

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
February 14, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:06 a.m. on Thursday, February 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 Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Thelma Reindollar, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office
Zach N. Young, Deputy District Attorney, Washoe County District Attorney's Office
Chuck Callaway, Police Director, Intergovernmental Services, Las Vegas Metropolitan Police Department
Steve Yeager, Attorney, Office of the Public Defender, Clark County

Chairman Frierson:

[Roll was called. Committee protocol and rules were explained.] Good morning. We have two bills today. I will open up the hearing for Assembly Bill 55.

Assembly Bill 55: Imposes an additional penalty for an attempt or conspiracy to commit certain crimes against older or vulnerable persons. (BDR 15-337)

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

Good morning, Mr. Chairman and members of the Committee. I am here on behalf of the Attorney General and the Nevada Prosecution Advisory Council. Assembly Bill 55 concerns *Nevada Revised Statute* (NRS) 193.167 which imposes an enhanced penalty for certain crimes when they are committed against an older person or a vulnerable person as those terms are statutorily defined. Presently the enhanced penalty is only applicable to the enumerated crimes, but does not impose the enhanced penalty for an attempt or conspiracy to attempt those crimes. Assembly Bill 55 will remedy this.

As our nation's population ages, elder abuse is rapidly becoming one of the fastest growing crimes, and committed against the most vulnerable and fragile segment of our society. More than two million elder Americans are victims of neglect or abuse every year.

Our senior citizens deserve the highest level of our respect and protection as they enter into a more fragile and vulnerable stage of their life. Nevada

prosecutors are committed to aggressively prosecuting those family members, caretakers, scam artists, and other criminals who target and harm our seniors and other vulnerable adults, and to ensuring that these offenders are held accountable.

Before I turn it over to local prosecutors who are in the trenches and will give you a detailed explanation of how this bill will work, I would like to note for the record that A.B. 55 was endorsed by the Nevada District Attorneys Association, the Nevada Sheriffs' and Chiefs' Association, and the Governor's Nevada Crime Commission.

Chairman Frierson:

Thank you, Mr. Kandt. Before we move on, would you please explain the Prosecution Advisory Council, how frequently they meet, and what they do?

Brett Kandt:

The Prosecution Advisory Council is established pursuant to NRS Chapter 241A. It is chaired by the Attorney General and comprised of district attorneys, city attorneys, and a law enforcement representative. It focuses on policy issues related to the legal and ethical duties of the Attorney General, the district attorneys, and city attorneys. The goals of its Executive Director are to ensure a fair and consistent application of Nevada law, to ensure that victims are safe and offenders are held accountable, and to ensure the efficient administration of justice in our criminal justice system.

Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office:

On behalf of the Nevada District Attorney's Association, I am here today with Deputy District Attorney Zach Young. Mr. Young has been a prosecutor with both Carson City and Washoe County for about eight years now. He is here to explain the bill.

Zach N. Young, Deputy District Attorney, Washoe County District Attorney's Office:

Good morning, Mr. Chairman, ladies and gentlemen. I am a prosecutor with the Washoe County District Attorney's Office. I had a case which led me to suggest to Ms. Erickson the proposed amendment to the law. Currently, NRS 193.167 provides for an enhanced penalty for enumerated crimes committed against either elderly persons, which is defined as persons 60 years of age or older, or vulnerable persons, which statutorily is defined as persons suffering from some sort of mental or physical limitation.

If you look at the enumerated list of crimes, there is really a nexus to the specific person. You do not see burglary, simple possession, or stolen property. There is some sort of nexus to the elder or vulnerable person; for example, a crime of violence committed against that person, or in certain property offenses, such as pickpocketing from the person, which is larceny, embezzlement, or obtaining money by false pretenses. Certain individuals are oftentimes targeted for these offenses.

The clear legislative intent behind this is to protect a group of people who are deserving and needing of that added protection. There is a separate offense for elder exploitation and again, that shows the legislative intent as to the protection that these people need.

The change that is being proposed by A.B. 55 does not change the penalties. It does not add any specific underlying offenses. All it does is add attempts and conspiracies to the enumerated offenses as already listed in the provision. If approved, section 1, subsection 1(b) which lists attempted murder, obviously should be stricken as it would be redundant. To explain why the change is appropriate and necessary, allow me to explain a case that I had.

In February 2011, there was a man who had just turned 66 years old about two weeks prior. He had just finished his shift at work in downtown Reno and was walking home. The defendant, a 21-year-old man with a lengthy criminal history, including crimes of violence, rapidly approached the 66-year-old, grabbed him around the shoulders and using his leg, tripped him and threw the victim down to the ground. He had demanded his jacket. There was a struggle that ensued over the jacket. He never actually fully possessed or obtained the jacket. During the struggle, one arm of the victim was removed from the jacket and the other arm remained in the jacket. Had the jacket been completely removed from the 66-year-old that would have been a completed strong-arm robbery. Fortunately, there was a police officer who just happened to be in the area, observed the struggle, came over to aid the 66-year-old, and was able to subdue the defendant. Because the jacket was never completely removed from the 66-year-old victim, it was only an attempted robbery. When I got the case, based on the age of the victim, I charged attempted robbery with the elder enhancement. It was only subsequent to my charging that offense, and through my research, that I learned that the attempt to commit the crime of robbery, which is one of the enumerated offenses in NRS 193.167, did not allow for an elder enhancement.

