

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

**Seventy-Fourth Session  
February 12, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:59 a.m., on Monday, February 12, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst

Minutes ID: 160



Risa Lang, Committee Counsel  
Doreen Avila, Committee Secretary  
Matt Mowbray, Committee Assistant

**OTHERS PRESENT:**

Nicolas C. Anthony, Program Manager, Office of the City Manager, Reno  
Stan Olsen, Legislative Relations Las Vegas Metropolitan Police  
Department and Nevada Sheriffs and Chiefs Association, Las Vegas  
Richard Nelson, P.E., Assistant Director, Operations, Department of  
Transportation  
Cotter C. Conway, Deputy Public Defender, Washoe County  
Bryan Gresh, Clark County Regional Flood Control District, Las Vegas  
Robert F. Joiner, AICP, Government Affairs Manager, Sparks  
Kevin Browning, Police Officer, Graffiti Abatement Team, Sparks  
Jason Frierson, Attorney, Office of the Public Defender, Las Vegas  
Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County  
Board of Commissions, Las Vegas  
Lee Rowland, Staff Attorney, American Civil Liberties Union  
Neil Schwartz, member of the Board of Directors, Greater Las Vegas  
Association of Realtors  
Devin Reiss, President, Greater Las Vegas Association of Realtors  
Tom Barry, General Manager, Sonic Drive-in, Las Vegas  
Neena Laxalt, Legislative Advocate, Representing Nevada League of the  
Cities & Municipalities, Reno  
Derek W. Morse, P.E., Deputy Executive Director, Regional Transportation  
Commission, Reno  
Kimberly J. McDonald, MPA, State Legislative Affairs Officer, City  
Manager's Office, North Las Vegas  
Ben Graham, Legislative Representative, Clark County District Attorney,  
Nevada District Attorneys Association, Las Vegas  
Mark B. Jackson, District Attorney, Douglas County  
Linda Bell, Nevada Attorneys for Criminal Justice, Las Vegas  
Mike Poehlman, Chief of Police, Reno Police Department  
Jessica Sferrazza, Council Member, Ward 3, Reno

**Chairman Anderson:**

[Meeting called to order. Roll called.] I will open the hearing on  
Assembly Bill 14.

**Assembly Bill 14: Makes various changes to provisions concerning graffiti and  
other damage to property. (BDR 15-387)**

**Assemblyman John Oceguera, Assembly District 16, Clark County:**

I am here today to present A.B. 14. It arises from all of our concerns about the ongoing problem of graffiti. The Nevada Sheriffs' and Chiefs' Association, Las Vegas Metropolitan Police Department, City of Reno, City of Sparks are all here today, and the Committee will hear from them later. We have all come together to offer viable solutions to counteract graffiti and vandalism, which defaces our communities. The colored amendment ([Exhibit C](#)) that was just passed out to you should serve as your road map on this new bill. All three bills that you have scheduled today are incorporated into this document. What you see before you is a collaborative effort of all those bills. A.B. 14 enacts strict new measures for the prevention of graffiti vandalism. Not only is graffiti unattractive—it is costly.

Committee members, I would like to give you a few figures to ponder. In 2006, Reno paid \$1 million to clean up over 5,853 forms of graffiti, while your hometown, Sparks, Mr. Chairman, spent \$350,000. At the same time, Sparks' property owners spent over \$1 million on the same destructive practices. In 2005 and 2006, Clark County purchased more than 20,000 gallons of paint and maintained six full-time employees to remove 717,507 forms of graffiti. It costs \$2.5 million a year to clean up the parks, buildings, and streets. The total cost in Clark County was \$30 million, in public and private funds. I think that we can all agree this is too much money to spend on tagging. The bottom line is this current law is not working. Law enforcement is having a hard time arresting these perpetrators because they are not allowed to apprehend taggers until they are caught in the act of vandalizing. This must stop.

Assembly Bill 14 makes it a misdemeanor for a person to carry in plain view, and certain public places, any item used to apply fluid with the intent to vandalize. That is in Section 2. Section 3 states violators of this section will be required to pay restitution to the owner of private or public property. Also, Section 4(d), added "any public mode of transportation" to the list of public places that will result in a gross misdemeanor, if violated. Violators will also be required to do community service, starting at 100 hours and assessed a fine not less than \$400 for the first offense; 200 hours and a fine not less than \$750 for the second offense; and 200 hours and a fine not less than \$1,000 for the third offense. People who place graffiti where the damage value is less than \$1,000 will be guilty of a misdemeanor, and if the value of the loss is \$1,000 or more but less than \$5,000, they will be guilty of a gross misdemeanor. Where the aggregate value of the loss is \$5,000 or more, the violator is guilty of a category E felony and a mandatory ten days in jail.

Also, there will be a mandatory suspension of drivers' licenses. The court must issue an order suspending the driver's license of a violator for a period of not less than six months. If the violator does not have a driver's license, the court is required to prohibit the person from applying for a driver's license for a period of not less than six months. If this person is a juvenile, but possesses a driver's license, the court must issue an order suspending the driver's license of the child until 18 years of age. The perpetrators of a gross misdemeanor and a category E felony must pay a mandatory administrative fee of \$250, which will be credited to the Graffiti Reward Fund.

This legislation allows Nevada law enforcers to do their jobs, effectively and ensures that violators will not suffer only a slap on the wrist. A.B. 14 serves as a deterrent to all perpetrators—they cannot deface our communities. This bill protects Nevada businesses, schools, places of worship, freeways, and homes from this unnecessary destruction of property. Graffiti sends a message that the community is unsafe, and these acts of vandalism severely impact Nevada's quality of life. Please join us in stopping this blatant disrespect from happening in our communities.

**Chairman Anderson:**

Mr. Ocegüera, I have not had much time to reread the new draft, but I appreciate the hard work that has already gone into it. Section 8 (a) states, if the child possesses a driver's license, issue an order suspending the driver's license until he reaches 18 years of age and you will be removing it for at least 90 days, but not less than 2 years. Suppose I am going to be 18 next week. Under the old law, I would have been without a driver's license for 90 days.

