MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Eightieth Session
June 2, 2019

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 9:24 a.m. on Sunday, June 2, 2019, in Room 2135 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 Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Eileen Church, Committee Secretary

OTHERS PRESENT:

Aaron D. Ford, Attorney General
Jessica Adair, Chief of Staff, Office of the Attorney General
Eric Spratley, Nevada Sheriffs' and Chiefs' Association
Corey Solferino, Washoe County Sheriff's Office
William Horne, SafeNest
John T. Jones, Jr., Nevada District Attorneys Association
Chuck Callaway, Las Vegas Metropolitan Police Department
Mike Cathcart, City of Henderson
Bailey Bortolin, Washoe Legal Services; Legal Aid Center of Southern Nevada

Amy Coffee, Nevada Attorneys for Criminal Justice
The Honorable James W. Hardesty, Justice, Nevada Supreme Court
The Honorable Linda Marie Bell, Chief Judge, Department 7, Eighth Judicial District
Jamie Rodriguez, Washoe County
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Michael Hillerby, Nevada District Judges' Association
Lisa Rasmussen, Nevada Attorneys for Criminal Justice
Holly Welborn, American Civil Liberties Union of Nevada
Daniel Honchariw, Nevada Policy Research Institute
Marcos Lopez, Americans for Prosperity, Nevada
Wiselet Rouzard, Americans for Prosperity
A.J. Delap, Las Vegas Metropolitan Police Department
Matthew Christian, Assistant General Counsel, Las Vegas Metropolitan Police Department
Nancy Savage, Assistant City Attorney, City of Henderson
John J. Piro, Clark County Public Defender's Office
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender, Washoe County
Delen Goldberg, City of North Las Vegas
Mike Draper, Fingerprinting Express

CHAIR CANNIZZARO:
I will open the hearing on Assembly Bill (A.B.) 19.

ASSEMBLY BILL 19 (1st Reprint): Revises provisions related to certain temporary and extended orders for protection. (BDR 3-417)

AARON D. FORD (Attorney General):
I am here to present A.B. 19, which concerns temporary and extended orders for protection. My chief of staff will take you through the bill.

JESSICA ADAIR (Chief of Staff, Office of the Attorney General):
The purpose of this bill is to strengthen Nevada's temporary and extended protective orders to better serve victims, law enforcement and public safety as a whole. I would like to publicly thank the many stakeholders who provided feedback on this bill, including law enforcement; district attorneys (DAs); members of the criminal defense bar; the Department of Public Safety;

Enterprise IT Services, Department of Administration; the Administrative Office of the Courts and victim advocates.

Section 1.3 of A.B. 19 provides an alternate method of service for those who are evading personal service of temporary protective orders (TPOs) by law enforcement. A TPO does not become effective until it has been served on the adverse party. The importance of this section is to make sure we have the ability to serve TPOs on people who are evading police and thus preventing those TPOs from becoming effective.

Section 1.3, subsection 2, defines due diligence by law enforcement by requiring a notice to be left at the person's home in a conspicuous place. In the event law enforcement has made at least three attempts at personal service, law enforcement is permitted to seek leave from the court to serve the adverse party at his or her place of employment. If service is unable to be effected in that manner, law enforcement may seek permission from the court to serve the TPO through the normal mechanisms under the *Nevada Rules of Civil Procedure*. This mechanism is currently permitted to be used in extended protective orders (EPOs), and A.B. 19 expands this option for TPOs. We believe this is a good balance between preserving due process and ensuring that TPOs can be served in an efficient manner.

Section 2, subsection 3 modifies existing law to allow courts to issue extended protective orders for up to two years. The court must provide a basis for all extended orders over one year in length. Currently, many domestic violence victims must go to court every year to get a new EPO. This would allow courts the discretion to reduce that burden if the facts warrant it. Subsections 5 and 6 clarify that an adverse party may file a motion to dismiss, modify or appeal the order.

Section 8 of A.B. 19 provides conforming changes to reflect the new name of the Repository for Information Concerning Orders for Protection, which was previously known as the Repository for Information Concerning Orders for Protection Against Domestic Violence. The new name does not limit orders to just those against domestic violence and covers other protective orders as well. It also expands the scope of the Repository to maintain records for additional offenses of stalking, aggravated stalking and harassment.

Section 8 also calls for the retention of expired TPOs and EPOs in the interest of public safety. The purpose of maintaining expired TPOs is to provide law enforcement more information to protect the safety of Nevadans and themselves. When police officers answer calls for service today, they only have information about current protective orders. This provision will allow them to see information about previous orders and respond accordingly to protect themselves. Domestic violence situations are particularly dangerous for officers. In 2017, more officers were shot responding to domestic violence than any other type of firearm-related fatality, according to the National Law Enforcement Officers Memorial Fund. From 1988 to 2016, 136 officers were killed while responding to domestic disturbances, according to FBI data. By comparison, only 80 officers were killed in drug-related arrests in the same time period.

To be clear, expired orders in the Repository are not viewable by the public. This bill will not affect the ability of a person to pass a background check for the purpose of purchasing a firearm, which is outlined in section 8, subsection 7 of the bill.

Section 10 of A.B. 19 provides a mechanism by which the court shall transmit information regarding protective orders to the Repository.

SENATOR PICKARD:
I love this bill. Working in this area of the law as often as I do, these are the kind of things we have been requesting for many years.

I like the service piece, but I have some questions. On the private side, when law enforcement is having a hard time serving an order, we will sometimes use a private process server. Once the private process server has served the first copy, we let law enforcement know where the person is, and then officers can often serve the person. I understand why the connection with law enforcement is important, particularly since it is probably more effective to have that law enforcement person standing in front of the adverse party and saying, "Thou shalt not make contact." But sometimes adverse parties evade service, and the private process servers have more time to locate and serve the parties. Is there a legal reason we do not authorize private process servers to do this work?

MS. ADAIR:
Thank you for your comments on A.B. 19. We worked very closely with law enforcement to ensure the bill is something that will be helpful to them.

To be frank, I do not know why the current statute does not authorize law enforcement to use private process servers. I would venture to guess that using private process servers would be prohibitive of cost and other resources. Using private process servers is a lot more expensive than having TPOs served by law enforcement officers.

However, the concern you identify is valid; people are evading service. We modeled the processes in the bill to emulate what a lot of private practice servers are doing—placing notice in a conspicuous location at the person's residence with information on how they can contact law enforcement to say, "This is a good time for you to come by," or "I can meet you at this location."

SENATOR PICKARD:
I appreciate that. I know it is late in the Session for amendments, but if the opportunity for an amendment comes up, I would suggest that we look at authorizing the applicant, if law enforcement cannot make service, to have the option to use a private process server to effectuate service and get that notice in the hands of the adverse party. It is that notice that starts the ball rolling. We cannot enforce a TPO or EPO until the adverse party has actual notice or constructive notice if it meets the requirements of this section.

ATTORNEY GENERAL FORD:
I appreciate the comments. In the interests of time, it is not likely we will be able to talk to all of the interested parties in this issue. However, I can commit to you that we can look into this over the Interim and will potentially bring something back in 2021, to the extent that we can.

SENATOR PICKARD:
I appreciate that.

In section 2, subsection 4 of the bill, my concern here is that they are already required to make findings when they extend an order at any length. I am concerned that this is going to open the door for no findings, particularly within the domestic context. That is critical. We have to know why the order has been extended, particularly if the party has not been charged with or convicted of criminal activity. The presumptions regarding child custody do not apply unless there has been a conviction. Is there some rationale under this section for only requiring findings for orders that last more than one year? Often, we find that

these extended orders are less than a year, and we would still want to see those findings.

MS. ADAIR:
This is not changing the current requirement that courts provide a finding of fact for the underlying basis of the extended order, but an additional finding of fact that the extended order should go beyond the typical length of one year. The courts know that this is not substituting their original responsibility for that finding of fact.

SENATOR PICKARD:
Fantastic, thank you.

I must commend you in sections 4 and 6 of the bill for this graduated violation protocol for the multiple violations. That is great. We find those violations in both areas, and often we change it in one place of the *Nevada Revised Statutes* (NRS) and not the other.

My last question has to do with something we did in A.B. 291.

ASSEMBLY BILL 291 (2nd Reprint): Revises provisions relating to public safety. (BDR 3-759)

This is a critical piece for when we file ex parte orders. In sections 21 and 22, A.B. 291 created a penalty for somebody who files a false affidavit or application. Unfortunately, we routinely see TPOs abused in order to get a tactical advantage in a custody matter. It is almost impossible to undo the damage, and there is no sanction; it is not even contemptible conduct, given that it did not happen in the presence of the court. It was not in violation of a court order, and the standard of proof is so low that there is really no way to punish a bad actor in this space. Did you consider that? To me, this is critically important. If we are going to make it an ex parte proceeding, we have to have some means of punishing those who abuse the process.

