IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: PRESTON S., No. 66410

A MINOR CHILD,
_____/

PRESTON SANDERSON,

Appellant,

v.

STATE OF NEVADA,

Respondent.
_____/

SUPPLEMENTAL APPENDIX

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MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Seventy-second Session
March 7, 2003

The Senate Committee on Judiciary was called to order by Chairman Mark E. Amodei, at 8:00 a.m., on Friday, March 7, 2003, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chairman
Senator Maurice E. Washington, Vice Chairman
Senator Terry Care
Senator Mike McGinness
Senator Dennis Nolan
Senator Dina Titus
Senator Valerie Wiener

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Bradley Wilkinson, Committee Counsel
Jo Greenslate, Committee Secretary

OTHERS PRESENT:

The Honorable Cynthia Dianne Steel, Department G, Family Division, Eighth Judicial District
The Honorable David R. Gamble, Department 1, Ninth Judicial District
Leonard J. Pugh, Director, Department of Juvenile Services, Washoe County and President, Nevada Association of Juvenile Justice Administrators
Larry Carter, Juvenile Justice Specialist, Juvenile Justice and Delinquency Prevention Act, Division of Child and Family Services, Department of Human Resources
Adrienne Cox, Assistant Director, Department of Juvenile Justice Services, Clark County
Willie Smith, Deputy Administrator, Youth Correctional Services, Division of Child and Family Services, Department of Human Resources
Katherine Kruse, Associate Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas
Lucille Lusk, Lobbyist, Nevada Concerned Citizens
Richard L. Siegel, Ph.D., Lobbyist, American Civil Liberties Union of Nevada

CHAIRMAN AMODEI:
I will open the hearing on Senate Bill (S.B.) 197.

SENATE BILL 197: Repeals, reenacts, reorganizes and revises certain provisions relating to juvenile justice. (BDR 5-633)

SENATOR VALERIE WIENER, CLARK COUNTY SENATORIAL DISTRICT NO. 3:
I am here today appearing before the Senate Committee on Judiciary on S.B. 197, which repeals and reorganizes all sections of the *Nevada Revised Statutes* (NRS) dealing with juvenile justice, juvenile corrections, and the interstate compact (Exhibit C). As a brief background, let me explain how this project and I came together. I was asked and allowed the privilege of bringing this particular piece of legislation to this particular Legislature.

I came to Carson City first in 1997, and since that time, I have introduced 16 bills dealing directly or indirectly with juvenile justice. In addition, I chaired two committees that focused on juvenile justice in one of the interims. That is a lot of time and energy spent on these particular issues. Because of this, and my private sector experience as an author, speaker, and community service advocate in juvenile justice, Dianne Steel, one of our esteemed judges from Clark County, asked me if I would be interested in introducing legislation to reorganize the statutory scheme of things affecting juveniles and juvenile justice in Nevada. As you can see by the very thick piece of legislation before you, my answer was yes, and S.B. 197 is the end product.

This bill, in particular, represents a collaborative effort, and I cannot overestimate how important that collaboration was in developing S.B. 197. It was the intent of the team, which worked diligently on this bill, to provide those Nevadans who need to use this particular area of statutory language greater ease in navigating statutes that affect juveniles, their families, and their communities. I would like to say Governor Guinn also had a keen interest in reorganizing this statutory scheme for juvenile justice. Knowing I was involved in the process, the Governor kindly withdrew his bill to avoid the expense and time-consuming duplication of efforts. To you, Governor Guinn and to your mighty and able staff, I say a very big thank you. As I do with many of my bills, I assembled a team to tackle this project. On the record I want to thank every person who made a contribution to the invaluable, sometimes painful, efforts in drafting S.B. 197.

Certainly, as with any project of this size, it is most important to get the extraordinary support of the Legislative Counsel Bureau (LCB). I want to offer my extraordinary thank you to match the spirit of the counsel to Brenda Erdoes, our legislative counsel, who many months ago agreed to my redrafting request. She was kind enough to assign two superb bill drafters to ensure we could have it ready for introduction during this Legislative Session. To the drafters, our own Bradley Wilkinson and his able colleague, Stephanie Haft, I want to give my humble and huge thank you. Your consistent intelligent, insightful efforts and patience with this project can serve as a positive influence for all involved in the legislative process.

The bill before you represents an exceptional effort in reviewing and reorganizing in a manageable chapter, every section of Nevada law relating to juvenile justice, juvenile corrections, and interstate compact. In that vein I want to stress one point. The intent of our efforts was to reorganize the statutes. We did not go into this project with any effort to address substantive issues. However, the mere exercise of reorganization requires some substantive changes to produce a consistent, coherent document. I want to add I have stressed to the legislative participants the urgency of passing this important piece of legislation this session. The history that has been built around S.B. 197 is quite exceptional, and I am not sure we would be able to repeat it any time in our lifetimes. If participants find before next session other issues we need to address, we can certainly do that next session.

I am aware there are others who are not participants in the reorganization process, who want to appear before the committee, whether by facsimile, E-mail, or in person, and I am eager to listen to their recommendations at this hearing. I am no longer an expert at this point. I would like to ask Mr. Wilkinson to come forward and present the bill. Following his testimony, we will have several drafters of S.B. 197 testify as well as anyone else who wants to come to the table. Following that, I urge your support for this lofty effort to help make our statutory scheme of things easier to navigate.

