MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
February 27, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:34 a.m. on Friday, February 27, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file 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:

Senator Dean A. Rhoads, Rural Nevada Senatorial District
Senator Michael A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Pam Borda, President, Spring Creek Association
Renny Ashleman, City of Henderson
Michael W. Bouse, Director, Building and Fire Safety, City of Henderson
Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno
Peter Crooymans

John Radocha
Mark Wier
Kevin C. Barker, Las Vegas Police Protective Association
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Sergeant Ray Magee, Regional Gang Unit, Reno Police Department
Sergeant Mark Marshall, Carson City Sheriff's Office
Kristin Erickson, Nevada District Attorneys Association
Lieutenant Tom Roberts, Las Vegas Metropolitan Police Department

CHAIR CARE:
We will open with Senate Bill (S.B.) 149.

SENATE BILL 149: Exempts limited-purpose associations that are created for a rural agricultural residential common-interest community from certain fees. (BDR 10-771)

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District):
Senate Bill 149 deals with issues regarding the Spring Creek community located in Elko County. There has been an ongoing battle paying annual registration fees due the Office of the Ombudsman for Owners in Common-Interest Committees. The Spring Creek Association was exempt from paying registration fees for several years. Pam Borda is the President of the Spring Creek Association and will explain the problems the Association has had for the past few years.

CHAIR CARE:
Ms. Borda, I understand from the Senator's testimony there is some ongoing battle about whether associations such as Spring Creek are exempt from the purview of the Ombudsman. Is that your understanding as well?

PAM BORDA (President, Spring Creek Association):
Yes.

CHAIR CARE:
Walk us through the problem so we can get an idea of what we are trying to do here. I see it is an exemption as to paying the fees, but go ahead and tell us how you got here.

MS. BORDA:
In 2000, the rural agricultural common-interest communities were placed under the Open Meeting Law. They were exempt from major portions of *Nevada Revised Statutes* (NRS) 116, including the fees. We do not use any of the services of the Ombudsman's Office. Through NRS 241, we have managed to do everything we need to do, and it works well for us.

Last Session, unbeknown to us or our representatives of the Legislature, a bill was passed that took away the exemption of the fees. We are still exempt from everything else but required to pay the fees. We first knew of this when we received a bill from the Ombudsman's Office dating back to four years before the bill went into effect.

CHAIR CARE:
What was the bill designation—Senate Bill, Assembly Bill—and the number?

MS. BORDA:
From the last Session?

CHAIR CARE:
Yes.

MS. BORDA:
I do not know. We did not even know it passed.

CHAIR CARE:
Maybe you or staff can find that. Perhaps it was A. B. No. 396 of the 74th Session.

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
It was actually S.B. No. 325 of the 73rd Session.

CHAIR CARE:
From the 2005 Session? Okay. If you have it in front of you, are we talking about an amendment to S.B. No. 325 of the 73rd Session, or was this bill standing alone?

MR. WILKINSON:
It was S.B. No. 325 of the 73rd Session that amended NRS 116.1203 to add this provision about limited-purpose associations.

MS. BORDA:
The first we knew about it was when we received a bill, and they tried to bill us for several years before S.B. No. 325 of the 73rd Session had taken effect. We fought that and won, so they resubmitted a bill with penalties and interest dating back to 2006. We paid the fees, which made a major hit to our budget last year of well over $50,000.

We are still contesting the penalties and interest because they are billing us for the first time, but they want us to pay penalties and interest dating back several years. We are here to ask you to reverse this change and put it back to the way it was, which exempts us from the fees.

We do not use their services; we do not impact their office. I could certainly understand those home associations under NRS 116 that use the services of the Ombudsman's Office, but we are not one of those.

As a rural homeowners' association, the Ombudsman's Office has the potential to impact us dramatically in terms of cost to our property owners. We are small, our members do not pay much, and we do not have gated communities. We are out in ranchland between Elko and Lamoille.

