MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
March 30, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Monday, March 30, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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
Assemblyman Nelson Araujo
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:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Dan Burdish, Policy Director, Assembly District No. 4
Vanessa Spinazola, representing American Civil Liberties Union of Nevada
Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office
Sean Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Janiece Marshall, Judge, Department 3, Las Vegas Justice Court
Dana Hlavac, Court Administrator, Las Vegas Municipal Court
Richard Glasson, Justice of the Peace, Tahoe Justice Court
John Tatro, Justice of the Peace, Carson City Justice/Municipal Court
Regan Comis, representing Nevada Judges of Limited Jurisdiction
Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Rose Asaf, Chair, Nevada Youth Legislature
Madeleine Welch, Member, Nevada Youth Legislature
Kimberly Caipa, Private Citizen, Las Vegas, Nevada
Lorne Malkiewich, representing Nevada Resort Association
John T. Jones, Jr., representing Nevada District Attorneys Association
Frank Coumou, Chief Deputy District Attorney, Clark County
David Stanton, Chief Deputy District Attorney, Clark County

Chairman Hansen:
[Roll was called and protocol was explained.] We have three bills on the docket today. The first one is Assembly Bill 281, which revises provisions relating to certain criminal offenses involving vehicles. It will be presented by our own Assemblywoman Fiore.

Assembly Bill 281: Revises provisions relating to certain criminal offenses involving vehicles. (BDR 43-243)

Assemblywoman Michele Fiore, Assembly District No. 4:
This is a bill that I brought forth last session and I am bringing it back. I am here to introduce Assembly Bill 281. Although this bill is 35 pages long, the basic premise of it is simple. It takes the minor traffic violations from a criminal violation and makes them a civil matter.

Currently, a minor traffic violation in the state of Nevada is a criminal offense and is punishable as a misdemeanor and subject to up to six months in jail and a civil fine. This bill removes the criminal offense and makes minor traffic violations subject to a civil penalty. Any statute that specifically calls for a misdemeanor, gross misdemeanor, or felony penalty for a traffic violation is not affected. Driving under the influence, operating a cell phone while driving, failure to stop for a school bus, failure to stop for a peace officer, failure to yield to an emergency vehicle, or aggressive driving will all retain their current criminal penalties.

Many of our neighboring states already have this practice in place. California, Arizona, Utah, and Oregon all treat their minor traffic violations as a civil matter instead of a criminal matter. None of these states have experienced any problems because of the change. Nothing in this bill is designed to change the fee structure currently in place or who receives the fees currently collected. We have accepted an amendment given to us by the administrators of Clark and Washoe Counties to ensure the fees stay where they are currently going.

In addition, my office has talked to Chief Justice Hardesty and Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts. I do not believe they are opposing this bill, but they will have to answer that question themselves. My office also requested input from Keith Lee in his official position as a representative of the Nevada Judges of Limited Jurisdiction. In addition, we had a meeting with the Department of Public Safety (DPS) and reassured them that we were not calling for any changes in how they handle the administrative processes. Lastly, we contacted the Las Vegas Justice Court and the Las Vegas Municipal Court for their input. If they have any suggested amendments, we assured them we were open to any suggestions they might have.

We are open to any amendments that leave the basic premise of this bill in place: decriminalizing minor traffic violations. I am prepared to present this bill section by section if the Chair or the members of the Committee desire but, in the interest of saving time, if you wish to forgo that, I am open to answering questions instead.

Chairman Hansen:
Can you give us a section-by-section overview? You do not need to go into any great detail, but I think it is important to get on the record what your intentions are on these sections.

Assemblywoman Fiore:
Sections 1 and 2 of this bill replace the misdemeanor penalties for registering a vehicle with a civil penalty. Section 3 removes the misdemeanor penalty for all violations of *Nevada Revised Statutes* (NRS) Chapter 482 unless they are specifically declared a gross misdemeanor or felony.

Sections 4, 5, and 9 remove the misdemeanor penalties for Nevada driver's license violations; however, driving on a suspended license still remains a misdemeanor violation. Section 6 requires the Department of Motor Vehicles (DMV) to keep track of civil fines in the same manner they kept track of misdemeanor convictions. Section 7 stipulates that failure to pay the new civil fine is punishable as a misdemeanor. Section 8 allows for the assessment of demerit points for the new civil fines imposed by this bill. Section 10 imposes misdemeanor penalties for specific violations in NRS Chapter 483 that are currently misdemeanors.

Sections 11 and 12 remove the misdemeanor penalty for all violations of NRS Chapter 484A unless they are specifically declared a gross misdemeanor or felony. Section 13 ensures that municipal courts retain jurisdiction over the civil penalties for violations of NRS Chapters 484A to 484E. Section 14 lays out the timeline for investigating the underlying issuance of the traffic ticket. Section 15 allows for the issuance of the traffic ticket and allows for mailing a traffic ticket under certain conditions. Section 16 allows peace officers to stop and detain a person they believe has violated provisions of NRS Chapters 484A to 484E.

Section 17 specifies how a traffic ticket is issued by a peace officer. Section 18 specifies how a traffic ticket is handled once it is issued. Section 19 limits a civil penalty to $250. At the request of the local authorities, we have agreed to increase that limit to the current limit of $1,000. In addition, section 19 allows for the imposition and collection of administrative assessments by the courts.

Section 20 specifies that an admission of the allegations in the traffic ticket is not evidence of admission of negligence in a civil or criminal proceeding. Section 21 allows a ticket issued for a traffic violation to be appealed to a district court. Section 22 allows a court to set payments for the civil fine for a traffic ticket. Section 23 requires all traffic violations in the state be uniform and further requires local governments amend their local ordinances so they are uniform with NRS.

Section 24 allows peace officers to issue either a misdemeanor violation or a traffic ticket based upon the evidence if they have reasonable and probable cause. Section 25 imposes a misdemeanor penalty if a person does not appear before a magistrate or pay his or her fine. Section 26 imposes a misdemeanor violation if a peace officer disposes of a traffic citation other than as outlined in statutes. Section 27 imposes a misdemeanor penalty for failure to pay a parking citation.

Sections 28 and 29 exempt the requirement for appearing immediately before a magistrate for a traffic citation that is a civil matter. Section 30 allows a court to require a person who has received two traffic citations to attend traffic school. Section 31 allows for a misdemeanor penalty for failure to comply with a lawful order of a peace officer. Section 32 allows for doubling of penalties in construction zones.

Section 33 allows for a misdemeanor penalty for drinking while driving or having an open container while driving. Section 34 allows for a misdemeanor penalty for interfering with traffic control devices. Section 35 allows for a misdemeanor penalty for failure to comply with a flagger or a traffic control device in a construction zone. Section 36 allows for a misdemeanor penalty for tampering with or removing a Breathalyzer device on a vehicle.

Section 37 imposes civil penalties instead of criminal penalties for violations of NRS Chapter 485. *Nevada Revised Statutes* Chapter 485 requires motor vehicle insurance. Section 38 allows the Department of Public Safety to suspend the license of a person who fails to pay a civil fine imposed for traffic violations. Section 39 imposes civil fines instead of criminal penalties for violations of NRS Chapter 486, which are motorcycle violations. Section 40 imposes civil fines instead of criminal penalties for violations of NRS Chapters 484A to 484C, which are generally rules of the road.

Section 41 allows exclusive jurisdiction by juvenile courts for administration of the civil penalties for juveniles or allows the juvenile court to transfer those procedures to justice or district court if it is in the best interest of the child.

Section 42 allows the juvenile court to impose the fees that are assessed in this bill, while section 43 enrolls the court assessments for the civil fines that are imposed by this bill. Sections 44 and 45 allow for the court assessments in a local jurisdiction. Section 46 repeals the allowance for civil fines by local jurisdictions for parking violations since they will now be covered by the changes enacted by this bill.

I have with me today my policy director, Dan Burdish, if you want to go through the bill.

Chairman Hansen:
Does anyone have questions at this time?

Assemblyman Gardner:
My question pertains to section 22. It talks about what happens if someone does not pay the fine. I know the process right now is that if you do not pay the fine, they send out a warrant and you can get arrested and thrown in jail. This is getting rid of that?

Dan Burdish, Policy Director, Assembly District No. 4:
The way this is designed is that the court can issue a misdemeanor violation if you do not pay the fine. We did this because the courts wanted a way to ensure that they were going to collect their fees. It also allows notification to the DMV. The DMV is allowed to suspend the license if you do not pay a fine, and then if you are caught driving, it is also a misdemeanor.

Assemblyman Elliot T. Anderson:
Would you tell me what the purpose of section 26 is, charging a peace officer with a misdemeanor? Is there a problem that is going on right now that that needs to be done?

Dan Burdish:
That is a provision which is currently in statute and is only a misdemeanor if you issue a ticket for a misdemeanor. We wanted to keep it in the statute, so all the Legislative Counsel Bureau did was add the same provision for a civil fine. Right now, if a peace officer writes a ticket, they are subject to a misdemeanor violation if they do whatever they do that is not per NRS. All this is doing is making it comply to the civil fines.

Assemblyman Elliot T. Anderson:
I did not know that; thank you.

Chairman Hansen:
This is my third session, and everyone complains about getting tickets, but I have never had anyone complain about the misdemeanor concept. What is the genesis of the bill? Where did it come from? Are there abuses going on that we need to be aware of?

Assemblywoman Fiore:
Sparks is a lot different than Las Vegas. In Assembly District No. 4 we had some issues prior to the 77th Legislative Session in 2013. That is why I brought forth this bill. We had a principal in my district, as well as a registered nurse who worked in my district at Centennial Hills Hospital. The principal had been pulled over, was told there was an unpaid speeding ticket, but it was paid. There was disruption in this gentleman's day of getting arrested because there was a warrant out for his arrest. When they arrested him, they took his cell phone and processed him in the Clark County Detention Center. Basically, he spent a day and a half getting out. His wife did not know where he was. He did not know her phone number because he would press one on the cell phone and that was his wife, and they took the cell phone. That was one incident, which was one too many.

Another incident occurred when my nurse was driving on Interstate 215 at Lone Mountain Road and a police officer pulled her over. She had never had a ticket. She disagreed that she was speeding, so he arrested her right there and had her car towed. They can do that. It is a misdemeanor. This is what brought this forth. I spoke with our previous Chair, Mr. Frierson, and he has been in the court system for a long time and agreed that this has been a problem for decades, so we need to fix it.

Chairman Hansen:
I have corresponded with Mr. Frierson on this and have some recommended revisions in it.

Assemblywoman Fiore:
We are totally open to any amendments on this. We just want to keep the premise of the bill changing the criminal infractions to civil penalties. It really ruins people's lives, believe it or not, to have a criminal record for a speeding ticket.

Assemblyman Wheeler:
You usually do your homework on these things pretty well, so I am assuming that you have spoken to the court system and the police officers. Would this bill actually save a little money in the processing of speeding tickets since it is no longer criminal? Save a little money in our courts and free up a little time?

Assemblywoman Fiore:
That has been our biggest blocker of this bill. During the 77th Legislative Session, this bill did not go forward because the courts were thinking we were going to interfere with the collection of fees. It will not. Where do you think we are with that question of saving money, Mr. Burdish?

Dan Burdish:
The biggest savings will come through the district attorney. We have not talked money with the district attorney this year, but two years ago when we talked to District Attorney Wilson in Las Vegas, he said the district attorneys spend approximately 15 to 25 percent of their time working on traffic violations. If someone gets a ticket, they go down, contact their attorney, their attorney calls the district attorney, they negotiate that traffic ticket down to a parking ticket, pay the same amount of fine, and do not get the points. This will eliminate it. When you are not negotiating a criminal matter, the district attorney can actually go out and prosecute criminals instead of negotiating traffic tickets.

Chairman Hansen:
Is there anyone who would like to testify in favor of A.B. 281?

