

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

**Seventy-Seventh Session  
April 17, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 9:04 a.m. on Wednesday, April 17, 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](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Brad Wilkinson, Committee Counsel  
Nancy Davis, Committee Secretary  
Colter Thomas, Committee Assistant

**OTHERS PRESENT:**

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities  
Cadence Matijevich, Assistant City Manager, Office of the City Manager, Reno  
Mike Cathcart, Business Operations Manager, City of Henderson  
Kristina L. Swallow, Engineering Program Manager, City of Las Vegas  
Dan Musgrove, representing City of North Las Vegas  
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office  
Chuck Callaway, representing Las Vegas Metropolitan Police Department  
P. Michael Murphy, representing Clark County Government Affairs  
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General  
John T. Jones Jr., Chief Deputy District Attorney, Office of the District Attorney, Clark County  
Marc DiGiacomo, Chief Deputy District Attorney, Office of the District Attorney, Clark County  
Robert Roshak, representing Nevada Sheriffs' and Chiefs' Association  
Lawrence P. Matheis, Executive Director, Nevada State Medical Association  
Chris Ferrari, representing the Nevada Dental Association  
Daniel L. Orr, Private Citizen, Las Vegas, Nevada

**Chairman Frierson:**

[Roll was called and standing rules were reviewed.] We have two measures on the agenda today. I will open the hearing on Senate Bill 37 (1st Reprint) regarding the destruction or theft of certain property.

**Senate Bill 37 (1st Reprint):** Revises provisions relating to the destruction or theft of certain property. (BDR 15-261)

**Wes Henderson, Executive Director, Nevada League of Cities and Municipalities:**  
I have submitted testimony ([Exhibit C](#)) and will also briefly describe what this bill will do. There is an ongoing problem with the destruction of utility property

and the theft of property to obtain scrap metal. You have all heard of copper wires being stolen from street lights and lights in parks. This bill would increase the penalties for persons convicted of damaging certain property or stealing scrap metal. This bill will also make restitution mandatory rather than optional. It also requires persons convicted of these offenses to perform community service.

**Assemblywoman Spiegel:**

How do the penalties for the crimes specified in this bill compare to penalties for the same crimes if they were committed against the private sector?

**Wes Henderson:**

Privately owned utilities are included in this bill. If you steal scrap metal from a private utility, these provisions would apply.

**Assemblywoman Spiegel:**

What happens if these things were stolen from a private home or private office building?

**Wes Henderson:**

This measure does not address that.

**Assemblywoman Spiegel:**

Do you know how these penalties compare to the theft of a private home or office building?

**Wes Henderson:**

No, I do not.

**Assemblyman Ohrenschall:**

I am questioning page 2, line 21, which changes the "may" to "shall." It appears you want to make this mandatory and not give judges wiggle room. My only concern is if the community service is mandatory, could that be an obstacle for someone to seek employment in order to pay the mandatory restitution?

**Wes Henderson:**

I believe that community service can be structured around the person's employment schedule.

**Assemblyman Ohrenschall:**

My concern is that if you overload the offender, you set him up for failure. Then restitution may not get paid and community service will not be done and he will end up in violation.

**Chairman Frierson:**

In answer to Mrs. Spiegel's question, in law there is malicious destruction of personal property, there is also theft. This seems to be a combination of both. I think the theft threshold for a felony is \$650.

**Assemblyman Ohrenschall:**

It is \$650. I believe \$3,500 is the threshold between category B and C felonies.

**Assemblywoman Spiegel:**

So there is not necessarily parity?

**Chairman Frierson:**

There does not appear to be.

**Assemblyman Wheeler:**

Since the court would mandate community service, there are already penalties for misdemeanor category D and C. I wonder if this would mitigate some of the punishment under those statutes, where the judge thinks, "I have to give him community service, so I will give him a little less jail time, or a smaller fine."

**Wes Henderson:**

I do not have an answer to that question. I would certainly hate to predict what a judge may do.

**Chairman Frierson:**

I was involved with the expansion of law in 2007 dealing with copper theft and Mr. Ocegüera's measure to increase the penalties at that time. From what I recall was that theft, when it comes to municipalities, affects users of the services, so it warranted a different treatment. Are there any other questions? Seeing none, is there anyone here wishing to offer support?

**Cadence Matijevich, Assistant City Manager, Office of the City Manager, Reno:**

I am here to urge your support for this measure. As Mr. Henderson explained, local government is experiencing significant instances of theft of property to obtain scrap metals that can be redeemed for cash or other monetary compensation. In our last fiscal year, which ended in 2012, we experienced a loss of \$103,000 worth of equipment and material directly related to theft of

these precious metals. We have already exceeded that amount this year. While the City of Reno does not operate a utility, we find most of these instances are happening are in our parks and recreation facilities. Our irrigations, particularly back-flow preventers, are being stolen. Many times these thefts happen while the water is still connected. As a result we experience significant damage from the running water. We have had to close parks and play areas due to that damage. This has had a significant impact on our community.

**Mike Cathcart, Business Operations Manager, City of Henderson:**

We echo what the City of Reno said. This is an important measure, and we want to be on the record as being in support.

**Kristina L. Swallow, Engineering Program Manager, City of Las Vegas:**

Ditto.

**Assemblyman Ohrenschall:**

Since we now have tougher penalties on copper theft, have you seen a decrease in the vandals stealing copper from the various municipal facilities? Has the tougher law had the deterrent effect we were hoping for?

**Cadence Matijevich:**

We have seen spikes and then lowering events, somewhat contingent on the market value of copper. I would reiterate that this is not just about copper. There are other types of metals that can be redeemed. Certainly copper is the one that has the most value recently. The \$103,000 loss I referred to, \$27,000 of that was one incident related to copper wiring for lighting along the railroad trench in downtown Reno. Unfortunately, I do not think we have seen a significant drop. I think these problems are an indication of our times. People are desperate and looking for ways to obtain materials that they can redeem for cash. Our position, particularly as it relates to the community service provision, is when people commit these acts, there is damage to community assets. We felt that there is a direct tie with the community service. If you damage, remove, or destroy an asset of your community, it is appropriate that there be a service back to the community.

**Assemblyman Ohrenschall:**

Do you have any anecdotal information about whether most of the folks who are caught end up being ordered to pay restitution by the judge? If so, are the municipalities ever made whole?

**Cadence Matijevich:**

I do not have that information. I will do some research and get it to you.

**Dan Musgrove, representing City of North Las Vegas:**

Me, too.

**Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:**

I would like to go on record as supporting this bill, particularly because we have specific examples, such as a park in Washoe Valley which was repeatedly hit, where people removed all of the sprinklers in that park. Not only do they take the brass back-flow prevention valves, which have some value, but they also took the plastic sprinkler heads. Then they took them again, once the county replaced them. That floods the parks, requiring them to be shut down.

**Assemblywoman Cohen:**

Can you give us some information about where those items are being resold?

**Eric Spratley:**

I do not have that information.

**Assemblyman Hansen:**

Have you done any sting operations? Being a plumbing contractor, I move a lot of copper through scrap metal dealers. They are very careful; they require a driver's license and fingerprints before we are allowed to sell to any local dealers. Where are the thieves fencing these things?

**Eric Spratley:**

I do not have that information. When they took both sets of sprinklers from the park I mentioned, we tried to watch the park, but that is a lot of wasted law enforcement resources. We had no other hits that year. The following year, it happened again, at the same park.

**Assemblyman Hansen:**

We increased the penalties before, which did not have the deterrent effect we were hoping for. Now we are going to increase them again. I am wondering if there is some way to try to block this from happening.

**Eric Spratley:**

We think the community service is a good aspect. If you cannot hit someone in the wallet, hit them with their time.

**Assemblywoman Dondero Loop:**

I recall that we passed a bill that required when someone sold copper scrap, they had to show a license, et cetera. What happened with that? Is it not working?

**Cadence Matijevich:**

We have found in Reno that our local scrap metal dealers are doing a great job. The measures that were passed previously in our state are working. As you know, we are very close to California. We have found, in many cases, these materials that are being stolen from our communities are going to California and being sold to scrap metal dealers in the Bay Area. We had an instance where we received a call from a scrap metal dealer in the Bay Area with a storm drain inspection cover with the City of Reno logo on it. We do not put our logo on every piece of metal we have, but unfortunately, with that proximity to those scrap metal dealers, who do not have the same tie to our community.

**Assemblywoman Dondero Loop:**

When someone calls you about a City of Reno manhole cover, what happens next?

**Cadence Matijevich:**

It depends on the circumstances. In that particular case, my understanding is that the manhole cover came in with a very large load. It was not immediately obvious to the dealer that it was within the load that was redeemed. It was not until the sorting process began and they were not able to trace it back to who had redeemed it. They do not have the same processes in place that we have. In those situations, we make a decision about whether it is worth the time of a city employee and the fuel to retrieve the item. If they have a dozen of them, we will probably go pick them up. If it is only one, we will probably make the decision that we do not get the return on the investment.

**Chairman Frierson:**

Can the judges impose these penalties now, without being forced to with this bill?

**Chuck Callaway, representing Las Vegas Metropolitan Police Department:**

I am not sure if the judges can already do this, I would defer that to the courts. I am in support of this bill. There was a bill passed in 2009 that required a fingerprint and an identification card and also limited the amount of cash that could be paid out for transactions involving scrap metal. We believe that has been effective in providing our detectives with leads and helping us track down folks who have been stealing scrap metal and selling it to the scrap metal yards. However, with that being said, criminals oftentimes know how to get around the processes. We have seen rises and falls in the amounts of scrap metal that have been stolen. We are currently working on a bill on the Senate side which would take it a step further and require scrap metal industries to list transactions in an automated system. The system we currently use is similar to what is being used in pawn shops, which is LeadsOnline. If a construction site

employee found that a large truck of copper wire was stolen, the detectives could access LeadsOnline and see if a similar amount of copper was taken to a scrap yard. This would provide us with leads we could follow up on. Our financial property crime section has several detectives that are devoted to construction theft and scrap metal investigations because of the problems we have seen in Clark County. From a law enforcement perspective, any checks and balances that would help stop or deter this are beneficial.

**P. Michael Murphy, representing Clark County Government Affairs:**

We are in support of this bill, specifically, the part that addresses all scrap metal. The problem that we see is the theft of sewer and storm drain inspection covers.

**Chairman Frierson:**

I just confirmed, under existing law for a misdemeanor, the court can impose up to 200 hours of community service; for a gross misdemeanor, up to 600 hours; for a felony, up to 1,000 hours. This bill would mandate a range of community service specifically for this type of conduct. Is there anyone else here wishing to offer testimony in support of S.B. 37 (R1)? Is there anyone here in opposition? Is there anyone neutral? Seeing no one, I will close this hearing. I will now open the hearing on Senate Bill 199 (1st Reprint).

**Senate Bill 199 (1st Reprint): Makes it a felony to perform certain medical procedures without a license. (BDR 15-504)**

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

Senate Bill 199 (1st Reprint) would create felony penalties for performing certain health care procedures or surgical procedures without an appropriate license. This bill was developed by an unlicensed health care task force that convened last year to examine the problem of unlicensed health care and formulate possible solutions. The task force was chaired by former Nevada Attorney General Frankie Sue Del Papa. I sat on the task force as current Attorney General Catherine Cortez Masto's representative. The task force was formed in response to a significant number of illegal surgeries and health care procedures that resulted in substantial injury and death in our state.

Its findings and recommendations were set forth in an action plan that I have submitted as an exhibit ([Exhibit D](#)). These findings and recommendations were then presented during the interim to the Legislative Committee on Health Care. That committee, at its August 29, 2012 meeting, recommended several of those proposals in the action plan be submitted for possible legislation. That resulted in two bills being submitted. Senate Bill 220 clarifies the existing

authority of the licensing boards and gives them a uniform set of tools to utilize to enforce unlicensed activity.

