

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

**Seventy-Seventh Session
March 13, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:13 a.m. on Wednesday, March 13, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. 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:

Assemblyman John C. Ellison, Assembly District No. 33
Assemblyman John Hambrick, Clark County Assembly District No. 2



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nancy Davis, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

James Litchfield, representing Nevada State Apartment Association
Kristin Erickson, Chief Deputy District Attorney, Washoe County
District Attorney

Chairman Frierson:

[Roll taken, standing rules explained.] Before we begin today's hearing, I have Bill Draft Request (BDR) 15-521 to introduce. I will entertain a motion.

BDR 15-521—Makes various changes governing the crime of sexual conduct between a school employee and a pupil to include former school employees and former pupils. (Later introduced as [Assembly Bill 261](#).)

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE
BDR 15-521.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

MOTION PASSED UNANIMOUSLY.

Chairman Frierson:

I will open the hearing for [Assembly Bill 194](#) and invite Assemblyman Ellison to come up to introduce this bill.

[Assembly Bill 194](#): Clarifies that a person who holds a leasehold interest in the real property of another person may be criminally liable for the destruction or injury of that real property. (BDR 15-654)

Assemblyman John C. Ellison, Assembly District No. 33:

I appear before you today to speak in support of [Assembly Bill 194](#). This bill clarifies the law regarding malicious mischief, particularly the destruction of the real property of another person. This bill makes it clear that the fact that the offender is a tenant in the property does not constitute a legal defense. [Continued to read from prepared text ([Exhibit C](#)).]

I have also provided you with a list of what other states have in statute dealing with the destruction of real property ([Exhibit D](#)).

This bill is similar to Assembly Bill No. 373 of the 76th Session, which was introduced by Assemblyman Goicoechea. That bill dealt with the destruction of foreclosed homes.

I would like to introduce Jim Litchfield who is representing Nevada State Apartment Association.

James Litchfield, representing Nevada State Apartment Association:

We are testifying this morning in support of A.B. 194. This bill was brought to our attention by the bill sponsor, Assemblyman Ellison. Upon review, we are of the opinion that his piece of legislation, if passed into law, would provide the landlord with another avenue to pursue in the event a resident causes willful damage to a unit. [Continued to read from prepared text ([Exhibit E](#)).]

Assemblyman Ellison:

I have seen an apartment where the renter sat in the living room and put 150 holes in the wall by throwing knives. The electrical system was shorted out and all the sinks were damaged. There were no walls left in this house and not a single window. There was about \$8,000 worth of damage. I looked at a house in Sparks that was totally gutted by the tenants when they were evicted. These people had money. They were evicted due to drug abuse. This bill would protect those people who have large investments in rentals and have no protection because the district attorney (DA) will not prosecute.

Assemblyman Carrillo:

Most renters are required to put down a damage deposit. Would there not be some recourse through either small claims, or suing the individual for the damage done? If this bill makes the crime a felony, how will the renter pay anything if he is sent to jail?

Assemblyman Ellison:

There was a family who moved into a unit in Osino, Nevada with a \$500 deposit. They were 3 1/2 months behind on rent when the owner of the property gave them a 5-day eviction notice. The renters contested the notice, went to justice court, and the judge gave them an extra 30 days. After the 30 days were up, the owner of the property went back to court to get a 24-hour eviction notice. The sheriff went to the property after the 24 hours and the renters were gone, but there was not a window, sink, or door left in the house. There was about \$7,000 damage done with a \$500 deposit. The deposits will not cover that kind of damage. It is not because they spilled

wine or accidentally broke a window, which is what the deposits are meant to cover. This is not cleaning and repair; it is actual destruction of homes. This bill does not mean that the DA will throw them in jail forever, but at least it will make the renters held responsible for the destruction of property.

Assemblyman Carrillo:

Is this suddenly happening where people are becoming more malicious and spiteful? Is this a trend that is seemingly getting worse?

Assemblyman Ellison:

I think the economy is making matters worse. When we went to the Legislative Counsel Bureau (LCB), we were told there is a law on the books already that protects these people. The problem is that the district attorneys are reading the law differently, stating it is a civil matter.

Assemblyman Carrillo:

Putting someone in jail does not resolve the monetary issue. I had a similar bill and basically that was the problem. What is the point of putting them in jail? If they cannot pay restitution, whether through the court process with a judgment or through the process of collections, how does putting them in jail solve the issue?

Assemblyman Ellison:

I am hoping that people realize they can be held accountable for the destruction. Right now, they are not.

Assemblyman Wheeler:

If this goes into effect, are you hoping this will be more of a preventive measure so people do not do this and we do not have to take them to court?

James Litchfield:

The intent of this bill is to define this willful intent of destruction of private property as a criminal act, and to hold those people accountable that the opportunity to use another person's property does not give one the right to destroy that property.

Chairman Frierson:

My reading of existing law is that this is already covered. Willfully and maliciously destroying the property of another is already against the law. If anything, this is attempting to clarify that being a tenant does not provide a defense. Are there cases where a tenant has said, "I am a renter so you cannot charge me with this"? Oftentimes, when I look at bills I am looking at what we are trying to fix.

