MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
March 31, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Tuesday, March 31, 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:

Assemblyman Edgar R. Flores, Assembly District No. 28
Assemblywoman Irene Bustamante Adams, Assembly District No. 42

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Carol Stonefield, Managing Principal Policy Analyst
Karyn Werner, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Steve Yeager, Deputy Public Defender, Clark County Office of the Public Defender
Tonja Brown, Private Citizen, Carson City, Nevada
A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Ailee Burnett, Sergeant, Las Vegas Metropolitan Police Department
John T. Jones, Jr., representing Nevada District Attorneys Association
Sean B. Sullivan, Deputy Public Defender, Washoe County Office of the Public Defender
Liz MacMenamin, Vice President, Government Affairs, Retail Association of Nevada
Beverly Salhanick, Attorney, Salhanick Law, Las Vegas, Nevada
Susan L. Fisher, representing Reno-Tahoe Airport Authority, and Nevada Association of Industrial and Office Properties
Jonathan P. Leleu, representing World Market Center
Nicolas Leleu, Private Citizen, Las Vegas, Nevada
Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada
Jonathan Friedrich, Legislative Affairs, Nevada Homeowner Alliance

Chairman Hansen:
[Roll was taken. Committee protocol and rules were explained.] We have a work session with 21 bills. We are going to hold several of the bills for amendments and clarifications. We will do the work session first. We will hold Assembly Bill 49, Assembly Bill 66, Assembly Bill 212, and Assembly Bill 224. Those will be coming up on a future work session, but will be held for now. We have three regular bills, but will start with the work session. We will start with Assembly Bill 31.

Assembly Bill 31: Removes the requirement that certain administrative regulations of the Department of Corrections be adopted in accordance with the Nevada Administrative Procedure Act. (BDR 16-340)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 31 was heard in Committee on February 26, 2015 (Exhibit C). This measure removes the requirement that certain administrative regulations of the Department of Corrections relating to the deduction of money credited to the Offenders' Store Fund and the imposition of a charge on purchases on electronic devices by offenders be adopted in accordance with the Nevada Administrative Procedure Act [*Nevada Revised Statutes* (NRS) 233B.039]. There were no proposed amendments to this measure.

Chairman Hansen:
I will entertain a motion.

> ASSEMBLYWOMAN SEAMAN MOVED TO DO PASS ASSEMBLY BILL 31.
>
> ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

Assemblyman Elliot T. Anderson:
I regret that I am voting no, but I want to explain why. We need to think of this in a certain way. In 2010, the Nevada Department of Corrections (NDOC) received extraordinary authority to basically run a debtors' prison taking inmates' money to pay for the cost of their incarceration. We were going through a bad fiscal period. We gave them that authority and said that they had to comply with a few transparency measures to ensure that trust was not abused. There is an imbalance of power in a prison; that is how it should be. What struck me is that they have never really complied with it and said as much. With everything going on in the news about the NDOC and inmates—it has been reported that inmates have been shot while handcuffed—we need more transparency and not less. The Legislative Branch needs to stand up and say, "When we pass laws, we mean it, and you need to follow them." For that reason, I will be voting no.

Assemblywoman Diaz:
I want to echo the sentiment of my colleague, Assemblyman Anderson.

Chairman Hansen:
I share some of your concerns. I was very disappointed that they had not complied with this. The only reason I felt like bringing this forward is the redundancy. They do the identical thing that has to be turned in to the

Board of State Prison Commissioners that governs them. Some of the things that came to light recently are very disturbing. There are investigations going on so it is probably not proper to comment on those things. This is a reasonable bill and there is still oversight to ensure they are not abusing the prisoners' finances. I will call for a vote.

THE MOTION PASSED. (ASSEMBLYMEN ANDERSON, ARAUJO, DIAZ, OHRENSCHALL, AND THOMPSON VOTED NO.)

Assemblywoman Seaman will do the floor statement. Next will be Assembly Bill 48.

Assembly Bill 48: Makes various changes relating to fraudulent acts committed against the State or a political subdivision. (BDR 14-154)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 48 makes various changes relating to fraudulent acts committed against the State or a political subdivision. It was heard in Committee on February 6, 2015. [Read from work session document (Exhibit D).]

Chairman Hansen:
I will entertain a motion.

ASSEMBLYMAN O'NEILL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 48.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

The floor statement will be handled by Assemblyman Wheeler. We will now go to Assembly Bill 51.

Assembly Bill 51: Revises provisions relating to securities. (BDR 7-449)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 51 revises provisions relating to securities. It was heard in Committee on February 5, 2015. [Read from work session document (Exhibit E).]

Chairman Hansen:
I will entertain a motion on A.B. 51 to amend and do pass.

ASSEMBLYMAN GARDNER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 51.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN SEAMAN VOTED NO.)

Assemblyman Nelson, will you please handle the floor statement. The next bill will be Assembly Bill 97 since we are skipping Assembly Bill 66.

Assembly Bill 97: Revises provisions governing wills. (BDR 12-505)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 97 was heard in Committee on March 20, 2015. It revises provisions governing wills. [Read from work session document (Exhibit F).]

Chairman Hansen:
I will entertain a motion to amend and do pass.

ASSEMBLYMAN GARDNER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 97.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

The floor statement will be handled by Assemblywoman Fiore. The next bill is Assembly Bill 124.

Assembly Bill 124: Revises provisions governing juvenile justice. (BDR 5-182)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 124 revises provisions governing juvenile justice. It was sponsored by Assemblywoman Diaz and was heard in Committee on February 19, 2015. [Read from work session document (Exhibit G).]

Chairman Hansen:
This is a friendly amendment. I will entertain a motion to amend and do pass.

> ASSEMBLYMAN THOMPSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 124.
>
> ASSEMBLYMAN GARDNER SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Diaz will handle the floor statement on her own bill. Next up is Assembly Bill 130.

Assembly Bill 130: Revises provisions relating to the administration of estates of deceased persons. (BDR 12-862)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 130 revises provisions relating to the administration of estates of deceased persons. It was heard in Committee on February 20, 2015. [Read from work session document (Exhibit H).]

Chairman Hansen:
I will entertain a motion to amend and do pass. They are both friendly amendments.

> ASSEMBLYMAN ELLIOT T. ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 130.
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

I will have Assemblyman Nelson handle his own floor statement. On to the fun bill, Assembly Bill 140.

Assembly Bill 140: Revises provisions governing certain domestic relations matters involving veterans with a service-connected disability. (BDR 11-519)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 140 revises provisions governing certain domestic relations matters involving veterans with a service-connected disability. It was heard in Committee on March 5, 2015. [Read from work session document (Exhibit I).]

Chairman Hansen:
On this one I would like to thank the parties for working very diligently to work out the bugs. Both parties are happy with the amendment as I understand it. I will entertain a motion to amend and do pass.

> ASSEMBLYMAN NELSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 140.
>
> ASSEMBLYMAN ARAUJO SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The floor statement will be handled by Assemblyman Wheeler. We will go on to Assembly Bill 141.

Assembly Bill 141: Revises provisions relating to the foreclosure of liens by a homeowners' association. (BDR 10-751)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 141 revises provisions relating to the foreclosure of liens by a homeowners' association. It was heard in Committee on February 25, 2015. [Read from work session document (Exhibit J).]

Chairman Hansen:
I will entertain a motion to do pass since there are no amendments.

> ASSEMBLYWOMAN DIAZ MOVED TO DO PASS ASSEMBLY BILL 141.
>
> ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The floor statement will be handled by Assemblyman Araujo. Next up is Assembly Bill 183.

Assembly Bill 183: Revises provisions related to real property. (BDR 10-621)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 183 revises provisions related to real property. It was heard before the Committee on March 2, 2015. [Read from work session document (Exhibit K).]

Chairman Hansen:
The amendment is a friendly amendment, correct?

Assemblyman Elliot T. Anderson:
Yes, I actually asked for it.

Chairman Hansen:
Very good. I will entertain a motion to amend and do pass.

> ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 183.
>
> ASSEMBLYMAN THOMPSON SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblyman Elliot T. Anderson will handle the floor statement. On to Assembly Bill 192.

Assembly Bill 192: Makes various changes relating to common-interest communities. (BDR 10-661)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 192 makes various changes relating to common-interest communities. This bill was heard in Subcommittee on March 26, 2015. [Read from work session document (Exhibit L).]

Chairman Hansen:
This one is different in that we have not heard it as a whole Committee, so before I entertain a motion, I want to know if there are any questions for the Chairman of the Subcommittee. Are there any issues that need to be addressed by the whole Committee? Seeing none, I will entertain a motion to amend and do pass.

> ASSEMBLYMAN ELLIOT T. ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 192.
>
> ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Diaz, will you handle the floor statement for us? We will now go to Assembly Bill 201.

Assembly Bill 201: Revises provisions governing eminent domain. (BDR 3-960)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 201 revises provisions governing eminent domain. It was brought forward by Assemblymen Kirkpatrick, Elliot T. Anderson, Benitez-Thompson, and Thompson. It was heard on March 17, 2015. [Read from work session document (Exhibit M).]

Chairman Hansen:
I will entertain a motion to amend and do pass.

> ASSEMBLYMAN THOMPSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 201.
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

The floor statement will be handled by Assemblyman Thompson as a co-sponsor. We will hold Assembly Bill 212, so we will go on to Assembly Bill 214.

Assembly Bill 214: Makes various changes related to public safety. (BDR 16-568)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 214 makes various changes related to public safety. It was sponsored by Assemblyman Sprinkle. The bill was heard on March 18, 2015 (Exhibit N).

Chairman Hansen:
I want to hold this for a moment. Did Assemblyman Sprinkle get ahold of you, Assemblywoman Fiore, about your fund raising issue?

Assemblywoman Fiore:
No.

Chairman Hansen:
We are going to hold this and we will come back to A.B. 214. I will not entertain a motion on this right now. There are a couple of questions that need to be addressed. Let us go on to Assembly Bill 223.

Assembly Bill 223: Revises provisions governing certain crimes against older persons and vulnerable persons. (BDR 15-566)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 223 revises provisions governing certain crimes against older persons and vulnerable persons. It was heard in Committee on March 19, 2015. The bill was brought forward by Assemblyman O'Neill. [Read from work session document (Exhibit O).]

Chairman Hansen:
Is the amendment a friendly amendment, Mr. O'Neil?

Assemblyman O'Neill:
Yes, Mr. Chairman.

Chairman Hansen:
Go ahead and go through the amendment for the record.

Diane Thornton:
Section 3 of the amendment clarified the definition of abandonment. On the following page they clarify the definition of abuse and extend the definition of abuse to permitting or allowing the abuse. Moving on to page 4, the amendment defines undue influence. It also extends the definition of isolation to permitting or allowing the isolation. On line 44, there is a definition of protected services. Page 10 of the bill clarifies what information must be redacted. Page 13 of the bill strikes some amending language dealing with negligent offenses of a misdemeanor and subsequent negligent offenses. On line 37, it strikes some additional amending language dealing with a misdemeanor for negligent offense or willful offense. Page 14 of the mock-up strikes additional amending language dealing with penalties that are provided again for the negligent or willful offense. That is the end of the proposed changes.

Chairman Hansen:
Those are all friendly amendments. I will entertain a motion to amend and do pass A.B. 223.

