

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
March 4, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:24 p.m. on Wednesday, March 4, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Senator Tick Segerblom (Excused)

GUEST LEGISLATORS PRESENT:

Senator Don Gustavson, Senatorial District No. 14

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Julia Barker, Committee Secretary

OTHERS PRESENT:

Lee McGrath, Institute for Justice
Robert Fellner, Nevada Policy Research Institute
Janine Hansen, State President, Nevada Families for Freedom
Vanessa Spinazola, American Civil Liberties Union of Nevada

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John Wagner, Independent American Party
Lauren Billings
Brett Kandt, Special Assistant, Office of the Attorney General
Kristin Erickson, Nevada District Attorneys Association
Keith Munro, Deputy District Attorney, District Attorney's Office,
Washoe County
Thomas Moreo, District Attorney's Office, Clark County
James Bonkavich, Las Vegas Metropolitan Police Department
H. Adrian Sandoval, Las Vegas Metropolitan Police Department
A.J. Delap, Las Vegas Metropolitan Police Department
Mac Venzon, Deputy Chief of Operations, Reno Police Department
Scott Gilles, City of Reno
Mike Cathcart, City of Henderson
Warren Hardy, City of Mesquite
Nichole Rourke, Clark County School District

Chair Brower:

I will open the meeting of the Senate Committee on Judiciary with the hearing on Senate Bill (S.B.) 138.

SENATE BILL 138: Revises provisions governing the forfeiture of property.
(BDR 14-222)

Senator Don Gustavson (Senatorial District No. 14):

Civil forfeiture laws represent one of the most serious assaults that can be levied against innocent citizens on private property rights in the Nation today. A video about this topic ([Exhibit C](#)) shows a situation in Humboldt County.

Under civil forfeiture laws, law enforcement can seize cash or other property, sell it and then use the proceeds pretty much however it sees fit, even if you were never arrested or charged with a crime. Passage of S.B. 138 does not eliminate law enforcement's ability to combat drug cartels and other criminal activity. The intent of this legislation is to protect an innocent individual's liberty and property rights and to keep innocent citizens from becoming entangled in the process that results in rights being trampled.

An innocent tourist driving back to Utah after winning a \$1,000 jackpot from a local casino can have that money confiscated though he or she has not been accused of any crime. The burden then falls on the innocent victim to get the

money back, a legal process that is time-consuming and oftentimes more costly than the value of the asset taken from the victim.

The driver on the dashcam recording in the video, [Exhibit C](#), who was never charged with any crime, was told by the deputy who took his cash, “Good luck proving it. You’ll burn it up in attorney fees before we get it back to you.” If the deputy had probable cause that a crime was being committed, then the deputy has a responsibility to make an arrest, seize all assets and impound the vehicle. Because the cash was seized and the driver was free to leave with his cashier’s check and his vehicle without being charged with a crime, a victim can only assume the objective of this stop was to hunt for cash and nothing more.

This bill would help reform forfeiture laws in Nevada to strengthen protections for innocent victims who are never charged with crimes. Specifically, it would end civil forfeiture; direct forfeiture proceeds to the State General Fund rather than the local agency doing the confiscating; strengthen innocent owner claims by spouses and other third parties who jointly own the property and are not charged with crimes; protect an innocent landlord from losing his or her property when that person had no idea that property was the scene of another party’s crime; and strengthen the reporting requirements in regard to assets being seized and how those assets were spent.

I applaud the efforts of the newly elected Sheriff and District Attorney (DA) in Humboldt County who are working quickly to correct the egregious acts that got out of hand and resulted in a flurry of lawsuits. Unless we as lawmakers fix the current language, we will continue to see these rights of innocent people trampled. I came forward to you with this legislation because it is not unusual to travel with cash, and under civil forfeiture laws, my money can be considered guilty until I prove it innocent, even though I have not been charged with a crime in connection with the money I possess. Having my property seized on a whim—even though I have not been charged with a crime—results in a nightmarish process to have my rightful assets returned to me, a costly time-consuming process often superseding the asset being confiscated.

Nevada is not alone. Civil forfeiture laws enacted around the Country after the 9/11 terrorist attacks eventually resulted in widespread, unintended consequences.

Lee McGrath (Institute for Justice):

I support [S.B. 138](#). No one acquitted of a crime in a criminal court should lose his or her property through forfeiture in civil court. No one who is not charged with a crime should lose his or her property through civil forfeiture. I would like to give you a way to think about civil forfeiture as a two-track system, highlight the key aspects of this bill, and suggest the State is not alone and what this bill does is not radical.

