

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

**Seventy-Fourth Session  
April 2, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 7:38 a.m., on Monday, April 2, 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 John Ocegura  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Harry Mortenson (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman David Parks, Assembly District No. 41

Minutes ID: 807



Assemblywoman Valerie Weber, Assembly District No. 5  
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1

**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Danielle Mayabb, Committee Secretary  
Matt Mowbray, Committee Assistant

**OTHERS PRESENT:**

James Jackson, Legislative Representative, Consumer Data Industry Association, Las Vegas  
Cotter Conway, Deputy Public Defender, Washoe County  
Scott Scherer, Legislative Representative, Dun & Bradstreet, Las Vegas  
Lea Lipscomb, Legislative Representative, Retail Association of Nevada, Las Vegas  
Jonathan Mayes, Vice President, State Government Relations, Safeway Stores Inc., Pleasanton, California  
Celia Kettle, Retail Loss Prevention Manager, Safeway Stores, Inc., Pleasanton, California  
Ken Lightfoot, Director of Loss Prevention, Scolari's Food and Drug Company, Sparks  
Shannon Humphrey, Investigations Supervisor, Organized Retail Crime Division, Walgreen Co., Oregon  
Sam McMullen, Legislative Representative, Retail Association of Nevada, Las Vegas  
Jason Frierson, Attorney, Public Defender's Office, Clark County  
Kristin Erickson, Chief Deputy District Attorney, Nevada District Attorneys Association, Washoe County  
Robert F. Bony, Deputy Attorney General, Reno  
Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence, Reno  
Ron Titus, Director and State Court Administrator, Administrative Office of the Courts, Carson City

**Chairman Anderson:**

[Meeting called to order. Roll called.] We are going to take the bills out of order this morning. We will open the hearing on Assembly Bill 428 first.

**Assembly Bill 428:** Prohibits the use and acquisition of certain personal identifying information of another without the prior consent of that person. (BDR 15-1334)

**Assemblyman David Parks, Assembly District No. 41:**

Today I am asking you to consider A.B. 428 which prohibits "pretexting." This is a term coined by the private investigation industry and refers to the practice of obtaining personal information under false pretenses. Pretexting is the use of false pretenses including fraudulent statements and impersonation to obtain a consumer's personal, financial, and other information such as bank balances and credit card information. Pretexters sell that information to persons who may use it to get credit in your name, steal your assets, or to investigate or sue you. A.B. 428 would make pretexting against the law in Nevada. Pretexters use a variety of tactics to get your personal information. For example, they may call and ask you some questions. When the pretexter has the information he wants, he uses it to call your financial institution. He pretends to be you or someone with authorized access to your account. He may claim that he has forgotten his checkbook and needs information about the account. In this way, the pretexter may be able to obtain personal information about you, such as your Social Security number, bank and credit card account numbers, information in your credit report, and the existence and size of your savings and investment portfolios. Please keep in mind that some information about you may be a matter of public record, such as whether you own a home, pay your real estate taxes, or have ever filed for bankruptcy. It is not pretexting for another person to collect this kind of information. Pretexting is a troubling and growing problem facing consumers. The disclosure of a consumer's bank account or other sensitive information is a significant privacy invasion with potentially serious financial consequences. I hope you will act favorably on A.B. 428.

**Chairman Anderson:**

Questions from the Committee? [There were none.] A category B felony is quite a bit up the scale, with the minimum of a year and the maximum of 20 years. Why a category B felony?

**Assemblyman Parks:**

When I looked at that, I realized that it was very high, but it was put in among the other categories. My presumption was that this was where it would best fit amongst existing statute. I do not feel strongly as to the felony category it would be set. I leave that to the discretion of the Committee.

**Assemblyman Cobb:**

When you describe personal identifying information in Section 1, is there any type of exemption for information that is public knowledge? I know that we are

talking about accessing information and then misusing it. I wanted to make sure that people are not going to get in trouble for accessing the information if it is public knowledge.

**Assemblyman Parks:**

This has been brought to my attention by several individuals representing different companies that actually "data mine" in a legal and ethical manner. They have some concerns. I have requested Legal to take a second look at it. They have not, as yet, gotten back to me. This is intended to be strictly a situation where an individual is using a false pretense to get the information. This goes beyond personal financial records. There is a case that has just been brought by the Federal Trade Commission (FTC) regarding companies that were getting unauthorized use of customer phone records, including lists of calls that were made, as well as dates, times, and durations of the calls in order to sell that data to other companies that would use it for their marketing plans. This is an invasion of privacy.

**James Jackson, Legislative Representative, Consumer Data Industry Association, Las Vegas:**

We support this legislation. Anything that helps protect personal identifying information and people from identity theft is something that our association and the industry support.

**Chairman Anderson:**

Let me move to those in opposition.

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

My concern is how broad the amended language to A.B. 428 is. Current law covers the use of the identifying information to harm another person, or for any unlawful purpose. Many of the concerns that Mr. Parks testified to this morning seemed to be covered by current law. The amended language seems to go much further and would cover some legitimate and legal purposes. Our investigators in the Washoe County Public Defender's Office often take the identifying information and research public records, looking for information they could possibly use for impeachment or other purposes. Prosecutors are known to use the personal identifying information of a jury during the jury selection process to determine if they might be able to strike a juror or make sure the juror is one they would want to keep on the panel. Probation officers use such information. There are a number of legitimate purposes. We are going to catch many people who are just doing their jobs or taking part in a legitimate activity where they have no intent to harm someone, and they have no intent to commit an unlawful act.

**Chairman Anderson:**

Currently, there is an exemption under *Nevada Revised Statutes* (NRS) 205.4655 for gathering that information in the ordinary course of business or pursuant to a financial transaction. So these people have no statutory authority to use that information? For their convenience, you would like them to continue on?

**Cotter Conway:**

I do not know if it is a question of whether they have statutory authorization, but they have nothing prohibiting them from doing it. It is a common practice to look into the criminal or civil records of a potential witness. It is a normal preparatory thing we do in our jobs. It seems that this is telling them that they cannot look through the district court records in the process of their investigation. That concerns me because that is something that we do routinely in our investigation.

**Chairman Anderson:**

Ms. Lang, I am having difficulty understanding what our concern is here.

**Risa Lang, Committee Counsel:**

This section, although it is not in the bill, says that these provisions that are in the bill

...do not apply to any person who, without intent to defraud or commit an unlawful act, possesses or uses any personal identifying information in the ordinary course of his business or employment, or pursuant to a financial transaction entered into with an authorized user of a payment card who is given permission for the financial transaction.

It may not cover every situation he is talking about, but I think it does cover investigators who are doing it in the ordinary course of their business.

**Chairman Anderson:**

Their intent is not to defraud the individual involved. Is that correct?

**Risa Lang:**

That is correct.

**Cotter Conway:**

Maybe we need some language to that effect. The existing law deals specifically with people who are causing harm or using the information for unlawful purposes. These two additional provisions seem to indicate that

maybe we need to have something that refers to the language that Ms. Lang talked about.

**Chairman Anderson:**

Anyone else in opposition to A.B. 428?

**Scott Scherer, Legislative Representative, Dun & Bradstreet, Las Vegas:**

We are not in opposition to the concept of the bill. We share some of the concerns that have been expressed with regard to Dun & Bradstreet's ability to do business research for transactions. Frequently, that business research is done without necessarily the knowledge and consent of the other party, but as due diligence for someone who might be entering into a significant transaction. I would be happy to spend some time with the language of the exemption and see if that satisfies our concerns. I am not sure it does entirely, but it will not take much to be able to satisfy the concerns.

**Chairman Anderson:**

Mr. Parks, is there any final statement you want to make?

**Assemblyman Parks:**

I will follow along and review this with Legal. We could add some wording on page 3, line 11 so it would say something to the effect of "obtain access to any nonpublic record." I would like to see what recommendations Legal has.

**Chairman Anderson:**

I will close the hearing on A.B. 428. Ms. Lang, is there an opportunity to tighten that language in such a way that we can reassure those concerned? I have some concerns because I know that we are trying to take some of those things out of the public record, such as Social Security numbers.

**Risa Lang:**

I think the exemption probably covers most, if not all, of what their concerns are. If they do not, I would be happy to look at how we might change that exemption. The personal identifying information is not always information that is not public; it is the use of that personal information to obtain information you would not have access to otherwise.

**Chairman Anderson:**

I will ask Mr. Scherer and Mr. Parks to have something to us by Wednesday or Thursday of this week so that we could get it into our work session documents. Let us open the hearing on Assembly Bill 421.

**Assembly Bill 421: Establishes the crime of participating in an organized retail theft ring. (BDR 15-1292)**

**Assemblywoman Valerie Weber, Assembly District No. 5:**

This morning we are bringing you A.B. 421. According to a report in the *Washington Post* dated July 31, 2005

...[l]osses from organized retail theft (ORT) have topped \$30 billion annually, triple what they were a decade ago, according to the National Retail Federation, leading to higher prices, frequent out-of-stock problems and a more cumbersome shopping experience for consumers.

ORT crime is separate and distinct from petty shoplifting in that it involves professional theft rings that move quickly from community to community and across state lines to steal large amounts of merchandise that is then repackaged and sold back to the marketplace. ORT has been around for years, especially regarding some high-profile products such as infant formula. Retailers and theft experts say criminals have discovered that large profits can be made relatively easily and without much risk by stealing merchandise from crowded, understaffed stores. The most stolen items tend to be high-priced, widely used products that are routinely sold in chain stores. For example, over the counter medicines, razors, film, CDs, DVDs, baby formula, diapers, batteries, hair growth products, smoking cessation products, hardware, tools, designer clothes, and electronics. In department stores, thieves will work together, one distracting the sales clerk and the others stealing the merchandise. Some schemes involve creating high-quality fake receipts in order to return stolen goods for cash. This crime affects unknowing consumers, employees of retail establishments, state and local governments through lost tax revenue, retail businesses across the State and nation, and the law enforcement community. You will hear today experiences from those in the retail industry to illustrate the need for this legislation. Others will speak to the four sections of the bill and the proposed amendment. We will now show you a video ([Exhibit C](#)).

**Chairman Anderson:**

Most of our existing statutes which are kind of tailored around the concept of shoplifting would capture these folks. What we are talking about here is the aggregate theft over 180 days, which is a rather substantial period of time considering the amount of time you are going to be put in prison. What is the advantage of this?

**Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1:**

This is a growing crime in my own district and neighborhood. I was in the grocery store one night and three guys were going out with backpacks. As the clerks were running and trying to stop them, a van without license plates pulled up. It is becoming an everyday problem such that my constituents are concerned about their safety. I asked myself why we have to have bars at the grocery store now. I understand that we have some of the most stringent laws in the State of Nevada; however, most of the crimes are being pleaded down to a petty larceny, so it is not getting to the root of the problem. It is a big problem. The consumers at the end of the day are the ones who end up paying the price.

**Chairman Anderson:**

If the district attorney decides to plea bargain it down, then there is nothing we can do about that statutorily. They are the ones who do the charging. They want to save time by coming to an agreement. We do nothing to discourage that since the cost of prison time is so great.

**Assemblyman Carpenter:**

It says that there have to be three or more people to have an ORT ring. In the video, it talked about how it is often only two people. The way the bill is written, it would not get to those people if there are only two of them. I do not know whether there was an amendment to change that or not.

**Assemblywoman Weber:**

We could have the folks who drafted this to come up and answer that.

**Lea Lipscomb, Legislative Representative, Retail Association of Nevada, Las Vegas:**

We are here today in support of A.B. 421. [Submitted written testimony ([Exhibit D](#)).]

**Jonathan Mayes, Vice President, State Government Relations, Safeway Stores Inc., Pleasanton, California:**

This issue of ORT is a growing problem. It is so much so that a number of other states have looked at this issue this year: Arizona, Colorado, Delaware, Hawaii, Illinois, Maryland, New Jersey, Oregon, and Texas ([Exhibit E](#)).

**Celia Kettle, Retail Loss Prevention Manager, Safeway Stores, Inc., Pleasanton, California:**

Safeway has 31 stores in Nevada. I am the Loss Prevention Manager for the Northern California Division and Western Nevada. We estimate that organized



retail crime (ORC) costs Safeway about \$5 million a year in those 31 stores in Nevada. I currently run the ORC unit and we take a lot of measures to prevent ORC, including identifying our products with security stamps and stickers, locking up products that are high-theft items, limiting shelf stock, electronic article surveillance (EAS) tags, uniformed guards, and boxes to lock up cigarettes, Nicorette, and razor blades. We also try to educate all of the store employees and managers. We educate law enforcement; we have taught at peace officer standard and training (POST) classes. We try to track the "boosters" who come into our stores, build cases on them, and find out where they are taking the merchandise. This bill can help us show law enforcement the gravity of the crime. Many times it is called petty shoplifting. We have a hard time getting police to respond in a timely manner. Many times the boosters are released before they have been identified. Later, police find out those boosters have committed multiple burglaries and are wanted on warrants. It would be beneficial to Safeway and other retailers to have a law we can refer to when we have these boosters in custody.

**Ken Lightfoot, Director of Loss Prevention, Scolari's Food and Drug Company, Sparks:**

This is a devastating crime to those who are in the retail business, especially grocery because our margin is so small. From the perspective of someone with 30 years of law enforcement experience, having many problems and a budget that will only allow some of them to be addressed causes me to wonder how we are going to take care of this. On the other end of that continuum, the Legislature is under intense pressure to keep our taxes down, which affects revenue and budget for local law enforcement. At the same time, you have to figure out ways to provide the best safety for our citizens with those low taxes. One of the things about ORC is that it affects sales tax revenue. There are estimates that show retail loss here in Nevada is \$252 million based on data from a couple of years ago. That \$252 million will raise somewhere between \$16 and \$18 million in tax revenue. There is a retail outlet that handles clothing. They track their ORTs nationwide. Consistently, there is a Nevada location in the top ten nationwide for ORT. Oftentimes, there are three Nevada locations in the top 20 nationwide. Their losses from ORT run up to \$20,000 a week. That \$20,000, over a one-year period, can end up with lost tax revenue of over \$75,000.

We at Scolari's serve many communities, including small communities where we are the one and only grocery store in town. We have many communities in the State where there is only one grocery store. If you have an infant child who has special dietary needs for baby formula, go to the grocery store only to discover an ORT crew has swept the shelves of the one and only type of

formula you need for your child, you are looking at a three-mile drive to the next community to find some. It is unfortunate and can be devastating to a family.

There was an issue raised about misdemeanor thefts. It is not uncommon to come across crews who have lists in their pockets of the cutoff between a misdemeanor, felony, and gross misdemeanor crimes. They keep those thefts below that misdemeanor rate, go to the next place, keep that theft below the misdemeanor rate, and so on.

The last thing I want to point out is that we all know that one of the most effective techniques for crime prevention is to make your house or your business harder to break into than your neighbor's. What we are seeing happen is that our State is becoming more attractive to thieves because our surrounding states are now entertaining passing laws similar to what we have here.

There was a question posed earlier about designating the number of three people to constitute ORT versus two. I am not certain, but I believe that is so this bill is in line with our Racketeer Influenced and Corrupt Organizations (RICO) statutes.

**Assemblyman Horne:**

The sentencing here is a category B felony. Typically, we reserve the A and B felonies for our violent crimes. I am curious about that. Looking at our sentencing structure, a category B is a 1–20 year sentence. I see you have it broken up to a 2–10 and a 3–15. On the 2–10 sentence, it is less than \$10,000 over a 180-day period. There is no bottom number, so it could be zero.

Section 1, paragraph 4 provides for prosecution in any county where the theft occurred even if the defendant was not physically present in that jurisdiction during that. Could someone explain that to me?

**Ken Lightfoot:**

I did not participate in the drafting, and I will have to defer to someone else for that. In a team, one person might steal the stuff and pass it on to someone else who will sell it. This law will allow us to prosecute not only the guy who steals it, but his team member who sells it on eBay or at the flea market. We want to be able to go after the entire team, not just the one who is the bag man.

**Shannon Humphrey, Investigations Supervisor, Organized Retail Crime Division,  
Walgreen Co., Oregon:**

We are in support of A.B. 421. You have seen from the video what ORC is, but I would like to speak to the scope of the problem in terms of economic impact

([Exhibit F](#)). ORC is a problem on the local, state, national, and international levels. ORC thieves and those who support ORC by fencing, laundering, and selling goods that are stolen by organized rings of thieves cost U.S. taxpayers billions of dollars each year. For the last 12 months, ending March 2007, Walgreen's reported combined self-service sales, excluding the pharmacy, was \$223.5 million in Nevada. Using the FBI's 4 percent shrink rate, our estimated losses to theft just in the State of Nevada for the same time frame were \$8.9 million. If we only figure in Clark County, where the majority of our Nevada stores are, with a sales tax rate of 7.75 percent, it is amazing to see that the citizens of the State of Nevada were robbed of approximately \$690,000 in tax revenue. This is just from Walgreen's alone in Clark County. Extrapolate that over the retailers that are in the State of Nevada, and it is a huge economic impact. This is only the loss related to sales tax and does not take into account that our loss is associated with jobs that were not available because of lost sales. State programs went under because they were underfunded due to lost tax revenue.

In conclusion, I would like to emphasize that ORC legislation will not, and is not intended to shut down legitimate vendors, but rather only those vendors selling stolen merchandise and products that pose a threat to our consumers. Consumers will benefit from A.B. 421. As more and more states pass ORC legislation, we do not want Nevada to be a dumping ground for stolen and dangerous products.

**Chairman Anderson:**

We will put your document in the record for the day. We also have a letter directed to me from Target and will have it submitted for the record ([Exhibit G](#)).

If the theft is less than \$250, we treat it as a gross misdemeanor for shoplifting. If it is from \$250–\$2,500, we make it a category C felony. Above \$2,500, we raise it to a B felony. In this particular document, if theft occurs over a six-month period, we would make it a C felony if the theft was less than \$10,000. If it is over that, then it would be a B felony. It is a substantially larger crime since it has no minimum. Was that your intent when you were thinking about drafting this?

**Sam McMullen, Legislative Representative, Retail Association of Nevada, Las Vegas:**

With respect to the Chairman's question about the 180 days, that is the estimated time frame in which we would find these criminal enterprises working, and it would allow law enforcement to make the case. As far as we are concerned, that is a policy decision for the Committee. We are trying to move beyond normal shoplifting. Quite frequently shoplifting, in a normal

sense, can be done with two people. Three or more people are a composite team in an organized criminal enterprise, not just a shoplifter and a lookout. We are trying to allow law enforcement and the retailers to put together packages of evidence that would capture people who are doing this as an organized criminal enterprise. We want to make an overarching criminal enterprise statute—which this would be—to give a different set of hooks and bargaining material to the prosecutors for purposes of turning people, getting information and convictions, and closing down these rings. It is a way to make Nevada's laws tougher. The bill drafter thought that moving the felony level up was the way you would handle an overarching criminal enterprise crime.