This fee impacts us; it is not fair we pay for something we do not use.

CHAIR CARE:
What is your outstanding balance now?

MS. BORDA:
The penalties and interest are around $6,000 or $7,000.

CHAIR CARE:
What is the legal recourse if the Association never makes payment?

MS. BORDA:
Assemblyman John C. Carpenter is trying to help us with that. The Ombudsman's Office was willing to waive the fees if we received a letter from the Governor.

SENATOR COPENING:
Could you explain to me the difference between a rural common-interest community and one you might find in an urban area? What do your members actually pay into? What do they receive?

MS. BORDA:
In a rural agricultural area, we are larger parcels. We are not like a gated community where everybody has the same house and the same income level. We are like a regular community. We have people who meet zoning requirements from mobile homes to large custom homes and incomes from poverty level to the affluent. The common theme is the agricultural area. Most residents are raising livestock. It is a different way of life. We are not there to receive amenities or people taking care of homeowners. Residents are there because of quality-of-life issues, living in a rural setting and having animals and livestock.

SENATOR COPENING:
Essentially, it is a common-interest community, which means they pay homeowners' association (HOA) fees?

MS. BORDA:
Yes.

SENATOR COPENING:
What are they actually paying for? What does that rural community association do for those members?

MS. BORDA:
Because we are so spread out and rural, we have 150 miles of roads that we have to maintain. We also have other amenities like parks that are provided to the membership. In this day and age, it is hard to maintain those. Our property owners pay $39 a month. I am sure you can appreciate what they pay in Las Vegas.

SENATOR PARKS:
You have specific covenants, conditions and restrictions (CC&Rs) recorded with your property when somebody buys a parcel in Spring Creek?

MS. BORDA:
Yes.

SENATOR PARKS:
There has been a major concern around the State with probably two-dozen communities that are either in or out. I live in one that does not have CC&Rs, yet the Ombudsman's Office claims we are such an entity. This issue is not going to go away, and we will probably hear quite a bit on that as we go forward.

CHAIR CARE:
How many communities do we have in this State that are having this fight over jurisdiction?

MS. BORDA:
In Elko County alone, there are half a dozen. Three or four of these are just like Senator Parks described. They are small, where residents might pay $3 or $4 a year to have somebody blade their dirt road. They have probably less than 100 members. They live on 40-acre parcels. We are probably the largest of that half dozen. Several of us are small, rural and do not have the money or the desire to be caught up in the requirements of the Ombudsman's Office.

SENATOR COPENING:
When homeowners have disputes, maybe among themselves or with the association, what recourse do they have in your community should they have some problem within the Association?

MS. BORDA:
There are several steps I would like to address because this is a huge issue for us. We have different appeal processes in place where a homeowner can go. It starts with our Committee of Architecture. They can go before our board, they can go before our legal counsel and then to the county level or, if necessary, all the way to court.

One of the mediation issues with the Ombudsman's Office is that it sounds good, but then you pay for it and allow anybody who has an ax to grind to file a complaint which, believe me, does happen. People get irritated if you make them pay their assessments. If anybody can go file that complaint with the Ombudsman's Office, then we have to pay for settling that. Nine times out of ten, it is dismissed because it is frivolous. It still costs the association and all those property owners because the Ombudsman's Office requires those associations who are not exempt to go through that process. It is hugely expensive.

CHAIR CARE:
There is an argument over jurisdiction. Am I to understand members within this Association have matters of mediation before the Ombudsman?

MS. BORDA:
No, we do not.

CHAIR CARE:
Are you stating that does not have anything to do with your Association?

MS. BORDA:
No. I recently received a letter from the Ombudsman's Office, and this is the first one the Association has ever received perhaps because we paid all of these fees.

The newsletter gave statistics about their mediation. It was interesting when nine times out of ten, those cases were dismissed. That is a huge cost to be required to go through a government agency and pay the expenses for a rural homeowners' association when a case may be frivolous.

CHAIR CARE:
Do we have somebody to testify against this bill?

I am going to review the legislative history of S.B. No. 325 of the 73rd Session. In the meantime, please provide Ms. Eissmann any correspondence from the Ombudsman's Office where they assert jurisdiction after enactment of the 2005 Legislation.

We will close the hearing on S.B. 149 and open the hearing on S.B. 68.

SENATE BILL 68: Establishes responsibility for the maintenance of certain security walls within common-interest communities, subdivisions and developments. (BDR 10-281)

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 11):
I can provide you with history on the previous bill.

CHAIR CARE:
For the record, we will reopen S.B. 149.

SENATOR SCHNEIDER:
The Spring Creek Association has been in and out over the years. It was a dozen years ago that I met with Assemblyman Carpenter, Senator Rhoads and the manager of the Association. I agreed they were out and we exempted them from NRS 116. Senator Rhoads and Assemblyman Carpenter said if there were any problems, they would call me.

Approximately nine months after the session ended, Assemblyman Carpenter called me and said, "Put them in." I did go to a Spring Creek Association meeting. They are in and out, and they do have problems with neighbors fighting. I realize they have 5-acre parcels. What I would say is look at this cautiously. Senator McGinness also represents some rural areas. They will start fighting out there; it is just as bad as Summerlin, Senator Copening, they get just as nasty. You can let them out this time and then next session when there is a new chair, they will probably put them back in.

CHAIR CARE:
I will close the hearing on S.B. 149. We will open the hearing on S.B. 68.

SENATOR SCHNEIDER:
Senate Bill 68 pertains to common-interest communities and perimeter walls referred to in the statute as security walls. Many associations have walls, and the landscape association takes care of them. They have perimeter walls they do not want to repair. They are trying to offload repair onto cities or counties. That is quite expensive. Who owns the wall? It is the association's wall. One association in Green Valley sued for construction defect on their wall. They won the case and were awarded substantial sums of money. They are trying to say the wall is not theirs, that it belongs to the city and the city should maintain and repair it.

Senate Bill 68 clarifies who maintains the walls. The City of Henderson and Clark County are present. There are amendments being proposed as the cities and the County got together and worked on the wording. Mr. Ashleman will submit an amendment that I support.

When the walls start to deteriorate, they affect the value of the property. They become dangerous. We have rolling hills as landscape features, and the walls go over the hills. There could be erosion from sprinklers, the walls will get wobbly, and they are costly, but whose walls are they? They belong to the association. Everyone who has a single-family home outside of an association understands that back wall is their responsibility to maintain.

The words "security walls" are misused throughout the chapters. For years, I have advised realtors not to use the term "security walls" or "security gate." There have been lawsuits in Las Vegas where people have had their houses burglarized or they have been mugged. The lawsuit will say, "Well, the realtor sold me the house and said it is a security gate and security walls." Obviously, there is no security here. They should use privacy gates and privacy walls instead.

For example, realtors were sued years ago when they sold a house and said there was a Jacuzzi in the backyard that was stated in the sales agreement. They were sued because it was not a Jacuzzi, it was a spa with a different name. Jacuzzi is a brand name. It is the wording.

CHAIR CARE:
Senate Bill 68 incorporates an existing statutory definition of security wall from NRS 271. Senate Bill 68 also goes to limited-purpose associations and maintenance districts. Could you explain to us what those entities would be?

MR. WILKINSON:
Section 2 of S.B. 68 on page 2, lines 15-17, states the provisions apply to limited-purpose associations created for maintaining landscape for the common elements. Otherwise, a limited-purpose association is exempt from NRS 116; but here we are stating this new provision does apply to those types of associations.

SENATOR SCHNEIDER:
Some of the housing subdivisions in Las Vegas have an entry feature. They have no association, but they do have landscaping. Sometimes, they will have landscaping around their perimeter wall. The only purpose of the association is to collect money to maintain the landscaping. That is a limited-purpose association.

RENNY ASHLEMAN (City of Henderson):
You have a proposed amendment to S.B. 68 (Exhibit C). The purpose of the amendment to S.B. 68, Exhibit C, is to make it clear these matters are prospective only and not trying to saddle any existing homeowners' association with the repair of walls they may or may not have bargained for. In the future, we make sure new associations that have walls would be handled.

When these walls fall down into a right-of-way, they create unsightliness or safety problems. We try to get them fixed, but the HOA says it belongs to the owner of the individual lot. The individual lot owner says it is the HOA, and you end up in litigation. The courts are saying, well, the owner of the property owns the inside of the wall and the association owns the outside half. That does not solve the problem as to who needs to put it back up.

Usually, the problem is water intrusion, but that is not the only reason. If the homeowner has the lowest lot, he gets the unlucky piece of the wall that falls down where all of the water percolated.

CHAIR CARE:
Can that work both ways, though? What if I water my lot and it wears through to the exterior of the wall?

MR. ASHLEMAN:
I am sure there are occasions where that does happen. As you probably know, the Uniform Common-Interest Ownership Act (UCIOA) already requires that these associations administer reserves for the repairs and refurbishment of various items. We are not asking them to take on an additional burdensome duty.

Typically, if a new subdivision puts a dollar or two a year aside per member, in 20 to 30 years when the problems develop in these walls, they would have

ample reserves. It might be a little more or a little less, depending on how big it is and which kind of walls you are talking about.

We have added the words: "or restoration" in the amendment to S.B. 68, Exhibit C, on page 1, section 1, subsection 1 at line 5 to match the reserve requirements in the UCIOA. That is done to make it parallel. We are striking the language on lines 6 and 7: "And which abuts the common elements of the common-interest community" because these walls do not always abut that way, so it is not the proper description to cover them.

The proposed amendment, Exhibit C, to S.B. 68 on page 2, section 1, subsection 2 reads, "As used in this section, 'security wall' has the meaning ascribed to it in NRS 271.203." That solves the problem of defining whose walls they are and which ones we are talking about. The statute technically says these walls are for the purpose of protecting against vandalism.

We are proposing to strike section 4 because that deals with maintenance districts. The problem is in Clark County. The County is apprehensive, and perhaps rightly so, in that they would end up with the burden on these maintenance districts instead of the people we were intending to reach. There are not many of them. It is not a problem Statewide. We are proposing you take them out.

There is an error in the proposed amendment, Exhibit C, to S.B. 68 in section 5, lines 15 and 16. The words "and section 4 of this act" need to be stricken because we are striking section 4. The section we are actually discussing will become section 4.

CHAIR CARE:
Referring to your first amendment, section 1, subsection 1, for clarity, this is going to style. Looking at line 5, if we were to say, "security wall which is located within the common-interest community, including but not limited to a security wall that abuts the common elements of the common-interest community." That is okay?

MR. ASHLEMAN:
That would not pose any problem.

CHAIR CARE:
If we pass this and it becomes law, will it have any affect on pending litigation?

MR. ASHLEMAN:
No. It is all after October 1, 2004, and it is tied to the CC&Rs. It only affects the ones recorded after that. There could not be litigation, they do not exist yet.

MICHAEL W. BOUSE (Director, Building and Fire Safety, City of Henderson):
I am the person who enforces the regulations requiring the maintenance of permanent or block walls for all properties in the City of Henderson.

The problem came to my attention when I was working on a wall abutting a common-interest area that had fallen into disrepair to the point that the wall was dangerous under our code for the abatement of dangerous buildings.

We gave notice to property owners to abate the problem. Because it is a common-interest community, the first thing we did was look to the CC&Rs. The CC&Rs were silent on the requirement of who was specified to maintain the perimeter wall. Absent that language, the city attorney advised me that I had to deal with the individual property owners. I gave notice to 15 property owners, individually, that their portion of that perimeter wall was in violation of the code and had to be repaired.

The first reaction I received was the property owners were astounded to learn that the wall was not addressed in the CC&Rs and that they were responsible for its maintenance.

The second problem was coordination of getting the wall repaired in an economical fashion. Some homeowners wanted to use contractors they were familiar with. Other homeowners did not have those types of contacts and did not know what to do. It was problematic. Now the problem has gotten even more acute. In my most recent case, I am dealing with 37 homeowners who have the same condition, a dangerous wall that has to be repaired or abated.

That is going to continue for some period of time because S.B. 68 is not retroactive, it is proactive. When the economy improves, I can start issuing permits again for these walls. I would like the statute to clearly specify that is the HOA responsibility.

Costs for repairing these walls range from $45 to $50 per linear foot of wall to $150 per linear foot of wall. It can range from $6,000 per lot owner, and if the wall is totally replaced, to tens of thousands of dollars per property owner. That is problematic for our existing residents. As Mr. Ashleman indicated, by placing this on the HOA, the HOA will build sufficient reserves to deal with these problems in the future.

CHAIR CARE:
Your difficulties have been confined to one association, is that correct?

MR. BOUSE:
It is one association. However, we are aware of other walls in Henderson that surround common-interest communities and probably meet the definition of a dangerous building/wall.

CHAIR CARE:
What is the name of the association that has the 37-unit wall?

MR. BOUSE:
In that particular neighborhood, there is not an association. We are required to deal with the individual property owner. I use that as an example, illustrative of the problem. I am anticipating receiving an official complaint about another neighborhood and will be dealing with 25 to 30 property owners.

CHAIR CARE:
Let us assume this becomes law as amended. Would it then be possible for an association to be created and as a condition of the purchase agreement, include in the CC&Rs that the buyer waive or assume the burden of maintaining the wall, taking that burden away from the association in spite of the statute?

MR. ASHLEMAN:
As presently written, that would be a possibility. I would not anticipate that would be done often. It is not a big burden if you put these things together at the inception of the association. You could also add language that it could not be waived, and there are portions of the UCIOA where we do not allow waivers.

MICHAEL TRUDELL (Manager, Caughlin Ranch Homeowners Association, Reno):
Initially, we were against S.B. 68 because it appeared to be retroactive on homeowners' associations and an unfunded mandate on homeowners'

associations to maintain walls which may or may not be the association's common area.

We would support this amendment as long as it is from here forward. As a former planner for the City of Reno and for a private sector planning company, this particular purview is with the city to make it clear walls would be the responsibility of the homeowners' association. If it was retroactive without that, it would be a problem for homeowners' associations to suddenly be responsible for those things.

When the developer turns over the common areas, it has to be clear that if the HOA IS responsible for a wall, then the developer must turn that common area over to the HOA.

The fences would be included in the reserve studies. We are in support of this bill as amended. But without the amendment, it would be a problem.

SENATOR WIENER:
When it says "a place to all common-interest communities created in the State after October 1, 2009," if an existing common-interest community has another stage of development, Phase 2 or Phase 3, is that considered pre—even though it is constructed post-October 2009—because it has the same name but may be a different phase? How would that be treated?

MR. WILKINSON:
It probably would not be considered a new common-interest community, but it may depend on how that is actually structured in the particular circumstances.

MR. ASHLEMAN:
When you have phase developments, the phases are described in broad detail in the original CC&Rs. You do not usually do them with successive CC&Rs. It is not impossible that you would have additional phases come in with new CC&Rs, but the normal case has them covered initially. It would be rare and only ordinarily occurs in the process of buying the property in a new development. From the circumstances I am familiar with, we are not causing anybody a problem.

PETER CROOYMANS:
I am retired with over 60 years experience in building and construction in Europe, California and Nevada. For almost seven years, I have served on the architectural review committee of our HOA. I discovered that the security wall construction was completely out of control. For the past four years, I have donated all of my retirement life investigating the security wall construction, which is now the basic issue in the proposed S.B. 68, making the associations responsible for maintenance of security walls.

How is it possible that the present security wall construction can create a damage estimated in Clark County into the millions? Most of the defective walls were built during the building rush in the 1990s. Labor capacity was pushed to the limit, and the contractors were working with time schedules.

I would like to say what went wrong with the wall construction. The security wall construction is designed to be a full-strength wall with vertical rebar connected to the foundation and the full height of the wall. The rebar cells have to be filled solid with concrete. This will bring the wall up to full strength. Prompt inspection by the inspector is critical.

In many cases, the contractor ignored filling the rebar cells with concrete and finished the wall before the inspector could determine if the rebar cells were filled. This is the main reason there are so many unstable walls.

With the speed these walls were built in the 1990s, it was impossible for inspectors to keep wall construction under control. Many other associations complaining about unstable walls are unaware of the consequences.

Summarizing, the building rush in the 1990s created the faulty security walls. The situation was a catastrophic disaster and should have been investigated.

I have submitted to the Committee a list of unanswered questions regarding this situation (Exhibit D). Making a decision on this issue will be time-consuming.

Most associations are already in a crisis. People lost their jobs, and they are unable to pay dues and rising maintenance costs. To put the maintenance of security walls on the shoulders of associations with so many unanswered questions and to cover the astronomical high costs of repair is not fair.

The legal aspect of the faulty security wall construction has victimized innocent associations and should have been investigated a long time ago.

I have to ask the Committee to deny S.B. 68.

CHAIR CARE:
I do not know if you had the opportunity to review the amendment offered by the City of Henderson. Senate Bill 68 would not apply to Pebble Canyon HOA because it would only affect associations created October 1, 2009, forward.

You raised some interesting questions. For example, a smart builder is going to ensure language in the CC&Rs of originating documents of any association constructed after that date is consistent with the language of S.B. 68, if it becomes law.

JOHN RADOCHA:
I live on a corner and have a wrought iron fence that goes from the back to the side. I am wondering if a wrought iron fence is included in S.B. 68 as I do live in a gated community.

CHAIR CARE:
It would not affect the gated community you are in now. Senate Bill 68 makes reference to an already existing statutory definition of security walls under NRS 271, but does it make any reference to wrought iron gates as opposed to stucco or cinder block?

MR. WILKINSON:
I can read the definition for you:

> "Security wall" means any wall composed of stone, brick, concrete, concrete blocks, masonry or similar building material, together with footings, pilasters, outriggers, grillwork, gates and other appurtenances, constructed around the perimeter of a residential subdivision with respect to which a final map has been recorded pursuant to NRS 278.360 to 278.460, inclusive, to protect the several tracts in the subdivision and their occupants from vandalism.

So, no fences are in this definition.

CHAIR CARE:
Mr. Radocha, the answer is: it would not apply.

MR. RADOCHA:
Could I ask one more question of your Committee lawyer that has to do with capital improvements? Are speed bumps called speed bumps or common elements?

CHAIR CARE:
This Committee has jurisdiction over NRS 116 which means this Committee hears most bills this Session regarding HOAs. It is possible we are going to hear issues regarding speed bumps, basketball hoops, speed guns, etc., but we do not have that before us today.

We will close the hearing on S.B. 68 and open the hearing on S.B. 142.

SENATE BILL 142: Establishes the crime of criminal gang recruitment. (BDR 15-723)

SENATOR MIKE MCGINNESS (Central Nevada Senatorial District):
I represent a large portion of Mesquite. Mark Wier contacted me approximately a year ago regarding S.B. 142. He is the chair of the Community Education Advisory Board, and he wishes to establish criminal gang recruitment as a crime.

MARK WIER:
I represent myself today. Thank you for the opportunity to introduce S.B. 142. I am the chair for the Virgin Valley Community Education Advisory Board. I speak with teachers, parents and administrators on a regular basis. At times, we speak of safety issues within the schools, and on occasion, we have discussed gang activities. Those discussions have led me to investigate what charges could be brought against gang members for recruiting minors. Many states have enacted legislation that makes it a felony for adult gang members to recruit minors.

The 2009 gang threat assessment from the National Gang Intelligence Center underlines the need for S.B. 142. It states:

> Gang activity at schools is rising, in part, because gangs are using middle schools and high schools as venues for recruitment and drug distribution. Law enforcement agencies ... in eastern states report that gangs are directing teenage members who had dropped out of school to reenroll, primarily to recruit new members and sell drugs.

Senate Bill 142 targets adult gang members who recruit children to commit crimes. It is preventative legislation. Nevada needs to join these other states in an effort to curb gang recruiting activities by passing S.B. 142.

KEVIN C. BARKER (Las Vegas Police Protective Association):
The Las Vegas Police Protective Association (LVPPA) represents police officers in Las Vegas as well as city and municipal court marshals in Las Vegas. We also represent correction officers for the Las Vegas Metropolitan Police Department.

I am here to support this legislation on behalf of LVPPA and members of our police union.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):
We come forward this morning in whole support of S.B. 142. Many times, I bring sheriffs of Clark County and chiefs of police of the cities.

This morning, I bring with me two individuals who are on the street, in the trenches, doing the work with regard to gangs. I have Sergeant Mark Marshall from the gang detail of Carson City Sheriff's Department and Sergeant Ray Magee from the Reno Police Department who runs the regional gang detail in Washoe County.

Senate Bill 142 would be a tool for us to break the cycle of recruiting gang members. That has to be the approach we take. We have to stop these young people from becoming members of these gangs. Many times, that is done by peer pressure, coercion and acts of violence against these young folks.

We are in support of S.B. 142. I have spoken with a number of district attorneys and the District Attorneys Association in support of S.B. 142.

SERGEANT RAY MAGEE (Regional Gang Unit, Reno Police Department):
The Regional Gang Unit in Washoe County is comprised of officers from the Reno Police Department, the Washoe County Sheriff's Department, Sparks Police Department and Washoe County School District. We support this bill; we are partnered with the juvenile justice system and the Children's Cabinet, and we are actively attempting to dissuade or remove youth from criminal gangs. A bill like this helps us prevent adults from going back in and undermining our efforts to get these kids out of the gang lifestyle by using threats of violence to get them back into it. It would certainly aid us in our efforts.

SENATOR WIENER:
I have spent several years working in the youth gang arena, writing books on it and doing about 400 interviews in the media in the United States and Canada. One of my books dealt with how young people create their affiliations.

What most people do not realize is that young people have more in common than not, whether it is a church group, basketball team or gang. However, in gang experiences, the mere threat of the gang in the neighborhood puts on pressure to join a gang. At least you have somebody watching your back versus nobody. Violence exists from recruitment before jumping in all the way through into trying to get out.

Breaking the cycle, as you say, to make it punishable for those who benefit through threats or violent behavior, is certainly something we need to do.

I believe the first introduction of gang activity in southern Nevada was in the 1960s. The Crips or the Bloods came over with recruiters, exporting their top people to start gang activity in southern Nevada. It has been an explosive environment ever since.

I applaud law enforcement's effort to break this cycle because it is lifelong, dangerous and harmful to a lot of people.

SERGEANT MARK MARSHALL (Carson City Sheriff's Office):
I am here to show the support of the Sheriff. Speaking for the Sheriff and myself in the Gang Unit, we are here to support S.B. 142. We need your help; please help us get it done.

SENATOR WIENER:
Early in Session we were advised, counseled or encouraged by Chief Justice James W. Hardesty to evaluate penalties that we assign. We have truth in sentencing, but his concern is with using appropriate penalties for crimes and caution in picking a particular category penalty. I see that this is a Category D.

Sometimes, we do penalties based on more than one offense. A second offense would go up and then a third offense. In Category D—the first time you arrest them, these recruiters may be 18 years old and coming out of their gangs.

One thing we know is the aging out in gangs has extended much later. Where gangsters formerly aged out at 18, they now extend into their twenties, thirties, even forties and older. The recruiters, which is what you are aiming for, do not just recruit one person. Is it a Category D for first, second, third, twentieth offense, or had you processed the possibility of subsequent convictions in different penalties, starting lower and going higher? Was that part of the conversation?

CHAIR CARE:
I understand recruiting; let us take an 18- or 19-year-old who is a recruiter. Not only have you recruited, but there is a subsequent act. The gang goes out, and the new recruit participates. I do not see anybody here from the district attorney's office, but you probably have a basis for an additional charge of conspiracy, coconspiracy.

SENATOR WIENER:
In a previous session, there was a bill where an adult using a juvenile in the commission of a crime experiences severe penalties to discourage criminalizing underage youth. We do have that on the books already; that could be utilized in this case.

CHAIR CARE:
For example, somebody recruits two gang members. Is that two offenses? You had a question about subsequent offenses. The stand-alone act of recruiting is

not going to happen. There is going to be additional acts as well.

KRISTIN ERICKSON (Nevada District Attorneys Association):
You are correct. If they were to recruit two people, we would charge that as two separate offenses. There could be additional crimes if others were involved. It could be conspiracy. However, if it is the act of one person, it would typically be one crime.

CHAIR CARE:
Is it conceivable somebody could be charged with recruiting and that is all, nothing else happens? Of course, gangs do not have membership cards but maybe tattoos. In your experience, you establish the existence of a gang. A good defense attorney might raise the issue that was not a gang, it was just a group of guys; some of them were bad, and some of them were not.

MS. ERICKSON:
Yes. We would utilize the expert testimony of someone like Sergeant Magee who is familiar with local gangs in the Reno area.

CHAIR CARE:
Senate Bill 142 is drafted requiring specific intent. I can see the situation where the defendant would say, "I was just kidding." The burden would be on the district attorney to demonstrate specific intent.

MS. ERICKSON:
That is correct. Specific intent is a higher burden than general intent. We would have to prove specific intent of recruiting.

LIEUTENANT TOM ROBERTS (Las Vegas Metropolitan Police Department):
We are also in support of S.B. 142. Senate Bill 142 helps curb the recruiting effort. It may be difficult to put together. It would require legwork on our part in documenting who the gang members are and their efforts. People would be

caught in this law who we are not targeting, like a joke or something. The burden is high, but we could do it.

CHAIR CARE:
Category D holds a penalty of one to four years and a $5,000 fine.

SENATOR WIENER:
We are being cautious regarding the burden on the corrections system, but this is one of those opportunities to do preventative work. For every young person not criminalized by this process, others will not be criminalized. Was there any consideration in subsequent convictions to impose a greater penalty? Give that penalty of four years for an 18-year-old, then they are out doing it again.

That is the gang environment; that is the culture. It becomes a lifelong commitment. Jumping out of a gang is dangerous as is being jumped out. Violence is the threat. The goal is to prevent young people from getting into the gang. Once they are in, it is very, very difficult to get out. Even when recruiters move to other communities, they are under the threat of an opposing gang. It is a lifelong commitment for most of them.

It is not about making a mistake and joining a gang. We are changing whole lives. It was not part of a consideration to have a greater penalty when recruiters have done it over and over and been convicted?

MS. ERICKSON:
I am aware of no discussion that has taken place. There is what we refer to as the habitual criminal once one has two or three felony convictions. However, it would be extremely rare to prosecute someone under the habitual criminal law with only two or three felony convictions. Sadly enough, it is too common now.

CHAIR CARE:
We will close the hearing on S.B. 142. Committee, there is no opposition to S.B. 142, there are no proposed amendments, and the Chair would entertain a motion.

SENATOR WIENER MOVED TO DO PASS S.B. 142.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

The meeting was adjourned at 9:40 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: