

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

**Seventy-Eighth Session
April 29, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Wednesday, April 29, 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 P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)
Assemblyman Tyrone Thompson (excused)

GUEST LEGISLATORS PRESENT:

Senator Don Gustavson, Senate District No. 14
Senator James Settelmeyer, Senate District No. 17

Minutes ID: 986



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Nancy Davis, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Lee McGrath, Legislative Counsel and Managing Attorney of the
Minnesota Office, The Institute for Justice
Brett Kandt, Special Deputy Attorney General, Office of the
Attorney General
John T. Jones, Jr., representing Nevada District Attorneys Association
Chuck Callaway, Police Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
Michael Cathcart, representing City of Henderson
Vicki Higgins, Private Citizen, Las Vegas, Nevada
Cindy Brown, Private Citizen, Las Vegas, Nevada
Mona Lisa Samuelson, Private Citizen, Las Vegas, Nevada
James Parsons, Private Citizen, Las Vegas, Nevada
Vanessa Spinazola, representing American Civil Liberties Union of Nevada
John Wagner, representing Independent American Party
Janine Hansen, representing Nevada Families for Freedom
Marc A. Johnson, President, University of Nevada, Reno
Cheryl Hug-English, Medical Director, Student Health Center, University
of Nevada, Reno
Enid Jennings, Health Educator, Student Health Center, University of
Nevada, Reno
Michael Hackett, representing Nevada Tobacco Prevention Coalition
Caden Fabbi, President, Associated Students of the University of Nevada,
Reno
Constance Brooks, Vice Chancellor, Nevada System of Higher Education
Joseph P. Iser, Chief Health Officer, Southern Nevada Health District
Luis F. Valera, Vice President, Government Affairs & Diversity Initiatives,
University of Nevada, Las Vegas
Michael Flores, Director of Communications & Government Affairs,
College of Southern Nevada
James Campos, Senior Advisor to the President on Economic and
Business Development, Office of the President, Nevada State
College
Elizabeth W. Neighbors, Director, Mental Health Developmental Services,
Lake's Crossing Center

Karl S. Hall, City Attorney, City of Reno
Ronald J. Bath, Private Citizen, Reno, Nevada
Scott F. Gilles, Legislative Relations Program Manager, Office of the
City Manager, City of Reno
Tom Robinson, Deputy Chief Operations, Reno Police Department
Tray Abney, Director of Government Relations, The Chamber,
Reno-Sparks-Northern Nevada
Erik Schoen, Executive Director, Human Services Network
Stacey Shinn, representing Progressive Leadership Alliance of Nevada
Rita Sloan, Coordinator, Life Peace and Justice Commission of the
Catholic Diocese
Madeleine Welch, Senate District No. 16, Nevada Youth Legislature
Quinn Jonas, Private Citizen, Reno, Nevada
Alfredo Alonso, representing Southern Wine and Spirits
Michael Ausbun, Private Citizen, Reno, Nevada

Chairman Hansen:

[Roll was taken and Committee protocol was reviewed.] I will open the hearing on Senate Bill 138 (1st Reprint).

Senate Bill 138 (1st Reprint): Revises provisions governing the forfeiture of property. (BDR 14-222)

Senator Don Gustavson, Senate District No. 14:

I am here to present Senate Bill 138 (1st Reprint) for your consideration. This bill provides that each law enforcement agency in the state must report annually to the Attorney General specific information about each seizure and forfeiture it conducts.

The Office of the Attorney General is to develop standardized forms for law enforcement agencies to use for the reports and make the reports available on its website by April 1 of each year along with an aggregate report of all forfeitures in the state. [Continued to read from prepared text ([Exhibit C](#)) and presented a video ([Exhibit D](#)).]

I applaud the efforts of the newly elected sheriff and district attorney in Humboldt County who are working quickly to correct the egregious acts that got out of hand and resulted in a flurry of lawsuits. [Continued to read from prepared text ([Exhibit C](#)).]

Lee McGrath, Legislative Counsel and Managing Attorney of the Minnesota Office, The Institute for Justice:

Thank you for the opportunity to testify in favor of S.B. 138 (R1). It is a good government transparency bill that will give you, members of the Committee, more information about what is happening and whether the 38 incidents in Humboldt that were mentioned are an anomaly or a more systematic issue for your future policy decisions.

The Institute for Justice is a libertarian public interest law firm headquartered in Arlington, Virginia. I am based in Minnesota. We are best known for representing Susette Kelo, the woman whose home was taken by eminent domain in 2005. My colleagues and I look at civil forfeiture through the same lens that we do eminent domain. The government should certainly be able to seize property, but it must have a good reason for doing so, and it must be done in a reasonable way with sufficient process.

The bill in front of you would enact a reporting requirement that would give you the information that other state legislators have. I am not suggesting that the situation in Minnesota is identical to the situation in Nevada. They are very different states with very different highways running through them. I want to tell you about the information that your counterparts have in Minnesota that has led to policy changes here.

In Minnesota, the state legislators receive a report annually, similar to what is required under this piece of legislation. Because of that information, they know, for example, that there are 7,000 seizures that occur in our state of 5 million people. The value of those seizures totals \$9 million. Interestingly, the average seizure is only \$1,400. Also, 94 percent of the seizures were related to driving while intoxicated or related to drugs; 58 percent of the seizures involved vehicles; 95 percent of the time property owners in seizures related to drugs just walked away and did not pursue their property. Twenty one percent of the time, the property is returned to owners. This information has changed the debate in Minnesota in two ways. One is that it has improved due process. Legislators in Minnesota have opened up a small claims court, or conciliation court, to handle forfeiture claims where property owners can go without an attorney and attempt to get their property back. Secondly, it has shifted the discussion away from the idea that civil forfeiture is used to break up large criminal syndicates.

Nevada is going to be different. What you will find as a result of implementing this bill is it will give you more information and different information than your counterparts in Minnesota have. It will inform you so as to address this issue in future sessions. Those decisions will not be made based on conjecture,

emotion, hyperbole, or speculation. They will be based on data, and they will be better tailored to the type of occurrences that are unique to your state.

Another point I would like to make is one that I think will ring true to members of the Assembly Committee on Judiciary. That is, the people of Nevada have given you a specific power, and they have separated that power from the Executive Branch. You are charged with the responsibility of raising and appropriating all funds. Nevada, like 42 other states, has delegated that responsibility to the Executive Branch. Law enforcement can raise and appropriate funds as it wishes. This may be a good and efficient decision, this may supplement the operations of law enforcement, but today you know very little about what is happening because of that delegation of legislative powers to the Executive Branch. For these two reasons: one, transparency and better information for future policy decisions; and two, to ensure that separation of powers are not lost and not wrongly delegated, I encourage you to enact this bill.

Chairman Hansen:

Is there anyone who would like to testify in favor of S.B. 138 (R1)?

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

We are in support of this bill. We believe that this reporting requirement, which we will help facilitate, will bring transparency to the civil forfeiture process in our state. I would like to make a very important distinction. The subject matter of the video was not a forfeiture proceeding. Forfeiture is a civil court proceeding. What you saw on the video was a seizure, which is the actual act of grabbing the assets of a person. Please keep in mind the distinction between a seizure and the civil forfeiture court proceeding.

Chairman Hansen:

A seizure would be part of the criminal side, versus the civil side, is that correct?

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

The seizure is the taking of the property. Once the property has been taken and the police department forwards the case to the district attorney's office, there will be a notation in the criminal file that certain property or an amount of money was seized. At the same time, there will be a case that goes to the civil division, which will start the forfeiture proceeding. Basically, there are two tracks going at the same time regarding the property. There is the criminal case and the civil forfeiture proceeding. Typically, the civil proceeding is stayed until the outcome of the criminal case. If the criminal case results in a conviction, that conviction will include the forfeiture as part of a stipulation

pursuant to the parties. If the criminal case goes to trial, once that case is over, then we will pick up the civil proceeding.

On behalf of the Nevada District Attorneys Association, we are in favor of this bill.

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

We are here in support. As my colleague said, this provides a level of transparency that I believe is important when dealing with this subject matter. I also think it is important to mention that, based on the current law in Nevada, 75 percent of revenue obtained from asset forfeitures goes toward education. Law enforcement does not retain all of that revenue. We are able to keep some of the seized money and there are restrictions on how it is used.

Assemblyman Jones:

Do you know if the City of Henderson is still opposed to this bill?

Michael Cathcart, representing City of Henderson:

Our fiscal note is no longer applicable with the amended version of the bill, and we are officially neutral.

Chairman Hansen:

I received a call from a justice of the peace in Clark County who was quite concerned about a case that he had. He talked about the need for proportional penalties and proportional punishment. He was referencing an individual who was caught poaching a deer. This individual had his four-wheel drive vehicle, a four-wheeler, all his camping gear, and his rifle seized. The value of all that was approximately \$50,000. As far as the justice of the peace knows, 100 percent of that was to be used by the law enforcement agency. He thought there was great disproportion to the nature of the crime. How do you balance the proportionality factor? If you catch a kid smoking pot, and he has \$50,000 cash in his trunk, and you seize the money, is that really proportionate to the penalty the individual is charged with?

Chuck Callaway:

Unfortunately, I do not know all the circumstances around that particular case. On the surface that does seem unreasonable that someone would lose his truck and all his equipment while hunting, being charged with the potential crime of hunting without a license. I believe that the purpose of the asset forfeiture court process is to look at the totality of the circumstances surrounding that incident and determine if the money or property was used in the commission of the crime or if it was assets gained through the commission of the crime.

If the courts reasonably believe that it was, then that is when the forfeiture would be granted. I do not think it is necessarily based on the crime versus the forfeiture. I think it is based on whether the property was used in the commission of a crime or gained through the commission of a crime. If so, it can be seized.

John Jones:

We have to show that the property that we are trying to seize is tied to either an instrumentality of the crime or a proceed of the crime. I think the case you gave is an interesting example where an officer pulls someone over and the odor of marijuana is there. He has a small amount on his possession and \$50,000 in the trunk. We still have to prove that the \$50,000 was a proceed of a crime or the instrumentality of a crime. If we cannot do that, then we would not meet the burden under the forfeiture law. We could try to negotiate—typically, these are adversarial proceedings—but we still have to show that the property being seized meets the definition in statute of property that can be forfeited.

