MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
April 21, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:38 a.m. on Tuesday, April 21, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman Ty Cobb, Assembly District No. 26

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Howard L. Skolnik, Director, Department of Corrections
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety
David Humke, Washoe County Commissioner, District 2
Michael J. Pomi, Director, Department of Juvenile Services, Washoe County; Nevada Association of Juvenile Justice Administrators
Scott J. Shick, Chief Juvenile Probation Officer, Juvenile Probation Department, Douglas County; Nevada Association of Juvenile Justice Administrators

Samuel G. Bateman, Deputy District Attorney, Office of the District Attorney, Clark County; Nevada District Attorneys Association
Rebecca Gasca, American Civil Liberties Union of Nevada
Jason Frierson, Office of the Public Defender, Clark County
Captain Philip K. O'Neill, Division Chief, Division of Records and Technology, Department of Public Safety
Major Tony Almaraz, Deputy Chief, Highway Patrol Division, Department of Public Safety
Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office; Nevada District Attorneys Association
Ronald Dreher, Government Affairs Director, Peace Officers Research Association of Nevada
Tim Kuzanek, Administrative Services, Governmental Affairs, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office

CHAIR CARE:
I will open the hearing on Assembly Bill (A.B.) 259.

ASSEMBLY BILL 259 (1st Reprint): Makes various changes relating to criminal offenders. (BDR 16-631)

HOWARD L. SKOLNIK (Director, Department of Corrections):
The Department supports A.B. 259, which cleans up language from A.B. No. 510 of the 74th Session. There are a number of Category B felons who would have qualified for residential confinement. The wording in A.B. No. 510 of the 74th Session eliminated them from that. This bill would restore nonviolent offenders' ability to qualify. It would hold the director of the agency responsible for making recommendations regarding the safety of the community. The bill also deals with time credits.

CHAIR CARE:
Section 1, subsection 4, paragraph (b), says, "The Director makes a written finding that such an assignment of the offender is not likely to pose a threat to the safety of the public." This would be new law. We do not want that to come back to haunt us. Please address how you would make that determination.

MARK WOODS (Deputy Chief, Division of Parole and Probation, Department of Public Safety):
We support A.B. 259. Assembly Bill No. 510 of the 74th Session included credits that were good carrots for our offenders. However, we realized gross misdemeanants were left off. We brought an amendment to the Assembly adding gross misdemeanants to the bill.

The other amendment involves people in a specialty court or who owe restitution (Exhibit C). The law permits offenders to earn enough credits to get off before their restitution is paid in full or before completing their drug court or specialty court program. Under our amendment, offenders do not earn any credits until they complete the specialty court program or pay off their restitution. Once they pay off their restitution or finish the specialty court program, they will get all their back credits. They will still be able to get off, so there is still an incentive for them.

CHAIR CARE:
Regarding the written finding the offender is not likely to pose a threat to public safety, please walk us through that process.

MR. SKOLNIK:
These offenders will go through the standard intake process. They will be evaluated medically and psychologically. They will be given points based on a system of classification developed for the Department showing current and future risk factors. They will then be reviewed specifically by classification for possible placement in residential confinement similar to non-Category B offenders. Parole and Probation does a community review before they are released to make sure the release is appropriate. The standards would be developed in the form of an administrative regulation, which would go through the Board of State Prison Commissioners for their review and approval before the standards would be effective.

MR. WOODS:
To illustrate our amendment, Exhibit C, let us say we have an offender on probation for a maximum of five years. The restitution was a large amount. The Division recognized in order for the offender to pay that amount of money, the monthly payment would be beyond his means. By working with the offender and looking at the fiscal situation, we would determine he would have to make a certain minimum monthly payment. Currently, if he makes the monthly

payment, he would earn the good-time credits for that month, which would be ten days. In reality, he would actually earn enough credits to get off earlier than the five years, and he would still owe restitution. He could potentially still have another year or two on probation. Our amendment says if you owe restitution, you must pay it in full before you get any good-time credits. Once that is done, offenders will receive all the credits they would have earned from the beginning. This keeps them in the system and gives us every possible chance to make the victim whole. At the same time, there is the carrot for the offenders. If they continue to pay what they are required to pay, they will still get off early.