MS. ADAIR:
That is something we discussed. I believe we wanted to limit the scope of this bill to just what is helpful for law enforcement. That being said, we are happy to continue that conversation.

ATTORNEY GENERAL FORD:
Senator, you have hit on something important. We have talked about this concern of due process and fairness under these laws. We want to protect everyone, both the accused and the alleged victim. We were not able to accommodate that in this particular bill, but I am more than happy to work with you on this over the Interim to find the right balance from a protection perspective.

SENATOR DONDERO LOOP:
We have heard several bills this Session on the topic of protective orders, and one thing that resonates in my mind is people saying, "Nothing works." The victim gets a TPO and it does not stop the adverse party. I know this bill strengthens the law, but is this also going to help that process so we can strengthen the actual protective order?

MS. ADAIR:
This bill assists in a few different ways. First, many TPOs are not effective because they have not been served on the adverse party. That is not to say law enforcement has not tried, but many adverse parties are using evasion as a way of preventing that TPO from becoming effective. That is the purpose of the constructive service mechanism in this bill.

This bill also includes oral and written notice to the adverse party that even if the subject of the protective order contacts the adverse party, responding to that contact can result in a violation of the protective order. We have heard that this situation comes up many times. If the person who requested the protective order makes contact with the adverse party, the adverse party then thinks, "Oh, well, clearly I can continue this conversation," and that conversation can escalate. This is a requirement in statute that under a TPO, the adverse party cannot respond to contact from the protected party. This seems like a small change, but it is important.

SENATOR DONDERO LOOP:
I have heard over and over again that to adverse parties, TPOs are just a piece of paper you look at, and then you go do what you want.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):
We are here in support of A.B. 19. We thank Attorney General Ford and Ms. Adair for their work on this important legislation for the protection of victims of domestic violence.

COREY SOLFERINO (Washoe County Sheriff's Office):
We are in full support of this bill. We worked with Ms. Adair and others to address some of our issues with this bill.

WILLIAM HORNE (SafeNest):
We are here to testify in support of A.B. 19.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
We are here in support of this bill.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
We support A.B. 19.

MIKE CATHCART (City of Henderson):
We are in support of this bill.

BAILEY BORTOLIN (Washoe Legal Services; Legal Aid Center of Southern Nevada):
We are in support of this bill.

AMY COFFEE (Nevada Attorneys for Criminal Justice):
I want to let the Committee know we had problems with this bill as it was originally drafted. We worked with the Attorney General's (AG's) Office, and the Office made a lot of changes and addressed our concerns, which had to do with service and other technical aspects. We now support A.B. 19.

CHAIR CANNIZZARO:
I will close the hearing on A.B. 19 and open the hearing on A.B. 43.

ASSEMBLY BILL 43 (2nd Reprint): Increases the number of district judges in certain judicial districts. (BDR 1-498)

THE HONORABLE JAMES W. HARDESTY (Justice, Nevada Supreme Court):
Chief Justice Mark Gibbons asked me to present this bill. Chief Judge Linda Bell will be presenting on behalf of the Eighth Judicial District, and I will be offering

comments regarding the issues surrounding the Second Judicial District, Washoe County, and the Fourth Judicial District, Elko County.

As you know, the Nevada Constitution empowers the Legislature to increase or decrease the number of judges. We come to you this year with a request to add one family court judge in the Second Judicial District, one general jurisdiction and family court judge in Elko County and six family court judges in the Eighth Judicial District in Clark County. I would like to incorporate by reference extensive presentations that were made to the Assembly Committee on Judiciary on February 27.

THE HONORABLE LINDA MARIE BELL (Chief Judge, Department 7, Eighth Judicial District):
I have a presentation (Exhibit C) explaining the need for these additional judges in the Eighth District.

We are asking for three judges to help manage the significant increase in the caseload of our civil domestic judges. In addition, we are looking for three judges to eliminate the use of hearing masters in the time-sensitive area of dependency. This deals with kids who have come into the foster care system because their parents are unable to take care of them. We have excellent hearing masters; however, due to the structure, when a hearing master makes a decision, there is an objection period, and that causes delays in an area where we really cannot afford to delay things for these vulnerable children. We are therefore looking for three judges to replace those hearing masters, for a total of six new judges.

JUSTICE HARDESTY:
In the Second Judicial District Court, the request is being made for one family court judge. Washoe County has not increased the number of family court judges since 2007. There are 6 family court judges in Washoe County, and their caseload has increased significantly due to a 10 percent increase in the population in the last 9 years. Chief Judge Scott Freeman has tried a number of different ways to use senior judges and general jurisdiction judges to address that docket. We propose to add a family court judge to improve the stability of that docket and deal with specific areas, including guardianship requirements and termination of parental rights (TPR) dockets. Of importance in that district, along with what is being done in the Eighth Judicial District, is to transfer or replace a family court hearing master with a sitting judicial district court judge,

which increases the judicial capabilities of the district to deal with these important dockets and is a reason why, in both the Eighth Judicial District and the Second Judicial District, the counties fully support these measures.

In Elko County, there is not a specialized family court jurisdiction. The district court judges in Elko County, as in many other rural counties, operate with both general jurisdiction issues, criminal, civil and family court issues. Elko County has had two district court judges since 1987. In that time, the county population has increased 119 percent, and the County has only one hearing master. The County intends to maintain that hearing master, but the shortage of judicial resources has affected its ability to not only deal with TPR cases but also implement fully the benefits of specialty courts, including mental health court and veterans courts. The County hopes through the addition of this judge to be able to expand those services and deal with an accruing backlog of cases due to the fact that it only has two district court judges.

Elko County Commission supports this request.

SENATOR DONDERO LOOP:
How long do we anticipate these numbers will hold us?

JUSTICE HARDESTY:
In the Eighth Judicial District, the number requested is actually below what is needed. That is also true in the Second Judicial District. During the hearing of this bill in the Assembly Committee on Judiciary, Assemblyman Chris Edwards said, "With 60,000 cases and 14 judges in the family court and a 2,080-hour work week, you basically have about 30 minutes to hear each case." I am sure the lawyers on this Committee will recognize that 30 minutes is an absurdly small amount of time for these critically important cases. The numbers are similar in the other districts.

The addition of these judges will improve matters, but it is a far cry from where we need to be to provide justice in Nevada.

CHIEF JUDGE BELL:
Our initial analysis of need was 15 judges when we looked at what we needed courtwide as our population has grown over the last 10 years. Unfortunately, due to the downturn in the economy, we did not think it was appropriate to ask the Legislature for that many additional positions. It has put us, like many

agencies, in deficit in terms of the number of judges we have. We worked very hard with Clark County to come to a number that we could agree upon without causing a significant financial hardship to the County. Certainly, we need more judges than we are asking for.

JUSTICE HARDESTY:
One of the glaring areas of need in the Eighth Judicial District is the number of pending murder cases and capital murder cases. District Judge Douglas Herndon, the presiding judge of the Criminal Division in the Eighth District, and his colleagues have done an excellent job of managing these cases, and in the process of doing so have achieved a number of settlements and resolutions of those cases. But there is still a serious backlog that needs to be addressed. This is one of the areas Chief Judge Bell was concerned about, as is the Supreme Court, about the time it takes to get these cases addressed. However, given the reality of the budgets of the counties that bear most of the financial burden for the district court operations, this was the negotiated agreement at this stage.

SENATOR DONDERO LOOP:
I totally understand the Clark County piece. I worry that the Second Judicial District Court, given the way Washoe County is growing, may need to escalate again. As our population grows, so does the need for all the services.

SENATOR PICKARD:
For the last three years, I have worked exclusively in the family courts. I cannot imagine them having a larger caseload, particularly when we look at that 30-minute statistic. Fortunately, most of the judges I appear in front of usually give me more than 30 minutes.

I am curious to know why we are limiting the request to three district judges. These are the dependency cases, not the domestic cases, where we have a substantial backlog as well. You mentioned the negotiation. Was this a fiscal issue or a space issue? I also noticed that in section 7 of the bill we are putting off the effective date for Washoe and Clark Counties to 2021. Was this a response to the physical limitations because we do not have enough courtrooms?

CHIEF JUDGE BELL:
There are space concerns. When we add additional judges, those judges would be elected in the next election cycle, which would be in 2021. That is why that

part of the bill has a start date of January 2021. With respect to the number of judges requested, we analyzed what was the most critical need for the courts and what the county could manage primarily in terms of finances. Space is also an issue, though we could have added a few more judges and not run quite out of space.

SENATOR PICKARD:
The elections would occur in 2020, and this would be effective in 2021, is that correct?

CHIEF JUDGE BELL:
Yes.