This bill, S.B. 199 (R1), addresses the situation when the unlicensed activity results in people suffering injury, substantial bodily harm, or even death. As a part of this initiative, a subcommittee of criminal justice agencies conducted a review of the criminal justice system's response to unlicensed health care, including an assessment of how unlicensed activity may enter the criminal justice system given the various state and local agencies that have jurisdiction over unlicensed activity.

We created a flow chart that I have also submitted ([Exhibit E](#)), which goes through how unlicensed activity may enter the criminal justice system. The flow chart shows that generally there are three ways that unlicensed activity may come to the attention of law enforcement agencies: one, through a direct report to a law enforcement agency; two, through a report of death, substantial bodily harm, or a sex offense being committed; or three, a report of unlicensed activity to a regulatory board or administrative agency.

The first assessment that takes place when it comes into the system is the determination of whether there was a death, substantial bodily harm, or a sex offense had been committed. If so, it is immediately treated as a crime and investigated by the local law enforcement agency, and if criminal charges are warranted, prosecuted by the district attorney. Short of that, if it is something that may involve some sort of fraud involving Medicaid, insurance, or workers' compensation, within the jurisdiction of the Attorney General's Office, it will be investigated and prosecuted in that manner. Finally, if it is something that falls short of someone being hurt or dying, but there is some sort of unlicensed activity that appears to be taking place, it is referred to the appropriate regulatory board for investigation and action. That board may or may not have current authority to seek injunctive or other civil remedies. If necessary it could be referred to law enforcement and local prosecutors for possible criminal charges.

The subcommittee noted that the current penalties for unlicensed activities as set forth within the chapters regulating each of the health care professions range from a misdemeanor to a class D felony, which is punishable by one to four years in prison and a fine of not more than \$5,000. There were many instances in which the punishment did not fit the crime. I will refer you to some local prosecutors to give you some specific examples of that. We developed the set of proposed crimes that are contained in S.B. 199 (R1) for your consideration to provide the appropriate penalties. I want to note, for the record, that in proposing these two new crimes which I will detail, we do not

believe that this would preclude a murder charge if the facts and circumstances warranted a murder charge.

The two new crimes we are proposing to be codified in *Nevada Revised Statutes* (NRS) Chapter 200 would be set forth in sections 5 and 6 of the bill. Section 5 would provide a crime for performing a health care procedure without a license which results in substantial bodily harm. For a first offense it would be a category C felony, and any subsequent offense would be a category B felony. If it results in death, it would be a category B felony; once again, not precluding a murder charge if the prosecutor feels it is appropriate.

Section 6 would create a new crime regarding the performance of a surgical procedure without a license. If it results in no substantial bodily harm, for a first offense, it would be a category C felony; for a second or subsequent offense, a category B felony. If it results in substantial bodily harm or death, it would be a category B felony, once again, not precluding a murder charge.

Before I turn this over to other individuals who were involved in the development of this proposed legislation, I would like to note for the record that the criminal penalties that are proposed were endorsed by the Nevada District Attorneys' Association and the Nevada Sheriffs' and Chiefs' Association.

**Assemblyman Duncan:**

I am wondering about the sorts of crimes we are trying to prevent. Maybe you can detail specifically what the genesis was. Are we talking about people who are holding themselves out as physicians just off the street, or are we dealing with the problem of when someone has been unlicensed or reprimanded as a physician and they cannot be licensed any longer? Also, can you give the Committee an example of what crimes you have seen?

**Brett Kandt:**

In large part, this came about because of a problem we see in many of our immigrant communities, in which individuals who may be licensed as health care professionals in other countries come here. They do not have the appropriate licensing here but they hold themselves out to members of the immigrant community that they are licensed and able to perform certain procedures. We will have some real stories from the people in the trenches of procedures being performed in garages and trailers. One instance was in the back of a tile store in Las Vegas in which people were being cut into. They are suffering serious injury. We have had deaths as a result. This is not only a problem in the immigrant communities, but it is definitely a problem there.