If I am driving through Reno or Carson City and I get stopped, my person goes into the criminal justice system, but my car and my cash go into the civil system. The problems that arise in civil forfeiture are a product of this two-track system in which the person has more constitutional protections—including the right to an attorney—and certain presumptions. The State has certain burdens that do not exist or are different in civil law. It is the fact that two tracks invite the type of problems highlighted in [Exhibit C](#). Nationwide, I have seen that people can lose their property by having it seized on one track without being charged and having their day in court on the second track.

There are two types of property owners, the suspect and those who know the suspect. [Senate Bill 138](#) eliminates the two track-system, replacing it with a more simple, straightforward, one-track system: criminal forfeiture process. This is so that if I am stopped, my person and my cash and car go into the criminal justice system. In such circumstances, I would have a right to an attorney throughout the process and the same judge and jury will consider my guilt and whether my car and cash were an instrument or proceeds of the crime to which I have been convicted. The beauty of this process is that it solves many problems that exist for people who face the loss of property without being charged or convicted of a crime. It is also a vehicle for both the suspect, as the property owner, as well as the innocent owner to raise claims about his or her seized property.

Section 12 gets right at the heart of the matter. It is a conviction requirement and allows for plea bargaining. At the core, it says that you are innocent, that the State recognizes your presumption of innocence, recognizes that your property is innocent and that the title to your property should not be lost without an underlying criminal activity proven by the State.

Sections 16 and 17 deal with seizure. Law enforcement does seizures while prosecutors do forfeitures. These sections clarify that nothing will change for

police officers and sheriffs. Nothing in this bill changes the day-to-day work of law enforcers on the streets seizing contraband, cash and cars. As long as they have probable cause, they can continue to do that.

Section 22 allows for a prompt postseizure hearing where an innocent owner claimant can go to court and not have to wait until the end of the criminal trial to make a case that his or her property should be returned promptly. This will avoid depreciation and loss of value that can occur while a vehicle sits in an impound lot.

Section 27 would be the biggest change in State law. Under the law, the wife, neighbor or innocent owner claimant has both the burden of production and the burden of proof. The wife must show that she is an owner or co-owner, and she also must prove that she did not have knowledge about the criminal activities of her husband, the suspect. This bill changes that to a way consistent with the idea that people should be presumed innocent until proven guilty. It keeps the burden of production on the innocent owner claimant so he or she must prove title; but it switches the burden of proof to the government. The government should have to prove that the claimant did have actual or constructive knowledge to the suspect's criminal activities. The bill defines both actual and constructive knowledge.

Section 28 is the core of S.B. 138. It removes the financial incentives that perversely motivate some members of law enforcement to see that the job is to fund the ongoing budgets of law enforcement. Section 28 ensures that anything seized and ultimately forfeited goes to the State Treasurer for end deposit into the General Fund.

Minnesota has an advantage by knowing exactly what seizures are happening in the state. The chairman of the Minnesota Judiciary Committee was reminded that of the 7,000 seizures in Minnesota, the average seizure is \$1,408 and 95 percent of the seizures are less than \$5,000. With that information, Minnesota can make public policy decisions outside of the emotional claims that seizures and forfeitures are an integral tool in the important work of law enforcement.

The state can see that forfeiture does have a role, but that it is a very different role from what is often portrayed as a useful tool in combating criminal syndicates. The acts in Nevada may be completely different from Minnesota.

This bill produces those facts so that in the future when policy issues do return, you will have a much greater sense of how forfeitures and seizures are occurring in your State.

Nevada is not alone. Twenty-six states from Arkansas to Wyoming are currently considering forfeiture reforms of various types. Some, like New Hampshire, are as straightforward and comprehensive as S.B. 138. Others are incremental, but every state legislature is responding to the revelations that people are losing their property even though it is very hard to find victims. It is my belief that victims in other states do not come forward because of the size of what has been seized and because of other factors like presenting themselves in public.

The bill is modest compared to other states. For example, Colorado and California legislatures are considering putting caps and prohibitions on how state and local law enforcement can work and collaborate with the federal government. This bill does not address that, instead focusing on Nevada State law and forfeitures that occur under State law. Other states, like California, are considering attorneys' fees. California is borrowing language that exists in federal law enacted under the Civil Asset Forfeiture Reform Act of 2000. This bill does not have an attorneys' fees provision.

Senate Bill 138 is consistent with some core principles of American jurisprudence, including the idea that everyone deserves his or her day in court and when charged with a crime, that day in court should be in a criminal court with an attorney. Everyone should be presumed innocent until proven guilty. This bill takes steps forward to realizing those two important American concepts.

Senator Gustavson:

I do have an amendment ([Exhibit D](#)) for section 47, subsection 9 to omit the language in lines 27 through 31.

Senator Ford:

This important issue is one we need to address.

Senator Gustavson:

I am willing to work with people who are opposed to the bill to see if we can find a solution to this problem.

Robert Fellner (Nevada Policy Research Institute):

The Nevada Policy Research Institute supports S.B. 138. The nature of the role of law enforcement as it pertains to the public trust is an important aspect. The primary function of government in general, and law enforcement specifically, is to protect an individual's rights. There is a tremendous amount of power and trust given to law enforcement. This perversion of justice with the idea of guilt before innocence, specifically the ability to profit off seizures, does a great disservice to the institution of policing and erodes the critical trust relationship between the public and law enforcement.

Citizens have to question whether their interaction with a law enforcement officer was based on a fair and just application of the law or if there was a motive for profit. That is bad for the law enforcement officer, the institution and the public. This bill is a commonsense reform for instituting the principle of innocent until proven guilty. It is bipartisan and shared across the spectrum.

We have submitted a American Civil Liberties Union report ([Exhibit E](#)) which states that forfeiture "puts our civil liberties and property rights under assault." The U.S. Attorney General, Eric Holder, has indicated that he would like to see civil forfeitures scaled back. We have submitted a document from the Institute of Justice ([Exhibit F](#)). The Heritage Foundation called for reform in 2014 in a policy brief which we have submitted ([Exhibit G](#)). Most revealing is the announcement by two of the architects for expanding this at the federal level during the Reagan Administration, John Yoder and Brad Yates, that "the program began with good intentions but now, having failed in both purpose and execution, it should be abolished." This bill is an opportunity to end a systemic injustice.

Janine Hansen (State President, Nevada Families for Freedom):

Nevada Families supports S.B. 138, which is a foundational liberty issue. It goes to the most important issues that are protected in our U.S. and Nevada Constitutions. We have a fine Declaration of Rights in the State Constitution which states and gives special rights that are being taken away under civil forfeiture. The *Las Vegas Review Journal* said, "One of the great travesties of modern policing is law enforcement's ability to lawfully steal the property of individuals without making an arrest or even writing a citation." My brother, Dan, always said that he has rights and dares to assert them. This is one of the things this bill does. It reasserts the rights that we have lost under civil forfeiture laws. It is very important that we regain those rights.

A few years ago, I became interested in our basic foundational rights when I was petitioning at the Reno bus depot. According to my rights in the U.S. and Nevada Constitutions and a law passed by the Nevada Legislature the year before, citizens are guaranteed the right to petition on public property. While petitioning, I was arrested, handcuffed, hauled off in a paddy wagon and sent to jail. That heightened my interest in asserting fundamental constitutional liberties. I was exonerated all the way to the Nevada Supreme Court on this issue, but it did heighten my concern for abuses that can take place by the police with regard to our fundamental constitutional liberties. It is important for us to regain and restore the fundamental constitutional values which have been lost under this civil forfeiture law.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

The American Civil Liberties Union (ACLU) of Nevada supports S.B. 138. We will probably have some amendments to propose.

Section 16 has to do with an ex parte order about seizing property. We do believe that the owner of the property should have the opportunity to appear in court and contest the seizure, and that it should not be ex parte.

Section 18 is the notice provisions from law enforcement. Right now it indicates that a receipt should be left, but we believe that there should be more duty on the behalf of law enforcement to actively locate the owner of the property or, at the very least, send a certified mail notice that the property has been seized.

In section 27, the notification process to the innocent owner should be more amplified. There is no notification process in the law right now.

In section 22 concerning the postseizure pretrial hearing about the property, we would like an additional part included for people who have an essential piece of property, like a car needed to commute to work or money to pay rent. We believe that if the court finds that the property is essential for their living and habitability, the court should grant that that property be returned.

Overall, we would like to see more provisions on how the property is cared for in the custody of law enforcement as well as civil remedies, which will be more controversial.

Chair Brower:

If you write amendments, we would consider them as long as a Committee member proposes them at a work session.

Senator Harris:

Do you know the monetary value of the majority of seizures in Nevada?

Ms. Spinazola:

I do not know. Across the Country, lower-income people are disproportionately affected by seizures, which is why the motion about the essential need for the property is important.

Senator Harris:

If you could find that information, that would be helpful.

John Wagner (Independent American Party):

The American Independent Party supports S.B. 138.

Lauren Billings:

I support S.B. 138. I am a professional poker player and an American citizen. I do not want to be fearful of my own law enforcement. I am the people. We are the people. This law is wrong. You could single-handedly ruin my life by seizing assets. Nevada is a gaming-driven economy. When people come to Nevada to gamble recreationally and then have their assets taken, why would they continue to come to the State? Besides the fact that the gaming industry propels the State, the law is against everything the Constitution stands for. Not passing S.B. 138 would set a bad example for the rest of the U.S. The fact that civil forfeiture laws have gone on the way they have is an affront on our liberty. If we are looking to control terrorism, the terrorists win when American citizens do not have the opportunity to travel with their own legal tender.