The issue in not putting minimum dollars in this crime is that we have found exactly what was testified to—people will load up the cart or bag or foil-lined booster bag to a value that is less than the felony amount. It would be a misdemeanor, it would not be worth prosecuting, they walk, and we do not have the tools to get them. I do not think that is going to be critical because what we are talking about is three or more people in a series of thefts and it is probably going to go above \$250 very quickly, if we are looking at the gangs at work in this State. I am not so sure that the \$250 minimum makes as much of a difference. If the Committee will look at Section 4 on page 3 through page 4, line 1, a value of property or services in the theft of \$2,500 or more can move it to a class B felony. We leave it to the Committee. We understand the fiscal concerns. Because the penalties might be a little higher, we may be able to stick the thieves with felonies as opposed to misdemeanors.

**Chairman Anderson:**

A sentence of 3–10 is pretty unusual. We are currently having discussions about judges having the discretion to decide minimum sentences rather than maximums. The judges are very concerned about that issue.

**Sam McMullen:**

We want to try to make the laws equal to those we are seeing passed in other states. In a sense, we used the penalties in Washington and a couple other states, as they are being proposed, to model this on. It would be fine if this Committee made a policy judgment that they would relax the minimum we have proposed. The issue is ensuring there is a heavy penalty whatever the Committee decides it is.

**Chairman Anderson:**

There is also the six-month factor. Three people actively involved in such a theft would clearly show more than just casual intent. If there was a family with two children engaged in such activity, this is another opportunity for the prosecutor. The six month question bothers me a little because it is a huge

amount of time, and there is no minimum dollar requirement—everything under \$10,000 fits in. In this particular statute, if you are looking for an enhanced penalty and it has no floor or minimum value, I have some concerns.

**Jonathan Mayes:**

One of the challenges for us is discovering these individuals, apprehending them over the course of 180 days. Obviously, we are not necessarily going to find every case where they have engaged in ORC. More important than that, from our perspective, is giving law enforcement a good tool to use when they do put together these cases so they can prosecute these individuals. Under current law, there is no ORC definition in the statute. The purpose here is to provide that. In our conversations with law enforcement, the consensus has been that they need this amount of time in order to be able to put together a case, particularly in the case of a grocer like Safeway.

**Chairman Anderson:**

I understand your point. I wish I could find that retailers were as consistent in giving law enforcement the tools they need to handle their problems in all cases, not just the ones that are beneficial to the industry.

**Assemblyman Horne:**

Those concerns are covered in the aggregate language that you have in here. While someone may be arrested with small amounts over such time that it is deemed they are part of an organized group, those amounts within that 180 days can be aggregated to reach your threshold—that is, should we indeed have a minimum threshold after vetting through this piece of legislation.

I asked a question earlier about paragraph 4 in Section 1 on whether you are able to prosecute in any jurisdiction the theft may have occurred, regardless of where the defendant is. If you have a team at Target in Carson City and they steal a bunch of items today and ten days later they go into Reno and do the same thing, then later in the month they are down in Clark County and then are arrested there, how do you anticipate prosecuting the person they are "fencing" the items to, the one who is not in any of the jurisdictions? Would that person be at risk of being prosecuted for each offense that was organized? Or would each county have to come together and decide on who is going to prosecute that person? Or is it something you anticipate the Attorney General prosecuting?

**Sam McMullen:**

I believe it is there to allow flexibility for the prosecutors to determine the best way to manage their case. This is a traveling crime now. We have people who come out of southern California and drive the day, boost for a few days, then

go back. That can clearly happen in Nevada. The prosecutors would have that discretion. We are trying to give them the tool to do that.

**Assemblyman Horne:**

Would that person be at risk of being prosecuted two or three times for organized theft crimes instead of one time? If prosecutors went after them in Clark County and Washoe County, would they be barred from prosecuting for that same crime even though, in their investigation, they found out this team had been hitting several locations? Would they choose one place to prosecute, or would the offender be at risk of being prosecuted for this crime in three different locales?

**Sam McMullen:**

Theoretically, the latter could be possible. We believe this will be, in so many ways, a task force type of issue where law enforcement will be cooperating and collaborating with the retail stores. The retail stores are already doing surveillance and other things to build the case. I would assume that there is going to be one prosecution. I do not know that there is anything in this that would preclude that. This is to try to give the prosecutors and law enforcement the tools that they need to deal with these people.

**Assemblyman Horne:**

I do not have a problem with making this a felony crime and having this type of definition in statute. I would just like to see if we can have some prosecutorial and judicial efficiency when doing that.

**Sam McMullen:**

I want to make sure that people look at the proposed amendment ([Exhibit H](#)).