ASSEMBLYMAN GARDNER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 223.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

The floor statement will be handled by Assemblyman O'Neill. We are not hearing Assembly Bill 224, so we will go to Assembly Bill 287.

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

Diane Thornton, Committee Policy Analyst:
Assembly Bill 287 prohibits a person from making or causing to be made a 311 nonemergency telephone call under certain circumstances. It was brought forward by Assemblyman Flores. It was heard in Committee on March 23, 2015. [Read from work session document (Exhibit P).]

Chairman Hansen:
The amendment is a friendly amendment. I will entertain a motion.

> ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 287.
>
> ASSEMBLYMAN O'NEILL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblyman Flores has joined us. Assemblyman Flores, would you like to do the floor statement on your own bill?

Assemblyman Edgar R. Flores, Assembly District No. 28:
Sure.

Chairman Hansen:
That passes unanimously. Now on to Assembly Bill 288.

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

Diane Thornton, Committee Policy Analyst:
Assembly Bill 288 revises provisions relating to residential mortgage loans. It was brought forward by Assemblyman Jones. It was heard on March 23, 2015. [Read from work session document (Exhibit Q).]

Chairman Hansen:
Is that a friendly amendment from Mr. Ross? I will entertain a motion to amend and do pass.

ASSEMBLYMAN GARDNER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 288.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Jones will do the floor statement on his own bill. On to Assembly Bill 301.

Assembly Bill 301: Prohibits restrictions on the freedom to display the flag of the State of Nevada in certain places. (BDR 10-533)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 301 was heard in Subcommittee on March 26, 2015. It prohibits restrictions on the freedom to display the flag of the State of Nevada in certain places. [Read from work session document (Exhibit R).]

Chairman Hansen:
Who was the bill's sponsor? [Several members stated, "Mr. Stewart."] Before we make a motion, since this was not brought before the whole Committee, is there any discussion or questions that need to be asked?

Assemblyman O'Neill:
Did anyone give a reason why the homeowners' association would not allow the Nevada flag to be flown if it was at the same time? What was their original reason? Did they make any statements?

Chairman Hansen:
Madam Chair of the Subcommittee, is there an answer to that?

Assemblywoman Seaman:
No. They just said it was not allowed.

Chairman Hansen:
We are going to correct that right now. I will entertain a motion to do pass.

ASSEMBLYMAN WHEELER MOVED TO DO PASS ASSEMBLY BILL 301.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Gardner is up next for the floor statement. Last up is Assembly Bill 420.

Assembly Bill 420: Enacts the Uniform Voidable Transactions Act. (BDR 10-1093)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 420 enacts the Uniform Voidable Transaction Act. It was heard in Committee on March 27, 2015. [Read from work session document (Exhibit S).]

Chairman Hansen:
This is the bill that was just presented by Senator Care. I will entertain a motion to do pass.

> ASSEMBLYMAN O'NEILL MOVED TO DO PASS ASSEMBLY BILL 420.
>
> ASSEMBLYMAN NELSON SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblyman Ohrenschall will handle the floor statement on that bill. That will end the work session. Some of those bills that we pulled we will probably hear in the not-so-distant future.

We will go into our regular hearing. We are going to take the bills out of order and start with Assembly Bill 444.

Assembly Bill 444: Makes various changes relating to the Advisory Commission on the Administration of Justice. (BDR 14-544)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:
I am here today to introduce Assembly Bill 444 which sets out recommendations from the Sunset Subcommittee of the Legislative Commission. I know this is not my first time in front of the Committee, so in the interest of time I will let you know that the Subcommittee is part of the Legislative Commission, and we are in charge of reviewing all boards and commissions created by this body. We are authorized to make recommendations on those entities: whether to continue, modify, terminate, or consolidate. That is why I am bringing before you A.B. 444 on the Advisory Commission on the Administration of Justice (ACAJ). This entity was added to *Nevada Revised Statutes* in 1995. Its name was originally the

Advisory Commission on Sentencing. We in the Legislature have come to think of the ACAJ as another interim committee. Four of the members are legislators appointed by the leadership of the caucuses; however, it does come under the review of the Sunset Subcommittee because of its purpose. Originally, the Commission was designed to bring together people who represent various parts of the judicial justice system in Nevada. In addition to legislators, the other members include judges, a district attorney, a public defender, law enforcement, and representatives of various state departments and agencies with responsibility of corrections, parole, and probation. The Attorney General is an ex officio member. Over the years, the Legislature has added a number of subcommittees, including Victims of Crime, Review Arrestee DNA, Medical Use of Marijuana, and Juvenile Justice.

This is what we are proposing in this bill. Last interim, Senator Tick Segerblom was the Chair of the ACAJ when he presented to the Commission two suggestions for revisions. First, he recommended that the Commission be authorized to request up to five bill draft requests (BDRs) in each regular session. Apparently, it started out as an advisory commission. The ACAJ has never been granted any BDRs. Individual legislators use some of their own BDRs to sponsor any legislation that the ACAJ proposes. Since the ACAJ has become more like an interim committee, the Subcommittee agreed to recommend that it should have its own BDRs. The second suggestion from Senator Segerblom was a recommendation that the ACAJ subcommittee on juvenile justice be repealed. In 2009, the Legislature created the Legislative Committee on Child Welfare and Juvenile Justice as a statutory interim committee.

The duties of the ACAJ Subcommittee and the statutory interim committee appear to overlap. Senator Segerblom testified that the ACAJ Subcommittee has not been active since the formation of the interim committee. The Subcommittee agreed with his recommendation to repeal NRS 176.0124. In addition, A.B. 444 also includes a recommendation from the members of the Sunset Subcommittee to create a new subcommittee of the ACAJ. This subcommittee shall consider issues relating to civil procedures and make recommendations to the ACAJ. During the review of the ACAJ, the Subcommittee members determined that there is no comparable standing interim committee that consistently covers civil proceedings and, therefore, agreed to the recommendation.

In conclusion, A.B. 444 is straightforward and the requests and recommendations come from your fellow legislators to make the Advisory Commission on Administration of Justice more effective, and to clean up the statutes by repealing a subcommittee that is no longer necessary.

I am available for questions. Ms. Stonefield was a policy analyst who helped us review all 31 entities and is also available for questions.

Assemblywoman Diaz:
I think I missed this, so can you restate why they felt the Subcommittee on Juvenile Justice needed to be repealed? Why is it no longer necessary?

Assemblywoman Bustamante Adams:
There is another entity called Child Welfare and Juvenile Justice that is a statutory interim committee and the two overlap. The one created under the ACAJ has never met, and the other entity covers the purposes of child welfare and juvenile justice.

Chairman Hansen:
We should all recognize this since we put the subcommittee together. We put the committee that you are on together to try to clean up issues like this, especially when you find there are overlapping committees. How many members are there on the ACAJ right now? Why does it have to be statutory? Can the committee on its own create a subcommittee? How many bill drafts does the ACAJ currently have? Are we adding five to what they already have?

Assemblywoman Bustamante Adams:
I will start with the last question first. They currently do not get any BDRs, so it is zero. Individual legislators come and bring forth the recommendations from that entity. The other question was how many members there are. I do not know, so we will ask Mrs. Stonefield if she remembers.

Carol Stonefield, Managing Principal Policy Analyst:
As Assemblywoman Bustamante Adams said, I was the policy analyst for the Subcommittee. I am not sure, but I guess there are about 15 members. There are four legislators, and in the past several interims, the Chair has been a legislator. The statutes specify the membership and that is about 15 members.

Chairman Hansen:
Currently, the ACAJ has no BDRs, but this bill would set up a subcommittee and give that subcommittee five BDRs?

Carol Stonefield:
The ACAJ has only evolved into an interim committee. In the beginning, when it was first formed as an advisory commission on sentencing that included legislators, the first meeting was chaired by one of the Supreme Court of Nevada justices. Its purpose was to bring all of the participants in the criminal

justice system together to talk about sentencing, then it evolved into talking about pardons, paroles, and the rest of the criminal justice system. It did not have any BDRs of its own because it was advisory. Since it has become more like an interim committee, and all of the other statutory interim committees have their own BDRs, Senator Segerblom requested BDRs. In the past—and this current session—if there were any recommendations for legislation from the ACAJ, they would have to be brought by an individual legislator. Senator Segerblom testified that he has carried them in the past, and Senator Parks—a member of the Sunset Subcommittee—also commented on the record that he too had carried legislation for the ACAJ. The proposed subcommittee is not getting the BDRs; the full ACAJ is.

Chairman Hansen:
I see. The subcommittee is adjunct to the ACAJ. Correct?

Carol Stonefield:
Yes. In essence, the bill proposes to repeal the Juvenile Justice Subcommittee, which has not met since the creation of the Legislative Committee on Child Welfare and Juvenile Justice. Senator Segerblom testified that the duties, jurisdiction, and interests of those two entities overlap. The Subcommittee has not convened. On the other hand, the Sunset Subcommittee is recommending the creation of a new subcommittee on civil proceedings.

Chairman Hansen:
Do you have anyone else you would like to have testify at this time? Shall I just open it up? Is there anyone who would like to testify in favor of A.B. 444 at this time either in the north or the south?

Steve Yeager, Deputy Public Defender, Clark County Office of the Public Defender:
I am in support of A.B. 444. I am just here to answer any questions. I typically attend most of the Advisory Commission meetings. My direct boss, Phil Kohn, is the public defender appointee on the Committee. During the last interim, I was honored to be asked to serve as the Chair of the Subcommittee on Arrestee DNA. I think the changes made in the bill are appropriate and make a lot of sense. The Advisory Commission is very busy and has a hard time getting to everything that it is tasked to do, particularly on the civil side. The creation of a subcommittee with civil practitioner appointees would make sense and it could make recommendations on any changes that need to be made in the civil realm.

Assemblyman Nelson:
What types of changes need to be made on the civil side?

Steve Yeager:
I do not know. For whatever reason—maybe because the commission started as a sentencing commission—it has dealt almost exclusively with criminal justice issues. I think the civil side has been lacking. Last session we discussed record sealing, which is a type of civil interplay. There has not been much discussion, if any, about civil attorneys and civil laws. We would like to get some folks together in a room to determine if any changes are actually needed.

Assemblyman Nelson:
It sounds like you changed your testimony. Initially you said there is a big need for civil changes, but now you are saying you are not sure.

Steve Yeager:
I might have misspoken. I intended to say that the Advisory Commission has not completed an analysis of the civil system. I do not know, perhaps there are other committees that meet, but the creation of a subcommittee would allow it to advise the whole Advisory Commission whether changes need to be made. I do not know whether that is the case or not.

Assemblyman Nelson:
I was trying to figure out whether it is necessary, but you believe it is.

Steve Yeager:
I think it is a good idea, at least for the next interim. If the Subcommittee meets but does not have any recommendations, it could be revisited. I think it makes sense to convene a subcommittee of civil attorneys to discuss it.

Tonja Brown, Private Citizen, Carson City, Nevada:
We support this bill. There are 17 members on the Advisory Commission.

Chairman Hansen:
Is there anyone else who would like to testify in favor of A.B. 444? Seeing no one, we will move to the opposition. Is there anyone who would like to testify against the bill? [There was no one.] Is there anyone in the neutral position? Seeing no one, Assemblywoman Bustamante Adams, is there anything else we need to bring up? [She shook her head no.] We will close the hearing on A.B. 444. We will go to Assembly Bill 297.

Assembly Bill 297: Revises provisions governing trafficking in controlled substances. (BDR 40-586)

A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I have two people who will provide the nuts and bolts of this bill, Assembly Bill 297, as well as our laboratory expert David Gouldthorpe, who is always a wealth of information even though I rarely know what he is talking about.

I was late in getting some pictures to the Committee, but I hope you all have them now (Exhibit T). You should have pictures of pills, and we will use these in our presentation to give you an idea what the volume of pills looks like. Assembly Bill 297 is another tool that was suggested by the members of the High Intensity Drug Trafficking Task Force. It was brought to our office of the Las Vegas Metropolitan Police Department (Metro) about a year and a half ago. It addresses issues with the sale of prescription medications on the black market. The task force is coming across large numbers of pills, but not as many as you would think. It takes a large quantity of individual pills to come up to the level that is considered trafficking. The detectives believe the suspects are intentionally keeping it under that amount. It was the determination of the task force that changes need to be made to the section of statute that deals with trafficking in narcotics.

I would like to have Sergeant Burnett walk us through the bill. She has been involved with this for a number of years. She and her partner brought the conceptual idea to us and have worked with the Office of the District Attorney to come up with the language.

Ailee Burnett, Sergeant, Las Vegas Metropolitan Police Department:
I have been with Metro for over 14 years and with narcotics for over 7 years. This bill came about because we saw an epidemic rising for the last couple of decades—not just in Clark County and the state of Nevada, but throughout the country. There is an epidemic of drug addiction to prescription medication. With addiction comes illegal drug trafficking and the black market. We have responsible health professionals who continue to treat their patients legally, so addicts are drawn to the black market. The *Nevada Revised Statutes (NRS)* that are in place to help us combat drug traffickers were written way before this epidemic ever occurred. Our laws need to be updated in order for us to address this ever growing problem.

That brings us to the bill today, A.B. 297, in which we talk about bringing forth a trafficking statute to include schedule III drugs and about changing some of the weight and pill counts to help us combat the issue. We are talking about lowering trafficking weights. Right now schedule II drugs start at 200 grams. If you do not know, our prescription medications start at schedule II and go up to schedule V. Schedule I is all of the illicit narcotics. We only have a trafficking schedule for schedule II drugs. The weight requirement to make it trafficking starts at 200 grams. When you look at pill size and weight—for example, oxycodone (oxy), which is one of the pictures—getting 200 grams takes a very large number of pills. On the black market that would go for a very high-dollar amount. If a drug trafficker is at 200 grams, he has probably been trafficking these pills for a very long time. It makes it difficult for us, in the capacity that we work in, to purchase these drugs on the black market to try to capture these drug traffickers. It is difficult to get up to that 200 grams or more. By the time we catch someone who is at that 200 gram level, he has been trafficking for years and hurting a large number of families and individuals.

We are asking for our laws to be changed to help us combat this ever growing epidemic and problem. We need to get to the point where we will be able to get these drug traffickers before they get too big. We want to cut them off at the knees, per se. When we are talking about the number of pills it takes to get to that weight, you will see in your pictures that 300 pills of oxycodone are only 31 grams. Keeping it at 200 grams of 31 milligrams of oxycodone, you can see how much it would take to get there. Those 300 oxycodone pills that you see cost $4,500, and we had to spend that just to get them. The deaths that we are seeing across the country since this epidemic came forth are people dying from prescription medications. There are more deaths from these drugs than there are from traffic fatalities, homicides, and all other illicit narcotics combined. The laws that we have to combat this issue have not changed. When we look at the issue of driving under the influence (DUI)—which is a definite problem—our laws have changed to help combat that issue. That is why we are looking at this issue to determine what we can do to help our community and our people to combat this problematic epidemic.

Assemblyman Elliot T. Anderson:
Can you help me understand the various levels on the drugs? Someone may have a prescription or be a dealer or be a trafficker. Can you help me get my head around how many pills you would normally expect to see an average person have in his possession in each category?

Ailee Burnett:
Are you talking about a person who is using or a trafficker?

Assemblyman Elliot T. Anderson:
To be clear, let us say someone has a schedule III prescription drug. How many would you expect that person to normally be prescribed? What about people who have intent to sell, or if they are dealers? How many would you expect for them to have on hand? If they are traffickers, how many pills do you expect them to have on hand in general?

Ailee Burnett:
That will vary if you have addicts with a particular problem. It depends on their level of tolerance and how long they have been addicts. When talking about an opiate addiction, the tolerance level will build. It can start with a five-pill-a-day habit and go all of the way to 50 or 80 pills a day. It depends on that particular addiction. That is why it is very widespread and why we have different categories—category A, category B, and category C—for felonies. You will see the different weights and pill counts and why they vary.

When you talk about a trafficker and a specific legal prescription, if you look at something like oxycodone, a doctor would normally prescribe anywhere from 30 to 90 pills for a 30-day period. Normally those do not come with a refill, so they would have to see their doctor each and every time they are needed due to the epidemic that we have. Doctors are trying to do the right thing, and they want to see the patient again before they refill prescriptions. If someone has pills like the first picture—20 or 40 grams, or 100 but less than 200 pill count—that shows us that he is able to get that over and over again in a 90-day period. They are bypassing legal means of getting them and are getting them through illegal means. They are definitely traffickers and selling the drugs on the black market.

Assemblywoman Fiore:
You said the amount of pills they have on them is proof that they are trafficking. Do you actually catch them in the act of trafficking?

Ailee Burnett:
It can go either way. When we talk about trafficking, it has to do with the weight and the amount of pills. It is the same thing when we look at schedule I controlled substances. For example, looking at methamphetamines, trafficking is about the weight, so when you look at a schedule I drug, if it is 4 grams or more, you are talking about low-level, mid-level, and high-level trafficking. If someone has 200 pills on him, that is beyond being normal. There is no

doctor who would prescribe that amount, so he definitely got it from illegal means or has it for illegal purposes.

Assemblywoman Fiore:
I am concerned with that. We have many people in prison because of the weight of a brownie versus the weight of the actual illegal ingredient. It is the same with the pills. If we are not catching them trafficking, we are charging victimless crimes. In the Nevada Department of Corrections, out of the 16 convictions in the past three years under the existing statute, not one of those convictions would have resulted in the greater penalty as called for in this bill. Why are we adding enhanced penalties for a crime that has not been committed in Nevada in the past three years?

Ailee Burnett:
One of the investigative techniques that we use is what we were talking about: our Drug Enforcement Administration (DEA) High Intensity Drug Trafficking Area (HIDTA). We basically go out and purchase these pills from drug traffickers. We definitely identify them as selling and trafficking pills. That is why the 90 days come into play. When an undercover detective makes a purchase from a pill trafficker, he buys between 200 and 500 pills at a time. It is consistent: we buy 300 pills today, in two weeks we buy another 300 pills, and in another two weeks we will buy another 300 pills. This works to our favor and we can show that they are drug traffickers and sellers. We do that on a daily basis in those teams.

Assemblywoman Fiore:
That would be correct since you are actually purchasing them, and it is not victimless because they are dealing. I am talking about the house raids where they have a vial of all these pills, but you have no proof that they are trafficking. We have to be careful with the intent of bills because once we put them into law, the judges have no wiggle room.

Ailee Burnett:
If someone has a legitimate prescription, it should only be for 30 to 90 pills. A doctor is not going to prescribe more than that within a one-month period.

Assemblywoman Fiore:
A doctor prescribes 60 pills but the person does not take all 60, and next month or a couple of months later he has a new prescription. He combines the pills in the same vial because it is the same medication; this is an issue. I am always nervous when we talk about bills like this. Our prisons are overpopulated.

Ailee Burnett:
I understand your concern. That is why we have these pill-drop locations at all of our substations. If someone has pills for this month and there is no reason why he should have the same amount of pills for next month, that is why we go back to that 90 days. If this person consistently gets these pills each month, and it shows he has a buildup of these pills, we take the totality of the circumstances. We are not going to just look at a 65-year-old male who has never been arrested, but has two vials of 60 pills each and think he is a trafficker. That would still not meet the statute. That is why it is 100 pills but less than 200 pills. There is no reason he should have that, but he might. It is within a four-month period, but would bypass the 90 days, and he has two vials of prescription medications. One is dated four months ago, and then he went for another procedure and was given another prescription of pills. We are going to be past that 90-day period, but we will also look at the totality of circumstances and say that this is not a drug trafficker. He has the pills, but just did not throw them away. It is about the totality of circumstances. This really works when we are running cases and are actually purchasing pills from a drug trafficker. It shows that we purchased this amount of pills on this day, and that amount on that day, and there is no way he got them through legal means.

Assemblywoman Fiore:
What you are saying is not delineated in the bill. The intentions are great but the consequences are not. I will just stop for the moment until we talk off line, but this bill is overzealous in my opinion.

Assemblyman Ohrenschall:
There is nothing in A.B. 297 about having to prove that a sale occurred or that a sale was going to occur. There is nothing about proving the alleged trafficker had scales to weigh the pills or anything like that. It is just based on the weight. Is that correct? I want to make sure I have this.

Ailee Burnett:
Yes. Basically, when they have this weight, it is the same thing for schedule I controlled substances—the weight is enough to show they are planning on trafficking the pills. There is no reason someone would have that amount of pills in their possession. We have seen this amount in our cases and our studies. With the training and experience that we deal with on a daily basis, if they have that amount of pills, they are in the trafficking business.

Assemblyman Ohrenschall:
Under existing statutes, if someone is bringing in pills and selling them or planning on selling them, he can still be charged with possession of a controlled substance with intent to sell. Is that correct?

Ailee Burnett:
Yes, he can. The unfortunate thing with that charge is that it really does not have that many consequences. The trafficking charge has more consequences. We are trying to give trafficking tougher penalties. With this trafficking bill, trafficking is a nonprobational charge; it has more bite. Right now, someone can have 10,000 pills of a schedule III controlled substance and the most we can charge them with is possession with intent to sell. That is a probationary charge and nothing happens besides a slap on the hand, and then they go right back to trafficking. This bill gives us a little more bite to say we are not going to stand for your trafficking and killing the citizens in our community or our state. We are done with it. It is going to put more bite in the law so they suffer consequences for getting into this business.

Assemblyman Ohrenschall:
I understand the intent and it is good, but I share Assemblywoman Fiore's questions about whether the net is going to catch folks who are not traffickers. We all agree that there is a real problem these days with juveniles and young adults stealing prescription drugs from their parents. I have met parents who keep prescription drugs in a safe because they are worried about their kids getting to them. Unfortunately, I can see a scenario where a kid steals mom's or dad's painkillers or antianxiety meds, gets caught up with that, is charged as a trafficker, and is looking at serious prison time. Under the existing charge, that is already available to the police—possession with intent to sell—and it is a felony. It is eligible for probation, but that would be up to the judge at sentencing. That charge would involve proving that there was an intent to sell, that the person had a scale or little Baggies. He would have to try to market something to customers and would need to have cash to make change. Maybe the correct route would be to enhance penalties for that because it would require proof that someone was intending to sell the items.

Assemblyman Jones:
I am following up on a previous question that you somewhat answered, but I need a little clarification. It seems that we are making such a drastic cut. We are changing the law from 200 to 400 grams down to 20 to 40 grams. That is down to less than 10 percent. My question is, what were they thinking at 200 to 400 grams? It is so drastic to lower it to 10 percent of that. I can see a 50 percent reduction, but all the way down to 10 percent seems like such a drastic downgrade.

Ailee Burnett:
I understand your concerns. Referring to the previous gentleman, children stealing prescription medication would absolutely not have the amount that we have referenced in this bill. If they are stealing, it is usually ten or less. If they have that amount, they are passing them out to friends at school. Getting to our young people is a huge concern for us.

Regarding the amounts, we have to think back to the original bill. We did not have the epidemic that we have today and the current problem. When the law was put at 200 grams, I do not believe anyone foresaw what we are dealing with today. That is why there has been this cut. Dealing with what we deal with on a daily basis and what we have seen, when you look at the pills in the pictures that you have in front of you of 300 oxycodone pills, 30 milligrams each is enough to kill anyone. That is only 31 grams and that is it. That is enough to kill a couple of people at least. When you talk about making it to the 20 grams or 40 grams, no one would have that through legal means. Our doctors are doing the right thing. They are trying to help those who need the help, but would not prescribe that amount to anyone. If someone has that amount, they are getting it off the black market and/or are trying to sell it on the black market because this is a very lucrative business at $4,500. That is actually a very cheap price for those 300 oxycodone. You can understand why someone wants to get into this trafficking business, especially during our economically tough times. That is why the weight has been lowered. I do not think anyone foresaw that this was going to be as big an issue as it is today. We look at how much these pills actually weigh; they weigh so very little. Then we have companies coming out with even more potent pills, like the pure hydrocodone pills—which are schedule II—that are very tiny pills. It will weigh even less than the oxy that you see here, and is more potent than an oxy. This also gives us wiggle room because pills come in different sizes, shapes, and milligrams, some more potent than others, but they are still in the same category. Someone can have 300, 400, or 500 pills, but we still would not be able to access any type of penalty that would make them want to stop. We need to give them some kind of prison time, punishment, or fines to say that this is wrong and you need to stop what you are doing.

Assemblyman Jones:
Assemblyman Anderson mentioned trafficking, dealing, and using, but you kind of put trafficking and dealing together. When I think of a trafficker, I think of what you see on television where they have big pallets of cocaine. That is a trafficker, while a dealer has little Baggies of drugs in his pockets. Does this break it down so the category C would be more for the dealer and the higher category would be for the trafficker? Is that what the intent is?

Ailee Burnett:
Yes, that is the idea. Basically, it is the same as when we were talking about the schedule I category. We break it down to low-level, mid-level, and high-level trafficking. This is the same type of category. I like your analogy; it can be broken down that way. You have street sales, then you have the mid-level person, and then the serious drug trafficker, the one who is dealing in thousands of pills.

Assemblyman Elliot T. Anderson:
You answered part of my question about how many grams a regular prescription would weigh. Repeating some of the concerns, this is a big drop and I would expect a lot of dealers to have this amount. Dealing is serious, but not as serious as trafficking. When I think of a trafficker, I think of someone crossing borders to bring in huge amounts of drugs that are then distributed to dealers. Getting to Assemblyman Jones' concerns, are you trying to get to dealers or traffickers because some of these amounts seem excessive for a dealer? That is my concern.

Ailee Burnett:
Again, whether we are talking about dealing or trafficking, the weights are all the same. What we want is for anyone wanting to get into this type of business to think about the consequences. It really is all about money; they do not care how it affects anyone. Because of the scope of this problem, people can easily purchase drugs off the black market, so they do not have to get them through legal means. Unfortunately, some professionals are turning to making extra money on the side by selling drugs. I understand your concern if you are concentrating solely on these amounts. It has become such a serious problem that we are trying to show everyone who wants to get into this business that we are not going to stand for it. We are going to have tough penalties and harsh consequences. We do not want anyone thinking everything is fine as long as they keep under the 200 grams, which is extremely easy to do since that is a lot of weight. In the interim, they hurt a lot of people, families, and communities. We want to start getting those people who know how to play the game and stay under that 200 grams. Just looking at the picture that you have, 300 oxy are only 31 grams. They need a lot of pills to get into trafficking and the harsh punishment area. If I am a trafficker or dealer, I can keep under that 200 grams and continue to sell my product. If I am in the health care profession, it is easy for me to maintain levels by just pushing these out and staying under the 200 grams. I can take it from wherever I am where I have access to these pills. If I keep less than 200 grams on my person or at my home and I get popped with intent to sell, I get probation but nothing really happens. Or I plead down to something even less than that.

Chairman Hansen:
You mentioned health care professionals and I assume you are talking about pharmacists, doctors, and nurses. When they get caught, are there any consequences for them with their licensing? If I am a doctor and I get caught selling whatever, are there consequences professionally as well as criminally?

Ailee Burnett:
I would like to say yes, but, unfortunately, it has been extremely difficult for us to prosecute doctors. Doctors are very difficult; they have their own board and regulations. We have found, because they are professionals, even when we purchase pills from them it has been extremely difficult to levy consequences on the punitive side. That is why we are looking at other bills, so we can establish harsher penalties. So far, it has been extremely difficult to do something about it.

Chairman Hansen:
Did you say earlier that it was $4,500 for 300 pills? I did not catch the numbers. What is the value of this stuff?

Ailee Burnett:
That is correct. The picture you saw was an undercover purchase from one of our detectives who purchased those 300 thirty-milligram oxycodone pills and it cost $4,500. That was actually a very cheap price. It even goes beyond that. The people who are trafficking these pills are making a ton of tax-free money. It is difficult for us because we have to spend this money to purchase these pills. If we had to purchase 200 grams of oxy, you can imagine what we would have to spend in order to show that this person is a drug trafficker.

Crossing state lines is drug trafficking as well. We are talking about a certain amount, but what happens once it gets here? We are not able to do much, but these people need to be held accountable for pushing this on the black market. That is where this bill is going to help us. The 200 grams have been extremely difficult to get from those drug traffickers. They know the game, how to play it, and they keep less than that amount on them.

Assemblywoman Diaz:
Having had someone who was in an accident, and was prescribed pain medicine, I can tell you that it is difficult to obtain them even legitimately. We have put a lot of measures in place with the pharmacies. We have made it onerous for real people who need the real medication. I could tell you horror stories about what I went through with my husband to get his pain medications. If it is that hard for me, who had just gotten the prescription from the doctor for a medical need, how do these individuals get these amounts? I do not think the

pharmacies are dispensing them, so how do they come up with all of these drugs?

Ailee Burnett:
There are so many ways; they can always find a way. Some doctor shop. It is difficult for doctors to find out. I go to Dr. Smith and complain of pain and get one prescription. The next day I go to my dentist and complain of toothaches; I get another prescription there. I go to Dr. Jones tomorrow and complain of this or that. These doctors do not know that I am doctor shopping all over the place.

Then I go to the pharmacy. This is why the Nevada State Board of Pharmacy has come up with a program to look up where and when someone has purchased medication, but not everyone checks. I can also go pharmacy shopping. I go to one pharmacy today and another one tomorrow. If someone does not check, no one will know. I can also use other people. I can ask another individual—and pay them a little bit of money—to pick up the pills for me. We have also seen an uptake in robberies of pharmacies as well.

We have people who will just sell their prescription medication. Some people in the health care profession see the dollar signs and start taking and stealing medications. They sell them on the black market. There are people who steal doctors' pads, forge signatures, and write out pain medication prescriptions in all different names. They can get fake identification. This is how strong the addiction is. They will go to whatever means they can in order to obtain these pills illegally. The traffickers also receive pills that are manufactured illegally through other countries, like China, India, and Afghanistan. You can purchase drugs on line through online pharmacies. Unfortunately, we have other states, like Florida, which is also dealing with a huge epidemic with the same issue. They have a lot of pain-pill clinics. You have people constantly getting the same prescriptions who go in and out of there and are not being scrutinized.

That is why it takes all of these measures as a whole to combat this problem. This is not just a law enforcement issue; this is not just a legislative issue. It is a community issue where everyone needs to come together to make it work to combat the problem. This is a problem that everyone has to deal with. That is all we are asking. The pharmacy people have been great in helping. Health professionals have also tried to take certain measures to combat the problem, and that is where we have to start looking at the laws that we have in place to help combat the issue.

Assemblywoman Fiore:
I appreciate what you go through. We have to be extremely cautious because every time we are in session, we take away more freedoms and fairness in our state. You said these people will go to any extreme to get these medications because they are very addicted. I feel in my heart that, if they are that addicted, they need rehabilitation not incarceration.

John T. Jones, Jr., representing Nevada District Attorneys Association:
I want to make a few points clear. First, when we talk about the legal definition of trafficking, what we are basically saying is that someone possesses an amount of drugs that this legislature says is not for personal use. That is all drug trafficking as a crime is: possession of a large amount of drugs. In the case of schedule I controlled substances, such as heroin and cocaine, that amount is four grams. When you look at the prescription drug amounts that are currently in statute, that is 200 to 400 grams. What you are hearing from Metro is that those amounts are so high it prohibits prosecution of people for trafficking who are clearly out there selling drugs. The pictures that you received from Metro show 300 pills that total 31 grams. I will again point out that 200 grams is the minimum for trafficking a prescription drug. If we take ten times the amount, so 3,000 pills that someone possesses, they are now into the trafficking range. We submit to you that what they see on the streets is that people carrying this quantity of pills are clearly selling them and providing them to people who are addicted. That is what this bill is meant to address.

I completely understand Assemblywoman Fiore's concerns about catching innocent people, like a grandmother who has a 90-day stockpile of drugs. We completely understand and are sympathetic to that. We are willing to work with all of you to ensure that type of person is covered by this statute. What Metro is saying is that we all need help by lowering these amounts to capture the people who are out there harming our communities.

Assemblywoman Fiore:
When we talk about weights and amounts, you and I both have seen that we have people in our prisons—not even our city or county jails—for the weight of a brownie. How do we fix that problem? We have people sitting in jail for the weight of the brownie. The drug ingredient in that brownie does not equate to a full marijuana cigarette, but they are in jail. When I looked at this bill and read through it, that was the only thing that caught my attention. That is where I am. As a district attorney, what do we do and how do we fix the problem to get the people out of prison when they are there because their brownie weighed more than their product?

John Jones:
I understand the concern you are expressing. From a law enforcement point of view, it is extremely difficult—when you are talking about compounds that make a brownie—for example to extrapolate how much marijuana is actually in that brownie. Presently, I am not aware of anyone who is in prison for possession of a marijuana brownie.

Assemblywoman Fiore:
I will get you a list.

John Jones:
Thank you. I would appreciate that. If you have concerns about that, we are more than happy to have the conversation with you on how to fix that situation.

Assemblyman Elliot T. Anderson:
Do you need to find something else in someone's possession? Let us say that you have all of these pills. You do not go around passing them out one by one to people. Can we tie the statute up a little more to get to the intent of trafficking? Is there something you would do to distribute it? If you are a dealer, it might be in a Baggie. If you are a trafficker, it might be in a Tupperware container. I do not know. I guess they do not have Tupperware containers if they are drug traffickers. They have to distribute it to dealers in something.

