

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

**Seventy-Eighth Session
March 23, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Monday, March 23, 2015, 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, to Room 137 of the High Tech Center, Great Basin College, 1500 College Pkwy, Elko, Nevada and to Room 114 of Great Basin College, 2115 Bobcat Drive, Ely, 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 www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman Nelson Araujo (excused)



GUEST LEGISLATORS PRESENT:

Assemblyman Edgar Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's
Office
John T. Jones, Jr., representing Nevada District Attorneys Association
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs'
Association
Sean B. Sullivan, Deputy Public Defender, Washoe County Public
Defender's Office
Steve Yeager, representing Clark County Public Defender's Office
Vanessa A. Spinazola, Legislative and Advocacy Director, American Civil
Liberties Union of Nevada
Keith A. Logan, Sheriff, Eureka County
Gerald Antinoro, Sheriff, Storey County; and President, Nevada Sheriffs'
and Chiefs' Association
Steve K. Walker, representing Douglas County
Dagny Stapleton, Deputy Director, Nevada Association of Counties
John Ridgeway, Private Citizen, Las Vegas, Nevada
Bonnie McDaniel, Private Citizen, Las Vegas, Nevada
Ramona Morrison, Private Citizen, Sparks, Nevada
George A. Ross, representing Nevada Bankers Association
Steve Hawks, Private Citizen, Las Vegas, Nevada

Chairman Hansen:

[Roll was called and protocol was explained.] We are going to take things out of order because of some confusion this morning about what bills were being heard. For all of the more professional lobbyists, we had a cancellation of a subcommittee and somehow it got reported that the whole Committee was being cancelled, so it threw a little glitch into the plans this morning.

We will start with Assembly Bill 287, and Assemblyman Flores is here to present that for us today.

Assembly Bill 287: Prohibits a person from making or causing to be made a 311 nonemergency telephone call under certain circumstances. (BDR 15-922)

Assemblyman Edgar Flores, Assembly District No. 28:

I have some of the hardest working individuals in my district, and it is an honor and a privilege to represent them. I am here to present Assembly Bill 287 and, before I proceed, I want to make sure everyone has a copy of the mock-up ([Exhibit C](#)), as I am going to be working directly off of this mock-up and referring to it. I also put together a quick PowerPoint presentation with a few pages to serve as a guide as we move through the dialogue, and I want to make sure everyone also has a copy of it ([Exhibit D](#)) as well.

Just as a roadmap of how we are going to proceed with the dialogue, I will first give a quick synopsis of what *Nevada Revised Statutes* (NRS) 207.245 does, and then I will go into the issues and what is problematic about them. I will dive into the amendment and the mock-up and explain why this is good policy and why it is needed. At the conclusion of my presentation, I am also going to ask the Las Vegas Metropolitan Police Department (LVMPD) to join me at the table, and they will give you specific examples and data as to why this law is needed, and then we will take questions.

Nevada Revised Statutes 207.245 currently makes it unlawful for someone to knowingly or willfully cause a call to be made to a telephonic access system when no actual perceived emergency exists. When someone dials 9-1-1 and they know there is no emergency and, for lack of a better word, they are doing a prank call, and then they hang up, it is currently a gross misdemeanor under NRS. That is all that it means. However, there is a loophole, so I am going to go into why an amendment is needed and why this bill is being presented.

I am going to paint a hypothetical situation and use this hypothetical throughout the presentation, which will illustrate the importance of this bill. Individual A uses a nonemergency telephone system. In Las Vegas, we have something called 3-1-1, which is why I used 3-1-1 in my original bill because I assumed it was a statewide nonemergency telephone system that we had, and it is not. It is just something that we have in Clark County, which is why this mock-up is so imperative. Person A will dial 3-1-1, knowing that they are using a nonemergency number. Person A will then claim there is a hostage situation where they are going to start killing individuals every X number of minutes.

They will tell the dispatcher that they will shoot at anyone who comes through the door. They hang up. That triggers a 9-1-1 call. The 3-1-1 dispatcher will call the emergency number, and the emergency number will then dispatch SWAT emergency responders. They will go to that address, kick the door open with guns drawn, and then find out that it is a prank. In that scenario, because they used a nonemergency number to declare a false emergency, they are not on the hook for a gross misdemeanor. The way the NRS is currently written, it only punishes the misuse of an emergency number, which is 9-1-1. It is specifically defined in statute as 9-1-1. That is an emergency number. When you use a nonemergency number, you are off the hook. That is one of the things we are trying to fix to make it clear across the board.

I would like to direct your attention to lines 6 through 9 of the proposed amendment. All that language does is clean up the loophole to where if you use a nonemergency number and declare a false emergency—knowing that you are lying, and then hang up, and it triggers a 9-1-1 call—it is also going to be treated as a gross misdemeanor. It just makes it transparent across the board and allows LVMPD and our law enforcement to do their job. As you see in the mock-up, I originally used 3-1-1. We crossed that out because we want to make it any nonemergency number being used to trigger a 9-1-1 call, which will trigger a gross misdemeanor when these specific elements apply.

The second portion of the bill brings something new to the table that was not originally in NRS. Lines 10 through 18 on page 1 of the mock-up do the following: under the same scenario, someone calls misusing the telephone system, 9-1-1 or 3-1-1 nonemergency number—it does not matter—they know they are lying, and they knew or reasonably should have known that it could result in death or serious bodily injury of another. If, in fact, it actually results in death or serious bodily injury of another, then it turns into a category E felony. Let me go back to my hypothetical to show how this would play out.

Person A calls 3-1-1, declares that there is a hostage situation knowing that there is not, says they will start shooting anyone who comes through the door, and hangs up. That triggers a 9-1-1 call. They then issue a code red. Code red is in essence a call to anyone who is available to report to the scene. Let us assume that it is SWAT; they show up to the address, kick the door down, and they have guns drawn because they are expecting that the person who is on the other side of that door is going to be shooting back at them. My fear is that someone at some point is going to get shot. Now LVMPD will go further into specific scenarios where there have almost been shootouts as a consequence of these types of pranks. Let us say someone gets shot. They do not die, but they get shot. The question is, do we want to treat someone who repeatedly calls 9-1-1 and hangs up as a prank? Do we want to treat that individual

equally as an individual who triggers SWAT showing up and shooting someone? It is my opinion that we do not. In this scenario, where these specific factors occur, it should be treated as a category E felony.

Page 2, lines 1 through 4, we talk about what a category E felony is. It is up to four years in prison, up to a \$5,000 penalty, and mandatory probation. That was important because I know we already have an issue with overcrowding in our prisons. We are not going to put another individual into a jail cell. We are going to put him on mandatory probation, and he will go to jail if he violates his probation.

I also want to elucidate a little on the restitution. When the category E felony triggers, when someone is killed or has serious bodily injuries, I want there to be restitution for our emergency responders. We all know that resources are very limited, and these individuals who are acting out of spite or playing these pranks are wasting those resources. I think they should be on the hook to give that money back, so I have also included that language.

I want to talk about what the intent is not. The intent is to go after individuals who act out of spite, so that is an ex-husband or ex-boyfriend making a phone call, trying to get their ex-boyfriend, ex-girlfriend, or someone who they are angry with in trouble, or someone who is a cybercriminal who hacks into other people's systems. Las Vegas Metropolitan Police Department is going to testify to this and different scenarios of how this can play out. They steal people's identity and a sophisticated individual or cybercriminal will know how to hack into Assemblyman Jones's Internet protocol (IP) address, make phone calls, and pretend it is Assemblyman Jones doing that, which triggers SWAT or emergency responders to go to his house only to find out that it is a prank or a lie.

Some of you may be questioning whether or not there is actual data to support why this bill is needed. In anticipating your question, I am going to bring it up now. In Las Vegas alone, there were 30 reported cases of "swatting," and I believe 24 out of those 30 cases of swatting were done through a nonemergency number. The scenario I have been using happened 30 times and out of those 30 times, 24 of them used a nonemergency number so they would not be on the hook to get into trouble. Beyond that, there were almost 280 reported cases of misuse of the emergency telephone system reported in Las Vegas alone. It is happening, it is being misused, and it is a problem. With that said, you will notice that I included the language "is not incompetent" on line 14 of page 1 of the mock-up. We are going to change it to fulfill our goal.

The intent is not to punish individuals who are mentally ill, individuals who pick up the phone and see aliens, et cetera. We are not trying to go after these individuals. We are trying to specifically go after cybercriminals and individuals who act out of spite. We are not trying to go after mentally ill people. Where it says "is not incompetent" on line 14, we are probably going to change that to "is not mentally ill." That is how we are going to safeguard and create the carve-out for those specific individuals.

Page 2, lines 17 through 24—I am also not trying to punish someone indefinitely when it is the first violation. When the category E felony language triggers, and it is the first time that this individual has ever been in trouble—first felony—and they follow the probationary rules put into place after three years, they are going to be eligible to have their records sealed. Typically, for a category E felony, it is a seven-year period before you can have your records sealed, and you have to ask for it. It is discretionary. The judge may say, "No, I am not going to seal your records." I am saying, "It is the first time you have ever committed a crime and it was a very stupid prank. You followed probation for however long the judge implemented it, and you have been good by it. Therefore, after three years, we are going to let you have your records sealed." You still have to apply, but it is no longer discretionary. The judge will award it through statute.

Let me explain why sealing the records is important. When your records are sealed, you are now entitled, as an individual who has had your records sealed, to indicate on a job application that you do not have a prior conviction. That is why it is so important. Again, we do not want someone who commits this crime at the age of 18 to not be able to find a job for the rest of his or her life. That is the intent behind that provision. That is only if you have never had a felony charge before and you follow probationary rules.

Let me explain why this is good public policy, and then I will ask law enforcement to join me up here. This is a growing trend. States all across the nation are adopting very similar language. Most recently, California had very similar language adopted to address something called swatting. This is not the only thing that we are addressing, but it is a big concern. It is a national growing trend where people from the video game community know how to steal people's IP addresses as a joke, because everyone is on camera while they are playing, so if we were all playing this video game, we can all see each other. I would steal Assemblyman Jones's IP address, pull the prank on you, make the hostage prank call, and then everyone can see SWAT through the camera as they break into your home. That is why this is a national trend. A lot of states are adopting similar language to address it. Our language goes a little further in that it broadens it up to also get individuals who are acting out of spite.

Assemblywoman Fiore:

The 30 incidences that you referred to—is that in a 6-month period, a 12-month period, or a 20-year period? What period of time is it?

Assemblyman Flores:

That was 2014 data.

Assemblyman Nelson:

I have a couple of questions about the language. In section 1, subsection (b), I understand why you changed it from 3-1-1, but I wonder if it is too broad because now you are saying a nonemergency telephone call. That could be me calling my best friend. Maybe you should add "maintained by a governmental agency" or something after it.

Assemblyman Flores:

I appreciate your bringing up that point because I should have clarified it from the beginning. This reflects the intent of what the actual Legislative Counsel Bureau (LCB) amendment is going to look like. This was not put forth by LCB staff; we just wanted to reflect the intent. I included a box to the right that says, "The amendment recognizes that not all counties have a 3-1-1 number for nonemergency calls and provide other nonemergency numbers instead." It is the intent for this to be anytime you call a state agency nonemergency number—which would be calling the Office of the Attorney General for example—that is the intent. It will not be me calling my uncle. That would be considered a nonemergency number as it is written now, but that is not the intent. The intent will be only state agencies.

Chairman Hansen:

Are there any further questions? [There were none.]

**Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

Swatting has become a very serious problem across the country and in Nevada. We had 30 cases in 2014, and we did not track swatting by itself. We had to go back through all of our misused 9-1-1 calls and have someone go through and pick out the ones that were actually a swatting case that rose to the higher level where someone said there was a hostage situation or someone has been killed or someone has a bomb strapped to them at this location. I will not read all 30 of them ([Exhibit E](#)) but I will give you a couple of examples.

There was one that occurred in April 2014 where an individual called in and said he was deaf and mute and that he had just shot his wife and his two children, that he had his brother hostage with duct tape, and he would kill him if the

police responded. At least seven patrol units responded to that call and streets were shut down in the area. Contact was eventually made with the owner of the residence where the call was made, and it was an unfounded call. That is one example. These cases tie up a tremendous amount of resources. Initially, multiple patrol units will be sent. First, we try to make contact with the residents, and in some cases the people are home and we can make contact, but obviously the officers are approaching very cautiously. Usually a perimeter will be set up if we believe that there is some type of hostage situation going on or someone inside is armed and has just killed someone and, as Assemblyman Flores said, they said on a phone call that they are going to shoot law enforcement when they come through the door. We may evacuate residents around this particular residence. We may block off streets, and if you live in the area and you are coming home from the grocery store, you cannot get to your house because law enforcement has the street blocked off. It does tie up a lot of resources, and if we do not make contact right away with the homeowner to determine that the call is unfounded, it may result in a SWAT team being called, it may result in negotiators being contacted, and traffic units being called out to set up a perimeter. Then there is the aftermath.