Chair Brower:

Can anyone from the Attorney General's Office update us on the status of the investigation featured in [Exhibit C](#)?

Brett Kandt (Special Assistant, Office of the Attorney General):

I will check on that status and find out if that investigation is pending or closed. Typically, we would not comment on an investigation if it is still pending.

Chair Brower:

Before starting opposition testimony, I would like to get on the record that:

Based upon my experience with asset forfeiture law and cases, I believe that the very, very unfortunate and frankly hard-to-believe situation that we just learned about from Humboldt County is an anomaly to say the least. To say the least. And I look forward to hearing more about the investigation, certainly the outcome of the investigation. But we're counting, as a Committee, on the next group of witnesses to explain to us why the Humboldt County situation was an anomaly. And beyond that, I'm hoping that the next group of witnesses can explain to the Committee if in fact anything about the process and the current statutory scheme—was I'm not going to use the word "distorted" but—wasn't explained quite accurately in the opening presentation. We, of course, want to hear that. We want to understand why not only the Humboldt County situation should not have happened, but how, if at all, the way the system works, the way the statutory scheme works and the way it's been explained isn't quite right in practice.

Kristin Erickson (Nevada District Attorneys Association):

The Nevada District Attorneys Association opposes S.B. 138.

Keith Munro (Deputy District Attorney, District Attorney's Office, Washoe County):

The Washoe County District Attorney opposes S.B. 138. After reviewing this bill I wondered if there was a recent case from the Nevada Supreme Court or federal courts where the legitimacy or fairness of our forfeiture proceedings had been questioned. I was unable to find such a decision in either court.

I was able to find an action by U.S. Attorney General Eric H. Holder regarding forfeitures. In January, the U.S. Attorney General announced he was making a policy change to the federal forfeiture program. Federal attorneys would no longer be taking any forfeiture cases which were strictly as a result of local law enforcement activities, though they could continue with forfeitures that resulted from joint federal and local law enforcement activities. The justification for this was that almost all states had created their own forfeiture procedures and the federal government did not need to serve in that Big Brother role. While there may be agencies that do serve this role, I was not able to find any local law

enforcement agencies utilizing federal attorneys to handle their forfeiture cases. The actions by Attorney General Holder do not seem to have any relevance with what was going on in Nevada.

Traditionally, the Legislators before you have set difficult standards. *Nevada Revised Statutes* (NRS) are more rigorous than the federal standards. Nevada has a higher burden of proof required before someone's property can be forfeited. Nevada's asset forfeiture statutes have been with us since the mid-1980s and have remained relatively unchanged since then. The State has forfeiture statutes because Nevadans do not want criminals profiting from their crimes.

My guess is that the reason I could not find any recent Nevada Supreme Court cases challenging the statutes—which is what we are really talking about today, challenging the fundamental fairness of the existing process that is already fair—is because Nevada statutes, judges, standards, rules of evidence and citizens who sit on juries do what is expected of them and are able to ensure that people in this State do not profit from their crimes.

We saw a video, [Exhibit C](#), and it sounded really bad. But did the video point to any of the statutes on the books that had anything to do with that situation? No. There was an allegation of a bad police officer. The statutory structure is sound. You cannot legislate bad characters out of existence.

Chair Brower:

I might even describe the Humboldt County situation as a violation of the law. Based upon what you know and based on that story, do you think the Humboldt County deputy violated State law?

Mr. Munro:

While I am not going to make any allegations, that seems to be what the proponents of this bill said. You cannot stop people from acting that way. At that situation, we had a camera. We are now told there is a criminal investigation and we had a court process where things could be corrected. We have a good process, but we cannot stop bad people. That would be like someone coming before you saying they have a bill to stop crime. You cannot do it.

Chair Brower:

The implication from the presentation and [Exhibit C](#) is that what happened in Humboldt County happened within the four corners of Nevada law and that the problem is the law. I do not believe that to be the case. Is what happened in Humboldt County legal in Nevada and the reason some think we need to change the law? Or is that not a good example of what might be problematic with the statutory scheme?

Mr. Munro:

[Exhibit C](#) is a good example of an allegation of a bad cop, not the laws. When the network showed that video, did it talk about any statute on the books that is insufficient? The people who sat in the chairs before you have set forth a good process where we caught that guy.

Senator Ford:

I do not know if the existing statutory scheme is not working; it may be more appropriate to make changes to statute rather than repealing it. We need to ascertain if what happened in the video was outside the bounds of State statutes. One could argue that our statutory scheme did not stop that. Just because you cannot stop all bad acts does not mean that you should not enact laws to stop bad acts. Potentially, we need to strengthen our laws, regardless of whether what the officer did in [Exhibit C](#) was within or without statutory framework. What are your thoughts on that?

