MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
April 12, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:39 a.m., on Thursday, April 12, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 2450 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman 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 Oceguera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Janie Novi, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Ben Graham, Legislative Representative, Clark County District Attorney, Nevada District Attorneys Association
Jason Frierson, Attorney at Law, Office of the Public Defender, Clark County
Kristin Erickson, Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney, Washoe County

Chairman Anderson:
[Meeting called to order; roll called]

We are in a work session today. We will begin with Assembly Bill 193.

Assembly Bill 193: Makes various changes concerning pleas, defenses and verdicts in criminal actions. (BDR 14-152)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 193 was brought forward on behalf of the Legislative Commission Subcommittee to study Sentencing and Pardons and Parole and Probation (Exhibit C). It was the interim study after last session. We heard the bill on March 20, and it was presented by Assemblyman Horne. This is the measure that would reinstate the plea of guilty but mentally ill and it also codifies the M'Naghten Rule as the standard for establishing a not-guilty-by-reason-of-insanity defense.

During the hearing there were some amendments received and additional testimony by district attorneys, public defenders, and other parties. After much discussion, there was a compromise amendment that was submitted to this Committee. That is the amendment included in the mock-up in the work session document. This final product amendment changes the language in the M'Naghten standard for not guilty by reason of insanity to include a disease or defect of the mind rather than using the word "insanity" to define insanity. Another change made is that a plea of guilty but mentally ill could only be taken up in trial upon a plea of not guilty by reason of insanity. Additionally, it requires that a defendant who is deemed mentally ill receive treatment from the Department of Corrections (NDOC).

Assemblyman Horne:
The amendment is good. It reflects the collaboration of Mr. Graham and Mr. Lalli from the Clark County District Attorney's office, and Mr. Frierson. I think that the many hours of discussion provided us with a good compromise

and reaches the original intent of the Assembly Concurrent Resolution No. 17 of the 73rd Session that the Committee had in mind.

Ben Graham, Legislative Representative, Clark County District Attorney, Las Vegas:

I am very excited by the compromise that has been orchestrated by this Committee and Assemblyman Horne. I think it takes us back to what we tried to do 12 years ago.

Jason Frierson, Attorney at Law, Office of the Public Defender, Clark County:
I will concur with Assemblyman Horne and Mr. Graham. This represents an extensive collaboration on the part of both parties.

ASSEMBLYMAN COBB MOVED TO AMEND AND DO PASS ASSEMBLY BILL 193.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Anderson:
There is a second bill considering a similar subject. We will move to Assembly Bill 369.

Assembly Bill 369: Makes various changes to provisions governing the civil commitment of a person found not guilty by reason of insanity. (BDR 14-1155)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 369 was brought forward on March 28 by Assemblyman Horne. This is the bill that would govern the civil commitment of a person who is found not guilty by reason of insanity. During the hearing there were some proposed amendments (Exhibit C). After the hearing there was discussion between all of the interested parties similar to the discussion on A.B. 193. The parties reached a compromise and that amendment is attached to the work session document in the form of a mock-up.

Chairman Anderson:
These amendments make some rather extensive deletions to the bill, but add in references to the new sections. We should glance through the explanation boxes in the mock-up to make sure everyone is clear.

Assemblyman Carpenter:
I guess I understand what we are trying to do. If something happens to one of these ill people or after their release another act is committed, we are going to be greatly criticized for doing this. I do not know how to get around that. I have some concerns because we know that if these people do no stay on their medication they can relapse very quickly.

Chairman Anderson:
That is a legitimate concern. When we put somebody out on parole or probation and anticipate their good behavior, it is like recognizing their stability and their opportunity to socialize in the real world. Getting these people to operate on medication is going to be the more likely scenario and of greater benefit to us in the end. Unfortunately, housing them permanently at State expense is of great concern. The realists in all of us recognize that successful treatment is not always the case. There are going to be some people who will fail treatment. We hope that they are not letting a person out just to let them out.