Vanessa Spinazola, representing American Civil Liberties Union of Nevada:
We are in support of A.B. 281. Our courts in Nevada and across the country are incredibly overwhelmed. Open Society Foundation has a report called *Minor Crimes, Massive Waste*, and basically we are faced with Nevada people negotiating directly with district attorneys for misdemeanor cases because they are not provided their right to counsel. I believe that if we got some of these misdemeanors off the books, people would have constitutional access to the courts and the opportunity to pay a civil penalty instead of negotiating in court.

Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:
For the reasons stated by Ms. Spinazola, we are also in favor of this bill.

Sean Sullivan, Washoe County Public Defender's Office:
I, too, agree with the comments of Ms. Spinazola and Mr. Yeager. Just recently, I had a family member go to Washoe County to handle a minor, innocuous traffic matter, and it was my understanding that there were three district attorneys handling and negotiating the traffic cases in Washoe County. That tells you how many man-hours it would take to handle these types of innocuous traffic tickets that are clogging the system. We certainly support this bill.

Chairman Hansen:
Are there any questions at this time? [There were none.]

Janiece Marshall, Judge, Department 3, Las Vegas Justice Court:
We are not taking a position on the policy with respect to whether the Legislature wants to change it to a civil matter versus a criminal matter. Representatives from our court have met with Assemblywoman Fiore's office and raised concerns regarding some of the issues on implementation of how this would work.

The first issue we would like to address is, who is going to be pursuing these cases if the district attorney is not going to be prosecuting them? You will have to set up a whole structure if it is a civil action. The bill provides for the rules of civil procedure not to apply. We would need you to instruct how you want the courts to handle the matters if the rules of civil procedure do not apply and it is now a civil action.

We are also concerned with the limitations of when the action could be brought. An officer who would issue a citation does not always determine at the time of the incident whether there is any offense. It may take well more than 60 days at minimum. If there is going to be a statute of limitations, it should be longer than what is provided.

Chairman Hansen:
Are you testifying in favor of the bill at this time? It sounds like you are in opposition to the bill.

Judge Marshall:
We are not in opposition. We are raising the issues of the concerns that we brought. I apologize; we were told to come up now if we wanted to testify.

Chairman Hansen:
Please hold on for a minute. Is there anyone else in Carson City who would like to testify in favor of the bill? [There was no one.] Now we will go to opposition. Unless you agree 100 percent with the bill, you are in opposition, and it sounds as if you have some significant amendments that you would like to include. Please go ahead with your testimony, Judge Marshall. I apologize for interrupting.

Judge Marshall:
There are additional issues. One is that after three years it would be dismissed. What we find—if past conduct is any example of what the future conduct will be—is that when someone has their license suspended, he or she will continue driving. If after three years this is dismissed, there are no ramifications for the act nor for the continued driving on a suspended license. If the other driver does not have insurance and becomes involved in an accident, the other person will have no insurance other than uninsured motorist insurance, which affects all the rest of our insurance rates when those go up. We are very concerned that it will create a subclass and subculture of people who receive citations, do not pay them, drive on a suspended license, and incur the ramifications of having no insurance.

We are also concerned with the basic implementation of it. If the district attorneys are not going to be prosecuting them as a criminal matter, then who will? It provides for service by certified mail, which costs a lot of money, and we would have to set up a whole division which would be serving by certified mail. The process and the way it works now is that when you have a citation, it gives you an appearance date. You can go pay the ticket before the appearance date, you can appear on the appearance date, pay the ticket, or you could then set up for a trial date if you want to dispute it. The way the bill is set up now is it is asking for service of the traffic citation by certified mail. This is a very expensive process, and we do not have the mechanisms in place to be able to establish it. Many of the things that it is seeking to do would require us to make significant changes in the administration and processing of traffic citations, and that is simply not included in the bill.

When this came up previously, we raised these issues, and we have raised them again recently when we saw the bill being produced and introduced again. We went through many of them line by line with representatives from Assemblywoman Fiore, and we appreciate that she had someone meet with us. These issues still exist, and we are very concerned about the additional cost that would result in the court to be able to administrate it. More specifically, who is going to be pursuing it? It does not have witness fees for when officers or anyone else have to come and testify. We do not know what rules would apply during these procedures, and who would be there because the court cannot prosecute a civil action. It has to be another entity that is actually representing the state or the county's interest in it. Without significant changes to the bill, we have significant issues on how we would actually go about implementing them and the cost associated with it.

We understand there is another bill that has been submitted which seeks to address similar issues. We also note that most people do not pay their traffic bills until it becomes bench warrant status. We do not arrest on a class citation that is issued on a bench warrant. What the Las Vegas Justice Court has done during the last year and a half is that when people are booked on a traffic warrant where they have another matter pending, we allow them time before they are booked into the Clark County Detention Center to actually pay their traffic ticket so they would not be booked into the Clark County Detention Center. This has created a revenue increase swing of $200,000 for people who are willing to pay their ticket to avoid going to jail, plus we save the debt days in jail for someone who would be booked on multiple traffic citations. The concern is that no one would ever pay their traffic bills if it becomes a civil matter.

In addition, when it becomes a civil judgment against a person, it will affect his or her life significantly. What usually occurs with a minor traffic fine is if you pay it, it is reduced to illegal parking. When you have it as a civil action of judgment, it is going to go against your credit rating, it is going to affect your ability to get loans or mortgages, you will have to pay higher rates, and it is a ramification of having a civil judgment against you. Where it might seem that it is a better result, it actually could affect people's lives more adversely than if it is only a misdemeanor and usually reduced to illegal parking.

Chairman Hansen:
I see that most of your testimony is in writing, so I would appreciate it if you would submit it, because obviously we have to take your concerns in and try to amend things if we process this bill going forward.

Assemblyman Elliot T. Anderson:
I have a question about your current collection rates. Obviously, the problem that Assemblywoman Fiore is trying to get away from is we are putting people in jail for those fines. I would assume that a large portion of these people pay their traffic tickets already. Do you know what the rate is on a percentage basis of how many people collect? You are talking about problems with going to a civil action to collect, so I am wondering how much we would actually have to go out and collect.

Judge Marshall:
I am not prepared with the rates; I do not know. Justices Tatro and Glasson are there; I do not know if they collected that data. I was more focused on the mechanisms of how we would go about doing it. I can tell you that there is some conflict with other provisions in the NRS with respect to insurance. If you do not have insurance or you get it after the fact of the citation, there are

different rates. We collect the bulk of our traffic tickets through the traffic division. We have a collection company that collects it if the people do not pay it before it gets to the trial stage. I do not have that information, but we can provide it to you.

Also, the documents that I have are not written notes of my testimony. These are questions that representatives from my court raised with Assemblywoman Fiore's representative, and I believe these were already provided. We would have to prepare them as actual points, and I did not bring them that way to submit them. I simply raised the issues that we saw as problematic for us to implement.

Assemblyman Elliot T. Anderson:
I would appreciate that information, because I think it is key to understanding how it would affect you and your revenue.

Dana Hlavac, Court Administrator, Las Vegas Municipal Court:
I will defer to members of the Judiciary who may be present in Carson City and reserve comments after they finish speaking.

Chairman Hansen:
Let us move to opposition testimony. Those who are here to testify against A.B. 281, please come up.

Richard Glasson, Justice of the Peace, Tahoe Justice Court:
I am on the Legislative Committee of the Nevada Judges of Limited Jurisdiction. The Nevada Judges of Limited Jurisdiction is the group that educates, trains, networks, and represents the municipal court judges and justices of the peace in Nevada. We are rural, frontier, and urban.

This bill is problematical to our association. I am also a member of the American Civil Liberties Union, although I am not paid by them and I am not on their board. We believe in protecting the rights of everyone that is in our court—the defendant, the prosecution, law enforcement, and the victim. This bill conflates the issue of civil and criminal. It is taking a criminal act but it is putting a civil window dressing on it. That does not stop these acts from being violations of criminal law. There are other words that could be used, such as infraction or penalty as opposed to a civil fine. A fine is a fine. A fine is a penalty. A fine is a sentence.

A couple of years ago, this bill came before this group and we were told that we would be involved in a study. It has been two years, and no one has contacted us. We are finding out about it now and we are trying to do a little

makeup work, but we have full calendars. We have had two years to work on this, and the silence has been deafening. Municipal courts currently have no civil jurisdiction, so this is a situation where the Assembly is asking that our municipal courts set up a whole parallel system to what they already have, and they are crowded and busy. They do not need a whole other section of jurisdiction. The bill talks about the Nevada Rules of Civil Procedure, which are applicable to district courts. Municipal courts have no civil procedure, and the justice courts have a completely separate set of rules.

Concerning the collections under this particular bill, there has to be a fund somewhere if it has been successful in Oregon, if it has been successful in Arizona. It is successful in those states—those states have state income tax. I am just a judge, but I dislike it when I see the camel's nose coming under the tent with a way to try to justify an income tax here in the Silver State.

In Nevada, victims have rights. It is enshrined in the *Nevada Constitution* in Article 1, Section 8, Subsection 2. The Legislature must provide, by law, for the rights of victims of crime personally or through a representative to appear at the time of sentencing. This takes that all away. Someone with a minor traffic offense, driving left of center, gets a civil penalty, a civil fine that they can send in. But the family who has been injured, they get no right to come to court. We have taken away constitutional rights of the victim.

Our collections at Lake Tahoe and Incline Village are largely 62 to 78 percent out-of-state residents. This bill does not address that. It does not give us any mechanism to take care of these fines. It is going to be a huge loss in revenue. This bill requires us to set up a parallel system. I would need to hire two or three additional clerks to work in East Fork and Tahoe to get this implemented. The money is now shared, depending upon how it is written and how it is prosecuted. This bill will change it and move all the money to the state, taking away a substantial amount of income from Douglas County. We have an increase in workload. If the civil fines are not paid, it then becomes a criminal matter. It turns Nevada into a debtors' prison state. That is not the way we take care of things here. We collect our fines at Lake Tahoe very well, converting many of them to community service. This takes that away. It would be wonderful to continue to give Douglas County Parks and Recreation over $200,000 in free labor every year. We will not be able to do that anymore. As to the cost to my county, where I need to seek my budget to pay my staff, the well is going to go dry. It is going to go elsewhere. So we have an increased workload with an increase in the budget, decrease in revenue, decrease in collected revenue, and decrease in collected assessments. This bill is a wholesale change to what we would be doing in our justice courts. I told Judge Tatro that it is like the Assembly calling up the Reno Rodeo and saying,

"Enjoy your rodeo. We have watched it all these years, but this year no livestock. We will take care of that elsewhere." It is just a different circus when that happens.

John Tatro, Justice of the Peace, Carson City Justice/Municipal Court:
I think the biggest thing is that we do not know for sure the consequences of this bill. We are not here saying we oppose it forever and that civil is a bad thing and it has to stay criminal. We do not know. We were going to have two years to study it and that is the big thing. We did not. It was a surprise to me, and I think to most members of our association, who are the judges throughout the state. One of the things you need to understand is that our systems in all the courts have evolved and grown. By systems, I am talking—just the computer systems, not to mention staffing and how we interact with the city and the sheriff's office—the systems have all revolved around traffic. In Carson City, we process almost 20,000 traffic tickets a year. That is a lot of traffic tickets for a two-judge court. The numbers are astronomical for Las Vegas. How that is going to go through our system and what is going to have to happen to our systems—just the computer systems—to accommodate it, we do not know. We are talking multimillion-dollar systems. I am on a system called CourtView that the Administrative Office of the Courts (AOC) sponsors, but our court has paid hundreds of thousands of dollars to be a part of it. How it is going to change I do not know, and I do not believe AOC knows how it will change.

I would like to point out that some of the things that are going to happen—such as not paying a fine now, the suspended license—currently your license is suspended, just like under the bill. There is the issue of traffic cases going to warrant. In our court—and most courts throughout the state such as Las Vegas, Washoe County, Reno, Sparks, and Tahoe—the officer writes a citation that you must appear in court on May 1. You do not appear on May 1, so on May 15 our court sends out a letter saying, "You were supposed to be in court on May 1 but did not show up. How come? Please come, or a warrant is going to be issued." That letter goes out. Then the next letter goes out and says pretty much the same thing in big, bold print: "Do it now, or we are going issue a warrant." By the time a warrant is issued, someone must either shred their mail or not pay attention to it. We do not want to send people to jail. We do not want to clog our jails with people on traffic cases. They are not paying until that threat comes out, and then we get payment.