James Litchfield:

I am not prepared to present any case law.

Chairman Frierson:

As a sponsor of this bill, Assemblyman Ellison, is there a situation that gave rise to this that was unable to be addressed under existing law?

Assemblyman Ellison:

There were several cases just recently that the district attorney refused to prosecute. He said that the language was too vague. The sheriff's offices are doing the reports and introducing them to the district attorney. The district attorney is just not prosecuting it to that level. We had one example where the guy had plenty of money; he was one of the highest elected officials in northern Nevada. His son did all the destruction to the property.

Chairman Frierson:

I do not know that the proposed language is changing the prosecutors' discretion to charge or the local law enforcement's discretion to pursue a charge. I am curious as to whether we are legislating because individuals are not exercising discretion in a way we would like, or if we are actually fixing something in law.

Assemblyman Ellison:

We looked at other states' laws to determine an amount for this offense. We went very low compared to most states. I do not think there is an amount for destruction of private property in existing law. We are not talking about wear and tear of a rental. We are talking about the total destruction of homes. I am hoping this law will give enough teeth to the district attorney's offices to make these renters accountable. That is all we are trying to do.

Chairman Frierson:

I do not want to confuse issues. Is there an amendment dealing with amounts? I do not think the bill itself changes anything about the amounts. You testified that the amounts were based on the value of the property. I am trying to determine if this will clarify existing law.

Assemblyman Ellison:

The amounts came from LCB. We looked at what several states have done to correct this problem, and they put it into law with an amount. I think the existing law does not show the amounts.

Chairman Frierson:

I have a fact pattern that came to mind when I read this bill. I am curious about whether this is what would be covered. You have a renter and a landlord that have an argument and the renter punches a hole in the wall. The lease is not up for another six months and the renter intends to fix the hole before the lease is up. How would that play into whether that person could be subjected to criminal charges?

Assemblyman Ellison:

If they fix the hole in the wall, they would not be held at all. Deposits are intended to cover holes in the wall. We are talking about kicking holes in every room in the house, busting windows out, et cetera.

Chairman Frierson:

The example you just gave, what if the tenant plans on fixing everything before the lease is up?

Assemblyman Ellison:

That is fine. I am talking about after they have moved out.

Assemblyman Hansen:

Existing law says this would fall under a public offense. Is a public offense criminal or civil?

Chairman Frierson:

We have no infractions, which in some states would make it noncriminal. In Nevada law, if there is no prescribed punishment, it is a misdemeanor.

Assemblyman Hansen:

Is there a hole in the law? What is the definition of "leasehold interest"?

Chairman Frierson:

That is something we can submit to Legal to get answered.

Assemblyman Hansen:

Has there been a case where somebody used as a defense that they have a leasehold or a rental agreement, and even though they busted up your property, you cannot do anything? Is there a defense that used a rental agreement as an excuse for damaging personal property and getting out of the malicious conduct that is covered in other sections of the law?

Assemblyman Ellison:

Not that I am aware of. Most of the renters will tell you they have a contract, and they paid a deposit.

Assemblyman Hansen:

This goes beyond that. If someone takes a sledgehammer to the property and does thousands of dollars of damage, and the landlord states, "This goes way beyond the security deposit; I am suing you for a criminal violation of my property." Is that not something you can do now in law?

Assemblyman Ellison:

You can do that, but you cannot hold them criminally liable. You can only hold them civilly responsible.

Assemblyman Hansen:

This does not deal with the district attorney's prosecutorial discretion, which still exists. There are some gray areas I would like to have clarified.

Assemblyman Ellison:

I think the leaseholder interest is the contract entered into when they rent the property.

Chairman Frierson:

You say you cannot hold them criminally liable; under the law you can. What you are saying is that the district attorney chooses not to pursue this criminally, correct?

Assemblyman Ellison:

That is correct. This is not just a northern Nevada issue; the first example I gave was in Sparks. It is a statewide issue.

Assemblyman Ohrenschall:

This reluctance of the county district attorney to get involved where the landlord feels the destruction has been willful and malicious, is that something you are finding only in the less populous counties, or are you finding the reluctance to get involved in the damage caused by the tenant in the more urban counties?

James Litchfield:

From my understanding from the Nevada State Apartment Association, this is a relatively widespread problem, largely with the increase in apartment and leasehold interest properties in our state in the last several years. It is not relegated to a more- or less-populated county or district in the state.

Chairman Frierson:

When you say this is a widespread problem, do you mean people engaging in this type of conduct, or the inability to deal with it criminally?

James Litchfield:

It is not just in the less-populated districts or counties that these activities are occurring.

Assemblyman Ohrenschall:

I have heard statistics that renting is at an all-time high. Is there a balance? If someone is destroying someone else's property, then I believe the existing law should be applied and there should be prosecution. I am just worried that someone may not want to wait for the landlord, and the renter tries to fix a problem, something happens and he is unable to fix the problem. I want to make sure this would not then be a criminal prosecution. Have you seen a specific example where a landlord had evidence that it went beyond the unqualified person trying to fix a leaky faucet; that it was willful and malicious and the DA did not want to get involved?