Mr. Munro:

Nothing in [S.B. 138](#) stops that bad officer. I really do not see any motivating factor justifying a complete overhaul of the State forfeiture process. If you overhaul the process, you run a risk of defeating the purpose of forfeiture laws and letting people benefit from their crimes.

Section 22 could turn the concept of preventing criminals from benefitting from their crimes on its head. This section could allow defendants to use assets which have been seized as proceeds of a crime for their legal representation.

Chair Brower:

The Committee could benefit from a brief tutorial on how a forfeiture should happen under NRS. Assume we know nothing about the process. This would aid in our understanding of the bill and whether it is needed.

Mr. Munro:

Section 22 allows someone who has something forfeited to go to a judge and say that he or she can use the proceeds of a crime for legal representation. That makes no sense. This provision tells me S.B. 138 is not as thought out as it could have been and that it is a scattershot device out of Minnesota. I do not think the sponsors looked at what we are doing in Nevada because this is a far-reaching bill. Section 12 states:

Property is subject to forfeiture only if the violation is of a law subject to forfeiture and the violation is established by: (a) proof of a criminal conviction; (b) part of a plea agreement approved by the presiding criminal court; or (c) agreement of the parties.

In Nevada, all crimes are forfeiture where the asset is a proceed of criminal activity.

Section 12 would make this Committee go through every criminal statute and have a public policy discussion about what crimes should be subject to forfeiture. Crime should not pay, but under S.B. 138, crime could pay, unless a specific statute prohibits the benefit. The sponsors left that out of their bill, and I am not sure that Nevadans would be in favor of that. Whetting the criminal justice system to the forfeiture process has never been the case in Nevada. You run the risk of complicating the criminal justice system. As some of you know, the criminal justice system in this State is complicated enough.

Section 25 allows a convicted criminal to petition the court if the State is taking an excessive amount of ill-gotten gain. I am not sure Nevadans would be thrilled about someone coming before a judge asking to keep some of his or her drug money. Nevadans would think that is a waste of judicial resources for a judge to hear a case like that, and judging from the vote about the Court of Appeals, Nevadans do not want their system clogged up any more.

Section 30 is another basis to be against this bill. It requires every law enforcement agency in Nevada to submit annual reports for each individual seizure and forfeiture completed by law enforcement under State and federal law. In a time where budgets are shrinking, why would you place more administrative duties on cops? Our papers are cluttered with expression of the need for more cops to protect citizens. That is not to say that anybody has anything to hide. The existing forfeiture process is public, and anyone can find

out anything about a forfeiture case by going to the court records. Any money derived from a forfeiture is part of a public agency's budget, which is also public record. If the Legislature wants this information, the duty set forth in section 30 should not be on the police because all of that is public. Use your legislative staff during the interim to gather that information. Police officers' lives are busy enough on a day-to-day basis.

Section 30 places new duties on the State Treasurer's Office—a small office with little experience in civil litigation and criminal justice matters. You would need to be sure that it is properly funded and staffed with experienced personnel before the Office becomes involved with the forfeiture process.

There should be a fiscal note on S.B. 138 because it requires an auctioning process as well as holding materials. That would fundamentally change the State Treasurer's Office. Mr. McGrath had a little thing about shifting the burden. State statutes are fundamentally clear. The State must prove with clear and convincing evidence that property was used in the commission of a crime. We have an innocent owner defense in NRS. What that requires is if people are allowing their cars to be used for drug deals, they are a part of the drug deals. If they want to claim that they knew nothing about it, that is an affirmative defense, just like we have in any civil case in this State.

We have a decent process. It could be tweaked and we are willing to work with this Committee and Senator Gustavson, but we have a good process. If people want to come forward when their property is seized, existing statute says forfeiture complaints should be filed promptly; they have the ability to accelerate discovery through a joint case conference report, request a trial and have discovery. Those avenues are available, but they were left out of the presentation. Nothing I heard from those testifying in support showed that a single statute today is not good.

Chair Brower:

The Committee is going to need help from those who do not like this bill. When the Committee hears about asset forfeiture in the abstract, then sees an example like in Exhibit C, it sounds like an incredibly unfair and unconstitutional process. I remind my nonlawyer colleagues that that is not necessarily the case, and when you think about it, the government is pulling people out of their homes, arresting them, executing search warrants, taking things from their home, placing that person in the county jail and may be keeping them there—all

of which happens before that person has been convicted of anything. That happens every day, and because of judicial oversight, we accept that as part of the system. Asset forfeiture is a far less draconian step than many of the steps I just outlined. But to the average Legislator who is not experienced with the criminal and asset forfeiture system, it seems unfair.

For example, we heard that it is possible for one's assets to be seized, forfeited and kept by the government without charges even being filed. The Committee needs to understand that could happen. The Committee needs to understand how the process is supposed to work. Until we understand that, if I called for a motion today, we would pass this bill out of Committee unanimously. That is how bad the situation sounds.

Mr. Munro:

We have had forfeiture laws in this Country since its founding. This business about people coming forward and saying that something unconstitutional is going on is not true. It is a bedrock principle of this Country that people do not get to benefit from their crimes. You do not get to sell drugs, do your time in jail but keep the proceeds.

Chair Brower:

You hit the fundamental problem that many people have. We all agree that no one should benefit from the proceeds of their crimes; but when we are talking about asset forfeiture, we are talking about a stage in the proceedings before anyone has been convicted of anything. Explain to the Committee why it makes sense that the government should be able to seize and forfeit property prior to conviction.

Mr. Munro:

Here is how the system works. Someone arrested for possession of drugs has a stack of 5,700 \$20 bills. That money is put aside. Under the law, you are supposed to file a suit immediately about forfeiting that money. A criminal defendant who is charged with possession of drugs can proceed with litigation in the civil case. The defendant rarely does. This civil case is called an in rem proceeding in which someone has the ability to come forward and say that the money is his or her property and he or she is entitled to it, requiring the government to prove the case through clear and convincing evidence.

The government then has to prove that the money is an instrumentality of the crime. That piece of property is separate and different from the Fourth, Fifth and Sixth Amendments of the U.S. Constitution, which all deal with the criminal justice process. The government files a civil action against someone and proceeds with that, so the government has the burden of proof.

Chair Brower:

So an arrest is made, charges are filed and at the time the suspect is arrested, cash and drugs are found in the car, resulting in the car, the cash and the money being seized. At that time, the defendant has not been convicted of anything, but under forfeiture principles and statutes, if the cash is believed to be proceeds of drug trafficking, is it seized and the government commences forfeiture action?

Mr. Munro:

Correct.

Chair Brower:

At some point, is the forfeiture action stayed, pending the outcome of the criminal case?

Mr. Munro:

It can be and usually is but does not have to be. The person to whom the cash belongs can proceed with civil litigation to get their cash back.

Chair Brower:

If the person does not, is it possible that the case can be distributed to law enforcement agencies and spent prior to conviction?

Mr. Munro:

You would need a court proceeding where the government proves through clear and convincing evidence that that is an instrumentality of a crime. Usually, that process goes second to the criminal proceeding.

Chair Brower:

That criminal proceeding can result in acquittal, conviction or a guilty plea?

Mr. Munro:

Yes. The criminal case goes first because in that proceeding, you find out whether that person is guilty or innocent.

Chair Brower:

That is critical for the Committee to understand. Could you elaborate on that?

Mr. Munro:

Most criminal cases in the State are plea-bargained, which is when a person comes forward and says, "I have committed a crime." Usually when the person says this, there is a conviction.

Senator Hammond:

Let us say that the defendant is acquitted. Does there need to be a proceeding in order to get the property back, or is it automatically assumed that if you are acquitted—and the money was not gained in an illegal fashion—there is no need for the second process?

Mr. Munro:

Since there are two processes, the second process takes place. I have been unable to find any cases in Nevada where someone was acquitted of a crime and there was still a forfeiture.

Chair Brower:

The normal situation is that upon acquittal or dismissal, the seized assets are not forfeited and instead are returned?

Mr. Munro:

Yes.

Senator Hammond:

Is that a yes to my question?

Chair Brower:

Is it possible for the government to prevail on the civil forfeiture action and keep the property, despite dismissal or acquittal? Does the inherent lack of logic in that mean that it never happens?

Mr. Munro:

Yes. Senator Hammond, because you have two legal proceedings, one is a criminal proceeding and the other is a civil proceeding. There is no nexus between the two. I am willing to hear of cases where someone is acquitted of a criminal act before a jury and law enforcement still went forward with the forfeiture proceeding.

Senator Hammond:

You do not believe that has happened and are waiting for somebody to provide evidence.

Chair Brower:

In practice, the civil forfeiture action is dismissed if there is an acquittal or dismissal of the criminal case. The government could choose to pursue it, but the practice is not to because of an acquittal or dismissal.

Mr. Munro:

There are two separate cases, criminal and civil. If the State loses the criminal case and you are acquitted of a crime, you would then go to a civil case with another jury and tell them that you have been acquitted of a crime. The State needs to be smart enough not to go down that road because it will lose that case and waste resources to go through the proceeding.

Senator Hammond:

A lot of cases are plea-bargained; what happens in those cases? Will the civil actions go to trial?

Mr. Munro:

In the civil case, you have to answer questions. If you do not answer those questions, the judge can instruct the jury to hold that against you.

Chair Brower:

If a plea bargain is reached on a criminal case, part of the deal is that the defendant agrees to forfeit the seized assets, unless the defendant will not agree to forfeit one particular seized asset because it did not have anything to do with the crime.

Mr. Munro:

Because it is a civil case, settlements are worked out between the parties.

Mr. Kandt:

An in rem action under NRS 179 is subject to judicial oversight and due process protections. Often a civil forfeiture action will commence prior to a conviction, but fairness and due process dictate that the forfeiture action should not conclude before conviction. In communication with law enforcement and prosecutors across the State, the practice is that the civil forfeiture action is stayed pending the outcome of the criminal action.

Our office is willing to work with Senator Gustavson to ensure that State civil forfeiture laws are utilized in an appropriate, effective and fair manner. This is not a systemic problem. You were given one example where a rogue law enforcement officer acted unethically, which brought up the issue of civil forfeiture laws. The fact of the matter is that our law enforcement agencies statewide are utilizing civil forfeiture laws in an appropriate manner.

Chair Brower:

People struggle with how the government can take their property, preconviction. Can someone give a brief overview of why it is important for the government to have this tool?

Thomas Moreo (District Attorney's Office, Clark County):

This is a difficult concept to grasp if you believe that we take property or money from people. That is not what happens. The civil forfeiture is probably the best way to move in this court scheme. The reason for that is that law enforcement has to go out and find the claimant in this case and personally serve that person, putting the person on notice that we are doing a forfeiture proceeding. We have to file a complaint and wait for an answer to that complaint. We then go through the rules of civil procedure, whereby we have to do the discovery process, early case conferences and all of the transferring of information back and forth with the complainant. Law enforcement never takes the money.

The court always allows or orders that money is to be seized and forfeited either through a trial, the complainant giving up the money, a guilty plea agreement or some type of negotiation with that complainant.

Chair Brower:

We need to get more basic than this. The idea is that if you charge someone with a crime and it is believed by the investigators that the defendant has \$5 million worth of proceeds from the criminal activity in a bank account, you

seize that money. Upon charging that person, if you let the person keep that money, chances are that that money is going to disappear. That is why there has been asset forfeiture. That does not mean it works perfectly and cannot be improved, but is that what we are talking about?

Mr. Moreo:

Yes.

Senator Hammond:

One of the things Chair Brower is hitting at is the fact that when we watched [Exhibit C](#) and saw the officer seize the assets, the report later said that some of the assets were being spent within that law enforcement department without going through a civil proceeding. I would like to hear that this was a rogue incident and that most of the time seized assets do go through this civil proceeding. Please clarify the absence of information from [Exhibit C](#) so we understand the process a little bit better.

Chair Brower:

We need a presentation of why the status quo is working or not. The average person hears this, sees [Exhibit C](#) and thinks, "Wow, before anybody is convicted, the government is taking and spending the money. That cannot be right." There is no way that what took place in [Exhibit C](#) was legal.

James Bonkavich (Las Vegas Metropolitan Police Department):

I am a sergeant with the Southern Nevada Interdiction Task Force for Las Vegas Metropolitan Police Department (LVMPD). I assure you that the stop performed in Humboldt County was a complete anomaly. We do not operate that way. Our policies are more stringent than State laws. I will run through a standard traffic stop to show how this should have been handled because painting a picture of all officers acting the way the officer in Humboldt County acted is not how we operate in southern Nevada in the LVMPD.

Traffic stops are done because of a probable cause violation. We approach the vehicle with tact and charisma, speak to the person in the vehicle, ask the person for paperwork and what she or he has in the vehicle. While we are there, we look for signs of criminal activity. These are signs we learn through training and experience. Signs could be nervousness beyond the normal. We understand that people get nervous when stopped by the police. Uncontrollable shaking and sweating is not normal for a reasonable person. We also talk to the person

about inconsistencies in her or his travel plans. If it is a mom-and-pop citizen going back and forth from Las Vegas to Utah, we can tell that. We are not taking citizens' money based on the fact that they have money in the car. We all know that it is not illegal to have money. Once we go through all of that, we do a criminal history check—such as any narcotics priors or information to give us further suspicion to establish criminal activity.

There is not any one thing we look at in order to seize the property a normal citizen would have. We look at all of the circumstances related to everything happening during that stop.

A reason we will take money in a car is how it is packaged. Money that is vapor-locked or next to narcotics leads to reasonable suspicion of probable cause resulting in that money being seized for submittal of seizure.

Chair Brower:

Is that when the lawyers get involved?