BRADLEY A. WILKINSON, COMMITTEE COUNSEL:
I am presenting S.B. 197 at Senator Wiener's request, but I first need to disclose, as an employee of the LCB, I am not urging passage or defeat of this particular legislation, but merely explaining what it does and some of the background behind its drafting.

Let me start by noting some things about S.B. 197 and proposed changes to Title 5 of NRS (Exhibit D. Original is on file in the Research Library.). Title 5 of NRS is the only NRS title that consists of a single chapter, chapter 62. Most titles in NRS have 10 to 20 chapters; Title 54, for example, has 50 chapters; Title 57 has 49 chapters. As a result, chapter 62 is long. Many of the sections have five digits beyond the decimal point. It has become difficult to read, difficult to amend, and is not especially user-friendly, either for our office or the public. In S.B. 197, we took chapter 62 and repealed it in its entirety and reenacted it as a number of other chapters. In so doing, we also repealed chapter 210, which pertains to State detention facilities, and chapter 214, which is the Interstate Compact on Juveniles. *Nevada Revised Statutes* 213.220 to 213.290, inclusive, are other provisions just sitting in chapter 213, but also pertaining to juveniles. Therefore, we have thrown out in their entirety those provisions and reenacted them. In reorganizing those provisions into new chapters, we have attempted to, whenever possible, retain their substance and meaning. We have also attempted to reduce redundancy, to omit archaic language and provisions, to improve the consistency of language grammar and structure, and to make the title user-friendlier.

There are some sections in chapter 62 of NRS that are 5 or 6 pages long. They have become unwieldy and difficult to read. The bill before you appears to have a lot of new language and new provisions, but I would point out there are no new fees, fines, penalties, or administrative assessments. Let me give you an overview of how the bill is structured. In doing so, it would probably be helpful to refer to the outline I distributed (Exhibit D), which is an approximation of how we might codify S.B. 197, if passed.

Senate Bill 197 starts out with a new chapter, which we will probably call "General Provisions." It contains definitions to be used throughout the title. One thing we did in the definitional section to make it more user-friendly was to not use definitions that say, "NRS X has the meaning ascribed to it," or "this term has the meaning ascribed to it in NRS X," in referring to another section that may be 300 chapters later. We have actually taken a definition from that section of NRS and put it directly into the new definitions, preventing the reader from having to flip through another book of NRS. While going through the provisions, I will highlight substantive changes.

After the definitions in chapter 62A, chapter 62B sets up organization and jurisdiction of the juvenile courts and mentions some of the actors in the juvenile courts. One of the specific changes made at the request of Judge Steel was inclusion of a provision for appointment of temporary masters in section 43. I believe there is also an amendment proposed by the Nevada Supreme Court that would allow the chief judge of the judicial district to appoint temporary masters. We could easily accommodate that request. Chapter 62C is entitled "Administration of Juvenile Justice," and this section in the current chapter of NRS breaks down provisions by counties rather than by subject.

Specific counties have to pick through every third section to find ones that would be applicable to their particular jurisdiction. Therefore, we have grouped the provisions by judicial districts and their county populations for ease of reference.

Chapter 62D relates to the basic provisions pertaining to procedure occurring in juvenile cases: the right to an attorney, how documents will be filed, the process for complaints and petitions, informal supervision, provisions pertaining to custody, and general provisions pertaining to the proceedings. Note that in section 107, we have clarified the court itself does not take custody over a child as the current language suggests. Section 124 relates to continuances and currently suggests the court supervises a child during a continuance, when actually the agency in charge of the child does the supervision. In section 131, we have added the court is required to notify all parents and guardians of each proceeding scheduled after the initial detention hearing. That change was one of the many made at the request of Judge Steel.

MR. WILKINSON:
Chapter 62E pertains to disposition. In section 167, we added specific provisions pertaining to restitution. Subsection 1 states, "The juvenile court may determine the amount of restitution it orders a child or the parent or guardian of the child to pay to a victim of the child's unlawful acts." Subsection 2 states:

> The juvenile court may order that the child or parent or guardian of the child, or both, pay restitution in an amount that equals the full amount of the loss incurred by the victim, regardless of the amount of insurance coverage that exists for the loss.

Along similar lines, in section 169, we added a new section providing even if the court orders payment of restitution, the victim can still bring a civil action in district court to recover damages incurred as a result of the unlawful act.

In chapter 62F, we have set forth specific provisions pertaining to juvenile sex offenders. The two main provisions are restrictions concerning sex offenders attending the same school as their victims and community notification of juvenile sex offenders. One change we made in this section was to add references to parole officers rather than merely probation officers. Currently, the statutes state a child who is a sex offender is assigned to the custody of a probation officer and that probation officer is responsible for the duration of time the child is within the court's jurisdiction. The difficulty is if a child is committed to a State detention facility and then released on parole, the child becomes the responsibility of a State parole officer as well as a probation officer. This is more of a clarification to make the system work better.

