MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
February 18, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:04 a.m. on Monday, February 18, 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 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:

Assemblywoman Olivia Diaz (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Clark County Assembly District No. 41

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Thomas Andersson, Organized Retail Crime Specialist, Albertsons
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Lea Tauchen, Senior Director of Government Affairs, Retail Association of Nevada
George Torres, Organized Retail Crime Manager, CVS Caremark
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada
John T. Jones, Jr., representing Nevada District Attorneys Association
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
William Seifert, Sergeant, Property Crimes Division, Las Vegas Metropolitan Police Department
Ryan Haddrill, Investigator, Target Corporation
Steve Yeager, Deputy Public Defender, Clark County Public Defender
Chris Frey, Deputy Public Defender, Washoe County Public Defender
Scott Coffee, Deputy Public Defender, Clark County Public Defender
Noreen Demonte, Deputy District Attorney, Clark County District Attorney
Donald Hoier, Sergeant, Las Vegas Metropolitan Police Department

Chairman Frierson:
[Roll was taken. The Chair reminded Committee members, witnesses, and members of the audience of Committee rules and protocol.] We will be going out of order today. We are hearing Assembly Bill 102 first. Assemblyman Carrillo is going to provide some introductory remarks.

Assembly Bill 102: Revises provisions relating to the crime of participation in an organized retail theft ring. (BDR 15-153)

Assemblyman Richard Carrillo, Clark County Assembly District No. 18:
During the interim session, I was invited to and attended more than one southern Nevada organized retail crime association meeting. Southern Nevada Organized Retail Crime Association (SNORCA) is comprised of local retailers and

law enforcement who have partnered to share intelligence, resources, and tools to fight back against the ever-growing problem of organized retail crime. It was brought to my attention at these meetings how large a problem organized retail crime has become. This is estimated to be a $30 billion-a-year problem, and Las Vegas is one of the top ten cities nationally for organized retail theft. Because of the nature of the items commonly stolen, or "boosted", in this kind of crime, there can be public safety issues. For example, baby formula and over-the-counter medications must be kept at certain temperatures in order to maintain the integrity of the product. It is known that these are very popular items to boost. Once it is out of the hands of the retailer, there is no guarantee that it is maintained at the correct temperature and could lead to illness or death for the individual who ingests it. Alcohol and tobacco are popular items to boost; however, once those items have left the store, the retailer has lost the ability to control who those items are sold to, opening the door to the possibility of youth obtaining these items. Beyond these few examples, the other cost is the cost to the consumer. When businesses lose money to theft, in the end it is the consumer who those costs are passed along to. Assembly Bill 102 is meant to address the monetary amount threshold that has been set in order to charge someone with a crime of organized retail theft.

Chairman Frierson:
What is the name of the national organization again?

Assemblyman Carrillo:
It is an organization based in southern Nevada. It is called Southern Nevada Organized Retail Crime Association (SNORCA).

Chairman Frierson:
Is it associated with a national organization?

Assemblyman Carrillo:
No, it is strictly southern Nevada. As you will hear in further testimony this morning, organized retail theft is oftentimes committed by individuals acting on their own, making it possible for them to commit these types of crimes without the fear of being charged with organized retail theft.

I have Mr. Thomas Andersson, Organized Retail Crime Specialist with Albertsons, who will provide written testimony and answer any questions. Thank for you allowing me to present A.B. 102. This completes my presentation.

Chairman Frierson:
I have some questions, but I think I will hear the entire presentation before I get to it. Did you say you had someone in Las Vegas to testify?

Assemblyman Carrillo:
Yes, if he could come forward. He should be on the docket showing he is speaking today.

Chairman Frierson:
Yes, he is.

Thomas Andersson, Organized Retail Crime Specialist, Albertsons:
I have occupied this position since 2006, and I handle all investigations of organized retail crime for Albertsons within the state of Nevada. I have a total of ten years of loss prevention experience within the retail environment. [Continued to read from prepared text (Exhibit C).]

Chairman Frierson:
Mr. Andersson, I have a copy of your written testimony, and I can certainly add it to the record. Would you be able to summarize your testimony for the Committee today?

Thomas Andersson:
We are here to separate shoplifting from organized retail crime. In the past couple of years, we have learned what organized retail crime is. What really is the problem is that there are not necessarily three or more people targeting our stores. We are seeing a lot of one or two persons targeting a large quantity of high-end products, which stays under the radar. In my experience, a lot of times we cannot pursue these cases as organized retail crime because it is different from what Nevada statutes [*Nevada Revised Statutes* 205.08345] states, which are three or more individuals. We are trying to explain that sometimes the value of what these individuals are stealing in our stores does not reach the $3,500 limit. We had a suspect that entered an Albertsons store and targeted 26 bottles of a Tide product. This is not for personal use or consumption, which a normal shoplifter would do. The same person targeted three or four other Albertsons stores within the next four days, and the total dollar amount was under the limit of $3,500. We are not able to pursue the case on this suspect in the category of organized retail crime.

Chairman Frierson:
Under current law, would you not be able to charge that individual with burglary, one to ten years, for entering with the intent to commit a crime each time they went into the building?

Thomas Andersson:
That is possible, yes, but this is organized retail theft. We have suspects targeting these products that a group of three or more would target, which is a large quantity of liquor, large quantities of Tide, diapers, and baby formula. Our company and other retailers are losing a lot of money on this and we are trying to change it to benefit the community. In every scenario, no matter how many suspects are involved, organized retail crime boosters target large quantities of specific merchandise with the intent to resell. We know organized retail crime is intent to resell. We should not focus on how many people are involved. We should focus on what they are doing, which is the intent to resell. You can use petit larceny and grand larceny to prosecute these people. You can use burglary. It is really organized retail crime.

Chairman Frierson:
You mentioned the goal with the organized crime organization is to target those who conduct themselves in this way with the intent to resell?

Thomas Andersson:
Yes, sir.

Chairman Frierson:
Does the bill include any intent to resell?

Thomas Andersson:
The statute that we have now states that it is three or more people within 90 days that are involved in this group, and they call it an organized retail crime ring; stealing an amount of $3,500 within 90 days. I would really like to read this through if I could, because it would explain things better for you.

Assemblyman Carrillo:
The nuts and bolts of this bill comes down to taking the title of organized retail theft ring because sometimes one individual could be considered basically an operation in itself. Currently, unless there are three or more, it does not allow that. I think recently in the last calendar year they have interrupted 70 theft rings. This is definitely a problem with an excessive amount of shoplifting for the purpose of reselling. The bill does not actually say anything about reselling, but the merchandise that is being lifted from the store is not being used for personal consumption. You have no way of proving that unless you find an individual that has the merchandise marked. Through these meetings I have attended, I learned they will mark the merchandise, whether it be through a special pen or maybe a little mark that only they know about, which is overlooked a lot of times. The problem is that whenever they actually go sell the stuff, they have no recourse of saying, especially if it is one individual,

"Well, how do we know it is just a one-time thing?" So that is where the one person comes into the effect in regards to changing it through the statute from ring to organized retail theft.

Chairman Frierson:
I am reflecting back to when organized retail theft was added to the statutes—I believe in 2009—and I think the presumption was if there were three or more people, that that would indicate a ring as opposed to an individual act. If we are proposing to take out the three or more persons without any indicia of resale, I am questioning why we would call it organized if it is just one person as opposed to enhancing the grand larceny statute. My other question is that last session there was an assembly bill that raised the threshold for grand larceny. Correct me if I am wrong, Mr. Ohrenschall, but we dealt with this in Assembly Bill No. 142 of the 76th Session where we raised the amount from $2,500 to $3,500. It just seems to be a roundabout way of undoing it. What I am trying to figure out is, we are talking about one person, it is not organized, then why would we not deal with it in the grand larceny statute as opposed to the organized ring statute?

