

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

**Seventy-Sixth Session  
April 13, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 7:45 a.m. on Wednesday, April 13, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](http://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](mailto: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 Kelly Kite  
Assemblyman Richard McArthur  
Assemblyman Tick Segerblom  
Assemblyman Mark Sherwood

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman John Ocegüera, Clark County Assembly District  
No. 16  
Assemblywoman Debbie Smith, Washoe County Assembly District  
No. 30

**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Nick Anthony, Committee Counsel  
Karyn Werner, Committee Secretary  
Michael Smith, Committee Assistant

**OTHERS PRESENT:**

Bridgette Zunino-Denison, Private Citizen, Reno, Nevada  
Lauren Denison, Private Citizen, Reno, Nevada  
Ashley Zunino, Private Citizen, Los Angeles, California  
Elliott Sattler, Deputy District Attorney, Washoe County  
District Attorney's Office  
Jayann Sepich, Private Citizen, Carlsbad, New Mexico  
Edward Smart, Private Citizen, Salt Lake City, Utah  
Catherine Cortez Masto, Attorney General, Office of the Attorney General  
Chuck Callaway, Director of Intergovernmental Services,  
Las Vegas Metropolitan Police Department  
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'  
Association  
Kristin Erickson, representing Nevada District Attorneys Association  
Marlene Lockard, representing Nevada Women's Lobby  
Orrin J. H. Johnson, Deputy Public Defender, Washoe County  
Public Defender's Office  
Tierra Jones, representing Clark County Public Defender's Office  
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties  
Union of Nevada  
Joanna Jacob, representing City of Reno  
Brian O'Callaghan, Government Liaison, Office of Intergovernmental  
Services, Las Vegas Metropolitan Police Department  
Jeffrey Toschi, Detective, Las Vegas Metropolitan Police Department  
Martina Geinzer, Litigation Manager, Las Vegas Metropolitan Police  
Department  
Lou Toomin, representing Las Vegas Constable's Office

**Chairman Horne:**

[Roll called. Everyone was present. Committee and audience were reminded to silence their laptops and cell phones.]

This morning we will be hearing three bills. Another bill has been pulled. Assembly Bill 344 and Assembly Bill 445 have been pulled from the agenda. If you are here for either of those two bills, I am sorry you came out just for that.

[Assembly Bill 344](#): Revises provisions governing preservation of biological evidence and genetic marker testing. (BDR 14-270)

[This bill was not heard.]

[Assembly Bill 445](#): Revises provisions governing mediation in certain actions for foreclosures. (BDR 9-707)

[This bill was not heard.]

We are going to begin with Assembly Bill 552. I will open the hearing on A.B. 552.

[Assembly Bill 552](#): Revises provisions related to the collection of biological specimens for genetic marker analysis. (BDR 14-539)

**Assemblyman John Ocegüera, Clark County Assembly District No. 16:**

I am here, with Assemblywoman Debbie Smith, to present Assembly Bill 552. This bill deals with the DNA collection from persons arrested for felonies and other sexual crimes.

First, I want to go over the current law. Under existing law, the defendants who are convicted of a felony, or certain other specified offenses, must provide DNA samples for analysis and storage. Also under current law, persons may not share or disclose certain information relating to another person's DNA or they are guilty of committing a gross misdemeanor, and may be imprisoned for up to one year and fined \$2,500. I will turn this over to Assemblywoman Smith who will talk to you about this bill.

**Assemblywoman Debbie Smith, Washoe County Assembly District No. 30:**

Thank you for hearing Assembly Bill 552. You will hear compelling testimony today regarding the genesis of this bill and why we believe this legislation is an important policy for us to adopt in this state.

Assembly Bill 552 requires the arresting law enforcement agency to collect an arrestee's DNA by cheek swab upon arrest for a felony or a sexual offense. Felony arrestee DNA will be analyzed and genetic profile information will be entered into the Combined DNA Index System (CODIS).

[Read from PowerPoint presentation ([Exhibit C](#)).]

We thought this was an important distinction between the felony and misdemeanor arrests for sexual reasons.

[Continued to read PowerPoint presentation.]

We have had considerable discussions about the types of misdemeanor sexual offenses that individuals can be charged with, and whether someone streaking across a football field that can result in some type of offense warrants the same level of attention that other offenses require.

[Continued to read PowerPoint presentation.]

This is a very important piece of the legislation because there are concerns about privacy issues and how this information is handled in CODIS. I am not an expert on this type of legislation, but we have the experts with us today to talk about CODIS and how DNA samples are handled and processed. Your questions will be able to be thoroughly answered on this issue.

[Continued to read PowerPoint presentation.]

**Assemblyman Ocegüera:**

I know that this is a policy committee; however, I think it is important to talk about funding since this was part of the issue with this bill. For this bill, at this present time, there are two funding mechanisms.

[Continued to read PowerPoint presentation ([Exhibit C](#)).]

Although this is not the Assembly Committee on Ways and Means, I know that the issue of funding comes up. Certainly options for funding are in flux. I would not say that is the final answer; we may come up with some creative ways to fund this bill.

**Assemblywoman Smith:**

You will probably remember that, after the murder of Brianna Denison, there was a backlog of DNA samples in the Washoe County lab, and gifts and donations had to be collected to run that backlog. Fortunately, that money was

raised very quickly and the DNA was processed. That is one of the reasons we put the gifts and grants provision in this legislation. If we do have any complications with funding, we will have the policy adopted out of this Committee, and we will deal with the funding part of it. We also want to be able to raise money through grants, gifts, and donations. That will also give us enabling legislation.

As I said earlier, this bill came to us for a compelling reason. It came to us because of the murder of Brianna Denison and the desire of her family and the friends and family members that you see behind us today who are here to support the legislation and the Denison family. Similar bills have been discussed and passed in many states. You will hear testimony from more than one person about the status of legislation in other states, and how these laws have been implemented. We have several compelling witnesses to tell you their stories and why we brought forward this legislation. We welcome the discussion and know that today we are focused on the policy and look forward to that. There are plenty of people here from both the DNA lab and law enforcement that will be able to answer any specific questions that we may not be able to answer for you.

**Chairman Horne:**

I see no questions. Do you want me to call those testifying in a particular order?

**Assemblywoman Smith:**

Yes, Mr. Chairman. I would like to begin with Bridgette Zunino, Brianna Denison's mother, who will share her story with you. Lauren Denison is also here. Then we have Jayann Sepich, who is the mother of a victim and has become a national crusader on this issue and has some information about what has happened in other states. She will also provide information on CODIS.

**Bridgette Zunino-Denison, Private Citizen, Reno, Nevada:**

I would like to thank the Committee for the opportunity to speak to you today. I am Bridgette, Brianna Denison's mom. Three years ago my biggest fear while raising my children came true. While Brianna was home from college on winter break, her sweet life was taken from me, from us.

[Continued to read prepared testimony ([Exhibit D](#)).]

**Chairman Horne:**

We have spoken before at meetings and previous hearings. I apologize that you are here again seeking this. I am glad we can offer you an opportunity to tell your story to this Committee. I am sorry for your loss.

**Lauren Denison, Private Citizen, Reno, Nevada:**

I appreciate the opportunity to speak in favor of A.B. 552. I am Brianna's aunt and I am here today, in spite of the overwhelming grief and loss that our family has suffered. This is not easy for me and there is no personal gain, considering Brianna is gone. However, I feel this bill is critical to preventing future victims of violent crimes. We are inspired and motivated by the love and support of this entire state. The importance of this may have originated because of Brianna, but it is now much bigger than her. This bill is about improving our response to violent crimes and providing law enforcement with better tools in order to get these offenders off the streets sooner rather than later, which would make our communities safer.

We were amazed with the level of support that we received from the day Brianna disappeared. There were the dedicated search volunteers, donations for the backlog that included children having penny-drives at their elementary schools, and large corporate donors. People all over the state have spoken through their actions. Although today you are hearing from just a few of us, we are their voice. When the people of this state found out there was a DNA backlog, they responded by donating \$180,000 in just three days, which is truly amazing. Cindy Carano really spearheaded this effort, and we are forever grateful to her. There is also a very powerful statement from the public, reacting to the need for "Brianna's Law." This case touched so many people, from the tow-truck driver who was so touched by Brianna's story that he named his daughter after her, to the hundreds of volunteers who gave their time to search fields and deserts for her.

I thank you once again for the opportunity to be here, and I urge you to see the need for this legislation and the lives it can save.

**Chairman Horne:**

Are there any questions? I see none.

**Lauren Denison:**

We have Bridgette's niece, Ashley, who would like to speak briefly.

**Ashley Zunino, Private Citizen, Los Angeles, California:**

Brianna was my cousin, although we grew up more like sisters. I cannot remember a single one of my childhood memories without Bri in it. Not a day went by that we did not talk. We told each other everything.

[Read prepared testimony ([Exhibit E](#)).]

**Elliott Sattler, Deputy District Attorney, Washoe County District Attorney's Office:**

I am here to give you an idea of how DNA impacts my everyday job. I had the pleasure of meeting this family when I was the lead prosecutor on the James Michael Biela case. He is the person who committed the heinous crimes, not only against Ms. Denison, but also against two or three other women in our community.

I think the most important thing to keep in mind about DNA evidence is that it is really the touchstone now for all juries, not just in homicide and rape cases. Basically, in every case I take to a jury, the jurors all want to see the DNA evidence. Unfortunately, people spend way too much time watching television. They watch *CSI* and some of these other shows and assume that DNA should be everywhere. Frankly, if there is any way we can collect it and use it, I think we should do that, as long as that collection and use falls within the parameters of the Fourth Amendment. I do believe the Fourth Amendment is sufficiently protected under "Brianna's Law." Something to consider about this case in particular is, on the night that Brianna Denison went missing, a swab was taken from the back door of the residence where she was staying. That swab had James Michael Biela's DNA on it. If we would have had his DNA from his previous arrest, we would have been able to immediately go to James Michael Biela's house and find out where he was and what he was doing on the night of the offense. I do not know whether it would have prevented Ms. Denison's death, but at least we would have been able to immediately stop him. As it was, Mr. Biela left our community and was living in Washington for approximately ten months. He was arrested in November, so we do not know where he was or what he was doing for that ten-month period of time. If "Brianna's Law" had been in place, I firmly believe we would have arrested him faster, and protected our community and others better. I believe this law should be passed and I encourage you to pass it.

**Chairman Horne:**

I see no questions.

**Jayann Sepich, Private Citizen, Carlsbad, New Mexico:**

Thank you for allowing me to be here today to share my story. Bridgette Zunino-Denison, Lauren Denison, and I have become very good friends. I would like to think that we would have been friends if we had met through other circumstances. We enjoy a wonderful relationship. Unfortunately, we met because we share a tragedy. I believe when this type of tragedy first happens, all we can feel is our own pain, our own suffering and agony. Then we learn that others are going through very similar situations. We learn that we are not alone. We learn of others' pain and then there comes

a time that we say, "How can we prevent this pain?" That is where Bridgette, Lauren, and I are today. I am here to share my story with you.

[She showed a PowerPoint presentation that included pictures of Katie Sepich ([Exhibit F](#)).]

You have the opportunity today to review and recommend legislation that has the power to not only solve crimes, but to prevent crimes, save lives, and exonerate the innocent.

[She continued to show PowerPoint presentation ([Exhibit F](#)) and read from prepared testimony ([Exhibit G](#)).]

I think it is very important to talk about the power of arrestee DNA to exonerate as well. We have three examples in the state of New Mexico where men who were arrested for rape and murder were exonerated when a match was later made on our arrestee DNA database. Arrestee DNA exonerates. We all know of cases where DNA has exonerated, but arrestee DNA can exonerate as well.

A case that I think would be of particular interest is the Alvaro Medina case. He was arrested for a burglary in Albuquerque. His DNA matched a cold case homicide in Las Vegas, Nevada. Detective Barry Jensen of the Las Vegas Metropolitan Police Department called me and told me that this man, Alvaro Medina, had never even been a suspect in that case and never a person of interest. He made the mistake of going to Albuquerque, New Mexico, and being arrested for burglary where that match was made.

I know the pain. I live with it every day. I know the power of arrestee DNA. You can make a decision today to recommend the policy that can make such a difference, so other mothers, like Bridgette Denison, will not walk this path.

[She continued to show PowerPoint presentation ([Exhibit F](#)) and read from prepared testimony ([Exhibit G](#)).]

When I first started working on this, I wanted to learn as much as I could about this system. I was concerned about privacy. I got to speak with two of the scientists that developed CODIS, Dr. Arthur Eisenberg and Dr. Bruce Budowle. I told them that I am not a scientist; I am a mom, so please explain this in terms that I can understand.

[She continued to show PowerPoint presentation ([Exhibit F](#)) and read from prepared testimony ([Exhibit G](#)).]



I submitted an example of a CODIS DNA profile ([Exhibit H](#)). This information is from Lab XYZ to DHL, which is the actual information that goes into the database. "Lab XYZ" is the lab identifier. It says that this is the lab that did the profile. The next number is a specimen identification number that says this is the person the DNA belongs to. The next 26 numbers are the 13 markers because there are 2 numbers for each marker. "DHL" is the lab analyst's initials.

It is so important to know how the system works. Allow me to take a few minutes to explain this. First, you have to understand that the DNA profile only exists in two places. It exists as a computer record in the state database, the State DNA Index System (SDIS), and the national database, the National DNA Index System (NDIS). Those are the only places it exists. It is not on paper. It is not attached to the arrest record. Although fingerprints are attached to the arrest record, the DNA profile is not. It is only in these two places. It never surfaces unless there is a match to crime scene evidence. When that match is made and all 26 of these numbers match, the state is notified that this specimen identification number matches this case number. What the state does is to retest the original sample to see whether it comes up with the same numbers. When the state determines they are the same numbers, those numbers go to a separate off-line, secure computer that keeps this number, 0012152. That is the specimen identification number that says who the DNA belongs to. That information can only be released to the law enforcement agency that is working that case. Although the state CODIS administrator and I became friends through this process, when the hit on my daughter's case was received, he could not pick up the phone to call me and tell me that a match was made. It is illegal for him to do that. He could only call law enforcement and tell them. Then law enforcement uses this as an investigative lead. They look to see whether there is other evidence that will corroborate this, and when law enforcement determines that there is a strong enough case to introduce it, law enforcement gets a warrant and this man's DNA is tested again. Law enforcement gets another cheek swab, and that is the evidence that goes to court. That is how the system works. It is a federal offense to tamper with CODIS and, since the inception of DNA databases, there has never been a misuse of CODIS.

I want to talk to you today about expungement. It is federal regulation that, in order for arrestee DNA to be uploaded into CODIS, the state must have a process for expungement. It is written into statute in "Brianna's Law." Opponents will tell you that once the information goes to the federal database you cannot get it expunged. I followed this very closely. As I told you, it only exists in the state database and the federal database. When it is expunged, it is expunged on the state level, and that synchronization takes place once a week.

When it is synchronized to the federal database, it is eliminated there. People ask, "What if there is a computer glitch and it is not eliminated?" First of all, you saw what is in the database, a code number. The identifying information on the separate computer is also expunged. So, even if for some reason there were a glitch, which has never happened because there are audits, which I will talk about, and the information still existed and a hit were made in NDIS, no one could go back and find out who that information belonged to because that information would have been expunged on the state level.

There are federal regulations that require audits of the expungement procedure. It is done by the Office of the Inspector General of the United States Department of Justice (DOJ). That office conducts regular and random audits. If you would like, I can get you the link on the website that can show you a state audit and how it is done. The Office of the Inspector General of the DOJ makes sure that the expungement is done.

[She continued to show PowerPoint presentation ([Exhibit F](#)) and read from prepared testimony ([Exhibit G](#)).]

The DNA system has been set up to guard privacy much, much more than fingerprints. In many states, fingerprints cannot be expunged; DNA is. Fingerprints are attached to the permanent arrest record. The DNA profile is not.

[She continued to show PowerPoint presentation ([Exhibit F](#)) and read from prepared testimony ([Exhibit G](#)).]

I can tell you that three years is a long time for a family to wait for justice. There are a lot of bad things that happen to families as a result of this kind of trauma. Justice does bring healing. We need to bring that healing to families much sooner.

I also want to address the Fourth Amendment. Opponents will say that this is a violation of the Fourth Amendment. Opponents are going to talk about cases, so I am going to talk about cases very quickly. The highest state court that has ruled on this issue is the Supreme Court of the Commonwealth of Virginia in a case called *Anderson v. Commonwealth of Virginia*, Record No. 062051 (2007). The court upheld arrestee DNA. That was in 2007. The Court said it was not a violation of the Fourth Amendment. This issue has also been heard by the Ninth Circuit Court of Appeals, which is the Circuit Court of Appeals for Nevada. That ruling came on September 14, 2010, in the case of *United States v. Pool*, 621 F.3d 1213 (9<sup>th</sup> Cir. 2010), in which the Ninth Circuit upheld the lower court's ruling. I am going to quote from the ruling: "The government's

interest in definitely determining the defendant's identity outweighs the defendant's privacy interest."

In the Court's decision, it differentiated the Nevada case of *Friedman v. Boucher*, 580 F.3d 847 (9th Cir. 2009), in which the Court stated ". . . the forcible taking of the DNA violated the defendant's clearly established Constitutional rights." The Court differentiated the *Friedman* case from the *Pool* case by stating that there was no statute in Nevada regarding arrestee DNA at that time. In summary, the Ninth Circuit Court of Appeals has upheld the taking of arrestee DNA as constitutional.

I know this is a policy committee, but I am also going to address funding. Opponents say it is too expensive. I say it saves money. Between the time Gabriel Avila could have been identified and the time he was finally identified, which was a little over three years, over \$200,000 was spent investigating my daughter's case. This is not salaries that were on the books. This is not money that was already there. This is money that could have been saved with a simple cheek swab.

There was a study done under the auspices of the DOJ. It was done to see how DNA evidence can be used in all types of crimes. The City of Denver participated in this study and very careful records were kept. After that three-year study was completed, it was determined that for every \$1 invested in DNA, there was a savings of \$90. I think it is very fiscally responsible.

[She continued to show PowerPoint presentation ([Exhibit F](#)) and read from prepared testimony ([Exhibit G](#)).]

One other thing you will probably hear about today is backlogs. It is very important that you understand that there are two separate tracks for DNA: DNA crime scene evidence and offender DNA testing. The DNA testing goes to two separate analysts. Separate equipment and two separate processes are used. Looking for crime scene evidence is very labor intensive. In New Mexico, we still have backlogs for our crime scene evidence DNA. We are working on it; it is getting better. But we have no backlogs for our offender testing. It is a different track with different equipment. When persons say this will make the backlogs worse, that is not necessarily true.

There are great costs and consequences for not taking DNA upon arrest. I think of these women whose lives were lost, and I can tell you with great confidence that if this law is not passed this year in Nevada, in the months and years to come, there will exist a list of names of Nevada victims who could have been saved, and we will know who those victims are. We will know their names and

their faces. We will know their stories and their mothers and fathers, and those that loved them will know they could have been saved. That is a tremendous burden to bear. If this law is passed in Nevada, we will not know the names of those who will be saved. We will only know that they have been saved and, to me, that is enough. To me, that is a tremendous blessing. I welcome your questions.

**Chairman Horne:**

Thank you for a thorough presentation, and your tireless work in this country, and for taking the trip out here to present this to the Committee and other legislators here in the building.

Are there any questions for Ms. Sepich? I see none.

**Edward Smart, Private Citizen, Salt Lake City, Utah:**

I appreciate the opportunity to be here. I am here with a number of people, members of a club that, hopefully, nobody here will end up belonging to. It is a group that has been brought together because of their children. I have been one of the fortunate ones to have had my daughter returned to me. The fact is that DNA can stop and help eliminate many of these cases. When I think of the pain and anguish that parents go through, the not knowing is worse than anything else. I think we have an opportunity to make a difference in our communities, in our state, and in our nation. The value of that is to help stop the cycle of violence. You have just heard about one man, what he did, and how many people he affected. How many lives would have been untouched if he had been caught up front and been held responsible for his actions? The bottom line is that DNA will help stop the cycle of violence happening in our nation. I appreciate the opportunity of being here with you. There are some wonderful people in this room. The bottom line is that we love our children, and we do not want to see them suffer. We want to stop those who choose to hurt our children.

**Chairman Horne:**

Thank you for making the trip here to Carson City. Are there any questions for Mr. Smart? I see none.

At this time, Ms. Smith, I am going to move to Attorney General Cortez Masto in Las Vegas.

**Catherine Cortez Masto, Attorney General, Office of the Attorney General:**

Thank you for having this hearing today. You know this is an issue that we, as a state, and particularly the Bri Foundation, have been trying to address and to bring this important legislation to our state. I cannot thank you enough for your

commitment to bringing this forward for a hearing today. As you can see, and as you know, this is such an important piece of legislation for our state. I have been working with the Foundation for the last 1 1/2 years. As you heard this morning, there is no more important piece of legislation for our state than this one today. I am in full support of this law. It affords a protection for the citizens of our state. After reading through the proposed legislation there is no doubt that we have also afforded protection within the Fourth Amendment parameters. If there are any concerns from the Committee members regarding any further protections that they feel are needed, I think we can work through those issues. From my perspective, as you have heard, this law will prevent future victims. It will also prevent those from being falsely accused. Many of you may know that the state has John Doe and Jane Doe websites. Our coroner has set those websites up for those unfortunate people who have been murdered in our state and whose identity remains unknown and have no closure. I think this law will help us identify those individuals, as well, and prevent future victims.

Thank you very much. I just wanted to come down this morning and give my full support for this law.

**Chairman Horne:**

Thank you, Attorney General Mastro, for working tirelessly for the last 1 1/2 years, as well, and in the interim. And thank you for coming to me and addressing others' prior concerns. You made it easy for me to make the promise to work with you and bring it to hearing today.

Are there any questions for the Attorney General? I see none.

**Assemblywoman Smith:**

That is the array of witnesses that we had planned for this morning. There are representatives from the DNA lab if the Committee has any specific questions. We had not planned for them to testify, but they are here to answer questions for you, as well as law enforcement representatives. Ms. Sepich did a thorough job of discussing DNA and CODIS, but we do have those people here if you have any other questions.

**Chairman Horne:**

We have no questions now, but the members can turn their light on if they have specific questions.

**Chuck Callaway, Director of Intergovernmental Services, Las Vegas Metropolitan Police Department:**

We support A.B. 552. I was going to explain to the Committee why it is important for law enforcement, but I think that has already been very adequately covered. We are also happy that this bill contains the funding mechanism, which has always been a concern for us in previous sessions. The last thing we want is to collect genetic-marker samples from suspects, and then have them sit in a box on a shelf because the funding is not there to process them. We believe this bill takes a huge step forward in addressing that concern as well.

With that being said, DNA testing is a complicated matter as far as procedure goes. I have people here from our crime lab, including Kimberly Murga, the supervisor of our crime lab in Las Vegas. I believe Washoe County has people here, too. There are minor bugs in the bill as far as procedure goes. As this bill moves forward, we believe those bugs can be worked out. Last night, I received an amendment on the bill. Our crime lab people are looking at it and will provide feedback of how we can improve the language.

**Chairman Horne:**

Briefly, how do you anticipate the collections to occur, in the field or at booking?

**Chuck Callaway:**

Ideally, I think it would be collected at the time of booking. However, there is a section in the bill that adds to the confusion in that area when it talks about the magistrate determining probable cause. The question is, does that mean the suspect has to go to preliminary hearing before the sample can be taken? Then, would the sample be taken prior to the release of the suspect? That falls into the category of "minor bugs" that need to be worked out that we can address as we move forward.

**Chairman Horne:**

In that section, was that on some of the sexual offenses?

**Chuck Callaway:**

What I am referring to is section 3, on page 3, where it says, ". . . magistrate makes a determination that probable cause exists for the person's arrest," and then goes into what information is collected. Many times, when a suspect is booked into the Clark County Detention Center, for instance, the officer in the field had probable cause to make the arrest, but the magistrate has not yet determined through a preliminary hearing whether probable cause exists to

proceed with prosecution. That is a small element of confusion that we feel would need to be worked out.

**Assemblywoman Dondero Loop:**

I need some clarification. Someone is arrested for a felony and a DNA sample is taken. Let us say there is no match. Does that DNA sample then remain where law enforcement can always get it? What if two years later the person gets arrested for a felony? Is an additional DNA sample taken at that point, or is the original one used?

**Chuck Callaway:**

It is my understanding based on the language of the bill that once a DNA sample has been taken from an arrestee, the law enforcement agency would not take a subsequent sample. The original sample would stand. One issue is that the information might not be readily available to the law enforcement agency. For instance, the subject was arrested in White Pine County for a felony today, and he gets his DNA sample taken. A week later he is released, and then is arrested in Las Vegas. We might not know that he has had that sample taken. That information may not be readily available to us. We would prefer that the language read that if the law enforcement agency is aware that a sample has been taken, a subsequent sample will not be taken.

**Assemblywoman Dondero Loop:**

I have looked into this for another bill that I am sponsoring, and I think it is really important that if someone is arrested, we resubmit at that point. Two years is a long time and people commit other crimes during that time.

**Chuck Callaway:**

I am not an expert in the field of DNA, but the lab people are and might be able to better address this. I think we are talking about two separate issues. One issue is taking the sample from the suspect upon arrest. The other issue is the storage of that sample in CODIS. The DNA evidence is periodically cross-referenced with CODIS. Once the sample is taken, it remains in CODIS, unless it is expunged.

**Assemblywoman Dondero Loop:**

That is where I am going. I believe you are innocent until proven guilty. I want to ensure we do not lose the opportunity to take a sample, even if the first time a person is arrested the felony he committed did not include the sampling. Subsequent arrests could include the cheek swab. Generally, criminal behavior escalates. As a mother, that is where I am going.

**Assemblyman Sherwood:**

To follow up on the question about language that needs to be worked out, right now, when you are arrested, do you wait on a magistrate for the mug shot and fingerprints?

**Chuck Callaway:**

No, we do not. When someone is booked into the Clark County Detention Center, his fingerprints and mug shot are taken. That is part of standard operating procedure for the booking process. Section 3 of this bill, on page 3, says that a magistrate would have to make the determination that probable cause exists. The language would need to be worked out so we know exactly when the sample would need to be taken.

**Assemblyman Sherwood:**

What would your preference be?

**Chuck Callaway:**

Our preference would be to take it at the time of booking, when the fingerprints and mug shots are taken. The corrections officer could take the DNA swab.

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

I would hope that DNA works similarly to the way we work with fingerprints. When a person is arrested and fingerprinted, those fingerprints are run against what is called a "latent fingerprint file." We take latent fingerprints from a crime scene, not knowing whom that print belongs to. When a person comes in, his fingerprint is run against the latent print. I see this being a similar system, and that when a person's DNA is taken and processed, it would be run against unknown DNA samples so we know whether there is a match.

**Assemblyman Sherwood:**

This is because of the latent DNA, right? A magistrate could say, "I do not see any probable cause." If we did not swab and he was responsible for five unsolved crimes, we could not connect this person to them, right?

**Frank Adams:**

Yes, as the bill reads. That is why I think it is important that we have a chance to work out some of these operational, technical things.

**Assemblyman Sherwood:**

For the record, I would say that is not minor or technical. That is the heart of this bill. We need to follow your recommendations for standard operational procedures.



**Assemblyman Frierson:**

I looked at that and it looks to me like the bill attempts to allow for collection at every possible point. For the people who are not in custody, when they go to a preliminary hearing, there is a method for their DNA to be collected. For people who are initially taken into custody, there is a method. I am assuming that someone will address what happens if the charges are dismissed, or he is acquitted. That person can request the money back that he paid. I appreciate your willingness to work it out. I hope those sections will conjunct with each other and alleviate your concerns.

**Frank Adams:**

Captain Kuzanek from Washoe County is in another committee and has asked me to speak on his behalf. We support this bill. We believe it is a vital tool that we need in law enforcement to continue to be effective and efficient in the way that we work. Our hearts go out to those family members and I personally, over my 41 years, have had cases that wrenched my heart out, too. I know that if we would have had DNA at the time, we might have been able to make a difference in those cases. We are willing to work with the Committee and the sponsor of this bill to come up with something workable. On behalf of the Washoe County Sheriff's Office and the Nevada Sheriffs' and Chiefs' Association, we do support this bill.

**Kristin Erickson, representing Nevada District Attorneys Association:**

I want to echo the sentiments of the previous speakers and indicate our support for this important bill.

**Assemblyman Frierson:**

My question from reading this bill line-by-line is from page 5. Is the reference to *nolle prosequi* a national phrase or is this something that could be tweaked to address Nevada? In Clark County, it is "insufficient recourses" or "insufficient evidence" or something like that. Would that phrase work across the state in Nevada, or would that need to be addressed to be Nevada specific?

**Kristin Erickson:**

If it is acceptable to the sponsors, we could work on a term that is more universal throughout the State of Nevada. However, I do think that term would be acceptable at this time.

**Assemblywoman Smith:**

Regarding the issue with the magistrate in section 3, it was just pointed out to me that I said it correctly in my testimony, but the bill was not drafted correctly. Section 3 should have said, "If a person is arrested for a felony pursuant to a warrant." Then, you have "without a warrant" down on line 27. We know

we have an error that we need to correct. In my testimony, I indicated that, if a warrant were issued, it would go before the magistrate. We need to correct that in an amendment, and we will take care of that. We will work with those who testified today to ensure we have that clarified.

**Chairman Horne:**

We will need to take action by Friday, even though it is going to Ways and Means.

**Assemblyman Brooks:**

Subsection 3 of this bill basically discusses that a person's criminal history in CODIS would be automatically expunged if that person requested it be expunged, and if he were found not guilty. My question is, if the person does not request that it be expunged, does it stay in CODIS? And if the person does request that it be expunged, does the marker still stay in CODIS?

**Chuck Callaway:**

The expungement of the record is important for law enforcement, and we are good with the way the bill is currently written. We do not like the word "automatically" because the process is not an automatic process. The person has to submit a request. The request has to go through the steps, and it must meet the criteria for that record to be expunged. We do not necessarily like the word "automatically," and we do want it to remain that the person has to request his record to be expunged. It would be a huge burden on law enforcement to track every case and automatically expunge those records. As you know, many cases are plea bargained down, or the person is not ultimately convicted. The charges may be dropped from a felony to a lesser charge. For law enforcement to have to track the several hundred thousand arrests made each year, and then automatically expunge those records, would be huge. To answer your question, if the person requests his record be expunged, and he meets the criteria, it is my understanding that record would be removed from the database, and it would no longer exist.

**Assemblyman Brooks:**

So, you are requesting that the language say, ". . . CODIS pursuant to this section . . . ." It actually says, "A person whose genetic marker . . . ," then as you go down it says, ". . . may request that it be automatically expunged . . . ." You would like to create an amendment to take out "automatically" and just put in that section ". . . may request that it be expunged . . ." without the word "automatic."

**Chuck Callaway:**

Correct.

**Assemblyman Brooks:**

"Automatic" is confusing. It makes us believe that it is automatically done and it is not.

**Chuck Callaway:**

That is correct.

**Assemblyman Brooks:**

If the person is innocent, is it removed from CODIS, as well, and there is no longer a marker there?

**Chuck Callaway:**

That is my understanding.

**Chairman Horne:**

I would caution that I would not want language in there that would give the impression that it would be expunged at your leisure.

**Chuck Callaway:**

That is correct. The person would need to request that the record be expunged. The process is not an automatic one; there are steps that would have to be taken.

**Chairman Horne:**

I understand, but once the request is made, you want there to be a mandate of when it has to be done.

**Chuck Callaway:**

Maybe "as soon as possible it will be expunged."

**Chairman Horne:**

There we go.

**Assemblywoman Smith:**

In the amendment that was offered ([Exhibit I](#)), "automatically" is taken out. We can clarify the "not at your leisure" language at the request of the Chairman.

**Assemblyman Brooks:**

For your information, the PowerPoint presentation stipulates that a person has 90 days to do it once it is requested. I did not see that in the bill, but it is on the PowerPoint.

**Chairman Horne:**

We have still not gotten to the opposition. Those who are here wishing to testify in favor of A.B. 552, if you have absolutely dire information that you have to put on the record, please come forward and do so. If not, your names are signed in and you will be part of the record in support.

**Marlene Lockard, representing Nevada Women's Lobby:**

We fully and strongly support this legislation.

**Chairman Horne:**

Is there anyone else who wishes to testify in favor of A.B. 552? Is there anyone in Las Vegas who wishes to testify? I am going to move to the opposition in Carson City.

**Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office:**

We are going to ask that this bill wait because the constitutionality of it is in question. It is not a slam dunk that it is unconstitutional, but it also is not a slam dunk that it is constitutional. There have been conflicting court decisions all over the country. The courts have looked at similar laws and have come to different conclusions.

When I talked with Assemblywoman Gansert last session about a similar bill based on case law coming out of the Ninth Circuit Court, I opined that I believed the Ninth Circuit would find this unconstitutional. I am going to talk about some of those cases. Again, that uncertainty brings the specter of this law being passed and relied on to convict people, and later found to be unconstitutional, when other methods would have been available to convict people. Then we have the horror not only of someone going through the tragedy, but also the person not getting his just due because we cut the corner a little too closely to the Fourth Amendment. That is beyond a liberty interest in general and should not be tolerated. Patience when we are dealing with these important constitutional issues, and taking a good long look at it, is absolutely critical to ensure we do this the right way.

I want to go through some of the cases that have dealt with these issues. There are actually not huge amounts; these laws are relatively new. In 2004, the Ninth Circuit Court decided a case called the *United States v. Kincade*, 379 F.3d 813 (9th Cir. 2004). In that case, and that was before California passed its DNA collection-upon-arrest law, the Court was determining the constitutionality of taking someone's DNA who was actually a federal parolee. California law allowed that. Originally, a three-judge panel of the Ninth Circuit determined that it was unconstitutional because there was no cause to do it.

An *en banc* panel, which means every judge on the Ninth Circuit, reversed that and said that it was constitutional, but most of their language revolved around the fact that he had already been convicted, and had already had due process, and all of that was already there. He was already being supervised, and he had a much lower expectation of privacy. Later, there was a case called *United States v. Kriesel*, 508 F.3d 941 (9th Cir. 2007). It was decided by the Ninth Circuit in 2007. Once again, it was a case that discussed taking DNA upon the conviction of all felons. Again, the Ninth Circuit made it very clear in its language that its decision was because the person had already been convicted and already had his due process. It is because of those cases that it looked like the Ninth Circuit would, if based on arrest without conviction, determine that these laws would be unconstitutional. Then, of course, there is the *Friedman v. Boucher*, 580 F.3d 847 (9th Cir. 2009) where someone in Las Vegas was forced to give a DNA sample. There was no law in place to justify it. In that particular case, the Ninth Circuit determined that it was, in fact, unconstitutional.

The current case on this, and the one we should wait for, is called *Haskell v. Brown*, 677 F. Supp. 2d. 1187 (2009), which has been heard and is currently on appeal to the Ninth Circuit Court. The American Civil Liberties Union (ACLU) is the primary litigant and asked for a preliminary injunction. In that case, in reviewing these other Ninth Circuit cases, the court denied the ACLU's request for preliminary injunction, so it will be interesting to see whether the full Ninth Circuit Court will take the case when it actually goes up on appeal. The Court makes balancing tests between the rights of the individual and the importance to the community as a whole. Denying the preliminary injunction does not make a final determination on the case itself, but it starts to be indicative of what the Ninth Circuit will actually do. By the next legislative session, I expect it will be fully decided.

I want to talk about some other states and some other jurisdictions that have weighed in on this. Obviously, the Ninth Circuit is the most important to us. In Minnesota, there is a case called *In re C.T.L.*, 722 N.W.2d 484 (Minn. App. 2006) that actually struck down Minnesota's arrestee DNA law as being unconstitutional. The Supreme Court of Virginia did, in fact, affirm that state's law, but that means different judges looking at this are coming to different conclusions. In the United States District Court, Eastern District of Pennsylvania, in 2009, in a case called *United States v. Mitchell*, 681 F. Supp. 2d 597 (W.D. Pa. 2009), the Court struck down a federal law as well. In the Ninth Circuit case that was referred to, *U.S. v. Pool*, it was different because it referred to a federal law and the DNA was not collected upon arrest in that case. What happened is that he was arrested, he went to his arraignment, and the judge found that there was probable cause for the

arrest. He then requested to be released on his own recognizance, which the judge agreed to under certain conditions. One of the conditions was that he had to provide a DNA sample. Judges have broad discretion to put conditions on releases of that type where someone is not actually posting bail. That case is not necessarily indicative of what the Ninth Circuit will do in *Haskell* or what they might do if this law were to pass.

**Chairman Horne:**

I am going to stop you there because you are getting off field.

**Orrin J. H. Johnson:**

That was my last case.

**Chairman Horne:**

Like you said, the Ninth Circuit is what is most important to us. For clarification, has the Ninth Circuit said that the taking of DNA samples at the time of arrest is unconstitutional, or have they said it is constitutional?

**Orrin J. H. Johnson:**

The Ninth Circuit Court has not said one way or the other. I cannot come before this Committee and tell you that the legal authority is clear that this would be unconstitutional. That is not the case. But I cannot come before this Committee and say that it is clear that it would be constitutional, and that is why I urge caution. That is my point.

**Chairman Horne:**

I appreciate that, Mr. Johnson. We are not moving forward with something we believe is unconstitutional. The Legislature is free to draft legislation that it believes may be constitutional. In this regard, we have nothing from the Ninth Circuit that suggests it is unconstitutional. We are in the 21st century now. Currently, for identification purposes at the time of arrest, a person gives his fingerprints, a mug shot is taken, and all of that is kept in perpetuity. The DNA samples that are collected today are for identification purposes. The strand of DNA that is taken is so limited it can only be used for that purpose, so how is the taking of DNA at the time of arrest different than what we have done for decades in taking fingerprints at the time of arrest? How is it different? How is it a violation of the Fourth Amendment? We are talking about at arrest, not about randomly swabbing cheeks as it has been done in some jurisdictions.

**Orrin J. H. Johnson:**

All courts agree, whether it is taking a cheek swab or a blood draw for DNA, that those actions constitute a search within the meaning of the

Fourth Amendment. It is a warrantless search, which means it is presumptively unreasonable unless there are adjunct circumstances that justify it. Adjunct circumstances may be for identification for booking. Again, I cannot say with certainty one way or another how the Ninth Circuit will decide this. I am concerned based on the Court's language in *Kincade*, *Kriesel*, and these other cases where emphasis has been placed on the fact that the person had already been convicted before the DNA was taken, and that justified the search. My thought before these cases was that, based on that language, the Court would not find the search constitutional if it were done upon arrest when there had been no due process. It would be destroyed after the fact, under this bill, if a judge later found that there was no probable cause for the arrest. Anyone can be arrested for anything. The DNA is taken, and the search has already been completed at that point. So there are some issues.

I am not here to make the case that this is unconstitutional. I am here to make the case that the Ninth Circuit could go either way. If that Court finds that this is unconstitutional, as some courts have, and the DNA has been relied on to convict people, convictions will be overturned. That is the threat and the fear. That is why I urge caution.

**Assemblyman Brooks:**

I find it interesting that the public defender takes that side when it has been proven in testimony that this has also been used to free innocent people. In this particular case, the gentleman was locked up for 12 years and was released because of the DNA evidence. I would have thought you would be neutral rather than taking a side. I also find it interesting that the United States Congress has mandated DNA be taken upon arrest for all federal crimes. That being said, I wonder why you would take a side when you should probably be neutral. You defend those people who come before you and, if this is a tool that can also prove innocence, why are you taking a stand?

**Orrin J. H. Johnson:**

That is our office's position. There are other ways to collect DNA for exoneration. DNA is actually better at taking someone out of contention than it is at perfectly matching. It is very accurate, but it is also not a magic wand, especially where there are relatives involved. We believe there are other avenues to that exoneration and that is why we are here to oppose the bill.

**Assemblyman Frierson:**

Mr. Brooks addressed my question about innocence.

**Assemblyman Hansen:**

The way you are looking at this, why is DNA considered a search under the Fourth Amendment, but fingerprints are not? How do you distinguish the difference as far as this being a search? One is a search and one is not?

**Orrin J. H. Johnson:**

There is a long line of cases that talk about intrusion to the body. It is a search; that is all settled. That is not a question that is up for debate in terms of what the state of the law is right now. I understand that they are similar. Once you break the plane of the body and take a biological specimen, it is still a search within the meaning of the Fourth Amendment, even though what goes into CODIS is a series of numbers. The courts have said that a blood draw is more intrusive than a cheek swab, but a cheek swab is still a search.

**Assemblyman Hansen:**

You mentioned that the courts are all over the place on this subject, but it is pretty obvious from public comment and what has happened in at least 24 other states that the public clearly wants the courts and the judicial system to move in this direction. I think our responsibility as a legislative body is to give direction to courts in matters like this. We should absolutely pursue this since it is currently not statute or law.

**Orrin J. H. Johnson:**

If you pass the bill, and then it is found unconstitutional, you risk the convictions that you have already obtained. When it comes to the judiciary, that is a coequal branch of government, and it is the one that makes the determination on constitutionality. That is a question of risk that has to be asked. It is a real, legitimate risk that needs to be considered before moving forward with this bill.

**Assemblyman Hammond:**

When answering Mr. Brooks, you mentioned "where relatives are involved." You glossed over that quickly, and I want you to further explain what you meant by that.

**Orrin J. H. Johnson:**

Relatives have similar DNA. In terms of actually making a match, initial DNA can look like a match, but later turn out that it is actually someone else's. I am not a DNA expert. I am not here to testify to that, but I have sat through enough training with DNA experts who have laid that out. That is often a question that comes up. I am not disputing that DNA is an excellent tool, both for convictions and for exonerations. I am just making the point that it is not a fail-safe, absolute magic wand as it is sometimes portrayed on television.



**Assemblyman Hammond:**

I have been led to believe from things that I have heard and read that the only possible problems that you have with DNA matching relatives is with twins. I have never heard that my brother and I might have the same DNA. I want to know whether you can clarify that.

**Chairman Horne:**

He is not a DNA expert.

**Assemblyman Hammond:**

Maybe he has heard it in his DNA training.

**Orrin J. H. Johnson:**

Briefly, one piece of information that is important is that you are not taking every single loci of your DNA and matching it in the database. There are only so many that are actually being compared. You are taking out some of those distinguishing features with that so you still have similarities. That is as far as I want to opine on the science of DNA at this point.

**Assemblyman Ohrenschall:**

I want to send my condolences to the families that are here today, especially Brianna Denison's family. We were all grieving in this state. My younger stepbrother went to Reno High School with Brianna and was her classmate and her friend. I know when the tragedy happened, he and her other friends from school were particularly hurt.

We heard about the other jurisdictions that have adopted this but, from your point of view, have there been a lot of problems in the jurisdictions that have adopted this? Or has it helped find the right perpetrators of the crimes and exonerated the wrong ones?

**Orrin J. H. Johnson:**

I did not do a full survey of every other jurisdiction's mechanics. I cannot say that there were any problems, and I do not expect that there were. The primary concern is that if the statute is later found unconstitutional, those convictions will be reversed. I am not here to suggest that there are going to be huge abuses, that people's DNA will be tucked away and cloned or something. That is not the argument. The argument is whether this crosses a constitutional line that will put convictions at risk if this Legislature acts before the courts have made a final determination on the constitutionality of similar laws.

**Chairman Horne:**

I have a public defender worrying about someone's conviction being overturned. I am just noting that for the record.

**Assemblyman Kite:**

I enlisted in the military in 1966. My picture and fingerprints were taken and are both still on record. My grandson enlisted in the United States Army approximately ten months ago. His picture and fingerprints, and I believe his DNA, are on record and will not be expunged. I quite frankly find it offensive that a suspected felon has more rights than the people who have worn the uniform to protect those rights.

**Orrin J. H. Johnson:**

My DNA is currently on file at the United States Navy and will be forever. I was in the Navy for six years and I am here to tell you, as a volunteer who joined the Navy of my own volition, that DNA was taken for a variety of reasons, including identification if something awful happened and for medical issues. That is a different constitutional line. As a veteran, that to me is a distinction that I am perfectly okay with when we are talking about these concerns.

**Assemblywoman Dondero Loop:**

This may be a question for someone else. When Elizabeth Smart was abducted, could she have been found quicker if law enforcement had DNA or fingerprints of her abductor?

**Edward Smart:**

A number of samples to determine Elizabeth's DNA were taken from the house. With regard to Brian David Mitchell, law enforcement did not have his DNA at the time.

**Assemblywoman Dondero Loop:**

Did they have his fingerprints?

**Edward Smart:**

I know that he had previously been arrested, but I could not tell you for sure.

**Assemblyman Sherwood:**

I, too, was hoping that you would sign in as neutral, as Mr. Brooks said. The other side of the coin is that there are hundreds of cases where people have been exonerated expressly because this has been passed in 25 other states. We saw a dozen of them here in this presentation. The Ninth Circuit Court said, as we heard, the reason *Friedman* got kicked out was because Nevada does not yet have an arrestee DNA statute. We only meet every two years; this is why

we are here. We do not defer. Do you want us to defer this because the Ninth Circuit Court told us explicitly there is no statute? That is why we are here.

**Orrin J. H. Johnson:**

I understand that. Again, the risk is that if you pass it and then the Ninth Circuit determines it is unconstitutional, everyone's conviction that was based on reliance of that statute will be put at risk. That is part of the determination. We are here to provide that background so you can make good policy choices.

**Assemblyman Sherwood:**

Then you should have signed in as neutral, if that is the reason you are up there.

**Chairman Horne:**

Let us move on.

**Tierra Jones, representing Clark County Public Defender's Office:**

Most of what I was going to say has already been said. We do have concerns, as well, with the cost of the implementation of the bill.

**Chairman Horne:**

A possible mechanism for doing this was addressed in the presentation.

**Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:**

We are here today in opposition of this bill. I have five pages of testimony explaining why ([Exhibit J](#)). I will not read this into the record, but will give it to the secretary for uploading into NELIS for your consideration.

As Mr. Johnson noted, the American Civil Liberties Union (ACLU) is the primary litigant in the Ninth Circuit Court case that is yet to be decided. Regardless of how that decision comes down, I can say with certainty that this issue will ultimately be decided by the United States Supreme Court, particularly given the varying decisions that have popped up in other jurisdictions around the nation. While the Ninth Circuit's decision will be determinative with respect to what the State of Nevada may decide to do in the short term, it will be decided by the Supreme Court in the long term. I think that is important for your consideration. From our perspective, there are some administrative problems with the way this bill is written, particularly on the onus burden being placed on the individual who ultimately is not convicted, and maybe not even charged, whose DNA is taken. As Mr. Brooks noted, this person would be required to put forward an

affidavit or request that his record be expunged. From our perspective, this flips the responsibility in the wrong direction. If the state is requiring that a person's DNA be taken, it should be the state that is responsible for ensuring that the information is eliminated once the state realizes that it had no probable cause to get the information in the first place. I think that distinction is clear, and it needs to be recognized that the courts have not decided with certainty whether it is constitutional.

What we are talking about here is the collection of the DNA itself. Certainly, we could go into great detail about the loci and what information is uploaded in CODIS. That is an additional perspective that needs to be considered. It is the taking of the DNA itself, at the very beginning. This is problematic regardless of whether it is processed once the court says probable cause was there or not. That is at the core of the issue. That is something that Mr. Sherwood recognized. I look forward to drafted language so I can give you specific feedback regarding collection and storage.

I would like to note that this bill does cover everyone arrested for a felony. This would include people who are arrested under mistaken identity. I believe it was this Committee that, earlier this session, heard the Speaker's bill regarding mistaken identity and correcting one's financial history. There was a young gentleman who testified in front of the Committee who talked about the great burden and bureaucratic mess that he had to sort through in order to correct his financial data and history. Someone had used his identity through the years that he was a child and a teenager and had been purchasing cars and houses and such. Ultimately, that young man was arrested for a crime that he did not commit. If this law had been in place, not only would he need to deal with the correction of his financial history, but he would also be forced to request the state expunge his DNA. That is a burden that we feel is unfair to impose on individuals, particularly those who are dealing with arrests made based on mistaken identity. From our perspective, DNA collection is different from fingerprinting. Although fingerprints are particular to an individual person, there is an issue with familial searching because of the way the loci process is carried out.

If I may expand on an inquiry made by Assemblyman Hammond, DNA profiles can be used to identify relatives of individuals. That has been used in the past. While courts have not decided on that, familial searching is coming under the spectrum of concern for various jurisdictions. From our perspective, that could be problematic in the larger picture, but that is not the core of the issue. It does merit some recognition that, in addition to the twin issue brought up by Mr. Hammond, there is a condition where an individual has DNA fused into his system throughout the gestation period from what would have been a twin.

You could get DNA from someone's mouth and that person's own DNA does not match his kidneys.

**Chairman Horne:**

I am going to stop you there. That probably happens once in 20 million people. I am not a geneticist. Please focus on the concerns that the ACLU has.

**Rebecca Gasca:**

Housing a person's DNA in a criminal database renders that person an automatic suspect. That turns upon its head the American value of innocent until proven guilty. It violates the constitutional presumption of innocence, and the state needs to be incredibly careful as it moves forward.

The whole idea of equating fingerprints with DNA needs to be considered since technology is rapidly changing. The entire genome is being studied by multiple people around the world. From what I have gathered by calling DNA labs, technology could be present to preprofile people in the near future by guessing what their race and physical features look like. That came from someone in Nevada who works for one of our DNA labs.

I am not going to go into the laboratory backlogs. If the state moves forward with providing a funding mechanism, the state could possibly process things more efficiently. Without that, the continued exacerbation of DNA backlogs will be consistent with that of rape kits around the nation. There are thousands of rape kits that have not been processed. That is problematic. That is for Ways and Means to consider.

Finally, I want to note that the racial disparities in our justice system would be highlighted in this regard. It has been persistent and well documented that the practice of discriminatory law enforcement procedures, combined with expanded DNA collections, could result in an increasingly skewed criminal database in which minorities and poor people are overrepresented. If arrestees are included in the DNA database, the demographics of individuals included will not represent the population of actual offenders, but instead could become a catalogue of the genetic information of minority communities. This racial disparity means that poor people and people of color who have committed no crime are more likely to be targeted for investigation than their counterparts. The specter of concern on the larger scale is one of public safety. We already have problems with racial minorities and poor people not trusting law enforcement, and carrying this out could exacerbate those conditions.

Finally, I want to end on the note that you cannot find a needle in a haystack by increasing the size of the haystack. Some people have been exonerated based

on DNA. However, we believe, in order to further that in the future, states around the nation should move forward with guaranteeing post-conviction DNA or even DNA analysis throughout the trial process. Some states have prohibited that, which is problematic. I would not agree with the statement that hundreds of exonerations in other states have been directly related to the implementation of similar laws. I think individuals have been exonerated on the post-conviction DNA testing and throughout the trial process itself, not directly related to this.

I will sum up by saying that we believe that A.B. 552 violates one of the most fundamental principles of American law, and that is to be presumed innocent until proven guilty.

**Assemblyman Hansen:**

In the absence of a specific prohibition against it in the court, and the fact that 24 states have already approved this, why should we as a legislative body not go forward since we represent the will of the people? The Fourth Amendment clearly says "unreasonable" searches would be prohibited. Why is it that fingerprints are reasonable, but taking a swab out of someone's mouth is unreasonable?

**Chairman Horne:**

If that could be a concise answer, I would appreciate it.

**Rebecca Gasca:**

I appreciate your question. From our perspective, DNA is unreasonable, particularly because it is subject to emerging technology. Clearly, five years ago, what one could do with DNA is much different from what one could do with it now. As I noted, that technology is constantly changing, and there is likelihood that in the near future we could be projecting what people could look like. My fingerprint does not match my sister's, it is not close to my sister's, but my DNA matches. That is the fine distinction between the two and why one would be considered reasonable and the other not.

**Chairman Horne:**

The first question was, why would we not do it as a Legislature?

**Rebecca Gasca:**

This has been challenged in other states and they have shown it as unconstitutional, which is reason enough to use caution. The ACLU is litigating this. We are the prime litigant in the Ninth Circuit Court, which obviously covers the State of Nevada, and this will move to the U.S. Supreme Court. Absent any sure indication of what the Ninth Circuit or the U.S. Supreme Court is going to do, it would be best to use caution and a more pragmatic approach.

This state is in dire fiscal straits right now. There are additional areas that merit concern and attention. It is certainly your prerogative to move forward and make the laws that you deem appropriate. We are just here to present to you the full spectrum of information so you can make the most educated decision knowing the complicated challenges that could lie in front of this law were it to be passed.

**Chairman Horne:**

I see no other questions. Since the Legislature has entertained this piece of legislation before, I would venture that it is not recklessly running into making the decision at this juncture.

No one came to the table in Las Vegas, so we will move to the neutral position. Is anyone neutral? I see no one.

I will close the hearing on Assembly Bill 552 and bring it back to Committee. We will work to make those changes and bring it back so we can take action.

We are in recess [at 9:42 a.m.].

[Assemblyman Ohrenschall assumed the Chair.]

**Vice Chairman Ohrenschall:**

We are reconvened [at 9:57 a.m.]. The Chairman has been called to another meeting, but he will be back shortly.

We will open the hearing on Assembly Bill 396.

**Assembly Bill 396:** Provides immunity from civil liability to local governmental entities that engage in cooperative training exercises under certain circumstances. (BDR 3-1002)

**Assemblywoman Olivia Diaz, Clark County Assembly District No. 11:**

I am grateful that this Committee is hearing A.B. 396. To start, I want to make sure you are aware that the first bill draft that you have probably read through is not accurate. When it was drafted, it did not clearly explain what we wanted to do. Please be advised to redirect your attention to the mock-up that is posted on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit K](#)). It has language in section 1, subsection 5, that reflects the modifications that we are seeking to make to the statute.

Assembly Bill 396 seeks to fix the problems that arise when governmental entities enter into interlocal agreements for cooperative efforts. Two or more

municipalities may combine programs to provide training at one facility. With the dire straits of our economy, some municipalities may want to capitalize on resources and work cooperatively to save time and money. Unfortunately, in drafting these interlocal agreements, it has become increasingly difficult to agree on liability and indemnification provisions. Section 1, subsection 5 of the bill mock-up proposes one simple thing in order to streamline the interlocal agreement drafting process: when an employee is injured, the exclusive remedy against the participating public entities will be to recover under the workers' compensation system of the entity that employs that employee. As an example, suppose the North Las Vegas Fire Department and the Las Vegas Fire Department are jointly holding a training program at the North Las Vegas Fire Department facility. Under A.B. 396, if a Las Vegas Fire Department employee sustains an injury, he would be required to recover under the Las Vegas Fire Department's workers' comp program, not that of North Las Vegas. Again, if you work for Las Vegas and you are injured, you would go through workers' comp for Las Vegas, and vice versa. That is the intent of this bill.

**Vice Chairman Ohrenschall:**

Are there any questions from the Committee? I see none. Everyone must like the bill. If there is anyone else to testify on this bill, please come forward.

**Joanna Jacob, representing City of Reno:**

We supported the bill as drafted. I have just looked at the mock-up, and I think it gives even further clarification for the city to engage in these cooperative exercises and to define our risk and liability. We are supporting this bill wholeheartedly, and we would encourage your support.

**Vice Chairman Ohrenschall:**

Could you give us some examples of what cooperative exercises are in the City of Reno and how they work? What other governments do they work with? What types of accidents are potential?

**Joanna Jacob:**

I requested that information from the Reno Police Department. I know they have engaged in some cooperative exercises with Washoe County. I did not get the information before this hearing, but I will be glad to provide some examples as soon as I receive it.

**Vice Chairman Ohrenschall:**

Are there any questions? I do not see any. Is there anyone else in support of the bill to testify?



Is there anyone neutral on the bill? There is no one. Is there anyone opposed? It looks like you have a good bill that everyone likes. We will have to wait, but perhaps when the Chairman comes back he might consider taking a motion on the bill.

**Assemblyman McArthur:**

Do we not have current laws that cover this now? I have nothing against the bill, but I thought everyone was basically covered like this already.

**Assemblywoman Diaz:**

I will ask Committee counsel to weigh in on my response because I do not want to give misinformation. I do believe that the language we are placing into A.B. 396 gives greater clarity. The existing bill does not stipulate when a training exercise is happening at a facility that the facility hosting the training is responsible. You might think, if the injury occurs at the city's facility, that is where the employee would file his workers' comp. This bill addresses that, regardless of where it happens, the employee goes through his employer's workers' comp program and not through the facility where the injury occurred. Would counsel please weigh in on that?

**Nick Anthony, Committee Counsel:**

Yes. I would agree with the Assemblywoman that this does clarify that provision of law in case there is any discrepancy. Sometimes local governments enter into cooperative agreements for these types of exercises, and this would specifically provide clarity in state law that workers' comp would govern and which workers' comp would apply.

**Assemblyman McArthur:**

Then it is basically for specific clarification. Thank you.

**Vice Chairman Ohrenschall:**

Are there any further questions from the Committee? We will close the hearing on Assembly Bill 396 and bring it back to the Committee. Hopefully, when the Chairman comes back he might consider a motion on it since it seems so universally supported.

We will now open the hearing on Assembly Bill 463. Anyone interested in testifying on the bill or presenting it, please come forward.

**Assembly Bill 463:** Provides an expedited process for the forfeiture of certain seized vehicles. (BDR 43-1128)

**Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services,  
Las Vegas Metropolitan Police Department:**

For brevity, you should have my testimony ([Exhibit L](#)) and I will go through this briefly. There is also an amendment to the original bill ([Exhibit M](#)).

Assembly Bill 463 proposes to give law enforcement the authorization to file a civil action to determine whether a seized vehicle shall be forfeited, reducing the cost for all parties. In 2006, we were rated No. 1 in the nation for vehicle theft. I am glad to say, after several years, we are down 57 percent from the original number.

In October 2007, *Nevada Revised Statutes* (NRS) 482.540 was amended to assist in combating thefts of autos and auto parts. I am not going to go through what the statute says because it is in my testimony.

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

Currently, as the law is written, it does not cover third-party purchasers. Now, if you cannot charge them criminally, the vehicles are stored in the seizure lot, and you have to wait until there is a court hearing. Sometimes these vehicles sit in the lot for months, and there is one vehicle that has been there for three years.

Another growing trend occurring within Clark County is related to the illegal street racing scene. Vehicles are being converted unlawfully from a standard left-hand drive vehicle to a right-hand drive vehicle. When these vehicles are converted illegally, they are unsafe on the roadway. There is a process to what is being done, which is in my testimony.

The Nevada Department of Motor Vehicles (DMV) is finding that right-hand drive conversion vehicles are being sold to Nevadans by someone in California, but right-hand drive conversions are strictly prohibited to Nevada residents. In most instances when purchasing the vehicle, the buyer has been unaware that the conversion was conducted unlawfully. This is the other problem. Like I mentioned before, these vehicles are towed and put in the seizure yard and stay there until the case has been heard by the court. These vehicles can be there for months, or even years, and are incurring costs for both the taxpayers and the person waiting for his car. Without a clear ability to dispose of an unlawfully converted vehicle, liability is assumed by both the DMV and law enforcement agencies within the State of Nevada. As I explained, this is what happens when these vehicles are stored in seizure lots and incur costs.

*Nevada Revised Statutes* 482.542 applies to cases brought before the court. This is vague and unclear regarding the disposition of these cases. One positive impact is that it reduces the cost for all parties, and the other positive impact is the removal of dangerous and unsafe vehicles from Nevada's roadways.

At this time, I will walk you through the bill. The amendment to the original bill ([Exhibit M](#)) takes the place of the original bill. After reviewing the original bill, it did not give the authorization to the courts to have the vehicles destroyed. Instead, it gave authorization to give the vehicle back to the owner. The intent for the amendment is to have the vehicle destroyed, or to see whether the vehicle or its parts have been altered or changed in any manner. The original bill also had conflicting parts, which the amendment will clear up.

*Nevada Revised Statutes* 482.542 relates to the disposition of seized vehicles. In section 1, we are adding "or any law enforcement agency." Currently, we do that. When the bill says "Department," that is the Department of Motor Vehicles. In section 2, we are adding "and the vehicle is seized pursuant to NRS 482.540, the Department or any law enforcement agency may file a civil action for forfeiture of the vehicle." In paragraph (a), if the value of the vehicle is under \$10,000, it will go to justice court; and in paragraph (b), if it is over \$10,000, it will go to district court. Section 3 says that once the civil action has been filed, the court shall have a court hearing within seven business days. The purpose of this is to have the vehicle processed through, saving fees not just for the Department, but also for the people waiting with their vehicles in storage. It is going to be up to the courts to ensure that motor numbers, manufacturer's numbers, or identification marks on the vehicle have not been falsely attached, removed, defaced, altered, or obliterated before releasing the vehicle to the person entitled thereto. Pursuant to section 4(b), the court was required to order that the vehicle be destroyed. Section 4 is removed. I have Legal in Las Vegas with me, and Detective Toschi to cover the reason why this was removed. Section 6 says, "As used in this section, 'claimant' means any person who claims to have: (a) Any right, title or interest of record in the property or proceeds subject to forfeiture; (b) Any community property interest in the property or proceeds; or (c) Had possession of the property or proceeds at the time of the seizure thereof by the Department or law enforcement agency."

That covers it. Detective Toschi also has a small presentation to go through on some of the cases he has with altered vehicles.

**Vice Chairman Ohrenschall:**

Before you begin, I have a question for you from Assemblyman Sherwood.

**Assemblyman Sherwood:**

The court is the one that has to find out whether the legal owner can be found. Is that correct? If the court does not find the owner, the court gets to keep the proceeds if the vehicle is sold. It seems that we are setting it up. When we take in the vehicle, we want to reunite the property with the owner, but if we do not, we are allowed to sell the vehicle and keep the proceeds. Did I understand that correctly?

**Brian O'Callaghan:**

No, that is not how that works. Currently, we do not have a disposition of those vehicles. During the 30 days the officers are out inspecting the vehicle, they are also diligently trying to find the owner. That is already in the NRS. This amendment gives direction to the court, if the vehicle or its parts have been altered, to have the parts or the vehicle destroyed. If nothing is altered, the vehicle or parts are returned.

**Assemblyman Sherwood:**

It is strictly for cars that have been altered. Standard cars do not fall under this law, correct? This is just for right-hand altered cars, not for all stolen vehicles?

**Brian O'Callaghan:**

No. It is also for stolen vehicles if the owner cannot be found. That search will be done before going to court.

**Jeffrey Toschi, Detective, Las Vegas Metropolitan Police Department:**

I have two example cases that I have presented ([Exhibit N](#)). The first has photographs of a 1996 Suzuki motorcycle. The motorcycle was stolen by a suspect and then he welded his own front fork and steering assembly onto the stolen frame.

[Read from PowerPoint presentation.]

In this case, we essentially have two motorcycles that were welded together as one. The victim's motorcycle was able to be identified, but because the motorcycle was welded with other parts, there is a liability when we identified the victim's motorcycle. However, because of the changes that were made, this bike is no longer safe to be on the roadway. If we released this motorcycle back to the roadway and, while the owner is driving it, the bike comes apart because of improper assembly, we are liable because we should have had the bike removed from the roadway.

Case 2 is an example of a right-hand drive vehicle that was unlawfully converted. The registered owner purchased the vehicle already converted.

The vehicle was an unknown-year Honda Civic and it was converted to a right-hand drive. Through our inspection, we found that the vehicle was actually registered as a 1994 Honda Civic. The DMV had placed an administrative stop on the vehicle requesting that the registered owner bring the vehicle in for an inspection. During the inspection, we found that federal labels provided one vehicle identification number (VIN), and the public VIN was a completely different number. The secondary or confidential number was also replaced. In order for the conversion to take place, the identity of the vehicle was completely changed.

The parts that are being used to convert the right-hand drives are brought in from Japan. They are brought in as parts only. They are not meant to ever be welded to a vehicle. The last page of example 2 ([Exhibit N](#), slide 15) also shows the removal of numbers off specific parts, such as transmissions, which also conceals the identity of stolen parts in vehicles.

[Chairman Horne reassumed the Chair.]

**Chairman Horne:**

Are there any questions for Detective Toschi? I see none.

**Assemblyman Carrillo:**

Are all right-hand drive vehicles on the street considered illegal?

**Jeffrey Toschi:**

There is no law that says a right-hand drive vehicle is unlawful if it is brought here legally through customs. There are laws that state it is unlawful to alter, remove, or deface a VIN without the prior written approval from the DMV. It is unlawful to convert vehicles because the process involves removing and destroying VINs.

**Assemblyman Carrillo:**

Basically, unless you have DMV approval, or it is a vehicle that has been imported, you cannot have a legal right-hand drive vehicle. Is that correct?

**Jeffrey Toschi:**

Unless the vehicle is brought in through customs as a right-hand drive vehicle, a right-hand drive vehicle would not be legal. If it were not converted, it would be all right, but there are very few instances where that is the case. Most of the time, the vehicle has been converted.

**Assemblywoman Diaz:**

How prevalent or how big of a problem is this in Clark County?

**Jeffrey Toschi:**

This is a growing problem. Right now, I would say we are looking at probably 15 to 20 cases a year. It has become more prevalent over the last four to five years with the popularization of certain movies that have brought the influence over here. Younger adults are trying to emulate the movies, but they do not know the process to go through to do so.

**Chairman Horne:**

Are there any other questions from the Committee? I see none.

**Brian O'Callaghan:**

We have our in-house legal counsel in Las Vegas, and she can probably answer some of the questions that were brought up.

**Martina Geinzer, Litigation Manager, Las Vegas Metropolitan Police Department:**

This bill is brought in addition to what was already enacted in the previous years by the Legislature. I believe it closes a gap that currently exists. This bill is to give more direction to the court on what to do. We have a process where we can seize these vehicles; however, there is a gap in what to do with the seized vehicles and how to do it. The fact is, these vehicles are illegal to have on the road and, actually, to possess, if there is an altered or obliterated VIN attached. Therefore, these vehicles also pose a threat to public safety if they are released on the road. We need to have guidance for the court on how to dispose of these vehicles, and there currently is nothing in place. We had several test cases through the general seizure statute, and it became apparent that the courts did not know what to do with the vehicles. This bill and the amendment are presented to close the gaps and give more direction to the courts.

**Assemblyman Daly:**

If there was no process before, and now you can file a civil action to dispose of the vehicle, what is the time frame that you have to hold onto the vehicle? What due diligence do you perform before you can file with the court?

**Martina Geinzer:**

I believe that is currently covered by NRS 482.540 and it gives us 30 days to do the initial investigation. After that, we would file the lawsuit for civil forfeiture. The court currently has a backlog, even though it gives preference to forfeiture actions under the general seizure and forfeiture statutes. We are still in the courts for up to a year, and that is a long time for these vehicles to sit there and accumulate fees.

**Assemblyman Carrillo:**

What if it were a situation where someone purchased an aftermarket kit car that he had checked out through the DMV, had it inspected, put it on the road, and years later it was stolen. It would not have the identification of a vehicle that was manufactured? How would that play out?

**Jeffrey Toschi:**

When a vehicle is built with a kit, the vehicle goes to the DMV for an inspection prior to being registered. The DMV, if there is no public VIN, applies a number. That is what is called a "blue tag." That is a VIN and takes the place of a manufacturer's VIN. The vehicle is registered and recorded in that manner.

**Assemblyman Carrillo:**

Similar to the motorcycle in your exhibit, what if he had scratched off all of the numbers, took it to DMV, and said, "This is my bike. I built it." You can see that it has a factory frame, and he scratched off the old number. Can he get it inspected and get a blue tag on it? It is, in essence, a homemade vehicle since another VIN was welded on and then scratched off to try to get a blue tag.

**Jeffrey Toschi:**

Anytime a VIN is obliterated, before the DMV will apply a blue tag VIN, it must be inspected. If the vehicle cannot be properly inspected, it would fall under one of the instances where the vehicle should not be on the roadway. In the instance of the motorcycle, the suspect welded the front end of his motorcycle onto the stolen frame, and in the process obliterated the VIN belonging to the victim. I do not know of an instance where anyone would obliterate the VIN just to get a blue tag, because the DMV has its processes of identifying motorcycles before it will retag a motorcycle. It has to be identifiable.

**Chairman Horne:**

Are there any other questions from the Committee? I see none. Is there anyone else to testify in favor?

**Martina Geinzer:**

I want to make it clear that the courts get hung up on the ownership issue. That is not the issue of this bill. We are talking about illegal vehicles, basically contraband. That is an important distinction.

**Assemblyman Frierson:**

Where did the \$10,000 figure come from? Was this a general figure or is there something specific like a threshold for older cars versus newer cars?

**Martina Geinzer:**

That was not an arbitrary figure. The figure represents what is under the jurisdiction of the justice court versus what goes to district court and is currently in the NRS.

**Chairman Horne:**

I will now move to the opposition for Assembly Bill 463.

**Lou Toomin, representing Las Vegas Constable's Office:**

We are in complete concurrence with the language in this bill and would recommend do pass, as amended.

**Chairman Horne:**

Is there anyone else? Now we will move to the opposition. [There was none.]

Is there anyone neutral? I see no one.

We will close the hearing on Assembly Bill 463.

We will now begin our work session for a couple of other bills. We will start with Assembly Bill 271.

**Assembly Bill 271:** Regulates private transfer fee obligations that affect real property. (BDR 10-628)

**Dave Ziegler, Committee Policy Analyst:**

Earlier this morning, there was a work session document posted on NELIS for this Committee, but I do not know whether the individual pages have been posted.

The first bill to be discussed is Assembly Bill 271. It was sponsored by Assemblywoman Bustamante Adams, and was heard in this Committee on April 8, 2011, and has to do with private transfer fee obligations.

[Read the work session document ([Exhibit O](#)).]

On the day of the hearing, Mr. Schulman proposed an amendment. A copy of his letter is attached, and the amendment is on the second page of the letter.

**Chairman Horne:**

Upon communication with the primary sponsor, she requested that we do not adopt the amendment on this bill. I would concur. I will open it up for discussion.



**Assemblyman Sherwood:**

I would like to make a motion to do pass.

**Chairman Horne:**

ASSEMBLYMAN SHERWOOD MOVED TO DO PASS  
ASSEMBLY BILL 271.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Ms. Diaz will back up Mrs. Bustamante Adams on the floor.

The next bill will be Assembly Bill 279.

[Assembly Bill 279](#): Authorizes independent testing laboratories to inspect and certify gaming devices, equipment and systems. (BDR 41-570)

**Dave Ziegler, Committee Policy Analyst:**

The next bill is Assembly Bill 279, sponsored by Assemblyman Ohrenschall and heard in this Committee on April 5, 2011.

[Read the work session document ([Exhibit P](#)).]

There was an amendment proposed by the sponsor on the day of the hearing and it is attached. The effect of the amendment is to make the requirement to adopt regulations mandatory rather than discretionary.

**Chairman Horne:**

Are there any questions on Assembly Bill 279?

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 279.

ASSEMBLYMAN BROOKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Mr. Ohrenschall will handle the bill on the floor and Mr. Hammond will back him up.

The next bill will be Assembly Bill 355.

**Assembly Bill 355**: Revises provisions relating to the Fund for the Compensation of Victims of Crime. (BDR 16-597)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 355 is the next bill. It was sponsored by Assemblyman Frierson and heard in this Committee on April 8, 2011.

[Read work session document ([Exhibit Q](#)).]

There were no amendments proposed to the bill.

**Assemblyman Sherwood:**

As I recall, this was \$22 million last biennium and 25 percent of that stayed there. We are talking about \$6.5 million that would not possibly go to the state. Is that the right bill?

**Chairman Horne:**

No. I think there was some misunderstanding on that. There was not \$6 million lingering in the account that is supposed to be going to the state. That was what is typically raised for the account that is disbursed. There is some money left over.

**Assemblyman Frierson:**

I think you are correct. That was an overall figure. The figure was thrown out there, but that was not specifically what goes to victims. I also want to point out that, if you recall, this is already happening and the bill attempts to put into statute what the practice is. In the future, there will be no confusion. Last session, the bill tried this in a confusing way when the amounts were above and beyond what was designated for the Victim Compensation Fund. That portion of the bill did not pass last session because of the confusion. This bill clarifies that what is happening now is the way it is supposed to happen, and puts it in statute.

**Assemblyman Sherwood:**

For my comfort level, I am going to reserve the right to change my vote when it comes to the floor.

**Assemblyman Hansen:**

Is there a cap on how much will be in this fund? How much is it typically? If it builds up to \$1 million, should some of it revert to the General Fund? How does that work? How is the existing money disbursed? Does it literally go to victims of crime?

**Assemblyman Frierson:**

A percentage of the assessments that are charged in court are designated for various accounts, and that is directed by the Legislature. The amount that goes into the Victim Compensation Fund is one of those amounts that is designated by statute that comes out of already-collected funds. There is a process for a victim to apply for relief out of this fund. The victim goes through the process of applying, and one of the concerns is that the process takes time. When the process time goes from the old fiscal year to the new one and starts over, the victim may be in the middle of his request, and funds may be depleted. This codifies what the intent was when the fund was created, and what the practice has been. The language was not clear enough last session to get this portion of the bill out.

**Assemblyman Ohrenschall:**

I have a comment that I hope will be helpful. Last session, we had a lady who was injured waiting to catch a Citizens Area Transit (CAT) bus to work in Las Vegas. A drunk driver slammed into the bus stop and she lost her legs. That depleted the fund and it was not able to pay for all the surgeries she needed. I think this bill will help, especially when something like that happens. That poor woman was trying to rebuild her life after just trying to get to work. I support the bill.

**Assemblyman McArthur:**

I want some more clarification. Do we know a percentage of this fund that actually goes to the victims? It sounds like a lot of this money goes different places.

**Chairman Horne:**

I do not know how that is relevant to this bill. This just says that existing funds would not go to the state, but stay with the fund to pay out to the victims.

**Assemblyman Frierson:**

I do not want to confuse the issue. When I said there were assessments collected that go to various accounts, all of the money that goes into the Victim Compensation Fund goes to victims. There are some assessments that go to things that have nothing to do with this bill or with victim's compensation. There are assessments through courts that go to various entities and programs far beyond the purview of this bill and of this fund. But the money that is designated for the Victim Compensation Fund goes entirely to victims.

**Assemblyman McArthur:**

All right. That is what we are talking about, the remaining funds of just the victim's part.

**Assemblyman Hammond:**

I reserve the right to change my vote on the floor.

**Chairman Horne:**

You always have that right. Please just let me know whether you are going to change. Are there any more questions? I will accept a motion.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS  
ASSEMBLY BILL 355.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Mr. Frierson will handle the bill on the floor. Mr. Carrillo will back him up.

The last bill is Assembly Bill 459.

Assembly Bill 459: Makes various changes relating to gaming enterprise districts. (BDR 41-1122)

**Dave Ziegler, Committee Policy Analyst:**

Assembly Bill 459 was sponsored by this Committee and heard on April 9, 2011.

[Read the work session document ([Exhibit R](#)).]

There were no amendments proposed on the day of the hearing.

**Assemblyman Daly:**

I support the bill, but I wanted to say on the record there is a reason there is no opposition. The church that is within 1,500 feet of it is already in the district. It was put on the record that there will be an opportunity for any other affected parties at the city or county level to air their grievances if they wish. I wanted to make sure that, if someone in the future comes in, there is a threshold on the decision that was made here and not have it "willy-nilly" that anyone outside of the 1,500-foot-zone can come in and say he want to be included.

**Assemblyman Segerblom:**

Last session, I fought this here and in the other House. What happens is that these tend to get expanded during the process. I appreciate the fact that, thus far, this is very restrictive. They have legitimate concerns and I support the idea, but I want to follow this very closely because I do not want everyone coming in and trying to add on another piece of property. I agree with Mr. Daly's comments.

**Chairman Horne:**

When I agreed to give it a bill draft, it was limited to this little area, or we would not have done it.

**Assemblyman Hansen:**

With a gaming enterprise, does it change the tax structure? Does it affect the property tax? Does it affect anyone else who might be in that district?

**Chairman Horne:**

No. I do not think so.

**Assemblyman Hansen:**

I do not see anything wrong with it, other than everyone coming and trying to get more pieces of these areas.

**Chairman Horne:**

That is when the bill is going to die. That will kill it.

Are there any more questions?

**Assemblyman Brooks:**

I was not here to hear the actual testimony, but I have a question. Did the local municipalities cash in on this? I thought gaming enterprise districts were only expanded by local municipalities. Correct me if I am wrong.

**Chairman Horne:**

Mr. Anthony can answer that, but there was no opposition to the bill.

**Nick Anthony, Committee Counsel:**

Currently, state law designates gaming corridors. This bill would extend the gaming corridor, and then it is up to the local jurisdiction whether or not to grant a gaming enterprise district within that corridor. That decision is made at the local level; however, the overlying corridor itself is under state law.

**Assemblyman Brooks:**

So, once we pass this bill, it will still have to go to the local municipality to be granted the gaming licensure to expand the district?

**Nick Anthony:**

To be designated a gaming enterprise district, it would still have to go the local governing jurisdiction.

**Assemblyman Brooks:**

That is what I thought. Thank you.

**Assemblyman Hammond:**

I would like to echo the sentiments of a couple of others here. Once we start this, I have a concern that more and more people will pile on and I am hesitant about that. I will support it as it is, since it is a limited area.

**Chairman Horne:**

Are there any other questions?

**Assemblyman Brooks:**

Does this put pressure on the local municipalities to give a gaming license because we passed this? Will the local municipalities be able to say that the state has already deemed this change so it is incumbent on the local municipality to fall in line? Does this give some kind of credence to do that?

**Chairman Horne:**

I do not think so. I will entertain a motion.

ASSEMBLYMAN SHERWOOD MOVED TO DO PASS  
ASSEMBLY BILL 459.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED.

Mr. Brooks will handle the bill on the floor.

**Assemblyman Carrillo:**

I reserve the right to change my vote on the floor.

**Chairman Horne:**

That concludes our work session for today. Is there any other business before the Committee?

Let us call up one of the bills we heard today, Assembly Bill 396. This is Mrs. Diaz's bill that I was not here for. There was no opposition.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 396.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Ms. Diaz will handle the bill on the floor.

[All items submitted on NELIS but not discussed will be made part of the record ([Exhibit S](#)), ([Exhibit T](#)), and ([Exhibit U](#)).]

If there is no other business to come before the Committee, we are adjourned [at 10:55 a.m.].

RESPECTFULLY SUBMITTED:

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Karyn Werner  
Committee Secretary

APPROVED BY:

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Assemblyman William C. Horne, Chairman

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

## EXHIBITS

**Committee Name:** Committee on Judiciary

**Date:** April 13, 2011

**Time of Meeting:** 7:45 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 552	C	Assemblywoman Debbie Smith	PowerPoint presentation
A.B. 552	D	Bridgette Zunino-Denison	Written testimony
A.B. 552	E	Ashley Zunino	Written testimony
A.B. 552	F	Jayann Sepich	Slide show presentation
A.B. 552	G	Jayann Sepich	Written testimony
A.B. 552	H	Jayann Sepich	CODIS DNA profile
A.B. 552	I	Assemblywoman Debbie Smith	Proposed amendment
A.B. 552	J	Rebecca Gasca	Written testimony
A.B. 396	K	Assemblywoman Olivia Diaz	Mock-up of proposed amendment
A.B. 463	L	Brian O'Callaghan	Written testimony
A.B. 463	M	Brian O'Callaghan	Proposed amendment
A.B. 463	N	Jeffrey Toschi	PowerPoint presentation and testimony
A.B. 271	O	Dave Ziegler	Work session document
A.B. 279	P	Dave Ziegler	Work session document
A.B. 355	Q	Dave Ziegler	Work session document
A.B. 459	R	Dave Ziegler	Work session document
A.B. 552	S	Jayann Sepich	Photo of Katie Sepich
A.B. 552	T	Jayann Sepich	Fact sheet on forensic DNA analysis
A.B. 552	U	Assemblyman Segerblom	Conceptual Amendment