MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
April 14, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:00 a.m. on Thursday, April 14, 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Lucy Flores, Clark County Assembly District No. 28
Assemblyman Elliot T. Anderson, Clark County Assembly District No. 15

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Dan Silverstein, representing Nevada Attorneys for Criminal Justice
Curtis Brown, Private Citizen, Las Vegas, Nevada
Michael Pescetta, Private Citizen, Las Vegas, Nevada
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Sam Bateman, representing Nevada District Attorneys Association
Chris Owens, Assistant District Attorney, Clark County District Attorney's Office
Ron Dreher, representing Peace Officers Research Association of Nevada
Kevin Ranft, Labor Representative, American Federation of State, County and Municipal Employees, Local 4041
Ronald Bratsch, Regional Vice President, American Federation of State, County and Municipal Employees, Local 4041
Daniel Shoup, Private Citizen, Carson City, Nevada
Greg Cox, Acting Director, Nevada Department of Corrections
Kelsey Stegall, Intern for Assemblyman Horne
Janine Hansen, President, Nevada Eagle Forum
John Sasser, Statewide Advocacy Coordinator, Washoe Legal Services
John Sande IV, representing Nevada Collectors Association

Chairman Horne:
[Roll was called.] We have three bills on the agenda this morning. After these bills, we have a work session, and there are about a dozen bills on that work session document. We may or may not process them all. We will probably recess when we are done this morning and reconvene at the adjournment of Assembly Committee on Transportation to continue with the work session. With that said, I will open the hearing on Assembly Bill 460.

Assembly Bill 460: Revises provisions governing the death penalty. (BDR 14-1125)

Dan Silverstein, representing Nevada Attorneys for Criminal Justice:
I believe Mr. Brown is down South, and he will be presenting this bill.

Chairman Horne:
Mr. Brown, are you down there?

Curtis Brown, Private Citizen, Las Vegas, Nevada:
Yes, I am sitting right here.

Chairman Horne:
Mr. Silverstein said you are presenting the bill.

Dan Silverstein:
I will just proceed. I am the former president of the Nevada Attorneys for Criminal Justice, and I have been assigned to the Capital Defense Unit at the Clark County Public Defender's Office. Based on my experience, I can tell all of you today there are significant problems with Nevada's death penalty system. Statutory aggravating circumstances are what make a case eligible for the death penalty. Those statutory aggravating circumstances are meant to genuinely narrow the cases that are eligible for the death penalty. Nevada's system does not do this. Virtually every homicide case is death-eligible under our current statutory structure. Normally when there is a problem, it costs money to fix, but not in this situation. In this situation, we can fix these problems and save the county money at the same time. Fixing these problems with the statute will help us use the death penalty more efficiently and effectively.

Assembly Bill 460 does not abolish the penalty but reinforces our death penalty law. Why do we need this change? Why not continue to let prosecutors keep the unlimited discretion they already have? You cannot have unlimited discretion on a limited budget. We have seen where this road leads. It leads to financial ruin and bankruptcy. By its own admission, the Clark County District Attorney's Office is out of money. Clark County has asked for a nine percent budget reduction to every branch of government, and the District Attorney's (DA) Office cannot comply. They cannot spare a dime. On April 1, 2011, David Roger, the district attorney, sent a memo to the Clark County Commissioners saying the financial situation in that office was so dire that any further reductions to its budget will contravene its legal obligations. There is a story in that memo about how that office cannot afford a secretary to type up jury instructions in the middle of a trial. These are the things that happen when prosecutors are spread too thin trying to enforce laws that are overly expansive

and vaguely written. I am not suggesting you should fault the district attorneys for doing their jobs because they are committed to enforcing the laws as they are written. However, when these laws are written too broadly and are interpreted even more broadly by our Supreme Court, the cost of enforcement spirals out of control and that is exactly what is happening. Their obligation to enforce these laws is never going to change. What has to change is the law.

I have been a resident of Clark County my entire life, and I believe the No. 1 issue facing voters of this county is the economy, and the number one priority this session is to save Clark County and the State of Nevada money. This bill will do that. The opponents of this bill cannot and will not deny that. This legislation will save our county hundreds of thousands of dollars on cases that should not be death penalty cases due to litigation costs, court hearings, and time spent ruling on motions.

Three days ago, David Roger told the Assembly Committee on Government Affairs that his office does not have $100,000 to fund the improved coroner's inquest procedure that was passed by the county commission. Here is that $100,000 and more. No one can or will deny this legislation will save money. The opponents of this bill will try to scare you into voting no. They will try to convince you that A.B. 460 will have murderers roaming the streets. The opponents of this bill are some of the finest lawyers in this county. I know Mr. Owens from the Clark County District Attorney's Office is here. I have worked with him, and he is one of the best lawyers that we have. He can absolutely tell you scarier stories than I can. I did not bring stories. I brought facts.

I have looked at every death penalty case pending in Clark County. I looked at Clark County because the majority of our death penalty filings are in that county. I have the notice of intent to seek death that has been filed in every single case. There are 80 pending death cases, and I can tell you this is the highest per capita rate in the entire nation. Not one county has a higher per capita death filing rate than Clark County. By way of example, Los Angeles County has 10 million people but only 33 pending death cases. We have around 2 million people and 80 pending death cases. Here are the facts: if A.B. 460 were the law and had been the law since the beginning, out of those 80 pending death cases, 77 would still be eligible for the death penalty.

I want to talk to you about the three cases that would not be eligible for the death penalty under this bill. In the Kentrell Welch case, he has a history of severe mental illness, and right now he is at Lakes Crossing Center. The State is seeking capital punishment. In *Valdez v. State*, No. 49541 (2008), this is a case where the defendant and two of his friends assaulted a man. The man

went to the hospital, was treated for his injuries, and was discharged from the hospital. He died eight days later from natural causes, and the State filed the death penalty. The death penalty is not appropriate in these types of cases, and A.B. 460 screens out the very cases that should not be death penalty cases. Seeking the death penalty in these types of cases is a waste of money and is not an efficient use of our taxpayer dollars. These are not the types of cases in which a jury will ever return a death sentence. There is no better example of that than the third case that A.B. 460 would make no longer death-eligible. That is the case of the *Valdez v. State* that went to trial in a death case. The jury convicted him of first-degree murder. The Nevada Supreme Court reversed the conviction because when the jury returned their verdict, they told the judge it was not a death case, and they would not return the death penalty in this case. This bill will screen out the cases where the death penalty is least likely to be imposed.

The proposals in this bill are minor, reasonable, and make sense. They are narrowly tailored to address the problems and nothing more. This bill is not soft on crime. This bill is smart on crime. This is not some radical overhaul of the current system, as it will be painted by the opponents. Even under this law, 77 of the 80 pending capital cases will still be eligible for the death penalty, and that is 96 percent. With this bill, we are not talking about abolishing the death penalty but slicing off a virtually insignificant fraction of the otherwise unlimited discretion of the prosecuting attorneys in exchange for a direct and substantial financial benefit to the taxpayers of this state. Nobody is talking about getting rid of the death penalty. We need to make it better and more cost-effective. We need to reinforce the death penalty.

To my opponents, to Mr. Owens, I am begging you for some compromise on this issue. Can we stop being prosecutors versus defense lawyers and just be citizens and taxpayers for ten minutes? I know they will never meet me in the middle, but can we meet at 96 percent?

Chairman Horne:
In section 1, it says if a jury does not come back with a unanimous verdict, then the judge imposes either life without parole, life with the possibility of parole after 20 years, or a definite term of 50 years with possibility of parole after 20 years. The current practice today is that another jury can be impaneled.

Dan Silverstein:
Yes, that is correct. Let us assume a jury decides that death is off the table, and they are only deciding between life with parole and life without parole. The current state of the law is that prosecutors can still seek the death penalty

in a retrial despite the fact the first jury unanimously agreed that death was not appropriate. That is the state of the law.

Chairman Horne:
What about in the situations where there is a "rogue" juror? I do not believe in rogue jurors.

Dan Silverstein:
I believe capital jury selection is some of the most in-depth jury selection you will get. The prosecutors who select these juries are trained. Jurors are asked about their views on a variety of issues including capital punishment. The chances of a rogue juror in a capital case, with that screening process in place, are very slim. However, I believe in a case where 12 citizens do not unanimously agree that the death penalty is appropriate then the death penalty is not appropriate. I can also tell you that the majority of jurisdictions that have the death penalty have a clause just like section 1 of this bill. The majority of states do it this way. If the jury hangs, it is automatically a life sentence. This section of the bill would bring Nevada in line with the rest of the country.

Chairman Horne:
Could you please explain section 2 and the circumstances in *Nevada Revised Statutes* (NRS) 200.033?

Dan Silverstein:
I have emailed a report to the members of the Committee, and I will say the majority of A.B. 460 is aimed at narrowing the statutory aggravating circumstances. The problem we have is that when these aggravating circumstances are written broadly and are interpreted broadly, the prosecutors have unlimited discretion to choose which cases to seek the death penalty in. By slightly narrowing these aggravating circumstances, the cases where the death penalty is not appropriate will be screened out. You will also cut down on litigation costs because I can tell you, as a capital defense lawyer, I have spent hundreds of hours dealing with these issues, and prosecutors have spent hundreds of hours defending these issues in statute. I would have to say 80 percent of the issues with aggravating circumstances are addressed in this bill. The sacrifice for getting rid of that litigation is that we retain 77 out of the 80 pending death penalty cases. I think it is a wise trade.

Assemblyman Sherwood:
You mentioned three cases. If this law were amended, what are the circumstances that would preclude them from the death penalty?

Dan Silverstein:
I have with me the notice of intent to seek the death penalty in each of those cases. I will refer to that. In *Valdez*, the aggravating circumstances were that Mr. Valdez had been convicted of another felony in connection with the homicide he was on trial for. Under our current law, that is an aggravating circumstance.

Assemblyman Sherwood:
So that is section 2, subsection 2, paragraph (b)?

Dan Silverstein:
Correct.

Assemblyman Sherwood:
Right now it says a felony, and you are changing it to "two or more felonies?"

Dan Silverstein:
In a separate proceeding. What happens now is that if someone is charged with six felonies, including murder, the prosecutor will use the other five felonies as five separate aggravating circumstances. Most states that use aggravators say that a person's prior history is one aggravator and not five.

Because of those provisions, Mr. Valdez's case would no longer be death-eligible under this bill. As far as Kentrell Welch is concerned, he has one prior felony conviction, and that would no longer qualify because it is only a single prior.

Assemblyman Sherwood:
So he would be under section 2, subsection 2, paragraph (b) as well?

Dan Silverstein:
Correct. Also, one of the aggravating circumstances there is that the murder was committed in the course of a burglary, and that is one of the things that is removed under A.B. 460. It would still be an aggravator if the murder occurs in the course of a robbery, kidnapping, arson, or sexual assault, but not a burglary.

Assemblyman Sherwood:
Is that because the murder may have been incidental and the gun went off accidentally?

Dan Silverstein:
It is a situation where the crime of burglary is defined very broadly in Nevada. Passing a bad check is burglary in Nevada.

Assemblyman Sherwood:
It is incidental.

Dan Silverstein:
Correct. The third case is that of Mickey Thomas. This is a case where the prosecutors have used an "under sentence of imprisonment" aggravator because Mr. Thomas was on supervised release from a prior conviction of possession of a firearm. I have never seen the "under sentence of imprisonment" aggravator actually used for someone who is not incarcerated.

Assemblyman Sherwood:
Is that section 2, subsection 1?

Dan Silverstein:
Yes, that is correct. In most states that have these aggravators, the legislative goal behind them is that if someone is already serving time in prison, they have little left to lose. There needs to be additional deterrents. It was never intended for probationers or parolees.

Assemblyman Ohrenschall:
I have two questions. The first question goes along with the Chairman's question. In section 1, if a jury comes back deadlocked and there will be another trial seeking the death penalty, can you give me an estimate as to what that costs either side or both sides?

Dan Silverstein:
I can tell you that since the opponents of this bill have also been opponents of a cost study, I cannot give you exact numbers. I can tell you that every state that has run a study on the death penalty has found that filing a death penalty increases the cost significantly because of the amount of preparation and litigation required. I am sure you are aware that the Nevada Supreme Court has a list of capital defense standards they have issued an order for ADKT 411. I cannot give you an exact figure, but I believe there is a bill for a cost study. The federal government ran this study and found that filing the death penalty increases the cost by a factor of eight. It is eight times more expensive, in the federal system, to file the death penalty than a typical homicide case.

Assemblyman Ohrenschall:
It would be much more expensive to put on a second trial seeking the death penalty as opposed to the default sentencing that would occur if this bill passes.

I have a friend I went to law school with, and she was working on a death penalty case. She was performing research on the defendant's background.

He grew up in Las Vegas, and she was interviewing people he grew up with and trying to find pictures of the neighborhood he grew up in. It was expensive research. Could you tell the Committee about what goes into defending and prosecuting one of these cases? I think many of us are not aware of how much money is spent.

Dan Silverstein:
I can give you an example. I have a case where the defendant is from London. In order to investigate the background in this case, it is necessary to work with the London government. I had to fly to London. The expenses in these cases are considerable. I have attorneys in my office who have had to go to El Salvador, Mexico, and Missouri. The background investigation of the capital sentencing phase is the most thorough and in-depth investigation in the criminal justice system. That is not because defense attorneys like to waste money. This is by order of the Nevada Supreme Court and also by the United States (U.S.) Supreme Court. We have a duty under the Sixth Amendment to do this kind of thorough background investigation when the State is seeking to kill someone. The Nevada Supreme Court stated in its order that we should go back three generations. We need to look at the client's family, his parents, and his grandparents. If they are not from here, it involves travel. It involves hiring experts including psychiatric experts. We have a full-time mitigation specialist in Clark County, but I can tell you that private attorneys do not have that same luxury. They have to hire mitigation experts just to do this volume of work. It is insanely expensive.

In the *Las Vegas Review-Journal*, County Commissioner Chris Giunchigliani pointed out that our death penalty system is costing the county in excess of $20 million. I do not have facts to back that claim up, but I would take her at her word. I think that is fair. We are not asking to abolish the death penalty but for a compromise. Shave off a little discretion on their end and save us a ton of money on the front end.

Assemblyman Ohrenschall:
Are most of the folks who are charged and tried with the death penalty defended by the Public Defender's Office? I imagine very few of them can afford private counsel. Does most of that burden fall on the taxpayers?

Dan Silverstein:
The vast majority of these cases are at taxpayer expense because most of the people charged with capital homicide cannot afford private counsel. I know our office has 33 of the 80 pending cases. I believe the Special Public Defender has 27 cases. There may be one or two who actually hire private counsel, but most of those go through the Office of Indigent Defense, and Drew Christensen will

appoint a lawyer at an hourly rate. The taxpayers are paying for a great majority of the death penalty system in this state.

Assemblywoman Diaz:
Can you explain what happens when someone has already been given a death sentence and then maybe more crimes are found related to the person already convicted? Do we continue to try that person for the other cases that come up after he already has a life sentence?

Dan Silverstein:
I can tell you that nothing in A.B. 460 would in any way affect the prosecutor's ability to charge a person with additional crimes. If someone were to commit an additional crime while he was in prison, there is nothing in this bill to prevent the prosecutor going after him. To answer your question, could the prosecutor go after someone who already has a life sentence? Yes, and they do. This bill does not deal with that. If someone is continuing to commit crimes while incarcerated, I do not think it is unreasonable for him to be prosecuted for those crimes. What is unreasonable is for a county our size to have 80 pending death cases. The reason we have that is because the statute gives unlimited discretion to the prosecuting agency, and that is what has caused the expansion of the death penalty. It is a direct result of the vague, expansive language in these statutory aggravating circumstances.

Assemblywoman Diaz:
What if those are also death penalties they are seeking? What if they are trying to prosecute again for a death sentence? Does that happen where we go through the expense again for trying that same person if he is already on a life sentence?

Dan Silverstein:
There is an aggravating circumstance for having committed a murder while under a sentence of imprisonment, meaning while incarcerated in a correctional facility. Under A.B. 460, if someone were to commit another murder while incarcerated, he would still be eligible for the death penalty under this bill. Is that a wise use of prosecutorial resources? That is a question I am not qualified to answer. Mr. Owens would probably be the best person to ask that question.

Assemblyman Segerblom:
In another committee this week, we heard that Washoe County has one pending death case. You said there are 80 in Clark County. Is there any explanation for the discrepancy there?

Dan Silverstein:
I believe discretion is in the eye of the beholder. The death penalty should be reserved for the worst of the worst. It is not for every murder. The Clark County District Attorney's Office may have a different view as to what separates a death penalty case from a nondeath penalty case. I think that is one of the problems A.B. 460 is designed to address.

Why is there the disparity? I am not sure. Why is there the disparity between Los Angeles County with 10 million people and 33 death cases? I am not sure. I do know that discretion that is not used wisely becomes very expensive. When that discretion is being used unwisely, I think the proper course is to narrow that discretion. We should not remove it, but narrow it so we can save some money.

Assemblyman Daly:
I have one question with three parts. On page 3, line 4, could you explain to me the "predicated on a felony-murder theory of liability?" Can you give me an explanation of why you want to get rid of "mutilation?" Obviously, if someone kills a person with an ax, you can claim mutilation. If someone disposes of a body in a wood chipper, like in *Fargo*, maybe that is the aggravating circumstance mutilation is covering. Could you also explain the rationale for wanting to delete section 2, subsection 9, lines 28 and 29?

Dan Silverstein:
I do not want to go off on a long legal rant. Let me briefly explain what the felony-murder theory is. Felony-murder means that if you are in the course of a felony, such as burglary, robbery, kidnapping, or sexual assault, and someone dies during the course of that felony, it is automatically considered first-degree murder in the State of Nevada, even if it is accidental. If you walk into a 7-Eleven with a gun and it accidentally goes off, and you were intending to rob someone and someone dies, that is first-degree murder. That is the felony-murder rule. There was a decision from the Nevada Supreme Court seven years ago, *McConnell v. State*, 120 Nev. 1043, 102 P.3d 606 (2004). What the prosecutors did was take that 7-Eleven robbery and use the robbery to make it a first-degree murder and then used the robbery again to make it a death penalty case because one of the aggravators is in the course of a robbery. They were using that robbery twice. The Nevada Supreme Court said you cannot do that anymore because these aggravators need to narrow the class of people eligible for the death penalty. *McConnell v. State* said you can no longer do that. The language in subsection 4 that was added is taken directly from that decision and is simply codifying what is already the law and what is already being obeyed in the State of Nevada.

