The Senate Committee on Judiciary was called to order by Chair Greg Brower at 9:36 a.m. on Tuesday, May 12, 2015, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair  
Senator Becky Harris, Vice Chair  
Senator Scott Hammond  
Senator Ruben J. Kihuen  
Senator Tick Segerblom  
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Michael Roberson (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27  
Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1  
Assemblyman Lynn D. Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst  
Nick Anthony, Counsel  
Lynn Hendricks, Committee Secretary
Chair Brower:
I will open the hearing on Assembly Bill (A.B.) 128.

**ASSEMBLY BILL 128 (1st Reprint):** Creates a power of attorney for health care decisions for adults with intellectual disabilities. (BDR 13-418)

**Assemblywoman Teresa Benitez-Thompson (Assembly District No. 27):**
This bill will put Nevada on the map in terms of the environment we are creating for our special-abled people. During the 2013-2014 Interim, I served as the chair of the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs. In our meeting on August 15, 2014, members unanimously supported a bill draft request (BDR) to create a power of attorney for health care decisions for persons with intellectual or developmental disabilities. This form would be different from the power of attorney for health care form set forth in *Nevada Revised Statute* (NRS) 162A.860. The new form would enable adults over the age of 18 with intellectual or developmental disabilities to receive assistance in making medical decisions. The BDR was the result of our meeting
on May 21, 2014, in which Mary Bryant, Project Coordinator for the Nevada Center for Excellence in Disabilities in the College of Education at the University of Nevada, Reno, testified that the proposed durable power of attorney for health care decisions would enable people with intellectual and developmental disabilities to obtain assistance needed with important medical decisions without having to submit to formal guardianship proceedings. The intent of the document is to be written in plain English so that people with intellectual disabilities would be able to understand and could sign it.

I will walk you through the bill. Section 2 of A.B. 128 contains the definition of “intellectual disability.” This definition was put into place by S.B. No. 149 of the 76th Session, which replaced the term “mental retardation” with “intellectual disabilities” throughout the NRS. This was the first step for Nevada to create an atmosphere of change about the way we perceive this population.

Section 3 gives the language of the modified health care power of attorney for adults with intellectual disabilities. It is much like the standard health care power of attorney, except that the language is much more simple and does not include any legalese. For example, on page 2, line 16 of the bill states that the new power of attorney form will say, “If I am sick or hurt, my agent should take me to the doctor. If my agent is not with me when I become sick or hurt, please contact my agent and ask him or her to come to the doctor’s office.” You will see the spirit of supported decision-making throughout this language. That means allowing the person with intellectual disabilities to make the decision, while a supportive caregiver is there to help the person digest and understand information, then help him or her make a decision about what is best.

As many of you know, being under a guardianship can take away many rights. This population is saying, “We want to keep our rights. We want the ability to get married, have checking accounts, have jobs. I don’t want to go into a guardianship just because I’m a little bit different, but I do need help with some things. I need help thinking about some things.” The intent of this form is to supply that need.

The new form continues on page 3 of A.B. 128, where the agent signs to acknowledge his or her responsibility to the intellectually disabled person. Lines 12 through 27 on page 4 list procedures the agent is not allowed to support. This is to help prevent extreme measures from being taken.
Lines 34 through 38 on page 4 require the agent to state his or her relationship to the intellectually disabled person and how long this relationship has been in place. If there is a question about fraud or exploitation, the courts can look at that relationship and see if it is a quality supportive relationship. One of the things you will hear from testifiers today is that many intellectually disabled people rely on their parents to help them make these decisions. We imagine that is the way this form will mostly be used. If the agent is a close friend or mentor, we want to ensure we spell out who the person is and what their relationship is. If it comes into question, we have it documented for the courts to decide.

Pages 6 and 7 of A.B. 128 deal with end-of-life decisions. The language here is similar to advance directives in statute but written more simply. Section 6 rolls into NRS 162A.860, which governs health care power of attorney and advance directives. In my job as a hospice social worker, I help a lot of families complete these end-of-life documents. They can be hard to understand. Perhaps there should be an easier-to-read version available for everyone.