Chairman Frierson:

Could you back up a little? There was an attempted robbery with the jacket, but could you go back and describe the physical nature of the encounter?

Zach Young:

Sure. The victim, a 66-year-old man, was walking home from work. The 21-year-old defendant approached him from the side, called out to him, and caught his attention. He ran up to the victim and grabbed him around the upper torso; if I recall correctly, around the shoulder area. The defendant used his foot to sweep under the victim's legs and trip him, thereby throwing the victim to the ground. At that point, the defendant demanded the jacket and tried to remove the victim's jacket from his person, getting it approximately halfway off his body. The victim still had one arm in his jacket while the other arm had been removed. The injuries that the victim suffered, though not of a substantial bodily harm nature, resulted in his missing approximately one week of work.

For your information, the defendant ended up pleading guilty to attempted robbery and was ultimately sentenced to prison. I did not have the benefit of using the elder enhancement because attempt, similar to conspiracy which does not apply here, was not available for elder enhancement. What struck me as odd was that the victim suffered the same injuries, suffered the same experiences, and had the same fears as if the robbery had been completed, yet he was not afforded the added protections of this penalty of an elder enhancement.

Chairman Frierson:

Thank you, Mr. Young. Are there any questions? I have a few.

The fear this victim had, and his subsequent physical altercation and injury, seems to me to be an assault and battery which would be covered under the existing enhancement statute. I am wondering if I am off as far as whether or not that would be covered under one of those circumstances.

Zach Young:

You are correct, Mr. Chairman. However, if you look at the penalties that are provided in NRS 193.167 which is the issue here, this amendment does not affect the penalties at all. Assault and battery, under these circumstances, would have been a misdemeanor offense. Under the law, the additional enhanced penalty is for a consecutive term. Whereas attempted robbery carries one to ten years in a Nevada state prison as a felony, both simple assault and simple battery, which were all that was present in the case, are both misdemeanors. I certainly could have charged that but as a practical matter, when I am charging a felony case such as this where the defendant is being charged with attempted robbery, I am not going to charge the related misdemeanor cases just in the interest of justice. So it would apply as you suggest, but in the long run, it does not provide the protection that A.B. 55 is geared for. We are talking about misdemeanors in this case versus providing an

enhanced penalty on a felony which a crime of violence, such as this, certainly applies.

Chairman Frierson:

Just so I am clear, an assault or a battery of an elderly person under existing law would expose them to up to one year in jail, correct?

Zach Young:

I may have misspoken. Assault and battery are punishable by up to 6 months each, respectively. The enhanced penalty would be a consecutive term of up to 6 months. If the person were convicted of battery with the elder enhancement, it would be a sentence of 6 months with a consecutive 6-month enhancement.

Chairman Frierson:

They would be looking at up to a year in jail under existing law. I empathize with the victim in this case, especially if he suffered significant injuries, substantial enough to have missed work. We are going from potentially 6 months in jail to 1 to 20 years in prison for essentially attempting to steal a jacket.

Zach Young:

Well, yes. The 1- to 20-year sentence is discretionary with the court unlike the misdemeanors and gross misdemeanors which the statute specifies that the sentence should be a consecutive and a like sentence. The sentencing court has the discretion in that felony to impose a sentence on the enhanced penalty of 1 to 20 years. It is not structured to have to be 1 to 20 years. In other words, a court for the enhancement can do 12 to 30 months, all the way up to 8 to 20 years.

Chairman Frierson:

I think you said that you originally charged attempted robbery. What would the sentence range have been for attempted robbery?

Zach Young:

Attempted robbery under existing law is from 1 to 10 years in the Nevada State Prison. It is probation eligible so an individual could be put on probation but the range itself is up to 10 years.

Chairman Frierson:

Under this statute, is it probationable?

Zach Young:

The elder enhancements?

Chairman Frierson:

Yes.

Zach Young:

Currently, yes. To my knowledge, outside of some of the enumerated offenses which require mandatory prison, such as murder, for attempted robbery the offense is probation eligible, and adding the elder enhancement does not change that.

Chairman Frierson:

Under that scenario, we would be going from 1 to 6, to double that, essentially, or up to 1 to 20.

Zach Young:

In the example I provided, the attempted robbery which is a 1- to 10-year sentence, if the individual is convicted with an attempted robbery with an elder enhancement which A.B. 55 proposes, the new sentencing range would be 1 to 10 on the underlying plus an enhanced additional 1 to 20.