John Jones:
That is not how this Legislature has defined trafficking in this state. The Legislature has defined trafficking simply as possession of more than a certain amount of drug. That is it. There are other crimes—for example possession with intent to sell—that require the state to prove beyond a reasonable doubt that they had that requisite intent, meaning the intent to sell. We would do that through the possession of more than one Baggie, scales, or sometimes their own words when they offer to sell someone the controlled substance. On the possession-with-intent-to-sell charge, there is no amount needed. The possession of any controlled substance in any amount with that requisite intent is enough to meet the statute.

Assemblywoman Seaman:
What you are trying to do is focus on the sellers and not the users. Is that correct?

John Jones:
Yes. It is my understanding that that is who Metro is going after; the people who are out there providing these drugs to those who are addicted.

Assemblywoman Seaman:
How does what you are trying to do differ or concur with current federal law?

John Jones:
It is a great question but I cannot answer it. I do know that Metro does work hand-in-hand with the federal government through task forces to go after these interstate traffickers of prescription drugs, schedule I drugs. I do not know about the interplay between the federal and state statutes.

Assemblyman Wheeler:
Is it true that traffickers know exactly what weight and how many pills they can carry before they reach that threshold? The intent of this bill is to bring levels down to where it makes it much tougher for them to get out and push pills.

John Jones:
That is exactly correct. When you heard Metro's testimony today, that is exactly the type of behavior they are going after.

Chairman Hansen:
Is there anyone else, north or south, who would like to testify in favor of A.B. 297 at this time? Seeing no one, we will move to opposition. Is there anyone who would like to testify against A.B. 297?

Steve Yeager, Deputy Public Defender, Clark County Office of the Public Defender:
I think this bill has good intent. I think prescription drugs are a real problem, particularly with young people who tend to mix opiates with alcohol, which is a really toxic combination. We should all be concerned with trying to get at the source of these drugs, whether it be from a pharmacist or illegal manufacturer. This bill is well-intended, but I have enough concerns about the way the bill is written that I am here in opposition to the bill. I could have been neutral with concerns, but to follow the rules I am here in opposition.

I want to take you through some of the concerns. Many of them have been mentioned by the Committee; a couple of them have not. Beginning in section 1 of the bill, it says that if a dealer says, "I have 200 pills that I am going to sell you" and Metro does an undercover buy, but it turns out there are only 50 pills, they are prosecuted as if there were 200 pills. The words, the representations made by the seller or trafficker, dictate the prosecution.

To me, that seems unfair. You should be prosecuted based on how many you actually have in your possession, not how many you say you have in your possession.

Section 2 is the meat of the bill. One provision that we have not talked about is the top of section 2 where they are adding the phrase "within a 90-day period." That is a troubling phrase. Essentially, my concern is Metro doing undercover buys from one particular dealer. They can basically use a 90-day period and do as many buys as possible, then aggregate the amounts for the prosecution. If we are truly concerned about public safety and cutting off the supply of these pills, why would an arrest not be made after the first undercover buy? If there is a two- or three-week or 90-day delay, that person is going to be putting these pills out on the streets. Waiting 90 days to make an arrest so we can bring more serious charges is wrong when the public safety concerns dictate an arrest be made as soon as possible to cut off that supply.

I am concerned that section 2 does not make any provision for persons with lawful prescriptions. We are talking about drugs that can be lawfully prescribed. Section 2 makes no exclusion for that. If you read that section, someone with a lawful prescription who is in possession of the requisite amount could be subject to liability. There should be an indication that we are not talking about folks who have lawful prescriptions for these drugs. I am somewhat concerned—as Assemblywoman Fiore is—that there are people who horde pills, do not take them all, or may be on automatic refills. I want to ensure we are not capturing people who do not have any criminal intent. There are a lot of people who travel and do not always have their pills in their pill containers; sometimes they are in plastic bags. We want to make sure we are not capturing those people.

With respect to the rest of section 2, I agree with the concerns that this is a dramatic drop in the number of grams. I think there was some testimony that 200 grams would be required for prosecution, but that is not how I read the current statute. Under subsection 1 that is being deleted, it is 28 to 200 grams. Under the example given, and the photograph shown, we have someone with 30-plus grams and, under existing law, that would be a category C felony. I heard a notion that a category C felony is perhaps not serious, or someone would get probation, but I do not think that is the case. Any felony conviction, whether it is probation or prison, is a serious, life-changing event, and I do not think we can discount that. It was assumed that someone with 10,000 pills would get probation. No judge in this state is going to give probation to someone with 10,000 pills. It is just not going to happen. That person is going to get prison. Under existing law, there is no requirement that they get probation; it is simply up to the judge.

If this Legislature decides to enact the amounts as requested in this bill, my suggestion is that the person be prosecuted under the lesser of the two amounts, the dosages or the grams. You would be prosecuted under whichever is the least rather than only the dosages. That seems more fair.

Although this is not a fiscal committee, there appears not to be a fiscal note and that raises a question. Either this is a problem and we are going to capture people engaging in this conduct, or it is not a problem so why do we need the bill. This Committee has heard me say a number of times that the cost of incarceration is pretty significant, so I think there is an inconsistency in not having a fiscal note on this bill.

What we are really going after is the sellers, not addicts or purchasers. Keep in mind, however, that trafficking does not require the intent to sell. There are only two elements for trafficking: that you possess the drug and at a certain quantity. I have always thought that trafficking was a misnomer. We should really call it possession of a large quantity of drugs; that is what it is. When people think of trafficking, you think of someone who is pushing the product out into the marketplace. Under our laws, that is not how trafficking is defined. For someone who is truly an addict, you are addicted if you pop 50 to 80 pills a day. That makes a one-week supply somewhere in the neighborhood of 350 to 400-plus pills that you might have on your person for a seven-day supply. Under this bill, that gets you close to high-level trafficking with a 5- to 15-year sentence. That is an addict, and remember, if we come across an addict who has 400 pills, he is a trafficker under our law, even if there is absolutely no indication that he is a seller. If they say they have them because they are addicts, they could be prosecuted under this statute and would have no defense. They would not be able to tell a jury that they are not sellers because it would not be relevant to the crime as charged.

We already have crimes on the books that would capture this conduct. No one has talked about selling a controlled substance that is a category B felony and would be one to six years in prison. Possession with intent to sell is a category D felony, potentially one to four years in prison. Conspiracy to violate the Uniform Controlled Substances Act is a category C felony, so if you have multiple people working together, you will probably see a conspiracy charge.

One last thing that I would like to mention is that we heard in the example that was given and the photos that were shown that we had 300 oxycodone pills at 30 milligrams each. I believe, and I could be incorrect, oxycodone starts at approximately 5 milligrams and goes to 30 milligrams. These pills look the same except for their different colors, but I believe they weigh the same. This

particular bill does not take into account the strength of the substance. As a matter of policy, does a legislator want to say that we are going to treat 5 milligram pills the same as 30 milligram pills? It seems there is a qualitative difference there. Someone popping a bunch of 30 milligram pills is going to experience more of an impact than a 5 milligram pill. That goes to Assemblywoman Fiore's issue about the medical marijuana brownie. Is there a way we can make policy based on what the strength of the actual substance is? This bill does not seek to do that. I understand the intent behind the bill and I am willing to work with the sponsors to come up with something that works. I am concerned that too many innocent people are going to be wrapped up in prosecutions under this proposed bill.

Sean B. Sullivan, Deputy Public Defender, Washoe County Office of the Public Defender:
I, too, share the same concerns as Mr. Yeager. I think he did an excellent job of highlighting all of my concerns. We are opposed to this bill for the same reasons. I want to put a finer point on actual versus constructive possession, which is what Mr. Yeager was talking about. Actual possession of these drugs means in your hand or on your person, and constructive possession means the person must exercise immediate dominion and control of the drugs in question. Is this bill going to cast a wide net and capture that older individual who takes a lot of prescription medications, does the socially responsible thing by putting it in a safe or locked medicine cabinet, but continues to collect the pills and does not take them to the pill drop off? Better yet, what about the teenage grandson and granddaughter who may gain access to the safe or have a key or combination; are they now going to be considered in constructive possession and be prosecuted as a drug trafficker under this bill because they now exercise constructive possession of that medicine safe? These are our concerns.

Assemblyman Wheeler:
When you started, you were worried about section 1 and the intent. You were concerned with the number of dosage units that they represented they had, 40 pills when they really only had 5. The way I read this is that it already says that. It says as far as weight is concerned, but all that is being addressed here is dosages. Is the intent still the same?

Steve Yeager:
You are correct. The current statute is worded that way with respect to weight. This seeks to add dosages. My objection would be the entire concept, realizing that it is not a change in this bill. Under current law, we would look at the weight, so if someone says they have 55 grams to sell but only have 10, they would be prosecuted for the 55 grams, or could be under this statute.

Chairman Hansen:
Is there anyone else who would like to testify in opposition to A.B. 297 at this time? Seeing no one, we will move to the neutral position. Is there anyone north or south who would like to testify in the neutral?

Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada:
I originally was not going to weigh in on this legislation. Typically, I would have been in support because I worked during the past interim with a coalition of the industry addressing prescription drug abuse. There are many areas where we talked about reaching out and trying to curb this issue in our community. One of those was through law enforcement and the person who carries this amount of oxy on his person and is out selling it. I heard the term life-changing, which happens to families that experience a drug overdose with their children or when someone in their family has a drug abuse problem. This bill appears to target those people who are selling to the family member that has a drug-abuse habit.

I support what Metro is trying to accomplish. Drugs that were prescribed by a legal prescriber should be looked at differently from those on the black market. We can easily put gram amounts to heroin or methamphetamines. I appeal to the Committee's heart and ask them to look at this and consider how important this is to law enforcement in stopping some of this trafficking.

Chairman Hansen:
Sergeant Burnett mentioned that they are very frustrated because they oftentimes come across professionals—doctors, pharmacists, nurses—selling drugs, and it is difficult to prosecute those people. Since you are involved with the pharmaceutical board and those folks, I wonder what the industry itself is doing to police its own people. It is very disturbing to discover that people we have high regard for may be the traffickers of these controlled substances. When they are caught, there seems to be a circle-the-wagons mentality.

Liz MacMenamin:
Within the industry that I am closely associated with, if you attended a pharmacy board meeting, you would see there is not a circle-the-wagon mentality. There is chastising and heavy penalties for a pharmacist or pharmacy tech. A pharmacy tech loses his registration. However, when an individual steals drugs off of the shelf and takes them out to sell, the employer will make a case and fire the person but, right now in Nevada, law enforcement's hands are tied through the prosecution process because that person may have taken thousands and sold them. They are only brought up on charges of

embezzlement. I do not know how we would address that issue. They are never prosecuted for trafficking of drugs. We do take it very seriously.

Chairman Hansen:
Is there anyone else who would like to testify in the neutral position on A.B. 297 at this time? [Submitted but not referred to is (Exhibit U).] Seeing no one, we will close the hearing on A.B. 297. We will open the hearing on Assembly Bill 379, which will be presented by Assemblyman Ohrenschall. We will take a two-minute break for him to get ready [at 9:48 a.m.]. [The meeting reconvened at 9:51 a.m.]