Chapter 62G is entitled "Rehabilitation" and contains existing provisions in chapter 213 providing for a special heightened supervision program to discourage delinquency. I do not believe these programs are in use, but we have retained them for possible future use. Chapter 62H relates to local and regional detention facilities and the financial issues relating to them. Chapter 62I contains information concerning records related to children, the collection of records, sealing and unsealing of records, and creation of reports by various persons at the Division of Child and Family Services (DCFS), for example. Chapter 63A pertains to State facilities for detention of children. Chapter 63A is a provision currently contained in chapter 210 of NRS, which is far from chapter 62, and can easily be overlooked. The chapter currently contains specific provisions pertaining to the Caliente and Elko facilities. Chapter 210 of NRS contains provisions parallel to those in Chapter 63A. Therefore, we

have consolidated those into one set of provisions to be applied to both those facilities and any future facilities.

One notable change was made in section 237, which is a good example of an archaic provision. Currently it states the State must provide only an electric or gas stove, a refrigerator, and an automatic washing machine in the residence of a facility superintendent. Subsection 3 of the current section precludes the State from providing any other sort of appliance. We did not believe it necessary to proscribe by statute what appliances could be provided and changed it to allow whatever appliances are deemed appropriate. Chapter 63B is the Interstate Compact on Juveniles. We have not changed the interstate compact in any way. We merely lifted and moved it to the new title. There is a bill coming before this committee providing for adoption of an updated interstate compact. If it is enacted, we will simply take the new compact and put it into Title 5 of NRS.

The remainder of S.B. 197 consists mainly of transitory sections, which say if any other bills pertaining to chapter 62 of NRS pass this session, we will fit them into the new provisions. The effective date is January 1, 2004. The reason for selecting that date is because it coincides with the release of our codified version of the printed NRS.

SENATOR NOLAN:
Mr. Wilkinson, you did a good job of outlining some substantive changes. Regarding those changes, since we do not have the actual wording of the statute, is there a document giving us a side-by-side comparison?

MR. WILKINSON:
We have, which on the left states the source of what is on the right (Exhibit D). We have identified from where in NRS 62 it came and the notes contain a small description of the change. Some sections are highly technical and contain more clarifying rather than substantive changes.

THE HONORABLE CYNTHIA DIANNE STEEL, DEPARTMENT G, FAMILY DIVISION, EIGHTH JUDICIAL DISTRICT:
I am the judicial court judge from the Eighth Judicial District and have been assigned to the juvenile division since January 2001. I have a prepared statement (Exhibit E) and Senator Wiener has already covered a lot of this. In response to Senator Nolan, I went through S.B. 197 with a highlighter to make sure everything in the old bill was in the new bill. I did the side by side for you and if you have any questions, I would be happy to help you.

When I took the bench as juvenile court judge in Las Vegas, I had never even looked at a juvenile statute. When juveniles started coming up in front of me, I decided to familiarize myself with juvenile law. When I went through the statutes, it seemed as if I had seen them somewhere before. I had, because some of the provisions are in the chapter four or five times. There was a lot of duplication and a lack of organization. I think that happened because there is no real oversight in this area of law. In my opinion, juveniles are an invisible population; unlike Child Protective Services (CPS) kids, who are being abused by their parents, and our heart goes out to them. These are kids who are out there destroying your property, robbing your stores, being truant, and causing us to pay taxpayer dollars to put them into detention facilities. Nobody pays a lot of attention to this population. I think that is part of the reason they slip through the cracks so easily.

Imagine you are a judge, and you see a group of laws created just to address the youth in our community. The laws direct courts to protect the community from juvenile delinquents, but also to

possibly rehabilitate them. I wear two hats whenever I am in front of these juveniles. The laws were created by the Legislature, so I do not have inherent power to do anything I want to do, anytime I want to do it. I have to go by statute, because I am within a statutory court. There are probably some loopholes discovered in chapter 62 of NRS, and old information needed to be ferreted out and placed into correct areas.

We have to deal with probation departments, probation committees, and the court processes the allegations of petitions involving minors pursuant to a cross between civil court and criminal court. There is no direction as to which applies. The State directs various entities to perform certain functions. The county probation department is to supervise children coming before the courts. They engage the juveniles in a variety of programs, which are also in the statute, and provide correctional supervision, random drug tests, home visits, community service projects, counseling, and other functions too plentiful to address. Juvenile justice services include detention, placement, intake services, diversion programs, and psychology departments to evaluate mental health and drug issues. There are times when the court "shall," the court "must," the court "may not," and the court "may" do some of these things. There are administrative services for the business department, collection of fines and fees, and ensuring facilities for detention services are open and staffed. The clerk's office is also heavily involved in these services in the "land of juvenile court," as I call it, because it is so different from everything other judges do.

Judges in juvenile court must ensure the court has the right calendars, receives administrative fees, files confidential documents ensuring only those permitted have access, as well as staff the courtrooms and record all the information. The education community is called upon by law to perform various tasks, and many times school police officers are required to testify in court. Administration assists in truancy courts by providing admissions records and making sure habitual truants get to court. They provide necessary information regarding a child's education and where he or she is in the system so a detention facility, if a child must go there, has the appropriate program for him or her. They also instruct in the detention facilities.