Assemblyman Horne:
All of us share those concerns. The reality is that we have persons who have been acquitted. If a doctor makes a determination that they are no longer mentally ill, we have to release them. What was missing was a clear procedure for that release. This legislation attempts to do that by providing for when they can petition, when these evaluations are done, et cetera. It is never going to be perfect and you are right, a person could be released, deemed no longer mentally ill, and relapse. We cannot keep them forever if the determination has been made that they are not mentally ill.

Assemblyman Cobb:
I recall during the hearing on this bill, discussion about limiting the time that a court would have authority over an individual. I wanted to know if there were any limitations on the amount of time that a court would have that authority.

Chairman Anderson:
Would it be in Section 12, subsection 2, page 4? Is it 21 days?

Assemblyman Horne:
I would like Mr. Graham and Mr. Frierson to come forward.

I remember that we debated that subject extensively with Mr. Coffee. He was of the opinion that once the determination that they were no longer mentally ill had been made, constitutionally we could not even hold them for one day.

Ben Graham:
I am not going to make any predictions. This may not be a perfect piece of legislation, but it is much better than what we currently have. This bill includes some safeguards and protections stating that these people will be retained under supervision until there is a determination that they will not be a danger to themselves or others.

Chairman Anderson:
I will restate Mr. Cobb's question. Once the person has been determined by the institution to no longer be mentally ill, is there a question of length of time? If a person is deemed no longer mentally ill, how long before they are released? Is it instantaneously, or after a time period?

Assemblyman Cobb:
I was actually talking about the authority of the court over the individual, not the retention of the individual. What if a person goes off of his medications? Can the court pull the person back yearly to see if the person is sticking to his medications and if he is still mentally stable? I want to know if there is a limitation on the court's authority to have a continual review of that individual's status.

Jason Frierson:
As I read it, there is a procedure—if this person becomes a danger to himself or the community he can be brought back into custody. This is not necessarily as a product of the original charge, but as a safety measure. This allows the court that discretion if the person becomes dangerous to himself or the community. This measure allows a process to make sure that the person is supervised and observed to the extent that the court feels necessary.

Assemblyman Horne:
In the redrafting of the amendments, we have provided for conditional release and it does not state any certain amount of time. We can have clarification from Ms. Lang, but if there is no stated specific time, the courts would have that authority or that mandate to act in a constitutional manner in carrying out the conditional release.

Risa Lang, Committee Counsel:
I do not think that this amendment states specifically how long a person can be on conditional release. Presumably, the court would have to make a determination as to the appropriateness of continuing that.

Chairman Anderson:
So, it is open for the court to determine.

Assemblyman Cobb:
I wanted to make sure that it would be all right for a court to schedule an annual review.

Chairman Anderson:
It would be up to the particular judge as to whether he felt that was an important part of the conditional release.

Risa Lang:
Under this amendment they can either discharge the person completely or they can keep them on a conditional release. If the person is conditionally released, then the court can have them come back and check that the conditions are continually being met. There is no stated time period for that.

Assemblywoman Gerhardt:
I am looking at Section10, line 21, regarding the conditional release. I am interpreting it to say that the conditional release can go on indefinitely according to the judge, but they cannot pull the defendant back into court unless the person fails to comply with any condition. That does not reach the level we were talking about. We were talking about a status check, or a yearly review.

Assemblyman Horne:
The failure to comply with any of the conditions can be set by the judge. Those conditions can include anything the judge finds appropriate. The conditions can include coming in and being evaluated, then during those evaluations making sure that the defendant is taking their prescribed medication. During that evaluation, if any other conditions are not being met, the court can bring them back into custody.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 369.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN CARPENTER VOTED NO.)

Chairman Anderson:
Mr. Horne will take care of this bill on the Floor as well as A.B. 193. We will move to Assembly Bill 428.

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)

Jennifer Chisel:
Assembly Bill 428 was presented by Assemblyman Parks and was heard on April 2. This would provide additional prohibitions of the use of personal identifying information in some situations: to obtain access to a person's personal identifying information without prior express consent, or to obtain access to that person's records or actions taken and communications made without the prior express consent of the person. *Nevada Revised Statutes* (NRS) 205.4655 does provide an exemption for those who use personal identifying information in the ordinary course of their business or employment, or for other authorized financial transactions. There are no amendments presented today on this bill (Exhibit C).

