MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
May 11, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:06 a.m. on Wednesday, May 11, 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 John Oceguera, Assembly District No. 16
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Brittany Shipp, Intern to Assemblyman John Oceguera
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Joseph Guild, Nevada Court Reporters Association
Lori Urmston, Nevada Court Reporters Association
John Wagner, Independent American Party

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Tim Kuzanek, Captain, Special Operations Division, Washoe County Sheriff's Office
Kristin Erickson, Nevada District Attorneys Association
Michelle R. Jotz, Detective, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; Southern Nevada Conference of Police and Sheriffs
Bob Irwin, The Gun Store
John Cahill
Rob Buonamici, Chief Game Warden, Division of Law Enforcement, Department of Wildlife
Ron Cuzze, Nevada State Law Enforcement Officers' Association
Tom Ely, Nevada State Law Enforcement Officers' Association
David Wallace
Vonne Chowning
Jennifer DiMarzio, Nevada Credit Union League
Jonathan Friedrich
Jan Gilbert, Progressive Leadership Alliance of Nevada
Ben Graham, Administrative Office of the Courts
The Honorable Michael L. Douglas, Chief Justice, Nevada Supreme Court
Bill Uffelman, President and CEO, Nevada Bankers Association
George A. Ross, Bank of America
Ron Peterson, Nevada Land Title Association
Michael Brooks, United Trustees Association

CHAIR WIENER:
I will open the hearing on Assembly Bill (A.B.) 249.

ASSEMBLY BILL 249 (1st Reprint): Makes various changes pertaining to certain court reporters. (BDR 1-235)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
My intern from the University of Nevada, Las Vegas, will present A.B. 249.

BRITTANY SHIPP (Intern to Assemblyman John Oceguera):
Assembly Bill 249 would amend statutes regarding court reporters to increase efficiency, decrease the likelihood of errors, eliminate confusion and prevent inefficiencies (Exhibit C). The statute on court reporters does not specify that a person acting as a court reporter must be licensed by the Certified Court Reporters' Board of Nevada. This bill will update the language to specify the certified court reporter appointee in a district court proceeding must be licensed by the Board.

This bill will clarify that prima facie evidence of the testimony in district court proceedings is provided by the transcript, not the report of the official reporter. This bill clarifies that court reporters pro tempore are not employees of the court but appointees.

Assembly Bill 249 ensures court reporters are fairly compensated by changing the statute to define the word "page" as an 8.5- by 11-inch piece of paper that does not include condensed transcripts. Condensed transcripts are multiple pages of a transcript condensed to one page.

The bill increases efficiency by stating that payment for civil cases or transcript preparation should go to the court reporter rather than depositing payment with the clerk of the court. Section 4, subsection 7 of the bill ensures fair compensation by stating the cost of sound recordings requested with transcripts must not exceed the cost of production. The requesting party must pay for the sound recording.

With modern court procedure, the recorder and transcriber may be two different people. Section 5, subsection 3 of the bill addresses this by requiring the recorder and transcriber to subscribe to an oath that the recording is a true and accurate account of the proceedings.

The bill provides greater assurance that transcripts are accurate reflections of court proceedings by mandating any error, malfunction or other problem relating to the sound recording equipment, or the sound recording itself, be reported to the court.

Section 7, subsection 1 of the bill requires that all sound recordings of justice court proceedings be preserved for at least one year after the time for filing an appeal expires. Recordings of proceedings involving a misdemeanor or higher

infraction must be preserved for eight years after the time for filing an appeal expires. This brings the courts to the same standards of record keeping as court reporters use.

This bill calls for commonsense legislation updating outdated statutory language so statutes are more relevant to today's court proceedings and court reporters. It removes redundancy and improves efficiency resulting in a smoother more dependable reporting operation. I urge your support of this bill.

CHAIR WIENER:
Section 5 of the bill relates to reporting an error. Would you anticipate that reporting would take place when the error occurs? Is due diligence attached to that?

MS. SHIPP:
The bill does not include a specific time. It should be reported at the time of the error.

CHAIR WIENER:
Section 7 requires preservation of the recording for eight years. How did you arrive at eight years?

JOSEPH GUILD (Nevada Court Reporters Association):
Section 7 of the bill comports the law with the requirements a court reporter must meet. It comports justice court proceedings with the standard requirement that a court reporter must maintain a record for eight years. Section 7, subsection 1, paragraph (a) of the bill changes the time period a court reporter must keep his or her own records from 30 days to one year.

CHAIR WIENER:
Since this bill states records must be kept for eight years, what was the standard before?

LORI URMSTON (Nevada Court Reporters Association):
The Board required court reporters to maintain their notes—the ability to produce a record—for at least eight years. That has been a statute for many years.

CHAIR WIENER:
Has it been statutory or has it been your standard?

MS. URMSTON:
Statutory.

MR. GUILD:
You have a copy of our conceptual amendment (Exhibit D). This is a technical amendment clarifying how court reporters are paid. We propose moving all of section 4, subsection 7 to a new section 5, subsection 5 of the bill and changing subsection 5 to subsection 6. This language is inapplicable in *Nevada Revised Statute* (NRS) 3.370 and technically should amend NRS 3.380.

Section 4, subsection 6 would change the word "upon" to "prior to," Exhibit D. Court reporters may be involved in a lengthy litigation or criminal proceeding for a month or more. During that month, they will not be paid. By changing "upon" to "prior to," court reporters would have more flexibility in their ability to be paid.

CHAIR WIENER:
I will close the hearing on A.B. 249.

> SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED A.B. 249 WITH MR. GUILD'S AMENDMENT.
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> SENATOR KIHUEN SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:
I will open the hearing on A.B. 282.

ASSEMBLY BILL 282 (2nd Reprint): Revises various provisions concerning firearms. (BDR 15-962)

ASSEMBLYMAN JOHN OCEGUERA (ASSEMBLY DISTRICT NO. 16):
Assembly Bill 282 includes revisions to Nevada's concealed carry laws (Exhibit E). This is commonsense legislation necessary to concealed weapons permits. The bill changes the categorical qualification which relates to a revolver versus a semiautomatic weapon. It changes the background check requirements. It has a confidentiality component and allows concealed weapons carry in State parks.

Under the categorical qualification, the law requires concealed carry weapon (CCW) permit holders to qualify with a revolver and any semiautomatic handgun they want to carry. However, all semiautomatic handguns are the same. It seems odd a person would be required to qualify on each and every one of those. Under A.B. 282, CCW permit holders may qualify for the revolver category and the semiautomatic category but would not have to qualify with every specific gun.