Chairman Frierson:

I believe there are other areas of the law where attempt and conspiracy carry the same sentence range as the carrying out of the underlying offense, probably regarding children I would imagine. Are you familiar with any other statutes where attempt is the same as the carrying out of that underlying crime?

Zach Young:

The only familiarity I have with attempt crimes is, I believe NRS 193.330, which for crimes sets out what the sentence is for attempt. Typically from the criminal's standpoint, with a few exceptions, it essentially will reduce the sentencing range. For example, attempt to commit a category B felony often becomes a category C felony. I am not sure if I am answering your question but again, that is wholly separate from the elder enhancement obviously. Going back to the case that I referenced, a robbery conviction is a sentence of 2 to 15 years. By statute, the attempt robbery gets it down to 1 to 10 years.

Chairman Frierson:

That speaks to the heart of what I am getting at; that is, that attempt and conspiracy are generally covered as a lesser crime than the carrying out of the crime. So is it your position that crimes on the elderly should be separated from the other statutory structures of attempt and conspiracy and treated similarly whether it is carrying it all the way out, or attempting, or conspiring to complete it?

Zach Young:

If I understand your question, I would say only as far as the enhanced penalty when a crime is committed against an elderly person. Regarding your question as far as conspiracies go, there are certain enumerated crimes where conspiracy to commit a certain offense is designated as a felony. Per Nevada law, the bulk of conspiracy charges are actually gross misdemeanor offenses.

Chairman Frierson:

Thank you, Mr. Young.

Assemblyman Ohrenschall:

What did the defendant in your case end up getting sentenced to?

Zach Young:

He plead guilty to attempted robbery which was the original charge. He was sentenced to 24 to 60 months in prison.

Assemblyman Ohrenschall:

Was this his first felony conviction? Did he have to serve the full 24 months before he was eligible for probation? Was this a B felony?

Zach Young:

Attempted robbery is a category B felony. His sentence was 60 months and he would be eligible for parole at 24 months. He was not placed on probation.

Assemblyman Ohrenschall:

Have you done any research into the legislative history of NRS 193.167? Perhaps the Legislature that put this into the NRS might have been enumerating those specific crimes, and not listing the attempt or conspiracy, because they wanted to perhaps use the prison resources, and prosecutorial and judicial resources for crimes that have been completed, as opposed to steps being made but not without the completion of the crime. I do not know the legislative history and I was wondering if maybe that was the reason they did not have attempt or conspiracy in the enumerated crimes under this enhancement.

Zach Young:

Candidly, I have not looked too closely at the legislative history. I would note that when I was reviewing the case, there was only a handful of offenses that this applies to. It does not apply to offenses in a general sense committed against elderly people such as burglary, possession of stolen property, and the like. There is really a nexus to the person, either in a crime of violence committed against an elderly person, or again, if you look at the last three offenses which are more or less property offenses, you see a nexus to the

person. It is arguably, or often the case, targeted against elderly or vulnerable persons because of any infirmities, disabilities, or other things that they may suffer from.

Some of these offenses, such as sexual assault and murder, are not eligible for probation in the first place. However, others such as battery, and in this case attempted robbery, and even robbery, are eligible for probation and the elder enhancement would not change that. Just because an individual is convicted of an offense with an elder enhancement, if it is a probationable offense, that does not change with the elder enhancement. As far as prison resources, to directly answer your question, if it is a case where an individual deserved to go to prison, the elder enhancement would add an enhanced penalty for that. If the individual was sentenced to a term of probation, the enhanced penalty would be hanging over that individual's head during his term of probation. It does not mandate that individual go to probation if he is eligible.

Chairman Frierson:

This is a follow-up on what Mr. Ohrenschall and a couple other Committee members have asked me about. Under the facts that you provided in the example, I do not recall if you concluded if the defendant had specifically targeted the person because they were elderly. Would that, under an attempt or a conspiracy, be a required element that they attempted, specifically, to target somebody who was over the age, or attempted to do the act and the person happened to be over the age?

Zach Young:

I do not have that information as to whether, in this specific case, the victim was targeted. Based on the number of cases that I have prosecuted over the years, we often see individuals targeting elderly or vulnerable persons. Any limitations that they might have may not otherwise be present in a healthy 20-, 30-, or 40-year-old individual. There were no statements or interviews, in my specific case, that he was targeting. All I can surmise is that, of all the people walking through downtown Reno on this evening when the victim was leaving work, it was the victim who was targeted. He is a healthy individual but he is smaller, older, and walks slower. I took that, at least subjectively, that he was targeted. Often this group of people is targeted.

Chairman Frierson:

It sounds like he either was targeted because he was elderly or, to some extent, visually vulnerable. Are there any other questions? I see none. Mr. Kandt, do you have a follow-up?

Brett Kandt:

I do, thank you. Going back to when this statute was originally passed and what the legislative intent was or may have been, regardless of that, we believe it is worthy of your consideration whether an offender should avoid the enhanced penalty simply because they did not succeed in completing the commission of the crime.