[Chairman Anderson leaves the room.]

Assemblyman Cobb:
I recall during the discussion that Chairman Anderson had a concern about raising this to a category B felony. There were no amendments proposed to change that to a C or a D felony?

Jennifer Chisel:
There were discussions, but the category B felony is what is listed in the existing statute. It was not actually changed by this bill; it merely conforms to existing statute.

> ASSEMBLYMAN CARPENTER MOVED TO DO PASS ASSEMBLY BILL 428.
>
> ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY. (ASSEMBLYMAN ANDERSON WAS ABSENT FOR THE VOTE.)

Vice Chairman Horne:
Assemblyman Manendo will be in charge of backing up Assemblyman Parks on the Floor.

Next we will go to Assembly Bill 521.

Assembly Bill 521: Revises provisions relating to the crimes of fraud and racketeering. (BDR 15-500)

Jennifer Chisel:
Assembly Bill 521 was heard by the Committee on April 5. It is a Committee bill brought on behalf of the Attorney General's office (Exhibit C). The bill changes the law in terms of crimes of fraud and racketeering to capture certain business enterprises that are set up to defraud the public. One example that was given was Tours for High School Seniors. During the hearing, Nevada Attorneys for Criminal Justice testified in opposition of this bill. However, the Attorney General's office worked with Lisa Rasmussen to come up with the amendment that is in the work session document. Essentially, it clarifies some of the language and makes the intent to defraud less vague and ambiguous.

ASSEMBLYMAN COBB MOVED TO AMEND AND DO PASS ASSEMBLY BILL 521.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Assemblyman Conklin:
Have they taken out the felony charge completely from the Section? I am looking in the original bill at Section 2, subsection 3. It does not have a felony charge. It only states that a person who violates subsection 1 is guilty of a category B felony. Is that left in?

Vice Chairman Horne:
Yes, it is. The amendment does not address that.

THE MOTION PASSED UNANIMOUSLY. (ASSEMBLYMAN ANDERSON WAS ABSENT FOR THE VOTE.)

[Chairman Anderson returns to the room.]

The floor assignment on this one will be to Assemblyman Ohrenschall. We will now go to Assembly Bill 83.

Assembly Bill 83: Revises provisions governing criminal and civil liability for crimes motivated by the actual or perceived status of the victim as a homeless person. (BDR 15-533)

We are bringing this back as a courtesy. The first time we heard it, it failed to receive the requisite votes. Mr. Ohrenschall has since lobbied his bill and would like the reconsideration of the Committee (Exhibit C).

Assemblyman Segerblom:
I originally voted against this, but upon reconsideration and consultation with my colleague I would like to have this bill reconsidered, and I will vote in favor of it.

Jennifer Chisel:
The proposed amendments would revise the definition of a homeless person in response to concerns that were raised by Committee members. In the original bill, they wanted to take out "any institution that provides temporary residence" to clarify the definition. The other amendment was to delete the aggravating factors and delete "homeless person" from the list of aggravating factors with regard to sentencing.

Assemblyman Cobb:
We did have a thorough discussion on this and my concerns still exist. I do not think that someone who voluntarily or involuntarily chooses to not have a fixed residence rises to a level of a special class with factors we have designated as important, such as race, national origin, or gender. I agree with Assemblyman Segerblom's original argument. I do not think the bill gets to the basis of the arguments in favor of the bill, one of those arguments being that teens in our society are the ones mindlessly going around attacking individuals who are or who appear to be indigent. All this is going to do is punish someone who is mindlessly acting as a teenager as opposed to preventing it from happening. Our resources should be spent on prevention, not trying to create an ineffective deterrent. If you are acting mindlessly, you do not think your actions through, and a deterrent is not going to play a role.

Assemblyman Ohrenschall:
I want to respectfully disagree. We had a statement from the Clark County District Attorney stating that he could not recall a recent hate crime prosecuted in Clark County. I think that some of that is a deterrent effect. People who might commit these crimes do pay attention to the laws and enhancements.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 83.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ANDERSON, CARPENTER, COBB, GOEDHART, MABEY, VOTED NO.)