**Assemblyman Wheeler:**

Page 2, line 9 states "any minimally invasive medical procedure where a break in the skin is created . . . ." Does that include tattooing?

**Brett Kandt:**

When this definition of surgical procedure was developed, subject matter experts crafted it in such a way that it was not intended to address tattooing or piercing; those types of procedures were not intended to fall within this definition of surgical procedure.

**Chairman Frierson:**

In the good old days, parents used to tie a loose tooth to a doorknob and close it to pull out the tooth. Would that be considered a health care procedure? I am not trying to make light of what we are trying to target here, I want to ensure that is not what we are trying to cover.

**Brett Kandt:**

That is not the type of activity we are intending to cover. Certainly law enforcement agencies and prosecutors would take into account the fact that is not the type of activity this is intended to cover and would exercise appropriate discretion.

**Assemblywoman Spiegel:**

In the Jewish religion, ritual circumcision is performed on infants when they are eight days old, typically done in a home setting by a religious practitioner. I was wondering if that would be covered under the surgical procedure or if that would be exempt.

**Brett Kandt:**

You would have to talk to the appropriate licensing board. That is an activity that already takes place, and I think the licensing board would have already addressed to what extent that procedure does or does not require a license.

**Assemblyman Ohrenschall:**

Suppose there is a surgeon who has a suspended Nevada license, but he may be licensed in Arizona. He has not lost his medical license, but maybe there is some kind of action pending in Nevada. Would that subject this surgeon to these enhanced criminal penalties?

**Brett Kandt:**

It may. That would go into the totality of the facts and circumstances that law enforcement and prosecutors would consider in formulating appropriate charges to address any potential criminal activity. It is also something that would be

taken into consideration in consulting the appropriate licensing board as to whether this person was in fact practicing without a license. I would remind you that when we are talking about these types of activities, the law enforcement agencies will work in concert with the licensing boards to determine whether it is truly a procedure that falls outside the scope of someone's license or if they are acting without a license.

**Assemblyman Ohrenschall:**

Are there currently criminal penalties for licensees practicing while their license is in suspension?

**Brett Kandt:**

I had indicated that there are current penalties for unlicensed activities set forth within the chapters regulating each of the health care professions. They range from a misdemeanor to a category D. I think each of those chapters addresses not only unlicensed activity, but activity that is outside the scope of an individual's license as well. We are concerned that those penalties do not fit the crime when we are talking about someone being cut into, suffering substantial bodily harm, or possibly dying. Once again, this would not preclude a murder charge, but sometimes a murder charge can be difficult in certain situations. The other available criminal penalties that might fit under our current laws are not always appropriate. Battery is a possible charge, but there is also the consent to treat issue, which can create an obstacle in successfully pursuing a battery charge. That is why we felt these criminal penalties would be appropriate to address that type of activity.

**Assemblyman Ohrenschall:**

I do not believe that the rabbis who perform the circumcisions are licensed by any state board. I believe it is done as part of their religious tradition.

**Assemblywoman Diaz:**

What happens to these individuals who practice medicine without being licensed in our state? For example, I remember a case where a woman was killed; basically things went wrong, so the individuals took her body somewhere else and left her there where she died. I believe two people were involved in that case. My husband was outraged because he felt that these two individuals took someone's life in their hands and ended it. He felt they only received a slap on the wrist by the legal proceedings.

**Brett Kandt:**

In the instance where there is unlicensed activity, but no one has been hurt yet, that falls within the purview of the current regulatory boards that license the various professions to investigate and take appropriate action. As a result of

the task force and its research and recommendations, S.B. 220 will clarify the authority of all the boards to go after unlicensed activity and give them a uniform set of tools to utilize in civil remedies to try to prevent unlicensed activity. When we move to the point where someone has been seriously hurt or dies, the current laws are inadequate. I am going to turn this over to the prosecutors who will address some of the situations and how our current laws are inadequate and how we feel that S.B. 199 (R1) will provide the appropriate criminal penalties in those instances.

**John T. Jones Jr., Chief Deputy District Attorney, Office of the District Attorney, Clark County:**

We are in support of S.B. 199 (R1). With me in Las Vegas is Mark DiGiacomo. Mr. DiGiacomo is in the major violators unit of the Clark County District Attorney's Office. He is one of the district attorneys who brought this issue to us and is here with some examples.

**Marc DiGiacomo, Chief Deputy District Attorney, Office of the District Attorney, Clark County**

I have been on the homicide unit for approximately eight years. In 2011, I became involved in the investigations and prosecutions of the case that was mentioned previously. Ms. Elena Caro wanted to have certain procedures done. She had had some procedures in the past and was referred from a beauty supply shop to an individual by the name of Ruben Matallana-Galvas. Mr. Matallana-Galves was a Colombian national who, it turns out, was a homeopathic doctor. I am not sure if he was even licensed in Colombia. He came here on a vacation junket and to make money. He did it over a period of time. He brought with him his wife, Carmen Torres-Sanchez, who ironically was a consumer protection prosecutor for Colombia.

Mr. Matallana-Galvas held himself as a doctor and Ms. Torres-Sanchez held herself out as a nurse. They set up shop in the back of a tile store and they engaged in thousands of medical procedures. The victim, Ms. Caro, had a procedure done on her eye. It was probably not the type of procedure that a local doctor would do; it would give her short-term wrinkle relief, but no substantial effect on her appearance in the long term. Because that worked so well, she went back for an enhancement to her gluteus region. When Ms. Caro showed up, they engaged in a procedure where they injected hyaluronic acid into her body. It turns out that hyaluronic acid is something that some medical professionals here would use, but in order to inject it, they had to inject her first with lidocaine.

These doctors did not have a proper facility, they did not have what is known as a crash cart, and ultimately it was not the procedure itself which was the

cause of death, it was a reaction to the lidocaine and the inability of the doctor to treat her due to lack of training and knowledge. Ms. Caro indicated to them shortly before the beginning of the procedure that she was feeling somewhat queasy and lightheaded. The doctor asked her if she wanted to keep going. That should have been an indication to them that she was having a reaction to something and they should have stopped the procedure and gotten her medical help. They did not. They continued the procedure and ultimately Ms. Caro's reaction caused her heart to stop. Instead of having a crash cart, they tried to make a phone call to a local doctor who had been somewhat associated with them. That doctor told them to call 9-1-1. They did not want to do that; they had taken a lot of cash, and knew they would have substantial problems with law enforcement. They called a friend who showed up. They re-dressed Ms. Caro and put her in a car. As the friend was driving Ms. Caro to the hospital, she realized Ms. Caro needed immediate help. She then stopped in a parking lot, pulled Ms. Caro out of the car and called 9-1-1, indicating that she saw the woman fall down in the street and that she needed help.

Mr. Matallana-Galvas and Ms. Torres-Sanchez wound up clearing out most of the items from the back of the tile shop, going to their apartment and taking everything of value, and within a few hours were at McCarran International Airport buying tickets back to Colombia where we never would have caught them. Luckily, the homicide detectives were able to quickly catch them. I became involved and we indicted them, prior to the medical examiner's report, for second degree murder because we believed that the cause of death would have been associated with some sort of foreign substance being placed in her body; based on reports from around the country of silicone or other types of not medically approved procedures being utilized in various places. When we received the toxicology report back from the grand jury, we learned that Ms. Caro's death was ultimately the result of negligence, potentially recklessness related to the way the procedure was conducted, but not necessarily related to the actual procedure itself. Based on that and our review of second degree murder and the necessity of the inherently dangerous aspect of the behavior, we decided that we likely would never be able to survive on appeals with a second degree murder conviction of these two individuals.