The aftermath is the follow-up investigation where we have to get administrative subpoenas to try to track phone numbers back to who made the call, track back IP addresses if these were done via the Internet, or via the type of web games that are being played out there. There is a lot of follow-up investigation that is done in these cases, and it is very resource intensive. The bad part of it is if you are a citizen who has a real emergency going on and you call the police for help. On any given shift, we have nine officers working an area command and all of those nine officers are tied up on a situation like this which turns out to be false, there is no one available to respond to your house to the real emergency. It is a very significant issue.

In addition, this is not just a harmless prank. This rises to a higher level. These are folks who are usually trying to get revenge on someone or trying to make someone look bad, such as the case where the people are watching on the video game and they want all of their friends to see SWAT break down this person's door. It is not just the harmless call where someone calls in and says, Do you have Prince Albert in a can; let him out. It is not that; it rises to a much higher level. There is the potential that someone can be hurt or seriously injured. Property damage can occur. We have been lucky in Las Vegas. We have not had someone seriously injured or killed because of this, but my belief is that it is only a matter of time if this continues at the rate it is occurring.

This can happen to anyone, not just video game players. In fact, if you Google "swatting," it has become so popular across the country that Wikipedia has a definition of it and their definition states that it is using 9-1-1 or some other emergency system to trick emergency services to respond to a false report of a critical incident, and they go on to say that "swatting can cause massive disruption to the civil order and the public peace." There are also cases where this has occurred to celebrities. Justin Bieber was a victim of swatting and Lil Wayne was a victim of swatting, if you have paid attention to some of the news. It is a very serious problem. We support the bill 100 percent and hope you will support it too.

Assemblywoman Fiore:

You gave us one example out of the 30 calls. As we create laws and create a new class of criminals every time we are in the Legislature, I get a little nervous. Across the nation, we incarcerate more—and this is from our Research Division—than Russia and China combined, and that is only with state prisons. If I was looking at the world and all the countries and said, where do I want to live? In America you are going to have a really good chance of getting arrested. In Clark County, we have quite overzealous officers and prosecutors. You cannot argue in a romantic relationship without one of them going to jail. I look at the swatting and look at this bill, and you have given me one example out of the 30 calls. How many times has SWAT been deployed on those 30 calls?

Chuck Callaway:

I would have to go through and pull each call to see particularly which resources went to each call. I did not break that down in my data, but we did take quite a bit of time to go through all of those 9-1-1 calls and pull the ones that were a swatting-related event. I think it is important to note that this rises to a higher level than a simple prank 9-1-1 call. This is putting people's lives in danger and tying up emergency resources. In this bill, a category E felony is a probationary felony. Someone could get probation for this. It is a limited number of cases. In the scheme of things, in LVMPD we receive around three million 9-1-1 calls per year, so 30 instances in a year's time out of that many calls is a problem that is occurring and we are seeing a trend, but I do not believe that we are going to see our jails and prisons filled with swatting people.

Assemblywoman Fiore:

You have basically given me one incident, and I do not think that creating law for one incident is a good practice of creating a new set of criminals.

Assemblyman Gardner:

I have noticed some other states that have these kinds of swatting laws allowed for the state to recoup all of the costs of the response. I was thinking that might be an idea. You also mentioned that it is different than common pranking. What if my kid accidentally calls the number? I do not think it would fit in, but the intent is not to hit little kids—this is for someone who is actually doing it maliciously?

Assemblyman Flores:

It is our intent to have restitution for the emergency responders, so we do have that language in there now. It is our intent that if SWAT is dispatched to a location, that that individual—the person who is convicted of this crime—has to pay them back for the resources they utilized. That is the intent.

I really appreciate your bringing up a minor because typically when a minor commits a crime, they will go through the juvenile system. It is up to the prosecutor to try to convict someone as an adult but, realistically, whether a prosecutor would try to convict a 7-, 8-, 10-, 12-, 15-, or 16-year old, I do not see it happening. It would be difficult to establish that intent. This bill requires that they know they are lying, and that they know or reasonably should know that someone is going to get severely hurt or killed. For a child to possess that intent would be difficult to prove.

Assemblyman Ohrenschall:

Is LVMPD getting more of the crank calls or swatting to the 3-1-1 number versus 9-1-1 in recent years? The other jurisdictions that have passed laws like this—do you know if they have had good results, fewer prank calls or swatting?

Chuck Callaway:

We have seen a trend. As Assemblyman Flores stated, 24 of the 30 calls that we received came in on the nonemergency number 3-1-1. Again, we have 30 cases—I can sit and read all 30 of these. There was not just one case where someone called in and said they had a hostage or they were going to kill someone or they had been stabbed. I do not know if this has been submitted to the Nevada Electronic Legislative Information System (NELIS) or not, but if not, I will submit it and encourage you to read it. It is not just one case. It is an ongoing trend of cases.

As far as what other states have implemented, I believe there are some states that have made this a felony. I think it is too early to see if it has decreased or deterred people from making these types of calls. In my mind, I think if you were facing a potential felony, you would be less likely to make a prank call of this nature than if you were facing a gross misdemeanor.

Assemblyman Ohrenschall:

Do you think there would be any issue with the citizen who makes a bona fide call in good faith but they are wrong, and then police respond and, heaven forbid, a tragedy happens. How do you see that working out? For example, a homeowner wakes up at three in the morning, hears a noise outside, sees a bunch of people having a party out in the street, calls 3-1-1, does not think there is anything life threatening, but thinks there is something going on that should not be, and maybe he was mistaken. Maybe they were guests of a neighbor, police respond, and a tragedy happens. Do you think this law might be applied to that homeowner, or do you think the law is crafted carefully enough so that we are not going to inadvertently catch the good faith caller?

Chuck Callaway:

This bill specifically speaks to the person who has intent. The person has to be acting basically maliciously, knowing that their actions could potentially cause harm or serious bodily injury to someone. It would not be the case where they, in their heart, believed that a crime was occurring. They hear noises next door and think that a hostage situation is occurring. Obviously, there is no intent, and they believe in good faith that they are calling the police to help the people next door. This bill would not apply to that. We would not be going after someone who is doing something out of good faith. It is the person who is maliciously doing it.

Assemblyman Ohrenschall:

That gives me a lot more comfort.

Assemblywoman Diaz:

What are the ages of these individuals who are committing the swatting crimes?

Chuck Callaway:

I do not have the ages of the suspects in these cases. I know that we have a total breakdown of the numbers of arrests we made for all of our misuse of 9-1-1. Understand that the 24 calls that we had that were to 3-1-1, under the current law we could not make an arrest or do anything with them. In some of those cases, we did not even identify a suspect. My guess would be—and I certainly do not want to guess to the Committee—but I think it runs the gamut. I think there are juveniles involved in this, obviously, but I think there are some older individuals as well. I could look back and try to get age numbers on the numbers of arrests we had, but that would be for total misuse of 9-1-1, not just these particular swatting cases.

Assemblywoman Diaz:

I am just reading about a 15-year-old who got 25 years to life in federal prison over a swatting incident. I do not want to see our youth get caught up in a wrong way because I remember when I was young, I did things that were not so wise.

Chairman Hansen:

Would you elaborate on that?

Assemblywoman Diaz:

I actually did a prank call into an emergency number when I was younger, but I did not know that it was—what are we doing to educate our youth? I can tell you that I do not think we talk enough about how we are not supposed to do this, especially in the time and the age that we are living with the video gaming boom. What are we going to do on the front end to educate our youth to make sure that they are not doing these types of things?

Chuck Callaway:

I am not sure where it was that the person got the 25 years to life for the felony. Under this bill, many of these cases are plea-bargained down, so if the person was charged with a category E felony—which is a probationary offense—the courts have the discretion, and the prosecution and the public defender or whomever the person's attorney is have the ability to work a plea bargain on these cases, especially if it is a first-time offense. If it is a juvenile and he has no criminal history, his intent was not necessarily to get a SWAT team out there and it did not follow the criteria of what is outlined in this bill.

I think that more can be done to educate our youth. As of right now, I am not aware of any program to talk to school children about the dangers of swatting. As an agency, that is certainly something that we could look into and try to work on from that side of it. As with a lot of criminal activity that occurs out there, whether it is stolen vehicles or a variety of things, it is always good to have a two-pronged approach—a community approach and an enforcement approach—and try to educate. We could certainly look at trying to come up with a program to do that. As of right now, I do not believe we have one that specifically deals with swatting.

Assemblyman Wheeler:

Do we have any idea on a per-agency basis on what a full-force SWAT response actually costs the agency?

Chuck Callaway:

I think it would vary. I do not have a breakdown on it because our budget for SWAT is—it would be hard to break down exactly what the cost would be for one specific response because they are a line item in our overall budget, so if they responded to one incident or they responded to different incidents, potentially the cost for the agency would be the same. Hypothetically, if we responded to a swatting case that took six hours to resolve and it turned out to be unfounded, our finance folks could probably come up with a figure of what the particular cost of that call-out was based on how many officers were deployed, what the tenure of the officers were, and if it went into overtime or not. There are a lot of factors that would determine the overall cost. I cannot tell you today specifically what an average cost would be.

Assemblyman O'Neill:

Excluding SWAT, when these officers respond to these calls, are they going Code 3, lights and sirens?

Chuck Callaway:

Yes. If an officer has a belief that a felony crime is in progress and someone's life is in danger, they are going to roll Code 3. That can potentially create a hazard on our roadways as well, so we have a lot of accidents that occur as a result of Code 3 driving.

Assemblyman O'Neill:

I think one of the leading causes of death for law enforcement today is actually traffic accidents, particularly going Code 3. We just had one a few years ago in Sparks where a Nevada Highway Patrol trooper was killed going through a red light to a prank bomb call. I would like to say I strongly support this; I think it is a serious issue, and thank you for bringing it forward.

Assemblywoman Fiore:

Out of the 30 calls, 24 of them were 3-1-1 and 6 of them were 9-1-1, and we have a deployment of the Clark County taxpayer dollars on 1 and we are hearing this bill. Am I correct on your numbers?

Chuck Callaway:

Yes, we had 30 swatting calls last year, 6 of them came into 9-1-1 and 24 of them came into 3-1-1 but then were transferred to 9-1-1 when the 3-1-1 operator received the call and the person said, "I just shot my roommate" or whatever the call was. Those calls were then transferred to 9-1-1 but the call came in on 3-1-1.

Assemblywoman Fiore:

Just to follow that through on this bill, when it says that your first offense you will be on probation, understand my experience in giving people second chances and going to the probation officers and walking them through this. If their probation period says they have to be home at 7 p.m. and they ran to the store and got milk, they could be arrested for that, and then the cycle starts. As we sit up here, we have not walked through what people do through probation, through city jails, through county jails, waiting there, to go in front of the judge, the ripple effect that it has on their family, jobs, bills, and houses. It is really something where we are creating a new class of criminals. We have to be very diligent. I am not talking for the other counties, but Clark County is the largest county here, and we have overpopulated city and county jails. We have zealous arrests—we have our sheriff on the record Friday threatening to arrest elected officials. We need to be really cautious when we create criminals here.

Assemblyman Flores:

In those 30 swatting calls, resources and money were utilized in all 30 of them. Mr. Callaway specifically went through one example when resources were utilized, but in all 30 of these cases, our resources and taxpayer money were used unnecessarily. Honestly, going through this bill when I was originally trying to come to consensus on the middle ground, I wrestled with questions such as, "Is probation too much? Is a category E felony too much when someone dies or is severely hurt?" Again, I came to that balancing scale where I ultimately said, yes. I think probation for the life of someone, or probation for someone getting shot and ruining that person's life for the rest of their lives, I think makes sense to me.

Assemblywoman Fiore:

You do realize, Assemblyman Flores, that we have laws on the books. If you shoot someone, you will be going to jail—it is called murder.

Assemblyman Flores:

I think you misunderstood my comment. When a police officer shoots someone as a consequence of a prank, it is my opinion that the person who made the prank call should get more than a gross misdemeanor.

Assemblywoman Fiore:

But that is not the case here. Our police officers have not shot anyone in regards to a prank.

Chairman Hansen:

Let me run interference. I know where you are going. This is a hypothetical. There are currently no cases where a police officer has actually shot someone in one of these pranks, but if that occurs, you feel they should have a felony conviction possibly. Is that correct?

Assemblyman Flores:

By the way, that is the only scenario where a felony conviction is going to happen. Assemblywoman Fiore, your concern of having people walking around with a felony conviction is not going to happen if everything stays the same as it is now. The category E felony only triggers if someone is shot or has severe bodily injury. Otherwise, it continues to be a gross misdemeanor. That is the only way this triggers.

Assemblywoman Fiore:

I just have to caution you not to try to create new criminals and laws. As we are elected officials, we have to really look at our citizens and stop jailing them. I am only speaking for Clark County, as we are quite overzealous with our arrests.

Assemblyman Thompson:

Let us say that someone is accused of swatting and there is bodily injury or death. Walk us through what that would look like as far as trying to investigate. You have a provision if the person is competent or not, so you are talking about mental health issues, and so on. Would you walk us through it for clarification?

