

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
May 9, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:10 a.m. on Monday, May 9, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
Michelle R. Jotz, Director of Governmental Affairs, Las Vegas Police Protective
Association Metro, Inc.; Southern Nevada Conference of Police and
Sheriffs

Senate Committee on Judiciary
May 9, 2011
Page 2

Tierra D. Jones, Office of the Public Defender, Clark County
Morgan Baumgartner, Nevada Resort Association
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union
of Nevada

CHAIR WIENER:

I will open the hearing on Assembly Bill (A.B.) 161.

[ASSEMBLY BILL 161 \(1st Reprint\)](#): Revises provisions governing the crime of trespassing. (BDR 15-729)

ASSEMBLYMAN ELLIOT T. ANDERSON (Assembly District No. 15):

I am here to present A.B. 161. We as citizens and Legislators see things in our own lives which allow us to make better decisions on related subjects. In the Legislature—whether it is having a business background, practicing law or understanding ranching—we bring something to our respective bodies. I work in the security department of a major casino in Las Vegas. My experience there is a good addition to the Legislature working in our State's biggest industry at the ground level.

As one might imagine, from time to time casinos see different troublemakers and people who have had too much fun. This can present a number of problems for those who work inside a casino in law enforcement. This creates a necessity of security. We need to be there to ensure the safety of visitors, not to mention the employees, because the various police agencies cannot be in all places at all times, especially inside of a casino. Casino security departments take reports when someone is missing property, ensure the compliance of underage gaming laws and make sure that guests who have had too much to drink make it back safely to their rooms. After all, we do not want our guests to not come back because they had a bad experience.

I have personally seen all manner of criminal complaints and have a multitude of stories I could tell you. I am sorry I cannot share them all today because there are some good ones, however later, I will tell you a story that I see way too much of. This line of work has allowed me to learn about many different subjects inside the industry. I have a comprehensive view.

While performing this function in my other life, I also noticed a serious strain on law enforcement resources brought on by repeated violations of *Nevada Revised Statutes* (NRS) 207.200, which is trespassing and what we are talking about today.

Slide 2 of my presentation ([Exhibit C](#)) explains why trespassing is used in casinos and everyone understands why we have trespassing—people have private property and property rights. And while casino security department employees take great pride in their work, they would be the first to tell you they are not law enforcement. They do not have the training and specialization of a police department officer. Therefore, they do not try to act like one. Instead of getting into confrontations or calling police and causing problems for people who are here visiting, most casino security employees will simply ask people who are causing trouble to leave the property, causing them to officially trespass. For your benefit, I would like to briefly discuss how casinos use trespassing to maintain order and explain how the process works. It is an educational hurdle to explain how it is used.

Slide 3 of [Exhibit C](#) describes the first step of the trespassing process. Most people do not get past this process. When they are asked to leave nicely, they leave and do not cause trouble; they get the message after what is called an "informal trespass." They are asked nicely to leave, and they usually do. An example of someone who trespasses under this step is one who: disturbs other guests after having too much to drink; falls repeatedly after being awakened; or harasses another guest who complains. Depending on the severity of the disruption of business or violation of law, this may or may not be permanent and may be skipped in lieu of a formal trespass.

Slide 4 of [Exhibit C](#) is the "formal trespass," which is used for repeated violations or a more serious infraction. A report is generated internally, which includes a video of a warning being given, a still picture of a person being warned and the gathering of a person's contact information. This process usually takes an hour and is used to document an official warning to satisfy paragraph (d) of subsection 2 of NRS 207.200. That subsection requires a warning be given notifying individuals they are considered to be trespassing and arrest cannot be effected—emphasize this—until the subsection has been satisfied. It should be noted that this step is often first used when someone is arrested on casino property by a division of law enforcement, which can include vice or any other law enforcement division. It should also be noted that step 2

can be repeated—depending on time constraints, staffing levels and the seriousness of the person being disruptive—in lieu of step 3. In many cases, step 3 involves an even greater time commitment.

Slide 5 of [Exhibit C](#) describes step 3, an arrest for trespassing in a casino. A citizen's arrest is normally done because it can be hard to get law enforcement to respond to an arrest for trespassing. It is much easier if you do a citizen's arrest because there is a lot going on. This step is used only for repeated, formally warned violations. If a person is suspected of formally trespassing, identification is asked for and the person's name is run through a computer for a match. We want to know whether it is that person because if you make a mistake and arrest someone wrongly, you may be arrested for false arrest or kidnapping, or you may be subject to a lawsuit. If the result is positive, NRS 171.126 allows for arrest by a private person for the purposes of notifying a peace officer. To be clear, this step requires a huge time commitment. An arrest under this provision requires the private person who conducts the arrest to take care of that person's well-being for up to an hour. That is a huge time commitment, particularly if staffing levels are low. *Nevada Revised Statutes* 171 describes the process for this type of arrest. It is worth repeating—an arrest cannot happen until a formal trespass warning is given under the requirements of NRS 207.200, subsection 2, paragraph (d).

