

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
February 5, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:03 p.m. on Thursday, February 5, 2015, in Room 2134 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 Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Tick Segerblom (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Suzanne Efford, Committee Secretary
Connie Westadt, Committee Secretary
Cassandra Grieve, Committee Secretary

OTHERS PRESENT:

Dave Prather, Deputy Administrator, Division of Forestry, State Department of
Conservation and Natural Resources
Leo Drozdoff, P.E., Director, State Department of Conservation and Natural
Resources

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Jeff Landerfelt, Deputy for Commercial Recordings, Office of the Secretary of State

Karl Hall, City Attorney, City of Reno

Ron J. Bath

Kate Thomas, Director, Office of Management and Budget, City of Reno

Francisco J. Lopez, Detective, Regional Gang Unit, Police Department, City of Reno

Tom Robinson, Deputy Chief, Operations, Police Department, City of Reno

Tray Abney, The Chamber

Alex Oritz, Clark County

David Cherry, City of Henderson

Alexis Miller, Nevada League of Cities and Municipalities

Adrina Ramos-King, City of Las Vegas

Robert Smith, Animal Services Supervisor, Regional Animal Services, Washoe County

Stacey Shinn, Progressive Leadership Alliance of Nevada; Human Services Network

Vanessa Spinazola, American Civil Liberties Union of Nevada

Steve Yeager, Office of the Public Defender, Clark County

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

Chair Brower:

We will begin the hearing with Senate Bill (S.B.) 36.

SENATE BILL 36: Revises provisions governing state business licenses.
(BDR 7-368)

Dave Prather (Deputy Administrator, Division of Forestry, State Department of Conservation and Natural Resources):

I am here to introduce S.B. 36. I will read from my statement ([Exhibit C](#)).

Leo Drozdoff, P.E. (Director, State Department of Conservation and Natural Resources):

The Department of Conservation and Natural Resources supports S.B. 36, and I will read from my statement supporting the bill ([Exhibit D](#)). I have also submitted a proposed amendment to S.B. 36 ([Exhibit E](#)).

Chair Brower:

We will consider the amendment during work session at a later time.

Jeff Landerfelt (Deputy for Commercial Recordings, Office of the Secretary of State):

The Office of the Secretary of State is neutral on S.B. 36 with regard to any revenue impact related to the State business license program. Provisions in *Nevada Revised Statute* (NRS) 86.5483 exclude from the State business license program those transactions completed within 30 days that are not a part of a series of transactions. Senate Bill 36 would simply extend that statute for the duration of any emergency.

Chair Brower:

Does the Secretary of State's Office oppose this bill?

Mr. Landerfelt:

No, it does not oppose this bill.

Chair Brower:

We will close the hearing on S.B. 36 and open the hearing on S.B. 56.

SENATE BILL 56: Revises provisions governing graffiti. (BDR 15-479)

Karl Hall (City Attorney, City of Reno):

In order to better assist the City of Reno and local law enforcement, sections 5 and 16 of S.B. 56 respectively amend NRS 206.005 and NRS 268.4075 to include an estray or one or more head of livestock within the scope of property to which the graffiti offense applies.

Senate Bill 56, section 7, seeks to amend NRS 206.335 to extend the definition of "graffiti implement" to include any item that could etch, mark or deface property.

Senate Bill 56, section 8, seeks to amend NRS 206.345, giving the government entity that incurred or will incur expenses authority to collect restitution for future expenses to abate graffiti. It also allows for the initiation of a civil suit to recover the cost of damages due to graffiti.

Senate Bill 56 seeks to authorize a city to adopt an ordinance for the removal of graffiti from residential and nonresidential property. Statute only allows the county to remove graffiti.

Senate Bill 56 seeks to allow for the collection of costs from perpetrators for graffiti eradication through either a lien or through a special tax assessment attached to the county tax rolls.

Senate Bill 56 seeks to change the language regarding rewards. Statute requires a conviction in order to receive a reward. We want to change that to include "for information leading to the identification, apprehension or conviction" instead of "and conviction" in order to encourage more help from the public. This bill allows the city manager to pay that reward out of the abatement fund.