Chuck Callaway:

From start to finish, we have already discussed the deployment of the resources and the people who would go out to actually contain the scene and determine if this is a real hostage situation or if it is a swatting case. Once the situation has been safely resolved, we are going to try to identify who the suspect is. We are going to interview the victims. "Do you know who might have made this call?" If the person was playing a video game at the time, there might be the ability to find out who they were online with. If it is potentially an ex-spouse or a neighbor who they upset, or it could run the gamut of who the suspect is, our detectives would investigate it and determine who the suspect is. We would also try to get cell phone data or phone data or where the call came from, and trace that back to who actually made the call. Once we determined who the suspect was, the detectives would put together a case based on the totality of the circumstances, and submit that case to the district attorney's office to determine if prosecution would take place. It would be the court process that would determine, once that suspect was identified and arrested for the crime,

if the person has a history of mental illness, if he is competent or not competent, if he knew that his actions were likely to cause harm or death to someone, and then it would basically run its course through the court system. I do not know if that fully answers your question. Each case could be slightly different on the type of hours put into the investigation or what would be needed. In some cases, we might need search warrants or administrative subpoenas to get records from cell phone data or from phone information. In other cases, it may be more simple. In some cases, the person may confess and say he did it and other cases he may not. It could run different courses, but ultimately the case would be turned over to the district attorney's office for prosecution, and they would determine if we had enough to prosecute.

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

I am here obviously in support of A.B. 287 and thanking Assemblyman Flores for law enforcement and overall public safety. I want to point out that for Washoe County Sheriff's Office, the number you would call nonemergency is 785-WCSO and for the Reno Police is 334-COPS. Those are the types of phone numbers he is trying to cover in the language of his bill because we do not use 3-1-1 for that purpose in Washoe County. I am not sure what number Sparks or any of the outlying rural agencies may have.

The people that do this know that 9-1-1 can instantly be tracked by us, so we can start narrowing down where a call is coming from. On the nonemergency numbers, sometimes it is recorded, other times it might not be, especially if they were to call our front desk. We are going to stay on the line with the caller, gather information, try to relay that information to our dispatch and get resources to these high profile calls. It is problematic for us when they are not on an emergency line and the callers that are intentionally doing this—and the language of the bill covers that—they are intentionally trying to spool up our resources and create this panic, knowing that it is less likely that they are going to get caught.

As far as Washoe County and the Reno Police, I know it is not your concern about our system's database, but for the past several years we have been upgrading our system so we can start capturing this information. It is a little antiquated—we are a couple of months shy of pulling the trigger on going live with it. For the past several years, we have not been able to enter a new call disposition. That means that when a call comes in, we categorize it as a domestic violence call or an accident. We put in disposition codes. There were a dozen of these calls that we were able to pull from 2011 regarding some of the swatting calls that we had to hand pull. There is no disposition on them.

They come in as a "trouble unknown." We do not have a disposition that we can pull data from for swatting. With our database, we were not able to create a new disposition code. We will be able to do it with the new one in a couple of weeks, and the next session we will be able to provide you with two years' worth of data for swatting incidents. We cannot do that currently.

Of the dozen that we do have, the trouble unknown calls—they have come in on 9-1-1 lines, they have come in on telecommunications relay services, nonemergency lines, AT&T relay systems, and pay phones. Some calls were disconnected and some were cell phones. These are very real: "I am in the trunk of a car, all I can see is a 76 station and a Motel 6 through the crack in the trunk of a car." The cops on the street start trying to put this together and say "Where the 76 and the Motel 6 are, that is Wells Avenue and I-80 in Reno, let us start in the direction," so they start deploying resources to that location. SWAT has not been called yet; they are just starting to spool this thing up. Then the caller will say something like "We just took a right turn, I feel like we went right, and I think we are on a freeway." So now we are getting Nevada Highway Patrol involved and maybe shutting down the freeway and looking for anything suspicious—we really have nothing, but we are trying to save a life. It can be a very panicked call, they are very real to us, the information they give is very real to us, so we put a lot of resources out, such as helicopters and detectives. Everyone is trying to clear the bleachers to respond to these things, and maybe SWAT has not even been called out yet. We are very cognizant these days that these calls that come in on the nonemergency lines might be swatting incidents. What does that do to the person hiding under the bed who is calling a nonemergency number for a legitimate emergency? We might pretend it is a swatting incident and not actually send out our resources. It really creates a conflict in law enforcement response that is a disservice to the people who we serve.

I have several other things I want to address. As far as education currently, if we go to a group of kids at a high school and say, "Do not do swatting because it is not the right thing to do because you can get in trouble, and we do not know what that trouble is yet because there is really nothing that applies to it." I do not mean to sound flippant, but the current statute that we are trying to change does not apply. They called a nonemergency line; they have not called an emergency line per the statute. We just wanted to create at least a penalty that we can educate on. This can be a category E felony. If bad things happen and someone gets hurt or killed, you could have a felony. There has to be a penalty for us to provide a real education.

I will try to see what it costs for a full-force SWAT response, but regardless of that, it is a huge response from just your average people out on patrol or working in the office to try to combat these things.

Chairman Hansen:

Welcome to Boy Scout Troop 495 from Gardnerville. We are talking about naughty kids who make prank calls, only sometimes they are serious naughty things. Do not make prank calls.

Assemblyman Gardner:

I was doing some research on the kid who got convicted for 25 years; it looks like it was just put up as a hoax and convinced a lot of the news journalists. It took me a while to find the article, but it was actually a fake news article.

Assemblywoman Diaz:

I am a strong believer that it is better to educate our youth than incarcerate them, so anything we can do to let them know what is not right when they are younger is good. I am not necessarily saying to hit them when they are a high schooler, because I know that might not be realistic, but why not start when they are at elementary or middle school ages and try to circumvent them being in the situation, getting caught up, being in our judicial system, and then being labeled? I just want to say that I do think there is some value in educating our youth, especially if we start early.

Eric Spratley:

I agree with that wholeheartedly. I want to let you know that as the legislative liaison for the Washoe County Sheriff's Office, I am going to contact our training section when I get the opportunity and add this as part of the training component we provide to all of the elementary schools and junior high schools in our jurisdiction. My point is that we would like to have a penalty when we do that training, but I see your point. Even if this does not move, we will do the best we can and use the laws that might cover it as part of the penalty in that curriculum.

Of the cases that I am aware of or have been the incident commander on, none of them were juveniles. The most recent one was at Spanish Springs. We ended up with a lot of resources at a woman's house. The only correlation was that she had a fraudulent Internal Revenue Service call come into her house. She said she had heard about the scam through local law enforcement, told him he was a scammer, and she hung up on the guy. Fifteen minutes later we are getting a call at the sheriff's office that this woman had killed one of her kids and was in the process of killing another. The information was coming from the grandmother who was being held in a back bedroom of the house.

So we were sending a lot of resources to this particular address. We were set up low-key, everyone is hiding in the bushes, the helicopter is overhead, and the woman comes out to check her mail. We dive across the yard, grab her, pull her off to a car, and start questioning her. She had no clue why we were there, and it was completely unfounded and we had to deal with this situation that came in from an adult caller that she believes might have been the scammer who got angry at her. The scammer had a lot of information about her, knew where she lived, talked about tax documents that were not filed correctly, and tried to scam her for money. When she called him out on it, we believe that was the connection, and that person called in the swatting call, maybe even from another country. It is real, it is happening in our jurisdictions, and we appreciate your support on this.

Assemblywoman Fiore:

Let us say hypothetically this law went into effect. Do you think this law would deter someone from swatting who does not know the law?

Eric Spratley:

I do not know if it would, but I know for something that might be a misdemeanor that actually is not a gross misdemeanor under the current statute, maybe there might be another law that might cover it as a misdemeanor. We look into and do a lot of research on who the caller was and try to track that down. If no harm, no foul, all we did was run lights and sirens, put up a helicopter, spent a lot of money, and hit some dead-ends, we cut our losses and move on to the next big thing. If there is the potential for us to have an actual penalty where someone could be held accountable for this, we would do a lot more research and investigation and could justify it because the law would have the teeth that it needs to be able to prosecute the person accordingly.

Chairman Hansen:

Are there any other questions? [There were none.] Is there anyone who would like to testify in favor of A.B. 287?

John T. Jones, Jr., representing Nevada District Attorneys Association:

We are here this morning in support of A.B. 287. I would like to thank Assemblyman Flores for bringing this bill forward. As you have heard from the testimony, it does fill a gap in the law between 9-1-1 and 3-1-1. I have had an opportunity this morning to review some of the potential amendments, and I have some concerns with them. The first is on page 1, line 14, where it currently reads "is not incompetent" and Assemblyman Flores asked to add "mentally ill" today. I cannot think of any other area in law where we exclude a class of people from criminal liability based on mental illness. That being said,

if you are mentally ill and it does directly correlate to the knowing or willful element of the crime, that could potentially be a defense. We currently have in statute the ability to defend against a crime if you are mentally ill by challenging the specific intent element.

With respect to competency, competency itself does not deal with a person's mental state at the time of the crime. It deals with their mental state after the crime and their ability to understand the nature of the proceedings against them and to assist counsel in those proceedings. I have some objections to adding any type of mental illness or incompetency language in this statute.

Finally, with respect to section 2, lines 17 through 24 on the second page, I understand what Assemblyman Flores is trying to do with allowing someone to seal after three years; however, I want to point out that for every other category E felony it is seven years. If you want to have a discussion about changing the time to seal on category E felonies, the Nevada District Attorneys Association is willing to have that discussion. To start putting different sealing times on different crimes, then we do have an objection to that. Right now, another category E would be a possession of controlled substance. For example, if someone possesses a small amount of cocaine, that would be a category E felony subject to a seven-year sealing process. However, if you make a 9-1-1 call knowing that someone is likely to be injured or that death results from that 9-1-1 call, you are eligible to seal after three years. In our opinion, this would create inconsistencies in the law.

Again, I would like to voice my support for A.B. 287; I just wanted to point out some of the concerns we have with the proposed amendment.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We support this bill and appreciate the changing of the language to remove the emergency call, just from 9-1-1, to a nonemergency number. Just for clarity, in the rurals, there is not an option of 3-1-1, so we appreciate this change.

Assemblyman Nelson:

You were talking about the sealing of the records, and it brought up a concern I had about making it mandatory on the judge to do that, whereas typically we allow the court discretion to seal records. Is that correct?

John Jones:

There is currently some discretion in the law; however, if someone meets all of the elements of the statute such as seven years have passed and they have no intervening convictions of those natures, the judge has generally sealed.

Chairman Hansen:

Are there any further questions? [There were none.] Is there anyone else who would like to testify in favor of A.B. 287? [There was no one.] Is there anyone who would like to testify against A.B. 287? [There was no one.] Is there anyone in the neutral position who would like to testify?

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

We are officially in the neutral position at this time, and we certainly appreciate all of the comments from the Committee concerning this issue. We also appreciate Assemblyman Flores and LVMPD being willing to work with us prior to today's hearing to vet and address a lot of our concerns.

I would like to put on the record first and foremost the concern about the category E felony. A category E felony is mandatory probation unless, pursuant to statute, the judge may have discretion whether or not the person was serving a time of probation; whether he violated that term of probation or had it revoked; whether or not he was in some sort of drug treatment program pursuant to NRS Chapter 453 and had that revoked; he was on parole and had that revoked; or had two previous felony convictions. There is a scenario that category E felonies are mandatory probation, but they can be discretionary if those four factors come into play, and the judge would have the discretion to put that person in prison or on probation if the defendant had one of those four factors that I just mentioned.

We appreciate the intent, or the spirit, of the bill and what is trying to be accomplished here, but we also want to be mindful of what this bill may capture and unintended consequences it may have. Our main concern is people with mental illnesses. Over my 12 years as a public defender, I have seen a lot of misuse of 9-1-1 calls. One that comes to mind is a young man, college age, who basically believed that every jet that was passing overhead was beaming images into his brain and heart. He was deemed incompetent for a period of time, treated for competency, and then subsequently prosecuted. I was able to get him into a mental health court program, but there was a very poignant moment in court when he was discussing these issues and he believed that this was happening, but was also struggling with the issue that he knew it was not right, but he still had thoughts and feelings whenever a jet passed by. It may happen. These are the individuals where, if we rise to the level of the felony, we have concerns not only for incarceration, but for housing issues, employment issues, and immigration issues. These are what we term collateral consequences when we enter into the felony realm.

I appreciate Assemblyman Flores being willing to at least have the discussion about mentally ill people. I agree with Mr. John Jones that incompetent is probably not the right term. We would like an affirmative defense if this bill is to be passed concerning that the person does not suffer from a mental illness or is not intellectually disabled. This is language that I had pulled from NRS 176A.260 and NRS 176A.265. We are certainly willing to work with all the stakeholders in this bill, including LVMPD and Assemblyman Flores, to style some language that will capture what the intent and spirit is of this bill.

I certainly understand that this bill is going after the ill-advised pranksters or the spiteful and jealous spouse that may want to hurt an ex-spouse. What we do not want to capture are the mentally ill or juvenile people who may just have an ill-advised prank on their mind. Other than that, I would be happy to answer any questions.

Steve Yeager, representing Clark County Public Defender's Office:

We are also officially neutral on the bill. I do not have much to add over what Mr. Sullivan said. Generally speaking, we have laws for two purposes: (1) deterrence, hopefully someone does not commit a crime and, (2) punishment. I think that whenever we are looking at crimes we have to ask, when it comes to deterrents, if people do not know that the law is on the books or they are not educated, we probably do not achieve deterrence. If that is the case, what is the policy decision? Do these people deserve to be punished and, if so, how do they deserve to be punished? I think that was pretty well fleshed out on the record, and obviously I would be willing to help in crafting this bill.