CHAIR CARE:
Do the restitution payments go straight to the victim or to the State to be turned over to the victim?

MR. WOODS:
They go to the victim through the State.

CHAIR CARE:
If the victim does not get the money, what is his recourse?

MR. WOODS:
The offender signs a civil confession of judgment at sentencing. The victim would use that to go after the offender for the money.

CHAIR CARE:
The judgment is entered, and it is up to the victim to execute on the judgment when there are probably no assets.

SENATOR WIENER:
Based on what we have heard, is this utilized in other states?

MR. WOODS:
We are one of the unique states to give good-time credits for supervision. I am not sure of any state that will give someone good-time credit for being cooperative and doing what they are supposed to while on community supervision. New Hampshire and Vermont are interested in this system because this is a carrot to get the offender to cooperate with us.

CHAIR CARE:
Please give us an update of the prison population in Nevada, what your capacity is and recent trends in the last couple years.

MR. SKOLNIK:
Our total population has been running around 12,700 for over a year now, with approximately 970 female inmates. The population has fluctuated by about 20 inmates total. It continues to stay flat. We have some vacant beds. We will soon get a certificate of occupancy for Unit 5 at High Desert State Prison, which will add 336 beds in each of two units. We do not anticipate opening that, based on discussions with money committees. Rather, it appears those funds will be redirected to keep Nevada State Prison open. But, those beds will be available if we are pushed up against a wall. We also have available beds at Florence McClure Women's Correctional Center. We opened 240 beds in a preengineered building during this biennium and have almost completed construction of an additional 300 beds at that facility. We are in good shape for the biennium regarding our ability to absorb a change in the population.

SENATOR PARKS:
Having served as Chair of the Select Committee on Corrections, Parole and Probation in the last Session, we considered A.B. No. 509 of the 74th Session and A.B. No. 510 of the 74th Session, which significantly changed the tabulation of credits for inmates. During that Session, we wanted to tread more slowly. Therefore, this bill is the next step to follow up those two bills from last Session.

CHAIR CARE:
I will close the hearing on A.B. 259 and open the hearing on A.B. 237.

ASSEMBLY BILL 237 (1st Reprint): Revises the provisions governing the certification of certain juveniles as adults for criminal proceedings. (BDR 5-825)

DAVID HUMKE (Washoe County Commissioner, District 2):
In the 1995 Session, Governor Robert Miller worked with Senator Mark James. There was an effort during that Session to become tough on crime, specifically juvenile crime. There was a grave concern that in juvenile gangs, some of the older members would use the younger members to commit serious offenses

because they were juveniles. Therefore, the ages for some of the serious crimes for which a child could be transferred to adult court were moved downward.

Then, along came *In Re William M.*, 124 Nev. 95, 196 P.3d 456 (2008). There was a self-incrimination problem. That is where this bill came from. The Assembly used a committee bill to make some of those changes to comport with *In Re William M.* and to look at some of the other age limits.

When I left the Assembly in 2002, I went to work at the National Council of Juvenile and Family Court Judges and was exposed to a 50-state analysis of what all states were doing with juvenile justice. I learned that statistically, serious youth crime was on the downswing at the time we passed the bill in 1995. We went after a problem that was not as severe at the time we sought to fix it. Assembly Bill 237 is now going the other way to make the changes mandated by *In Re William M.*

SENATOR WIENER:
On page 2, section 1, subsection 1, paragraph (b), you retained 14 years of age for a crime that would have been a felony if committed by an adult. On page 2, line 22, the age is raised from 14 to 16. Can you help me understand that?

