MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
March 16, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:08 a.m. on Monday, March 16, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Sean McDonald, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

L.J. O'Neale, Deputy District Attorney, Clark County District Attorney's Office, Las Vegas, Nevada
Bruce Nelson, Deputy District Attorney, Clark County District Attorney's Office, Las Vegas, Nevada
Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada
P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada
Sam Bateman, representing the Nevada District Attorneys Association, Las Vegas, Nevada
Tony Almaraz, Deputy Chief, Nevada Highway Patrol, Department of Public Safety
Ronald Dreher, Government Affairs Director, Peace Officers Research Association of Nevada, Reno, Nevada
Brett Kandt, representing the Office of the Attorney General and the Advisory Council for Prosecuting Attorneys, Carson City, Nevada

Chairman Anderson:
[Roll called. Opening remarks on protocol on testifying before the Committee.]

Assembly Bill 244: Provides for the public auctioning of certain confiscated and forfeited firearms under certain circumstances. (BDR 15-762)

Mr. Hambrick, do you want to make a disclosure relative to Assembly Bill 244?

Assemblyman Hambrick:
It is my intent to withdraw the bill and hopefully resubmit it at some later date should I return at another session.

Chairman Anderson:
It is Mr. Hambrick's bill, but it now belongs to the Committee since it has been submitted to the floor and referred to this Committee. It is the pleasure of the Committee. If there is no one objecting, we will put it back on the board, or do you want it indefinitely postponed, Mr. Hambrick?

Assemblyman Hambrick:
Mr. Chairman, if it is the pleasure of the Chair, I would prefer that it be indefinitely postponed.

Chairman Anderson:
Okay. So that we can close it, so we will not use it as a vehicle for another piece of legislation, the Chair will entertain a motion to indefinitely postpone A.B. 244, at the request of Mr. Hambrick.

> ASSEMBLYMAN HAMBRICK MOVED TO INDEFINITELY POSTPONE ASSEMBLY BILL 244.

All those in favor please indicate by saying aye. All those in opposition.

> THE MOTION PASSED UNANIMOUSLY.

Mr. Secretary, please record it as unanimous, with Mr. Mortenson now being in attendance, an indefinite postponement of A.B. 244.

[The motion to indefinitely postpone set out above, which action was in doubt by the Committee, was taken up again on March 18, 2009, and the motion to indefinitely postpone was subsequently made, seconded, and passed at that meeting.]

Let me open the hearing on Assembly Bill 250.

Assembly Bill 250: Revises provisions relating to certain affidavits or declarations of experts. (BDR 4-1018)

Assemblyman Mark A. Manendo, Clark County Assembly District No. 18:
I bring forth Assembly Bill 250 on behalf of the Nevada District Attorneys Association. In Las Vegas, we have Mr. O'Neale and Mr. Nelson, who are the

experts in this particular area. I would like them to testify since I am proposing the bill for them.

L.J. O'Neale, Deputy District Attorney, Clark County District Attorney's Office, Las Vegas, Nevada:

I am the chief of our vehicular crimes unit. Among our responsibilities is the prosecution of misdemeanor driving while under the influence (DUI) offenses. We have asked for your consideration of this bill because it is a procedural bill. It does not affect anyone's substantive rights. However, it does make things a little bit easier and a lot less expensive.

The first portion of the bill amends *Nevada Revised Statutes* (NRS) 50.320 regarding the admissibility of an affidavit to change the qualification requirement from a person who is qualified "in the district court of any county" to "a court of record." When the statute was first introduced in 1971, the district court was the only court of record. In 1979, justice courts and designated municipal courts became courts of record, but the language in the statute was never changed to accommodate this new reality. This is significant because, with the crowding of the courts, especially the district court, we have people who have been working and are qualified as experts who have never actually had the chance to testify in a district court trial just because of the competition to get court time for various cases. This does not affect us so much as it does proceedings such as the Department of Motor Vehicles' administrative hearings, which accept affidavits from people who are qualified. We have people who have been working in the Las Vegas Metropolitan Police Department's (Metro) crime lab for four or five years who are not qualified under the present statute because they never qualified as an expert in the district court. Because the justice courts are courts of record, anything said there can of course be examined and their qualifications, or a lack thereof, can certainly be ascertained easily. This is just more of an administrative change but one that I think is significant with the evolution of the courts.