Assemblyman Carrillo:
One thing that they have seen is when it comes down to organized retail crime, a lot of times it is not just multiple people that do a business. Sometimes it is one individual, and that individual has to make sure he takes care of his payroll and he takes care of the boosts. It may be a little more elaborate, but when it comes down to it, you do not necessarily need to have three people to run a business. You can have a sole proprietor, and I do not know if that is the correct way to say it, but if he is running a day-to-day operation as an individual, it would be considered an organized operation.

In regards to the second part of your question, I would ask that you repeat it.

Chairman Frierson:
I was referring to Assembly Bill No. 142 of the 76th Session.

Assemblyman Carrillo:
The effects that I have received, not so much the complaints with the SNORCA, are this kind of tied their hands. I know the reason A.B. No. 142 of the 76th Session was changed was because of the inflation to bring it up to today's standards of, at the time, 2011. Of course, this has hurt the retailers for the prosecution process to actually try these people. They know their limits. Not to get too far into A.B. No. 142 of the 76th Session, because that is not what we are here to speak about, but it does affect it. For instance, they would go out to these retailers and they would steal a Dyson vacuum cleaner that is

$649. They know the limits that they can push. We are not looking for the individual that is doing the shoplifting, or the boost, we are looking for the organized theft. I do not want to call it theft ring because that would be considered three or more.

Chairman Frierson:
As a primary sponsor, I am curious that in Nevada's statutes, burglary is considered entering with the intent to commit a crime, and that intent is inferred on certain factors that are not necessarily articulated in the statute. For example, if someone entered the premises, stole something, and they did not have any money in their pocket, there is an inference that they entered with the intent to commit a crime. I am wondering if you would be comfortable in this fashion with an inference that it is for resale. It is similar to burglary; you cannot include every single inference of resale. For example, if someone has 60 bottles of Tide that are marked with a list, but no other indication that it is for resale, something like that would allow for an inference of resale so that we can separate the individual thief from the actual organized effort to steal. Another example is possession of drugs with the intent to sell is not necessarily articulated, but if you have it in multiple packages you can infer that it was with the intent to sell, and that is often how it is charged. Would you be comfortable—and I do not have anything to propose necessarily—with making sure that there is some type of way to infer intent to resell if we are focusing on organized theft?

Assemblyman Carrillo:
Speaking from my point of view from the attendance of the meetings during the interim session, I saw they were not concerned about the burglary. Of course, that was what they had to allude to because of the increase from $250 to $650 in A.B. No. 142 of the 76th Session. They are looking more toward catching the boost; the people that actually get the product. In fact, when I was taking a tour of an Albertsons, they showed me an individual that had two big boxes of Tide, and that particular individual was going to get busted. He was going to be sent to jail but, in the same aspect, he was not reaching that $650. They have multiple people that do this. The same person is not used over and over again but through SNORCA, they are able to see these people come back many times. They see the same faces; they have pictures in their room that this individual has been at their store; and they pass it off to the other stores so they can catch these people before they actually do the crime—not necessarily inside the store because the intent has to be proven. I only learned this firsthand from the meetings that I had prior to the session starting. I would like for Mr. Andersson to assist in answering that particular question.

Chairman Frierson:
I appreciate that, Mr. Carrillo, and this is obviously an important issue. Mr. Andersson, if you have anything to contribute or add, it would be fine.

I know that different stores handle it differently, but I believe there has been a trend to move away from loss mitigation by stopping it if they see it, and instead of recording it, they refer it to the Las Vegas Metropolitan Police Department—probably for liability purposes in case injuries might occur with a confrontation. Is Albertsons one of those where you stop them before they get out, record it, and then call the police department?

Thomas Andersson:
We do have programs. For safety reasons, we are not allowed to touch anyone. We have what we call, customer service people, who approach suspects and ask them if we can help them. We do not pass the doors because of safety reasons. We have a good program with handling the boosters. We do research, through reporting and statistics, on which stores are being victimized the most with organized retail crime. Based on that, we schedule our associates to meet the needs to prevent more organized retail crime. We have a good relationship with other retailers right now as well as with law enforcement. We build cases and share information with others to make the cases more effective, and they are usually shorter now because of the communication we have with the network. We have really good programs.

The only thing we have seen in the last couple of years is that it is not necessarily three or more people; it can be one or two people. The focus should really be on what they are taking and what they are doing; anything from a hundred dollars to thousands of dollars. If you steal 30 or 40 deodorants, that is not for your own use. That is for resale, but that might only come to $120. It would still be in the category of a misdemeanor, and this crime is not a misdemeanor crime. It is definitely a felony, or should be a felony, in my opinion and others' opinions. Since we started SNORCA in Las Vegas, we have had a lot of success, but we also still have challenges. That is why we are supporting this bill.

Assemblywoman Spiegel:
If it is the same people again and again, do you have a mechanism of barring these people from all Albertsons and preventing them from coming in?

Thomas Andersson:
Would you elaborate on that question a little more to explain what you mean?

Assemblywoman Spiegel:
I know from visiting some casinos that they have the ability to take people who are not welcome guests and trespass them and say, "You are not allowed to come in here anymore, you are no longer welcome," and then their pictures are circulated to all properties that are owned by that company. I am wondering if you have a similar capability that if there are people that you know that come into one or more Albertsons on a regular basis and steal from you. Do you have the ability to say to these people, "You are no longer welcome in Albertsons, and we are going to circulate your picture, and if you come into any Albertsons ever again we are going to have you arrested for trespassing"?

Thomas Andersson:
We do have a program where we share in-house reportings called Organized Retail Crime (ORC) alerts. With this program, we share the information with all the store employees, the management, and loss prevention, and they in turn share this information with other departments. When someone recognizes one of these people, we approach them and customer service them—it is effective. We have deterred a lot of these types of incidents by sharing the information among the stores. The only thing is, people do not have any regard. We ask them to leave, but they know that we are not allowed to stop them, touch them, or detain them. They continue, unfortunately, but it is helping by us sharing this information and executing customer service.

Assemblyman Duncan:
I am not sure if you talked to the public defenders who offered an amendment, but is it your intent under the statute to also be able to charge burglary along with organized theft? I am having a hard time understanding when we are dealing with one actor that comes into a retail store with the intent to steal something—such as Mr. Andersson's example of deodorant—that person could potentially be charged with a class B felony under the burglary statute, and it would still be the same under this statute. So when we are dealing with one actor, I am not seeing where this bill is reaching.

Assemblyman Carrillo:
To elaborate for the Committee members, a boost is someone who basically has a list of things to get, whether it be deodorant, baby formula, or detergent. The list that they have is from the fence. The fence is basically the leader of that organization. What they are using now is the burglary statute to be able to press charges on these individuals that do get the 60 deodorants. That is something they are going to use for that purpose. What we are looking at is not even part of the bill; we are looking at the organized theft. The boosts come and go. That is the thing that would allow us to say, "Well, we have seen this individual come into our store before, we are going to keep a close eye

on him, we are going to do customer service with him and basically say that we are here to help you." They cannot be saying, "Well, we are here to kick you out." They will watch him in the store. The boost might be a different individual the next time around. The burglary part of it is strictly for the purpose of catching the boost. What they are looking at is going after the fence—the actual person that is sending those people in to get the product.

Assemblyman Duncan:
Is it your intent with this bill that we will be able to charge both burglary and retail theft, or very similar offenses?

Assemblyman Carrillo:
The intent is not so they can try him for two different crimes. There is no way that you would be able to address the organized retail crime part of it as a burglary after the fact. Basically at that point it would be considered the possession of whatever product they have. How would you be able to prove that that was a burglary that they actually committed in the store? I am not sure if that is getting to the nuts and bolts of your question.

Mr. Andersson, maybe you could help out with this. Maybe we could ask the individual who proposed the amendment, Mr. Yeager, as to what the intent was of keeping the two separate so that way the individual is not charged twice. I do not have the answer to that question, and I am not going to sit here and ramble on about something I do not know.