The language in A.B. 128 was crafted to drive supported decision-making in health care power of attorney documents.

Senator Harris:
I also have an opportunity to work with end-of-life directives. The forms are challenging for most people even on a good day. Why would we not want to look at conforming them to this new language? It would be helpful for everybody.

Assemblywoman Benitez-Thompson:
That is a good suggestion. I see no reason why we could not look at this in future sessions once we see how this language works and find out if there is an appetite to apply it to a greater variety of folks.

Mary Bryant (Vice Chair, Nevada Commission on Services for Persons with Disabilities):
I support A.B. 128. I have written testimony describing my personal experience with my daughter Kailin and expanding on the need for this bill (Exhibit C).

Travis Mills:
I support A.B. 128. I have written testimony describing my experience with this issue (Exhibit D).
Jana Spoor:
I support A.B. 128. I have written testimony explaining my experiences with getting appropriate health care for my brother Greg Spoor after he was struck by a car on January 23 (Exhibit E). The provisions in this bill would have helped us avoid most of the issues we experienced during Greg’s hospitalization, and there would have been better communication between the nursing staff and doctors.

Greg Spoor:
I am Jana’s brother. I am deaf in both ears. When I was in the hospital, I had severe pain due to internal bleeding. I closed my eyes to concentrate on controlling the pain, and the hospital staff thought I was asleep. That is why I called my sister and my brother in the morning to let them know I was in severe pain.

Mark L. Olson:
I support A.B. 128. I have written testimony describing my experiences with this matter and explaining the need for this bill (Exhibit F). My team and I opposed the original version of A.B. 128, but we fully support the amended bill.

Shelley Hendren (Administrator, Rehabilitation Division, Department of Employment, Training and Rehabilitation):
We support A.B. 128. I have written testimony describing our support for this measure (Exhibit G).

Ed Guthrie (CEO, Opportunity Village):
We support A.B. 128. Opportunity Village is a community rehabilitation program in Las Vegas that provides employment, training and habilitation services to some 2,000 people every month and to about 4,000 people in the course of a year. About two-thirds of our clients live with their families. Many or most of those parents never go through the process of getting legal guardianship of their children. When a health emergency occurs for those individuals, they are stuck in a gray area. This bill allows parents to help their intellectually disabled children participate in the supported decision-making process for health care, while at the same time avoiding the legal issues that go along with acquiring full legal guardianship. For that reason, we strongly support this bill.
Jon Sasser (Legal Aid Center of Southern Nevada):
I am also the legislative chair of the Nevada Commission on Services for Persons with Disabilities. We fully support A.B. 128. I worked with Sally Ramm on the amendment offered in the Assembly Committee on Judiciary in an effort both to accommodate the need of people with intellectual disabilities for independence and to give doctors the confidence they need to move forward.

Sherry Manning (Executive Director, Nevada Governor’s Council on Developmental Disabilities):
We strongly support A.B. 128. The Council works toward systems change and capacity building for all people with intellectual and developmental disabilities. We feel this bill will further their abilities. 

Assemblywoman Benitez-Thompson:
People with intellectual disabilities do not always get the care they need in traditional health care settings because they need family to help them make supported decisions. We need physicians and the medical community to reach out to families. These folks want to be independent, and they want to maintain their independence as long as they can. This bill seeks to help them accomplish that goal.

Chair Brower:
We will close the hearing on A.B. 128 and open the hearing on A.B. 201.