ASSEMBLYMAN ANDERSON:

What does this have to do with A.B. 161, and what does this crash course have to do with the Senate? From this point, slide 6 of [Exhibit C](#), violators who go through the system are usually convicted. However, the penalty is rarely sufficient to stop repeated trespassers. Among the most frequent violators of trespass law are those engaged in prostitution on The Strip. I have personally asked some of these people who were repeatedly trespassing why they keep coming back. They tell me the penalty, which is usually a small fine issued by judges, is normally a slap on the wrist compared to the amount of money people who engage in prostitution are able to make within the time frame of a week. They tell me they can hire an attorney and almost always get out of a substantial fine, and then go right back into the hotels and cover their fines—upwards of huge percentages. Unfortunately, there is a decent financial incentive for the law to be broken inside our State's gaming establishments, particularly in Las Vegas.

To be clear, this is a huge drain on police resources and also for people who are enforcing gaming laws inside the casinos. When you arrest people and put them into handcuffs, you are responsible for their health and well-being. In practical terms, law enforcement or a private person making an arrest is then unable to respond to any other incident in a casino or on the streets. There are paperwork requirements and reports to fill out for anyone who is arrested, and this can take time.

There are also time requirements for surveillance operators inside a casino. For any arrest for formal trespass, video and still pictures need to be taken to satisfy evidentiary requirements. This is time taken away from surveillance operators who are supposed to be watching for cheaters on slots or table games or even thieves, suspicious activity with terrorism and so on. For a state that relies on tourism, we need to do all we can to ensure that law enforcement and those who are enforcing our State's gaming laws are not bogged down unnecessarily. Even in the best of times, this can be a problem for the gaming industry, and the same is true for law enforcement. As we all know, this is not the best of times, people are stretched, budgets are stretched and we need to take some of the pressure off.

Slide 7 of [Exhibit C](#) specifically explains what the bill does. The bill is a sentencing guideline. It gives judges a maximum discretion in dealing with the strain on law enforcement and those who enforce gaming law. Institutions need to focus their time on our tourist base. This bill only applies to people previously convicted of solicitation three times within a five-year period, and then people who are subsequently convicted of trespassing. It only applies at a gaming establishment. I want to emphasize that this sentencing guideline requires convictions; this does not happen just because a person asks someone to leave a casino. For each gaming establishment effecting an arrest by a private person, a specific formal trespass must be administered. One formal trespass warning at one gaming establishment does not apply to other gaming establishments unless owned by the same company, and all said properties are mentioned in that warning. Just because a person is arrested at one property does not automatically bar him or her from any other establishment unless owned by the same company and mentioned in that warning. Also, after five years from the date someone is convicted of a solicitation, the incident would be removed from the record for the purposes of the sentencing guidelines. Once you get past the five-year period from a solicitation conviction, it would not count going forward.

In addition, under the heading for penalties, the bill has multiple options to deal with anyone convicted under a set of circumstances. Judges have five options, and they have to apply at least one of them. A maximum misdemeanor fine of \$1,000 is one option—I am not changing the amount, I am only mandating it—whereas community service and a program for rehabilitation, when the program exists, are two other options. This bill does not mandate creating such a program; for that option, there is a diversion program, which would allow those convicted to go through this program and get the conviction off their records. There is a jail time option and the option of a combination of fine and jail time, which can be determined by the judge. Depending on the type of offender, different options may work better, and that is why we have left in a few options.

For someone caught up in the trade wrongly through bad or forced circumstances, rehabilitation is a good option. The professional types of offender are better served by that \$1,000 fine because those people know what they are doing, they know what they are doing is wrong and they continually do it even after being arrested time and time again. Those types of offenders only want a fine. They do not want to spend a day in jail or time in a rehabilitation program because that is money out of their pockets. Every day they are in jail is a day that they are not making thousands of dollars.

Our working class people—either in law enforcement or who do their jobs inside of a casino—should not have to deal with people who flagrantly violate the law. That is why I brought this bill forward. This bill has plenty of tools to give law enforcement and our judicial system the help to deal with this problem, no matter what type of offender gets caught up in this. I do find it highly unlikely that someone who has previously been convicted of solicitation three times within five years and is convicted of trespassing in a gaming establishment will get caught up in this wrongly. To be clear, this bill only applies to that set of circumstances.

This bill passed unanimously both in the Assembly Judiciary Committee and on the Assembly Floor. We did a lot of work on it. I have been working on this bill since November, meeting with all of the various stakeholders.

CHAIR WIENER:

You mentioned in your presentation and your remarks that this was a collaborative effort to get this bill where it is today. It is a first reprint; would you briefly describe what changes were made from the original bill?

ASSEMBLYMAN ANDERSON:

On the Assembly side, we mainly added options to deal with offenders who may have a drug problem and/or were forced into the trade; this bill did not intend to go after those offenders. It treated all those people the same and that was not my intent. I understand people who know what they are doing, are well aware that what they are doing is wrong and are doing it per their own initiative. Many members of the Assembly Committee on Judiciary thought it would be a good idea and I agreed. The bill was strengthened by adding provisions which would allow different options based on different types of offenders. We all understand that one size does not always fit all in criminal justice, and I would certainly agree that someone who is violating the law flagrantly versus someone who was forced into it and then caught in a bad cycle deserves to be treated differently. The main difference is a diversion program. It takes a lot of the text of the bill and also provides that outlet for those different types of offenders.

CHAIR WIENER:

The language in the reprint under section 2.5, subsection 6, lines 8 through 13—this is something that I did not hear you discuss—read: "A professional licensing board may consider a proceeding under this section in determining suitability for a license or liability to discipline for misconduct." It goes on from there requiring a "truthful answer." Would you please explain that?

ASSEMBLYMAN ANDERSON:

This is standard diversion language. If you want to be a cosmetologist or anything else that is licensed under the State, the licensing board can still use these convictions per its recommendation to give you a license. This could also apply to gaming. Boards may be interested in this if you have a criminal past. That is something they still need to use for their deliberations.

CHAIR WIENER:

Other language in the amended version deals with the five-year timeline because you are talking about wiping the slate clean. Assemblyman Anderson, would

that five-year window give someone that chance if he or she stayed off the radar that you are creating here?

ASSEMBLYMAN ANDERSON:

The boards need to get a truthful answer on this. The five year timeline is a good provision because board by board, it depends on how much that is weighted. To use my example, if you were going for a cosmetology license versus a gaming license, there is a big difference. What is in your past is probably not going to hurt me if you are working on someone's hair, but if you are enforcing gaming laws inside a casino, it is probably more important. To answer your question succinctly, it is important that licensing boards consider these matters because they may need to in some areas of our law. That is up to the licensing board.

CHAIR WIENER:

I hope they would all be truthful. My consideration is clarity on that five-year window created in your bill. Mr. Wilkinson, can the licensing boards go outside of this in considering what is designed in this bill in terms of time frames?

BRADLEY A. WILKINSON (Counsel):

The licensing board can consider all of these convictions, including the three previous ones that triggered this section and the fourth conviction in five years. Yes, they can consider all of them.

SENATOR GUSTAVSON:

Assemblyman Anderson, you said the reason you want to make this a mandatory \$1,000 fine is because violators have been getting a slap on the wrist by the judges. What is the average slap on the wrist that they get?

ASSEMBLYMAN ANDERSON:

I answer that by relating a story: I was in the process of escorting someone out of a casino whom we had arrested repeatedly—at least four or five times. At this point, we did not have the staffing levels to do the full requirements, the full arrest and so on that were normally done. Instead, we were doing another formal trespass, rereading the NRS and asking the person to please leave. My curiosity got the better of me, so I said, "Why do you keep coming back?" I remember her quote was something like, "Dude, please. I make \$10,000 in this casino each week. I am going to go out, I am going to get a couple

hundred dollar fine and then I am going to come back." That is when I started thinking about this bill.

CHAIR WIENER:

Assemblyman Anderson, because it seems like it is a prevalent concern in an average workday or workweek, how much of this do you see? You had mentioned an hour timeline that you may be required to set aside. How much of your time would you spend on this?

ASSEMBLYMAN ANDERSON:

I would say a lot. There are days where we could have three or four reports in an eight-hour shift, not necessarily all on this subject, but these are the most prevalent types of reports. Given staffing levels and everything else going on, the minimum time is about 45 minutes to make sure your paperwork is in order, depending on if you are also filing an internal report and doing a criminal complaint as well. An arrest under step 3—described on page 5 in [Exhibit C](#)—entails additional work above an internal report. You only need an internal report with step 2 on page 4 in [Exhibit C](#), a formal trespass. But I would say 45 minutes to one and one-half hours.

CHUCK CALLAWAY (Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):

I would like to thank Assemblyman Anderson for bringing this bill forward and for reaching out to my office, long before the Session even started, with this idea and meeting with me several times to discuss it.

