

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
April 23, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:13 a.m. on Tuesday, April 23, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the University of Nevada, Las Vegas, 4505 S. Maryland Parkway, System Computing Service Building, Room 102. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman Richard Carrillo, Assembly District No. 18

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Britney Shipp, Policy Assistant
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General;
Advisory Council for Prosecuting Attorneys
John T. Jones, Jr., Nevada District Attorneys Association
Chuck Callaway, Las Vegas Metropolitan Police Department
Lea Tauchen, Retail Association of Nevada

Eric Spratley, Lieutenant, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association
Ken Lightfoot, Coalition of Law Enforcement and Retail
Thomas Anderson, Coalition of Law Enforcement and Retail
William Seifert, Sergeant, Las Vegas Metropolitan Police Department
Robert Lawson, Detective, Las Vegas Metropolitan Police Department
Chris Frey, Washoe County Public Defender's Office

Chair Segerblom:

I will open the hearing on Assembly Bill (A.B.) 55.

ASSEMBLY BILL 55 (1st Reprint): Imposes an additional penalty for attempting or conspiring to commit certain crimes against older or vulnerable persons. (BDR 15-337)

Brett Kandt (Special Deputy Attorney General, Office of the Attorney General; Advisory Council for Prosecuting Attorneys):

We support A.B. 55. This bill addresses the same statute as Senate Bill (S.B.) 297 and proposes a change similar to the one proposed by that bill.

SENATE BILL 297 (1st Reprint): Revises provisions relating to certain crimes against older or vulnerable persons. (BDR 15-1005)

Assembly Bill 55 addresses the elder enhancement in *Nevada Revised Statute* (NRS) 193.167, which applies an enhanced penalty to certain enumerated crimes when committed against a person who is over the age of 60 or who is vulnerable as that term is defined in statute. Under existing law, the enhancement only applies to the crimes listed; it does not apply to an attempt or a conspiracy to commit one of those crimes. This bill would remedy that.

The difference between the two bills, A.B. 55 and S.B. 297, is that S.B. 297 includes an attempt or conspiracy to commit all of the enumerated crimes in NRS 193.167, and A.B. 55 limits it to an attempt or conspiracy to commit the crimes listed in section 1, subsections (h) and (i) of the statute. These are primarily crimes associated with financial exploitation.

Chair Segerblom:

Why the difference?

Mr. Kandt:

During the hearing on A.B. 55 in the Assembly Committee on Judiciary, there was some concern about having attempt or conspire apply to all the enumerated crimes because you would face the enhancement regardless of whether you intended to commit the crime against a senior or vulnerable adult. Some members of the Assembly Committee on Judiciary felt the expansion of the enhancement to attempt or conspire should focus on financial exploitation crimes in which a senior or vulnerable adult is actually targeted.

Senator Hutchison:

Which bill do you like better?

Mr. Kandt:

Either bill would be an improvement over the current statute, which has no enhancement for attempt or conspire for any of the enumerated crimes. That being said, A.B. 55 was originally sought and endorsed by the Nevada District Attorneys Association, the Sheriffs' and Chiefs' Association and the Governor's Crime Commission to extend attempt or conspire to all the enumerated crimes. We still stand behind the position that it would be appropriate for attempt or conspire to apply to all the enumerated crimes. There has been defense for that on the record even from members of the defense bar.

Senator Brower:

Can we only process one bill or the other? Could we not ask the Legal Division to put them together and make one law out of them?

Chair Segerblom:

We could amend A.B. 55 to correspond to S.B. 297.

Senator Brower:

Judge Learned Hand is often quoted as saying that conspiracy is the "darling of the modern prosecutor's nursery." By that, he meant that a charge of conspiracy is a powerful count for a prosecutor to use in many different types of cases. We do not have any interest in doing something other than making sure the NRS reflects our intent, which is to provide the conspiracy count option for prosecutors in as many types of crime as possible.

Chair Segerblom:

I think what the Assembly did is quite appropriate, given the fact that it is a strict liability crime. For crimes where the elderly are particularly vulnerable, such as embezzlement and things like that, it is appropriate.

Senator Brower:

Could we think about this for a few days and figure out how to work this out?

Chair Segerblom:

We will not vote on A.B. 55 today.

John T. Jones, Jr. (Nevada District Attorneys Association):

We are here in favor of A.B. 55.

Chuck Callaway (Las Vegas Metropolitan Police Department):

We are here in support of A.B. 55.

Chair Segerblom:

I will close the hearing on A.B. 55 and open the hearing on A.B. 102.

ASSEMBLY BILL 102 (1st Reprint): Revises provisions relating to the crime of participation in an organized retail theft ring. (BDR 15-153)

Assemblyman Richard Carrillo (Assembly District No. 18):

During this past interim, I was invited to attend more than one meeting of the Southern Nevada Organized Retail Crime Association (SNORCA). This group is comprised of local retailers and law enforcement who have partnered to share intelligence, resources and tools to fight back against the growing problem of organized retail crime. At these meetings, it was brought to my attention how large the problem has become. Nationally, it is estimated to be a \$30 billion a year problem, and Las Vegas is in the top ten cities for organized retail theft.

There are other costs as well. Because of the nature of the items commonly stolen, or "boosted," there can be public safety issues. For example, baby formula and some over-the-counter medications must be kept at certain temperatures in order to maintain the integrity of the product. These are popular items to boost, and once they are out of the control of the retailer, there is no way to guarantee the safety of the public. Alcohol and tobacco are also popular items to boost. Once those items leave the store, the retailer has lost the ability

to control who they are sold to, thus opening the door to the possibility that they will be bought by minors.

Assembly Bill 102 is meant to address the definition of organized retail theft. As you will hear in further testimony, organized retail theft is often committed by individuals acting on their own, making it possible for them to commit these types of crimes without fear of being charged with being part of an organized retail theft ring.

The bill was amended in the Assembly to keep the amount in the definition of organized retail theft as \$3,500 to \$10,000 stolen in a 90-day period. The original language in the bill had changed this to \$2,500 to \$10,000. The biggest amendment was to add the phrase "either alone or with other person or persons" to section 1, subsection 5, paragraph (b) of the bill. This was done because a theft ring does not necessarily involve a multitude of people. A theft ring can consist of one person who gives directions to many people who go out to lift the merchandise. In that same section, we added subparagraphs (1) and (2) to say that the thefts are done with the intent to return or resell the merchandise. These items are not being stolen for personal consumption but in order to be resold for money.

Senator Jones:

What other states have adopted similar legislation?

Assemblyman Carrillo:

I do not have that information. Some of this language is taken from the State of Texas.

Senator Hammond:

The way I understand it, there are individuals who have organized themselves to basically mine-sweep stores, taking products that are easy to sell in garage sales or out of the back of a truck. What we are doing with this bill is recognizing that these people are working together as an organized unit, and so we want to enhance the penalties to persuade them not to do this, to make it not worth their while. So the first thing you have to do is recognize they are working together. Is that correct?

Assemblyman Carrillo:

Yes. My meetings with SNORCA showed me that the best tool they have to fight this crime right now is prosecution. Statute currently only covers an organized retail theft ring consisting of three or more people. The typical setup for such a ring is to have a fence, the person who sells the stolen merchandise, and a number of boosts, the people who steal the merchandise. A boost goes out with a grocery list and picks up the product and brings it back to the fence. The boosts often get caught. Those who do not get caught bring the merchandise back to the fence, who then returns or resells the product. The reason for the change in definition in the bill is to allow us to charge the individual boosts as being involved in organized retail theft without having to catch three or more of them. The other major change is in defining organized retail theft as involving merchandise that is to be resold. These thefts are not for private consumption. If you steal 50 cases of infant formula, unless you have a lot of kids to feed, it is probably not for your personal use. That stuff is going to be resold.