Why remove the mutilation language? I think that is a good question. What does mutilation mean? I do not know if any of us really knows what it means. There are cases that say 13 stab wounds is not mutilation, and there are cases that say 100 stab wounds is mutilation. I am not sure where the line is. How many stab wounds is mutilation? It is a very vague term, and it means different things to different people. That is why it should not be in this statute or an aggravating circumstance at all. Arguably, if you shoot somebody multiple times, you have mutilated that body. That would make every homicide case a death penalty case. I think limiting that aggravator to torture, with the strict definition of torture that has been provided by the Nevada Supreme Court, accomplishes the goals the prosecutors need. It also gets rid of much of the vagueness that is causing a lot of litigation. When you have court decisions that say 13 stab wounds is not mutilation but 100 is, if there is a case with 20 stab wounds, you have to litigate. It goes on from there. These vague terms are costing us money.

As far as random without a motive, why get rid of it? That is because every other state has. Not a single state has this aggravating circumstance. We are the only state that says if a killing is random and without apparent motive, it is an aggravator. Again, this is just like the mutilation language. What does it mean to be random and without apparent motive? I do not know. There have been cases where a jury has found something to be random and without apparent motive, and a unanimous Nevada Supreme Court said no, it is not random, and it was not without apparent motive. When you put language in these laws that can be interpreted different ways by different people, you end up with inefficiencies and wastes of money. That is the reason to get rid of that language.

Assemblyman Hammond:
You keep using numbers, and I want to make sure I can make sense of these numbers. There are 80 death penalties in Clark County, and there are fewer than that in Los Angeles County, even though the population is higher. That does not tell me much. Anybody who listens to the news always hears somebody did something heinous and horrible and is suspected of going to Las Vegas. There are certain types of people who tend to be attracted to Las Vegas. It does not surprise me there is a higher number. Can you share with me the number of murder cases in Los Angeles compared to Clark County? It does not surprise me to find out we have 80 death penalty cases in Clark County due to the nature of the people we attract to Las Vegas.

Dan Silverstein:
I had a feeling this question was coming. Last year, there were 295 homicide cases in Los Angeles County, and here there were 141 homicide cases.

Their murder rate is lower than ours per capita. Saying the murders that happen here are worse than the murders that happen in Los Angeles County is not necessarily a true assessment. I know many heinous crimes happen here. I see a lot of it. None of the heinous crimes you are talking about would be excluded under A.B. 460. In any of the cases you can think of over the past 50 years in this State that have been heinous, they would still be death penalty cases under this bill. The only cases this bill would no longer make death penalty eligible are the cases that should not be death penalty cases in the first place.

Assemblyman Hammond:
Of those 80 in Clark County, how many would be excluded under this bill?

Dan Silverstein:
If this bill had been the law from the beginning, out of these 80 cases, 77 would still be death cases. That is 96 percent. This bill is only shaving off 4 percent of the prosecutor's discretion.

Chairman Horne:
Are there any other questions? [There were none.]

I am going to move down South.

Michael Pescetta, Private Citizen, Las Vegas, Nevada:
I am an attorney in Las Vegas who practices in the area of death penalty law and habeas corpus law. I support A.B. 460. I come at it from a slightly different perspective because I do habeas corpus work and see the cost associated with having to litigate these cases over very long periods of time in situations where the law is frequently changing. Constitutional attacks on some of these aggravating factors may at some point result in reversals in the federal courts.

Let me make a comment on section 1, which is the provision that does not allow seeking death again if the initial jury hangs. There are some constitutional problems with the situation as it is now. If the jury hangs, the trial judge has unlimited discretion to say we will have another trial, in which the State can seek the death penalty again. He also has the discretion to say no, we will impose life without the possibility of parole, as the statute is currently written. To my knowledge, that unlimited discretion makes the death penalty arbitrary and unreasonable in the situation of anyone whom the trial court does allow to have another penalty phase at which the State can seek death. At this point, there have been cases in Clark County where the jury is hung and the judge said, "We are not going further. We are just going to impose life without the

possibility of parole." In other cases, the judge has said, "We are going to have another penalty trial." In one case that has been in litigation for about four years, the judge who decided the state could try another penalty phase, refused to poll the jury to find out whether or not the jury had in fact decided the defendant was not eligible for the death penalty at all. That case is now in the Ninth Circuit Court of Appeals. It is unresolved at this point, and it has cost a lot of money, time, and resources to litigate. Because of the constitutional problems with allowing the unlimited discretion of the trial judge to either expose the defendant to the possibility of another death sentence or to simply impose a lesser sentence, these cases have to be litigated when the trial judge chooses to allow another penalty phase and a death sentence is imposed.

Clarifying the statute in the way A.B. 460 does would reduce significant amounts of litigation in any case where that happens. I think that is a desirable result. Also, I agree with Mr. Silverstein that when you try a death penalty case, the jury is thoroughly voir dired to render the defendant death eligible. It is a jury that can impose the death penalty in appropriate cases. If the State cannot convince that first jury to unanimously impose a death sentence, I believe that should be the end of the matter, and a lesser sentence should be imposed.

Let me go briefly to the individual aggravating factors, some of which Mr. Silverstein has touched on. Under section 2, subsection 1, this clarifies that the murder would have to be committed by somebody incarcerated in a correctional facility. If you look at the original 1977 law that adopted these aggravating factors, some of them were taken from other states while others were drawn from the previous law in Nevada. The classic instance for the application of this factor was Mr. Shuman who was a life prisoner under the statute at that time and committed a murder while in prison. That capital murder statute provided for a mandatory death penalty under those circumstances. That part of the statute was declared unconstitutional by the U.S. Supreme Court in *Sumner v. Shuman*, 483 U.S. 66 (1987). Although the legislative history is completely unhelpful in the 1977 act, the intent was to capture those people who commit crimes in prison. I think that was what the under sentence of imprisonment language originally meant. The problem is that the Nevada Supreme Court has unfortunately interpreted broadly instead of treating these elements of capital eligibility narrowly. Under the *Nevada Constitution*, it has exposed the scope of those provisions to the least possible constitutional ambit, and some of these over time have expanded. Prosecutors have consistently argued for the broadest possible interpretation of all of these provisions. This provision would return this aggravating circumstance to the ambit with which the Legislature originally thought it would cover, and it would also make it more rational. As it is currently written,

it is the same aggravating circumstance with the same support of death eligibility if you are a murderer under a life sentence in prison and you commit another crime, or if you are someone who is on probation for larceny. I think this provision would return some rationality to this system.

I think Mr. Silverstein has adequately discussed subsection 2, which deals with the prior felony aggravator. We do have to consider the policy. Recidivists are significantly more culpable and likely more dangerous than someone who just commits two offenses in the course of the same transaction. Again, this would add further rationality by recognizing the difference in culpability between those two situations. The felony-murder portion in subsection 4 has been adequately discussed by Mr. Silverstein. Subsection 5 is the portion that deals with a murder that "was committed to avoid or prevent a lawful arrest or to effect an escape from custody." Here again, the loss that the Nevada Supreme Court has put on this factor is that it can be established without any evidence at all of an intent "to avoid or prevent a lawful arrest." As long as there was another crime involved, the Nevada Supreme Court will allow the prosecutor to charge, and the jury to infer, that the purpose of committing that offense was to avoid arrest by eliminating a witness, even if there is no evidence at all. That interpretation also leaves the term "lawful arrest" out of the statute because at the time of the offense, no one really has any idea whether an ultimate arrest of the defendant would be lawful or not. Even Alabama applies a stricter standard for showing the reason for committing the offense was to escape from custody or from an imminent arrest. Again, this is a proposal in A.B. 460 that will narrow the discretion to a logical and rational scope.

Subsection 6 is what is classically called a murder-for-hire situation. Murder for a pecuniary gain is not for some hypothetical gain, but it is the hirer and the hiree in a murder-for-hire situation. That is a clearly rational and narrow scope for this aggravating factor, and that is how this aggravator should be clarified to make sure it has a rational and truly narrowing effect.

Subsection 8 deals with the mutilation factor. The torture part of this provision, as Mr. Silverstein said, would codify the Nevada Supreme Court case law on what is required to establish torture. It is important to codify this because there is also a murder by torture theory of first-degree murder. Just like felony-murder, you can be convicted of first-degree murder on a theory of torture and have a torture aggravating factor imposed as the basis for death eligibility. The narrower version of this aggravator does codify the Nevada Supreme Court decisions that adopt this standard for a narrow and strict interpretation of the meaning of torture. The mutilation issue is strange and peculiar because there is no obvious reason for why some form of mutilation would be a rational distinction between a capital and noncapital

crime. Every murder inflicts some sort of mutilation on the body of the victim. Unfortunately, the traditional definition of mutilation that is given to the jury for the purpose of this aggravating factor is based on the separate crime of mayhem.

Mayhem, as is explained in Mr. Silverstein's materials, was originally an offense intended to deter depriving the king of soldiers by making them unable to fight. The definition usually given to juries is "to cut off or permanently destroy a limb or essential part of the body or cut off or alter radically so as to make imperfect." That instruction has been approved by the Nevada Supreme Court. Really, you cannot commit a homicide without altering radically or making imperfect some part of the victim's body. That definition actually makes it possible for every homicide to be death eligible. We have had cases in which the Nevada Supreme Court has upheld a finding of the mutilation factor in a situation where the argument made by the prosecution to the jury was that the mutilation was in fact simply the wound that was the cause of death in the homicide. This is clearly too broad, and I do not think it can be rationally narrowed. I think the amendment removing the mutilation part of this aggravating factor would be both adding rationality to the system and narrowing the aggravating circumstances.

Finally, as to the random and motiveless, Mr. Silverstein is correct in saying that no jurisdiction in the United States has ever had this aggravating factor. It is not just they have abandoned it; no one has ever had it in the first place. It is a bit difficult to reconcile the fact that we have a hate crime aggravator where a particular motive makes a homicide more death eligible, and this aggravating factor makes having no motive death eligible. It has also been the subject of litigation. The Nevada Supreme Court eventually had to narrow it because it was originally broadened so any killing in the course of a felony could be considered at random and without apparent motive. In *Leslie v. Warden*, 118 Nev. 773, 59 P.3d 440 (2002), the Nevada Supreme Court narrowed it and said that is not an appropriate use of this factor. However, it then gave the following definition of what "at random and without apparent motive" means when it applies "to situations in which the defendant selected his victim without a specific purpose or objective, and his reasons for the killing are not obvious or easily understood." Predicating death eligibility on whether the police, prosecutor, judge, or jury finds the reasons for the killing "obvious or easily understood," is practically the definition of vagueness under the *U.S. Constitution*. This issue has never been decided by a federal court, and it has never actually been addressed by the Nevada Supreme Court.

From the point of view from somebody who litigates these cases over long periods of time in habeas corpus proceedings, I submit that it is extremely

valuable, looking forward, to clarify these provisions to avoid the enormous cost and waste of resources that is involved in litigating these questions. Ultimately, in the event that a federal court or state court decides these aggravators are invalid as applied, they are avoiding the cost of retrying, reprosecuting, and reanalyzing these cases. In 1989, the Ninth Circuit Court of Appeals invalidated the depravity portion of our aggravating circumstance that was originally torture, depravity, or mutilation. Many cases since then have had to be vacated and set for retrial because of the invalidity of that aggravator. If you adopt this measure, I believe the increasingly narrow definitions that are imposed here would make this statute considerably less exposed to constitutional attack and thus would reduce litigation and would reduce the possibility of ultimately having to try these cases again.

Assemblyman Ohrenschall:
You see these cases after they have gone through the state system. You have taken care of federal habeas corpus, as I understand it. In your opinion, do you think there are people being charged with the death penalty where they should not be based on our State's case law and federal case law, and it is wasting our scarce prosecutorial resources?

Michael Pescetta:
Yes. I think in any situation where you have unlimited discretion to charge the death penalty, you are going to have overly aggressive charging practices. No one is criticizing any prosecutor for being aggressive. The problem is when you have aggravating circumstances that are so loosely defined, you end up capturing people in the capital punishment system who really are not appropriate for that treatment. Narrowing these provisions will not only avoid the problems arising from that but also the problems arising from litigating so many cases as capital cases.

Chairman Horne:
Are there any other questions? [There were none.]

Curtis Brown, Private Citizen, Las Vegas, Nevada:
I am an attorney at the Clark County Public Defender's Office specializing in the capital death penalty litigation. For the last several years, I have been the supervisor of the unit that handles the death penalty cases. I am in support of A.B. 460.

As we know, death is different. The Nevada Supreme Court has said so, and the U.S. Supreme Court has said so. It is different in its severity and finality. For the purposes of A.B. 460, death is different in its financial strain on the judicial system. Simply put, seeking the death penalty is very expensive.

This bill will allow for some financial relief to the system without significantly affecting the State's ability to seek death in the cases in which they want to seek death.

Nevada has 15 aggravating circumstances enumerated in NRS 200.038. This leaves all but one substantially intact and just trims them down to about six factors to make them more in line and consistent with the financial perspective on how to proceed on death penalty cases.

The District Attorney's (DA) Office is the sole decider as to which cases it will seek death. The DA's Office has the sole discretion, and it makes the determination once it has identified an aggravating circumstance. The way the aggravating circumstances are enumerated now in NRS 200.033 is that it gives the DA's Office more options and expands the discretion and gives it more opportunities to file death penalties. The DA's Office would more likely be faulted for not seeking death penalties in cases where there are aggravating circumstances as opposed to now. We have to tailor it somewhat to eliminate some of the duplicity in these aggravating factors. Once the DA's Office does file a notice of intent to seek death for any particular case, everything goes up starting with the requirement that you must have two attorneys. Every death penalty case in Nevada requires two attorneys to be appointed to the case. The research, investigations, mitigation, litigation, time, and cost all go up in death penalty cases. Mr. Silverstein mentioned briefly ADKT 411, and that is an additional order from the Supreme Court, which codifies the Supreme Court Rule 250. This rule mandates the extra litigation preparation and the requirement of two attorneys on every death penalty case.

Assembly Bill 460 is narrowly tailored to trim the excess fat, if you will, off of NRS 200.033. It will save time, and it will save money in nearly every case. This bill will not significantly affect the State's ability to seek the death penalty in cases.

Clark County has 80 active, open, and pending death penalty cases that are awaiting trial. That is 80 cases that require two attorneys to serve. I believe there was a question from Assemblyman Ohrenschall about the majority of the cases being in the Public Defender's Office or not. The way it primarily works is that there are two Public Defender's Offices. The Clark County Public Defender's Office, which has the homicide unit, and there is a conflict office called the Special Public Defender's Office that takes codefendants in cases where we have conflicts. We handle the bulk of the appointment cases through the County for the people who qualify. In addition to that, there are other cases where neither of our offices are able to take cases that still do not have the resources to hire attorneys. The county still pays for that. There is an

appointment system through Clark County, run by Drew Christensen, where he has to retain attorneys, and on death penalty cases, he has to hire two attorneys. He must pay for all the costs, including research, travel, mitigation, et cetera. That still comes out of the county budget. I feel safe in telling you that in respect to the 80 pending death penalty cases, close to 90 percent are represented by appointment attorneys who are paid by the county agencies.

With that said, there are 80 cases where pretrial investigation and litigation is required. Every time you have litigation, you have hearings, court costs, et cetera. Mr. Silverstein pointed out that of the 80 cases, A.B. 460 would only remove three of them currently. We are speaking in terms of what we have now because we do not know the future. I think it is a fair extrapolation to how A.B. 460 is applying to the cases we have now and to the cases we have had in the past to how it would apply in the future. You are probably asking yourselves if we are only removing three cases, where are the savings? It does save money on those three on the exorbitant cost of proceeding from start to finish through a death penalty case. Of the remaining 77 cases, every single one of them has some issue that needs to be litigated that could be resolved through this bill. Some of the issues that arise are the burglary statute and the aggravating circumstances listed there, but every one of the cases needs some level of litigation to take place. What that means is that the attorney needs to do the research, write the brief, staff needs to be paid, it must be responded to by the District Attorney's Office, it has to go to court, and be reviewed by the judge. The judge will make a decision, but court time is taken up by this. Even if it is one issue, and it is likely to be more than one issue in each case, that is a savings in every case.

If I were a private lawyer and were retained on a death penalty case, and the family came in to pay me, I would identify all the issues in the case. If I had to file a motion to strike one of the aggravating circumstances that would have been resolved by A.B. 460, I would have to take the time to research that issue. I would then have to draft a brief and have my secretary write the brief. Then I would need to have the brief filed. The State of Nevada would then be required to respond to the brief, and it must do its research, file its brief, and then we have to calendar it for court. We all must go to court and wait for the hearings. The judge would review the briefs and have his law clerk review them. For every one of these issues, I would need to dedicate time, and that time equals money. The client that is paying me will have to pay me to litigate those issues that might otherwise be excluded by this bill. The interesting part about what is happening here is the client in my scenario is the Nevada taxpayer. The Nevada taxpayer has to pay me, my co-counsel, and my staff. He also has to pay the District Attorney's Office, its prosecutor, its staff,

the judge, the court, the clerk, and the court time. The Nevada taxpayer is footing the bill for the entire process as opposed to a private client who is paying his private attorney.

If A.B. 460 were the law, those issues would not have to be litigated in detail. They would not be there anymore. That means you are saving all of that time and money. Looking at it one case at a time may not seem like much, but when you add it up, it rises to a level of significant savings. This bill seems to be good business. When looking at a cost/benefit analysis based upon the cost of proceeding on these issues versus the benefit you are gaining, a better way to look at it is the lack of no benefit. The State is not going to be significantly affected in its ability to seek death in the cases it wants. If death is deserved, it can still present its case and convince a jury.

The only difference in seeking death with the passage of this bill is that it would be done in a more efficient, cost-effective manner. It is anticipated that the District Attorney's Office and the opponents of this bill may indicate that all of these issues have been decided. The Nevada Supreme Court has said through countless appeals that these issues are there, but it is okay. We are not talking about constitutional analysis of A.B. 460. We are talking about a financial cost/benefit analysis to this bill. The Supreme Court has not done any legislation because they leave that up to you. If you were to take out some of these issues that are eliminated through this bill, it is unlikely the Supreme Court will have a problem with that.

Assemblyman Segerblom:
Of the three cases, could someone explain what happened in one of those cases so we can understand why that would not be deserving of the death penalty?

Curtis Brown:
I do understand the question, but I do not have those cases in front of me. If Mr. Silverstein is still there, he has those cases and is in a better position to answer that question.

Dan Silverstein:
The first case is *State v. Mickey Thomas*, and that is the case where three people beat up a man, and he went to the hospital was treated, discharged, and died eight days later from a heart-related incident. That was charged as a death penalty case.

Assemblyman Segerblom:
What was the aggravating factor in that case?

Dan Silverstein:
The aggravating factor was that Mr. Thomas was on supervised release for possession of a firearm, and he had one prior felony conviction. Those are the two aggravating circumstances that made it death eligible. They would no longer be aggravating circumstances under A.B. 460. *Valdez* is the case where the jury deliberated and heard all of the evidence, and they came back with a verdict of guilt, but they told the judge they were not going to impose the death penalty. The Nevada Supreme Court reversed that. Mr. Valdez also had a single prior felony conviction and one felony conviction from that incident that was connected with the murder itself. That would not qualify under this bill because the felony convictions must be prior criminal history and not something that occurred in connection with the homicide. The third case is Kentrell Welch. This is the man who is currently at Lakes Crossing Center and has had significant mental health history his entire life, and the State is seeking the death penalty against him. The aggravators in his case are that the murder was committed in the course of a burglary because it happened inside of a building. He was previously charged with multiple felonies in connection with the murder. Had he been convicted under this bill, those would not have been aggravators because they happened in connection with the homicide. They are not prior felonies and therefore not aggravators.