Assembly Bill 379: Revises provisions relating to commercial tenancies. (BDR 10-126)

Assemblyman James Ohrenschall, Assembly District No. 12:
A little history for you on Assembly Bill 379. Back in the 2011 Session, I was privileged to work on a major piece of legislation. It was Assembly Bill No. 398 of the 76th Session and dealt with commercial tenancies in Nevada. Prior to that, there was no separate commercial tenancy statute. Assembly Bill No. 398 of the 76th Session created *Nevada Revised Statutes* (NRS) Chapter 118C. Prior to that, laws governing residential tenancy applied to commercial tenancy. However, the feedback was that they were cumbersome and did not work well. That is why I carried Assembly Bill No. 398 of the 76th Session. I worked closely with Mr. Leleu. The bill passed both houses unanimously, was signed by the Governor, and was enacted into law.

Since then, I have been contacted by Ms. Beverly Salhanick—a Las Vegas attorney whom I hold in high esteem—about some adverse consequences from the law and how it is working. Assembly Bill 379 is an effort to correct those consequences. You will hear testimony from folks in opposition, and I have met with everyone who represents the World Market Center, Clark County, the airports in southern Nevada and Reno, and the Nevada Association of Industrial and Office Properties (NAIOP). I think there is a lot of room for consensus, and I know we do not have much time left until the committee passage deadline, but I do think there is a good chance of ironing out the differences.

Beverly Salhanick, Attorney, Salhanick Law, Las Vegas, Nevada:
I am presenting this to you from two different perspectives. The first is based on an experience that a client of mine had regarding a bad acting landlord. The key issue that would have mitigated and prevented a substantial piece of litigation would have been a notice prior to lockout. That notice would also be effective in the event where a tenant's check is mailed, lost in the mail, or the landlord's bookkeeper applies it to the wrong account—or any other human

errors that may occur. The opposition that you are going to hear to that concept is that the tenant can go into court and sue the landlord. That would only happen after a lockout where the tenant has sustained damages from not being able to operate and from potentially losing clients who come to the store or place of business and find out that there is no business there to do business with. It would have a very detrimental effect on the tenant. Keep in mind that in the United States approximately 90 percent of the people are employed by small businesses. Small businesses are businesses with 500 employees or less. Many of those are employed in what are called microbusinesses. The definition of those are typically looked at as having around 15 employees or less. When you have a microbusiness that is in a landlord/tenant situation, they do not necessarily have the resources to be able to go in and fight the landlord, which may very well put them out of business. They may not have access to the legal system. Simply because a person owns a business or operates a business does not mean they have the wherewithal either financially or intellectually to consult with an attorney or know how to locate an attorney.

The second aspect that I am concerned about is that I represent a number of clients who are manufacturers and sellers of medical equipment: large pieces of equipment that would be placed into a space. If the tenant defaults on the agreement to either lease or purchase the equipment, and typically at the same time defaults on the lease, they may be evicted or they may just abandon the property. The equipment, which may be worth tens or hundreds of thousands of dollars, is left on the premises. It is difficult for the landlord to remove that property or to sell it. Keep in mind that the most sophisticated of these manufacturers and sellers will file a Uniform Commercial Code 1 (UCC1) security statement with the Nevada Secretary of State to show that they have a security interest—to show that they are still due money for the lease or purchase. A provision in this bill which requires the landlord to notify the holder of the security interest that there is personal property abandoned on the premise is necessary to allow these people or companies to go in and reclaim their property. The fact that it is abandoned by the purchaser or lessee of the equipment is of minimal impact, although the ability to pick up, retrieve, and resell the equipment does have the impact on whatever balance is due by the lessee purchaser.

We have been talking and there are some changes that will probably occur to this bill. We have discussed a number of amendments; however, those are two provisions that, from my clients' perspective, are important provisions and we would request that this Committee go forward with those amendments (Exhibit V).

Chairman Hansen:
Is anyone going to go through the bill section by section?

Beverly Salhanick:
I can do that if you like.

Chairman Hansen:
Just briefly. Sections 3 through 9 are similar. Please just give us an overview of the whole bill.

Beverly Salhanick:
Section 2 defines what a security deposit is. Sections 3 through 10 discuss how the security deposit is handled. Section 10 handles other charges. These are provisions that discuss how the landlord handles a security deposit, what rights the tenant has to retrieve any security deposit at the end of the lease, and what offsets can be based on damages to the property or default.

Section 12 is the start of the security interest that I mentioned earlier. There are some technical changes that are in sections 13 and 14. The key provision for my clients, based on their experience, is in section 13, subsection 4, where there is an opportunity to have a notice posted, but that notice is posted after the lockout. The key is providing notice to the tenant prior to the lockout so the tenant has an opportunity to cure.

In section 14, subsection 2, there is a proposed change. I have spoken with the people who will be in opposition. That change really is not necessary based on both prior actions of this body, as well as the Supreme Court of Nevada. We are in discussion about subsection 3 based on a wrongful eviction where the tenant is supposed to post a bond and what remedies the tenant would have in that situation.

Chairman Hansen:
You are eliminating the requirement of a posted bond, but are you in discussions to keep that?

Beverly Salhanick:
The people who are in opposition to the bill would like to retain that provision. My position on it is that there are two ways to go with it: one is to change the "shall" to a "may," and the other is to make a provision that, if the lockout is deemed to be an inappropriate lockout, any kind of damages that are related to the posting of the bond will be recouped. As you may know, there are two ways to post a bond. You either post the cash or you get an insurance policy that covers that amount. If you posted the cash, you get your cash

back. If you have to pay an insurance premium, you do not get that premium back, so that would be a measure of damages to the tenant in the event the lockout is deemed to be an inappropriate lockout.

We have discussed subsection 5, and we do not believe the changes are necessary there. We did not get that far, but it may obviate the need for subsection 6.

Chairman Hansen:
That is under section 14, correct?

Beverly Salhanick:
Yes. I am still under section 14. The new language for subsection 9 is not necessary. That could be handled with an order to show cause request to the court. We did not get a chance to get to subsection 12 when we were working this morning.

In section 15, you will find the mechanism that discusses how security interests are handled. In addition to the language, and in an effort to compromise, in subsection 1, paragraph (a), subparagraph (2), subsubparagraph (II), where it says, "The landlord shall be deemed to have taken the reasonable steps required by subparagraph (2) if the landlord has reviewed the results of a current search of the records in which a financing statement must be filed . . . " would be modified to say "Nevada search."

Chairman Hansen:
I need to interrupt you because we have some questions on section 14.

Assemblywoman Fiore:
I am not familiar with the commercial aspect, so can you explain to me what is happening with your tenants. In the noncommercial, if this applied to squatters that would be great. Can you give me some examples of what is happening so I can get my head wrapped around this.

Beverly Salhanick:
The trigger for me to contact Assemblyman Ohrenschall—particularly when I reviewed the legislative history and saw that Assemblyman Ohrenschall had initially proposed this bill—was that I had a client who was treated very badly by his landlord. In addition to refusing to repair the premises, the landlord was responsible for repairing the roof, which leaked like a sieve. That caused an additional problem with mold. The landlord, instead of simply locking him out, broke a key off in the lock, then locked the electrical panel so my client could not turn the lights on. This resulted in turning the lights off in the common

areas of the building, which was a risk to anyone coming into the building. The landlord posted notices on both the door to the suite and the exterior door to the building, which is excessive and not the business of any third party coming into the building to do business with another tenant. There were discussions with third parties about claims of past-due rent, about taking the equipment that the tenant had on the premises which was subject to security interest, and about starting a new business and asking the third parties if they wanted to start the new business. That triggered looking at the statute and me saying that the tenants need more protection. I work with a number of microbusinesses on a volunteer basis through a program—Ask A Lawyer Program—that was initially run through the Legal Aid Center of Southern Nevada. There were other inquiry sessions with tenants who have experienced problems with landlords that they did not know how to resolve. Many of them do not have the financial means to resolve the problems because they cannot afford to retain a lawyer.

Assemblywoman Fiore:
In the commercial aspect of this, can the landlord just lock you out if you are a day late with the rent? Is that happening?

Beverly Salhanick:
The landlord has the ability, under this statute, to lock out when a tenant is delinquent on rent. The delinquency would be defined under the terms of the lease, so if there is a three- or five- or ten-day grace period, it would be on day four, six, or eleven. How the landlord chooses to proceed, whether he is going to be courteous and provide a notice prior to lock out, is up to the landlord.

Assemblywoman Fiore:
In the commercial world versus residential, you do not have to go get an eviction or go through the courts or go through any of that?

Beverly Salhanick:
Correct.

Assemblyman Nelson:
Since we are on section 14, I would like to look at subsection 9, which talks about contempt. In my experience, the court can do an ordinary show cause why someone should not be held in contempt. Usually, unless the person is in front of the judge and commits contempt, the judge will not jail them. What you are purporting to do here is, if the court finds that the person has directly or indirectly disobeyed the writ after considering the evidence at the hearing, the court may commit the person to jail without bail. Is that what you really want to do to a landlord in a commercial setting?

Beverly Salhanick:
No. As I stated before when we were going through this, this is a provision that does not need to be maintained in the amendment. This is a provision that can be covered by the show cause hearing. Keep in mind that there are two kinds of contempt: the contempt that is in front of the court, and the contempt that is committed outside the presence of the court, which are typically the ones which are the subject of an order to show cause and subsequent hearing.

Assemblyman Nelson:
So this will be amended out.

Beverly Salhanick:
Yes.

Assemblywoman Seaman:
I think you answered my question, but I want to be clear. You are saying that three days after rent is due for that month they can be locked out without notice?

Beverly Salhanick:
If the three days is the grace period under that particular lease and the landlord deems them to be in default, yes, the lock can be changed and they can be locked out.

Assemblywoman Seaman:
I am trying to understand that. You are saying that you had a client who did not pay his rent, was locked out, and then had all of these different problems. Did the problems come after the rent was due or was he complaining before that?

Beverly Salhanick:
It was both before and after. The leaking roof had been a long-term problem. My client had mirrors on the walls of the facility and when they were removed you could see mold behind the mirrors because of the leaks from the roof that had been there for some time.

Assemblywoman Seaman:
How delinquent was your client?

Beverly Salhanick:
My client was in a world of hurt and not in very good shape.

Assemblyman Elliot T. Anderson:
We all know that commercial real estate has taken a real hit in Las Vegas considering what we went through. I was wondering about scope. How many people are potentially facing this type of situation? Maybe Mr. Ohrenschall is a better person to answer this question. Mr. Ohrenschall, have you spoken with the Chamber of Commerce, Retail Association, or those groups to poll them and see if any of their members are having this type of problem? I would be interested to know if we have a wide problem or a narrow one.

Assemblyman Ohrenschall:
I have spoken with some of the stakeholders but not the two you mentioned. I have spoken with folks in real estate. I have a constituent who has a brokerage and struggled with the real estate market in Las Vegas. She is a small business person and was trying to work things out with her landlord to make sure she could get caught up with back rent and arrearages, but she was in terror that she would show up one morning to the real estate brokerage and the locks would be changed and a sign would be on the door. Her agents would then lose faith in her. That is a business person who is struggling, and certainly on the brink of insolvency, but maybe not. That action would definitely throw her over and we would lose another small business person.

Chairman Hansen:
Let us go back to section 15 since there are no more questions. Let us do that quickly if we can.