So we looked at the rest of the statutes that we had. We had involuntary manslaughter, which is a category D felony with one to four years in prison. We also had practicing medicine without a license, another category D felony, and a gross misdemeanor of conspiracy to commit practicing medicine without a license. So those were the only crimes we were left with to charge these two individuals. Ultimately, they wound up pleading to those three crimes. We got a good district court judge to max them out on their sentencing; their felony sentencing range was three to eight years in prison. With the passage of the

new sentencing guidelines, within a few months of going to prison they are eligible for parole and will likely be deported back to Colombia and not have significant consequences for killing a woman and engaging in this behavior for a long period of time.

Subsequent to that, I was approached by a number of jurisdictions who had similar problems and similar results. One of which was in northern California where the first time they caught someone holding himself as a doctor and injecting silicone into someone's backside in order to enhance it, they had to let her off with a slap on the wrist because they could not establish her knowledge of the inherently dangerous behavior. A few years later, they arrested her again, this time for murder for engaging in the exact same behavior resulting in death to a second individual. We feel we should not have to wait for someone to kill two people before we protect our community, which is the reason for my support of S.B. 199 (R1).

**Chuck Callaway, representing Las Vegas Metropolitan Police Department:**

We are in full support of S.B. 199 (R1). I was the law enforcement representative on the unlicensed health care task force during the interim. Our violent crimes detectives are the ones who encounter these cases when they rise to the level of someone suffering significant bodily harm or death. We believe there are a lot of these types of cases that go unreported. After one meeting with the task force, I was approached by a lady as I walked to the parking lot. She told me a story about how she had come to this country from Cuba and she did not have health insurance. She had gone to a gentleman who was a dentist in Cuba, but was not licensed to do dental work here in Nevada. She had some dental work done in this gentleman's garage. Luckily, the procedure went without any problems, but she could have very well ended up just like the other young lady we heard about today.

**Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:**

We are in support of S.B. 199 (R1). I did want to address a few of the questions asked earlier. Sections 3 and 4 address health care procedures or surgical procedures covered by certain chapters in NRS which require a license to perform pursuant to those chapters. I did not find anything in NRS in my brief search regarding tattoos, piercings, or circumcision that would require a license.

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

We are in total support of S.B. 199 (R1) and did participate in the meetings that were held in the interim pertaining to this bill.

**Lawrence P. Matheis, Executive Director, Nevada State Medical Association:**

We participated in the task force as well and do support S.B. 199 (R1). This is one of three pieces that the task force recommended should be put into place. This one deals with ensuring that criminal statutes reflect what is going on so that law enforcement has appropriate tools for the situation. The issue is targeting the immigrant community and playing on natural concerns, fears, and cultural differences. The bill that was also mentioned, S.B. 220, which is going to the Assembly Committee on Commerce and Labor, ensures that all the licensing boards have the tools they need to deal with the activity itself that needs to be dealt with. The third piece is public education targeting the immigrant community about the risks associated with going into unlicensed settings with unlicensed health professionals. There has been a public education campaign through the University of Nevada, Reno and with the Mexican Consulate here in Las Vegas. Several of the licensing boards, including the Board of Medical Examiners, have put together significant materials. Clearly public education is going to be a real challenge going forward. This is a good bill as a step along the way. I would hope that the Legislative Committee on Health Care, to which the task force reported, will monitor the situation to ensure that everything is being done in these pieces of legislation do get to the target, which is the unfair advantage that is being taken in the primarily immigrant community.

**Assemblyman Carrillo:**

On page 2, line 9, it mentions mucosa. Is that anything to do with piercings through the nasal area?

**Lawrence Matheis:**

You are talking about tattoos and piercings that are done for various purposes. Those are regulated in other fashions. This bill is not intended to get at that. This is really intended to aim at the surgical procedures being done under the claim that it is a medical procedure. There are other avenues through the Department of Health and Human Services or the local health districts to oversee and regulate piercings and tattooing. I think Mr. Kandt can speak to this as well. These two definitional sections were not intended to encompass things that were already regulated in one fashion or other; to describe what procedures could be done by an unlicensed person in an unlicensed setting that could result in bodily harm.

**Chairman Frierson:**

I think, in simple terms, Mr. Carrillo's question is what is mucosa?

**Larry Matheis:**

I will get the Committee a formal answer on that.

**Chairman Frierson:**

Are there any other questions? Is there anyone else here in support of this bill? Seeing none, I will move to opposition. I see none, is there anyone here in a neutral position?

**Chris Ferrari, representing the Nevada Dental Association:**

We are very much in support of this bill, but are proposing a friendly amendment ([Exhibit F](#)). We are proposing the addition of a definition of dentistry within NRS Chapter 631. Currently, neither dentist nor dentistry is defined in that statute, but the illegal practice of dentistry is defined under NRS 631.395 and carries a category D felony. Many other things are included in the definitions as well; board-licensed, dental hygiene, hygienist, executive director, even insurer, but not dentist or dentistry. As Mr. Kandt alluded to, his office finds out about the instances of unlicensed practices in various manners. This bubbled up for the Nevada Dental Association in March 2012, when Raul Rodriguez sent a patient to the emergency room with a blocked airway as a result of a botched dental procedure. Immediately following, we met with Interim Health Committee Chairwoman April Mastroluca and with former Attorney General Frankie Sue Del Papa, who is also involved in the efforts to publicize this problem, to talk about how we could help. As a result of that dialogue, we began to look at the definition of dentistry. This conversation was furthered by Dr. Orr, who is very involved nationally on the dental level. He is also the editor of the *NDA Journal*.

This morning, in conversations with legal counsel for the State Board of Dental Examiners, they indicated that a definition added to what we currently call a laundry list within statute identifying procedures that a dentist may perform would indeed help enforcement. Currently, NRS Chapter 631 has the static list and most states across the country have a definition or a list and a definition, which is what we are proposing in Nevada—that additional layer. The other additional consumer protection benefit of incorporating a definition into statute is for the board to be able to regulate new technology. At this point, with the static list, if a new technology arises, for example, laser therapy, someone may be practicing in that vein, but since it is not defined in statute, the board would be unable to regulate it. Having a broader definition of dentistry in statute would also enable the board to take on those responsibilities.

**Daniel L. Orr, Private Citizen, Las Vegas, Nevada:**

I am here at the behest of the Nevada Dental Association. For the last five years I have also been professor and director of oral and maxillofacial surgery and advanced pain control at the University of Nevada, Las Vegas, School of Dental Medicine. I did write an editorial about this subject four years ago in the *NDA Journal*. I agree with what Mr. Ferrari has expressed. I think this will be a

valuable tool. If I was a perpetrator in the community practicing in the head and neck area, one of my main defenses would be, "I was not doing dentistry." If we implement this suggested definition, which one-third of the states already have, I think it will be well serving for the community. [Also provided written testimony ([Exhibit G](#)).]

**Chairman Frierson:**

Are there any questions?

**Brett Kandt:**

This bill came about as a result of the task force efforts. I do not feel that I have the authority to accept this amendment. I would like to leave it to the discretion of the Committee whether it is appropriate.

**Chairman Frierson:**

Thank you Mr. Kandt. Mr. Ferrari, I would encourage you to contact the people who were on the task force. Are there any other questions? I see none. I will now close the hearing on S.B. 199 (R1) and open the meeting up for public comment. Seeing none, meeting adjourned [at 10:09 a.m.].

RESPECTFULLY SUBMITTED:

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Nancy Davis  
Committee Secretary

APPROVED BY:

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Assemblyman Jason Frierson, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** April 17, 2013

**Time of Meeting:** 9:04 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 37	C	Wes Henderson	Written testimony
S.B. 199 (R1)	D	Brett Kandt	Responding to Unlicensed Health Care in Nevada: A Plan for Action
S.B. 199 (R1)	E	Brett Kandt	Flow Chart for Unlicensed Healthcare Activity
S.B. 199 (R1)	F	Chris Ferrari	Proposed Amendment
S.B. 199 (R1)	G	Daniel Orr	Prepared testimony