Mr. Bath will testify on the background of the City of Reno Anti-Graffiti Task Force, which played a key role in the development of S.B. 56.

Ron J. Bath:

I am a former member of the Reno City Council-appointed Anti-Graffiti Task Force, created June 19, 2013. The Task Force was established to evaluate the City's graffiti problem and to prepare recommendations on best practices to mitigate graffiti through enforcement, education and eradication. This Task Force consisted of City employees, business community members and Reno citizens.

My role within the Task Force was to look at how we could address our problems from within the Legislature. I interviewed members of the City Attorney's Office, Washoe County municipal court judges, the District Court Juvenile Master, the Washoe County District Attorney's Office and program managers at Washoe County Juvenile Probation Services.

We found that graffiti is not just a juvenile issue, as the approximate age of the perpetrator is 19 years old.

It costs the City of Reno approximately \$339,000 annually for graffiti abatement and eradication. This cost does not reflect the lowering of property values associated with graffiti in a community or neighborhood. Nationally, about 50 percent of the cost of graffiti is associated with the eradication process. As the Task Force examined the eradication and abatement process, it found that perpetrators were defacing windows and other pieces of property not only with paint but by scratching or etching property. Eradicating paint on a wall is much different than replacing a scratched-up storefront window, since the costs associated with defacing or vandalizing a window are much higher.

The Task Force found that business owners struggle with this type of vandalism because it is more than just street art. Etching a window with a drill bit or screwdriver establishes a permanent signature, more so than tagging a wall with spray paint. This situation is addressed in section 7 of S.B. 56.

I understand the opposition to this bill that will be presented by others here today. It is an issue of social good versus practical solutions. I was the Washoe County Public Defender for juveniles when I started my practice and later was chairman of the Washoe County Juvenile Probation Commission. These positions allowed me to understand the social aspects of the graffiti problem, but the costs of this type of regular and continual vandalism on the communities of Reno and Las Vegas are more far-reaching than the social issues that deal with contact between juveniles and law enforcement.

Senator Hammond:

In sections 5 and 16, you ask to extend this legislation to include livestock. What are you calling livestock? In your testimony, you talk about etching and defacing, and I do not see how that relates to livestock.

Mr. Bath:

During my time with the Task Force, people decided to graffiti the side of animals in pastures. They were painting livestock. They were painting on the sides of horses.

Mr. Hall:

Clark County will be submitting an amendment regarding section 14 of the bill. The City of Reno agrees with that proposed amendment.

Kate Thomas (Director, Office of Management and Budget, City of Reno):

Regarding sections 5 and 16, I would like to clarify that we are not talking about livestock defacing property. We are talking about livestock that have been defaced as an issue on such property.

Chair Brower:

I understand the graffiti issue. The Legislature has dealt with graffiti issues in the past. The new issue allows the City to eliminate, cover up, get rid of the graffiti and then charge the property owner for the associated cost. Could you please elaborate on this situation?

Mr. Hall:

The way it works now is the City uses money from its graffiti abatement fund to pay for the removal or cover-up of graffiti.

Chair Brower:

Assume the owner has not taken action to remove the graffiti. What is the procedure when the City becomes aware of graffiti on a building?

Mr. Hall:

If it is a residential property, the City would go to the owner and request permission to remove the graffiti at the City's cost. If it is commercial property, the onus is on the property owner to remove the graffiti at his or her own expense. If the property owner does not remove the graffiti, once the appeal process has been exhausted, the City can assess the owner for removal or cover-up costs.

Chair Brower:

With a commercial property, we assume the graffiti is unauthorized by the business owner. What happens if the business owner does not authorize the graffiti, but the graffiti happens and the business owner is okay with it and does not want to spend the money to remove it? Under this bill, is the business owner forced to spend money for graffiti removal?

Mr. Hall:

Yes. A commercial property owner will be forced to remove or cover up the graffiti. There is due process, however, and a right of appeal. The City of Reno is paying for removal of graffiti from commercial properties out of the graffiti abatement fund. The City notifies the commercial property owner, asks the owner to sign a waiver and then the Graffiti Abatement Team cleans up the graffiti. Senate Bill 56 gives us another tool to use when we have repeat offenders. It also gives us another way, either through a lien or special assessment, to recover damages and costs for graffiti removal.

