

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
May 11, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 10:42 a.m. on Monday, May 11, 2015, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Michael Roberson (Excused)
Senator Tick Segerblom (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn D. Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Cassandra Grieve, Committee Secretary

OTHERS PRESENT:

Scott Black, Detective, Las Vegas Metropolitan Police Department
John T. Jones, Jr., Nevada District Attorneys Association
Eric Spratley, Lieutenant, Washoe County Sheriff's Office

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Mike Cathcart, City of Henderson
Bob Roshak, Nevada Sheriffs' and Chiefs' Association
Steve Yeager, Office of the Public Defender, Clark County
Sean B. Sullivan, Office of the Public Defender, Washoe County
Rita Sloan, Alternatives to Violence Project of Nevada
Astrid Silva, Progressive Leadership Alliance of Nevada
Kathleen Chandler, Be the Change Project
Vanessa Spinazola, American Civil Liberties Union of Nevada

Chair Brower:

We will open the hearing on Assembly Bill (A.B.) 244.

ASSEMBLY BILL 244 (1st Reprint): Provides an enhanced penalty for committing certain repeat graffiti offenses. (BDR 15-736)

We will continue to take testimony on A.B. 244, introduced in the subcommittee of the Senate Committee on Judiciary by Assemblyman Lynn Stewart.

Scott Black (Detective, Las Vegas Metropolitan Police Department):

We support A.B. 244. A gap in the law is hindering our ability to manage graffiti proliferation. Individuals committing the majority of the high-dollar graffiti damage are adults, some in their 30s and even 40s.

These perpetrators commit chronic acts of graffiti vandalism that purposely do not cross the \$5,000 threshold. These individuals are repeatedly convicted of graffiti crimes, both misdemeanors and gross misdemeanors. They are thumbing their noses at the law by continuing to violate the graffiti laws without penance.

I have interviewed these individuals following their repeated arrests. I have even sought to get them to stop committing these offenses, but they refuse. Assembly Bill 244 will be an effective tool in getting repeat offenders—who are adults, not juveniles—to stop their conduct.

John T. Jones, Jr. (Nevada District Attorneys Association):

We support A.B. 244.

Eric Spratley (Lieutenant, Washoe County Sheriff's Office):

This is a problem in Reno, Sparks and Washoe County. We support A.B. 244.

Mike Cathcart (City of Henderson):

We support A.B. 244.

Bob Roshak (Nevada Sheriffs' and Chiefs' Association):

We support A.B. 244.

Steve Yeager (Office of the Public Defender, Clark County):

We oppose A.B. 244 and have submitted a document concerning the cumulative fiscal impact of such legislation ([Exhibit C](#)). Existing statutory penalties are severe enough if applied appropriately.

A first graffiti offense is a misdemeanor punishable by 6 months in jail. We heard testimony about acts committed under the \$5,000 threshold, but if the damage caused is over \$250 and under \$5,000, it is still a gross misdemeanor carrying 364 days in jail or a formal probation with a probation officer.

Damage over \$5,000 is a felony offense. If an individual receives probation on that felony, 2 days must be served in jail at the beginning of the sentence.

If a protected site is graffitied, such as Red Rock Canyon National Conservation Area, it is a Category D felony. The language referring to graffiti on a protected site was added in 2013; we supported that change. Graffiti on a freeway overpass sign that costs \$13,000 to clean up meant it was a Category E felony.

If convicted, statute states mandatory community service must be served and, if possible, that service must relate to graffiti abatement. A first offense is 100 hours, a second offense is 200 hours and a third offense is 300 hours. Individuals convicted of graffiti offenses must perform numerous hours of community service, and the penalty applies to repeat offenders. An individual with multiple convictions would likely have to serve hundreds of hours of community service. Statute also states that if convicted of a graffiti offense, an individual's driver's license is suspended for a minimum of 6 months.

If there is a problem with repeat offenders, it is because these cases are not being charged appropriately. Perhaps these cases are being negotiated too lightly or judges are not enforcing the law. I cannot imagine that someone who has dozens of convictions for misdemeanor or gross misdemeanor offenses has not done substantial jail time already.

We heard that a few individuals are responsible for hundreds of thousands of dollars of damages. Given the levels in statute, I do not see how that would be possible. In order to reach that level of damage, someone would need to have twenty or more convictions for gross misdemeanor graffiti.

More data is necessary before moving on with A.B. 244. How many perpetrators are involved? How many convictions do they have? What damage did they do? What penalties did they receive? We need to know what happened in those cases. Policy based on the actions of a few individuals is not good policy. We heard testimony about some individuals who are chronic perpetrators of graffiti, but we do not have any data associated with those individuals in terms of the acts they committed and the punishments they received.

We do not want to put people in prison for chronic graffiti offenses. If you put someone in prison, restitution will not be paid and graffiti will not be cleaned up. These individuals will also then have felony convictions, which means they will not be employable and will be a burden on society. If existing statute is applied correctly, it is severe and harsh enough to serve the objectives of the criminal justice system.

Chair Brower:

Would passage of this bill allow for probation even with a felony conviction under this section?

Mr. Yeager:

It would; however, if someone has the number of convictions referenced, I do not know whether a judge would give probation. Assembly Bill 244 states it is a Category C felony, which is eligible for probation. One might read the required jail time to be the same as the Category D and E felonies, but I cannot say how a judge would read that.

Chair Brower:

I do not read this bill as requiring a minimum prison sentence or jail sentence.

Mr. Yeager:

I agree. That is correct.

Sean B. Sullivan (Office of the Public Defender, Washoe County):

We oppose A.B. 244. When there is a repeat offender in other areas of the law, like with a DUI, that person is channeled into DUI court or some kind of diversionary program. Warehousing these types of individuals in the Department of Corrections is not the best use of our resources. Diversionary programs such as community service, abatement, etc., need to be considered. We need to have judges oversee these types of programs in an effort to channel the perpetrator's energy into positive programs instead of putting them in prison.

Chair Brower:

Perhaps the Committee should look into establishing a graffiti court to add to the list of specialty courts.

The idea here is not to impose prison sentences on felony offenders under this section, but to put the threat of the felony and potential prison over their heads lest they be tempted to do it again. Would you agree there is no mandatory jail sentence with this bill?

Mr. Sullivan:

I agree there is no jail time with the Category C felony. There would be mandatory jail for the Category E and D felonies with statute—10 days in jail as a condition of probation—but I do not see the 10-day jail time listed with the Category C felony.

Rita Sloan (Alternatives to Violence Project of Nevada):

Alternatives to Violence Project (AVP) conducts 3-day intense workshops in Nevada prisons. In 12 years of doing AVP, I have met far too many men who went into prison at a young age, some of them in their teens. It is heartbreaking that their lives have been irrevocably changed by their prison experience. Young people need guidance, education, opportunity, jobs, responsibility and positive mentors; they do not need prison. I know it was stated the individuals are not young people, but it is primarily young people who do the graffiti.

In this age of mass incarcerations, we need to find better ways to deal with these problems. The fact incarcerations are increasing tells us that what we are doing is not effective. We need creative and effective programs, not prison.

Astrid Silva (Progressive Leadership Alliance of Nevada):

We oppose A.B. 244. Based on our racial equity impact assessment, it would disproportionately affect communities of color. The Justice Policy Institute reports that African Americans and Latinos are imprisoned under California's Three Strikes law at far higher rates than their white counterparts. There are ways to solve this problem other than to place people in prison for nonviolent crimes. These people are not a danger to our communities.

Chair Brower:

Do you have ideas you can share with the Committee on how to stop repeat graffiti offenders?

Ms. Silva:

I have not been involved with anyone doing graffiti, but threatening someone with getting in trouble might not be the best solution.

Kathleen Chandler (Be the Change Project):

An alternative way to stopping repeat offenders would be to work with offenders. We live in a low-income neighborhood, and graffiti is a part of our lives. Our neighborhood brought together a homeowners' association with the city bus company and an organization called Reno Art Works. We brought these businesses together to work with young people who had been arrested for tagging. This group created a beautiful mural—the largest in Reno—that has been up for 2 years and only tagged once, and that tag was very small.

Chair Brower:

Where is that mural?

Ms. Chandler:

It is in Reno near Hug High School. You will see it if you drive on Wedekind Road. It is beautiful. That project was a different way of approaching the chronic graffiti problem.

Using taxpayer dollars to put individuals in prison or burdening them with felony charges does not allow people to do what we hope they will do, which is become valuable, contributing members of society. Finding ways to help people express themselves would be fantastic. I oppose A.B. 244.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

I oppose A.B. 244. Studies of the past years show that increasing sentences and raising the bar on felonies do not deter crime. Criminals often are not even aware of the penalties, so it does not deter their activities.

Graffiti is a problem and a hot topic this Session. I like the idea of a graffiti court; perhaps it can be referred to the Advisory Commission on the Administration of Justice for study. The City of Chicago, Illinois, and the City of Brooklyn, New York, have each received grant funding for such projects for youths.

In the Assembly, it was testified that graffiti could almost be like an addiction. The problem needs to be addressed on a more thorough level other than merely criminalizing it.

Chair Brower:

The Committee will consider your suggestion.

Assemblyman Lynn D. Stewart, Assembly District No. 22:

These individuals have been warned, cited and convicted. They know the third time they are convicted that the sentence may carry prison time. Assembly Bill 244 will be a deterrent. We want to deter additional graffiti. Please consider this as way of solving this problem.

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Chair Brower:

I will close the hearing on A.B. 244 and adjourn the meeting at 10:58 a.m.

RESPECTFULLY SUBMITTED:

Cassandra Grieve,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	5		Attendance Roster
A.B. 244	C	6	Steve Yeager / Clark County Public Defender's Office	Fiscal Impact