Chairman Hansen:

The justice of the peace said that as far as he knows, the law enforcement agency, in that case the Nevada Department of Wildlife (NDOW), was actually allowed to keep 100 percent of the value of those assets and use them in their law enforcement financing. There is actually an incentive to try to seize as much as possible and then negotiate it down. When the negotiations are all done, the money stays in the law enforcement agency's budget. You mentioned that 75 percent goes to schools, but is that consistent with all the law enforcement agencies in the state?

John Jones:

In reading the statute, every law enforcement agency in this state has to turn over 75 percent of the proceeds to the school district in the county in which the property was seized. Anytime there is a lawful seizure, that money must be turned over to the school district.

Assemblyman Nelson:

Why was this bill amended so much? I liked everything that was taken out; it set the standard for seizures. Was that just to get it passed out of the Senate?

Brett Kandt:

I think we were able to demonstrate that our civil forfeiture laws serve a legitimate purpose and they work well in the vast majority of instances. The vast majority of the agencies involved in employing those civil forfeiture laws follow them properly, and utilize them properly. They follow the best

practice that Mr. Jones referenced, which is to stay the civil forfeiture proceeding unless and until you obtain a criminal conviction. I also wanted to follow up on the issue of the standard of proof in that civil forfeiture proceeding. The state has to demonstrate by clear and convincing evidence that those assets are either the instrumentality of the crime that was committed or the proceeds from the crime that was committed. Unless the state can meet that burden of proof, the court will not allow those assets to be forfeited to the state.

Assemblyman Nelson:

Is turning over 75 percent to the schools delayed until there is a final determination?

John Jones:

Yes. The property is not legally the states or the agencies until we actually obtain a forfeiture, either a stipulation between the parties or the civil proceeding is actually adjudicated and the property is ordered forfeited by the judge.

Assemblyman Elliot T. Anderson:

What are the constitutional requirements for a civil forfeiture under the Fifth Amendment?

John Jones:

I am assuming you are talking about the reasonableness standard under the Fourth Amendment; it has to be reasonable taking.

Assemblyman Elliot T. Anderson:

I am talking about the takings clause under the Fifth Amendment.

John Jones:

Then you are talking about due process, which is afforded as a constitutional right, along with the provisions in statutes which provide for the process. For example, seizure has to be made pursuant to a lawful arrest, pursuant to a search warrant, or pursuant to some other judicial order. If you have an instance where the arrest is not lawful, you can move to have that property returned to you.

Chairman Hansen:

Mr. McGrath mentioned \$9 million worth of seizures in Minnesota. Even if we just have 25 percent of that, that is a substantial amount of money. There is a little bit of a perverse incentive for law enforcement if they get to keep it. If they are going to err, they are going to err on the side of the financial gain of

the law enforcement agency. Since you already have your budgets set, would you object if 100 percent of those assets were turned over to education?

John Jones:

I think that is a conversation that our entities can have. I am uncomfortable making that agreement here on the record today without talking to the folks who are actually engaged in this process.

Chairman Hansen:

I would like to have that addressed. I am concerned that there is a perverse incentive for law enforcement to abuse this process for financial gain for the agency.

Vicki Higgins, Private Citizen, Las Vegas, Nevada:

I appreciate your taking the time to review this bill to ensure that the general public is protected. I agree with Assemblyman Hansen that the police incentive should be removed. I think that would be a good thing to help control this. Maybe we could look into a general fund in addition to the schools.

Cindy Brown, Private Citizen, Las Vegas, Nevada:

I am a 21-year voting resident of Nevada, living in Senate District 3, Assembly District 10. I would like to commend you on the amount of time and questioning you have allowed on this subject at the prior hearing. I listened to over two hours of testimony and would like to point out a few things. [Continued to read from prepared testimony ([Exhibit E](#)).]

I would also like to remind you that in a few months we will have fully legal marijuana dispensaries in Nevada. They do not have any banks where they can deposit their cash, nor, to my knowledge, any official procedure on how to transport the cash. They will be very vulnerable to the seizure law as it stands. [Continued to read from ([Exhibit E](#)).]

Mona Lisa Samuelson, Private Citizen, Las Vegas, Nevada:

I am a 25-year resident of Nevada. I am hoping very much by coming down here to speak to you today that you will understand that your community desperately needs your help so that our laws do not leave us, your most responsible and law abiding citizens, as easy prey to unscrupulous practices. [Continued to read from prepared testimony ([Exhibit F](#)).]

James Parsons, Private Citizen, Las Vegas, Nevada:

I am the former president and founder of the Medical Cannabis Consultants of Nevada, a licensed charity that was licensed by the City of Las Vegas to basically help educate and inform the public about medical marijuana services in

our state. I did this in 2008. I have copies of the illegal warrants that were used to rob me and my family of our assets and our tools of mass drug distribution, which were a Nintendo Wii, a PlayStation, and cash. I have an actual piece of paper where they wrote down what they took from me. To this day, since their raid in 2010, I have yet to be charged with a crime. I have never even been accused of a crime. If you read through my warrant, it is not even a warrant; it is a shopping list. It literally tells them what to take and what to destroy. For example, in my home, even though I am a licensed patient who was following constitutional law, they destroyed all of my personal medical devices. They destroyed my medical garden and took my cash. They do this because they know there is no legislation in place to stop them.

I am here to let you know that this bill is absolutely necessary. When someone tries to tell you that there is not an incentive or they do not gain from these raids, they know exactly what they are doing. They have judges that rubber-stamp it, police officers who follow orders, and literally financial assassins who are out there to take everything they have asked for. I would have loved to have seen the financial value of everything they took from me.

To this day, I have not been charged, yet I no longer have a wife, I no longer have pets, I no longer have assets, and I no longer have a legal licensed charity that was helping thousands of sick people in this state all because of something that could have been prevented with legislation.

Just know that I am the lottery winner, and it was not a good one. I am the person you hear about who had his family and his house torn apart, his business destroyed, and his reputation ruined. To this day, I have never been charged or accused of a crime in my life. I am a military veteran; my family has over 50 years of dedicated military service. I should not be here today, still trying to find my property from 2010. No one can tell me where it is. I already know where it is. It was sold. When I hear there has to be some kind of legal thing that takes place before the Las Vegas Metropolitan Police Department can have this property to sell it, that is a lie. To this day, James Parsons and his family and the charity of the Medical Cannabis Consultants of Nevada are still without property and still without due process. It needs to end.

Chairman Hansen:

I have asked our legal counsel to check into the fact that all law enforcement agencies have to turn 75 percent of forfeitures over to education. In fact, the justice of the peace from Clark County was correct.

Brad Wilkinson, Committee Counsel:

You were asking about money that was forfeited from NDOW. That provision is *Nevada Revised Statutes* (NRS) 179.1187, subsection 2, paragraph (c), which states, "Money derived from the forfeiture of any property described in NRS 501.3857, must be used to enforce the provisions of title 45 of NRS." That money goes to enforce the wildlife provisions in NRS Title 45.

Chairman Hansen:

In other words, the money they have raised in these types of arrests does not go to the General Fund or education; it stays entirely within the law enforcement agency that enforced the original law, correct?

Brad Wilkinson:

Yes, for that particular forfeiture.

Vanessa Spinazola, representing American Civil Liberties Union of Nevada:

We are in support of this bill. It is a good transparency bill. I was also looking at NRS. Full disclosure, there is a minimal reporting requirement in NRS 179.119. Law enforcement has to report quarterly the approximate amount. We conducted findings to see if anyone was complying with NRS. We were only able to get one in Clark County and one in Washoe County. We found that nearly \$450,000 had been forfeited in 2014 under that current NRS. It is not being complied with, so we do support the amplified reporting in this bill. Also, we were looking at NRS 179.118, which lists a number of people who are supposed to get those forfeited provisions from law enforcement, such as the Fund for the Compensation of Victims of Crime.

John Wagner, representing Independent American Party:

We agree with the ACLU. Also, there is the provision of people who have had their houses broken into by police by mistake, seizing guns and ammunition. In many cases it is hard to get those guns and ammunition back again, particularly in light of what happened in New Orleans. Those people were having their guns seized for no reason at all. I think this is a good bill that would help the citizens of Nevada.

Janine Hansen, representing Nevada Families for Freedom:

We supported the original bill. We do feel this is a good place to start. We are concerned with the problems where people have not been charged with a crime and have no due process. We know the *Constitution of the State of Nevada*, Article 1, section 18 mirrors our *Constitution of the United States* right of freedom from unreasonable search and seizure. We think this has been a serious problem for a long time that has gone unaddressed, the seizure of assets without due process. We have seen abuses as we have heard today,

and there are many more. We agree with the Chairman that this money provides a perverse incentive. As a result of this particular reporting bill, we hope to see additional legislation which will be able to further protect innocent people from these problems that have been created by the idea that due process has been done away with when they seize your assets.

Assemblyman Araujo:

Ms. Spinazola, you mentioned that there are already minimal requirements under statute for quarterly reporting. How did we make the shift from quarterly reporting to annual reporting? Also, is one year too long to wait for someone who is looking for that data?

Vanessa Spinazola:

I am not sure. I think annual is the standard that Mr. McGrath suggested. Right now, it is just an approximate value, so this is an improvement over what we currently have in statute.

Chairman Hansen:

I will close the testimony in favor of this bill, and open it up for anyone wishing to testify in opposition. Seeing no one, is there anyone who would like to testify in neutral? Seeing no one, Senator Gustavson would you like to close it up?

Senator Gustavson:

I would like to thank everyone who came in support of this bill. I believe it is a good bill, and I would like to see it passed.

Chairman Hansen:

Are there penalties for law enforcement who do not follow the reporting requirements? I will forward that question on to legal counsel. I will close the hearing on S.B. 138 (R1) and open the hearing on Senate Bill 339.

Senate Bill 339: Authorizes the Nevada System of Higher Education to impose additional restrictions relating to the use of tobacco. (BDR 15-873)

Marc A. Johnson, President, University of Nevada, Reno:

This bill changes the state's Clean Air Act under *Nevada Revised Statutes* (NRS) 202.249, which prohibits a board from imposing more stringent restrictions on smoking, use, sale, distribution, marketing, display, or promotion of tobacco or products made or derived from tobacco, than are prohibited by several statutes, except as otherwise provided in subsection 5. Subsection 5 exempts school districts from placing more stringent restrictions on tobacco than in other parts of the law. All this bill does is add properties of the

Nevada System of Higher Education (NSHE) to the school districts, allowing campuses of colleges and universities to restrict more heavily on the use, sale, and promotion of tobacco products. Basically, this bill will allow the colleges and universities of NSHE to join 1,200 other colleges and universities across the country to become tobacco-free. We are in support of this because the University of Nevada, Reno, (UNR) in particular would like to go tobacco-free and this bill would also, at the volition of the other institutions, allow them to do so. Quite a number of western universities have already endorsed and activated tobacco-free campuses, and we would like to do the same for the health of our students, improve their productivity, and reduce the health costs of these individuals through their lifetime. This bill has been supported and endorsed by NSHE Board of Regents. Going tobacco-free at UNR has strong endorsements from our Undergraduate Student Senate, our Graduate Student Council, our Staff Employees Council, and the Faculty Senate. We think it is a great way to provide an example for students to live healthy lives. [Also provided prepared testimony ([Exhibit G](#)).]