**Chairman Anderson:**

I note, in the amendment, what the purpose is. How do you perceive handling the issue of a family that might be engaged in this activity?

**Sam McMullen:**

The original language did not have as a specific element a clear definition that it is about people who associate for the purpose of ORT. To the extent that we are talking about a criminal enterprise, one of the elements of the crime would be associating for the purpose of engaging in the conduct. A very valid concern was raised that you could have a family doing this; however, that could be problematic when it is some of the family rings that we have seen. We understood the issue and tried to define it as those who associate for the purpose of ORT, and are not associated just because they are family. That would be a different element of the crime. Families would be prosecuted

differently because they would not match the element of associating just for that purpose, they would be associated otherwise.

**Chairman Anderson:**

Is this wordsmithing? I am having a difficult time trying to determine the rearrangement of the words.

**Sam McMullen:**

On line 7 in the original bill, basically it used the words "who engaged in the conduct of or are associated for the purpose..." Someone pointed out that a family who was shoplifting for their purposes would fall into this category and have heavy penalties when in fact it is just regular shoplifting. We took the associated language of line 7 and moved into the first line, saying that it is three or more people who associate for the purpose. It makes it an element of the crime that they are building a criminal enterprise and associating for purposes of conducting these thefts. I think that would solve the issue that was raised, and we would be happy to see what bill drafting does with it because I want to make sure that we do it right.

**Chairman Anderson:**

Any other questions? [There were none.] Opposition? [There was none]. We will close the hearing on A.B. 421. I am a little concerned about the six-month time period in this issue, which is a large amount of time in terms of the process. I would be a little more comfortable recognizing that there had to be a certain threshold that initially had to be met so that we know we are moving to a higher level. I do not know how you get law enforcement's attention if they do not want to pay attention. That seems to be the problem, at least from the merchants' point of view. They are having difficulty being taken seriously for these losses, which are a serious impact on their business. We all take it seriously because we end up, as consumers, paying for it one way or another. I am going to hang onto it and try to get it into next week's discussion.

**Assemblyman Horne:**

Also, it would be helpful if we can get some clarification on who would be prosecuting the case. Maybe there is an answer inside the RICO statutes. There is oftentimes criminal conduct that has happened in various locations in a RICO case, but one prosecution.

**Chairman Anderson:**

We will ask Legal to look at that and potential double jeopardy questions relative to multiple jurisdictions.

Let us open the hearing on Assembly Bill 300.

**Assembly Bill 300: Revises provisions governing the additional penalty for the use of certain weapons in the commission of a crime. (BDR 15-1122)**

**Assemblyman Tick Segerblom, Assembly District No. 9:**

Nevada has the stiffest penalty for use of a deadly weapon ([Exhibit I](#)). I proposed this bill and then discovered that a similar bill, A.B. 63, had been proposed by the Judiciary Committee. Because you have already heard the discussion on A.B. 63, I thought I would do a slightly different take on this and try to briefly explain the impact it has on the criminal justice system. Right now, if you plead guilty or are convicted of a crime using a deadly weapon—a gun, a knife, the ground, or a shoestring, as we have heard—the judge will impose the penalty for the underlying crime and then that penalty is automatically doubled. I have passed out an example. I asked the Department of Corrections (NDOC) to give me a list of people who have gone to prison recently for the underlying crime with the use of a deadly weapon. The last sheets of the exhibit show the figures they gave me for 2006. As you can see, there were 223 admissions for robbery with the use of a deadly weapon. The penalty for robbery, which is the second page, is 2–15 years. Hypothetically, if judges are giving ten years to people convicted of robbery, that punishment currently would be doubled for an additional ten years. My bill, if it were enacted, would lower that at least to five years. That means that each one of these 223 people would have five less years to serve, all things being equal. The cost of keeping an inmate in prison for one year is \$20,000, so the amount saved would be approximately \$4 million. If the full five years were served, that would be a savings of about \$20 million a year just on the robberies and based upon their predicted sentence. This does not include the fact that some people might get paroled early. That is just on the cost, to say nothing of the human life. Obviously, there are people who need to be in prison for a long time, but there are also people who are going to prison much longer than they need to be just because of the way our current law is structured. Going back to the \$20 million, that is just a one-year increment and that is just for robbery. If you projected that out over the next 20 years or so, you are looking at huge amounts of money. Our future legislators will have to deal with this problem for years to come, so when we make our decisions today, we need to realize the impact we are having on the whole system. I sit on the Education Committee, and we talk about all the things we would like to do if we had the money that was going to be given to prisons. I know some of you sit on the Corrections Committee and hopefully you are working on that issue too. This is a worthy bill. It is really in tandem with A.B. 63, but I do think it is something the Committee should address this session.



**Chairman Anderson:**

How will it affect the current prison population?

**Assemblyman Segerblom:**

It is my understanding that it would not affect it at all. The Parole Commission, when they go to look at this, might say, "Gee, the Legislature realized this is a significant issue" and give the offender parole earlier, but it has no binding impact.

**Assemblyman Mabey:**

What is the history of why they wrote the law the way it is now? Why did they use that wording?

**Assemblyman Segerblom:**

I apologize for not knowing the full history, but back in the 1990s, the Supreme Court had issued some kind of decision which the Legislature thought was letting people off too early. They said they were going to make it clear that in Nevada we are going to tough on crime and enacted this doubling penalty. We have the stiffest penalty for use of a deadly weapon out of any state.

**Chairman Anderson:**

Mr. Horne chaired the Interim Committee that looked at some of these statutes and made the recommendation which the Select Committee is looking at in the other bill.

**Assemblyman Horne:**

It was the Truth in Sentencing legislation in the 1995 Session, which at the time everyone thought was a great idea. That is how we got our equal and consecutive sentencing. Depending on what side you fall on, some would say that there were some unintended consequences. We have heard some testimony on how these have been applied. Some of these sentences we might not have applied but for the statute mandating it to be so. We are now in a place to where we have an overflowing prison population. We are looking at it in the Select Committee.

**Chairman Anderson:**

Any other questions? [There were none.]

**Jason Frierson, Attorney, Public Defender's Office, Clark County:**

We support A.B. 300 and the philosophy behind giving judges the opportunity to exercise their discretion in resolving these sentencing matters in a way consistent with the facts presented to them.

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

We also stand in support of A.B. 300. It is an important step, much like some of the other legislation that has come before this Committee and the Select Committee.

**Chairman Anderson:**

I see no questions. Is there anyone else in support? [There was no one.] Is there anyone in opposition or neutral?

**Kristin Erickson, Chief Deputy District Attorney, Nevada District Attorneys Association, Washoe County:**

We feel that a 1 to 5-year enhancement for crimes using a deadly weapon is insufficient, and we oppose this bill.

**Chairman Anderson:**

The district attorneys are consistent in their opposition to bills in this category. Anyone else wishing to testify on A.B. 300? [There was no one.] Close the hearing on A.B. 300. We will open the hearing on Assembly Bill 482.

**Assembly Bill 482: Makes various changes to provisions relating to criminal procedure. (BDR 14-516)**

**Robert F. Bony, Deputy Attorney General, Reno:**

[Read from prepared testimony ([Exhibit J](#)).]

**Chairman Anderson:**

Giving up the firearm would not be a problem, but having to locate all the ammunition might be a different kind of question. That perplexes me.

Does this preclude the use of polygraphs on people who might be convicted of these kinds of crimes even if they wanted to demonstrate their lack of involvement?

**Robert F. Bony:**

The language the federal government is passing down to the states is a condition of continuing to receive this funding. I was not there when the federal government hashed this out and came up with the language, but the

language does mirror what the federal laws state regarding possession of a firearm or ammunition. They are trying to be consistent. In passing that consistency down through the federal legislation, they are now asking the states to make the same changes to their statutory construction.

With regard to the polygraph, it applies to the victim. No law enforcement officer, prosecuting attorney, or other government official can ask or require the victim to take a polygraph examination.

**Assemblyman Horne:**

Would this statute prevent law enforcement officers from making any request for a polygraph of the victim even though they are proceeding with an investigation?

**Robert F. Bony:**

It would preclude law enforcement or other government officials from asking the victim to submit to a polygraph.

**Assemblyman Horne:**

Under any circumstances?

**Robert F. Bony:**

I believe so. It is important that we realize this requirement is being imposed on all 50 states. It is an important source of funding for this State and for the programs that relate to these types of issues.

**Assemblyman Horne:**

This paragraph also pertains to the federal funding, as well.

**Robert F. Bony:**

It does.

**Assemblyman Carpenter:**

Does it apply to any misdemeanor, or does it have to be a gross misdemeanor before you have to notify the defendant that they must give up their firearms and ammunition?

**Robert F. Bony:**

It is any misdemeanor as prescribed by NRS 33.018—any misdemeanor for domestic violence.

**Chairman Anderson:**

Other questions? [There were none.] Is there anyone else who wishes to be heard on A.B. 482?

**Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence, Reno:**

I am here in support of A.B. 482, and you have received a copy of my testimony ([Exhibit K](#)). The requirement from the federal government is that a judicial officer let the defendant know that he will be impacted by the federal firearm legislation, which is already in place. This bill does not set up a similar law in Nevada. There is currently a federal firearm legislation that says if you have been convicted of domestic violence, you cannot own, possess, or be in the presence of firearms or ammunition. This is just letting the defendant know of that federal law.

**Chairman Anderson:**

Thank you for that clarification. I also have a letter from Michael Sprinkle of the Nevada Council for the Prevention of Domestic Violence ([Exhibit L](#)) to be put in the record of the day. Is there anyone in opposition to A.B. 482? [There was no one.] We will close the hearing on A.B. 482.

ASSEMBLYWOMAN GERHARDT MOVED TO DO PASS  
ASSEMBLY BILL 482.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

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

Assemblyman Mabey will take it to the Floor. Is there anything else to come in front of the Committee?

**Jennifer M. Chisel, Committee Policy Analyst:**

There were some bills discussed in Friday's work session that were not dealt with. We had Assembly Bill 246, which concerns the increase in the number of district court judges.

**Assembly Bill 246: Increases the number of district judges in the Second and Eighth Judicial Districts. (BDR 1-654)**

**Chairman Anderson:**

If we wait for a few minutes, we may have someone from the Supreme Court here to tell us they think their amendment may not be entirely necessary.

ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS  
ASSEMBLY BILL 246.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

**Ron Titus, Director and State Court Administrator, Administrative Office of the Courts, Carson City:**

We had requested consideration of an amendment to add a tenth judicial district. We are withdrawing that amendment at this time.

**Assemblyman Cobb:**

I support the policy of this issue and hope the Ways and Means Committee seriously considers the fiscal impact, which I do not necessarily support. I would like to see the localities negotiate the exact number of judges. I am not necessarily enamored with the number.

**Chairman Anderson:**

Assemblyman Cobb recognizes the need for additional judges, but he is not comfortable with the total number of judges that are being requested.

**Assemblywoman Allen:**

I echo the same concerns. I will vote "yes," but I am going to reserve my right to change my mind on the Floor.

**Chairman Anderson:**

We could deal with that issue now if you feel comfortable enough to determine the number it should be pared down to. It is a proper discussion question.

**Assemblywoman Allen:**

It seems we would need members from the local governments to come and participate in the dialogue.

**Assemblyman Horne:**

I understand the Committee members' concerns. I was not here that day, so I do not know if there was any testimony as to why these numbers were picked. I would feel uncomfortable if that was not discussed.

**Chairman Anderson:**

There was strong testimony from both the Second and Eighth Judicial Districts for the additional need in the family courts. The other specialty courts presented another series of problems, particularly in the Eighth Judicial District. The county did raise some concerns about additional space, which is going to be a problem. The court felt they would be able to meet that challenge by the time these judges would be elected.

**Assemblyman Horne:**

In the past, the courts have demonstrated how they have been, to use an analogy, redlining. They have been pushing the limit for a long time, and they have been the victim of their own success. I do not have a problem if they said they need a certain number of judges in order to relieve that burden.

**Chairman Anderson:**

I would also like them to move forward with the appellate process. That would be a major element in trying to solve some of their workload problems. The argument is clear that justice delayed is justice denied.

**Assemblyman Cobb:**

I wanted to make that statement on the record because I respect the opinion of the courts and their need to increase the number of departments within each court system. I worry that it could be considered a bit myopic—in terms of the overall issues involved here—for one group who would benefit from this to come forward and say this is what they need without consultation with groups that have to pay for it, such as the local entities. That is why I just said that I agree with the policy. I would say hire 12 more judges for every court, but that needs to be balanced with the fiscal costs. I encourage the courts to work with the local entities who would help pay for and house these judges.

**Chairman Anderson:**

Let me suggest that if we are to pass this piece of legislation, we ask Ms. Chisel to draft a letter to Ways and Means that would indicate our concerns about the need for greater cooperation between local governments and the court in determining the actual cost of the program. We will also ask her to draft a letter to the Supreme Court regarding our continuing concerns about the lack of advancement of the appellate court issue. The overtone of the letter should be one that says we recognize the importance and need for additional judges.

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

A.B. 246 is referred to Ways and Means. We are adjourned [at 10:02 a.m.].

RESPECTFULLY SUBMITTED:

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Danielle Mayabb  
Committee Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

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

## EXHIBITS

**Committee Name:** Committee on Judiciary

**Date:** April 2, 2007

**Time of Meeting:** 7:30 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A	*****	Agenda
	B	*****	Attendance Roster
AB 421	C	Assemblywoman Valerie Weber	Video
AB 421	D	Lea Lipscomb, Retail Association of Nevada	Information sheet on organized retail crime
AB 421	E	Jonathan Mayes, Safeway Stores Inc.	Fact Sheet on organized retail crime
AB 421	F	Shannon Humphrey, Walgreen Co.	Written testimony
AB 421	G	Nate Garvis, Target	Letter
AB 421	H	Sam McMullen	Amendment to AB 421
AB 300	I	Assemblyman Tick Segerblom	Information related to AB 300
AB 482	J	Robert F. Bony, Attorney General	Written testimony
AB 482	K	Susan Meuschke, Nevada Network Against Domestic Violence	Written testimony
AB 482	L	Michael Sprinkle, Nevada Council for the Prevention for Domestic Violence	Letter