MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
May 14, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:17 a.m. on Tuesday, May 14, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Greg Brower, Washoe County Senatorial District No. 15
Senator Tick Segerblom, Clark County Senatorial District No. 3
Senator Michael Roberson, Clark County Senatorial District No. 20

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

John T. Jones, Jr., representing Nevada District Attorneys Association
Thomas Moreo, Clark County Office of the District Attorney
Brett Kandt, representing the Advisory Council for Prosecuting Attorneys, Office of the Attorney General
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice
Brian O'Callaghan, Government Liaison, Las Vegas Metropolitan Police Department
Venicia Considine, representing Legal Aid Center of Southern Nevada
Mary Law, Private Citizen, Reno, Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association
Jennifer DiMarzio-Gaynor, representing Nevada Credit Union League
David Kallas, Private Citizen, Las Vegas, Nevada
Karen Dennison, representing the State Bar of Nevada

Chairman Frierson:
[Roll was taken. Committee protocol and rules were explained.] We have a fairly heavy agenda and have a floor session, so we have to get through this. I will be reminding folks to stay focused and get to the heart of the matter so we can get through all of the bills. We were going to do a work session first, but we will start with the hearings. I think Senate Bill 118 is a simple bill, so I will open the hearing on Senate Bill 118.

Senate Bill 118: Revises provisions relating to forfeiture of property. (BDR 14-462)

Senator Greg Brower, Washoe County Senatorial District No. 15:
I introduced Senate Bill 118 at the request of the Nevada District Attorneys Association. Senate Bill 118 is intended to assist Nevada's law enforcement agencies in their efforts to target criminal enterprises motivated by greed. We are talking about organized crime operations, major drug dealers, pimps, sex traffickers, et cetera. Yes, we are talking about the government's seizure of assets prior to a conviction. If you have not encountered this concept previously, it may sound strange to you, but it is, in fact, what we do as a state government. It is what all state governments do, and what the federal government does. It is a concept that goes back to the English common law. I will explain how that works in more detail in a moment.

Let me be clear, Nevada law already enables law enforcement agencies to seize property used by criminals to perpetrate their crimes and allows for the seizure of the proceeds of such crimes. Again, that is not new. What this bill would do is change the standard of proof in forfeiture actions from "clear and convincing" to a "preponderance of evidence." Many criminals are motivated by the acquisition of material goods, so the ability of law enforcement to forfeit seized property can be a very effective tool in reducing the incentive for illegal conduct. Asset forfeiture is simply intended to take the profit out of crime; in other words, to ensure crime does not pay.

A short bit of history may be helpful. The government's ability to seize and keep or forfeit property related to criminal activity goes back to English common law. Today, forfeiture is commonly used by both the federal and state governments. Nevada's statutory scheme goes back to the 1980s. For decades the standard of proof in such forfeiture actions was preponderance of the evidence. During the 2001 Legislative Session, the Nevada standard was changed to clear and convincing evidence. However, the clear and convincing standard is not what federal law and the laws in most states require. This bill would simply return Nevada to the more common preponderance standard. As the civil litigators on this panel know well, the preponderance standard is the one used in the vast majority of civil cases, which means more likely than not. As will be explained in more details, most asset forfeiture cases are civil proceedings and not criminal proceedings, although they relate to criminal cases.

With respect to the 2001 change in the law that I just referenced, I dug up some legislative history from that bill and I was reminded that I, as a member of this Committee at that time, had some serious reservations about the change

from preponderance to clear and convincing. I now support Nevada's prosecutors who believe that the 2001 change was a mistake and should be reversed. I should note that, in reading the history of the 2001 bill, I was reminded that what seemed to be behind the bill at that time was some concern with the federal law, a concern that was fixed in 2000. The Nevada law—in my view—never had a similar problem and should not have been changed in 2001.

The basics of a typical case will put all of this into context. It involves the following scenario. First, there is a seizure of certain property by law enforcement. This typically happens, for example, when the Nevada Highway Patrol stops a vehicle for speeding on the highway and a search, incident to that stop, reveals a large amount of cash, some weapons, and some illegal drugs. Incident to the arrest of the occupants of the vehicle, the troopers seize all of the property found in the vehicle. The occupants are then charged criminally, and the district attorney also initiates forfeiture proceedings pursuant to *Nevada Revised Statutes* (NRS) Chapter 179. This is done by the filing of a civil suit against the property itself, known as an *in rem* action. Some of you might have seen cases that have interesting titles such as *State v. $300 in cash, two sawed-off shotguns, and one Chevrolet Suburban*. When you see a case title like that, it is a classic civil forfeiture action. The government will notify all known potential claimants to the property that has been seized. Those claimants can then answer the suit, thus asserting their claims to the property. That case then proceeds ultimately to a trial, unless it is settled. It is at that trial that S.B. 118 comes into play. Currently, at such a trial, the government must prove by clear and convincing evidence that the seized property is the proceeds from criminal activity, or was used for criminal activity. This standard of proof under current law is not the same standard that is used in other types of civil cases. It is not the standard used in asset-forfeiture cases in most states, and it is not the standard used currently by the federal government.

This creates two problems. First of all, it is more difficult for the government to prove its case under the current standard necessitating more witnesses, court time, and efficiency in the process. Second, because of the first problem, law enforcement agencies at the state level often defer to the federal authorities to do the seizure, because the federal standard is more lenient. Our statutory scheme allows for a percentage of seized assets to go to our school districts in Clark and Washoe Counties. The practical impact of the difference between the federal and state burdens of proof is that the feds end up taking all of the assets and cash, and the state and the school districts lose out as a result.

Let me be clear about this. This bill does not give Nevada's law enforcement agencies the power to seize and forfeit property related to criminal activity.

They have had that power for decades. This bill only changes the standard. I am not an expert in asset-forfeiture litigation. I do, fortunately, have at least one expert with us today in Las Vegas, Tom Moreo, from the Clark County District Attorney's Office to answer questions and elaborate on the details of what we are talking about today. To my left is Brett Kandt from the Office of the Attorney General, who can supply additional information.

In summary, asset forfeiture provides a very valuable tool for law enforcement as it helps strike at the economic foundation of illegal activity. Asset forfeiture can help law enforcement agencies offset the cost of their operations, and it also dismantles these illegal operations. Under Nevada law, our schools stand to benefit from an efficient asset-forfeiture system. The current system is not as efficient as it could be, and that is why we have presented S.B. 118.

Chairman Frierson:
I have to point out a couple of things that struck me as odd. One of those things is that it takes the profit out of crime, when it is taking property before there is an establishment that a crime occurred. That is a concern. We are not taking the profit out of crime, but taking the profit out of precrime. The notion that we take it out before we prove there is a crime, if that is the basis for the bill, seems to me to be a bit unsettling.

Senator Brower:
As I said, this is not a new concept. We seize property from alleged criminals, property that is believed to be the proceeds of criminal activity and the instrumentality of the criminal activity. We cannot allow criminals to amass property.

Chairman Frierson:
Again, we are saying criminals. Be careful, because they are not criminals yet.

Senator Brower:
The standard is that there has to be reasonable belief on the part of the government that the property is proceeds from criminal activity, or was the instrumentality of the criminal activity. There is, of course, a mechanism for the defendant to seek the return of the property, but if we were to wait until there is actually a conviction, there would be a significant chance and the likelihood that the property we are talking about would be hidden, dissipated, or transferred before the criminal conviction. That is why, for centuries, the government has been allowed to pursue preconviction forfeiture of assets. That can be undone if the government cannot prove its case.

Chairman Frierson:
That was my next question. Can you describe the process of undoing it if someone's assets get forfeited and he is ultimately acquitted?

Senator Brower:
I will defer to Mr. Jones and Mr. Moreo who deal with this every day.

John T. Jones, Jr., representing Nevada District Attorneys Association:
As Senator Brower indicated, we have Thomas Moreo in Las Vegas and he is a subject matter expert. He is a chief deputy district attorney over the forfeiture unit in Clark County. I think he can answer some of the questions that you are addressing. Generally speaking in a forfeiture case, when they proceed to trial, the civil trial is stayed until after we get a resolution to the criminal case.

Thomas Moreo, Clark County Office of the District Attorney:
The gentlemen are correct. Under most circumstances, when a claimant has a criminal trial pending against him—probably nine out of every ten times—the civil forfeiture will be stayed until the completion of the criminal trial. The reason is that this is a civil procedure. We have to file a complaint in the clerk's office and to start a civil case against that property, which means we have to physically serve the claimant. Once he is served, we then have to abide by the rules of civil procedure and the discovery commission by doing certain sets of discovery. In most cases, the criminal defendant does not want that discovery to go forward. He does not want to answer interrogatories or go through the deposition process. He does not want to do any of that until his criminal case is over. Our civil cases are almost always stayed until after the criminal matter has been resolved. If, in fact, someone is acquitted of the crime, we look at the civil forfeiture and make a determination whether we would be able to prove the property seized was, in fact, proceeds from an illegal activity. If someone was innocent of that illegal activity, we would dismiss the civil case and return the property to the defendant.

I also want to comment on one other thing. You can imagine the enormous profits from the use of drugs, the drug cartels, and the drug business in southern Nevada. You are also aware of the numerous joint task forces that are available and operating here in southern Nevada. The Senator was correct that when we seize a large sum of money, it always—not sometimes—always goes to federal court. The reason they go to federal court is because it is easier to prove those cases in federal court, and once those cases go to federal court, Clark County does not normally see those proceeds. We are losing tens of thousands of dollars every year because of the difference in what proof is necessary for a civil case in Clark County versus what proof is necessary in federal court. By modifying this bill and putting us on the same status as the

federal court, those dollars will come back to Clark County and not go to federal court.

Chairman Frierson:
I know personally of situations where preconviction seized or forfeited property was sold. If it is the one out of ten—and it seems to me it would be more than that—who has his property sold before conviction, are they just out of luck?

Thomas Moreo:
You have misunderstood. No property is ever taken away from a claimant unless we go through the civil procedure and a judge indicates that the forfeiture is a correct forfeiture and he awards the property to the state. We do not take property from someone and start selling it. Every one of our cases has to go through a civil court, and only a judge can sign off on a forfeiture that allows us to seize that forfeiture and take that property into our possession to sell it. We do not do that without court approval.