The section of the bill that defines the term "chemist" is becoming significant because, as persons go to greater and greater extremes in the defense of cases, we have seen a couple of instances where defense counsel say, well, your chemist is not really a chemist because his or her job title is not chemist. In fact, none of the people who do this work have a job title of chemist. Metro forensic lab people are forensic scientists. They used to be called criminalists, and this was changed a couple of years ago. The people who do the analysis for Quest Laboratories, which does the Highway Patrol cases, are termed forensic technicians. So their job titles do not say chemist. Chemist is perhaps on the lowest level as a term of art because people say, "Do you have your chemist available? Is your chemist ready to go?" So these people are always

referred to as chemists even though their job titles are not chemist. This is just a clarification that, for these people that everybody calls chemists, the law will call them chemists as well.

The language of the bill that would provide the most savings in time and money for us is the ability to give a notice of intent to use an affidavit by personally serving it on the attorney or the defendant. This would typically be done in court when the attorney receives the discovery for the case. Because DUIs have jail time attached to them, attorneys are always appointed for the indigent. It is very rare for a person to waive counsel, and that happens only because someone is in jail and has the prospect of immediate release if they settle the case right away. Even in these cases, our judges will ask the public defender, although not appointed to represent the person, to act as a friend of the court and give legal advice to the person as to his or her rights.

A DUI defendant, if a case is ever set for trial, will have an attorney. We can hand the notice to the attorney, they get it much sooner, and it does not affect any of their rights as far as their ability to object or deal with it appropriately. It saves us the time of our secretaries: it takes about five minutes to set up these two letters because you have to send one to the defendant and one to the attorney. About a quarter of the ones that are sent to the defendants are returned because they have moved or the address is bad. Five minutes is not much, but when you have 8,000 to 10,000 cases per year, five minutes adds up. The cost for sending a certified letter is about $5 with a return receipt. That is $10 per case. If we send it registered mail, as the statute permits, registered mail starts at $10, so that would be about $20 a case. Merely handing the attorney the notice gives him the notice sooner and as effectively, does not compromise any of the defense rights, and saves a lot of time and trouble. Again, this goes back several years, perhaps at a time when certified mail was the most reliable way to get things to someone. Now, at least in our courts, since people are given the discovery and they sign for it at the first arraignment, it would be a more direct and efficient way to accomplish the process without affecting substantive rights.

Chairman Anderson:
Mr. Nelson, any additional testimony that you need to put on the record?

Bruce Nelson, Deputy District Attorney, Clark County District Attorney's Office, Las Vegas, Nevada:
No, I will just echo everything Mr. O'Neale said unless the Committee has any questions.

Assemblyman Carpenter:
For either witness, will they sign for this information when you give it to them, or what kind of a situation will exist to acknowledge receipt?

L.J. O'Neale:
Typically, it would be part of the discovery package, and, in fact, they do sign a receipt for the discovery because we have a per-page charge for copying and a charge for duplicating photo discs and other things. They do sign and acknowledge that they have received discovery.

Assemblyman Horne:
It was just a clarification that I wanted. These are going to be given to counsel at the time of discovery—I can see the ease of this for public defenders, you could serve the public defender's office, but private attorneys often withdraw before discovery. I would hate to see a situation where an attorney who has withdrawn receives this notice and not the actual attorney. A person may be without an attorney for a period of time. Discovery is not always immediately given upon receiving a case.

L.J. O'Neale:
The problems we have are probably greater with the present system. When we have a new attorney substitute in for a defendant, we do routinely renotice them by certified mail. Generally, as far as an attorney withdrawing before arraignment, that is fairly rare in our cases. We usually do not give the discovery until the arraignment when the attorney actually confirms as counsel. Certainly, we do renotice new attorneys. Sometimes, we do not know there is a new attorney until the day set for trial. Someone will typically have a public defender, and then they or their family will hire private counsel. As it stands now, the last time I ran the numbers, about 23 percent of our DUI misdemeanor cases were public defenders, and the rest were private counsel. It is a preponderance of private counsel in our cases. We do renotice them with certified mail. It just doubles that particular cost, but we would routinely reserve them. We want to make sure people have discovery because we do not want to have all our witnesses show up for a trial date and the attorney says he never got discovery.

Chairman Anderson:
Mr. Horne, are you concerned with the language at page 3, subsection 2(b)? You feel that there is a need for greater clarification that notice be served other than by registered or certified mail? Do you want it clarified that each of the attorneys be served? Are you going to make a suggestion that we broaden this in some way?

Assemblyman Horne:
No, I am comfortable the way it is.

Assemblywoman Parnell:
What concerns me is you are deleting who performs the service with the deletion of "by the prosecuting attorney." There is no other reference as to who is actually doing it. If you could clarify that for me, I would appreciate it.

L.J. O'Neale:
Actually, that seems to be how the bill emerged from drafting. We do not mind taking on that responsibility. We think it is ours anyway. We did not ask for that language to be removed. Grammatically, the language should probably appear at the end of the sentence. We are happy with adding the language back in since we are the ones who do it anyway.

Bruce Nelson:
The way discovery is typically served is that our district attorney (DA) clerk will hand it to the defendant. Technically, they are being served by the clerk and not by the prosecutor, so I think that is why that language was eliminated. It really does not matter. The main point is they are getting it in court from someone from our office.

Assemblywoman Parnell:
I think the word "by" needs to be there somewhere in that section because it should show who is going to be doing it.

L.J. O'Neale:
I would just say "by the prosecution."

Chairman Anderson:
I think the Legislative Counsel Bureau (LCB) will solve it.

Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada:
As a practical matter, I do not think this changes very much at all. The defense attorney, if a person is represented, can request that they be served in lieu of the defendant. There is still a process to make sure that the defendant has an opportunity to object in writing whether this is served via certified mail or by personal service.

Chairman Anderson:
I will close the hearing on Assembly Bill 250.

Ms. Parnell, we will ask Legal to look at the need to remove the language from the bill. Ms. Chisel, did you have something?

Jennifer M. Chisel, Committee Policy Analyst:
Our Committee Counsel is watching the hearing, and he indicated to me that deleting "by the prosecuting attorney" is because the language is not necessary. In other words, the defendant will know who is serving him. It is usually served by the clerk or someone in that office, so that is why the language was deleted.

Chairman Anderson:
The bill drafter is of the opinion that the language is apparently no longer needed.

Assemblywoman Parnell:
It concerns me because it does not state who is responsible for it.

Chairman Anderson:
I am sure the bill drafter would be happy to return the language if you insist.

Assemblywoman Parnell:
If Legal is comfortable, I am fine with that.

Chairman Anderson:
The hearing is closed on A.B. 250. The Chair will entertain a motion.

> ASSEMBLYMAN CARPENTER MOVED TO DO PASS ASSEMBLY BILL 250.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED (ASSEMBLYMAN GUSTAVSON WAS ABSENT FOR THE VOTE.)

Let us open the hearing on Assembly Bill 253.

Assembly Bill 253: Revises the crime of resisting, delaying or obstructing a public officer in the discharge of his duties. (BDR 15-892)

Assemblyman Ty Cobb, Washoe County Assembly District No. 26:
[Read from prepared remarks (Exhibit C).]

P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety:
[Read from prepared testimony (Exhibit D).]

Assemblyman Gustavson:
Under Rule 23, I would like to disclose that my daughter is a deputy sheriff with Washoe County, but it will not affect her any more than anybody else. I will be voting on the bill.

Chairman Anderson:
Captain O'Neill, the perpetrators were charged with what kind of a crime, under the current statute? If one of them is serving 12 years, something must have been of a category B or C felony against you as an individual rather than as a police officer.

P.K. O'Neill:
I have to apologize to you. I knew they plea negotiated at the time, but it has slipped my memory as to what charges they actually pled to. I just know the time served on sentencing.

Assemblyman Cobb:
Just to complete the testimony, this also does affect situations where an individual disarms the peace officer but does not necessarily try to use the gun against that officer. Obviously, it is a very serious crime to attempt to murder an individual, so that is probably what those individuals were charged with, to which they later pled out. But in a situation where an individual takes the officer's firearm, but does not attempt to use it against him, this crime would also address that scenario. It will show how serious we are as a society about trying to keep firearms out of the hands of criminals. I believe there are several individuals from the law enforcement community who wish to testify.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada:
We would like to go on record as strongly supporting this bill. I happen to be the historian for the Peace Officers' Memorial. We are adding another name on the wall this year, unfortunately, and that makes it 104. I hope to God we never have to add another one, but I know that will not happen.

Chairman Anderson:
We are very fortunate that Captain O'Neill's name was not added, under the circumstances.

Assemblyman Horne:
I do not think any of us are opposed to protecting our officers on the street, but I think the point is, as you highlighted, we thought we handled this. I am waiting on asking the DAs and the police officers some questions. Police officers want to be protected by all means, rightfully so, but if we already have ways of prosecuting such conduct, I think the DAs and the police departments are the best people to ask.

Sam Bateman, representing the Nevada District Attorneys Association, Las Vegas, Nevada:
I would be happy to answer any specific questions. Obviously, we are in support of this bill.

