

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Seventh Session  
April 19, 2013**

The Committee on Government Affairs was called to order by Vice Chairwoman Neal at 9:03 a.m. on Friday, April 19, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Dina Neal, Vice Chairwoman  
Assemblyman Elliot T. Anderson  
Assemblywoman Irene Bustamante Adams  
Assemblyman Skip Daly  
Assemblyman John Ellison  
Assemblyman James W. Healey  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblyman James Oscarson  
Assemblyman Lynn D. Stewart  
Assemblywoman Heidi Swank  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Teresa Benitez-Thompson, Chairwoman (excused)  
Assemblywoman Peggy Pierce (excused)

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Committee Policy Analyst  
Jim Penrose, Committee Counsel  
Bonnie Hoeffcker, Committee Manager  
Lori McCleary, Committee Secretary  
Jennifer Dalton, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General  
Keith Munro, Assistant Attorney General, Office of the Attorney General  
Robert Roshak, representing Nevada Sheriffs' and Chiefs' Association  
Eric Spratley, representing, Washoe County Sheriff's Office  
A.J. Delap, representing Las Vegas Metropolitan Police Department  
Kristen Erickson, Chief Deputy District Attorney, Washoe County District Attorney

**Vice Chairwoman Neal:**

[Roll was called. Rules and protocol were explained.]

We are going to have two bill hearings today. The first will be Senate Bill 24. I will invite Brett Kandt to the witness table.

**Senate Bill 24: Authorizes the establishment of a program for law enforcement personnel and prosecuting attorneys on the Vienna Convention on Consular Relations. (BDR 18-399)**

**Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:**

I am here this morning on behalf of the Attorney General to present Senate Bill 24 for your consideration. This legislation would authorize the Office of the Attorney General to provide assistance to local law enforcement agencies in complying with consular notification requirements when a foreign national is arrested or detained. We have provided you with information on consular notification requirements pursuant to Article 36 of the Vienna Convention on Consular Relations ([Exhibit C](#)).

Article 36 of the Vienna Convention on Consular Relations addresses the requirements of a local law enforcement agency to notify the consulate of the home country of a foreign national at the time of the arrest, detention, death, or serious injury of that foreign national. If a detainee requests notification,

his or her consulate must be notified. If the detainee is a national of a mandatory reporting country, then the consulate must be notified regardless of whether the detainee requests it or not. Consular officials must be allowed to communicate with and have reasonable access to detainees from their countries.

You have also been provided with a recent case from the Nevada Supreme Court, *Gutierrez v. State*, 112 Nev. 788, 920 P.2d 987 (1996) ([Exhibit C](#)). The case highlights the importance of compliance with these consular notification requirements. The case concerns Carlos Gutierrez, a Mexican national, who was charged with the death of his three-year-old stepdaughter in 1994. Mr. Gutierrez was convicted of first-degree murder and sentenced to death. The murder conviction and death sentence were upheld on appeal. However, Mr. Gutierrez alleged that his consular rights were violated during the appeal process. In reviewing that allegation, the Nevada Supreme Court ruled that Mr. Gutierrez was entitled to an evidentiary hearing to determine whether he suffered actual prejudice from an alleged lack of proper notice to consular officials and, consequently, a lack of consular assistance.

In presenting this legislation, the Office of the Attorney General specifically makes no comment on the merits of the *Gutierrez* case, but we want to highlight the case simply because it illustrates the importance of consular notification to the Nevada Supreme Court. The legislation before you simply enables the Office of the Attorney General to provide assistance, upon request, to any local law enforcement agency requiring assistance to comply with Article 36 of the Vienna Convention on Consular Relations. The U.S. Department of State has standard operating procedures to address this issue and can also provide a list of consulates that are located in or that cover Nevada.

With that, I would be happy to answer any questions.

**Assemblyman Ellison:**

When I looked over this bill, one of the things I did not see is where you match or follow federal law. Is that not what you are going to have to comply with?

**Brett Kandt:**

That is correct. We will have to comply with the Convention itself, which the United States is a party to. Therefore, we will have to comply with it to the extent that it is mandated under federal law. It references the Convention itself.

**Assemblyman Ellison:**

Should that not be in the bill?

**Brett Kandt:**

We simply wanted the statutory authority to assist agencies in complying with requirements of the Convention. The enabling legislation was drafted by the Legislative Counsel Bureau (LCB) and I would defer to them for that question.

**Jim Penrose, Committee Counsel:**

In response to that question, I would say that the requirement to comply with federal law is implicit in not only this bill, but in any bill in which federal law is implicated. I do not know if there is a necessity to have the provisions that the requirements of federal law will be complied with. To the extent they are applicable, they would be binding on the Office of the Attorney General.