JUDGE STEEL:
This statute is an ongoing process. The State keeps growing and so do the statutes. As a judge, you are assigned to the juvenile bench, and the only knowledge you have of juvenile justice is that family court judges have jurisdiction over NRS 62. In looking through chapter 62 of NRS, you discover the term "sexual offender" is defined in several different places, usually verbatim. You begin to notice there are several programs created by the Legislature and others routinely recommended by the probation department. You remember reading somewhere about driver's license suspensions, but you are now looking at driver's license suspensions in truancy court. That seems to be different from your recollection of other driver's license provisions somewhere else in the statute. There are so many examples; I could go on all day.

Now imagine you are a new probation officer who needs to make recommendations to the court, or the child, who does not understand what comes next, or the parent, who is trying to help this child get out of gangs only to find himself in the serious land of juvenile court. Or, you are an attorney whose client has a kid in trouble and has never been here before. Finally, you see a theme running through the group of laws, and you see the word "parents," time and again. They are mentioned everywhere. The Legislature instructs the courts and others involved in the process to get the parents more involved with their children. The courts send subtle messages along these lines:

> Have the parents pay costs of court and placement. Have the parents pay restitution when the children cannot. If the parent cannot, make them do community service. Complete programs in counseling or be held in contempt.

Basically, the group of laws says, "Don't be punitive, be helpful. Don't overwhelm the child or the parent, just get their attention." You ask why are these laws so difficult to grasp? It is just one statute. You start separating different kinds of information and collecting it into common sense, logical groups. The overlapping, repeating, and mixing of one subject split into another starts to make sense. Chapter 62 of NRS is just one statute. It is the only statute in Title 5 of NRS, and herein lays the problem. In our zeal to address and assist kids and their parents, we look at the immediate issues and try to accomplish a worthwhile feat. Crime is up? Lower the age for consideration of adult prosecution. Sex offenders are in the papers? Take care of those situations. Thugs are everywhere? Pass special legislation. Due to the lack of consistent oversight, the changes are not always separated into like categories.

Clearly S.B. 197 shows there are various areas of concern in the statute. When placed in a more logical sequence, the statute becomes immediately more effective. I have had no less than ten calls asking me why I put something into this bill, to which I was able to reply, "If the bill dies today, that something would still exist in the statute." Your reorganization brought to light the something, because it is now where it belongs. I am grateful to all those who listened and cared enough about our troubled youth, our invisible population, and our future, to help this reorganization come to life. I was at an attorneys' luncheon where Senator Wiener was speaking about organization, and it dawned on me she would be the perfect person to ask to marshal this bill through. I had not approached anyone yet and she was gracious enough to not only say she would sponsor this bill, but she brought in everybody early because she knew if we were going to do a rewrite, we would have to get an early start.
I would be happy to address any issues of concern.

SENATOR CARE:
In section 44 on page 7 of S.B. 197, subsection 3 states, "A master of the juvenile court shall provide to the parent or guardian of the child, the attorney for the child, the district attorney, and any other person concerned … ." Who would that any other person be?

JUDGE STEEL:
Sometimes when children are in front of juvenile court, they may have a guardian ad litem assigned to them from a CPS action. They may have an aunt who is the placement where they will be living instead of with the parent or guardian because of some dynamic that has happened within the household. There are others who need to know what is going on with this child because the court has given them some kind of responsibility.

SENATOR CARE:
In section 47, subsection 3, at the top of page 9, it states, "For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act … ." I would like to know what that does to the certification process?

JUDGE STEEL:
The way the statutes run right now, if the child commits a murder, the child is going to be directly filed into district court. The child would not even come to juvenile court. I am deprived of jurisdiction, because it is not deemed to be a delinquent act if the charge was murder. If the charge is

gun-related, such as burglary in a grocery store with a gun, depending upon the age of the child, if the child has any prior felonies, and so forth, he or she might be direct-filed. If it is his or her first offense and the child has robbed a bank or been the lookout kid, he or she will come to juvenile court. Depending upon whether the child had the gun in his or her hand will determine how I evaluate that child for certification. If the child had the gun in his or her hand, it is a "shall" certify unless I find the child had some behavioral problem, some extreme drug problem, or an emotional problem that had a nexus with the crime I can also treat. In that case, I do not certify even on a "shall." Then there are the "mays." In the crime just described, the child may have been the lookout this time, but in four, five, or six other prior events his or her felonies had escalated. Under those conditions, I can certify the child if I do not find a reason to keep him or her at the juvenile level. There are different analyses to look at on certification. In this particular instance, if deprived of jurisdiction because of the type of crime, the child would not come for certification. He or she would go straight to the district courts.

SENATOR CARE:
If that were to happen, would there be a provision for "decertification?"

JUDGE STEEL:
If the district court finds the charges were overcharged, they can refer the child back to juvenile court and have the district attorney in juvenile court charge the child. If I send them there, they can still send them back to me if they find some exceptional circumstance I perhaps missed. Truly we want to keep children in juvenile court if we can help them. We do not want to escalate them up into adult circumstances and give them a record at such a young age and perhaps impact the rest of their lives.