MICHAEL J. POMI (Director, Department of Juvenile Services, Washoe County; Nevada Association of Juvenile Justice Administrators):
When we testified in support of this bill in the Assembly, line 10 on page 2 of the bill did say 16 years of age and was modified as it moved to the Senate for consideration. We support the language being 16 years of age throughout the bill and to modify line 10 to say 16 years of age.

In Clark County in 2008, there were six motions for certification of 15-year-olds. There were two motions on 14-year-olds. In Washoe County, we had three total certifications of 14- and 15-year-olds from 1997 to 2008. This is not a large number. When the legislation was originally proposed, we did not have Summit View Youth Correctional Center in Clark County. We now have a place to keep public safety at the top and to protect our communities. We have a place to put kids in a viable alternative that did not exist at the time we looked at setting the age at 14.

The Juvenile Justice Administrators support moving the age to 16, which was the original intent of the bill coming out of the Assembly.

CHAIR CARE:
Do you know what the cases involved where 14-year-olds were certified?

MR. POMI:
I do not know, but I will get that information for you.

SCOTT J. SHICK (Chief Juvenile Probation Officer, Juvenile Probation Department, Douglas County; Nevada Association of Juvenile Justice Administrators):
Fourteen-year-olds do not belong in the adult system in any way. We have the ability to treat even heinous offenses, such as sex offenses and weapons-related offenses, in the juvenile justice system. The adult system is not geared to house them, treat them on parole and take them back out on the street. Any 14-year-old I have ever worked with was treatable, and many of them had weapons and sex offenses. They need to be held accountable in the juvenile justice arena.

CHAIR CARE:
If there is a self-incrimination issue, you are left with a juvenile who has a substance abuse, emotional or behavioral problem. There is still an implication, without getting the child to admit to it, the crime is a result of this other problem. Since he will not admit to it, and the court cannot draw that conclusion, why not delete that section of existing law altogether?

MR. POMI:
The majority of our kids have substance abuse or emotional disturbance issues. Up to 50 percent to 60 percent of our daily population in detention in Clark and Washoe Counties suffer from a diagnosable Axis I mental health disorder. The language speaks to the population we deal with. The majority of our kids also experiment with substances. I would like the Committee to consider that these kids, regardless of how we change the language, belong in the juvenile justice system. In whatever way you fashion this legislation, we hope it is supportive of moving kids away from adult corrections and into juvenile corrections where we are trained to deal with them.

CHAIR CARE:
What if we were to say something like, juvenile court specifically finds by clear and convincing evidence that the child is developmentally or mentally incompetent, and the court has reason to believe there is a nexus there. I do not

know if there is a way to craft that. That standard is still clear and convincing evidence.

MR. POMI:
I spoke with Frances Doherty, District Judge, Family Division, Second Judicial District. Filing the motion would be the district attorney's responsibility, and they would have control of it. The language should say the court would have the ability to move kids, and it should be discretionary, not mandatory. On page 2, line 14 of the bill, where it says, "... the court shall certify ... ," it should say, "may certify." We want to give complete due process to our children. There would be a public defender, district attorney, parents and the court present, which should have the ability after hearing all testimony to certify children and move them. The court should have the control after all parties are heard to make that decision.

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
If changing the "shall" to "may," you are eliminating the concept of presumptive certification.

CHAIR CARE:
I suggest we go ahead and make that an item for discussion at a work session. If a child cannot be forced to testify on the issue, maybe it would be the court's discretion.

SAMUEL G. BATEMAN (Deputy District Attorney, Office of the District Attorney, Clark County; Nevada District Attorneys Association):
As this bill came to the Assembly, it included a change to section 1, line 10, on page 2 of the bill to 16 years. A juvenile can end up in adult criminal court in three ways. If they committed a murder, attempted murder or sexual assault when they already have a felony offense, they go straight to adult court. These are called direct files. By statute, juvenile court has no jurisdiction over those individuals.

There are two other ways for a juvenile to end up in adult court, called certification. If a juvenile is booked into juvenile court, juvenile court has jurisdiction until that juvenile is certified to adult court. Those are the two issues addressed in section 1 of the bill. The first one is commonly referred to as discretionary, which is under section 1, subsection 1 of the bill. Discretionary is when the burden rests entirely on the State of Nevada to prove to a district

court judge that this particular juvenile should be treated as an adult based upon the crime. That is a small number of 14- and 15-year-olds in Clark County.

Section 1, subsection 2 of the bill deals with presumptive certification. It is offense-specific. If a juvenile commits a sexual assault with violence or an offense involving a firearm, it is presumed they should be treated as an adult. The burden then rests on the juvenile to prove they have some mental issues or a substance abuse problem. Before *In Re William M.,* you will note on line 30, page 2 of the bill, the statutory scheme essentially said the child had to show their emotional, behavioral or substance abuse problem had a direct nexus to their criminal activity or the actions they took on the offense date. This is where the Nevada Supreme Court determined there was a Fifth Amendment violation because it was requiring the juvenile to make a statement that inculpated themselves. Therefore, they struck down the whole statute, but it really only addressed the presumptive section.

After testimony in the Assembly, line 10 on page 2 of the bill remained at 14 years of age. That is the discretionary certification process where the State retains the burden to convince a judge that, based on all the facts of the case, this juvenile should be treated in the adult court. The compromise was that on line 22, page 2 of the bill, in the presumptive section where the burden is on the juvenile, the age goes from 14 to 16 years.

I am not here to oppose that change. If the bill were to go forward with that change, the District Attorneys Association will live with that change and will not oppose it.

We do oppose changing the discretionary age to 16. Juveniles are committing armed robberies, and it is largely gang-related. I handle most certifications in Clark County that come to adult court. The crimes are armed robberies or involve individuals who have been through the juvenile system, had multiple petitions and are committing robberies with firearms. The juvenile system has not created a situation where they can address these individuals. It is a small number of 14- and 15-year-olds. There is a larger of number of 16- and 17-year-olds.

We also get some juveniles who commit violent sexual assaults under this section. There was mention of the gang problem in Clark County. There has been a change since 1995 when older gang members used younger gang

members to get around being treated as an adult. We now have hybrid gangs who have young members. There is not as much structure like there is in the older gangs. They are financially driven. They are doing the armed robberies. They are the 14- and 15-year-olds who are coming to adult court. The only rule these hybrid gangs have is that there are no rules.

On lines 33 to 35, page 2 of the bill, it says, "... substance abuse or emotional or behavioral problems may be treated through the jurisdiction of the juvenile court." If a judge is certifying a juvenile under this subsection, the judge is making a finding that the juvenile court cannot appropriately treat that particular juvenile.

Ultimately, in Clark County, a juvenile gets a maximum of 12 months in a youth camp, and with good time credits, they get out much sooner. Juveniles are committing armed robberies. If our only option is to keep them in juvenile court, someone who likely has a significant criminal history and is committing serious violent crimes in our community would get nine months in a youth camp. If we had more options in our juvenile system, you may be able to readdress whether we should be sending some of these juveniles to adult court. How do you deal with the most violent individuals who are committing violent crimes in the communities?

Therefore, we have the compromise before this Committee that we do not oppose changing the age on the presumptive statute to 16. The other point I would make has to do with the Nevada Supreme Court decision. We submitted an alternative to the fix contained in lines 30 to 33 on page 2 of the bill. Our alternative was modeled after some other statutes. It left the language as is in lines 30 and 31. However, it included another section saying that any statements made in furtherance of rebutting the presumption—any inculpatory statement that a juvenile was involved in a particular crime, which was substantially influenced by their substance abuse problem—cannot be used against them in any other proceedings, whether it is a delinquency proceeding if they were not certified, a discretionary certification process if they were not presumptively certified or in criminal court if they were certified. That remedies the Fifth Amendment violation because a true Fifth Amendment violation does not occur until your incriminating statement is actually used against you, and you are compelled to be a witness against yourself at the same time. The witness-against-yourself portion of this is largely to the benefit of the juvenile in a presumptive proceeding.

Mr. Chair, you mentioned a juvenile having to make statements about his substance abuse problem, which begs the question of whether that substance abuse problem had something to do with the juvenile's activity, and it still requires the juvenile to make statements. That is why we were still concerned about this particular fix. The Assembly decided to go with this fix over ours. I would be happy to submit our fix between now and the work session.

CHAIR CARE:
We will take it. I am not trying to create a controversy. I am not saying I would change this. It is ripe for discussion. You have no issue on line 22 on page 2 of the bill, leaving the presumptive certification at age 16 as it is in the first reprint of the bill?

MR. BATEMAN:
Yes, as long as there were no other changes to the bill.

CHAIR CARE:
Please submit the language you made reference to.

REBECCA GASCA (American Civil Liberties Union of Nevada):
We are neutral on this bill. This bill appropriately addresses the acute constitutional concerns raised by *In Re William M.* Unfortunately, I do not hear support of the juvenile certification aspect of it. The American Civil Liberties Union of Nevada believes juveniles are best served in juvenile court, whether they are 14, 16 or 17. While I am not in support of any of the changes that have been made, we hope the Committee would consider keeping the threshold at 16 across the board. That would be a step in the right direction, although we do not actually support the certification on its face.

JASON FRIERSON (Office of the Public Defender, Clark County):
I support A.B. 237, both in its original form and its current form. There was discussion and compromise in leaving the discretionary certification age at 14 and moving the presumptive age to 16. We support that as a step in the right direction, a step toward recognizing many issues that come along with treating a juvenile in the adult system and the adult system's ability to supervise and care for that individual in an adult environment. Those who introduced the bill suggested moving toward eliminating presumptive certification. That is something we would also support. However, we support this bill as it was released from the Assembly.

We have some concerns regarding the nexus between the individual who may have a substance abuse or emotional problem and their conduct. The case that gave rise to this change had an issue with the juvenile having to confess in order to benefit from not being certified. I understood it was crafted in this way to remove that nexus and say if a juvenile has a substance abuse or emotional behavior problem and committed an act that fell within this, that would allow the court to consider whether or not to certify.

CHAIR CARE:
No one has an objection to leaving the age at 16 on the presumptive certification. Referring to the language on page 2 of the bill, lines 32 and 33, which would be new law, please walk us through the steps of how that information would come before the court if it will not include a statement from the child himself.

MR. FRIERSON:
I briefly worked in the juvenile court system, but not often enough to be comfortable explaining the process in detail. I could have people from our juvenile department provide some information and clarity on the exact process.

CHAIR CARE:
That would be helpful. This bill will go on Friday's work session. Please get that information to us in that time frame.

MR. POMI:
Two points: First, Summit View Youth Correctional Center in Clark County will not be closed. The bed capacity was reduced to 48. Ways and Means introduced $466,000 back into community corrections so juvenile justice across the State could keep kids in corrections.

Second, what we do in corrections is not about the length of time children stay in commitment. It is about changing their cognitive behavioral structure thinking. We do Thinking for a Change, a behavioral program for offenders, throughout the State, including Clark County.

We are saying to the Committee there is an evidence-based practice to work with kids. We are talking a small population of youth that would be afforded the opportunity to not enter the adult system where they are sexually and physically abused. They do not stay out of prison. The likelihood is they enter back into

the adult system because once-certified, always-certified, which maintains that prison status in their life. They learn from the experts, who are the adults. When you put a 14- or 15-year-old on a prison yard, you have to use separate housing of those youth to protect them. It is ridiculous for the district attorneys to look at any other option but 16. We are fashioned in this State to deal with them appropriately. I hope the Committee will see that.