JAMIE RODRIGUEZ (Washoe County):
We are in support of A.B. 43. We thank the Second Judicial District Court for reaching out to us early in the process. In Washoe County, we will be eliminating one hearing master position and replacing it with a judge. Outside of the monetary confines for counties, for Washoe County specifically, we do not actually have any additional space in which to put a new judge. We have an historic courthouse in downtown Reno, and we do not have the ability to expand outside of that at this point, especially with the budgetary constraints. Because it is historic, any work done to that building is far more expensive than the usual rebuilding project.

MS. BORTOLIN:
We thank the stakeholders for bringing this bill forward. We think it is very important. We are also particularly happy to see the allocation to the dependency courts.

When you look at the caselaw around what has happened in our dependency system, it has been ruled that a hearing master cannot preside over a TPR case. This causes a bifurcated system, depending on how the child gets assigned to a hearing master or a judge, and often means that for our kids in Child Protective Services, permanency can take a lot longer for a child whose case is assigned to a hearing master.

There are a lot more levels of appeals. We have one child who has been waiting over three years for her adoption to go through purely due to appeals related to whether cases in different parts of her case should be heard by a hearing master

or a judge. For this reason, we feel the system is not working for our children and that our children will achieve permanency better and faster if we can make this shift to all judicial officers so the children are all given a fair hand when they get to the judicial process. Those appeals have led to children spending Christmas in our congregate care because we are dealing with the appeals and slowing them down. We think that is a really worthwhile investment, and we appreciate it coming forward.

SENATOR PICKARD:
I want to make sure the record is clear. In 2017, we statutorily authorized the hearing masters to rule on TPR cases. They are fully authorized under law to do that. I know there is some dispute as to whether they should because they are not elected.

Setting that aside, it is my understanding that the appeal process on a TPR, if it is being heard by a hearing master, goes to the district court on a first review, and then if the litigants still disagree, they can then take that to the Supreme Court. If we create a district court position and eliminate the hearing masters, does that eliminate a level of appeal? We no longer have that first review at the district court level; we start in the district court, and the determination is now kicked up to the Supreme Court. My understanding is usually these reviews are handed in in a matter of days from the hearing master to the District Court. These are typically expedited reviews, but it will take months typically for the Supreme Court. Am I incorrect?

MS. BORTOLIN:
It is my understanding that not every case starts the same way. Some children are assigned directly to a judicial officer, whereas other children are assigned to a hearing officer. Where the hearing officer does create levels of appeal, that often leads to delay that is not happening in other cases because we have these additional time frames. There may be delays at different points in that system. If the hearing master renders a decision that was signed off by the district court judge, the district court judge may undertake a review, but you can also later appeal more generally. We often see that it is just remanded to be heard by a district court judge all over again, which restarts the clock. That is the process that from a child's perspective can be an unfair and unnecessary delay.

SENATOR PICKARD:
I appreciate that. However, if we start in the district court, we are going to eliminate a level of review that is beneficial to children because it is much faster. We are taking about days, maybe a week, to go from the hearing master to the district court, and I know of cases that have been reviewed by the district court on the same day the hearing master heard the case. If we are talking about speed of review, I would think we would want to start every TPR within a dependency context at the hearing master level so we can go through these cases quickly and address. But that is not in this bill.

ALEX ORTIZ (Assistant Director, Department of Administrative Services, Clark County):
We are here in support of A.B. 43. I want to thank Chief Judge Bell for working so closely with our commissioners and senior management team to get from the 15 judges we originally requested down to the 6 judges in this bill. That took some time and negotiation

Regarding the question of space, currently we do not have the space to accommodate these judges. However, the Las Vegas Municipal Court occupies some space at the Regional Justice Center, and the city is building its own facility and will be moving out of the Regional Justice Center when construction is complete in two years. When the city moves out, we will be able to accommodate the full complement of additional judges.

MICHAEL HILLERBY (Nevada District Judges' Association):
We are here to support the bill, and we appreciate your consideration of it.

CHAIR CANNIZZARO:
I will close the hearing on A.B. 43 and open the hearing on A.B. 420.

ASSEMBLY BILL 420 (1st Reprint): Revises provisions governing the criminal forfeiture of property. (BDR 14-717)

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):
Assemblyman Steve Yeager is on the Assembly Floor at the moment. He wanted me to let you know he is in support of due process protections relating to asset forfeiture, and that he is sorry he cannot be here to give his opening remarks for this bill. I will present the bill.

I would like to start by giving an overview. You are probably familiar with S.B. No. 358 of the 79th Session that was brought last Session by Senator Donald G. Gustavson. That bill was proposed by Senators Gustavson, Parks, Kieckhefer, Segerblom, Ford and Harris, and it had joint sponsors of Assemblymen Hambrick, Hansen, Titus and Wheeler. This is a modified version of that bill. There were concerns the last time this bill was presented. In proposing the legislation this Session, many of the concerns that arose last Session were addressed and modifications made to this bill.

I will give you some background history, go through the mechanics of the bill and then go through the amendments that were made to the bill in the Assembly.

The goal of A.B. 420 is to simplify the process of asset forfeiture. As we all know, those who commit crimes cannot profit from the proceeds of their crimes. Often, they are not allowed to retain the material instruments of that crime. Nobody is here to disparage the work done by law enforcement when it makes seizures with regard to a crime that is happening. Nonetheless, the process we have is old; it dates back to English common law. It is also cumbersome, and in many ways it is overkill.

This bill puts the process of asset forfeiture when something is seized as part of a crime into the criminal case. Currently, asset forfeitures are handled as civil cases and require a separate civil filing. The civil case is prosecuted independently of the criminal case. This bill simplifies the process by putting the forfeiture process into the criminal case, where it is associated appropriately with the crime. The bill is based on model legislation. Three other states have adopted similar legislation: New Mexico, Nebraska and North Carolina. Other states that have recently made similar modifications are Maryland, New Hampshire, Michigan and the District of Columbia.

I will go through sections of the bill. Section 52 repeals the existing statutory scheme governing the civil seizure forfeiture process.

Sections 2 through 28 of the bill enact a new statutory scheme under the jurisdiction of criminal courts rather than civil courts.

Section 6 of A.B. 420 declares that the stated goal of the legislation is to protect against the wrongful forfeiture of property and to ensure that only criminal forfeiture is allowed in Nevada.

Section 8 of the bill lays out the types of property subject to forfeiture law.

Section 9 provides that in order for forfeiture to take place, there must be proof of criminal conviction, a plea agreement approved by the court or an agreement by the parties.

Section 10 allows a court to substitute property in certain circumstances.

Section 11 prohibits the State from seeking personal money judgments not provided by law.

Section 12 provides that a defendant is not jointly or severally liable for awards owed by other defendants and provides for the distribution of property when ownership is unclear.

Sections 13 through 16 address when property may be seized by the court under specific circumstances.

Section 17 provides that an owner may post bond or give substitute property while awaiting trial.

Section 18 allows for the AG to remit or mitigate a forfeiture in certain circumstances.

Section 19 provides a process for a court to grant a motion to remit or mitigate a forfeiture if it makes specific findings.

Section 21 requires local rules to apply in the district court where the action is pending if there is a conflict with local rules across the State.

Section 22 requires that forfeiture litigation must take place in one proceeding with regard to that related criminal process.

Section 23 sets forth the circumstances under which a defendant may challenge the constitutionality of a forfeiture.

Section 24 provides that a bona fide security interest in property is not subject to forfeiture. That would be an innocent person.

Section 25 provides the forfeiture of an innocent owner's property and sets forth the conditions for determining innocence.

Section 26 sets forth the ways in which the State Treasurer is to dispose of excess property.

Section 27 prohibits law enforcement from retaining forfeited property for its own use.

Section 28 provides that a court will return seized property to the owner if certain findings are made.

That was how the law was introduced. The Las Vegas Metropolitan Police Department (LVMPD), which currently handles forfeitures in Clark County, had an initial laundry list of concerns. Some of those concerns were addressed in the amendment adopted in the Assembly Committee on Judiciary. I will run through the changes made by this amendment.

Section 5 of the bill was amended to indicate those who violate or attempt to violate a statute qualify for forfeiture.

Section 9 was amended to say that property can be forfeited at other times than when a person is found guilty. There are other circumstances that would also suffice, including the death of the defendant, where there is a showing by clear and convincing evidence that the defendant would have been convicted of a violation of statute and/or if the defendant absconds. We added circumstances where we could foresee that someone should be subject to forfeiture anyway even though the person may not end up with a conviction because he or she either dies or absconds.

Section 19 originally provided the opportunity for someone to go and say, "You seized all of my money. May I have some of it so I can retain defense counsel?" The LVMPD had concerns about that, so we modified it to say that the amount was not to exceed 10 percent of the value of the seized property or $100,000, whichever is greater. This bill is not about defense counsel being able to get

money to defend these clients. That happens sometimes in very large forfeiture cases.

In section 25 of A.B. 420, there was a slight change to reflect the situation where the equity on a vehicle is less than $15,000. Language was taken out of section 25, subsection 6.