Chairman Hansen:

I assume one of the reasons that NSHE has not been included is because they are typically considered adults over 18 who choose to smoke. Why is it that NSHE feels that you have a right to stop them from using a legal product in Nevada?

Marc Johnson:

As with the other 1,200 campuses, we find that the example of tobacco-free will encourage young people not to get involved in smoking tobacco products. Even though it is their right, and we are not saying it is illegal to use tobacco, we are just providing an example on campus. Studies have shown that young people do not actually take up smoking as a lifetime activity until the age of 20. It is encouraged at the junior high and high schools now to not have tobacco on campus, and we would like to provide a similar example at colleges and universities.

Chairman Hansen:

What about alcohol consumption? I know it does not occur much at UNR, but I was wondering, since that also has some pretty serious health consequences over time, does UNR intend to make itself a dry campus?

Marc Johnson:

We do not have that under consideration at this time. That is not the subject of this bill, but we do have a great deal of educational opportunity and recovery opportunity on the campus, always encouraging the students not to use alcohol until they are the age of 21, and to use it in moderation and responsibly. Those

students who experiment with alcohol have plenty of support on campus to both trim back on consumption and recover if they are in an alcoholic condition.

Chairman Hansen:

Does UNR have any policies in place regarding the smoking of marijuana, which is now legal in certain circumstances on campus?

Marc Johnson:

To my knowledge, we follow the laws of the land. We do not do research on marijuana because it is federally regulated. I do not know that we have any particular restrictions on it other than what is restricted by law.

Assemblywoman Fiore:

When we start making laws like this, there are consequences, penalties, and suspensions of adult students who are engaging in legal activities in the state. With this bill, once the campus becomes tobacco-free, if there was tobacco on campus, could you be suspending an adult student for that? Also, I find it a little ludicrous that tobacco taxes are a large portion of educational funds. So, you want to take the money, but ban the product.

Marc Johnson:

We anticipate having social enforcement, which means we will not issue citations, nor will we suspend anyone from campus because of this activity. It is going to be an encouragement to provide a healthy-lifestyle environment for the campus. In terms of taxes and the use of funds, it seems as though your revenues and expenditures are somewhat independent, although they have to match by the end of the session.

Assemblyman Jones:

When you say completely tobacco-free, are you still going to have designated areas, such as a smoking section in airports? I can see it would be difficult for a smoker with three or four classes. It may also result in people not wanting to go to UNR.

Marc Johnson:

We are not going to have designated smoking areas on campus.

Assemblyman Trowbridge:

I am a nonsmoker, but the taxes do go to the schools. The NSHE receives considerable funding from the tobacco sales. Do you have a suggestion as to where the additional monies would come from to replace that income, or would you be willing to accept a reduction in funding equal to the amount of the reduction of revenue that comes from the loss of tobacco purchases?

Marc Johnson:

We do not have a revenue strategy to replace the taxes that would not be paid on college and university campuses.

Assemblyman Trowbridge:

Because of your stance on the issue, would you be willing to accept reduced budgeting in the amount equivalent to the revenue received from tobacco sales?

Marc Johnson:

If that is the wish of the Legislature to make that distribution, it is up to you. We have a rapidly growing student population on campus. We are producing a professional workforce for the economic development of the state and for the volition of the students who want an education. We think teaching good health behavior is very important.

Assemblyman Trowbridge:

In answer to my question, are you saying, yes, you will accept the reduction, or are you going to leave it up to me? If I vote in favor of your bill, and the consequence is there, you want me to bear the responsibility for the consequence of supporting your request.

Marc Johnson:

Certainly the allocation of funds to higher education is up to the Legislature.

Assemblyman Elliot T. Anderson:

I would like to welcome President Johnson and Ms. Gansert to the Legislature. It is great to see you.

Cheryl Hug-English, Medical Director, Student Health Center, University of Nevada, Reno:

I am here today to encourage your support of S.B. 339. As a physician, I have seen the significant impact that tobacco use can have on health. Tobacco use can negatively affect every organ in the body. According to the Center for Disease Control, tobacco use is the leading preventable cause of death in the United States. [Continued read from prepared testimony ([Exhibit H](#)).]

Enid Jennings, Health Educator, Student Health Center, University of Nevada, Reno:

Two years ago, becoming a tobacco-free university became a priority as part of a strategic plan to improve campus health and wellness. Since then, the university's students, employees and key stakeholders, including Faculty Senate, Associated Students of the University of Nevada, Staff Employee Council, and the Graduate Student Association, have voted to join the ranks of

over 1,200 colleges in the United States who have adopted a tobacco-free policy. [Continued to read from prepared testimony ([Exhibit I](#)).]

Chairman Hansen:

The statistics I saw showed that almost 25 percent of Nevadans smoke. The Governor's budget is proposing a 40 cent additional tax on cigarettes. All those taxes are used to support the university system. While I am a nonsmoker, I am concerned about the compulsory aspect of this. You are dealing with adults. If they choose to use a legal product on a government-funded campus, where do we derive the right to tell them no, while at the same time we are taxing them for the use of the university system for all the students?

Enid Jennings:

As President Johnson mentioned, we are not requiring that people quit using tobacco; we are only creating a supportive environment on our campus for those who either choose to be tobacco-free or who make the choice to quit. As a component of this process, we have developed a lengthy menu of cessation resources that will be free to faculty, staff, and students on our campus. In terms of the taxes on tobacco and that revenue coming to the university, I think that when we look at a public health issue and we look at the cost impact of tobacco use on our healthcare system, the benefits of people quitting far outweigh some of those losses in financial revenue from taxes. Also, in terms of smoking rates, our student population at UNR has a very low smoking rate. Our faculty and staff is typically the 20 to 25 percent that we see in Washoe County, but our students are under 10 percent so far as their tobacco-use rate. We know that from our National College Health Assessment data. That is pretty significant, and we would like to keep it that way on our campus.

Chairman Hansen:

Just for the record, tobacco taxes in Nevada average over \$100 million each year, which goes to fund things like higher education. There seems to be a little conflict here. On one hand you want more money for higher education that we take from people who smoke. On the other hand, we are going to tell those people when they walk onto a public facility that they have no right to smoke anywhere on that campus.

Assemblyman Gardner:

I am wondering where we draw the line when we force people to live healthier. We know if you go to the food court in these universities, there is lots of unhealthy food. There are many things that happen on these campuses that

would definitely be characterized as unhealthy. Why cigarettes? We all understand that cigarettes are bad, but why are we drawing the line there?

Enid Jennings:

We are not drawing the line there. We actually have a number of strategies in terms of our strategic plan for wellness on campus that address things like nutrition, the foods that we offer on campus, the environment in which the students live in the residence halls, and encouraging physical activity. Tobacco use was not singled out as a strategy for incorporating wellness for our students, it was just simply part of a strategic plan for wellness. We have modeled this on what we have seen on other campuses across the country.

Chairman Hansen:

Is alcohol consumption part of your wellness plan?

Enid Jennings:

Alcohol and other drugs are most definitely part of the strategic plan in terms of our outreach, the resources we provide, and the health care we provide to students.

Assemblywoman Diaz:

Thank you for being here and advocating for the health of our college students. I do not see that we are forcing this measure on anyone. The language is very clear; it says "may impose" more stringent restrictions on the smoking, use, sale, et cetera. I heard from President Johnson that this is voluntary, that UNR wants to take this up, and that the students, faculty, and the staff want this initiative to be moved forward on their campus. I think we need to hear the voices of the people who are there. I am sure that outdoors versus indoors will play critical roles in designating where people can smoke or not. Can you shed some light on the process of how we would then implement smoking zones versus nonsmoking zones?

Chairman Hansen:

President Johnson clearly stated that there will be no smoking zones on campus, correct?

Cheryl Hug-English:

That is correct. The University of Nevada, Reno, has made the decision to be tobacco-free. What is true in the language of the bill is that it does not require any other institutions to do the same, but it gives permission if they chose to follow a similar pattern. There was tremendous outreach to students, faculty, and staff. There were surveys done, there were votes taken, and all of the groups voted to support this. Interestingly, people who were smokers were

very favorable about this. They said, I am a smoker, but I think this is a good thing; I think this may, in fact, help me to make the decision to quit.

Assemblyman O'Neill:

Have any studies been done? Will this encourage or discourage future attendance at UNR? I assume this also includes chewing tobacco, correct? What about vaping? What is UNR's position on electronic cigarettes, which contain nicotine and other harmful chemicals?

Enid Jennings:

This bill does include other tobacco products, but not electronic cigarettes at this time. The research that we have done involved talking to other universities that have gone tobacco-free. There has not been any increase in terms of attendance or attention for universities who have implemented the policy.

Assemblyman O'Neill:

Why are you excluding electronic cigarettes when they also have chemicals, the nicotine is still there, and they can be just as obnoxious and addictive as a cigarette?

Chery Hug-English:

I think that those are valid points. We were trying to present a clear bill first with tobacco products. We will leave it to you, as the legislators, to determine how to define tobacco. Right now, that is a little bit unclear with electronic cigarettes, so they are not included in this bill.

Chairman Hansen:

Is there anyone who would like to testify in favor of this bill?

Michael Hackett, representing Nevada Tobacco Prevention Coalition:

We would like to go on record in support of S.B. 339 and commend UNR on the decision to establish a tobacco-free campus.

Caden Fabbi, President, Associated Students of the University of Nevada, Reno:

We are also on board with this bill. If this bill is not passed out of Committee, it will be a road block in terms of us promoting a much healthier campus to our students.

Constance Brooks, Vice Chancellor, Nevada System of Higher Education:

As President Johnson indicated, this legislation is part of the Board of Regents' legislative priorities for this session. On behalf of the Board of Regents, we offer our support for this legislation.

Assemblyman Trowbridge:

To the president of the student body, how much more per unit are you willing to pay to offset the revenue from cigarettes?