Chairman Horne:
Are there any other questions? [There were none.] Is there anyone else in Carson City or Las Vegas who wishes to testify in favor of A.B. 460?

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:
I have some written remarks that I will submit for the record. I just want to state briefly that we are in support of this bill because we believe that laws created by the Legislature need to be clear. We think this move would be best for governmental transparency in allowing the public to better understand why certain things are being charged.

Chairman Horne:
Are there any questions? [There were none.] Seeing no one else wishing to testify in support, we will move to the opposition of A.B. 460.

Sam Bateman, representing Nevada District Attorneys Association:
We oppose A.B. 460. We have our assistant district attorney in Clark County, Chris Owens, who has done a whole lot of these types of cases. I would like to defer to him to present our position and provide you with some of the information. I did want to clear up a couple of things while he is gathering his information. We did provide you with a slide (Exhibit C) on the

Nevada Electronic Legislative Information System (NELIS) that Mr. Owens will refer to regarding the number of individuals who are actually receiving the death penalty versus the number of murders committed in Nevada.

I also wanted to note that there is another piece of legislation regarding the study on the financial cost, where it seems at least a portion of the proponents of this bill want to take their argument. It was noted that the DA's Office was opposed to that study, but that is absolutely not true. If you want to do a study, go ahead, and we will be happy to be a part of it and make sure it is an unbiased and accurate study. That was what our testimony was in front of Assemblyman Segerblom's committee. I am sure he remembers.

The only other thing I would note is that I am not sure whether this is a financial attack or if we are talking about us going forward on too many death penalty cases out of this 80. I would certainly invite Mr. Pescetta and Mr. Silverstein to tell us which ones they agree with that we should go forward with. My guess is that they would say zero. I had some problems with that argument.

The thing we have kind of left out is that there is a process that our office goes through, and then it is not as though we just skip to the death penalty. We must first convict someone of first-degree murder, prove these aggravators beyond a reasonable doubt, prove they outweigh any mitigation evidence that a defense attorney might present on behalf of their defendant regarding their background, and a jury makes all of these decisions. Death is never required, and the jury can always disregard death, and it requires 12 individual jurors to decide that the death penalty is appropriate in light of this entire process. It is quite significant. Just merely filing the death penalty does not mean someone actually gets it. In fact, very rarely does that happen.

With your permission, Mr. Chairman, I would like to defer to the testimony of our assistant district attorney.

Chairman Horne:
First, you said the aggravators need to be proven beyond a reasonable doubt. One of the questions is whether or not the existing aggravators we have should be trimmed down.

Sam Bateman:
I understand that. That does appear to be part of the argument.

Chairman Horne:
You said a jury can always choose not to recommend death. Was there not an argument that when that happens, the district attorney can panel another jury?

Sam Bateman:
I believe you are referring to section 1 of the bill. We actually had a case recently when this occurred, and Mr. Owens can probably follow up on that. When a jury cannot decide what the appropriate penalty is in a death penalty case, the judge does have the ability to reimpanel a jury. You do not have the whole trial again, but you have the sentencing hearing again. It is two-part process. You have the guilt phase, where the jury finds whether the State has proved beyond a reasonable doubt that the defendant has committed first-degree murder. Then there is the sentencing phase, called the penalty phase, and that is what this bill refers to. If the jury cannot decide and is hung, the judge can either reimpanel the jury, and remember that this is 12 people from the community deciding what the appropriate sentence is for someone who has committed first-degree murder, and the judges normally like to have our population making these kinds of decisions, or as it currently stands, the judge can impose a life without sentence. This proposes to take away that option of reimpanelling the jury.

Chairman Horne:
I guess the real question is whether or not a jury cannot decide on death or has not decided on death. Here is an example, and we will go with the scenario of 11 for and 1 against. In one argument those jurors cannot decide. The other argument was that they did not decide on death because you must have all 12 agree, and the district attorney failed to meet that burden of a unanimous decision. Why impanel another jury? Why not have the judge just impose the life sentence?

Sam Bateman:
I understand, and I am going to defer to the experts in my office so they can answer your question as part of their presentation.

Chris Owens, Assistant District Attorney, Clark County District Attorney's Office:
Could you repeat the question?

Chairman Horne:
It was stated by Mr. Bateman that an impanelled jury could not decide on death, and I posed the question of whether or not it was that they could not decide on death or they did not decide on death. If you have 12 jurors and 11 were for death and 1 was not, with this bill, if the jury werr impanelled and heard the evidence and the district attorney did not meet the burden of getting a unanimous verdict, why would we not then just allow the judge to impose a life sentence? Why impanel another jury to do the same thing over again? Was it they cannot or did not impose death?

Chris Owens:
This happens sometimes. We had a situation like this. I am joined here by Pam Weckerly, who is the chief of our Major Violators Unit, and Mark DiGiacomo, who is the chief of the murder team, and they have a lot of knowledge and remembrance about some of these events. We have the Mastas case, and the Harrison case that has already been remarked upon. Essentially, the law now allows the court a lot of discretion in this area, and the judges are in a good position to exercise that discretion. They have exercised it in both directions. Some have decided to prohibit a further penalty hearing, and some have decided to go ahead and have a new penalty hearing. Some have gone ahead and sentenced under the different sentencing schemes there are. It allows the judge to make that decision, and that is a good way to do it because the judge is sitting there and hearing the evidence that is being presented. I do not see any reason to rob the judge of that ability to make that decision from the area where he or she is actually seeing what is going on in the case.

Chairman Horne:
Could you state your name for the record please?

Chris Owens:
Yes. My name is Chris Owens.

Chairman Horne:
In that situation, is the judge exercising discretion, or is there a motion by the District Attorney's Office to impanel another jury? Does the judge do that on his or her own?

Chris Owens:
The judge has discretion under the statute. The judge has listened to what happened in the hearing, and then will make a decision based upon that.

Chairman Horne:
So there is no motion by the DA's office? I am not sure of the process as I have never done it. Say the jury came back 11 to 1. At that point, does the judge make the decision, or does the district attorney make a motion that another jury be impanelled?

Chris Owens:
No. It is not the district attorney's discretion; it is the judge's. We had a case, and I believe it was one of the Nunnery cases last year, where the judge decided there was not going to be another hearing. That was the end of it, and the death penalty was off of the table. The judge has the discretion.

It is important to have that because occasionally jurors will come back from these hung juries because one juror was opposed to the death penalty, and he would not vote for it under any circumstance. That is one of the reasons a jury hangs. That is not going to happen in the other direction. Sometimes there will be a sleeper on there who is not forthright in voir dire. I think we need to be looking at either buying into the jury system, or we do not. If we buy into it, then we let the jury make a full decision, and we do not let it be held hostage by one juror who may have a hidden political agenda. The safety belt on that is the judge, and not the State or prosecutor. That makes sense and the way it should be. Judges have gone all different directions on these issues as they have come up. It just depends on the facts and circumstances. That is the current law.

Chairman Horne:
If we buy into the jury system or do not, we cannot say if we have 1 juror opposed to the other 11 that he is rogue or diametrically opposed. There are other jurors who have a 100 percent buy-in on the death penalty. You go through the process and get a jury empanelled, and you live with what that jury brings to you, short of jury tampering. Is that not true?

Chris Owens:
Yes, you live with the verdict they bring to you. A hung jury is not a verdict. We cannot say there is a rogue juror in every case when that occurs. We do hear from other jurors in some cases that the juror acted in that jury room different from what the juror said he would do during the voir dire process at the beginning of the case. I would call that a rogue juror. The juror declares to the jury that he has political objections. Any juror can have political biases one way or the other, but at the beginning the juror promises he will be able to consider the evidence and make a decision based upon that and not based upon a political philosophy. We have jurors who get into the room at the end of all of our case presentation and say they will not vote for the death penalty and will never vote for it because they do not believe in it. They essentially violate their oath. Yes, we need an escape valve for those situations.

Assemblyman Frierson:
Some of us have received several emails about a couple of circumstances, and I wonder how frequently they happen. The first circumstance is when someone is subjected to the death penalty and willing to plead guilty to life without, yet the death penalty is still sought. The second circumstance is when someone has already been ordered to death and has subsequent cases. I think this is more typical in a gang case where there are multiple murders. After someone has already been sentenced to death in one case and subsequently prosecuted for other crimes that have occurred. How frequently

do those circumstances happen? I think some of us have received correspondence about that and the cost implications of seeking the death penalty when somebody is willing to agree to life without or when he has already been sentenced to death in another case.

Chris Owens:
Frequently, if a person is willing to plead guilty to life without, we review the evidence and the reasons why we first sought the death penalty and look at the nature of the case at that time with the strengths and weaknesses of the case and make a decision. Many times we will agree to accept a plea to life without the possibility of parole. That is not an uncommon thing. If we look at the case and find that the death penalty is still justified, we go to a jury and have the jury make that determination. If we still feel our case is still viable, then we go forward. That raises the issue of prosecutorial discretion in these matters.

I think it is important to point out the history of these things. This was talked about by the proponents of this bill. We have a committee in Clark County that began in 1995, and it reviews all murder cases that are eligible for the death penalty. In my experience, somewhat less than half the murders committed are eligible for the death penalty. That committee typically will decide to seek the death penalty in about 15 cases per year on average, which is about 10 percent of the available cases. Before we went to the committee process in 1995, we sought the death penalty in every single circumstance the Legislature allowed by statute. We did not exercise discretion. If we had aggravating circumstances, we filed the death penalty. In that particular methodology, we were never accused of violating discretion because we did not exercise any. We relied upon the Legislature's discretion in enacting particular aggravating circumstances. It was the defense attorney bar that requested to have our office go to a committee. The process we are currently using was put in place by Stewart Bell, the district attorney at the time. It was part of one of the issues he ran on, and it was at the request of the defense attorneys. Some of them have testified before the Committee today. Their intention in that process was to have us exercise our discretion to narrow the class of available cases for the death penalty. That is what we have been doing, and there has been a substantial narrowing since that time. Part of the process they are complaining about is an aspect of their own creation. Memories are short on things like that.

Assemblyman Ohrenschall:
Right now, of the individuals currently on death row, are they any who would not have been eligible for the death penalty if this bill had been the law?

Chris Owens:
I am not aware that this bill would apply to any of those. We would have to take a look at it though. I can speak to the comments by Mr. Silverstein who said out of the 80 cases, 3 would be taken off of that current list. Eighty seems like a high number to us based upon the numbers we are tracking. If we take a look at those three cases that he mentioned, we received some procedural history a few months ago from Mr. Silverstein, but we did not receive the factual history. If you would indulge me for a few minutes, I would like to talk about those cases. I do not believe it is accurate to say those cases would be removed from the death process based upon this bill. In the Valdez case, there was a forceful entry of a residence by the suspect where he obtained a knife and stabbed the woman occupant in the back of the neck nine times. When her 12-year-old son jumped up to intervene and protect his mother during the stabbing, he was stabbed in the chest with such force by Mr. Valdez that it broke off the knife handle. The young man ran out of the front door where he was chased by Mr. Valdez, and he tried to stab the young man again. When a security guard tried to intervene to protect the young man, he was chased by the knife-wielding Mr. Valdez around the building until he was finally able to get away. We had a series of three victims, including the 12-year-old young man who survived and witnessed the murder of his mother. Those are the facts of that case that Mr. Silverstein says is a case that should be removed from death penalty consideration.

In the case of Mr. Welch, we also had a forced entry of a residence where the victim was shot in the head by the gun-wielding assailant, Mr. Welch. He then pointed the gun at one of the other occupants and shot him in the chest. When the police tried to take him into custody, he went into a minimart and threatened the clerk with a knife saying he was going to stab her. When customers tried to protect the clerk from the knife assault, he threatened them with the knife. He was finally taken into custody while he was trying to strangle one of the other individuals in that knife attack. With regard to the defendant, Mr. Thomas, which was the third case mentioned by the proponents, that was the cold-blooded and calculated conspiratorial killing of an older gentleman. He was the victim of an attack by multiple people who beat him together in his residence so they could steal items from his residence. They were largely after electronic devices. He was dragged outside and beat to death, and then his home was robbed. The person who was the primary assailant in this case, Mr. Thomas, had two prior felony convictions. One of the convictions was a federal firearms offense and the other for a robbery with use of a deadly weapon, which also involved a brutal assault upon another victim several years earlier. I see aggravators in these cases that would be upheld even if this particular legislation were passed. I would disagree with Mr. Silverstein's analysis on this. I hope that after you hear the facts on this,

you can see the character of these offenses. They are nothing like what was represented to you a few moments ago. They have a lot of different facets to them, and it is easy to see the reasons why these are recommended to be jury considerations for the death penalty.

Public polls have repeatedly shown public support for the death penalty. We agree that it should be used in the worst of the worst cases. We have prepared a chart (Exhibit C), and I have it available in a PowerPoint here. I hope you can see it there. It shows all of the murders committed in Nevada, and we have a very high murder rate nationally and have had for a long time. It is nearly 5,000 murders in our state since 1977. Of those, we have actually obtained the death penalty throughout the State of Nevada 141 times in that 35-year period. That means only 1.4 percent of all individuals having committed a murder over that period of time actually received a sentence of death from a jury. That does not mean they were executed.

Chairman Horne:
Of that 4,900, how many were death eligible?

Chris Owens:
First of all, they would have to be apprehended. That is the number of murders that occurred. If you have a solve rate somewhere between 50 and 75 percent, then you would actually have around 3,000 we would know or have available to us. My experience indicates that probably around 40 percent of those might be eligible for the death penalty, at least for consideration of it. In our office, if they had come before us under the current process, probably around 10 percent of those would have been eligible for the death penalty. That would have been around 300 people over the last 30 or so years. If you look at the chart, in Clark County over the past ten years, we have had around 150 murders per year, and of those, we have obtained approximately two death penalty sentences from Clark County juries on average. That is the worst of the worst, and that is what we are focusing on. These are the individuals who are deserving of the death penalty according to legislative enactment, and there are only a small portion of those the Legislature has told us are eligible for the death penalty. They are a minor fraction of those. It is important to keep those numbers in mind when we consider what is involved here. Our money and time does not go primarily into these types of cases.

Because of the economic comment about these, I think it is important to point out we are being fought on more than just death penalties. We have the federal public defender intervening on cases where we have not sought the death penalty. We are fighting tooth and nail, and a lot of money is being expended. There are bills before this Legislature to pay the federal public defender to come

in from the federal court and represent their interest for our state defense in the state court. We are being too loose with this kind of money and representation on the cases where they are life without, or even where they are life with the possibility of parole. It is the same fight. You could eliminate the death penalty, and the individuals and proponents of these ideals are still going to put money into the fights in these other areas. I had a habitual criminal who was fought all the way up through federal court. He had received a life sentence with the possibility of parole, and I had to retry him ten years later. We expended thousands of dollars on that. He had over 20 prior felony convictions, and he was a menace to society. We are fighting this battle on many other fronts. It is not just the death penalty issue when you talk about the economics of this.

If I can address myself to the bill briefly, I did a comparison of the language of this bill to all of the language in all of the other death penalties and aggravating circumstances in other states, Guam, and Puerto Rico. I can tell you the language put in here was made up out of whole cloth. I cannot find parallel language in any of the statutes for aggravating circumstances in any of the other states in our country. There are two places where I recognize language coming out of Nevada Supreme Court cases. The attempt to codify language dealing with torture come out of *Domingues v. State*, 112 Nev. 683, 917 P.2d 1364 (1996), and also language coming out of *McConnell*. In neither case is language accurately cited from the opinions of the Nevada Supreme Court. Even there, this bill language does not get it right. It gets it wrong in ways that change the meaning and intent of the Nevada Supreme Court in favor of defendants. It goes further than the Nevada Supreme Court did. With regard to the language of torture, there is no reason to codify that because this Legislature and the law is recognized by the Nevada Supreme Court as giving it the authority to narrow these issues, and it has done so. If this Legislature were to try to codify this, it would be doing it every legislative session. We have a narrowing function that is occurring through the function of the Nevada Supreme Court, and that has been sufficient to narrow these and bring them into compliance with Supreme Court announcements.

With regard to *McConnell*, the language in this particular bill is more expansive than *McConnell* and does things the Nevada Supreme Court was not willing to do. It treads into areas where it has rejected not only in the original *McConnell* case, but in cases citing from *McConnell* since then. Our Supreme Court has said that *McConnell* was wrongfully decided and not based upon the law it cites. If it would go back into it, it would cite it differently today. In the interest of all the cases that have been affected by it, it has decided to leave it on the books. To expand that now into other areas does not make any sense at all, but that is what this bill is trying to do.

When I read through it and think of where the language comes from, it appears to be simply a wish list by a defense attorney who sat down and said, "If I were in charge, what would I think the law should be?" That is what we have here in this bill.

The particular aggravator they are trying to eliminate in total is the aggravator dealing with the random without apparent motive. Mr. Silverstein gave us a challenge to come up with similar law anywhere in the United States. Almost every other state that has the death penalty has similar language. They just do not have identical language. They talk in terms of pleasure murders with indifference to suffering. That is what this language is aimed at. It has been in our statute since 1977, and it is directed at "thrill kills" and rampages. Up North, we would associate this language with the death penalty case *Priscilla Ford v. Second Judicial District Court*, 97 Nev. 578, 635 P.2d 578 (1981), who mowed down three people with no apparent reason other than it being a "thrill kill." Down here, we would associate this language with the death penalty case of *Zane Floyd v. State of Nevada*, 118 Nev. 156, 42 P.3d 249 (2002). He had no robbery motive, but he simply told people he wanted to know what it would be like to kill someone. He walked through an Albertson's store and blew them away with a shotgun and other weapons while they pled for their lives.

Those are two of the cases the Nevada Supreme Court had said are good indicators of a proper and appropriate use of this aggravator that has been on the books for 35 years. It had narrowed the use of it in robbery cases. Using that narrowing, we have narrowed our usage of it and employment of it as well. Frequently, in these kinds of murders, we do not have another aggravator to employ. These are some of the most horrendous killings we have had in our State.

If I could mention one other thing, it has been pointed out to me that one of the gentlemen with me, Mr. Mark DiGiacomo, is a prosecutor along with Pam Weckerly, who is also present, on the murder case of Las Vegas police officer Trevor Nettleton. In listening to the layout of the facts in reviewing this statute, they are of the opinion that the death penalty would be unavailable in that particular case of the murder of this police officer in his own home by a series of assailants. It is a rather notorious case down here and is pending. If this statute were to be enacted, it would come into play in this case.