Chair Brower:

How will the City decide if something on the side of a business location is graffiti or an expression of art by the owner of the building?

Francisco J. Lopez (Detective, Regional Gang Unit, Police Department, City of Reno):

When commercial properties get tagged a lot or are graffiti victims, owners have come up with the solution of doing murals on the sides of buildings to deter future taggers. Property owners consult with the Police Department, and we tell them murals are obvious drawings of artistic value. Graffiti normally put on these buildings is etched or tagged with spray paint or markers. Unless property owners can justify the words spray-painted on the side of their walls as art and convince us that they gave permission to individuals to create those marks, we interpret the markings as graffiti.

Chair Brower:

Is it up to the commercial property owner to decide if the graffiti is authorized or is that decision up to the City of Reno whether it constitutes illegal graffiti or is art that the owner may want there? Who makes that decision?

Detective Lopez:

The Graffiti Abatement Team approaches the commercial property owner and asks if he or she would like the graffiti cleaned; if so, then a waiver needs to be signed. When the waiver is signed, the City of Reno pays for and executes the cleanup. When the team first approaches the commercial property owner, the owner has the opportunity to say if the graffiti was allowed; if so, we would not ask for the signed waiver.

Tom Robinson (Deputy Chief, Operations, Police Department, City of Reno):

An officer on patrol who observes a new exterior coating on a building will contact the commercial property owner and offer the owner a waiver. The waiver says the property owner allows the City of Reno to paint over graffiti on the property. At that point, we learn whether the mark or tag is something they want or if it is indeed graffiti, which is vandalism.

With our abatement program, we only stock and purchase a finite number of colors to cover graffiti. A property owner may acknowledge the graffiti or vandalism but decline a color from our color palette. At that point, it becomes the property owner's responsibility to remove the graffiti. We always consult the property owner first to find out if it is graffiti or artwork.

Mr. Hall:

I reiterate the due process rights built into S.B. 56, so property owners are entitled to a hearing and can appeal an adverse decision. It is not a unilateral decision by the City of Reno.

Chair Brower:

That implies it is up to the City of Reno to decide whether a piece of art is graffiti, not up to the owner of the building. Could you please clarify?

Mr. Robinson:

What Mr. Hall refers to is contained within the City of Reno's Municipal Code. If a commercial property owner does not want to remove the graffiti and that graffiti is a nuisance, this is when the hearing and appeal process kicks in for the owner.

Mr. Hall:

I cannot recall if we have ever had an issue where someone has claimed something is art as opposed to graffiti.

Chair Brower:

This gets back to the general micromanagement the Legislature always does with local governments. You are here because you do not believe you can enact an ordinance without legislative approval—even though we are talking about a city ordinance. You have looked at it, thought about it and do not think the Reno City Council can enact an ordinance without enabling statewide legislation?

Mr. Hall:

Statute allows counties to do that but not cities. We are adding cities so that cities do not have a problem with enacting an ordinance in violation of the original rule.

Senator Ford:

As I read in section 5, graffiti is defined as unauthorized. Given that, may a property owner authorize it after the fact under statute?

Mr. Robinson:

Are you asking if the property owner authorizes the markings on a building, do we have the authority to remove it?

Senator Ford:

No. For example, unauthorized graffiti is done but now the commercial property owner likes it and wants to keep it. Is that after-the-fact authorization of the graffiti going to be addressed under this statute?

Mr. Hall:

No. The statute contemplates getting authorization from the owner.

Senator Ford:

Is the decision of what constitutes graffiti still decided by the property owner?

Mr. Hall:

Yes.

Chair Brower:

I am not convinced that S.B. 56 as drafted makes that clear, but we will take a closer look at it in work session.

Tray Abney (The Chamber):

Representing The Chamber, I served as the vice chair of the City of Reno's Anti-Graffiti Task Force. We support S.B. 56 and will agree to any amendments deemed appropriate. Going to the Legislature with this bill is only a piece of the puzzle; we did not meet for 9 months and then decide to ask the Legislature to fix our problems.

The solution to this problem in our cities is multifaceted. We are talking about forming nonprofit relationships, media outreach, adopt-a-block programs, graffiti counts and other programs that work on a local level to get this situation under control. From the perspective of the business community, we are concerned about graffiti's negative impact on our communities: cost to taxpayers, cost to economic development efforts, decrease in home and business values, and a decrease in investment activity in general. It is like the broken-windows theory, which holds that if you let the violations proliferate, the neighborhood gets worse. We would appreciate any way that limits continuing graffiti and gives our local governments more tools.

Chair Brower:

I appreciate your testimony and recognize the significance of the broken-windows theory. As strange as it may seem that cows are being tagged,

I have prosecuted taggers who put graffiti up on the side of a mountain on federal parkland. I never figured out how the National Park Service was able to remove it. I agree that the removal of graffiti is a problem.

Alex Ortiz (Clark County):

Clark County is submitting an amendment to S.B. 56 ([Exhibit F](#)). The amendment seeks to change five different areas.

Chair Brower:

We will consider the amendment. Mr. Hall, does the City of Reno support Clark County's amendment?

Mr. Hall:

Yes.

David Cherry (City of Henderson):

The City of Henderson supports S.B. 56, which will provide municipalities with additional tools to combat graffiti and to cover the costs associated with its removal. The City of Henderson supports Clark County's amendment as proposed in [Exhibit F](#).

Alexis Miller (Nevada League of Cities and Municipalities):

The Nevada League of Cities supports S.B. 56 and any amendments that help to clarify the language in order to reach its intent.

Adrina Ramos-King (City of Las Vegas):

The City of Las Vegas has an existing and effective graffiti abatement program. Our concern lies with the details of notification and consent found in the bill. This may have a detrimental effect on a functional service we provide to the citizens of Las Vegas. We are here to propose an amendment to S.B. 56 that would essentially allow counties or cities the flexibility to keep operating programs related to graffiti abatement ([Exhibit G](#)). We have shared our thoughts with the City of Reno and appreciate your consideration. We also support the Clark County amendment in [Exhibit F](#).

Chair Brower:

We will now hear from those who are neutral to S.B. 56.

Robert Smith (Animal Services Supervisor, Regional Animal Services, Washoe County):

Washoe County Regional Animal Services is neutral to S.B. 56. We thank the City of Reno for clarifying that livestock walking through a yard are not considered graffiti when they damage property.

Chair Brower:

We will now hear from those who are opposed to S.B. 56.

Stacey Shinn (Progressive Leadership Alliance of Nevada; Human Services Network):

We specifically oppose S.B. 56 expanding the list of items considered graffiti implements. We object due to the possible unintended consequences of criminalizing our youths. Numerous studies have found that increased contact with law enforcement increases a person's likelihood of committing future crimes. There is a racial justice component when crimes are expanded in statute as people of color are arrested and incarcerated at a disproportionate rate. We encourage Committee members to consider other strategies to address the issue of graffiti, such as placing youths in after-school programs, art programs, employment training, etc. Human Services Network has submitted a letter explaining its opposition to this bill ([Exhibit H](#)).

Senator Ford:

Your statement resonates with me; however, can you specifically tell me which provisions of the bill are objectionable? You stated instruments of graffiti. What provision expands the term instruments of graffiti?

Ms. Shinn:

We oppose the wording on page 4, line 7, that states, "Etch, mark or deface property."

Senator Ford:

Is your objection to the inclusion of the phrase "Etch, mark or deface property" within the definition of graffiti implement?

Ms. Shinn:

Yes. We are concerned that youths could be sent into the criminal justice system for something as simple as carving hearts into their desks. We want to make sure we are not expanding what constitutes graffiti too far into statute.

The definition of graffiti implement becomes more broad in this bill, and we do not want to overcriminalize youths.

Senator Ford:

This bill is about defacing external property like a building, not a school desk. The example you gave would not fall within the purview of this statute. Your point is understandable, but I need to understand more why etching, marking or defacing property should not be included in this bill.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

The bill would be applicable to the damage done to the exterior of a school, which gets at the issue that Ms. Shinn was talking about. The ACLU Stop-and-Frisk report in New York found that most people who did commit graffiti and were stopped were between 13 to 25 years old. It has already been established that 19 years old is the average age of a perpetrator, so we are mainly worried about law enforcement's contact with youths.

In addition to Ms. Shinn's testimony, S.B. 56 expands the probable cause for which a police officer can stop a youth. If a youth is walking home from school toting a backpack that contains a pencil, eyeliner and lipstick—those are things that could etch, mark or deface property. Technically, finding those items could allow police to bring the youth in for questioning. The bill does contain an intent requirement, but that later requirement has to be figured out in court.

In my statement, I have cited the problem as being the youth's initial contact with the police ([Exhibit I](#)). The ACLU is only opposed to the one line in the bill, as it expands the list of ways in which police can interact with youths and likely bring them in for questioning. We know that this kind of interaction can lead to future crimes by a youth and cause distrust with police at a time when we are trying to build police trust in our communities.

I cannot say how big of a problem the inclusion of this line will actually be, but it does raise questions. I thank Ms. Thomas and the City of Reno for speaking to us about it; however, I could not find a way to narrow the definition that would not include all sorts of things that a youth coming home from school would have in a backpack.

Senator Ford:

Chair Brower indicated that this bill may be applicable to more than real property. As I read it, it looks like it is real and personal property, so there may be a need for more consideration toward the wording. You said communication with the proponents of the bill has not lead to a compromise in language that can satisfy your concerns and the proponent's concerns?

Ms. Spinazola:

Yes. It is only that one line that makes the definition of graffiti implement overbroad. We are concerned that a youth coming home from school with normal school stuff in a backpack—who is not actually someone who will be prosecuted for graffiti—can get pulled into the system at both the taxpayers' expense and his or her own personal expense, even though that youth will most likely not be convicted.

The NRS is sufficient. To expand the definition of graffiti implement does nothing to reach the culprits who cause graffiti. My statement, [Exhibit I](#), cites an ACLU of Massachusetts report that indicates out of 200,000 police stops and interrogations, only 2.5 percent of the stops resulted in people carrying contraband. Ultimately, increased stops equal increased resources and interactions without more prosecutions in the end.

Chair Brower:

As I read the bill, statute invokes a misdemeanor for a person to carry a graffiti implement with the intent to vandalize, place graffiti, etc. Would this bill expand the types of things that could be considered graffiti implements?

Ms. Spinazola:

Yes, that is my understanding.

Senator Harris:

I have a question about the intent. People are free to carry these items under the statute, but it becomes a problem when they are carrying with intent. How is intent established? Does that occur when they are caught in the act?

Ms. Spinazola:

My interpretation of the bill is that permitting a person to carry any of these instruments—that etch, mark or deface property—creates an initial reason to stop and haul an individual in for questioning by a police officer. We are most

concerned about a youth with a backpack who has one of these items on his or her person. Senate Bill 56 immediately justifies the police officer to extend the interrogation during which intent would be established.

Chair Brower:

I do not want to get too carried away about interrogation. Interrogation has to lead to evidence of a crime. I submit that the vast majority of students with backpacks probably have an implement that could be construed as having the ability to etch, mark or deface property, but that is a long way from being evidence in a crime.

Ms. Spinazola:

That is correct. We are concerned about the racially disproportionate impact that stopping youths may have on communities. You can see this impact with the stop-and-frisk policy in New York. If we examine who is being stopped in the first place and who has these types of implements on one's person, report statistics from New York and Massachusetts show that black youths are led down the more extended interrogative road. This concerns us.

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

We oppose this bill for the exact same reasons as the ACLU. The only section we oppose is the one containing those five words under discussion: "etch, mark or deface property."

Graffiti is a serious problem and graffiti offenses should be prosecuted. We are concerned about amplifying the definition of what qualifies as a graffiti implement.

When we consider a graffiti implement, we normally envision a can of spray paint, and there is little reason to legitimately have a can of spray paint on your person out on the street. If we look at school supplies that youths are required to bring to school, we see things like scissors and markers—items that can be used to etch, mark or deface property. In fact, it is hard to think of things that could not be used to etch, mark or deface property.

Given an intent requirement and Senator Harris's question, it is difficult to think of a scenario where someone would have one of these implements as defined in the bill and lack the intent to put graffiti on something or serve as a lookout for

someone doing graffiti. Those violations can already be prosecuted under attempt of placing graffiti, conspiracy of graffiti or aiding and abetting graffiti.

Our concern is that this new definition of graffiti implement opens up a new area of potential liability or litigation about intent. If that language regarding etch, mark or deface property was removed, the Clark County Public Defender's Office would support the bill.

Chair Brower:

Have you ever defended a person who you thought was unfairly targeted under the statute?

Mr. Yeager:

Only one case of mine at the Clark County Public Defender's Office comes to mind as on the fringe. In this case, an individual was standing down the road from somebody else who was putting graffiti on a wall, and this person had some kind of tip that went to a spray can. We negotiated that case. Most of these Clark County cases tend to fall under the City of Las Vegas jurisdiction and go to municipal court. My concern is amplifying the definition with simple everyday items such as scissors or markers.

Senator Ford:

What looked to me at first to be a modest bill now has me thinking about unintended consequences. Is this language used elsewhere throughout the Nation?

Ms. Thomas:

We do not have an answer for that at this time, but we would be happy to look into that and get back to the Committee.

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

I share Mr. Yeager's concerns regarding the language of etch, mark or deface property. Regarding the issue of intent and unfair treatment, the only experience I can offer is that of a youth offender who may have markers on his or her person and copies the street monikers. When I say moniker, I mean taggers' actual signatures that are on display all over town as a form of graffiti. The Reno Police Department keeps binders of the monikers and is well-versed in a graffiti artist's moniker.

A youthful offender who copies a moniker and scrawls it all over a personal backpack or notebook does get to intent when you couple that with the presence of markers. With these types of cases, intent is rarely proven with direct evidence, and conviction is ultimately reliant upon circumstantial evidence.

In my experience, a case where we examine a perpetrator's possession of markers and then look at what is scrawled on his or her notebook or binder would be enough circumstantial evidence to prove intent with the clause of etch, mark or deface property.

Washoe County would support the bill if the words etch, mark and deface property were removed from S.B. 56, or perhaps if the wording of section 7, subsection 1, "with the intent to vandalize," were repeated in section 7, subsection 2, paragraph (b), subparagraph (2). Such words inserted in this section would remind prosecutors that an implement of graffiti has to also have the proper intent.

Chair Brower:

Are you proposing adding language at the end of the graffiti implement definitional section? Could we add "Etch, mark or deface property with the intent to vandalize" in this section?

Mr. Sullivan:

The wording "intent to vandalize" already exists at the beginning of section 7, subsection 1. I would like to see those words also added to section 7, subsection 2, paragraph (b), subparagraph (2) or thereabouts, thereby getting to the intent of the graffiti.

Senator Harris:

I still have a concern about inappropriately assigning intent to someone who might have one of these implements, and I am not even sure that type of an amendment answers my concerns. You testified that most of the evidence used to prove intent is circumstantial, so I need a better definition of intent. I would like to see some foundational principles on which we could establish intent because it is just not clear enough in the bill. I would not want to inappropriately assign intent to someone just because he or she has a graffiti implement.

Mr. Sullivan:

I appreciate your concern, Senator Harris, and I would be happy to work with the City of Reno and the ACLU in crafting better language concerning the intent in section 7, subsection 2, paragraph (b), subparagraph (2). That these crimes are usually proven by circumstantial evidence is a concern.

Chair Brower:

This is not a work session, but if the City of Reno has an easy response to the items discussed here today, I would be interested in hearing it.

Mr. Hall:

I would like to address the comments by Ms. Spinazola. The issue she presents is that the language contained in the proposed bill may increase law enforcement's contact with youths.

If we look at criminal law, to make contact with a youth, an officer has to have reasonable suspicion that crime is afoot. We know that youths walk around with those broad-tipped markers identified in NRS 206.335, subsection 2, paragraph (a). We are already talking about broad-tipped indelible markers, so we are not widely expanding the list of graffiti implements.

The issue we address is the etching that seriously damages property in Reno. It is not as though officers are out to stop youths and search their backpacks for graffiti implements. In order for law enforcement to get involved, officers have to believe a crime has been committed; for a misdemeanor, a crime has to be committed in an officer's presence. We are talking about whether an officer has reasonable suspicion that a youth has graffiti implements with the intent to deface property, because if the crime is not committed in the officer's presence, the officer has to have other information to lead to an investigation.

The idea behind this bill is to address those implements that cause serious damage. It takes the whole issue out of context to rely on some studies conducted in New York in a totally different fact pattern and situation than in Reno.

Chair Brower:

What is your reaction to the proposal that the words "with the intent to vandalize" be added in at least one additional place?

Mr. Hall:

I have no objection to that.

Senator Ford:

I have sympathy for your argument, Mr. Hall; however, as Senator Harris pointed out, I am also not sure about the language. I am confident you can figure out better language. Better language is necessary because hyperinteractions between law enforcement and the community are seen throughout the Country right now, and we need to make sure our language is precise. I suggest you consult with the ACLU to work out better language with regard to intent.

Mr. Bath:

I would like to comment on the property language. The reason we included that language is because motor vehicles, trailers and trucks parked in front of businesses are getting graffitied and those fall under personal property, not under real property.

The second issue I want to address is that the talk about etching does not apply to mascara and crayons. We are talking about someone with acid or a drill bit with a carbide tip that can go into a plateglass window. The only way to eradicate that kind of damage is to replace the window, and the cost involved with that is significant. Businesses are frustrated because the ante raises when it comes to eradication. It is difficult to eradicate that storefront plateglass window; it has to be replaced.

Detective Lopez:

I would like to clarify that moniker graffiti on a backpack, clothing or an item a youth may have is not sufficient reasonable suspicion for a law enforcement officer to contact the youth. That situation falls under what we call consensual contact. In order for a law enforcement officer to figure out anything about a graffiti implement or if a youth is carrying a graffiti implement, there would obviously have to be a frisk which would require reasonable suspicion for the contact. Normal reasonable suspicion is a call for service regarding the destruction of property wherein police officer comes into the area.

Senator Hammond:

Detective Lopez, if you saw a building or the side of a truck that had just been tagged with the same design as on a nearby youth's backpack, does that give you reasonable cause?

Detective Lopez:

That situation would definitely give me reasonable suspicion to contact anybody leaving the area, especially if someone has that same tag on their backpack.

Chair Brower:

Would that situation give you probable cause to arrest that individual or "haul them in" as has been suggested today?

Detective Lopez:

Absolutely not. Also, to clarify, possession of a graffiti implement and graffiti materials is a citable offense, a misdemeanor.

Senator Ford:

Do you need to amend the statute for that to take place? We do not have to add "etch, mark or deface" to the statute in order for you to do what you just described. The issue is the initial contact we want to avoid. Without better verbiage, it leaves the statute wide open to interpretation, and that is a concern.

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Chair Brower:

Seeing no more business or public comment, I will close the hearing of the Senate Committee on Judiciary at 2:10 p.m.

RESPECTFULLY SUBMITTED:

Cassandra Grieve,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

| EXHIBIT SUMMARY | | | | |
|------------------------|----------------|---|--|----------------------|
| Bill | Exhibit | | Witness or Agency | Description |
| | A | 1 | | Agenda |
| | B | 7 | | Attendance Roster |
| S.B. 36 | C | 2 | Dave Prather | Statement |
| S.B. 36 | D | 1 | Leo Drozdoff | Statement |
| S.B. 36 | E | 2 | State Department of Conservation and Natural Resources | Proposed Amendment |
| S.B. 56 | F | 6 | Clark County | Proposed Amendment |
| S.B. 56 | G | 1 | City of Las Vegas | Proposed Amendment |
| S.B. 56 | H | 2 | Human Services Network | Letter of Opposition |
| S.B. 56 | I | 2 | ACLU of Nevada | Letter of Opposition |