Chairman Frierson:

Would it also be similar if two individuals conspired and changed their mind before they actually completed a crime?

Brett Kandt:

Mr. Chairman, in that instance, I think the prosecutor, in exercising discretion to make charging decisions that are in the interest of justice, can decide whether at that point in time it is appropriate for the enhanced penalty or not.

Chairman Frierson:

Thank you. Any other questions? I see none. I do see some folks here to testify in favor of A.B. 55.

Chuck Callaway, Director, Intergovernmental Services, Las Vegas Metropolitan Police Department:

Good morning, Mr. Chairman and members of the Committee. We have a section of our department that specifically deals with crimes against the elderly. As was stated in the presentation, we do see that criminals tend to focus on crimes of opportunity and then take advantage of the elderly, therefore, we support A.B. 55.

Chairman Frierson:

Thank you. Mr. Callaway, if you or the sponsors of the bill have any data on the number of offenses that we are looking at, in particular, the number of attempts or conspiracies that occur, that would be helpful to the Committee.

Brett Kandt:

We will try to get the best statistics that we can. Unfortunately, this is an area in which statistics are hard to come by. When I attempted to look at cases in which, according to the Uniform Crime Reporting data, the victim was a person over the age of 60, the cases appeared to reach into the thousands. I also know that there are studies out there that indicate that for every crime against a senior or elderly person that is reported, there are probably 14 crimes that go unreported. That especially applies to those areas where you are talking about abuse, neglect, or exploitation. To the extent that we can find some data for you, we will do the best we can.

Chuck Callaway:

Mr. Chairman, likewise from the Las Vegas Metropolitan Police Department. I will provide data to the Committee on the number of arrests or cases we have had specifically dealing with elder abuse. As Mr. Kandt said, it may be difficult to find information on attempts depending on how many steps were taken during the attempt and whether or not we charged. We may not have that data.

Chairman Frierson:

Thank you, Mr. Callaway. Thank you, Mr. Kandt.

Assemblyman Hansen:

In the case that was cited, if the assailant had been 65 years old attacking a 62-year-old, would you seek the same enhanced penalties?

Brett Kandt:

It would be eligible.

Assemblyman Hansen:

It would be discretionary for the judge in that case. My thinking is that what we are trying to do here is prevent aggressive young people, if you will, from attacking more vulnerable seniors, but if it is a senior attacking a senior, would you seek an enhanced penalty?

Brett Kandt:

Once again, that is at the prosecutor's discretion in the charging process that comes into play and whether it would be appropriate to charge and seek the enhanced penalty at that time.

Assemblyman Hansen:

So it is a "may" rather than a "shall" in this?

Brett Kandt:

Yes.

Chuck Callaway:

Assemblyman Hansen, from a law enforcement perspective, our detectives would look at the totality of the case. In the example you gave, if we had a 65-year-old and a 60-year-old that got into a fight in a bar, we would not charge the enhancement on that crime, but if the 65-year-old was robbed by the 60-year-old or a 59-year-old, the detective may decide to use that enhancement. It would be determined on the facts of the case.

Assemblyman Hansen:

Excellent. Thank you.

Chairman Frierson:

On the discretion that I think Mr. Hansen was touching on, the statute does not provide for "may." From my reading, it is "shall," but you are speaking of the prosecutor's discretion and how they ultimately charge based on those independent facts?

Brett Kandt:

Yes, Mr. Chairman.

Assemblyman Ohrenschall:

My question is in that same vein with the discretion. Is this similar to the hate crime statute where after someone is convicted, the judge, at sentencing, decides who is going to impose the enhancement for hate crime? If someone takes a plea deal or is convicted at trial, are they going to get this enhancement because the prosecutor has decided they are going to charge under the vulnerable person statute as opposed to the hate crime enhancement?

Brett Kandt:

I am not familiar with the hate crime enhancement. I would have to bring up one of our prosecutors who utilizes that on a regular basis. I would just indicate, as demonstrated in the testimony from Mr. Young, that it is a tool for the prosecutor in making the charging decisions.

Assemblyman Ohrenschall:

With NRS 193.167, it would be at the prosecutor's discretion whether they are going to seek the vulnerable person statute as opposed to just the normal battery and robbery.

Assemblyman Martin:

This is more a conceptual issue that I am thinking about. I am also a certified fraud examiner and have taken a great deal of criminology training. One of the things they beat home with us during those trainings in the past 20 years is that you can have all the penalties you want, and if you are not able to enforce or otherwise investigate or detect, it is meaningless. My question is when formulating this bill, did you consider the possible ramifications of the increasing cost to the state due to housing and sentencing? Also, the fact remains that if you do not have the ability to enforce and catch these people, the number one deterrent is the fear of getting caught. Maybe we would be better off adding more resources, such as police and security, instead of lopping on more

penalties. Maybe having more security and more chances of getting caught will serve as a better deterrent. I am open to discussion on this point.

Brett Kandt:

I have three points there: (1) deterrence is one of the goals of prosecution, (2) I am not aware that any fiscal notes have been submitted in connection with this bill, and (3) I think the case that Mr. Young detailed is a great example of where there was detection. There was an arrest made and yet the statute fell short, under the fact pattern of that case, in allowing for the enhancement because it does not provide for attempt.

Chuck Callaway:

Assemblyman Martin, from a law enforcement perspective, I agree 100 percent with what you are saying, but there is also that core element of folks out there that regardless of what penalties are put in place, they will not be deterred and they will still commit the crime. Definitely, I am 100 percent supportive of adding more police officers to the street and, in fact, we have a bill later in the session that I would love to discuss with you.

Chairman Frierson:

Thank you. I want to clarify that the penal system is not simply about deterrence. It is also a punishment factor and a protection of the public factor. Correct me if I am misspeaking. Any other questions? I see none. Anyone in Las Vegas? [There was no one.]

Assemblywoman Spiegel:

I am expecting some written testimony in support of this bill later today from a friend who would benefit from having this bill become law. She is an elderly lady and with your permission, I would like to share some of the details of what will be in that testimony.

This is an elderly woman who has been living in a group home for the past eight years. When she moved in there, she had over \$300,000 in the bank, a house filled with treasured antiques, and all the possessions she accumulated over her life. Over the course of the last eight years, her daughter, her daughter's husband, and her great-granddaughter had systematically stolen all of her money and her possessions. [Assemblywoman Spiegel continued to read from ([Exhibit C](#)).] After her daughter passed away one year ago today, the true extent of the theft and conspiracy was made apparent.

There was not anything on the books talking about the conspiracy element. She knows that this law probably is too late to help her but she also knows that

there are a lot of people who are going to be in her position, or could be in her position, and this law would really help them. Thank you.

Chairman Frierson:

Thank you, Ms. Spiegel. I was tempted to ask one of the prosecutors about embezzlement, however, not having all the facts, it would probably not be appropriate. I appreciate Ms. Spiegel's contribution and we had discussed the admission of that information into the record in support of the bill. When she does provide that statement, please let the committee manager know so that we can make that part of the record.

Chairman Frierson:

I will now move to those in opposition to A.B. 55. Is there anyone in Carson City or Las Vegas in opposition? I see none. Is there anyone here or in Las Vegas to testify in neutral with respect to A.B. 55? I see none.

I will now close the hearing on A.B. 55 and open the hearing on Assembly Bill 91.

Assembly Bill 91: Revises certain provisions relating to programs of regimental discipline. (BDR 14-740)

Steve Yeager, Attorney At Law, Office of the Public Defender, Clark County:

Good morning, Mr. Chairman and members of the Committee. My name is Steve Yeager from the Office of the Public Defender in Clark County. It is a privilege this morning to present A.B. 91. Everyone should have a copy of the handout ([Exhibit D](#)) which gives some highlights of the bill and the so-called boot camp program. [Read from prepared testimony ([Exhibit D](#)).]

The change that was proposed to A.B. 91 is pretty simple when you look at the bill. This bill relates to regimental discipline in the state of Nevada. It is a program that is run by the Department of Corrections (DOC) and is commonly referred to as boot camp, but you will see it referred to as regimental discipline as well.

The way the statute reads currently, if you were convicted of a felony that involved an act of violence, you could not go to the program even if the judge wanted to send you to the program. That was an excluder for this program. What this bill seeks to do is to take out that categorical exclusion and instead put in its place that if you were convicted of a category A felony, you cannot go to boot camp. [Continued to read from prepared testimony ([Exhibit D](#)).]

This bill would allow a district court judge the discretion to send an individual to boot camp when they were convicted of a crime of violence, whereas right now, a judge does not have that discretion. [Continued to read from prepared testimony ([Exhibit D](#)).]

Assemblyman Carrillo:

My understanding is that the current program is 190 days at the Three Lakes Valley boot camp. I wonder if 150 days is optimal or sufficient for someone who has committed a violent crime.

Steve Yeager:

I think you are correct. It is 190 days. If you look at page 2 of the bill as it currently exists, the program cannot last more than 190 days. The actual disciplinary and training part of it is 150 days. There is some processing time on the front end. The statute allows for intake and processing but in no instance can it be more than 190 days total.

Assemblyman Carrillo:

Thank you, Mr. Yeager.

Steve Yeager:

The cost of the program does result in savings. It is \$42.30 a day for a boot camp inmate versus \$58 a day in prison, and \$114 a day at the Clark County Detention Center. [Continued to read from prepared testimony ([Exhibit D](#)).]

Assemblyman Carrillo:

How many facilities currently offer the regimental discipline program?

Steve Yeager:

My understanding is that there is only one facility which would be the Three Lakes Valley Correctional Center in Indians Springs. That is the only facility that is currently equipped to offer this program.

Assemblyman Carrillo:

How many beds are available at any given time?

Steve Yeager:

Typically there are about 65 people in the program at any given time but perhaps there are additional beds for another 10 or 15 people. Based on the potential shortfall of resources, they do not have the ability to have that many. My understanding is that it could be as many as 80 at any given time.

Assemblyman Carrillo:

Thank you.

Steve Yeager:

In terms of how the program works, a district court judge decides whether to send somebody to boot camp. It happens in one of two instances; either before sentencing, or if someone has been granted a term of probation and is having problems on probation. A judge could, as sort of a collateral sanction, order the person to complete the boot camp program and see how that goes, then decide what to do after that.

The rationale for the bill is pretty straightforward. Under the system now, there are certain young first-time offenders who commit what would be considered a violent offense who I think would otherwise be good candidates for the boot camp program. I know that there are some judges, in particular Justice Hardesty and Judge Barker who were on the Advisory Commission on the Administration of Justice, who had wanted to send somebody to boot camp and just simply were not able to do so because of the way the law was written. This change in the law would not make it a requirement. It would always be up to a judge's discretion so if there is any concern about violent crimes in particular, those are likely scenarios where a judge would not see fit to send somebody to boot camp. In fact, the way the statute reads, if you are convicted of a nonprobationable offense, you cannot go to boot camp anyway. I think the judges would appreciate more discretion. I do have at least one example of a case from our office that came up.

Chairman Frierson:

I am sorry, Mr. Yeager. I cautioned someone earlier about advocating on behalf of some other groups because they certainly have voices and can voice their opinions or concerns. I do not want to get in the habit of speaking on behalf of other groups.

Steve Yeager:

Thank you, Mr. Chairman. I can say from my personal experience that there are certain offenders who, I think, would be good at the boot camp program. For example, one set of circumstances where you might see this is a young offender who is 20 or 21 years old and does not have any prior criminal record, participates in what is called a beer skip where they go into a convenience store to steal beer or some other item, and on the way out they push somebody out of the way. Now that is a robbery; that is a violent offense. If they are convicted of that offense under the current statute, they cannot go to boot camp. Some of those individuals, I think, would really benefit from that

program, particularly young offenders who do not always make the best decisions at that age.

The whole point of this program is to instill discipline and life skills. I have seen a number of my own clients who completed the program and I can tell the Committee that they are changed people when they come back. There really is a difference. That said, I have also had clients who have not completed the program and the remedy there is that they go to prison. This is just another tool that a judge would have in these kinds of specialized cases. When a judge is determining whether to send somebody to boot camp who committed a violent offense, they can look at how the defendant has behaved up until the time to make that decision. If the defendant happens to be out on bail or bond, the judge can evaluate how that person behaved while out of custody.

That is the background of the bill and boot camp. I will be happy to answer any questions.

Chairman Frierson:

Thank you, Mr. Yeager. I have a question. Under the current law, if the person has been convicted of a felony that does not involve an act of violence, how is it determined whether or not the act is an act of violence? Is that statutory or is that discretionary on the part of those considering admission to boot camp?

Steve Yeager:

That is a very interesting question. I do not know that there is one particular answer. The way the statute reads, at least, is that you are to look at what the defendant is convicted of. It says "convicted of a felony," so I think there are a couple different places where this comes into play.

As an initial matter, the first argument could be to the judge that this is a violent offense, and if the judge believes that it is a violent offense, then I think a judge would believe that under the statute he or she does not have the discretion to send someone to boot camp. However, we have had circumstances where the original offense would have been violent, but the actual offense the person was convicted of was a nonviolent offense. We have had circumstances where a judge has ordered that person to boot camp. When they go into the system and boot camp, at intake process there have been individuals rejected from the program by those running the program on the basis that the offense is violent.

Assemblyman Wheeler:

A category B felony, to follow up on what you were just saying, can be a violent offense. With plea bargaining, a lot of them can be violent offenses. Boot camp, by its very design, is designed for nonviolent criminals because of

the discipline needed in the boot camp for the other people. Have you spoken to anyone at the boot camp to see how they feel about admitting violent criminals into their system?

Steve Yeager:

I have not personally spoken to anybody at the boot camp program although I do know there were the interested parties that participated in the Commission and I do not purport to speak for them. You may hear from some other interested parties this afternoon. I certainly think there was a concern about allowing people that are too violent to be in the program but again, I think that is where the judicial discretion would come into play. I do not foresee a situation where an extremely violent person who commits an extremely violent offense would be sentenced to boot camp by a judge. I think that would be a very unlikely scenario.

Assemblyman Carrillo:

In regards to the life skills programming, is the life skills coach licensed?

Steve Yeager:

I do not know the answer to that question. I could try to find out.

Assemblyman Carrillo:

What about therapists that are on staff? Are any of them licensed?

Steve Yeager:

Likewise, I do not know the answer to that.

Assemblyman Hansen:

Is this modeled after other states? If it is, do other states allow this category of felon to participate in the program?

Steve Yeager:

I do believe that there are a number of states that have programs like this. I cannot say for sure whether it was modeled after a particular state. I know it is a trend to allow for diversionary type programs. I simply cannot speak as to what exclusions other states may have. Speaking intuitively, I would think that like the proposed statute, the most serious of offenders would not be eligible.

Assemblyman Hansen:

I am assuming the reason that violent people were excluded originally was a safety concern for the people that do participate. I am imagining that is where everybody is a little uncomfortable at the idea of leaving that discretion entirely to judges. Thank you.

Assemblyman Martin:

I am very intrigued by the cost of the program versus the cost of being an inmate in the Clark County Detention Center. It seems like there is far less security but I would think the offset would be more rehabilitation and training. That is a very precise calculation, \$42.30 per day, versus the rounded number of the other ones. I know a lot of other things factor into the cost and certainly, calculations can be used to support or attack an argument. Do you have the details of how that is calculated? You probably do not have that information with you but if you could forward that to me, that would be great, or you could also just comment on it.

Steve Yeager:

The Advisory Commission on the Administration of Justice held a meeting on March 7, 2012 where Sheryl Foster, Deputy Director of the Department of Corrections (DOC), gave a presentation on the boot camp program. Ms. Foster had provided that figure of \$42.30 per day. I think your comments are pertinent to the hope that we can keep people out of prison and rehabilitate them, especially young offenders who do not necessarily appreciate the path that their lives are taking. This is a program that works for some people, and it does not for others. The idea is to allow a judge to have that tool.

Assemblywoman Diaz:

Is there data on the success rate of the boot camp program? If so, is the data in such a manner that we can see the males that are in it, the category of offense that they had coming into the program, and its effectiveness by category? Additionally, when it is successful we see that people are not coming back into our system.

Steve Yeager:

I do not have those numbers precisely but I do know, from the minutes of the Advisory Commission's meeting and Ms. Foster's presentation on the program, 890 people entered into the program in a three-year period, and 390 returned to prison for various reasons. The data does not indicate whether that includes people who initially failed out of the program, or whether it is just those who successfully completed it. I will see if I can obtain more specific information relating to offenses and recidivism rate.

Assemblyman Carrillo:

Are the therapies and practices used for rehabilitation based on best practices?

Steve Yeager:

I am not in a position to be able to answer how DOC models the therapies and treatments that they are doing. I would be happy to contact Ms. Foster and see if she can provide additional information that I can pass on to the Committee.

Assemblyman Carrillo:

This is going to help me make my decision. Thank you.

Assemblyman Ohrenschall:

The scenario that Mr. Yeager shared on the beer skip is a great example. You could end up with some 18- or 19-year-olds who steal beer from a convenience store. They run out, take the beer to their car, the clerk tries to stop them, but they get in the car. Later they get pulled over a block away, they are arrested, and then prosecuted. These teenagers would be ineligible for an opportunity at boot camp under the current statute. Our robbery statute is incredibly broad.

Nevada Revised Statute (NRS) 200.380 does not define robbery the way most of us think of robbery. Most of us think of robbery as someone who goes into a bank or a convenience store with a loaded gun and demands all the money be handed over. The NRS definition of robbery is very broad and it includes any force used to facilitate escape, prevent, or overcome resistance. When one of these teenagers is trying to exit the convenience store with the beer, the force they use in trying to run, theoretically, can get them a robbery charge which would preclude them from getting a chance at the boot camp program.

I have seen young adults go into this program who come back and have succeeded. They are changed young men and this is often the first thing they have succeeded at in their lives. That is really the litmus test. The judge then decides if he will give them a chance at probation rather than sending them to prison. I do understand that it is a small minority of young adults who go to boot camp and succeed; most of the young men fail. They have to work very hard and it is very trying on them.

I had a discussion with a district court judge in Clark County who had been a long time prosecutor, and is someone who has a reputation of being fair but by no means a softie, a bleeding heart, or anything like that. In these scenarios, like the beer skip, young people would not be allowed to get that opportunity for boot camp. There is no guarantee. The judge decides if they get that. I wanted to try and clear that up for the Committee.

Assemblyman Hansen:

I do not know if they do this anymore, but years ago the judges used to give young males the option of going into the military for the same principle. They

need discipline in their lives and they get into that very disciplined environment. Do they allow that anymore, or is this like a replacement concept for that?

Steve Yeager:

I am not aware of any judge doing that. I have had some clients who want to get into the military but it is hard for them to get in with pending criminal charges hanging over their head. That may be one of the reasons, but the idea here is sort of military type training that I think works for young individuals.

Chairman Frierson:

Any other questions? I see none. Thank you, Mr. Yeager.

Is there anyone in Carson City to testify in support of A.B. 91? I see no one in Carson City or Las Vegas. Anyone interested in testifying in a neutral position? I see none.

I will now move on to public comments. Did I skip opposition? Let us go to opposition to A.B. 91.

Chuck Callaway. Police Director, Intergovernmental Services, Las Vegas Metropolitan Police Department:

The Las Vegas Metropolitan Police Department definitely supports programs that reduce recidivism, keep people out of our prison system, and reduce cost to the state. That said, I come to you today with strong concerns about A.B. 91. As a member of the Advisory Commission representing law enforcement, I heard the testimony from Sheryl Foster, DOC, and her complete testimony is available in the minutes on the legislative website under the Advisory Commission. I encourage the members of the Committee to read it.

During her testimony, she stated that many states, and the Federal Bureau of Prisons (BOP), have discontinued the use of boot camps because they have largely been seen to be ineffective. As stated in the previous testimony, she also stated that in a three-year period, they had 621 people that failed the program and of those 621, there were 390 participants that went back to prison.

We also have concerns because she stated in her testimony that they lack funding and resources for the program. It is minimum custody and minimum security. In addition, Ms. Foster stated in her testimony that one of her biggest concerns about the program was the lack of transitory support once someone leaves the program. You can go through boot camp and have discipline drilled into you but when you are released from the program, if there is no

support for you after you get out, often that training and discipline does you very little good.

I would express to the Committee that our primary concerns are taking violent offenders and putting them into a program with minimum custody and minimum security. In the Indian Springs area, you are in close proximity to the community in Indian Springs. If somebody decides they were going to walk away from this boot camp, there is a potential danger, as Assemblyman Hansen stated, to other participants in the program who are nonviolent offenders who have been placed in the program.

Chairman Frierson:

Mr. Callaway, before you move on, the concern about the security and walk-away has not changed though. That is currently the situation with boot camp. So are you opposed to boot camp, or simply this bill? I ask just so we focus on the changes proposed.

Chuck Callaway:

I am opposed to expanding the boot camp to violent offenders. I am not opposed to continuing the current boot camp program although the testimony did state that they have been seen to be somewhat ineffective. I think the concern of a nonviolent offender walking away from a minimum security facility is a lot less of a public safety concern than a violent offender walking away.

I would like to touch briefly on the beer skip scenario that was brought up earlier. Having been a police officer working the streets of Las Vegas for about 22 years, it has been my experience that the vast majority of those cases, if charged as a robbery, are plea bargained down to a petty larceny once the facts of the case come out. In my experience, there are very few examples where the young adult gets sent to prison for 10 to 20 years because he pushed the clerk while walking out of the store with a case of beer. So I would urge the Committee once again to look at Ms. Foster's testimony and vote no to expanding this to violent offenders. Thank you.

Chairman Frierson:

Thank you, Mr. Callaway. I certainly understand the concern about mixing violent offenders with nonviolent offenders both in boot camp as well as detention facilities. I am curious, in this instance, would you be satisfied if there was an expansion of access to boot camp where the judge was required to articulate reasons why they would deviate from it in certain circumstances where the underlying offense would otherwise disqualify them from boot camp, or are you not comfortable trusting the judges to do the right thing?

Chuck Callaway:

Thank you, Mr. Chairman. I certainly respect the discretion of the judges. If the funding and resources were there to enhance the security of the boot camp so they could accommodate violent offenders without the potential risk of them walking away to the public, then I would support it. I stated that in the Advisory Commission's meeting as well.

Chairman Frierson:

Are you familiar with instances where there were escapes from boot camp?

Chuck Callaway:

I do not have firsthand knowledge of that. I can certainly reach out and see if that is the case. In the past we have had cases in Indian Springs of escapees, or folks that have walked away, from the work groups they have for nonviolent offenders where they do roadwork or pick up trash.

Assemblyman Hansen:

There are quite different opinions on this. The public defender suggests that the program is exceptionally successful. You say that it has not been. Is there any actual statistical evidence that backs up either of your claims?

Chuck Callaway:

I can certainly look and see if I can find specific statistics. I am basing my information on the testimony that was given by Sheryl Foster of the DOC. About the time that Ms. Foster gave her testimony, there were some news articles on boot camps and statistics regarding boot camps across the country. If I recall correctly, they stated that 44 percent of people who go to boot camp end up committing crimes in the future.

Assemblyman Hansen:

One thing that apparently is very positive is the substantial difference in cost to incarcerate people in these programs. If nothing else, it is quite a savings on taxpayers.

Chairman Frierson:

Are there any other questions? I see none.

Thank you, Mr. Callaway. You mentioned the report by Ms. Foster. Are we able to get a copy of that and get it disseminated to the Committee? Thank you.

Anyone else in Carson City regarding A.B. 91? I see none. I see no one in Las Vegas. We will now move on to public comment. I see none. I do not think that we have any matters to consider. With that, the Committee is adjourned [at 9:21 a.m.].

RESPECTFULLY SUBMITTED:

Thelma Reindollar
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 14, 2013

Time of Meeting: 8:06 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 55	C	Assemblywoman Spiegel on behalf of Jeanette Goldstein	Written testimony
A.B. 91	D	Steve Yeager, Attorney At Law, Office of the Public Defender, Clark County	Prepared testimony