Caden Fabbi:

I think there is a larger conversation behind this based on financial aid. I am sure this is not the only case of tobacco products being used in areas seeking revenue or gaining revenue where tobacco is not allowed.

Assemblyman Trowbridge:

Twenty dollars?

Caden Fabbi:

That is part of a larger conversation in terms of needing financial aid for students on our campus.

Assemblyman Nelson:

Can you tell us what the students' reaction has been to this bill?

Caden Fabbi:

About a year and a half ago, the Senate decided that we would support the administration in moving forward with a tobacco-free campus. The senators on our campus represent students within the college, with 1,000 students per senator. There was a large amount of outreach in speaking with students in terms of how they feel about this bill. We ultimately felt that students would support it, and we wanted to support a healthier lifestyle for all students on our campus. We are also in full support of the E. L. Wiegand Fitness Center, which will soon be coming to our campus. We really are trying to promote all aspects of health. Working with the students on our campus, they pretty much seemed to support this bill. Further, our campus is very accessible to simply crossing the street to smoke if they need to.

Assemblyman Araujo:

I have heard a lot of speculative questions regarding tobacco sales. It almost seems that we are alluding that tobacco sales are taking place within the campuses. Students can still purchase tobacco products outside of campus. I believe that most do. If they choose to smoke as soon as they leave school, they can. I think we need to be mindful of that. I commend you all for taking the student's perspective and listening to what they would prefer, and I think we should do the same.

Assemblyman Elliot T. Anderson:

I would like to ask legal counsel if this would prohibit students from buying cigarettes, because it sounds like that is what we are talking about with a lot of these questions.

Chairman Hansen:

They cannot purchase on campus because this will be a tobacco-free zone if this passes.

Assemblyman Elliot T. Anderson:

I have been a little confused by the discussion. I am not sure how this bill would affect tax revenues without taking it further than what the bill provides.

Chairman Hansen:

We are pointing out that the amount of tobacco taxes that are paid to the state of Nevada are substantial and this bill would actually make it illegal for someone to use those products on a government facility. Mr. Fabbi, currently under Nevada law, if you are under 21, you cannot drink. I was being facetious when I said there was no underage drinking on campus; what have you been doing to aggressively address that?

Caden Fabbi:

We know that drinking occurs on our campus. Again, this is part of a larger conversation and one that we have been having among our student officers in terms of how we can help students who decide to experiment with alcohol. We will also be discussing Senate Bill 464 (1st Reprint), which is related to medical amnesty and being able to create a community of supporting each other.

Chairman Hansen:

If you are willing to have a conversation on making health and wellness a significant part of your college package, have you gone to your senate and said, we want to have an alcohol-free zone just like the tobacco-free zone?

Caden Fabbi:

We are having those conversations. In this past year, it was a particular point that we wanted to discuss. We have measures such as S.B. 464 (R1) to address these issues on our campus. We want to create a safe and healthy environment for our students.

Joseph P. Iser, Chief Health Officer, Southern Nevada Health District:

I was the district health officer for the Washoe County Health District. In the past, when I was up north, we worked diligently with UNR to develop some of the policies that you are hearing today. They have been in the forefront here in the state for trying to develop smoke-free campuses. By our reckoning, there are over 1,500 smoke-free campuses in the United States with two-thirds of those being completely smoke-free, as UNR would like to become. Beyond that, my testimony would mirror others, so I would like to express my strong support for passage of this bill.

Luis F. Valera, Vice President, Government Affairs & Diversity Initiatives, University of Nevada, Las Vegas:

I am testifying in support of S.B. 339 (R1). Based on the input we have collected from our students, we are in favor of this legislation.

Michael Flores, Director of Communications & Government Affairs, College of Southern Nevada:

Ditto.

James Campos, Senior Advisor to the President on Economic and Business Development, Office of the President, Nevada State College:

Ditto.

Chairman Hansen:

Is there anyone here who would like to testify in opposition or in the neutral position on S.B. 339 (R1)? Seeing no one, I will close the hearing on Senate Bill 339 (1st Reprint) [also provided and not discussed is ([Exhibit J](#))]. I will now open the hearing on Senate Bill 54 (1st Reprint).

Senate Bill 54 (1st Reprint): Revises provisions governing the commitment and release of incompetent criminal defendants. (BDR 14-334)

Elizabeth W. Neighbors, Director, Mental Health Developmental Services, Lake's Crossing Center:

I am the Agency Director at Lake's Crossing Center, which is the state's only facility for mentally disordered offenders. I am here today in support of Senate Bill 54 (1st Reprint) as amended, which addresses procedures in *Nevada Revised Statutes* (NRS) 178.461 for individuals who are incompetent without probability of attaining competence and who may be committed for extended periods of time, up to ten years, because of the identified dangerousness of their behavior. I would like to state that there is an alternative commitment procedure that is a civil commitment procedure, also in NRS Chapter 178, which is more broadly available to the individuals who are

incompetent. This is focused on those folks whom the court believes to be particularly dangerous and who have been charged with egregious crimes.

This bill also has a second section which clarifies conditions of release for these individuals. This bill proposes that the list of charges that make an incompetent defendant eligible for long-term commitment to a maximum security forensic facility are overly broad. It is a long list that includes all category A felonies as well as a significant amount of category B felonies. As the bill is amended, the list of charges would be limited in regard to those that may result in commitment without the concurrence of the evaluators who complete the risk assessment prior to the court ordering the commitment. This change in procedure allows for input from the Division and more substantive input regarding the person's appropriateness for being placed in this setting.

We have some concerns about individuals being captured in this commitment process who are probably not appropriate for the level of security and care that we provide, which basically remains with the criminal justice system. Having worked with this statute for some time now, it has become a growing concern that at any given time as many as 60 percent of the inpatients committed to the state for restoration of competency could be eligible for commitment up to ten years if they are not able to be restored. That is a fairly large proportion. As you can perceive, if it is as long as ten years, they are going to stay in the facility for a period of time. We process about 245 inpatients each year. We have about 20 percent who we are not able to restore. This fact creates a rather large pool of folks who could remain in the custody of the Division for many years even though they may not need the level of restrictiveness provided by such a facility. Although the Division is allowed to provide a risk assessment at the time of commitment, as the statute currently reads, the sole discretion for commitment has resided with the district court in the county of residence.

Additionally, there is a provision in the law for folks to be placed out on conditional release under our supervision if they are committed under this law. That sole discretion is also with the district court of the county of residence. The bill as amended provides for substantive input from the Division in that the petition for commitment must be denied for all charges, except murder and sexual assault, if the risk assessment, which is required prior to the hearing, does not assess that the person needs the level of security and care of a forensic facility. This is the highest level of restrictiveness in the state in terms of mental health placement.

The original intent of the statute was to serve those individuals who had committed egregious crimes and who were not going to be safe in a civil psychiatric facility if we petitioned and had them committed there subsequent

to their being found incompetent to proceed. In that regard, we were concerned that they would present a risk to the community. We are seeing individuals who may not meet that criteria. Given the present list of offenses, the possibility exists for individuals to be committed under this statute who could be safely cared for in a less restrictive environment with appropriate supervision. Consequently, the procedural change would be more appropriate to manage these individuals who cannot be restored but may not need such high level of care and security. We have worked with the district attorney's office regarding this issue and have included their input.

The second part of the bill takes out the language which indicates the person should no longer have a mental disorder to be eligible for conditional release. I believe that we are all pretty much aware that mental disorders are frequently lifelong experiences and that this is an unreasonable requirement. A more reasonable requirement would be that the person is sufficiently treated to be safe in the community.

Chairman Hansen:

Who does the actual risk assessment? This states that the court "shall" dismiss the motion, not "may" dismiss the motion. It seems that whoever is doing the risk assessment has a tremendous amount of leverage. Because the judge has no options, he will follow the recommendations of whoever does the risk assessment.

Elizabeth Neighbors:

This is a very weighty responsibility. They are the individuals who are psychiatrists and psychologists in the forensic facility who have to follow their professional ethical guidelines and provide reasonable responses. All of them have to be specially trained. We are presently working to encourage all of our staff to be board-certified providers in the forensic field. They are all doctorate-level people who would do these risk assessments according to evidence-based, nationally-accepted protocols in which they are trained.

Assemblyman Jones:

Basically, you are removing the power of the jurisdiction of the court when it comes to analyzing whether someone is mentally ill or dangerous. It is removing the court's overseeing power and giving it to the psychiatric facilities, is that correct?

Elizabeth Neighbors:

No, I would not say that. As written, there are two designations, murder and sexual assault, which require a risk assessment. However, the court has complete jurisdiction and has the discretion to not follow the recommendation

of the evaluator. The evaluator could recommend that the person needs to be committed to the facility, and the court could certainly override that opinion. That would only be if the court comes to the conclusion that the offender does not need that level of care, which is an extremely high level of care. We are talking about a detention environment facility for these individuals. Assault with a deadly weapon can be a broad range of accusations. These individuals are not adjudicated, so they have no opportunity to plea bargain or make their case in court. The charge does not change once it is filed. This gives a much more substantive opportunity for the facility that is going to be treating this person to provide input regarding whether he actually needs that level of care and security. The purpose of the commitment is going to be for treatment and psychiatric care.

Assemblyman Jones:

Not counting murder and rape, now the decision of what level of security is placed solely with the psychiatric facility? I am still confused. Is the bill saying that except for categories A and B, the assessment is placed with the psychiatric facility, not the court?

Elizabeth Neighbors:

Up to a degree. It does not mean the person will not be committed. There is still a procedure that allows for petition for civil commitment. Additionally, there are other vehicles by which individuals can be placed and supervised under significant observation. We currently do that through methods other than committing them for up to ten years in this particular facility. It does not mean that they do not get supervision and care; it just means that the assessment is saying this person does not need that level of care.

Assemblyman Elliot T. Anderson:

Do you have any data to show the reliability of the assessments that ensures that we are getting it right?

Elizabeth Neighbors:

There is data in that regard. I could get you specific data if you would like. The reliability and validity of risk assessments has been much improved over the last decade and a half. They are not perfect. In conjunction with all of the other information: history, interview, observation, and the ability that we have to collect information on any given individual, the assessments are reliable to the degree that the courts use them on a frequent basis. The particular instruments that are used for any given individual may be different; it depends on what the offense is and what the person's psychiatric history is.

Assemblyman Elliot T. Anderson:

I would appreciate that information. I know that diagnosing mental health issues can be a bit trickier than non-mental health diagnoses.