Thomas Andersson:
Organized retail theft, no matter how many people, is stealing in our stores with the intent and it is really about what they are taking. Burglary refers to someone who comes into the store with the intent to steal. Organized retail crime is when someone comes into the store with the intent to steal a large quantity of a specific product. If they were charged with burglary and organized retail crime—I could not tell you if that is the case, but I would assume that they would not—now they can add other charges, such as grand larceny. I have seen those being charged before. When we are talking about how organized retail crime is when it is only one person, there are so many elements involved. They are coming in with a shopping list to steal, not to shop. They are targeting many of the same products, and they have a place they are going to unload the products where they are making 15 to 40 percent profit on the dollar; it is organized. I think that is different from the burglary part. It is still in the intent, but there is a lot more to organized retail crime.

Assemblyman Wheeler:
If someone comes in with the intent to steal for resale through a second party, then that automatically becomes an organized crime ring. If that is so, I do not see that in the bill. Could there be an amendment put in there that says it has to be with an intent for sale through a second party, which I believe would be the definition of organized?

Thomas Andersson:
They are coming in with the intent, and although we do not know for a fact who they work for or who they steal their large quantity of products for, we do know they are stealing it for resale based on what they are taking. The focus should really be on what they are taking. If they are just taking a couple of grocery items, that is not for resale. I think the focus should be on what they are taking and how much it is. It is very easy to differentiate those two just by looking at what they have. I do not think we have to identify the fence to be able to charge this as organized retail crime. It should be based on what the products are.

Assemblyman Wheeler:
I do not have a problem with this bill, but it seems an investigatory tool is needed here before it can truly be considered organized. Is that correct?

Thomas Andersson:
In order to identify a fence, you do have to do some investigations. With any help that we can receive, that might be something that we should add. We should focus on what they are doing in our store, not how many there are, who they are working for, and all the other things. Those are things that we eventually find out. It is really important that we stop these people from doing what they are doing.

Assemblyman Martin:
As a cosponsor of this bill, I am very much in favor of the concept in strengthening the laws and clarifying definitions. I have to say, in reading your testimony, Mr. Andersson, I am a little taken aback by something in your testimony. It says, "On a daily basis, Albertsons sees reports from our stores that boosters are pushing out shopping carts, carrying out hand baskets, and utilizing sometimes extravagant booster bags to conceal and exit . . . ." That is almost implying that there is no store security and that you may be trying to rely upon the strengthening of this law and possible enforcement. That would obviously have a cost to the taxpayers to do what Albertsons could be doing, or any other retailer could be doing, on its own in terms of simply having a security guard at the exit that could flag someone walking out with 20 bottles of Tide. That part of the testimony particularly bothered me. Separate and apart from

the definition that we are trying to work out in terms of organized crime, I do not want to see the trend of retail stores dependent on law enforcement to pick up the slack for very simple store security.

Thomas Andersson:
We do have store security in a lot of our stores, and we do have loss prevention specialists in our stores. Even though we do have those people in place, we are still seeing these types of thefts, because of the deception that some of these people have; how they operate; how they steal. Fortunately, we do have video surrounds in our stores where we do follow up and can build our cases. Even though we have those things in place, there is no way we can create a Fort Knox in our store just to keep our products out for our customers. I realize that some people may be required to respond to scenarios when they are seeing these boosters, but a lot of times when we see the theft it is always after the fact, and we did have security. Sometimes we even have called police in, and it does not stop it. I do not think we can ever be perfect and stop this. These people are very organized. Even though they are just one person or two people, or however many people that are involved, they know when we receive our shipments of liquor, and they are aware of the money we are making. It is as if our stores are giving them information—anything is possible.

In response to your question, we do utilize security and live video. We have people watching live video to prevent these types of theft, and then they communicate to the store as the theft is occurring.

Chairman Frierson:
Are there any questions for Mr. Andersson? [There were none.] I will invite those testifying in support of A.B. 102 to approach the table and provide their testimony.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We support A.B. 102. I was listening to a lot of the questions that came up over the last few minutes and I would like to offer a brief scenario that might shed some light on the differences that we in law enforcement see between these crimes. If I walk into Best Buy to buy a battery charger, and while I am in there I see a brand new top-of-the-line iPad and I think, "Oh, I want that," I grab it and run out of the store, that would be a grand larceny. If I was sitting in my house and thinking, "You know, I need that new iPad, I think I am going to go over to Best Buy and grab one," and I went over there in my car, walked in, grabbed the iPad, and ran out, that would be a burglary. Now if I decided I was going to hit every Best Buy in town and grab an iPad, and then I was going to go back to my house and put those iPads on the Internet and sell them, we

believe that would constitute the theft ring, even if I was operating solo as one person operating a business to sell these iPads, or if I was working with some others folks in a group to sell these iPads. I believe this would be a crime that could be charged in addition to a standard burglary, but that would depend on the totality of the circumstances if the officer at the scene felt that both charges were warranted based on the circumstances. I do not know if that clarifies it but, from a law enforcement perspective, that is how I look at it.

In addition, I know that Sergeant Seifert from the Metropolitan Police Department is in Las Vegas, and I know he participates in some of these retail theft groups. He might be better able to answer some of the questions that were raised.

Chairman Frierson:
Thank you. In a practical sense, that was exactly the clearest distinction between grand larceny and burglary that I have heard since I have been at the Legislature. That was exactly the distinction that I think was being questioned about earlier.

In your opinion, would the language "with the intent to resell" accomplish the same goal?

Chuck Callaway:
I think that is definitely a good discussion to have. My only concern would be the difficulty in proving the intent to resell. If we could show that through past behavior the person was selling—to use the iPad example—a number of iPads online or to people in person, and then we caught that person stealing iPads and we could show the connection, then I think that that is something we could look at. I think there needs to be that component. That is part of what the whole retail theft ring is. These people are not stealing the merchandise to use it for their own personal use. They are stealing it to resell it in most cases.

Chairman Frierson:
Are there any questions? [There were none.]

Lea Tauchen, Senior Director of Government Affairs, Retail Association of Nevada:
I am testifying in support of A.B. 102. I do not want to be redundant, but I do want to reiterate the sophistication of these criminals and add some Nevada specific statistics to it. Approximately $345 million of merchandise is stolen from retailers annually, which amounts to about $22 million in lost sales tax revenue. The retailers have become extremely resourceful at trying to combat this crime and prevention is obviously their most effective line of defense.

With me today is George Torres, who is also a loss prevention specialist with CVS Caremark, and I will let him elaborate. Thank you.

George Torres, Organized Retail Crime Manager, CVS Caremark:
I am the regional investigation manager that focuses on organized retail crime. I am based out of Los Angeles, but I do cover the Nevada area, Arizona, New Mexico, Los Angeles, some parts of Texas, and at times, Oklahoma.

We have become very resourceful. We have adapted in combating organized retail theft with prevention being our most effective line of defense. We definitely try to come up with strategic measures in protecting our product in our stores, and I speak on behalf of all of our retail partners. We all try to protect our product first, but also to provide customer service as well, and to make it easy for our customers to purchase product. Unfortunately, a lot of these individuals have figured out our prevention methods, and they have figured out ways to be resourceful as well. I find myself following a lot of these boosters from state to state, whether it be utilizing surveillance, tracking them through our in-store reporting, or online video. We definitely strive to protect our product by utilizing customer service and enhancing our store by making them aware, and also providing some sort of security folks in our stores. Now we cannot outfit all of our stores with security guards or in-store loss prevention folks, but we definitely try to customer service these instances to keep them from occurring but, unfortunately, they will come in, maybe five folks at a time. They know specifically what times of the day we are the busiest, and they know what time of the day our cashiers are at the registers and are busy. Therefore, they take that opportunity and, unfortunately, it impacts not only CVS but all of our retailers in Nevada.

Chairman Frierson:
Would an element of intent to resell accomplish your goal? Mr. Callaway gave the example of a trunk full of iPads. Would adding that accomplish your goal of capturing these organized groups or individuals?

George Torres:
I think it is a great point of discussion. Personally, when they do commit these acts, they are definitely committing them with the intent to make money off the product that they stole. Yes, I think it is a great point to visit.