**Assemblyman Ocegüera:**

That is a good point, Mr. Chairman. We have found one provision that we were to do some work on. Let us turn to Mr. Anthony and see if that is the provision.

**Nicolas C. Anthony, Legislative Relations Program Manager, Office of the City Manager, Reno:**

In regard to Section 8, my understanding is that the juvenile court retains jurisdiction until the person turns 18 years old. Under existing law, even if they have a suspended driver's license when they turned 18 years old, the juvenile court would not have jurisdiction any longer.

**Chairman Anderson:**

Under the old law, I see that we recognize a period specified by the juvenile courts, which must be at least 90 days, but not more than two years. Under your proposed law, is it going to be possible for a juvenile court, the original jurisdiction, or a following court to extend beyond the 18th birthday? I was under the impression that under our existing statute, it would be possible to extend the withholding of a driver's license for a longer period of time.

**Nick Anthony:**

I can certainly double check that with the court, but I understand that they only had jurisdiction until the juvenile turned 18 years old. That jurisdiction would not continue past their 18th birthday. Maybe Legal Counsel or a member of the Judiciary can correct me on that.

**Chairman Anderson:**

Mr. Ocegüera, I know that you worked hard on this bill, and I want to clearly recognize that the background for this particular issue came about in 1995 when I was first Chair. It was a piece of legislation that was sponsored by 42 members of the State Assembly, which clearly showed that all of us were concerned. We had an interim study on misdemeanors and gross misdemeanors, chaired by Mr. Manendo that included bill drafts in 2001 and 2003. The Legislature is again making the recommendation that we need more stringent requirements. The reason this room is full is because we would like a stronger message sent to the community that we are not going to tolerate this. So, I applaud you for coming forth with a stronger piece of legislation. Hopefully, it will be clear because I want to make sure that we have not damaged the definition of graffiti in any way with this draft.

**Assemblyman Ocegüera:**

Through some research on this subject, we developed ways to deter these folks, but they come up with different ways to get around us. A method that they use now, widely available on the internet, is emptying shoe polish out of a can, putting acid in it, and then using it to etch the windows. I do not know if we can cover every single thing that they may come up with.

**Chairman Anderson:**

I think we have taken care of the etching.

**Assemblyman Ocegüera:**

I think so as well. I am just saying that there are many forms of graffiti and vandalism that are taking place out there.

**Chairman Anderson:**

Section 5, page 2 states "where the value of loss is less than \$1,000." Before, it was less than \$250, but now we are going to move it up to \$1,000. What is the reason for moving the bottom figure up higher rather than lower?

**Stan Olsen, Executive Director Intergovernmental Services, Las Vegas Metropolitan Police Department:**

This has been an issue that we have been beating our heads against the wall for many years. After drafting and working with the Public Defender's Office, we raised it to \$1,000. It captures more than the misdemeanor range before jumping up into the significant areas.

**Chairman Anderson:**

Is this part of the compromise that you worked out with everybody?

**Stan Olsen:**

Yes, sir.

**Chairman Anderson:**

Mr. Ocegüera, are you in agreement with that compromise?

**Assemblyman Ocegüera:**

Mr. Chairman, I locked them in your "Wood Shed" and said, "Do not come out until you all agree."

**Assemblyman Carpenter:**

When it says "what is in plain view," how will that actually help law enforcement be able to arrest these people?

**Stan Olsen:**

We wanted to show intent. We did not want to capture the true art student who may have the right stuff for the right reason. We wanted to capture the person that had the right stuff for the wrong reason. It gave us some opportunity to distinguish those people who have a legitimate reason for having those items.

**Assemblyman Carpenter:**

I am just wondering whether we are making it strong enough. Is there not another way to do this? If it has to be in plain view, are they not going to put it in their pocket pretty damn fast?

**Stan Olsen:**

Yes, they could even though some of it is fairly large and it may be difficult to conceal in their pocket. This brings up the issue of search and seizure. We do not have the legal right to pat them down when we expect to find a weapon or other contraband. We wanted to give that room; it was part of what we worked out with the Public Defender's Office to ensure that we did capture, charge, and successfully prosecute. Then there will be little or no question about the seizure of the item.

**Assemblyman Carpenter:**

If you think it helps.

**Stan Olsen:**

If the Public Defender agreed to everything that we wanted without any discussion that would have really helped, but they did not want to do that.

**Assemblyman Carpenter:**

This is a terrible problem everywhere. If we do not attack it with something that is going to work, then we are going to be back here. In your original bill, it mentions taking a car away for 30 days. Is that still there?

**Nick Anthony:**

As part of the negotiation, we removed that provision and added the mandatory fine as opposed to mandatory vehicle impoundment because there were some questions about that provision.

**Assemblyman Carpenter:**

In one section it says vandals should work community service. It seems to me that many of these people who get community service should work on graffiti. That is the biggest problem out there. Is it possible to get an amendment so that the person who is vandalizing receives community service whether they actually did graffiti or not.

**Chairman Anderson:**

The community service question is an interesting one, and we may need to look at that a little bit.

**Assemblyman Horne:**

Mr. Ocegüera, I agree with you about the problem of graffiti everywhere, particularly on Interstate 95 in Las Vegas. The new sound walls came up, and there was graffiti. It drives me nuts. One of the issues I have is that a \$5,000 loss makes a category E felony and a mandatory probation. Many of these taggers are going to pop that \$5,000 first time out, particularly on a

sound wall on a freeway where you are talking about man hours. We have tiers for battery domestic violence because their third offense becomes a felony, but there does not seem to be a tier for this crime. Here we may be making some 20-year-old who is being a knucklehead a felon right off the bat, and we all know that a felony conviction is with you like luggage for the rest of your life.

**Assemblyman Ocegüera:**

A couple of things: first, the repairing and the man hours do not go into the total. It is just the property destruction. Second, it is tiered in the sense that it is a misdemeanor, gross misdemeanor, or felony. If a few people get a felony for something they should not be doing, hopefully that is a deterrent. The word will get out that it is a felony to do something this egregious. I feel that we should be fairly strong on this one, but I understand your perspective.