Assemblyman Gardner:

This bill is deleting a line from the statute that says, right now the court has to find, by clear and convincing evidence, that a person no longer has a mental disorder and the person is not dangerous to himself or herself. Why are we taking out the mental disorder?

Elizabeth Neighbors:

Because mental disorders typically do not perfectly resolve. If a person has suffered from schizophrenia, that is a lifelong illness, which waxes and wanes over time, like diabetes, for example. To say a person no longer has diabetes or any other chronic disease, even though it is treated and is no longer afflicting them in a way that interferes with their life, would be inaccurate. That is not a scientifically accurate statement to make.

Chairman Hansen:

Is there anyone here to testify in favor of this bill?

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

We are here in support of S.B. 54 (R1). I do want to thank Dr. Green and Dr. Neighbors for working with our organization on coming up with this compromise. I would like to say that the procedures outlined in this bill are used sparingly by the district attorneys' office. When they are used, it is because the person poses a threat due to a mental illness. It is an important statute that we rarely use, but when we do, it is because it is important.

Assemblyman Nelson:

How do you feel about taking the discretion away from the judge?

John Jones:

We agreed to this language, so I believe that our organization thinks it is language we can work with.

Chairman Hansen:

Is there anyone else who would like to testify in favor of this bill? Seeing no one, is there anyone who would like to testify in opposition of this bill? Seeing no one, is there anyone neutral on this bill? Seeing no one, I will close the hearing on S.B. 54 (R1) and open the hearing on Senate Bill 56 (1st Reprint).

Senate Bill 56 (1st Reprint): Revises provisions governing graffiti. (BDR 15-479)

Karl S. Hall, City Attorney, City of Reno:

We would like to speak in support of Senate Bill 56 (1st Reprint). Before I begin my presentation, I would like to introduce General Bath. He is a two-star general with the United States Air Force, he is a fourth-generation Nevadan, and he is on the anti-graffiti task force which worked up the amendments to the law in Nevada reflected in S.B. 56 (R1). I would like to give General Bath the opportunity to discuss what he did in terms of preparing the amendments for this bill.

Ronald J. Bath, Private Citizen, Reno, Nevada:

I am part of the community that got together with the anti-graffiti task force in the City of Reno. We spent approximately one year working on this. I knew nothing about graffiti when I started. I was pretty amazed at the impacts that it has. One of the things that we found is that it becomes the permanency of the palette and that there were a lot of things we needed to address with this bill. Not only is graffiti taking a spray can and putting graffiti on the side of a wall, we started finding that graffiti people were willing to graffiti the side of a horse in the middle of a pasture. Delivery vehicles parked at a facility become white palettes. We started to try to find abatement issues. The abatement issues, you can paint it over, but it becomes the permanency of the graffiti. What we are getting at with the issue of etching is that for a \$3 carbide bit that is used to drill cement, you can now put graffiti into a plate glass window or into an aluminum fascia on the side of a building, and it becomes permanent. The only way to abate that is to remove the window and completely replace the plate glass. What is behind this bill are some of the things we were trying to overcome because graffiti is a moving target. As we come up with ideas for abatement, the person who wants to do graffiti is going to come up with different ideas to make it permanent.

Karl Hall:

With a broad brushstroke, what the bill does is expand the definition of graffiti and also gives the city additional power to abate graffiti by placing liens or instituting other legal processes to cover up and abate graffiti. I would like to walk through the sections, starting with sections 3 and 4, which expand the definitions to include livestock and estrays, because they have been the object of graffiti in the past, and we want to abate that. Section 5 defines what graffiti is, it speaks to decals and stickers being affixed to property, and it also addresses the easy removal of decals and stickers as not being considered graffiti. Section 6 removes the definition of livestock from *Nevada Revised Statutes* (NRS) 206.150. Section 7 expands the definition of graffiti implements to include carbide-tipped instruments and any other instrument that

can be used to etch or deface property. It also provides that any substance that is propelled and not soluble in water is a graffiti implement. Section 8 allows the city to recover expenses for graffiti abatement that will occur in the future. It states, "incurred or will incur expenses for removing" graffiti. It also allows the governmental entity of the city to bring a civil suit to recover damages. Section 8.2 adds additional language to NRS 244.36915, which defines graffiti to include language regarding stickers and decals and the removal of the same. Section 8.4 defines residential property as owner-occupied, single-family residences. The city is allowed to remove graffiti from single-family residences. This also allows the county to do the same. Section 8.6 allows the county to adopt procedures by ordinance allowing employees to remove graffiti placed on residential property. Section 8.8 allows the county to adopt procedures by ordinance allowing the county to order an owner of nonresidential property to remove graffiti placed on the property.

Sections 9 through 15 amend NRS Chapter 268, powers and duties of cities, and allows the city to adopt procedures by ordinance to cover graffiti on residential property and order owners of nonresidential property to cover or remove graffiti, or pay for the removal. Again, we can use a lien or special assessment, which would be attached to the tax roll to pay for the abatement. Section 16 amends NRS 268.4075 to include livestock. It also defines the meaning of affixed decals. Section 17 addresses NRS 268.408 and allows the city to bring civil action to recoup the cost of abatement. Section 18, with respect to NRS 268.4085, addresses the graffiti reward and abatement fund statute. It dictates where the money can be spent and also allows the city manager to authorize the reward for information received regarding graffiti.

Chairman Hansen:

We had a bill earlier this year addressing graffiti in Clark County, and they had an estimate of approximately \$30 million in yearly damage. Do you know what Washoe County or the City of Reno's estimate is on the amount of damage caused by graffiti?

Karl Hall:

I know the damage is huge. I can tell you that just for the abatement last year, we spent approximately \$250,000 in hiring people to cover-up or abate graffiti. Those were costs paid for out of the city coffer.

Ron Bath:

One of the things we did find out was there were property owners who were paying upwards of several hundred thousand dollars to take care of graffiti that was happening on commercial property. I cannot give you a firm figure on how much the damage is, but there is an insidious value where property values start

to drop and then you start seeing a differential in the tax base as well. The issue of graffiti from a dollar standpoint is dramatic within the community.

Assemblyman Araujo:

Many graffiti offenders tend to be youth. When we talk about civil cases being brought forth, if they are a minor, will the civil case be brought forth to the family?

Ron Bath:

One of the things we discovered is that this is not a youth issue. The average age of the person who does graffiti is in excess of 19 years. This is not a juvenile thing, even though it tends to be identified as such.

Assemblyman Araujo:

For those who are minors, how are we going to follow through with this process?

Karl Hall:

I had an opportunity to speak with the juvenile probation division to get some statistics. I can tell you that they had approximately 30 cases over the past two years, in which all of the individuals were placed on probation. No one was jailed. With respect to the amount of restitution that those families would be required to pay, that depends on the crime itself. I do not know how prolific a minor may be in graffiti and how much damage is caused. If there were extensive damages, for example extensive etching on glass in a commercial business, then a civil suit may be filed to recover those damages. I did not see where that has been done in Reno, and I do not have any information that it has been a practice in the past.

Assemblywoman Diaz:

I would like to remind everyone that being 19 years of age does not equate to your brain having matured. We have heard from many folks that specialize in the area of the brain that the brain matures at around 25 years of age. When we talk about youth, 19 years of age is young. I have a concern that we are trying to incriminate them instead of helping them through different stages they may be going through. Think back when we were 19 years of age. We did many things that were not appropriate, but we had to learn through our mistakes. This task force was given the responsibility to look at how we defeat graffiti in our community. Did you talk about any diversionary programs? For example, mural painting, if you engage these people in painting walls that constantly get graffitied all the time. I can tell you that our school got tagged quite a bit, then murals went up on the wall and the tagging stopped. Also, I have concerns about these instruments and someone just carrying this

instrument already makes him a candidate for law enforcement to scrutinize, asking, What do you have in your pocket, what are you doing with it. I can tell you that my son, when he grows up, will be twice as likely to be questioned if this law goes into effect than many other children.

Ron Bath:

The answer is yes, we looked at a lot of things on that task force. We are just civilians, people in the community. We have looked at other alternatives. There is a difference between tagging and artistic graffiti. Also, regarding the issue of 19-year-olds, that is the average age. There are graffiti people who are in their twenties and thirties. We did look at all of those things. I personally spent more than a year interviewing people with the Washoe County Public Defenders' Office, with the juvenile probation department, with the courts, and with the police agencies. From the standpoint of the juvenile, in an earlier life, before I was a fighter pilot, I was the Washoe County Juvenile Public Defender. I was also chairman of the Washoe County Juvenile Probation Commission. I understand this issue from a juvenile standpoint. I will tell you that this is not a juvenile issue. This is an issue that affects the community at a dramatic level. I can understand what you are saying, but this is not just a juvenile issue.

Karl Hall:

I would also like to mention that there is judicial discretion involved. Certainly in my experience as a district attorney, when you have a youth who is a first-time offender who comes from a good family, who has taken remedial measures, we are not just looking at throwing him in jail. The purpose of this bill is not to widen the net, as stated by the American Civil Liberties Union (ACLU). That is not the purpose at all. It is to give the city more tools to abate and address graffiti. I can tell you that in Reno, there are a lot of murals around town, and I think they have been very effective in addressing graffiti. It is not like we are out to get the youth.

To address the carbide-tipped issue, currently, the statute talks about indelible markers. Think about the difference between an indelible marker or a spray can and now a carbide-tipped drill bit; there really is not much difference. When you look at the statute, an officer has to have reasonable suspicion that crime is afoot before he can even talk to someone. Then he has to believe that the person is armed with a dangerous weapon before he can frisk that person. With a misdemeanor crime, the crime has to occur in the officer's presence. He has to actually see the person commit a crime or have another person sign a complaint before he can arrest on a misdemeanor. This is not a situation where we are casting a wide net to ensnare youth and charge them with graffiti. This gives the city abatement tools and widens the definition to add

a carbide-tipped instrument, because we are having so many etching problems that are causing very expensive damages to property.

Chairman Hansen:

The development of the brain is an interesting discussion we have been having. We had a parental notification bill on a very extensive medical procedure, and somehow some of these concerns were not addressed at that time by others, but some of us felt that was something that should be brought to the attention of the parent before doctors do something like that.

Assemblyman Nelson:

We all know that graffiti is a huge problem, particularly in Clark County. In section 15, subsection 4, the bill authorizes a lien upon nonresidential property if the city or county removes the graffiti. Section 15, subsection 6, says that once the lien is placed, the property can be foreclosed. This seems to be adding injury to insult; if a building is tagged and the owner does not get notice of the clean-up efforts, then his building can be taken away through the foreclosure process. Is that correct?

Karl Hall:

That is correct; however, my practice has been, in addressing graffiti abatement, that we work with the owners very closely. There is due process involved and outlined in the statute that would allow the owner to contest the assessment or lien. There is a process that would be followed before that foreclosure took place.

Assemblyman Nelson:

I notice in section 14, residential property, the city can clean up the graffiti but does not have the same lien rights. Is that correct?

Karl Hall:

Typically, when working with residential property, we will pay for the cleanup on single-family residences. Since we are paying for it with their permission, we do not have to put a lien on their property.

Assemblyman Elliot T. Anderson:

Section 7 is the existing substantive law prohibiting carrying a graffiti implement with the intent to vandalize. This seems rather subjective, because I could have a nail clipper that could etch something and be walking down the street under a bridge. That does not necessarily mean that I am going to graffiti something. The only way the police would actually know if I am planning on committing this crime is to stop and ask me. How does a police officer currently, under

existing law, know whether a crime is being committed with the intent to vandalize when carrying a graffiti implement?

Karl Hall:

The basic intent of criminal law is that you have to have an act and intent; it is in statute that you have to have both. Just walking around with a fingernail clipper or a screwdriver, or a drill bit is not going to subject a person to a criminal activity. As I mentioned earlier, NRS 171.123 requires a police officer to have reasonable suspicion that crime is afoot. You can have consensual interaction with a person and ask him to show you what he has in his pocket. He has the right to refuse.

Assemblyman Elliot T. Anderson:

I see the act and the intent: the intent is section 7, line 38, and the act is carrying a graffiti implement. You expand graffiti implement to be anything that can etch. If I have a fingernail clipper, which can etch, the only way this could be enforced is by that police officer asking questions. I see this as not objective enough with the expansion of the definition. Obviously, if I am carrying a can of spray paint, under the existing definition, and I am under a bridge, it is a little more clear. I am wondering if the expanded definition really ropes in many more situations.

Karl Hall:

No, it does not. First, you have officer discretion. The officer has to believe that criminal activity is actually occurring. To have someone with a fingernail clipper or a carbide tip is not going to cause that alarm. Then the case would go to either a city attorney or a district attorney for review to determine if he will prosecute that person. Then it will go to a judge. There are several layers of review before someone is going to be prosecuted for a crime. Expanding the definition of graffiti implements is not going to widen the net of people ensnared. Again, I harken back to what is already in the statute, which is indelible markers are defined as a graffiti implement. Expanding it to things that are actually causing significant damage gives us an additional tool, but does not expand the net beyond what it already is.

Assemblyman Gardner:

Section 8.4 refers to the definition of residential property. Why are we shrinking it from a zoned for single-family residential use to an owner-occupied, single-family residence? I know people who rent out homes to family members. I have friends who are living in a home owned by their parents. This bill would treat it like a business, and you could put a lien against that house. Why would these situations be treated like a business where you can get a lien and foreclose on the home?

Scott F. Gilles, Legislative Relations Program Manager, Office of the City Manager, City of Reno:

The change in 8.4 came from an amendment from Clark County. My understanding of the intent is to clearly define what type of property we are discussing here. This aligns Clark County's definition of residential property with what we have in the bill for the incorporated cities. I think the purpose of the change is to clarify that there is residential property, which is owner-occupied, single-family residences. Nonresidential property is basically everything else. My understanding of the intent is to carve out and make it clear what is residential and what is nonresidential property. The process for abatement changes depending on which type of property it is.

Assemblyman Gardner:

If I do not own the house, even if I am not a renter, you can file a lien on that house; you can order me to clean up graffiti. If I do not respond, you can charge me for that, you can put a lien on my house, and you can foreclose on my house. This scenario would fit under the previous definition, but not under the proposed definition.

Scott Gilles:

The process, with respect to nonresidential properties, would be a property in which a renter is staying, owned by someone else. In that case, there are provisions currently in NRS Chapter 244 for the counties, which we have essentially duplicated in this bill into NRS Chapter 268 for the cities, which allow the counties or the cities to adopt procedures to order the owner of the property in a nonresidential situation to abate the graffiti. If the owner does not do that, the city or county may proceed. There are notice provisions, there is due process, an appeal, and a hearing. There is an already defined process by which the counties, and now the cities, would be able to do the abatement on their own as well as recover costs.

Tom Robinson, Deputy Chief Operations, Reno Police Department:

I would like to provide clarity on the issue of possession of a graffiti implement. We see people every day carrying spray paint cans or indelible markers walking down the street. We do not, and more importantly, we cannot stop someone for possession of a paint can or an indelible marker. Law enforcement personnel must be able to articulate that the individual possessing said items is about to use that item to apply graffiti or vandalize an object. The typical scenario is, we catch someone about to spray the paint, and we catch him before he propels the paint onto the surface. We would then be able to arrest him for possession of a graffiti implement.

Assemblywoman Fiore:

As I look at this bill, what I see is legislation that gives law enforcement more tools to where they do not have to articulate why they are pulling folks over and why they are doing what they are doing. The legislation that has come before us today, including this bill, is good for law enforcement, but there are no penalties when law enforcement goes astray. I am quite concerned about changing the definition and redefining what may be carried with the intent to deface. I think we need to start looking at legislation that enables protection for the people and not continually giving tools to bad behavior law enforcement.

Chairman Hansen:

We are always trying to make those balances. The reality is we have all sorts of property owners who are innocent victims, and we have to look out for them as well.

Assemblyman Jones:

I like the overall intention of the bill to stop graffiti because it is a problem that creates damage, particularly on private property, but now you are making the victim responsible for the egregious activities of these underdeveloped brain kids who cause damage. Now the owner is liable to pay the city for cleanup. That seems like it is punishing the wrong party.

Ron Bath:

That came about as a result of the property owners wanting the ability to allow the city to abate. The quicker you abate, the better it is. In some cases, the property owner is not there, and the adjacent property owners want to get it abated as soon as possible rather than having it become worse. That is the genesis from the task force in coming up with that language.

Karl Hall:

Another issue we have run up against is being unable to find the owner of the commercial property. It may have already gone into foreclosure, and this allows the city to do the abatement and then recover the costs.

Chairman Hansen:

If someone does not pay for the abatement, you can put a lien on a property and then foreclose on it. That is something that will need to be looked at.

Karl Hall:

I did want to address Assemblywoman Fiore's comment. With respect to the ACLU and a letter from Ms. Spinazola ([Exhibit K](#)), when I went to the authority that was cited in the letter, the Vera Institute of Justice report. The recommendation from that report, which the ACLU relies upon to say we

should not make these changes, is this: In light of the fact that it decreased stops by 22 percent, or the crime rate held steady, the New York Police Department should continue to recalibrate its stop and frisk practices to remedy the serious consequences to police-community relations and public safety that this study reveals. The point of that is the police were not acting appropriately in New York, according to this study. There is a disconnect between the law, which is giving the police more tools, and the police acting appropriately in law enforcement.

Assemblywoman Fiore:

I also invite laws like this to add amendments for strict penalties on law enforcement that act and display bad behavior. Those who cannot articulate why they are doing what they are doing. I would support a bill like this if we had penalties on the bad actors in law enforcement that do this with no cause.

Chairman Hansen:

Is there anyone else who would like to testify in favor of this bill?

Tray Abney, Director of Government Relations, The Chamber, Reno-Sparks-Northern Nevada:

I served as the vice chair of the City of Reno graffiti task force, along with General Bath. Just to reiterate, this is a community pride issue, it is a property value issue, it is a tourism issue, and it is an economic development issue. We think this helps to address that problem. This is only one small piece of the entire thing that this task force looked at, including education, art programs, murals, and helping set up neighborhood watch programs. This is only a piece you are seeing here today, but it is a multifaceted effort.

Michael Cathcart, representing City of Henderson:

We are in support of this legislation.

Chairman Hansen:

Is there anyone else who would like to testify in favor of S.B. 56 (R1)? Seeing no one, is there anyone who would like to testify in opposition of this bill?

Vanessa Spinazola, representing American Civil Liberties Union of Nevada:

I am here in opposition to section 7 of the bill. We understand the problem that Reno is trying to address, but we do not think that expansion of that particular definition is going to solve any problems; it can actually cause more harm than good. I have submitted a letter ([Exhibit K](#)). I would like to note that NRS already sufficiently punishes people who commit the actual crime of graffiti, including not only criminalization, but they are subject to civil lawsuits, they lose their driver's license for up to two years, and can pay individual fines,

penalties, and restitution. What we are talking about expanding here is basically a thought crime. This is someone walking around with something and they are being penalized for possibly thinking at one point in time about committing graffiti. We are talking about kids who maybe were considering doing graffiti, but they changed their mind. But, they happened to be under a bridge, and they had the implement in their hand. Are we going to punish them for changing their mind, simply because they have this intent? We have admitted on the record that this law is overbroad and it cannot be consistently enforced. Everyone in this room, potentially, could be thinking about committing graffiti right now and could be subject to this law. By definition there has to be some level of discrimination in order to actually enforce it. What we have seen across the country is that discrimination breaks down on youth and racial lines. I do not think that anyone can guarantee that is not going to happen with this bill. We realize that only 32 kids were prosecuted and they all got probation; that is not our concern. Our concern is that initial stop and frisk with the police. That is the problem. Even if nothing comes of it, it is that interaction of people with the police, that, through studies, leads people down a road to more criminalization, dropping out of school, and involvement in the juvenile criminal justice system. That is what we are most concerned with, that this bill actually expands the opportunity for police involvement with citizens.

Chairman Hansen:

We had a situation at my kid's high school where a former student and a couple of buddies were caught on the roof with paint ready to go, but they had not painted a thing. You do not think that is intent? Would you actually have to wait until they started painting the building before it would be reasonable to arrest them?

Vanessa Spinazola:

I disagree with criminalizing thoughts. I think that acts are what should be criminalized. In that case, we should even look at whether that person is a threat to public safety as opposed to whether we are going to incarcerate them and ruin their opportunities for employment by all of the collateral consequences. I believe other things, such as diversion programs, help more in not only reducing graffiti, but keeping people out of the criminal justice system and being a burden on society.

Chairman Hansen:

Even though they are on the roof with paint, you still do not think the cops should have nailed them?

Vanessa Spinazola:

If they dropped one bit of paint, that would be graffiti.