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:

With the amendments on NELIS that have been proposed this morning, we are neutral at this time. I agree with my colleagues, but would like to add a couple more unintended consequences.

In terms of immigrants, they are incredibly afraid to call 9-1-1 and even nonemergency numbers. There have been cases of immigrants being prosecuted and deported for calling 9-1-1. This is a community that traditionally underreports crime and makes all of us much more unsafe, so any deterrent to them without any sort of public education about what this means could further isolate that community and make it an unsafe community.

In cases of domestic violence, I just wanted to flag it. Sometimes the abuser threatens to kill himself if the victim calls the police. If you have a survivor who knows that the abuser is going to commit suicide and if the police come to

the house, he or she would fall under this bill. I leave that to judicial discretion to determine if that is okay. Our main concern is raising this to the category E felony. Again, we want to see those amendments in there.

I am curious if there is a cap for the cost. I am worried that prosecuting the cost is going to cost more than the cost if it is something like \$2,000 or \$3,000 in terms of getting the affidavits and bringing those people into court. I would like to see what that is, investigate it, and possibly look at a cap.

Chairman Hansen:

Are there any questions? [There were none.] Is there anyone else who would like to testify in the neutral position on A.B. 287? [There was no one.]

Assemblyman Flores:

I want to make it clear that I realize "incompetent" is a term defined under NRS 178.400. Typically what happens is when someone is charged, they have to be competent to stand trial. They will go to specialty court, a judge will then determine whether or not they are competent to stand trial, and if they are not, sometimes they will put them in a specific type of guarded safe living place, and then they try to come back to the specialty court until they are competent to stand trial. I realize that, and it was not my intent to misuse different terms of art. This is a mock-up, and we wanted to encapsulate something, and I misused that term. I apologize if I created any confusion with it.

Chairman Hansen:

I will close the hearing on A.B. 287 and open up the hearing on Assembly Bill 283, which revises provisions governing law enforcement powers on certain lands. We will have a two-minute recess because I will be presenting that bill, and Vice Chairman Nelson will be running the meeting.

[Assemblyman Nelson assumed the Chair.]

Assembly Bill 283: Revises provisions governing law enforcement powers on certain lands. (BDR 14-397)

Assemblyman Ira Hansen, Assembly District No. 32:

In recent years, federal law enforcement agencies, specifically the land management agencies, have on occasion overstepped their authority and have encroached on the rights of the citizens of Nevada. The federal government has

no authority to enforce state law on state lands without the permission of state and local law enforcement. Contrary to the claims of these federal agencies, we have received numerous complaints about federal officers enforcing state law. To clarify the state's position on this matter, Assembly Bill 283 specifically designates the sheriff of the county as the primary law enforcement officer of unincorporated areas and restricts federal law enforcement activities on state land unless consented to by a sheriff. In doing so, A.B. 283 will hopefully reign in some of the activities being carried out by certain federal law enforcement agencies.

With your approval, Vice Chairman Nelson, I will do a section-by-section review, or you can go right to the questions, but I would prefer to go through the sections, if I may.

Vice Chairman Nelson:

You can go through the sections.

Assemblyman Hansen:

Sections 3 through 7 of this bill define terms to establish the land and agencies to which the provisions of this bill apply. This bill specifically applies to the United States Bureau of Land Management (BLM), the United States Forest Service, the National Park Service, the United States Fish and Wildlife Service, the United States Bureau of Reclamation, the United States Environmental Protection Agency, and the United States Army Corps of Engineers. The bill specifically exempts the activities of the Federal Bureau of Investigation (FBI), United States Secret Service, Drug Enforcement Administration, United States Postal Inspection Services, and the Bureau of Indian Affairs.

If you take a look at section 8 of the bill, you will see we are not trying to limit the federal government's ability to enforce federal law on federal land. Section 9 authorizes a state or local law enforcement agency to assist a federal agency with the enforcement of federal law if there is an agreement between local law enforcement and the federal land management agency. Section 10 gives some leeway in the case of an emergency by allowing federal law enforcement agencies to conduct certain activities in emergency circumstances with the consent of the local law enforcement agency. Section 10 also limits the cooperative agreements described in this bill between a local law enforcement agency and a federal agency, which authorizes specific federal employees to enforce state or local laws to a term of not more than two years.

Finally, section 10 requires federal officers granted authority to enforce state or local laws to successfully complete a 40- to 57-hour course focusing on criminal law and procedure in Nevada approved by the Peace Officers' Standards and Training (POST) Commission. This will ensure that federal officers conduct themselves in accordance with the law enforcement standards and expectations of this state.

Section 11 prohibits a state or local governmental agency from allowing a federal agency to access or use correctional and communication facilities and equipment without the express written consent of the appropriate official of the state or local law enforcement agency. Section 12 gives a county sheriff oversight responsibilities by requiring them to review the duties and activities of federal agencies that have been granted the authority to enforce state and local laws. This will help determine whether the federal agencies are acting in accordance with this bill.

Section 13, as described earlier, designates the sheriff of a county as the primary law enforcement officer in unincorporated areas. In counties with a metropolitan police department, the sheriff is the primary law enforcement officer in the unincorporated areas of the county, and in any unincorporated city over which the sheriff has jurisdiction. That concludes my presentation, and I will be happy to answer any questions at this time.

Vice Chairman Nelson:

Are there any questions from the Committee?

Assemblyman Wheeler:

I see that you have some law enforcement with you. Maybe they will give us specific examples of overreach by the federal government, or did you want to do that?

Assemblyman Hansen:

I have some anecdotal evidence of it. I think the biggest one that everyone who has a computer should look up is the case of D'Andre Berghardt Jr., the 20-year-old black male who was shot and killed by two BLM officers. That is an extremely serious case, and it far exceeds any of the traffic citations that we are typically dealing with. That is probably the real litmus test as to what the correct procedure should be for federal officers enforcing different laws.

Last session, I met with the Bureau of Land Management law enforcement people about some of these issues, and they gave me a copy of the cover of the Nevada State Office, Department of the Interior, Bureau of Land Management field guide ([Exhibit F](#)). I gave you one sample of how they have incorporated

state law into their enforcement portfolio. I asked if they received approval through the state, and they said they did not need approval from the state. They have the ability to assimilate state law and to enforce those things. I said, "Really? You can start pulling people over and giving them citations on state law issues?" They said "Yes, we can actually incorporate those things." That is the genesis of my interest in this specific bill and to try to limit this.

The bigger issue is that we elect our sheriffs, district attorneys, justices of the peace, and the district court people. That provides checks and balances. There is an absence of that when it comes to these federal enforcement things. In fact, if you are in Eureka County or White Pine County and you get pulled over by a BLM officer, you would either have to go to Las Vegas or Reno if you chose to contest a citation. Something as simple as being able to go down and meet face to face with the people you helped elect, these reasonable checks and balances that exist in our laws are largely absent when it comes to these federal issues. You actually go before a federal administrative law court. You will not go to anyone you elected. There is no real recourse for any of the reasonable checks and balances that we take for granted in our current system. All of those things added together are the reasoning behind this bill.

Keith A. Logan, Sheriff, Eureka County:

I just followed a seven-term sheriff who was very strong and adamantly against the infringement and attempts by the federal government to take away some of the local rights. In 2000, we had four of our ranchers and citizens of our county confronted by a federal agent ranger from the BLM who blocked a county road and demanded to know if they were hunting and demanded to see a hunting license ([Exhibit G](#)). One of the four people who he had stopped was the actual road superintendent, so they were very well aware of what road they were on. They ended up driving around and avoiding that situation. The problem was addressed through Sheriff Ken Jones and was certainly never fixed as far as a problem. That ranger is no longer in our district and no longer in our area.

Most recently, I had the privilege of dealing with a horse gather that started where the decision from the BLM to process and gather the horses was decided on February 9, 2015. On February 13, they began the gather and they approximated to be done on the 20th or 21st of February. When they gave the decision on the 9th of February, there was an automatic 30-day appeals process for the permittee holders, the ranchers, or any other group who wanted to question the authority of what they were doing. They intended to be done in eight days. They intended to accomplish their task and do what they chose to

do in that period. The ranchers, permittee holders, and Eureka County filed a suit with the Interior Board of Land Appeals (IBLA), which was a court I had never heard of, but it was an administrative federal court. When the appeal was filed, it automatically gave a 45-day stay.

At the same time that that process started to take place and the BLM was notified of the appeal, the ranchers showed up to make sure that the horses were not turned out. They were gathering horses, they were going to ship some away, and they were going to sterilize some and return them to the range, which was above the number of horses that should be on the range. That is what the actual question was—how many horses were going to be put back out on the range. They were already housed, already being fed, watered, and taken care of. There was no reason to push them back out onto the range. Let a court of competent jurisdiction and authority give an opinion and we would be able to follow that.

There was a BLM ranger and a U.S. Forest Service ranger who were providing security for that operation, and who had met with me before. In their notice of their plan, the law enforcement plan is actually blank on that page of their operational plan. They were doing a good job. They called for a deputy to come out because the ranchers were there and opposed to what they were doing. We responded out there. The ranchers were not a problem; they were not being disrespectful or anything. They stayed approximately 60 yards away from the corrals like everybody else was directed to do for the safety of the corrals, the horses, the operators, et cetera. The BLM brought in eight separate rangers, all with tactical gear on and all standing around with the exception of one of them, taking a position of advantage on the high ground, at one time or another, to deal with just a few ranchers. I was there in regular uniform. The ranchers followed every direction I asked them to do. I communicated between the BLM, the horse advocates who were there, and the ranchers. The horse advocates have standing with the BLM. They take them everywhere. They protect them. The public affairs officer said, "I have to take care of my people." The ranchers separated themselves a little bit and they stood there and watched what was going on. The ranchers followed everything I asked them to do. They did not block a single road. They did not do anything to stop them. The BLM also made comments about, "Well, we do not believe...." They agreed what the rules were under Title 43 of the *Code of Federal Regulations* that the general rule was that the stay was proper, the 30-day delay was proper, all of that process was proper. But they also said, "We have another rule that says we do not have to follow the rules. We will do what we want to do."

Doug Furtado, the Battle Mountain BLM District Manager, which is the jurisdiction this area would fall under, indicated to me that delaying their operation was a horrible precedent to set and one that he was not willing to do. I asked several times, "Why not? It is the right thing to do. If you turn those horses back out, you cannot unring that bell, because I am not going to do it." He said, "But you have the permission to go over my head," which was exactly what was already being done anyway. I did not need permission to go over his head. The problem was that all of these rangers could be there today and be gone tomorrow. Eureka County—and I will only speak for Eureka County—has a little over 2.6 million acres—4,200 square miles—and we have zero rangers. We do not need any rangers in our area. Now the district itself in that region has five rangers. Sometimes I receive emails about what they are going to do, which, in this particular instance, the supervisor sent an email to tell me, "Just a heads up—we will be down in your area to do the horse gather." The district manager did invite me to be in the planning meeting, so I was well aware. Of course, in their operational plan, they still have Sheriff Jones as the sheriff of our county.

We started meeting with the sheriffs from Churchill County to Lincoln County and across the eastern corner of the state. Sheriff Jim Pitts [of Elko County] asked me to share his feelings and he agrees with my testimony. This has become a problem. There are the traffic tickets: White Pine County has the Forest Service that writes tickets; Elko County is also suffering from that point. Demar Dahl, Chairman of the Elko County Commissioners and J.J. Goicoechea, Chairman of the Eureka County Board of Commissioners, have expressed that you should have the fairness and fundamental right of due process by having the ability to deal with your issue—whatever it is—in your jurisdiction, your local court, where you have the right to talk to the people you have elected.

The other thing that was a problem during the whole horse gathering incident, which went on for about four days before Washington, D.C. decided they were to ship the horses to Palomino Valley to be held until the IBLA could take care of it. Now every one of these rangers showed up with the external vests on, the extra magazines, the knives, the holsters, the Tasers, one dog—which I will clearly state that when the ranger showed up and pulled his dog out, it was to show the dog to one of my officers since they were longtime friends from Las Vegas. The ranchers did not take it that way. They took it as a show of force with this dog. The same thing that was seen in Bunkerville. If you cannot communicate, all the equipment you have does not matter. You still have to look at someone in the eye and ask them and hear what they have to say. You do not have to agree with it. You still have the lawful authority to do what you need to do, but you need to hear the citizens, and that is what is not happening with the expansion of the federal government's mission creep.

Assemblyman Hansen has shown you the BLM law enforcement guide. It has 16 separate categories, and of those 16 separate categories, not one of them has to do with traffic enforcement. It has to do with the jobs that they are supposed to do—looking at the land, managing the land; they are interested in protecting that resource, whereas I am interested in serving all the citizens and visitors to Eureka County, as are all of the 17 sheriffs. Every piece of land that is governed by the BLM is located within one of the 17 counties of our wonderful state. Let us do our jobs. That is all we are asking to do. Our job and mission is to serve the people, and we are very proud to do that job on a daily basis, and not just serve the parts that are convenient to us. We serve our entire counties.

We have no idea how many tickets there are. For a registration ticket with a \$250 fine plus other fees ([Exhibit H](#)), by the time you go from Elko to Reno twice, once to set the hearing and the second to have the hearing, you have spent far more than you would spend on the ticket alone. Lander County Sheriff Ron Unger's son and a friend received a ticket at a campground for having an unregistered vehicle. That is not BLM's responsibility. It is if people have paid their fees and are they using the land appropriately. That is what we should be concerned with.

Assemblyman Jones:

I really like the idea of restricting the federal government's jurisdiction; however, would it not be akin to telling the local sheriff that you cannot go into a homeowners' association (HOA) community because the HOA community wants to monitor its own streets? We can say this, but can we make the federal government do what we want them to do? Do we have any precedent on it?

Keith Logan:

In the letter that you saw ([Exhibit I](#)), it has been clearly defined what their authorities are, and they can have collateral duties and responsibilities if they enter into a memorandum of understanding or some sort of contract with the county to do it. There are no private lands out there as it comes to that point of fact. Now the homeowners can take responsibility for the streets, but they do not have their own community where they get to create their own laws. Do I think under section 12 of the bill that they are ever going to open their books up for me or any other sheriff to examine what it is they are doing, if they are in compliance with the law, and there is no penalty if they are not in compliance with the law? I do not think they are ever going to do that.

Assemblyman Hansen:

We exempted the FBI from the bill, along with the Secret Service, the Drug Enforcement Administration, the United States Postal Inspection Service, and the Bureau of Indian Affairs. The reason we did that is because that is already in law now. There is a precedent that already exists in Chapter 171 of *Nevada Revised Statutes* (NRS). We have simply expanded the number of federal agencies, because at the time NRS Chapter 171 was put in, there were no law enforcement capabilities for the U.S. Fish and Wildlife Service and the BLM. Prior to the Federal Land Policy Management Act of 1976, land management agencies always went through the local authorities. With that passage, they began to have the mission creep that Sheriff Logan mentioned, and that is why we now are trying to once again do to them what we had done previously with those agencies that I have mentioned.

Assemblyman Jones:

Maybe my analogy threw you off a little. Specifically, I get that we are trying to limit their jurisdiction. Will the federal government respect that limitation of their jurisdiction? If so, do we have any precedents? The BLM thinks they are above the state of Nevada.

Keith Logan:

Yes. In Bunkerville, the chief ranger pointed out to several of the sheriffs that were there—I was not one of them—that there is a reason that the American flag flies above the Nevada flag. Regarding this particular horse gather, one of the ranchers told the supervising ranger if he did not have a memorandum of understanding (MOU) with the sheriff, that he could not have any authority. His response was very succinct: "Are you familiar with the Supremacy Clause that says that if there is federal land, I have the federal jurisdiction on it?" We both had jurisdiction for the state actions, but his answer was simply, "We will just codify all state laws and then it becomes federal law," which is what they have been doing.

I had the privilege of meeting with Salvatore Lauro, who is the Director of Law Enforcement and Security for the Bureau of Land Management, and with the BLM's Nevada chief ranger Eric Boik, both of whom indicated on record that they did not wish to have state peace officer rights. All they simply want to do is try to build relationships—which I think is a bit of hogwash—but they want to build the relationships to say that if they are out there and they need help, that we will come help them, which we always will. But if we need their help, we could rely on their rangers and agents to be out there to help us.

Part of the other fallout from this horse gather issue was that there was a death threat made, to harass the ranchers, by the horse advocates. One was a death threat from a person in Washington State. The Federal Bureau of Investigation was involved with us from the very beginning and commented, called us, called me to make sure that we understood that they were there to help, that Washington was concerned as was Las Vegas and the general offices out of Elko about what they could do to help with these threats that were happening from across state lines, electronically and everything, and it was the advocates who want their way. It is okay for them to sue, but if anyone else sues, that is just a harassment and a delay of proper policy.

Assemblyman Thompson:

Are the personnel who are in the agencies listed in section 4 of the bill POST-certified, or is there an equivalent on the federal level?

Keith Logan:

I believe they have gone to the Federal Law Enforcement Training Centers in Georgia.

Assemblyman Thompson:

Based on section 10, subsection 3, paragraph (b), do you know whether at least the 40 hours dealing with working with criminal law and procedure is included? The reason I ask is that on the website for the POST Commission, it already states that for the two different categories of officers, there are 83.5 hours in law and legal procedures, 74.5 for category II. I am just wondering if we know for a fact if the equivalents are already there?

Keith Logan:

I do not believe we know that for a fact, but I believe that the Nevada Sheriffs' and Chiefs' Association will be coming up here momentarily and has already been speaking with the POST Commission to try to go to that in lieu of the academy, which is the 80-hour to 83.5-hour academy for reciprocity for someone who is certified in another state.

Assemblyman Thompson:

Is the total intent of the bill to limit authority of the federal partners, or is it just the fact that there is a feeling they may not be properly trained in law enforcement.

Assemblyman Hansen:

I do not know if they are properly trained. I think the case of Mr. Berghardt in Clark County raises some serious questions about that. Having talked with several law enforcement people, death could have been avoided.

Because of that specific incident, I think we want to make sure these people are POST trained so that they understand Nevada law. They are obviously trained to some level to become a law enforcement officer, but my intent with the bill is to ensure that anyone who is going to enforce Nevada state law follows Nevada POST standards.

Keith Logan:

That would only be if a specific agency or a county in the state enters into an agreement with any of those other agencies—a contract to provide any kind of collateral service within their community. If they go to an 80-hour class or a 40-hour class or a 57-hour class, that would automatically give them police powers in the state of Nevada. I think it still has to be under the specific agreement with the individual county. Certainly, in my 28 years of experience, when I worked in Douglas County, we had a contract with the United States Forest Service to patrol certain areas of that jurisdiction that Douglas County just simply could not get to.

Each ranger is allotted a little over a million acres. They cannot do it, and is beyond their capabilities, yet they are wanting the mission creep to expand their powers to do more of the fun stuff. We are there not to just do the fun stuff. We are there to do everyday stuff and to meet the needs of our people.

Assemblywoman Fiore:

As the sheriff of your county and as our other sheriffs of all of the counties, when we have overreaching federal thugs coming into our counties and behaving in this fashion, why can you not arrest them immediately?

Keith Logan:

It has to do with whether they have the responsibility and the authority of what they are doing. Are they enforcing something on public lands or are they not? If it has to do with my particular agency, we have not had one of these citations for impersonating a peace officer. That was the original statement that was drawn back in 2000 involving a case of impersonating a peace officer. Unfortunately, I think that is what it is going to come down to. I sat very long out there at that gather and pondered, "If I parked my sheriff's unit directly in front of the ramp that they were going to use to load the horses, how long would it take them to arrest me or tow my car away?" That is going to happen one of these times; it is just a matter of when is the first case.

Assemblywoman Fiore:

I implore you to set precedent and, as we are invaded by the BLM, to throw them in your county jail.

Assemblyman O'Neill:

How will this impact Burning Man? The Bureau of Land Management has jurisdiction up there.

Assemblyman Hansen:

Burning Man is in my district in Pershing County and the BLM has, in the agreements that they have made to allow Burning Man to occupy the Black Rock Desert, insisted that they make concurrent agreements with the Pershing County people. The BLM, in this respect, honored the local commitment because the actual people who get arrested and who are tried and so forth go through the Pershing County system. In that particular case, they have gone out of their way to try to work in conjunction with the locals, and the locals have cooperated with them as well. Again, that should be something that the local people are allowed to do by our law. We should be protecting our people in those arrangements, to insist that the BLM has to have an agreement with the local people. The point that Assemblywoman Fiore brought up is that the whole supremacy issue is huge. With Nevada being 87 percent federal land, then all of our efforts at law enforcement outside of that 13 percent could be null and void, and we could just turn over all of our rights and everything to federal law enforcement people. It is a real huge concern.

The example that Sheriff Logan gave is recent—less than a couple of weeks. Think about it. You had eight fully-armed, tactically set up Special Weapons and Tactics guys basically called in by the local BLM guy to try to intimidate the local law enforcement people from enforcing a very reasonable standard of state law. All the local people were asking for was to follow the court order, which had already been established to not release these horses until a judge had an opportunity to review it. Mr. Furtado was a consistent problem—it is my district. Instead of honoring what the court had done and trying to cooperate with Sheriff Logan, he brings in these eight guys to try to basically scare the local sheriff away.

To Assemblywoman Fiore's point, at some point we are going to have to have this out because after this law is passed, if they are impersonating a police officer trying to enforce state law, that is against state law. Who enforces it at that point? Can a local sheriff or a local metropolitan police department in effect arrest a federal law enforcement officer? It is an interesting dilemma. We are trying to avoid that by getting into statute now that these agreements have to be met with the highest local law enforcement person in that county, which would be the elected sheriff.

Assemblyman O'Neill:

In section 5, you have excluded the U.S. Marshals Service and the Department of Homeland Security law enforcement. Was there a reason for that or was it just an oversight?

Assemblyman Hansen:

I believe they were excluded because they are already under NRS Chapter 171. If they are not, we would be glad to amend that into the bill.

Assemblyman Elliot T. Anderson:

I am looking at this bill and in general want to understand the constitutional issue a little better. I think the way that it operates is that if the federal government wants to do it, it is hard for us to say you cannot do it, but the way that it is operating is that we are determining when our state law enforcement officers recognize their jurisdiction under some existing case law. Do I understand that right?

Assemblyman Hansen:

You are correct, and it is a concern. One of the basic premises of U.S. law is that we, as citizens, have certain unalienable rights that the federal government is actually supposed to protect. When they start to usurp things, such as our ability to control our own laws, enforcements, the people who we elect—we have checks and balances built into it, and when you have an overriding federal government coming and doing what they are starting to very consistently do in our state, there are reasonable due process concerns as well. Are we serfs or are we private citizens with certain unalienable rights? That is what it is coming down to. Do these people on each side of me, who have been elected by the people in their district, have the right to help and protect the citizens in their district from abusive federal authority? That is what this bill is trying to get a little bit of a handle on.

Assemblyman Elliot T. Anderson:

I am trying to figure out what teeth this has and how it would stop them from doing it. Can you break that down for me? Obviously, this is an issue you are passionate about that I do not understand as well as you do.

Assemblyman Hansen:

The teeth portion is a lot tougher. I think what Assemblywoman Fiore was getting at is that at some point, you may have to have a situation where a sheriff, like Sheriff Logan, actually arrests a federal law enforcement officer for trying to enforce state laws and impersonating a police officer when they do not have the proper training and they do not have an agreement between the counties and the federal authorities to do so. That is where push may come to

shove and where all of this is slowly going. You have land management agencies—remember, they are land management agencies, not enforcement, not the Federal Bureau of Investigation—slowly but surely creating these police forces, and these police forces are slowly but surely, through mission creep, usurping the authority of our elected law enforcement officials. That is a basic fundamental question that Americans are dealing with, especially in the rural parts of the Intermountain West. That is what this bill is trying to help solve.

Gerald Antinoro, Sheriff, Storey County; and President, Nevada Sheriffs' and Chiefs' Association:

As explained by Assemblyman Hansen, the purpose behind this and what we are concerned with are the due process concerns. They are not getting that with the federal enforcement. We are also worried about the local protections, as Sheriff Logan indicated. People of our respective jurisdictions have put us there to protect them. We do not need to have a lot of federal authority in here muddying up the water, so to speak. There are two questions that were previously asked, and I would like to go back and address them.

Assemblyman Thompson asked about the training at the federal academy. The federal academy trains their peace officers with federal law and federal procedures. There are significantly more latitudes under federal law than under state law, which is one of the concerns we have for meeting a minimum standard of training in the state of Nevada. They need to be aware of our laws.

Assemblyman O'Neill asked about other federal agencies that were not named on either side of this fence. The Nevada Sheriffs' and Chiefs' Association as a whole has not been supportive of a number of agencies who have come up asking for their support and seeking state peace officer authority for that very reason. We believe that the responsibility to protect our citizens rests with the local authorities and not with the federal government. The federal government has their jurisdiction; they have their crimes that they need to be concerned with, and leave the state enforcement to those of us locally who are empowered to do that.

Assemblywoman Diaz:

As I am reading and rereading section 8, subsections 1 through 3, it says, "Except as otherwise provided in this section, a state or local law enforcement officer may recognize a federal employee's exercise of law enforcement authority." It keeps saying may, may, may, but where are the instances where they "shall" because they are acting in their scope of practice? To me, this reads that state and local law enforcement will ultimately decide if we want to agree or disagree with what the federal agent is doing. I think there

should be some "shall" in here because they do have jurisdiction over federally managed land. I understand if the federal agent is writing a traffic citation, but even then I am playing that out in my mind how that works. Let us say this federal agent writes a traffic citation, now the person has to direct themselves to the federal court. How is that interplay between the state or local agency going to work out? If a local judge says, "You do not have to pay this ticket because a federal agent wrote it," how is that going to get thrown out?

Assemblyman Hansen:

If you will notice, there is the Assimilative Crimes Act, *United States Code*, Title 18, Section 13. Remember, what we are talking about is the usurpation of state law by federal authorities. We are not in any way, shape, or form capable of blocking federal enforcement of federal laws. That is not what we are trying to do. Under the Assimilative Crimes Act, they are actually allowed to incorporate state law into their enforcement portfolio. We are insisting that before they are allowed to do that, they have to make an agreement with the local jurisdictions before they can simply start enforcing state or local law. In fact, we want to make sure that the local law enforcement head agency does have a "may" clause in there because they may not want to have the federal government in Sheriff Logan's county and start enforcing highway laws or speeding tickets through the town of Eureka, and he may say no, that is not part of your federal mandate and federal authority. There is nothing in this bill that is going to challenge the Supremacy Clause. We do not have the right to tell the federal people that they cannot enforce federal laws on federal land.

Assemblywoman Fiore:

This is such an important subject because as elected officials, especially with my peers as we fight to protect our constituents—and I think you have heard that with the previous bill—the same goes with this. I do not know that anyone behind the dais with me today understands the impact of the BLM overreaching. I am an elected official, and when I was in Bunkerville in April as an elected official standing up for the people, I received a text from a Metropolitan SWAT officer—a personal friend of mine—saying, "Get out of there. They will shoot you." All of my peers understand that the federal government, elected or not, will shoot you as well as your constituents, and as we protect our constituents against unnecessary laws with bad consequences with good intentions, the federal government has shown—in Bunkerville, we were seconds away from going hot, which means seconds away from getting shot at. They literally had detention buses, fire, police, and ambulances. They were expecting a bloody mess, and they would not stop at anything. They would shoot you and me the same as they killed the cows.

Assemblyman Hansen:

I will give you another example, perhaps not as dramatic as what happened in Bunkerville. In Battle Mountain, Nevada, they have had problems with Mr. Furtado—who was mentioned earlier—and the people there began a petition. As you know, under our *Constitution*, we have a right to petition the government for redress of grievances, and these people did that. In fact, in the local hardware store, they had a copy of the petition, and a fully armed BLM ranger in his tactical uniform—bulletproof vest and everything—showed up here, went up to the clerk, and asked to speak to the owner of the hardware store. The hardware store owner came out and he was informed, "Did you know that it is a federal offense to try to intimidate a federal official?" The individual said, "No." The ranger asked, "Can I see a copy of that petition?" The store owner gave him a copy of the petition, which was then slowly read in front of him. Remember, this is a federal law enforcement officer in full combat gear. The man looked at him and informed him, "Well, this does not look like it is too bad" and walked out of the store. That kind of intimidation of a fundamental constitutional right is the sort of issue that we are driving at here. If that would have been the local sheriff, he would have been up for reelection and you can count on it that the people would say, "You abused your authority when you went in and started intimidating people who are trying to petition the government as this is a fundamental constitutional right." This is not just a minor matter, and ideally what this bill is trying to do is help put a little oil on troubled waters. This is not trying to eliminate their presence from the state of Nevada, but it is trying to certainly protect the basic fundamental due process rights of the citizens that we were all elected to represent.

Assemblyman Ohrenschall:

On page 6, section 11, states, "A state or local governmental agency may not allow a federal agency or federal employee to access or use the correctional and communication facilities and equipment of any state or local law enforcement agency without the express written consent of the appropriate responsible official." What if there is an emergency or crisis situation and you cannot get ahold of the sheriff for some reason? Do you think section 11 could present a problem in that situation where we need the different agencies to work together?

Keith Logan:

As much as I have attempted a few times to not be reachable, I have yet to be able to accomplish that. Our operation is always 24/7/365. We are always available. They can always find someone. As a general rule, they would not come to secure or book someone into our jail or use our communication facilities. As in Bunkerville, they brought people from all around the United States—rangers who had never been to the desert, had just walked

off a beach in Hawaii, and had gloves and the whole nine yards. It is about the physical and visual intimidation as opposed to just being a simple deterrent for bad behavior.

Assemblyman Ohrenschall:

You do not think it would be a problem?

Keith Logan:

No, sir.

Assemblyman Ohrenschall:

On page 6, section 12, states, "The sheriff of a county shall regularly review the duties and activities of federal agencies which have law enforcement responsibilities in this State and which are acting within his or her jurisdiction to determine whether the federal agencies are acting consistently with the provisions of sections 2 to 12, inclusive, of this act." I know our 17 sheriffs are very good, hardworking, and qualified people, but they are not attorneys. Do you think the sheriffs have the qualifications in terms of reviewing other agencies' activities and deciding whether they are up to muster with this proposed new law or not?

Keith Logan:

It has to do with the ability to manage and operate an agency, the ability to see how policies are set, and how they are carried out. We are very qualified to do that. As far as determining whether or not you are seeing a full picture, that you have the time, scope, and ability to examine everything, that would be impossible because you still have an agency to run with your own personnel issues and things of that nature to make sure you are operational and that no cascading event takes place that needs your attention elsewhere. That is going to be the hardest thing.

I believe that the feeling or spirit of that section is that we have the ability to immediately address another citation issue and then the overbearing response issue, where if you get involved in something that you should not be involved in, to be able to deal with heads of agencies to tell them to stop that. Now I would like to see there be some sort of ability for them to have an injunction or be brought before some board to have them answer to why they chose to ignore state law or the regulations that govern that. The two officials indicated to me that as the state ranger and the Director of Law Enforcement and Security of the BLM, they do not want to overstep their bounds. Until proven otherwise, you would like to believe them.

Assemblyman Ohrenschall:

So you do not foresee section 12 causing a problem where a sheriff of county X may feel that a certain federal agency crossed the line? My worry is if the sheriff of Clark County were to review every decision of the sheriff of Esmeralda County or vice versa. They might not agree with every decision or feel like every decision is constitutional or legal, but I do not think either sheriff would want the other agency second-guessing every decision they make. That is for the courts to do. I wonder how you see this working.

Keith Logan:

I find that one to be the hardest section to find any merit of what we are going to do should they or should they not be in compliance. I also think that it allows you some broad scope that what is appropriate in Eureka County may not be the same needs as Douglas County, Esmeralda County, or Lincoln County. They may have other needs where they could work better, where they have actual rangers who live within their jurisdictions and are working there every single day. They are going to have more of a one-on-one relationship with the supervisors that may be able to address these issues a little bit better.

The problem is the same as it was with the horse gather. Most of the people at the horse gather—the incident commander, the public affairs officer, everyone who was there—all had the same answer for me. I cannot make that decision; that decision is above me somewhere else, whereas the sheriff is the final decision. There is no one else.

Vice Chairman Nelson:

It seems to me that what we are getting at here is the concept of federalism and the Tenth Amendment, correct? Under the *Constitution*, Article 1, Section 8, delineates responsibilities of the federal government and if it is not on that list, it is not their thing to do, and the Tenth Amendment reserves those rights to the states. Is that part of the policy behind this bill?

Assemblyman Hansen:

Of course. The Ninth and Tenth Amendments serve to protect the citizens. Originally, in theory, there are 50 independent sovereign states, and what we are trying to do with this bill is to help maintain a little bit of the sovereignty concept at the county levels and make sure that these guys who are elected by the county citizens have the backup of the NRS when it comes time to challenge issues that are Tenth Amendment-related.

Assemblywoman Diaz:

Section 11 talks about federal agents not being able to use local law enforcement communication facilities and equipment, so I am wondering what happened in order for us to expressly put it into section 11. Also, I need to understand why we need section 13 in the bill.

Assemblyman Hansen:

I think section 13 may be one of the most important parts of the bill because it finalizes in Nevada law that the local sheriff is the highest law enforcement official in that county, and there have been questions about it where the federal people claim they are the highest because of the Supremacy Clause. That is one of the reasons it is in there. We want to make sure that everyone in the state of Nevada agrees that those elected sheriffs are there for a reason and that we are going to support them in these kinds of issues.

The main thing in section 11 is simply to ensure that the federal people go out of their way to work in cooperation with the local people to use locally provided facilities. I think that is something that is very simple to do well in advance, and the issue in an emergency—I assume that once this law is passed, if it is—that the federal government, the states, and the counties will start working out those kinds of details so that if there is an emergency, they can cooperate and use the sheriff's communication facilities or the jail facilities if necessary, but it will be on an equal footing basis.

Keith Logan:

One of the things that we have entered into is the radio frequency use which helps with the Federal Communications Commission. We do that with all of our surrounding agencies because in theory, we are only permitted to use the radio inside of our county whereas in the rural parts of the state, the county jurisdiction lines are there for prosecution situations, but if you call 9-1-1 and you need help, you do not care what uniform shows up, just as long as someone does. We respond to all of the counties around us because where we are geographically located, we are the quickest unit to respond to those emergencies. I believe that is what section 11 has to do with.

Assemblyman Gardner:

I have been reading a dissertation on presumption rights on federal lands. It looks like all this bill is doing is what the courts have already allowed us to do. We have certain rights because it is in the state of Nevada. If I had a question, it would be if it is your intent to use the rights that have already been granted to us by the United States Supreme Court under the *U.S. Constitution*?

Assemblyman Hansen:

Of course, that is what we are trying to do. I think the courts also recognize what Assemblyman Nelson brought up, which is we are supposed to be a sovereign state, we are supposed to have certain rights, and we are supposed to protect our citizens. One of the dangers nowadays is a constant overreach of the federal government, and we have discussed many of those issues. The answer to your question is absolutely. We are doing everything in complete compliance with the court orders and the *U.S. Constitution*.

Vice Chairman Nelson:

Is there anyone else in Carson City to testify in favor of the bill?

Steve K. Walker, representing Douglas County:

Douglas County is in support of the bill, although they do suggest an amendment to section 12 because they thought that might not be workable. I have not talked with the bill sponsor; I was remiss on that regarding the proposed amendment, but I will.

Vice Chairman Nelson:

Is there any particular thing about section 12 you do not like, or is it just in general?

Steve Walker:

The input I received from the sheriff's department was that it did not seem like it was workable, that they did not think the information would be forthcoming from the federal government, and it would be a lot of work to comply with section 12.

Dagny Stapleton, Deputy Director, Nevada Association of Counties:

We support this bill, and the need for it to show clarity regarding jurisdiction between federal and local law enforcement agencies is an issue that has been brought to us by some of our members. We think this bill provides that clarity in terms of the authority. It also creates a process for cooperation and creating agreements between the different agencies. We just want to put our support on the record on behalf of the counties.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

As mentioned earlier, the Association is in support of Assembly Bill 283, but in section 10, subsection 3, paragraph (b) with regard to the training, in conversations I have had with POST, they have an 80-hour in-lieu class already in place that they use when officers want to transfer over from another state, so we are going to be bringing a friendly amendment to Assemblyman Hansen and discussing that with him.

John Ridgeway, Private Citizen, Las Vegas, Nevada:

Basically, I am for A.B. 283. It talks about Article IV, Section 3, Clause 2. That is fine, but it is talking about territories and properties. I think a very important clause that was overlooked is in the *U.S. Constitution*, Article I, Section 8, Clause 17. That is the Enclave Clause. If the federal government has not purchased the land, it does not belong to the federal government. It belongs to the state of Nevada on the equal footing clause. Granted, it was in extraordinary conditions that we became a state, and we only had about 40,000 people and we needed 60,000. In the *Nevada Constitution*, it talks about perpetuities, which the federal government wants to be supported. The federal government has been exceedingly overreaching. I have heard them called thugs, we have had some agents accused of extortion, mail fraud, fraud, and tyranny in the *Hage* trial [*Estate of Hage v. United States*, 113 Fed.Cl. 277 (2013)]. This bill, A.B. 283, wants to go ahead and buddy-buddy up with them and give them jurisdiction.

Vice Chairman Nelson:

I appreciate your comments on the equal footing doctrine; in fact, I have also testified on it. I just want to make sure that you are in support of the bill. It sounds like you are in opposition to it.

John Ridgeway:

I am in support with a couple of changes. In answer to your question if I am in support of A.B. 283, yes, sir, I am.

Vice Chairman Nelson:

If you have friendly amendments that you would like to discuss, you can discuss those with the bill's sponsor, Assemblyman Hansen. Go ahead and finish up your statement.

John Ridgeway:

There is a very important document about federalism, Executive Order 13132, dated in 1999 by President Clinton. It says to stick by the *U.S. Constitution* and go with whatever the state wants. Then it was looked at again in 2009 and most recently in 2010. It seems that federalism just wants to choke and choke and choke and get tighter. It would help tremendously if the state could exercise its Tenth Amendment rights, protect my rights, and add in the 1999 Executive Order 13132.

Bonnie McDaniel, Private Citizen, Las Vegas, Nevada:

I am also speaking for the other 26 members of my family who are registered and voting residents of Nevada. One of your sheriffs stated that if BLM or the Forest Service or park rangers give you a traffic ticket, you have to go to federal court. When you show up in a federal court, you do not know and the judges cannot tell you or will not tell you whether you are actually in an Article I, Article III, Article IV, or Article VI court. How are you supposed to know what legal papers to file when you go to these? They do not have the jurisdiction to write traffic tickets, and we should not ever give them the authority to write traffic tickets or anything else. I support this bill on the whole, and I agree with Mr. Ridgeway's statements that we need to look at President Clinton's Executive Order 13132.

The BLM, especially, is way overriding their pseudoauthority and not only did the sheriff have problems with the horses in his county, but you are going to have another Bundy situation in southern Nevada if something is not done to curtail them and their authority. They had SWAT everywhere and those were hired snipers; they were not part of the BLM. We need to pass this law with a couple of changes, and I will talk with Assemblyman Hansen about those. Do not give the BLM or any of these other agencies authority. We are not a territory. We are a state, and when we became a state, we owned all that land in perpetuity. When that state line was finalized, that land was ours, except for the Air Force bases, the federal buildings, and federal jails. They do not own; they only manage and take care of and they are doing lousy jobs of it. The BLM euthanized about 23,000 tortoises because they could not take care of them. They will tell you it is from disease, but if you go out in the desert, you will never see a tortoise shell laying around where they died of disease. I support this bill and would like to see a couple of changes.

Vice Chairman Nelson:

Are there any questions? [There were none.] Is there anyone else in Las Vegas who would like to testify in support of A.B. 283? [There was no one.] Is there anyone in Carson City who would like to testify in support of A.B. 283? [There was no one.] Is there anyone in Carson City in opposition?

Ramona Morrison, Private Citizen, Sparks, Nevada:

I apologize that I have to come in and oppose this bill. I was not aware of it until just the other day. Although I agree entirely with the intent of the bill as expressed by Assemblyman Hansen, I think as written it could be a slippery slope and it is very dangerous as written.

My family has been involved in this issue between the federal and state government for over 35 years when we bought a ranch in central Nevada. My brother had a sniper rifle pointed at him while the federal government conducted a raid on our ranch—very similar to the Bundy situation—to gather 100 head of cattle in basically an asset forfeiture action without due process of law. We went to court and since 1991, spent the last years in federal courts, one in the U.S. Court of Federal Claims, and also more recently, in the U.S. District Court, District of Nevada in a trespass case, which was in essence the same case as Bundy's case. The problem with Bundy's case was he had very poor legal representation. In our case, we ended up with a ruling that said that the government had basically engaged in a conspiracy to run us out of business since the 1970s.

As was mentioned earlier, there was a ruling of conspiracy, fraud, wire fraud, mail fraud, and evidence of racketeering during the course of the trial. We have confronted these issues head-on, and most significantly confronted these in 2002 when we had numerous court rulings in our favor, yet the government refused to grant us a grazing permit for our preexisting rights to the forage, range, and water rights that we had on the ranch. When they refused to grant that grazing permit and, as was recognized by Judge Jones here on the most recent case, my father decided that we had no choice but to go ahead and turn cattle out and test that notion as to whether or not a grazing permit was necessary to avail ourselves of our preexisting property rights. As a result of that, the BLM tried to bring an action into the county to do a raid on the ranch and impound and confiscate those cattle. We got in touch with our sheriff at the time, Sheriff Tony DeMeo, and had a conversation with him explaining the nature of the lands we were talking about. These are Forest Service and BLM-managed lands on which the government has only a proprietorial interest jurisdiction. If you read every land law passed by Congress down to the Federal Land Policy and Management Act (FLPMA)—I have the language here but I will not take the time to read it—they reserve civil and criminal jurisdiction to the states. While the government has their regulations, their laws, and all of the rest, civil and criminal jurisdiction rests with the states, and Congress has been consistent in that.

I would argue that this bill, A.B. 283, sections 8 and 9 in particular, are based on a faulty premise that they have police power in the first place. They do not have police power. The only place where they have police power in Nye County—under a federal enclave where they have enclave powers—is the Tonopah Post Office. Of course, we have all of the other areas of the state with high security, but the only place where they have full police power is in a federal enclave at the Tonopah Post Office. When that was explained to Sheriff DeMeo, he told the BLM, "I do not think you have police power, but if

you come in with a court order, I will treat you as any other citizen." They threatened him, threatened to arrest him, and he gave them his home address. When they realized that effort to bamboozle him was not going to work, they came back later and said, "Okay, okay, this is the attorney for the BLM who was making these statements." They said, "Okay, we do not have police power. We know we do not. But the National Park Service does." So they tried it again. This time, Sheriff DeMeo thought, "Yes, of course they do. I have gone to law enforcement officer training in Washington, D.C. with Park Service law enforcement officers." So he was ready to let them come in with their own law enforcement. Once again, we got on the phone with Sheriff DeMeo and said, "Yes, at the Tonopah Post Office, yes, they have exclusive jurisdiction, they get to conduct a police power action and they have the power to do so." But not on all these other federally managed lands in which they have it only in proprietorial-interest-only jurisdiction.

By the way, that jurisdiction is defined as where they hold that land as any other landowner. They have their federal laws and federal powers, but they are limited by their own laws, which say they have no police power. I would argue that this law in section 8 and 9, which allows and gives them the state's endorsement and state police powers to enforce their laws is a problem, and I think it is a very dangerous and slippery slope, and it will go contrary to what we are trying to do, or what I think everyone here is trying to do, especially Assemblyman Hansen.

Secondly, I am wondering where the Forest Service and BLM are in opposing this bill. I think that ought to be very telling. If they were truly concerned—they never like their power reined in—and I would suggest that if they are not here, maybe this is a good bill for them.

Assemblywoman Fiore:

Is it possible to work with the sponsor of the bill because there are going to be a few bills, and I have to tell you that I am very happy that you are here. I know what your family went through. Are we still in that same spot where the federal government has been ordered to basically reimburse you, and they have not?

Ramona Morrison:

Our original judge was replaced by an Obama-appointed judge. She has tried to dismiss that action. That action will go back after the feds circuit. They may sit on it for a while.

Vice Chairman Nelson:

Was that Judge Jones who required that?

Ramona Morrison:

We have several judges. Judge Smith was originally on the takings case in the U.S. Court of Federal Claims, and he was replaced by an Obama-appointed judge, who is sitting on the case now. That was basically on remand from the federal circuit. The federal circuit issued a ruling that was a reverse and remand and it addressed narrow parts of the case and narrow parts of the judgment. Instead of dealing with that remand, she basically dismissed it out of hand, so we will be appealing it back up.

Assemblyman Elliot T. Anderson:

I am hearing all this reminiscence about the situations that have happened. At least with the Bunkerville situation, there was a court order that was on point, so I understand your point about due process. I agree; due process is incredibly important, but I am wondering, this law cannot really affect federal court orders, can it? When we pass a statute, it is not going to change the situation in Bunkerville or anywhere else. Can you explain to me how this bill would potentially help your situation with your amendments?

Ramona Morrison:

In my opinion, the bill as written cedes state police power to the federal government specifically for enforcement of the Federal Land Policy and Management Act and all of their other land management acts. That is contrary to those land management acts, which specifically preserve, I believe, under our constitutional form of government, police power to the states. I believe that for those laws to have been constitutional in the first place, they had to have that reservation of police power to the states because that has always been the way it is, in terms of our federal and state governments.

Assemblyman Elliot T. Anderson:

I am just going to have to get my head around some of the constitutional issues.

Ramona Morrison:

The thing that causes so many people problems is that people assume because it is federally managed lands that we have waived all police power. We have not waived the right of taxation. We maintain and control our own wildlife. That is a state police power function. We have state police power over livestock. That is a state police power function. Just because it is managed by federal agencies does not necessarily mean they have all of the powers they assert. I will tell you from years of litigation, when their lips are moving, you can fill in the rest. They are not hung up on being truthful in their assertion of power. I would assert that they are running around with—I am sorry to be

blunt—cop cars, badges, and guns with an assertion of power they simply do not have. They just assume that because they have the appearance of authority, that we will all just do what they say.

Assemblywoman Fiore:

It is my opinion, and is it also your opinion that our sheriffs right now do have the authority to arrest these BLM agents impersonating police? Do you think that could be done today?

Ramona Morrison:

Without getting into the legalities of it—I believe in looking at the statutes as written—they may have that authority. By the way, FLPMA does allow for that. But the sheriff only has the authority to grant power he has. He does not have the power to enforce FLPMA. If the sheriff signs an MOU under the FLPMA to enforce state law, he assumes the liability and responsibility for their actions. I believe Sheriff Gillespie in Clark County has some very serious liability issues. He allowed those guys to run amok. Because of that, I think Sheriffs have that authority. I think as it presently stands, BLM agents are impersonating law enforcement officers.

Assemblywoman Fiore:

Just for your information, Sheriff Gillespie retired. It is now Sheriff Lombardo.

Vice Chairman Nelson:

Are there any other questions for Ms. Morrison? [There were none.] Is there anyone else in Carson City who is in opposition to A.B. 283? [There was no one.] Is there anyone in Las Vegas who is in opposition to A.B. 283? [There was no one.]

Assemblywoman Fiore:

Mr. Callaway, as the representative of our Clark County sheriff, where does Mr. Lombardo stand on protecting the people from the obnoxious federal agents?

**Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

We are neutral on the bill. We believe that the concerns which were raised here by the other sheriffs from the rural counties are a significant concern. In Clark County, for the most part, we have had a good working relationship with our federal partners, and resources are very strapped for the Las Vegas Metropolitan Police Department (Metro).

One of the scenarios that was raised earlier was the incident that occurred with BLM rangers out in Red Rock. We do not have the number of officers to put people out on Blue Diamond Road, Red Rock, Lake Mead, or some of the other areas where BLM or National Park Service rangers would be. We would certainly hope that if someone was driving recklessly or driving intoxicated or endangering the lives of our citizens, and we do not have a Metro police officer able to be out in that area, that if a BLM ranger witnessed that, that they would take appropriate action to potentially stop someone from getting hurt or losing his life. We believe we have had a good working relationship, and my belief is that if this bill passed, we would enter into an MOU. I like the fact that the bill gives the sheriff the ability to review and potentially hold people accountable who are not doing what they are supposed to be doing. I also understand the concern of being cited for traffic offenses and having to go to a federal court, which is a far distance from where you live. Obviously, in Clark County, the federal courthouse is right downtown, so it is not as big of an inconvenience in Clark County as it may be for the more rural areas. Based on that, we are neutral on the bill.

Vice Chairman Nelson:

Is there anyone else who is in the neutral position in Carson City? [There was no one.] Is there anyone in Las Vegas who is in the neutral position? [There was no one.] Is there anyone else in this room who would like to testify in opposition? [There was no one.] Assemblyman Hansen, would you like to come forward and wrap up?

Assemblyman Hansen:

It is interesting that the BLM and Forest Service are not here. It is a good point; we will have to check with them on it. Sections 8 and 9, Assemblywoman Diaz caught it. That is all "may" language. It is up to the sheriff. It is also very clear "when the exercise of that authority is consistent with the United States Constitution." So the sheriff has a great deal of latitude in this. As Mr. Callaway pointed out, if Clark County or any other county wants to, if the sheriff in that county wants to enter into an MOU with the federal people, that would be completely allowable under this law and maybe something we want. They can have that kind of level of cooperation with the understanding that the county sheriff is the highest law enforcement official in the county with ultimate veto power over these sorts of MOUs. That is to ensure the protection of the citizens, which this bill is all about. I am certainly interested in any quality amendments that people want to present. I would be more than happy to do that.

Senator Goicoechea requested to be a cosponsor, and I wanted to have that amended into the bill.

[Also submitted but not discussed were ([Exhibit J](#)) and ([Exhibit K](#)).]

Vice Chairman Nelson:

I will close the hearing on A.B. 283, and will take a 30-second recess while Assemblyman Hansen resumes his Chair.

[Assemblyman Hansen reassumed the Chair.]

Chairman Hansen:

Before we go to Mr. Jones, who would like to present Assembly Bill 288, we have some Committee bill draft request (BDR) introductions that we have to do.

BDR 14-544—Makes various changes relating to the Advisory Commission on the Administration of Justice. (Later introduced as [Assembly Bill 444](#).)

I will entertain a motion at this time.

ASSEMBLYWOMAN SEAMAN MOVED TO INTRODUCE
BDR 14-544.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN ARAUJO WAS ABSENT
FOR THE VOTE.)

Chairman Hansen:

Next is BDR 43-93.

BDR 43-93—Prohibits a peace officer from taking a person before a magistrate under certain circumstances related to traffic violations. (Later introduced as [Assembly Bill 432](#).)

I will entertain a motion.

ASSEMBLYMAN THOMPSON MOVED TO INTRODUCE BDR 43-93.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN ARAUJO WAS ABSENT
FOR THE VOTE.)

Chairman Hansen:

Next is BDR 14-913.

BDR 14-913—Revises provisions concerning the interception of wire, electronic or oral communications. (Later introduced as [Assembly Bill 433](#).)

I will entertain a motion.

ASSEMBLYWOMAN DIAZ MOVED TO INTRODUCE BDR 14-913.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN ARAUJO WAS ABSENT FOR THE VOTE.)

Chairman Hansen:

Next is BDR 12-1094.

BDR 12-1094—Enacts the Uniform Fiduciary Access to Digital Assets Act. (Later introduced as [Assembly Bill 434](#).)

I will entertain a motion.

ASSEMBLYMAN WHEELER MOVED TO INTRODUCE BDR 12-1094.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN ARAUJO WAS ABSENT FOR THE VOTE.)

Chairman Hansen:

Next is BDR 1-302.

BDR 1-302—Provides for the realignment of certain judicial districts. (Later introduced as [Assembly Bill 435](#).)

I will entertain a motion.

ASSEMBLYWOMAN SEAMAN MOVED TO INTRODUCE BDR 1-302.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN ARAUJO WAS ABSENT FOR THE VOTE.)

Chairman Hansen:

We will now open the hearing on Assembly Bill 288, which revises provisions relating to residential mortgage loans. Good morning, Assemblyman Jones.

**Assembly Bill 288: Revises provisions relating to residential mortgage loans.
(BDR 9-896)**

Assemblyman Brent A. Jones, Assembly District No. 35:

I do not know if my bill will be as interesting as the previous two, but we do not want to jinx it either. Testifying with me today will be Mr. Ross, representing the Nevada Bankers Association, and Mr. Hawks, representing the real estate industry.

As we are all aware, our housing market was severely impacted in a very negative manner during the recent financial crisis. To date, although we have made some progress, the market still has not recovered to the extent that other markets in surrounding states, such as Arizona and California, have. One of the significant reasons for this has been that Nevada enacted certain laws that, although they were well intentioned, did inject uncertainty into the housing financial markets, and most importantly, those laws also created barriers that prevented a fair and efficient recovery.

Now looking back at what has happened and where we are now, if we want a true recovery in our housing markets, if we want to bring liquidity back—and by liquidity, I mean the ability for middle-class, hard-working families to obtain and have access to fair home loans—then we must enact laws that will bring stability to home loan banking and encourage responsible behavior. If we do this, then lenders will be willing to come back to Nevada and our housing market will fully recover, as they have in California and Arizona.

The bill I am presenting today, Assembly Bill 288, is one small piece that will help bring back a fair and efficient market to Nevada. During the financial crisis, many things happened and many laws were created. On the federal level, the most significant home loan laws fall under the Consumer Financial Protection Bureau (CFPB). Under the CFPB laws are the Final Servicing Rules.

The Final Servicing Rules provide standards at the federal level that all large banks must adhere to. Large banks include those banks that service 5,000 or more loans throughout the United States. These are the large lenders we are all familiar with, such as Bank of America, Wells Fargo, Citibank, et cetera.

On the state level, we have our various laws, but of particular importance was the Joint State-Federal National Mortgage Servicing Settlement that was announced in February 2012 and set to expire soon in October 2015. This settlement included the attorneys general of 49 states, the District of Columbia, and the federal government. Under this settlement, the various banks agreed to certain servicing and foreclosure practices. The CFPB patterned its Final Servicing Rules after the settlement.

The Nevada Legislature enacted Assembly Bill No. 284 of the 76th Session and Senate Bill No. 321 of the 77th Session. Assembly Bill 288 intends to amend the law Senate Bill No. 321 of the 77th Session created. As written it is, for the most part, in alignment with the settlement. However, and unfortunately, as Nevada state court judges decide cases, our state law will inevitably begin to differ from the CFPB regulations.

What we are intending to do with this bill is make sure that the large banks know what the law is and how they should proceed. The problem develops when a federal law exists and then each state starts to change the law. This creates uncertainty. Just imagine a large bank. It has thousands of employees and they are all trained on a specific law and its practical day-to-day implementation which, by the way, takes months if not years for that training. Then, as each state decides to change the law, the large bank must interpret, adjust, and retrain just for that specific state. Now multiply that by 50. As you can imagine, this creates uncertainty and frustration for the bank. With the uncertainty and frustration comes reluctance to participate in a particular market. That reluctance results in less access and an inefficient market. The result is a slowed recovery and/or complete lack of participation in the specific market by the banks. We want to avoid this. We want an efficient market that provides easy access so that our Nevada citizens can experience the American dream. Simply put, they can own and sell their houses.

As I mentioned, Assembly Bill 288 aligns our state law with the federal law for large banks. The first change simply adds the most recent federal update of the CFPB Final Servicing Rules [78 Fed. Reg. 10,902 (Feb. 14, 2013)] to our law.

A bank or large servicer that is in compliance with the Final Servicing Rules will be deemed to be in compliant with Nevada law. This prevents the problem of conflicts in laws that deal with a situation in different ways.

The next change is simply to provide that if the CFPB gets repealed or lapses, we will revert back to our state law. We have just a couple of small amendments that further clarify some aspects of the law, and these will be friendly amendments. They will be described briefly by Mr. Ross, and we will have those submitted prior to a work session.

George A. Ross, representing Nevada Bankers Association:

I would like to thank Assemblyman Jones for bringing forth this bill. It was a concept that we worked on and started getting some conclusion on last session, but could not quite get it nailed down, and this takes care of the problem. Very simply put, as I think Assemblyman Jones laid out quite clearly with the situation where all the big banks and services have to be under the CFPB's foreclosure rules, we have a set of laws in Nevada which were based on the same base as they were, but over time, those decisions happen and you get conflicts of laws.

Some of you, regrettably, are very familiar with super priority liens and homeowners' association issues about banks and investors. I say "regrettably" because it is a real sticky-wicket problem. One of the things—those of you who are attorneys probably remember—is that at one point in this whole process there have been cases in both federal and state court on both sides of the issue, and it really provides a great deal of uncertainty. What we are trying to do in this one particular area—which is so crucial for those of you who are veterans of this Committee—to the state's economy and for the ability of the banks to again start making mortgages, for people to start getting mortgages—and for those of you who may still be underwater—to get your housing values up so we start growing our economy again. If we have certainty, if we know what the law is, then that solves a significant problem. When that bill was passed last session, it gave an exemption to those banks who had signed the attorneys general settlement. Not every bank took advantage of it because they were concerned if an unfriendly jury or judge in a different state ruled against them, they would find that they no longer qualified for the exemption and all the mortgages they had previously gone through might be ruled invalid if they had not followed it. They continued to follow it anyway. This just gives one set of rules for them to follow.

I also want to stress a point that Assemblyman Jones made, which has to do with getting everyone trained. We think that in Nevada we will pass a law and the next day it is going to solve the problem. First of all, for the people who are affected, their lawyers have to read these laws. Compared to California, New York, and Florida, we are pretty far down the line in terms of market size and, therefore, priority. Once they get that figured out, the second thing that happens is that they have to train their people. It takes a while to implement

anything we do. This just avoids that problem as much as we can. We have two places where we put the new rule in there for sure, which again solves this problem, making sure what we are going to be following.

Secondly, we make it clear that in the event the CFPB were eliminated—last session that was a big problem in some people's minds, although this little amendment that we put in would solve that problem—this solves the problem if it does go away. We are going to add some language that says if a foreclosure has been started under the CFPB rules, if that were to go away, you would not have to start the foreclosure all over again ([Exhibit L](#)). You could just continue with the new rules at the point where the bank was in that process. It simplifies matters, adds a little certainty, and is one more thing that takes away some of the problems facing the housing market and the economy in general.

Steve Hawks, Private Citizen, Las Vegas, Nevada:

I have been in the real estate industry since 1998. As we all know, there was a huge foreclosure crisis that is pretty much over now, and we are trying to get on the road to recovery. A lot of state and federal policies had good intentions but they overlapped, and now they are hurting home ownership. Home ownership in Las Vegas is the lowest in 40 years. The state and federal policies are now anti-home ownership because when we are talking about uncertainty, you have federal laws that tell the banks and services that they have this much time to foreclose and then we have Senate Bill No. 321 of the 77th Session where the banks have to do certain things in certain time frames. It is impossible to meet both, and that is why we have the uncertainty that we do right now.

Currently, there are 58,000 homeowners who are not paying their mortgage in Clark County alone. The average time that someone can live for free in their house right now is three years if they do nothing. That information is straight from <www.realtytrac.com>. If a homeowner hires an attorney to go through the process and take advantage of the time frames of the laws, they can get up to five years and growing. We have several clients who have been in their house for over four to five years without making a mortgage payment. As I said before, we have the lowest home ownership in 40 years right now. Nearly 50 percent of all the homes under \$300,000 are non-owner occupied. When they have reduced the inventory, it has allowed hedge funds to come in and purchase these homes and turned them into rentals. We have all heard that squatting is a huge problem right now across the Las Vegas Valley. Las Vegas Metropolitan Police Department and the Henderson Police Department do not have the resources. If someone is squatting in a house now, law enforcement ignores it and lets it go because they do not have the resources.

Another report that validates what we have been stating is from the Federal Reserve Bank of Atlanta which confirms that "homeowners find it more lucrative to live free for years than participate in a program." All of the programs out there that are supposed to help home ownership are actually not as lucrative as living for free and taking advantage of the system. Right now, thousands of homes are being rented out as owners collect rent and do not pay the mortgage. This is hurting the local economy because those could be homeowners. Instead, they are forced to pay rent instead of being homeowners.

Another thing that this has created is that the Wall Street hedge funds have taken advantage of these homes. That has actually locked out the middle class. We have the lowest home ownership in 40 years, and many times it is because the hedge funds have outbid or backdoored clients through...

Chairman Hansen:

Mr. Hawks, I am going to have to ask you to wind it up, though I have some questions for you.

Steve Hawks:

I will leave out some of the facts that support it, but the Atlanta Federal Reserve report is a good one. Nevada has an opportunity to capitalize on the California exodus, and companies are fleeing California to go to other states. Right now, Nevada is not offering them affordable and available housing because of these foreclosure laws which helped us four or five years ago but need to be amended now to help us spur the economy in today's current environment. These companies are going to Texas, Arizona, and Utah because they can find affordable and available housing. These laws are now hurting middle-class home ownership.

Chairman Hansen:

Before I go to questions, is there anyone who intends to testify in opposition to this bill? [There was no one.]

Assemblyman Elliot T. Anderson:

I think a bit of that is an exaggeration. I have worked in foreclosure. When the process goes wrong, it is because something is not in order. I think that is how it used to be but now, as Mr. Ross said, people start to get comfortable with the law and they start to get better at compliance. These things do not happen as much. That being said, I am struggling to figure out what all you said has to do with this bill. This bill looks harmless to me. I do not understand where all that came from.

Steve Hawks:

Actually, it is more of a problem now than it was two years ago because the average homeowner could stop making the mortgage payment and live for free for three years by playing the system with the banks. When you are saying they are foreclosing, they do have the paperwork, but it is not clarified on what it is.

Chairman Hansen:

Perhaps Mr. Ross could address the specific issue. I understand the broader concern that Mr. Hawks is addressing, but how does this one paragraph in particular solve any of the problems he is addressing?

George Ross:

It is basically one piece of several pieces overall that one would hopefully get done to clarify this whole issue and this whole area of law. By itself, it provides certainty and makes things happen more clearly. By itself, it will not solve all the problems.

Assemblyman Jones:

I have talked with a number of people in the industry, and the bankers have indicated to me that the problem is that Nevada is a small market and, as Mr. Ross indicated, California and New York have put their attention there. If they feel that we are putting a monkey wrench, so to speak, in the works, then they will just say that they will deal with it later because it is such a small market. That is the problem. We have got to get to where the rules are set with what they are following on the federal level.

Assemblyman Elliot T. Anderson:

I do not have a problem with the bill. I just do not understand all that we heard from Las Vegas. It felt a little out of the scope of what this bill does. I think that anything we can do to make it easier to comply is a good thing. I do not have any issues with this bill at all.

Assemblyman Jones:

In our surrounding states such as Arizona and California, those markets have completely come back past where they were in 2007-2008 and are vibrant. Personally, I just tried to get a loan, and I make decent money—not saying exactly how much I make—but the house is only \$455,000 and it was very hard for me to get the loan. I can imagine what it would be like for someone who is only making \$90,000 or \$150,000 a year.

Steve Hawks:

When the banks find it harder to foreclose or they are uncertain, they add overlays. Las Vegas has more overlays to a standard loan. When people say it is easier to get a loan in certain states, Nevada has more overlays to protect the bank from the uncertainty.

Chairman Hansen:

Is there anyone else who would like to testify in favor of A.B. 288? [There was no one.] Is there anyone who would like to testify in opposition or in the neutral position at this time on A.B. 288? [There was no one.] We will close the hearing on A.B. 288, and open it up for public comment. [There was none.]

Is there anything that needs to be brought before the Committee other than what we have already done? [There was nothing.] This meeting is adjourned [at 11:00 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 23, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 287	C	Assemblyman Edgar Flores	Proposed Amendment Mock-up
A.B. 287	D	Assemblyman Edgar Flores	Presentation
A.B. 287	E	Chuck Callaway, Las Vegas Metropolitan Police Department	LVMPD Related Swatting Calls
A.B. 283	F	Assemblyman Hansen	Document
A.B. 283	G	Keith A. Logan, Sheriff, Eureka County	Witness Statement
A.B. 283	H	Keith A. Logan, Sheriff, Eureka County	Citation
A.B. 283	I	Keith A. Logan, Sheriff, Eureka County	Letter
A.B. 283	J	Keith A. Logan, Sheriff, Eureka County	Letter from U.S. Department of the Interior
A.B. 283	K	Keith Logan, Sheriff, Eureka County	Photo
A.B. 288	L	George A. Ross, Nevada Bankers Association	Proposed Amendment