**Vice Chairwoman Neal:**

I thought because the Supremacy Clause was being invoked and there was a baseline of the customary international law, that although the United States is not mandated, it is a notice that kicks in if it is requested by the Mexican national. Is that correct?

**Brett Kandt:**

Once again, I made the distinction in my testimony. Some countries are parties to the Convention, but they are not mandatory reporting. In those instances, if the detainee or the foreign national requests it, then the law enforcement agency has to contact their consular officials. However, some of the parties to the Convention are mandatory reporting, meaning the law enforcement agency has to contact the consular officials from that foreign national's country, whether or not the foreign national requested it. I also provided some background information and the relevant portions of the text from the Convention ([Exhibit C](#)). On the last page of the exhibit, I provided a list of those countries that are mandatory notification countries.

**Assemblywoman Bustamante Adams:**

I understand what you are trying to do, but my question is why? Was there a situation that came up in Nevada or is there something going on at a national level that is causing this to come forth?

**Brett Kandt:**

We referenced the Nevada Supreme Court case in which this became an issue. We think because the Nevada Supreme Court considers it important enough to require it and to consider it something that could possibly implicate the validity of a criminal conviction, we think it is worth bringing to your attention. That is the one specific example I gave you. There are certainly other instances that have come up where the mandatory notification requirements of the Convention kick in. I think our two largest counties, Clark County and Washoe County,

generally already have procedures in place to follow the requirements of the Convention. However, some of our smaller counties may not have those procedures or those resources. This enabling legislation would simply give us the authority to assist them, if requested, in following the appropriate procedures that are promulgated by the U.S. Department of State to ensure that they are following the requirements of the Convention when it applies.

**Assemblywoman Bustamante Adams:**

Thank you. I appreciate the clarification. In the minutes from the Senate, Senator Goicoechea asked why you would use the word "may" instead of "will" in section 1, subsection 1. The minutes reference that there was no preference either way. What was the discussion leading to leaving "may" in the bill?

**Brett Kandt:**

Before the Senate Committee on Government Affairs I believe I indicated our office is neutral on whether it should read "may" or "will." That is the way it was drafted by your legal counsel and it is your prerogative to provide whichever you would like. Our office will follow it either way.

**Assemblyman Livermore:**

That was my line of questioning. You are here today to represent a bill where the regulations may never be written. We really do not know whether the Attorney General's intent is as you say. I am pleased that the Senate asked the same question. If this bill were to move forward, I would recommend that the word be amended to be mandatory.

**Brett Kandt:**

My office would have no objection to that.

**Assemblyman Daly:**

I have two questions. What happened to the person who received a new trial from the Supreme Court?

I see this as similar to the Supremacy Clause. We have the Vienna Convention we have to follow, so it is similar to when the Miranda rights came into existence and the police had to read people their rights. If they did not read the Miranda rights, it could result in a mistrial or perhaps evidence or confessions would not be admissible. If they miss this one step, they would potentially have to start over and there may be evidence that cannot be used. You want to have the authority under *Nevada Revised Statutes* (NRS) Chapter 228 in order to establish a program to assist and make sure law enforcement handling the case directly are giving foreign nationals the right to talk to their consulate, the same as the Miranda rights. Is that correct?

**Brett Kandt:**

You used the key word "potentially." The potential is there for a conviction to be overturned because of a failure to adhere to the requirements of this Convention.

With regard to the *Gutierrez* case, the Supreme Court's opinion was just issued in September 2012. They remanded the case for a review in the lower court as to whether Mr. Gutierrez's rights under the Convention were followed or not. I do not know whether that has been determined yet. Once again, to clarify, the Nevada Supreme Court did not overturn his conviction, they remanded it to the lower court for determination as to whether his rights under the Convention were followed or not.

You brought up the real issue. There is the potential that perhaps a conviction could be overturned or not upheld because of a failure to follow the requirements of the Convention.

You also mentioned Miranda. Our law enforcement agencies are well versed in the requirements of Miranda. However, with the Convention, the consular notification requirements could possibly kick in before Miranda would kick in. Miranda kicks in when a person is facing a custodial interrogation. However, even if they are detained, the requirements of the Convention could kick in prior to when Miranda might kick in. It is very important that we assist the law enforcement agencies in complying with the requirements of the Convention.

**Assemblyman Daly:**

I know you are neutral as to "may" or "shall." The word "may" would allow you, if you had the resources to do it. The word "shall" would put it in a different category. Do you have the resources to do it? Is it within your budget? Is it part of the Governor's *Executive Budget*? I know we are not the fiscal committee, but I am just asking the difference between those two words.