In 20 years of being a judge, I have never once sentenced anyone to jail for speeding or any traffic offense. The only one might be driving on a suspended license if it is their fifth suspended license over a period of years and there is just nothing else left. The other thing I have never seen in 20 years is anyone

getting arrested for just speeding, just failing to use their blinker, or some minor traffic violation. It is always accompanied by another offense such as having drugs, refusing to sign the ticket, or refusing to cooperate. They obstruct the officer and maybe they will go to jail on that, but that is extremely rare.

As we walked in this morning, we had a chance to look at the amendment, and I do not think even the amendment covers our concerns. In Carson City, if someone is issued a citation that is under the NRS, it is converted to the municipal code, and any money goes to Carson City. If this bill passes right now, Carson City would lose $540,000 a year. That is a minimal estimate. We were trying to be conservative so we do not inflate our numbers. Basically, that is where we stand. We are not opposing the policy issue of civil or criminal, but the effects are huge and we need to know the ramifications better because it is going to impact the cost to our counties and how we operate.

Regan Comis, representing Nevada Judges of Limited Jurisdiction:
We have expressed concern and look forward to working with the Assemblywoman.

Assemblyman Gardner:
It is my understanding, regarding the municipal courts and the justices of the peace, that a percentage of your budget is based on these traffic tickets; is that correct?

Judge Tatro:
No, absolutely not. Economics cannot drive justice. Justice is served on each individual case.

Judge Glasson:
There is an administrative assessment on any fine, a portion of which is retained in the local jurisdiction—be it municipal or justice—for specific purposes such as information technology or training. It is a fixed amount on every fine, whether it is a battery or even a parking ticket. We are not working on commission.

Assemblyman Elliot T. Anderson:
I hope the panel can get me information on your collection rates. I think it is key for us to understand the impact this measure will have.

Assemblyman Ohrenschall:
Judge Tatro, one part of this bill that rings true with a lot of us is law-abiding people get very busy with their lives and are working two or three jobs trying to keep a roof over their kids' heads and forget to pay one of these infractions. Then they get pulled over for a broken taillight, and very often they are put in

handcuffs and brought in because there is a bench warrant. I think that is the concern many of us have and would like to see corrected. A car could get towed, and, as a result for many of our constituents who lack means, they may never get the car back, and a night in jail may mean losing a job. There are a lot of collateral consequences that we are trying to fix. I hope you will work with the sponsor. I was looking back at the legislative history from two years ago, and it looks like my colleague's bill on the study almost made it to the Governor's desk, and then the last session it died on the Senate's desk. The Advisory Commission could have studied it anyway, but I do hope you will work with the sponsor.

My question has to do with those notices about the tickets that go to bench warrant. A lot of people are very transitory these days and are struggling. I imagine you must get some that come back in the dead letter file. Do those go to bench warrant? A concern I have are the people who never received the notice and then find out they have a bench warrant when they are being pulled over and being brought into a county jail.

Judge Tatro:
Yes, those will go to warrant. The law currently requires that you must keep your current address with the DMV, so their driver's license address is supposed to be the address they are at. I understand people move, but we send the notices to the address on their driver's license, which, by law, is supposed to be their current address. Sometimes they do come back unclaimed and yes, they will go to warrant, but I will say that when those people get arrested—and it is just for such a minor thing like that—we have a process sort of like what Judge Marshall talked about, where we get them out of the jail very quickly. They do get picked up, they do go to jail, but they have had the citation and the two notices, and then they are brought to jail. There is a substantial amount of time that has usually passed before that happens and efforts by the courts to contact them.

Assemblyman Ohrenschall:
So there is no process right now in your court to try to get those letters that come back undelivered and make sure that the system takes it into account that those do not go to bench warrant? Obviously, in an ideal world, whenever any of us would move, we would go to DMV the next day or the next and get our information updated, but obviously that is not happening. That troubles me. People might be arrested and brought in on a bench warrant and they did not realize it because of the circumstances that they are going through. Is there any process to try to get those return notices so they do not go to bench warrant?

Judge Glasson:
It is an individual training issue that we are trying to get our judges and law enforcement involved with. I am from a small rural township. If someone has that type of situation, they explain it, and hopefully there is not a shouting match. I work 24/7. I get calls from law enforcement all the time. "I have a bench warrant, these are the circumstances, she promises to come to court on Monday, can I let her go?"

Assemblyman Jones:
I concur with my colleague with the concern. You just brought up the fact that you want to work with people. Unfortunately, when you have the discretion, there are a lot of people who do not want to work with people and they get thrown in jail. A few years ago, I had a situation with my son where he was picked up on a similar situation, was at the local jail, and they said, "Okay, you pay the fine. We will not process you." It was a weekend and they would only accept cash. Do you know if they only accept cash, or do they accept credit cards and checks?

Judge Glasson:
It varies from jurisdiction from jurisdiction. It is a training and marketing issue. At our jail now, we take cash, check, money order, plastic, and you can even pay online. Someone else can pay online for you. There is a website where you can get these things taken care of.

Assemblyman Jones:
Is it an issue in Las Vegas?

Judge Marshall:
We make multiple efforts to communicate by letter before a bench warrant would ever be issued. I would also note that it is the policy of the Las Vegas Metropolitan Police Department (Metro) that they do not arrest someone on a traffic bench warrant. Generally there is another case pending, which is why you are brought to the jail. We established the policy a year and a half ago where we allow people, and we accept all forms of payment, to pay their ticket or bail amount and still be able to dispute the charges if that is what they want to do. We do not book them in jail; we do not want them spending a night in jail for any type of traffic infraction. In my courtroom, I personally make the effort that when it gets to the point where there have been many communications and the person still has not responded, I obtain the address, make sure the summons goes to the ticket and whether if it returns; many times

it does not return. I then ask the district attorney for the most recent address on file in our system, and if it is different, we also do an independent search to try to locate the person's most recent address. We do all of those things before we even issue a bench warrant.

Chairman Hansen:
If they have 20,000 citations issued in Carson City, do you have any idea what the number is for Clark County?

Judge Marshall:
I would not want to even guess. I can provide those numbers to you. That was one of the things I asked the court administration and they just did not have sufficient time for the hearing today. We thought that we were going to have additional time to work with Assemblywoman Fiore before this was set for a hearing. We can provide those numbers for you. It is a huge amount and, of course, many of the tickets are from people from out of town, as Judge Glasson referenced in his jurisdiction. Sometimes it takes a while for those people to send the money in, which is one of the concerns we have. It is 60 days. The time period for all of this to occur is going to be problematic for us. We get a tremendous amount that is paid through our traffic division that never gets to the judicial part, the bulk of our tickets are going through our traffic division. They are paid and they are resolved at that level. So when Judge Glasson talks about how much it is going to cost additionally for justice court, It is a very small percentage that actually makes it to a judge. It is less than 1 percent that I would ever have on my calendar, and I do a general criminal calendar. That is a very small percentage and the district attorney is involved one step prior to the court when the person does not show up and then they are offered an opportunity to pay it or set it up for trial. That is when the district attorney starts getting involved. Prior to that, that is all our traffic division, so it would be a significant change in our system. If it becomes a civil action, then we will be involved much earlier in the process because then it would be a civil judgment. It will require a tremendous amount of shifting of our resources. We have spent millions of dollars on our software programs, such as Odyssey, because it is all on an electronic system. We do not use what the rural jurisdictions use, which is CourtView. We converted to Odyssey, and in the last couple of years we have spent a tremendous amount on our traffic division to set it up the way that it is now. We will be looking at significant increases in changing it to a civil fine format.

Assemblyman Gardner:
From what I am hearing, it sounds like you get notice when you have these tickets before they become a bench warrant. I can tell you for a fact that over the last couple of years, that has not been the case in the least. There are a handful of issues that I know of personally where they had no notice. I know of one person whose tire popped on the freeway. He was talking with the police officer, and I went there to pick him up. His wife was there, and as soon as I got there, they put him in handcuffs, threw him in the back of the car, and when I tried to talk to him, the police officer shouted to me and threatened me to get back in my car. He would not let us know what was happening, and we did not know anything. I was an eyewitness to this. That is my concern with this bill. When we are talking about how people get all of these notices, I can tell you that they are not. They lived at their house for 20-plus years and the address had not changed. That is where a lot of my concerns are coming from. There are people being thrown in jail and if they are thrown in jail during the weekend, they will spend the night in jail no matter how much money you have or when you can pay it. I know that in this case specifically we had tried to pay for him to get out. They would not let us do it because they could not get a judge. This happened about two years ago in Las Vegas. I know that this was not allowed as recently as a couple of years ago. If that is how it is now, I thank you, because that is what it should have been in the first place.

Chairman Hansen:
It raises an interesting point, because even if you have the threat of jail hanging over your head and you still do not pay your fine, if it goes to the civil fine, what threat is it going to be that is going to make you want to pay your bill? It is an interesting dilemma. I guess the real answer is, if you do not want to go to jail, pay your fine. I am sympathetic somewhat, but I never actually received a traffic ticket in California that I did not pay because I took a risk and said, "What are the odds of me going back there and getting a ticket again?" I do not think like that, but I believe there are some people out there who do.

Dana Hlavac:
I believe members of the judiciary have done a great job highlighting some of the things about the bill, but I think I can address some additional areas. It is curious that this bill has no effective date. We tried to see what exactly we would have to do to implement it, and I believe Judge Marshall as well as Judges Tatro and Glasson have talked about the fact that we have significant reprogramming of software systems that would have to occur. In fact, the City of Las Vegas is undergoing a request for proposal for a complete new software system because ours has outlived its life function. It is an issue in terms that we would at least need a significant delay in the actual effective implementation date in order to reprogram software.

While there was an attempt to include the administrative assessments back in the bill, I would note that the genetic marker fee is not included in the list of administrative assessments—which is a $3 genetic marker that actually goes to the counties—and that would be lost revenue to the counties.

I would echo what was said about the attempts of the courts to try to notify people who have missed their obligations. In the Las Vegas Municipal Court, we have an automated telephone system that calls people before their scheduled appearance and payment dates, reminds them of their dates, and reminds them of their payment obligations. If they miss their date, phone calls and follow-up letters go out saying that if they do not come in within a certain period of time, bench warrants will be issued. If the warrant is issued, another series of letters and phone calls go out to those individuals informing them that bad things can happen if they do not come into compliance.

I certainly appreciate Assemblyman Gardner's position that a lot of times the information we get off a citation is not accurate. The simple transposition of one digit or something in an address can certainly result in someone not getting that kind of notification. I work for the City of Las Vegas on those simple bench warrants for a simple traffic matter. Every one of those warrants includes a notation that that warrant can be cleared by calling a phone number, and an officer who stops one of our defendants with a warrant is able to call that phone number, put the defendant on the phone, and make arrangements either for the defendant to fulfill his or her financial obligations or to reschedule a court date to come in. What we see is that only the serious repetitive offenders, who have either continued to reschedule payments or have been scheduled to come back in and continue to fail to come in, are the ones that are getting arrested.

Section 15 states that a traffic citation can be served by delivering a copy of the traffic citation to a person. Under the Nevada Rules of Civil Procedure, section 18 states that none of the other Rules of Civil Procedure apply to these particular cases. That would seem to exempt all civil collection methods including execution, garnishment, or any other methods of collecting a civil judgment, which essentially leaves us in the position of simply having a civil judgment that we cannot even collect other than asking someone to please come in and pay their debt.

I would note that there are other limitations to collecting, because while the bill attempts to provide an enforcement tool through DMV notification under section 18, subsection 6, a person failing to appear can have a civil judgment entered; however, the court has to make a finding that paying that debt within 30 days is an undue hardship. If the person fails to show up, there is no way

the court can make that finding of an undue hardship, and the entire amount becomes immediately due and owing. However, you cannot notify DMV unless the court has a record that they have provided the person an opportunity to go on extended payments, which you cannot do because the person is not there and you do not know if the notice is going in because you cannot send a notice under the Rules of Civil Procedure because only the service of the citation is applicable under the Rules of Civil Procedure. What this leads to is basically we have a lot of judgments and no way to enforce them.

I would note that the bill calls for the ability to take a failure to pay and make it a misdemeanor. In the City of Las Vegas, roughly 44 percent of our cases are on extremely minor driver's license infractions—44 percent of the outstanding number of warrants, which is 120,000 outstanding warrants. That represents approximately 45,000 to 50,000 warrants that would no longer be warrants, but in order to pursue the people who have not paid, we would have to issue probable cause statements. Then I either have someone personally serve the person with those warrants or simply issue arrest warrants, so we have now created an additional warrant system that still has to be prosecuted but actually at a higher level. This is not a solution; it is simply exacerbating the existing problem.

There was a discussion about the desire to not have a criminal record for traffic violations, and I would note that the DPS and the disposition reporting that goes to DPS does not include traffic violations. It only includes the more serious misdemeanors, so there really is no criminal record per se. Those violations are not recorded to the National Crime Information Center or the Nevada Criminal Justice Information System.

Assemblyman Elliot T. Anderson:
Is it possible that we can make special rules and not just default to the Rules of Civil Procedure for this? Could you not just take the civil penalty, transfer it over to DMV, and have the DMV be in charge of collecting in order to renew your registration or driver's license? Would that not be a functional way to do that without arresting people?

Dana Hlavac:
That is basically the system that exists right now. When a warrant or failure to pay is issued, we can report it to DMV. A great number of people actually come in and pay because they are trying to clear their license and get their obligations taken care of. Unfortunately, the 44,000 to 50,000 outstanding warrants are people who it has not worked for in the past.

Chairman Hansen:
Is there anyone else in Las Vegas who would like to testify in opposition to A.B. 281? [There was no one.] Is there anyone who would like to testify in the neutral position on A.B. 281?

Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are in the neutral position, but we have a few concerns. We are concerned that currently the officers stop the vehicle and approach the driver. We are making sure it does not make the changes of how the officers conduct their daily business as such. There is another concern that Judge Tatro brought up, which is, what happens after the stop? Inside the vehicle, if something else comes up, smoking marijuana, or some other things that come up, what happens after that? What if they refuse to sign? Do we just let them go? Basically, that is most of our concerns.

For our policy, currently we try not to arrest for traffic violations, unless it is required by law or there are some other circumstances.

Chairman Hansen:
Mr. Hlavac mentioned there are apparently 120,000 outstanding warrants, for Clark County, as we speak. That is a lot of people. How many citations are normally issued in Clark County in a normal year? Do you have any idea?

Brian O'Callaghan:
No, I do not have those numbers, but I can get them for you.

Chairman Hansen:
I am just curious. How big of a problem are we trying to solve? Are we creating more problems? Regarding the question that Assemblyman Gardner brought up, let us say that you pull Ira Hansen over, a reasonably decent citizen, has one strike against him for being a legislator—I understand. How often do you arrest people who flat out have not paid their bill? Maybe I got a ticket in Clark County two years ago, I have totally spaced it, have not paid it, received my notices in the mail, ignored them, and you pull me over for a blown tire or taillight. I have an outstanding warrant for failure to pay my traffic ticket. Do you typically arrest those people under that circumstance? What is the current procedure for Metro?

Brian O'Callaghan:
That all comes into play in terms of what is occurring. It could be that the officer tells them that they have a warrant and they need to take care of it. If they have a consistent speeding ticket and they have warrants for speeding and now they are out there speeding again, that could come into play. If they are not paying their fine, then they could be taken to jail.

Chairman Hansen:
Is there anyone else wishing to testify in the neutral position on A.B. 281? [There was no one.] We will bring back Assemblywoman Fiore to wrap it up.

Assemblywoman Fiore:
I will review some of the concerns that were brought up. I want you to understand that when they say there are 50,000 warrants, there are 120,000 warrants. Last session—and Mr. Chairman, you sat right here with me—we had Julie Butler from DPS express that there were 80,000 unfixed reports. So in the case where my principal was arrested, it is because his status was not updated, they lost it, and he had paid the ticket. I would really like to believe that what occurred two years ago would not occur today, but that is just not the case. I have to tell you that it disturbs me because each and every one of us are elected by our citizens and our constituents to protect them, and we come up here with legislation to help our citizens, and we get kind of blindsided and railroaded with Well, this is a bad bill because it is going to affect—and I will be politically incorrect and blunt—it is going to affect the dollars in the court system and it is all about the money. I have answered these questions and we want to leave it as is. You want to arrest people because you think speeding is a crime and 36 other states including all of our contiguous states, do not think speeding is a crime. Again, Nevada is quite unique. We arrest people as a collection agency. We throw them in jail unless they pay, and that is not why we are elected. I really do not care who opposes this bill. What I care about is protecting the citizens who elected us to protect them. If our judges and all of these people have an issue with them, once we pass this law, then we can straighten out their issues and they can get paid, along with updating our system to get all of these warrants off of the registry that are not updated. Would you answer, Mr. Burdish, some of these outrageous concerns?

Chairman Hansen:
Actually, no. Mr. Burdish, you are not going to answer. We are not here to rebut all of the previous testimony, only if there are some specific things that were not addressed in the bill. If you would like to, wrap up some specific things, but this is not rebuttal time on all the previous testimony. Only if there are some specific things that have not been addressed.

Dan Burdish:
The only thing I really wish to rebut is that three weeks ago we went to Keith Lee, the lobbyist for the Nevada Judges of Limited Jurisdiction, and asked him for his input on this bill. We heard nothing back. Two weeks ago, I met with Judge Saragosa in Las Vegas as Judge Marshall did say. She was supposed to get me an email or contact me with what their objections were. The ones they brought up I told her that we are more than willing to work on. Lastly, failure to pay your fine and going to a misdemeanor was something that we put in the bill two years ago at the request of the courts so that they could do a collection. This was something specifically added because of the problems the courts had because they would not be able to collect.

Chairman Hansen:
We will close the hearing on A.B. 281 with this caveat. We have a beautiful conference room and hopefully we can get everyone in the room. Whether it was two years, two weeks, or two minutes ago, that option is on the table, and I expect both sides to take advantage of it and see whether we can reach a compromise and move forward with this bill.

We have a special group with us today, which is the Nevada Youth Legislature. We have set aside 10 minutes to give them an opportunity to present their bill, which revises criminal penalties for the consumption or possession of an alcoholic beverage by a person under 21 years of age.

Senate Bill 464: Revises criminal penalties for the consumption or possession of an alcoholic beverage by a person under 21 years of age. (BDR 15-651)

Rose Asaf, Chair, Nevada Youth Legislature:
I was appointed by Senator Hammond, who represents Senate District No. 18. I come before you today as the Chair of the Nevada Youth Legislature presenting Senate Bill 464. To provide a brief background on how we are privileged enough to be here before you today, I would like to share some information about the Nevada Youth Legislature. The Nevada Youth Legislature is composed of 21 high school-age students, each of whom is appointed by his or her Nevada State Senator to serve a two-year term. During the two years, we attend monthly training sessions and learn skills such as constituent outreach, issue analysis, presentation skills, preparing testimony, and much more.

Nevada is one of two states that grants statutory authority for a youth group to propose a bill during a legislative session. Youth Legislator Madeleine Welch will now explain to you the thorough and rewarding process the Nevada Youth Legislature undertook to select one measure to be introduced in this session. That bill is S.B. 464.

Madeleine Welch, Member, Nevada Youth Legislature:
I am a youth legislator who represents Senate District No. 16, and I am going to talk about how we came to arrive at this bill, which Chair Asaf originally proposed. First of all, each of the 21 youth legislators came up with a bill which we all debated, and then an issue-narrowing process brought the proposed 21 bills to 7. Then we debated some more and brought those seven bills to two, at which point we adjourned the meeting for a new one. In order to decide between the two bills, we heard testimony that Chair Asaf and the other youth legislator had prepared for us. Chair Asaf's bill had been very much supported by all the youth legislators from the very beginning. There were many cosponsors for her bill, and she had many testifiers, one of which you will be hearing today.

I would also like to discuss how the bill came to be in the form that it is now. Originally, the bill exempted multiple callers for a minor who had suffered an alcohol-related injury, and it also exempted the person who sold the alcohol to a minor from prosecution. I proposed changes to both of these things so the bill is not so soft on the law and it does not provide an out for students; it just provides an incentive for students to want to be safe and to want to go to the hospital in the case that their life is threatened.

Rose Asaf:
As you can tell, the process of selecting 1 bill out of 21 was a challenging task; however, the Nevada Youth Legislature ultimately selected the bill that our members believed would save lives. As both Chair and as a person who proposed this measure, I would like to explain how this idea initially came about.

When I was a sophomore at Bishop Gorman High School in Las Vegas, I was eager to apply to the Nevada Youth Legislature. The application I filled out had three essay prompts. One of the questions asked, "If you could propose one piece of legislation, what would it be and why?" The result of my answer to that question is what you are considering today.

Senate Bill 464 is a lifesaving piece of legislation that offers medical amnesty to underage drinkers who find themselves in life or death situations. The Nevada Youth Legislature crafted this bill very narrowly to address its concerns for the

underage drinker. Senate Bill 464 provides a legal exemption only for a minor in possession and minor in consumption charge for underage drinkers who seek medical attention. The immunity is granted to both the first caller and the person or persons for whom the person is calling. The caller, however, must remain on the scene and must comply with law enforcement.

Similar medical amnesty legislation has already been passed in 23 states and has garnered tremendous bipartisan support (Exhibit C). We want to stress that S.B. 464 addresses concerns for the underage drinker by empowering young people to make the right and responsible decision to seek medical attention without hesitation and without fear of legal consequences. Our priority is the well-being and safety of minors. We will only be calling one witness to the table for our presentation this morning due to time considerations. Our first and only witness is Mrs. Kim Caipa, a courageous and inspiring mother who lost her teenage son far too early because no one made a lifesaving call. She will be testifying through videoconference from the Grant Sawyer State Office Building in Las Vegas. Chairman Hansen and members of the Committee, I look forward to sharing closing remarks with you after her testimony. Thank you very much for your time and consideration today.

Kimberly Caipa, Private Citizen, Las Vegas, Nevada:
As much as I wish that I were not so personally impacted by the dangers of alcohol consumption by our youth, I am honored to be included today to discuss this incredibly important topic. All of our children and their safety are worth it. As an eighth grade teacher for the past thirteen years and as a mother of four, I have been a safety advocate for teens regarding drugs and alcohol for many years. I thought I had prepared all of my kids for the dangers they would face.

"Be safe and take care of each other." Those were the last words I spoke to my 17-year-old son, Brady. It was over three years ago, as he and his friends headed out to a Halloween party. I uttered the same words I always said when one of my children was going out with friends.

Brady had called us twice that night as checking in was one of our rules. It seemed as if the boys were having a fun night together and he did not give us any reason to believe they were drinking. However, they were not just drinking, they were drinking a lot. There were 26 underage teens drinking with Brady on a Saturday night in the home of one of the teens whose parents had left for the night. I have been told the events are not that unusual, but for me the events of that evening proved to be anything but usual. You see, the events of that evening lead to the death of my son, Brady. He did not come home that night.

Brady lived and loved so big that the gaping hole he left here on earth will never be filled. It is still difficult to understand why someone who was such a bright light had to leave this world so soon.

The bits and pieces I have managed to put together over time since that evening go as follows: Brady and his friends had gone from one home to another to party together. Brady had not been drinking as heavily as the rest of the group so he began playing "catch up," intaking alcohol quickly. At some point Brady fell and hit his head on the bar. His friends helped him up, but a short time later he reported feeling ill and was helped to the bathroom. Later that night the friends that Brady had gone to the party with checked on him one last time, said goodbye, and left, closing the door behind them. They had no idea that was the last time they would see their friend. Brady was not found until the next morning when cleanup began. Clearly, my words "Take care of each other" had not sunk in to his friends as they left him the night before.

No one here knows if the logistics of this bill—allowing for medical attention to be sought without fear of facing criminal charges in those who are under the age of 21—would have saved Brady's life. Unfortunately, we cannot relive that evening; there is no do-over. But I would like to think it would have made the difference. Kids would have been educated to look for signs of alcohol overdose and call for medical help, even though they themselves were intoxicated. The 26 other kids at this party would not have had to face fear of criminal charges because they made a stupid adolescent decision to drink. Their only concern would be to get help for their friend because he was obviously in trouble. And they would remember the words of Brady's mom as they headed out, "Take care of each other," and they knew they could do just that without fear of criminal repercussions. It would have only taken one of them to do the right thing.

This bill, composed with insight and forethought, is a necessity. I would like to report that because of my son's death, all underage drinking has stopped and no others have been hurt or killed, but we all know that is not the truth. Will this bill stop all underage alcohol-related deaths? We would be foolish to think that it would. But if there is the slightest possibility to make a difference in this battle to save the lives of our teens when they find themselves in trouble, should we ignore that opportunity or grasp it firmly and fight for it? I think there should be no question in the matter. We fight for it, because if this bill prevents even one more mother from answering her door to police officers reporting that her child is dead, then it is worthwhile.

Rose Asaf:
Students and young people are reluctant to seek medical help for themselves or their friends because of their apprehensions of being penalized by the law.

In 2006, Cornell University adopted a policy that granted medical amnesty to its students (Exhibit D). This decision was based upon on-campus research that indicated that there was a need for medical amnesty. Prior to this policy, 19 percent of students reported that they had considered calling for medical help due to concern for someone severely intoxicated. However, only 5.4 percent made the call. Furthermore, according to a 2013 report to Congress on the Prevention of Underage Drinking, 40 young people in Nevada lost their lives to alcohol between the years of 2001-2005, not including motor vehicle accidents. This means that 2,379 years of potential life were lost because no one called for medical help. However, we want to emphasize the importance of realizing that anytime a young person drinks, a fatality or serious injury is possible. Referring to a 2012 Nevada study, 74,000 young people between 12 and 20 years old—that is nearly 1 in 4 minors—have reported drinking alcohol within the past month. Underage drinking is a real problem in the state of Nevada, and together we must ensure that our young people remain safe and alive.

Thank you very much for allowing us to make this presentation before you today. If Senate Bill 464 moves out of the Senate and into your house for consideration—which we hope it does—we look forward to appearing before you again and conducting a full hearing.

Chairman Hansen:
Thank you for a very professional presentation, Ms. Asaf. Thank you also to Ms. Welch as well as Mrs. Caipa. When this bill comes before us, we will look forward to hearing your testimony again.

Assemblyman Thompson:
Thank you so much for taking the time. You were very prepared and you did your homework. I remember that I received some lobbying phone calls when you were trying to narrow it down to which topic you wanted to address. I also want to thank Mrs. Caipa for sharing her story. It takes a lot of courage, and thank you for trying to help others.

[These additional exhibits were submitted regarding Senate Bill 464: (Exhibit E), (Exhibit F), (Exhibit G), (Exhibit H), and (Exhibit I).]

Chairman Hansen:
We will now close the brief presentation of Senate Bill 464 by the Nevada Youth Legislature. We will go next to Assembly Bill 419. I believe this will be a little more brief than Assembly Bill 296. We will start with Mr. Malkiewich right now. The applicability of the Uniform Unclaimed Property Act is clarified in A.B. 419.

Assembly Bill 419: Clarifies the applicability of the Uniform Unclaimed Property Act. (BDR 10-1104)

Lorne Malkiewich, representing Nevada Resort Association:
Assembly Bill 419 clarifies that the Uniform Unclaimed Property Act's applicability to tangible property is limited to tangible property in safe-deposit boxes in financial institutions. Generally, the Uniform Unclaimed Property Act applies to intangible property, such as checks, credit balances, stocks, bonds, insurance payouts, and money in trust. The limited exception is tangible property described in *Nevada Revised Statutes* (NRS) 120A.510. That section says "Tangible property held in a safe-deposit box or other safekeeping depository in this State in the ordinary course of the holder's business..." The concern of the Nevada Resort Association is that this statute has been interpreted to apply to safes in hotels, and we believe that that is simply an inaccurate interpretation of the bill.

Uniform acts have an interesting interpretation tool. When the Uniform Law Commissioners adopt the act, they include comments with the Uniform Act to help explain what they were doing. Comments to section 1 of this act include, "The Act provides exclusively for the disposition of unclaimed intangible property and does not apply to tangible property, with one exception. Section 3 applies to tangible property contained in safe-deposit boxes." A comment to section 3 says that the section is not intended to cover property left in places other than safekeeping depositories, for example, airport lockers or field warehouses, and, we would argue, hotel safes. The comment states, "Its coverage is limited to tangible property held in safe-deposit boxes in banks and financial institutions." That is the language we sought to add to this bill.

Of course, the question arises, "Did the Legislature intend to adopt the interpretation of the Uniform Law Commissioners?" The language was adopted verbatim with one limited exception I will get to in a second.

There are other references in NRS. *Nevada Revised Statutes* 663.085 refers in the chapter on deposits under Title 55, "Banks and Related Organizations," and indicates what a bank is supposed to do when it opens a safe-deposit box. Subsection 2 provides that "If the contents of a safe-deposit box that has been

opened pursuant to subsection 1 have been unclaimed by the owner for more than 3 years, the lessor shall deliver the package to the State Treasurer in the State Treasurer's capacity as the Administrator of Unclaimed Property pursuant to the provisions of chapter 120A of NRS."

Nevada Revised Statutes 673.373 includes a similar provision for savings and loan associations. There is no other provision in NRS providing for delivering the contents of a safe-deposit box or other safekeeping depository to the Treasurer, certainly nothing concerning public accommodations.

The regulations with respect to this as found in the *Nevada Administrative Code* Chapter 120A include two provisions. *Nevada Administrative Code* 120A.070 talks about the presumed abandonment. Right now, property in a safe-deposit box is presumed abandoned after the end of the lease period. This regulation says that if you have an account and you get the safe-deposit box as a part of that, then it is presumed abandoned at the time you close the account. The language is "being deposited with the banking or financial organization."

Nevada Administrative Code 120A.080, subsection 1, talks about "The specific contents of safety deposit boxes must not be listed on Form UP-2 unless the list of contents required by NRS 663.085 is incomplete or unreadable." That is the statute I just read concerning deposits.

As a practical matter, one of the basic rules of statutory construction is that if an interpretation of a law has an absurd result, then that is not the appropriate interpretation. The statute provides for the property that remains unclaimed by the owner for more than three years after the expiration of the lease or rental period of the box or other depository. The phrase "lease or rental period" does not apply to a hotel safe that is provided as a courtesy to a guest. It applies to a safe-deposit box of a financial institution. Presumption of abandonment after three years would make no sense as applied to a hotel but makes perfect sense applied to a safe-deposit box.

We have an amendment on the Nevada Electronic Legislative Information System adding the phrase "or safe-deposit company" (Exhibit J). This phrase is used in NRS Chapter 120A. *Nevada Revised Statutes* 120A.040 includes safe-deposit companies as a type of business association. In the ordinary course of your business, if you are engaged in safe-deposit, then we believe the statute should apply.

Assemblyman Jones:
Can you give me a practical example of why you need this bill? What is the purpose of it?

Lorne Malkiewich:
The problem is that you have corners in Las Vegas that have more hotel rooms than certain cities in some states do. Items are left in safes and hotel rooms all the time. Of course, the first thing the hotel is going to do is try to return the property, and in most cases that is exactly what will happen. They have the address of the person who checked out and they provide the property. But if they cannot, what this law says—if it applied to hotels—is you need to hang on to it for three years.

I mentioned that there was one difference between the Uniform Act and what we adopted. The Uniform Act provides a retention period of five years. That is the only change in the language from the Uniform Act which was clearly intended to apply to safe-deposit boxes, but the concern is that first all of these hotels would have this property that they have kept for three years, and then the Treasurer's Office would get it. You turn all that property over to that department. It simply is not what the intent was, and I think there is a very good reason it was not intended to apply to such situations.

Assemblyman Jones:
How would it be? What if they did not have it a total of three years? What would they do?

Lorne Malkiewich:
Right now, there is not a distinction between property kept in a safe or property found. Oftentimes, people leave things behind. You find a Rolex watch left in the bathroom and a teddy bear in the safe, because the baby wanted their teddy bear kept safe. Both of these would be treated the same way under current law. Under current practice, what a hotel will do is try to return the property, try to contact the person, and if they cannot find the person or have the person come back and get it within 30 or 60 days, they will either donate it to charity or sometimes if a housekeeper has turned in something, they will get a slight reward for turning it in as an incentive to do it. Generally, it is either given to charity or otherwise disposed of within 30 to 60 days by the hotel. Again, this is the situation where items are not returned to the guest. Obviously, the incentive of the hotel is to get the property back to the guest.

Chairman Hansen:
Are there any further questions? [There were none.] So right now under the law—the teddy bear example—you would have to save that for at least three years? Is that correct?

Lorne Malkiewich:
If, in fact, the law applied, that would be the case. It is our position that this is just clarifying that the law does not apply and the absurd result that you have to hang on to a teddy bear for three years demonstrates that this clearly is not the intent of the current law.

Chairman Hansen:
The original intent of the law applied just to hotels or motels. Are there actually safe-deposit companies in Nevada? Why the addition in the amendment?

Lorne Malkiewich:
Because there is a reference in the statute, and when I submitted the bill draft I included that phrase. I think that the bill, as it stands, would be perfectly consistent with the intent of the Uniform Law Commissioners, since there is the reference to safe-deposit to such companies in the law. I believe the concern is the difference between a company that incidentally has something locked up, such as a hotel safe or a locker at a fitness facility, versus someone who is in the business of providing safe storage, and that is why we would include it. Again, the amendment is optional.

Assemblyman Elliot T. Anderson:
I read the legislative history and it appears the only mention of a safe-deposit is that it was for banks. I think that is what the Committee contemplated when it was first passed. I asked you to check into whether there were any court cases ongoing with this issue, as I want to ensure that we are not stepping into litigation. I looked myself and I could not find any, but I wanted to see if you had any hits on that research request.

Lorne Malkiewich:
It was one of the very fun things I did yesterday afternoon. The only cases I found generally concerned disputes between a person who left property with the hotel, and that is exactly where the relationship is—between the hotel and the guest, not the safe. I found no cases involving the Uniform Unclaimed Property Act.

Chairman Hansen:
Is there anyone else you have lined up to testify at this time? [There was no one.] Is there anyone in Carson City or Las Vegas who would like to testify in favor of A.B. 419 at this time? [There was no one.] Is there anyone in opposition to A.B. 419? [There was no one.] Is there anyone in the neutral position to A.B. 419? [There was no one.] We will close the hearing on A.B. 419 and open the hearing on Assembly Bill 296, which revises provisions governing the criminal liability of parties to certain crimes.

Assembly Bill 296: Revises provisions governing the criminal liability of parties to certain crimes. (BDR 15-914)

John T. Jones, Jr., representing Nevada District Attorneys Association:
I have two individuals present with me today, one in Carson City and one in Las Vegas via videoconference. The person sitting to my immediate left is Frank Coumou, who is the team chief of our homicide unit in the Clark County District Attorney's Office, and the person in Las Vegas is David Stanton, who is the chief deputy district attorney on the homicide unit. We are here today to present Assembly Bill 296, which revises provisions regarding the criminal liability of parties to certain crimes, specifically conspiracy liability. With that, Chairman Hansen, with your permission, I will turn it over to Mr. Coumou, who will present the bill to the Committee.

Frank Coumou, Chief Deputy District Attorney, Las Vegas District Court:
I am here to ask you to do a revision on *Nevada Revised Statutes* 195.020, which is reflected in A.B. 296. We would like to change the lettering of law, and this is to hold people accountable for their actions. This is really in essence what it comes down to. Individuals who commit crimes together, whether aiding and abetting each other, acting as coconspirators, they are agreeing to commit a crime together. Each and every one of those individuals should be held accountable for those actions, even if they are not the ones who are committing it. We would like to change and revise section 1, subsection 1 to read as follows: "Every person concerned in the commission of a crime, whether present or absent, is a principal and must be proceeded against and punished as such." That means that everyone is just not an accessory; everyone is a principal. So everyone is going to be held accountable for their actions. I will be giving examples in a scenario.

Chairman Hansen:
I do not have a copy of that. Is that an amendment that you put on the Nevada Electronic Legislative Information System?

John Jones:
That is the language in the bill. Mr. Coumou just read section 1, subsection 1.

Frank Coumou:
Looking at subsection 2, where we are asking for most of the changes, it starts as follows:

> A person is concerned in the commission of a crime if the person: (a) Directly commits the act constituting the crime; (b) Aids or abets another person in the commission of the crime; (c) Is a party to a conspiracy to commit a crime and the crime committed is: (1) The object of the conspiracy; or (2) Committed in furtherance of the object of the conspiracy and reasonably foreseeable as a natural and probable consequence of the object of the conspiracy, regardless of whether that consequence was intended as part of the original plan and regardless of whether the crime committed is a general intent crime or a specific intent crime; or (d) Directly or indirectly counsels, encourages, hires, commands, induces or otherwise procures another person to commit the crime.

This change that we are asking for is nothing new. In fact, what we are asking you to do is to adopt the federal standard, which was adopted by *Pinkerton v. U.S.* [328 U.S. 640, 66 S.Ct. 1180 (1946)]. This case has been the law of the land for the last 70-plus years, and has been a standard that has been approved not only by all federal courts but also by the majority of the states. Nevada had been following that law all the way up to 2005. It was in 2005 when the Nevada Supreme Court addressed this particular liability action in order to change the law, and that was in the *Bolden* decision, which is listed as *Bolden v. State* [121 Nev. 908, 124 P.3d 191 (2005)].

I would like to highlight an example or a scenario to explain what we mean by vicarious liability, making sure that everyone who enters into a conspiracy who is aiding and abetting each other should be held accountable for their actions. One of the very normal type of crimes that you see almost daily in our casinos, whether it is in Las Vegas, Carson City, Reno, Stateline, or anywhere in the state, are these distract-type of thefts. Two individuals agree to commit distract theft. They will walk up to someone who is playing the slots who has a bag or something of value sitting next to them. There is an agreement or a conspiracy. Both of these individuals are agreeing to commit a distract theft. One of them sits to the left of the intended victim and starts talking and distracting that victim so that her attention is on her left side away from her personal property. The second individual, who is in agreement of this conspiracy, then sneaks over, grabs her purse or belongings, and then takes off out of the casino. That is a traditional example of how we can show what a conspiracy is.

Let us change the facts for a second and tell you that the victim is suddenly aware of what is happening. She grabs her purse, and in the process of fighting the second individual, the first individual grabs a knife which he has on his person and stabs the victim. Now that victim is potentially a murder victim, so

let us keep it as a specific intent crime. She survives, but now there is only one person under current law—because of the way the *Bolden* decision has rendered it for specific intent crimes—who can be held accountable when there is a conspiracy. So the second individual who is out there fighting with the victim trying to take her purse away would not be subject to criminal liability under the same count of attempted murder as his cohort in crime.

Prior to 2005, before the *Bolden* decision was rendered, we were able to charge both individuals with that particular crime because it was a foreseeable act that when you bring a knife to a crime, even though it may not have been the intended crime to commit. It was foreseeable that you would suddenly have a situation where a victim would fight against losing her property, and that one or both could suddenly resort to deadly force in order to try to take away the property.

What we are asking is to adopt back and go back to the *Pinkerton* decision, and that has been codified in the language, especially in subsection 2. The *Pinkerton* decision is actually a very restrictive way to hold coconspirators into the crime. The District Attorneys Association, the Clark County prosecutors, or any prosecutor in the state would first have to show that there was, in fact, a conspiracy that was entered into by these two individuals. Then we have to prove beyond a reasonable doubt that the subsequent actions that were maybe not the intended crime but resulted from this crime, go to "reasonably foreseeable," that a coconspirator is going to be acting in the natural consequences under the unlawful agreement that something worse could happen. This is pack mentality. You have individuals who agree and get together; they start getting the idea that they are going to do something against the law, and one can take it further than the other, but we still have to prove that it was reasonably foreseeable in order to get that second individual who did not actually commit the crime to also be charged with additional crimes that result from the original conspiracy that was entered into. This is not the crime that we are talking about. There are crimes in our books right now that are conspiracy to commit burglary, conspiracy to commit theft, and conspiracy to commit murder. Those are crimes on their own. I am asking for you to understand that this is the legal theory behind holding people accountable when they enter into a conspiracy, that when there are additional crimes that occur, they are going to be foreseeable when they commit those crimes, and they should be held accountable for their actions.

May I add one more thing? On page 922 of the *Bolden* opinion [volume 121, *Nevada Reports*], it was very clear that the Nevada Supreme Court came to their decision by changing the law as to when it comes to specific intent crimes that we cannot charge those additional individuals. The language in *Bolden* on

page 922 stated that the reason why they were rendering the decision as such was because the Nevada Legislature has been silent on this particular issue. We have been following case law all the way up to 2005, and they even indicated that since the Legislature had not adopted the language which is in *Pinkerton*, which is now before you in proposed Assembly Bill 296, what we are asking you to do now is exactly what the *Bolden* court indicated back in 2005. Since the Legislature had not actually gone forward and adopted in writing and codified *Pinkerton*, that is the reason they rendered this decision. It is very important for the law-abiding citizens of this state for us to get this bill on. We are dealing with a lot of individuals who sometimes agree to commit crimes together—this pack mentality—but I also want to point out that in all honesty it could also be a deterrent for individuals not to get into conspiracies, because when they do recognize that when they are getting into a criminal activity with others, they could ultimately end up being charged with far worse crimes than what they originally intended. Perhaps there is a deterrent factor in order to get them not to join.

At this point, my colleague in Las Vegas, Chief Deputy District Attorney David Stanton, has some examples he can give to you, cases of notoriety that we have handled in the Clark County District Attorney's Office.

David Stanton, Chief Deputy District Attorney, Clark County:
I am here primarily to assist the members of the Committee to address, as you have with other bills, some real-life scenarios that you can see and focus your attention on as to whether or not this bill makes sense to you. Let me give you two real-life circumstances.

You or a member of your family go to your physician's office and, as you are required to, you are divulging a significant amount of material about what we call your identifiers—your social security number, date of birth, and all the things that are necessary and are absolutely critical if someone were to make you a victim of identity theft. The person at the physician's office is then asked by her boyfriend to bring home documents from her work reflecting new patients and patients with the physician that she works with. From that, a crew of people using various printers, electronic readers, and magnetic strips are able to convert all of that personal information to steal your identity and access your accounts. That is exactly what happens frequently in cases in Clark County. This bill would permit us to then seek liability of the employee of the physician who is a principal in the act of procuring the underlying information, even though she did not—in this particular case that I prosecuted—actually perform any identity theft. She did not attach the

identifying information to magnetic strips that were used on debit and credit cards and did not do it for checks and other fraudulent documents to pursue stealing that person's identity and taking their credit.

On the inverse, you take your car to a car wash and the people who are vacuuming the inside of your car—if it is a nice car and has some items of value in it—go through your glove compartment and look at your registration and jot down your address. At the end of the day, they go back to buddies of theirs and say, "Look, these top 20 cars are really nice cars and here is the address." Lo and behold, over the next several nights, all 20 of those cars are burglarized based upon the information that was provided to them. The person at the car wash never enters the car. He is not involved in the burglary of the vehicle. Those are real-life examples of, as Mr. Coumou stated to you, groups of individuals who collectively use information, either in a violent form in a casino in a distraction theft, or in a burglary or theft of your identity. This change in the law permits us to hold all those accountable, even those who are not actually physically committing a criminal act.

Assemblyman Elliot T. Anderson:
I want to parse out your hypothetical, because that sounded more like aiding and abetting to me than a conspiracy. I do not know if *Bolden* would exactly apply. If you charged all three, I would assume that it would. In that hypothetical situation, that would be robbery with theft by force in general. Is that not a general intent crime, too? I am a little confused how *Bolden* would apply to this. Just so you know where my concerns lie, I want to know to what specific intent crimes this bill would go, because *Bolden* dealt with a narrow issue of specific intent crimes with conspiracy. Help me flesh out that hypothetical a little more with what the bill would do, and secondly, what specific intent crimes are out there that this bill would create a shortcut to?

Frank Coumou:
You bring up a very good point. The hypothetical that I gave you could range from several crimes, but the aiding and abetting portion that you are talking about is one legal theory of holding someone accountable for their actions. The second one obviously is the actual person who is committing the crime, and third is the conspiracy. Now the conspiracy theory is two individuals agreeing to commit a criminal wrong, and they agree to do this type of distract theft before even entering the casino. By entering into the casino, now they are going in with the intent to commit a theft, so they have also entered into a conspiracy to commit burglary. The charge of burglary itself is a specific intent crime. I believe robbery is a general intent crime; however, in my scenario that I gave you regarding one of these individuals suddenly pulling out a knife and stabbing this woman, we would charge that as attempted murder.

Any crime with the attempt statute attached to the actual crime is a specific intent crime. In this particular scenario, under the *Bolden* case we would be prohibited from getting the two additional charges of burglary and the attempted murder charge against the individual who is in the conspiracy. He is there as aid and help and he is a coconspirator in this crime.

Assemblyman Elliot T. Anderson:
Could you go more into what the specific intent crimes are? I want to understand the full scope of line 23 and what exactly that would do. Again to flesh out the hypothetical, would it be burglary? You have a right to be in the casino, do you not?

Frank Coumou:
Yes, everyone has a right to go into the casino to do something lawful, but not to do something unlawful. You can still charge someone entering a business establishment if they are entering into that particular establishment with unlawful intent. There are several specific intent crimes. Burglary and any crime that has intent to commit that crime would be specific intent. So would attempted burglary, attempted murder, attempted robbery, attempted kidnapping, et cetera.

There are other crimes that are actually specifically in the statutes that are specific intent crimes, such as sexual assault, first-degree kidnapping, second-degree kidnapping, and first-degree murder. Those are all specific intent crimes where we have to show beyond a reasonable doubt the individual had the specific intent to commit those crimes. Some of the scenarios that we can give you also were actual true examples. Like in *Bolden*, or as in another case, *Sharma v. State* [118 Nev. 648 (2002)] that addressed the aiding and abetting language—that is a case that predated *Bolden*—if there is a conspiracy where individuals go into a home and commit a home invasion, and there is a female occupant in that residence, even though the original conspiracy was for these individuals to just go in and ransack the place and take anything out of there that was of value, but if one or two of these individuals takes the female and then proceeds to commit a sexual assault, under our old law, as it was prior to 2005, we could hit every one of those four individuals with the crime of sexual assault on the victim. Right now, we are prohibited from doing that because of *Bolden*. Again, I want to stress that with *Bolden*, when it comes to specific intent crimes, the Supreme Court was really putting it back on the legislative lap—your lap—to make this change so that we could go back to the *Pinkerton* decision and codify that ruling, which is the law of the land in the

federal courts and the majority of our state courts in the United States. To go back to that standard so that we can hold individuals who commit crimes in a pack mentality and so that they can be charged for every crime that each and every coconspirator commits.

John Jones:
I want to make clear that what we are asking you to adopt today is basically the exact standard that we were using in Nevada prior to *Bolden*. For 100-plus years prior to 2005, this is exactly what we were doing in Nevada. Then the *Bolden v. State* decision came down, and quite frankly, the Nevada Supreme Court narrowly construed conspiracy liability in such a manner that makes it virtually unavailable to us as prosecutors in some of the most violent offenses. That is why we are asking this legislative body, as was hinted at in the *Bolden* decision, to adopt that standard specifically.

Assemblyman Elliot T. Anderson:
I am having a little trouble with it because I know we have a lot of other shortcuts to get specific intent. Obviously, you work in homicide and you are aware of the felony-murder rule. Of course, some of those are specific intent crimes as well. I hope you can give us a little time with this because although it was prior to 2005, this was also up before the Legislature in 2007 after the decision, so I want to get my head around why it was not adopted then. I appreciate your being open to questions and helping me flesh this out.

Assemblyman Jones:
Although I practice law, I am not very versed in criminal law. In Clark County, in the examples he gave about identity theft, it seems like the old statute completely accommodated those because it is whether present or absent and it is helping or procuring, et cetera, so would the crimes not have been the same? Am I understanding this? The difference would be with your casino scenario under the old law because of the *Bolden* case, you would have still got the guy for stealing, but you would not have got him for assault. Is that what we are talking about? It is the secondary crime, although it was not intended or potentially foreseeable.

For example, a couple of buddies say, let us go rob this house. They both agree not to bring a gun, but one guy does bring a gun and he shoots someone. Both are guilty even though they agreed earlier that no one was going to bring a gun, but under this new law they would both be guilty for a simple crime and then it is a big murder. Is this how I am understanding it?

Frank Coumou:
Your scenario brings out an excellent point, which is something that we would be addressing in our charging scenario, whether or not we are going to charge everyone as coconspirators. In your scenario where both believed that no one was going to be carrying a weapon, that would not be foreseeable, that someone would get shot or stabbed. The scenario I gave of the distract theft is not so much for the assault, but if both individuals were armed with either a knife or a gun and suddenly the victim puts up a fight and the victim gets stabbed, then it is foreseeable under those scenarios, that all individuals would be held accountable.

The point that you brought out—the distinction of those two—I think shows how restrictive *Pinkerton* actually is. It is a standard of liability theory that is very restrictive. First, we have to show that there is a conspiracy, and second, we have to show and prove beyond a reasonable doubt that those additional crimes that were maybe not originally agreed to upon a conspiracy but were reasonably foreseeable to result from this criminal enterprise that these two or more individuals got involved in. I hope I can show the distinction.

I also want to stress how restrictive *Pinkerton* is and the language that is before you is exactly the restrictive nature of *Pinkerton* that we are required to do. I want to give feedback to Assemblyman Anderson with one point that I want to add. In the dicta of the *Bolden* opinion on page 922, the Supreme Court even stated that since it has not been codified, they are even willing to look at whether or not general intent crimes that we—prosecutors in the state—could possibly be restricted in charging coconspirators even for general intent crimes. For those reasons, we feel this is an important bill to address not only general intent crimes but also specific intent crimes.

Assemblyman Nelson:
I am looking at subsection 3, which you have changed. I am curious about where it says that the fact that the "person…could not or did not entertain a criminal intent is not a defense." Who could not entertain a criminal intent? Is that someone who is incompetent?

Frank Coumou:
Every case is unique to its own facts. You would have to look at the individual who is committing a crime and ask if they are competent to be able to stand as a culprit to be charged for the crime. Obviously, children are not. They are not going to be part of this crime. For someone who is completely intoxicated, there is a defense of voluntary intoxication, but only to specific intent crimes. Voluntary intoxication to general intent crimes is not a legal defense. You can also look at other scenarios where someone may not have the capacity to be

able to reason. Remember, what we are looking at in this particular statute, and we are talking about reasonably foreseeable, are individuals who should be reasonable men and women of our community who know the difference between right and wrong.

Assemblyman Nelson:
My reading of the change to subsection 3 is that even if you cannot entertain a criminal intent, that is no defense.

Frank Coumou:
Subsection 3 states, "The fact that a person aided, abetted, counseled, encouraged, hired, commanded, induced or procured, or could not or did not entertain a criminal intent is not a defense to any person aiding, abetting, counseling, encouraging, hiring, commanding, inducing or procuring him or her." That language is just an added explanation. It does not necessarily go to the crimes of conspiracy and the theory of conspiracy. Even though you did not necessarily intend that that crime was to be committed, you are part of a criminal enterprise and something goes horribly wrong. We are dealing with people who have a pack mentality. In the scenario that I gave with the distract theft, the intention was strictly to commit a theft, to take the purse of this lady who was sitting at the casino slot machine, and then slip out quickly and see what kind of value is inside that bag. It may get taken a step further, because it is reasonably foreseeable that some additional crimes could happen. When, for example, a victim does not acquiesce or suddenly recognizes what is happening and she puts up a fight, then you have an additional crime, and that is what the language of aiding and abetting goes to, that you could not necessarily use that as an excuse when that is not what you intended.

When you enter into a conspiracy, when you decide to go into a group and aid and abet each other, you should be held accountable for all the actions that come out of that group. I believe that is what the language is in subsection 3.

John Jones:
When you think about why we do that, the likelihood of success for criminals is greater when they work together. The harm to victims increases as more defendants are involved in a conspiracy, and the likelihood of additional crimes increases. We want to dissuade people from working together in criminal enterprises. That is one of the reasons why I think A.B. 296 is so important, because we want people to understand that if you engage in a criminal enterprise, anything which is reasonably foreseeable or a natural and probable

consequence of that enterprise you are going to be liable for. As Mr. Coumou has pointed out, as prosecutors, we still have to prove beyond a reasonable doubt that it is "reasonably foreseeable as a natural and probable consequence of the object of the conspiracy."

This bill does not make it easier per se for the prosecutors, because we still have to prove that element beyond a reasonable doubt. What it does is put people who engage in a criminal enterprise on notice that they are going to be held liable for any natural and probable consequence of a conspiracy. A great example is if all members know that a weapon is going to be used in a commission of a crime and that weapon is actually discharged and someone is harmed, it is reasonably foreseeable that someone could be shot. In that case, we could hold them accountable for the use of a deadly weapon.

In the prior example, if someone has no idea a weapon is going to be used, the weapon is never discussed, or if it is affirmatively said that no one is to bring weapons, then it is not reasonably foreseeable that someone is going to get shot. So I want to point out that this does not make it easier for us; it just explains when a person can be held criminally liable for the actions of a criminal enterprise.

Assemblyman Nelson:
I guess I am not asking this properly, because I do not think that you have answered my question. The only thing that I am focusing on is someone who could not entertain a criminal intent. Let us say that they are incapacitated, a child, or not mentally competent. With the change in the language, what you are saying is that that is not a defense, correct?

David Stanton:
I agree with you; the question was not answered. The issue of competency that I think you are driving at in subsection 3 is handled and litigated at a hearing prior to the application of the statute. This statute merely references that if the district attorney elected to prosecute four codefendants for criminal acts committed during a conspiracy does just that, it is not a defense to say, I did not have the intent that—to borrow Mr. Coumou's example—a sexual assault would occur on a woman inside of a home invasion. That is not a defense if the sexual assault is proven to be a foreseeable consequence of the home invasion based upon the facts of that particular case. It does not address and does not speak to the issue of legal competency to stand trial for any offense, but merely that you cannot claim it as a defense and say, I did not know a particular act was going to occur.

Assemblywoman Diaz:
Section 1, subsection 2, lines 20 to 21—it is not sitting with me well. It says "regardless of whether that consequence was intended as part of the original plan." I could see this getting out of hand really fast, especially as you have vocalized many times about the pack mentality. I know that there are some unfortunately troubled youth who sometimes get pulled in—either by their own will or not—and now I am concerned. Let us say that they got pulled in and they said, Okay, we are going to go commit this robbery at a Walgreens nearby. Then the older person pulled the younger person into the crime instead of just robbing. They also murder someone, so now you have a youth also on the hook for murder, and it is regardless of whether the consequence was intended. This youth was probably just thinking, I need to listen to this person, or else I am going to get the wrath from them. Now we are adding more charges to this person. I do not feel comfortable with saying that all people that engage in the same crime are equally guilty of what ensues. This language says regardless of whether it was part of the original plan, they are on the hook for it.

Frank Coumou:
Your concerns are our concerns as well. Every time we have new cases submitted to us, we have to make the painstaking decision and make a determination of whether or not we can prove this case beyond a reasonable doubt. There is something of a screening effect that happens within our office before we even decide to file charges.

By the way, we as prosecutors cannot file charges until we feel we will be able to prove beyond a reasonable doubt. It is not going to open up a Pandora's box of a whole bunch of additional crimes. Keep in mind that the part in 2005 is the law of the state that we were following all along, and is the law that is taught in the law schools, and the law, as I indicated earlier, in the federal courts and the majority of the United States. There are other safeguards. Your point about the juvenile is certainly something that we take into consideration. There is juvenile law. Anyone who is under the age of 18 certainly goes immediately through the juvenile system and there are some charges that would immediately push someone up into the adult court, but those are few and far between—murder, obviously, being one of those charges.

The safeguards do not just stop there with the juvenile law because there are specialized courts that handle individuals like that for these particular crimes. Then we also have the argument that the defendant can use, which is mere presence. This is a legal argument that is used all along throughout

the United States, where the individual can say that he was merely present and no, he was not part of the conspiracy and this was not a reasonably foreseeable crime. So there are additional safeguards right there for an individual.

Then there is what I call the filtering system, which is going through the justice court system or the grand jury. We have to first and foremost prove that we have probable cause in order to show that the individual committed these crimes and that he should be held accountable for them. If a justice of the peace determines that there is no probable cause for additional counts, then he or she would not be bound up in district court for those crimes, or the case may get dismissed. Then you also have the district court rule, where the district court judge then reviews what we call a pretrial writ of habeas corpus and makes the determination whether or not the justice of the peace made the correct decision or, if we chose to proceed forward with an indictment, then the grand jury's decision is scrutinized by the district court. Now the district court judge has the opportunity to look at the law as it is proposed right now, or currently. Then the district court judge will make a determination whether or not the probable cause was had and that the justice of the peace was correct in his or her decision.

I think the most powerful screening safeguard that we have for any individual that Assemblywoman Diaz may have concerns about is our jury system—the jury system that this country has been using now for hundreds of years. I have been a prosecutor for almost 24 years, and I can tell you I think it is the best system in the world. I have had some experience in foreign countries with different judiciary systems, and I would not trade our system for anything. The jury system alone has the opportunity to make the determination whether or not an individual should be held accountable for the reasonably foreseeable questions. Again, what we are pointing out with the *Pinkerton* decision—which is codified in this proposed legislation—is that we are actually making it restrictive enough for us that we still have to prove beyond a reasonable doubt that the individuals were in a conspiracy, and then that the additional crimes that came out of that conspiracy were reasonably foreseeable natural consequences of those crimes.

Assemblywoman Diaz:
I was thinking that if they do go to trial, but unfortunately not all of the individuals that get caught up in our system get to that point. A lot of people cut deals with you when they feel like they have no other avenue or they do not have a chance. How difficult is it currently to show conspiracy?

Frank Coumou:
Showing conspiracy is actually difficult. We can show it either through direct evidence that we have someone who heard that these four individuals were going to commit a crime. Or we can show it by facts and make inference that there is a conspiracy, because of the acts that they were doing; for example, they are all dressed in black, they were all carrying guns, they all went directly into the casino and hit the casino cage and committed a robbery, and two people jumped over the counter to grab the money while the other two were standing at bay. Facts like that will clearly show a conspiracy, that there was a meeting of the minds to commit the crime. That is for the crime of conspiracy.

The legal theory, which is something different and which is what I am addressing here, is then to show that if you join into a group, you should be held accountable for all the acts of your cohorts, especially the ones that were agreed upon, for example, robbery or theft, and additionally the crimes that would be reasonably foreseeable which come out of that conspiracy because you chose to get into that case.

I am going to say about 96 percent, if not more, of our cases get reduced through plea bargaining negotiation. There is still that additional filter safeguard. I can only speak for Clark County because I deal with a lot of the attorneys there, one of whom is present in this room. These are very capable and good attorneys who are there to represent the best interests of their client, and many times there is a lot of discussion on the strengths and weaknesses of our case in order to make a determination. I think where we come to a head is when the cases go to trial, like in the *Bolden* decision, because we suddenly get a result that was not intended.

Assemblyman Ohrenschall:
I am reading over *Bolden* and their discussion of the *Pinkerton* rule and about how, even though it is the federal rule, it has garnered a lot of disfavor, being rejected by the Washington Supreme Court, Arizona Supreme Court, and New York Supreme Court. They quote the drafters of the Model Penal Code stating that the "law would lose all sense of just proportion" if, by virtue of his crime of conspiracy a defendant was "held accountable for thousands of additional offenses of which he was completely unaware and which he did not influence at all." They go on to state that the Nevada Legislature has never adopted the *Pinkerton* rule and that they are not likely to do it in *Bolden*. I believe *Bolden* was a unanimous decision. Certainly, we are a separate branch of government. We can write statutes as we believe the policy is correct as long as it comports to our state and federal constitutions. I guess I am not seeing *Bolden* as an invitation to adopt the *Pinkerton* rule. If anything, I am

reading *Bolden* as this rule is in disfavor. Certainly, it is still a federal rule under that Supreme Court opinion, but states are not rushing to adopt it and there are a lot of potential problems with adopting *Pinkerton*.

Frank Coumou:
If you look at page 922 of the *Bolden* decision, it is basically stating that the reason why they ruled the way they did was because the Legislature has been silent on adopting *Pinkerton*, and the standards that we are asking you to change now go back to the law pre-2005.

Regarding your concerns about some of the negative treatment, keep in mind that that is the minority view of some of the states. It is not all. I cannot speak for Washington state and why they did that; perhaps they did not have a statute on point, so I cannot answer that question as to why there was negative treatment by a Washington state court. I suspect that perhaps there was no statute on point and that the legislature in Washington did not handle the adoption of *Pinkerton* by codifying it, but at this point I am guessing at it.

As far as other negative treatments, they quote in the talk about one particular essay writer who was taking a negative stance on the criminal liability, but that is a minority. The *Pinkerton* decision is still the law of the land in the federal courts. It is adopted in our federal district courts and it is adopted in all the 49 other states, as well as the particular territories that fall under the government of the United States. We are not asking to take a restrictive view in the sense that we are taking a minor view; we are asking you to revert back to what the law in Nevada used to be prior to *Bolden*.

Chairman Hansen:
Is there anyone else who would like to testify in favor of A.B. 296 in Carson City or Las Vegas? [There was no one.] Is there anyone who would like to testify against A.B. 296 at this time?

Steve Yeager, Deputy Public Defender, Clark County Public Defender's Office:
The Clark County Public Defender's Office is in opposition to A.B. 296, specifically subsection 2, paragraph (c)(2), lines 18 to 23, which seeks to put the natural and probable consequences doctrine into our Nevada statutes, and that is the very doctrine that has been rejected by our Nevada Supreme Court. First, I want to clear up a misconception. I do not think it is accurate to say that what this bill seeks to do is put Nevada law back where it used to be.

In the *Bolden* case, the Nevada Supreme Court said that the natural and probable consequences doctrine was not Nevada law, so what the Supreme Court said there was that the district attorneys had been misinterpreting and misapplying Nevada law for the better part of 100 years. I do not think this is merely turning back the page; this is seeking to put new doctrine into Nevada law.

The basic idea, and what we are really talking about, is that specific intent crimes require proof of specific intent, that the defendant actually intended to commit the crime charged. Just being part of a conspiracy does not mean that someone is automatically liable for every single crime that another member of the conspiracy commits. We heard the hypotheticals today. Keep in mind under existing law—and most of this bill is existing law, it is just reorganizing. Under existing law, there are a number of ways to get criminal liability. If you take a look at section 2, paragraph (a) of the bill, if you directly commit the crime, you are going to be liable. In section 2, paragraph (b), if you aid or abet another person, you are going to be liable.

I would say that the examples we heard in the hypotheticals today are aiding and abetting cases. The person who goes in with the intent to commit a crime and help someone rob someone at a casino is aiding and abetting. The person who steals medical documentation and gives it to a significant other to take the information out of there is aiding and abetting. That is already existing law.

In subsection 2, paragraph (c), if you are part of a conspiracy and the object of the conspiracy is the crime, you are liable as a conspirator for that crime. If we go down to paragraph (d), that is incredibly broad language. If you counsel, encourage, hire, command, or any of these things, you are already liable for the crime and, as Assemblyman Nelson pointed out, subsection 3 says you cannot even make a claim that you did not have the intent necessary. All that we are talking about here is the new language, the natural and probable consequences doctrine. From my experience, district attorneys like Mr. Coumou and Mr. Stanton have no problem at all charging these kinds of activities and criminal complaints. Typically, when we see a couple of people charged as defendants, you are going to see a conspiracy charge in the complaint. That is going to happen in almost all cases.

I know that Assemblyman Ohrenschall brought up some of the discussion, but if you read the *Bolden* case, I think you see some of the concerns with adopting this particular doctrine in the state of Nevada. It permits convictions for crimes that maybe were foreseeable but never were intended. It is inconsistent with fundamental principles of our justice system. We punish people based on proportionality. You should be punished for your role and your responsibility.

Punishing someone for consequences that were not intended is a fairness issue. Take one of the hypotheticals that we heard earlier about the casino where two men go in and one of the men then takes a knife out and stabs the woman. We were told in that situation you would not be able to charge a second individual for attempted murder. I think that is an egregious example, but let us go back and look at that hypothetical. What if the two go in just to commit this theft and there is no weapon involved? No one has a knife, no one knows about a knife, but the second person, just on his or her own volition, starts strangling the poor woman who is resisting. You have to ask yourself, should the other coconspirator—the first person who just went into that casino to help try to commit a theft—now be on the hook for an attempted murder when he had no intent for that to happen? Yes, there is a foreseeability requirement, but that is going to go to the jury. Mr. Coumou had talked about the fact that our justices of the peace have a screening function, and I would remind this Committee that Assembly Bill 193—which is potentially going to allow hearsay at every single preliminary hearing—takes away any sort of screening function. That is a case that will go to trial and will be for a jury to determine.

Mr. Coumou talked about maybe there is a deterrent effect if we put this into the law. Maybe the individuals will not be part of conspiracies. I would note that it is really only a deterrent if there is an educational component to it. I think conspiracy law, particularly this bill—even though it is a short bill, it is not a simple bill—in terms of deterrent, someone has to understand that it is the law. People have to understand that if they are part of a conspiracy, they are going to be liable for every single crime that happens whether intended or not, and I do not think most people who are engaging in criminal enterprises have that level of understanding of what the law dictates and requires.

Sean Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
We are in opposition to the bill as well. I could not have articulated it better than my colleague, Mr. Yeager, and I agree with all of his comments.

Chairman Hansen:
Their argument is, even if this law is in place, they still have to prove beyond reasonable doubt these scenarios occurred. Is that not a reasonable check on the concerns that you addressed?

Steve Yeager:
It is true that they have to prove beyond a reasonable doubt that the consequence was reasonably foreseeable or it was a natural and probable consequence. I do not disagree with that, and I think it is a check. The point that I was trying to make is there is no requirement that they prove intent.

As a policy matter, this body needs to decide if we should be holding individuals liable for crimes that they had no intent to commit. Keep in mind that if they were committing the crime separately on their own, it would be a specific intent crime, and the district attorney would have to prove intent beyond a reasonable doubt. That is a safeguard, but this bill takes away the need to prove beyond a reasonable doubt the actual coconspirator's intent to commit the crime that is charged.

Chairman Hansen:
Going back to *Bolden*—I have not read the whole decision, but it was mentioned that there was an absence of codification and that Nevada law had been applied for 100 years in the absence of that codification, and what they are attempting to do now is basically codify what was practiced for about 100 years. You are suggesting that for 100 years they were doing it incorrectly. If there is an absence of codification, yet you have 100 years' worth of case law—and that concept is what the common law is based on—would not this law basically apply to common law that had been applied in Nevada for over 100 years prior to *Bolden*?

Steve Yeager:
It is sort of a hard question to answer. I do not know sitting here right now what the case law was. As far as I know—and I could be mistaken about this—*Bolden* was the first time that the Nevada Supreme Court looked at this issue and said that there was an absence of codification. I agree with that. Our statute is silent on this issue of whether you can be liable for a specific intent crime as part of a conspiracy. As far as I know, *Bolden* was the first time that the Nevada Supreme Court looked at it, so I think our prosecutors had probably been charging it as if this were the law prior to it, but I do not know if any of those had been challenged or gone up to the Nevada Supreme Court.

I think the Nevada Supreme Court did what it had to do, which is to look at the statute. What does this really mean and how does it shake out? They decided to add some specific language from the Legislature. This is not the law of the land, at least in the state of Nevada. I certainly agree that it is up to this Legislature as a policy decision whether to fix that absence of statutory language which would allow these types of charges.

Chairman Hansen:
Your testimony is that for about 100 years they basically applied this concept up until *Bolden*?

Steve Yeager:
I think the district attorneys interpreted the law in a certain way for 100 years. I am not saying that they were wrong to do that, but at some point the Supreme Court stepped in and said that that is not the law in the state of Nevada and you cannot interpret it that way.

Chairman Hansen:
Are there any further questions for Mr. Sullivan or Mr. Yeager at this time? [There were none.] Is there anyone else who would like to testify in opposition to A.B. 296? [There was no one.] Is there anyone who would like to testify in Carson City or Las Vegas in the neutral position to A.B. 296? [There was no one.] Are there any last minute comments you would like to address prior to closing the hearing?

Frank Coumou:
Regarding the scenario given throughout this testimony about a strangulation not being foreseeable, the state differs in that opinion. We certainly think that that is a reasonably foreseeable act if the victim suddenly puts up a fight and the perpetrator facilitates escape to ultimately get what he or she wants and tries to get out of there before the police or law enforcement comes around. That question alone, as opposed by Mr. Yeager, clearly points out one thing that we would ultimately have to do, which is to prove beyond a reasonable doubt.

Again, we are not asking this body to change the law drastically. We are asking to go back from something that has been the law in this state and has been the law of this land for over the last 100 years. We are asking to make sure that coconspirators—individuals who agree to commit a crime, masterminds who may not actually be part of the actual crime, but the mastermind who puts all the thinking together—be held accountable. Is it in the best interest of our law-abiding citizens of this state to make sure that every individual who is committing a crime be held accountable for their actions? That is really the question that we pose to you. Is this state ready to revert to the law to make sure that individuals are held accountable, or do we want to continue to adopt the *Bolden* standard, which makes it harder for us as prosecutors to hold individuals accountable? On certain specific intent crimes that result out of a conspiracy, we have to show that an individual who did not actually commit the crime also had that specific intent. Are we as a state ready to give better criminal protections to a criminal? I believe the answer would be no.

Chairman Hansen:
We will close the hearing on A.B. 296 at this time and open it up for public comment. Is there anyone in Carson City or Las Vegas who would like to address this body at this time? [There was no one.] We will close public comment. Is there any Committee business?

Assemblyman Elliot T. Anderson:
Do you know when we will have a work session?

Chairman Hansen:
Pretty quick. I cannot say specifically, but it is being reviewed as we speak. It should be any time. Is there any other Committee business that we need to have at this time? Seeing none, this meeting is adjourned [at 10:35 a.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 30, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 464	C	Aaron Letzeiser, The Medical Amnesty Initiative	Letter in Support
S.B. 464	D	Rose Asaf, Nevada Youth Legislature	Document from Cornell University
S.B. 464	E	Aaron Letzeiser, The Medical Amnesty Initiative	Testimony
S.B. 464	F	Cameron Hughes, Student, University of Nevada, Reno	Letter in Support
S.B. 464	G	Stacy Woodbury, Nevada State Medical Association	Letter in Support
S.B. 464	H	Quinn Jonas, Student, University of Nevada, Reno	Testimony
S.B. 464	I	Quinn Jonas, Student, University of Nevada, Reno	Discussion Draft
A.B. 419	J	Lorne Malkiewich, Nevada Resort Association	Proposed Amendment