CHAIR CARE:
I will close the hearing on A.B. 237 and open the hearing on A.B. 253.

ASSEMBLY BILL 253: Revises the crime of resisting, delaying or obstructing a public officer in the discharge of his duties. (BDR 15-892)

ASSEMBLYMAN TY COBB (Assembly District No. 26):
I am here to present A.B. 253, which is a measure designed to give district attorneys in Nevada an additional tool in prosecuting individuals who take or attempt to take a peace officer's firearm. I requested this bill after Captain Philip K. O'Neill was attacked last year by several individuals who attempted to kill him with his own firearm.

Fortunately, he was not injured. However, there was no specific crime under Nevada law to charge the individuals for taking Captain O'Neill's firearm. The job of law enforcement officers is dangerous. The latest statistics from the Federal Bureau of Investigation report that in 2007, 57 law enforcement officers were feloniously killed in 51 separate incidents throughout the country. Fifty-five of these 57 officers were killed with firearms, including 2 with their own weapons.

Assembly Bill 253 amends *Nevada Revised Statutes* (NRS) 199.280, which is the crime of resisting, delaying or obstructing a public officer in the discharge of his duties. Currently, this crime is a Category D felony if a dangerous weapon is used and a misdemeanor if no dangerous weapon is used. The bill adds language specifying if a firearm is used in the course of resisting, delaying or obstructing the officer, or the person intentionally removes, takes or attempts to remove or take the firearm from the officer, the crimes escalate to Category C felonies, punishable by one to five years in prison.

This is crucial for instances where a detainee may disarm a peace officer without attempting to harm him and flee with the officer's weapon. Knowing

the dangers officers face every day to protect the public, it is important to match the penalty with the crime. Taking the firearm of a peace officer is a public danger and should carry a greater penalty than a simple robbery. I urge the Committee's passage of A.B. 253.

CAPTAIN PHILIP K. O'NEILL (Division Chief, Division of Records and Technology, Department of Public Safety):
This bill is aimed at providing our community with another tool in protecting itself from the outlaws who have chosen not to live within society's boundaries. During my years as a peace officer, I have served in almost every aspect of law enforcement. During my tenure, I have been assaulted numerous times with fists, clubs, knives, cars and firearms. The violence that confronts our world every day is not an abstract thing. Public officials and peace officers are assaulted daily. In 2007, over 2,100 officers were assaulted nationwide. Nevada had 569 of those officers; 20 of those attacks were with firearms.

At approximately 6 p.m. on November 14, 2007, I was saying goodnight to staff and was advised that a woman was being assaulted in the parking lot. I told staff to stay inside and call the Sheriff's Office for assistance. I went out to investigate what was occurring. I interrupted a violent domestic argument. As I attempted to calm the situation and prevent any further injuries, the three friends, two young males and a female, banded together and jumped me. They struck me with their fists, kicked me, choked me and tried to take my firearm from my holster. One of them took my weapon and placed it to my head, pulling the trigger. Fortunately, my weapon had a manual safety, and the young man did not know how to operate it. As the fight continued, he put a new round into the chamber, put it to my head again and tried to discharge the weapon and kill me. Help arrived, and the three were taken into custody.

They were charged with a series of offenses, including robbery, attempted murder and resisting arrest. The case was successfully prosecuted, and a felony plea negotiation resulted in 2 offenders serving 6 years and 1 serving 12 years in the Department of Corrections.

A law makes a statement of what acts we will not accept in our culture. You are being asked to make a statement that in Nevada resisting or obstructing a public officer to such a serious degree as taking or attempting to take the officer's firearm will not be tolerated.

CHAIR CARE:
There is an enhancement for the use of a firearm, even if it is your firearm someone has taken from you. These people had reason to know you were law enforcement, and there is an enhancement there. In light of that, is it necessary to have an additional statute with criminal sanctions for the conduct you ran into that evening?

CAPTAIN O'NEILL:
We are providing an additional tool. My situation was an extreme. However, there have been times when people have tried to take my weapon from me as I have passed by in crowds. This bill would address that. It also addresses the attempting to take the weapon in not necessarily a full-on assault.

ASSEMBLYMAN COBB:
The main change in the law in A.B. 253 is the attempt to take a firearm from a peace officer, which is not currently in statute in terms of a felony.

MAJOR TONY ALMARAZ (Deputy Chief, Highway Patrol Division, Department of Public Safety):
The issue is attempts to remove firearms. From my experience, usually when things go bad, it is during traffic stops, investigations and field interviews. When it is time to go to jail, suspects will usually make an attempt to get away. They will use any means to get away—pushing, punching, and attempting to grab weapons or impact tools.

We are trying to clean up the language so it is not so ambiguous when someone attempts to get an officer's weapon. Currently, if they hurt me, there is a felony. We are trying to get away from that.

CHAIR CARE:
What do you do now if someone attempts to take your weapon? What recourse do you presently have?

MAJOR ALMARAZ:
That is where it is unclear. Unless the officer is injured, it is difficult to prosecute that action.

KRISTIN ERICKSON (Chief Deputy District Attorney, Washoe County District Attorney's Office; Nevada District Attorneys Association):
The issue has been adequately identified. The issue arises on line 12, page 2 of the bill where it says, "Where a dangerous weapon, ... is used ... ." The argument has been that attempting to take someone's gun is simply that, attempting to take the gun. It is not being used to resist them. The argument could be made they were attempting to take it to throw it away so it was not used at all. That is where the issue arose, and this bill clarifies that if you try to take the gun, it is a felony.

CHAIR CARE:
Is it your testimony that this does fill in a gap?

MS. ERICKSON:
Yes, it does.

RONALD DREHER (Government Affairs Director, Peace Officers Research Association of Nevada):
We support A.B. 253. If someone attempts to take a peace officer's weapon right now, they would be charged with obstructing and resisting, which is only a misdemeanor. Most officers carry weapons other than guns—Armament Systems and Procedures batons, which is a small spring-loaded expandable baton; tasers or handcuffs. This bill would make the attempt to take any of these weapons at least a Category D felony. You will not always have the extreme situation as Captain O'Neill experienced, but it happens all the time.

TIM KUZANEK (Administrative Services, Governmental Affairs, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association):
We support A.B. 253. On numerous occasions in the last 15 years, I have had to defend myself and try to retain my weapons. My experience has been that the best I could do was charge those persons with a misdemeanor. This bill helps to clean that up and fill that gap.

MR. FRIERSON:
We do not uphold addressing the problem targeted by this bill. We have statutes in place to address the conduct. Nevada Revised Statute 205.226 deals with grand larceny of a firearm, which is a Category B felony punishable by one to ten years. Nevada Revised Statute 205.270 deals with larceny from a person for anything valued at $2,500 or less, which is a Category C felony punishable

by one to five years. Nevada Revised Statute 200.380 deals with robbery, which is taking by force or fear and used to obtain property, prevent or overcome resistance to the taking or facilitate escape. This is a Category B felony, punishable by 2 to 15 years. In a robbery case, the degree of force is immaterial. There is attempted murder, which is punishable by 2 to 20 years. One of the individuals in Captain O'Neill's situation was charged with attempted murder. Injuries are not required in any of these statutes. They are simply theft statutes where the Nevada Legislature has recognized the increased danger of theft, either of a firearm or theft from a person.

The impetus behind this bill was from California. I did some research and could not find anywhere other than a couple of states, Colorado and California, where they have anything remotely similar to this bill. I do not know if they have the statutes we have dealing with theft of a firearm.

This situation, which is already adequately addressed, contributed to our overcrowding because we have stacked charges. We have options, and we create more options.

In California particularly, when you are dealing with resisting arrest, it is understandable to always be concerned about the possibility of someone going for your weapon. California addressed that situation by adding extra criteria which must be proved to go forward. This includes, for example, whether the firearm was actually removed, whether there were fingerprints on the firearm or holster, whether there was an independent witness who saw the incident or whether the safety on the gun had been released. Those criteria were added because there is always the danger of a perception of someone going for a weapon in any resisting case.

We do not oppose addressing this problem. We believe it is already addressed. If we are going to move forward, those safeguards would be a good idea to include here to make sure we are not dealing with just the perception, but some type of corroborated proof. We take issue with including attempt in any of the criminal statutes because we have an entire attempt statute. For an attempt Category B felony, it would already be a Category C felony. For an attempt Category C felony, it would already be a Category D felony. That is in NRS 193.330. All of those matters are already covered. If we are going to move forward with repetitive legislation, the attempt is not necessary because it is already covered. Tightening up the language somewhat similar to California

would make this better, although it would be duplicative of statutes we already have in place.

SENATOR WIENER:
There is a distinction between intentionally removing a weapon and attempting to remove a weapon. The California model requires a physical touching of the weapon. It is not subjective. Do you agree with that?

MR. FRIERSON:
California has several others. From memory, I recited a few of California's requirements, but they have several others. Another one is whether the individual made statements indicating they were trying to go for the weapon. They do take into account circumstances where it was attempted, but not successful.

I acknowledge your concern about the danger of attempt. First, because we have NRS 193.330, we have felony options for attempt. The appropriate focus is not so much ignoring the attempt, but acknowledging the danger of the successful taking. If we did not have options for attempt, it would be problematic because attempting to take an officer's weapon is a problem and warrants consequences greater than a misdemeanor. With NRS 193.330, we have that. I do not know if California has that. I do not want to suggest they have to succeed in the taking in order for it to be elevated to felony treatment.

SENATOR WIENER:
In the years you have been with the Public Defender's Office, or in sharing conversation with others, have there been numerous cases where these existing laws have been used to hold people accountable who have put officers in jeopardy?

MR. FRIERSON:
I have not seen any of these using the officer cases. I have had situations where there were other charges in the same case. If there was a resisting situation, even if it was in a police report that it was alleged, there were so many other charges more serious than a Category E or D felony that ultimately the case was not charged that way or was resolved before a complaint could be amended. Those are charging decisions properly left up to the discretion of the prosecutors. We have the tools, and there is no showing we do not have options.

ORRIN J. H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):
The bill proponents testified the problem went beyond just taking a weapon and using it against the officer. They want to address the behavior with the same language in the statute of taking a weapon and then tossing it away for whatever reason, or just taking it. It is worth pointing out that those two behaviors, while both are bad, are already covered. They are different and should be punished differently. There is a difference between taking a weapon and using it against the officer and taking it and throwing it away or just taking it and running away with it. Not to excuse either of those, but one is more serious than the other. One should be addressed more seriously than the other to avoid prison overcrowding by addressing everything under the harshest possible penalties. Existing law covers these situations adequately. We oppose A.B. 253.

CHAIR CARE:
The reality is anyone who would be charged under this crime would already be charged with a laundry list of other offenses. Thus, this becomes part of the plea bargaining leverage the prosecutors have. Nonetheless, we also are being asked, as a matter of public policy, to demonstrate to the public that in the minds of the Legislature the role of law enforcement is so serious that any attempt to forcefully interfere with those responsibilities carries a penalty. I suggest if you have any ideas, please forward those to the members of the Committee and to Assemblyman Cobb.

MR. FRIERSON:
I did not provide it today because I did not have an opportunity to give it to Assemblyman Cobb first. I will do that. We probably are more on the same page than not.

CHAIR CARE:
It may be that this conduct would meet the elements of robbery or theft, but we are carving out something different that applies only to law enforcement. I will close the hearing on A.B. 253. There being nothing further to come before the Committee, we are adjourned at 9:56 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: