MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
May 2, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:09 a.m. on Thursday, May 2, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. 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:

Assemblywoman Marilyn Dondero Loop, Assembly District No. 5
Assemblyman Jason Frierson, Assembly District No. 8

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

James J. Jackson, Nevada Judges of Limited Jurisdiction
Melissa Saragosa, Las Vegas Township Justice Court, Department 4, Clark County
John Tatro, Nevada Judges of Limited Jurisdiction

John McCormick, Rural Courts Coordinator, Administrative Office of the Courts, Nevada Supreme Court
Nicole Rourke, Clark County School District
John T. Jones, Jr., Nevada District Attorneys Association
Jennifer Batchelder, Nevada Women's Lobby
Craig Stevens, Nevada State Education Association
Lindsay Anderson, Washoe County School District
Dotty Merrill, Nevada Association of School Boards
Lonnie Shields, Nevada Association of School Administrators; Clark County Association of School Administrators and Professional-Technical Employees
Paul Villa, Peace Officers Research Association of Nevada; Reno Police Protective Association
Chris Frey, Washoe County Public Defender's Office
Steve Yeager, Clark County Public Defender's Office
Scott Pearson, Reno/Verdi Township Justice Court, Department 4, Washoe County
Lea Tauchen, Retail Association of Nevada
Kalani Hoo, North Las Vegas Township Justice Court, Department 1, Clark County
Paul Sevcsik, Reno Police Department

Chair Segerblom:
I will open the hearing on Assembly Bill (A.B.) 54.

ASSEMBLY BILL 54 (1st Reprint): Revises provisions relating to fees charged and collected in justice courts. (BDR 1-388)

James J. Jackson (Nevada Judges of Limited Jurisdiction):
This bill allows an increase in the justice court civil filing fees. We have been trying to get a fee increase for 20 years, and this is the first time we have gotten this far with it. This is an attempt to help fund the courts and take the burden off the counties, particularly in those areas where the courts' functions are most impacted by the number of people who access the justice court civil process and civil jurisdiction.

Melissa Saragosa (Las Vegas Township Justice Court, Department 4, Clark County):
I support A.B. 54. This bill raises civil filing fees to amounts that are commensurate with the surrounding jurisdictions. The bill raises fees across the board, including for unlawful detainer cases. These are cases in which a bank is seeking an eviction action against either a former owner against whom the bank foreclosed or a tenant of the former owner whom the bank is trying to evict. Our existing statutory scheme has no filing fee for this specialized type of case, so it falls under the category of "All other filing fees," and the fee is $28; with administrative assessments, it is about $49. After doing a review of surrounding states, A.B. 54 increases the amount to $225. That is still less than most of the surrounding states, which are closer to $300. This is an area where we need to be commensurate with the surrounding jurisdictions and keep up with the times and the economy.

The other part of the bill creates a mechanism for providing funding to the courts. First, it increases the general fund because of the increase in filing fees overall. Second, it carves out a use of funds for the courts, and it allows enough flexibility for the use of those funds to enhance the courts' needs.

Each of our jurisdictions across the State has a different need. Judge John Tatro will speak to you about security, and other jurisdictions have construction or remodeling needs. Some courts need private space for defense attorneys to speak with their clients; they do not have the funds to do that type of construction work, and the counties cannot give it to them. In the Las Vegas Justice Court, we have seen huge growth in our caseload over the years. The county has been unable to keep up with staff to meet our needs. We have outgrown the Regional Justice Center where we are housed. If you look at the State Demographer's projections, in the next 2 to 4 years we will have another justice court department in need of another courtroom space. The funds provided by A.B. 54 will help us provide that space. It will also help us add additional staff to meet the needs of our users and process cases. Increasing our staff would allow us to enhance our services and provide enhanced access to justice.

Chair Segerblom:
There are several different justice courts within Clark County. Will those courts get the portion of the fees for cases that are filed in their townships?

Judge Saragosa:
Yes.

Chair Segerblom:
Will A.B. 54 relieve the congestion and shorten the lines to get into the Regional Justice Center?

Judge Saragosa:
It could. We have not had specific discussions on how that would work, but it has been discussed in general. The district court has made great strides already in reducing those lines. In the past couple of months, they have been much shorter. We have discussed the idea of creating a separate entrance for the traffic court similar to that for the marriage bureau.

Senator Hutchison:
How exactly will the money raised be allocated? What uses will it be earmarked for? I went through the bill, and I am not clear on the allocation of the funds.

Judge Saragosa:
In general, 75 percent of every dollar would go directly to the county's general fund. The county would decide on its own how to spend it. A portion of the money that goes into the general fund comes back to us in our general budget. The other 25 percent would go to the individual court that collected the fees. It would be held in a special reserve account by the county so that it would be used for the purposes enumerated in section 1.5, subsection 6 of A.B. 54. Each of our limited jurisdiction courts would determine its own particular needs.

Senator Hutchison:
I assume you are all happy with this language. Are you happy with the 75-to-25 split?

Judge Saragosa:
Yes. We took the majority of the language from A.B. No. 65 of the 75th Session, which had to do with district courts, and tailored it to the needs of the limited jurisdiction courts. As for the rest of it, we negotiated the language with the Clark County Manager, who in turn negotiated with the Clark County Commission. We are in agreement on this. I am not sure if Mike Murphy is here today, but he testified in the Assembly Committee on Judiciary that he is in favor of A.B. 54.

Chair Segerblom:
I note that there is a fee here for the law library, which is fantastic. I commend you for including it.

Judge Saragosa:
Thank you. We negotiated that as well, and the law library is happy with that.

Mr. Jackson:
This bill is the result of many hours of discussion with Clark County, Washoe County, Carson City and every other stakeholder that would be affected by A.B. 54. The inclusion of the law library fee is one item that resulted from those discussions.

John Tatro (Nevada Judges of Limited Jurisdiction):
We support A.B. 54. I have written testimony explaining the need for this bill (Exhibit C). As has been pointed out, this bill raises the justice civil court filing fees, giving a portion of the fees to the local courts. It is important to remember that justice court civil filing fees have not been raised since 1993. Because of that, our funding authorities in the counties have been required to increase funding to the courts, so the percentage of costs covered by fees has dropped dramatically. In recent years, local governments have been having trouble meeting their funding demands, and the courts have been seriously affected. We have outdated facilities that we have outgrown; our technology is outdated; our staffing is inadequate. At Carson City Justice Court II, where I preside, if one person calls in sick, we have to contract a temporary employee to fill in.

The issue I want to touch on is court security. The main issue of A.B. No. 65 of the 75th Session was security in the district courts. In the hearings for that bill, someone testified about court security and the dangers surrounding district court judges. A member of the Committee asked about the dangers surrounding the lower court judges, and the testifier said that the lower court judges did not face the same dangers the district court judges do. I have been waiting 4 years to answer that question.

This past year, I had an experience that changed my life and gave me a greater respect for the position I hold. On December 11, 2012, at 4:20 a.m., two bullets ripped through my front door and went through the house, blowing up ornaments on the Christmas tree, shattering the sliding glass door and finally stopping in the backyard fence. Waking up to gunfire at 4:20 a.m. is not

something I recommend. I am thankful my wife was not injured; she would have gone to that door 20 minutes later to get the newspaper before going to her morning workout.

Those two bullets changed our lives. I now have a surveillance and alarm system in my home. My wife and I are constantly aware of security wherever we go. Every time my wife walks by the front door, she skips past it even now. We check the surveillance system before answering the door. Everywhere we go, we have to consider security; in fact, I came here today with an escort because there is still a threat. The case has not been solved and probably never will be.

Security incidents and threats against judges are on the rise. This past year, the courts in Carson City issued six orders for individuals to be escorted by security personnel while coming to court because they were verified threats to the judges, the staff, the lawyers, the public and everyone using the facility. According to the Administrative Office of the Courts, there were approximately 200 threats against judges in 2012. These were personal threats that had to be followed up with investigations.

We recently performed a survey of court security among the municipal and justice courts (Exhibit D). Nineteen courts responded, and many of those are in desperate need of improvements in security. Nine courts do not have metal detectors. We mostly deal with law-abiding citizens who are coming in to deal with traffic tickets or civil cases, but there are also convicted felons, criminals and people involved in divorces and protective order cases every day. Twelve courts do not have scanners or X-ray machines. Sparks Township Justice Courts were in a temporary facility in a strip mall for 20 years. In the courthouse the two courts finally moved into, contractors built a bubble for surveillance so security personnel could monitor doors and control security; however, when the courts asked Washoe County for funding, there was no money to put someone in the security bubble. Seven courts have no bailiffs to protect them. Some courts are 45 minutes away from response by law enforcement. They do not have holding cells. Judges park by the front door and use the same restrooms as plaintiffs, defendants, witnesses and members of the public. Once, in our old courthouse, I walked into the restroom we shared with the public and discovered a man smoking a joint.

We are on borrowed time before a judge, court staff, a victim, a witness, an attorney or a member of the public is seriously injured or killed. Judge Chuck Weller in Reno was shot in the chest in June 2006 after ruling on a divorce case. Every day in the justice courts, we rule on protective orders. Those are cases where individuals are concerned that people they loved, they married, they lived with, are now going to try to kill them. Those are the people we are dealing with. Every criminal case starts in our court, and most of them are dealt with in the lower courts. No criminal case goes to the district court that did not first come through justice court unless there is a grand jury indictment, which does not happen very often. Yes, we do face the same hazards the district courts face.

Assembly Bill 54 gives the justice courts an opportunity to address security needs, as well as all the other needs out there. The counties cannot fund us. We are using every fee; we are trying everything we can to save money, but we are at the point where something bad is going to happen. At the very least, we will not be able to keep up with the caseload based on staffing. We have needs the counties cannot meet, and this will help us resolve that.

Chair Segerblom:
Are there any restrictions on the 75 percent that goes to the counties?

Judge Tatro:
No. It goes to the counties' general funds.

Chair Segerblom:
Do we want to make the counties plow it back into the courts?

Mr. Jackson:
That was part of the agreement we negotiated with the counties.

Senator Brower:
In the federal system, the judges and prosecutors are well protected, and that is the way it should be. But as you have shared with us, the everyday realities of what happens in your courts and the state district courts are every bit as dangerous, if not more dangerous. We have ignored this issue for too long.

Senator Hutchison:
I think there would be an appetite in this Committee to do whatever you think is necessary in terms of funding. I was surprised at the 75-to-25 split; I would think you would want to control more of that money, because once it goes into the general fund, you never know how it is allocated. We would do what we thought was reasonable to support what you need.

It would be interesting to know how much the population has increased since 1993, to know what the fees would be if they had kept up with inflation.

I note that most of the fees in this schedule and the district court schedules relate to people who are voluntarily accessing the system. Most of these fees do not relate to people who are reacting to being sued, for example, or who are being ordered into court; or if there are fees, they are much lower than for those who are accessing the system voluntarily.

Mr. Jackson:
As Judge Saragosa pointed out, in studying which fees needed to be raised, there was emphasis on those voluntarily accessing the system. It does not in any way affect the ability of someone who is indigent or unable to pay those fees to apply for a fee waiver.

John McCormick (Rural Courts Coordinator, Administrative Office of the Courts, Nevada Supreme Court):
I do not have the population figures, but I do have civil filing figures (Exhibit E). In 1994, when the last fee increase went into effect, there were 62,465 civil cases filed in the justice courts across the State. In 2012, there were 112,788 civil cases. The highest level was 144,000 in 2008. We applied the Consumer Price Index (CPI) to these fees, and we are around CPI across the board with some fees being higher and some lower. Right now, compared to Utah, Washington, California, Idaho, Oregon and Arizona, Nevada has the lowest civil filing fee for cases under $2,000 by at least $25. Our unlawful detainer fee is low; in California, that fee is $240. For other civil matters, we currently charge $28. In Utah, that fee is $360; in California, it is $225, and in Oregon, it is$137.

Chair Segerblom:
It sounds like the 75-to-25 split is a deal that has been worked out, and we do not want to tamper with that. We want to honor whatever the deal was.

I will close the hearing on A.B. 54 and open the hearing on A.B. 377.

ASSEMBLY BILL 377 (1st Reprint): Revises provisions governing the crime of sexual conduct between certain school employees or volunteers at a school and pupils. (BDR 15-514)

Assemblywoman Marilyn Dondero Loop (Assembly District No. 5):
This bill arose out of an incident in the Clark County School District last year in which two teachers were arrested for having sex with a student who was not a student at the schools where they were employed. Nevada has a statute that makes it a crime for a person who is employed or volunteers in a position of authority at a school to engage in sexual conduct with a student at that school. However, in the incident in Clark County last year, the teachers worked at different schools at the time of the sexual conduct, so the statute did not apply. Hearing that, I decided the existing statute was too limited, since teachers, bus drivers and coaches, to name a few examples, come into contact with students other than those enrolled at their schools and should be held to the same standard as employees and volunteers working at a student's school. In the Clark County incident, one of the teachers had worked at the student's school previously, but had moved to another school.

Assembly Bill 377 removes the limitation that this crime only applies if the employee or volunteer is working at the same school at which the student is enrolled. I do not see why it would be less of a crime if a school employee or volunteer engaged in sexual conduct with a student from another school. Of course, other charges could probably be brought if adults have sexual contact with minors, but I felt it was important to broaden the current definition of a crime involving students and school employees and volunteers. School employees and volunteers are in special positions of trust when they are around students, and it does not matter which school that student attends. All school employees and volunteers who come into contact with students should be held to the same high standard of behavior, not just those working at a specific school that the student happens to attend.

This bill does not change the level of felony or the punishment for the crime.

Chair Segerblom:
I see that the bill was amended in the Assembly, and it looks like it has been improved. Just because you work for a school district does not automatically

make you liable for this crime. There has to be some prior contact in your relationship as a school employee. It would not, for example, cover a custodian at one school who happened to have sex with a 17-year-old who could lawfully consent and was a student at another school. Is that right?

Nicole Rourke (Clark County School District):
My understanding is that the person has to be in a position of authority over the student. I am not an attorney and would not represent that I fully understand the legal situation, but that is my understanding.

Assemblywoman Dondero Loop:
My intent with this bill was that even though a custodian may or may not be considered a person of authority, anyone who works at a school as an adult is considered an authority by the students. A custodian could ask students to pick something up or help wipe tabletops. Even in an elementary school, kids help custodians wipe tabletops.

Chair Segerblom:
But if a custodian who worked at one school happened to meet a 17-year-old student from another school out somewhere in the community, so there was no relationship from a school position, that custodian would be no different from any other person having sex with someone over the age of consent.

Senator Brower:
As I read A.B. 377, section 1, subsection 1, paragraph (c), subparagraph (2) requires the adult to have been in contact with the student in the course of his or her duties as an employee of the school. In the hypothetical situation of a bus driver who meets a 17-year-old student from a different school with whom he has never had previous contact and they have consensual sex, that would not be prohibited by this bill.

Assemblywoman Dondero Loop:
Correct, but the situation that triggered the bill was that students change schools, and so do teachers. What has happened in the past is a teacher and a student engage in sex, and the child goes home and says to the parent, "I don't want to go to that school anymore," because that will keep the teacher from violating the letter of the law. This bill will prevent students from being able to change schools or drop out to help the teacher avoid prosecution.

John T. Jones, Jr. (Nevada District Attorneys Association):
We support A.B. 377. Section 1, subsection 3 of the bill defines a position of authority. I want to point out that paragraph (d) includes in this definition "an auxiliary, nonprofessional employee who assists licensed personnel in the instruction or supervision of pupils pursuant to NRS 391.100." That could include a custodian in some schools. I was a teacher in the Clark County School District for 2 years, and the custodians do play a supervisory role to some extent. If they witness activities going on that should not be happening, they are bound to stop them and report them. To that extent, they play a supervisory role in Clark County.

Chair Segerblom:
In the situation where an employee from one school meets a 17-year-old student outside the school context, if they have no prior contact through the schools, would you agree that would not be a crime under this bill?

Mr. Jones:
I think you are correct. The crux of this bill is the phrase, "has had contact in the course of performing his or her duties as an employee or volunteer." If the person and the student have not had contact within the context of the person's job at the school, then yes, you are right; there would not be a charge under this bill.

Senator Hutchison:
Has there been any kickback or opposition from the school districts? Is there anything we are overlooking?

Assemblywoman Dondero Loop:
No. Both Clark and Washoe School Districts have been supportive and want this bill.

Senator Brower:
I want to make sure I understand the intent of Assemblywoman Dondero Loop and the school district. Is it your position that it should not be against the law for a school district employee to have a sexual relationship with a student, even a student of age and if the relationship is consensual, unless there is a supervisory relationship? The Chair seems to think that would be too broad, and I understand that, but I want to make sure we all understand what we are doing with this bill.

Assemblywoman Dondero Loop:
I am not clear on your definitions. My intent is if you work in a school district and you have contact with kids, it is wrong to have a sexual relationship with them. I am not talking about 20 years after you graduate from school; A.B. 377 will not affect that.

Senator Brower:
Let me put out a hypothetical case. Under this bill, a teacher at Chaparral High School could have a consensual sexual relationship with a 17-year-old student at Bonanza High School, providing they never had a student-teacher relationship. This bill would not prohibit that, correct?

Assemblywoman Dondero Loop:
That is not my understanding, but I am not an attorney and would like to consult briefly with Mr. Jones.

Mr. Jones just pointed out to me that the bill clearly says, in section 1, subsection 2, paragraph (c), subparagraph (2), "has had contact in the course of performing his or her duties." However, I would put a little caveat on that to say that if a teacher taught at Chaparral High School but was a coach at Bonanza High School and had contact with the student there, the bill would still apply.

Senator Brower:
So a coach at Chaparral who meets a cheerleader from Bonanza at a basketball game would not be precluded under this bill from having a sexual relationship, as long as it is consensual and the cheerleader is 17 years old.

Mr. Jones:
I do not like getting into hypothetical situations, but in that scenario, I would argue that the coach did meet the cheerleader in the course of performing his or her duties. I am not here to say yes or no with respect to whether we want to prohibit any teacher from having sexual conduct with any student under any circumstances. I am not taking a position on that with respect to this bill. But this bill says if you are in a position of authority over a student, you should not be using that position of authority to initiate any type of sexual contact.

Senator Brower:
Agreed. I just want to make sure, though, that it is the sponsor's intent and that the school district understands and agrees that the right policy is to not prohibit

teacher-student sexual relationships where they do not have a classroom or other professional relationship. I just want to make sure we understand what this bill does not prevent.

Mr. Jones:
This bill may not prevent it. I am not saying that is a policy decision this bill is necessarily trying to address. I do not want anyone to assume that because we are supporting this bill, we also support the conduct you just described. I also want to note that there are other potential charges a district attorney could apply, such as statutory sexual seduction, which is a felony if the teacher is over 21 and the student is under 16.

Senator Brower:
Understood. So if the student is 17, which is the age of consent in Nevada, and the relationship is consensual, this bill does not prevent that relationship unless the school employee and the student have some other school relationship, like the student is in the teacher's class or plays on the coach's team.

Mr. Jones:
Some contact in the course of the employee's duties, yes.

Senator Brower:
If there is no other connection, the student is 17 and the relationship is consensual, A.B. 377 does not prevent sexual contact. Maybe preventing that is too far a reach, in terms of policy.

Chair Segerblom:
Right, and that is the point. Teachers should not be second-class citizens.

Senator Brower:
I just want to make sure we all understand what this bill does not do.

Mr. Jones:
The crux of A.B. 377 is a person using his or her influence and authority over a student to his or her advantage to initiate sexual contact. That is what this bill is concerned with.

Ms. Rourke:
We would like to express our support for A.B. 377. Student safety is a top priority for Clark County School District, and there is no place in school for an inappropriate relationship between a student and a teacher or anyone else in a position of authority. The statute's original intent was to protect students from inappropriate relationships with school staff or volunteers. We support closing any loopholes in the law.

Jennifer Batchelder (Nevada Women's Lobby):
We think A.B. 377 closes a loophole, and we fully support it.

Craig Stevens (Nevada State Education Association):
We fully support A.B. 377. It is our opinion that at no time in the course of duty should a teacher have an inappropriate relationship with a student. We are in full support of anything you can do to strengthen that.

Lindsay Anderson (Washoe County School District):
We also support A.B. 377 for the reasons you have already heard.

Dotty Merrill (Nevada Association of School Boards):
We support A.B. 377. This situation has not just arisen in Clark County; it has also happened in at least five other counties in Nevada, so this is a matter of great interest for the Nevada Association of School Boards. Before the Legislative Session began, our Board of Directors and Executive Committee voted unanimously to support this bill because it closes a loophole. I am not an attorney, but I have been advised by an attorney that this is especially important when it connects to *Nevada Revised Statute* (NRS) 391.312, section 1, subsection (h). That is the statutory language covering suspensions, dismissals and reemployment, and it lists moral turpitude as one of the factors. Clarifying this definition and closing the loophole here is important in connection with that statute because it allows boards to move forward under the umbrella of this other statute.

Lonnie Shields (Nevada Association of School Administrators; Clark County Association of School Administrators and Professional-Technical Employees):
We want to register our full support for A.B. 377. We cannot comprehend allowing principals or anyone in authority to have some kind of sexual

relationship with students. We feel this closes that loophole, and we are very much in favor of it.

Senator Brower:
This raises again the issue I have been talking about. I want to make sure we are making the right policy decision here. Do you not believe that teachers and coaches generally do not have a special, unique status such that they should be precluded legally from having sexual relationships with any student, regardless of whether they have had direct contact or authority over them?

Mr. Shields:
I believe our code of ethics would say that is not acceptable. Whether that should be in law, considering what Chair Segerblom said with regard to separating groups of people out of the law, I do not know and cannot answer that. However, I personally, as a principal or an administrator, would abhor anyone in a position of authority who takes advantage of a student of any age at any school.

Senator Brower:
You understand that under this bill, you might abhor it but you could not do anything about it.

Mr. Shields:
I understand that, Senator.

Senator Ford:
I agree, Senator Brower, that we should probably not allow any teacher in any school district to have sex with any student whether they are in the same school or not. This bill does not address that. My query is whether we open up a different can of worms when we attempt to ban all teachers from having sexual relationships with all students regardless of contact or influence. I do not know if Mr. Anthony has an initial opinion in that regard, but I would like to have some analysis made of that. I do not want to open us up to a lawsuit that we violated the equal protection clause or some other form of constitutional protection by being too expansive.

Senator Brower:
I appreciate your comments, but I am not seeking an amendment. I just want to make sure everyone here, in our effort to close this loophole that has to be

closed, understands that we may not be going as far as some in this room thought we were going and that the bill is limited. Maybe we have struck the right balance with the limitations of this bill; it sounds like there is consensus that we have. I am not proposing that we go farther. I just want to make sure we all understand it, and I think we do now.

Senator Ford:
I would still like to see some analysis as to whether, if we want to go further, we would have a problem constitutionally.

Nick Anthony (Counsel):
Our office can certainly look into the specifics of that question.

Assemblywoman Dondero Loop:
There was quite a bit of discussion about the legal ramifications of this bill in the Assembly. We were not intending to separate out one group of people.

Senator Hammond:
In your discussions with others toward this compromise, did you have any discussion concerning such relationships in colleges, where all the students are over the age of 18?

Assemblywoman Dondero Loop:
There was some discussion, yes. It was my understanding that those situations would be covered by the regulations of the college or university.

Senator Hammond:
Is there nothing in statute? I believe many universities create policies saying professors and staff members may not have sexual relations with students whether consensual or not, regardless of whether the student is in the teacher's class or just enrolled in the university. I wondered if that is in statute or is just the university's policy.

Assemblywoman Dondero Loop:
I did not find it in statute, but it was a discussion, not research. I can tell you that NRS 391.312 discusses moral turpitude in a school district setting. I do not know that there is anything in statute regarding universities in this regard.

Mr. Jones:
I can tell you that NRS 201.550 prohibits sexual contact between certain employees of colleges or universities and students. It is similar to this statute in that the student has to be 16 or 17 years of age for it to be illegal.

Senator Brower:
What about the connection between the employee and the student?

Mr. Jones:
The statute refers to a person who is 21 years of age or older, is employed in a position of authority by a college or university, and engages in sexual conduct with a student who is 16 or 17 years of age and is enrolled or attending the college or university at which the person is employed.

Senator Brower:
Does it require that the person have authority over and contact with the student?

Mr. Jones:
Subsection 2 of NRS 201.550 states: "For the purposes of subsection 1, a person shall be deemed to be employed in a position of authority by a college or university if the person is employed as a teacher, instructor or professor; an administrator or; a head or assistant coach."

Senator Ford:
It does not say, for example, that College of Southern Nevada professors are banned from having relationships with students of the University of Nevada, Las Vegas?

Mr. Jones:
No.

Senator Ford:
That is a distinction we need to keep in mind.

Chair Segerblom:
I will close the hearing on A.B. 377 and open the hearing on A.B. 415.

ASSEMBLY BILL 415 (1st Reprint): Revises various provisions relating to criminal justice. (BDR 15-804)

Assemblyman Jason Frierson (Assembly District No. 8):
This bill represents an effort to combine responsible use of limited resources with appropriate punishments for crime and protecting the public. It represents a reasonable approach to some nonviolent offenses.

The bill is significantly different from its original form. It initially covered many subjects, but I acknowledge that most of those subjects warranted a more in-depth conversation and were more appropriate for the Advisory Commission on the Administration of Justice to look at. The Commission can take the time to collect data and get input from all the stakeholders—law enforcement, the court system, retailers and others. We met with someone from the Council of State Governments who said that 27 states have already started Right on Crime programs, which we have been calling Smart on Crime for decades. This effort started in Texas, where officials made significant changes to punishment for nonviolent and drug offenses to focus on reentry, reducing recidivism and rehabilitation. The bill before you now refers these matters to the Commission to review. It also expands the Commission's ability to seek funds to provide for studies and look into these matters.

The remaining substantive portion of A.B. 415 proposes to make adjustments to the definition of burglary. In Nevada, burglary is defined as entering a structure with the intent to commit a crime. Some 15 years ago, the definition of burglary was expanded to include entering a home or a vehicle to commit a battery domestic violence, which is a misdemeanor. The way the statute is construed, if you steal something from a store and you do not have any money in your pocket, it is presumed that you entered with the intent to commit a crime, and therefore it is defined as a burglary. The result is that we are felonizing young people for minor shoplifting. In the course of my 10 years of experience in criminal law, I remember a case where a woman with mental health issues went into a convenience store, opened a Chocolate Yoo-Hoo drink and drank it. The manager said, "Are you going to pay for that?" She said, "No." That made the charge felony burglary, which carries a penalty of 1 to 10 years in prison. As with many cases, that case was resolved to petty larceny, which is what it should have been in the first place. The bill would say that shoplifting is not a felony; we do not need to spend the money to charge a person with a felony

and imprison him or her for 1 to 10 years for shoplifting. It does not make any sense to me that you can steal a candy bar and be branded a felon.

Chair Segerblom:
For the record, what is the threshold for a regular felony?

Assemblyman Frierson:
Last Session, Assemblyman James Ohrenschall sponsored a bill that raised the level from $250 to $650. If you steal something worth over $650, that is considered grand larceny; if it is under $650, it is petty larceny. My concern was to focus the resources we have on violent offenders. That is the intent of the bill: to acknowledge that shoplifting is a misdemeanor offense, and charging it as a felony is not necessarily the most responsible use of our money.

I have spoken with retailers and worked with them extensively on this because there is another bill dealing with organized retail theft, A.B. 102.

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

Assembly Bill 415 is a simple effort to be responsible with our money, and then refer the matter to the Advisory Commission on the Administration of Justice to see what other matters need to be looked at.

Paul Villa (Peace Officers Research Association of Nevada; Reno Police Protective Association):
We have Proposed Amendment 8722 (Exhibit F).

Assemblyman Frierson:
I have seen this amendment, and I appreciate the thought put into the practical side of this bill. Exhibit F is consistent with the intent of A.B. 415.

Chair Segerblom:
I agree. I do not think it interferes with your intent to make sure stealing a candy bar is not a felony.

Senator Hutchison:
This bill seems to be a commonsense approach to this issue. Do you have a sense of how much time law enforcement officers are spending on these kinds of matters and whether this will help free up some of their resources?

Assemblyman Frierson:
I cannot speak for law enforcement. From my experience in criminal court, I can speak about the resources it takes to prepare for a felony charge as opposed to a misdemeanor charge. Often, with a limited amount of time to get ready, you devote your time to the more serious charges. If the charges were consistent with the crime, the focus could be on those more serious cases and we would not have to waste the time and energy on spurious felony charges. Even if they are negotiated 2 weeks down the road, it would be that many fewer resources we would have to utilize in preparation for what could be a serious charge.

Senator Hutchison:
So it will save a lot of time getting ready for trial cases.

Assemblyman Frierson:
Exactly, for trial and for preliminary hearing. I think it will save a tremendous amount of time in the court system. Law enforcement has a job to do as far as casting the net wide to protect the public. Officers make the arrest, and then the court system deals with it. But this bill would save a tremendous amount of energy as far as preparing for those charges.

Senator Hutchison:
Are the retailers on board for this?

Assemblyman Frierson:
I believe so. I have not had the opportunity to speak to them about the amendment in Exhibit F.

Chris Frey (Washoe County Public Defender's Office):
We support A.B. 415 and are also on board with the amendment in Exhibit F. We support A.B. 415 for two reasons: common sense and cost. The bill recognizes up front that traditional shoplifting is a misdemeanor. It is proportionate to the offense; it does not inflate it to burglary simply to create leverage for prosecutors going forward. With regard to the cost, there are two ways to quantify it. First, the bail that attaches to a burglary charge is

$20,000, and for petty larceny it is $500. The higher the bail amount, the harder it is for someone to make bail in either cash or bond form. That results in a greater number of custody days before the preliminary hearing. If the person being charged cannot make bail, he or she must spend time in custody at taxpayer expense. With a petty larceny charge, the person can typically either make the bail in cash or post a fraction of that in the form of a premium to the bondsman. That means the person is in and out of custody quickly, all to the savings of the taxpayer.

Second, my understanding is that the Washoe County Jail sees around 200 or so bookings on burglary charges monthly. A large percentage of those relate to commercial burglary, and a subset of that is traditional shoplifting. There are cost savings there as well because we know people are being charged with burglary for traditional shoplifting. This bill would address that.

There is one other issue I would like to address. We are supporting the amendment, but the anecdote that was offered as support for it is lacking correspondence with the amendment. The anecdote is that John Doe is a major offender who goes into commercial establishments with fraudulent receipts and procures items by those means. However, Mr. Doe would not escape punishment under existing law because entering a store with the intent to obtain money or property by false pretenses is a predicate for burglary. He is committing a burglary in each and every instance. The passage of A.B. 415 would not allow John Doe to escape prosecution. He is already subject to prosecution under statute.

My last remark is with respect to community courts. I do not want this important component of A.B. 415 to get submerged in the conversation about shoplifting and burglary. This is something of an omnibus bill; it set out to do a lot of things, many of which have been taken out as part of the compromise worked out in the Assembly. One item left in is the community court component, which would, for the first time, allow for misdemeanor diversion for eligible defendants. At this time, justice courts cannot divert individuals and give them the opportunity to earn what would otherwise be a conviction off the record. This would be an important tool in the sentencing judge's toolkit, and the community court concept would allow justice courts across the State to implement it. That is a tool available at the felony level in district courts, and there is no reason it should not be available to justices of the peace at the misdemeanor level. We expressed strong support for that.

Senator Ford:
I appreciate the cost savings and the other benefits of this legislation, but I am particularly delighted that we get to address some issues that have long-term effects on people's ability to maintain themselves as productive members of society. The collateral consequences of having a felony on your record for stealing a candy bar are huge. However, I also appreciate this bill's effort to address these issues from a more societal context that will allow people to rebound from an arrest and get turned around via the diversion program so they do not end up in the system later on. I appreciate that part of the bill, and I wanted to put that on the record.

Mr. Jones:
We support A.B. 415. With respect to the petty larceny burglary issue, we think these changes mirror what has been the practice recently in Clark County, where people who are brought in on a first-time petty larceny charge are not necessarily charged with burglary. Many different factors go into charging a case, including prior record and severity of the crime. We have thrown around the reference to a candy bar, but with the new $650 cap you can go as high as an iPad. The proposed changes mirror practice, and we are in support of them.

With respect to the Advisory Commission on the Administration of Justice, this bill also mirrors efforts from Senator Brower and Senator Barbara K. Cegavske, who are asking the Commission to look at our criminal sentencing guidelines.

Steve Yeager (Clark County Public Defender's Office):
We support A.B. 415. Regarding burglary versus petty larceny, when someone is charged with burglary, you can be almost certain that the person will sit in jail for a period of time. When someone is charged with petty larceny, the officer might just give the person a citation, after which the person is released and must return to court on his or her own. A petty larceny charge saves resources in terms of the officer having to transport the person and the jail costs; it may determine whether a public defender is appointed at all. Everyone has acknowledged that the right outcome is generally reached in these cases, but it takes a couple of weeks, so there is a resource strain there.

We are also in favor of the community courts portion of this bill. Members of our office have been working with some of the local judges in Clark County on this. I have a booklet from the Bureau of Justice Assistance, U.S. Department

of Justice, titled *Principles of Community Justice: A Guide for Community Court Planners*, explaining the concept of community courts (Exhibit G).

Scott Pearson (Reno/Verdi Township Justice Court, Department 4, Washoe County):
I support sections 9 through 11, the community court provisions, of A.B. 415.

Historically, the criminal justice system dealt with punitive measures. You committed a crime and you were incarcerated as punishment. In the course of time, we realized that this was not working. There have been studies in criminal justice measuring the effect of positive reinforcement for good behavior versus negative consequences for bad behavior, and positive reinforcement has a greater effect on individuals. There is definitely a place for the punitive measures. There are individuals who are antisocial or psychotic, and those people need to be locked up. But we need to make sure that we take the opportunity to reach those individuals who can become makers and not takers.

There are nearly 3,000 drug courts or specialty courts in the U.S., and after thousands of studies, we know the best practices for those community courts. The most important factor is positive reinforcement from the judge. Punishment alone is not the answer, and the probation model was largely ineffective. Its message was, "We understand you have a drug problem. Go get some treatment. Good luck with that." That is like asking fourth graders to write doctoral theses; they might be willing, but they do not have the life skills to be successful. That is what we are able to give these people. We hold their hands; we see them regularly.

We also address the whole person. A defendant with a drug problem may have an underlying medical or mental health issue. If you do not treat the underlying problem, there is no point in sending the person to drug counseling. We have a group of drug treatment counselors, mental health counselors, job training experts and social workers who attend my court regularly. We come together and evaluate these individuals to learn what they need to be successful. That is completely different from how courts have historically thought; in the past, all we said was, "We will deal with you when you fail." Now we are building a system for success. Before individuals graduate from my program, they must be clean and sober for 12 to 18 months, and they must hold jobs if they can. By the time they leave my program, they are makers, not takers. Our success rate is incredible. Around this Country, for every dollar you put into a drug court or

specialty court program, you save more than two dollars. If our defendants are dangerous individuals who threaten our community, we need to lock them up. But if they are not, we need to address those issues and get them back on their feet so they can be productive members of the community.

I urge you to support the community court portion of A.B. 415 regardless of what happens to the other portions of the bill.

As he left, Judge Tatro told me that he and his organization are in support of A.B. 415. It is an important tool that will pay tremendous dividends for the justice courts and the communities in which they operate.

Lea Tauchen (Retail Association of Nevada):
We support A.B. 415. With regard to section 1, subsection 5 of the bill, our members do not want Nevada to be viewed as a state where stealing from businesses is considered low risk and an easy profit crime. In our conversations with Assemblyman Frierson, we agreed that we did not want to see a simple, one-time shoplifting offense charged as a felony. However, our concern was capturing the repeat offenders who are more than simple shoplifters but less than organized retail theft rings. We believe A.B. 415 addresses our concerns.

Kalani Hoo (North Las Vegas Township Justice Court, Department 1, Clark County):
Like Judge Pearson, I support sections 9 through 11 of A.B. 415. It sounds like Judge Pearson's court is a few steps ahead of us in implementing the community court program, but we have the same goal: to find avenues to keep first-time offenders from that lifestyle.

Assemblyman Frierson:
I understand some of the concerns about the bill. I appreciate that those who have concerns came and talked to me about them.

Mr. Villa:
We testified in the Assembly Committee on Judiciary in opposition to this bill. We signed in neutral today, but with the amendment, we can support the bill.

Paul Sevcsik (Reno Police Department):
I have written testimony (Exhibit H). I am here to discuss the friendly amendment in Exhibit F. The amendment does two things. First, as the bill is

currently worded, a person has to be twice convicted of petty larceny from a business or commercial establishment. The location of the theft is not tracked in any of our courts. Petty larceny is, but our data does not specify whether that is from a residence, a vehicle, a business or whatever. Changing section 1, subsection 5, paragraph (a) to delete "in a commercial establishment during business hours" removes this problem while still maintaining the spirit of the law.

Second, there was some concern with regard to ex-felons. The change in section 1, subsection 5, paragraph (b) prevents those with a prior felony conviction from being charged with a misdemeanor. This eliminates career criminals who are trying to circumvent the law. My understanding is that the intent of the bill is if Ma and Pa Kettle go into a store knowing they do not have enough money for groceries and steal a loaf of bread, we do not have to charge them with burglary. The bill is not intended to protect the guy who comes out of prison and says, "I can steal up to $650 at a time without being charged with a felony."

Senator Kihuen:
I will close the hearing on A.B. 415.

Chair Segerblom:
Is there any public comment? Hearing none, I will adjourn the meeting at 11:18 a.m.

RESPECTFULLY SUBMITTED:

_____
Lynn Hendricks,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	6		Attendance Roster
A.B. 54	C	1	John Tatro	Written testimony
A.B. 54	D	1	John Tatro	Court Security Survey
A.B. 54	E	1	John McCormick	Western States Limited Jurisdiction Court Civil Filing Fee Comparison
A.B. 415	F	5	Paul Villa	Proposed Amendment 8722
A.B. 415	G	20	Steve Yeager	Principles of Community Justice booklet
A.B. 415	H	2	Paul Sevcsik	Written testimony