The statutes require a background check for the initial CCW permit only. Because the background check is not required for permit renewals, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) requires Nevadans to submit to a $25 background check every time a gun is purchased. Under A.B. 282, background checks will be conducted upon the initial CCW permit and then renewal. Assembly Bill 282 would exempt CCW permit holders from background checks for each gun purchased. Permit holders would be required to undergo a background check upon renewal once every five years.

The CCW permit applications are confidential. However, a 2010 court case said certain information would not be confidential. Assembly Bill 282 would eliminate this exception for confidentiality by adding the following confidential information: identity of the permit holder and any records regarding the suspension, revocation and restoration of the permit.

Assembly Bill 282 ensures that State parks may not adopt regulations regarding the possession of firearms or use of firearms in self-defense that contradict or are more restrictive than State law. In the past, there were tougher laws on discharging firearms in State parks. We have been working to bring the regulations in line with the State law. The only time you could discharge a weapon in a State park would be if you have a CCW permit and are acting in self-defense.

These changes would lower the burden on permit holders. The changes would protect the identity of permit holders and gun owners who carry in State parks. The bill fixes the renewal system and the background checks necessary to qualify for exemptions under the Brady Handgun Violence Prevention Act.

SENATOR ROBERSON:
This sounds similar to a bill passed in the Senate. Is this the counterpart to another bill Senator James A. Settelmeyer sponsored?

ASSEMBLYMAN OCEGUERA:
A number of bills have addressed the issues of category of qualifications, confidentiality, State parks, removing CCW permitting provisions, campus carry and renewal background checks. We all request our bills before and during the Session, and some of them are similar.

JOHN WAGNER (Independent American Party):
I agree with everything Mr. Oceguera said. This is a good bill, and I urge your support.

RONALD P. DREHER (Government Affairs Director, Peace Officers Research Association of Nevada):
We support this bill and urge your support for the second reprint of A.B. 282.

CHAIR WIENER:
Because we are in a second reprint, please explain how this bill changed from the original version.

ASSEMBLYMAN OCEGUERA:
Initially, we had a provision allowing military personnel between the ages of 18 and 21 to have a CCW permit. That is a good idea, and we honor and respect the service of those people. However, that provision would have jeopardized our ability for reciprocity with other states, so we removed it from the bill. You cannot purchase a firearm at that age. Although we allow our military personnel to carry arms into battle, it is not that way in the State.

CHAIR WIENER:
That was from the original bill?

ASSEMBLYMAN OCEGUERA:
Yes.

CHAIR WIENER:
Since this is in second reprint, what was the first reprint?

ASSEMBLYMAN OCEGUERA:
The first reprint is what I just described. The second reprint was clarifying the actual cost information. There was some concern that the agencies would be able to charge whatever they wanted for this background check. The second reprint says they can only charge the actual cost.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):
I represent the 17 elected sheriffs who are responsible for administering this program. We have approximately 49,000 CCW permit holders in Nevada. We have worked with these issues for several sessions. The four issues the bill deals with—categorical qualification, background checks, confidentiality and State parks—will go a long way in helping us serve our citizens in Nevada.

SENATOR GUSTAVSON:
Will this bill eliminate the requirement that CCW permit holders have a background check every time they buy a weapon?

MR. ADAMS:
In 2004, the ATF looked at Nevada's CCW program and because of the tragedy of September 11, 2001, some changes were made to the process. We did not change the way we were doing business as far as background checks, so the ATF removed that exemption. The ATF required us to include the language in A.B. 282 to get that exemption back. Once this bill passes, the Nevada Sheriffs' and Chiefs' Association will petition the ATF to reinstate our exemption. It has said this language is needed to reinstate that exemption. When the exemption is reinstated, you will not have to pay for the Brady check when you purchase a weapon if you are a CCW permit holder.

ASSEMBLYMAN OCEGUERA:
The Department of Public Safety has confirmed with ATF that, with the provisions in this bill, there is a high likelihood of reinstating the exemption. That was part of the reason for those requirements.

SENATOR GUSTAVSON:
If passed, what is the effective date of this bill? Can it be effective upon passage?

ASSEMBLYMAN OCEGUERA:
I do not see a problem with that.

SENATOR GUSTAVSON:
Is there a reason to prolong this?

MR. ADAMS:
Once the bill passes, we must apply to the ATF for the exemption. That will not happen overnight. We will make the request as quickly as we can, but I do not know how long it will take for ATF to reinstate the exemption. It has approved the language.

SENATOR GUSTAVSON:
I hope it could be July 1 or some time sooner than October 1.

CHUCK CALLAWAY (Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):
We support the bill.

TIM KUZANEK (Captain, Special Operations Division, Washoe County Sheriff's Office):
We support this bill.

KRISTIN ERICKSON (Nevada District Attorneys Association):
We support this bill.

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

BOB IRWIN (The Gun Store):
I support this bill. All its provisions will be an advantage to my customers. Assemblyman Oceguera said the ATF requires the $25 background check. The

ATF requires the background check. The $25 fee is paid to the State for the background checks.

JOHN CAHILL:
I support the bill. It is important to note the waiver was in place from 1985 until 2004 when an audit was done. Technical errors were found on the part of the some sheriffs who issued permits but failed to conduct a U.S. Immigration and Customs Enforcement check at the time the permit application was submitted. That kind of technical error resulted in the waiver of the background check going away. When that waiver was in place, there were no problems with someone not properly authorized—a CCW holder with a valid permit—buying a firearm and using the waiver.

Regarding confidentiality, many CCW holders would not care if the public knew they had a CCW permit. However, it identifies them as a gun owner, which could make them a target. That is like handing someone a list of 49,000 places in Nevada where he or she is likely to find a firearm. Many people own multiple firearms. We do not need a public list telling others the addresses where they are likely to find firearms.

If a victim of domestic violence is a CCW permit holder, a list available to the public should not identify who is armed and who is not. In some domestic violence cases, the perpetrator repeatedly targets the victim. The victim's preparation to defend herself or himself should not be advertised in advance so the perpetrator can be prepared to confront or revictimize that person. This is another good reason not to have the list available to the public.

United States Senator Harry Reid was instrumental in passing legislation allowing CCW firearms in national parks, which was signed by President Barack Obama. No incidents have been reported. That has been successfully implemented, and we can do the same thing for our State parks.

CHAIR WIENER:
Would that address national recreation areas? Is it all encompassing?

