up. If I am wanted in the State of Nevada or outside the state, that information will show up. When the officer wants to know, he can get a complete format or information on the individual or vehicle that he is dealing with, and if they are related. If they have any warrants on them, or if they have information put out into various files in the Criminal Justice Information System (CJIS) that the vehicle is wanted in connection with a homicide, it all comes to them simultaneously.

Chairman Anderson:

I think this is one of the criticisms that was in the audit report relative to the accuracy of the information. Are those inaccuracies the result of minor errors in the system, such as misspellings and incorrect dates, or are they excessive errors?

P.K. O'Neill:

The inaccuracies talked about in the audit finding report are records dealt with in the Sex Offender Registry files. That was actually a legitimate finding, and we agreed with them on all nine of their various findings. We were also being proactive, and we had identified some of those issues prior to the 2007 Legislative Session. We used to have one supervisor managing ten case file investigators. The supervisor was unable to review all case files to determine if the necessary information was included in the assessments, or, as we call it, if the record was "packed properly". In the 2007 Legislative Session, you granted us an additional supervisor. With the additional supervisor, all files or assessments are checked for accuracy. We have also had time to update and confirm our desk procedures so that each case file investigator knows exactly what to do. There is a checklist that they go through that is monitored by the supervisor to ensure the accuracy of the work.

Chairman Anderson:

Does the primary responsibility of the Records and Technology Division, the support for the officer in the field, still remain at the highest level?

P.K. O'Neill:

Yes.

Chairman Anderson:

The sex offender question is where the audit brought forth criticism about public access and the accuracy of that information. Is that the nature of that particular part of the discussion?

P.K. O'Neill:

Yes. Some of the Web sites were not being updated properly and in a timely fashion because of the immense supervision span of the supervisor. That has since been corrected. With the additional supervisor, we went from a ratio of one-to-ten to one-to-five. Also, the desk procedures have greatly assisted in correcting the LCB audit findings.

Julie Butler:

I wanted to clarify that, with respect to the officer on the street, the audit findings were not that the criminal history record was not accurate or was not packed properly. The audit findings concerned the Sex Offender Registry and the accuracy of the written file versus what was actually in the Sex Offender Registry database.

Chairman Anderson:

I want the Committee members to keep this particular discussion in mind over the week. As we listen to both the court's discussion on the preparation of the presentencing report for the courts, in terms of parole and probation, and the judge's sentencing, be aware that they rely upon the data that is going to be supplied from this source, so we are going to come back to this discussion again and again. Captain O'Neill and his agency play such a pivotal role for the law enforcement officers, the courts, and the prison system and parole and probation, in addition to the civil responsibilities.

P.K. O'Neill:

[Read in part from PowerPoint Presentation. See ([Exhibit D](#)), pages 25 through 26a, paragraph 3.]

The requirement for rigorous background investigations has actually been a challenge for us when we have had vacancies in our hiring. Several of our Information Technology (IT) personnel will go to hire applicants who will decline the position once they learn they will have to pass a stringent background security check, or, during the background check, information will come forward that will not allow them to be hired in our division.

[Read in part from PowerPoint Presentation. See ([Exhibit D](#)); pages 26a, paragraph 4 thorough 26b.]

Chairman Anderson:

[Five minute break called. Meeting resumed.]

Dennis Neilander, Chairman, State Gaming Control Board, Minden, Nevada:

I am going to spend some time discussing the makeup of the Gaming Control Board and the Nevada Gaming Commission. I will go into some detail about the basic tenets of gaming regulation. We are here in these times when things could not be worse financially. I cannot recall anything nearly this bad in my tenure with the Gaming Control Board in terms of the economy and how that has affected gaming. To be here in the Legislature and think about the history of gaming and the first bill that granted wide-open gaming in Nevada, it is interesting to note that in 1931, Assemblyman Phil Tobin was the first legislator who sponsored the bill that legalized gaming. He was out of Winnemucca. At that time in Nevada's history, gaming was prohibited. It was then legalized, prohibited, and then legalized, but it occurred even in the times when it was criminalized. So, the thought was that perhaps it ought to be legalized, regulated, and taxed. In 1931 we were still in the middle of the Great Depression, coming out of the dust bowl, and Nevada's economy was thought to be the worst it had ever been. It is an interesting contrast in times for us to be here today. These are some difficult economic times, and I will spend a little bit of time discussing where the industry is in terms of those issues.