Chairman Anderson:
Currently, we have tried to create a standard, generally speaking, that is uniform so that we do not put people into special classes: the underlying law is sufficient so every citizen feels the same level of protection as every other citizen. We also recognize that police officers, by the nature of their employment, have weapons with them at all times. In fact, they are even expected to carry weapons when they are off duty, in some cases. What kind of a problem does that create for us if someone may not know? Are our laws not strong enough to provide for the prosecution of somebody who attacks a police officer?

Sam Bateman:
I think the crimes that were charged in Captain O'Neill's case probably carried higher penalties, and those crimes were pretty well covered in the exact situation that Mr. O'Neill was in. As Assemblyman Cobb noted toward the end of his comments, perhaps there is a loophole in the resisting statute when a suspect resists and attempts to take a police officer's weapon. The important point of the resisting statute is that you are resisting a police officer who is on duty and engaged in police duties, potentially creating a very serious situation because most police officers do carry weapons on them. The loophole that is addressed here is the situation where someone attempts to take a weapon from a police officer but is unsuccessful in doing so. This would bring that situation into statute as a "resisting with a weapon," even though the suspect did not obtain the weapon from the police officer.

Assemblyman Horne:
This suggests two scenarios. First, as outlined in Captain O'Neill's situation it escalated to an attempted murder, and we had that covered before. Second, in a situation where someone disarms an officer, but does not attempt to shoot the officer—they had physical possession of the weapon for a moment before

throwing the gun to the ground—how would the DA's office typically charge that?

Sam Bateman:
Under those circumstances, I think you could potentially charge the misdemeanor crime of resisting that is currently in the statute. You may be able to charge resisting with a weapon because they were able to secure the weapon from the holster of the police officer, even though they only maintained it for a little while, and that would be a category D felony under the existing statute.

Assemblyman Horne:
Which is 1-4 years?

Sam Bateman:
Correct. You may be able to charge, depending on the circumstances, a battery on an officer, which would be a gross misdemeanor. You could potentially charge an attempted robbery, but throwing the weapon away quickly might make that problematic. Attempted robbery I believe would be 1-10 years. Just off the top of my head, those are the crimes that I think you could potentially charge.

Assemblyman Horne:
So, no more than 6 months for a misdemeanor; 1-10 years for the attempted robbery; and 1-4 years for the resisting with a weapon. Mr. Frierson, on the attempt, would it be subjective to the officer? If an officer files a resisting report and says that during the struggle the defendant attempted to obtain the officer's firearm, is that problematic for the public defender, or have you seen such a fact pattern?

Jason Frierson, Clark County Public Defender's Office, Las Vegas, Nevada:
That actually touches on the primary concern of the Public Defender's Office. We certainly do not want to get in the way of protecting law enforcement. They are charged with protecting the public, and that includes us. However, conceivably every single resisting arrest case that ever arises could involve the officer's subjective belief that somebody is going after his weapon. That would arguably raise every misdemeanor resisting scenario, under this proposed legislation, directly to a felony. We have a concern with protecting law enforcement with a broad stroke that would open the door for every single resisting situation, when an officer was armed, to be perceived as that offender was potentially going after that officer's weapon.

In Captain O'Neill's situation, I wanted to point out just taking notes of the potential charges enumerated by Mr. Bateman, that even a few of those listed would expose those individuals to a prison term from 17-70 years. It may be dangerous to frame legislation on negotiations when that is not what the defendants were exposed to as a consequence of their actions. Attempted murder is 2-20 years; with use of a weapon is an additional 1-20 years; and robbery is 2-15, with an additional 1-15 for use of a weapon. Those two in and of themselves would expose somebody to 6 years on the bottom, at the very least, up to 17 on the bottom. If they were maxed out, if that case was not resolved, we have laws in place now that would expose those individuals to a term from 17-70 years. That is not a function of how the parties may negotiate cases, but we have laws that will expose individuals to lengthy prison sentences.

Tony Almaraz, Deputy Chief, Nevada Highway Patrol, Department of Public Safety:

I have been doing this for 21 years. I have had the opportunity to work the highways for a number of years, and I have had the opportunity to come across many different walks of life during my time. Fortunately, I have been able to go home fairly unscathed from most of my contacts with people I have dealt with. However, there have been times where I have had some pretty scary moments out there in terms of resisting, whether it is wrestling around with someone who does not want to go to jail or someone who really wanted to disarm me for some reason, and you later find out that maybe he just wanted to get away. The problem here is you really never do know. In Captain O'Neill's situation, thank God he is here. I was in a situation where I was over at Parole and Probation for about a year, and I am sure everyone is very familiar with Officer Kara Kelly-Borgognone. At the time she was over at Parole and Probation, I was actually her captain. She ran into a situation where she was trying to get a urinalysis from a subject who was under the influence of meth. That turned out to be a terrifying situation for her and another officer, Officer Greshock, in an office where the guy was just trying to flee and attempted to grab her weapon in an effort to get out of the building. Unfortunately, it resulted in her and Officer Greshock getting into a violent confrontation with this individual, which ended in Officer Kelly-Borgognone having to shoot and kill the individual. It was very scary for both officers. Unfortunately, a year later, Officer Kelly-Borgognone was killed in an unrelated issue.

We teach our officers, when they get into some kind of close quarters situation, whether the offenders are trying to disarm them or not, how to hold and preserve their weapons. That is key. If you lose that weapon, the odds go up tremendously that you could be hurt or killed. We do teach about that.

Fortunately, in most of our cases where people resist, they are usually trying to get away. We teach our officers how to discuss these situations in the arrest report when it goes to the district attorney's office for prosecution.

I submit that the situation is critical to all police officers, and I appreciate the time.

Ronald Dreher, Government Affairs Director, Peace Officers Research Association of Nevada, Reno, Nevada:

I am here to ask for your support for A.B. 253 for a number of reasons. I thank Assemblyman Cobb and all of the other sponsors for bringing this bill forward. It is definitely needed. It is another tool, as you have heard.

From a police officer's standpoint, I was on patrol for many years. I retired from Reno Police in 1999 after having 26 years with that agency. I retired as a homicide detective. In that capacity, I had the unfortunate experience of investigating the types of crimes like Captain O'Neill's. There are various types of these situations. The reason we have this tool in front of you is not to negotiate but to provide a big deterrent to the people out there who attack us on a daily basis. I was attacked as a patrol officer when we stopped a couple of burglars in the middle of the night. I had a rookie with me. All of a sudden, the fight was on. But for the fact that we had cover, I may not be here any more than Captain O'Neill. The fact of the matter is we do not want to die; we want to go home to our families each and every night.

Another example is John Bohach, who is deceased, who was a Reno police officer on the street when he confronted an individual. You confront somebody—we call them field interviews—who is doing something wrong and in an instant they are going for your gun and they are taking you down. In Officer Bohach's case, they ripped his holster off of his belt, pulled the gun out, and attempted to shoot him. But for the fact that he grabbed the slide, he would have been killed. He ultimately died from another injury years later.

I have a lieutenant with the Reno Police Department. In the middle of the night, during a burglary in progress, he confronts an individual walking out of an establishment, and has no idea who this person is. The next thing he knows he has several chops to his head with a lawnmower blade. He pulled his weapon out, had officer safety stamina, shot the guy, and killed him.

It is not uncommon to see these types of situations, as you heard Captain O'Neill talk about. It is a deterrent. Our gang members today pride themselves on confronting us. The tools that we have for some of these issues are attempted murder, murder with a deadly weapon, battery with a deadly

weapon, and resisting a public officer with a weapon. A.B. 253 talks about dangerous weapons. What happens if you do not use a weapon and confront the officer? It still remains a misdemeanor. It is not so much subjective on the officer's part, it is what the facts show to the investigator. For the most part, an officer is not going to say a suspect was going for his gun when he did not.

I was going to bring with me today my ASP baton. It is a little tool about this big [indicates size], and when you flip it open, it becomes a major baton. It is made out of steel. We carry that on purpose. Some of us still carry batons. And, today, as you know, we carry Tasers. A Taser can be a deadly weapon in the wrong hands. These are all of the things officers carry: a Taser, an ASP, a baton, a knife, a radio. A radio could be a deadly weapon, but as the Chairman knows, the *Nevada Revised Statutes* (NRS) define what a dangerous weapon is, so we are limited to that, as well.

In summary, this is a tool bill. It is another step, another deterrent, against these people who are attacking us on a daily basis. If I did an investigation, I would charge them with everything, and I would trust and hope that the district attorney's office would follow that up and that person would be prosecuted and sentenced on each one. We, on our side, do not want the pleas negotiated; we want that person going away forever. Lastly, there is an individual who went to prison not long ago, who was sentenced to concurrent four counts of life with possibility of parole. He has said he will kill a cop when he gets out. These are the types of things we ask your support in by passing A.B. 253. I ask that you take those things into consideration when considering this bill.