James Litchfield:

I am not prepared to give specific examples, but our understanding of the intent of this legislation is that it helps to define the criminal intent. Given that there are established tenant rights, this legislation would create the opportunity for the landlord to fix the damage that compromises the integrity of the property, both the interior and exterior.

Chairman Frierson:

Are there any other questions? Ms. Erickson, can you come answer a few questions? My first question is whether the targeted behavior here is already covered in existing law.

Kristin Erickson, Chief Deputy District Attorney, Washoe County District Attorney:

In my reading of the statute, it would be covered because of the phrase "property of another." If you are a leaseholder, that does not mean it is your property, it is still owned by another. Oftentimes, we do not prosecute these types of cases because we cannot prove who did it. Just because you are the leaseholder and are responsible for the premises does not mean you committed the crime. You could have had a friend come over and he could have destroyed the property. Each case is decided on its merits and whether we can prove the case. Additionally, we have to prove beyond a reasonable doubt that the destruction was malicious. It is my understanding there are civil remedies available which have a lower burden of proof and would be easier to prove.

Chairman Frierson:

Would the language proposed in this bill change your ability to prove a case in respect to that intent or identifying who may have committed the crime?

Kristin Erickson:

It would probably clarify the matter and take away any possible issue that you do not have to be a lienholder to be prosecuted for this.

Chairman Frierson:

Have you ever been involved with the prosecution of tenants who have destroyed property?

Kristin Erickson:

With regard to leaseholders and tenants, no I have not.

Assemblyman Hansen:

Are you aware of a district attorney not prosecuting because of a leasehold agreement?

Kristin Erickson:

I am not. We evaluate each case on its own individual merits. One of the biggest problems is proving who is responsible.

Assemblyman Hansen:

So you do not know of any cases where someone is using that defense not being prosecuted because of a leasehold agreement?

Kristin Erickson:

I am not aware of any.

Chairman Frierson:

I will now hear those here to testify in support of A.B. 194.

Assemblyman John Hambrick, Clark County Assembly District No. 2:

I am here to support this bill. I have heard some of the testimony, and in my opinion this bill comes down to whether someone should be held personally responsible for their actions. When we were growing up, most of our parents taught us right and wrong, and normally there was a consequence. The consequences would escalate if the wrong activity continued and was severe. I believe the Committee knows what "willful and malicious" means. I am sure there are legal definitions, but when you look within yourselves and your upbringing, all of you know what "willful and malicious" means. It is not an occasional broken pipe or one trying to repair something and needs

the skill of a professional to repair it. We have all heard the reports in the media—cement down the toilets? It is kind of tough to explain how that was an accident. Same for removing windows, when they are in pieces lying on the ground outside. I would again ask the Committee to look at your upbringing.

We always hear the term "this is not rocket science," and ladies and gentlemen of the Committee, this is not rocket science. Many of you have legal training, but go back to your upbringing and look at what is right and what is wrong. You will then have to decide whether this piece of legislation offers a consequence which occasionally stops things from happening, because people realize there are consequences. We will have to determine if the consequence stops the activity. That is a gamble. I would ask you to consider more commonsense; can we stop something if there is a consequence for being malicious and willful?

Chairman Frierson:

It sounds to me that this bill is saying, "This is already the law, but we really mean it."

Assemblyman Hambrick:

This may be clarifying language to assist the prosecutors around the state to have a more clear definition and path to use as a deterrent. I would suggest that, should this bill be used once or twice, the message will get out.

Assemblywoman Spiegel:

I was raised to treat property well. One of the questions presented is how do we determine who committed the crime? I am a renter, and one of the provisions of my lease agreement is that every adult who lives in the home must be listed on the lease separately. If there is more than one adult on the lease, and there is damage done, how would the police identify who did it and who to file charges against?

Assemblyman Hambrick:

This is where law enforcement would have to do their investigative activity to determine the perpetrator. I would hope that the leaseholder would also advise the property owner who was responsible. Remember we are discussing malicious and willful behavior. We are not talking about "oops" moments.

Chairman Frierson:

Is anyone else here to testify in support of this bill? I see no one. Is anyone here in opposition? I see no one. Is anyone here in neutral? I see no one. I will invite Assemblyman Ellison to come back for closing remarks.

Assemblyman Ellison:

We are not asking that someone be held criminally because they had a few mishaps. We are talking about thousands of dollars in damage to property and no accountability. We are hoping this will be a tool for prosecutors to look at this type of case.

Chairman Frierson:

I certainly empathize with the frustration of having folks who are in a position to apply the law actually apply it. I will now close the hearing on A. B. 194, and open the meeting for public comment. I see none. This meeting is adjourned [at 8:58 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 13, 2013

Time of Meeting: 8:13 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 194	C	Assemblyman Ellison	Written testimony
A.B. 194	D	Assemblyman Ellison	Similar Laws in Other States
A.B. 194	E	Jim Litchfield	Written testimony