**Stan Olsen:**

It is very difficult to reach that \$5,000 mark. Even on a single incident it takes an aggregate number to get to that. We had an individual who did the backs of 25 homes and each one was less than \$250. They come in and sandblast the wall. The actual cost was less than a misdemeanor. Under this proposal, we can take the 25 homes, and see who can hit the \$5,000 mark, but I do not know if the damage would equal a felony. Glass may be a separate issue because the glass is destroyed, and it can never be repaired; it has to be replaced, and if they do a large amount of glass or even a large sheet of glass, then it could hit the \$5,000. With the graffiti vandals who use spray paint, it would be difficult. If we do an aggregate one, we have to show that graffiti person X did each one of these. We have three full-time graffiti cops who work on this and they are pretty good, but it is difficult.

**Assemblyman Horne:**

Mr. Ocegüera testified there would not be those man hours put in, like in my example of the sound walls on the freeway construction. Say I am a tagger and I write "WCH" everywhere, that \$5,000 would be an aggregate. But you are going to say that that \$5,000 is not going to be reached by the man hours to lay out the cones and everything to repair the area. I can see now the District Attorney's office saying that it took a crew of three ten hours to complete this and the cost will be—whatever. I just want it to be clear that this kind of cost is not going to be included, and it will only be basically the paint to repair it or the sandblaster.

**Stan Olsen:**

Speaking for Las Vegas Metropolitan Police Department (LVMPD) and the Sheriffs' and Chiefs' Association, this was the portion that we wanted as a felony. When we did the negotiations with everybody in the room—the



different entities, the Public Defender, and the DA—we did not discuss, nor did I intend to include, the work to repair it. We hope to get rid of repair work simply by putting people on notice and a few people getting punished really hard. Another issue to keep in mind is that if it is, as you said, a knucklehead doing this and is questionable, it could be reduced by the courts; therefore, he does not get a felony. Two sessions ago we had a bill in graffiti. There was one individual we identified who in one year did \$2 million worth of total damage all over the community. That individual would qualify under the aggregate; he would be a category E felony. But, we were absolutely able to determine that it was him in each one of these cases. There is a way they do it, but I am not an expert.

**Chairman Anderson:**

Currently damage to property of public communication, public transportation, and police and fire protection is a category E felony and has up to one to four years as a potential choice for a judge. So, we are moving from discretion—from a "may"—to a "shall?"

**Stan Olsen:**

Yes, sir, we are. We have had a lot of "mays" out there for years and the "mays" are not being used. Community service fines are not being used at a level that is having any impact on the issue. Some of the feedback has been from the different courts who say, "Well, the defendants do not have a job to pay the money." So nothing gets done.

**Assemblyman Ohrenschall:**

Many of us, when we were younger made bad choices or hung out with bad crowds. On the driver's license issue, for the true hardship case, can the Department of Motor Vehicles (DMV) issue a hardship license if somebody is the sole support of his family, or if he has children that he is taking care of? Is there a safety valve to this issue on the driver's license?

**Nick Anthony:**

It says in the bill, Section 9, subsection 3, the existing language under *Nevada Revised Statutes* (NRS) 483.250:

To any person whose license has been suspended, but upon good cause shown to the administrator the department may issue a restricting license to him or shorten any period of time of suspension.

I believe we are covered there. A person could apply to the DMV and ask for a restricted license.

**Assemblyman Mortenson:**

Are private entities being slighted by this bill? I keep reading public churches, institutions, schools, but only one place in here do I see "private property." Are we slighting the private people, and are they not going to be protected as well by this bill?

**Stan Olsen:**

No, we are not. We only need it one time in there. Our bigger concern was not to expand it to absolutely everything. All government properties would come under this. We had been very restrictive on the government stuff and the specific buildings. When we tried this bill two sessions ago, this was one of the problems. We are trying to identify those issues that are important, such as hate crimes or private property. That is what we are after in this bill.

**Assemblyman Mortenson:**

I hope somebody will double check that because I keep reading page after page of institutions, public facility, church, synagogue ...

**Chairman Anderson:**

Under existing law, facilities such as religious worship burials, education, or community centers are currently gross misdemeanors. That was a response to a piece of legislation that we dealt with several sessions ago. We made them category E felonies because what were being vandalized were public communication facilities, transportation, police and fire protection, or the equivalent, and we had made that a potential felony in the past. Mr. Mortenson, I will be happy to get part of the materials that I used as research in preparation for this. Would you like that?

**Assemblyman Mortenson:**

It was just pointed out to me that there is a change in the amendment that Mr. Ocegüera put in here. The original one did not state in Section 2, "state private property," but in the amendment it does.

**Assemblyman Mabey:**

How do you determine who actually did the graffiti? But I am curious how you are going to identify and find the real culprit behind the tagging?

**Stan Olsen:**

I have never worked this, but I can tell you what I have learned. An artist has a type of signature—these taggers have the same thing. They get some kind of point system, particularly if they hang off the side of a flyover bridge and put 20-foot letters on the side, which is worth X points. They practice their art in a sketchbook, so before they actually put the artwork—as they call it—on a

structure or building, they have already practiced it. That is seized as evidence. Taggers keep it to show that they have done it or are going to do it, and this is their signature. You have probably seen this when they include their initials or their graffiti name. They sign their work the way a normal, real-life artist would, and within their culture, that is how they identify each other.

**Assemblyman Ocegüera:**

My full-time job is a firefighter, and one day I received a call from one of my stations. Somebody had the audacity to deface a fire station while we are there 24-hours a day. The guys who chased this person off the roof found exactly what Mr. Olsen described. They found the book on how they were going to lay it out by putting it up against the wall. Then we took all this stuff that was on the roof and used it to locate a website. We could match exactly what they were putting on the station to what was on the website.

**Assemblyman Cobb:**

When determining the value of damage, in order to define a crime as a gross misdemeanor or felony, I am assuming that it must be proved by the prosecution, and it would be determined as a matter of law by the judge, correct?

**Stan Olsen:**

That is my understanding, and it may be better answered by the District Attorney's Office on how they establish that for the court.

**Chairman Anderson:**

Ms. Lang, do you have an observation addressing Mr. Ohrenschall's question whether we need to do a little more investigation into the situation of hardship?

**Risa Lang, Committee Counsel:**

As Mr. Anthony indicated, there is an exception in here for the Department to issue a restrictive license under subsection 3, line 9. But under subsections 8 and 9, it seems to limit that for people whose licenses have been suspended or delayed because of a graffiti violation. So, if it is the Committee's intent to allow that, then they might want to add that to the amendment just for clarification.

**Assemblyman Ocegüera:**

I am okay with the hardship provision if they do not have that ability.

**Chairman Anderson:**

We will try to get it into work a session.

**Nick Anthony:**

We are open to amendments, but we also might want to look at NRS 483.490. It seems to state that a juvenile can immediately apply for a restricted license as well. It is not in the bill, but is an existing law; there might be a conflict there. I would also like to add that graffiti is the number one priority for our city council, which receives 20 calls a day. I believe I have a councilmember in the audience in support, as well as our Chief of Police and our graffiti detail team. We have also handed out some information for you on the total dollar value amount and the number of crimes that are being committed within the City of Reno ([Exhibit D](#)).

**Chairman Anderson:**

We will make Mr. Anthony's document part of the record for the day, as well as the attendances of Chief Poehlman, and Councilmember Jessica Sferrazza, who are here representing the City of Reno.

We have not opened A.B. 23 yet, but is it my understanding that the City of Reno feels, with this new amended version, that it may potentially solve both problems with one stone?

**Nick Anthony:**

That is correct.

**Chairman Anderson:**

I want to make sure we get that into the record. You may have to stick around to get it into the record again.

**Stan Olsen:**

Sparks, Reno, Mr. Oceguela, the Public Defender's Office, and the District Attorney's Office are all in collaboration on this.

**Chairman Anderson:**

Not that it is part of today's agenda, but there is another bill that is currently on its way here. It will be coming in front of the Committee, and it does not seem to stand in conflict with any of these that we have under consideration.

**Richard Nelson, P.E., Assistant Director, Operations, Department of Transportation:**

It seems that public infrastructure makes very attractive targets for these taggers. Over the years, the Department of Transportation (NDOT), like many of the government agencies that were mentioned earlier, has spent thousands of dollars to clean up graffiti from bridges, signs, sound walls, and other infrastructure. In addition to the labor associated with the clean-up, these

efforts can require inconveniencing motorists with lane restrictions, traffic delays, and so on, so that it could be accomplished safely. Last year alone the NDOT spent over \$4 million in abatement and anti-graffiti coding along all of our sound walls and critical infrastructure. In addition, we have included specifications in our contracts to require contractors to clean up graffiti that occurs during the course of construction. It is very difficult to estimate how much money that actually costs us through the course of our contract because they embed those cost in other items of work. I would like to close with saying that the money we spend on graffiti abatement is money that is diverted from other critical infrastructure needs that we have.

**Chairman Anderson:**

Did you have an opportunity to review these proposed amendments that came forward today?

**Richard Nelson:**

No.

**Chairman Anderson:**

It looks like the combination of two bills into one, but any additional power would be helpful to NDOT.

**Cotter C. Conway, Deputy Public Defender, Washoe County:**

I worked with the "Wood Shed" group, but did not have the final language. I am for the amendments presented this morning, with one exception regarding Mr. Ohrenschall's concerns. Paragraph 8, Section 9 of the bill would not allow a juvenile who is under that suspension to get a restricted license. I think that needs to be stricken.

**Chairman Anderson:**

We will take that up when we come to work session.

**Bryan Gresh, Clark County Regional Flood Control District, Las Vegas:**

We do appreciate the Majority Leader bringing this bill forward and we are certainly in support.

**Robert F. Joiner, AICP, Government Affairs Manager, Sparks:**

We also appreciate the Majority Leader reaching out to us because our bill has not come out of legal draft yet. We did work with the "Wood Shed" group, and we are in concordance with the recommendations that you have. For the record—and you will see from some of the materials that I have handed out ([Exhibit E](#))—this is the single bill draft request (BDR) that Sparks has allowed this year. It is so important to our community along with a lot of other issues.

This is the BDR that we came up with on graffiti. Our City Council wanted to have 500 hours of community service for the first violation. That was how adamant they were. In looking at NRS, and working with the "Wood Shed" group, we understand that we would have to amend not just these provisions in NRS to do that for misdemeanors, but many others. We have also worked with our judges on some of the areas where they can tighten up on local regulations to fix some disconnects, and so that our law enforcement has more power to arrest for possession of paraphernalia. You can see from the materials that this is a major concern for us in our small community.

In the audience today we have Kevin Browning, an officer who handles the graffiti abatement team. We also have Mr. Dexter Baker Jr., who has a company that does the removal on the private side, and our City Planner, Margaret Powell. The other provision that we feel strongly about is the graffiti abatement fund. After several years, we had about \$1,000 not being utilized. It was permissive that these be mandatory elements of the bill. The abatement fund not only provides money for remediation of some of the graffiti, but also rewards those who will come forward and identify graffiti artists. We have also worked with the Secret Witness Program, who are promoting secret witness identification of graffiti violators.

**Chairman Anderson:**

Mr. Joiner, I would like to thank the City of Sparks for taking care of the community. You know I am a victim of tagging. The house that I grew up in, which my brother and I still own, is in the older section of the community and has a garage in the alley on the corner. My nephew paints this on a regular basis, but the City has been kind enough to do the garage side on a regular basis as well. So, this is a program that speaks well for our community and has done a great job. I want to make sure that you tell them how much I, personally, as a taxpayer of the City of Sparks, appreciate what they are doing.

**Assemblywoman Allen:**

I was hoping to speak with somebody from the City of Sparks. Perhaps they can address the question Dr. Mabey had about identifying a tagger and his art.

**Kevin Browning, Police Officer, Graffiti Abatement Team, Sparks:**

In recognizing graffiti, one of the biggest issues is gathering information from witnesses. Kids will not tell on their friends because of retaliation. What we usually do when we get information, whether it is direct or through a secret witness, is follow up by investigating. We talk to possible suspects in the case and look at his property—piece books, are what they call them. They are nothing more than practice books, but it is still difficult because they always have excuses and blame their friends. Who are the friends? Well, they do not

know. We continue to go after them, sometimes for a long period of time. I did this for two years with a young man who was using the moniker "Lover" and his recidivism was amazing. He was arrested five times—three by us, and twice by Reno—and in between that time he continued to tag. Lover stated that he will continue to tag, so that is an issue for us. That is where we need help with the law and cracking down on these types of taggers who are going to continue to tag. We need to give them some type of incentive to stop. Investigating is very tough because of the lack of information.

**Chairman Anderson:**

Officer, I would like for you to continue, but we need to move on. If you could answer Ms. Allen's question regarding the difficulty level of identifying a tagger. You are telling us that it is extremely difficult to do because it is hard to find somebody who will testify who might be part of this group. Sketchbooks and other documents can often be linked back to the original tagger, and they are not unusual to find. So, you as a law enforcement officer have much work to find the tagger?

**Kevin Browning:**

Yes.

**Chairman Anderson:**

It is not something that is easily done?

**Kevin Browning:**

That is correct, Mr. Chairman.

**Jason Frierson, Attorney, Office of the Public Defender, Las Vegas:**

The Clark County Public Defender's office recognized it was a significant nuisance that needed to be addressed by statute. However, there are two areas that we are concerned with after collaborating with the other bodies. A 15-16-17-year-old who does not yet have a driver's license gets penalized differently by virtue of their age only because they are not yet 18: a 17-year-old would lose his driver's license for a year, and a 16-year-old would lose the driver's license for two years. I have spoken with Mr. Anthony about that portion of the BDR. It was my concern that there was not a range, and that a judge could apply it depending on the individuals. There was a set amount of time up until they are 18 years old. We would certainly not be opposed to some clarification that the damages be comprised of the cost of materials to repair, as opposed to man hours or something of that sort. Other than those areas, we compromised in order to address a significant problem in our communities.

**Chairman Anderson:**

Properties that may have some historic significance—often public—buildings, can be repainted and the etching removed on the original glass, but the City may not be willing to put that much money into a replacement. Now, it has historic interest, but not necessarily the plateglass or other kinds of things. How do you measure that economically? Just buy the paint and that is it? Is that the way the Public Defender would like to see it?

**Jason Frierson:**

I think that historical buildings are certainly a different kind of graffiti crime. Our concern with respect to the \$5,000 aggregate is the typical graffiti crime, and making a felon out of those individuals. However, I do not believe the Public Defender's office would have an issue with treating unique circumstances, such as a historical building.

**Chairman Anderson:**

I have seen some beautiful pieces of artwork where the storeowner has agreed to have people come paint their side wall hoping that it may keep the graffiti artists away; he may have paid big bucks to a kid. Now, all of a sudden, it can not be reproduced, the kid has moved out of town, and the community has changed. Now the storeowners' only alternative is to paint the whole thing. How do you measure that loss?

**Jason Frierson:**

That is another unique situation. The Public Defender's Office for Clark County would not be opposed to taking those types of circumstances into consideration and addressing the value of the damages. I do not know the historical or artistic perspective, but the value of the materials would be something that could be calculated, though certainly not in the way that you would calculate a simple wall. We would not be opposed to treating those circumstances differently.

**Assemblyman Ocegüera:**

Two points on Mr. Frierson's comments. One, I was just talking to Ms. Lang about the 18-year-old provision, and I believe that the juvenile courts can retain jurisdiction past the age of 18. If we need to fix that, we need to fix it. We can make the time even. And two, I am still not sure that I understand the argument on the \$5,000 aggregate and above. If you stole \$5,000 from my house, you are going to get a felony. So, if you do \$5,000 worth of damage, then you get a felony. That is how I feel about it.

**Sabra Smith-Newby, Director, Intergovernmental Relations, Las Vegas:**  
Kumbaya.



**Lee Rowland, Staff Attorney, American Civil Liberties Union:**

It is difficult to give specific testimony because we do not have access to the current copy of the bill in Las Vegas, but I will try to be to the point. Firstly, I just hope that every member of the Committee remembers the words of Glen Whorton from last week, which is that our prison systems are overflowing to the point of bursting at the seams.

With regard to determining what the felony level is, it is crucial to have specific guidelines on how you calculate it, so that not every graffiti crime becomes a felony. There is probably a reason that the permissive language has not been used by the courts; it is because they are comparing it with other crimes and they are finding that it is probably not worthy of jail time. So, in terms of calculating that felony, I just urge you to use more specific guidelines with respect to what is going to count as opposed to speculation. Secondly, the part of the bill that involves mere possession of the implements still lacks an intent requirement. I am mindful that Mr. Olsen said that they were trying to get at that, but it does not seem that there is a specific intent requirement, and it is still a mere possession requirement. I would suggest a rewording of that section to simply be criminalizing possession with intent to use for the purposes of graffiti. That would eliminate the concerns about the art student that were raised earlier.

**Chairman Anderson:**

Do you have suggestive language?

**Lee Rowland:**

I would suggest possession with the intent to create graffiti.

**Chairman Anderson:**

Do you have suggestive language in writing?

**Lee Rowland:**

No, not in writing. We did not know that it was an issue again until this morning, so we did not have that bill available. If I am able to get the text before the next hearing, I will do my best to submit some.

**Chairman Anderson:**

There will not be another hearing on the bill, you realize.

**Lee Rowland:**

I am sorry, but I thought there would be another chance on the consolidated bill.

**Chairman Anderson:**

No.

**Lee Rowland:**

Then I do not have anything in writing, Chairman, I apologize.

**Chairman Anderson:**

Do you want to try to get something in writing, then?

**Lee Rowland:**

Sure, I can attempt to submit that.

**Chairman Anderson:**

That would be a good idea.

**Neil Schwartz, member of the Board of Director, Greater Las Vegas Association of Realtors:**

[Provided written testimony ([Exhibit F](#)).] I think I understand what you mean by doing a "kumbaya," but I need to add to that. You need to understand that as a working agent I am concerned on how to approach a property with a buyer in my car because of the extensive graffiti; it is a problem. When a buyer finds the perfect property and will not buy it because of the extensive graffiti in the area, it is a problem. Finally, you need to understand that I drive the streets of Las Vegas every day, and I do not take the same route to work every day, so I see firsthand what is going on. It is a real problem.

**Chairman Anderson:**

Sir, I will make your information part of the record for the day.

**Devin Reiss, President, Greater Las Vegas Association of Realtors:**

Kumbaya.

**Chairman Anderson:**

Mr. Reiss, I have a faxed letter from you, and I will make it part of the record ([Exhibit G](#)).

**Tom Barry, General Manager, Sonic Drive-in, Las Vegas:**

I am here as a victim and a concerned citizen. I think that everybody realizes that this problem is enormous. I have listened to some terms today such as "knuckleheads," "graffiti artists," "nuisances," and I think this is too kind. These are trespassers, they are hoodlums, and we are talking about \$250 of material, but not labor. I wonder if the "paint fairy" is going to come and paint these buildings for us. There are man-hours and huge amounts of money

involved. House owners' largest single investment here in Las Vegas is \$250,000 to \$300,000, and they have to wait until a level of \$5,000 has been reached before these transgressors are deemed to be a felon. Our investment in a restaurant today is over \$2 million. We are looking at a piece of property in Las Vegas, where the property alone is \$2.1 million, yet these people can come in, disrupt our business, and people's lifestyles. California and Arizona have set much lower levels to meet a felony. All these little labels of graffiti artists should be set aside quickly, and the real problems addressed with a very firm hand—something that has not been done.

**Neena Laxalt, Legislative Advocate, representing Nevada League of the Cities & Municipalities, Reno:**  
Kumbaya.

**Chairman Anderson:**  
In support, put Ms. Laxalt specifically into the record.

**Derek W. Morse, P.E., Deputy Executive Director, Regional Transportation Commission, Reno:**  
We think this is an important issue. We spend thousands of dollars every year removing graffiti from our facilities. We would like to suggest a very minor amendment of Section 2, 1(b), about folks who are carrying graffiti materials "at or on any public facility, community center, park, playground, swimming pool, transportation facility, transit vehicle, beach or recreational area whereon a sign is," will also include our transit facilities.

**Chairman Anderson:**  
Do you have that in writing?

**Derek Morse:**  
I can provide that to the clerk ([Exhibit H](#)).

**Kimberly J. McDonald, MPA, State Legislative Affairs Officer, City Manager's Office, North Las Vegas:**  
We had not anticipated speaking this morning, but we just received these amendments, and we do want to go on record as supporting the amendments for A.B. 14.

**Chairman Anderson:**  
That will close the hearing on A.B.14.

**Chairman Anderson:**

I am now going to open the hearing on A.B. 23.

**Assembly Bill 23:** Revises the penalty for placing graffiti on or otherwise defacing property. (BDR 15-436)

**Nicolas C. Anthony, Legislative Relations Program Manager, Office of the City Manager, Reno:**

As we stated earlier, we ask that you please send A.B. 23 back to the board at this point.

**Chairman Anderson:**

I will close the hearing on A.B. 23.

Okay. Let me now turn our attention to A.B. 44.

**Assembly Bill 44:** Requires a criminal defendant to be present at the preliminary hearing under certain circumstances. (BDR 14-658)

**Ben Graham, Legislative Representative, Clark County District Attorney, Nevada District Attorneys Association, Las Vegas:**

This came from the Supreme Court Judicial Group; it was supported by that Body and was submitted. I would like to explain on behalf of the courts and judicial system, including the District Attorney's Office, as to what we are talking about here. We almost touched on that area in this graffiti bill about what it takes to arrest somebody on probable cause: simply that a crime has been committed, and that this person probably committed it.

At the first stage you would have something called a preliminary hearing, which is in justice court. Normally the defendant, the defense counsel, the prosecution, and various witnesses would be present at a preliminary hearing. The State presents evidence with regard to the crime, which would also include the degree of damage. It could possibly show that it should be a felony, and would go on to district court if a judge finds probable cause. One of the issues at an arrest is determining who the defendant is. The person may have actually been a witness and then arrested on the scene, but there may be other indications of a crime through police research, investigation, and determining who they believe the defendant is, and why.

Also you have situations where victims are victims of robbery, sexual assault, or some other type of offense in which it is important for the defendant to appear in justice court for the preliminary hearing. It is not only for the defendant and his counsel to see the evidence that is against them, but really to eyeball the

witnesses, so that they can make a judgment call as to what type of case the State might have. It is also important for the defendant to be present, so that the victim can determine whether or not this person really is the wrongdoer. Frequently, that is done in open court. The question is asked if they recognize anyone in the room, and they will describe articles of clothing and point out the defendant.

Traditionally, the defendants have always been there. Recently, a defendant did not appear for a preliminary hearing, which was on the way to a trial in district court. We had all the victims there, the court personnel, the defense attorney, and the prosecutor, but the defendant did not bother to come. So, his defense attorney said, "We waive his presence Your Honor." But the court said he needed to be there. Our Supreme Court looked at the cases and the statutes, and said, "Well, a justice court is something we call a court of limited jurisdiction and we don't see anywhere in here that the justice court can order a defendant to be at a preliminary." Everybody said that is unusual. In order to have a good identification, and to have the defendant look at the case and the witness against him, he should be there. They bailed out and have been ordered to appear and answer orders of the court.

What we are asking for, again, on behalf of the courts and the judicial system, is for the justice system to amend the statute giving the authority to the justice court to mandate a defendant to be present at a preliminary hearing. The defense will argue that it is not fair to require a defendant to be in court to be identified at a preliminary hearing. That will be your call whether or not you feel that it is unfair. If you feel that the defendant should be at his own preliminary hearing with everybody else, then, in the long run, we are going to ask you to amend this statute. After the preliminary hearing it goes on to District Court where the proof has to be beyond a reasonable doubt. At the Justice Court level it is strictly probable cause.

**Chairman Anderson:**

In death penalty cases, we currently do that. You are required to be there.

**Ben Graham:**

I do not know and am not aware of that particular provision where it says that you are required to be at a preliminary hearing. We are asking the court to have authority to order or require a defendant charged with a felony to participate in the preliminary hearing. The court can always waive it and go on to district court, but we are asking that if they do not waive it, the defendant at least be present when everybody else is.

**Chairman Anderson:**

In the justice court the majority of cases are traffic offenses and landlord-tenant issues, so this is only for things that could be felony in nature?

**Ben Graham:**

That is correct, Mr. Chairman. This is at the preliminary hearing stage, which is the one area that justice court has, and municipal court does not have, for felonies. We are leaving it alone for a new classification.

**Assemblyman Horne:**

One of the issues with identification in a court is that it is suggestive, is it not? There are instances where it is all going to turn on identification. Typically, the judge would ask, "Do you see the defendant in the courtroom?" and the answer is, "Yes, he is sitting right there." Then the issue is to discern whether the defendant was picked out because he happens to be sitting at the defendant's table, particularly in a case where everything is going to be determined by the identification of the defendant. Are there not instances where it is prudent to allow that defendant not to be present? There are other ways of identifying the defendant through use of a six-pack of pictures that police officers use; they put the defendant in one shot and five others in who look similar to the defendant in question. They do not necessarily have to be in court for that identification.

**Ben Graham:**

That is certainly an argument the defense can make. I personally feel that if everybody else is there, then the defendant should be as well. In some instances, the defendant has bailed out or been released on his own recognizance anticipating appearing at the preliminary hearing. It is in the defendant's best interest to be there because there are times when the defendant is not identified. I would think that possibly one-on-one is no more overtly suggestive than a criminal photo lineup that the defendant has already been identified from. It is a decision that this Committee is going to be asked to make. I am not going to argue that it is not overly suggestive—from time to time it is—but remember this is the preliminary hearing and you could sure as heck beat down identification to death when it comes time to trial, where proof is beyond a reasonable doubt.

**Mark B. Jackson, District Attorney, Douglas County:**

I strongly support A.B. 44. First of all, Chairman Anderson, you spoke about the justice court and its major responsibility being traffic citations and landlord-tenants, but that is not the majority of what they do. The majority of what they do is act as the original jurisdiction on all misdemeanor offenses committed within the jurisdictional boundaries of each county. They are also

the court that handles the preliminary hearings on gross misdemeanors and felony offenses.

Regarding the bill in Douglas County, we have two justice courts. One is located at Stateline. The majority of the defendants who are charged in that jurisdiction are actually from the State of California, El Dorado County, or as far as the Bay Area. In cases where the defendant is not required to appear for the preliminary hearing, then the other alternative would be used, such as photographs, as Mr. Horne mentioned. Which is more unduly suggestive, a booking photograph of a defendant in jail garb or a defendant sitting in street clothes? It is the exact procedure that is going to be done if there is a probable cause determination, and there is a bind over to district court. It is the exact procedure that will be done in front of a jury of that person's peers. It is not unduly suggestive at that level, but we do have a much lower threshold based upon the probable cause that there be slight, even marginal evidence to believe that a crime has been committed, and that this individual may have been involved in the commission of the crime. The rights of the defendant are protected throughout the preliminary hearing. I will tell you, from experience, that a lot of cases get resolved at the preliminary hearing because of lack of identification. Even with the defendant sitting at counsel table, the case is resolved there and is not bound over to district court.

**Assemblyman Horne:**

Are there a large number of defendants who are not prosecuted because of their failure to show at a preliminary hearing and used as a strategy choice by the defense?

**Mark Jackson:**

As far as prosecuting—the District Attorney's office files a new charge for failure to appear—no. Typically, the courts will treat that as a direct contempt and go under Chapter 22 of NRS and issue a bench warrant for the defendant's failure to appear.

**Assemblyman Horne:**

I am speaking to situations where the defense attorney has chosen to keep them out of the court because there are identification issues at the preliminary hearing. Your burden is marginal evidence, which is very low. Has there been a failure to proceed with the prosecution because of that type of scenario?

**Mark Jackson:**

If I understand the question correctly, have there been lost prosecutions? In other words, was there a failure of the State to meet that burden at a

preliminary hearing based on identification issues? The answer is yes. I can recall a burglary case and a robbery case where there was a failure to identify. In these particular cases, there were two defense attorneys and two defendants—one defendant was identified and no witness could identify the other defendant, so the charges against that defendant were dismissed.

**Assemblyman Horne:**

In your practice, you believe that it is more suggestive when a person is identified in a group of photos with other people, as opposed to sitting by themselves with defense counsel at defense table?

**Ben Graham:**

We are not really here to get into the argument of what is overly suggestive. We feel that it is judicially prudent to order a defendant to be present at his preliminary hearing. With regard to the identification process you can take that up when you get to district court about whether or not we got the right person. Further, Mr. Chairman, I think possibly Mr. Jackson misunderstood the court's representation. He is a felony prosecutor, and I apologize for that misunderstanding.

**Assemblywoman Gerhardt:**

When they do that photo array, every photo is in jail garb, so it is not as though it would be easy to pick out one individual who is wearing distinctive clothing. It is a little bit more of a fair test.

**Chairman Anderson:**

The origins of why this is being brought forward again are based upon a suggestion from the Supreme Court, and that is the reason why it is their legislation.

**Ben Graham:**

That is correct.

**Jason Frierson, Attorney, Office of the Public Defender, Las Vegas**

The basis of the Clark County Public Defender's opposition is not the cases in which a defendant just does not show up. Our concern is where a defendant is in contact with his attorney, provides a written waiver saying that he is aware of his rights, and does not want to be there because of identification issues. There is a six-pack option allowing photographs and that would by-pass the need for somebody to sit right there in jail garb, if they are in custody, or in plain clothes, if they are not. We would request that the defendant be allowed to provide a written waiver in the instances where identification is an issue.