Chairman Frierson:
I appreciate that, Mr. Moreo, but I am aware specifically of a case in Las Vegas where property was sold prior to conviction. It may not be the norm, but it does happen. I am concerned that, even if it is one out of ten, the person is left without a remedy.

Thomas Moreo:
If the property was taken and sold, it had to have gone through a court process. The claimant had to have been served and given proper notice. He had to know what was going on in the civil case and be given an opportunity to appear in court. He could request a stay, answer questions, file motions wherever needed, and have that property returned.

Chairman Frierson:
What is their remedy for property that has already been sold or disposed of?

Thomas Moreo:
I have been doing this for 3 1/2 years and I cannot tell you about one case where someone has been acquitted and the property was sold before the criminal cases were resolved.

Chairman Frierson:
I will find it because I know of it, but we can move on.

My concern is about our comparison to the federal system and due process. I think the Committee has received a letter, and I am not familiar with it. Can you tell us about the difference between the due process protections in the federal system versus the state?

Thomas Moreo:
When it comes to civil forfeiture? A claimant has dual protection. If someone has been arrested for a crime, he has a right to appear in the criminal case, in the criminal court, and ask that the evidence be suppressed and ask that the property be returned to him. At the same time, they have a second avenue that goes into the civil department and asks that the evidence be suppressed, ask for a claim delivery that says it is stayed, and if you cannot prove that this property is proceeds or instrumentality of a crime, give us back our property. They have a dual course: they can do it through the civil department or the criminal department. Not too many organizations have that right to have their property returned under two different systems of law, civil and criminal.

Chairman Frierson:
My question was more geared toward comparing what the requirements are in the state system versus the federal system. I do not know the answer. I know the Committee was told that there are a greater number of protections in the federal system than in the state.

Assemblyman Hansen:
In the bill's existing law [section 1, subsection 4], it says, "In a proceeding for forfeiture, the rule of law that forfeitures are not favored does not apply." I am curious how that would factor into this. It also says that once property is forfeited to the plaintiff, it still has to be turned over to the claimant who establishes a protected interest. What does that mean? Who gets to claim this as a protected interest? I assume it is the common-law concept, but when are forfeitures not normally favored allowed? Does it change in our Nevada law?

Senator Brower:
The old statutory language clarifies that forfeitures in the abstract are not favored. There is an exception when there is evidence that the government can establish that the property was the proceeds of criminal activity or instrumentality of criminal activity. In that case, there is a statutory scheme for forfeiture.

Assemblyman Hansen:
How do you establish the right of a claimant? Who gets a protected interest in a forfeited property?

Thomas Moreo:
The Legislature was very clear on the crimes we could go after for forfeiture. The statutes are also clear on what is considered an innocent owner, and who has property interests in it. All of those things have to be investigated before we can do a forfeiture.

Let us say that someone is driving a vehicle and gets arrested. There are drugs and money in the vehicle, but it turns out that the vehicle was leased and owned by a dealership in Clark County. We have to notify that dealership and give them first right to come take the vehicle. If they want the vehicle back, they come and take it. We cannot seize that vehicle. The only property we can go after is property that is 100 percent owned by the person who was arrested, the claimant himself. We do not go after any property that has a secondary interest that belongs to someone else or that a third party has an interest in. We only go after that property that we can prove is solely owned by that person before we do the forfeiture.

Assemblyman Hansen:
We are talking about criminal law for the most part, yet this is only handled civilly. There is one step since we are mainly focused on the crime aspect of this. In existing law, it says, "The plaintiff has an absolute privilege to refuse to disclose the identity of any person, other than a witness, who has furnished to a law enforcement officer information purporting to reveal the commission of a crime." Normally, in criminal law, you have a Fifth Amendment right to confront your accuser. This seems like we are talking about criminal law, but then we have some unique statutes that are civil in scope. In this case, since we are all focusing on the criminal side, it seems we are taking away a classic constitutional right to be confronted by the people who are accusing you of a crime. Am I reading that correctly, or is there something else in there that I am missing?

Thomas Moreo:
You are reading it correctly. The reason that was put into place was in a lot of cases—like drug cases—the police get their information from confidential informants and they do not want to disclose who they are before the criminal case is over. That is all it means. It does not mean that, further on in the process, the confidential informant would not be known. However, in the beginning when we file the forfeiture cases, we do not have to disclose who the confidential informant was initially to get the case going forward. Just like in the criminal cases, we do not need to advise who the informant was until the court orders them to do so in the criminal case.

Brett Kandt, representing the Advisory Council for Prosecuting Attorneys, Office of the Attorney General:
We are in support of S.B. 118. We believe the change in the standard will promote the more efficient use of our limited resources with regard to our courts, law enforcement agencies, and prosecution agencies, without impacting the due rights of claimants. In the correspondence that I submitted in support of the bill (Exhibit C), I attempted to identify for you the numerous due process protections that are available to protect claimants. I am not going to go through them now; they are in the letter.

I did make one comparison to the federal system that I wanted to note. In the Nevada system, each claimant must receive personal service of the summons and complaint, or the court must authorize publication pursuant to *Nevada Rules of Civil Procedure* (NRCP) 4. In the federal administrative forfeiture scheme, notice may be sent by mail. There probably are other examples of how the Nevada system attempts a higher standard to ensure due process, but I am not an expert on the federal system. I could not list them all.

I wanted to point out that there is a level of due process attended to all civil proceedings in our forfeiture scheme. This proposal to change the burden of proof does not affect all of those due process protections.

Chairman Frierson:
There was a question raised when we took this notion out of A.B. 67 where they proposed originally to change the standard to preponderance, and I believe it was Mr. Wheeler who asked about the person who would have used that money to pay for counsel. Is there a mechanism for someone to be able to access that seized property for the purpose of paying for counsel? Otherwise, you would have someone with means being appointed counsel.

Thomas Moreo:
We only seize money when we can prove that the money is proceeds from an illegal activity. We need to show there is an illegal activity going on and that the property we seized were profits from that illegal activity. If that money was to be used for something else, it is still the proceeds from that illegal activity, no matter what the purpose was.

Chairman Frierson:
Do you know how many other states have a preponderance standard for property seizure?

Brett Kandt:
I did some research and determined that preponderance—or a lesser standard such as probable cause—is the standard in approximately 75 percent of our states and the federal system. There are about a dozen states in which the standard was clear and convincing. There are, according to my research, three states that actually have a higher standard: Nebraska, Wisconsin, and North Carolina. Apparently, they have the standard of beyond a reasonable doubt, which is obviously the standard in the criminal system.

Chairman Frierson:
Can you provide that information to the Committee if it is in a form that can be distributed? I think the Committee would like to see what states are in that 75 percent.

Brett Kandt:
Of course.

John Jones:
I did not have anything else to add. I just want to say that we are here in support of S.B. 118.

Chairman Frierson:
Is there anyone else wishing to offer testimony in support of S.B. 118?

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:
I am here to express our support of S.B. 118.

Chairman Frierson:
Is there anyone else in support? Now for testimony in opposition to S.B. 118.

Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice:
We are in opposition to S.B. 118. We had extensive debate when this bill came up before the Senate Judiciary Committee, and I want to recap some of that. I provided several documents—and the documents are available—and one is a report that was completed two years ago, or maybe a year ago, called "Policing for Profit." In that report, each state and its procedures are set forth and how the different states vary, and gives them a letter grade. It gave Nevada a very poor grade, like a D- or so. I also provided some other documents that I found. When we were before the Senate Judiciary Committee, I included as an exhibit the legislative history on this. This Committee can see from what went on in 2001 that this was an issue that passed. At that time, the standard was preponderance. There was substantial testimony from both of the district attorneys and the Nevada Attorneys for

Criminal Justice (NACJ), including Mr. Richard Wright at that time. The Legislature changed it to the current standard of clear and convincing.

Obviously, we are opposed to it being reverted because there has not been any change in the procedural due process issues. One thing that I talked about at the last stage was the problem that we do not have adequate due process measures in our statutory scheme. I agreed that I would work with Mr. Brower to compare the federal due process measures to the state to see if we could work on that, but unless we had different due process protections, we were adamantly opposed to changing the standard. That is the history and how it got here. Also, I should tell this Committee that discussions and proposals were initiated by Senator Segerblom about the money that was to go to the school district—and he had a proposal to increase that—but for some reason there was no appetite for that.

Having said all of that, and listening to the testimony here today, I have some additional things to add and some questions to answer. One thing that seems to be a point of confusion is the actual seizure when the property or funds are seized. If it is a vehicle, it is obviously physically seized; same with money. If it is real property, it is done through what is called a *lis pendens* procedure, where the state would post a notice of *lis pendens* on the property so you could not sell it or refinance it until the litigation is concluded. That is how it works physically. What we are talking about is two phases. The initial phase, in civil terms, would be like a preliminary injunction. Then there would be the final disposition of the case.

Mr. Moreo is right that sometimes those proceedings are stayed. That happens in federal court, as well as in state court. That particular aspect is the same. There are some cases in which the people want to go forward with the litigation. Here are some substantial differences. When a person is accused of a crime in Clark County, a criminal case is opened. There is not necessarily a timeline for the state to initiate their civil action. In federal time, there is. There is a specific timeline of 90 days. When we talk about claimants, this is a really interesting issue. A claimant is a self-designated title. Mr. Moreo says they personally serve the claimant, the person whom the state deems to be the person who has title. What if we are talking about a piece of real property that is titled in one person's name, but there is a lease with an agreement to purchase? That person would also have a property interest in that property and Clark County would not know about it. The reason we have more due process than the federal system is that the feds actually publish—and not in one of those legal newspapers that no one reads—in the newspaper that everyone reads, the property, money, vehicle, and anything else that has been seized by the government. They publish it in the newspaper so anyone who has a claim

is allowed to file, instead of the state or Mr. Moreo's department determining who the claimants are. That is a huge difference.