Assemblyman Frierson:
I was trying to take as many notes as I could, but you were going pretty fast. You mentioned *McConnell*, and did you say that case was overturned?

Chris Owens:
It has been overturned in language but not in fact. I think it was Justice Hardesty. Within the opinion of examining that rationale, he said that case was wrongly decided, and if the Supreme Court were to review that, it would not decide it the same way. Because a lot of the death penalties have been set aside based on that decision and its retroactive application, even though it was erroneously decided, he did not want to disrupt the stare decisis of the continuum of law in our State, so it has left it alone.

Assemblyman Frierson:
Could you provide us the citation of that? I am not familiar with that one.

Chris Owens:
Yes, we will.

Assemblyman Segerblom:
Do you have any explanation of why Washoe County would have one death penalty case and Clark County has 80?

Chris Owens:
I know they have fewer people up there, and they have fewer homicides. That would be guess work, and you can ask them that question.

Assemblyman Segerblom:
I can tell you what their answer was. They look at these cases very carefully and pick the ones they truly believe deserve the death penalty.

Chris Owens:
Washoe County might have a percentage under two percent. Ours is under ten percent. I think those are low percentage points against the number of murders.

Chairman Horne:
Are there any other questions? [There were none.] We have been at this for quite some time now. Is there anyone else in Carson City wishing to speak in opposition and put new information on the record?

Ron Dreher, representing Peace Officers Research Association of Nevada:
I have listened to the proponents and opponents. My past is as a major crimes detective with the Reno Police Department, and I worked there for 11-plus years. I worked on some of the cases that have been discussed today. Having at least one person that has been sentenced to death, I have heard

today that there were some issues. Saving money has been discussed as well as the State seeking to kill someone. I am not a supporter of those statements.

There has been other testimony that Assemblyman Segerblom mentioned that District Attorney Gammick testified and stated publicly that the Washoe County District Attorney's Office definitely goes through a process in determining who they should or should not be seeking the death penalty for in these specific cases. Mr. Brown did a wonderful job of describing how the system works, and Mr. Owens capitalized on that a few minutes ago by saying that it does not matter if A.B. 460 is passed or not in its present form. The appeals will go on and on.

In my reading of this bill, I obviously have major concerns with the language. It changes these aggravators that are very well detailed and described by the district attorneys who go through these processes before deciding who should or should not be prosecuted. I think it comes down to this: if anyone in this room were a victim of one of the crimes mentioned, you would want this process to continue as stated. You also want the due process as stated by the federal public defender. Witnesses have stood up and said we should do things a little bit differently. I am not sure taking out burglary from an aggravator is a worthwhile project, especially when you heard some of the cases cited when it was burglary. Someone entered a home and brutally killed those people. Home invasion is when you tear the door down and go into a house. A burglary can happen when you leave your door open. That is what happened in Brianna Dennison's case that was mentioned yesterday. That was a burglary, but a brutal murder resulted from that.

I think the Nevada Supreme Court and the district attorneys have done a pretty good job of doing their job and leaving well enough alone. I believe this bill would be a step backwards. I ask this Committee not to proceed with A.B. 460 and leave it the way it is. The ongoing battle will continue no matter what you do, and so will these decisions, appeals, and so on.

Chairman Horne:
Are there any questions? [There were none.] Is there anyone in the neutral position? [There was no one.]

I have a question for Mr. Bateman. On one of the things Mr. Owens said about codifying a Nevada Supreme Court decision, we do that all the time here. I am not entirely sure what the opposition is with codifying it. Is it bad to codify Nevada Supreme Court decisions?

Sam Bateman:
I would certainly defer to Mr. Owens. What I think he is referring to is the attempt to codify in this bill does not actually track the language of the Nevada Supreme Court statute accurately. The litigation talked about regarding the aggravators and what they mean occurs every year, and we receive continuing decisions about those. I think the point is that you would be back here every two years adjusting the statute based upon new proclamations by the Nevada Supreme Court, and it is not necessarily needed. I do not think he is suggesting we should never codify that, but in this specific instance, those two issues would arise.

Chairman Horne:
We will close the hearing on A.B. 460. We will take a quick ten-minute recess.

[Meeting was recessed and reconvened at 10:05 a.m.]

[Vice Chairman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:
We will open the hearing on Assembly Bill 461.

Assembly Bill 461: Revises provisions concerning the duties of the Board of State Prison Commissioners and the Director of the Department of Corrections. (BDR 16-1123)

Kevin Ranft, Labor Representative, American Federation of State, County and Municipal Employees, Local 4041:
I am a correctional peace officer with the Nevada Department of Corrections (NDOC) working at the Northern Nevada Correctional Center (NNCC). I am not here representing NDOC. I am speaking on matters of public concern. I would like to thank Chairman Horne for bringing this bill forward. I would like to give a little testimony before I actually go over the bill and amendments (Exhibit D and Exhibit E).

Assembly Bill 461 was brought forth to help ensure the lives of correctional peace officers, correctional employees, inmates and, alternately, the public are protected. You may hear that this bill is very complicated, but it is not. This bill is very simple as it provides for mere oversight from the Board of Prison Commissioners when NDOC directors, deputy directors, and wardens set their minimum staffing levels at each institution or facility. There is no other way to seek support for this bill other than to address the concerns directly and state the necessary facts to you so you can make the appropriate recommendations for this bill. Again, this bill is about basic oversight that can save lives. Why is

the oversight in need of statutory change? American Federation of State, County and Municipal Employees (AFSCME), Local 4041 has received complaints that the former and current NDOC directors, and the deputy directors, have authorized their wardens' requests to staff various prisons at levels employees feel are unsafe. I can also personally testify that NNCC has unsafe staffing levels. I can also tell you that on a daily basis, the lives of correctional peace officers, correctional employees, inmates, and the public are in unnecessary jeopardy.

As numerous positions are currently being pulled and shut down during various shifts, these risks are preventable as legislatures have set and approved staffing charts and provided the necessary funding to fill these positions. This bill does not apply in officer versus inmate ratio.

Last session, we tried to apply some staffing levels when it came to ratios for officer to inmate, and there were some concerns there, so we sought a different avenue by going through the Board of Prison Commissioners that is ultimately responsible for NDOC as a whole. We feel this avenue is appropriate, and at this time, I would like to go over the bill and the amendments.

Assembly Bill 461, section 1, subsection 2, under *Nevada Revised Statutes* (NRS) 209.111, originally had: "Regulate the number of officers and employees of the Department to ensure the safety of such officers and employees within each unit of any institution or facility of the Department." Section 2, subsection 7 requires the director ". . . including, without limitation, submitting on an annual basis for approval by the Board a minimum staffing chart for each institution and facility of the Department, which must not exceed the allocation for staff authorized by the Legislature." We have drafted a few amendments, and I would like to give some clarification of the intent of these and why they were brought forth. In the first amendment (Exhibit D), section 1 states, "NRS 209.111 is hereby amended to read as follows . . . ." Originally, this was under subsection 2, and we would like to move it down to subsection 3, as we do not want to limit the Board of Prison Commissioners within their scope of regulating the number of officers and employees with the Department just for mere safety and security. There can be other avenues and concerns, and that is why we want to leave that as is and just do a basic move down to subsection 3, where it says: "Review staffing plans submitted by the Director to ensure the safety of such officers and employees within each unit of any institution or facility of the Department."

I have a second amendment (Exhibit E) because there was a concern brought to us that about having an open forum discussing the minimum staffing of various institutions and facilities. My immediate answer was that the inmates already

know what positions are staffed and not staffed. They were adamant about possible solutions, and this happened more than once. We drafted an amendment, and this could be controversial to a certain degree. Oftentimes, under NRS Chapter 241 dealing with the open meeting law, there are not many exemptions that come under this statute. However, I firmly believe that this is a long time coming, and NDOC should have this avenue under the open meeting law to have an exemption for various reasons. We would like to add to NRS 241.030, "Exceptions to requirement for open and public meetings . . . ." This goes on to paragraph (d) where it says, "To preserve the security of the Department of Corrections, its institutions, facilities, confidential administrative regulation manuals, staffing charts, or any other sensitive matters being reviewed by the State Board of Prison Commissioners pursuant to NRS 209.101 to NRS 209.116."

Just a little information on what is currently going on with the State Board of Prison Commissioners. They meet quarterly to go over much of the administrative regulations within NDOC. Quite often, you see a generic administrative regulation come forward that says to refer to the manual, but you never see the manual. That is because there is confidential, sensitive material in it. They circumvent the State Board of Prison Commissioners because of that confidentiality and sensitivity. There is no avenue to talk about use of force policy and other security issues within the prison system. Again, that is why this amendment was put forth. We think it is a good idea, but it would not address anything outside of security and sensitive matters.

I would like to go over a couple more concerns. Since this is a matter of public concern, I can talk about various positions within NDOC at NNCC. As you have received, there is a staffing roster that has highlighted areas. [Due to sensitive nature, this was not submitted as an exhibit.] These are what you call pull and shut down positions. The warden has gone to the Deputy Director of the Department and asked for approval to have these positions shut down or pulled for various hours within a shift. Positions are shut down more often than they are pulled. The reason behind the bill is because of this reason. There are so many positions being pulled or shut down that it is jeopardizing the safety and security of the correctional officers, staff, inmates, and public. I will give you an example. One of the positions that has been pulled is the perimeter. The inmates know the perimeter is not running on a nightly basis. The perimeter is an officer driving a vehicle going around the outer gates within the prison. They are there to ensure that nobody throws stuff over the fence from the public and vice versa. They are also there to make sure inmates do not escape. They basically back up the towers. It is common for the perimeter to be pulled. Another position pulled is the culinary gun post. When you do escorts, there is no gun coverage on the yard. These officers are walking with

an unnecessary risk when there is a funded position. There is serious concern as to why that position is not being staffed. Units 4, 5, and 6 are not being staffed, and there is only one officer left in the unit. Inmates are not getting the appropriate checks on an hourly basis as required by our post orders. Why is that? The Deputy Director and the warden have chosen to do these pull and shut down positions, placing people's lives in jeopardy, and it needs to stop.

That brings me to unit 8B, which is the regional medical facility at NNCC. That situation is very volatile. There are mental health inmates and only one officer on the floor and one officer in the bubble right above it. The concern here is that officer should have a partner at all times on the floor with him to address security needs. For example, the swing shift had a similar situation where they pulled the floor officer and a mistake happened. The correctional officer in the bubble was trying to put away an inmate and accidentally hit the wrong button and opened up the sally port door for that unit. That inmate came out and brutally assaulted a nurse, and there was only one officer on the floor, and he could not stop it. The inmate struck the nurse, knocking her unconscious. Had there been two officers on the floor, the inmate probably would not have come out, but if he did, two officers on the floor could have potentially stopped the attack. That was an unnecessary situation that occurred. These positions are funded.

I would like to discuss the vacancy rate at NNCC. There are 21 current positions that are vacant. There are 9 individuals on extended leave, and that could be because of various reasons. We have furloughs as well. So, not only do we have 21 vacancies, we have 9 extended leaves, and that does not take into account staff out on sick or annual leave. However, with sick and annual leave, those positions are covered with relief actors, but if there are any over those relief actors, that could be a concern as well. When we met with Acting Director Cox regarding the concerns of pull and shut down positions, he stated, "We reviewed these positions and, in fact, we did an audit." He turned to Deputy Director E.K. McDaniel, who stated, "I reviewed those, and I approved it." That is why we are here today seeking the support for A.B. 461. We need to ensure there is more oversight and not someone just trying to save a buck.

There was another incident at Ely State Prison where this legislative body approved staffing for the day shift culinary, which is up to three positions. I would like to read the statement from the officer involved in this incident. "On the date of March 07, 2011, I, Correctional Officer Cortney Green, was working at my assigned post in the Ely State Prison Culinary when the following incident did occur . . . ."

[Continued to read from report of violation (Exhibit F).]

We do not like any of our staff to be assaulted when there could have been more than one officer in there. This is an unnecessary risk and preventable. This should not have happened. We are asking for support of A.B. 461 because of that incident and other attempted attacks that have taken place. This is an unnecessary risk that the Department is currently taking on a daily basis, and it needs to stop. This bill is simple oversight, but NDOC will tell you this is unneeded, and it can manage this with no problem. We have seen what happens under its management.

I would like to let you know there was an officer death in a South Dakota correctional facility. The inmate took his uniform and killed the officer in an attempt to escape. We do not want that to happen here in Nevada. There was another murder in Washington of a female officer who was working visiting. We cannot afford for this to happen here, but we know it could happen. It is preventable. This bill does not even address all the issues. This is mere oversight. We know there are other avenues to fix this problem.

Assemblyman Hansen:
To bring it up to the level you would like, I could not find a fiscal note. Do you have any idea what the cost would be to do that?

Kevin Ranft:
There would be no fiscal note because the current staffing is already funded through the budget that was presented by the Governor and approved last session. Those funds are there. Many times they utilize what they call "salary savings" to hire overtime, and that does drain certain elements. However, you will quite often find NDOC goes to the Interim Finance Committee and asks for additional funds for salaries because it has gone over its cap. It has been granted anywhere between $2 million to $7 million for those additional funds to ensure the safety and security. We know that is only a small chunk of it. Staffing is very expensive. There are two ways to deal with this, either hire overtime to fill the voids or hire officers and train them to fill those positions. Quite often the Department runs the academies, but it does not staff them as it could. It is fully funded by the Legislature.

Assemblyman Brooks:
What is normally the reason given for this understaffing from supervisors and managers? Why do they feel this is necessary?

Kevin Ranft:
We have asked that and their response has been the almighty dollar. They have to absorb these positions to save money. Our concern is if a dollar is worth a person's life. Absolutely not. That is what is happening. The Nevada State Prison (NSP) is facing closure, so they may not want to fill those voids. We understand that to a certain degree. We understand there will be pull and shut down positions. I will give you an example. If you have an outside institutional medical (OIM) position, this means an inmate went to the hospital on a 911 or for a surgery. If those positions are not being utilized, they are able to be pulled and shut down. If there are no transportation runs for the day, those positions should be shut down. We are asking for the vital positions to be filled. There should not be 25 positions unfilled on day shifts at NNCC, as currently on their staffing charts. It is getting ridiculous. If you look back four or five years ago, it was nowhere near the caliber of pull and shut downs as it is today. I think we are getting to the point where the inmates know what is going on, and they will take advantage of it, as they have started doing now.

Vice Chairman Ohrenschall:
When the staffing levels are not where they should be, is it your opinion that it not only puts the officers in danger but also puts the inmates in danger?

Kevin Ranft:
Absolutely it puts the inmates in jeopardy. Let me give you an example. If you only staff a unit with one officer, that officer must wait to go down to the unit to do a unit tour. When you are leaving an inmate alone for a period of time up to four hours, anything can happen, like rapes. If someone is not monitoring those inmates, one of them could potentially hang himself, and we will not catch it for an hour and a half. If we do enough unit tours, we can catch it in enough time to be able to save that individual's life. The NDOC is taking the wrong avenue, and I think this would give them a tool. It will not fix the problems. Having so little staffing does jeopardize the inmates, and the public, because even the perimeter is being pulled.

Vice Chairman Ohrenschall:
I was looking at the fiscal note online, and the fiscal note is $0. Could you explain why that is $0?

Kevin Ranft:
It is our understanding that the positions have been allocated with appropriate funding through the legislative body during the last budget cycle. The NDOC will come back and say it will cost us overtime because we do not have enough officers to fill those voids.

Vice Chairman Ohrenschall:
In the second amendment, which is the exception to the open meeting law, could you explain why you are seeking that?

Kevin Ranft:
Yes, absolutely. It is a security basis on sensitive matters relating to any item the NDOC or Board of Prison Commissioners feels that if the public had knowledge of them, they could use that as a tool or avenue to assist an inmate into a possible escape or similar concerns. They could possibly get knowledge of an administrative regulation manual, which talks about our use of force and how we deal with that. The inmates do not need to be made aware of that.

Vice Chairman Ohrenschall:
Are there any more questions? [There were none.] Is there anyone else wishing to testify in support?

Ronald Bratsch, Regional Vice President, American Federation of State, County and Municipal Employees, Local 4041:
To touch a few bases, when Mr. Ranft said we were down 21 officers that are unfilled positions and 9 on extended leave, we also have furlough positions that equal 10 more positions. That is 40 positions at one institution we are down. The officers who are employed at that facility number 200, so we are down 20 percent of our officers before we even start. To go further, on March 7, Mr. Roundy was assaulted, and on March 8, the nurse was assaulted and ended up with a concussion. On March 10, our warden changed those pull and shut down positions, so the second position was not pulled anymore. We are concerned they are reactive to an incident and not proactive. We believe that position should never have been shut down in a mental health unit. Those inmates are in a mental health unit for a reason.

Vice Chairman Ohrenschall:
Do you believe those attacks on the staff were due to insufficient staffing?

Ron Bratsch:
Yes, I believe that 100 percent. In the culinary position in Ely, there were supposed to be three officers on the floor during that incident, and it only had one. The legislatively approved positions equaled three, but the pull and shut down was allowed to shut down two of those positions, which left only one officer in that area to protect the free staff from the inmates. In other states, they actually chain that paddle to an area where it can only be used there and not carried into a dry storage area.

Before they even go into the pull and shut down, we have heard testimony from our Department that we have the second highest inmate-to-officer ratio. We believe with the pull and shut down, that puts us at number 50 and really puts us at risk. Furthermore, Stewart Conservation Camp, which is just outside the gates of NNCC, is using the same staff it has had but have increased the inmates by 50 percent. It went from 240 to 360 inmates by putting a double bunk between the two bunks so there are now 6 in a room rather than 4. It did not add any staff. We believe that puts a more taxing position on our officers, but it also does not have the appropriate cleaning places to do laundry. We heard the inmates are getting irritated, and approximately two weeks ago, multiple weapons were found. We had six inmates go from a minimum classification to be moved to Ely for a maximum. Camps are not known for inmates having weapons. We believe there are more dangerous things happening. Because of the lower staffing, I would hate to see us not be in guidelines with the Prison Rape Elimination Act of 2003 (PREA) and wind up with the federal government stepping in and doing things we believe should be taken care of. That is why we believe this should be referred to the Board of Prison Commissioners and not at the lower level of the wardens. We do not think they are making the correct decisions on our behalf.

Vice Chair Ohrenschall:
Are there any questions? [There were none.]