During my career in law enforcement I was assigned the Las Vegas Strip for approximately ten years. Trespassing is a huge problem on The Strip, specifically in regard to prostitution-related trespassing. These incidents tie up police resources. Several times while I was working The Strip, we would have three or four trespassing calls a day. Sometimes we would go for a period of time without any. But then there would be times where it seemed like we were receiving many of those types of calls. If it takes on average 45 minutes to an hour to handle one of these calls, you can see how that can definitely tie up police resources. We believe this bill will add teeth to that law and for that reason, we support the bill.

Senate Committee on Judiciary
May 9, 2011
Page 10

MICHELLE R. JOTZ (Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; Southern Nevada Conference of Police and Sheriffs):

Over the 26-month period from January 2008 to March 2011, there were 23,512 citations for trespass. There were thousands of recidivists on the list that I pulled, and many of those subjects were arrested or cited more than a dozen times each during that 26-month period. I discovered that several had been arrested or cited more than 50 times. Clearly, the fines imposed are not a deterrent. I have one page with me, of the several hundred pages in microscopic print, of the arrests during that 26-month period.

I am in my fourteenth year as a police officer and for several years I patrolled the area that encompasses The Strip. The police officers assigned to work The Strip respond repeatedly each night to the hotels and casinos for in-custody people for trespass. Frequently, those people were working as prostitutes. I had the opportunity to ask these people why they would continue to return after being arrested, cited or warned. They said that the fines were so microscopic that it was not a deterrent and they could potentially make more money illegally. This amended bill would put some teeth in the law; because of that we respectfully request your support on A.B. 161.

CHAIR WIENER:

Ms. Jotz, are you able to provide that document to us?

Ms. JOTZ:

This is confidential information.

CHAIR WIENER:

Can you provide the statistics?

Ms. JOTZ:

I provide the statistics in my handout ([Exhibit D](#)).

TIERRA D. JONES (Office of the Public Defender, Clark County):

When Assemblyman Anderson and I first met regarding this bill, one of our office's major concerns was distinguishing between the homeless person who may have mental health issues hanging out in front of Planet Hollywood and the prostitutes, for which this bill is targeted. Assemblyman Anderson did a tremendous amount of work to make sure this bill was redone to target the

prostitutes and not the homeless or mentally ill people who may have been caught in front of a property on The Strip. We very much support this bill. We support the fact that these people may seek a counseling program as part of the sentence, as well as the possibility of diversion if they carry out the responsibilities imposed by the court. Based upon that, we ask for your support on A.B. 161.

MORGAN BAUMGARTNER (Nevada Resort Association):

As you have heard from the previous witnesses, this is a fairly significant problem in many of our resort properties. We believe the legislation proposed by Assemblyman Anderson will provide that additional deterrent and free up law enforcement resources that are needed in other parts of the city. Anything we can do to alleviate this problem and provide a deterrent to some of these people who are committing these crimes over and over again on our properties is much appreciated. We urge your support of this bill.

CHAIR WIENER:

I will close the hearing on A.B. 161 and open the hearing on A.B. 56.

ASSEMBLY BILL 56 (1st Reprint): Grants subpoena power to the Attorney General, acting through the Medicaid Fraud Control Unit, to obtain certain documents, records or materials. (BDR 18-119)

BRETT KANDT (Special Deputy Attorney General, Office of the Attorney General):
I will read from my written testimony ([Exhibit E](#)).

CHAIR WIENER:

We have the letter from the Office of the Attorney General ([Exhibit F](#)). At what point would you make the decision to go into one of these businesses with an administrative subpoena, and what would prompt you to investigate and what would the trigger be?

MR. KANDT:

Excellent questions and quite frankly, if our Medicaid Fraud Control Unit (MFCU) had this tool, it would be the first tool of choice in obtaining records. In practice, the administrative subpoena is a letter. The health care provider or entity under investigation would receive a letter from the MFCU requesting specific records, which would be provided to our offices in Las Vegas or Carson City. If we did not get a timely response, we would follow up with the

provider or entity and ask once again what the status was in obtaining those records, because the majority of the MFCU's investigations and prosecutions are under the civil realm. The issue of whether it arises to a criminal level is one that would be determined early in the process. If it looks like a criminal proceeding would follow, then we could utilize the traditional search warrant or grand jury tools already available and utilize the more traditional method of obtaining and serving a search warrant to obtain the records.

CHAIR WIENER:

As you just stated, it is more a pursuit on the civil side using the subpoena starting with a letter. Going with a search warrant on the criminal side, what if the provider or entity refuses to comply? What is your next step?

MR. KANDT:

As we requested in the bill, there are sanctions for failure to comply with the administrative subpoena. At that point, the MFCU still has the option to seek and execute a search warrant.