Chairman Frierson:
You said that CVS cannot provide loss prevention in every CVS store. Out of curiosity, particularly in Nevada, is there any loss prevention in Nevada CVS stores? Are the video cameras watching, or are there individuals in any store that actually try to stop the loss from occurring?

George Torres:
We have individuals in some of our stores. We cannot have them in all of our stores, but we do have them in strategic stores where we know, through theft trends and inventory results, that we would definitely need them to help our statistics and inventory for the upcoming year.

Chairman Frierson:
If those individuals observed a theft in the process, would they try to stop the theft from occurring?

George Torres:
Yes, they would.

Chairman Frierson:
Are there any other questions for Mr. Torres or Ms. Tauchen? [There were none.] Actually, I have one question. When we raised the threshold from $2,500 to $3,500 at the last session, I thought it was agreed upon. I do not know that I necessarily saw an indication that retailers supported it. I do recall having a discussion about it with you, and the retailers were not opposing the measure of raising the individual grand larceny portion of the statute from $2,500 to $3,500. Am I correct on this?

Lea Tauchen:
We did not oppose it at the time. We obviously feel that we need to defer to the Committee in determining those thresholds for the best mechanism to capture and charge these criminals. You are correct; we did not oppose it at the last session.

Chairman Frierson:
I just want to be clear. I thought you supported it, but I realized when I read back, you testified neutral; you did not support it.

Lea Tauchen:
That is correct.

Chairman Frierson:
Are there any other questions? [There were none.]

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:
I have appeared in front of this Committee under different chairs to oppose issues of raising the cost for inflation. I am speaking here today to support A.B. 102 in its entirety, and I am speaking in opposition to the proposed

amendment. I believe you have to look at these in perspective. What has happened here over the past few years, and what the Committee needs to know, is you are dealing with con artists. In a nutshell, they are con artists. They know the game, they know how to use the game, and when you raised the costs for burglary from $250 to $650, they knew that amount. When you raised the amounts from $2,500 to $3,500, they knew those amounts. We are not dealing with dumb people or stupid people. They are very calculated and very good at what they do. Lieutenant Callaway gave a beautiful example of the three types of charges: grand larceny, burglary, and the organized crime ring types of things. They know all three, and they know how to use all three, and that is what this Committee has to understand.

First of all, I believe you should reduce it from $3,500 to $2,500, and you should keep it at one person or more. I think Mr. Martin asked the question about having to do an investigation; yes. Before you do anything in these kinds of situations, you have a ring of us. The individual that testified, Mr. Andersson, who runs the other areas, he does see these things, and they do an investigation. They know who the bad guys are, and they do 86 them, or as Ms. Spiegel pointed out, we do trespass them. They have pictures of these people and they can, over a period of time, put them back in perspective. This is a gang. It is an organized gang, even if it is one, because that one then reports back to the next.

I have been in front of this Committee several times about boosting. We have had lots of information; we have presented a lot of testimony over the years about that. In a nutshell, this is an organized gang. The unintended consequences for inflation in raising the amount was to try and keep up with inflation and keep these people honest. They are not honest. They are crooks, and I think you have to put it in that perspective. With that, I wholeheartedly ask this Committee to support A.B. 102 in its entirety. I do believe that we need all three from a law enforcement perspective, and we do need the right to have duplicate charges if we need them. Burglary, grand larceny, or organized crime, or a combination of all three if we can prove it, is needed to keep these things from going on and on and on. You have got to break the ring somehow and they are very good at what they do.

Chairman Frierson:
I will ask you the same question I asked previous law enforcement personnel. In your opinion, are we attempting to capture those conducting the theft ring with the intent to resell, and would that accomplish your interest in this bill?

Ronald Dreher:
Yes, I do believe that that could be an element to this particular provision, especially if you are reducing it from three people to one person, because now you have the element of resale. In law enforcement, we deal with elements of crime. As the Chairman pointed out, you entered with the intent to commit a grand or petit larceny, which constitutes a crime of burglary or grand larceny. I assume what I am hearing the Chairman talk about is, if you add the element of resale to this, then we would have to prove that in order to charge it. Yes, I do believe it would be a good thing.

Assemblywoman Fiore:
I am just amazed by your passion about this. Thank you for your passion on this bill.

Chairman Frierson:
Are there any questions for Mr. Dreher? [There were none.]

John T. Jones, Jr., representing Nevada District Attorneys Association:
I am here in support of A.B. 102. In the interest of not being redundant, I will leave it at that, unless the Committee has any questions.

Chairman Frierson:
Is it your belief that the goal is to target those who are doing this boosting with the intent to resell? Is this something you think would accomplish that goal?

John Jones:
I think when you look at the organized retail theft organization in total, yes; the intent to resell is an important part of that. However, when you look at pieces of the theft ring, maybe you should not necessarily have to have that element of proof. You have the person who is going in the store to steal the Tide detergent and take it back to someone else. They may not have the intent to resell as part of the theft ring, but the theft ring itself does have that intent. The Nevada District Attorneys Association is willing to engage in discussions with both retailers and others to change this bill if that is the will of the Committee.

Chairman Frierson:
I am curious about any language with the intent to resell or redistribute, something beyond an individual grand larceny. I am curious if that would accomplish that end.

Assemblyman Wheeler:
From the district attorney's point of view, do you find that the capability of having more charges that you can levy will result in more convictions?

John Jones:
We try to end up with a charge that adequately mirrors the crime that was committed. In this case, as Mr. Callaway with the Las Vegas Metropolitan Police Department described, there are numerous charges. You have grand larceny, burglary, and in this case, you will have organized retail theft. We want to have as many tools available to us as we can to adequately mirror the conduct that was committed.

Assemblyman Wheeler:
So this is basically a tool to get the bad guys off the street?

John Jones:
Yes.

Chairman Frierson:
Are there any questions for Mr. Jones? [There were none.]

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:
In the interest of time, I will echo what my colleagues have said in support of A.B. 102.

Chairman Frierson:
Are there any questions? [There were none.] Is there anyone in Carson City who would like to testify in support of A.B. 102? [There was no one.] Is there anyone in Las Vegas who would like to testify in support of A.B. 102?

William Seifert, Sergeant, Property Crimes Division, Las Vegas Metropolitan Police Department:
There are just a couple of things I would like to cover. In the last two years I have been with Property Crimes with our Department, and the last year I helped start our initial Retail Apprehension Prevention Partnership (RAPP) team, and we work directly with a lot of our retailers that have been testifying, our SNORCA division, and Assemblyman Carrillo. With that, I thought it was important to share a couple of things that would maybe clear up some questions that you have been having.

First of all, as far as talking about these organized retail crime groups, what we are seeing now is typically the operating groups of two or three individuals, but only one will actually go in and do the theft. The other two or three will either

stand by and assist or watch for loss prevention personnel, police, or store employees. If they are stopped, the one that is doing the watching or the one who is sitting out in the car, will leave. They just overwhelm the employees with their sheer numbers, and typically only one person ends up getting stopped. That takes out only part of the three-ring crew, because we never find out who those other two individuals are.

The other thing that we are seeing is that a lot of these individuals, these fences that you heard about, are our gang members, and they are branching into this as a way of funding their organizations. Typically they will put out the word as to what they are looking for. Last year we stopped a lot of individuals who stole bags of clothing at four or five different retailers. When we stopped them, they said there was basically a bounty, for lack of better terms, on a certain sized bag. In other words, if you went in and stole a bag of clothes and took it to this fence, they would pay you $100. They send out person after person after person to do this, typically preying on our lower income individuals or those who are facing some tough difficult economic situations. They get caught up in this. They go out and steal, and continue to steal, and the fence continues to make their money. So the individual is doing the theft itself. I think that is important to bring to the Assembly. That is why there is such a push right now to go after an individual rather than trying to put a sheer number on two, three, four, or five. That is difficult to prove if they are all working together. They are smart enough to know to send one individual in and let them do the stealing.