Ron Dreher, representing Peace Officers Research Association of Nevada:
Just a few points I would like to add to what Mr. Ranft and Mr. Bratsch have already put on the record. The issue here comes down to officer safety. In the Legislative Mall, there is a memorial for the law enforcement officers of this state who have been killed in the line of duty. What happens is this; there is a saying on that wall that says, "Some gave all. All gave some." What you have to realize is that if, in fact, minimum staffing is not provided to the correctional officers of this state, we will add more names to that wall, and we should not have to go to that extreme. These officers put their lives on the line every day in a situation where they are not armed. They have very few resources to draw from in deadly situations and riot situations. If it can be prevented, it should be prevented. There is a lot of talk about taxpayers paying money. There is a huge cost for funding prisons. There is a higher cost in having the life of one of our correctional officers needlessly taken in a situation where it did not have to be taken. They need your support to continue this. They should not be placed in situations as you have heard described by these officers. I would ask that you support A.B. 461 with the amendments, including the portion dealing with the open meeting law because it does deal with security, and they need to be confidential in certain respects. I am sure the media is good at looking at some of this data Mr. Ranft talked about. Some

of this could be shared in a confidential situation. The real thing comes down to the ability to protect these officers and the jobs they have to do. You have the power to do that by enacting this bill with the amendments.

Vice Chairman Ohrenschall:
Are there any questions? [There were none.]

Daniel Shoup, Private Citizen, Carson City, Nevada:
I am a senior correctional officer at NNCC. I am the nightshift officer in unit 8B, which is the psych ward. I work that unit alone on the floor at night from the hours of 11 p.m. until 7 a.m. I am supposed to have a second officer with me. I could have brought facts and figures with me, but what I really want to do is bring it down to three points. One is right, one is wrong, and one is indifferent. What is right is that I work with people who do more with less every day. We are stretched as thin as can be, and we maintain the prison system to the best of our ability. That is a good thing.

We also have a new camera system going in, and I am not sure where the funding for that came from, but it is a great idea. I will be able to check places I cannot see from a normal viewpoint. I can check for possible danger zones and be able to see before I get there, if this is what the system will be used for. The computer system they have has cameras hooked in, but only certain people can view anything, and it is basically just looking at officers in their work stations and not in inmate locations or danger zones. It is almost like a casino would watch a dealer to make sure he is not cheating. The Director or the warden can look me up at 3 a.m. to see what I am doing, and I do not have a problem with that because I do my job. It does not help me, though. If I am down in a section, and I am assaulted or trying to help protect another staff member, I have to wait for help. I am a victim of an assault that happened last week. I have a scar as a souvenir. I had an inmate throw bodily fluids all over me and drench my uniform. It is a humiliating thing to have happen. I was working on the floor alone, and the inmate had been a problem. I was able to pull a second officer from the unit down below, but the only reason he was available was because at that particular time, he had no other duties that would call him out to the yard. The problem comes when I realize that when I go home, I do not know whether I have picked up some type of disease or whatnot that I can bring home to my wife and children.

When you work a unit where you are supposed to have a partner, especially when you are working with inmates who have psychological issues or are problematic as they are, it is very unpredictable. Inmates of that nature are predatorial in nature. It is just like the law of the pack on the African savannah where they choose the weak or infirm. They choose to attack when they have

the numbers. When you are the only officer alone in a unit on the floor, it does not matter how large, strong, or tough you are; you are at a disadvantage. I am familiar with the case where the nurse was attacked. A 140-pound officer had to square off against a 300-pound inmate who is psychotic. He likes to start fires. The door was accidentally opened by the control officer. We understand that things like that can happen. People do make mistakes. The point of having enough staffing is that in a situation like that, you are able to protect yourself and the people around you. In my particular case, when I was assaulted, we were trying to check on a problematic inmate. Had there been enough staff on a regular basis, would the inmate have been as bold and foregoing as he was? That is up to conjecture. The point is that the inmates know we are working short-staffed. They know help is not available.

We recently had an inmate who managed to pop a door with a toothbrush and run amok. It took 40 minutes before there was enough staff available to come up and get this guy under control. He took trays, busted out ceiling tiles, and gathered pieces of metal to make weapons. He was trying to open other cell doors. Forty minutes is a long time, especially if you happen to be an officer, or an officer escorting a nurse on that range, when an inmate pops a door on you, whether it is accidental, the inmate stuffed something in the lock, or he managed to pry it open with something he got his hands on. We do not have the ability to check cells. I have the highest concentration of high-security inmates in the entire yard at NNCC. However, I am staffed there alone.

This bill brings staffing under review. Our warden at NNCC has been there for a little over a year. We have a new associate warden of operations. Quite honestly, if they were in my unit being eaten by an alligator, I would not know who they were. I have never seen them. They have no idea what goes on in my unit on a daily basis, yet they determine how much staff is required. The Legislature has already determined how much staff is needed and necessary. The wardens are circumventing the process.

When I took the oath for this job, I realized what that oath meant. I was actually putting my life on the line to protect the State and the people I work with. I gave that oath willingly and freely, and I would do it again. If I am going to risk that on a daily basis, I do not want it to be for nothing, and that is what it feels like.

Assemblyman Brooks:
How long have you been an officer there?

Daniel Shoup:
I have been in corrections for 19 years, and I am going on 15 years here in Nevada.

Assemblyman Brooks:
How many times have you been assaulted?

Daniel Shoup:
I have been assaulted twice. This last time was last week. I had been working on modified duty because my hand was crushed in a door about four months ago. I do not believe the warden was even aware that I was under restrictions, but I am doing my full-time job because I cannot sit in a control room and put a brand new guy on a floor working with these kinds of inmates without any experience. We do not have the people available. You have to do what you have to do.

Assemblyman Brooks:
In normal situations, would you have another guard with you that could have preempted or been able to alert you that this inmate was going to throw feces on you?

Daniel Shoup:
Yes. We are mandated for two officers. I have been in the same unit for two years. We did not have the incidence of assaults last year when there were two of us on the floor. This year, having a second officer is an absolute exception. It is not the rule. I can count on one hand how many times I have had a partner on the floor. It is the same thing with my supervisors. I can count on one hand, in the last two years, how many times I have actually had a supervisor come up to my unit. Supposedly, the cameras are supposed to fix that, but I would rather have another body up there with me. Some of the inmates are a handful.

Assemblywoman Diaz:
In reviewing the handout of the staffing chart, I was alarmed to see that during the shift you work, from 11 p.m. to 7 a.m., is where there is less coverage. I would think that is one of the most vulnerable times. During this time, is it a time when you feel inmates might be more rowdy or looking for opportunities?

Daniel Shoup:
Yes. Night does mean it is darker. We are in a lower mode because we do not have as much movement on the yard. That does not mean the inmates cannot be as active. In my particular unit, because people with psychiatric problems do not work on the same clock as you and I do, they can be up and going all night.

In each particular wing, you can have as many as 60 inmates. If you are by yourself, you can go down that wing to see what anyone is up to. If you were smart, you probably would not even try. You have to rely on your search and escort officers coming by and either going around the outer perimeter of the building or inside with you. It is not a safe environment when you work a unit by yourself. If something happens to you, you have no way of contacting anyone for help. Some of those units still have the kick panels for fire safety where the area below the window can be kicked out. Inmates could actually get out to the yard very easily that way. The Department has been working on fixing those problems, but there are still shortcomings.

It is also unsafe for the inmates. In unit 8, we have mandatory blood draws once a week for inmates to check Depakote levels and different types of psychotropic drugs they may be taking. Because of their classification, some of these inmates require two or three officers to move them from the cell to where they can have their blood drawn. In most cases, I am scrounging trying to find anybody who can come up and give me a hand with this. If I cannot find anyone, I cannot move those inmates out of those cells. That means they are not getting their proper medical treatment, which opens the state up to different liabilities.

Assemblyman Sherwood:
Given the state of where we are at with resources and funds, we may not be able to ideally staff where we would like to. I found it disconcerting when you said you have not talked to the warden, and the supervisors are disengaged. Are there other remedies short of coming to the Legislature to do things like put in a camera or other technology? We are only here for so long. Could you exhaust other remedies?

Daniel Shoup:
Yes, and we are trying to. Our representatives, Mr. Ranft and Mr. Bratsch, have gone to the Director with the concerns. So far, they do not seem to be listening. It has become an us versus them type situation, and we do not hold out a whole lot of hope for this being resolved anytime soon. We are not asking for tons of funding or hundreds of new officers because we know we will not get that. We would like them to staff the units at the levels the Legislature has already approved. They have already been paid for. It would be nice if we could update all of the equipment, but we understand the funds are not available. We know that we will have to take cuts, but there are some things that should not be taken advantage of.

Assemblyman Daly:
On page 2, subsection 7, I want to make sure I understand it the same way you do. Mr. Shoup said the Legislature sets what the staffing level is through a budget process and the Board is supposed to review that. Part of subsection 7 reads, ". . . including, without limitation, submitting on an annual basis for approval by the Board a minimum staffing chart for each institution and facility of the Department, which must not exceed . . . ." Should it be "cannot be less than what has been approved by the Legislature" rather than "must not exceed?" The way I read that language is even if they had an extra person, they would not be allowed to put him in if it exceeded what was allowed. It seems to me it should be "cannot be less than what the Legislature has approved."

Ronald Bratsch:
The reason it says "not to exceed" is that every biennium we get legislatively approved positions, and they are budgeted. That is a high number for how many every unit should have. What the Director does is start pulling and shutting down these positions. We cannot go over your funded number, so it cannot exceed that number. We are worried about the bottom line. How far is he going to cut and pull and shut down? That is where we have a problem. We feel the warden is gouging our safety and security, as well as the inmates' and public's, by the way they are cutting these positions. The Legislature is approving enough positions to fill these without a problem.

Assemblyman Brooks:
Going back to what my colleague was saying, the way it is written it says it "must not exceed," which means that is what the Legislature would approve. You are worried about the cuts coming out, correct? Should you put in language that says something that would keep them from pulling the positions and not replacing them?

Kevin Ranft:
I understand the point. The concern is NDOC can do certain levels of pull and shut down positions. I will give you an example; a medical officer working at the hospital. There is a limit there, so that position should be able to be pulled and brought back to the institution. If there is no transportation for that day, transportation officers should be pulled. There will be a certain level of positions that can be pulled and shut down, but we are asking for the ones that will jeopardize the safety and security if they are pulled. I will double-check on the verbiage. We were talking ultimately about the monetary amount, and they cannot exceed the monetary amount.

Assemblyman Brooks:
If that is what you are looking for, then you should probably be more specific.

[Chairman Horne reassumed the Chair.]

Chairman Horne:
Are there any other questions? [There were none.] Is there anyone else wishing to speak in favor of this bill? [There was no one.] We will move to the opposition. I believe Director Cox is down South.

Greg Cox, Acting Director, Nevada Department of Corrections:
I would like to indicate that our No. 1 priority is the safety of staff and inmates. With that being said, in regard to A.B. 461, NRS Chapter 209 already provides the level of oversight that is being looked at in regards to the operation of the Department.

The Board of Prison Commissioners, according to NRS 209.101, is the head of the Department. In NRS 209.111, it states, "The Board has full control of all grounds, buildings, labor, and property of the Department." It goes on to say the Board can, "2. Regulate the number of officers and employees of the Department. 3. Prescribe regulations for carrying on the business of the Board and Department." The administrative regulation committee is also composed of representatives from the employee associations. The Director of the Department is responsible to the Board, so I am responsible to the Governor, Secretary of State, and the Attorney General. In NRS 209.131, it states, "The Director shall: 1. Administer the Department under the direction of the Board . . . 5. Ensure that any person employed by the Department whose primary responsibilities are: . . . (b) The security and safety of the staff; and (c) The security and safety of an institution or facility of the Department." Later it goes on to say, "The Director shall: 7. Take proper measures to protect the health and safety of the staff . . . ." This is all completed under the Board.

We also have a legislatively approved staffing plan with funding approved by the Legislature. The top three administrators of NDOC have over 100 years of combined service in corrections. The legislative approved staffing charts are submitted to the Legislative Counsel Bureau (LCB). We have numerous functions and oversights in this Department. I have been the acting director of this Department since January, and since then I have met with all of the members of the State Board of Prison Commissioners. I have met with them twice along with their staff. I have met with the Governor and his staff numerous times. I will assure you that they have multiple questions in regards to the Department, and I have been very accessible to all of them and have met with them individually concerning any issues they may have with the

Department. I will share with you that they have the same concerns that I have, which is the safety of the staff and inmates under our care.

I also want to indicate that I have a high regard for all of my staff and the work they do. They have done a fine job of maintaining the safety and security of our institutions. Looking at specific areas in other things as reference, the Legislature has approved additional cameras and other security equipment at some of our facilities. We have continued to ask for those, and they were recently approved at several of our facilities including Ely.

There is a lot of oversight of this Department, and I have taken it upon myself to meet with the Board of Prison Commissioners, not just in a formal setting in meetings, but also individually. They also share the staff's concerns of the operation of the Department.

Chairman Horne:
Are there any questions? [There were none.] Is there anyone else wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in the neutral position? [There was no one.] [Exhibit G was submitted, but not discussed.] I will close the hearing on A.B. 461.

I will open the hearing on Assembly Bill 462, which I am presenting, so Assemblyman Ohrenschall will assume the Chair.

Assembly Bill 462: Revises provisions relating to acts of terrorism. (BDR 15-1124)

Assemblyman William C. Horne, Clark County Assembly District No. 34:
I am presenting A.B. 462, which changes the definition of acts of terrorism. My intern, Kelsey Stegall, will run through a PowerPoint (Exhibit H). Then I will speak to the Committee on why I believe this is an important bill.

Kelsey Stegall, Intern for Assemblyman Horne:
The PowerPoint is called "Terrorism against Public Officers." On the second slide, we have why this bill is needed. One main reason is that there is growing polarity in the United States between citizens and their elected officials. Many citizens are getting unhappy with everything that is going on. It is causing citizens to take matters into their own hands more often. Because of this, we are seeing more acts of terrorism.

On the next slide, there is a picture of growing protests. I am sure we all see protests on the news as well as other situations where citizens are unhappy.

Just a note, this bill does not seek to restrict protests, but it is just an example of how people want to voice their opinions.

[Continued to read from PowerPoint presentation.]

The next slide shows another example of terrorism. This act of terrorism was not against public officials, but it does show how terrorism is becoming more prevalent. The picture is from the Fort Hood shooting where someone just opened fire on people.

On the next slide, the Las Vegas U.S. District Court shooting on January 4, 2010 is explained. Someone came in angry about not receiving his social security, so he opened fire at a Las Vegas federal district courthouse. A security officer was killed, and a deputy U.S. Marshal was injured.

[Continued to read from PowerPoint presentation.]

The next slide shows a map of the U.S., and on the next slide, all of the white states represent those that already have similar laws to A.B. 462. On the next slide, there are two green states, North Carolina and Massachusetts, that have similar pending legislation. On the next slide, there are two states, California and New Jersey, that reference the federal definition in their state laws. There is a similar federal law. On the next slide, we added Nevada to the white states to show how many states would have this law if it were passed and how it would affect the U.S.

[Continued to read from PowerPoint presentation.]

Vice Chairman Ohrenschall:
Thank you for the excellent PowerPoint. I have a couple of questions. You said a bunch of other states already have a law similar to this. Do you know how many?

Kelsey Stegall:
I am pretty sure it is around 27 states.

Vice Chairman Ohrenschall:
Wow, so the majority of the states already have a law like this.

Kelsey Stegall:
I know it was over 25 states.

Assemblyman Frierson:
I am not entirely sure how the other states statutory schemes are with respect to some of the criminal penalties included, but this proposes to include battery and assault, which are misdemeanors. I am concerned with the way that battery is often charged as an offensive touch, if the intent were to include simple battery. Or, are we talking more along the lines of battery with a weapon or battery with intent?

Assemblyman Horne:
I share those concerns, but let us say what this bill is not intended to do. There may come a time where you, "Mr." Frierson, annoy the heck out of somebody, and someone puts his hands on you because he believes you are being a jerk. This bill will not address that, and it will not come into effect under those circumstances. Then there comes a time when you make statements or take positions as "Assemblyman" Frierson that somebody is diametrically opposed to. His opposition comes to a fever pitch where when you leave this committee room, he puts his hands on you because he wants to express how upset he is with you, and he wants to intimidate you into changing your position. That is different. Elected officials are doing the functions of their job, whether you agree or disagree, and they should not be put in harm's way. It is one thing to yell at them, and it is another thing to threaten to make sure they do not win the next election. The person could send out 1,000 emails every day saying what a terrible legislator you are, but if it comes to a point where he says something like, "I hope you and your family have good security around your house," and threatens you or actually does harm to you because of the work you are doing as an elected official, that is not acceptable. I believe that is terrorism. It is not throwing a grenade in a room or coming in with a gun, but we have seen that on the news too. We saw a few months ago where a man was upset with a school board, and he walks in, pulls out a gun, and he starts shooting. He did that because he disapproved of them politically. That is terrorism. Some will say we already have laws on the books to address attempted murder, murder, assault and battery, et cetera, and that is true, but we do not have laws on the books when that conduct rises to a certain level. This bill is trying to address that. This bill is trying to send a message that it is okay to disagree and be passionate about the positions you take politically. You can be angry with your elected officials and express that anger to them in an appropriate way. It is not okay to intimidate them with threats of violence and actual violence in order to get your way.

I took the long way to answer your question, but I thought I would segue into the purpose as to why I brought this bill.

Section 1, subsection 1, of this bill revises the definition of an "act of terrorism" to "(b) influence a policy of a government entity; or (c) affect the conduct of a governmental entity by committing any of the following offenses against a public officer." You will see in subsection 2:

> "Public Officer" means a person elected or appointed to a position which:
>
> (1) Is established by the Constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and
>
> (2) Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.

I believe that is a narrow definition of "public officer."

Assemblyman Hansen:
I like the idea that if someone is intimidating us, as elected officials, that we have some means to protect ourselves. There are a couple words in there; for example "coercion." The bill states, ". . . coercion . . . to influence the policy of a governmental entity." When I looked up coercion, it says, "Mental force or persuasion." This is pretty broad. The people who were out in front of the building the other day who had caskets, and I do not think they were trying to threaten us, but to my mind, would that not be a form of mental coercion where they are trying to influence the policy of a governmental agency? Is that really something we should address legislatively?

Assemblyman Horne:
I do not believe that scenario is mental coercion. I am talking about the mental coercion where you become fearful. It is not the type of coercion where someone says, "We are going to come after you next election cycle." You can argue that is coercion. Obviously, that is not the intent of this bill. I think that is fair game. Protests are fair game. Even civil disobedience is an appropriate form of protest. You may get arrested for civil disobedience though.

Assemblyman Hansen:
I just wanted to make sure it is not what this bill is aiming at. I can see that if somebody were reading this, he may think we are putting ourselves on a pedestal.

I do have a question for our Committee Counsel. Right now under the law, if somebody actually threatened me or my family, is there recourse? Are people allowed to make these threats?

Vice Chairman Ohrenschall:
Assemblyman Horne, if you would like to address that, it is fine.

Assemblyman Horne:
I am not trying to put us, or any other elected official, on a pedestal. I am trying to put our political process on a pedestal. We do not own these seats but are temporarily occupying them. Somebody will be here after we are gone. The institution, our form of government, belongs on that pedestal. If somebody undermines it through violence and intimidation, I think that is wrong. That is what I am seeking to get at.

Nick Anthony, Committee Counsel:
I believe there is currently a provision. I have not had a chance to pull that statute up, but it is *Nevada Revised Statutes* (NRS) 199.300. It criminalizes threats against public offices and officers.

Vice Chairman Ohrenschall:
Does that answer your question?

Assemblyman Hansen:
Yes, thank you.

Assemblyman Sherwood:
I have two questions. In light of the fact that this is a growing issue, we definitely need to talk about it. We already have federal law, so why would we not just stick with the federal law like California and New Jersey? Also, a "'public officer' means a person elected or appointed to a position . . . a political subdivision of this State." We will be hearing some homeowners' association (HOA) bills. Let us say that all of a sudden I have been appointed through somebody, and I am the temporary HOA board president. Technically it is an appointment, but I can see Assemblyman Frierson's point. Even elected officials can abuse this. I know that is not the intent of this bill, but how do we make sure that abuse of power does not happen?

Assemblyman Horne:
To answer your first question, we have a number of laws on the books. There may be federal laws, but each individual does not have to choose to rely on the federal government to enforce the law. We are allowed to have state laws as well to cover similar prohibitive conduct. That is what this would do. If we did not have this, and it was a violation of federal regulations, we would have a tool to prosecute that if the feds chose not to.

As to the scope of appointed officials, I do not believe this expands to the scope in which you articulated. I believe Mr. Anthony can address your concerns on what appointed officers this bill would cover.

Nick Anthony:
It is currently written in paragraph (b), where it defines "public officer." The position, either elected or appointed, must be established by the Constitution, a statute, a charter, or ordinance of a political subdivision. I do not believe that an HOA would be created either by a charter or an ordinance of a political subdivision, nor would it particularly fall under the definition of a political subdivision.

Vice Chairman Ohrenschall:
Does that answer your question?

Assemblyman Sherwood:
Yes. I grabbed HOA, but I was talking about any of those tertiary positions. It becomes all-encompassing at some point when talking about a charter or ordinance. I want to make sure we know we are talking about elected officials. I do not want to disparage people who have been appointed to a commission through six degrees of separation.

Vice Chairman Ohrenschall:
A law like this might be able to prevent a tragedy like the one that happened in Arizona. Maybe it is something we should seriously consider.

Are there any other questions? [There were none.] Do you have any other witnesses you would like to bring forward?

Assemblyman Horne:
No.

Vice Chairman Ohrenschall:
Is there anyone else in support of the bill? [There was no one.] Is there anyone in the neutral position? [There was no one.] Is there anyone in opposition?

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:
Our concerns with this bill are reflected in the questions that have already been asked by the members of the Committee, particularly with the use of coercion in subsection 1, paragraph (c). One could certainly attempt to blackmail a legislator into voting a certain way, but that is obviously illegal. Is that terrorism? We do not think so. Even the "violence" in the way this bill is

drafted is somewhat problematic. In paragraph (d), the language would preclude a domestic violence situation or even the shooting of Judge Weller. Some of you may be familiar with that case that happened a few years ago. That was revenge and not an attempt to affect the conduct of a governmental agency. Listing assault and battery as noted by Assemblyman Frierson leaves this open-ended, so that an argument over a policy that might escalate but go no further than shoving or spitting could be ratcheted up to an act of terrorism. Also, we have a concern with the definition of "public officer." Frankly, it is so broad that it could include me. I serve on the privacy subcommittee of the Blue Ribbon Task Force on Health Information Technology. I have to tell you, I get quite a few threatening emails and voicemails in the course of my duties. It is disconcerting, yes, but does that raise it to the level of terrorism? I do not think so. I particularly get a lot of threatening emails and phone calls around Christmas because people swear that the American Civil Liberties Union (ACLU) hates Christmas, which is not true. The way this is drafted, it could be taken too far.

I want to make it clear the ACLU does not condone violence. The tragedies that have happened around the nation with respect to killings or shootings by people who are frustrated are separate entirely. We certainly believe there are adequate laws in place to prosecute individuals who commit acts like these.

We need to keep in mind that the way this bill is drafted is considering it a category A felony. A category A felony is the highest level of felonies and carries multiple year sentences with it. When it is connected to something like battery or broad terms like coercion, we think it could be problematic. Basically, the proportionality that terrorism deserves is not reflected in the way this bill is drafted. We are in opposition to this bill.

Finally, the overall effect could be chilling under the First Amendment. We do not want to see that happen.

Vice Chairman Ohrenschall:
After the incident in Arizona, if people were afraid to be appointed to offices or afraid to run for office because of the climate, do you not think that would have a chilling effect as well?

Rebecca Gasca:
I think that carrying out public service and public duties is a difficult decision to make, regardless of the circumstances in which you serve. I do not know what happens behind your closed doors, but things get contentious, regardless of what the political pressure is by the public at large. I do not know whether this

bill would even reflect the intended consequence it is meant to address. I think it would be merely supposition for me to say otherwise.

Janine Hansen, President, Nevada Eagle Forum:
We have shared this platform before on this issue, but it was before Ms. Gasca was here. This is a matter of déjà vu. This issue was brought up in the 2003 Legislature, and some of the same language was in there. It was brought forward by Speaker Perkins. As a result of those deliberations, the words that are contained in this bill, particularly on page 2, line 8, "Influence the policy of a governmental entity," were removed from the final version of that bill, which passed through the Legislature at that time. There are several reasons for that. In fact, after that hearing, there were big headlines in the paper with my picture saying, "Janine the Terrorist." There are some concerns I would like to share with you today about this bill. I certainly appreciate the Chairman's purpose for this and have no difficulty with that. I want to protect all of you from anyone who might want to harm you.

If we look at the definition of coercion, and there are many, I found several had to do with intimidation of a victim to compel the individual to do some act against his or her will by the use of psychological pressure. It also includes physical force.

Vice Chairman Ohrenschall:
It was pointed out to me that on page 2, line 16, coercion is already part of the existing statute. That is already in there.

Janine Hansen:
I understand that. I am trying to connect it with the rest of the bill. It says on page 1, line 4, ". . . coercion or violence which is intended to." That refers to paragraphs (a), (b), (c), and (d). Is that not correct?

Vice Chairman Ohrenschall:
That is correct.

Janine Hansen:
It does refer to (c), which I am going to talk about. I understand it is in the current law. That is why this definition is important as related to paragraph (c). Another definition says coerced is to cause to do through pressure or necessity by physical, moral, or intellectual means. When we consider those definitions, we realize that if those definitions apply to "influence the policy of a governmental entity," that could happen almost every day in this building.

Yesterday, I was at a hearing with a particular issue. It was a work session. One of the senators said she received an inordinate number of emails about a particular issue, and as a result of that, she was changing the bill to include the information that had been previously taken out of it. It had to do with a contentious issue of parental consent and abortion. I think that "influenced the policy of a governmental entity" is part of the federal definition from the Patriot Act. In my opinion, it could include such things; for example, as we look down at line 17, it says, "'Coercion' does not include an act of civil disobedience." If I want to make my point on a bill by lying out in front of the door, that would not be included. It does not say it would not include lobbying, exercising political free speech at a rally, or other kinds of political activism. I think those could be construed in that way. The reason I believe that is because of a recent report put out by the Department of Homeland Security (DHS), and I am sorry I was not able to put this up on NELIS, but I did give a copy to the secretary (Exhibit I). This is called *Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment*. This was put out a couple years ago. About 50 times in this document, it refers to "rightwing." In 47 out of the 50 times, it infers to "rightwing extremists" or "rightwing terrorists." I suspect there are people in this building that might use that name with regard to me. They might call me a "rightwinger." That has happened to me. The definition in this report says, "Rightwing extremism in the United States can be broadly divided into those groups, movements, and adherents that are primarily hate-oriented (based on hatred of particular religious, racial or ethnic groups), and those who are mainly antigovernment, rejecting federal authority in favor of state or local authority . . . ." I would fall into that one very often. It goes on to read, ". . . or rejecting government authority entirely. It may include groups and individuals that are dedicated to a single issue, such as opposition to abortion or immigration."

In this particular report from DHS, it says they have an analysis but have no specific information that domestic rightwing terrorists are currently planning acts of violence, but rightwing extremists may be gaining new recruits playing on their fears about several emergent issues, including to issues relating to the economy. It also says how the volume of purchase and the stockpiling of weapons and ammunition by rightwing extremists in anticipation of restrictions and bans in some parts of the country continue to be of primary concern to law enforcement.

One of the things they mention that received a huge outcry in the public was that returning veterans possess the combat skills and experience that are attracted to rightwing extremists. There was a statement put out by the heads of the American Legion and the Veterans of Foreign Wars. These issues that

are included in this report include those many rightwing extremists who are antagonistic toward the new presidential administration and perceive this stance on a wide range of issues, including immigration and restriction of firearms. It talks about gun control and free trade agreements. Longstanding exploitation of social issues, such as abortion and same-sex marriage is discussed.

Vice Chairman Ohrenschall:
I do not mean to interrupt, but I want to make sure you stay focused on the bill. We have a limited time.

Janine Hansen:
I was trying to make the point, according to the bill on line 8, that DHS, which is responsible for terrorist enforcement in the U.S., has put out a report which would characterize me, and many other law-abiding citizens, as potential terrorists. This particular bill expands the definition to include "influence the policy of a governmental entity" possibly by using coercion, which can be said to be a psychological effect. That is why I am using this material from DHS.

I will quickly make a couple more comments on that and finish up. It talks about law-abiding citizens as well as right-wing extremists making bulk purchases of weapons. I am sincerely concerned about what the results of this particular bill might mean with regards to broad interpretation.

In 2001, after September 11, my brother Dan Hansen had an event occur that forever changed my feeling about these kinds of laws. He had 20 uniformed, flak-jacketed Internal Revenue Service (IRS) agents with the IRS Criminal Investigation (CI) come to his office when he was not there with a warrant that was later proved to be an illegal warrant. I was called shortly after that, so I witnessed it. They came into his office and took many of his political materials. He was the founding chairman of the Independent American Party and also one of the founding members of the national Constitution Party, which has a platform plank which would abolish the IRS. At this point in time, with drawn guns, they went into his office and took some 20 boxes of materials. That night on the news, as I watched CNN, I saw flak-jacketed, yellow-vested CI agents making another invasion of some other citizen. On the report, it was said that these assaults were done across the country on "domestic terrorists." This happened to my brother, who is a law-abiding citizen and always believed the best way to resolve political issues was through the political process. He had also dedicated his life to improving the laws locally and nationally, and he was never involved in anything illegal or violent. He was identified as a domestic terrorist.

You can understand why I might be concerned about this particular bill, which includes, "Influence the policy of a governmental agency." I do not have any problem with paragraph (d). If people are committing violent acts, that is another issue entirely. I do have a problem with paragraph (c). I would encourage you to be very cautious in the way you apply these laws because somebody like me or my brother might be identified as a domestic terrorist, as we have been under the definition of DHS.

Vice Chairman Ohrenschall:
I did not mean to be rude or rush you, but we have a limited time till we have to get to the work session. Are there any questions? [There were none.]

Ron Dreher, representing Peace Officers Research Association of Nevada:
With all due respect to the Chairman, we are opposed to this bill, specifically page 2, line 8, which states, "Influence the policy of a governmental entity." If you have ever been to Williamsburg, Virginia, Patrick Henry said, "Give me liberty or give me death." These are things you have to do, and we influence you every day. Even though it is not civil disobedience, the coercion we try to take in educating this body, or any body, is the right of the people. Some of the comments made earlier about taking the office you did, we have to go back to look at some powerful people in the U.S. that did provide the ultimate sacrifice. It was not from terrorism, but from people who were different. In Tucson, there was a mentally ill man who went on a rampage. I am more concerned about labeling someone a "terrorist" when he is not. If you look at President Kennedy, President Jackson, Martin Luther King, Jr., or all the people who were put into high positions, they were not attacked by terrorists. September 11, 2001 was a terrorist attack. What is going on in the Jihad movement is a terrorist act. By putting in line 8, that is not what we want to do. We do not want to label somebody as a terrorist because he spoke out.

Starting at line 9, there is nothing wrong with that. We already have laws put in place. Threats against public officers are violent and should have more sentencing like there is in this bill. My only objection to this bill is line 8 because it is too vague even with the coercion definition. I really think we will wind up labeling someone a terrorist in this day and age who should not be.

Vice Chairman Ohrenschall:
The way I read the bill is it applies to actions, not threats. Let us say you have something like the Oklahoma City bombing. Do you not think a statute like this would be a proper way to prosecute someone like that? He was trying to make a statement.

Ron Dreher:
You are absolutely correct. The example that the Chairman gave on threatening, that would be a terrorist act according to this. I know the Governor of our state, when he was the Attorney General, received similar threats to what Assemblyman Horne talked about. His family received similar threats. I am not sure that is a terrorist act. It is a threat, and there is a law that prevents that. To speak out because I am trying to influence public policy is too vague with the definition listed here. The rest of the bill is fine. I am just concerned about line 8.

Assemblyman Frierson:
I am struggling because oftentimes we have members of the law enforcement community who support a bill, and in their support, they cite the prosecutor's ability to exercise discretion. It sounds to me that there are circumstances this would cover that should not be covered. Would that not also be the prosecutor's discretion to exercise and decide not to prosecute if it was not an appropriate action for terrorism?

Ron Dreher:
You are 100 percent correct. I am not trying to take away that discretion. When I read this bill this morning, I had no intention of coming in here and being opposed to it. Having recently been to Washington, D.C., it is under guard. Your freedom is restricted there. I can give you an example of my little grandson going in front of the Pentagon after September 11, 2001. He was told he could not take pictures of the Pentagon. I do not want my grandson threatened as a terrorist because he took pictures. To go back to what you were saying, the discretion of the prosecution is always going to be there. I do not mean to take that away. My whole point of opposing this is when we are talking about vagueness, I really believe we are doing something here that is extremely vague and should be tightened up.

Vice Chairman Ohrenschall:
Are there any more questions? [There were none.] Is there anyone else wishing to speak in opposition to the bill? [There was no one.] We will close the hearing on A.B. 462.

I will hand the gavel back over to the Chairman.

Chairman Horne:
I will take the liberty of the Chair to state that I am familiar with the Patriot Act. As Ms. Hansen knows, in 2003 we had our own version of the Patriot Act, and that is my language. I worked hard to prevent the very problems that Ms. Hansen shared. I think we have some good protections in there about

going overboard. I am cognizant of the protections we want to afford to the people who come into this legislative building or other places where elected officials are conducting their business. We want the public to express their support and opposition, without being labeled as terrorists. I think I articulated well in my testimony that it was not lobbyists who are sometimes overrambunctious.

We have a work session with a dozen bills. We will take a short ten-minute recess.

[Meeting was recessed at 11:45 a.m. and reconvened at 12:33 p.m.]

Chairman Horne:
We will begin our work session. We have a dozen bills we will try to process in the next 30 minutes. We will take them out of order and start with the easy ones first. Let us start with Assembly Bill 135.

Assembly Bill 135: Revises provisions governing probation. (BDR 14-806)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 135 is sponsored by this Committee and was heard on April 4. This bill prohibits a court from ordering a probationer to serve a prison term for violating a condition of probation.

[Continued to read from work session document (Exhibit J).]

In the Nevada Electronic Legislative Information System (NELIS), there should be a compiled work session document. There are paper copies for the audience. The individual pages of the compiled document should be filed in NELIS under the bill numbers. There is one loose amendment on one bill that came in late.

Chairman Horne:
Are there any questions?

Assemblyman Segerblom:
One of the problems is that people are revoked from probation for minor issues and go back into prison. It costs a lot of money and does not help them. This gives the judge flexibility he may not otherwise have had.

Chairman Horne:
I will entertain a motion.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS ASSEMBLY BILL 135.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMMOND, HANSEN, KITE, MCARTHUR, AND SHERWOOD VOTED NO.)

We will move to Assembly Bill 107. Assemblywoman Flores is here.

Assembly Bill 107: Requires the adoption of certain policies and procedures regarding the eyewitness identification of criminal suspects. (BDR 14-614)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 107 is sponsored by Assemblywoman Flores and was heard in this Committee on March 10. This bill relates to criminal procedure.

[Continued to read from work session document (Exhibit K).]

There is a proposed amendment attached from Assemblywoman Flores. Section 1 requires law enforcement agencies to adopt policies and procedures. Section 2 is transitory language, which compels the representative of the Nevada Sheriffs' and Chiefs' Association to appear before the Advisory Commission on the Administration of Justice and report on progress.

Chairman Horne:
I have had discussions with Assemblywoman Flores and Mr. Adams. There were problems with the original bill. Both parties have been working tirelessly to bring forth this amendment for a compromise.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 107.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Are there any discussions on the motion?

Assemblyman Sherwood:
I think the amendment is to the Advisory Commission, which sunsets on October 1, 2012. I think this is workable for all parties. I am glad that

everyone could get together with nonbinding arbitration to make this work. I will be supporting this.

Chairman Horne:
I will open the vote.

> THE MOTION PASSED. (ASSEMBLYMEN HANSEN AND MCARTHUR VOTED NO.)

Let us move to Assembly Bill 149.

Assembly Bill 149: Makes various changes concerning medical and dental malpractice claims. (BDR 3-762)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 149 is sponsored by Assemblyman Segerblom and was heard in this Committee on March 17. In a medical malpractice proceeding, A.B. 149 authorizes a plaintiff's attorney to submit a supporting affidavit of a medical expert after the attorney files the action.

[Continued to read from work session document (Exhibit L).]

Both amendments are in play.

Chairman Horne:
I had discussions with all parties on this, and an agreement was made. Is that correct Assemblyman Segerblom?

Assemblyman Segerblom:
Yes, my understanding is that the parties met and reached this agreeable language.

Chairman Horne:
Mr. Ziegler, we are also supposed to allow for the defendant to file his answer after the receipt of the affidavit if it is not with the complaint?

Dave Ziegler:
Yes, that is correct.

Assemblyman Hammond:
I am trying to understand this. My original problem with the bill was the length of time at the end because they added the 45 days. If there is a mistake or error, I would like to make sure everybody has a chance to clean up the errors.

I do not want to penalize somebody for a small clerical error. If I am not mistaken, it says if they file a complaint, they have "reasonable" time to submit the affidavit. Is that correct?

Chairman Horne:
Assemblyman Segerblom, this is basically Rule 60 taken out of the statute correct?

Assemblyman Segerblom:
Correct. The affidavit has to be referenced in the complaint, which is filed within the one year time limit. If it was not attached by mistake, et cetera, then it can be submitted after that time. The part about extending the time by 45 days is out.

Assemblyman Sherwood:
Before it was 45 days, and that is out because a deadline is a deadline. Now it is 20 days unless there is an excuse. If there is an excuse, it can go on indefinitely, or did I misunderstand that? You lost me when there were two amendments at play.

Assemblyman Segerblom:
The second amendment just dealt with the defendant having the right to file his answer. He does not have to file the answer until he has seen the affidavit. That is where the 20 days comes into play. As far as the affidavit, it has to have been referenced in the complaint and a failure to attach it when the complaint was filed has to be one of the reasons itemized. It does not extend the time line.

Assemblyman Sherwood:
I am going to plead ignorance on this and reserve my right to vote yes on the floor.

Assemblyman Hansen:
My original opposition was that this was on the ballot and people gave this a one-year window. The proponents wanted to extend it to 45 days. With the amendment, it still stays within that one-year window?

Chairman Horne:
The statute of limitations is not addressed. They can file the affidavit for these stated reasons if they file the complaint without the affidavit attached. The defendant will have 20 days after the affidavit is filed to file his answer to the complaint.

Assemblyman Hansen:
This only applies to the defendant to give him an additional window? The plaintiff must file within the one-year window still? This would allow the person receiving the papers an extra 20 days to answer?

Chairman Horne:
Unless any of the stated reasons is claimed.

Assemblyman Hammond:
I understand the answer given to me about "reasonable time." However, I am still a little sketchy on it. I was under the impression that if a person forgot an affidavit, he had one to three days to return it and make sure justice was still served. I do not see the need to leave it open to the end of the year in order to get that documentation in. I am still a little worried about that. I will probably vote no, but I will reserve the right to say yes on the floor.

Assemblyman Segerblom:
To answer that, if you remember the case that was presented, he was not even told and did not file for three years. This actually cuts it back from two years. The key is that if it was a mistake, you might not even know the mistake was there until the other side advises you of that. The time period of a year was agreed to by all parties.

Chairman Horne:
Are there any other questions? [There were none.] I will entertain a motion.

> ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS ASSEMBLY BILL 149.
>
> ASSEMBLMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN HAMMOND, HANSEN, KITE, MCARTHUR, AND SHERWOOD VOTED NO.)

Assemblymen Hammond and Sherwood reserved the right to change their vote on the floor.

We will move to Assembly Bill 219.

Assembly Bill 219: Provides that certain unredeemed wagering instruments escheat to the State. (BDR 10-811)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 219 is sponsored by Chairman Horne and was heard in this Committee on March 22. This bill relates to unclaimed property.

[Continued to read from work session document (Exhibit M).]

Chairman Horne:
Could Mr. Anthony walk through the amendment please?

Nick Anthony, Committee Counsel:
The intent of this conceptual amendment is to clarify that the bill only applies to ticket-in ticket-out wagers. The amendment would retain sections 1 through 3 of the original bill regarding definitions, and it would also retain section 6 regarding the adoptions of regulations by the Gaming Commission. The amendment would delete sections 4 and 5, which is currently the Uniform Unclaimed Property Act. It would also delete section 7 of the bill. The bill would add a new section to *Nevada Revised Statutes* (NRS) Chapter 120A. It would essentially mirror the gift card statute, and you have that language before you. It would also provide that all ticket-in ticket-out wagers must be reported to and escheat on a quarterly basis, as well as provide for a split of 75 percent of that amount to be retained by the state and 25 percent to be retained by the gaming licensee. It would add a new effective date section to clarify that the bill becomes effective upon passage and approval.

Chairman Horne:
Mr. Ernaut and I have had discussions as recent as yesterday about this bill. We are still negotiating parts of this bill. I have agreed to move it out today, though it will not move out of this House until we make final amendments. Comments have been made about going back retroactively, but we have no intention of doing that. Some had objections on the 75 percent/25 percent split saying the State should keep it all. I think it is fair to share it with gaming. I will continue to work with Mr. Ernaut on further amendments. I ask the Committee to process this now with the understanding there will be additional tweaks to the bill before we pass it out of our House.

Assemblyman Brooks:
On the third point of the conceptual amendment where "all ticket-in ticket-out wagers must be reported to and escheat to the State on a quarterly basis," would the State be in charge of the monies and for sending the 75 percent back to the resorts, or would it go the opposite way?

Chairman Horne:
Right now, we are talking about not sending it through the Controller's Office but sending it through the Gaming Control Board. That 75 percent would go from there to the State, and the 25 percent would remain with the gaming establishments. They would continue to pay taxes on that amount.

The other thing we are talking about is the time in which they have to send that money to the State. For customer service purposes, there is a loan opportunity for their patrons who bring in the tickets that are expired.

Assemblyman Brooks:
When I initially saw this, I thought the State was receiving 25 percent and the resorts were receiving the 75 percent. Now I see it is opposite. I like that better.

Assemblyman Hansen:
I am going to support this with the understanding there is an arrangement made, but I would like to reserve my right to change my vote on the floor if the amendments are not agreeable to all parties.

Assemblyman Kite:
When you and I talked, I never gave you a commitment, but I cannot vote to approve a bill with players to be named later. If we had a complete bill, I would probably support it, but I cannot without knowing all of the details.

Chairman Horne:
Are there any other questions? [There were none.] I will entertain a motion.

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 219.
>
> ASSEMBLYMAN DALY SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN KITE, MCARTHUR, AND SHERWOOD VOTED NO.)

Assemblyman Hansen reserved the right to change his vote on the floor.

We will move to Assembly Bill 226.

Assembly Bill 226: Revises various provisions governing landlords and tenants. (BDR 3-669)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 226 has to do with landlords and tenants and is sponsored by Assemblyman Frierson. It was heard in this Committee on March 31. In the case of a summary eviction of a tenant for default in payment of rent, A.B. 226 provides that the court may order the sheriff or constable to remove a tenant not less than 24 hours and not more than 48 hours after the receipt of the order.

[Continued to read from work session document (Exhibit N).]

There is an amendment proposed by Assemblyman Frierson received on April 12, and it is attached.

Chairman Horne:
Assemblyman Frierson, do you have any comments on the amendment? Are you okay with it?

Assemblyman Frierson:
I am okay with it. This is a result of some extensive conversations with the interested parties. The language was actually submitted by Susan Fisher on behalf of the apartment managers. It is a good effort at trying to address the problem in a way that does not affect the good actors. The amendment simply deals with the notice that is required and the definition of essential services. The constable at the hearing had a concern on portions of the amendment, and those portions were removed. The work the sheriffs and constables do with respect to evictions is not impacted by this bill at all. The language goes back to existing law. This simply gives teeth to address the bad actors. It is supported by the apartment managers as well as the realtors.

Chairman Horne:
Are there any questions? [There were none.] I will entertain a motion.

> ASSEMBLYMAN DALY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 226.
>
> ASSEMBLYMAN BROOKS SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

We will move to Assembly Bill 294.

Assembly Bill 294: Revises various provisions governing mobile gaming. (BDR 41-1042)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 294 has to do with mobile gaming and is sponsored by Chairman Horne. It was heard in this Committee on April 5. This bill revises the definition of "mobile gaming," by including the Internet within the term "communications technology," and including accommodations within the term "public areas."

[Continued to read from work session document (Exhibit O).]

The amendments include the one submitted by Mr. Faiss and the conceptual amendment submitted by Chairman Horne to exclude hotel rooms or accommodations from the term "public areas."

Chairman Horne:
The reason why I proposed the conceptual amendment to remove the actual hotel rooms was because of feedback from members of the Committee. There was some discomfort about it being allowed in the hotel room. There was an enforcement issue with that as well by not having eyes on who is actually playing it in the room. I wanted to give everyone comfort. There are still other areas on gaming properties that are restricted now that would be opened up with this bill.

Are there any questions? [There were none.] I will entertain a motion.

> ASSEMBLYMAN FRIERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 294.
>
> ASSEMBLYMAN HAMMOND SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

We will move to Assembly Bill 317.

Assembly Bill 317: Revises provisions governing mediation and arbitration of certain claims relating to residential property. (BDR 3-540)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 317 is sponsored by Assemblyman Segerblom and was heard in this Committee on April 11. This bill relates to arbitration and mediation in civil actions regarding the bylaws or covenants of a homeowners' association or the procedures used for imposing additional assessments upon unit owners.

[Continued to read from work session document (Exhibit P).]

The first attached amendment is a friendly amendment proposed by Assemblyman Segerblom which would eliminate all sections of the bill except for section 4, subsection 8. The second amendment was submitted by Mr. Friedrich on the day of the hearing. I will let the sponsors speak to that amendment.

Assemblyman Segerblom:
My amendment cuts the bill down to one phrase to make it clear when the appeal deadline runs from. Mr. Friedrich was cut off because we ran out of video feed, so we could not hear his testimony. Because we did not have the chance to discuss the other parts of the bill, I am not prepared to support his concepts. I think they are valid, but we did not have enough evidence put on the record to support him. I ask the Committee to support my amendment.

Assemblywoman Diaz:
Are we removing all of the proposed changes that you originally proposed? We are not getting rid of all the sections, correct?

Assemblyman Segerblom:
We are getting rid of everything except for section 4, subsection 8.

Assemblywoman Diaz:
The statutes will stand as is, except for the modification to section 4, subsection 8?

Assemblyman Segerblom:
The existing law will stand except for the modification.

Assemblywoman Diaz:
I just want to make sure because it says, "Eliminates all sections . . . ."

Assemblyman Daly:
Just for clarification, when I look at the original bill, what would have been the old subsection 5 is the new subsection 8. Is that correct?

Assemblyman Segerblom:
Yes.

Assemblyman Daly:
I am assuming the reference within the end of section 1 would also be removed within that subsection 8.

Assemblyman Segerblom:
Yes. I forgot to mention that.

Assemblyman Sherwood:
The feed got cut off for Mr. Friedrich's amendment. What would his amendment have done? Our choice is vote for this or vote with the amendment, correct? What was wrong with Mr. Friedrich's amendment?

Assemblyman Segerblom:
There is probably nothing wrong with it, but we did not have the time to hear the basis for it. We did not want to ask you to vote for something you did not have the chance to hear.

Chairman Horne:
Much of what is in Mr. Friedrich's amendment is in another bill that was in the Subcommittee. That will be addressed later.

Assemblyman Sherwood:
This is pro-homeowner?

Assemblyman Segerblom:
Yes, absolutely. This is very pro-homeowner.

Assemblyman Hansen:
What does dispositive mean? I am not a legal expert. Does it mean disposition of the property?

Nick Anthony, Committee Counsel:
I do not have my *Black's Law Dictionary* in front of me, but I think dispositive means showing of any of all issues. The final decision and award is clearly shown of any of all issues of the claim that was submitted.

Assemblyman Hansen:
So this means if one of the parties is unhappy in binding arbitration, he will have the opportunity within 30 days to file civil action, correct?

Nick Anthony:
Yes.

Chairman Horne:
Are there any other questions? [There were none.] I will entertain a motion.

ASSEMBLYMAN DALY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 317.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN KITE VOTED NO.)

We will move to Assembly Bill 324.

Assembly Bill 324: Revises provisions governing dangerous or vicious dogs. (BDR 15-223)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 324 is sponsored by Assemblyman Hambrick and was heard in this Committee on April 7. This bill relates to crimes against public health and safety.

[Continued to read from work session document (Exhibit Q).]

Chairman Horne:
I know Mr. Anthony worked with the parties on this amendment. Do you want to speak to this amendment?

Nick Anthony, Committee Counsel:
Certainly Mr. Chairman. You will see the amendment attached. It is labeled Conceptual Amendment A.B. 324, submitted by Assemblyman Hambrick. The first section talks to the intent of the proposed amendment. The second part shows what those proposed conceptual amendments would look like in language. Basically, these were agreed upon by all parties.

Assemblyman Sherwood:
As far as law enforcement goes, were they willing parties to the amendment? From the testimony, if I recall correctly, it would have handicapped law enforcement.

Nick Anthony:
Yes, I believe they were. Mr. Adams as well as Mr. Kuzanek were in the room and were a part to these negotiations.

Assemblyman Daly:
As I recall, there was a question over who made the determination and what remedial actions should be taken. That is not in the law now, and that is going to be handled by each individual county or jurisdiction.

Chairman Horne:
Will this be handled at the local level, Mr. Anthony?

Nick Anthony:
Yes, that is correct. The amendment clarifies in state law for purposes of *Nevada Revised Statutes* (NRS) 202.500, which are currently criminal provisions where a dog is defined as dangerous or vicious. Some changes are made there. If you notice in NRS 244.359, this is the area of law where the State delegates responsibility for animal control to the county or local level. This also clarifies in those particular sections that a county may not designate a dog as dangerous or vicious until after a hearing. Also, a board of county commissioners shall not adopt or enforce an ordinance or regulation that deems a dog dangerous or vicious based solely on the breed of the dog. That does put some further restrictions on the county commission.

Chairman Horne:
Are there any other questions? [There were none.] I will entertain a motion.

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 324.
>
> ASSEMBLYMAN BROOKS SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN HANSEN AND KITE VOTED NO.)

The bills we did not hear will likely be heard this afternoon. We are going to have a work session this afternoon at the adjournment of Assembly Committee on Transportation, which will be around 5 p.m. We will reconvene then. There will probably be additional bills on the new work session document this afternoon.

[Recessed at 1:21 p.m. and reconvened at 4:41 p.m.]

We are going to continue with our work session, and we will start with Assembly Bill 161.

Assembly Bill 161: Revises provisions governing the crime of trespassing. (BDR 15-729)

Dave Ziegler, Committee Policy Analyst:
There is a new work session document up on Nevada Electronic Legislative Information System (NELIS). There are paper copies available for those in the audience.

Assembly Bill 161 is sponsored by Assemblyman Anderson and was heard in this Committee on April 4. This bill relates to the crime of trespass.

[Continued to read from work session document (Exhibit R).]

Chairman Horne:
Mr. Anthony, have you reviewed the amendment? What does it do to the bill?

Nick Anthony, Committee Counsel:
I believe this is a new amendment, which replaces the existing bill. It would provide for a person who has previously been convicted of three violations of *Nevada Revised Statutes* (NRS) 201.354, which is engaging in prostitution or solicitation. It provides for a person who commits a subsequent, which is a second violation of trespass within five years. He would then be eligible to go to an educational or counseling program, or in the case of a person dependent upon drugs, a program of treatment and rehabilitation. If the person completed that particular program, then the charges in the case would be dismissed. It is similar to a program we currently have for drug offenders.

Chairman Horne:
This is in line with what we call 3363 treatment. The sponsor of the bill is okay with the amendment. He has been working with Assemblyman Frierson on language as well.

Assemblyman McArthur:
I am just now looking at this amendment. Are we getting rid of some of the parts he had before?

Chairman Horne:
This amendment will replace the bill.

Assemblyman McArthur:
It will replace the bill. Okay.

Chairman Horne:
I will entertain a motion.

ASSEMBLYMAN SHERWOOD MOVED TO AMEND AND DO PASS ASSEMBLY BILL 161.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will move to Assembly Bill 284.

Assembly Bill 284: Revises provisions relating to real property. (BDR 9-1083)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 284 is sponsored by Assemblyman Conklin and was heard in this Committee on March 31. This bill relates to the foreclosure process and the enforcement of foreclosure laws.

[Continued to read from work session document (Exhibit S).]

I would be happy to answer any questions about the amendment.

Chairman Horne:
Yes, please explain the amendment.

Dave Ziegler:
Hitting a few highlights of the amendment, in section 1, there was some commentary the day of the hearing of the thought that it is probably difficult or infeasible to record everything within 60 days, so it was changed to say the assignment is simply not enforceable until it is recorded. In section 6, this has to do with who may be a trustee on a deed of trust. The language at the bottom of the page is cleaned up about substitution of a trustee. Later in section 6, this complies with the provisions of *Nevada Revised Statutes* (NRS) 107.080, which is the main foreclosure statute in NRS Chapter 107, and states, ". . . shall create a rebuttable presumption of impartiality and good faith . . ." on the part of the trustee. In section 9, there is a great amount of language that is stricken and replaced, which is more editorial cleanup than anything else. It pretty much stays the same that the ". . . notarized affidavit of authority to exercise the power of sale . . ." has to accompany the notice of breach and election to sell, which is sometimes called the NOD. From the day of the hearing, there was commentary that the requirement for an affidavit and a statement was burdensome, and so it has been folded into one affidavit. Also in section 9, the statement that starts, "The notarized affidavit set forth in paragraph (c) is not required for the exercise

of the power of sale . . . under Chapter 119A . . . ," is the timeshare amendment sought by Ms. Dennison.

Chairman Horne:
Was that a friendly amendment?

Dave Ziegler:
Yes. I think those are the main highlights of the amendments.

Chairman Horne:
Are there any questions? [There were none.] I will entertain a motion.

> ASSEMBLYMAN FRIERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 284.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN HANSEN, KITE, AND MCARTHUR VOTED NO.)

We will move to Assembly Bill 346.

Assembly Bill 346: Provides a cause of action against public agencies which delay certain actions after adopting a resolution of intent to exercise eminent domain. (BDR 3-531)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 346 is sponsored by Vice Chairman Ohrenschall and was heard in this Committee on April 8. This bill creates a statutory cause of action in situations where a public agency has adopted a resolution of intent to acquire property and has not commenced an eminent domain proceeding within 180 days or, if it has commenced an eminent domain proceeding, has not served the complaint and summons.

[Continued to read from work session document (Exhibit T).]

It is my understanding from the testimony that the amendment proposed by Clark County is not a friendly amendment.

Assemblywoman Diaz:
This is not a friendly amendment, so the sponsor of the bill does not like it?

Assemblyman Ohrenschall:
Yes. This bill came to me after hearing about people who were caught in this system where a public agency passed a resolution of intent to take their property through eminent domain, but they did not do anything about it and waited for years. The people were left in limbo and home values went down. I have talked with Mr. Waters, who testified in support of the bill and also another eminent domain attorney in Las Vegas, and they both feel the amendment posed by Clark County will be injurious to people who are going through the eminent domain process. In their opinion, they would rather see the bill not go forward than proceed with Clark County's amendment. I have tried to talk to both parties and hoped we could get a compromise that would please everyone.

In speaking to those who support this bill, they are willing to have the 180 days in section 1, subsection 1, changed to 365 days so a public agency would have a full year before they would have to institute the eminent domain proceedings. That is about the only thing they are willing to change in the bill. I believe the bill is fair, and I think the 15 years that is the existing statute of limitations through case law is a protection that is reasonable to give people. During this period, many people do not want to look at buying their property or investing their property. I would have preferred it if we could have gotten everybody together, but it was just not possible. I urge the Committee not to adopt Clark County's amendment, but we are willing to change the 180 days to 365 days if it pleases the Committee.

Chairman Horne:
There is no other amendment other than changing the 180 days to 365 days?

Assemblyman Ohrenschall:
That is correct. We are not willing to change the 15 years.

Assemblyman Sherwood:
I want to do everything possible to make sure this bill passes, so at the appropriate time I move to amend the conceptual amendment of the sponsor to 365 days.

Chairman Horne:
We have some questions first, but I will come back to you.

Assemblyman Hansen:
We talked to the city and talked about changing it to 365 days, and after hearing about it, I think it is reasonable. However, on the Clark County amendment, the one thing we think should be in is the last line where

"by eminent domain" is added. That is what this bill is about, and it frees up Clark County from having to deal with every other aspect of any other property purchases that fall outside of eminent domain. We thought it is reasonable to keep those three words in.

Assemblyman Ohrenschall:
If you look at that portion in the original bill, in section 1, subsection 6, where it states, "(a) 'Public agency' means an agency or political subdivision of this State. (b) 'Resolution of necessity' means a resolution which: (1) Is adopted by a public agency authorized by NRS 37.0095 to exercise the power of eminent domain; and (2) Announces the intent of the public agency to acquire property." The "and" connects the two parts of the definition meaning this is acquiring property through eminent domain. That is already part of the definition. I would be glad to defer it to our Committee Counsel, but that is how I read it.

Assemblyman Hansen:
This bill will be exclusively applied in instances of eminent domain?

Assemblyman Ohrenschall:
That is what this bill is meant to address. It is meant to address when a public agency passes a resolution of intent to acquire private property through eminent domain and does not move forward for quite a while. The private property owner is put on ice and put in limbo because no one wants to invest in that property or buy that property knowing it will be taken away in a number of years. This is specifically addressing the taking of private property through eminent domain by a public agency.

Assemblyman Hansen:
If we did leave that in, then the worst case scenario is that it is redundant, correct?

Assemblyman Ohrenschall:
That is how I interpret it.

Assemblyman Hansen:
The Clark County folks seem to want that.

Assemblyman Ohrenschall:
I am not in favor of the Clark County amendment.

Nick Anthony, Committee Counsel:
For clarification, in that last subsection of the bill, you are reading a definition of "resolution of necessity." Where that is used in the bill; for instance, in subsection 1, "If a public agency has adopted a resolution of necessity but has not commenced an eminent domain proceeding . . . ," if you put eminent domain again with the resolution of necessity, you would essentially be saying eminent domain twice. Therefore, it is not necessary for it to be included in the definition.

Assemblyman Kite:
I am inclined to approve this bill, but I do not particularly like the conceptual amendment. I liked the way the bill read initially. I do not think the conceptual amendment is a hill to die for.

Chairman Horne:
You will vote yes, but you liked it better the other way?

Assemblyman Daly:
I am not very fond of this bill. I think the sponsor knows that. If it is changed to 365 days, does the resolution then get rescinded at the end of the 365 days? I am not sure what happens then. Also, if it gets rescinded, then there is no damage or encumbrance. The homeowner could still sue 14.5 years later and say you have to pay me the difference because at one time you were going to take my property. I am just trying to understand what the homeowner can do 15 years later if he did not act within the 1 year and the resolution of necessity is taken away. What rights does the homeowner have for the next 14 years?

Assemblyman Ohrenschall:
I will attempt to answer that as well as I can. I am not an expert in eminent domain law. The way I see the bill with the conceptual amendment, if a public agency passes a resolution of intent that the agency is going to acquire a home through eminent domain, for the first 364 days they could rescind, but after the 365 days, you would have a cause of action under this statute. Let us say you were in a busy time in your life, and you did not pay attention to what the local government was doing for the first year or two because you had many other things on your plate. Maybe you did not realize until three or four years down the line this had happened and they passed this resolution of intent. The 15 years we are providing is the statute of limitations provided for by the Nevada Supreme Court case, *White Pine Lumber v. City of Reno* 106 Nev. 778, 778 (1990), which would give you the protection that if you did find out three years or six years down the line that there is a reason nobody wants to buy your property. They know that your whole neighborhood could be taken for expansion of a freeway. You would still have a cause of action and not be

penalized because you did not act immediately. In the proposed amendment, you would only have 18 months in which to act or you would lose your right for a cause of action, and that is why I do not support it.

Assemblyman McArthur:
I want to clear up what the author is really doing here. Basically, we are changing the 180 days to 365 days and leaving the rest of the bill the same?

Assemblyman Ohrenschall:
That is correct. That is with the conceptual amendment I am proposing.

Assemblyman Frierson:
I just want to state that I know Assemblyman Ohrenschall has put forth significant effort to try to bring the parties together to find some common ground. While I understand the concerns of Clark County, I think the fact that it is the state of the current law gives me some comfort to know there is not going to be a travesty of justice in that regard. I am happy to see there were some concessions made to give those entities more time on the front end to decide what they are going to do and provide the proper notice. I am supporting the bill, and I appreciate Assemblyman Ohrenschall's work.

Chairman Horne:
Are there any other questions? [There were none.] I will entertain a motion.

> ASSEMBLYMAN SHERWOOD MOVED TO AMEND AND DO PASS ASSEMBLY BILL 346.
>
> ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN MCARTHUR VOTED NO.)

We will move to Assembly Bill 373.

Assembly Bill 373: Prohibits the willful destruction of real property that is subject to foreclosure or repossession. (BDR 15-98)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 373 is sponsored by Assemblyman Goicoechea and was heard in the Committee on April 8. This bill relates to the destruction of property.

[Continued to read from work session document (Exhibit U).]

Chairman Horne:
I would advise the Committee that the conceptual amendment came into play after discussions with Assemblyman Goicoechea. He said that if we amended it to a misdemeanor, he would be fine with that. We knew people had a headache with the felony treatment.

Assemblyman Brooks:
I cannot support this bill because I feel there is a better way to handle the issue. I am not in support of helping the banks do any more damage to the homeowner who has earnestly bought into the "American dream." The banks have made money going in and coming out, and now we are going to allow them to prosecute people. I am not going to do anything to help them at this time.

Assemblyman Hansen:
I am going to support the bill. The only people who are going to be prosecuted would be the people who willfully vandalize property prior to leaving it. Anyone going through the normal foreclosure process and leaves the property in a reasonably decent state would have no fear of this law.

Assemblyman Frierson:
During the hearing of this bill, I asked how we can prevent a homeowner from being subjected to this kind of prosecution, especially in large counties like Clark County that has a record number of foreclosures. I believe the response was that the homeowners can defend themselves, and if they are proven to have not caused damage, they would be provided with a remedy. I think that will potentially subject an awful lot of people to the criminal justice system unnecessarily, even if they are ultimately found not to be guilty of the offense. Many of these folks have no resources and will be appointed an attorney and will spend time in jail waiting for a preliminary hearing.

I certainly understand the intent of this bill, and I did ask about circumstances where a homeowner did not go through a bank and if this bill could be limited to only those circumstances and the sponsor preferred to leave the banks in. Because of that, I cannot support this bill and risk so many people in Clark County being subjected to this.

Assemblyman Ohrenschall:
I remember during the hearing that it was brought out by one of the witnesses that if this bill passes, even in the amended form, someone who is criminally prosecuted and caught up in the system, it will not help him be able to pay back any of the damages he may have caused. It will probably lessen the chances of

restitution being made. This gives me many concerns about this bill. I do not know whether it is a wise use of prosecutorial resources.

Assemblywoman Diaz:
I want to echo the comments made by Assemblyman Frierson. In my opinion, I think it would be hard to prove who did the damage to foreclosed properties. In the rural areas it is probably more obvious, but in Clark County, it would be very difficult to know for sure who damaged properties. I do not feel comfortable accusing the owner with the responsibility of owing the banks for the damage. At this time I cannot support this bill.

Assemblyman Sherwood:
I would feel the same way my colleagues feel if we did not have due process. To make the connection that just because we have this law everyone will now be accused and put in jail is incorrect because we do have due process. Everyone is innocent until proven guilty. A crime has been committed, so this is not about making the banks whole. Let us come back to the issue at hand because it is criminal, and we should have recourse for it. Do we trust our justice system? Of course we do. We have due process.

Assemblyman Kite:
I can see and respect the problems this creates in Clark County. I do not know whether I am in a position to make an amendment for my colleague, but I am willing to offer up a suggestion to make exempt counties over a population of 200,000.

Chairman Horne:
I do not know whether we can do that. I will defer to our Committee Counsel.

Nick Anthony, Committee Counsel:
I believe we would run into problems if we had a population cap exemption. This would mean there would be a crime in one part of the state but not in another part of the state.

Assemblyman Kite:
I know we do that in some circumstances. This is really important for the rural counties because many ranchers have taken a small portion of their property to build a house on it, and that is their whole retirement. As we saw the pictures the other day, this happened to me 30 years ago as a property owner. I understand this bill, and I want to find a way to make both sides find a compromise.

Chairman Horne:
The bill has some problems, so I will probably pull it back.

Assemblyman Hammond:
I understand the concerns some here have expressed. There is an occasion when someone leaves his property and the house is a mess. I do not think that would be interpreted by those in the judicial processes worthy of being prosecuted. I think we are looking at more severe circumstances; for example, cementing all the pipes going to the restrooms or kitchen. I see this as a real problem in the rural counties and in Clark County. I think we do have a good idea of any damages when someone moves out. Maybe we do not know exactly what happens because there are so many foreclosed homes. I like this bill as it is.

Assemblyman Hansen:
One of the purposes of criminal law is not so much restitution but to act as a deterrent to certain acts. The idea that people will randomly be accused and thrown in jail does not add up. The police would do an investigation if a complaint was filed, and they would not randomly start arresting people without strong evidence as to who committed the crime. I have enough faith and confidence in law enforcement that I do not believe this will become an abuse perpetrated by bankers. While I can see pulling the bill, I think this is something we should do as a protection for property owners regardless of whether or not they are bankers.

Chairman Horne:
I am going to pull the bill back. Maybe Assemblyman Goicoechea can convince a couple of members of the Committee to change their mind before the deadline tomorrow.

We skipped over Assembly Bill 223, so we will move to that since Mr. Sasser is here now.

Assembly Bill 223: Makes various changes concerning the execution on property of a judgment debtor or defendant. (BDR 2-989)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 223 is sponsored by Assemblyman Segerblom and was heard in this Committee on March 14. This bill relates to enforcement of civil judgments.

[Continued to read from work session document (Exhibit V).]

Assemblyman Hammond:
There are a lot of amendments. I am hoping we can go over some of it and have the difference explained to us between the two amendments.

Chairman Horne:
I believe that is why Mr. Sasser is here. Mr. Sasser, could you please walk us through the amendments?

John Sasser, Statewide Advocacy Coordinator, Washoe Legal Services:
Even though each amendment is 23 pages long, that is because the bill is 23 pages long. There are very minor changes in each amendment. Ms. Considine's amendment makes two changes. The first simplifies the interrogatories that are sent, and that was at the request of the constables. I do not know of any dispute over that change. The other change was taking care of former Senator Adler's concern, which was the earnings on retirement accounts of over $500,000. The retirement accounts are already exempt, but in the bill there is some language that said "and the earnings therefore," so we took that out. Those are the only changes in our amendment.

Mr. Sande's amendment makes two changes. The first change is the heart of the controversy. On page 3, he removes the automatic exemption of the $1,000 wild card, and we leave it in. Also, when a debtor has to claim his exemption, we proposed to move that from 8 days to 20 days, and I believe he wants to leave it at 8 days.

Do you want to allow someone who has his last $1,000 in a bank account to be automatically exempt from having that account frozen and having other checks bounce while he goes through the process of claiming the exemption? Or, do you want to keep the current system where a person must go through the process of claiming his exemptions while the account is frozen? From testimony, people either do not know about the $1,000 or are reluctant to claim the exemption. We are trying to protect what is already exempt.

Assemblyman Sherwood:
What are the similarities between the two amendments? It seems to me the big issue was not the $1,000 but the exempted money of social security disability being off limits right away. In many cases it was not their last $1,000 but rather the last $1,000 on top of any welfare check. Is there any common ground in the two amendments? I want to see this bill pass, and I hope there is enough common ground to make that happen.

John Sasser:
Neither amendment makes any changes to that portion of the bill, so both amendments leave that portion in the bill. To be honest, that is of less value to us because of what the federal government is planning to do. They are planning regulation starting on May 24. To a large degree, that will be done whether this bill passes or not.

Assemblyman Hansen:
Due to the volume of the amendments, could we have Mr. Sande come up and explain that $1,000 provision? There were some critical things for small businesses we need to have addressed.

John Sande IV, representing Nevada Collectors Association:
The only thing I would take issue with is that it is not necessarily the person's last $1,000. This applies to anybody regardless of how much money they have. This is part of a process and is the last part of the process. This is the creditor's last chance to get the debt they are owed. If they cannot collect through this garnishment process, they cannot collect. From what I understand, rarely does anyone claim an exemption because they know they owe the money, and they do not want to bother with trying to keep on playing the chase game or ignoring the phone calls. There are many issues we do have with the $1,000, but to sum it up, this allows another opportunity for people who may be unscrupulous and want to play games with the laws. It allows them that additional flexibility, and we do think it will affect the small businesses that are relying on being able to collect the money that is owed to them to operate and do business.

Assemblywoman Diaz:
I have been acquiring a little bit more information about this, and I was informed a creditor seeks to recoup the debt in around 15 to 18 months. I was also advised that a person must make over a certain threshold. If a person is in the poverty threshold, a creditor will not push forward to collect the debt from them. I feel comfortable with the exemptions that are currently in place and that certain monies are protected. That income is of extreme importance to certain individuals. I do feel if we purchase things, we should be made accountable to pay for them. I saw where they can file an affidavit for the $1,000 not to be touched. I am comfortable with the second amendment only if they can extend that window for people to file that affidavit. I would like to see that pushed out to 20 days.

Assemblyman Brooks:
I echo the sentiments of my colleague. My biggest issue was the low-income population, and I have been assured those are not the people who are targeted

here. I too believe people are responsible for taking care of the debts they put in place. I would like to see that moved out to 20 days as well, and then I will support the bill.

Assemblyman Segerblom:
I think it is nice they say they will not go after the low-income population, but there is nothing in the bill that says they will not go after them. That is the problem. They can go after anybody, and the $1,000 wild card is there to protect the poor people, the working population. When someone loans money or issues a credit card, they run the risk they cannot receive the last $1,000 of someone's account. I think it is critical that everybody has a lifeline. If it is your account, and it is your last $1,000, you do not want someone to grab it no matter what. I think it is a basic threshold, and we are telling people we respect your dignity and will let you live for a while. We are talking about a minimal amount and not about thousands of dollars. I oppose the second amendment.

Chairman Horne:
When coming after the poor, there may have been an issue determining how much a person makes a year. It becomes a cost/benefit analysis.

Assemblyman Segerblom:
Their argument was that they were not going to go after the low-income population, but it is not in the law. There is no limit, and we are not dealing with a perfect world but with unscrupulous people, and that is why these protections are in there. If the world were perfect, we would not need laws like this.

Assemblyman Hansen:
I think we should recognize that these garnishments come after due process court proceedings. I have been involved in several of these with my plumbing business. If my business does work for somebody, and he does not pay his plumbing bill of $300 to $400, we can end up going to court. In many cases, the people who hired us to do the services do not even show up. We then file a garnishment on it. Frankly, $1,000 in your account is pretty good, and you are not necessarily the poorest person in the world. This is one of the ways we are able to collect. We do not arbitrarily slam an attachment to a person's account. I think we should look after the person who legitimately offered services and got gypped by a person. This is especially important for small businesses.

Assemblyman Frierson:
Oftentimes when we have this type of bill, we are talking about extremes. We are talking about businesses and people who are trying to gyp the system.

In reality, the concern is if you get your Social Security check, and it is $1,000, you have $1,000 in your account, and when you pay your rent, you have $0 in your account. There are some legitimate concerns on both sides. I am concerned about how a creditor would verify someone's income. While we understand they try not to go after the low-income population, I am not entirely sure how they are able to verify that a person's income is below the poverty line. I do not even know how I am going to vote just yet. There are some people where this is their last $1,000 and that is what they live off of and pay for their medicine with. They have up to 10 days now, and 20 days with the amendment, but that is 20 days of checks bouncing while they figure that out. I think there was an effort between the parties to see whether the banks would not return checks under these circumstances, and that could not be worked out. There was some discussion about lowering that $1,000 to a lower amount, and that was not in agreement. I do think there are some legitimate concerns, and there are some people who will be hurt by this.

Assemblyman Ohrenschall:
I want to echo Assemblyman Segerblom's comments. Some of these folks said they would try not to go after someone who is living under the poverty line, but if there is a mistake made, that could mean that person is homeless that month. I also encounter many constituents who are afraid of banks and keep all of their money in a drawer in their house. The more people who have their bank account wiped out and incur so many fees for bounced checks will make them distrust banks even more. People should pay their debts, but there should be an amount that we will not touch.

Chairman Horne:
If I take a motion, is everybody ready to vote?

Assemblyman Sherwood:
I would like to make a motion when you are ready. It sounds like there was some emphasis on the second amendment. I would like to see something pass, and if it is the choice between the second amendment and not seeing this pass, I would prefer the second amendment.

Chairman Horne:
My sense of the Committee is that they want the first amendment. I do not know whether your motion would pass.

Assemblyman Segerblom, you do not consider Mr. Sande's amendment a friendly amendment?

Assemblyman Segerblom:

No, I do not.

Chairman Horne:
I will accept a motion with the first amendment if the Committee is ready to vote on that. Otherwise, I will pull the bill back.

Assemblyman Ohrenschall:
I would be happy with whatever your wishes and the sponsor's wishes are, but I would also be happy to make a motion with the first amendment, should you be willing to accept it.

Chairman Horne:
Are you ready Assemblyman Segerblom?

Assemblyman Segerblom:
We should wait until tomorrow.

Chairman Horne:
That is what I figured. We will pull this back until tomorrow. We are going to call it a night.

The meeting is adjourned [at 5:39 p.m.].

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 14, 2011 **Time of Meeting: 8:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 460	C	Sam Bateman and Chris Owens	PowerPoint Slide
A.B. 461	D	Kevin Ranft	Proposed Amendment
A.B. 461	E	Kevin Ranft	Proposed Amendment
A.B. 461	F	Kevin Ranft	Report of Violation
A.B. 461	G	Senator Horsford	Letter in Support of A.B. 461
A.B. 462	H	Kelsey Stegall	PowerPoint
A.B. 462	I	Janine Hansen	Rightwing Extremism
A.B. 135	J	Dave Ziegler	Work Session Document
A.B. 107	K	Dave Ziegler	Work Session Document
A.B. 149	L	Dave Ziegler	Work Session Document
A.B. 219	M	Dave Ziegler	Work Session Document
A.B. 226	N	Dave Ziegler	Work Session Document
A.B. 294	O	Dave Ziegler	Work Session Document
A.B. 317	P	Dave Ziegler	Work Session Document
A.B. 324	Q	Dave Ziegler	Work Session Document
A.B. 161	R	Dave Ziegler	Work Session Document
A.B. 284	S	Dave Ziegler	Work Session Document

A.B. 346	T	Dave Ziegler	Work Session Document
A.B. 373	U	Dave Ziegler	Work Session Document
A.B. 223	V	Dave Ziegler	Work Session Document