CHAIR WIENER:

If someone is perpetrating a Medicaid fraud, it may not be with just one person who qualifies for Medicaid, but many. What would the timeline be if you do not get a response to take the next step? The longer you wait, more fraud instances could occur. After the letter is sent, what is the timeline if you do not get compliance?

MR. KANDT:

You are right. In most instances, the fraudulent activity is not restricted to a single instance, but there is a pattern of systemic fraud taking place. In terms of the timelines, I would have to defer that question to the chief of our MFCU. I apologize that he is not available today. I was hoping he could be available in Las Vegas, but he is in court prosecuting Medicaid fraud. I will follow up with him and get you more concrete information on the types of timelines.

CHAIR WIENER:

We need the due process too because there would be a cumulative effect as you move forward with your action.

Senate Committee on Judiciary
May 9, 2011
Page 13

SENATOR MCGINNESS:

Mr. Kandt, your letter—[Exhibit F](#)—says MFCU. Who in that organization makes the determination? Does the same person do all of this, or do you get the approval of the Attorney General? Does a secretary decide that?

MR. KANDT:

I assume you are referring to the decision to investigate to request records and ultimately the prosecution decisions.

SENATOR MCGINNESS:

Who actually approves the subpoena?

MR. KANDT:

That would be the chief of the MFCU acting on behalf of the Attorney General.

CHAIR WIENER:

I will close the hearing on [A.B. 56](#) and open the work session on [A.B. 9](#).

[ASSEMBLY BILL 9 \(1st Reprint\)](#): Revises provisions relating to fees charged and collected in justice courts. (BDR 1-322)

LINDA J. EISSMANN (Policy Analyst):

I will read from the work session document ([Exhibit G](#)). There were no amendments and there was no opposition.

SENATOR COPENING MOVED TO DO PASS [A.B. 9](#).

SENATOR BREEDEN SECONDED THE MOTION.

CHAIR WIENER:

Is there discussion, Committee?

SENATOR GUSTAVSON:

I do have some concerns. I understand the courts would like to have more money at this time—they could raise their fees and use more money; but the bill mentions that they are looking for money to buy new property and build new buildings. The way the economy is going right now, the State is not growing like it has in the past, and I do not know if the courts have the need to grow as much as they have been growing. To raise fees for everybody who is filing

Senate Committee on Judiciary
May 9, 2011
Page 14

papers in the court system would not be prudent at this time. We should wait and see how the economy goes and where we are going with this.

CHAIR WIENER:
Any additional comments or questions?

SENATOR ROBERSON:
I would concur with my colleague, Senator Gustavson. During the hard times that working people are having right now, should we be increasing the cost on them to access our justice system? I will be voting no.

CHAIR WIENER:
Any additional comments or questions?

THE MOTION PASSED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

* * * * *

CHAIR WIENER:
I will open the work session on A.B. 196.

ASSEMBLY BILL 196 (1st Reprint): Revises provisions governing the collection of fines, administrative assessments, fees and restitution owed by certain convicted persons. (BDR 14-557)

MS. EISSMANN:
I will read from the work session document (Exhibit H). There was an amendment requested by the Administrative Office of the Courts to exclude restitution as a collectible item. That amendment corrects the first reprint to accurately reflect the amendment agreed to in the Assembly.

CHAIR WIENER:
Is there discussion, Committee?

SENATOR ROBERSON:
I want to note for the record that I questioned whether I could potentially have a conflict based on a legal client I have who is in the business of the collection of fines, an outstanding warrant business. In talking to the sponsor and my

Senate Committee on Judiciary
May 9, 2011
Page 15

client, it does not sound like this affects the client one way or another. I do not believe I have a conflict.

CHAIR WIENER:
Thank you for sharing that with us.

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 196.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:
I will open the hearing on A.B. 107.

ASSEMBLY BILL 107 (1st Reprint): Requires the adoption of certain policies and procedures governing the identification of criminal suspects. (BDR 14-614)

ASSEMBLYWOMAN LUCY FLORES (Assembly District No. 28):

The bill is very short, but it is a consensus bill. This bill started out very long and ended up very short after I worked with members of the law enforcement community. Initially, this bill set forth a lot of specifics about how law enforcement needed to deal with eye witness identifications. But it was never the intent of the bill to tell law enforcement how it needed to do those eye witness identifications. The intent was to ensure law enforcement was using best practices based on years of solid research on eye witness identification procedures, and how we can do those procedures to ensure accuracy and to decrease a likelihood of a wrongful identification, which results in wrongful convictions. We amended this bill to require each law enforcement agency within the State to have a policy in place that deals with eye witness identifications. And then each law enforcement agency has the purview to do what fits its needs best.

Rural law enforcement agencies cannot do what an urban agency can do. Some agencies had eye witness identification procedures in place that were thorough

and some did not, and some did not have any at all. This is necessary because, first and foremost, it ensures all law enforcement agencies have a policy in place. Second, section 2 of A.B. 107 states that law enforcement communities will come back to the Advisory Commission on the Administration of Justice twice before the next Legislative Session to check in and give an update on where they are in developing these procedures.

No law enforcement communities will say they do not believe that good eye witness identification policies should be in place; we have always been on the same page about that. And they were working with a national agency to develop best practices and their identification procedures. It was not a hard sell with law enforcement; it was a matter of making sure that we all agreed on a way to get there.

I submitted two lengthy documents: *Reevaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of Misidentification* ([Exhibit I](#)) and *Identifying the Perpetrator* ([Exhibit J](#)). This testimony was given on the Assembly side, but it was unnecessary on this side because we did come up with a consensus bill.

As far as wrongful convictions are concerned, I will give a few statistics: Nationwide there have been 267 postconviction DNA exonerations, and 17 of those were waiting to be executed by the state. They were sentenced to death and found factually innocent after they had DNA testing done on the evidence that led to their convictions. The average sentence served by a DNA exoneree is 13 years, and in almost 40 percent of DNA exoneration cases, the perpetrator has been identified. Exonerations have been won in 34 states, including Washington, D.C. In those exonerations we know they were factually innocent because of DNA evidence involved, and we know that the convicted person was not the perpetrator. Wrongful identifications were the leading factor in 75 percent of those convictions. We know, based on all of these cases of wrongful convictions, that misidentification by a witness was the first and the leading cause of wrongfully convicting that person.

Law enforcement can do different things in order to make the identification process more reliable and more accurate so we do not end up identifying the wrong person and sending the wrong person to prison. One of those things is blind administration—where the person who is doing the lineup does not know whether the alleged perpetrator is present and neither does the witness. There

is no accidental bias or words of encouragement. That happened in a case where a woman identified who she thought was her rapist, and then after she did the identification, the law enforcement agent said, "Good job, you got him." That boosted her confidence, even though she had identified the wrong person, and he ended up in prison for some 20-odd years. It is those types of things that you want to avoid during the identification process. If you do a blind administration, then you avoid that entirely. It is something simple that law enforcement can do to boost the accuracy.

Other things are instructions: making sure the eye witness knows the person may or may not be there and taking a confidence statement; after the person has done the identification, you immediately ask, "How confident are you that that is the person?" You have that type of information on the record for trial if it goes to trial later; video recording whenever possible; audio recording if the video is not available; and written observations at the least—any type record of impressions on the identification process.

There are sequential presentations of lineups, which means that someone does identification all in the agency, not in the field—a completely different procedure we do not encourage because that increases the likelihood of bias. When you are in the agency, you are shown a picture, or if it is a live lineup, you do it one by one to increase accuracy when you are forced to make that determination based on your own memory as opposed to comparing a group of people in front of you.

These are some of the major reforms advocated by researchers. Las Vegas Metropolitan Police Department has a robust policy and does much of what I have already stated.

CHAIR WIENER:

I want to be clear. Where people had signed in supporting the bill "as amended," that meant as amended with the amendment before us on a first reprint bill. All of you coming forward please clarify that this means you support the first reprint.

MR. CALLAWAY:

Yes, we support the bill as first reprinted. I would like to thank Assemblywoman Flores for sitting down and working with us. On the original bill, we had some concerns. We believed that policies and procedures should be

left to the agencies and not codified into law because best practices change, and sometimes policies need to be updated and changed. Once in law, it is difficult to change; we have to come back to the Legislature to do that.

The Las Vegas Metropolitan Police Department believes we have a best practice in regard to witness identification with an extensive policy about 14 pages long. We agree that agencies should have a policy in place when it comes to witness identification. We support the first reprinted version of the bill.

MS. JOTZ:

I will "me too" to Mr. Callaway.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):

I too would like to thank Assemblywoman Flores for bringing this bill forward and working with us. We do support the bill as first reprinted. In 2010 through the Nevada Sheriffs' and Chiefs' Association, we embarked on a program using a company by the name of Lexipol that deals with developing standard policy statements for law enforcement—major overriding policies such as force, pursuit driving and eye witness identification.

The Nevada Sheriffs' and Chiefs' Association is working on a policy that will be given to all of our agencies to accept, put into place and then develop procedures for that individual agency. Understanding that eye witness identification is governed by court cases by our district attorneys, the Attorney General's Office and courts of appeal, we have a good overview in Nevada as to what we can and cannot do. We support this bill and believe there needs to be a policy and procedure in each agency.

CHAIR WIENER:

As the bill requires, there will be interim reporting to those who are ready and willing to hear how that progress is being made.

SENATOR GUSTAVSON:

I understand this is the first reprint and there were some problems with the original bill. I could see that there would be because I do not like to see these procedures codified into law. Are you stating that all of your agencies have policies that do this?

MR. ADAMS:

Some of our agencies have robust policies in place; some of them have some minor policies; and others deal with guidelines by court cases and their district attorney. Even before the bill was brought forward, we felt that this was an important area. We standardized statewide so everybody is on the same page. Lexipol looks at best practices. That is what we will bring forward and report back to the Advisory Commission on the Administration of Justice.

SENATOR MCGINNESS:

Mr. Adams, what did you hear from your rural sheriffs and chiefs? Is this going to be a burden on them?

MR. ADAMS:

We started with that as one of the issues. The way the bill was first drafted, we had some real compliance issues with that. We were able to deal with the bill, negotiate and ensure all have policies and procedures. No, I do not believe we are going to have a problem. All sheriffs and chiefs understand the importance of this issue and, by having the help from Lexipol, we will help develop those policies and procedures throughout the State.

SENATOR MCGINNESS:

So every sheriff does not present this report, a compilation report is done by the organization?

MR. ADAMS:

Yes, sir. Lexipol is currently working on the standardized policy that will be given to each of the agencies. Then the Nevada Sheriffs' and Chiefs' Association will report back to the Advisory Commission on the Administration of Justice as to where we are, how many agencies have implemented the policy it and how far they have gone with it. By the second report, all of our agencies have accepted this policy and adopted procedures to move forward.

CHAIR WIENER:

Assemblywoman Flores, because we have a lot of fiscal commentary on this, is the first reprint giving us an opportunity to erase the fiscal impact that was a lot about video equipment, training and so on? Although we do not have revised fiscal notes, my presumption is that those notes addressed the original bill.

Senate Committee on Judiciary
May 9, 2011
Page 20

ASSEMBLYWOMAN FLORES:

There are quite a few fiscal notes. I am in the process of calling all those agencies and local governments asking them to withdraw their fiscal notes so they do not get snatched up by the Assembly Ways and Means Committee.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):

We are in support of the bill. We think it will help enhance transparency as well as ensure due process rights of individuals who deal with the criminal justice system and who are subject to police identification policy and procedures.

SENATOR ROBERSON:

Assemblywoman Flores, I notice law enforcement is in support of the bill and that gives me comfort. I see there were nine votes against the bill on the Assembly side; I assume that was on the reprinted version?

ASSEMBLYWOMAN FLORES:

Yes, I would imagine so.

SENATOR ROBERSON:

Was the opposition to the bill verbal? Did you get a sense of the objections? Before I vote, I want to get a sense of those objections to the bill.

ASSEMBLYWOMAN FLORES:

Most of the objections were with the first reprint, not wanting the Legislature to dictate these types of policies to law enforcement. Ultimately, if it did not come out unanimous on the Assembly Floor, there may have been some of those concerns. I am not entirely sure, I did not speak to those who did not vote for it after the reprint came out. It could be that, but I cannot say because I have not spoken to any of them. Overall, it was the sense that the Legislature should not be dictating policy and procedure for law enforcement, although you have already heard that is not what we are doing.

CHAIR WIENER:

Committee, you will notice that the bill does say in section 1, subsection 1 that each law enforcement agency "shall" adopt policies and procedures. If it were "may," the vote might have been different, but there was a substantial pass in the Assembly. The vote was 33 to 9.

Senate Committee on Judiciary
May 9, 2011
Page 21

I will close the hearing on A.B. 107 and will open the work session with A.B. 244.

ASSEMBLY BILL 244: Enacts the Uniform Partition of Heirs Property Act.
(BDR 3-329)

Ms. EISSMANN:

I will read from the work session document ([Exhibit K](#)). The bill was sponsored by Assemblyman Tick Segerblom, but ex-Senator Terry Care presented the bill. There was no opposition and there were no amendments.

SENATOR BREEDEN MOVED TO DO PASS A.B. 244.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:

I will open the work session on A.B. 269.

ASSEMBLY BILL 269 (1st Reprint): Revises certain provisions relating to the use of a grand jury. (BDR 14-1127)

Ms. EISSMANN:

I will read from the work session document ([Exhibit L](#)). You may recall Tonja Brown was at the hearing with an amendment that counsel determined was not germane and there were no other amendments. There was no other opposition.

SENATOR COPENING MOVED TO DO PASS A.B. 269.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR ROBERSON VOTED NO.)

* * * * *

Senate Committee on Judiciary
May 9, 2011
Page 22

CHAIR WIENER:

I will open the work session on A.B. 284.

ASSEMBLY BILL 284 (1st Reprint): Revises provisions relating to real property.
(BDR 9-1083)

MS. EISSMANN:

I will read from the work session document ([Exhibit M](#)). The work session document indicates there was no amendment and that is not entirely true. You may recall Venicia Considine testified that she preferred the bill in its original form and had some amendments that would have taken it back to its original form. Otherwise, there were no other amendments proposed.

SENATOR ROBERSON MOVED TO DO PASS A.B. 284.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:

I will open the work session on A.B. 313.

ASSEMBLY BILL 313 (1st Reprint): Revises provisions governing the custody and visitation of children for persons who are members of the military.
(BDR 11-627)

MS. EISSMANN:

I will read from the work session document ([Exhibit N](#)). Following the hearing, there was a meeting of the interested parties and a mock-up amendment was provided, which is in your work session document, to reconcile A.B. 313 with Senator Gustavson's S.B. 284. The amendment adds Senator Gustavson's name as a primary Senate sponsor and incorporates some of the provisions of S.B. 284 into A.B. 313.

SENATE BILL 284: Makes various changes concerning the custody of children.
(BDR 11-785)

MR. WILKINSON:

The description in the work session document is nice and concise. Section 12 adds a provision that when issuing a temporary order regarding custody or visitation that reasonably accommodates the deployment of a parent, the court is required to consider ensuring the parent who received the orders for deployment is able to maintain frequent and continuing contact with means that are reasonably available. Also, section 14 is amended to authorize a parent who received orders for deployment to seek an expedited hearing and/or present testimony by affidavit or electronic means if the military duties of the parent have a material effect on the ability, or anticipated ability, of the parent to appear in person at a hearing, rather than if the military duties prevent the parent from appearing at a hearing.

CHAIR WIENER:

Senator Gustavson, do you have any comments? Your name now appears on this measure.

SENATOR GUSTAVSON:

I appreciate everyone working on this measure so we have the best bill that we can get out of the two. I do support the amendment and appreciate the Committee's support.

SENATOR GUSTAVSON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 313 WITH PROPOSED AMENDMENT 6703.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:

I will open the work session on A.B. 321.

[ASSEMBLY BILL 321 \(1st Reprint\)](#): Revises provisions relating to the use of force. (BDR 15-963)

Senate Committee on Judiciary
May 9, 2011
Page 24

MS. EISSMANN:

I will read from the work session document ([Exhibit O](#)). There was no opposition and no amendments to the bill.

SENATOR MCGINNESS MOVED TO DO PASS A.B. 321.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:

I will open the work session on A.B. 408.

[ASSEMBLY BILL 408 \(1st Reprint\)](#): Restricts the use of restraints on pregnant females who are in confinement. (BDR 16-117)

MS. EISSMANN:

I will read from the work session document ([Exhibit P](#)). There was no amendment and there was no opposition.

SENATOR BREEDEN MOVED TO DO PASS A.B. 408.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:

Committee, we heard three other measures this morning, what is the sentiment of the Committee? If you need more time, that is the prerogative of Committee members. Is there any appetite to move A.B. 56?

SENATOR ROBERSON:

I ask that we delay this bill.

Senate Committee on Judiciary
May 9, 2011
Page 25

CHAIR WIENER:

Okay, we will delay A.B. 56.

What is the pleasure of the Committee on A.B. 107?

SENATOR BREEDEN MOVED TO DO PASS A.B. 107.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:

What is the pleasure of the Committee on A.B. 161?

SENATOR BREEDEN MOVED TO DO PASS A.B. 161.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Senate Committee on Judiciary
May 9, 2011
Page 26

CHAIR WIENER:
The meeting is adjourned at 9:29 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 161	C	Assemblyman Elliot Anderson	Slide Presentation
A.B. 161	D	Michelle Jotz	A.B. 161 Trespass
A.B. 56	E	Brett Kandt	Written Testimony
A.B. 56	F	Brett Kandt	Letter dated April 29 to Chair Valerie Wiener
A.B. 9	G	Linda Eissmann	Work session document
A.B. 196	H	Linda Eissmann	Work session document
A.B. 107	I	Assemblywoman Lucy Flores	Reevaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of a Misidentification
A.B. 107	J	Assemblywoman Lucy Flores	Identifying the Perpetrator
A.B. 244	K	Linda Eissmann	Work session document
A.B. 269	L	Linda Eissmann	Work session document
A.B. 284	M	Linda Eissmann	Work session document
A.B. 313	N	Linda Eissmann	Work session document
A.B. 321	O	Linda Eissmann	Work session document
A.B. 408	P	Linda Eissmann	Work session document