The other thing that I think is important to realize is exactly where that funding is going. I will share a story with you about one of our stops last year. We were working as a group looking for these professional thieves, and we saw a group of three go in and hit three different stores in one of our local malls. They quickly refunded the items and got their cash purchase. We were continuing to follow them because we wanted to see what other criminal activity they were going to commit. They went immediately to one of our local retail outlets in the parking lot and called for another vehicle to come over. As we watched what took place—and many in law enforcement know exactly what I am talking about—there was a drug transaction. We ended up stopping both individuals. They were taking this money directly to buy heroin. The car we stopped had over 100 balloons of heroin in it. You can see where this money is going and why we are deeply concerned from a law enforcement standpoint as to the trend of this.

The last thing I will leave you with is that a lot of people have asked what is different now? Why are we seeing more of these groups doing it? To be honest with you, my law enforcement partners and I will share this, it is the

advent of some of our social media sites like craigslist, eBay, Facebook, et cetera. They are now able to go into a store, steal five items, quickly go outside, and immediately sell those items within hours. They are making a large profit on it, and it is very difficult for us to prove. It is difficult to show that intent and it is easier for them to do it. I thought it was important that I share those topics with you.

Chairman Frierson:
Are there any questions? [There were none.]

Ryan Haddrill, Investigator, Target Corporation:
There are a couple of points that I would like to make, and I speak on behalf of all my retail partners here locally. We have a lot of different strategies and tactics that we use in our stores that are geared around prevention. For Target specifically, we have security guards in uniform at every store. These tactics and strategies that we use and employ on a daily basis are just not enough. These subjects that are coming into our stores know what the laws are and they know how to get around them. They just continue to come into our stores.

There are a couple of cases that I wanted to talk about to show that point and why we want this law to go through. Back in 2011, a subject was hitting our stores multiple times, but she was hitting for small dollar amounts. Each individual incident was probably less than $100. The most she ever took was $150. These are all small petit larcenies, but when you put them all together, they obviously equal a bigger amount. She was eventually charged with multiple petit larcenies. The problem is that she did not get charged with the organized retail crime part of it because there was only one person involved. She did have the intent to sell; she admitted it during interviews when we actually apprehended her. She was stealing the same items all at the same time. Multiple bottles of shampoo, multiple bottles of fragrances, and all sorts of things, were not for her personal use and she admitted that also during interviews after she was caught.

Another case we had involved two subjects. This case involved a little more organization. They were selling outside of Nevada, so they were crossing state lines as well, but there were only two people involved. They had burglary tools and things like that. We could charge for burglary as well, but the organized retail crime piece of it never came into play because there were only two people involved, and they did impact stores such as Wal-Mart and Target in California and Nevada. These are just two cases that I bring up out of about 35 cases that I worked last year. I could probably think of a dozen more that fit that category, where it is just one or two people. I guess it is easy for a retailer to

catch one person and charge them with petit larceny or burglary, whatever the case may be. Sergeant Seifert mentioned the subject sitter outside the store. They do not get caught and they do not get charged. If we could get that one person off the street for a little bit longer and make a bigger impact, I think it would deter many of those subjects from deciding to do the theft.

Chairman Frierson:
In the example you gave of the woman who admitted in interviews that she was intending to resell or redistribute, I will ask you the same question. Would that language address what you believe the needs are? Also, the woman who acknowledged that she entered with the intent to take something to resell, she would be exposed to one to ten years in prison over a burglary, correct?

Ryan Haddrill:
Yes, I believe she was initially charged with burglary on the one incident; however, it was obviously pled down. For your first question with the intent, I agree with some of the previous testimony. It is going to be very hard to prove the intent to resell, but I think we need to visit that and talk about it as part of the bill as well.

Chairman Frierson:
Are there any other questions? [There were none.] Is there anyone in Carson City in opposition to A.B. 102?

Steve Yeager, Deputy Public Defender, Clark County Public Defender:
As the Committee knows, I submitted an amendment (Exhibit D) and would be happy to answer any questions about it. I wanted to point out a couple of things for the Committee based on the prior testimony.

It seems the intent of the bill is to go after the fence, and we heard some testimony that it is difficult to find those people; to locate them so we can prosecute them. I do not know how this bill would necessarily achieve that objective, because what this bill seeks to do is potentially add additional charges to the individual who is actually going in and stealing the merchandise—so I do not know that it really speaks to the fence. In the circumstances where the fence is located, I think prosecution has tools already. They could charge that person with a burglary under the aiding and abetting statute and certainly if they are working in cahoots with the boost. That person could be prosecuted under the same statute. In addition, there is also the conspiracy statute. Furthermore, there would be the racketeering statute which would come into play when these kinds of organized rings are taking place. Conviction under racketeering would be a category B felony with a penalty of 5 to 20 years. I think there are other tools out there already. My main concern for the

amendment is that they already have these abilities to charge burglary, and I will say that it is the exception, not the rule, that you see a case merely charging a petit larceny. They usually come with a companion burglary. My concern is just making sure that they are not tacking on additional charges.

Furthermore, a second conviction for burglary is a greater offense and is non-probationary. So if someone already has one offense for doing this and is convicted of a burglary and picks up a second one, they must go to prison for a period of one to ten years. It would seem like there should be some kind of an election here rather than a tacked-on additional charge to combat this problem.

Chairman Frierson:
It may seem obvious, but for those who are not in criminal law, does the prosecutor have the discretion to deal with these crimes in a way that is common sense and negotiate in a way that fits the actual conduct?

Steve Yeager:
Yes, of course. The prosecutor and the defense attorney are always going to try to work on a reasonable compromise, so there are tools there that you hope everyone can reach a reasonable agreement. I will say that I have seen petit larcenies—very minor items, soap, shampoo—come in with a charge of burglary, which is the category B, one to ten. Obviously that is a huge offense to be hanging over someone's head when we are talking about negotiations. Certainly if the parties are willing, appropriate negotiation in these cases can be had.

Chairman Frierson:
Are there any questions for Mr. Yeager? [There were none.]

Chris Frey, Deputy Public Defender, Washoe County Public Defender:
We would support the comments by Mr. Yeager with respect to his reservations as to the bill. I would like to address your point, Mr. Chairman, about the intent for resell language. I think that is an attractive modification to this bill because it actually makes a critical distinction that excludes those who steal for purposes of sustaining life and necessities—baby formula, diapers, et cetera—and it includes professional thieves. You have already heard testimony about professional thieves. So to the extent that it really does protect those who are stealing for altruistic or reasons of maintaining life and supporting their children, I think it is a critical distinction and I think that language offers needed protection. We support that addition with the reservations that Mr. Yeager noted about the other portions of the bill.

Chairman Frierson:
Are there any other questions? [There were none.]

Scott Coffee, Deputy Public Defender, Clark County Public Defender:
I am the past president of Nevada Attorneys for Criminal Justice, the largest association of criminal defense attorneys in the state, and I am here on behalf of them this morning. We are also testifying in opposition to the bill.

As a practical matter, these things are charges. I have not heard of conduct from anyone that has been put forth that could not be charged under the burglary statute, either as aiding and abetting, or as a conspiracy. That is what you would normally see. You have heard several people in law enforcement talk about additional elements with this.

In all candor, I do not know that this is going to get used that much if it is passed, because burglary is simply easier to prove. There is no dollar amount involved with a burglary charge. It is simply entering with the intent. If anything is organized, you are going to be able to prove the intent on entering for burglary. I think we are talking about something that is not going to have much teeth. I think it is unnecessary for that reason. I think it is covered by other things. There is obviously a problem with retail theft, but I will tell you now that is handled at the district court level in front of the sentencing judge. What would normally happen is if someone has done one of these retail thefts, if they have entered a plea, the prosecutor is going to come in and say, "This looks like a retail theft. They were doing it for resale." A judge is most likely going to be able to give a more serious sentence to that person than someone who is coming in and stealing diapers or baby formula for their personal use. It is certainly something that would be taken into consideration with the one to ten years for felony burglary. With that, we would submit our opposition.

Chairman Frierson:
Are there any questions for Mr. Coffee? [There were none.] Is there anyone in Las Vegas who would like to testify in opposition to A.B. 102? [There was no one.] Is there anyone who is neutral to A.B. 102? [There was no one.] I will close the hearing on A.B. 102. I will open the hearing on Assembly Bill 97.

Assembly Bill 97: Revises provisions governing habitual criminals, habitual felons and habitually fraudulent felons. (BDR 15-680)

Assemblyman Paul Aizley, Clark County Assembly District No. 41:
Assembly Bill 97 is a very simple bill. The measure requires the prosecutors to file charges of habitual criminality within 30 days after the arraignment of the defendant on the primary offense, unless for good cause the court extends the

time. Currently prosecutors may wait until after the trial, or after a guilty plea is offered, to file for habitual criminal status against the defendant. This may put the defendant in a difficult bargaining position with respect to the prosecution. Assuming the previous convictions would put the defendant in jeopardy of habitual criminal status, the defendant may feel pressure to take a plea deal on the primary offense, if the prosecution agrees to not seek the habitual criminal label. The defendant would then avoid a possibly lengthy extension of prison time, but sacrifice the ability to make the prosecution prove its case on the primary offense.

I am not a lawyer. Some of this did not come across to me in detail, and that is why Assemblyman Ohrenschall is here to help. What mostly got my attention is that this is a simple matter of fairness. The last thing anyone should want is for offenders to plead guilty to crimes they did not commit because they are worried about the possibility of having to serve more time.

Chairman Frierson:
Are there any questions for Mr. Aizley?

Assemblyman Duncan:
There are many factors to take into account when we are thinking about sentencing someone. In plea bargain negotiations, they have the ability to come to formal agreements with the defense counsel and the prosecutor. Does this not take away the prosecutor's ability to have that as a bargaining chip and also in rehabilitating the offender himself?

Assemblyman Aizley:
From my point of view, the offender does not know what is coming at the end of the period, and things may be added after negotiations begin. I think Assemblyman Ohrenschall can probably answer that question better.

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:
If this bill becomes law, it will lead to more resolution of cases because there will be full information on both sides. A defendant will know if the prosecution is seeking a penalty enhancement under the habitual criminal statutes in *Nevada Revised Statutes* (NRS) Chapter 207. There is a greater likelihood of resolution.

Scott Coffee, Deputy Public Defender, Clark County Public Defender:
I have been a practicing criminal defense attorney for almost 20 years at this point. I have been a line deputy to do training for the public defender's office, and I was the past president of Nevada Attorneys for Criminal Justice. I was speaking with Mr. Ohrenschall, and he asked, "Is there anything fundamentally unfair with the statutes that you know of? What can we do to improve

things?" Yes, there is a fundamental unfairness that I am aware of with the habitual criminal statute, and it is the only thing that can be charged after trial. A defendant can be forced to go to trial not knowing that they are facing habitual criminal status. Essentially they could be going to trial thinking that they might be going to a mandatory probation offense and be hit with a life sentence after the fact. You can add habitual criminality after the trial at this point.

What we have done in other areas—death penalty situations, for example—is to have notice requirements. If you move the time frame forward to force the district attorney's office to file a notice of habitual criminality before the trial, at least all the parties involved know what is going on. The defendants know what they are facing if they go to trial. It gives the prosecutor actually more leverage in many instances because you can go with a piece of paper to a defendant and say, "You are facing habitual criminal charges." I will tell you right now I deal with indigent defendants on a daily basis, and when I talk with indigent defendants at the detention center, if there is not a piece of paper charging them with something, they do not believe it can happen. That is just the nature of the beast. When you are not paying for counsel, people tend to not want to believe what we tell them. The legal reality is you can go to trial under the current system not knowing what you are going to face, and an allegation of habitual criminality can be filed after a conviction. If you have an attorney who is asleep at the wheel, they may not know what is coming down the road. They may not give good advice to their clients. This creates other issues.

There are some recent cases from the U.S. Supreme Court that talk about effective assistance of counsel in a plea bargaining context. I do not know how I can give effective assistance of counsel and tell someone whether they should take a plea negotiation or not when I do not know what is coming down the pike. With habitual criminality, that is exactly what we have. We do not necessarily know what is coming down the pike. This just plugs up a hole that has existed for years. It has existed as long as I have been in the public defender's office. As a note, no one is trying to take away the prosecutor's ability to pursue habitual criminal charges.

There is an exception here for good cause if, for example, someone gave a fake name and they find that out after a conviction, that would be a good cause for a late filing. What this does is put the cards on the table before trial, which I think drives negotiations. It is always better for the parties to know what is coming. That has been my experience in doing this for 20 years. For that reason, I think it is a good bill. It keeps people from waking up angry about how a trial turned out. Some 95 to 99 percent of prosecutors act in good faith,

but there are situations where they are unhappy with the defense attorney, they get mad at the defendant, and they will add habitual criminality after the fact as a punishment. That should not happen. There should be thoughtful filings, and people should know what they are facing if they go to trial. That is the reason for the amendment.

Assemblyman Hansen:
I always thought that in criminal law, prior to a trial, the district attorneys would not be allowed to bring up previous criminal history before going to trial because it prejudices the jury. Would this not in effect tell everyone that this person has been at least a two-time offender on a felony level prior to trial?

Scott Coffee:
No, this is not a trial issue. The adjudication of habitual criminality is something that happens with the court and the judges and not something to be presented in front of a jury. It would just be a situation where we would know what was coming at sentencing; here are the potential sentences. The judge is the one who ultimately makes the determination on it.

Assemblyman Martin:
You are using the term "habitual." Is there a specific definition of habitual? Is it three times or three types of crimes? I guess what I am asking is, would this be leaning towards a third-strike policy? If you steal a pizza in California and it is your third time down this path, you get life in prison? If you could clarify the definition and the intent, I would appreciate it.

Scott Coffee:
There are currently statutes that define habitual criminality in Nevada. There are several different ways you can become a habitual criminal. Third-time felons are eligible for habitual criminality. On low-level offenses, that does not happen very often. It is a matter of judicial discretion. If you have multiple violent felonies, at some point it becomes a mandatory situation where you shall be treated as a habitual criminal at a certain point in time. Most of the time he looks at discretionary matter in front of a judge, and those things are currently on the books. A third felony puts you up for habitual criminal treatment. Did that answer your question?

Assemblyman Martin:
I am concerned about the judicial discretion aspects of it. I tend to favor more determinate sentences and more definitive ones. It is good enough for the purposes of this.

Scott Coffee:
Mandatory habitual criminal statutes in California created a huge fiscal mess. It has since been repealed because you had people stealing video tapes and DVDs and they were getting life in prison. We certainly do not want that situation. The idea is not to take away judicial discretion. I think the system that we have in place by and large works. This is just giving us notice before trial. That is all this is meant to address.

Assemblyman Duncan:
I would like to get your intent on what you were thinking about in terms of what good cause would equal. Are you saying that there are plea bargain negotiations that take place between a prosecutor and a defense counsel and they agree on a certain crime in lieu of going to trial? Right now, can you not say through plea bargain negotiations, "We are not going to seek the habitual criminal distinction." I am wondering if that is true or not.

Scott Coffee:
Yes, you can absolutely do that through plea negotiations. Most good attorneys are going to do that in plea negotiations. There are certain cases that do not resolve for whatever reason. We have a number of defendants who have mental frailties; we have a number of defendants who just have antisocial personality disorders for lack of a better description. They do not believe the risks that are involved unless it is in front of them. This is primarily in a trial situation where you go to trial and the prosecution can file it after the trial. It is a case that does not resolve for whatever reason.

False name is one example of good cause that I can think of off the top of my head. A defendant comes in and gives a fake name to someone and then you find out after the fact that he has an extensive criminal history that no one can find. That would be a good example. Another possible exception would be a contractual obligation in the plea agreement. Right now the district attorney's office in Clark County has modified the statutory language on plea agreements to include some provisions that kick into place if a defendant does not show up to the Office of Parole and Probation to do a presentence interview. They retain the full right to argue. I would certainly think that you could include in the language, if you were in the district attorney's office and if you sought to, that if you fail to show up and fail to cooperate with Parole and Probation, that should be deemed good cause to later file habitual criminal charges if necessary. Those might be the two exceptions I can think of.

Most of the time I do not think you are going to put the State at much of a disadvantage because they lack just a couple of tools that everyone needs to be aware of when we are talking about criminal justice—Nevada criminal

history, which is Shared Computer Operations for Protection and Enforcement (SCOPE), and the National Crime Information Center (NCIC), which is the national criminal registry. Prosecutors have access to it, but defense attorneys do not. They could very easily pull up a person's criminal background in general so they know beforehand who has a record. Habitual criminality is filed only in a small percentage of cases. Even with multiple-time offenders, it would just be good to know which case it is going to be filed in.

Assemblyman Duncan:
I know you said there have been inequities. Has this statute evolved at all over the last five or ten years? Has it changed? Has it always been after a conviction?

Scott Coffee:
I think it was adopted that way. Since I have been a practicing attorney, they could file after the conviction, which I always thought was strange. Even when I started practicing 20 years ago, I thought it was strange. You talk to defendants about eventualities. They are just in the ether until someone actually files something. It makes it very difficult to deal with folks who like to see things in black and white.

Assemblywoman Cohen:
I know it is different from jurisdiction to jurisdiction and case to case within the state, but can we get a general timeline of how long it takes to get to trial in a criminal case?

Scott Coffee:
If you are arrested, charges are going to be filed within a day or two. It will then be up to 15 days to get to a preliminary hearing. After that, you are going to be held over for district court, and a district court arraignment will take place about a week to ten days after that. At district court you have the right to a speedy trial. That would take place within 60 days of the district court arraignment, although to be quite honest, many defendants waive. There are a lot of ways around the right to a speedy trial, in which case the trial would get sent to ordinary courts and that could take months. We are talking bare minimum 60 days. I have never seen one go that quick by the time you do a preliminary hearing and the other matters. Three months would be the quickest, and that is if someone is demanding a trial and if there is courtroom time available.

Assemblywoman Cohen:
Would you be willing to support a change in this? Instead of the district attorney having to file within 30 days, would it be better to have it more of a back-end requirement? Does it have to be filed 30 days before trial?

Scott Coffee:
I do not think it is critical one way or the other as long as there is some notice beforehand. For example, we have to file a notice of alibi witnesses a certain amount of time beforehand, or we have to file notice of expert witnesses 21 days before trial. Those would all be reasonable ways to draft this. The reason it was drafted the way it was is that it mirrors the language of the Nevada Supreme Court Rule 250, which kicks in with death penalty cases and talks about notice of enhanced penalty and death penalty cases. As long as it is before trial, and you have the time to talk to a defendant, I think it would be adequate.

Chairman Frierson:
Are there any other questions? [There were none.] Is there anyone else in Carson City to testify in support of A.B. 97? [There was no one.] Is there anyone in Las Vegas who would like to testify in support of A.B. 97? [There was no one.] Is there anyone in Carson City to testify in opposition of A.B. 97?

John T. Jones, Jr., representing Nevada District Attorneys Association:
We are here in opposition to A.B. 97. This bill was introduced last week and we have been going to various prosecutors in Nevada to see if there is a problem that any of them are aware of with respect to the habitual criminal statute, and almost universally the answer has been no. We are not aware of any problem. In many ways, we feel this is a solution in search of a problem. The Nevada District Attorneys Association feels that the habitual criminal statutes are working well and an essential tool in helping to keep Nevada's streets safe. We are not in the business of surprising defendants with surprise motions after a conviction to enact the habitual criminal statute.

With that being said, I have Noreen Demonte in Clark County, who is on our repeat offender program unit in the Clark County District Attorney's Office.

Noreen Demonte, Deputy District Attorney, Clark County District Attorney:
I am testifying overall in opposition to this bill. We are not aware of any situation where a criminal defendant has been surprised by it. For the people who are not that familiar with criminal law, in Nevada, if you have two or more prior felony convictions, it certainly exposes you to what is known as habitual criminal treatment under *Nevada Revised Statutes* (NRS) 207.010. If you only have the two prior felonies, your exposure is called the small habitual, which is

a sentencing range of 5 to 20 years. If you have three or more prior felony convictions, that exposes you to the large habitual criminal statute. That could be anywhere between ten to twenty-five years, or ten to life, or life without the possibility of parole. Under NRS 207.010, that is discretionary upon the trial judge as to whether or not they are actually going to impose that sentence. If you have two or more prior violent felony convictions, that is a nondiscretionary mandatory 10 to 25, 10 to life, or life without the possibility of parole. The statute lays out very clearly what violent felonies are. For the most part they are the category A felonies: murder, robbery, rape, and sexual assault. There are certain other ones also delineated. It is mandatory upon the state that we file it and seek it, and it is mandatory upon the judge that they actually impose it. That is under NRS 207.012.

In Clark County, the way we normally handle habitual criminal prosecutions—and this is normally, because I can tell you that we have at our disposal various means by which we can allege it—is we can allege it as part of the information when it is originally filed in district court. In the repeat offender program unit, of which I am a part, that is how we normally go about it. The Las Vegas Metropolitan Police Department, Henderson Police Department, and North Las Vegas Police Department actually screen the cases ahead of time to see that they meet certain criteria. The criteria required to be screened to come to my unit is even above and beyond what is required by *Nevada Revised Statutes*. It is even more stringent and strict as far as what it is. We want to be more selective in how we seek it because we do not want abuses, and we do not want to have a situation of unfairness. That is how it is normally handled, so it comes to us usually at the preliminary hearing stage and then we file it as part of the information.

What Mr. Coffee and Mr. Yeager have talked about today is the ability for the state to file it post-verdict, or after a guilty plea. I can tell you in my experience that it is used probably 1 percent of the time. It is very rare that we actually do that. I myself have only done it once as part of the repeat offender unit; however, when I was a track deputy on the normal tracks where we had ten people to a team sharing a secretary, I did seek habitual criminal as a track deputy, and that was the means that I utilized to go at it. I can tell you in my experience no one was ever caught off guard by that. I can count on one hand the number of cases that I did it in, and I can tell you that in every single one of those instances, the defense attorney knew well in advance what the situation was that they were looking at should the case go to trial.

In fact, in the case of Daimon Monroe, it was the defense attorney who told the Division of Parole and Probation when they were prepping the presentence investigation, "Oh, by the way, the state has not filed it yet, but they are

seeking habitual, so you might want to include that." In my experience, it has never been a surprise. The reason I can say that with confidence, office-wide, is that in Clark County, we take less than one-half of one percent of our cases to trial. In other words, negotiations happen 99.5 percent of the time. In Clark County, when a person is booked into the Clark County Detention Center and the intake services report is generated and provided to the state as well as the defense counsel, it lays out at least some semblance of what their criminal history is. It will say they are a five-time convicted felon; 1995 Nevada this charge; 1996 California that charge. So at the very early stages we are talking arraignment. That criminal defense attorney knows the criminal history.

Secondly, I have yet to meet a habitual criminal that does not know they have three prior felonies. In fact, they usually know before we do. That is because they use fake names, they use fake dates of birth, and they use all kinds of ways to hide their tracks. The state does have access to SCOPE and to a limited extent NCIC. Not every state actually inputs data into this system, so someone can have felony convictions that never show up in NCIC. Additionally, when I say it is limited access, in my office the individual deputies do not have access to NCIC; only the investigators do. On my unit I have one investigator that I share with three people. When you are talking about the normal track line deputies, there are probably 15 deputies per one investigator, and that investigator is out in the field most of the time conducting process serving duties. It is not like our track deputies have a lot of access to NCIC to be doing this.

I take issue with some of the things that were said. I have not heard of a single example of the State not utilizing habitual criminal in good faith with someone being caught off guard. If that is happening, I urge my colleagues at the Public Defender's Office to call me and I will personally deal with it and take it up the chain in my office. That is not how we do business and, if I know of an example, I will gladly investigate and get to the bottom of it. The bottom line is, when it is done post-verdict, it is a matter of resources and it has never been a surprise to anyone.

When I say it is a matter of resources, I am talking about when I was on track, that was the only mechanism I utilized to habitualize someone. That is because I shared a secretary with ten people and we negotiated 99.5 percent of the cases. In every situation, right up until the day of trial, it was, "My offer is attempted burglary and I will not seek the habitual." It has always been a part of the discussion. If it is a matter of individual defense attorneys not discussing potential penalties with their client; that is not a legislative problem. In my opinion, that is a malpractice issue that needs to be dealt with on a different level.

I am going to give you an example of when I utilized post-verdict once since being on habitual criminal. The gentleman's name is Raymond Sharp. Under Case No. C-11-274805-1, we charged him with 18 separate counts, most of them relating to pandering, battery, domestic violence, first-degree kidnapping, and things of that nature. The crime itself occurred on July 2, 2011, when a woman, wearing nothing but a pair of thong underwear and bleeding from her head, was banging on her neighbors' door. The neighbors called 911, witnessed her hiding under the bench and obviously hiding from someone. They recognized her as their neighbor. They then saw their other neighbor, Raymond Sharp, come out of the house and drag her by her hair back into that home. When police arrived on the scene, they attempted to knock at the door and they noticed that the front door of that house was actually nailed shut. That was one thing the neighbors also reported to 911. As the officer was going back to his vehicle, that naked woman, still bleeding from her head, came diving over the six-foot block wall in the backyard, running toward the police car screaming, "We have to get out of here; he has a gun." What Raymond Sharp was doing at that moment was loading an AK-47. He was going to get in a shootout with the police.

Investigators eventually discovered that the woman, named Alicia Grundy, was a prostitute, and Raymond Sharp was her pimp and had been so for approximately 15 to 20 years. Mr. Sharp was arrested for the kidnapping counts, domestic violence counts, and pandering counts. Additionally, they located a chop shop inside his backyard as well as the AK-47 rifle and the AR-15 rifle that was at the top of the stairs. Now the only reason there was no shootout in this particular case was because, in his anger and frustration, he put the AR-15 rounds in the AK-47 and then stuffed that behind the couch cushion when he realized what he had done. In Raymond Sharp's case, it moved very quickly.

As you are going to discover, probably two days from now when you hear about the human trafficking bills, is that there is a lot of victim manipulation that happens and a lot of ways that these criminals manipulate the system. In Mr. Sharp's case, we actually went to trial in three days; three days after filing a superseding indictment. In Mr. Sharp's case, we were aware of some criminal history that he had. We suspected he might qualify for habitual, but his record was out-of-state convictions from California that were over 20 years old. We went to trial on Mr. Sharp. We convicted Mr. Sharp of every single count alleged in the indictment.

One thing we learned as we were preparing for trial is that not only did Mr. Sharp have some criminal history out of California, but we were able to determine that it was not remote and it was not a situation where he had these

20-year-old convictions and then was a good boy all these years. We found circumstance after circumstance in Las Vegas, Nevada, where police had been involved because he kidnapped a 15-year-old girl from Scottsdale, Arizona, and brought her to Nevada to prostitute for him. The case wound up getting negotiated down to a misdemeanor because she would not testify because of that manipulation. He was documented for pimping another 16-year-old girl that he had brought in from San Diego, California. He had numerous instances of using firearms against our victim in that case. He actually broke the leg of his own son to keep control over one of his other prostitutes.

Over the years, Mr. Sharp had manipulated the system to where he should be in prison for the rest of his life, but he only had some minimal criminal history out of California. We caught a lucky break when Mr. Sharp's attorney asked to continue the sentencing. That enabled us to get the certified copies of his judgment certification from California. We are actually still waiting for them from the California courts. I was able to contact the California Department of Corrections to get certified copies of the ones he went to prison for, and we were able to determine post-verdict that he was a five-time convicted felon. Mr. Sharp is now serving life in prison without the possibility of parole.

I understand that the way this bill is written uses two words, "good cause." I give to you that the judge who sentenced Mr. Sharp would have found that to be good cause. Good cause means very different things to different judges at different times, and when it comes to a monster like Raymond Sharp, it does not sit well with me to think that that man could be out in five years. That is all we were able to get him on if we did not have habitual. Five years for that monster; good cause is not good enough.

Chairman Frierson:
I ask that in the interest of time, to the extent that you agree with Ms. Demonte, that any other testifiers indicate such. We have floor session, but I do not want to prevent you from getting on the record with any additional information you believe is relevant.

Donald Hoier, Sergeant, Las Vegas Metropolitan Police Department:
I am testifying against A.B. 97. Without the existing law, there is no way that we would have put Raymond Sharp away for the rest of his life. He was an individual that had been problematic for a number of years, and he is where he belongs now as a result of the law existing the way it is.

Chairman Frierson:
Do I have any questions from members of the Committee? [There were none.] Ms. Demonte, do you have anything else that you would like to add in closing?

Noreen Demonte:
In addition, I would like to address a few things that were mentioned in the opening comments. One thing that stuck out to me as this bill was being introduced was that it wanted to prevent defendants from pleading guilty to crimes they did not commit because they were worried about an enhancement. This bill would probably have the opposite effect. I also noted that this bill advertises having no fiscal impact. I do not believe that would be the case. The practical reality is that what we would do from the state—at least from the Clark County prosecutor's standpoint—is that we actually only see habitual criminal on less than 50 percent of the people that really qualify under the statute. If this bill were to be passed, all it would accomplish is that in every single case where we see that they may qualify, we are going to notice it anyway, just in case it happens to be a person like Raymond Sharp. That is going to create a judicial backlog, and that is going to have the opposite effect that I think this bill was intended for by people thinking they are going to be facing it when, in reality, we probably would not be seeking it.

It is also going to cause a backlog of cases. It is not going to encourage negotiations for us to be filing it in every single case. It is going to have the opposite effect. It is also going to have severe fiscal impact. Not only will the district attorney's office be seeking additional monies from the local governments to have greater access to NCIC so we can notice it earlier and seek more investigators, the public defender's office will be banging on the doors of the county commission seeking more positions. This will have the opposite impact.

Chairman Frierson:
Are there any questions for Ms. Demonte? [There were none.]

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
As Sergeant Hoier said, the Las Vegas Metropolitan Police Department opposes A.B. 97. We have a career criminal team that works in our agency that specifically works with the worst of the worst criminals, and we work very closely with the district attorney's office. Last year that unit submitted approximately 170 cases to the district attorney's office and made 119 arrests of career criminals. We support the district attorney's office having the tools necessary to do their job, and therefore we oppose A.B. 97.

Chairman Frierson:
Are there any questions? [There were none.]

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:
I am here in opposition to A.B. 97. As law enforcement agencies, we have to provide information to our prosecutors seeking this sort of thing. One case we had was a guy went into the pizza place to rob it. He put everyone on the floor at gun point, could not get into the register, and snagged a pizza on his way out. That was plea bargained down and all that we could have him convicted for. The facts are that he committed a violent crime, and through plea agreements, he was convicted of just stealing a pizza and the burglary. It would be incumbent upon the law enforcement agency to provide all the facts and circumstances relating to that case. The 30 days would be a time constraint that we would have trouble with and it would be a problem for us. We are in opposition to A.B. 97.

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:
For the reasons already stated, we are in opposition to the bill.

Chairman Frierson:
Are there any questions? [There were none.] Is there anyone here to testify in the position of neutral? [There was no one.] We will close the hearing on A.B. 97. I do not believe we have any bills to introduce today. Is there anyone here to provide public comment? [There was no one.] Is there anyone in Las Vegas to provide public comment? [There was no one.]

I want to encourage the parties to talk and see if there is any common ground on some of the issues that have been raised in preparation for any work sessions as we move forward. We are adjourned [at 11:03 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 18, 2013 **Time of Meeting: 9:04 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 102	C	Thomas Andersson	Written Testimony
A.B. 102	D	Steven Yeager	Proposed Amendment