Chairman Anderson:
That takes us to Assembly Bill 237.

Assembly Bill 237: Makes various changes to provisions governing the admissibility into evidence of certain statements made by certain young children. (BDR 4-1180)

Jennifer Chisel:
Assembly Bill 237 is a Committee bill that was heard on March 13. It governs statements made by young children and the admissibility of those into evidence. During the hearing there were a couple of amendments presented by the Nevada Attorneys for Criminal Justice. That is indicated in the work session document, Exhibit C. Additionally, there were some problems with the term "custodial examination" so there was a desire to change it to "acting as an agent of the state." Additionally, Ms. Lang had stated that we could use the term "an interrogation" instead of "custodial examination." That would be an alternative amendment to number one, which is listed in the work session document. Also, there was an amendment to the definition of testimonial statement, which was just a word change of an "and" to an "or." That was presented by Cotter Conway on behalf of the Washoe County Public Defender's office. That change is in subsection 5 of Section 1 of the bill. That would make it so that a statement could be made in preparation for or with the intent to go to trial.

Chairman Anderson:
The District Attorney's Association had argued in large part that this may be a rush to judgment. There is an issue that exists here: are we moving too rapidly? Regarding the decision in *Crawford v. Washington* [541 U.S. 36 (2004)], it is felt that there may be subsequent cases that may yet change this decision and there needs to be further action. Clearly, there is a disagreement over whether or not we need to do this bill. I am still of the opinion that it does make some level of sense to try to clarify this, especially in terms of the testimony that needs to come forward in these kinds of trials.

Assemblyman Horne:
I was originally in disagreement because it was unsettled law. In law school, you learn that when the United States Supreme Court makes a decision, and it becomes law until that decision is overturned. At the Legislature, it is not uncommon that we draft legislation to comply with those laws that are passed by the U.S. and State Supreme Courts. That is what this bill does. We may not always like what the Supreme Court says, but that is the system of government that we have. All this bill does is brings our law in compliance with what the United States Supreme Court has told us. If later that changes, we

can change our statutes to match that. I understand the discomfort some have with this, but that is our situation and we also took an oath to uphold the *United States Constitution*.

Chairman Anderson:
I always find it difficult when the Judiciary begins to make the law. We should make sure that the harm is not done to defendants in terms of confronting their witnesses as best they can. That is part of the old concept of due process. I think that all three of the amendments suggested are important for us to put into place on a conceptual basis.

Assemblyman Conklin:
I am going to respectfully disagree. I think that we do entertain bills from time to time based on the Supreme Court's decisions. We are also our own separate branch of government; we are the Legislature, not the Supreme Court. It is their job to interpret what we have done. From time to time it is possible that they make mistakes. I think that this is a classic example. The original *Crawford* decision was tight—five to four. There have been additional rulings after the fact on similar subjects that have narrowed its scope tremendously. I think that this particular case needs stronger standing before we take away the ability of the prosecution to have an environment safe for a child to testify against his or her abuser. We would be making a huge mistake by passing this bill at this time without letting case law fully develop in this area before we take a step forward.

Assemblyman Oceguera:
I would agree with Assemblyman Conklin, as he stated most of my points. Narrowly looking at one Supreme Court decision, as in this case, is a rush to judgment. We have to look at a multitude of decisions and see what direction the court is heading. We worked diligently to change this last session and protect the children. I think we were heading in the right direction and would be turning around with this bill. I will be voting no.

Assemblywoman Gerhardt:
I would like to echo the comments made by my two previous colleagues. I will also be voting no.

Assemblyman Ohrenschall:
I have a question for Legal. Assuming A.B. 237 does not pass, pursuant to *Crawford* and the rights that are sought to be codified, do those rights already exist because of the *Crawford* decision? Can somebody seek those rights?

Risa Lang, Committee Counsel:
I think that what we have now is a law that the court has held partially unconstitutional. The courts would have to apply it in a constitutional way. The part that is sought to be changed here would be read out of anything the court holds differently.