Erik Schoen, Executive Director, Human Services Network:

We agree largely with Ms. Spinazola's comments that in essence we feel that this bill is overly broad, specifically section 7 with the additional language of etch or deface or propel any substance. We feel that opens this law to be overly broad and broadly interpreted. We have seen across the nation examples of what happens when these kinds of laws are broadly interpreted and broadly applied, whether in New York, Ferguson, North Charleston, or Baltimore. One of the things we have a concern with in the human services field is that any exposure to contact with law enforcement is generally deleterious. For a juvenile who is stopped and frisked needlessly, it increases the likelihood of delinquency, and contact with the law enforcement system is generally criminogenic. Just like exposure to x-rays are carcinogenic, exposure to law enforcement is criminogenic and increases the likelihood of delinquency. If we really want to get in front of graffiti, which I empathize with, we should be looking at preventative types of programs, whether it is artistic murals, investing in education, or other types of preventative programs. That would be the thrust of where I think we should direct our efforts. [Also provided letter in opposition ([Exhibit L](#)).]

Chairman Hansen:

In following your logic, a cop stops someone and frisks him, that enhances the likelihood that he will become a criminal in the future? Basically, cops cause crime.

Erik Schoen:

I get the apparent dichotomy there. I admire what the men and women do for us on a day in and day out basis in our communities. Their jobs are hard. If we can minimize the unneeded, unnecessary contacts by ensuring we have clear bright lines for law enforcement to interpret, that will help.

Stacey Shinn, representing Progressive Leadership Alliance of Nevada:

We, too, are opposed to the broad language of graffiti implements in section 7. We believe we need to be mindful when we create broader laws that further criminalize nonviolent community members and how such expansion contributes to the issues of mass incarceration in our country. There is also a racial justice component to this, a strong example being in New York with the stop-and-frisk policy where over half of the persons stopped were black, yet only one-quarter of New York's population is black. At a time when we are worried about funding in this state, we should not be spending more money on the criminal justice system. We should be spending more money on education, rehabilitation, after-school programs, art programs, et cetera, to keep folks from committing these acts in the first place.

Chairman Hansen:

Will you point out the part of the bill that is actually racial profiling so that we can remove it to prevent that?

Stacey Shinn:

It does not actually say race in the bill.

Chairman Hansen:

You just indicated that the bill has a racial component, as did Ms. Spinazola. I want to know what in the language is considered exclusive to one race or another.

Stacey Shinn:

We see this with any criminal justice policy. It has impacts where people of color are arrested and involved in the criminal justice system at a greater rate, even when we know that in certain cases people of color are not committing these crimes at a greater rate than their white counterparts.

Chairman Hansen:

But there is nothing specific in the bill that you want to have removed? You are all three worried about section 7 and would support this bill with the absence of section 7?

Stacey Shinn:

Correct.

Assemblyman Nelson:

Ms. Spinazola, you said that you would like to punish action, not thought. Would that also apply to many bills that are floating around to add enhanced penalties when people have certain thoughts in their mind?

Vanessa Spinazola:

Yes, as the Chairman is aware. The hate-crime legislation, we typically are either against or neutral, depending on how it is worded. We do believe that when someone dies or is murdered, it is awful across the board. Your thoughts in committing such a crime should not necessarily be included when you are committing that crime.

Assemblyman O'Neill:

I find some of the testimony rather insulting. After 40 years in law enforcement, I would like to ask Stacey Shinn a question. You bring up New York's statistics, what is the victimization rate of blacks in New York, compared to the population?

Stacey Shinn:

I would have to look that up for you.

Assemblyman O'Neill:

Would you please get that for me. I would like to see if it is proportional to the population. You keep implying that the police somehow are profiling blacks just because they are black. I would like to see what the victimization rate is of that.

Assemblyman Elliot T. Anderson:

Have you approached the bill sponsors to see about putting in a diversion program? I think our Committee has had some disagreements over how we handle repeated graffiti offenses, but this seems like a good vehicle to provide another option besides prison. Maybe requiring first-time offenders to go through a diversion program, maybe with that program we heard about in this Committee. I think we should be smart and not always tough about handling crime. I think this is one of those instances, where it is a nonviolent crime. I do not want to punish taxpayers, I want to punish criminals. Have you approached them at all about some of these kids who are getting caught up in this? We have had great experience with the specialty courts, and maybe graffiti is another place where we need a specialty court, because obviously it is a huge problem; we get many complaints from our constituents about graffiti, but what we are doing does not seem to be working. We keep having these bills, why not use something like a mental health court or a DUI court? It seems to me that restorative justice and smart justice is the wave of the future. Are there any opportunities with this bill where we could turn this into something visionary to actually get at the problem rather than just incarcerating?

Chairman Hansen:

If you want to talk with the bill's sponsor, that is wonderful, but we are not going to address specialty courts on graffiti in this bill.

Rita Sloan, Coordinator, Life Peace and Justice Commission of the Catholic Diocese:

I am also the primary coordinator for the Alternatives to Violence Project, Nevada, which does intense three-day workshops in prisons. I am also here as a mother of five and grandmother of ten. When it comes to young people, and I do believe the majority of the people who this bill would affect are young people, whether we call them youths or young adults, I think we have to find a better way. I agree completely with the testimony of the people who had very good arguments against this bill. I would ditto what they said. I would also like to remind you, you have heard the term "it takes a village to raise a child." The increases that we see in vandalism and other offenses, especially

among the youth, indicate our failure as a village. Criminalizing and finding more ways to find felonies is not the answer.

The Alternatives to Violence Project opens up hearts and minds, and it shows people that they have a lot more power for personal change and choosing their path in life than they originally thought. If we have had one consistent response from people who take the program, it is, Why did I not hear such a thing when I was younger. I am just saying in this age of mass incarceration, we have got to find better ways to deal with our issues than locking people up and giving them a criminal record.

Chairman Hansen:

Is there anyone else who would like to testify in opposition? Seeing no one, anyone in the neutral position? Seeing no one, I will close the hearing on S.B. 56 (R1) and open the hearing on Senate Bill 464 (1st Reprint).

Senate Bill 464 (1st Reprint): Revises provisions concerning criminal penalties for certain acts involving alcohol. (BDR 15-651)

Madeleine Welch, Senate District No. 16, Nevada Youth Legislature:

I am here representing the Nevada Youth Legislature because the chair could not be here today. As you may remember, Senate Bill 464 (1st Reprint) is a life saving measure that gives medical amnesty to underage drinkers in life threatening situations. The immunity is granted to the first caller and the person or persons for whom he or she is calling. The caller must remain on the scene and comply with law enforcement.

We have several brief remarks, but first Senator Settlemeyer would like to discuss his amendment.

[Assemblyman Nelson assumed the Chair.]

Senator James Settlemeyer, Senate District No. 17:

I am here to discuss the concept of the amendment that was added in the Senate. It came to my attention that there was a new product on the market that seems rather problematic. It is called Palcohol, or powdered alcohol. Some of the dangers of it were brought to our attention. In the United States, we do not actually allow the legalization of what is called vapor alcohol. Only China has legalized vapor alcohol. Alcohol is an interesting substance; however, by its very nature, it creates some problems. You have a situation where one individual figured out that if he snorted alcohol, he could get drunk in about 3 1/2 to 4 seconds; that seems to be an issue. The other concept that seems problematic is that we do have some individuals who have problems with

alcohol. You could easily mess someone up by sprinkling this on his pancakes. There are all types of devious things that can be done with this substance. Many states have decided, since its inception in March, to make it illegal, meaning they do not feel there is a legitimate purpose for this product on the market. However, one state has decided to legalize it—Colorado. In the Senate, we looked for a vehicle to outlaw the concept of powdered alcohol. The distillery bill that I had was not germane. We thought the bill for a ban on bath salts was not an appropriate vehicle. This youth legislative bill was germane to this topic. They agreed that this product seemed to be problematic for Nevada.

Vice Chairman Nelson:

Thank you, I appreciate your adding this amendment. I am one of the people who approached you on this, and I am grateful for your adding this.

Assemblyman Jones:

This is the first I have ever heard of powdered alcohol. Is this being marketed already as a substance and kids can get a package of powdered alcohol?

Senator Settlemeyer:

It is available on the Internet. Currently, it can only be purchased in Colorado. One thing I found interesting is that you can purchase an unflavored version. Once Palcohol was legitimized by the Alcohol and Tobacco Tax and Trade Bureau (TTB), some states are considering legalizing it just as regular alcohol. The concept seems rather problematic in our opinion, and we are asking the Assembly Committee on Judiciary to consider this.

[Assemblyman Hansen reassumed the Chair.]

Assemblyman Gardner:

I was looking this up on the Internet, and it looks like the TTB approved this last month. Do you know what the process was in approving this? I heard they approved it, then denied it, and have now approved it again.

Senator Settlemeyer:

The TTB went through the same procedure that they did with vapor alcohol; however, they decided that the vapor alcohol had no legitimate purpose or benefit. There was a fair amount of opposition to vapor alcohol, so they banned it. When powdered alcohol came about, they vacillated as to whether it seemed like a good idea. They decided to legitimize it, allowing the states to make their own determinations. That is why I am in front of you today, asking you to make the decision on whether you think the idea of Palcohol is an interesting concept.

Assemblywoman Diaz:

This is new to me. What is the average age of the users of this powdered alcohol? Also, why is there not a difference between the distributor/seller versus someone who is just in possession? When you are young and you are offered things, sometimes you take them. I have heard from many of my former students, just being in the park, they are asked by law enforcement what they are doing, then they get searched, and if this powdered alcohol is found on them, what would happen to them? I would like to know why there is not that distinction between someone who sells it versus someone who is maybe just using it for the first time. Then they could get caught up with a misdemeanor.

Senator Settlemeyer:

The concept was an outright ban on it. Each state has to vote as to whether they think it is a valid substance. As far as the average age, if we do not pass a law, then we have nothing on record. If there is no law, then there is nothing wrong with a 10-year-old walking around with powdered alcohol because we have not passed a law stating that it either fits into the alcohol category through the distributors or we ban it outright. In discussion with individuals, it seems that we prefer not to have the substance within the state of Nevada. As for the penalty for having it in possession, I think it was trying to follow the current laws regarding possession of a substance that you are not supposed to be able to legally purchase due to your age, for example cigarettes and alcohol.

Assemblyman Jones:

I like the medical amnesty portion of this bill. I think it is a very good concept.

Assemblyman Trowbridge:

Regarding the bill, section 2, subsection 3 discusses the criminal penalty and addresses just alcohol. Does this exemption apply to liquid alcohol also, or just the powdered alcohol?

Senator Settlemeyer:

I believe the exemption in this bill applies to liquid alcohol.

Quinn Jonas, Private Citizen, Reno, Nevada:

I am here today to convey the support of S.B. 464 (R1). The original intent when our resolution and support of it was written, was without the powdered alcohol amendment. The resolution in support of S.B. 464 (R1), passed unanimously with the University of Nevada, Reno (UNR) student government, with representation from members of every college on our university campus. As college students, this is a situation we are all too familiar with. Underage drinking is a health crisis which affects college campuses. While we continue to support and make every effort to reduce the rate of underage drinking in

Nevada, we believe S.B. 464 (R1) prioritizes the safety of minors and addresses the problem as it exists in reality, not as we would wish it to be. Student safety is our top concern. We believe S.B. 464 (R1) is a commonsense bill which gives students and minors the confidence to make a potentially lifesaving call when even moments of hesitation could have dire consequences. This limited legal immunity has been proven to increase calls to emergency medical services and enrollment in programs which address the underlying mental and social factors which contribute to underage drinking. We have provided a presentation letter in support from The Medical Amnesty Initiative ([Exhibit M](#)), which includes a Cornell University study regarding the medical amnesty program. I ask that every legislator consider the mentality in which this bill would be applied. I thank you again in considering this matter and hope you will take a step toward considering a safer state for students, minors, whether high school or college level.

Chairman Hansen:

You are under the age of 25, correct?

Quinn Jonas:

One of the biggest issues of underdevelopment comes with the conceptualizing of consequences and mortality. Pediatricians realize that until about the age of 25, it is not that my mental capacity is not available to solve a math problem or do well in three-dimensional calculus; it is a problem that consequences and my own mortality and mortality of others is not properly weighed. In the mentality in which this bill could be employed, a hypothetical situation, a senior in high school gives into peer pressure. He is a good kid, going to a party to relax. This is the first time this individual has ever had alcohol. I can speak from personal experience, my mentality when intoxicated, is not my correct mentality. The way I see consequences while intoxicated are not the way that I see them now. In this situation, the bill applies to students who think calling 911 for their friend because he is passed out is not a good idea because he might get a minor in possession fine and lose all of his scholarships, or he will be grounded forever. That is the mentality in which this bill will come into effect. In a party situation, where someone is unresponsive or not breathing, not everyone would have the capacity to make the decision to call 911.

Assemblyman Jones:

I know this is limited to alcohol. Did you consider other drugs? I would imagine that occasionally other drugs are consumed as well.

Quinn Jonas:

Following the model of other states, Oklahoma actually has the most expanded medical amnesty program which includes other drugs, such as heroin and other illicit substances. Ideally, we would like to see this extended to other substances as well, employing the same mentality as far as a lifesaving call should be your primary concern. However, with the current legislation, we wanted to ensure that we take progressive steps toward including other substances.

Assemblyman Gardner:

Do we have any examples of when this has actually worked? My concern is that if we have kids who are all drunk, how is the thought process going to work? Is someone going to think because there is a law now, that will protect me. If I call first I am okay. Whereas currently, he thinks, there is no law to protect me, so I am not going to call. How frequently does this happen?

Madeleine Welch:

As was previously mentioned, Cornell University implemented and polled the students based on how the implementation of medical amnesty changed their behavior. There were dramatic increases in the tendency to call for help without hesitation.

Assemblyman O'Neill:

I have a different scenario: A group of underage people are at a party, all drinking. Someone sees his friend is going to drive away in his car. The group holds him back and grabs the keys. Is there any way that scenario could be included in this bill?

Madeleine Welch:

Would you like to extend the amnesty to driving under the influence (DUI)?

Assemblyman O'Neill:

No, the three of you are all out partying tonight, you see that the gentleman to your right is going to his car. The two of you stop him and grab his keys. The police come up for whatever reason, the circumstances are such that instead of calling 911 and getting arrested, you were trying to prevent him from driving. Should you also be exempt, through amnesty, or a Good Samaritan act?

Madeleine Welch:

I would certainly consider an amendment to expand the amnesty to a more broad Good Samaritan act.

Assemblyman Elliot T. Anderson:

I would like to direct your attention to section 3, subsection 4, which talks about if you are the person that someone else calls for, there is no liability. In general, I like the intent of this bill to help ensure that people do not die. Underage drinking is against the law, but it is not the most evil thing in the world. We do not want people to die. How would that section work? Tell me what we have in this bill to ensure that this will not be abused to get people off the hook when there is not an actual emergency. What incentive will kids have left to make sure they are not breaking the law?

Quinn Jonas:

There is a provision of the bill that states only the first caller. Hypothetically, you are at a party and someone is passed out, no one wants to get busted so everyone starts calling 911. The limitation to only the first caller addresses the abuse. Also, with the Cornell study, the policy's specific term is psycho-educational intervention; UNR's programs are called Substance Abuse Treatment, Educational Programs for Student Success, and the Medical Amnesty Program. These programs address the underlying issues of drinking, such as social pressure or mental factors. Clark County law enforcement has said this bill would not prevent them from conducting follow-through investigations. This bill applies to minor-in-possession-and-consumption and minor-in-possession circumstances. Also, this limited legal immunity does not apply to property damage resulting from a DUI.

Chairman Hansen:

Is there anyone one here who would like to testify in opposition to this bill? Seeing no one, I will continue to hear from those in favor.

Caden Fabbi, President, Associated Students of the University of Nevada, Reno:

I would add that I do not think anyone intends to go to a party and get so intoxicated that he has to go to the hospital. There are a number of other consequences to that, including the medical bills. I would also like to share some statistics with you from UNR. We conducted a campus climate survey to address these issues. We had an "in the last 30 days" question that showed 81 percent of students reported using alcohol in the past 30 days, which is well above the national average of 65 percent. Students under 21 reported consuming an average of 4.6 drinks when they make the decision to drink, which is considered binge drinking. Again, this is very important for us to create a community of looking out for each other on our campus.

Chairman Hansen:

It is interesting that 81 percent use alcohol. How many students on campus are under 21 years of age?

Caden Fabbi:

I do not know, but I can get that information for you. Again, this is all-encompassing and we are attempting to address them one by one.

Assemblyman Nelson:

Have you all agreed to the powdered alcohol amendment?

Quinn Jonas:

As far as our primary concern being student safety, powdered alcohol appears to be posing a severe danger as to how easy it is to sneak it to someone with an alcohol problem, and how easy it is to overdose on it. Yes, we support the amendment.

Madeleine Welch:

The Nevada Youth Legislature has not been able to meet on the bill as amended; therefore, we are neutral on the amendment.

Chairman Hansen:

Is there anyone who would like to testify in the neutral position?

Constance Brooks, Vice Chancellor, Nevada System of Higher Education:

We are in support of the bill as it was originally proposed, as we are supporters of the Nevada Youth Legislature and commend their efforts in bringing forth this legislation. Our Board of Regents has not had the chance to review the amendment; therefore, the Nevada System of Higher Education is neutral to the amendment.

Marc A. Johnson, President, University of Nevada, Reno:

The University is in favor of the original bill in the interest of safety.

Vanessa Spinazola, representing American Civil Liberties Union of Nevada:

We are in support of the bill as originally drafted. In regard to section 1, we are opposed and we would submit that perhaps powdered alcohol should be regulated like regular alcohol. It is more of a health approach. For example, if you are under 21 and you are driving under the influence, the first thing that happens is you are taken to court and you get an evaluation to see if you are abusing. This would be a way to get at whether people are abusing powdered alcohol.

Chairman Hansen:

It is interesting, for example, marijuana, when it was first introduced, no one knew what it was and the initial reaction was to entirely eliminate it. It seems to me that we are now doing the same with powdered alcohol.

Alfredo Alonso, representing Southern Wine and Spirits:

The reason for the amendment on powdered alcohol, similar to what had transpired years ago with the vapor alcohol, for purposes of our state, we will not carry the product. We do not expect any of our wholesalers in the Nevada Beer Wholesalers Association to carry it either. It is too easy to overdose on. It is dangerous, and most states are looking at banning it now. In fact, Texas just banned it last week. Again, there is no way to control what your intake is. That is the problem, particularly with kids. The powdered alcohol's own website states that it is dangerous to snort and "it will mess you up."

Chairman Hansen:

How interesting. All we have to do is pass a law to ban it, and it will stop substance abuse.

Alfredo Alonzo:

Clearly, we are not going to eliminate it entirely, but the interesting part is that after several deaths in Europe with the vapor alcohol, ultimately wholesalers around the country stopped carrying it. You would be hard-pressed to find it in the United States. This product is dangerous, and there is not enough money in it if it is banned.

Michael Ausbun, Private Citizen, Reno, Nevada:

I would like to say ditto to the presentation by the Nevada Youth Legislature, the President of the University of Nevada, Reno, and Mr. Quinn Jonas. I support the initiative for student safety.

Chairman Hansen:

Thank you for your testimony. We appreciate the efforts of you and your fellow students. Is there anyone else who would like to testify in the neutral position? Seeing no one, I will close the hearing on S.B. 464 (R1). [Also provided but not discussed is a letter in opposition from Marissa Crook, Associated Students of UNR ([Exhibit N](#)).] I will now open the meeting for public comment. Seeing no one, meeting adjourned [at 10:56 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: April 29, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 138 (R1)	C	Senator Don Gustavson	Prepared Testimony
S.B. 138 (R1)	D	Senator Don Gustavson	Video
S.B. 138 (R1)	E	Cindy Brown, Private Citizen, Las Vegas, Nevada	Written Testimony
S.B. 138 (R1)	F	Mona Lisa Samuelson, Private Citizen, Las Vegas, Nevada	Written Testimony
S.B. 339	G	Marc A. Johnson, President, UNR	Written Testimony
S.B. 339	H	Cheryl Hug-English, Medical Director, Student Health Center, UNR	Written Testimony
S.B. 339	I	Enid Jennings, Health Educator, Student Health Center, UNR	Written Testimony
S.B. 339	J	Marc Johnson, President, UNR	Tobacco-Free Flyer
S.B. 56 (R1)	K	Vanessa Spinazola, ACLU	Letter in Opposition
S.B. 56 (R1)	L	Erik Schoen, Human Services Network	Letter in Opposition
S.B. 464 (R1)	M	Aaron Letzeiser, The Medical Amnesty Initiative	Letter in Support
S.B. 464 (R1)	N	Marissa Crook, Associated Students of the UNR	Letter in Support