**Chairman Anderson:**

Do you have amended language that you are going to suggest?

**Jason Frierson:**

I can certainly provide written language to allow for a defendant to write a written wavier.

**Chairman Anderson:**

Just in case we decide to move with this bill, it would be good to have the language that would be suggested.

Ms. Rowland, I have a statement from you, and I will have it submitted to the record ([Exhibit I](#)).

**Lee Rowland Staff Attorney, American Civil Liberties Union:**

It is incredibly important to mention that this request from the Nevada Supreme Court raises serious issues regarding separation of powers. As you can see from the discussion, this is something that substantially affects the rights of criminal defendants; this is a tool that defense lawyers use as part of their strategy. The Supreme Court has requested a BDR taking sides on this issue, and we believe that violates separation of powers. No criminal defendant could appear at a preliminary hearing to challenge the fact that he is required to be there and expect an impartial ruling from a judge who has gone on the record as supporting his mandatory presence there.

This is not an administrative question or about administration of the courts, and we believe it is fundamentally improper for the Supreme Court to be making substantive legislation. Their job is to adjudicate, not to create law. This also is in reaction to a specific Supreme Court opinion, *State v. Sargent*, [128 P.3d 1052 (2006)] which does not appear on the BDR legislative overview. The Supreme Court actually ruled that a defendant did not appear and that the judge lacked the authority to mandate a defendant be present for the exact reasons we have just heard. The prosecution has a number of tools that are available to obtain identification rather than "in-court" identification. So, the fact that the Supreme Court has submitted a bill to overturn their own precedent smacks the impartiality in a way that we believe violates the separation of powers.

As far as the text of the bill, I substantially echo Mr. Frierson's comments, which is that we believe that anytime a wavier is made knowingly and voluntarily, therefore, reflecting defense counsel's strategy, that the wavier should be honored by the courts. It should not be discretionary because that would effectively grant a prosecutor's veto. I think it is notable that Mr. Graham from the District Attorney's Association was the one to defend this

bill. You can see that this is a litigation tactic that the court has now taken a side on. So, again it should not be permissive. Section 3 should allow a waiver that is knowing and voluntary for any crime. At present, it only allows the waiver if the crime is punishable for less than a year. So, as it stands, it is virtually always required with no opportunity for opt-out. We have provided that language, and, if it is helpful, I can also provide specific text, but I have a feeling that ours would agree substantially with Mr. Frierson's.

**Chairman Anderson:**

Over 50 percent of all the language that we look at comes from either an Executive Branch of Government or from the Judicial Branch, or some of the judicial officers. We often get BDRs from different agencies, and Ms. Lang from our Legal Division, does present us with a general overview. Those are usually select cases where they have talked to me about them that raise issues beforehand, so it is not a complete scenario of issues that might be of interest to you or your group, or other interested parties, such as the Supreme Court.

I appreciate your concern about separation of powers; however, it is what we deal with on a regular basis. If you have any suggested language to clarify that in the bill, make sure that Ms. Chisel has it in a timely fashion. We do have amendments that are going to help or hurt the bill.

**Lee Rowland:**

Every other BDR from the Supreme Court both this year and last session are what I would qualify as administrative in nature. This is the only bill that I could find in the last two sessions that substantially affects the rights of defendants in a courtroom, and that is specifically our concern about the issue of separation of powers.

**Cotter Conway, Deputy Public Defender, Washoe County:**

We do oppose this bill as written, but would support it if it did have the allowance of a waiver under certain circumstances where we can petition the court. A big deal was made about the need for the defendant to be there, but in the grand jury determinations, the defendant is not even allowed at all. So, I do not believe that to be an absolute requirement. There are strategic reasons for the defense counsel to request the absence of the defendant. That would still be left to the discretion of the court hearing the petition, and that is in Section 3. We will present language for your consideration at work session.

**Chairman Anderson:**

Please put that in writing to me so that I can understand that just a little bit. I want to make sure that if it is necessary to get that in the record, that we have

it clearly stated. Remember, we are building a statement that is going to be utilized potentially by the court even though this is not part of the judicial part.

**Linda Bell, Nevada Attorneys for Criminal Justice, Las Vegas:**

I reiterate the concerns raised by Mr. Frierson and Ms. Rowland that this is a tremendously rare circumstance. Usually, we want the defendant to be there at the preliminary hearing, but every once in a while, it is in their best interest not to be there. It is really a concern to mandate their attendance without any provision for them to waive.

**Chairman Anderson:**

Ms. Bell, if I am to understand, you would support the suggested language that may be coming forward. I would suggest that you take the opportunity to talk with these folks to make sure that it does conform to what you think it should—that is, if we are to move forward with this bill at all.

Let me close the hearing on A.B. 44.

The meeting adjourned [10:53 a.m.]

RESPECTFULLY SUBMITTED

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Doreen Avila  
Committee Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

DATE: \_\_\_\_\_

## EXHIBITS

**Committee Name:** Committee on Judiciary

**Date:** February 12, 2007

**Time of Meeting:** 8:59 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 14	C	Assemblyman John Ocegüera	Mock-up of Assembly Bill 14.
A.B. 14	D	Nicolas C. Anthony, Legislative Relations Program Manager, Office of the City Manager, Reno, Nevada; on behalf of Reno Police Department	Graffiti Stats for 2006
A.B. 14	E	Robert Joiner, AICP, Government Affairs Manager, Sparks, Nevada	City of Sparks; Graffiti Removal and Identification Program
A.B. 14	F	Neil Schwartz, member of the Board of Director, Greater Las Vegas Association of Realtors	Written testimony
A.B. 14	G	Devin Reiss, President, Director, Greater Las Vegas Association of Realtors	Written testimony
A.B. 14	H	Derek W. Morse, P.E., Deputy Executive Director, Regional Transportation Commission, Reno, Nevada	Copy of AB14 with suggested amendments
A.B. 44	I	Lee Rowland, Staff Attorney, American Civil Liberties Union	Written testimony