Chairman Anderson:
This is a bill that we asked to be drafted as a Committee to try to address this particular issue. In the first week, there was a presentation made about court cases that may have some impact upon legislation and where we may or may not be in compliance with either a federal statute or a state Supreme Court decision. We are aware of this in case there is a necessity either to clarify the language of our original intent. In the future, the court will have greater guidance to believe that it had legitimately raised an issue that we had not considered, therefore, trying to bring our statutes into compliance with the unintended consequences of a piece of legislation, which we may have passed. This particular bill falls in that category. I am concerned about whether we are changing course here. That is a very real concern. There is the potential that what we hoped would be protections are not going to be as strong as we had anticipated.

Assemblywoman Allen:
I am not in favor of the bill. I would like to wait for more case law.

Assemblyman Cobb:
Since the Supreme Court has struck down part of the existing statute, is it inoperable? Could the district attorneys try to use that section at trial? Would that be considered an error at trial? I do not think that this bill is even necessary. We are talking about providing statements at trial; it is an evidentiary ruling of the judge. The judge, based on Supreme Court case law, would not allow the district attorneys to put such a statement into the record unless they provided an individual ten years of age or younger for cross examination.

Chairman Anderson:
I take that as a no.

Assemblyman Cobb:
It is also a question.

Chairman Anderson:
Have our statutes been rendered inoperable by the Supreme Court decision? Do we need to clean up our language so that the district attorneys have clearer guidance as to what the proper process is?

Kristin Erickson, Chief Deputy District Attorney, Criminal Division, Washoe County:
If I understand the question correctly, the law would apply as *Crawford* currently stands. The subsequent rulings and the subsequent case law that has come down applies. The law will be applied to any statements that come forth. It is a question for the judge to decide.

Chairman Anderson:
Are your filings and treatment of witnesses going to have to comply with the *Crawford* decision?

Kristin Erickson:
Yes.

Chairman Anderson:
It is the law of the land, for no other reason than that. State statutes, not having been amended to reflect these changes, are in conflict. If we do not do this, the district attorneys are not harmed, but then who is?

Kristin Erickson:
It is the position of the Nevada District Attorney's Association that it is an evolving area of the law and should we narrow the specific area to this particular statute, then we foreclose further changes and developments throughout the case law.

Jason Frierson:
I believe that this would just be subjecting all involved to continuing litigation in court. This would go on until the law was either interpreted in a way that the court found unconstitutional or the Legislature took action to clarify it. The district court will have to evaluate, then possibly the Nevada Supreme Court in subsequent cases.

Chairman Anderson:
Are the same problems going to occur whether we pass it or not?

Jason Frierson:
I would anticipate there being an increase as the law is applied.

Assemblyman Ohrenschall:
I am swayed by the opinions of Assemblymen Conklin and Oceguera. I will be voting no.

Assemblyman Segerblom:
I agree with Mr. Horne and think that it is crazy to say that our laws should conflict with the *U.S. Constitution* as interpreted by the United States Supreme Court. I think we need to amend our law to conform to what the U.S. Supreme Court has said. I will be voting yes.

Jennifer Chisel:
I have one clarification for you. The amendments listed at number one and number two are trying to amend the same thing, so you have to choose one or the other.

Chairman Anderson:
Thank you.

Assemblyman Segerblom:
I would go with amendment 2.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 237.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

Assemblyman Carpenter:
We have discussed this issue many times and I feel that our state law makes more sense than the Supreme Court decision, so I am going to stick with our state law and vote no.

THE MOTION FAILED.

Chairman Anderson:
The only thing we have left for the day is Assembly Bill 421.

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

I am a little concerned about this particular bill. I am not sure that the presenters really made their case. There is no doubt in my mind there are groups who are doing this kind of shoplifting and assault upon the marketplace by working in teams, groups, or conspiracies. These groups then resell these

materials on the black market. If you will remind us what we are trying to deal with.