Chairman Anderson:
It always distresses me to ask this question, and I always ask it: what makes you believe that the person who is doing this even cares about the fact that this will move to be a higher level crime? I do not believe that is part of their thinking. I do not think there is rational thinking here because you would not do this if you were rational. I realize that gang members may see this as a status issue. But your assertion that offenders are going to make a rational decision—I am not going to take the weapon because it will move me from a misdemeanor to a felony—I just do not see that happening.

Ronald Dreher:
I do not disagree with you because most of them are irrational, but the ones you just mentioned, the gangs, do see it is a status symbol. They get tattoos for that and they get kudos for taking us on. I agree with you.

Assemblyman Horne:
You touched on making a rational decision and having a tool. It sounds like the tool is to move this from a category D to C felony and add a year on to the sentence. That does not seem to be much of a deterrent, particularly in the situations that have been described here today, all of which have put officers' lives in danger. One of the tools that we already have is the death penalty. I do not know of a situation when a cop has been killed and the death penalty has not been on the table. Everybody knows if you kill a cop, particularly in Nevada, you are going to be looking at the death penalty, but that has not stopped people from trying to do it. I do not know how—maybe you can explain it—this is going to be a tool to prevent this from happening. I do not see a groundswell of concern where people have said we have a problem out here. People are attempting to get police officers' guns and hurt them with those guns, and this bill will stop that from happening. We have not heard that. We have heard that these situations happen from time to time, and when they do happen, we hear about the various charges that are filed when it happens. So, it seems like this is already being addressed. I do not see how this will be a valuable tool.

Ronald Dreher:
I do not disagree with what you are saying, but I would like to add this: I would love to see a category A felony put on that, for the same situation, because we talk to kids very early and tell them what will happen if they do bad things. We are trying to keep them in the right direction. One of the things that we have is our tools. Every law enforcement officer at the academy talks about putting tools into our toolbox to use to keep our citizens and our officers safe. This is just another tool, another step, to send a message to people to stop doing this to us. It is not right. We are the first responders out there taking care of business and making sure 24/7/365 that you are safe. When we have one of our people attacked, the attackers have to know that they will have the book thrown at them. This is one step in the book. It may turn out that this is the only step. A lot of things happen in negotiations, and I do not want to see this used in negotiations, but I also know that, in reality, it will be. It is another thing that we use, another tool that we use, to make sure that people stop attacking us.

Chairman Anderson:
Let me close the hearing on A.B. 253.

I want to look at a few things before we move with this bill.

Let us take a five-minute break so we can get out our work session document.

[The Committee stood in recess at 9:20 a.m. and was called back to order at 9:39 a.m.]

Let us turn our attention to the work session document on A.B. 88 (Exhibit E).

Assembly Bill 88: Establishes a civil remedy for a person who was a victim of a sexual offense which was used to promote child pornography. (BDR 15-267)

Jennifer M. Chisel, Committee Policy Analyst:
Assembly Bill 88 was brought to the Committee by the Attorney General. This bill would create a civil cause of action for a person who, while a minor, was the victim of child pornography. In this cause of action, the victim's actual damages are deemed to be at least $150,000. During the hearing, there were a few amendments, all proposed by the Office of the Attorney General.

The first amendment would amend the bill itself. It would be to remove subsection 5, on page 2, which is at lines 15-20. This is the provision authorizing the Office of the Attorney General to bring this civil lawsuit on behalf of the victim. This language was taken from the Florida statute, and it was determined by the Office that this scenario would probably not work very well in Nevada. That is why they are seeking to remove that provision from the bill.

The second amendment would change existing statute. It would amend *Nevada Revised Statutes* (NRS) 200.725 by removing the elements of advertising or distributing from this particular crime because the Office felt that advertising and distributing is within the definition of promote, which is a category A felony under a different provision, NRS 200.720. This clarifies whether the crime of advertising and distributing would be a category A or category B felony. It was the preference of the Office to clarify that it was a category A felony.

The third amendment would change existing statute by amending NRS 200.730 to add the offense of accessing the Internet with the intent to view child pornography. In testimony it was described that, with the evolution of the Internet, a person has the ability to view streaming video without actually downloading. This would provide law enforcement with the opportunity to charge under accessing with the intent to view child pornography.

The other issue that the Committee may consider is the statute of limitations period in the bill. This was taken from Florida statute. It provides a three-year statute of limitations for these victims. The limitations period is a policy

consideration for the Committee; if the Committee so chooses, that could be another possible amendment.

Chairman Anderson:
It would appear that the statute of limitations, Mr. Carpenter, does not conflict. We can make it all one, if you would like. I am going to suggest that, in order to move the bill along, that we accept proposed Amendment 1. I think we will have long discussions about Amendments 2 and 3. While they are valuable discussions, I do not think that they will help us to gain much headway with the bill.

Assemblyman Segerblom:
I would concur with you. I know that when we talked about this recently we were concerned that if you happened to end up at a website there might be a possibility that you would be charged with some type of sex crime because you intended to do something. To try to figure that out at this point I think would be very difficult and just confuse the bill. I prefer that we stick with the original bill and leave the other issues for sometime down the road.

Assemblyman Cobb:
Just to clarify, if we follow the motion as stated, this would not include the viewing of streaming videos and things like that, which is becoming fairly common with child pornography. Is that the case?

Chairman Anderson:
Perhaps Mr. Segerblom can clarify.

Assemblyman Segerblom:
The original bill was designed to allow the victim of child pornography to sue. An amendment was proposed which then made viewing streaming video a crime, which adds a whole different area. The problem is intent: was there intent when you looked at the streaming video? If law enforcement could show you went to the website, would that mean you were somehow a child sex offender and had to register for life? There were a lot of issues there that I felt we could not flesh out in time, and they were really extraneous to the bill. The bill was just allowing the victim of child pornography to sue the maker of the pornography.

Chairman Anderson:
I think we are in agreement, Mr. Cobb, that we felt that the opportunity to sue within the three years was there, but technology is constantly changing. We are trying to keep ourselves current on this issue, but as it pertains to the third amendment, it may be a longer discussion than we apparently had time for.

Assemblyman Cobb:
I just know that in discussions with law enforcement, they consider it an absolutely crucial need right now to allow them to prove intent to view in the actual viewing of streaming video in order to prosecute child pornography. And, if this is not the appropriate vehicle for that type of addition to statutory law, I certainly understand that. I was just hoping to understand if we were going to have a guarantee that such a vehicle will be coming forward at a later date to meet that absolutely crucial need for law enforcement or if this is our only opportunity.

Chairman Anderson:
I think I signed a bill this morning that dealt with this question, in part. If it is your desire, we will put this bill back to the board again. I will not guarantee that it will be in the next work session document.

Assemblyman Cobb:
I do not want to hold it up as long as there is an opportunity later on to address the issue that we are deferring right now.

Chairman Anderson:
I cannot guarantee what is going to happen tomorrow, but I did note that there is a bill that potentially deals with this area, if not directly.

There is agreement on Amendment 1. Mr. Cobb is of the opinion that Amendments 2 and 3 be included, correct?

Assemblyman Cobb:
Yes, I would prefer that Amendments 2 and 3 be included in this bill. Again, if it is going to hold up this bill, which I think is a good bill in and of itself, and there is another vehicle, I do not want to hold up the bill.

Assemblyman Horne:
I agree with you and your Vice Chair that, if we are going to move the bill and avoid the risk of hanging it up, the original motion will do that. Regarding these other amendments, I do not know if there is another vehicle somewhere to put them in, but there has been some angst with those other two amendments.

Assemblyman Ohrenschall:
I agree with my colleague from District 34. I think this bill has always been about civil remedies, and I think we should keep it in the civil remedy area and find another vehicle for criminal remedies.

Assemblyman Gustavson:
I agree with my colleague from Reno that I would like to see Amendments 1, 2, and 3 in this bill, but I do not want to hold up a good bill.

Chairman Anderson:
Amendment 1 deals with the civil remedy question. Amendments 2 and 3 broaden the question overall to the underlying crime. That is where the division is taking place within the Committee: whether there was sufficient information for the Committee to feel comfortable with the questions that were asked and answered, in part, about the broadening of the criminal remedy to include streaming video and other technological questions.

Assemblyman Gustavson:
I understand that.

Chairman Anderson:
The Chair is of the opinion that, while we remain concerned about the issues as suggested by the Attorney General's Office, we are more concerned about, and feel more comfortable with, the amendatory language suggested in removing section 1, subsection 5, on page 2, lines 15-20, of the bill. Thus, an Amend and Do Pass motion would be an acceptable motion to the Chair.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 88 WITH AMENDMENT NO. 1.
>
> ASSEMBLYMAN HORNE SECONDED THE MOTION.

Assemblyman Carpenter:
I really have a problem with this bill because it says that "it is not a defense to a cause of action under this section that a defendant did not know the victim or did not personally engage in the sexual conduct which involved the victim." It just seems to me that it leaves it wide open to set someone up who really did not do anything, but somebody had an idea that there was a way to get back at someone. My idea is if you have been convicted, then a victim should be able to bring this cause of action. Without a conviction, I feel uneasy about being able to bring this kind of action.