MR. CAHILL:
Those areas fall under federal law. The only exceptions would be what the federal government applies. Firearms are allowed, and hunting is allowed in some national recreation areas, around Lake Mead for example. Areas are

designated open to hunting in the Overton area. There is no absolute prohibition of firearms in national recreation areas. There are certain applications in that case. They had been banned in parks which, as I mentioned, was an administrative ruling overturned by the action of Congress and the President.

MR. ADAMS:
It is my understanding that State law would apply to carrying concealed weapons. That includes parks, recreation areas, national forests and U.S. Department of the Interior, Bureau of Land Management land. If you are allowed to carry within the State under state law, that would apply on federal land.

CHAIR WIENER:
We received letters supporting this bill from the Stillwater Firearms Association (Exhibit F) and the National Rifle Association of America (Exhibit G).

SENATOR GUSTAVSON:
Is the Committee interested in changing the effective date of this bill?

CHAIR WIENER:
Would that be adequate since there are different parts of the bill?

BRADLEY A. WILKINSON (Counsel):
I do not see any provision that would require a delay to the effective date.

ASSEMBLYMAN OCEGUERA:
An effective date of July 1 would make sense. We have talked to the ATF. They are aware of this. They had talked about a May implementation date based on the language.

> SENATOR GUSTAVSON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 282 WITH AN EFFECTIVE DATE OF JULY 1.
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> SENATOR COPENING SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:
I will open the hearing on A.B. 13.

ASSEMBLY BILL 13 (1st Reprint): Revises provisions relating to certain offenses committed by juveniles. (BDR 5-470)

ROB BUONAMICI (Chief Game Warden, Division of Law Enforcement, Department of Wildlife):
Assembly Bill 13 is a commonsense bill. For example, if a juvenile is hunting in the duck marsh with his or her parents and commits a minor wildlife violation, such as an unplugged shotgun, the game warden or any peace officer must arrest that juvenile and take him or her into custody. That is contrary to common sense. Arrest is not appropriate for that type of violation. We are asking for the flexibility to arrest or not arrest a juvenile for these types of violations (Exhibit H).

Section 2 provides some guidance to the juvenile courts regarding penalties and assessments for juveniles involved in big game poaching in Nevada, Exhibit H. Big game poaching for an adult is a Category E felony. This proposal delineates potential sentencing guidelines for juveniles.

Section 3 would clean up language for the revocation of licenses for juveniles involved in a violation of NRS 502.118, Exhibit H.

SENATOR BREEDEN:
Are you bringing this bill forward because you have had several incidents?

MR. BUONAMICI:
We have incidents concerning minors. It is contrary to State law not to arrest them. These juveniles are out there in the duck marsh or dove hunting with their parents. It is not appropriate to arrest at those times.

SENATOR BREEDEN:
Is it serious enough that it needs to be changed?

MR. BUONAMICI:
Yes.

RON CUZZE (Nevada State Law Enforcement Officers' Association):
I am on the board of directors for the Nevada Association of Public Safety Officers. We support the bill as originally written. We offered an amendment (Exhibit I) because the State is putting our youth parole officers at risk. It is no secret our youth are getting more violent. Our youth parole officers are sworn police officers. They are required to wear body armor while on duty, which is an admission of liability. They are required to carry handcuffs, radio, badge and everything else but not a duty weapon. These officers go into the same places under the same situations as the adult parole and probation officers. As with adult parole and probation, it is normally not the offenders posing the greatest risk. The offender might not be violent but likes to steal cars, for example. However, when the youth parole officer goes into the home, the offender's violent older brother may be there, or gangbangers next door, or there may be a methamphetamine laboratory next door. We are sending these officers into harm's way without any way to protect themselves.

We have talked about liability. I have been told that risk management does not think youth parole officers should be armed because of the liability involved if a youth parole officer shoots a juvenile. What if the juvenile shoots the youth parole officer? That is also a liability. This bill is long overdue.

SENATOR GUSTAVSON:
The amendment says youth parole officers shall be armed, Exhibit I, page 3. Can they be armed at present?

MR. CUZZE:
There is no statute saying they cannot be armed. Off duty, they can carry anything they want. They are not allowed to carry a weapon on duty, which does not make sense. These officers can make an arrest any time anywhere in the State on duty or off duty. They go through the same Peace Officer Standards and Training (POST) as all other State law enforcement officers. In the academy, they get initial weapons training.

SENATOR MCGINNESS:
Please give us a history of when they were permitted to be armed and then were not.

MR. CUZZE:
The Division of Parole and Probation on the adult side and youth parole were standalone agencies in the late 1980s. For unknown reasons, these agencies were placed into a department. The Division of Parole and Probation was placed into the Department of Public Safety. Youth parole should have gone into the Department of Public Safety at the same time. Instead, it was placed into the Department of Health and Human Services, Division of Child and Family Services. That Department and Division is geared for social work. This is a law enforcement agency. The Division of Child and Family Services unarmed these officers, but they perform the same duties. This is dangerous.

TOM ELY (Nevada State Law Enforcement Officers' Association):
I am a lieutenant with adult Division of Parole and Probation. We support the bill as amended. Our intent is to see that youth parole officers are armed so they can protect themselves. The Division of Parole and Probation was located in the Belrose Complex in Las Vegas with youth parole for several years—2007 through 2010. Several times, youth parole called us to assist rather than the Las Vegas Metropolitan Police Department. They called on our Intensive Supervision and Gang Units to assist with threats posed specifically regarding gang members threatening to kill other gang members. These are the youths we are talking about. On several occasions, we had officers check vehicles coming into the parking lot with potential youth gang members.

DAVID WALLACE:
I have been a peace officer since 1989. I support this bill, which is about the preservation of life. It is our responsibility; we are sworn to protect and serve. That preservation of life includes our own lives. The youth parole officers I have come into contact with are just as dedicated, important, trained and experienced as any peace officer in Nevada. They have families like other peace officers do. I have seen Nevada, specifically Clark County, grow, and crime has increased.

I am concerned with the right thing to do. We need to send a clear message to our peace officers, including our youth parole officers, that their lives are important. Their sworn commitment to save the lives of others is expected. We should care enough to properly equip them with all the tools necessary to make a professional and discretionary decision regarding how to best complete their job duties and preserve life.

The youth parole officers in Nevada are trained in defensive tactics and firearms. Youth parole officers must be able to protect themselves properly as sworn peace officers. Why should we have to wait for the death of a peace officer? The Clark County School Police Department works with young people every day from elementary school through high school. There have been no incidents involving a youth being shot or killed because of the officers' training. Situations will arise where officers are expected to make discretionary calls, and based on their training and experience, that call should appropriate. If youth parole officers are armed, based on their training and experience, this bill will help them complete their job expectations.

These youths are the ones involved in gang activity in Clark County. Shootings have taken place, and murders have been committed. We expect youth parole officers to make visits to the homes of these gang members. The home visits are mandatory. One or two home visits a year are completed with youth probation. Youth parole officers are required to complete two to four home visits each month, depending on the level of supervision. They are confronted with the same situations the Las Vegas Metropolitan Police Department, Clark County School Police and other armed officers are on a daily basis. It is careless to put these officers into that environment and not arm them.

MR. CAHILL:
I am a retired juvenile parole and probation officer. I served 30 years with the Clark County Juvenile Court. When I went to work at Spring Mountain Youth Camp in 1966, two brothers were there for truancy and stealing from the neighbors' vegetable gardens. Through the years until I retired, I saw the rise in the level of gang violence in our community. Those were significant changes. This bill as written does not apply to county officers. That authority and discretion is left up to the chief parole officer in each county. This bill relates to youth parole.

I speak to an unavoidable philosophical argument about how we approach our children and our families. The community pays salaries for juvenile parole and probation officers because they want a safer community. They do not want their children going to school and getting shot at. They do not want them going to school where other children are selling drugs, stealing their cars or assaulting them. They do not want children breaking into their homes while they are at work.

These officers should be first and foremost in their role apart from law enforcement. They are POST-certified and are Nevada peace officers. There is some confusion over when the role begins and ends. The community is generous in supporting how families are dealt with once a juvenile is adjudicated. The community supports treatment and counseling because those things work.

Youth parole officers should be identified correctly as part of law enforcement. We cannot cut law enforcement. We need safe communities. There was an attitude that juvenile parole and probation is more of a social work function. Part of that confusion is based on the fact that, although they are peace officers and deal with some of the most violent and unpredictable offenders in our community, we could cut youth parole officers back and would not affect community safety. That is not true and has never been true.

Gang groups wanting to make a point can make that point because they know the youth parole officers are unarmed. They know when youth parole officers come to their doors, they are unarmed. They know when youth parole officers come to a school or workplace to verify what is going on, request a drug test or perform some other duty, they are unarmed.

It more properly aligns the role and responsibility of our juvenile parole and probation officers if they are clearly identified as law enforcement. Those persons should not be disarmed while performing their duties throughout the day. This makes them easy targets for some gang members who want to send a message that their gang is tougher than anybody else. I support this bill.

MR. DREHER:
We support the first reprint of A.B. 13. I heard Mr. Cuzze speak about the amendment, Exhibit I, which we support. We have spent considerable time trying to get our peace officers armed so they can protect themselves in deadly force situations. We are aware of many incidents around the United States involving schools, juveniles, gangs and confrontations made toward other peace officers. They need the protection.

The effective date is not in the amendment. According to this bill, this act becomes effective March 1, 2012, Exhibit I, page 3. Even if you were to pass this in its current form, our officers would remain unarmed for another year. That is not appropriate. I ask the Committee to consider that. If you include the

amendment, Exhibit I, I ask it be effective upon passage. That is our only concern. Any effort to arm our unarmed peace officers is important.

SENATOR COPENING:
You brought up an interesting point. I am not certain why the effective date is March 1, 2012.

MR. BUONAMICI:
The effective date of March 1, 2012, is the license-year start date for hunting, fishing and trapping licenses in Nevada. That is the only reason for the March 1 date. Any revocations start with that new license year. Potentially, there are individuals with licenses who perhaps should not have a license under this new provision.

SENATOR COPENING:
With a change in that particular situation, would it cause a hardship to enforce these laws if it did not fall on that date?

MR. BUONAMICI:
No. We would be able to work around that.

MR. DREHER:
Regarding section 1 of the bill making it discretionary, that is important. Peace officers must have that discretionary power. In lieu of taking a juvenile into custody, they should have the discretion to write a citation, for example. They would have the power to take a juvenile into custody if appropriate. Section 1 of the bill does that, and we support that.

I do not know why there is a fiscal impact. I have not looked at the fiscal note on the bill, but if you give the officer discretion, there should not be a fiscal impact.

SENATOR COPENING:
There is no fiscal impact. There was an effect on the State, and the various agencies put zero in their fiscal notes.

MR. IRWIN:
I want to address the amendment. I taught at 28 police academies for the law enforcement community in southern Nevada, which encompassed several

hundred juvenile officers. I was surprised youth parole officers are unarmed even though they go through the firearms training because of POST requirements. I wondered how they could do their jobs without the ability to carry firearms.

I spent some time riding with juvenile parole officers. They are required to make unannounced home visits. The officer I was riding with that morning called each juvenile to say when he would be there. He did this because the officers were not allowed to carry guns, and it was safer if they did not arrive unannounced and discover something going on. These youth parole officers go through the same training as other officers, and they need to be armed for self-protection.

MR. CUZZE:
When we asked for this amendment, Exhibit I, we knew weapons would be involved. I contacted Bernard W. Curtis, Chief, Division of Parole and Probation. If the Committee passes this bill, adult Parole and Probation will transfer 30 .40 caliber semiautomatic weapons to youth parole. Additionally, I spoke with Chris Perry, Acting Director, Department of Public Safety, and they will provide recertification at no cost for these officers because they are out of certification.

The other thing is ammunition. I spoke to several youth parole officers who said they have no problem buying their own ammunition. Many of them probably have their own weapons, and they will carry their weapons on duty that they carry off duty. This amendment does not have a fiscal note.

SENATOR COPENING:
I will close the hearing on A.B. 13 and open the hearing on A.B. 388.

ASSEMBLY BILL 388 (1st Reprint): Revises provisions relating to real property. (BDR 10-568)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
The origins of A.B. 388 are multiple. It started out when constituents came to me trying to save their house from foreclosure. They showed me a letter from the bank saying they had received the loan modification application, and it was being processed. The bank said everything looked good, and the homeowner would hear back from the bank within the next six to eight weeks. A week later, they received another letter notifying them that their house had been sold.

This is a process called dual tracking. It is where one arm of the bank, the foreclosure arm or the servicer, goes full steam ahead on the foreclosure while loan modification is being considered for the homeowner.

The next step in the origin of this bill was a conversation I had with a former member of this Legislature. Vonne Chowning served 14 years in the Assembly. She is a former Chair of the Assembly Transportation Committee. She is a real estate agent. She and her husband have seen many people lose their homes due to this dual tracking process. They have seen short sales fall apart because the servicer has gone ahead and foreclosed while the short sale was still pending and about to happen.

Former Assemblywoman Chowning asked me to consider introducing legislation based on a bill that has been introduced in California. It was introduced a few times in the California legislature. That is where A.B. 388 comes from.

Before the servicer can record the notice of default and institute foreclosure proceedings, the bill would require a reasonably good faith effort be made to allow the homeowner a chance at loan modification. If passed, A.B. 388 would try to make sure anyone who qualifies for loan modification gets that opportunity.

We have a mediation program, which is after the notice of default has been recorded and after foreclosure has started. What would be the advantage of this program before foreclosure starts? There are many advantages. One of them is that the homeowner or borrower will not be as far behind, and the amount of debt they need to catch up on will be lower.

VONNE CHOWNING:
I support A.B. 388. This bill accomplishes many things. Before the notice of default is filed, the lender would have to provide a loan modification process to the buyer. This bill gives timely deadlines, which shortens the process. This should be good for the banks, and it should be good for the borrowers.

Before borrowers get to mediation, they are usually seven to ten payments behind on their mortgage. This would shorten that process. They would only be two to three payments behind. Mandating the lender to offer the borrower loan modification is a great help to the borrower. If the borrowers are declined, they must be given notice. Borrowers deserve a good faith process instead of

foreclosure notices. They deserve a yes or no answer in writing. Currently, almost everything is verbal. This would reduce everything to writing, which helps everyone. It helps the bank to have proof that the loan modification process was given a yes or no answer.

This bill requires proof of ownership of the underlying note. There have been many problems with robosigning. Borrowers deserve to know that the person foreclosing on them can show proof of the underlying note.

This bill requires an accounting of all the payments made, including late fees, taxes and insurance. I am sure some of your constituents have stated they have received foreclosure notices when they have made their payments, but the lender had not been required to show proof the payments had been made.

If lenders do not act in good faith, the borrowers can do nothing but leave their homes. They may get a cash for keys situation where they get $2,000 to $3,000 with the promise they will not destroy the home. This bill gives the borrower civil action remedies and holds the borrower accountable. The borrower cannot play games with the lender. The borrower must go through the loan modification process with the lender. If the lender forecloses on the home, or sells the home without having complied in good faith, then the borrower has a remedy—$10,000, $20,000, minimum of $1,500.

This bill stops the dual tracking practice. For example, I know a person who was selling his home in good faith with his lender. He had tried for loan modification. He did not go through the mediation program because he did not know about it. His lender gave him permission to short-sell his home. This person had a contract between a buyer and seller. The lender had given them permission to go forward. They were simply waiting for approval of the short sale by the lender. Without any communication with him, the lender pulled the rug out from under him and sold his home.

I will give you a second example. A woman found the home of her dreams. She was waiting for the lender's approval, but the lender sold the home. She lost the home. Another woman was in escrow with the lender's approval stating the twentieth of the month was the deadline for the close of escrow to occur. Another branch of the lender filed the notice of trustee sale of the home that had to occur on the twelfth of the month. These are actual occurrences. We must do something to protect homeowners and help the banks in this difficult

process. We must stop wrongful foreclosures. We must stop the dual tracking. We need to help all parties involved.

ASSEMBLYMAN OHRENSCHALL:
Section 18, subsection 4, paragraph (c) of A.B. 388 provides a one-year time period within which the homeowner can try to bring a cause of action to reclaim his or her home if the foreclosure was not done properly. The title insurance industry has some concerns. We discussed changing it to 120 days, which would comport with NRS 107. I spoke to Ms. Chowning, and she thought that was reasonable.

JENNIFER DIMARZIO (Nevada Credit Union League):
We are asking to amend the definitions to clarify that this will not apply to certain cooperative nonprofit corporations with member owners (Exhibit J). Our amendment addresses the definitions of "authorized agent," "beneficiary," "mortgage servicer" and "trustee." These terms will all be modified to say they do not "include a cooperative, nonprofit corporation, organized for the purposes of promoting thrift among its members and creating a source of credit for such members at a fair and reasonable rate of interest," Exhibit J.

The reason for this amendment is to bring this bill in line with a similar bill in California upon which Ms. Chowning based this bill. Generally, these nonprofit organizations hold their own mortgage notes. They do not sell them to the secondary market. They do not double-track the notes, and they do not hold the notes. They will be held by Fannie Mae or Freddie Mac. Because of the close relationship between these nonprofit cooperative organizations and their membership who are the borrowers, approximately 67 percent of delinquent loans are already successfully modified.

JONATHAN FRIEDRICH:
I support the bill. There is one item I would like to suggest as a minor amendment. In section 14, subsection 2 of the bill, I suggest adding the requirement to make at least three attempts to contact the borrower. An article appeared on the Internet that in Dallas, Texas, a home was sold out from under a soldier who was overseas. His wife was home but was suffering from depression. She had received notices by mail but had not opened them. The home, which was paid for, was sold by the homeowners' association for nonpayment of association fees. Had someone knocked on the door or called, it would have brought this issue to light and the home would not have been sold.

As good as this bill is, a personal touch—be it a phone call or a knock on the door—could alleviate unforeseen problems such as occurred in this instance.

SENATOR ROBERSON:
Do I understand correctly this bill is based on California legislation?

ASSEMBLYMAN OHRENSCHALL:
Yes.

SENATOR ROBERSON:
What is the status of that legislation?

ASSEMBLYMAN OHRENSCHALL:
The legislation did not pass. It died in committee this week. It was introduced in one prior session.

SENATOR MCGINNESS:
How does this fit with the program going on with the Nevada Supreme Court? Does it complement it or add to it?

ASSEMBLYMAN OHRENSCHALL:
Ms. Chowning and I believe it would complement it because this is before foreclosure starts. The mediation program is after the notice of default has been recorded. It is after foreclosure has started. By necessity, you will have dual tracking because on one hand you have the servicer who wants to foreclose on the property, but then you have an attempt at loan modification. This bill would provide an opportunity to see if the homeowners qualify for loan modification before they get to foreclosure, before the notices of default are recorded. If passed, this bill would lead to fewer foreclosures, and more people would have a chance at loan modification to save their homes.

SENATOR ROBERSON:
I appreciate the spirit with which you are bringing this bill. We are hearing many pieces of legislation regarding lenders, foreclosures, mediation and how to fix this problem. At the same time, we are trying to do what we can from a policy perspective to turn the real estate market around. I do not want to see a further delay in the movement of real estate in this market because of this legislation.

I have heard it takes 18 to 24 months to foreclose on a home in southern Nevada. I am cognizant of the trouble people in Nevada are having because of our unemployment rate. Having said that, we all enter into a contract for our homes. It does not seem reasonable that a person should be able to stay in his or her home for two years without making a payment.

Lenders should be working with borrowers. The mediation program kicks into effect for a borrower after the foreclosure process has started. I understand this is a preforeclosure process. We have the mediation program. We have safeguards in place to protect homeowners from being foreclosed unlawfully or inappropriately. I do not know whether this is the right policy at the right time. I do not know if this helps us get out of the mess we are in.

ASSEMBLYMAN OHRENSCHALL:
We have all seen foreclosures in Las Vegas. It hurts the economy when a person is able to get a loan modification but did not because of dual tracking or falling through the cracks. If A.B. 388 were passed and the borrower could be evaluated before going into foreclosure, it could speed up the recovery of the real estate market because we would know whether the person has a chance to save his home. This bill could speed things up because people would be evaluated. A good faith effort would have to be made to find out if the person qualifies. People who want an evaluation would get one before foreclosure starts.

SENATOR COPENING:
I support the spirit of the bill as I had something not quite as extensive heard in this Committee. Members of the court have some concern with this bill. You are as open as I am to see if we can rectify those concerns. There is a problem with good faith communication between lenders and borrowers. It has put people who own homes in a precarious situation because there has been no communication.

JAN GILBERT (Progressive Leadership Alliance of Nevada):
We support A.B. 388. We supported the mediation bill last Session because communities of color were hard hit by the foreclosure crisis. We researched for our Racial Equity Report Card and discovered more than 50 percent of all Native American, African American and Latino borrowers ended up in high interest loans, and this foreclosure crisis affected them a great deal. This could be incorporated with the mediation process. It is not one or the other. It could

be implemented first to help people stay in their homes and avoid the long term of not paying their bills. The borrowers want to remain in their homes if we give them a helping hand. I urge your support for A.B. 388.

BEN GRAHAM (Administrative Office of the Courts):
I would like to put this in perspective. The judiciary interprets the laws. The Legislators speak for the people. As such, the court is not in favor or opposed to this bill. The amendment discussed by Assemblyman Ohrenschall is a courtesy amendment put together by the Foreclosure Mediation Program and not the court (Exhibit K).

If this legislation had been proposed two years ago, it is likely there would not be a Mediation Program today because the proposals set forth in A.B. 388 would take the place of a Mediation Program. At this stage, the Foreclosure Mediation Program is less than 18 months old. It started from scratch and took a lot of work. The Nevada Supreme Court established an Advisory Committee on the Foreclosure Mediation Program. This Advisory Committee put together a group of people from all segments in this property area and will work on many of the issues concerning our constituents and the Legislature.

I am asking you to consider pausing this legislation until 2013. The Mediation Program will have developed further. Many of the problems we have heard happened six or eight months ago. More than 40 cases are pending before the Nevada Supreme Court dealing with bad faith. We worked with Assemblyman Ohrenschall and others in the other House on Assembly bills. There was a frenzy the last couple of days dealing with these issues. The proposed amendment deals with adequate notice to the borrower. That amendment was offered as a courtesy to replace the language in A.B. 388 in its entirety if the Committee wishes.

Time needs to be utilized in working out these issues. The Advisory Committee and the cases pending will answer many of these issues. If we do something like A.B. 388, the Mediation Program we have established would come to a halt.

SENATOR COPENING:
What would it do? What is the problem with prior notification? How does that affect and impact the Foreclosure Mediation Program?

MR. GRAHAM:
If A.B. 388 had been here two years ago, we would not have needed the Foreclosure Mediation Program. If people do not qualify for loan modification, they would know. If they know, there would be no need for mediation. Assembly Bill 388 would require the lender and potentially the borrower to do all the steps required in the Mediation Program. If they were unable to resolve the loan modification, the Mediation Program would be of no benefit.

SENATOR COPENING:
I understand the problems this poses. I am looking for a solution to situations where the communication is lacking and maybe ways where we can ensure that borrowers understand what is available to them. When my bill came forward, the notification that goes out from the lender is not an inviting type of notification. Many borrowers do not know this program exists. We must do a better job with communication or homeowners will lose their homes without the opportunity to try to save their homes. Once you have been turned down, if the bank goes through these steps, then the bank would have cause to say, what is the point in going through the Mediation Program? The question remains whether there was a good faith effort. That is where you get into legalities.

MR. GRAHAM:
On page 3 of the proposed amendment from the Foreclosure Mediation Program, Exhibit K, a suggested notice that states the borrower is in danger of losing his or her home says, "You have a right to participate in the State of Nevada Foreclosure Mediation Program." This notice from the program would be helpful. It could buy some time for people to at least know they could get in a program or attempt to do so. Over the interim with the Advisory Committee and the 40 cases coming out of the Supreme Court, many of these issues would be resolved.

SENATOR COPENING:
Does this notice go out with the notice of default, so it is the responsibility of the lender to include this notification? It says the notice is provided by the mediation administrator, but that mediation administrator would not know of a person in default.

MR. GRAHAM:
It would go out with the notice.

THE HONORABLE MICHAEL L. DOUGLAS (Chief Justice, Nevada Supreme Court):
Mr. Graham has echoed the sentiments of the Foreclosure Mediation Program over which the court has supervision responsibility based upon the creation of the program by the Legislature. You asked a question regarding the notice. In reviewing the statutes with the Foreclosure Mediation Program, notices of default are not to be issued unless parties go through foreclosure mediation, but there is not specific notice requirement in the statutes.

Members of the lending industry have been cooperative in putting a notice in their packages, and they have accepted the notice provisions that foreclosure mediation has put in one of the standard forms. It was proposed that a notice be sent out giving broad-based notice to individuals of the circumstances and alternatives and making this a requirement. To mandate that a notice must go out and allow the Foreclosure Mediation Program the right to dictate what would be in that notice would be a major improvement so all individuals in this predicament would be aware of the availability of the program or programs. That is one of the holes we see in this program. This is a policy decision, and from the court's standpoint, not a legal decision.

BILL UFFELMAN (President and CEO, Nevada Bankers Association):
The process Assemblyman Ohrenschall has put forth is similar to the alternative we offered to the mediation bill two years ago. We went down the mediation track. The bill does duplicate the effort before you go through another effort. There are cost elements to this and time involved for a variety of people before we turn to the other required program, mediation.

A settlement was signed in April by all the major national banks and servicers with the attorneys general regarding dual tracking, and an order came from the Office of the Comptroller of the Currency, which regulates national banks. Dual tracking as a methodology has been put to rest. That will not happen any more. We are looking back over the last two to four years at the experiences we had with the bad mortgages people got in 2005 and 2006. Those mortgages are gone. We are now experiencing foreclosures caused by the economy. People do not have jobs, so the reasons for foreclosure are different.

We can deal with the suggestion of a notice reminding people all these programs are available. In the first 30 days after people miss their first payment, they receive a letter. The form and content of that letter is dictated by federal law because it is an attempt to collect a debt. We could have an additional form

advising people of the Mediation Program and that they need to take certain steps. That could be in a friendlier format than the federally mandated form of a debt collection letter. If it improves the process, fine.

Before the Mediation Program, the efforts of the Nevada Bankers Association and all its members involved Consumer Credit Counseling Services (CCCS) and others who help people deal with these issues. We have spent a lot of time and energy doing this. When people say they did not know about the Program, you wonder what rock they have been hiding under.

Wells Fargo is putting on a program in May, and other banks have done similar things to help homeowners. Wells Fargo sent out a press release this morning reminding people of the program on May 25 and 26 at the Tropicana (Exhibit L). If you want to make this available to your constituents, I encourage you to do so. This is an example of what the industry has done to try to get people to the table. Experience has told us that if people will confront the issue and sit down with their lenders, they are more successful. They look at their budget and try to work through the issues. This is where CCCS has been helpful. Those who have gone through CCCS as part of this have been more successful in staying with the program.

On a national basis through March 31, Wells Fargo reported it has modified or have people in trial modifications in 664,195 loans. The irony of all of this is the Home Affordable Modification Program (HAMP) that kicked all this off has only done 95,647. The other 568,548 are Wells Fargo-specific programs. People with some means to support a mortgage have begun to get in touch with their lenders. For Wells Fargo, fewer than 2 percent of the loans supported by owner-occupied homes have been foreclosed in the last 12 months. Modification of some kind, HAMP or proprietary, is working.

The additional notice in Exhibit K reminds people that, notwithstanding all the advertisements we have done, there is a modification program; however, the first step is talking to your lender. In that vein, I urge you to take the court up on its proposed change.

GEORGE A. ROSS (Bank of America):
I want to make something clear. My testimony in no way impugns the sponsor's motivations or my respect for the sponsor. Sometimes bills have other implications and other indirect impacts which may be detrimental.

The ongoing mortgage modification program is beginning to work. This bill will add a lot of time to the process before a foreclosure occurs and the market clears. It is duplicative and contradictory. The bill upon which it was based in California was not just any bill. It was sponsored by the speaker pro tempore, so it was a powerful person in California, as it is here. It lost twice in policy committees, two years in a row with broad bipartisan opposition. When the Nevada Assembly Speaker brought the mortgage modification bill two years ago, we worked closely with her to develop that bill, and we supported it because it was an effort to bring people out of the closet and make them realize a Foreclosure Mediation Program was available. The problem we have is that 90 percent of the people who receive notification they are potentially defaulting do not come forward and take advantage of the Program. We assume those 90 percent are either going to strategically default or know they cannot qualify. They are going to live in the home for free as long as they can until they are foreclosed upon. That is an unfortunate situation, and Bank of America is burdened with the loans made by Countrywide.

This bill is dealing with yesterday's problems. We need to look forward to getting out of this mess as equitably, fairly and quickly as we can. In addition to the end of the dual tracking, the federal regulations require much improved communications by the loan servicers with the borrowers, including a single point of contact. People have been frustrated by never getting the same person twice. The new regulations also provide for remediation for borrowers who suffered injury as a result of wrongful foreclosures. There is an ongoing 50-state attorneys general effort to negotiate a settlement with the banks. The summary of the draft settlement is 27 pages. Everything you could imagine regarding mortgage foreclosure and mediation was included in that draft. It is important to know this problem is being attacked and is being worked.

A great deal of effort is going on to contact people and work out these problems. Similarly, the Bank of America data shows hundreds of thousands of modifications have worked. On the other hand, half of those that are modified still default because the problem is not just the loans people got into; now it is the loss of income.

This bill promotes strategic defaults. Twenty-three percent of foreclosures are now strategic defaults, which is when someone consciously walks away. Statistically, people who strategically default have good credit ratings. They know what they are doing, but they are walking away from a contract they

signed. This does not differentiate between people who default because they really are at risk and people who just decide not to pay on a house worth half what they owe. There is no requirement for a borrower to show good faith. Typically, people who are foreclosed on today have lived free in their home for 18 to 24 months. This would add several more months to that process.

It would further delay clearing out the market. As I have said, my client feels the most important thing the Legislature can do for its constituents is to do those things which would facilitate clearing the market as fast as possible in a fair way to get values increasing again. When values increase, all those homeowners who are underwater will be less underwater. If you decide to go forward with this bill, the piece about leaving the title clouded for a year means you will not be able to sell that house for a year. There are people who have an opportunity in this situation. Many people can now buy a home. All these houses will be unavailable to them until the titles are cleared up.

In summary, we urge you to vote against this bill or to adopt the amendment suggested by the Supreme Court, Exhibit K, which would increase the notification. We would find this helpful.

RON PETERSON (Nevada Land Title Association):
After reading the bill, there are many problems from the title insurers' point of view. Commonly, title insurance companies act as trustees. If the borrower is given a year to challenge the foreclosure, that would add a year to the time when title would be insured or be able to be insured to the property. I understand that Assemblyman Ohrenschall is open to changing the bill to what NRS says, 120 days. Even if it was changed to 120 days, we would still have a problem because we could not insure title for 120 days.

You have heard testimony that a foreclosure takes from 18 to 24 months. This would add another 120 days because if a title insurance company will not insure clear title to the home, whether the bank owns it or not, it will not be sold without title insurance.

We have talked about a lot of notices. The borrower is noticed by certified mail that foreclosure is started. There is a posting on the home. Notice is posted in three public places in the county where the home is located. It is run on the legal page in the newspaper three times—three weeks. That is a lot of notice that your home is in foreclosure, and you have a problem you need to address.

There was testimony about dual tracking. As title companies, we get involved in the dual tracking indirectly because a foreclosure has started. Many times, the borrowers want to try to short-sell their homes. That is where a title insurance company gets involved because an escrow is opened and there is a purchase contract by a potential short-sale buyer. We run a title report and find there is a foreclosure on the property because a notice of default has been recorded. We know there is a short sale being processed, and we know there is a foreclosure. We have found that almost 99.9 percent of the time, the lenders are willing to cooperate in the short sale even though they have the foreclosure started. Put yourself in their point of view. If they are already out 18 to 24 months in a foreclosure, they do not want to add time with a short sale if the short sale is not going to go through. From their point of view, they want both these things to happen at the same time. If the short sale does not fall through, they do not want to then have to start the foreclosure because another three or four months are added.

Dual tracking needs to be happening at the same time. That is not an adverse thing. That is a business thing. Otherwise, a borrower could be coming through with a potential short sale, just stalling, and taking that 18 to 24 months out further and further. Both of those things have to happen.

MICHAEL BROOKS (United Trustees Association):
We share many of the same concerns as in previous testimony. It is simple math in this situation. If we look at the notice requirements before the commencement of the foreclosure, we see it is going to take an additional two to three months before the start of the foreclosure because of this bill. In addition, even as modified, we will have an additional four months of unmarketable title after the foreclosure sale is completed. We are adding 6 months to the 18 to 24 months it takes for foreclosure. A lot of that additional time in Nevada has been added because of the Foreclosure Mediation Program. The time frames were shorter before the enactment of the Program. This bill would extend that time another six months, possibly longer. The shadow inventory is problematic in terms of recovery. Even if it is for only four months, it would likely result in the further depression of home prices in Nevada.

The bill is overinclusive because it applies to every foreclosure. We know from the Foreclosure Mediation Program statistics that somewhere between 10 percent and 15 percent of all notices of default are resulting in an election to

mediation. This tells us that close to 90 percent of homeowners are willing to let the foreclosure process proceed. This bill would create significant additional cost to every foreclosure, including the 90 percent who are not concerned about the foreclosure and make it more difficult and more expensive to complete the process.

Regarding individual homeowners, the audit expenses related to completing this process and those foreclosure costs will be passed on to the borrower, resulting in a higher price for reinstatement of the actual debt obligation. The hope is that the foreclosure process can be as cost-effective as possible so that when homeowners experience changed circumstances—new-found employment, a relative who comes up with cash or something like that—they can reinstate that debt as inexpensively as possible. The industry works hard at trying to keep those costs down, but a bill like A.B. 388 and others like it will increase the cost to the foreclosure process and result in more difficulty for the homeowners who want to reinstate.

With respect to testimony earlier about homeowners foreclosed upon despite the fact they are making payments, I have been doing this type of litigation since 1993 in California and Nevada. I am not aware of any cases where a foreclosure trustee, beneficiary or lender servicer has persisted in attempting to complete a foreclosure sale despite the current status of the payment contract. If a borrower has made all his or her payments and is still being foreclosed on, I would like to offer my legal services as long as I do not have a conflict of interest. That would be a great case. It would be a windfall, and we would be hearing about it a lot. I am not personally aware of any such situations. If it does happen, it is anecdotal and would not represent what happens in 99.9 percent of the cases we see.

I would like to corroborate two points made. First, there are many notices sent to a property once a foreclosure is commenced—the notice of default and the notice of right to elect mediation. The mediation rules have been amended so that now a packet including information on the Foreclosure Mediation Program, questionnaires and other materials are all included. In addition to that, notices are taped on the door because of a 2009 statute requiring that tenants be notified they would be foreclosed upon. That notice is sent to every property, even if it is owner-occupied because it is impossible to confirm owner occupancy.

Regarding short-sale cooperation, I have seen numerous instances where the lender gives the borrower every opportunity to complete a short sale for financial reasons. The money lenders receive out of that short sale exceeds the value they will receive if they complete the foreclosure. The statistics from the Greater Las Vegas Association of Realtors show 22,000 homes and condominiums were on the market. There were only 3,800 sales for that same period of time. There is a 7 to 7.5 month supply of homes on the market. Of those 3,800 homes, over half of the sales were made to cash purchasers who are absentee owners. They were not owner occupiers. I see three-bedroom homes going for $82 per square foot where the replacement cost of that home is $123 per square foot. Many people who could not afford to buy homes could now afford to buy homes and service the debts on the current rates. Unfortunately, many of those people are not able to obtain the financing they need to buy those homes. I have no problem with cash purchasers, but we need to empower the disenfranchised who have an opportunity now to get into the housing market and realize the American dream. We cannot do that if we drive up the cost of lending in this State, especially relative to other jurisdictions.

ASSEMBLYMAN OHRENSCHALL:
I appreciate the comments and concerns. The amendment, Exhibit K, is a good amendment. Assembly Bill 388 has the potential to help homeowners who qualify for loan modification stay in their homes. In Nevada, 85 percent of our homeowners are underwater. Less than 10 percent of homeowners who are being foreclosed on elect mediation. That means many of those might have qualified for loan modification.

I disagree with the argument this will extend the time. I have heard from some that the time is not as long as 18 to 24 months. In terms of those who go through mediation or get a loan modification and then redefault, the problem might be that the loan modification was not workable.

We need more communication between the servicers and the borrowers. I talked to many people who tell me they have purposely stopped making their mortgage payments because the bank or servicer will not talk to them about loan modification unless they stop making their mortgage payments. That is not a good situation. With less than 10 percent of foreclosed homeowners electing mediation, there is a problem that needs to be addressed. Assembly Bill 388 and the proposed amendments are ways we can try to address this issue to see if people qualify for loan modification before they are eight or nine months behind,

maybe when they are only two or three months behind before foreclosure has started.

SENATOR COPENING:
I will close the hearing on A.B. 388 and open the hearing for public comment.

There being nothing further to come before the Committee, we are adjourned at 10:39 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 249	C	Brittany Shipp	AB 249 Makes Common Sense Improvements to the Court Reporting System in Nevada
A.B. 249	D	Joseph Guild	Conceptual amendment to AB 249
A.B. 282	E	Assemblyman John Oceguera	Revisions to Nevada's concealed carry laws
A.B. 282	F	Senator Valerie Wiener	Letter of support from Stillwater Firearms Association
A.B. 282	G	Senator Valerie Wiener	Letter of support from National Rifle Association of America
A.B. 13	H	Rob Buonamici	Proposed amendment
A.B. 13	I	Ron Cuzze	Proposed Amendment 6806
A.B. 388	J	Jennifer DiMarzio	Proposed amendment
A.B. 388	K	Ben Graham	Proposed Change
A.B. 388	L	Bill Uffelman	News Release