Jennifer Chisel:
The Committee heard A.B. 421 on April 2, presented by Assemblywoman Weber. This bill would address organized retail theft rings. During the hearing, there were a few amendments offered (Exhibit C). After the hearing another amendment was proposed by the Retail Association of Nevada. Essentially, the first amendment that is listed in the work session document is not necessary because it is captured by the proposal in number three. I will just start with number two. These suggestions were proposed by Nate Garvis on behalf of Target. I have just indicated what his proposals are in the work session document; I have not included his testimony. His first suggestion was to expand the bill so that it is not limited to rings where there are just three or more participants. Also, he wanted to expand the bill so that it is not limited to situations where more than one merchant is robbed. At number three, we have proposals by Lea Lipscomb on behalf of the Retail Association of Nevada. Her first suggestion is to amend Section 1 to provide a minimum aggregate loss of $1,000 and reduce the minimum term to one year. Also, it would amend Section 1, page 2, line 14 by reducing the minimum term to two years. Additionally, there was the amended definition of organized retail theft ring.

Chairman Anderson:
I have in my notes that I was concerned about this being a category B felony. That is pretty high up the list as far as felonies go. Usually there is a 1 to 10 or a 2 to 15-year sentence for burglary or racketeering for category B felonies. Why would we not have this crime in the category C felonies?

Jennifer Chisel:
There was no proposed amendment regarding the level of felony. I have in my notes that they did not want to use the category C felony because that is the felony for shoplifting, and they wanted to raise it above shoplifting.

Chairman Anderson:
I see that they are changing the minimum term of imprisonment to be "not less than a year." Also, the amendment is reducing the second to a two-year minimum sentence. Additionally, it says an organized retail theft ring does not include a family grouping.

Assemblyman Horne:
All I see in the amendment is that they want to move the aggregate down to make the threshold only $1,000. In the bill it was $10,000. Now, in order to

meet this threshold for the category B felony, they only have to reach an aggregate of $1,000.

Jennifer Chisel:
In the original bill, there was no minimum threshold; it just said, up to $10,000. This would provide a minimum. They have to reach $1,000 in order for this legislation to kick in.

Assemblyman Horne:
I recall now that there was no floor. The amount of $1,000 still seems really low. I wonder if the Committee would consider making that threshold $2,500, especially if we are going to keep it at a category B felony.

Chairman Anderson:
The other issue involved is the one dealing with the six-month time period. Six months is a relatively long time in terms of amassing materials.

Assemblyman Horne:
I recall having a question on how this would be prosecuted. If these types of crews are moving from one county to another, are there going to be three separate prosecutions because they can reach these thresholds in three different counties, or can the prosecution aggregate all of the cases and do the prosecution in one location? I do not think that I ever received an answer for that. Theoretically, there could be a prosecution in each locale.

Chairman Anderson:
Can I ask Ms. Erickson and Mr. Graham to come to the table?

If today, in the real world of Nevada, you found that such a ring existed, how would the district attorney's office approach the issue? How would you currently handle these people under our current statutory scheme?

Kristin Erickson:
We currently have several options for handling that. We could use the current burglary statute if we can prove that they entered with the intent to steal. We could also charge petty larceny if the value of the merchandise was less than $250.

Chairman Anderson:
Could you use conspiracy?

Kristin Erickson:
Yes, we could also charge conspiracy to commit various crimes.

Chairman Anderson:
Even if you were driving the car or were the holder of the merchandise?

Ben Graham:
We have participated with the retailers on this legislation, and there was some sentiment in the law enforcement community that we had a statutory scheme that would address much of what was encompassed here. However, I do think that they made a fairly compelling argument that these enterprises are something more than what we deal with on a day-to-day basis. This would allow the retailers a significant tool to potentially develop cases to turn over to or alert the law enforcement community regarding these large theft operations.

Chairman Anderson:
Shall we raise the dollar amount for the minimum threshold for aggregate value theft during a period of 180 days to $2,500? I am still a little uncomfortable with the 180 days. I would suggest a shorter period of time. Ninety days may not be long enough to give them ample time, but it should be long enough though.

Assemblyman Cobb:
We need to keep in mind that these groups are probably not limited by political boundaries and could easily leave the State for a certain amount of time and then come back. If we lessen the number of days, they could go to another state, wait out the six months, commit more crimes, then return.

Chairman Anderson:
I think the scenario of the perpetrators leaving the State seems to be very applicable. Three months is still a substantial period of time and that is the very reason for a statute of limitations on certain crimes.