**Brett Kandt:**

"May" or "shall," it is our office's intention to provide this assistance to law enforcement agencies using our existing resources.

**Assemblyman Stewart:**

I guess I watch too many movies, but does diplomatic immunity enter into this in any way?

**Keith Munro, Assistant Attorney General, Office of the Attorney General:**

It does not play into this at all. This is a bill where we tried to be good citizens. We saw an issue with respect to consular notification and a requirement that

the United States has put upon our states. There is a question of "may" or "shall." We stepped forward, as the Attorney General's Office, and we thought this is something we should be providing assistance with, to mostly the rural counties, if they need assistance. We did not come here looking for any money to carry out this program, we decided to step forward and do it because these are requirements.

Assemblyman Stewart, if you ever travelled to Canada and were arrested, you would want to have the opportunity to speak to your consulate. We need to make sure we live up to our obligations. We saw the *Gutierrez* case as an instance where people were not afforded what they were required under the treaty. We stepped forward because, as the Office of the Attorney General, we know about these issues and we have some expertise. It is not a requirement that the local jurisdictions utilize us, but we are raising our hand to let them know if they need some help, we have some understanding of these issues and we can help them.

**Assemblyman Livermore:**

In this case, when a conviction takes place and it is appealed to the Supreme Court, what part of the chain of events does the Attorney General play in conjunction with the district attorney?

**Keith Munro:**

By decision of the Legislature, as the Office of the Attorney General, we represent the State. Mr. Gutierrez's case is in state court. Those collateral challenges that occur in state court are usually handled by the District Attorney's Office. When you take the next step up and go to federal court and have collateral challenges in federal court, that is where the Legislature has said to the Office of the Attorney General that we are going to represent the State. With respect to Mr. Gutierrez's case, if that issue were in federal court, we would be in the middle of that. As you know, some of these cases involve extradition. We are proud to have your daughter-in-law, Wendy Livermore, as the extradition officer and those are issues related to extradition.

**Assemblywoman Swank:**

I am a little confused. Why do we need this? It seems this should be implicit.

**Keith Munro:**

You could choose not to pass this bill. However, I am the Assistant Attorney General, and when I am putting my employees in a spot where they are working with local officials and providing advice on that, you start talking about issues of liability and risk as it relates to foreign nationals and

foreign governments. When I start putting my employees in a position of liability, I want to make sure we have some legislative blessing to be in the middle of it.

**Assemblywoman Swank:**

I was not questioning the need for this. It seems it should be without needing to be in statute. If it is something that comes down from the federal level, it should be something that we do not actually need to state in our statutes.

**Keith Munro:**

For the most part, the Office of the Attorney General is created in the *Nevada Constitution*. We get our authority from the Legislature. We are supposed to be involved in issues that the Legislature tells us to be involved in. You have not given us the explicit authority to be involved in issues regarding consular notification. Are we working with folks and providing them information? Yes. As we become more of a transnational world, these issues come to the forefront more and more. As in the *Gutierrez* case, we have foreign nationals being arrested and they have some rights under the consular notification treaty referenced. If I am going to put my employees in a situation where they are involved with foreign nationals and foreign governments, I want to make sure that the Legislature understands we are doing that and gives some approval that we assist our local authorities.

**Assemblywoman Swank:**

I have one question about section 1, subsection 1, on line 3 and the use of the word "program." Why "program" and not "procedure?" Is there a difference? To me, it seems a program is a much larger entity than a procedure.

**Brett Kandt:**

I believe that is the way it was drafted by your legal counsel. Procedures required under the Convention are set forth by the U.S. Department of State. We would like the authority to have a program to assist law enforcement agencies upon request in complying with those State Department procedures. Once again, I believe that is the term that was utilized by your legal counsel in drafting the enabling legislation.

**Assemblywoman Bustamante Adams:**

I know we are policy and not fiscal, but in authorizing the establishment of this, what kind of fiscal impact would it have on the Attorney General's Office?

**Keith Munro:**

It will have a fiscal impact because we are going to have staff doing more. However, these are important issues and we are going to have our staff



step forward and do it. We are not going to put a fiscal note on the bill because we think it is important.

**Assemblyman Daly:**

You talked about being involved in the hierarchy between the agencies. We have our State Attorney General with the authority established in the *Nevada Constitution*, then we have each of the county district attorneys and city attorneys. Those interactions are jurisdictional. As far as the interactions between those entities, the Office of the Attorney General needs to be able to say they have the authority in their procedures to establish this program so when they do interact, there is legislation supporting it. The Attorney General's Office can interact if requested, but there is a procedure. Currently, you can only give an opinion to a county or a city if they request one, and then only in certain circumstances. This program just allows you to interact better. Maybe they could do it without this legislation, but it would be cleaner if they had this provision.

**Keith Munro:**

I could not have said that better myself. We are just trying to make it clear in the statutes what our authority is and what we are doing so the Legislature knows. Assemblyman Daly, you are familiar with issues regarding legal opinions and what our authority is. These are issues where we want to help rural counties, so we are stepping forward to do it.

**Vice Chairwoman Neal:**

Dealing with implementation, page 12 of the document you provided ([Exhibit C](#)), there was a discussion saying that Washoe County and Clark County, the two larger jurisdictions, have already implemented some kind of internal directive or procedures for law enforcement. Is that correct?

**Brett Kandt:**

I do not want to speak for the counties, but my understanding is Washoe County and Clark County, because they encounter these situations more often, in terms of the arrest or detention of foreign nationals, have already put procedures in place. They would have to confirm that, but it is our understanding. The need may be there with our smaller counties.

**Vice Chairwoman Neal:**

In the larger counties specifically, where have you seen the flaw where you plan on implementing or inserting yourself as the Office of the Attorney General into their practices or lack of practice if it involves the consular notice? My understanding is we are not mandated to provide notice. The United States is not listed on page 15 your document ([Exhibit C](#)). We are under the

customary baseline according to page 12 of your document, which states that if the foreign national requests it, then it kicks in. Is that the standard we are operating under?

**Keith Munro:**

We are not experts on consular notification or on the international treaty. However, there are rights. When a person requests, yes, they have a right. Because the United States has stepped forward and signed this treaty, all of our citizens have that right when they are in foreign countries. We are becoming a more transnational world, where we have more foreign nationals coming to the United States and Nevada. These are issues that people need to be educated about. As Mr. Kandt said, in some of the larger counties, they face this more. The rural counties do not face it as much. We want to be out there educating folks and have a program where we can give them information if they have an issue arresting a foreign national.

There is an employee in the Attorney General's Office who knows how to do this. He will handle this for us. We deal with the federal government and the U.S. Department of State. We will know where the consulates are.

**Brett Kandt:**

Just to clarify, you were referring to the list of countries that are mandatory notification countries and jurisdictions in the document we provided. You noticed that the United States was not listed. I cannot tell you whether U.S. citizens in other countries are entitled to a consular official if they request it or if they get it whether they request it or not. I cannot tell you that because that is an issue for when our citizens are overseas. I can tell you, for the countries listed here, if a foreign national from any of those countries is detained in our state, their consular officials have to be notified whether they request it or not.

**Vice Chairwoman Neal:**

What I read is there are two categories. There is a mandated category and then there is a request by the actual foreign national. That is the way I understand it to be. When I was reading the bilateral agreement on page 11, I realized the United States is entered into a lot of nonbinding memoranda of understanding. There are some bilateral consular agreements that require consular officials to be notified upon arrest and detention. My question is in regard to the larger counties, do we know if there is already a bilateral agreement that they are operating on, or an internal directive that kicks in for arrest and detention for notice to the consular official?

**Brett Kandt:**

I cannot speak for the two larger counties as to exactly what they have in place. The bilateral agreements would not be between counties and countries. The bilateral agreements they are referencing are between our country and other countries.

You had also asked about whether there are any issues that indicate the larger counties are not able to handle them. I do not want to speak for the counties. I can tell you the *Gutierrez* case came out of Washoe County. Once again, to stress that if you give us this authority, it will be to assist the local authorities upon request. If they request our assistance, we will provide it.

**Vice Chairwoman Neal:**

The only reason I am asking is because it did say "program" in the bill. I was trying to figure out what you will actually be implementing. What will you be doing and under what rule? If we are not mandated and this is a request, I am trying to figure out if you are then going to help local law enforcement when they make an arrest or detain an individual. The local agency would call you and then you would then advise them on what Article 36 has to say, then tell them they must contact their consular official so we can figure out whether or not they want to invoke their right to get involved in this. I understand the consular does not have to automatically respond. They have a choice because we are not mandated. There is either request or the consular indicates he wants to get involved. That is the way I understand it.

**Keith Munro:**

The short answer is yes. The longer answer is this, because I think your question highlights something. You are the Vice Chairwoman of the Assembly Committee on Government Affairs. You are a trained professional. You have a legal background. Imagine if you did not and you were just an undersheriff's officer in a small rural county and you had to wade your way through these types of issues. It would be difficult, even if you were trying to do your best. We saw there is a problem out there. The *Gutierrez* case is from Washoe County and they made a mistake.

**Vice Chairwoman Neal:**

I agree. It is a huge problem. I am trying to understand where the flaw is. I do not see any of the counties signed in to talk about this. I see what happened in Washoe County, which is a huge problem. That case was ridiculous in terms of the interpreter and the other drama that happened. In Clark County specifically, where have you seen the flaws within the implementation of this rule that they probably already have in their manuals?

**Brett Kandt:**

We are trying to be a bit more proactive than that. We are trying to get ahead of the curve and prevent any instances of a failure to strictly comply with the requirements of the Convention rather than have it come up after the fact, after someone has been arrested, prosecuted, and possibly convicted. In the instance of the case we provided you, we are talking about an individual who received a death sentence. We want to be proactive in working with the counties and local officials, but only if they request it. We will have a public outreach component, offer training, and be proactive so we do not have instances where the Convention is not complied with.

**Vice Chairwoman Neal:**

I have one last question. I am not getting irritated or upset, I am just trying to get to what you want to implement and how you want to engage yourself. The two pending cases associated with this, what county did they arise from and what are the issues? I was reading there are two additional cases that are also pending in the Supreme Court dealing with a similar type of issue with consular notice. Is that correct?

**Keith Munro:**

These issues are throughout the country. The United States Supreme Court has gotten involved in interpreting consular notification. What we are going to do is plug into our existing extradition efforts. We provide extradition training for all of the local officials. As a subset of that, we will provide consular notification. We will also develop some forms and identify the local consulates. We have already starting doing that. Therefore, we will have a checklist involved, so when someone calls, we can tell them the things they need to look at. We can tell them where the consulate is and ask them if they are going to call or if they want us to call. We will create a paper trail.

**Vice Chairwoman Neal:**

I will open testimony for those in support of Senate Bill 24.

**Robert Roshak, representing Nevada Sheriffs' and Chiefs' Association:**

We stand in support of this bill. It will assist the rurals in helping to provide information pertaining to consular training and what they need to do. Traditionally, the U.S. Department of State publishes a brochure they send to various agencies that gives a brief rundown of what law enforcement agencies are supposed to do. If you have a question, you call a 1-800 number. Having the Office of the Attorney General available to assist, answer questions, and put on training would be a great benefit for our agencies.

**Vice Chairwoman Neal:**

Currently, what do you have in place in your manuals or internal directives to deal with this issue?

**Robert Roshak:**

I cannot answer that question as to what the rurals have in place. I know the larger agencies do have policies.

**Eric Spratley, representing Washoe County Sheriff's Office:**

I am here to express support for Senate Bill 24. The confusing discussion you just had will be covered by the Attorney General's training, developed by the person who has expertise and knowledge in this arena so it is not confusing to us on the street. We do have a policy regarding consular relations, but it is just that—a policy. It is very confusing for line personnel to know all the intricacies of all of our policies and procedures. It is far better to receive hands-on training and have some experience to draw from rather than trying to remember the letter of a policy.

In Washoe County, it is an issue that is low frequency, but potentially high liability. These are the types of issues we would like to have specific training on. We encourage the enabling legislation of S.B. 24 and look forward to the Attorney General's office being able to provide that training.

**Vice Chairwoman Neal:**

Are there any questions from Committee members? [There were none.]

In regard to the policy, and I hope you know at least some portions of it, what is the current policy or issue that you felt has not been applied? Are you saying that the officers who are aware of the policy do not understand what it says or they do not understand how to implement the policy?

**Eric Spratley:**

Policy No. 422.7 is the Washoe County Sheriff's Office policy regarding foreign nationals. It is a two-page policy with different issues and bullet points regarding what will be done and how it will be documented. It has different time frames. There is a 60-minute time frame to everyone in the United States, but there seems to be a 2-hour time frame for foreign nations. It is confusing. I am here to tell you, if we come across someone and recognize them as not being from the United States, we then have to start this into motion. We are calling a supervisor to bring up the policy and perhaps contact the U.S. Immigration and Customs Enforcement (ICE) agency. It just gets confusing at that point. We may have stopped them for a simple traffic violation or some other small crime, and we are trying to muddle through this. It would be good

to just have something to draw from. If the Office of the Attorney General put on training where we could invite the rural agencies, then we would know. We could have a checklist in our bag of tricks and know the first thing we need to do, the second, and so forth. Their experts would put that together for us so we have the training and something we can draw back on. We could have a document we could use while we are on the streets instead of being confused and having a sergeant try to dig up the policy.

**Vice Chairwoman Neal:**

How many instances have been recorded where you have run into a situation where you had a foreign national that was either stopped, detained, or delayed?

**Eric Spratley:**

I do not have that information.

**A.J. Delap, representing Las Vegas Metropolitan Police Department:**

We are in support of this measure. We appreciate the assistance we have received in this matter and other matters from the Office of the Attorney General. We currently have a policy of notification when a person comes in who hits the mandatory notification list on booking. We make that notification when mandatory and we also, if requested to do so by a non-mandatory country arrestee, make that notification.

**Vice Chairwoman Neal:**

Are there any questions from Committee members? [There were none.]

How many foreign nationals have you detained, delayed, or arrested?

**A.J. Delap:**

I can get that number for you. It comes through our office as well if any governmental services were notified. I will be happy to follow up with you and have those numbers pooled, if we track them. I am assuming we do track them.

**Vice Chairwoman Neal:**

Mr. Spratley, could you send me a copy of your policy No. 422.7 ([Exhibit D](#))?

**Eric Spratley:**

Yes.

**Vice Chairwoman Neal:**

Mr. Delap, would you also send me a copy of yours ([Exhibit E](#))?

**A.J. Delap:**

Yes.

**Vice Chairwoman Neal:**

Is there any additional testimony in support of the bill? [There was none.] Is there any testimony in opposition to the bill? [There was none.] Is there any testimony neutral to the bill? [There was none.] Mr. Kandt, would you like to make any final comments?

**Brett Kandt:**

I would like to reiterate that we are just seeking statutory authority to be proactive and to facilitate getting the experts in from the U.S. Department of State to the extent necessary to provide training and education outreach to those local authorities who request it to ensure they are able to comply with consular notification requirements.

**Vice Chairwoman Neal:**

I will close the hearing on Senate Bill 24 and open the hearing on Senate Bill 25 1st Reprint.

**Senate Bill 25 (1st Reprint): Makes various changes relating to technological crimes. (BDR 18-220)**

**Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:**

I am here today to present for your consideration Senate Bill 25 1st Reprint. This bill concerns our ongoing efforts to combat technological crime in our state. [Mr. Kandt submitted a written letter ([Exhibit F](#)).]

*Nevada Revised Statutes* (NRS) 205A.030 defines "technological crime" as "The commission of, attempt to commit or conspiracy to commit any crime that involves, directly or indirectly, any component, device, equipment, system or network that, alone or in conjunction with any other component, device, equipment, system or network, is designed or has the capability to: 1. Be programmed; or 2. Generate, process, store, retrieve, convey, emit, transmit, receive, relay, record or reproduce any data, information, image, program, signal or sound in a technological format, including, without limitation, a format that involves analog, digital, electronic, electromagnetic, magnetic or optical technology."

The complexity of that definition denotes the need for training and expertise. The Office of the Attorney General currently has several forensic investigators who work cooperatively with federal law enforcement investigators on tech crime cases. The work has been effective in investigating and successfully

prosecuting various instances of tech crime. Our office is also seeing an increased use of technology to facilitate a wider range of crimes investigated and prosecuted by local law enforcement agencies and by our own consumer protection and fraud units.

At the Vice Chairwoman's request, we have provided a few examples of tech facilitated crimes in a memorandum from Samuel R. Kern, Senior Deputy Attorney General, one of our bright, young prosecutors in the Bureau of Consumer Protection (Consumer's Advocate) ([Exhibit G](#)).

To more effectively respond to the growing problem of technological crime, our office should be involved with these specialized technological prosecutions, both to assist local prosecutors and/or to handle complex prosecutions that may be beyond local expertise.

Section 1 of this legislation grants our office the statutory authority to begin to develop a group of litigators within our office to ensure that we have the expertise to deal with the complicated prosecutions related to tech crime. We are not asking for any staff with this bill draft. We are seeking the flexibility necessary to better adapt and respond to technological crime.

Section 2 of the bill seeks to clarify and update the definition of "theft" as set forth in NRS 205.0832. Representatives from both our local prosecutors and public defenders have indicated their support to us for the provision. This amendment was made in the Senate and was not part of the original bill. However, it clarifies the definition of "theft" to update it for certain specific technological crimes—in other words, thefts that are now made possible due to the use of certain technologies. Specifically, it will amend the existing language in NRS 205.0832 to clarify that when someone else uses technology to knowingly steal another's property, including intangible property, they can be criminally liable. We also clarify that when someone steals services, those services include audio and visual services, such as television programming that someone may steal without having authorization using new technologies. Finally, with respect to the theft of these audio and visual services, it clarifies that the person may be criminally liable if they knew or they should have known they did not have a legal right. In this limited instance, the new standard is needed, given that Internet users can try to escape prosecution if they claim they did not know they were getting the service without authorization. This will establish that if you should have known it was illegal, then you can be held criminally liable. This language was carefully crafted and vetted by prosecutors, as well as defenders, and has the support of both as a reasonable and needed clarification.



Moving on to section 3 of the bill, the Legislature established a technological crime board. The Attorney General serves as chair of that board. The board is composed of federal and state representatives. It focuses on coordinated responses that can adapt to the ever-evolving methods of criminals in using technology to facilitate crime. The executive director of that board is appointed pursuant to NRS 205A.070. Section 3 simply makes a slight change to the appointment of that position. It changes the appointment from a two-thirds approval requirement to a simple majority. Let me explain why. There are several federal law enforcement members who serve on that board. However, the Office of the Attorney General does not believe we should be asking federal law enforcement officials to be involved with the hiring of state officials. When you have the authority to make hiring decisions involving personnel and you act upon that authority, you derive some potential liability to yourself. Therefore, the federal law enforcement members of the board have abstained from voting on the appointment of an executive director in the past, since that director is a state employee. However, due to the way our Open Meeting Law operates, it can be very problematic to obtain a quorum, to hold a meeting, to take action to hire an executive director, and still have a sufficient number present to vote and meet the two-thirds requirement if the federal members recuse themselves. By changing the two-thirds requirement to a simple majority in the statute, we can still have the federal members serve on the board, which we need, but allow them to recuse themselves from participating in the appointment of the executive director position.

That concludes my testimony. I would be happy to answer any questions.

**Assemblyman Elliot Anderson:**

I am confused about section 1. Why do we need to give you authority to prosecute? Is that not inherent with your office? Is this a shift from prosecution from a county level to the state level?

**Brett Kandt:**

I have several answers to your question. First of all, what is our authority to criminally prosecute? We have no general authority to prosecute crime. That is left with the district attorneys. Our office, once again, is a creature of statute and can only prosecute crimes when we are granted specific statutory authority to prosecute those crimes. We are asking for broad statutory authority to prosecute technological crimes to clarify our existing authority. We are not, in any way, trying to supplant the ability of our local district attorneys to prosecute tech crime, but rather to assist them, when requested; to begin to build the expertise in our office, since these are complex prosecutions; to take advantage of federal grant money; and to take advantage of opportunities at the federal level for training.

I will give you one example. There is a top tier facility in Alabama called the National Computer Forensic Institute that was established by the federal government a few years ago to bring in investigators and prosecutors to learn how to handle these complex tech crime cases. This year, in the midst of budget cuts and sequestration, the federal government is actually considering doubling the budget for that center because they recognize the growing problem of technological crime.

With this general statutory authority that would be granted under section 1 to build that expertise in prosecuting tech crime cases in our office, we can send prosecutors to that center to gain that expertise and be a resource for our district attorneys when they request it.

**Assemblywoman Bustamante Adams:**

I want to disclose for the record that I served on the board during the interim, replacing our former Senator, Valerie Wiener, and I was recently elected to be the Vice Chairwoman.

**Assemblywoman Swank:**

I have a question about the difficulty of getting a quorum at the meetings. Are the state employees just not coming to meetings? I am not sure what the problem is here. Why we would need to go to a simple majority?

**Brett Kandt:**

It is a question of math. Obviously, we have some very high-profile, top officials who serve on the board and lend their expertise. I believe the board comprises 13 members, 4 of which are federal members. A quorum requires seven members. However, if any of the seven members present for the hiring of an executive director are federal officials, we cannot meet the two-thirds requirement. If you do the math, we need two-thirds of the board of 13 members to make an appointment. By the time you get the number present for a quorum, that is not even enough to make an appointment. If the federal officials that are present recuse themselves, it becomes very difficult. In the past year, we appointed a new executive director and I believe we had to schedule three meetings because we kept having a difficult time obtaining a sufficient number of voting members to meet the two-thirds requirement. We thought it worthy of bringing to your consideration that it might be a better policy. It is ultimately your decision to make whether or not it makes more sense to have the board be able to appoint an executive director on the basis of a simple majority.

**Assemblyman Ellison:**

When I look back through the testimony on the Senate side, there is no comment from anyone from any of the counties. Have you reached out to counties across the state to talk to them? My second question is do you not have to comply with the Open Meeting Law, the same as we have to or counties have to?

**Brett Kandt:**

When you say reach out to the counties, which provision of the bill are you referring to?

**Assemblyman Ellison:**

Section 1. You are talking about going ahead and doing the investigation. That is not the Attorney General's position. You are supposed to assist the counties, not prosecute. Have you received any feedback from any of the counties?

**Brett Kandt:**

Yes. We have communicated extensively with the counties on this issue. I believe on the Senate side, representatives from the Nevada District Attorneys Association indicated they were supportive of this provision because they understand it is not our intent to supplant the excellent work our local prosecutors are doing when it comes to the issue of tech crime, but rather to build up the expertise in our office to provide resources and assist when requested, especially when we are dealing with complex cases.

The second part of your question had to do with complying with the Open Meeting Law. I assume you are referring to the tech crime advisory board, and yes, it is subject to the Open Meeting Law.

**Assemblyman Daly:**

I was looking at NRS Chapter 205A, which is the statute that talks about technological crime. I am assuming, based on what you said, that all of the local jurisdictions can take that and determine something is against the law and have the right to enforce it. You are saying you do not really have that authority unless you get some kind of authorization. Is the Attorney General's Office going to be the lead in these issues, or is it just mainly if it is multicounty? For example, if there were a group of people breaking these laws in Las Vegas and Washoe County or across state lines, would you just be asked to assist on something like that?

The second comment is regarding free media. You can reuse free media. That is not a technological crime. You record a television program and you want to reuse it, I believe you can. I am just curious.

**Brett Kandt:**

To answer the first part of your question, this would be to assist and provide a resource to local authorities when they request it and if they request it. It would also clarify our authority because we are creatures of statute and only have the authority you grant us. For instance, if you take a look at NRS 205.473 through 205.513, they deal with unlawful acts regarding computers and information services. If you look at NRS 205.513 regarding enforcement of the provisions, it specifically provides that the Attorney General or the appropriate district attorney may take injunctive action to prevent these types of unlawful acts from occurring. However, then it says it does not preclude the criminal prosecution and punishment of a violator, but it does not clarify whether we have any criminal authority in that regard. If you granted us the authority we are requesting in section 1 of the bill, it would clarify that under that statute, we can enforce, not only through civil injunctive relief, but criminal prosecution, those laws you have enacted regarding unlawful acts in computer and information services. That is just one example where it would clarify what our authority is exactly.

Secondly, you were talking about free services with regard to section 2 of the bill. There are some individuals here who are behind the request for section 2 of the bill, which was not in the original bill draft request we submitted. We are not talking about free content; we are talking about where someone is stealing audio or visual services or the delivery of those services or content. That content can be delivered through a cellular phone service, cable, satellite dish, et cetera, and if someone is stealing that content by obtaining the delivery of the service without paying for it, we are just clarifying that it is a theft that costs the providers of those services. Ultimately, that cost is passed on to consumers. We want to update our law to clarify that is a theft and can be prosecuted as such.

**Assemblyman Elliot Anderson:**

Just to clarify, would we just be granting the authority to prosecute or do the other civil remedies with NRS 205A.030? Is that the only statute you would be allowed to prosecute with this language?

**Brett Kandt:**

I think it might be broader than that. Once again, I think it would also clarify our authority under NRS 205.513, or perhaps in other areas as well.

**Vice Chairwoman Neal:**

Are there any further questions from Committee members? [There were none.] Is there any testimony in support of the bill?

**Kristen Erickson, Chief Deputy District Attorney, Washoe County District Attorney:**

We are in support of this bill. I am open for any questions.

**Vice Chairwoman Neal:**

Are there any questions from Committee members? [There were none.]  
Is there any testimony neutral on this bill? [There was none.] Is there any  
testimony in opposition to the bill? [There was none.] Mr. Kandt, would you  
like to make any final comments?

**Brett Kandt:**

Only that I am available if there are any follow-up questions. Otherwise, thank  
you for your consideration of this bill.

**Vice Chairwoman Neal:**

I will close the hearing on Senate Bill 25 1st Reprint. Is there any public  
comment? [There was none.]

This meeting of the Assembly Committee on Government Affairs is adjourned  
[at 10:06 a.m.].

RESPECTFULLY SUBMITTED:

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Lori McCleary  
Committee Secretary

APPROVED BY:

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Assemblywoman Dina Neal, Vice Chairwoman

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

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** April 19, 2013

**Time of Meeting:** 9:03 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 24	C	Brett Kandt, Office of the Attorney General	Letter from Attorney General with attachments
S.B. 24	D	Eric Spratley, Washoe County Sheriff's Office	Policy Manual 422.7 regarding foreign nationals who do not claim immunity
S.B. 24	E	A.J. Delap, Las Vegas Metropolitan Police Department	Standard Operating Procedures for booking and detention of foreign nationals
S.B. 25	F	Brett Kandt, Office of the Attorney General	Letter from Attorney General
S.B. 25	G	Brett Kandt, Office of the Attorney General	Memorandum from Samuel R. Kern regarding types of technological crimes