**ASSEMBLY BILL 201 (1st Reprint):** Revises provisions governing eminent domain. (BDR 3-960)

Assemblywoman Marilyn K. Kirkpatrick (Assembly District No. 1):
This bill came about in response to a situation that came up in North Las Vegas in 2013 in which the company Mortgage Resolution Partners (MRP) proposed a plan to use eminent domain to seize mortgage loans from their holders. If adopted, the plan likely would have resulted in significant losses to investors, making it harder for residents in the community to obtain mortgages and ending up in lengthy and expensive litigation. When A.B. 201 was heard in the Assembly Committee on Judiciary on March 17, I submitted a packet of information giving details of MRP’s proposal and negative reactions to it from such entities as the Federal Housing Finance Agency, The Wall Street Journal and the Greater Las Vegas Association of Realtors. We wanted to ensure that
such a plan could not take place in Nevada. Governments should not be in the business of buying houses with a third party.

The bill has two sections. Section 1, subsection 2 says that local governments cannot enter into an agreement with any person for the purpose of exercising the power of eminent domain to take on a mortgage or deed. The City of North Las Vegas did not fall for the scheme completely, but they did get their feet wet, which resulted in a bill of $50,000 for attorney fees.

Brad Spires (Nevada Association of Realtors):
I am a broker-salesman in Gardnerville with RE/MAX Realty Affiliates.

When we spoke on this bill in the Assembly Committee on Judiciary, there was a misunderstanding about what this bill was about. This is not the grant, bargain and sale deed that is recorded where you own the property. This bill is in response to MRP trying to take a recorded instrument that encumbered the property for a third party. In other words, the note and deed of trust was recorded for the bank or for the lender. While the note and deed of trust did not convey the property, MRP was attempting to take the note and deed of trust and then sell them. The worst part is that the loans they went after were conforming loans—loans from people making their payments who are unlikely to default. This bill prevents the taking of a recorded instrument that encumbers the property.

Rocky Finseth (Nevada Land Title Association):
We support A.B. 201.

Chair Brower:
I will close the hearing on A.B. 201 and open the hearing on A.B. 457.

ASSEMBLY BILL 457 (1st Reprint): Revises provisions governing reports required to be submitted by various entities. (BDR 1-937)

Assemblywoman Kirkpatrick:
In 2013, Assemblywoman Benitez-Thompson and I worked on A.B. No. 350 of the 77th Session to get rid of obsolete reports or reports that no longer made any sense. In that same Session, Senator Debbie Smith introduced a similar bill, S.B. No. 405 of the 77th Session. The two bills were merged together, and the Legislative Commission was asked to look for reports required by statute that
were no longer needed or which needed modification. For example, some reports were being generated quarterly when they were not needed that frequently.

The goal of A.B. 457 is to ensure that we only require reports that are still needed and eliminate those reports we no longer need. Creating unnecessary reports is expensive, and doing away with them will save us money.

Chair Brower:
Are there any reports in this bill that we should be concerned about?

Assemblywoman Kirkpatrick:
The ACLU of Nevada was concerned about one report reporting crime statistics, and that report is produced elsewhere, so their concern has been addressed. We changed the time frame of the ambulance report we added in 2007 so people could track it. The State Board of Parole Commissioners report was changed to biennial as opposed to quarterly.

I am a big believer in reports. Once we leave the Legislature, we have to have regular reports. But when people quit using them, they are no longer effective. We tried to clean up the language with this bill. This is an ongoing process to ensure that reports go to the right committees. For example, one report that goes to the Interim Finance Committee should go to an education committee. One report has been in place since 1996, and I do not know too many people who were here in 1996 to even know the issue.

Senator Ford:
You may have addressed one of my concerns. Section 3, subsection 6, paragraph (h) of A.B. 457 is deleted, indicating that the Central Repository for Nevada Records of Criminal History will no longer be required to support the report containing statistical data about domestic violence in the State. Are you saying that those reports are still required elsewhere in our statutes?

Assemblywoman Kirkpatrick:
Yes. The majority of that report goes to the FBI, so we have access to the information. The data is not being lost.
Senator Ford:
I note that section 3, subsection 6, paragraph (g) has also been stricken. That is the annual crime data report. Is that also covered elsewhere?