Assemblywoman Gerhardt:
I need clarification on Section 1, line 22, where it says, "The amount involved in a single theft shall be deemed to be the highest value by any reasonable standard of the property or services which are obtained." Since we are still kicking around the idea of what the aggregate value is going to be. . .

Chairman Anderson:
We will come back to the aggregate value question. I want to finish the discussion on days.

Assemblyman Ohrenschall:
Perhaps 90 days would not be unreasonable.

Chairman Anderson:
That has been suggested.

Let us go back to Assemblyman Horne's original suggestion that the aggregate value of the theft committed be $2,500.

Assemblyman Cobb:
In the original bill there was no minimum threshold. It is a very responsible thing for the industry to come forward and say that there should be some minimum, a lower threshold. I think $1,000 is appropriate because once again we need to focus on the problem and deter these crimes. Right now we have a cost of $30 billion to our industry, and I think it sends a strong message if we keep a threshold of $1,000 rather than raise it to $2,500.

Chairman Anderson:
Ms. Gerhardt, your question does not deal with where the floor should be, but with another section of the bill. You want to talk about Section 1, subsection 3a, lines 22-24.

Assemblywoman Gerhardt:
In order to determine how we are going to apply this law, we are going to be figuring out the value of a certain theft. I am concerned with the term of "highest possible value." That is not what the product is purchased for or what the product sells for. But for this purpose, we are going to try to determine the highest possible value of a product. How does that work?

Risa Lang:
I want to point out that in NRS 205.0834 that language is the standard currently used in determining the amount involved in a theft. This merely duplicates the language, but this also says that you have to aggregate the different thefts.

Chairman Anderson:
Items at the Dollar Store cost a buck because it is the Dollar Store, but the items' market value in other places may be $9.25. If someone shoplifts here, they are not charged with an amount of a dollar, but $9.25 even though it never sold for that price.

Assemblyman Ohrenschall:
Perhaps a fair method of determining value would be the actual loss to the retailer, instead of the highest mark-up value before it was on sale?

Chairman Anderson:
So, we are talking about the price that the retailer buys the product for? You are suggesting this price only for use with this statute, right?

Assemblyman Ohrenschall:
I would agree with that, but perhaps the additional cost suffered for loss prevention could be factored in.

Assemblywoman Gerhardt:
The retailer should certainly not lose their profit, but I think it should be what the marked value on the item is.

Chairman Anderson:
It depends on what store you take it from to determine the market value. Since this is a theft ring and they could be taking from various stores, you would have a variable price.

Assemblyman Cobb:
The section that we are considering only deals with aggregating the value in terms of determining which punishment is appropriate under Section 1, subsections (a) and (b). It has nothing to do with repaying the store. The fine that is set in statute is not based on the exact amount that was stolen. This does not involve any loss of profit for the store. It is merely to determine the value that was stolen for the purpose of prosecuting the individuals involved in the ring. I think we should leave the language as it is now. It matches other statutes in the NRS. I feel that $1,000 is an appropriate minimum.

Assemblyman Horne:
If we are going to move this bill today, I believe that at line 22 the amount is fine. Mr. Cobb's analysis is correct. In having worked in retail, the products come with packing slips that state the price. I am not comfortable moving the bill if the floor is $1,000. I would suggest $2,500 on that, especially for a category B felony. That would raise my comfort level.

Assemblyman Mabey:
I support the language the way it is and would still support the $2,500. I feel this is important legislation and I would like to see our Committee move with it.

Chairman Anderson:
Ms. Gerhardt, how is your comfort level?

Assemblywoman Gerhardt:
I am satisfied as long as it is fair and easy to determine. I would like the higher minimum amount.

Assemblyman Carpenter:
I think it is important to move this legislation. We should change the days to 90 and the amount to $2,500.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 421.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

This bill is Assemblywoman Weber's, and Assemblyman Horne will explain the amendments on the Floor.

Meeting adjourned [at 10:45 a.m.].

RESPECTFULLY SUBMITTED:

_____
Janie Novi
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 12, 2007 **Time of Meeting: 8:39 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Jennifer Chisel, LCB Research Division	Work Session Document