THE HONORABLE DAVID R. GAMBLE, DEPARTMENT 1, NINTH JUDICIAL DISTRICT:
I would like the record to reflect this is not one of the areas in which we made substantive changes. The current statutory scheme, under section 47, subsection 3 of S.B. 197, covers areas of crime not subject to the certification process. All others are subject to the certification-up and certification-down process. These two do not have the opportunity to come back to juvenile court because they have never been juvenile crimes. They have never been delinquent acts. All others for which certification applies can go either up or down or, if they are certified-up during the adult criminal process, can be remanded out at different stages of the proceeding.

SENATOR CARE:
That is what I meant when I said some of my questions might go to existing law. In section 50, subsection 1, on page 10, it says the court may terminate its jurisdiction concerning the child at any time, either on its own volition or for good cause shown, and I am wondering what that would be. Is that also existing law?

JUDGE STEEL:
Yes, it is. What that means is I may put a child on probation for 1½ years because he or she has done something especially inflammatory. Perhaps that child has now aged-out and wants to go into the military. The child has been an angel, and the probation officers and others working with him or her might come to me and request an early termination. I can look at all circumstances and determine whether or not I want to terminate my jurisdiction over the child at that time.

SENATOR CARE:
I believe section 118, regarding public viewing of proceedings in juvenile court, is existing law. There is another bill on the Assembly side that says these proceedings will be open. I think that bill also has

a discretionary provision. Do you have any thoughts on when juvenile proceedings should be open to the public?

JUDGE STEEL:
Juvenile proceedings, unless they are sex offense cases, are open to the public. The discretion we have is if one of the parties or the judge, on his own, decides it is perhaps too sensitive and in the best interest of the child, the public would need to be excluded from the hearing.

JUDGE GAMBLE:
I believe the bill in the Assembly you are referring to has to do with abused and neglected children, children covered under chapter 432B of NRS. Those hearings, under current law, are not open; they are specifically statutorily closed. The Assembly bill has a version containing the court's discretion. The Assembly is debating whether that discretionary provision should be put into the bill. Judges north and south, rural and city, have had many discussions over the interim about the rightness or wrongness of the discretionary provision. Judge McGee from Reno and Judge Hardcastle from Las Vegas carefully presented the judges' positions. I know the Nevada District Court Judges Association has not taken a position. I have my own opinion; I think those cases specifically should not be open.

SENATOR NOLAN:
On page 19 of the document you provided (Exhibit D), in addressing section 169, the explanation of the change in that section is it was added to provide, even if a juvenile court orders a child, parent, or guardian to pay restitution, the victim may bring a civil action in district court to recover damages. I want to make sure, regardless of whether or not a court orders somebody to pay restitution, the victim always has the opportunity to bring a court action. Is that correct?

JUDGE STEEL:
It is. This is more of a clarification than anything else. Sometimes when I order restitution on a child, he or she is 13 or 14 years old and does not have an opportunity to get a job. By the time the child would have finished probation, it might have changed the timing on filing a civil action to collect restitution. I have never tried the issue of the amount due. If victims come in with receipts to the Victims Assistance Program, there is no litigation on that issue. If I only order $3000 in restitution, that is not a determination of how much the cost truly would have been to the victim. I thought it fair to put into statute victims could litigate.

SENATOR WASHINGTON:
Judge Steel, on page 18 of Exhibit D, section 158 deals with the commitment between juvenile court and DCFS. Could you elaborate on that commitment?

JUDGE GAMBLE:
Senator Washington, this again is current law, and the issue is an important one. Right now when we commit a child to a State facility, we commit the child to the DCFS for placement in the facility. It is a point of control between the judicial branch and the executive branch as to how much power judges have or do not have with regard to that placement. For example, if I send a child to the Nevada Youth Training Center and he is 13 or 14 years old, I may seriously recommend to the DCFS they place the boy at the Caliente rather than the Elko facility. That is only my recommendation currently; it is not an order. It is similar to the adult system wherein when we send a defendant to prison, I cannot decide whether he goes to Warm Springs or Ely. As soon as the adult is sentenced, and in juvenile court, as soon as disposition is made and there is a commitment, our jurisdiction terminates and he or she goes

under the control of the executive branch. That is what this reflects. I wanted to make sure the legislative history of S.B. 197 included this. There has been no intent by any of the participants in construction of this bill to either increase or diminish the power of the court to order the State to pay or provide any benefits or services to juveniles.

SENATOR WASHINGTON:
I noticed in Judge Steel's prepared statement and in Mr. Wilkinson's dissertation, the interstate compact was mentioned.

JUDGE GAMBLE:
I just told Mr. Wilkinson about the bill draft request (BDR) that will be introduced today.

SENATOR WASHINGTON:
I do not know if it is reflected in S.B. 197.

JUDGE GAMBLE:
It is not currently. Senate Bill 197 provides a place to put the interstate compact bill if it passes.

LEONARD J. PUGH, DIRECTOR, DEPARTMENT OF JUVENILE SERVICES, WASHOE COUNTY AND PRESIDENT, NEVADA ASSOCIATION OF JUVENILE JUSTICE ADMINISTRATORS:
I am somewhat relieved by introduction of S.B. 197. I have worked with NRS 62 for a number of years and have also testified on amendments to that chapter. I have struggled at times in trying to find those amendments and I work with them all the time. People who do not often work with the juvenile court system really had a difficult time. The chapter needed to be made user-friendlier. We discussed the proposed amendments in the State of Nevada Juvenile Justice Commission's work-study group, and as Nevada Association of Juvenile Justice Administrators, we fully support the revision of chapter 62 of NRS.

LARRY CARTER, JUVENILE JUSTICE SPECIALIST, JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT, DIVISION OF CHILD AND FAMILY SERVICES, DEPARTMENT OF HUMAN RESOURCES:
I see Willie Smith is in the Las Vegas hearing room. I was here to present her testimony (Exhibit F). Briefly, I would like to say this bill has been a long time coming. The work-study group and the juvenile justice commission, which I staff, are firmly behind these initiatives. We made these recommendations to the Governor's fundamental review committee last April, and we still stand behind them.

ADRIENNE COX, ASSISTANT DIRECTOR, DEPARTMENT OF JUVENILE JUSTICE SERVICES, CLARK COUNTY:
I am representing Kirby Burgess today, our director, who apologizes for his inability to be here. Clark County heartily supports S.B. 197. This bill is supported by the Juvenile Justice Association and by the entire Clark County Department of Juvenile Justice Services.

WILLIE SMITH, DEPUTY ADMINISTRATOR, YOUTH CORRECTIONAL SERVICES, DIVISION OF CHILD AND FAMILY SERVICES, DEPARTMENT OF HUMAN RESOURCES:
I am here to support passage of S.B. 197 and also to provide a little more history. As Mr. Carter mentioned, in April 2002, the State of Nevada Juvenile Justice Commission and the work-study group submitted a recommendation to the Governor's fundamental review study committee for revision and

reorganization of chapter 62 of NRS to create a more reader-friendly document. As a result of that recommendation, the Governor directed the Division of Child and Family Services, Department of Human Resources, to submit a BDR, which was BDR 5-513 to accomplish this purpose. The department later withdrew BDR 5-513 to avoid duplication of effort and to support BDR 5-633 proposed by Senator Wiener.

BILL DRAFT REQUEST 5-633: Revise provisions regarding juvenile justice. (Later introduced as Senate Bill 197.)

Following that, with the assistance of Senator Wiener and the LCB staff, and the leadership of Judge Dianne Steel, members of the work-study group and other juvenile justice professionals collaborated to develop what is now S.B. 197. Many of the goals and areas we chose to revise have already been identified to the committee. However, I would like to reiterate some advantages proposed in S.B. 197. The bill clarifies and minimizes confusion in the juvenile justice delinquency statutes. Most importantly, it improves the organizational structure so we can identify any potential substantive changes necessary in the next Legislative session or in other proposed bills. There is no fiscal effect on local government or the State. Finally, I would like to stress S.B. 197 constitutes good public policy because it eliminates duplication in statutes, minimizes confusion, and allows us to work more effectively.

I would also like to emphasize S.B. 197 represents an important milestone for Nevada's juvenile justice professionals in our ongoing effort to improve the juvenile justice system.

KATHERINE KRUSE, ASSOCIATE PROFESSOR OF LAW, WILLIAM S. BOYD SCHOOL OF LAW, UNIVERSITY OF NEVADA, LAS VEGAS:
I am codirector of the Juvenile Justice Clinic at the William S. Boyd School of Law. In that capacity I have the pleasure of supervising students before Judge Steel in Clark County Juvenile Court. I am here in support of S.B. 197. I would like to add to what others have said about the confusion of the current chapter 62 of NRS. I am a newcomer to this State. I joined the faculty at the Boyd School of Law this fall and have spent the past several months acquainting myself with chapter 62. I am well aware of the shortcomings in the current organization and am appreciative of efforts to reorganize the chapter.

The reason I am here today, aside from supporting S.B. 197, is to point out some of the consequences of one of the changes that may not have been intended by the committee, but causes me concern. Section 15 of S.B. 197 provides a new definition of "guardian," which is broadly defined to include both people who have a legal responsibility and relationship with a child within the court's jurisdiction and extending beyond, to people who have responsibilities for a child, whether or not they have a legal guardianship. Currently in NRS 62, the terms "guardian" and "custodian" are both used. Neither is defined, and I think that creates confusion and needs clarification. Looking through chapter 62 of NRS, I see an internal consistency in how the terms are used, in that some sections refer to "parents, guardians, or custodians," and other sections just refer to "parents or guardians." The sections that refer to parents, guardians, or custodians tend to involve provisions relating to bringing people within the juvenile court jurisdiction. It is important for people involved in care-giving relationships to be brought within the jurisdiction of the court, because the court may need to order them to do things, such as take the person in their care to a treatment program during his probation period. If the caregiver refuses to take the probationer to his treatment program, the court may need contempt power over the caregiver.

In the current chapter 62 of NRS, the places referring to parents or guardians only tend to relate to financial responsibility for the child. An example is people who can be ordered to pay child support if the child is committed to DCFS. Also included are people required to reimburse the county for attorneys fees, people required to pay, according to their financial ability, for services provided to the child, and people required to pay restitution if the child is unable to do so. By including people who do not have a legal custodial or legal guardian relationship with the child within that new definition of guardian, we are casting a wide net of people who may be required to bear financial responsibility for the child. These are people who would not ordinarily be required to pay child support. A lot of the families we see in family court are nontraditional. By having only one definition of guardian, the net is cast too widely in terms of financial responsibility.

I distributed a memorandum (Exhibit G) that proposes language regarding the definition of guardian. I suggest a proposed amendment draw on the language in chapter 432B of NRS, relating to abuse and neglect. That definition defines both the custodian and person responsible for a child's welfare. In my opinion, lifting language out of those definitions makes sense. If someone could be liable for abuse and neglect of a child, because they have care-taking responsibilities for the child, it makes sense to also bring them within jurisdiction of the court, even if they do not bear financial responsibility for the child.

JUDGE GAMBLE:
Professor Kruse, I have a question for you. We worked with the definition of guardian, and one of the most important things in the juvenile court system is our excess jurisdiction over adults who are in contact with kids. I think you would agree with me on that. They include people who need to take them to treatment, those who feed them breakfast before they go to school, and so forth. If I can direct your attention to section 55 of S.B. 197 on page 13, this is a subsection I have used effectively over the years to bring those peripheral adults into the ambit of the court to control what they do with kids. This additional definition, basically for the committee's purposes, gives us almost plenary jurisdiction, subject to their constitutional rights, over anyone having contact with the child. Do you think section 55, combined with the guardian definition, suffices? Or do you see a problem with using this section as sort of an adjunct for the court's purpose in controlling these people and protecting kids?

PROFESSOR KRUSE:
I think section 55 clarifies the breadth of jurisdiction, and I believe the breadth of jurisdiction over adults in a child's life is crucial in helping the child obtain needed services through the juvenile justice system, so hopefully, they will avoid the adult criminal system. My concern is section 15 of S.B. 197 brings too broad a definition into the term "guardian." Particularly, subsection 2 of section 15 states, "The term includes, but is not limited to, a legal guardian or custodian of a child." My concern is throughout the rest of the code, as Judge Steel pointed out, there are many provisions imposing financial responsibility on guardians. I believe it is appropriate to exercise jurisdiction over nonlegally responsible caretakers. I do not think it appropriate to impose financial responsibility onto caretakers for the children's actions or services for the child incidental to juvenile court jurisdiction.

JUDGE GAMBLE:
Perhaps I can illustrate this by way of anecdote. Less than 3 weeks ago I had a 15-year old girl, outside the court's jurisdiction at the time, who moved in with another family in order to help the girl's family control her. While in their custody, she sold drugs to the host family's daughter, and the visiting girl's parents had no contact with their daughter. Therefore, there was no court process to make the host family the guardian. There was simply the parental trusting of the host family with their

visiting child. The current scheme brings the unofficial guardian parents into a place where I can, in fact, order them to pay when they have agreed with the girl's parents to support the girl for the next couple years. We have had many situations in which outside-the-court system changes have been made in family structures where there was, in fact, a guardian, but no court process to accomplish that. In my opinion, the definition of who is responsible for the care and custody of a child in section 15, when combined with section 55 of S.B. 197, is a good one.

PROFESSOR KRUSE:
My response is, in that kind of informal arrangement, were that arrangement formalized, the parents would be the ones who would still owe a duty of support. They could be ordered to pay child support to the people caring for their child. It seems when people step up and take responsibility for helping to care for a child it should not necessarily bring with it the responsibility of a court order to pay for the child's care if committed to DCFS. The parents ought to be required to pay support for the child while under the jurisdiction of DCFS. My concern, when looking at chapter 62 of NRS, is the distinction between statutes that say "parents, guardians, or custodians" and statutes that just say "parents or guardians." The parents or guardians statutes are the ones relating to payment, consistently throughout chapter 62. I believe the definition in section 15 of S.B. 197 puts it all together and destroys the logical distinction made by NRS 62.

SENATOR WIENER:
I would be happy to have Judge Gamble, Judge Steel, Professor Kruse, Mr. Wilkinson, and myself comprise a team to resolve this issue in time to bring it back to the committee for a work session so we can move forward with S.B. 197.

CHAIRMAN AMODEI:
Professor Kruse, would you like to participate in crafting the amendments that will come back before the committee? We plan to schedule a work session on S.B. 197 1 week from today, on March 14, 2003, which means we would require either individual or combined amendments be received by either Mr. Anthony or Mr. Wilkinson by Wednesday, March 12, 2003. Would you have time to participate with Senator Wiener?

PROFESSOR KRUSE:
Yes, I will have time to do that.

LUCILLE LUSK, LOBBYIST, NEVADA CONCERNED CITIZENS:
I would like to add a lay citizen perspective in support of S.B. 197. We have a high interest in families, children, juvenile court issues, and criminal law in general. Normally when I see something this size, I am horrified by the prospect of going through it and picking out things that may or may not include unintended consequences. You can imagine my delight as I read this and found it easy to read. That is what I believe the drafters intended to accomplish, not major changes in the law, not even significant changes. While I do understand Professor Kruse's concern about an unintended consequence and appreciate Senator Wiener and Judge Steel's willingness to work that out, as an overall product, this is wonderful. I hope it will provide a precedent for the Legislature to consider in other chapters and areas of law. This is a real service to the citizenry. I would like to join, from a pure citizen prospective, in expressing appreciation for S.B. 197.

RICHARD L. SIEGEL, PH.D., LOBBYIST, AMERICAN CIVIL LIBERTIES UNION OF NEVADA:

I also want to commend Senator Wiener and all the people who worked on S.B. 197. The American Civil Liberties Union (ACLU) is completely in support of the work done to recodify this area of law. There is an area, however, presented in an article from *The Associated Press*, we would like you to consider for modification of this bill. Originally I planned to request rescission of section 53 of the bill. I realize we have to be realistic, and we would like to ask you to consider an amendment to section 53 that we will present to you by Wednesday for the work session. The amendment has to do with a point made in a study undertaken by the MacArthur Foundation. I have circulated a summary of the study (Exhibit H) and will provide a copy of the full study Wednesday.

The MacArthur Foundation is a reputable organization, best known for awarding genius grants. They have done an enormous amount of good. The foundation has sanctioned a study of certifying juveniles for adults. It is a brand new study not yet reviewed by Senator Wiener or any of the drafters of S.B. 197. They found one-fifth of juveniles, aged 14 or 15 years, could not understand the proceedings or help lawyers defend them. That is a serious concern. We would not be asserting this one-fifth were mentally retarded or mentally ill. I believe the study essentially shows there is a developmental incapacity, and among younger children, between 11 and 13 years of age, one-third cannot understand the proceedings or help lawyers defend them. I looked at section 53 of the bill, and it seemed to me this is not adequately covered.

At the least, we would like you to amend section 53 so while we are reviewing the certification of juveniles, we do not have automatic certification and processing as adults. We recognize section 53 contains language about emotional disturbance and several other things mentioned by Judge Steel. However, we are not relating currently to normal developmental incompetency. It is wrong to put a 15-year-old on trial, with grave consequences of decades of imprisonment, when he cannot provide what a normal adult can in terms of assistance to his counsel and demonstrate an ability to understand what is going on at trial. We will provide, by Wednesday, language to the effect we will at least tighten up the matter of dealing with this population.

SENATOR NOLAN:
Dr. Siegel, can you tell me factually what percentage of adults do not fully comprehend the system in their defense?

DR. SIEGEL:
I do not know, but I do know it is a fundamental principle of law that people should be able to do what it says here, understand the proceedings and help lawyers defend them. That is a core element of adjudicating. We actually adjudicate that in the context of the rather acute level of incapacity, while in the juvenile area we have a full spectrum of it. We may have a 15-year-old of slightly subnormal intelligence who cannot do this. I frankly think we have a real dilemma here. On the one hand, we are taking them out of the quasi protection of the juvenile court. We are giving them greater due process in the adult court, and the ACLU has supported that greater due process. The problem is the potential of punishment is so great for somebody who may not be able to understand the proceeding or help his attorneys.

CHAIRMAN AMODEI:
Dr. Siegel, this study indicates a sample was taken of 1400 people in Los Angeles, Virginia, and Florida? Surely young people in Nevada are more intelligent than in those locations.

DR. SIEGEL:

I think you are being lighthearted about it, which is fine, but the fact is, according to national tests, the young people of Nevada are pretty close to the national norms in their testing and intelligence levels.

SENATOR WASHINGTON:
For my own understanding, based on Judge Steel's testimony, there are only two offenses that cannot be certified: murder in the first degree and some sex offenses. The court has the distinction of whether or not to certify up or down. If I understand your testimony, you are saying no matter what the offense, the minor should remain in the jurisdiction of juvenile court, and that is what you are basing your amendment on. Is that correct?

DR. SIEGEL:
I believe we are stuck in a dilemma for a certain population of juveniles, and I know we take practical steps and ignore that dilemma sometimes. I understand there is no easy solution to the question of somebody who has committed an extremely serious crime, but really cannot assist his attorney and understand the proceedings. That is a problem we face when dealing with adults also. I believe we should be explicit in asking the juvenile courts to make a finding as to whether the juvenile was capable of assisting his attorney given the stakes involved.

SENATOR WASHINGTON:
In my tenure on this committee, we have taken a great deal of time to construct certification, whether it should go up or down, based on the offenses and egregiousness of the crime perpetrated by juveniles. We did not arbitrarily state certain crimes would be certified up or down. To see our efforts become undone would be a disservice to the State of Nevada. I am eager to see your amendments, but will be hesitant to change S.B. 197.

DR. SIEGEL:
I would like to present this issue to Professor Kruse, who may contact me at the Political Science Department at the University of Nevada, Reno. To Senator Wiener and the judges involved, we want you to think very hard about this issue. I believe the research of the MacArthur Foundation deserves a thoughtful response from the committee.

CHAIRMAN AMODEI:
That is not an unreasonable request; we will do that.

We will close the hearing on S.B. 197. There being no other business to come before the committee, we are adjourned, at 9:35 a.m., until Monday morning.

RESPECTFULLY SUBMITTED:

_____
Jo Greenslate,
Committee Secretary

APPROVED BY:

_____

Senator Mark E. Amodei, Chairman

DATE:_____

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on January 23, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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