Chairman Anderson:
You are concerned with subsection 6 of section 1, the right to bring a case regardless of whether anybody has been prosecuted or convicted.

Assemblyman Carpenter:
I have a problem with subsections 4, 5, and 6.

Assemblyman Manendo:
I was going to say take out subsection 6, but now I see he is talking about subsections 4, 5, and 6.

Chairman Anderson:
Mr. Carpenter, are you of the opinion that subsection 6 should be further amended so that a victim could only bring a case when a person was found guilty? In other words, if someone were adjudicated at some time for child pornography, the fact that you now discover this as an adult—you were a child at the time—that you would now have a civil cause for action. Is that what your concern is, the fact that the person who has done this has to be charged in some meaningful way?

Assemblyman Carpenter:
It says "regardless of whether any person has been prosecuted." If they had been prosecuted and found not guilty, I think we are carrying it too far. If they had been prosecuted, maybe the jury could not decide whether they were guilty. I do not feel right about making people stand up to this kind of a situation when maybe they really had not done anything. I may be wrong, but I think we are treading on real shaky ground here.

Assemblywoman Parnell:
I am reading section 1, subsection 1, and the intent there, as I have been reading it, is that they have been found guilty of a sexual offense. If that is the case, subsection 6 contradicts subsection 1. In that case, I would agree with my colleague from Elko that if subsections 4, 5, and 6 are deleted, perhaps that cleans up the language and would suggest there has been a prosecution of an offense.

Assemblyman Cobb:
I want to clarify the comments by my colleagues from the north. I do not see anything in subsection 1 that suggests that there has to be a conviction: it just discusses an offense. The other subsections are not subordinate to subsection 1; they are other subsections. Speaking in general to the concept of an individual bringing a civil suit where another individual has not been convicted of a crime, it is quite common in our jurisprudence. You do not have to be convicted of a crime for an individual to bring a civil suit against you for an action upon which a crime can be charged but may not have been charged or was not actually brought all the way to full conviction.

Chairman Anderson:
Wrongful death.

Assemblyman Cobb:
Correct.

Brett Kandt, representing the Office of the Attorney General and the Advisory Council for Prosecuting Attorneys, Carson City, Nevada:
If you could direct a specific question to me, I was not sure what clarification you were seeking.

Chairman Anderson:
We are concerned about the issues that Mr. Carpenter raised: that a person be convicted of an offense before a victim has standing to bring a civil action and that it is not a defense to an action that the defendant did not know the victim or did not engage in any sexual conduct involving any person.

Brett Kandt:
I can only follow on the comments from Assemblyman Cobb, and I believe you, Chairman Anderson, also made a reference to wrongful death lawsuits that oftentimes occur in a civil case resulting from an incident involving a death or a prosecution for murder. The best example would be the O.J. Simpson case in the 1990s. He was prosecuted and acquitted for the murder of two individuals, but he was held civilly liable in wrongful death lawsuits that were brought in connection with the deaths of those individuals. It is a different standard of proof in the civil case. Here, we envision that, in creating the civil remedy, an individual would not have it tied in any way, shape, or form to any criminal case. In essence, that answers why we sought subsection 6.

With regard to subsection 4, we felt it appropriate to not distinguish between an individual who involves a child in pornography or actually participates in the pornography with the child and an individual who may not have known the child, involved the child, or participated with the child but nevertheless was involved in promoting or possessing that child pornography. We see there is no distinction: individuals are culpable regardless of whether they know the child or are involved in the porn and should be held accountable civilly.

Chairman Anderson:
Mr. Carpenter, does that help you reach a conclusion or do you remain where you were?

Assemblyman Carpenter:
I remain where I was. In the situation of Mr. Simpson, there must be some way you can already do it, so why do we need to encourage people to do it, would

be my only response. I just have a gut feeling that it is not right to have a statute like this on our books.

Chairman Anderson:
[Restated the motion.]

> THE MOTION PASSED. (ASSEMBLYMEN CARPENTER AND MORTENSON VOTED NO.)

Assembly Bill 102 is in the book, but we will not take it up. I will not be putting it back in the work session for a while.

[Discussed upcoming work session schedule.]

We are adjourned [at 10:19 a.m.].

RESPECTFULLY SUBMITTED:

_____
Sean McDonald
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 16, 2009 Time of Meeting: 8:08 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Guest list
A.B. 253	C	Assemblyman Ty Cobb	Prepared remarks
A.B. 253	D	P.K. O'Neill	Written testimony
A.B. 88	E	Jennifer Chisel	Work session document