Another question touched on was, can you use the money for counsel? In the federal system, under the Criminal Justice Act (CJA) statute, the court is allowed to appoint counsel for indigent people in related civil forfeiture proceedings. In Nevada, in cases where I have been appointed as CJA counsel, I have also been appointed to do the forfeiture proceedings and to protect the client's interests in that regard. We do not have any similar provision in the state system and I would not be appointed for a collateral civil proceeding. That is a huge problem. We have people whose entire assets are being seized and they are unable to defend it. What if that is all the money they have? That is a really good question. I have actually negotiated that in federal court, but not here in Nevada. There are circumstances where the government will allow the accused to use a portion of seized funds in his defense, as long as the fee is reasonable and not outlandish. It has to be approved by the Department of the Treasury. We do not have any similar provision in the state system, and that is also an issue.

In the materials that are exhibits from the last go-round on this bill in the Senate, there was a lot of discussion about innocent owners. Nevada actually requires an innocent owner to prove their innocence. There are about ten other states that place the burden on the government, or the state, to do that. This is another problem. When we talk about innocent owner, it could be someone who owns a house who rented it out and there was criminal activity going on there, or it could be an innocent spouse who did not know the proceeds were the result of something unlawful. There are a variety of ways that this comes into play. In short, the federal statute is much more extensive—it probably covers about 200 pages—than the protections that we have. It breaks things down and differentiates between criminal forfeiture and civil forfeiture. It also differentiates between types of assets being forfeited. I do not think your question was ever answered as to who gets to claim a protected interest. That is exactly the problem. In federal court, everyone is given the opportunity to come forward, at least by way of publication. They do a much more thorough job on researching and determining who might have an interest. For example, in a criminal case in federal court, if I was defending someone charged with a crime related to the seizure, I would get notice of the forfeiture action. That does not happen in state court. These are the differences. I would reiterate that I would be happy to work on some of these issues. I attached part of the federal statutory scheme to the meeting minutes the last time this matter was heard.

Chairman Frierson:
If I may interrupt, just so you will know, the confused look is because we do not have any of that. You submitted all of that in the Senate, but it starts from scratch over here. Folks are trying to find it. We have access to it through the Senate, but it takes time and navigation to get to it. We do not have it handy, so we need you to resubmit it on the Assembly side so we can include it with our exhibits.

Lisa Rasmussen:
I will resubmit it. I thought you had it because I was able to pull it up on the Nevada Electronic Legislative Information System (NELIS) this morning.

Chairman Frierson:
You pulled it up from the Senate; it is on the Senate side.

Lisa Rasmussen:
I think I have identified some of the problems that you have already touched on. At the Senate Judiciary meeting, they asked if there were any statistics or data on money that was seized during the last five years. The Nevada statute requires that there be an accounting and that information is to be made publicly available. No one knows where the information is. That is another problem; we do not have data on it. At the last hearing, someone from Washoe County testified and stated that she would keep bigger cases and not give them to the feds if the standard were lower. She was also asked if she had ever lost a case with the higher clear and convincing standard and she said, "No."

Some of the cases that go through the federal court process that the state is referring to are joint task-force cases where the feds were involved, and a charge is filed in federal court as well. There is a reason they go to the feds. The joint task-force cases include the highway interdiction cases, which are the best and clearest example. There is a sharing formula where the U.S. Marshals give a portion to Clark County. It feels to me like we are creating a scenario that is not really a problem. At a minimum, this Committee should ask for the data and statistics on what money has been seized, where it has gone, what the status of the cases are, or some timeline on those cases.

Chairman Frierson:
What is being done with the money is probably a separate issue than the principle of what process should be in place to forfeit property now. Mr. Kandt indicated that he had done some research and offered to provide that to the Committee. It appears that 75 percent of the country has a preponderance standard.

Lisa Rasmussen:
That may or may not be the case. I will go through the "Policing for Profit" report and call it out for you. The problem comes when the state has a different standard, because they may have different due process protections. It may not be an apple-to-apple comparison. One of the exhibits that I attached shows ten states that require the state or government to prove the burden with regard to an innocent owner. The burdens vary from state to state, but the notice requirements are also different. I will do my best to synthesize those materials for you and submit all of the exhibits to this Committee.

Assemblyman Hansen:
It seems to me the crux of this boils down to the issue of money. It is my understanding one of the main reasons you want to change this is because the federal government is getting a disproportionate share. We have a higher standard than they do and they are taking the cases. You mentioned a sharing formula. Is there any evidence that the states that have the preponderance standard get a higher share of the forfeited money?

Lisa Rasmussen:
We do not have that information. That is why I said we should ask for the information that would enable us to make an intelligent decision on what we are really missing out on. Clark County gets money from federal forfeitures on the joint task-force cases. What we do not know is what cases Clark County has kept, and what cases they allege they gave away. We should ask for some data on this. If the impetus is money for schools, we should see what we have already gotten and what is happening with it.

Assemblyman Hansen:
I hear you completely.

Chairman Frierson:
Does anyone else want to offer testimony in opposition? [There was no one.] Is there testimony in the neutral position? Seeing none, is Senator Brower here for closing remarks?

Brian O'Callaghan, Government Liaison, Las Vegas Metropolitan Police Department:
I stepped out for a moment to do some follow-up work and missed the testimony for support. We are in full support of this bill.

Chairman Frierson:
Senator Brower, I will give you the opportunity for closing remarks. Are you, Mr. Moreo, or Mr. Kandt aware of this notion of profit sharing? I do not know what that is. I do not know if, in the practical sense, it provides information about the feds sharing the profits with the state when they take a case and seize property. There was no testimony to that effect. If there is some information, please have it provided to the Committee.

Senator Brower:
We would be happy to. I have been intimately involved in that profit-sharing process. In some cases, each and every agency—federal, state, and local—that is involved in a particular operation takes a cut. Again, having been involved in those operations, I would submit that where one stands on this issue depends on where one sits. When I was sitting in the United States Attorney's chair, the status quo was just fine with me. As an agent of the federal government, I was happy to take all of the money, and maybe give a little bit of a cut to the agencies that helped us with the take-down. As a member of the Nevada Legislature trying to fund education, I have a very different view. It does affect the due process and the real concerns expressed by members of the Committee and Ms. Rasmussen. We can potentially increase the amount of money that goes to our two largest school districts; money that we all know is needed.

The "Policing for Profit" report that Ms. Rasmussen referenced is an interesting report. Ms. Rasmussen mentioned that Nevada received a grade of D-. If you look at the report, the average grade in there is a D. It is clear that any state with a preponderance of evidence standard was not treated well by this report, and that is approximately 75 percent of our states. We are in the mainstream with our D- grade.

With respect to using forfeited funds to pay for counsel, the point is that these funds are alleged to be the proceeds of criminal activity. Let us not lose sight of the fact that we are talking about high-level drug traffickers who are engaged in violent criminal activity in many cases. We do not let those defendants use the proceeds from their illegal activity to pay for counsel. Having said that, as we all know, if a defendant cannot afford counsel, whether it is because they never had any money or the proceeds from their illegal activity has been seized, they are appointed counsel free of charge and it is paid for by the state. Let us not lose sight of that fact.

Finally, some of this may have been lost in the semantics of this debate. Remember that the burden of proving that seized assets are the proceeds of instrumentality of criminal activities is on the state. The burden is not on the

individual. This bill would change that burden to reflect the norm around the country and is an effort to recoup more of the proceeds for our two largest school districts. We would respectfully submit on behalf of the law enforcement agencies around the state that this is a commonsense reform. We hope the Committee will very carefully consider this proposal.

Chairman Frierson:
Your closing highlighted something that I think would be valuable: what other states are doing.

Senator Brower:
We will get that information to you in as much detail as you need.

Chairman Frierson:
With that, I will close the hearing on S.B. 118 and apologize to the folks who will follow. I thought that would have been shorter. I will now open the hearing on Senate Bill 389 (1st Reprint).

Senate Bill 389 (1st Reprint): Revises provisions relating to real property. (BDR 9-601)

Senator Tick Segerblom, Clark County Senatorial District No. 3:
This one will be quite simple. Senate Bill 389 (1st Reprint) is a simple bill that addresses the issue of homeowners trying to obtain proof that their lender has the title to their property. It comes up quite a bit in the mediation process, and at other times. The bill, as originally drafted, said the homeowner has to ask the lender for proof that they have the title, and if they do not provide that within 60 days, they would lose their lien against the property. That seemed to be too harsh for the Senate Judiciary Committee, although I did not agree with that. We modified it by saying they still have to give proof of the title within 60 days, but changed the penalty. If they did not provide that information, they would be reported to the state agency that regulates the mortgage industry. It is very important in bankruptcies and other processes that this takes place, so I think the validity of the 60-day requirement is important.

Down south, we also have Venicia Considine from the Legal Aid Center of Southern Nevada. She has an amendment based on federal law, which we found out about after this bill passed the Senate (Exhibit D).

Venicia Considine, representing Legal Aid Center of Southern Nevada:
I am appearing today as a concerned citizen and as an attorney who represents clients in a variety of consumer-related issues, including foreclosure defense. We support S.B. 389 (R1). This bill gives homeowners the ability to get

information on the current owner and current servicer of the mortgage. [Continued to read from written testimony (Exhibit E).]

The assignments are transfers of the deed of trust and are all done electronically without records. Typically, the Mortgage Electronic Registration Systems (MERS) will only assign a deed of trust when it is required to, and without requiring the certified copies in this bill, the originally scanned note and deed of trust may be the only documents that are provided. Being able to get those updated allonges and endorsements and those assignments will give the homeowner the true record of who the holder of that note is and where the deed of trust is. [Continued to read from written testimony (Exhibit E).]

We also suggested that the return of those certified copies be given to the homeowner within 30 days. That is to be in line with the proposed rules that will go into effect in January.

To point out another reason why it is important information for the homeowner to have is to know who the current owner of that note is, or who the assignee of the deed of trust is, it will give a homeowner more information about what options, if any, they have if they go through issues with their home. For example, it you are current on your mortgage and you want to refinance, you need to know if Fannie Mae or Freddie Mac is the owner or investor of that note, because they have programs available only if you are current. If you need to know whether you are eligible for the Home Affordable Refinance Program (HARP), you need to know who the owner of the loan is. This is information that is really helpful to the owner. Under the Real Estate Settlement Procedures Act (RESPA), this information is required to be given, and having those certified copies requires that information to be the most current and up to date.

Assemblyman Thompson:
Why would this only pertain to a house that you are occupying? Some people are responsible homeowners, live in their home, and have rental properties. Why would this be limited to your primary residence?