Lea Tauchen (Retail Association of Nevada):

We support A.B. 102. According to the 2011 National Retail Federation's Organized Retail Crimes Survey, 95 percent of all retail establishments have been the victims of retail crime. It affects retailers of all sizes and all formats. Industry experts estimate that Nevada sustains losses of \$345 million each year from organized retail theft. That amounts to \$22 million annually in lost sales tax revenue. In 2011, Las Vegas was in the top ten list of cities in the U.S. for organized retail crime.

These organized retail theft rings use a variety of methods to acquire stolen products. They sometimes use shopping lists, walk into stores and walk out with shopping carts full of merchandise. Social media such as Twitter have inspired a version of flash mobs that have been dubbed flash robs, where a group of people suddenly descends on a store and walks out with lots of merchandise. Cargo theft is also on the rise, where thieves steal the merchandise when it is in transit or take pallets from distribution centers. The ease of selling stolen goods on the Internet makes organized retail theft a high-profit, low-risk crime. It allows criminals to generate revenue to fund other illicit activities.

Mr. Callaway:

We are here in support of A.B. 102. We have seen an increasing problem with retail theft. As was stated, typically these folks rob from one store and either take the merchandise to another store to return it or sell it on the street or via craigslist or eBay on the Internet. We work closely with loss prevention officers from various businesses, but some businesses do not have the resources to effectively prevent these crimes.

Eric Spratley, Lieutenant (Washoe County Sheriff's Office):

We support A.B. 102, and I agree with the comments made by Mr. Callaway.

Senator Hutchison:

What does this bill allow law enforcement to do that it cannot do now?

Mr. Callaway:

It establishes the proper crime for this type of activity. When this bill was heard in the Assembly, I raised several scenarios to illustrate it. If I walk into Best Buy, see a new iPad, decide to steal it and walk out with it, I have committed petty larceny. If I decide to steal an iPad, walk into Best Buy with the intent to steal an iPad and then do so, I have committed burglary. If I meet with three friends and convince them to each steal an iPad so I can sell them on the Internet, that is the crime A.B. 102 targets.

Senator Hutchison:

It looks like all this bill does is reduce the number of people required to qualify for organized retail theft. Is that it?

Mr. Callaway:

That is correct. Criminals have become more resourceful. They know that if each boost claims to be working alone, it is hard to tie the boost to an organized retail theft ring and charge him or her with organized retail theft. The change in A.B. 102 allows us to charge the individual thieves with the crime that carries a higher penalty and stop the practice.

Chair Segerblom:

Mr. Anthony, would you explain to the Committee what you told me about the tightening language at the end of the bill?

Nick Anthony (Counsel):

Another change in section 1, subsection 5, paragraph (b) is replacing the phrase "more than one merchant in this State or against one merchant but at more than one location of a retail business of the merchant" with the phrase "one or more merchants." This change allows us to address a pattern where the thief repeatedly steals from one store. Also, the addition of subparagraphs (1) and (2) to paragraph (b) tightens the intent, as it adds that the intent of the theft must be to either return the merchandise to the merchant or sell it to someone else. This more directly addresses the nature of the crime.

Lt. Spratley:

This bill also tackles the issue of flash robs. If on surveillance footage we can show that several people went into the store individually but all got out of the same van or arrived at the same time, we can tie them together through investigation. We can then show the organization part of it, and it is no longer just petty larceny or burglary, it is organized retail theft.

Ken Lightfoot (Coalition of Law Enforcement and Retail):

I am the Loss Prevention Director at Scolari's Food and Drug Company in northern Nevada. The Coalition of Law Enforcement and Retail is a national organization that deals specifically with sharing information and intelligence about these organized groups that move around the U.S. Typically, these travelling groups start in Los Angeles and go to Las Vegas, then Salt Lake City, then Boise, across to Seattle and back down to Los Angeles. Here in Reno, they start in the Bay Area, then go to Sacramento, Roseville, Reno, Carson City, Tahoe and back to the Bay Area.

In 2007, Nevada passed the initial organized retail theft bill, A.B. No. 421 of the 74th Session, to create NRS 205.08345. The wording of the original statute was conservative in that it was restricted to large groups of people. Our intent was to avoid clogging up the criminal justice system with lots of people being charged with this enhanced shoplifting crime. Nevada was one of the first states that had a law like this in 2007; today, there are only five or six states that do not have one. Nevada's statute is now considered one of the more difficult to prosecute under. I would guess that statewide, there have only been ten cases prosecuted because of the difficulty of proving the charge. That is one of the reasons for the changes this bill makes.

The provision in section 1, subsection 5, paragraph (b) regarding intent was intended to narrow the scope of the statute, but having to prove intent makes it more difficult to prosecute. The purpose of a crime bill is to punish those who do the crime and discourage others from doing it. Since we now have one of the weaker laws in this area, the time has come for us to step up and make the statute tougher. I do not know how much impact it will have on these travelling organized retail theft groups, but it will have some impact.

I am sure that every member of the Committee who ran for office last year talked to constituents about two things: the economy and jobs. Assembly Bill 102 hits right in the middle of both issues. We have retailers who are on the verge of going out of business because of the thefts they are suffering. Ms. Tauchen said 95 percent of merchants are victimized. That number is out of date; it is now up to 96 percent, as of last month.

I encourage you to move A.B. 102 forward and help us to stop this problem.

Thomas Anderson (Coalition of Law Enforcement and Retail):

I work for Albertsons, and for the past 8 years I have worked as an organized retail crime specialist. In the beginning of my experience in loss prevention, organized retail theft was not a topic of conversation among retailers or law enforcement. Since then, we have seen a lot of organized retail theft in our stores. We have learned that there is a difference between regular shoplifters and organized retail theft boosters. Shoplifters steal for their own consumption or just on impulse; boosters steal to make money by reselling the items they steal. We have learned that a lot of the shrinkage or theft in our stores is actually organized retail theft.

Under Nevada's current organized retail theft statute, there have to be three or more people involved to be charged with organized retail theft. That is difficult for us to do because 90 percent of the organized retail theft we see in Albertsons does not involve three or more people, but what the individuals are doing has the same impact as if three or more people had committed the theft. Often we see individuals stealing a large quantity of products that they later sell on the black market. A lot of the products end up at swap meets, and we have found our products in local liquor stores and various mom-and-pop stores. These thieves are charged with misdemeanor theft or petty larceny, and a lot of times they walk away with simple citations. If they do get arrested, they are released quickly and are back in our stores again. I have numerous cases where we have

repeat offenders who cause liquor losses of \$5,000 to \$6,000 each time they come in our stores. They get arrested, they get a ticket, they walk away, and they come back and do it again. We even have triple repeat offenders.

We definitely support A.B. 102. Some of these organized retail theft boosters are involved in other criminal activities such as drugs. We had a case where they were selling cartons of cigarettes with no tax stamps.

William Seifert, Sergeant (Las Vegas Metropolitan Police Department):

I am with the LVMPD team that specializes in the type of crime we are talking about. We recently went after what we call a fence, an individual who sends others into stores to commit organized retail theft. We became aware of him from our retail partnership. We took him into custody and served a search warrant on his house, where we found approximately \$40,000 worth of merchandise from 20 different retailers. When we interviewed him, he stated that he would send individuals out one at a time to go to various stores and commit large thefts.

This bill helps address the fact that this crime is not always committed by groups of three or more people who enter a store to steal. There may be three or more in the group, but only one enters the store and the others assist—using cell phones to alert each other as to where store personnel are. The difficulty in prosecuting these people has been that they keep the amount stolen below the limit for grand larceny and they work alone, so it is difficult to prove organized retail theft under the statute. If A.B. 102 is passed, it would aid us in going after those individuals who are continually victimizing stores in both northern and southern Nevada and across the U.S.

Mr. Jones:

We are neutral on A.B. 102. There are numerous changes in this bill that help law enforcement, as you have heard. Our concern lies with the language about intent. Basically, we have swapped two hard-to-prove provisions for one hard-to-prove provision, and that is intent. As prosecutors, we have to prove beyond a reasonable doubt the intent to do one of those two things. In organized retail theft, we do not always get the whole picture. We may only see one part of the organization: the person who is constantly in the store stealing. That particular person may or may not have the intent to resell.

There are a lot of good things in this bill. We just have that one concern.

Chair Segerblom:

Is it not the point of this bill to differentiate between burglary, petty larceny and organized retail theft?

Mr. Jones:

In section 1, subsection 1, paragraph (a) of the bill, it specifies that a person must steal \$3,500 or more in merchandise during a 90-day period in order for this statute to apply. It is our opinion that that provision would do a better job of drawing that line than the intent provision does and be easier to prove.

Assemblyman Carrillo:

When I attended the SNORCA meetings and met with the loss prevention people, I saw that they are working for one thing: to protect the consumer. We are the ones who end up paying for these massive losses. Economic times are still hard, and people are still struggling to stretch their dollars. This bill is definitely needed to decrease the economic hardship on all of us.

Chair Segerblom:

I will close the hearing on A.B. 102 and open the hearing on A.B. 352.

ASSEMBLY BILL 352: Revises provisions governing hoax bombs. (BDR 15-510)

Britney Shipp (Policy Assistant):

I am the policy assistant for Assemblyman William C. Horne, Assembly District No. 34. Existing law provides that it is a gross misdemeanor for someone to manufacture, purchase, possess, sell, advertise or transport a hoax bomb if the person leads someone else to believe the hoax bomb is real. This bill adds that in order for a person to be guilty of this crime, the person must intend to make others believe the hoax bomb is real, cause alarm or reaction, or cause the evacuation of a building. It also revises the definition of a hoax bomb. The bill further increases the penalty to a Category C felony if the person commits the act in furtherance of any other felony, and to a Category E felony if the act causes the evacuation of a building.

Senator Hutchison:

The statute says, "make a reasonable person believe that the hoax bomb is an explosive or incendiary device." The bill adds paragraphs (b) and (c) to section 1, subsection 1 of A.B. 352 that add the intent to cause alarm or reaction, or to cause the evacuation of a building. It seems to me that a person

trying to cause alarm or to evacuate a building would always intend to make a reasonable person believe the hoax bomb is real. Why change the language? Is there a reason to include this, or was there an incident that triggered this new language?

Ms. Shipp:

My understanding is that it has to do with the prosecution of these cases. Right now, it is a gross misdemeanor to have a hoax bomb when other crimes are felonies. Often, people are being prosecuted for a lesser charge when they should be charged with a felony. However, I believe the next testifier can answer the question more completely.

Robert Lawson (Detective, Las Vegas Metropolitan Police Department):

Over the last several years, we have had an increase in hoax bombs. We have had numerous incidents at banks where a person walks in and makes a bomb threat: "This is a bomb and I'm going to blow you all up," or "I have a bomb." The threat in itself is a felony. But if the person places a device on the counter and a reasonable person would believe it is a bomb—a box with flashing red lights or wires coming out of it—and the person with the bomb says, "Give me all your money," but does not actually say that the box is a bomb, it is a gross misdemeanor. We have also had incidents in which people have placed items in buildings to get out of school or work early. An incident with a possible bomb causes a whole different level of response. A bank robbery pulls in patrol officers; a bank robbery with a bomb requires calling in the fire department, bringing in the bomb squad, closing roads, evacuating buildings and so on.

Senator Hutchison:

I am trying to understand the reason for the additional language in section 1, subsection 1, paragraphs (b) and (c). This seems to be more limiting than the original language in the statute, which is in paragraph (a). If you intend to cause an alarm or cause an evacuation, are you not always going to intend to make a reasonable person believe the hoax bomb is real? If people do not believe the hoax bomb is real, they will not be alarmed or evacuate the building. Since that is the case, why do we need this additional language?

Detective Lawson:

We have had incidents in which people walked into a building and left an item behind. What was the intent? We have to be able to prove beyond a reasonable

doubt that their intent was to make us believe it was a bomb. If the language were more broad, the statute might be overused.

Senator Hutchison:

From a lawyer's standpoint, I believe the original language is broad enough and is included in every case, including those listed in paragraphs (b) and (c).

Senator Brower:

I had the same question. It would be helpful to hear from the District Attorney's Association to explain how this might help prosecute a case.

Mr. Jones:

We support A.B. 352. The provisions we specifically favor are in section 1, subsection 2, in which situations that warrant a penalty greater than a gross misdemeanor are listed. I understand Senator Hutchison's point, and section 1, paragraph (a) is the one that will be used most of the time in the prosecution of these cases.

Senator Hutchison:

Can you think of a situation in which a person would want to cause alarm or the evacuation of a building without also intending to make a reasonable person believe the hoax bomb is real?

Mr. Jones:

Not off the top of my head, no. However, such a situation may be possible. That is why this provision is in the bill.

Chris Frey (Washoe County Public Defender's Office):

We were neutral on A.B. 352 when it was heard in the Assembly. The way I read section 1, subsection 1 is that there are two elements to intent, but the second element is disjunctive. There has to be a reasonable person who believes the hoax bomb is real, and there must also be a reaction, which can be either the alarm of a person or the evacuation of a building. From a civil perspective, there have to be damages.

Senator Hutchison:

I do not know how you read it that way when the list is joined by "or" and a semicolon rather than "and." There are three elements, any one of which will

satisfy the intent. I question why we need paragraphs (b) and (c), because paragraph (a) will always cover paragraphs (b) and (c).

Mr. Frey:

I respect your reading. Perhaps there is an ambiguity because of the absence of an "or" after paragraph (a). Reasonable minds can differ, and I hope we are those reasonable minds. I could imagine a scenario in which a reasonable person believes a hoax bomb is real but there is neither an alarm nor an evacuation. If they are disjunctive, I have no objection with regard to paragraphs (b) and (c). We favor the bill as drafted.

Senator Hutchison:

I would like to know the sponsor's intent. If the intent was to make it conjunctive following paragraph (a), as opposed to disjunctive among all three, it completely changes what the prosecutor has to prove.

Mr. Anthony:

Section 1, subsection 1 of the bill refers to the intent to (a) make a person believe the hoax bomb is real, (b) cause alarm or (c) cause evacuation. There is no "and" implied; the bill says "or," and thus it is disjunctive.

Chair Segerblom:

Can it be any one of those three?

Mr. Anthony:

Yes.

Senator Ford:

I agree. If you want an "and" in there, you might want to talk to the sponsor and make that change. It might be unwise for us to remove paragraphs (b) and (c). We may think they are encompassed in paragraph (a), but there may be a scenario that we cannot currently imagine. If it turns out after a couple years that paragraphs (b) and (c) are not being utilized, we can take them out of statute.

Ms. Shipp:

With regard to Senator Hutchison's issue, I am sure Assemblyman Horne would be willing to discuss a possible amendment.

Senate Committee on Judiciary
April 23, 2013
Page 15

Senator Hutchison:

I am not suggesting an amendment.

Chair Segerblom:

I will close the hearing on A.B. 352. Is there any public comment? Hearing none, I will adjourn the meeting at 10:17 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster