

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

**Seventy-Sixth Session
February 14, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:10 a.m. on Monday, February 14, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/76th2011/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 William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

Assemblyman Kelly Kite (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Nancy Davis, Committee Secretary
Julie Kellen, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Kenneth E. Mayer, Director, Department of Wildlife
Cameron Waithman, Game Warden Captain, Law Enforcement Division,
Department of Wildlife
Daryl E. Capurro, Chairman of the Legislative Committee, Board of
Wildlife Commissioners, Department of Wildlife
Kyle Davis, Policy Director, Nevada Conservation League and Education
Fund
Julie Butler, Records Bureau Manager, Department of Public Safety
Brian Campolieti, Executive Secretary, State Board of Pardons
Commissioners
Wes Henderson, Deputy Director, Nevada Association of Counties
Tierra D. Jones, representing Clark County Office of the Public Defender
Kevin Higgins, Justice of the Peace, Sparks Justice Court; and
representing Nevada Judges of Limited Jurisdiction
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'
Association
Dino DiCianno, Director, Department of Taxation

Chairman Horne:

[Roll was taken.] We have three bills on the agenda today. The first is
Assembly Bill 13.

Assembly Bill 13: Revises provisions relating to certain offenses committed by
juveniles involving hunting activities or target practice. (BDR 5-470)

Kenneth E. Mayer, Director, Department of Wildlife:

With me today is Captain Cameron Waithman who has a prepared statement.

**Cameron Waithman, Game Warden Captain, Law Enforcement Division,
Department of Wildlife:**

Current language in *Nevada Revised Statutes* (NRS) 62C.060 requires the arrest
of a child that is committing or has committed an unlawful act that involves the
possession, use, or threatened use of a firearm.

[Continued to read from written testimony ([Exhibit C](#)).]

Chairman Horne:

Why would we treat juveniles who commit misdemeanors with firearms differently in one area of the state than we do in another area of the state?

Cameron Waithman:

I am not sure we do. Originally, the intent was directed at school grounds and gangs without taking into consideration target practice, hunting, and nonviolent offenses that can happen when in possession of a firearm. The way the language returned from Legislative Counsel Bureau (LCB) reads, juveniles may be arrested if they have a violation when they are hunting or target practicing. I cannot see any other situation where they would be in violation.

Chairman Horne:

That is my point. In Washoe County or Clark County, particularly, if a juvenile commits a misdemeanor when in possession of a firearm, they are going to be arrested, and they are going to jail. If a juvenile commits a misdemeanor when in possession of a firearm while hunting, they may or may not go to jail. Two groups are being treated differently. If a child in Washoe County steals a bicycle and has a gun on him, he is going to jail. If a kid shoots a gun across a roadway in a rural area, he may not go to jail. One has actually fired the firearm, possibly putting people at harm, and one did not even use the firearm. Why would we treat them differently?

Cameron Waithman:

In my opinion, this bill will give officers discretion to make a reasonable judgment in either situation, regardless of where it happens. If it is in Clark County and a child is out quail hunting, or in Humboldt County and he is deer hunting, this gives the officer discretion. If a child discharges his gun from his driveway across a major street, he may very well go to jail. If he discharges his gun across a minor county road, and you need to transport him two to three hours to jail, there is no officer discretion. It seems excessive to have to arrest and transport a child to jail for violations that entail possession of a firearm, without any discretion.

Chairman Horne:

Should we have discretion across the board for misdemeanors in possession of firearms?

Kenneth Mayer:

We are basically looking to clarify what discretion officers have. We have not taken anyone to jail, but that could happen. We do not believe that is the right way to go unless the situation deems that the juvenile needs to go to jail.

Chairman Horne:

How often are juveniles going to jail? Is the Nevada Department of Wildlife (NDOW) taking juveniles to jail who are in violation of the statute as it currently exists?

Kenneth Mayer:

At this point, we have not taken anyone to jail. Our situation is unique, unlike for the sheriff where not every juvenile is carrying a gun. In our case, while in the pursuit of hunting, a gun is involved. We have many junior hunters and we want to make sure we provide the flexibility and the discretion for the officers so they do not feel they have to arrest a juvenile and take him to jail for an unplugged shotgun. A father may have taken his child on a chukar hunt, and then waterfowl hunting, and they may be in violation of a misdemeanor for having an unplugged shotgun with more than three shells in the gun. That is the type of situation we are trying to avoid.

Assemblyman Sherwood:

My concern is that a juvenile would have to be detained until a hearing. Is that correct?

Cameron Waithman:

Yes, that is what the current language says. They have to be detained until a juvenile judge can be present at a hearing.

Assemblyman Sherwood:

If we do not clear this up, and a 12-year-old has to go to jail for an unplugged shotgun, how long could they be sitting in a detention center?

Cameron Waithman:

On a holiday weekend, it could be three days. We usually do not go to juvenile court, however, we do for some more major violations. It could be three days, although I doubt that ever happens.