Assemblywoman Kirkpatrick:
No. I should note that this bill has been in progress since the last Session. The Legislative Commission had a hearing on the matter in August 2013. The process has been completely transparent throughout; there have been several hearings. We started out eliminating 50 reports, and now we are down to 6. I was only made aware of this concern in the last couple of days. We felt we could eliminate those reports that are already collected by the FBI and available on the Department of Public Safety Central Repository Website. We can get that information any time we need it. Does that answer your question?

Senator Ford:
Yes. I want to ensure there will still be access to the data. One of the concerns articulated to me is that if you need to get such data from the FBI, you have to individually file a public records request. In view of that, it may just cease being collected altogether. Do you have any thoughts about that?

Assemblywoman Kirkpatrick:
I am happy to take that report out of the bill altogether to ensure that it continues to be produced.

Kristy Oriol (Nevada Network Against Domestic Violence):
We are neutral on A.B. 457. I apologize to Assemblywoman Kirkpatrick for not informing her of our concern earlier in the process. I have written testimony explaining our position on this bill (Exhibit H).

We do not have any major concerns about A.B. 457, but I would like to clarify our position for the record. Section 3 of the bill does not eliminate the reporting of statistics on domestic violence or other crimes with the Department of Public Safety. We want to ensure that these reports still remain available on the Website. The data is extremely useful for us in our grant reporting, grant applications and tracking of statistics on domestic violence in Nevada. As long as that is the case, we have no problem with A.B. 457. We support any effort to reduce redundancy and unnecessary reporting, but we utilize some of this data and would like it to continue to be available.
Chair Brower:
Do you believe the bill should be amended to reinstate the deleted material we see on page 8, section 3, subsection 6, paragraphs (g) and (h)?

Ms. Oriol:
I am not sure those provisions need to be deleted if that data will remain available to the public without having to submit a public records request. Assemblywoman Kirkpatrick indicated that this would be the same report submitted to the FBI, which is on the Department of Public Safety (DPS) Website. The language in this section indicates that the requirement that this report be given to the Legislative Counsel Bureau is being deleted.

Chair Brower:
Since we do not have a representative from DPS here, please meet with Assemblywoman Kirkpatrick on this issue and let us know what you decide. We will adjust the bill to make sure everyone has the data they need in the easiest way possible.

Ms. Oriol:
I will.

Vanessa Spinazola (American Civil Liberties Union of Nevada):
We are neutral on A.B. 457. We have the same concerns Ms. Oriol has voiced. It was unclear to us whether this bill eliminates only the printed copy sent to the Governor or eliminates the report in its entirety. We compare crime statistics with incarceration trends. If we had to do public records requests on all these data, I do not know that the work and cost to the DPS would be substantially less than it is now.

Chair Brower:
I will close the hearing on A.B. 457 and open the hearing on A.B. 419.

**ASSEMBLY BILL 419 (1st Reprint):** Clarifies the applicability of the Uniform Unclaimed Property Act. (BDR 10-1104)

Lorne Malkiewich (Nevada Resort Association):
This bill has to do with the Uniform Unclaimed Property Act, NRS 120A. A question arose regarding the scope of the Uniform Unclaimed Property Act and the meaning of “tangible property held in a safe-deposit box or other
safekeeping depository” in NRS 120A.510. This bill clarifies that it is limited to such storage with a financial institution or a safe deposit company. Generally, the Uniform Unclaimed Property Act applies to intangible property: checks, credit balances, stocks, bonds, insurance payouts, money in a trust and similar items. The only exception is tangible property held in a safe deposit box or other safekeeping depository in the ordinary course of a holder’s business. The specific question is whether a safe in a hotel room is considered a “safe-deposit box or other safekeeping depository.”

The Uniform Law Commission—there are two Uniform Law Commissioners and two former Uniform Law Commissioners on this Committee—adopts comments in addition to the text of the uniform acts. The comment to the section concerning tangible property held in safekeeping depositories makes it clear that the definition is intended to be limited. The comment states, “This section is not intended to cover property left in places other than safekeeping depositories, for example, airport lockers or field warehouses. Its coverage is limited to tangible property held in safe deposit boxes in banks and financial institutions.”

Nevada adopted this provision of the Uniform Unclaimed Property Act with just one word changed from the original language. Did we intend that interpretation? In addition to adopting that exact language, other sections in NRS make it clear this was the intent. For example, NRS 663.085 relates to safe deposit boxes in banks and related organizations. It states that when a safe deposit box has been unclaimed for more than 3 years, the lessor is required to deliver the contents to the State Treasurer in the State Treasurer’s capacity as the administrator of unclaimed property pursuant to the provisions of NRS 120A. In addition, NRS 673.373, concerning savings and loans, has an identical provision requiring a financial institution to turn property over to the State Treasurer. No other provision in NRS requires that tangible personal property be turned over to the State Treasurer pursuant to this statute, and certainly nothing in public accommodation statutes. Perhaps the State Treasurer has interpreted it differently.

The regulations of the State Treasurer, Nevada Administrative Code (NAC) 120A.070, specify that the period begins after the end of the rental period. It spells out how to address the situation when there is no rental period:
A safety deposit box that has no lease or rental fee and is provided to the owner as a condition of a specific amount being deposited with the bank or financial organization shall be presumed abandoned at the same time as the account for which it was provided.

This regulation is referring to safe deposit boxes in financial organizations. Also, NAC 120A.080 refers specifically to NRS 663.085 and states that a bank or similar organization is to turn over the contents of an abandoned safety deposit box.

Finally, the strongest argument for the limited application of this statute is the argument of absurdity. A fundamental principle of statutory construction is that statutes should not be construed in a manner that would result in an absurd application. The statute provides that property in a safe deposit box is presumed abandoned if it remains unclaimed for more than 3 years after the expiration of the lease or rental period. The concept “lease or rental fee” makes no sense applied to a safe in a hotel room. A presumption of abandonment after 3 years makes perfect sense for safe deposit boxes but would be insane applied to a hotel safe. For example, if a family stayed in a hotel and Junior thinks it would be interesting to put his teddy bear in the safe, the hotel would be required to keep the teddy bear for 3 years and then turn it over to the Unclaimed Property Division.

I am sorry to beat this to death, but I want to make it abundantly clear that this is a clarification of statute and not a change, clarifying that the Uniform Unclaimed Property Act provisions concerning safe deposit boxes do not apply other than to safe deposit boxes in banks, other financial institutions and safe deposit companies.

**Senator Segerblom:**
Have other states considered that this law applies to hotels?

**Mr. Malkiewich:**
I am not aware of any. Assemblyman James Ohrenschall, a fellow Uniform Law Commissioner, checked to make sure there was no pending litigation. The Uniform Unclaimed Property Act is one of the less uniform acts; it started with the Uniform Disposition of Unclaimed Property Act of 1954, which was revised in 1966, 1981 and 1995—and this July, they will take it up again. It has been
amended quite a bit. As I said, there was only one word changed between the Uniform Unclaimed Property Act and NRS 120A. The Uniform Unclaimed Property Act provides for a 5-year retention, and we changed it to 3 years. I am not aware of any states that have a different application.

Chair Brower:
I will close the hearing on A.B. 419 and open the hearing on A.B. 301.

ASSEMBLY BILL 301: Prohibits restrictions on the freedom to display the flag of the State of Nevada in certain places. (BDR 10-533)

Assemblyman Lynn D. Stewart (Assembly District No. 22):
This brief bill was brought forth at the request of a constituent who was flying the Nevada State flag at his home during the State’s sesquicentennial celebrations. His homeowners’ association (HOA) made him take down the Nevada flag. Assembly Bill 301 authorizes the flying of the Nevada flag on your own property whether you have an HOA or not.

Chair Brower:
This bill says that the statutes allowing the flying of the United States flag also apply to the Nevada flag. That is, HOAs cannot restrict the display of the U.S. flag, with some exceptions, and we will add the Nevada flag to that same statute. Is that right?