Venicia Considine:
We would be fine if it was for everyone who was the titled owner of the property.

Assemblyman Thompson:
On the Division of Mortgage Lending (MLD), what ultimately would the penalty be? These are some big servicing companies. People are trying to get documents all of the time, and they may or may not get them depending when they call into those 1-800 numbers. It depends on who they talk to. If they get

a nice person, they may get it; but if they get the person who had a bad morning, they may not get it. What would be some of the penalties? It does not outline it here.

Senator Segerblom:
The way the bill was originally drafted, the penalty was the ultimate death penalty: you lose your secured interest. That was too harsh for the committee and by the time we got around to it, we could not come up with a penalty, so we said you had to report it to the state, and the state might take action. I feel it would be appropriate to put some type of financial penalty on it that would be meaningful. You are right; we need to make sure they understand that this is important to us. This bill and the next bill both go to the situation—which I find most troublesome—of the underwater mortgage people trying to stay in their house and negotiating with the owner of their mortgage for a reduction of the principal. That is very difficult in Nevada; 60 percent of the houses are underwater, and anything we can do to give them leverage is very helpful.

Assemblywoman Cohen:
What is the cost to the servicer to provide the certified copies of the documentation?

Venicia Considine:
I am not quite sure what the actual costs would be. Technically, it would be the wages of someone who is already employed filling out a form that says, "I have the original and updated assignments and endorsements, and here are copies of them," and then the mailing costs.

Chairman Frierson:
Are there any questions? Seeing none, I would invite anyone wishing to offer testimony in support of S.B. 389 (R1) to come forward, both here and in Las Vegas. Seeing no one, I will invite anyone wishing to offer testimony in opposition of S.B. 389 (R1) to come forward, both here and Las Vegas.

Mary Law, Private Citizen, Reno, Nevada:
I am in that weird position where I totally support Senator Segerblom's original efforts. We need something with teeth in it to help us enforce the proof of the clear chain of title. I would also echo the question from Assemblyman Thompson. This should apply for all deeds of trust and title. This is critical for our system of property transactions. I oppose the watering down of the bill. I can already report this to anyone I want to report it to. With the revisions, it is not helpful. I did note that there are some

60-day requirements, and perhaps that is all that is missing. [Written testimony was submitted, but not read or referred to (Exhibit F).]

Chairman Frierson:
Is there anyone else wishing to offer testimony in opposition? [There was no one.] I will now move to neutral. Is there anyone wishing to offer testimony?

Bill Uffelman, President and CEO, Nevada Bankers Association:
I signed in as neutral on this bill. We did oppose it in the Senate originally, but with the various amendments that were made, that neutralized our opposition to the bill. I am neutral with the amendments that were mentioned in the bill.

Chairman Frierson:
Is there anyone else wishing to offer testimony in neutral? [There was no one.] Senator Segerblom, if you want to make closing remarks or address the amendments, please go ahead.

Senator Segerblom:
We support the amendment proposed by Ms. Considine. I apologize because I thought it had been submitted to the House. I gave it to Legal to draft, but I will get it for you later today if possible. [Amendment mentioned was submitted subsequent to the hearing (Exhibit D).]

Chairman Frierson:
I will close the hearing on Senate Bill 389 (1st Reprint). I will now open the hearing on Senate Bill 424 (1st Reprint).

Senate Bill 424 (1st Reprint): Revises provisions relating to foreclosures. (BDR 3-1113)

Senator Tick Segerblom, Clark County Senatorial District No. 3:
This is another bill that deals with underwater mortgages. It deals with the situation that we find very common, which is homeowners that are forced to go into a short sale. What happens oftentimes—60 percent of the houses in Nevada are underwater—is that you have a $500,000 mortgage, but your house is only worth $300,000. You want the bank to reduce the principal to the value of the house. The bank says they cannot do it, so you ask for a short sale. The bank agrees to sell it for $300,000. The question is, why should the owner not be able to buy his house at short sale? That would keep him in the house. Whoever buys the house, the bank will get the same price as they would if they sold it on the open market. It keeps the homeowner there as opposed to a hedge fund coming in and buying these houses. It seems like a win-win to me. No one seems to be able to explain why the homeowner cannot

buy it at his own short sale. This bill attempts to address that issue. We tried to work on the language and we ended up with a hybrid, but it essentially says if there is a sale, the homeowner has the right to meet the exact terms within 30 days. If the bank sells the property for cash, the homeowner would have to show up with cash. I am not sure how often that would happen. The reality is that it gives the homeowner a little leverage and an opportunity to stay in his own home if he can figure a way to swing it.

This deals with just one piece of the issue, but in my opinion, the key to the housing recovery is getting all houses above water, and that is going to take time. It also means that someone is going to have to eat the principal, and I believe that should be the banks.

Chairman Frierson:
Is Ms. Considine part of your introduction to the bill?

Senator Segerblom:
Yes, she is. She just does not think so.

Chairman Frierson:
If you are here for supportive testimony, we can see if there are any questions first. If you are part of the introduction, I would be happy to let you go ahead.

Venicia Considine, representing Legal Aid Center of Southern Nevada:
We are here in support of everything that Senator Segerblom stated.

Chairman Frierson:
Are there any questions for the sponsor?

Assemblyman Wheeler:
Would this incentivize someone from not paying his mortgage so he can get out from under his mortgage and buy it for a cheaper price?

Senator Segerblom:
Your answer is yes. In reality, that is what goes on in Nevada every day. If you have a $600,000 mortgage and your house is worth $300,000, how many years are you going to sit there? Are you going to sit there for 20 years until your house is above water? Economically, people are not going to pay on a mortgage for years when they will ultimately still be underwater. They are going to walk away at some point. This helps them do it now. Right now, the bank does not have to let you do a short sale. If the bank wants to say no, it is going to make you stay there or file bankruptcy, which is the bank's choice. The irony is that the bank says, "Sure, we recognize that you are underwater

and cannot stay in this house, so we will let you do a short sale and walk away." You are going to have to sell it to someone, perhaps an investor. You will have to leave the neighborhood, and the kids will have to leave their schools. For what? The reality is that the bank is going to take a $300,000 hit in the principal and let someone else move into your house, so why should you not be given that same opportunity. That is what we are saying. If the bank is willing to do it for someone else, you should have a chance to buy it too. I agree with your basic premise that it might encourage people to do it sooner, rather than later. [(Exhibit G) submitted but not mentioned.]

There is an amendment being offered by the credit unions (Exhibit H). We do not have an objection to the majority of the language, but there is one point that says it is only available to people who participate in mediation. It is my understanding that only one out of ten mortgagees are participating in that process, so I do not think there should be the limitation of whether you went through the mediation program.

Chairman Frierson:
If they are going to be here to provide testimony, I will address that as well. There is a bill, if it moves, that would create an opt-out provision that might increase the number. I will let the credit unions address that.

Assemblyman Thompson:
I like the bill and what it says should happen. People are having a hard time now just getting a reduction. Have you talked to any banks to see if we can actually implement this? Or if we pass this, will it just sit there and create false hope? Do you have any assurances from the banks? That may come from later testimony.

Senator Segerblom:
Originally, you did not have to match the specific terms; you had a 30-day right to come back in. You had a chance to go get a mortgage, come back, and buy it at the short-sale price. To get it out of my committee, I had to water it down. I had another bill which dealt with getting rid of deficiency judgments. There are a lot of things we could do but, as you know, that is the reality. People are begging the banks to negotiate with them, to reduce the principal to what the value of the house is. They do not want to move; they want to stay there. It is their neighborhood and anything we can do to help them we should do. This may be one small piece of the puzzle, but we are trying.

Assemblywoman Spiegel:
When my husband and I bought our house in 2001, we wound up getting a mortgage from a mortgage servicer that is out of state because the interest

rate was lower. They told us we were able to do that because the risk of mortgage default was higher in Nevada, and the California servicer that we had was not up to speed on that. I wonder what impact this would have on interest rates. Do you have any analysis or data on what kind of impact this would have on the interest rates that are charged in Nevada? Assemblyman Wheeler brought up that mortgages in Nevada would be riskier than in other states.

Senator Segerblom:
I do not have percentages, but in 2009 we passed a bill that said, in the future, homeowners could walk away without deficiency judgments for any mortgage entered into in 2009 and forward. We do not have that for mortgages before 2009. Our law is now the same as it is in California. If you get a mortgage for $600,000 and the property is only worth $300,000, you can walk away scot-free. I do not think it makes any difference; that protection is already in our law for future mortgages. I do not have any evidence that what is being charged for interest rates in Nevada is any less or more than in other states.

Chairman Frierson:
Ms. Considine, please go ahead with your testimony.

Venicia Considine:
We support S.B. 424 (R1) because it gives the homeowners the opportunity to obtain their home at market value in situations where the lender or servicer cannot or will not work with them otherwise. This scenario may not help thousands of homeowners, but I believe it will help a very important segment of them. For example, right now we see a lot of investors, or advertisements, and people coming into our office stating that they are getting phone calls, papers on their doors, and letters in the mail saying, "We can get you your house for market value." Essentially, short sell your house, we will buy it, and then we will resell you the house. The idea is, if you cannot short sell your house, this third party can be the entity in the middle. We have seen this fall apart. Of course, we only get the people who come to our office where that situation has failed, and where someone has a mortgage owned by an entity that does not do principal reductions, period. They cannot afford the current mortgage and are not able to get a payment that is affordable; therefore, they go to the people where the home was sold through a short sale.

What I want to point out about a short sale is that the bank agrees to an amount that it is willing to take; an amount short of what is owed overall that the bank is willing to accept. That amount is then given at the short sale and the sale goes through. Sometimes, the other part of the agreement to buy the house back is that you have to rent it for a year, and then you can buy it back. Many times that does not happen and the previous homeowners who fell for

this idea are evicted from the property. In some respects, it is going on to the detriment of our communities and the homeowners who want to stay in those communities.
About 60 percent of the current mortgages in Nevada are owned by entities that refuse to do principal reductions. If you and your neighbor bought your homes on the same day, at the same time, the same model, the same price, and you have the same income, but he has a loan owned by someone willing to do a principal reduction, your neighbor could potentially get a principal reduction where you cannot. You sit there watching the neighborhood turn over and the people with equity in their houses reselling them, while you owe hundreds of thousands of dollars more than your house is worth. In a situation where the lender refuses to do a principal reduction—but is willing to accept a lower price to sell the house in a short-sale market—this bill gives homeowners who have the available credit and the means to buy the house back at the short sale equal footing with the rest of their community. It keeps people who want to stay in the community and neighborhood there, and the house does not become an investment or rental property. That is why we support the bill.

Chairman Frierson:
I see no questions. Is there anyone else wishing to offer testimony in support of the bill? [There was no one.] Is there anyone wishing to offer testimony in opposition both here and in Las Vegas?

Bill Uffelman, President and CEO, Nevada Bankers Association:
We are in opposition to Senate Bill 424 (1st Reprint). As Ms. Considine said in her testimony, 60 to 65 percent of mortgages in this state are not eligible for principal reduction because they are owned by the government-sponsored enterprises that, in many instances, your retirement funds are invested in. They are barriers to some principal reduction actions that the Senator and others would like to see.

That said, on its face, this bill could encourage the borrower not to short sell the property, but to allow it to go to foreclosure in the hopes that he would be able to reacquire it after the foreclosure sale. The comment was made that third parties say they will buy the house and rent it back to the homeowner; that they will put the homeowner in a position so he can buy his house back. I have seen short sale documents that specifically provide that the current borrower will not regain possession of the house through rent or purchase for an extended period of time. They are creating a hope that, as Ms. Considine said, in many cases turns out to be a false hope.

The bill relies on the seller's intent. If, in fact, the bank becomes the owner of the property through the foreclosure sale, it intends to sell it for as much as

possible. You may think it is their intent to sell it for some reduced value—it may end up being a reduced value—but the initial intent when the property is put back on the market is to sell it for as much as possible.
I have been advised that in this state the courts have a doctrine of equitable reattachment. Equitable reattachment says that, if the defaulted borrower winds up in possession of the property, the junior liens and any liens that were foreclosed reattaches to the property. You may have thought you had a deal, but the reality is that you bought it with all of the impediments that it had prior to your foreclosure sale. It is not the great deal that some people think it might be. I would suggest that this bill, though well intended, is faulty and I urge you to vote against it.

Chairman Frierson:
Would you agree that we are probably talking about an extremely small number of people who would have the resources to try to do this considering their credit is probably shot? You are looking at cash or a real nonconventional lender.

Bill Uffelman:
You are probably right. The question in my mind is, as I said, the hope preexists the introduction of this bill. This bill might increase hope. There is a hard-money lender out there who will lend you money on any terms at any price. Yes, the mortgage might be less money, but the reality is that the interest rate could be three times what you paid previously. The bill could impact and encourage the entire industry to return people to the same problem they had before they went through the foreclosure.

Jennifer DiMarzio-Gaynor, representing Nevada Credit Union League:
I have proposed amendments for S.B. 424 (R1) (Exhibit H), which have been submitted to the bill sponsor. I would like to say that my client is supportive of the intent of this bill, and we bring these amendments to add some clarification. I thank you for your consideration of them. As Senator Segerblom has already noted, he has approved these with the exception of one amendment that would require participation in the Foreclosure Mediation Program before a homeowner could qualify for the right of redemption. I will leave that to his and the Committee's discretion. I will also leave it to the Chair if you want me to walk through the remaining amendments.

Chairman Frierson:
Please do.

Jennifer DiMarzio-Gaynor:
The second amendment would clarify the meaning of the right of first refusal being conditioned on the owner-buyer meeting the same terms as the creditor

is now forgoing. We believe this was discussed in the Senate and Senator Segerblom discussed it here this morning. We want to add that to the bill language. That would include, for example, if it is a cash offer, the owner would have to also come up with cash.

The last several amendments are where the bill provides specific guidelines for the notice of pending sale and the right of redemption, which will be made by the creditor to the homeowner. It also sets a time frame for the homeowner to redeem that right before the creditor can commence with the sale and when that right terminates. It also clarifies what happens if the creditor attempts, in good faith, to contact the homeowner but cannot. Then there are recommendations. Thank you for your consideration.

Chairman Frierson:
You are opposed to the measure because you believe that your amendment is necessary, or even with your amendment you are still opposed?

Jennifer DiMarzio-Gaynor:
With the amendments, we would no longer be opposed. We think if needs clarification as to time lines so the mortgage holder would know what they are required to do and what the time frames are.

Chairman Frierson:
Would that mean you would support it with the amendments, or would you be neutral?

Jennifer DiMarzio-Gaynor:
I would have to talk with my client, but they would probably be neutral.

Mary Law, Private Citizen, Reno, Nevada:
I would like to address three points that have been brought up. When they talk about matching an opposing cash offer, I am pretty aggressive and I would like to recommend that they also include the down payments that we have made, the monthly payments made, the paid property taxes, homeowners' fees paid, and the insurance that we paid. As a current participant in the home purchase, we did not just walk in and sit in the house for free. We have invested our money and our time, and I would like to see some kind of consideration for that prior investment if we have to compete to buy it on an open market. That may be radical and there are probably issues that would have to be discussed to resolve those questions. I would like to put that out as an amendment.

Regarding the participation in the Foreclosure Mediation Program as a requirement, I would totally encourage you to open the participation in the

program to all homeowners. It is limited now since you have to wait for a notice of default. The banks control that and they use it against us. Anything you can do to open participation would help a lot of homeowners. I do not have statistics on how many, but it would help a lot of us. The mediation program needs some encouragement and support to do what they are already entitled to and supposed to be empowered to do, which is to issue sanctions when the banks do not comply with the rules. Be as supportive of the Foreclosure Mediation Program as you can.

Finally is the issue that deals with the 60 percent that are owned by government-sponsored enterprises that refuse to do principal reduction. The good news is that there is a lot of participation across the nation to change that policy. I believe it comes from the Federal Housing Finance Agency (FHFA). The acting director is being replaced. As you know, that takes time. There was an analysis done after he made his decision to refuse principal reductions. As analyses always go, there is a follow-up analysis that says if they had offered principal reduction in the first place, we would all be better off. If Nevada can get us ahead of the curve, that would be great.

Assemblywoman Spiegel:
Is your opposition mostly that this bill does not go far enough?

Mary Law:
Pretty much.

Chairman Frierson:
Are there any questions? Seeing none, is there anyone else wishing to offer testimony?

David Kallas, Private Citizen, Las Vegas, Nevada:
Even though I am sitting here representing myself in opposition, I am in full support of the language contained in S.B. 424 (R1). I had offered an amendment to Senator Segerblom's office and had spoken with the Senator regarding the amendment and I believe I have his full support on it. It relates to line 5 of the first page of the amendment where it talks about foreclosures. If the banking institution receives the property at a foreclosure sale, add "or through a deed in lieu of a foreclosure," which, for those of you who are not familiar with that, is when both parties agree to return the property to the financial institution with no penalties, and it is currently not in default. Those people should also be entitled to purchase the house in a future foreclosure sale or sale by the financial institution at market value. When we talk about market value, my hope is that the Committee would define market value. If you would indulge me, the reason I am saying that is because market value can be

determined by the bank, which is not always the best objective party to make that determination.

I had a situation where, for the last four years, I have been trying to keep a piece of property afloat that I purchased in 2007 just prior to the market tanking. For two years, while I was at the Legislature working in 2007 through February 2009, I was making payments on both the land that we had purchased and on the home that we were renting to the total of $7,750 a month. For those of you who know me, you know that I retired from the police department in September 2009 after 30 years of service. My wife has been a social worker with the county for 28 years. No way could our salaries support that type of payment, so we had to use every bit of our personal savings to not go into default because we did not want to be part of the problem. We wanted to be part of the solution with the hope that the market would eventually turn around. When the bank finally gave us the money to build the house in early 2009—we completed it in December 2009—we were told that the house was worth $100,000 less than what our mortgage was. The mortgage was $945,000 and the house was appraised at $855,000. We continued to make the payments on it because it was our obligation. We have done so to the extent that every single dime that I had personally saved in my retirement account—which exceeded $377,000 on the day I retired—has now been exhausted so we could continue to fulfill our obligation to the financial institution, the homeowners' association, and the Clark County Assessor's Office by paying our property taxes. The previous speaker spoke about taking into consideration the costs that are associated with maintaining a structure at the time it may go into a foreclosure sale or is taken back in lieu of foreclosure. I think that is important for the Committee to consider.

We are currently in the process of trying to sell our home and we have had the association and financial institutions agree to a short sale even though they put a value on the home based on their interpretation of what the value is. When we questioned what they used to determine the value, they told us they used three comparable sales that took place in a country club eight miles away from our subject property. I do not think a licensed appraiser would tell you that is an appropriate measure. There are certain guidelines they have to follow, and using property seven or eight miles away is not the way to do it. We currently have a buyer for our home who has offered cash for the house somewhere close to what the credit union has said is their market value. Unfortunately, I do not believe they are dealing in good faith. They asked their own appraiser to give us an appraisal on the residence so we could have an idea ourselves what the real value of the house was. After receiving a check and a contract, he called us two days later and told us that his errors and omissions insurance told him it would not be a good idea to do the project after providing us with an

appraisal. I have to believe, and it is only my own belief, that it was because of his relationship with the financial institution that owned the note.

As I sit here today, I would implore the Committee to take this bill and pass it as soon as possible, even though I heard one of the Assemblymen say there may be people who will take advantage of this by going into default and then receiving a principal reduction on their home as a way to save themselves hundreds of thousands of dollars. I would argue on the other side that there are a lot more people like me who are, at the detriment of our financial futures—not just my wife's and mine, but our children's—have continued to fulfill our obligations. We have been met with objectionable procedures from the financial institutions as we try to resolve this issue in a reasonable and fair manner.

In conjunction with what the last speaker said, I provided the financial institution with all of the information about the interest that we have paid on our home since we purchased the property in June 2007, along with all of the other auxiliary costs that we paid them during the different closings that we did. To give them credit, they have made two loan modifications on the existing note. With all of that said, if they were to accept the current cash offer by the current buyer, their loss would be around $60,000. That is a lot of money to anyone. In October 2012, when we spoke to them about doing a principal reduction, they told us our home was valued $300,000 less than what we owed. We started looking for other properties and found that the only other properties we could buy were of similar value. We asked them why they could not just reduce the principal rather than have us move into a house that would cost us the same as what they would be selling our home for. Their response was that if they did it for us, they would have to do it for other people. We responded, "Why not?" Why do they continue to make people suffer when they have a way to resolve this? All I see now is people coming in with cash, buying up homes, and artificially inflating the value of those homes to the extent that we are going to go right back to the same problem we had eight years ago. We will have a bubble that will eventually burst in five or six years and we will find ourselves in front of this body again asking for assistance.

Even though I sit here in an opposing manner, I am fully supportive of this bill. I would ask that you include the words "in a deed of foreclosure" after the words "at a foreclosure sale." Let those of us who can reach an amiable solution with our financial institutions take back pieces of property that we have spent four years maintaining at our own financial risk.

Assemblywoman Spiegel:
I would like to ask Mr. Uffelman a question if I may.

As I was thinking about this bill and listening to the testimony, I realized that there is something I do not understand, and I hope you can explain it to me. It is about paying my insurance. It is my understanding that, if people do not have at least 20 percent down at the time they get their mortgage, they need to have mortgage insurance. What happens with mortgage insurance when there are foreclosures or strategic defaults? It struck me that we have not heard from any of those folks.

Bill Uffelman:
Private mortgage insurance (PMI) insures the difference between your down payment and the traditional 20 percent down. If you were buying a $200,000 house and you only put down $20,000, which is not 20 percent or $40,000, you would be buying $20,000 worth of insurance. The rate that you, the homeowner, pay is based on your credit score, how much you actually put down, and a whole host of factors that go into it. Two people on the same day buying the same type of house could wind up with different PMI rates.

When the house ultimately sells after a default, at some point in time, the insurer has an obligation to pay on that PMI and the PMI gets paid to the investors who own that note. If you followed the news for the last few years, there is a situation where the PMI insurer refused to pay because they felt the underwriting on the loan was faulty. There is no clear, "Yes, you will get $20,000 at some time in the future on that default." That is the situation. It is not like the default happened, there was a sale on the first of the month, and on the thirtieth I get a check; it is a long way out there.

Chairman Frierson:
We heard the opposition, so now we are in neutral. Is there any testimony in the neutral position? Seeing none, Senator Segerblom, would you like to come up and make closing remarks before we move on?

Senator Segerblom:
This bill does not deal with the situation we had a couple of years ago where the homeowner lost his job and could not afford to pay his mortgage. This is a situation where the neighbor has the same identical house and your neighbor has a $300,000 mortgage, which is the value of the house, and you have a $600,000 mortgage. That cannot be sustained. That is 60 percent of the situation in Nevada. This bill allows the homeowner to go to the mortgage company and negotiate a principal reduction.

Next, 60 percent of the homes are currently in the group of mortgagers who, under federal law, are not negotiating principal reductions. President Obama has just hired a new person to be in charge of that. I am confident that will be

changed, and the policy will be such that the 60 percent will also be able to reduce the principal. This is just a tool to give homeowners leverage with the mortgager, to ask the mortgager to reduce their principals to allow them to stay in their house and neighborhood. I do not think it applies to as small a group of people as you think. After the President changes his policy, there will be a large number of people who will benefit from this bill.

Chairman Frierson:
With that, I will close the hearing on S.B. 424 (R1). I see Senator Roberson here. I will open the hearing on Senate Bill 356 and remind members that we have this bill, a work session, and floor. Please keep that in mind when I start moving people along.

Senate Bill 356: Revises provisions relating to real property. (BDR 9-824)

Senator Michael Roberson, Clark County Senatorial District No. 20:
I brought Senate Bill 356 at the request of the Real Property Law Section of the State Bar of Nevada. Senate Bill 356, which passed out of the Senate unanimously, makes technical corrections to laws affecting mortgage loans. The bill has been approved by the Board of Governors at the State Bar in support of the recommendation of its Real Property Law Section. A similar bill passed both houses in 2011, but failed when extraneous language was added to the bill at the end of the session. The present bill has been approved, as I mentioned, by the Senate in its original form.

In summary, sections 1, 2, and 3 clarify and update language in *Nevada Revised Statutes* (NRS) Chapter 107 relating to statutory covenants and assumption fees and deeds of trust. Section 4 corrects an inadvertent omission in 2011 legislation. Sections 5 and 6 combine into one statute the two existing statutes dealing with borrower impound accounts for insurance and tax proceeds. I can go through sections 1 through 6 or I can turn it over to Ms. Dennison.

Chairman Frierson:
Is Ms. Dennison going to go through the remainder of the bill? That is the bill. Is her testimony part of the introduction that might answer some questions for the Committee before we start?

Senator Roberson:
There was very little testimony before the Senate Judiciary.

Chairman Frierson:
Then would you go through it.

Senator Roberson:
Section 1 amends two of the nine statutory covenants in NRS 107.030. This statute, originally enacted in 1927, contains provisions that may be added into a deed of trust. Covenant No. 7 on page 4, lines 22 and 23, addresses the distribution of trustees' sales proceeds. The covenant is amended to permit the beneficiary's attorney's fees to be consistent with most loan documents, stating "reasonable" rather than a percentage of the unpaid loan.

Chairman Frierson:
On Covenant 7, when you say reasonable as opposed to a percentage of the loan, are we striking language that indicates it is a percentage of the loan and replacing it with "reasonable counsel fees" or is that a reflection of the practice?

Karen Dennison, representing the State Bar of Nevada:
In Covenant No. 7, the amendment allows the attorney's fees that are collectible to be expressed either in the form of a percentage, which is line 22 on page 4, or as "reasonable counsel fees and costs actually incurred." As Senator Roberson explained, current practice is simply to insert in that blank reasonable counsel fees, and this codifies current practice.

Chairman Frierson:
If you can do a percentage or reasonable fees, is the addition of reasonable fees for the instance where the percentage is not adequate? What is the difference? Why would we not strike percent and only use reasonable fees?

Karen Dennison:
Percentages tend to be arbitrary, whereas "reasonable" is a standard that is customarily used in loan documents. We give the parties to the deed of trust the option to fill in the blank—which is a statutory covenant that has a blank in it—either with a percentage or with reasonable counsel fees and costs actually incurred.

Chairman Frierson:
So, I would assume, at this stage we do not know what the fees are going to be yet, so this is a covenant on the front end that says you make your choice now if it is going to be a percentage or reasonable fees and you have to live with whatever choice that is.

Karen Dennison:
Yes, that is correct. The attorney's fees can vary according to the work that needs to be done.

Senator Roberson:
Next, please look at Covenant No. 9, which is page 5, lines 9 through 15. This addresses changing the deed of trust trustee. The covenant is amended by removing the reference to a corporate board resolution. In modern real estate loans, changing the trustee is a ministerial act accomplished by the recording of a written substitution trustee signed by the beneficiary and would rarely, if ever, come to the attention of a lender's board of directors. Also, many lenders are not corporations. The amendment provides that a properly recorded substitution, signed by the beneficiary is sufficient to change the trustee.

If we go to section 2, it amends NRS 107.040, which explains how to add the statutory covenants into a deed of trust. If you look at page 5, lines 43 through 45, it permits the blank for attorney's fees to be completed with the words "reasonable counsel fees and costs actually incurred."

Section 3 amends NRS 107.055, which requires any assumption fee to be contained in the deed of trust when it is signed. In practice, if an assumption is permitted, the assumption fee is usually a percentage of the unpaid loan. The bill, on page 6, lines 5 through 12, clarifies that the fee may be a fixed amount; a percentage of the loan; the lesser of or greater of; or some combination of the two.

Section 4 amends NRS 40.458, which was enacted in 2011, which states how a financial institution preserves any deficiency following a short sale. As presently written, the statute on page 6, lines 38 and 39, requires only the borrower to sign the document preserving the deficiency. Since it is the lender that actually holds any deficiency rights, and an agreement is between two parties, the statute is amended to also require the signature of the lender.

In section 5 on page 7, NRS 100.091 governs how lenders administer impound accounts into which borrowers deposit amounts used for the payment of taxes and insurance. The statute is amended by adding in the nonduplicate provisions of NRS 106.105—the other impound statute—so all of the impound rules are in place. Specifically, subsection 1, which is on page 7, lines 13 through 19, the lender's overall responsibilities for the account are amended by adding in NRS 106.105, subsection 1, paragraphs (a) and (b). That is on page 9 for your reference.

Section 5, subsection 3, page 7, lines 38 through 44, adds language from NRS 106.105, subsection 2, requiring the lender to annually return to the borrower any amounts in excess of the amounts necessary to pay the obligations covered by the account.

In section 5, subsection 4, page 8, lines 6 through 18, the lender's obligations, after its required annual review, now includes those items in NRS 106.105, subsection 1, paragraph (c), which spells out the borrower's rights with respect to excess funds.

Section 5, subsection 5, on page 8, lines 19 through 22, adds NRS 106.105, subsection 1, paragraph (c), permitting the lender to retain excess funds in the account if the borrower fails to give directions to the lender.

Section 5, subsection 6, page 8, lines 24 through 25, clarifies the statute that governs not only deposits into the account, but also interest on those funds.

Section 5, subsection 7, page 8, lines 27 through 29, adds the civil penalty for violations of the statute presently found in NRS 106.105 after subsection 1(c).

Section 5, subsection 8, page 8, lines 30 through 35, is new. This limits the application of the statute to residential loan transactions without regard to the amount of the loan. While most residential loans require impound accounts, the requirement of an impound account on a commercial loan is a matter of negotiation, and many loans do not require them.

Finally, section 6 repeals NRS 106.105 since those provisions that do not already duplicate NRS 100.091 are now incorporated into that statute pursuant to section 5.

Chairman Frierson:
It wasn't apparent until after you went through it all that this seems to be codifying practice in large part. I was looking at section 5 about annually returning the excess and this seems to just codify practice.

Are there any questions? Seeing none, anyone who wishes to offer testimony in support of Senate Bill 356 either here or in Las Vegas, please come forward. Seeing no one, is there anyone in opposition? There is no one, so we will take neutral here or in Las Vegas. Seeing no one, thank you for your patience. I would have called you first had I known it would be that fast. With that, I will close the hearing on Senate Bill 356. I am going to take a two-minute legislative recess to get ready for the work session [at 10:13 a.m.].

[The meeting reconvened at 10:18 a.m.] We have our work session and, fortunately, we are going to have enough time to do it. We have eight items on today's work session. We will get right to it by starting with Senate Bill 71.

Senate Bill 71: Revises provisions governing sentencing of certain criminal offenders and determining eligibility of certain prisoners for parole. (BDR 14-447)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 71 was sponsored by Senator Parks. It was heard in this Committee on April 19, 2013. It relates to criminal sentencing and parole. [Continued to read from work session document (Exhibit I).]

Chairman Frierson:
Is there any discussion on the bill? There is a motion to do pass.

ASSEMBLYWOMAN DIAZ MOVED TO DO PASS SENATE BILL 71.

ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.

As Chairman, I included the amendment. I think Ms. Brown has been dedicated to some of these causes and deserves to be heard. There are some problems with the proposed amendment. Putting in an age requirement is an equal protection challenge, as well as some of the language could work in a statutory sense. To automatically release people to the streets is not typically something that we contemplate in statute anyway. I wanted it to be heard. There is a motion and a second, and is there any other discussion?

THE MOTION PASSED UNANIMOUSLY.

Mr. Carrillo will do the floor statement.

Next on the agenda is Senate Bill 103 (1st Reprint).

Senate Bill 103 (1st Reprint): Revises the period of limitation for crimes relating to the sexual abuse of a child. (BDR 14-177)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 103 (1st Reprint) was sponsored by Senator Kieckhefer. It was heard in this Committee on May 8, 2013. This bill revises the period of limitation for crimes relating to the sexual abuse of a child. [Continued to read from work session document (Exhibit J).]

Chairman Frierson:
Are there any questions or discussion on the bill?

Assemblyman Hansen:
What is the Nevada definition of sexual abuse? There is a due process issue in my mind. To jump this up by 15 years—I agree it should go up—seems like an awfully long time for someone to come back 20 or 30 years after an alleged crime and then make the allegation. Why would we wait so long? I recall psychiatrists interviewing people and, in effect, creating scenarios that never really happened and got these people believing that these things had occurred when in fact they had not occurred. I wonder about those types of issues, especially from the lawyers on the Committee. From a defense perspective, is it reasonable to wait 20 years before making allegations?

Brad Wilkinson, Committee Legal Counsel:
With respect to the definition of sexual abuse, it has a meaning ascribed to it in NRS 432B.100. *Nevada Revised Statute* 432B.100 defines it as acts upon a child constituting incest, lewdness with a child, sado-masochistic abuse, sexual assault, statutory sexual seduction, open or gross lewdness, or mutilation of the genitalia of a female child.

It is a policy decision as to what the statute of limitations should be. There is not a constitutional due process concern with the statute of limitations being a certain period as testimony indicated. There are a number of states that have no statute of limitations at all, which is what the bill as introduced originally provided. It is up to the Committee to determine what the appropriate statute of limitations should be.

Assemblyman Hansen:
With your background in defense, Mr. Chairman, are you comfortable with the verbiage in this bill?

Chairman Frierson:
I am a prosecutor now. I did not see it as waiting as much as being able to pursue it if, for whatever reason, a circumstance arose that prevented it from being pursued earlier. As a matter of fact, in a practical sense, it would not make sense to wait if you had the evidence, because the evidence naturally gets weaker over time. The concern about waiting and the effect that therapists could have are valid concerns, but I do not think that any prosecutor would intentionally wait, because it would make his job more difficult. This is designed to acknowledge the victims who came forward years later because they had not been comfortable. A lot of these will never come to this, because the witnesses will not be around for that long. For those where someone else came forward and they finally come up with the courage to come forward, this gives them a voice. I think that was the intention of the bill. I do not think any

practitioner would wait, because it makes the job more difficult for everyone after waiting that long.

Are there any other thoughts on the bill?

> ASSEMBLYWOMAN DIAZ MOVED TO DO PASS SENATE BILL 103 (1ST REPRINT).
>
> ASSEMBLYMAN WHEELER SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Ms. Dondero Loop will do the floor statement.

Next on the agenda is Senate Bill 106 (1st Reprint).

Senate Bill 106 (1st Reprint): Revises various provisions relating to judicial administration. (BDR 14-509)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 106 (1st Reprint) was sponsored by the Senate Committee on Judiciary on behalf of the Commission on Statewide Juvenile Justice Reform. It was heard by this Committee on April 25, 2013. This bill relates to juvenile justice and criminal procedures. [Continued to read from work session document (Exhibit K).]

Chairman Frierson:
I certainly appreciate the work that went into this. This is the second time around trying to get this measure approved. I appreciate Judge Voy taking out what some members of the Committee found to be problematic language.

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS SENATE BILL 106 (1ST REPRINT).
>
> ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Mr. Ohrenschall will do the floor statement.

Next on our work session we have Senate Bill 169 (1st Reprint).

Senate Bill 169 (1st Reprint): Revises provisions governing criminal penalties. (BDR 15-495)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 169 (1st Reprint) concerns criminal penalties and was sponsored by Senator Segerblom. It was heard in this Committee on May 7, 2013. This bill limits punishment by imprisonment in the county jail for persons convicted of a gross misdemeanor to no more than 364 days. [Continued to read from work session document (Exhibit L).]

I am not sure what date Senator Segerblom submitted a proposed amendment, but a copy is attached. This bill is 19 pages long and I only provided a copy of the section that was affected by the amendment. It is only the new section, section 31. The rest of the bill would remain unchanged by the amendment.

Chairman Frierson:
We have the bill itself, but we also have the amendment that originally proposed to reduce the matter down to a misdemeanor. The question comes to mind, which misdemeanor? The court would be obligated to pick a misdemeanor, which we decided was problematic in other bills. However, it is my understanding there had been discussions that, rather than amend it to allow for a person to go back and request a reduction to a misdemeanor, the conceptual amendment would allow a person to go back to court and request that his sentence be modified retroactively to be 364 days. The amendment would accomplish the same goal for ex-offenders as the bill does for existing cases.

It is also my understanding that the District Attorneys Association was neutral on this bill, but would be compelled to oppose the bill if either the amendment as presented or the conceptual amendment were added. Each member of this Committee can take that for what it is worth, but also for what it means for the bill long term. I would be open to comments or thoughts on this before we move.

Assemblyman Ohrenschall:
I had the opportunity to speak with Mr. Jones, who represents the Nevada District Attorneys Association, and I appreciated being able to talk to him about the amendment that Senator Segerblom proposed, and about a conceptual alternative that would allow someone who has already done his time and served the year in jail to go back to court and not ask that they be exonerated, but simply ask that the sentence be reduced to 364 days. That seems like a bookkeeping or recordkeeping thing. For some of the examples brought up in the hearing, there are folks who end up serving the year and the collateral consequences from the U.S. Immigration and Custom Enforcement

could be devastating to their whole family. A lot of times, the kids are going to school and doing the best they can, but they lose the head of the family. Sometimes people are serving a sentence for a theft crime, but it is the crime of obtaining a false identification so they can work. It is no other crime. I think there were examples highlighted in testimony as well. The conceptual amendment, which would allow people who have been sentenced to the whole 365 days to lower it to 364, would limit the number of people who would seek this type of relief. That might address some of the concerns that were brought up, that this might open the floodgates. I believe the courts would have jurisdiction.

There is a case called *State of Nevada v. Eighth Judicial District Court,* 100 Nev. 90, 677 P.2d 1044 (1984). It was ruled on by the Nevada Supreme Court in 1984. The court said that the sentencing court may, under certain circumstances, entertain a motion to vacate or modify its orders and judgments. In that same case, the court said where a defendant was sentenced on the basis of a materially untrue assumption concerning his or her criminal record, the result—whether caused by carelessness or design—is inconsistent with due process of law. I hope the Committee will consider the conceptual amendment. What we are trying to do prospectively does not seem fair to me; denying people who have served their time and are paying the ultimate price in not being able to go forward with their case and trying to become legal citizens.

Chairman Frierson:
With the conceptual amendment, there may be a legal opportunity to do so. I would be concerned that this would kill the bill. That is worthy of consideration, although nothing we do is certain, and a lot of our other bills could be killed just as well.

Assemblyman Hansen:
I am against the amendment. It looks backwards too much. These people have broken the law. We are removing the discretion that the judge would have to take into account extenuating circumstances. If, in fact, someone committed a fairly serious crime and was sentenced for a gross misdemeanor, that is a good reason they should potentially be removed from the country for violating our laws. I think the bill, overall, is wrong and we should leave those things up to the judges. When there are unique extenuating circumstances, the judges will certainly take those under consideration so the punishment is not excessive in relation to the crime. So I am a no vote, although the amendment sounds good to me at the moment.

Assemblywoman Diaz:
I want to clarify for my colleagues that sit on this Committee that being a legal, permanent resident does not mean that you broke the law to be a law-abiding citizen of this state. You did your paperwork, got your green card and came to this country, and have been working just like anyone else that was born here. The only part that is missing is that you were not naturally born in this country. You did everything the right way and have been a resident for 20 years, but now you have a bounced check against you. You are looking to obtain your citizenship, but that bounced check prohibits you from doing anything. Your kids may have been born here and all of your ties are here. You could be the most American person, but now you cannot become a citizen. How is that an even playing field? I want to make sure you have in your mind that this is not just about undocumented people. It is more about making sure that we are not taking certain avenues for people to obtain citizenship that have not done things in a law-abiding fashion. I think there are many citizens who do these types of crimes, but they are still able to remain in this country.

Assemblyman Ohrenschall:
Assemblywoman Diaz brought up some points at the hearing that I think the representative from Catholic Charities also brought up. A lot of folks end up with a gross misdemeanor sentence from the state judge who does not realize the drastic consequences on their families from immigration removal and deportation. It could be that bounced check. It could be something that could happen to any of us who are natural born or naturalized, but we will not face those consequences. I would not want to spend a year at the county jail, but that would be less devastating than to potentially be forced out of the country.

I have great respect for my colleague from Sparks, but this does not take away discretion from the judges. If the amendment were adopted by the Committee, and someone wanted to go back and ask for the reduction to 364 days after he had served his sentence, the judge would have complete discretion. If the standard in the amendment was for good cause shown, the judge could look to that or case law. Is there a good reason that the sentence was too severe?

Assemblywoman Fiore:
I want to clarify that I spoke with the district attorney and this does not hinder judges' decisions whatsoever.

Assemblyman Hansen:
Can we get a brief review of what kind of gross misdemeanors there are in Nevada? I know about bounced checks, but I do not think people will be sentenced to a year in jail for bouncing checks. I understand that gross misdemeanors are actually fairly significant crimes and they do not revolve

around minor, technical things like a bounced check, unless it has been repeated behavior.

Chairman Frierson:
I do not think the extent to which someone goes to jail is the issue here. Whether if requires incarceration is not the point. The point, with respect to the bill, is the consequence of the gross misdemeanor. This not only helps those who are not citizens—and Ms. Diaz pointed out that we are talking about people who are here legally, not illegally—but this also helps people qualify for boot camp. It helps young people who want to get into the military who would have that on their record. While the majority of the testimony was about immigration, it does help other people as well.

Dave Ziegler:
There are a number of gross misdemeanors identified in the bill such as attempted C, D, or E felonies; exploitations of an older or vulnerable person; certain unlawful acts of bidders on public contracts; filing a false or fraudulent sales tax return; defacing a native Indian grave; defacing an historic site; violating an order of the Secretary of State regarding athletes' agents; illegal dumping; intentional violation of wastewater discharge permits; and others.

Chairman Frierson:
We do not normally take testimony, but there are a lot of questions.

Senator Tick Segerblom, Clark County Senatorial District No. 3:
It affects immigration, but there are other issues too. It is not how long you are in jail, but it is the fact that the sentence could have been up to a year. That is why, if you change it from 365 days to 364 days, you do not qualify for the enhanced penalty.

Chairman Frierson:
The question is not only about the bill, but also about the proposed amendment. We are looking at the conceptual amendment of allowing someone to come back and request that his 365-day sentence be reduced to a 364-day sentence. That would take the district attorneys association's neutral position to one of opposition, even with the conceptual amendment.

Senator Segerblom:
I strongly support this. It is the crux of the bill. It gives people who have already been through this process a second chance; people who may not have had good legal advice, and pled to something before they realized the consequences. The district attorneys' objection is that there will be too much paperwork. It is not that they object to what we are asking. If it means

someone can apply for citizenship as opposed to the district attorney having too much work, I will jump to the side of the person applying for citizenship.

Assemblyman Ohrenschall:
The conceptual amendment is a change from the amendment in the work session, because it changes the limit from 365 days to 364 days. You would be limiting the group of people who might seek this type of relief. That would address some of the concern about caseload. If it is a meritorious claim for lowering it, nothing mandates the prosecutor to file or apply to oppose this. It is only when they feel it is unwarranted. We are talking about sentences that were already served. They are not looking at getting out of their sentence.

Chairman Frierson:
Is there any other discussion on the bill? I am seeking a motion to amend and do pass with the conceptual amendment. In a practical sense, we are talking about a day.

> ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS SENATE BILL 169 (1ST REPRINT).
>
> ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN DUNCAN, HANSEN, AND WHEELER VOTED NO.)

Ms. Spiegel will do the floor statement.

Next on our work session we have Senate Bill 286 (1st Reprint).

Senate Bill 286 (1st Reprint): Provides immunity from civil action under certain circumstances. (BDR 3-675)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 286 (1st Reprint) was sponsored by Senator Jones. It was heard in this Committee on May 6, 2013. This bill relates to strategic lawsuits against public participation, also known as SLAPP suits. [Continued to read from work session document (Exhibit M).]

Chairman Frierson:
Is there any discussion on this bill? [There was none.]

> ASSEMBLYMAN CARRILLO MOVED TO DO PASS SENATE BILL 286 (1ST REPRINT).
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Mr. Duncan will do the floor statement.

Next on our work session we have Senate Bill 347.

Senate Bill 347: Requires the Advisory Commission on the Administration of Justice to consider certain matters relating to parole. (BDR S-1050)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 347 was sponsored by Senator Brower. It was heard in this Committee on April 29, 2013. This bill requires the Advisory Commission on the Administration of Justice to include on an agenda a discussion of items relating to parole. [Continued to read from work session document (Exhibit N).]

Chairman Frierson:
Is there any discussion on this bill? [There was none.]

> ASSEMBLYMAN CARRILLO MOVED TO DO PASS SENATE BILL 347.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Mr. Wheeler will do the floor statement.

Next on our work session we have Senate Bill 419.

Senate Bill 419: Revises provisions relating to marriage. (BDR 11-1107)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 419 was sponsored by the Senate Committee on Judiciary. It was heard in this Committee on April 22, 2013. This bill authorizes a notary public who has obtained a certificate of permission from a county clerk to perform marriages. [Continued to read from work session document (Exhibit O).]

Chairman Frierson:
Is there any discussion on the bill?

Assemblyman Thompson:
In the last sentence of the first paragraph, does that mean a minister can only do five weddings in a calendar year? When you say five authorizations, does that cover a certain number of marriages that the minister can perform?

Dave Ziegler:
We discussed that question earlier today in getting ready for this meeting. Our reading of the bill is that a person who has a certificate of permission from the county clerk to perform marriages can perform marriages as many as they want and whenever they want. As an alternative method, a person can approach the county clerk for authorization to perform a specific marriage up to five times a year.

Assemblyman Thompson:
So what is a specific marriage?

Dave Ziegler:
My understanding is that there may be a notary public who has a certificate of permission from the county clerk to conduct marriages and it would essentially be an element of their business, or part of their business model to offer marriages. You might also have another person who would like to perform the ceremony for his cousin. He could do that, not as a business, but as a courtesy a few times a year.

Assemblyman Hansen:
I am going to vote no on this because I think we are getting too far down. Notaries public are all over the place. My secretary is a notary public; my daughter is a notary public. Should these people be allowed to perform a sacred ceremony that is legally binding? I do not think they should. I do not think the notary public standards are high enough to perform an ordinance like that.

Assemblyman Wheeler:
I do not have a problem with the notaries doing it, but I do have a problem with the fee increase. I will be voting no on it because of the fee increase.

Chairman Frierson:
If I remember correctly, the fee provision was not opposed in order to take into consideration that some folks are going to be able to take advantage of the significantly less expensive notary option. This would allow the chapels to conduct their business and to stay in business.

Assemblywoman Cohen:
I believe from the testimony that the fees have not been raised in ten years. The chapels were fine with it, according to my notes.

Assemblyman Martin:
I am voting in favor of this bill. I think having notaries perform marriages is just fine. It does not preclude religious organizations from doing what they want to do. We are trying to upgrade, in general, the power of notaries by this bill and it is a good thing. They notarize legal documents—and this is one more legal document—and marriage is a legal contract.

Assemblyman Duncan:
One of the predicates for bringing the bill was that there was a constitutional challenge in federal district court. In taking a look at the case law, I was not convinced—and maybe I need to take a look at it again—that there was a constitutional problem with our statute. For that reason, I will vote no with the right to change upon looking at case law a little more.

Chairman Frierson:
Are there any other thoughts? I see no one, so I will seek a motion to do pass.

> ASSEMBLYWOMAN SPIEGEL MOVED TO DO PASS SENATE BILL 419.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN DUNCAN, FIORE, HANSEN, AND WHEELER VOTED NO.)

Ms. Cohen will do the floor statement.

Last on our work session is Senate Bill 432.

Senate Bill 432: Revises provisions governing the regulation of taxicabs. (BDR 58-1073)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 432 was sponsored by the Senate Committee on Transportation. It was heard in this Committee on April 30, 2013. This bill requires each operator of a taxicab business to post a sign in each taxicab it operates notifying passengers of the maximum penalties for committing an assault or battery upon a taxicab driver (Exhibit P). There was an amendment proposed on the day of the hearing from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). The amendment was not approved by the sponsor.

Chairman Frierson:
From what I recall, the amendment was determined to not be germane. I would be looking at the bill as it is. Is there any discussion on the bill?

Assemblyman Hansen:
I am going to vote no on this and I will tell you why. While I certainly agree with the concept, the idea that you come to the State Legislature to have a statute passed to do something that you are totally free to do now completely independent of any law, it seems like the ultimate in micromanagement. I realize they came and requested that we put it into statute, but they can do all of these things right now. They can adjust it. Now, if they want to do any adjustments, they have to wait two years to come back and redo everything. To me, it is crazy. We should leave it up to, if anything, local jurisdictions. This is not something we should be dealing with on a state level.

Chairman Frierson:
There are statutory requirements of postings in all types of areas, like smoking in restaurants and health codes. This measure is one that is not intended to micromanage, but intended to increase protection of cab drivers by making sure passengers know what they are getting into if they get a little tipsy and decide to take it too far. While I do not support micromanaging anyone, and they certainly have the option of doing this or more, we as a community pay when we let it happen and do not take steps to prevent it.

ASSEMBLYMAN THOMPSON MOVED TO DO PASS SENATE BILL 432.

ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN HANSEN VOTED NO.)

Ms. Dondero Loop will do the floor statement.

I believe that is the end of our work session. I will briefly open it up for public comment. [There was no one.] The Assembly Committee on Judiciary is now adjourned [at 11:02 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 14, 2013 **Time of Meeting: 8:17 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 118	C	Brett Kandt	Letter in Support
S.B. 389 (R1)	D	Senator Segerblom	Proposed Amendment by Venicia Considine
S.B. 389 (R1)	E	Venicia Considine	Written Testimony
S.B. 389 (R1)	F	Mary Law	Written Testimony
S.B. 424 (R1)	G	Senator Segerblom	Pictures
S.B. 424 (R1)	H	Jennifer DiMarzio-Gaynor	Proposed Amendment
S.B. 71	I	Dave Ziegler	Work Session Document
S.B. 103 (R1)	J	Dave Ziegler	Work Session Document
S.B. 106 (R1)	K	Dave Ziegler	Work Session Document
S.B. 169 (R1)	L	Dave Ziegler	Work Session Document
S.B. 286 (R1)	M	Dave Ziegler	Work Session Document
S.B. 347	N	Dave Ziegler	Work Session Document
S.B. 419	O	Dave Ziegler	Work Session Document

S.B. 432	P	Dave Ziegler	Work Session Document