Language was added to section 26 that allows the agency doing the seizure and forfeiture to retain reasonable costs. Importantly, section 26, subsection 4, paragraph (c) ensures that if restitution is owed, it comes out of the seized money and goes directly to the victim. It would never be returned to a defendant under any circumstance if there is a restitution issue.

Changes were made to section 27 to ensure that the bill did not interfere with law enforcement's current joint task force obligations. There are sharing agreements between the Drug Enforcement Administration (DEA), the LVMPD and the Nevada Highway Patrol. Under those sharing agreements, agencies basically share seized or forfeited assets. When a larger case ends up in federal court, the DEA will provide a portion of any seized or forfeited funds to the LVMPD or the Nevada Highway Patrol, and those local agencies are allowed to use those funds for specific law enforcement purposes. This bill does not attempt to alter any of that or change any of their joint task force goals or sharing formulas. Nor does it change the ability for a case to be filed in the district court or justice court, and then later filed in federal court for the seized assets to be handled in the federal case. There are no restrictions, and I know that was a big concern of the LVMPD.

That is what the bill does. I know this is a complicated subject, and I would like to emphasize again why A.B. 420 is important. In Nevada for fiscal year (FY) 2017-2018, across all law enforcement agencies in Nevada, $3.6 million in assets and funds were seized in various cases. The bulk of those came from the LVMPD, and the next largest amount came from the Reno Police Department. These forfeitures are appropriate in almost all cases, but the process is burdensome.

Many of these forfeitures are small amounts. For example, a report from the LVMPD lists forfeitures of $10,461, $587, $1,000, $988, $763 and $6,200. Dealing with each of these in a separate civil case is cumbersome and not practical for a defendant to hire a separate lawyer to independently deal with

this. Public defenders are not able to represent their clients in these separate civil proceedings.

In federal court, we just do the forfeiture in the federal case. It is an additional element in the criminal case. It is just pleaded as a single count at the end of the criminal complaint or indictment. It will say, "An allegation for forfeiture," and then when we negotiate a plea in the case, we negotiate the forfeited or seized amount of property. It is simply negotiated as an additional part of a plea negotiation just as you would negotiate restitution.

I am aware that my cohorts from two public defender agencies are in opposition to this bill. I believe their concerns are that this will cause too much additional work for the public defenders who are already overburdened. I do not think it will cause a lot of extra work. It is simply an additional element that is added to a criminal case. After all, the seizure and forfeiture of money is part of the punishment for the crime with which the defendants are being charged. If they are not being charged with a crime, we should not be taking their property or assets.

SENATOR HARRIS:
You said that public defenders cannot represent their clients in these forfeiture cases because they are separate cases. Assuming we were to connect the two, do public defenders have the training and understanding of the law to properly represent their clients in this kind of civil aspect? They are used to doing the criminal stuff, and this would be something new for them.

MS. RASMUSSEN:
These forfeiture issues look complicated, but they are not. There are just a few key principles to look at. First, is there a related crime that someone has been accused of? Second, is the person actually guilty of the crime? Third, is the forfeiture permitted under statute, and is it excessive?

I would certainly be willing to provide training in this area if requested. It is not complicated. We do it in federal court all the time, and we do not get a lot of training about it there. It is statute-driven; we look at the statute and decide if we are going to resolve it in a plea context, which is how most cases resolve. In the rare case, there may be something complicated to litigate, and we file a motion and talk about it in the context of sentencing. I do not think it is complicated or too hard for any of the public defenders. The only reason they

are not able to do it right now is that they cannot appear because of their charter as public defenders in a separately filed civil case.

MS. COFFEE:
I am here representing the Nevada Attorneys for Criminal Justice (NACJ) and as a member of the Office of the Special Public Defender, both of which support this bill.

As someone who has been a public defender for 19 years, I will tell you that often these matters are negotiated as part of plea agreements. In that case, the defendant will knowingly agree to a forfeiture and will often sign the paperwork for forfeiture when signing the plea agreement. It is an up-front part of a bargain for exchange. It does not create any burden or require extra resources from the public defender. If A.B. 420 is passed, I anticipate that most of these cases will be negotiated as plea agreements.

I cannot address your question about what happens in a private civil case, since we are not authorized as public defenders to represent clients in private civil matters. We represent the indigent, and the county pays us to do that. We cannot appear in civil matters as the situation currently exists.

SENATOR HARRIS:
Are you suggesting that if we pass this bill, not much will change because public defenders are already negotiating this portion?

MS. COFFEE:
Yes, that is fair to say. This bill would not change the fact that we currently negotiate a lot of forfeitures. It does stop property being seized by default judgment when defendants do not have representation or the means to represent themselves. This bill does not change what we do as public defenders. It does change the people who are subject to forfeiture.

SENATOR HARRIS:
I am guessing that those defendants who would have defaulted on forfeitures will now be represented by public defenders in these matters. Is this kind of practice currently covered under their malpractice insurance, or do you anticipate they would need to beef that up a little bit in order to cover this kind of practice?

MS. COFFEE:
I cannot answer a specific question about county liability. That is beyond my expertise. I will say, however, that this bill anticipates making forfeiture part of the criminal case so it would appear on a criminal complaint. As public defenders, we handle criminal matters for the indigent population. We currently handle forfeitures as they are rolled into criminal matters.

As I said, I cannot answer the question about liability insurance. I can speculate that it would not be a problem because we have been doing this for a few years. That is the best answer I can give.

SENATOR HARRIS:
I am confused. If you are already doing this, why are we changing the law? I cannot figure out which pieces of the bill you are already doing, which you are not doing and how this bill would change what you are doing.

MS. RASMUSSEN:
Ms. Coffee is correct when she says they are already doing this in some cases. It most often comes up in regard to guns. When guns are seized in criminal cases, an extra page is attached to the plea agreement where the person waives the right to ownership in the gun and the gun is forfeited. In some cases, this same procedure is followed with other property, but not always. When the value of the property is small, it seems like a waste to file a complete separate civil case to handle it. In some cases, a prosecutor who is particularly on the ball may say, "This property was seized in this case. Should we go ahead and add it to the plea?" So some cases are rolled into the criminal case, but it is not happening across the board.

Our concern is for those defendants who have had maybe $2,500 or $3,000 seized, and to them that is a lot of money. But as a lawyer in private practice, it would not be fiscally prudent for me to make an appearance in a completely separate civil case. Senator Pickard could probably tell you that he would not make an appearance to fight over $2,000 because that would be less than the retainer you would require to appear in the case, pay a $233 filing fee to appear, file an answer and go through the process. It is economically unfeasible to take the case unless the amount is substantial, so a lot of times defendants have no option but to default and lose their property.

SENATOR HARRIS:
One of the things I heard from you is that these cases are already combined when the DA is particularly on the ball and brings it forward as something to negotiate. Can the public defender also bring it forward as something to negotiate?

MS. COFFEE:
There are two issues. First, I am not going to go to the DA and say, "Let me draw your attention to some property you should take from my client." Second, sometimes the forfeiture action can happen after the case has been resolved or on a different timeline entirely. We might not even be aware of the forfeiture action. By making it part of the criminal action, A.B. 420 at least puts the attorney on notice. The action can be filed months after the fact. The LVMPD has its own legal section that goes into court and files a civil action. With the current mechanisms in place, it is going to be in a different courtroom than the criminal action, and we would most likely not be aware of it.

SENATOR SCHEIBLE:
Ms. Rasmussen hits the nail on the head with negotiating forfeitures of guns and cash. We seize guns and cash every day, and I think that is because those are instrumentalities of the crime. My understanding of the process is that we are clarifying that defendants understand their guns have to be forfeited. They are not giving up a right; they are not negotiating the forfeiture. They know they would lose a forfeiture action in civil court. So we try to streamline that process by having them sign Exhibit 2, which is the forfeiture agreement that says, "I know I can't have this gun. I agree to forfeit it." That is something DAs do on a regular basis to save the LVMPD from the hassle of going to court to prove that exact same thing. That is different from the idea of negotiating a forfeiture, where the law may be fuzzy and there may be arguments on both sides.

I do not feel that I as a prosecutor have the legal knowledge to walk into court and litigate whether a car, a house or a bank account that was seized should rightfully be returned, partially returned or not returned. How are we going to educate the hundreds of prosecutors and public defenders in Nevada who will expect to start litigating these complicated cases, the cases on the margins that are not clear-cut? Is there funding for it? Are there going to be additional attorneys for it? How are we going to prepare all these attorneys to litigate these cases that they have never been charged with litigating before?

MS. RASMUSSEN:
I do not think the issues are so complicated that you or anyone in your office cannot understand them. We are certainly willing to do training for the public defenders' offices. I would offer to train your office, though I am not sure you want me to do that. In addition, there are so few cases that come to litigation. I have been practicing for 20 years in State and federal court, and there are probably two cases in the history of my practice where there has been something substantial to litigate with regard to a forfeiture issue.