Assemblyman Stewart:
Yes. There are restrictions on the size of the flag, and those same restrictions apply to the Nevada flag.

Chair Brower:
Can we do anything about folks flying flags that are tattered or otherwise not in good shape? I see tall buildings where businesses are flying flags that are long past the point for honorable burning in accordance with proper flag protocol.

Assemblyman Stewart:
That is not part of this bill, but I would not object to it.

Marco Velotta:
I support A.B. 301. I am a resident of Henderson. I consider myself a proud Nevadan. During our sesquicentennial year, I celebrated at many of the events
held throughout the State, including the parade in Carson City. I displayed a Nevada flag at my residence until I received a cease-and-desist letter from my HOA at Champion Village, even though I had followed the procedures outlined in our governing documents. When I presented my argument to the board and the community managers, they were not swayed and would not hear my matter except during a closed session. However, they had no problem giving me approval to fly a Denver Broncos flag. When I attempted a resolution, I was advised that nothing could be done and I would have to contact my Legislators and request a change in the NRS. That is what I am doing.

I am a city planner, and I do not take issue with reasonable covenants, conditions and restrictions (CC&Rs). I fully understand and agree with the standards for signage in support of community aesthetics. Throughout this experience over the past year, I reviewed the signage standards and zoning codes of many cities and counties across Nevada, and I could not find any that contained prohibitions on flying the State flag on residential or commercial properties. Some even explicitly allow for it, including Henderson, Las Vegas and Carson City. However, if you live in an HOA, as many Nevadans do, the HOA governing documents apply. Most tend to be restrictive. Some, such as Arrowcreek in Reno and Sun City communities in southern Nevada, only allow for the American flag. Some, including Caughlin Ranch in Reno, explicitly allow the State flag. Others, including my HOA, leave it to the board’s discretion to pick and choose how you are allowed to decorate your property.

This is a matter of State and civic pride. I hope all Nevadans, whether they live in Laughlin, Jackpot, Wendover or Tahoe, have the right to freely fly our State’s emblem, whether we are celebrating a milestone year or not. The American flag is protected by the NRS, and I respectfully ask this Committee and the Senate to extend the same protection to our State flag.

Chair Brower:
Did you say that your HOA would not let you fly the Nevada flag but would let you fly a Denver Broncos flag?

Mr. Velotta:
Yes.

Chair Brower:
How did the board justify that?
Mr. Velotta:
I am not sure. They allow seasonal flags for sports teams. They told me that they approve them on a case-by-case basis. I had to look at a Detroit Redwings flag during the hockey season. It is baffling as to why it is that way.

Jonathan Friedrich:
I support A.B. 301. Yesterday, you asked me to give you examples of abuse by HOA boards. This is a perfect example. This gentleman is lucky he was not taken out and shot at dawn by his HOA board. It is absurd that he received a cease-and-desist order over a flag.

Chair Brower:
I agree with you that it is absurd. That is why we are here, and that is why this bill in all likelihood will be successful. In defense of the HOA board, however, the flying of the Nevada flag did violate their CC&Rs. That was probably an unreasonable provision, and we will change the law. But in this case, flying that flag was a violation of the CC&Rs. It was not an example of an HOA board acting outside of their CC&Rs.

Mr. Friedrich:
It was an example of abuse.

Chair Brower:
I agree with you. Do you like the bill?

Mr. Friedrich:
I like A.B. 301. When people living in an HOA have no recourse, they come to you to get the law changed. Mr. Velotta was facing fines, which could be $100 a week or $100 a day, depending on what the board decides. The boards have unlimited power.
Chair Brower:
I would like to think that this particular rule is so absurd that the residents would be able to persuade the board to change it. In any event, it is appropriate for us to become involved.

We are adjourned at 10:45 a.m.

RESPECTFULLY SUBMITTED:

______________________________
Lynn Hendricks,
Committee Secretary

APPROVED BY:

______________________________
Senator Greg Brower, Chair

DATE:______________________________
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