Assemblyman Frierson:

I would like to revisit a question Chairman Horne had regarding discretion. It sounds as if you are trying to distinguish between juveniles that have firearms for no legitimate reason, and juveniles who may be in possession of a firearm and not be quite as nefarious as some criminal activity. If we gave law

enforcement discretion across the board, would law enforcement be able to take that or any other circumstance into consideration and decide whether or not to take a juvenile into custody?

Cameron Waithman:

That is correct. If the law read "may" for any violation involving a firearm, it would be fine by me. It gives discretion and does not force an officer to make an arrest. "May" means he can or he cannot, he is going to make that judgment. Is it reasonable, is it excessive, what are the parameters, what is the juvenile's history? He can take all of that into account. When I originally submitted language for this, it basically read unless he commits a crime against another person, they "may" be arrested. The only time an arrest is required is if a crime is committed against another person involving possession of a firearm. If "shall" was changed across the board to "may," it would be absolutely fine with me.

Assemblyman Daly:

What if an adult commits a misdemeanor? Would you write him a ticket?

Cameron Waithman:

Yes, generally he would get a misdemeanor citation. For some of the firearms violations, they get a further notice that requires them to take a hunter safety class before they get another license, but basically they receive a citation.

Assemblyman Daly:

If this is not corrected, you could have a situation where a father is out with his child, the child makes a mistake, the father gets a misdemeanor, and you have to arrest the child.

Assemblywoman Dondero Loop:

Because this bill references education facilities and other areas, I have concerns about how this works. I understand if you are out in the middle of a rural area and one of your officers comes upon a person carrying a firearm, but since we do have schools in more rural settings, where does the responsibility lie for the arrest? Is NDOW always involved?

Cameron Waithman:

We are not always involved with the schools. These are not tickets that only game wardens issue. Deputies, Department of Public Safety (DPS) troopers, and the like, run into these situations. As for the school grounds, once again, if the language is changed to "may" it is at the officer's discretion. If there is a misdemeanor violation where a kid went hunting and left his loaded shotgun in

the vehicle in the school parking lot, that would be a reason to take him to a juvenile detention facility.

Assemblyman Hansen:

How long has this law been on the books?

Cameron Waithman:

I believe since 2007.

Assemblyman Hansen:

So it has been at least three years and there has not yet been one case of taking a juvenile to court?

Cameron Waithman:

Correct. Our officers are currently issuing citations. It is one of those issues that is hard to balance. In Title 45, NRS 501.386 states: "Whenever any person is halted by a game warden for any violation of this title, the person shall, in the discretion of the game warden, either be given a citation or be taken without unnecessary delay before the proper magistrate." Nevada Department of Wildlife usually operates under NRS Chapter 171, which defines when someone is required to be taken before a magistrate. Our officers are operating under several different laws and we have basically told them to use good discretion, and to also use the reasonable factor that laws are judged on.

Assemblyman Hansen:

Then you already have the discretion and you are exercising it without any changes in the law?

Cameron Waithman:

Cleaning up the law takes away that gray area.

Assemblyman Hansen:

Yet there have been no cases in three years of a single juvenile being taken to justice court or put into jail because an officer had to follow the letter of this statute. Is that correct?

Cameron Waithman:

As far as I know, that is correct for game wardens. I do not know about other agencies.

Chairman Horne:

Thank you. I believe we have a few people present who wish to speak on this bill.

Daryl E. Capurro, Chairman of the Legislative Committee, Board of Wildlife Commissioners, Department of Wildlife:

This bill is among a package of bills that we reviewed in the Legislative Committee and forwarded to the Commission for approval. It made sense because in reading the law, there is no discretion for situations that have been described here today. After reviewing it at some length with the other commissioners, we decided that this was a reasonable way to go. It did allow some discretion with respect to law enforcement personnel in the event of minor violations that do not rise to the level of an arrest. We support this legislation.

Assemblyman Hansen:

You said the reason the Commission supported this is that there is a lack of discretionary authority. Mr. Waithman said they have at least two other places, Title 45 of the NRS and Chapter 171 of the NRS, where they are currently exercising discretion.

Daryl Capurro:

This particular statute, NRS 62C.060, contains the term "the officer shall take the child into custody." There is no discretion with respect to this particular section.

Assemblyman Hansen:

This section was designed to deal primarily with urban gang violence type situations, correct?

Daryl Capurro:

The decision was made by the LCB on how to structure the bill and in the concept that was sent to them. In light of what has been brought up here, yes, this would give discretion in other situations also. I believe the discretion should be there. If it is a minor situation that does not rise to the level of an arrest, an arrest should not be made. An excellent example was given by Mr. Daly in that the father could be issued a citation for not having the plug in the shotgun, but the son would be arrested. This would clear that up so that would not happen.

Assemblyman Frierson:

Would you still be supportive if it simply said "may" across the board so that any officer could exercise discretion? This does not only apply to NDOW, but

could also apply to Las Vegas Metropolitan Police Department, or Parole and Probation and the like. Would you still be supportive if it said "may" and did not distinguish between activities?

Daryl Capurro:

Yes, sir, I believe that gives discretion to any peace officer.

Assemblyman Brooks:

Based on the example of the father with the unplugged shotgun, is it not true that even at this time, under that particular circumstance, NDOW is operating under another code that would allow them to give the child a citation and not arrest him? What is the purpose of changing the law if they are already operating under another code that allows them to issue a citation?

Daryl Capurro:

In the testimony that was given to us in the Legislative Committee, the statute under which they believe they are operating had left them no discretion. Therefore, the change they have requested in A.B. 13 was sent to LCB. Again, LCB may draft language that is somewhat different than what they received, and they may be looking at a bigger picture than what was originally intended. The intent was in a hunting situation when what was described here takes place and does not rise to the level of felony or an arrest type situation.

Assemblyman Brooks:

At this particular time, no one has ever been arrested under the current law. Have there been any incidents where this particular situation has arisen, and the juvenile was given a citation?

Daryl Capurro:

The intent of NDOW is to review statutes that pertain to our particular area of expertise which is in the hunting, fishing, and trapping area. In doing so, we came across statutes that we believe need to be adjusted to reflect the situation today. That is the case here, and that is the case with several other pieces of legislation that we came across. There was an in-depth review of laws that pertain to wildlife and this is one of the recommendations.

Assemblyman Brooks:

You want to bring this into compliance with your other statutes, is that correct?

Daryl Capurro:

We wish to give the officer discretion with respect to the type of arrest or non-arrest activity that he might carry out.

Assemblyman Sherwood:

I appreciate the fact that you are proactive and getting in front of this so we do not have a situation with letters to the editor asking why we sent a child to jail. What would be the technical ramifications for an officer if he does not follow the law? If an officer gave discretion, and it is interpreted that they did not follow the law, what would happen to that officer?

Daryl Capurro:

Our concern is both for the youth and for the officer who has to make that decision given the circumstances that are in front of him. If the law is hard and fast that he shall take the youth into custody and arrest him, and he decides this does not rise to that level, obviously he is violating the law. We want him to be able to make that kind of decision in the field, under the circumstances that he sees.

Assemblyman Hammond:

If we do change the language to "may," would you counsel your peace officers on how to approach this change? What advice would you give a peace officer if he encounters these situations? If I am an officer and come across a young person using a firearm out in the rural area, what training would I have received as to what action I should take? I am very concerned about whether I should follow the intent of the law and arrest the youth because I am worried about what might happen to me afterwards. What are the repercussions that may occur?

Daryl Capurro:

Our game wardens receive plenty of training before they are put into the field. This includes training with other officers who are already trained in those aspects. Following this session, any of the laws that are passed and put into place will be reviewed. All of the officers, including any new game wardens, will be brought up to speed. There is an ongoing training factor as these officers become more familiar with different situations that their discretionary decisions will be upheld.

Assemblyman Hansen:

All wildlife violations are found in Title 45 of the NRS, are they not? Under what title is NRS Chapter 62, which we are dealing with today? These officers enforce wildlife laws, which I believe are in a totally different section of the NRS.

Nick Anthony, Committee Counsel:

What we are dealing with today is Title 5 of the NRS, Chapter 62C, which relates to juveniles. Throughout the juvenile chapter you will see some crimes

that, if committed by an adult, would be a crime in another section. However, this particular section deals with juveniles.

Assemblyman Hansen:

So this is typically outside of the jurisdiction of the game wardens who enforce wildlife laws, is it not?

Daryl Capurro:

If you notice, section 3 of A.B.13 amends NRS Chapter 502 which is a wildlife section. It refers to NRS 62E.660, which is where the tie-in comes.

Chairman Horne:

One of my concerns in changing "shall" to "may" throughout is that the discretion will extend across the state, including schools where I may not necessarily want the police officer to have discretion to arrest a student who brings a gun to school. Also, I would like to get information from Legal on what the original intent of this bill was.

Assemblyman Ohrenschall:

I support giving officers discretion in this statute and perhaps making it "may" throughout instead of "shall." I do not think we should try to micromanage how officers in the field conduct their business through the *Nevada Revised Statutes*. They need to have the discretion in the field. I support that in terms of an amendment to this bill.

Kyle Davis, Policy Director, Nevada Conservation League and Education Fund:

I would like to be on record that we are in support of this legislation. We think it is a good change to the law.

Chairman Horne:

Are there any other questions? Is there anyone else who would like to testify in support of A.B. 13? Is there anyone in opposition? Seeing none, I will close the hearing on A.B. 13.

I will open the hearing on Assembly Bill 66.

Assembly Bill 66: Revises certain provisions concerning the restoration of a person's right to bear arms. (BDR 14-465)

Julie Butler, Records Bureau Manager, Department of Public Safety:

I had emailed an amendment ([Exhibit D](#)) to this bill to the committee secretary. Before I get started, I would like to confirm that you have received the amendment.

[Read from written testimony ([Exhibit E](#)).]

[Chairman Horne left the room.]

Vice Chairman Ohrenschall:

When someone has their records sealed, it is not automatic that their right to bear arms is restored, correct?

Julie Butler:

Yes and, unfortunately, we get many individuals who have had their records sealed, they try to purchase a firearm, and we have to present them with the unhappy news that their firearms right has not been restored. We are trying to get the process codified so the individuals understand what they need to do to get their firearms right restored if it has been revoked.

Vice Chairman Ohrenschall:

Can an individual have his record sealed regardless of whether they have been convicted or not convicted?

Julie Butler:

If they are acquitted, the sealing of records is automatic although they still have to notify us. In terms of other offenses, the statutes vary depending on the offense. They may have to wait a certain length of time, 7 years, 15 years, et cetera, before they can get their record sealed.

Vice Chairman Ohrenschall:

In the section of the bill where it refers to someone applying for a full, unconditional pardon from the Board of Pardons, would that be a community case, or would that be someone who has already served their sentence and is now seeking a full pardon?

Brian Campolieti, Executive Secretary, State Board of Pardons Commissioners:

That is correct. It is addressing community cases.

Vice Chairman Ohrenschall:

If someone is granted a full, unconditional pardon by the Board of Pardons, is their right to bear arms automatically restored?

Brian Campolieti:

That is correct. Within the last 15 years, we began stating the right to bear arms has been restored, or has not been restored.

Vice Chairman Ohrenschall:

If someone is granted less than a full, unconditional pardon, can the right to bear arms be part of that pardon?

Brian Campolieti:

They can be granted either an unconditional pardon, which would restore all rights, including the right to bear arms, or a conditional pardon where they would restore all civil rights excluding the right to bear arms. That would restore the right to vote, the right to run for office, the right to serve on a jury, but not the right to bear arms.

Vice Chairman Ohrenschall:

In past sessions we have discussed how overburdened the Board of Pardons Commissioners were and how understaffed they were, and they were not able to meet as frequently as had originally been envisioned. How frequently are they meeting now?

Brian Campolieti:

The Parole Board funds the Board of Pardons meetings, and we are funded for two days a year. We met in November and will meet again in June. That is for inmate cases only.

Vice Chairman Ohrenschall:

Will you explain the difference between community cases and inmate cases?

Brian Campolieti:

Community cases are individuals that may have had a conviction five to ten years ago and would like to get their rights restored. They will apply to us and their information will be sent to Parole and Probation (P&P) who will then conduct a background investigation. If everything is appropriate, their case will go before the Board. The Board will make the decision to restore their rights. An inmate will apply for a commutation of sentence. For example, if an inmate has five consecutive sentences and he would like to run them concurrent to limit the amount of time he must serve, we will review that as an inmate case.

Assemblyman Hammond:

What was the impetus for this bill? Were people wanting to buy firearms, but were not sure if their rights had been restored?

Brian Campolieti:

Actually, this bill was not proposed by the Board of Pardons. We are neutral on this bill. I can say we are more in favor of the bill with the amendment because it has only been in the last 15 years that we have actually been specifically

stating whether the right to bear arms has been restored. The older pardons state all civil rights have been restored. It is ambiguous as to how those older pardons will be treated.

Julie Butler:

We proposed the bill because of the Brady Unit and in terms of people who apply to our division to get their criminal record sealed. There is a misconception. These people thought they would get all their rights back. They try to purchase a firearm and find out they did not get their right to bear arms restored. That is why we wanted to clarify for individuals that they do not get everything back just by virtue of the seal. If they want the firearms right, they have to get the pardon. The Brady background check of the pardons document has to state specifically that the right to bear arms has been restored.

Assemblyman Daly:

If someone received their pardon papers 20 years ago, and it states that "all rights heretofore enjoyed by him" have been restored, what is his status now?

Julie Butler:

In regards to the Brady background check, we could not assume that the firearms rights have been restored. That is one of the reasons that Mr. Campolieti approached my division. The Board of Pardons' feeling was that 20 years ago there was a different Board of Pardons, different people, different statutes, and that is why they want this bill to apply prospectively rather than retroactively.

Assemblyman Daly:

So, someone has a record from 20 years ago stating all rights have been restored. Under the old language, does he have the right to bear arms or not?

Julie Butler:

No, not as far as a Brady background check would be concerned.

Brian Campolieti:

The original intent of the Board of Pardons when it was stated that all civil rights have been restored, as far as we were concerned, firearm rights were restored. However, the laws have changed. Twenty or thirty years ago you would have to go to the federal government to get your right to bear arms restored, or you would come to the State of Nevada, through a pardon. I am not sure when the laws changed, but they did change. This is why in the last 15 years we have been stating the right to bear arms has been restored.

Assemblyman Daly:

I am still not clear. For my example, she says no, you say maybe. How do you go back? You cannot go ex post facto, so there is still a gray area when someone is in that situation.

Brian Campolieti:

That is correct.

Julie Butler:

That is why we want to apply this prospectively. In terms of the Brady background check, if the pardons document does not specifically state the right to bear arms, we cannot assume, so yes, that would be a gray area.

Assemblyman Daly:

So, the position of the Department of Public Safety (DPS) is, no matter what the laws were, or the intent of the Board was, you are saying no, unless specific language is either restored by the feds, or the state through a petition. Even though this person, potentially, has already been able to purchase firearms and been considered legal by everybody else, except you.

Brian Campolieti:

That is exactly our concern. Twenty to thirty years ago these individuals received a pardon. There was no unconditional pardon or a conditional pardon, they received a pardon. The pardon would state all civil rights have been restored. How are the older pardons going to be treated, when these individuals have been purchasing firearms legally since they received their pardon?

Assemblyman Daly:

I am hearing conflicting testimonies. The DPS would say that without a Brady background check, they are not allowed to bear arms.

Julie Butler:

We would have to go back through old pardons documents to determine if firearms rights had been restored. We would need to do some additional research in order to determine if the pardon from 20 years ago had restored the firearms right. The problem is, if a person had his records sealed from 20 years ago, the Board of Pardons does not have the authority to open that sealed record. Section 2 of the bill gives them that authority. If it is a 20-year-old pardon and it was not sealed, we would need to do additional research through the Board of Pardons to find out if that right had been restored. With additional research, it could be determined that firearms rights were restored, but absent that, we would have to say no.

Assemblywoman Diaz:

Can you tell me what goes into weighing whether someone is granted a pardon for bearing arms? When they appear before the Board, how does the Board determine whether or not they will restore these rights?

Brian Campolieti:

It depends on whether they have lost the right to bear arms. On the application, they will make a request for an unconditional pardon that restores their right to bear arms. The information we receive from P&P will include a recommendation from the Chief of P&P and a full report. The Board will go through those reports and make a determination whether they feel this individual should get an unconditional pardon or not. It depends on the case.

Assemblywoman Diaz:

Does this mean that you heavily consider their criminal history upon making this decision?

Brian Campolieti:

Absolutely. We conduct a full background investigation.

Assemblyman Frierson:

People who were pardoned 20 years ago did not receive the right to bear arms unless it was expressly stated in the pardon. This bill is trying to prevent people from being confused about their right to own a gun. It does not seem to me that it changes anything other than to clarify for new pardons that when they buy a gun or possess a gun, they have a right to do so. Is that right?

Julie Butler:

That is correct. We are trying to codify the existing informal process. We still would have directed them, absent this legislation, to get a pardon. This puts it in statute and makes it more concrete for individuals so they understand.

Assemblyman Hansen:

I am not familiar with the Brady background check. Can you give me the details? It appears this became a problem when that became law.

Julie Butler:

The Brady Act came about as the result of the assassination attempt on President Reagan in the eighties. The legislation which was put into place in 1994 imposed a waiting period of three days so that a name-based criminal history check could be done on the individual before the transfer of a firearm.

Our Brady program started at the same time, we do our own Brady background checks. We check against a list of federal prohibitions which include:

- Convicted felons.
- Wanted persons.
- Persons under indictment.
- Persons who illegally use or possess a controlled substance.
- Illegal aliens.
- Persons dishonorably discharged from the armed forces.
- Citizenship renunciates.
- Persons who are the subject of restraining orders.
- Persons convicted of misdemeanor crimes of domestic violence.
- Mental defectives, people with a mental health prohibition against owning a firearm.

We will run a name-based criminal history background check and if they are any of those on the list, they will be denied the purchase or transfer of a firearm.

Assemblyman Hansen:

Even if they have been granted a pardon in the past to own one? Since this has been going on since 1994, how many cases have we had where this is an issue?

Julie Butler:

I would have to get some statistics on that, but we know it happens often enough for me to be here today, presenting this to you.

Assemblyman Hansen:

Is this just for convenience, or is there a consistent pattern of problems that we are trying to resolve here?

Julie Butler:

I would say there is a consistent pattern of problems.

Vice Chairman Ohrenschall:

Could you get those statistics for the Committee? How many people are applying for gun ownership, who claimed a pardon in the past, that you have to verify that their right to bear arms has been restored?

Julie Butler:

I can try.

Assemblyman Hammond:

The language for what you want to do seems pretty straightforward. You want to make sure that the individuals who have been given their rights back know whether or not they have the right to bear arms. The confusion for me is this amendment and going back to those who got their pardon 20 to 30 years ago. Who is going to be opening up the records? Is it the Board of Pardons?

Brian Campolieti:

Yes, that would be our office. We would be contacted by DPS, and I would go through our archives to verify that a pardon was granted.

Assemblyman Hammond:

How would those individuals feel about their records being opened? Is it specific for the purpose of knowing whether or not they have the right to bear arms? Is that the only reason to be looking at their record?

Julie Butler:

For the purposes of this bill, it would only allow the Board of Pardons to open the sealed record for the purpose of determining firearms rights eligibility and making a judgment on that.

Assemblyman Hammond:

Will this only occur when someone wants clarification if they can bear arms?

Brian Campolieti:

Are you referring to the section that refers to the investigations as far as opening the records?

Assemblyman Hammond:

Yes.

Brian Campolieti:

We get quite a few calls where an individual states he was told that if he got his records sealed, he would get his right to bear arms back. That is incorrect. We would have to tell them you cannot get your right to bear arms back by sealing your record, you need a pardon. We would then have the individual go back to the court to grant P&P the ability to go into their records and conduct that investigation. Otherwise, we cannot conduct an investigation.

Assemblyman Hansen:

Are there individuals out there who possess firearms now who, after their records are opened, will find out they are not eligible to own firearms?

Julie Butler:

We are not intending that the Board of Pardons go back and look at all of the old pardons; they need a reason to open the record. Usually that reason is initiated because they have done a Brady background check and have been denied. They thought the right to bear arms had been restored by virtue of the seal and they are informed it has not been restored.

Assemblyman Hansen:

So, they are coming to you on a case-by-case issue?

Brian Campolieti:

If they get their record sealed, their right to bear arms is not restored, and they go to a gun shop and try to purchase a gun, they will be refused. They have to come back to us. That is where I get the phone calls, "I thought I had the right to bear arms because I got my records sealed." I tell them they have to apply for a pardon. We then go through the process of opening their records so we can conduct our investigation.

Assemblyman Hansen:

I understood from earlier testimony there are people who received their pardons 20 to 30 years ago and have weapons now because they thought they had the right to have them, and now they might get that right taken away.

Julie Butler:

Our intent is to clarify how to get their rights restored. We are not going to go back retroactively and look through every case and second-guess ourselves.

Vice Chairman Ohrenschall:

If this passes as proposed in section 3 of the amendment, then anyone pardoned after October 1, 2011, will need to have an expressed grant of the right to bear arms in their pardon. For the person who was pardoned 30 years ago and whose pardon states all civil rights restored, has he been granted his right to bear arms or not?

Brian Campolieti:

If they received a pardon 30 years ago, and it states all civil rights have been restored, as far as we are concerned their right to bear arms has been restored.

Vice Chairman Ohrenschall:

So, if someone received their pardon 30 years ago, the only reason they would not have the right to bear arms would be if there was an express condition that restores their right to vote, but not to bear arms?

Brian Campolieti:
Correct.

Vice Chairman Ohrenschall:

Is there anyone else in favor of A.B. 66 who wishes to speak? Anyone opposed? I will close the hearing on A.B. 66.

[Chairman Horne returned to the room.]

[Meeting recessed.]

Chairman Horne:

We will now open the hearing on Assembly Bill 49.

[Assembly Bill 49](#): Revises provisions relating to public defenders. (BDR 14-279)

Wes Henderson, Deputy Director, Nevada Association of Counties:

The provision of defense counsel for indigent persons charged with criminal acts is one of the bedrocks of the judicial system in this country.

[Continued to read from written testimony ([Exhibit F](#)).]

Chairman Horne:

I would like to remind the Committee that this is a policy committee, and we should not get bogged down in taxes, et cetera. We will focus primarily on the policy of implementing the Fund for Legal Defense of Indigent Persons.

Mr. Henderson, you stated that currently only five counties utilize the services of the state public defender. This bill would allow for all counties to have a one-eighth of 1 percent sales tax implemented, which would go to a fund they are not using.

Wes Henderson:

The one-eighth of 1 percent sales tax will be retained by the county in which it is generated and can only be used to pay for the provision of defense counsel, regardless of the method of delivery. If they have their own public defender, it would be used for that, and if they use the state public defender, it would be used to reimburse them.

Assemblyman Hansen:

Does the State go to bid to hire attorneys? What is the cost to the counties to provide these services?

Wes Henderson:

Each county is different. Clark and Washoe Counties, by statute, must have public defender's offices. They also have alternate public defender's offices, and they have contracts for counsel. Some of the smaller counties have contracts with counsel for defense and other counties have created their own public defender's office. Five of the counties still use the services of the state public defender, and that office bills the county at a rate established by the Legislature.

Assemblyman Hansen:

So it is a pre-established rate, and not up to the law firm or attorney to bill the county at the rate they choose?

Wes Henderson:

The state public defender's rates are set by the Legislature. Clark and Washoe Counties' defenders are county employees, and are paid accordingly. Contract counsel in some of the smaller counties negotiate a specific rate. It varies from county to county, but the cost is borne 100 percent by the counties.

Assemblyman Daly:

Will the projected revenue cover the projected expenses?

Wes Henderson:

At the one-eighth of 1 percent sales tax, Clark County has estimated their revenue to be \$35 million. Washoe County's estimate is \$6 million and they have budgeted \$10 million for their provision of indigent defense for this year, so the revenue would cover about 60 percent. I do not have the figures for the smaller counties.

Assemblyman Daly:

You stated you will adopt regulations for a new board. How will you proceed with that under the Governor's prohibition against regulations?

Wes Henderson:

I would certainly hope there will be an exception for a new board.

Assemblyman Daly:

As part of the laundry list of things you can do with the money that stays in the county, will there be an opportunity to use it for rehabilitation or other types of aid and assistance so you do not spend as much for people in the court process? Is there any opportunity to expand the use of the money?

Wes Henderson:

This bill is intended to provide funding for the indigent defense counsel.

Chairman Horne:

I do not believe that any committee should or should not take action because the Governor will not sign something. We are the third branch of the government and we should operate independent of that. We send over recommendations and what happens then is a different matter. Let us not hamstring ourselves by not moving a bill because the Governor is not going to support it.

We had a troop of Boy Scouts come in, welcome. As a quick review, we are now hearing A.B. 49, which deals with raising money for indigent defense. That is those persons charged with crimes who cannot afford an attorney, and one will be appointed to them. Often times it is a private attorney and they have to be paid for their services. This bill is being used as a mechanism to allow the counties to raise money to do that. Everyone has a constitutional right to counsel if charged with a crime that will take a liberty away from them, which is going to prison.

Assemblyman Brooks:

Mr. Henderson, you stated there is a one-eighth of 1 percent sales tax which would generate approximately \$35 million a year, correct?

Wes Henderson:

The \$35 million is in Clark County.

Assemblyman Brooks:

What was the amount of money spent on indigent defense last year in Clark County?

Wes Henderson:

I do not have that figure, but I can get it for you.

Assemblyman Brooks:

Approximately what would a county similar to Clark County spend per year on indigent defense?

Wes Henderson:

Again, I do not have the exact figure with me.

Assemblyman Brooks:

Do you know if it would be close to \$35 million?

Wes Henderson:

It would be more than that.

Assemblyman Brooks:

How will the county pick up the rest?

Wes Henderson:

The bill has an optional second one-eighth of 1 percent that the Board of County Commissioners can pass, which would cover the cost. Currently, indigent defense throughout the state is being paid through the county General Fund.

Assemblyman Brooks:

On page 15, line 39, I notice the administrative assessment fee is doubled when a judgment is rendered against a guilty party. Why is it doubled?

Wes Henderson:

That was the figure that our legislative committee agreed to.

Assemblyman Brooks:

There is a series of increases in \$5 increments as well as the doubling of the administrative assessment fee along with the one-eighth of 1 percent sales tax with the option for another one-eighth of 1 percent sales tax. That is what you are requesting, correct?

Wes Henderson:

There are three pieces to this bill. The two sales tax pieces, the statewide and the county option, would be kept in the county in which it is generated to use for indigent defense. The third piece, the increase in administrative assessment fees, would go into a statewide fund for counties with extraordinary costs or complex cases who could apply for reimbursement of those funds.

Assemblyman Frierson:

With respect to the administrative assessment fees, what happens if an individual is unable to pay them? Is there a chance they will be incarcerated because of their inability to pay?

Wes Henderson:

There is a provision currently in statute which allows a judge to waive the assessment fees.

Assemblyman Frierson:

Could they punish someone for not following through with all of their orders by requiring that they serve some time if they are unable to pay?

Wes Henderson:

That is not my understanding, but I can find out.

Chairman Horne:

Is anyone else here to testify in support of A.B. 49?

Tierra D. Jones, representing Clark County Office of the Public Defender:

We are in support of this bill based upon the fact that our office would be receiving the benefits of this bill.

Chairman Horne:

Can you answer Mr. Frierson's question regarding incarceration for failure to pay an administrative assessment fee?

Tierra D. Jones:

Right now the court does have the ability to waive the administrative assessment fees, and as a general policy, most judges in Clark County do not incarcerate individuals for the inability to pay the fees. I do not know that it has never happened or that it never will happen.

Kevin Higgins, Justice of the Peace, Sparks Justice Court:

People do go to jail for not paying their administrative assessment fees. If you have a fine and do not pay it, a bench warrant is issued for your failure to pay the fine and you are incarcerated. These can be, and frequently are, converted to community service, but if you have not come to court to explain your circumstances, you will get arrested.

Chairman Horne:

Can the administrative assessment fees be converted to community service?

Kevin Higgins:

The statute currently provides for that, yes.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:

I am in support of this bill, but with concerns. We believe there needs to be a stable funding source for our public defenders and indigent defense funds, however, I do have grave concerns about one of the funding sources. That has to do with the court assessment fees. I know this is not a money committee, but I would like to point out our concerns.

Since the inception of the court assessment fee, we have seen the use of this money go to other funding issues. When the court assessment fee was initiated, there were the courts, Peace Officers' Standards and Training

Commission, and the criminal history repository. That is what was supposed to be funded from that assessment. Since that time, there is a position at the Attorney General's Office for Domestic Violence and Victims of Crimes which is funded out of that. Last session the Legislature added a \$5 fee that goes directly to the General Fund and now the public defender wants to add additional fees to that.

My concern is that the collection of this fee is supposed to be directed towards the funding for which it is collected. That is not happening. For example, the Peace Officers' Standard and Training Commission, over the last ten years, has reverted \$60 million to the General Fund. That is \$60 million taken away from the training of police officers. I remind you that police officers are the ones that generate the arrests and tickets which generate the court assessment fees. Also, the criminal history repository is in dire straits, money for the repository has been diverted back to the General Fund. The Peace Officers' Standards and Training budget for 2012 is down \$800,000, in 2013 it is down \$1.6 million. That is \$2.5 million back to the General Fund. We have 10,000 police officers in Nevada, we only average \$300 each, per year for training. My concern is that the money be used for what it is designated for.

Assemblyman Brooks:

Ms. Jones, can you tell me how much money was spent on indigent defense last year by Clark County?

Tierra Jones:

I can get those figures for you by the end of the day and submit them to you.

Chairman Horne:

Please submit those figures to all the members of the Committee.

Is anyone else here to testify in favor of A.B. 49? Anyone in opposition?

Dino DiCianno, Director, Department of Taxation:

I understand this is a policy committee, not a tax committee. I just want to make sure that the Committee is aware that the Department has filed a fiscal note ([Exhibit G](#)) with respect to this bill which will be addressed further in the Taxation Committee. However, if it is processed, we would ask that the effective date be changed to October 1, 2011, to give us sufficient time to be able to change our computer system in order to affect the collection and distribution of the revenue.

Chairman Horne:

I would like to put on record that David Bowers, City of Las Vegas, has signed in as being opposed to A.B. 49. I would like for Mr. Bowers to advise me on his rationale of opposing this bill.

Kevin Higgins, representing Nevada Judges of Limited Jurisdiction:

I would like to point out that I came to Boy Scout Government Day for the first time in 1973. I believe all the committee members were different at that time.

We are neutral on this bill. I am a member of the Commission on Indigent Defense, and have spent my entire career in the criminal justice process. I know from both sides of the bench how important it is to have adequate, competent legal defense. It is the bedrock of our criminal justice system, and we cannot do without it. Our issue is the administrative assessment fees portion. We have become increasingly concerned about the viability of continuing to collect administrative assessment fees. In 1983 there was a \$10 administrative assessment fee imposed, now administrative assessment fees are in the low \$100 range for different crimes. There is also a sliding scale assessment fee that is split between the Judicial and Executive Branch and there is a \$10 court facility fee that the courts can choose to impose. What we have found is after that \$5 administrative assessment fee was imposed during the special session and put to the top, statute ranks what has to be collected in what order, and we have seen a decrease at the bottom of the scale. The portion of the fines and fees that go to the city and county has decreased.

It appears there is a finite amount of money that people can pay. Almost everyone I see has a public defender appointed to them. They cannot afford an attorney. They are indigent, which generally means they cannot pay their fines and fees, which are often converted to community service. I do not think there is a pot of money that we have not tapped into that we can use to pay for these services.

I have been tasked by our association to testify against assessments in the past. I have testified against money for rural ambulance services and money for funding different parts of the state budget when we do not think it is collectable. When people do not pay their fines, warrants are issued and they end up in jail. It is then the position of the judge to decide if somebody is just not paying the fines because they do not want to, or if they are indigent and have to do community service. There is a cost to the city and county in putting people in jail for not paying their fines. In Washoe County it is \$127 a day.

Assemblyman Hansen:

Your Honor, for the benefit of the Boy Scouts, will you tell us what your rank is in Boy Scouting.

Kevin Higgins:

I am proud to be an Eagle Scout.

Assemblywoman Diaz:

How is indigent defined?

Kevin Higgins:

Statutorily, it is up to the judge during the arraignment to make that decision. The Commission on Indigent Defense, through the Nevada Rules on the Administrative Docket No. 411, has set the number at two times the federal poverty rate, which is published twice a year. A single person, with income of less than \$1800 a month, would be considered indigent. Also, anyone receiving Temporary Assistance to Needy Families, food stamps, government assistance, unemployment, or incarcerated, or in a mental health treatment center, they are considered indigent.

Chairman Horne:

Is anyone else present wishing to testify on A.B. 49? I will close the hearing on A.B. 49.

To let the Boy Scouts know, I was a Life Scout. I hope you gained a lot out of this, young men. Enjoy your time here in the legislative building.

I would like to remind the Committee that A.B. 49 is going to Taxation. If we process the policy on this bill, there will be a one-eighth of 1 percent sales tax implementation, also another one-eighth of 1 percent discretionary to the county to impose. We are looking at two administrative assessment fees to fund the indigent defense fund and creation of a board to administer it. This is the policy we will deliberate on and whether or not it is a good idea. We will let the tax committee determine if those assessments are warranted, excessive, not enough, et cetera.

I need to assign Assembly Bill 11 to someone on the floor. It will be up for a third read today. I will assign this to Mrs. Diaz.

Also, to the Committee, for the past week I have allowed members to get their feel for the Committee. In the future I am going to reel it in on the expansiveness and scope of the questions.

With no more business before the Committee, we are adjourned [9:54 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 14, 2011

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 13	C	Cameron Waithman	Written Testimony
A.B. 66	D	Julie Butler	Proposed Bill Amendment
A.B. 66	E	Julie Butler	Written Testimony
A.B. 49	F	Wes Henderson	Written Testimony
A.B. 49	G	Dino DiCianno	Executive Agency Fiscal Note