The Nevada Gaming Commission was created in 1959. It is a five-member commission made up of part-time lay persons. They are appointed to four-year terms by the Governor. The commission has the final authority over all licensing matters. It has the ability to restrict, limit, condition, deny, revoke, or suspend gaming licenses. It has the final authority in terms of promulgating regulations. The commission, although it is a part-time body in the two-tiered system established here in Nevada, has the final authority over rule making and licensing matters. It also acts almost in the capacity of a judge. When the Nevada Gaming Control Board, which regulates the day-to-day activities of gaming, has a contested issue, it acts in a prosecutorial manner. The commission acts in more of a judicial manner.

The Gaming Control Board, of which I am a member, was created in 1955. It is made up of three full-time members appointed by the Governor, and it conducts all of the day-to-day responsibilities in respect to gaming regulation. We do all of the precicensing investigations and make recommendations to the commission. We enforce all of the laws and regulations regarding compliance with gaming laws, as well as taxes and fees. We do act in a prosecutorial capacity if we suspect that a licensee has violated the Gaming Control Act or the regulations. We have offices in Carson City, Las Vegas, Reno, Elko, and Laughlin, Nevada. We are currently employing approximately 439 people

assigned throughout seven divisions within the board. You should have a packet of information ([Exhibit E](#)) in front of you in a blue binder. A lot of that information is about how we generally regulate gaming. I am not going to go through that in any detail. If you look at page 2 of your packet, you will see a wire diagram of how the board and commission function. I will go over these individual divisions briefly.

The Administration Division provides the entire budget, personnel, and other administrative services to the board and its other divisions.

The Audit Division is responsible for auditing Nevada's largest licensees. Those are the licensees that have gross gaming revenues annually of more than \$5.48 million. With those larger licensees, our Audit Division evaluates their systems of internal controls, conducts interim observations, and ensures continuing compliance with regulations including: regulatory risk analysis of financial statements, casino bankroll, game statistical performance, and adequacy of financial reporting. Approximately half of our auditors are Certified Public Accountants (CPA). The Gaming Control Board is certified by the Nevada State Board of Accountancy so that when someone comes to work for us as an auditor, he has to have a minimum of an accounting degree. The hours they work on these casino audits count toward their certification, so, typically, in around four to five years, we will have a number of auditors who will become CPAs. Over the last several years approximately half of our staff have continuously been CPAs. When we do these audits, especially the financial audits, we render a full-scope opinion in respect to the amount of taxes that have been paid and compliance with the minimum internal controls. These audits are probably not like what you would think of when you hear of a state audit. These are full-scope audits that are rendered with an opinion. Every year the State Board of Accountancy reviews our programs to ensure compliance with the standards that are required.

The Corporate Securities Division regulates all of the publicly traded companies. They do both prelicensing investigations for public companies and ongoing monitoring. This division is also principally in charge of reviewing foreign gaming operations for our licensees that are doing business outside the State of Nevada.

Our Enforcement Division is the law enforcement arm of the board. We have five offices, statewide, that operate 24/7. We conduct both criminal and regulatory investigations. All of our officers are Peace Officer Standards Training (POST) certified, so we have a dual role there. We have criminal functions as well as regulatory functions. That division also arbitrates all patron disputes that might occur between casinos and patrons. Each of those agents

goes through a training program on how to resolve those disputes. We also conduct gaming employee background investigations through that unit. That unit also inspects and analyzes new games, surveillance systems, chips and tokens, charitable lotteries, and bingo.

The Tax and License Division is responsible for reviewing the financial performance for all the smaller nonrestricted casinos. Those have gross gaming revenue of less than \$5.48 million. As I mentioned, our Audit Division does all the larger audits. The smaller licensees are audited through our Tax and License Division. As a matter of law, the standards are very different between the larger entities and the smaller ones. The Tax and License Division also produces statistical reports and projections on gaming revenue. Every month, we release our numbers for revenue that are generated out of that particular division. This division also generates our projections, which are used by the State of Nevada Economic Forum in determining the number used while addressing the biennial budget. Through that division, we monitor all the licenses, and collect all the taxes, penalties, interest, and fines. We also monitor Native American gaming through this division. We currently have six different Native American tribes that have entered into compacts with the State of Nevada to engage in gaming activities.

The Investigation Division conducts all of our prelicensing investigations of all individuals in privately-held entities. I mentioned earlier that Corporate Securities does the public entities, while Investigations does the private entities, including individual applicants.

The final division is our Technology Division. We consolidated many responsibilities into one division back in 2006. That has been a very successful endeavor for the board. That division principally examines and tests all gaming devices and associated equipment. It also does all of the field inspections of gaming devices to ensure their continued integrity. The Technology Division supports a number of activities in the other divisions, including areas such as identifying methods of cheating at gaming, complaints and patron disputes, live games, and mobile gaming. That is a basic overview of how we are structured and what our primary responsibilities are.

Assemblyman Segerblom:

I want to ask a hypothetical question. If we have a licensee in Nevada, who is licensed in another state, and there is a problem with their license in the other state where the license may be taken away, do we have a process where that information is brought before you so you can investigate whether the license will be taken away or investigated?

Dennis Neilander:

Yes, there is a process. *Nevada Revised Statutes* 463.680 to 463.720 are the Foreign Gaming Act. That provision addresses licensees' activities outside of the State of Nevada. Historically, that law required that any licensee who was going to conduct business outside of the state had to get prior approval from the Nevada Gaming Commission. At a time when most of the Midwestern states began to legalize gaming, that became unworkable for the industry because it was slowing down their business plans to expand. They came in and asked for an amendment to that law to take away the commission's requirement that they be approved prior to engaging in those activities. Within the foreign gaming statutes are provisions that require licensees to report their activities. There are also some disciplinary provisions in there, so that if a licensee were to knowingly violate provisions, there is a potential for the commission to take disciplinary action. That would be done, as all other matters are, upon investigation and recommendation of the board.

Assemblyman Segerblom:

My specific question is with respect to the company that owns or operates the Tropicana. I know you know that their license was revoked in New Jersey. When that happened, did that automatically trigger an investigation of their license here in Nevada?

Dennis Neilander:

We did two parallel investigations on that. One investigation centered on the activities in New Jersey, and another investigation was opened on the separate activities in Nevada. In that instance, the results of the investigation determined that the licensee's conduct here in Nevada did not rise to the level where it would have warranted disciplinary action.

Assemblyman Segerblom:

Are you saying that you do not look at what the licensee did in New Jersey; you just look at what they have done here in Nevada?

Dennis Neilander:

No, we did both.

Assemblyman Segerblom:

Does Nevada have a different standard than the other state?

Dennis Neilander:

Yes, the violations that were cited in the New Jersey case, at least in the two major instances, were laws that were peculiar and unique to New Jersey. They were laws that did not exist here in Nevada. The conduct that was the subject of their complaint in New Jersey was not an issue here in Nevada.

Assemblyman Horne:

Can we expand a little bit on the Indian gaming compact you have? A total of six, you said? Are those the larger entities that are typically audited by your Audit Division or smaller ones that are audited by your Tax and License Division? In respect to the scope of these compacts and your enforcement of Indian gaming, is it the same as traditional gaming properties, or do you have some limitations because they fall under federal law?

Dennis Neilander:

Each of the compacts is different. Back in 1988 Congress passed the Indian Gaming Regulatory Act (IGRA), which created the federal framework that allowed the tribes to go forward and practice gaming. Within that federal framework was a requirement that each state negotiate a compact in good faith. There is no particular model compact, although I would say that the State of Nevada entered into the first Native American compact prior to the passage of IGRA. We began negotiating that compact in 1986. The compact we ultimately entered into was used as a model when IGRA was adopted by Congress because it was the only one in place at that time. That compact is for the Avi casino outside of Laughlin, Nevada. That is a large casino with a golf course and some other amenities. In that compact, the tribe essentially ceded all of the licensing and regulatory authority back to the state. We are fairly heavily involved in the regulation of that particular property. You have that one, and then of the rest of the six, only four are active. You have the Avi plus three others. The other three are fairly small facilities. Primarily, they would be like a smoke shop, more akin to what we would think of as a restricted location. Regarding those compacts, the varying degrees of regulation the state might perform are negotiated between the state and the tribes, so there are different levels. In each case, the one thing we have tried to make sure we have been consistent with has been that all of the gaming devices that are offered for play, which are all slot machines, have all been tested by our lab. We ensure compliance to make sure that those devices have been approved. As far as the licensing of employees of the casino, in some of those compacts that actually falls under the jurisdiction of the tribe as opposed to the state.

Chairman Anderson:

The issue of Native American sovereignty is a very difficult one to deal with when you are on native lands. The question of sovereignty is very important. There are also small urban communities that may have land that falls under that category, so when we approach the land, we are going to be dealing with that issue. At least up to this point, the gaming devices meet our standard, and there are currently no gaming devices that do not meet our requirements. The personnel, however, since they are hired by the tribe, fall under tribal sovereignty. However, the rest of the controls are there as if it were a regular Nevada casino, and only one casino is large. Is that a fair assessment?

Dennis Neilander:

That is correct.

Chairman Anderson:

The reason that the personnel question is relevant is: have they asked for assistance from you in screening their personnel to ensure that they are qualified to be managers who observe our regulations on underage players?

Dennis Neilander:

The compacts, even the smaller ones, contemplate that the tribes may ask the state for assistance in that regard, and that is something that we do on a regular basis. We assist them in vetting those kinds of issues, and the compacts specifically allow for that.

Chairman Anderson:

Do we cooperate with any of the California or Oregon groups that might be inquiring into the background and qualifications of potential employees, in terms of their ability to be good managers?

Dennis Neilander:

Yes, we have frequent contact with other state regulatory bodies that have to oversee those activities. It may be our licensees in Nevada who are involved in those.

Chairman Anderson:

How many states have modeled their licensing requirements after us?

Dennis Neilander:

Most of the states in the United States have taken either whole parts of the Nevada system or at least smaller parts of it. I have spent a lot of time over the past decade meeting with other state officials who are contemplating legalized gaming or are in the process of changing the way they regulate gaming.

Gaming has become such a globalized industry that, in the last few years, I have spent a lot of time meeting with officials from other parts of the world as they set up gaming regulatory apparatuses. One example is Singapore, which enacted legalized gaming about two years ago. We have been working closely with them in helping them establish a regulatory regime in Singapore which is going to look an awful lot like Nevada's.

Chairman Anderson:

Given the fact that you have been doing this since 1995, you have seen the broadening of the rest of the states in terms of their involvement in gaming. New Jersey, Florida, and a couple of states that have race tracks were probably there already. California has been there for some time with their card rooms. Instead of there being nine states that have gaming, there are maybe nine states that do not. Is that a fair assessment?

Dennis Neilander:

There are actually 48 states that allow some form of legalized gaming. There are only two states that do not. Those states are Utah and Hawaii. The state of Mississippi probably has the closest system to Nevada's because it does have more of a wide-open competitive system. Most of these states are either monopolistic or oligopolistic. Mississippi does limit the number of licenses to some extent, but it is more of a competitive industry there than in some of the Midwestern states. In Mississippi there are a number of places in their statutes where "Nevada" is still used instead of "Mississippi." They forgot to change it when they copied our statutes. We work closely with Mississippi, as well, because a number of our licensees are also involved in gaming activities in Mississippi. There are a number of states that do things in ways similar to ours; there are some that do not. It also depends on the nature of the type of gaming that is allowed. What we are seeing right now is an expansion of the "racino" concepts. They may have had horse or dog racing legalized for some time, but now several states, Pennsylvania particularly comes to mind, allow slot machines in their race tracks. There are a different set of regulations that go with horse racing coupled with casino gaming.

Chairman Anderson:

Newspaper stories in some states talk about what the gaming rate is and make comparisons with Nevada. The first question a non-Nevadan will ask is, how come we do not have a rate that high? That is because of the monopolistic concept, that they are very limited in the number of gaming institutions or gaming units compared to Nevada. Nevada leaves it open to the requirements of the Gaming Control Board and the local ordinances of a particular community, in terms of physical location and other factors. Other than those restrictions, Nevada will let you build one right in the middle of the desert. If you think

people will come and you want to build it, we would say yes as long as you meet the Gaming Control Board's criteria.

Dennis Neilander:

The Nevada model is, as long as someone meets the suitability requirements, has adequate financing for the proposed project, and meets any other local requirements, there are no barriers to development. Most of the other states within the United States, and most international jurisdictions, have limited numbers of licenses that are available, and these are limited to certain locations. For example, we have 2,933 active licenses right now. Of those, 2,163 are restricted licenses that have 15 or fewer slot machines, and there are 770 nonrestricted licenses. New Jersey, for example, has 10 licenses. I believe Indiana has 8 licenses. Illinois has 7 licenses. Michigan has 4 licenses. You can see that there is a very different economic model at play in Nevada compared with most other states.

Chairman Anderson:

We are concerned about this because this is one of the large sources of revenue for this state and one that we want to encourage.

Assemblyman Horne:

Does the Nevada Gaming Control Board have an uncollected debt? If so, how much debt do you expect to collect?

Dennis Neilander:

In terms of the tax structure in Nevada, the largest portion of the taxes that are paid with respect to gaming are the percentage fees. Ninety-five percent of the state's intake is from percentage fees, and that is a percentage of gross gaming revenue. That is on a sliding scale up to a maximum of 6.75 percent. We collect that tax as follows. Each licensee is required to pay three months of advance taxes when they are issued a new license. Their first payment is actually an estimate of what the tax revenue will be for three months, and then, on a rolling forward basis, that money is then stayed. It is adjusted every month, so when their actual revenues come in, they do what is called an estimated fee adjustment, but they have always paid three months in advance. They pay on a monthly basis. If someone cannot make the tax payment, there is a 30-day grace period, and within those 30 days penalties and interest accrue. Upon the expiration of those 30 days, if the licensee does not pay the taxes, the license is automatically revoked. It is not discretionary with the board or commission. As a matter of law, if the taxes are not paid following the 30-day grace period, there is a revocation of the license. When that occurs, the state has one month that it did not receive any payment for, but it still has two other months that were prepaid. The state is always whole when it comes to

percentage fees. The only debts we have outstanding, that we would not be able to collect, are the fines. For example, the largest one I recall was the United Coin case where we fined a particular company and revoked its license. The company disappeared. They were insolvent, and we were never able to collect the fines that were owed. That is the only area where we have collection issues, and in the overall scheme of things, it does not amount to a material number.

Chairman Anderson:

While many of us recognize that there are a lot of large gaming establishments, particularly in the southern part of the state, there are also smaller communities which are involved in gaming. Almost every tavern, restaurant, gas station, or 7-Eleven in the state has a slot machine. They are usually operated by what is called a "slot route operator." Are they treated differently than the other licensees in terms of your response, both for the location and the slot route operator?

Dennis Neilander:

A restricted gaming license is for 15 or fewer slot machines. The Nevada Gaming Commission only allows restricted gaming to occur in grocery stores, convenience stores, bars, taverns, and drug stores at this time. As the Chairman previously mentioned, there were no restrictions on localities. There were some general provisions, but we had slot machines in car dealerships in Las Vegas. We had slot machines in a hardware store in Reno. We had slot machines inside a bait and tackle shop right outside of Lake Mead. Today, those are not suitable locations. The commission has decided that slots can only be placed in the four types of locations that I mentioned. There are some that have been grandfathered in, but typically there are two ways persons can operate gaming within those types of establishments. I will use a convenience store as an example. You can either apply for your own license and be the operator of the devices, in which case either an individual or corporation becomes licensed, or you can lease a portion of your space to a slot route operator. The slot route operators are then licensed to place machines, and they conduct gaming activities in conjunction with the business operators. Those are the two models used by small location operators. The slot route operators are subject to what we call the internal control procedures. There are fewer procedures than you would see in a large casino. The other thing to keep in mind is that those restricted locations pay a flat fee. It is an amount per device. They do not pay based on a percentage of revenue, so there is no need to conduct an audit. The auditing of those locations is simply a matter of counting the devices because that is what the tax is based upon.

Chairman Anderson:

So your involvement would be in making sure that the slot route operator is responsible for making sure that someone under 21 years of age is not using those devices and that the tax is paid on a regular basis. If, on the other hand, the owner of the place has the license, then he has the responsibility to make sure those things take place.

Dennis Neilander:

The primary responsibility in those locations is compliance with certain regulations. For example, you have to have brochures related to problem gambling available, and things of that nature. You would need to make sure that the gaming devices themselves are approved by the state and that the hardware and software contained in them are current. Those are the kinds of things we would look at in the smaller locations.

Assemblyman Segerblom:

Has anyone ever looked to see whether this charge per machine is anything comparable to what a casino would be paying on a similar slot machine?

Dennis Neilander:

The slot route operators pay the flat fees that I have mentioned.

Assemblyman Segerblom:

What I am saying is: has anyone looked at that flat fee and contrasted it with how much revenue that machine would otherwise make in a casino, such as the Bellagio, in order to see whether we are really taxing slot operators properly?

Dennis Neilander:

We have not done that. The information that we get from the route operators is based on a flat fee, so we do not necessarily get their financial information. We can probably make some general estimates, but we do not audit their financial statements. We would get some of that information if it is a public company. Per location, our concern on the tax side is with a flat fee. We are auditing to make sure they are paying the correct amount under the flat fee. If they went to a percentage, we would have to figure out how that would work.

Assemblyman Segerblom:

That was my question. So, we do not really know that?

Dennis Neilander:

We do not know that at this time.

Assemblyman Manendo:

I was going to ask you this question earlier, but you mentioned the number of restricted and nonrestricted licensees, and I could not grab my pen in time. Could you repeat those numbers?

Dennis Neilander:

The number of total licenses is 2,933. That includes restricted licenses; nonrestricted licenses; slot route operators; operators of inter-casino-linked systems, such as Megabucks; operators of mobile gaming systems; manufacturers; distributors; race book and sports pool disseminators; and operators of pari-mutuel systems. Those are the total classifications of licenses. If you break down those 2,933 into the major licenses, 2,163 of those are restricted licenses, and 770 are nonrestricted licenses.

Chairman Anderson:

How many major manufacturing companies do we have here in Nevada?

Dennis Neilander:

There are about six of the major ones. There are a number of smaller ones. There are probably twenty total licenses that have been issued that are active. There are about six major players that are large, publicly traded companies.

Chairman Anderson:

Do those have Nevada as their primary location? I am thinking of IGT, in particular.

Dennis Neilander:

IGT is the largest one that is located principally in Nevada, but we also have a company called Aristocrat, which is out of Australia. It does have a large facility here in Nevada, but its principal business was born out of Australia. Konami is a fairly large manufacturing company that is based out of Japan. WMS Gaming, which you may remember as William's Gaming which made pinball machines and juke boxes, is based out of Chicago. They have a very large facility in Las Vegas. Bally Gaming is the other very large one.

Chairman Anderson:

Does the Cantor Fitzgerald group do anything here in Nevada?

Dennis Neilander:

Yes, Cantor Fitzgerald has a subsidiary which they call Cantor Nevada. Cantor Fitzgerald is a very large bond trading firm. They have also developed a company called eSpeed, which uses certain kinds of technology to regulate the bond markets in the United Kingdom. They have a very large presence on

Wall Street. Cantor Nevada is now licensed here as an operator of a mobile gaming system. As you will recall, this Legislature enacted legislation during the last two sessions which now allows for mobile gaming to occur within certain nonrestricted locations. It is still in its infancy, but, for example, the M Resort, which was just recommended for licensing by the board and commission, will open on March 1, 2009. Cantor will have its first major mobile gaming system in operation in conjunction with the race and sports book there. The first system was tested at the Venetian some time ago. There are now different generations of these devices that are going through, and there are now at least four other companies that have received their license to operate mobile gaming and are in the process of submitting various devices to our lab.

Chairman Anderson:

Mr. Neilander, is there any other piece of information that you feel would be helpful for this Committee in order to understand the issues and challenges relative to the gaming industry?

Dennis Neilander:

I think I should spend a brief moment talking about technology because that is really what is driving the growth in the industry. It may be an issue that you will have to grapple with from time to time. Something called system based and system supported games, commonly referred to as server-based gaming, is something that we have adopted technical standards for. We have tested a couple of systems already. This appears to be the wave of the future, at least with respect to slot machines. The notion is, in system based, that the game outcome is determined by a central server that is in the back of the house, so the random number generator is housed within a central server. System supported gaming is sort of the opposite. There are certain functions in the back of the house, but a win or a loss is determined by the machine itself with its own random number generator. We performed an initial field trial at Treasure Island for the first of these systems. It was a pretty basic system, but it successfully passed the field trial. As we begin looking at CityCenter, there is a possibility that CityCenter will ask to open its entire floor as a server-based system. That would be the first one that I am aware of. There are a few Native American jurisdictions that do have fairly wide use of server-based gaming, but it is a very new thing in the United States. Australia does have quite a bit of experience with it, and we have been in close contact with our counterparts in Victoria and New South Wales in regard to their experiences there. The economic model of server-based gaming has not been figured out yet. I think the technology is there. We are dealing with it in our lab environment. The economics of how it will get priced has not necessarily been sorted through yet. Ticket-in, ticket-out, otherwise known as TITO, is a system in which you go coinless on the floor. That technology is now widespread and

used in almost every large casino. We expect that server-based gaming may be the next thing that is widely used by the nonrestricted licensees.

Chairman Anderson:

Ticket-in, ticket-out is a relatively new piece of gaming technology that is less than 20 years old. It brought about penny slot machines that were a rarity once upon a time and are now commonplace. What happens to somebody who walks out the door because they do not feel like cashing in the seven cents that are left in the machine? How is that money tracked? Does that money belong to the casino? Is that part of the house profit?

Dennis Neilander:

Most of the ticketing systems now either round up or down, so there is no fractional payment. In the event that there is, the patron can ask the casino to pay them in cash instead of a ticket. That happens in some cases. If the patron just abandons the credits on the machine, someone else will generally come in and pick those up and play them.

Chairman Anderson:

If you walk out the door with a chip in your pocket, the house is still holding the money. If you have put money into the machine and you walk away with a piece of paper, is that revenue generated to the casino? In theory, someone could come back, put in his ticket, and pick it up.

Dennis Neilander:

The chip and the ticket are accounted for in exactly the same fashion. The ticket represents a wagering instrument, which is accounted for within the revenue side. That ticket, much like a chip, has a limited period of time in which it can be cashed. There is an expiration on it, but it is fully accounted for within the system. That individual should be able to come back and cash that ticket.

Chairman Anderson:

How would the customer know that the ticket had a limited time factor?

Dennis Neilander:

It is printed on the ticket.

Chairman Anderson:

Is that time frame generally a month or a day?

Dennis Neilander:

Each licensee independently decides the time frame, but I would tell you, based on my experience, it is generally six months.

Chairman Anderson:

Have we seen yet if using a central server random generator versus an individual machine random generator changes the element of probability?

Dennis Neilander:

It does not. The executable code and the algorithms that are used to develop random number generators are exactly the same whether they are housed within the machine or on the central server. The central server simply has to have a lot more horse power in order to be able to transmit that information over a wide number of machines.

Chairman Anderson:

Do we believe that it will reduce operating costs for the casino?

Dennis Neilander:

Yes. The economic model should drive the cost down, but it will also create much more efficiency. For example, if you want to change your device from a nickel machine to a quarter machine, that requires you to go to each individual machine, power it down, open the door, reconfigure it, test it, and fire it back up again. You can imagine how much less it would cost if you could do that from the back of the house with a server, without having to disrupt the game at all, and doing it all instantaneously, as opposed to servicing each individual machine. You could control your whole floor in that respect. I think some of the things the licensees believe are attractive are, for example, the marketing possibilities. You may have a bank of machines that are down or have not been played in a while, then someone inserts their player-tracking card, the casino recognizes that as a good player, and they offer him a free buffet through the

server on the machine's screen. There are a lot of marketing things you can do with this new technology, and to some extent it may help with regulatory compliance because the central server creates an audit trail.

Chairman Anderson:

[The meeting adjourned at 11:01 a.m.]

RESPECTFULLY SUBMITTED:

Kyle McAfee
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: February 9, 2009

Time of Meeting: 8:35 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Jennifer Chisel, Committee Policy Analyst	Memorandum Concerning Judgment for Minors
	D	P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety	PowerPoint Presentation
	E	Dennis K. Neilander, Chairman, State Gaming Control Board, Minden , Nevada	Information Packet