There are basically just three issues to consider: Is the item that was seized, whether it is cash, a gun or a vehicle, related to a crime? Is the person convicted of the crime? Is the forfeiture excessive? That last was one of the issues that came up in the U.S. Supreme Court case of *Timbs v. Indiana*, where a $48,000 vehicle was seized from someone who had 2 ounces of marijuana. The U.S. Supreme Court found that was an excessive fine under the Constitution's Eighth Amendment.

These are not complicated issues, but the current statutory scheme makes them seem overwhelming, which is why people do not show up to the civil cases and their assets are seized by default. That is not to say those assets would not have been forfeitable in the criminal case, but the one-page Exhibit 2 that gets filed with pleas on guns and cash is the forfeiture agreement. That agreement to forfeiture is part of the case. In Clark County, 99 percent of our cases are negotiated by plea, and restitution is negotiated as part of the plea. This is simply one additional element. I do not think it is complicated, and I have all the confidence in the world in the ability of all the prosecutors in your office to navigate these issues.

SENATOR SCHEIBLE:
Much like Senator Harris, I am confused about your saying this already happens and it is not a big deal, combined with testimony that it is really important to change the statute. I do not know how often I tell attorneys, victims and witnesses, "Forfeiture is separate; that is a civil matter." When someone asks me, "Can I get the money back? Can I get my phone back?" I have the ability to separate those and say, "I don't deal with the forfeiture aspect. Let's just talk about the crime; let's talk about restitution; let's talk about why the victims are feeling unsafe." I would feel much more comfortable moving forward with this change if we had an accurate assessment of how much time this is going to take. How many cases are there going to be? How often am I going to be on

the phone, in court or having a meeting with somebody about this because there is this new aspect to the case? Do we have an estimate? How many cases are currently being litigated in the civil forfeiture suit that are now going to be swept into a criminal case? I am thinking of the full-time attorneys at the LVMPD who are currently litigating these matters. If we need full-time attorneys to litigate forfeiture cases, you cannot expect the prosecutors and defense attorneys of our community to just absorb the workload.

MS. RASMUSSEN:
Let me talk first about why we need A.B. 420. I did not make this point clear. The money seized by the LVMPD, the proceeds of these forfeitures, go to the school fund. What LVMPD does first is take out its personnel costs and its costs for litigating the civil cases. Whatever is left goes to the school fund.

Why do we need the bill if we are already doing it? Because we are not doing it across the board. In the last fiscal year, 303 seizures were made and 490 forfeitures were accomplished. When I do a search, I find that LVMPD is filing a completely different civil case when the value of the forfeiture is low. There is no need to do that. We as taxpayers are paying for a cumbersome process. I am not complaining about the way LVMPD does it; the Department is following the statute. But it is costing labor and other unnecessary costs when it could simply be negotiated.

How much more effort is this going to take? If you look at the effort you would spend to negotiate a restitution case, it is minimal. This is just another element that gets negotiated. In federal court, we simply negotiate forfeitures just like any other element of the plea. It is not a big deal. When clients sign the plea, they are consenting to the forfeiture, and the forfeiture order gets filed along with the judgment of conviction. In a case that goes to trial, at sentencing, the judge decides if forfeiture is warranted. This is not something that requires a lot of extra time and attention. It is not a complicated process.

I believe the concerns of the public defenders are overblown, with all due respect to my colleagues. All of us who see each other at the court day in and day out are more than capable of navigating these issues.

SENATOR SCHEIBLE:
I would like to point out that private defense attorneys get paid by the hour, whereas public defenders do not. When you add to the public defender's workload, it is different from a private attorney.

Workload aside, I also have some philosophical questions about this process. Moving away from indigent clients, I am concerned about the door this opens for defendants from whom big sums of money or very valuable items are seized to use those items as bargaining chips. I can imagine a situation, and I believe this will happen, in which I have two drug trafficking cases. In the first, a defendant who had $10,000 cash seized and who has hired a private attorney asks me as the prosecutor to reduce the charge in exchange for forfeiting the cash. In the second case, a defendant who is indigent who had no cash seized is accused of the same crime, but since no cash was seized and the defendant has no private attorney, he or she does not have that bargaining chip to ask for a reduced charge. Personally, I hope I would tell the first defendant, "Sorry, but you can't get a lower charge just by forfeiting some of the money that was seized." But this bill seems to open up the door to these completely inequitable negotiations for people who have money as opposed to people who do not.

MS. RASMUSSEN:
I am not sure I can answer that question. Pleas are decided by your office, and we have very little power. We can make legal constitutional arguments in defending people, but we are not the ones in a position of power with regard to what pleas are offered. I would point out that it is not uncommon for your office to offer two different options in a plea. For example, one offer would be to plead to a gross misdemeanor but accept lifetime sex offender registration, and the other would be to plead to a felony and sex offender registration with an opportunity for a step-down later. We do not have any control over that.

I understand your concern that things may not be equitable, but I do not know that I can answer your question.

I do want to address one thing you said earlier, and that is that private lawyers get paid by the hour. We generally do not get paid by the hour. Most of us quote flat fees, and often halfway or two-thirds of the way through the representation, the client will say, "Oh yeah, by the way, what about my $4,900 that they seized? Am I going to get that back?" I am in the same unfortunate position of having to say, "I don't know because they haven't filed

a civil case. You didn't hire me to represent you in your civil case." Often I will help clients with their civil cases anyway without charging additional money. This has nothing to do with us benefiting from it.

SENATOR SCHEIBLE:
Let me put it another way. Do you really believe, in good conscience, that private attorneys who have clients who are very wealthy and who have large sums of money seized in the course of a criminal case are not going to come to the prosecutor's office and offer, as a negotiation, "My client will agree not to seek return of his or her property in exchange for a better deal"?

MS. COFFEE:
I know exactly what you are talking about. We see this on casino marker cases. People who are wealthy can pay off their markers without criminal charges. If people in this situation get a public defender, it usually means they have no money, and they are often facing multiple felonies. In this case, the defendant's financial situation results in the person getting treated in a much less favorable way. It is not the result of the bargaining of a private attorney; it is the fact that these default judgments affect poor people more than they do rich people. What the DA's office in Clark County does is its right, and it is solely within the power of the prosecutor to extend negotiations or not, make them similar or not. That is a fact of life, and I do not think this bill is going to change something that is true everywhere we look. I am sorry to be so cynical.

SENATOR SCHEIBLE:
It has been my experience that people can get their property back through a civil forfeiture before the criminal case is resolved. Would A.B. 420 result in the delayed return of property if they are tucked into the same case?

MS. RASMUSSEN:
This bill basically provides for the same ability for someone to go to the court and say, "This is excessive," or "The property is not related to the crime. Can I get my property back?" That motion could be filed in the criminal case just as it can in the civil case. I do not think it hurts anyone in that regard.

SENATOR PICKARD:
For me, this is a no-brainer when we go back to the U.S. Constitution and consider deprivation of property rights without a good process to protect them.

I have a concern with section 12 of the bill. How does that work? It states as the initial premise that if the ownership of the property is unclear, the court just gets to decide. There are no factors or explanation of how this would work, unless it exists elsewhere and I did not see it. Can you explain it?

MS. RASMUSSEN:
Yes. I will start with the restitution context, because this is why that section is in there. Currently, in criminal cases, let us say there are three defendants who rob a bank and steal $15,000. They all plead guilty or are convicted. The court is going to order restitution jointly and severally to all three defendants in the amount of $15,000. That is done in almost every criminal case. Restitution with multiple defendants is joint and several. That means that when they get out of prison and start paying restitution through their parole process, it does not matter who pays it; when the $15,000 is paid, the court stops collecting money. If one defendant has more money and pays more of it, so be it.

In the U.S. Supreme Court case *Honeycutt v. United States*, the Supreme Court made it clear that forfeiture cannot be joint and several. There must be an amount certain determined. Pursuant to *Honeycutt*, the amount is only to be what each person benefitted from the crime. If someone benefitted to the tune of $15,000, that person has to forfeit that amount. If there are three defendants and the court cannot figure out how each person benefitted, the court might say, "Okay, that means $5,000 from each of you." There is no further guidance because *Honeycutt* only gives us that much guidance. We are not trying to put anything more in the statute than the Supreme Court has given us, other than to say it cannot be joint and several.

SENATOR PICKARD:
We add guidance to statute beyond what the Supreme Court would give all the time. As I see it, restitution and forfeiture are separate issues. I certainly understand that if you have stolen $15,000, $15,000 of restitution has to be paid regardless of who pays it. But we are talking about property. Let us say someone purchases a vehicle for cash and is unwittingly caught with the proceeds of a theft when a friend throws a bag of money stolen from a bank into the back of the vehicle. The vehicle is seized, and the car's owner is charged as an accomplice. Now we are talking about a situation where the court says, "The property ownership is unclear. We don't know who owns this vehicle." How does the court assess whether the property is going to be divided

in terms of ownership? How does the court determine on a pro rata basis what is equitable if the ownership of the property itself is unclear?

MS. RASMUSSEN:
I would think that what the court would do in that case is look at the facts of the case, determine how many people were involved, what the amount was and then come up with a pro rata amount. In almost every case, this would be negotiated as part of the plea by the prosecutor and the defense lawyer.

SENATOR PICKARD:
As I understand it, then, we are just letting the court use whatever means it finds equitable. I am assuming there is an established process the court is going to follow.

MS. RASMUSSEN:
Yes. We trust courts to do that in many circumstances, including determining the best interests of a child. With restitution, we do not have a lot of guiding factors, other than it is about making victims whole and returning their property. This is about making sure the proceeds from a crime are not maintained because it is part of the punishment for a crime that defendants disgorge their proceeds. That is what forfeiture is: making sure no one benefits from a crime. At the same time, the defendant is entitled to due process protections. I know I am not answering your question directly, but I am trying.

SENATOR PICKARD:
I am satisfied. Ultimately, the core of this is that we are trying to make sure property that should not be forfeited is returned to the individual who owns it. As I said, that is a no-brainer, and we should be pursuing that.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
We are here in support of A.B. 420. The Criminal Law Reform Project has been at the forefront of organizations that have sought to rein in the practice of asset forfeiture across the U.S. The courts have weighed in on this issue, both under the Eighth Amendment's prohibition against excessive fines and under the due process clause. We have been successful in litigating and have come to settlement in a variety of jurisdictions that have looked at these issues, including Arizona, Pennsylvania and New Mexico. In the city of Philadelphia, there is a prohibition on seeking forfeiture of property valued at less than $250,

forfeiting property for simple marijuana possession or using forfeiture revenue to fund law enforcement agencies.

We think this bill is necessary, based on some of the practices we have observed in several jurisdictions in Nevada. Something has to be done; the government needs to act, or several counties could face litigation. This bill addresses many of our concerns by creating a simplified and streamlined process, adding due process protections and avoiding policing for profit.

DANIEL HONCHARIW (Nevada Policy Research Institute):
We are proud to support this bipartisan bill. I have a report from the Nevada Policy Research Institute (Exhibit D) titled, "Who Does Civil Asset Forfeiture Target Most?" that reviews LVMPD's forfeiture activities for FY 2016.

MARCOS LOPEZ (Americans for Prosperity, Nevada):
We support A.B. 420 because we want to protect property rights. We believe the bill restores due process. Exhibit D shows that asset forfeiture in Las Vegas targets the poorest and most racially diverse neighborhoods, impacting those with the least means to contest forfeiture. Out of the $5 million seized by the LVMPD in FY 2016, the majority of the forfeitures were worth less than $1,000. Because the cost of hiring an attorney and subsequent legal action was more than the value of the confiscated property, those who were accused had little to no recourse to demand the return of their property.

WISELET ROUZARD (Americans for Prosperity):
I urge you to support A.B. 420. This bill restores the concept of innocent until proven guilty, particularly for minorities and those who do not have much money. If you look at page 5 of Exhibit D, you will see a graph highlighting where forfeitures are most likely to occur in Las Vegas. The highest number of forfeitures occur in areas that are predominantly minority communities. I have spoken with several people who have been through this process and did not pursue the return of their property, partly because they did not understand the process and partly because they did not have the money. The report confirms that 56 percent of forfeitures are under $1,000 in value.

What you find here is it is not that the individuals are guilty. It is that they do not have the finances to prove their innocence. If we are talking about the Constitution, it was never meant to make a process so burdensome that those

who do not have money cannot prove their innocence. This bill restores that process so those who are truly innocent can retain their property.

A.J. DELAP (Las Vegas Metropolitan Police Department):
We are opposed to A.B. 420.

MATTHEW CHRISTIAN (Assistant General Counsel, Las Vegas Metropolitan Police Department):
One of my roles at the LVMPD is to pursue civil forfeitures.

We are opposed to this bill mainly because it is attempting to solve a problem that does not exist. In so doing, it is introducing a lot of ambiguity. A lot of provisions in this bill are unclear, whereas our current system is quite clear and has been tested by time. There are Nevada Supreme Court opinions that further define the parameters and procedures to be used. For that reason, this bill is a bad idea.

It is important to go through the current process because there is so much misunderstanding about how it works, especially in terms of the due process protections afforded to persons who have claims to seized property. The seizure process and the forfeiture process are two different things. A law enforcement agency cannot seize property unless there is probable cause to believe the property will be subject to forfeiture. That means officers have probable cause to believe a felony crime has been committed, and the seized property is either proceeds from that crime or an instrumentality used in the commission of the crime. That is the first protection. If a case comes across my desk where property has been seized and there is no probable cause, I cannot pursue a forfeiture, and the property will be returned.

If we move into the forfeiture process, a civil complaint must be filed. That complaint is just a placeholder. It holds the place in case the forfeiture cannot be resolved in the criminal case. In the vast majority of these cases, the person from whom the property is seized has a parallel criminal case. In the majority of the cases, the forfeiture of the property is resolved through the criminal process. The criminal defense attorney is involved, whether through a plea agreement or not. These cases only turn into civil matters when the defendant or claimant contends the property is not subject to forfeiture. In that case, it often gets quite complicated. The civil process is the best vehicle to resolve the question of where the property came from and whether it is subject to

forfeiture. It allows for discovery and other mechanisms that are well-vetted to determine the source of the property.

The process for the defendant/claimant is not as complicated as it has been made out to be. When a civil complaint is filed, if the person whose property was seized wants that property to be returned and the issue was not resolved in the criminal case, all the person needs to do is come forward and make a claim. These individuals can either contact the law enforcement entity and engage in a discussion of the source of the property, which we do every day, or they can file an answer to the civil complaint. That process is not complicated. If they have questions about the process, my office regularly refers them to services at the Clark County Regional Justice Center. Forms are provided. The goal is if someone has a valid claim to the property, we want to hear that claim and test it to make sure it is valid. We do not require any type of formality to the answer, and in fact we do not require that they even file an answer. If they want to provide information to us, we look at that information and take it from there.

One concern Senator Pickard brought up is about third parties. In many of these cases, we have innocent third parties, or parties who claim to be innocent, who have an interest in the seized property. One example would be a vehicle that is seized because it was used to transport stolen property. The person who was arrested while driving the vehicle may not own it. Under existing law, when I file a civil case, I am required to name not only the person driving the vehicle but also the party who owns the vehicle. That gives owners the opportunity to come to me and demonstrate that they knew nothing about the crime. If they can, they are innocent and their property has to be returned. Under A.B. 420, how would a third party make an appearance in someone else's criminal case? This bill would require someone who is innocent to come forward and make a claim as part of the criminal case. The way it works now, the process is more protective of third parties.

There has also been discussion about the concept of policing for profit. That is not the case here. The law already requires that any property seized be used first to reimburse any person with a bona fide interest in the property, which includes any victims to the crime. The next step is to reimburse the law enforcement entity for the administrative costs of processing the forfeitures. This bill would take away that funding so that there is no way to pay for that

work. After those costs are paid, the rest of the money goes to the school district. To call it policing for profit is a misnomer.

There are other provisions in the bill that demonstrate why a civil procedure is more appropriate. Section 11 provides that any other remedies will not be available. Since existing law is governed by civil law, if there is property subject to forfeiture, such as a home, we could place a lis pendens or lien on that property so it could not be disposed of pending the forfeiture action. We had a case recently in which a woman was accused of elder abuse. She took advantage of an elderly gentleman, tricking him into signing over the deed to his condominium. Because forfeiture is a civil process, we were able to file the forfeiture action and place a lien on the condominium so she could not sell it pending resolution of the criminal case.

There have been a lot of questions today about how the process works. We file about 250 forfeitures every year, and a majority of them are resolved within the confines of the criminal case. There are probably at least 50 to 60 cases each year where that does not happen because the person from whom the property was seized claims the property is legitimate. That is where I step in to discover if that claim is true. Civil law is the best remedy for that.

MR. SOLFERINO:
We are here today in opposition of A.B. 420. The Washoe County Sheriff's Office wants to ensure that all people are afforded due process. Without a criminal nexus, no one's property should be taken or forfeited. If property is taken in error, it should be returned immediately or as soon as practical.

I want to thank Assemblyman Yeager and Ms. Rasmussen for listening to our concerns. We appreciate the language they added to protect our federal task force; however, provisions in section 27 of the bill would bring that partnership into question and provide an avenue to effectively end our task force, which would have devastating consequences for law enforcement in Nevada.

The Nevada High Intensity Drug Trafficking Area (HIDTA) program is one of the most productive and recognized units in the U.S. This task force seizes thousands of pounds of narcotics annually and also seizes millions of dollars from illegal sales, transportation and distribution of narcotics in our region. The drugs that are seized and removed from the streets were destined for our cities, towns and neighborhoods. These drugs feed our public health crisis and have

ripple effects across the criminal justice community. The organizations targeted in these crimes have direct links to foreign and domestic terrorism groups, human and sex trafficking rings, and international drug traffickers.

Nevada HIDTA was formed specifically to target the large criminal enterprises and traffickers higher up in the food chain. So often in this Committee, we speak about going after the kingpins in this industry. This partnership with HIDTA and our local and federal partners gives us the ability to do so. Most local jurisdictions simply cannot logistically or financially take on a multistate criminal drug trafficking case, while HIDTA networks across state lines and in North and South America. Together, we can make a difference; separately, we cannot.

The loss of funding from HIDTA for FY 2019-2020 would amount to over $1.5 million in salaries, equipment, training and overtime to conduct investigations in northern Nevada alone. The HIDTA program provides training free of cost across northern and southern Nevada in the very disciplines that have been approved and discussed in this Committee, including crisis intervention, de-escalation, constitutional use of force, caselaw and excited delirium, to name just a few. In last night's meeting of the Senate Committee on Finance, we spoke about revenue shortages in northern Nevada agencies and keeping up with public safety in the wake of massive growth in Nevada. The loss of $1.5 million may not seem like a lot, but that money goes a long way in funding agencies that cannot afford the cost of training or equipment.

Members of northern Nevada HIDTA include the Washoe County Sheriff's Office, the Reno Police Department, the Sparks Police Department, the Nevada Highway Patrol, the DEA, the Washoe County DA's Office and the U.S. Attorney's Office for the District of Nevada. Over the course of the last several weeks, I have spoken to leaders in each of these organizations regarding our concerns and the collateral consequences of the passage of A.B. 420. I have received permission from those entities to share their opposition to this bill.

Criminal enterprise is no different from private enterprise. It is driven by the desire for power and profit. The only way we can shut it down is by interrupting the enterprise and stopping the source of funding.

I appreciate the comments made by Ms. Rasmussen this morning and her willingness to put that on the record. However, I interpret the language of the bill a little differently and believe that it provides a legal defense to target a case being turned over to a federal agency regardless of the preexisting memoranda of understanding that are in place.

MR. JONES:
We are here in opposition to this bill. I fear that some people are taking some of the abuses we have read about nationally and assuming they are going on in Nevada when actually they are not. Mr. Christian from the LVMPD aptly pointed out that there are two different aspects to this, seizure and forfeiture. There is a mechanism in a criminal case to challenge a seizure, and it can be found in NRS 179.085. This statute allows a defendant in a criminal case to file a motion to return unlawfully seized property. This provision was changed in 2015 in S.B. No. 191 of the 78th Session to allow a defendant to motion the court for return of property in situations beyond illegal seizure. So in terms of seizure itself, there is an existing mechanism in the criminal case.

With respect to forfeiture, we addressed these issues in 2015 with S.B. No. 138 of the 78th Session, which amended NRS 179.1171. It requires an annual report to the AG and prohibits forfeiture unless a complaint for forfeiture is filed within 120 days of the forfeiture. It also provides a stay of forfeiture proceedings during a criminal case. This means that nothing can happen to the property until the criminal case is resolved. That does away with the argument that forfeiture deprives defendants of the right to be considered innocent until proven guilty. Finally, existing law requires that property be returned within seven days if the charges are dismissed or if defendants are found not guilty. We already have numerous protections in statute to protect what have been called "the excesses of civil forfeiture."

NANCY SAVAGE (Assistant City Attorney, City of Henderson):
I handle our forfeitures in Henderson. I would like to state my opposition to A.B. 420. We have the same objections as the prior speakers. I would also add that in 2015, some of the protections for individuals who had property seized included that if a person is acquitted, the property is returned. If a person is not charged, the property is returned. If the charges are dismissed, the property is returned. Also, with respect to the claims of policing for profit, we have a statute that specifies what the funds can be used for and specifically states that they cannot be used to pay ordinary operating expenses of a police agency.

Many of the problems this bill is intended to address are already included in the statutory scheme we have. That scheme has been tested and honed over time. It is a full and comprehensive statute. What is being proposed in this bill would replace what we have with a statute that is not comprehensive. The bill has gaps in its procedures. I do not believe it is necessary, and I think we would find inadequacies in what is being proposed.

The City of Henderson strongly opposes A.B. 420.

JOHN J. PIRO (Clark County Public Defender's Office):
It is with great frustration that I have to oppose this bill, especially after listening to the other testimony in opposition. Previous speakers are wrong when they say that the system in place works well and is fair. It is easy for LVMPD attorneys to roll over poor people in civil proceedings when they do not have an attorney present. The civil process is ridiculously hard, and it is frustrating to come here and hear them say it is a simple process. It is not simple, and it is not fair.

The only problem we have with A.B. 420 is with staffing. As a public defender, I handle about 290 cases a year, and that average is lower than some of the other attorneys because I have been out of the office during this Legislative Session. Were this bill to pass in its current form, you would be asking our staff to do more work with less staff. Passing a tax to pay for more cops is palatable, but as we increase police officers, there is no corresponding increase in the staff of the DA's office or the public defender's office to deal with the increased number of arrests.

To say that the forfeiture process works well is not true. To say that we have not made national news and the problems are happening elsewhere is also not true. I was here last Session when Senator Gustavson played a video that covered a problem in Nevada with these issues. To say that this is not a problem in Nevada is beyond frustrating, and it makes me mad that I have to be up here opposing this bill. Reform is most certainly needed. As I said, the only issue our office has with this bill is staffing.

Negotiating the forfeiture of a weapon is easy, yes, but imagine a situation in which a kid is selling drugs out of his mom's house. I have to fight that case to make sure the mom's house is not seized. That is going to be a difficult procedure. The nexus is the thing. Is the house in nexus with the crime? Is the

car in nexus with the crime? It is not just about acquittals and dismissals. It is about the nexus between the property and the crime. The police do not always get that right, and we have to fight it. And I would love to fight it, if we just had more staff.

Opposing this bill is frustrating for me. It is not true to say that the process is clear and fair and that our system works.

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):
I echo Mr. Piro's statements. We oppose A.B. 420 mostly because of staffing issues. We believe this bill will have a tremendous fiscal and time impact on the Washoe County Public Defender's Office. Our attorneys already carry caseloads that push the bounds of the American Bar Association's legal standards. The fiscal impact will require a minimum of four experienced attorneys with civil backgrounds and experience, one legal secretary and two office support staff paralegals.

Although we appreciate Ms. Rasmussen's offer to provide us with training, we believe that in order to uphold our standards, we will need to spend a minimum of $15,000 in the first year in continuing legal education to ensure all of our attorneys have the information about the civil discovery process, the civil subpoena process and things of that nature to make sure we are compliant.

We disagree that we would be covered by the fact that this would be done through a criminal proceeding and thus we would not need additional malpractice insurance. We believe we would, since we would be engaging in civil discovery procedure.

We also have a concern about how this would play out in the criminal process. Will this have more people pleading to crimes in order to get their money or property back? Will people be potentially giving up on issues like motions to suppress where they would then have to say, "Yes, this is my property," even though they may not be able to prove it?

We are also unclear about whether this process would allow for a third party with a claim on seized property to have a right to counsel, since it is in a criminal proceeding. Would that mean if I am representing my client and a third party says, "I have an interest in that property," that third party has a right to

counsel? If so, it could either be through the public defender's office or through a conflict counsel. In that case, the burden would be on the county and on the State.

Those are our reasons for opposing A.B. 420. We do agree that some reform is needed. However, at this point, we are opposed to this bill.

DELEN GOLDBERG (City of North Las Vegas):
We appreciate the work that has been done on this bill, and we believe the amendments made in the Assembly are an improvement. However, we still oppose A.B. 420 and feel strongly that maintaining the current statute as written is the best-case scenario.

This bill proposes an entirely new forfeiture procedure. Several unanswered questions remain. What are forfeiture trials going to look like? Who will take the lead? Will they require the law enforcement entity to send an attorney to all criminal court dates involving forfeiture? Would the law enforcement agency be ceding control over disposition of the forfeiture if we do not appear at every court date to defend our interests? Would having the law enforcement agency as a party in a criminal matter slow down the process?

While the procedure on its face sounds workable, more time needs to be spent identifying potential issues and workable solutions.

MR. SPRATLEY:
We oppose this bill.

MS. RASMUSSEN:
This is an Assembly Committee on Judiciary bill. I am here on behalf of NACJ presenting the bill on behalf of Assemblyman Yeager.

This is a good bill. It is frustrating that Assemblyman Yeager and I have been available all Session to talk about any of the concerns we heard today. I have reached out on multiple occasions and spent a great deal of time working with Mr. Christian and the LVMPD. I have listened to all of their concerns and have done my best to suggest amendments to Assemblyman Yeager to meet those concerns, and many of them were incorporated into the bill. To come in the day before sine die and say, "We don't like this, we don't like that," makes it

apparent that the opponents do not like the bill and are not interested in a solution.

The amendments that were made to the bill addressed the major concerns that were brought to us. I do not think it is going to be costly. When I look at Washoe County in particular, there are 38 nonfederal cases litigated in Washoe County. Only one of them is greater than $2,000. This is not a substantial effort that is going to require four additional lawyers. All of us can do these procedures with confidence. I have worked with many of you, and we are more than capable of handling this issue in a criminal context.

I urge your support of A.B. 420.

CHAIR CANNIZZARO:
I will close the hearing on A.B. 420 and open the work session on A.B. 425.

ASSEMBLY BILL 425 (2nd Reprint): Revises provisions governing fingerprinting services. (BDR 14-945)

PATRICK GUINAN (Committee Policy Analyst):
I have a work session document (Exhibit E) summarizing the bill and including the amendment proposed by Mike Draper on behalf of Assemblyman Edgar Flores.

SENATOR HARRIS:
Does the proposed amendment in Exhibit E represent the full text of the bill, or is this just excerpts showing what would be changed?

MIKE DRAPER (Fingerprinting Express):
The proposed amendment shows what would be the full text of the bill.

> SENATOR HANSEN MOVED TO AMEND AND DO PASS AS AMENDED A.B. 425 WITH THE AMENDMENT IN EXHIBIT E.
>
> SENATOR HAMMOND SECONDED THE MOTION.

SENATOR HARRIS:
As section 4 is still included in the bill, I do not think I can support it at this time.

SENATOR OHRENSCHALL:
I support moving the bill out of Committee, but I want to talk with Senator Harris about her concerns and will reserve my right to vote no on the Senate Floor.

SENATOR DONDERO LOOP:
Could someone give us a legal overview of section 4?

MR. DRAPER:
Section 4 of the bill is language requested by the Department of Public Safety (DPS). When we came to them, we thought it made sense that employees at fingerprint background check companies should also have to go through fingerprint background checks because they handle personal information. The DPS has language elsewhere in other industries and services that essentially says, "What gives the DPS the authority to require fingerprint background checks is if you enter into a contract with DPS." These are not arbitrary contracts. If you meet all the Department's requirements, you are contracting with DPS to transmit the information to the Department. That is what that section does.

SENATOR DONDERO LOOP:
Is DPS setting out the criteria for what needs to be done? Who is saying, "You have to have fingerprints"? Who is saying, "You have to have a contract"? Whose ideas or criteria is that?

MR. DRAPER:
All of that is set out by DPS. It mimics what DPS does with other services. We told DPS we thought our employees should be fingerprint background checked, and DPS said, "This is the language and how we would prefer to do it."

SENATOR HARRIS:
I understand that you would like the DPS to be able to require the fingerprinting of those who are handling sensitive information. It seems to be that section 5 gives DPS the authority to create regulations necessary to do this, and I am okay with that. But why is that not enough? Why does the Department need to require the contracts in section 4?

MR. DRAPER:
I do not know; DPS drafted the language in the original bill and in the amendment. The Department insisted that this is how it has had to do it in other areas that require fingerprint background checks.

SENATOR HARRIS:
Would the Committee be willing to withdraw the motion and consider a new motion to amend and do pass as amended with the deletion of section 4?

SENATOR PICKARD:
It is my recollection that the Central Repository for Nevada Records of Criminal History cannot accept the fingerprint information without a contract. I believe that is the reason for section 4.

SENATOR HARRIS:
I asked that question of the director of the Repository, and the answer was that you do not have to have a contract. In fact, we have fingerprinting businesses already participating that do not have contracts with the Repository.

MR. DRAPER:
There is some confusion on that; DPS does require a contract in order for them to accept personal information from you. You do not need a contract to do fingerprint background checks if you are not transmitting the information to DPS. Part of the reason for this bill was to allow us to take some of the burden of background checks being done by law enforcement or the school district, and in order to do that, you need a contract with DPS. Companies that do not transmit to DPS do not need a contract.

SENATOR HARRIS:
Thank you for that clarification. My basic concern still stands. Why do we require a contract? If a company only wants to do private background checks, that is its prerogative. You are suggesting that if it also wants to do this in the public sphere, like for schools and county jobs, it would need this contract. But I am not seeing any reason why we would need to require every business to have this contract if it does not do background checks for the public sector.

SENATOR DONDERO LOOP:
My concern is what would happen if Company A, which normally only does private background checks, suddenly decides to do background checks for

school employees. There is no check to know what that private company is doing. How would the company know it needs a contract to do public background checks? How would the public entity know it could not go to that company?

SENATOR HARRIS:
Correct me if I am wrong, but I believe DPS simply would not accept the information from that private company because DPS does not have a contract with that company. The company could attempt to do it, but it would not be allowed to.

MR. DRAPER:
This is how this bill came about. A couple of years ago, we and others were talking to law enforcement agencies about doing some of the civilian background checks being done by those agencies to lessen the workload. There are some we cannot do; we cannot process applications for permits to carry a concealed weapon, for example. That will always be done by law enforcement. But there are some we can do. Law enforcement said, "Yeah, we really appreciate this, but we would feel a heck of a lot better if there was some regulation around fingerprint background check companies."

More than 80 industries are required by statute to get fingerprint background checks. There is little oversight, and DPS has few tools on what it can do to provide some kind of oversight. The original form of this bill was to license all fingerprint background companies. It was revenue-neutral. We amended that in the Assembly to include what we thought was a baseline of regulation that was not cumbersome and would not put anyone out of business. The DPS was comfortable with this as a way to start. The bill codifies for DPS some things it would like to do but does not have the authority to do. That is where this started.

In the private fingerprint industry, there is not a lot of business where you are not transmitting the information to DPS. If you are in an industry required to do background checks, you have to go through the Repository. Without that, the most you will get back is maybe the person's work history.

SENATOR DONDERO LOOP:
I am struggling with why a contract with the DPS would be a problem. If you are going to do fingerprints, go to the DPS, get a contract and do your fingerprints.

SENATOR HARRIS:
Again, I suggest that section 5 of the bill gives the DPS broad regulatory authority that it could use to require fingerprint companies to enter into a contract with the Repository through regulation. I do not see any need to put that contract into statute. We are giving DPS quite a few tools that the Legislative Commission will review, and I trust it will come up with regulations that are appropriate and not overly cumbersome.

SENATOR PICKARD:
When we first started regulating and licensing contractors, we started on similar grounds. We started, as most states do, with public works contractors but not residential contractors. It grew to the point where some were subject to the regulations and some were not.

If we give the DPS regulatory authority but do not require that the fingerprinting companies obtain a contract, then the regulations have no effect over those that are not doing business with the Repository. We then end up with a consumer protection problem. Consumers might go to these unreported fingerprint places, pay the $25 or $50 to do their fingerprints and only then find out that the results were not uploaded to the Repository because the company is not under contract. The consumers then have to go to a second company and start all over again. That causes confusion on many levels.

I understand this is one of the discussions that came up last Session when we added requirements for school volunteers and others in the classroom to get fingerprinted. This bill just makes everybody play off the same sheet of music. I think section 4 is critically important because it speaks to those that do not fall underneath the regulatory protections of the DPS.

SENATOR HANSEN:
I am not willing to withdraw my motion to amend and do pass as amended with the amendment in Exhibit E. I am comfortable with the bill and amendment as is.

CHAIR CANNIZZARO:
After consultation with Committee Counsel, we will vote on Senator Hansen's original motion.

THE MOTION PASSED. (SENATORS CANNIZZARO AND HARRIS VOTED NO. SENATOR OHRENSCHALL WAS EXCUSED FOR THE VOTE.)

* * * * *

CHAIR CANNIZZARO:
I will open the work session on A.B. 19.

MR. GUINAN:
This bill was heard earlier this morning. No amendments were submitted.

SENATOR SCHEIBLE MOVED TO DO PASS A.B. 19.

SENATOR DONDERO LOOP SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR OHRENSCHALL WAS EXCUSED FOR THE VOTE.)

* * * * *

CHAIR CANNIZZARO:
I will open the work session on A.B. 43.

MR. GUINAN:
This bill was heard earlier this morning. No amendments were submitted.

SENATOR SCHEIBLE VOTED TO DO PASS A.B. 43.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR OHRENSCHALL WAS EXCUSED FOR THE VOTE.)

* * * * *

CHAIR CANNIZZARO:
Is there any public comment? Hearing none, I will adjourn at 12:01 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	4		Attendance Roster
A.B. 43	C	7	Linda Marie Bell	Presentation
A.B. 420	D	7	Daniel Honchariw / Nevada Policy Research Institute	Who Does Civil Asset Forfeiture Target Most?
A.B. 425	E	3	Patrick Guinan	Work session document