Beverly Salhanick:
As I said before, this is the portion of the proposed statute that deals with the mechanism on how the secured holder of any personal property would be notified. Again, I would recommend that there be a revision that the landlord would only have to search Nevada records.

Section 16 has only one section deleted with a reference to another statute, so that speaks for itself.

Chairman Hansen:
In section 15, line 15, it already says, "Except as otherwise provided in subsection 3, a landlord who leases or subleases any commercial premises under a . . . " and you have crossed out rental and put in lease. Is that not redundant? A lease is a lease agreement.

Beverly Salhanick:
That is the Legislative Counsel Bureau's (LCB) change.

Chairman Hansen:
Then that is a question for the Legal Division. Is there a difference between a rental agreement and a lease agreement? Are they interchangeable?

Beverly Salhanick:
The change has been made throughout the bill, so it may be LCB's attempt to clarify.

Chairman Hansen:
Is there anything else you would like to add, Mr. Ohrenschall, before I open it up for testimony?

Assemblyman Ohrenschall:
Not unless there are more questions. I do want to add that you are going to hear a fair amount of opposition, but we are meeting with them, and I believe there is some common ground on some of these issues.

Assemblyman Nelson:
In section 16 you are deleting NRS 118C.220, which deals with the jurisdiction of the courts and summary eviction. Are you now saying that it is a violation of the one-action rule? Why are you deleting this?

Beverly Salhanick:
I did not request that deletion and I believe that, if the provisions in section 14, subsection 2— the new proposed language regarding the district court— are not inserted into the revision, then the hand-in-hand language in section 16 should not be stricken.

Assemblyman Nelson:
I agree. On page 2, in section 3, subsection 2, you are saying, "A claim of a tenant to a security deposit takes priority over the claim of any creditor of the landlord, including a trustee in bankruptcy." Do you think that is enforceable under bankruptcy law?

Beverly Salhanick:
Probably not.

Assemblyman Nelson:
I do not think it is.

Beverly Salhanick:
Probably not, but at the same time, there are some other anomalous provisions within the Nevada statutes. For example, there is a provision within the workers' compensation statutes that seems to indicate that the workers' compensation provisions, as to the insurer, prevail over the trustee, which are probably not enforceable either. This may be along the same lines.

Assemblyman Nelson:
That may be something to consider. Also, in section 4, subsection 3, paragraphs (a) and (b), you say that the landlord is not required to give the tenant a description if the tenant owes rent when the tenant surrenders possession of the commercial premises and no controversy exists concerning the amount of rent owed. I would say, would you not, that it is almost impossible that there will not be any controversy. In my experience, and I have done a lot of leases like you have—representing tenants and landlords—there is always controversy on rent and whether there should be a deduction because the roof was leaking or the garbage has not been picked up or whatever. I wonder if that is too high of a standard to meet.

Beverly Salhanick:
That would be something to be examined. I am certain that the people who represent the commercial landlords primarily will also provide this Committee with testimony that there are tenants who simply abandon the property, in which case there is no controversy. They know there is rent due and are not disputing it, but walk away and may never be found again. That would be the flipside, but would be something to be examined.

Chairman Hansen:
Is there anyone north or south who would like to testify in favor of A.B. 379 at this time? Seeing no one, we will move to the opposition.

Susan L. Fisher, representing Reno-Tahoe Airport Authority, and Nevada Association of Industrial and Office Properties :
I am going to let Mr. Leleu start first, and I will do backup.

Chairman Hansen:
There are two Mr. Leleus sitting there.

Jonathan P. Leleu, representing World Market Center:
If I may indulge the Committee for a moment, to my left is my son Nicolas. He is an eight-year-old third grade student at Goolsby Elementary in Las Vegas. He approached me a couple of months ago asking me what I do for a living. I put on the Schoolhouse Rock video about "I'm just a bill." He asked if he could join me to experience government in action, so I figured spring break is a great opportunity for him to do that, so he is with me today.

Assembly Bill 379 is a modification of NRS Chapter 118C. I have the distinct privilege of being the author of NRS Chapter 118C, so I have some inside knowledge regarding that particular statute, why it was put in, and the process that got us to what is now NRS Chapter 118C. Assemblyman Ohrenschall was the sponsor of Assembly Bill No. 398 of the 76th Session. The intent was to become Nevada's first commercial tenancy law. The reason that was necessary is that, until 2011, Nevada courts were defaulting to Nevada's residential leasing statute and applying that in the commercial context with respect to the enforcement of leases and all other aspects. That created a myriad of problems in Nevada's courts with respect to how leases were enforced. We decided that it was time for Nevada to move forward and address the commercial context of leasing, and we created this particular bill. The bill went through a number of machinations and, in fact, it was a heavy lift. What we originally started with was not reflective of what we ended up with. What we started with was an idea that we wanted to codify the leasing process to make it easier for commercial landlords in the state to lease. We wanted to promote business by creating a statute that left little to guess for a commercial landlord and tenant when they entered into this leasing relationship. We started with a very comprehensive bill that included language regarding security deposits and a bunch of other things. What we saw once the bill dropped was an explosion, for lack of a better term. The explosion was the industry. The industry pushed back hard. A lot of commercial landlords pushed back hard saying no, we want to be able to govern our own business transactions between our tenants and us. The tenants said the same thing. They wanted to be able to govern their own transactions. What we ended up doing was to dial back this bill considerably. We took out language regarding security deposits because landlords and tenants said they wanted to see that as a lease term and wanted to be able to negotiate that as they entered into this landlord/tenant relationship. We took that out along with a bunch of other things. We put in a bunch of other things. What we ended up with was NRS Chapter 118C, which has been on the books for four years. I can tell you as the formal general counsel of the World Market Center, we litigated hundreds of these things. There were times that the World Market Center was wrong, but NRS Chapter 118C worked; it worked flawlessly. It gave judges, tenants, and landlords predictability. I had people in the industry contacting me after NRS Chapter 118C was introduced asking me

for advice and how it applied and how to litigate it in court. We talked about it and went to court and said yes, this works—until now.

Here we are. We are talking about an amendment to NRS Chapter 118C and it is a substantial amendment. In the first section that amends it, sections 1 through 10 reflect part of the debate from 2011. I might be able to shortcut that and tell you with 100 percent certainty that we tried to talk about security deposits in 2011 and I got beat up. We ended up taking it out. We, from World Market Center's perspective, are still under the belief that it would be a really good thing if you codify this. The industry pushback was not worth the effort, and accordingly, we think sections 1 through 10 should probably go if you want to see this bill pass, because there is no way the industry is going to accept the Legislature intruding into its contractual relationships. It is just not going to happen; I tried.

We will skip to the notice of intent to lock out, section 12. Ms. Salhanick and Assemblyman Ohrenschall talked about a notice of intent to lock out. What is being suggested is that, before the landlord changes the locks on a defaulting tenant, the landlord should give written notice per statute in order to then proceed with changing the locks. There are a couple of issues with that. One issue that I want to talk about is what Assemblywoman Seaman and Assemblywoman Fiore were questioning regarding eviction and how this works. The reason this lockout is an important tool that we added to this particular statute is that, in an eviction action, what you end up with as a landlord is no tenant. You kill your lease. That is not what we wanted to do. We wanted to preserve the lease. As general counsel for the largest commercial landlord in the state, World Market Center, we found that tenants would intentionally not pay rent, accrue back rent, and would do this for the purpose of coercing a lease restructure. We talked to various people in the industry and we saw that it was happening all over the state and, in fact, was happening all over the country. We took a look at other states' statutes that had similar provisions in it in the commercial context, not in the residential context. This does not happen in the residential context because you do not want to lock someone out of his or her home. There is a difference when you are dealing with people and the roof over their head and a business that is a fictional entity. We want to preserve the lease because, if we evict them and that is the only option we have, we lose them; they are gone. That relationship is ended, and that is not what we want. We want to return the parties to center, get them to a point where they are at the same table negotiating on fair terms so the gun is not to the landlord's head with this huge amount of lease arrearage, and the tenant is not holding a huge hammer over the landlord saying, either you are going to try to recover this money or I will just leave and you will not be able to recover anything. I will shut down my corporation, and I will be gone. We do not want

that. We want to preserve the relationship and the business and get the parties back to center and moving forward. That was the point of the lockout. We will prevent the tenant from doing business in the space and now we can talk. We can now restructure the lease without ending it. That is why we put that in there.

Adding a notice of intent layer to that adds an additional step that must be completed in order for the landlord to effect its rights and, in addition, is what that would do in the summary eviction statute. Summary eviction is locking the tenant out. Now you have to do a notice of intent, then a five-day notice of intent per existing statute. You are talking two layers of notice on that side. That is not where we want to be. It is overly complicated. Again, NRS Chapter 118C works. We do not believe that section 12 is appropriate.

Section 14 discusses "shall post a bond" versus "may post a bond." While it seems fair to us that, if the tenant is locked out because he has not been paying rent, that he pay rent and post a bond to regain access, then we can talk about it. Would it be fair to give a judge discretion to say that he is not going to force someone to pay the rent, but allow him back in the premises to keep doing business, then we will talk about this in front of the court? That obviates the need for NRS Chapter 118C entirely. We think the language "shall post a bond" is important; that is the reason the lockout provisions are there.

Of great concern to us is section 15, the lien section. I would ask you all to consider the situation that exists here. Why are we here today? We are talking about a landlord/tenant relationship. When a landlord sits down and talks about leasing space to a commercial tenant, the landlord's thought process does not go beyond leasing space to the commercial tenant. It does not go to where does this tenant get its product from. It does not go to that tenant's commercial relationships beyond where it gets its product from. When you are dealing with a retailer, for instance, you have a manufacturer who I assume manufactures the product. That manufacturer then sells to a distributor. Usually those sales are done on account. There is a lien issue there. That distributor either sells to a store or, in World Market Center's circumstances, an exhibitor. There is a second layer there. Sometimes that is not on account, so you are talking about a second lien layer. What section 15 does is it places the onus on a landlord whose sole interest is leasing commercial space to go and look at transactions that it is not privy to and look for transactions that it is not privy to in order to satisfy a relationship that it is not a party to. The landlord has no visibility on those relationships—the relationship between the manufacturer and distributor and the distributor and the ultimate tenant—and it is not fair to ask a landlord to go and hunt those things down. The landlord has just been defaulted on and again has the concern of how he is going to lease his

space. The commercial leases are very typically leveraged in commercial loans, like your strip malls. What is really going on is that you have a tenant that is gone, and the landlord's concern is that he needs to go and release this space, otherwise, he will default on the mortgage on the mall. Now we have a section that says, in addition to all of that, we want you to search for a lien when we do not know if there is one, where it is, or who has it. Respectfully, it is too big of a hill to climb.

Finally, with respect to section 17, it deletes a section that we spent a lot of hours on in 2011. That section is about the jurisdiction of the courts. Before 2011, Nevada courts and litigants did not have any predictability where commercial leases were to be litigated. They could be litigated in justice court or district court, but we were not sure where. On top of all that, we had two transactions going on: a summary eviction transaction in which a landlord is trying to recover its commercial property, and then we may have a subsequent action for damages pursuant to the lease, whether it is accelerated rent or past rents or whatever. There was no clarity where these cases were to be brought and in what order. A claim might be precluded by the legal doctrines if they were brought in the wrong order. What the court section does is to provide that clarity. It says that summary eviction actions are to be brought in the justice court that has jurisdiction. Then it says that a subsequent action for damages pursuant to the lease can be brought in the court that has jurisdiction of those damages. As you know, there are monetary jurisdictional limits on our courts, so depending on the amount that is in controversy the litigants bring those claims in the appropriate court. Then it goes one step further and says, if the claim is brought one after the other, there is no collateral estoppel or res adjudicata effect, and you can bring those claims as appropriate because those claims arise out of separate transactions or occurrences. It provides clarity. In 2011, while we were debating this bill, the Supreme Court of Nevada was sitting on a case in which this precise issue was being debated. They waited until the Legislature passed our bill, and then the Supreme Court acted. Where we ended up is a very good place from World Market Center's point of view. We ended up with a solid piece of legislation. Is it perfect? No, it is not perfect, and as Assemblyman Ohrenschall and Ms. Salhanick mentioned, we are absolutely committed to working with the sponsors on revisions. As you know, I am open to conversation and to negotiation. There is a substantial amount of policy and history of reasons this bill is inappropriate and why we stand in opposition today.

Assemblyman Wheeler:
My question is for Mr. Leleu, but the smaller one. Now that you have had all morning to see what it is that your dad does, what do you think? Remember, you are giving testimony before the Assembly Committee on Judiciary and you have to tell us what you really think.

Nicolas Leleu, Private Citizen, Las Vegas, Nevada:
Mr. Chairman, I think my dad works hard.

Assemblyman Jones:
I have been involved with commercial leases as a tenant. There are good landlords and bad landlords. When you have a good one, they want to work with you, and let you be late sometimes when things are tough as long as you catch up and are in communication with them. Occasionally you run across the bad landlord who keeps your security deposit, does not fix the air conditioner, and does not care, so I can see some of this with the security deposit. Do you think you can come to an agreement on the security deposit so that it is reasonable? There are those bad actors, and I understand that you believe World Market is not a bad actor, but there are bad actors. The second part is in section 15. You applied this to just retail, but there is also manufacturing. I run a manufacturing company, so I run big equipment that you cannot put in a box and pull it out. There are people who do not have a security lien because you lease that equipment over time. That is a bigger thing than some garments that are liened on a general lien. That is a specific lien on a specific piece of equipment with numbers on it and a description. Do you think you can find some common ground on this? I have experienced the security issue and I do experience the lien issue.

John Leleu:
With respect to the security deposit issue, World Market Center's position is this: that was something that we had tried before, and it is something that we are happy to try to work on now. Our concern is that it is a bill killer because of industry pushback and what I saw in the history of this when we tried it back in 2011. To answer your question directly, I am happy to try to work on common ground, but my concern is that the bill may not survive as a result.

Your second question, with respect to the lien, is there common ground? To be quite direct, I do not know if there is. I believe that the relationship that is at play here is a relationship between the tenant and the lienholder. Further on down the line, the person who put that equipment may not be the tenant or the lienholder. To insert the landlord into a transaction that he may not be aware of is unfair. Is there a way to do it so the landlord is treated properly and not as a third party to the transaction, but as an outsider to this transaction and more

like a conduit or facilitator? I do not know; I would like to think there is. As we all know, the law tends to be a bit of a blank canvas that we can paint any way we want, and can write law any way we want to write it as long as it comports with the other laws. To that extent, I think there is always a possibility. We must overcome those hurdles and make sure the landlord is completely insulated and cannot be held liable in the event there is a lienholder who shows up later and claims the large piece of equipment is his and he has a lien that is in New Hampshire and you should have known.

Assemblyman Nelson:
It seems in those situations the typical thing is to have an estoppel certificate and handle it that way with the liens.

John Leleu:
It does seem like that may be the way to do it. I was also thinking along the lines of what folks do with respect to materialmen's liens and you have a notice of non-responsibility or something similar. Is there a way we can morph that concept into this particular situation? Yes. There is an estoppel certificate that can be done and that may be a way to partially skin that cat.

Assemblyman Nelson:
What is your opinion on sections 8 and 9? Section 8 says that a tenant who withholds payment is deemed to be in bad faith. Section 9 says that a landlord who fails to return a security deposit within 60 days and provide an itemized list is presumed to have acted in bad faith. I think those are inappropriate, and I am curious about your opinion.

John Leleu:
We are in complete agreement that those are inappropriate.

Susan Fisher:
There were some questions about an anecdotal story about bad players with regard to landlords and locking people out and breaking off keys. We already have protections for tenants in statute that went into effect in 2011. I worked on those on the residential side at that point. If you look at section 13, that covers everything that is already in statute that the landlord cannot do in order to harass the tenant, like turning off the power or water or locking them out or disabling the locks. Tenants already have those protections in place.

Chairman Hansen:
Is there anyone else north or south who would like to testify in opposition to A.B. 379? Seeing no one, we will go to the neutral position. Is there anyone neutral on this bill?

Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada:
In response to Assemblyman Anderson's question posed earlier, I want to put on the record that our association represents business owners on both sides of the equation, some are commercial landlords and some are commercial tenants. At this time, we have not been made aware of any of our members having any of the commercial tenancy issues that this bill is seeking to address. In that regard, we have no stories to share; however, we will reach out to our members and garner additional feedback and get back to the bill's sponsors as soon as possible.

Chairman Hansen:
Is there anyone else who would like to testify in the neutral positon? Seeing no one, Assemblyman Ohrenschall can wind this up. It sounds like you have a lot of opportunities to work together.

Assemblyman Ohrenschall:
I appreciate everyone's willingness to work together. I think there is common ground, and I will turn this over to Ms. Salhanick, and she will address some of those points.

Beverly Salhanick:
There was a discussion about how a lockout provision might preserve a lease, but if you look at the situation of a small business, or microbusiness, the lockout may just be the death knell. It is a draconian move and does not protect a tenant who has actually paid the rent and, due to human error on the part of the landlord or postal system, is placed in a position of default. To preclude the circumstances that Mr. Leleu was discussing, the landlord needs to move swiftly when there are rent arrearages accruing to the level of tens of thousands of dollars. That is the landlord's problem and is something they should be working on to resolve quickly.

Locking out a microbusiness or small business can really impact the livelihood of individuals. It locks out employees and the small business owners. We are not talking about locking out Dillard's or Macy's or Vons. We are talking about locking out the little taco shop or retail store. When you talk about the security interest, those typically are not the companies that are covered by the security interest. If you look at the language within the proposed statute, it discusses

perfected security interests that are filed with the appropriate bodies. That can be amended to state that it is just Nevada so there is no nationwide search required. For example, an X-ray machine provider provides an X-ray machine and files the UCC1 in Nevada. The landlord goes to the Nevada Secretary of State and for a small fee can search those records and determine if there is a UCC1 filed. He then has the ability to contact that secured party. When you are talking about something like an X-ray machine, for example an X-ray machine that is hung from the ceiling, it has to have special reinforcements, which are a tenant improvement. The landlord is going to be aware of the improvement. We are not talking about operating in a vacuum or talking about trying to locate the secured party for 15 dresses that were ordered for prom. We are talking about the companies that are providing large pieces of equipment like Assemblyman Jones referenced, or medical equipment, or other types of manufacturing equipment that may be substantial.

Section 17 has a provision that all parties agree on. We do not need to change jurisdictional issues. The jurisdiction issues have been resolved by the Supreme Court of Nevada.

The last comment on the bond issue would be a question that I would pose. What if the error is on the part of the landlord? Again, we have a situation where a small business tenant is forced into the position of going into court to regain possession of property that he paid his rent for, but the rent check got lost in the mail or the bookkeeper misapplied it. Why do they then have to come up with a bond in the amount of the rent that they already paid? That mandatory provision may not be appropriate in that situation. If you have a small business that is working hand to mouth, particularly if they have been locked out and do not have customers coming in, that may be their death knell. We would ask that this Committee review this legislation, particularly once we have been able to meet and discuss it further and provide revisions to go forward with the proposed amendments.

Chairman Hansen:
We will close the hearing on Assembly Bill 379. We will open it up for public comment in the north or the south. Is there anyone who would like to address the Committee?

Jonathan Friedrich, Legislative Affairs, Nevada Homeowner Alliance:
I want to bring to your attention what I believe to be a deceptive and misleading statement by attorneys testifying on homeowners' association (HOA) bills. I am suggesting that they are violating the bylaws of the Real Property Section of the bylaws of the Nevada Bar that require a disclosure. I will read a small portion of that from page 8. I emailed you all of the pages of those bylaws yesterday.

> The legislative action taken by the Section shall be clearly identified as the legislative position of the Section and not that of the State Bar or the Board of Governors. A legislative position statement of the Section to a legislative body must, as a preamble, contain a disclaimer, which shall contain such words and be in such form as may be required or approved by the Board of Governors. Unless otherwise approved by the Board of Governors, the disclaimer shall state as follows: This position is being presented only on behalf of the Real Property Section of the State Bar of Nevada. This position should not be construed as representing the position of the Board of Governors or the general membership of the State Bar. The section, which takes this position, is a voluntary section of State Bar members composed of lawyers practicing in a specified area of law. . . . This disclaimer shall be filed before the initial presentation of testimony with the clerk of the committee or subcommittee before which the testimony is to be presented. Additionally, the disclaimer must be repeated at the beginning of any oral testimony before a committee or subcommittee.

We have heard attorneys testify on HOA bills, and they make it sound as if the State Bar of Nevada has sanctioned this.

Chairman Hansen:
Do they actually specifically say that the State Bar sanctioned it in their testimony?

Jonathan Friedrich:
The Board of Governors.

Chairman Hansen:
Did they actually say that specifically?

Jonathan Friedrich:
Yes. You have it in the email I sent you.

Assemblywoman Fiore stated in Assembly Bill 297, which we heard earlier, "We take people's rights away in each session of this Legislature." That was done by the passage of Assembly Bill 192 this morning. Owners will be subservient to the declarant and never be able to control their own communities. The amendment did not cover the real issue here.

Chairman Hansen:
Is there anyone else who would like to make a public comment? Seeing no one, we do have a little Committee business. Tuesday and Thursday of the following week we will not have floor to allow us to have more time. I will try to roll at least four bills on those days. We have been averaging three bills with an expectation of an hour per bill. We start sharply at 8 a.m. and end by 11 a.m. That is my goal. Please help us keep it in a specified window as much as we can, and we can get as many bills heard as possible and give everyone a fair chance to present their side of the issue.

Assemblywoman Seaman:
I wanted to remind everyone that we have a subcommittee meeting on Thursday night at 6 p.m.

Chairman Hansen:
This meeting is adjourned [at 10:58 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 31, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 31	C	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 48	D	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 51	E	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 97	F	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 124	G	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 130	H	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 140	I	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 141	J	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 183	K	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 192	L	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 201	M	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 214	N	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 223	O	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 287	P	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 288	Q	Diane Thornton, Committee Policy Analyst	Work Session Document

A.B. 301	R	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 420	S	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 297	T	A.J. Delap, Metro	Pictures
A.B. 297	U	Stacy M. Woodbury, Nevada State Medical Association	Letter in Support
A.B. 379	V	Beverly Salhanick, Salhanick Law, Las Vegas, Nevada	Proposed Amendment