Mr. Bonkavich:

Yes.

Chair Brower:

The course of the way it should happen is not the officer asking the driver of a car how much money he or she has, then taking it, as apparently what happened in the Humboldt County situation. Are you talking about evidence of narcotics trafficking, which typically means bundles of money with narcotics or weapons?

Mr. Bonkavich:

Yes. When we go through the car, the last thing we are looking for is money. The Interdiction Task Force is tasked with drug seizures, stopping the drug cartel from transporting drugs through our State and counties.

Senator Hammond:

We came into the story in [Exhibit C](#) at the point when the officer was asking how much money the driver had, and he took it. We did not hear any interaction before that, so we do not know what took place before that. We do not know if the officer saw money next to a bag of narcotics. If you as an officer are making a traffic stop and doing a commonsense check—looking for the signs of

evidence of criminal activity—then you go to the secondary criminal background check and notice the vehicle's occupants have a stack of cash of a sizeable amount. You ask how much money they have. At that point what do you do? Do you ask why they have that much money? I know that it is not illegal to have cash on you. If you put \$10,000 in cash in the bank, the bank has to check or submit to the IRS that that happened, right?

Mr. Bonkavich:

In a circumstance like that, we look into it. We ask more questions. We understand that the State is built on gambling. Winners of large amounts of money are given receipts from the casino for the IRS and other things. We want to know if the person can produce that. This is all consensual. The packaging of the money is also something we look at because a reasonable person would not travel with large amounts of money that is vapor-locked. We look to see where the money is within the vehicle, such as if it is hidden within a concealed compartment in the vehicle. It is not reasonable for a person to do this. From our training and experience, we know this is the way drug cartels operate. We also have canines which are highly trained. While it is not the No. 1 thing these dogs hit on, large amounts of money recently handled next to narcotics will give off a scent to these animals. That is one more thing that adds to our suspicion and helps with probable cause in putting this case together. It is not that these people are simply going back and forth.

Chair Brower:

When we are talking about seizing large or small amounts of money found in a car, you are not seizing the money just to seize the money, you may seize it incident to an arrest because you also found narcotics, illegal weapons or have evidence of other illegal activity, correct?

Mr. Bonkavich:

Yes.

Chair Brower:

So we are not talking about pulling people over for running a red light, finding a stack of money in the passenger seat and having no other probable cause for arrest. You are not going to arrest them for having money, instead you will seize the money once you have probable cause to arrest them for something else, correct?

Mr. Bonkavich:

Correct. You can arrest for probable cause as well as seizing the money.

Chair Brower:

But you will not arrest someone because money was there. You will seize money incident to an arrest for something else, correct?

Mr. Bonkavich:

Correct, but not in all cases do we immediately arrest the person. You might issue a citation or a warning. What will happen is that he or she will have the right to file to have the money returned. We do not spend seized money right away. It is seized by the seizure detail within the LVMPD and sits on the LVMPD Fiscal Affairs Committee until the case itself is dismissed or a conviction occurs.

Chair Brower:

When you say the case itself, you are talking about the criminal case. Have you ever been involved in a seizure that did not result in a criminal case and the seized assets were not returned?

Mr. Bonkavich:

No.

Senator Hammond:

I know we may be getting into the weeds of this, but it is to our benefit to understand the extent of the need of this bill. Talking about a traffic violation where you are going to issue a ticket: you notice an excessive amount of cash in the car. So you look for all of the signs mentioned. You do not necessarily seize the money. You give the citation, you do not arrest the occupants because they have cash on hand. Typically, as an officer, at what point do you decide to hold those at the traffic stop or bring canine assets to the scene?

Mr. Bonkavich:

We do not just go off the basis that the subject has a large amount of cash in the car. We further investigate, bring the canine to the car, and get written consent from the occupant of the vehicle. The dog does a sniff of the vehicle and money, and the dog alerts, which is another element used to justify narcotics being associated with the money.

Senator Hammond:

It really goes back to the original traffic stop. I want to get at whether this happens often. Do you pull somebody over, notice a lot of cash and decide to seize that cash? That is what everybody is concerned about. Are the officers being opportunistic and abusing their power? It sounds to me that just because you pull somebody over and see that the occupants have a lot of cash does not mean that you take the next step and call the canine unit in. You may just ask a few questions, and the occupants answer them without raising your suspicions. These are policies put in place to protect the person you have pulled over. This does not always have to escalate to a canine unit being called in, right?

Mr. Bonkavich:

We know that just because a person has money in the car does not mean that the money is illegal. Not every stop results in a canine unit with a dog doing a sniff. We let thousands of dollars go because a reasonable person can prove that he or she legally has that money. We let this go all of the time. Seizures are few and far between, not everyday occurrences. People who have won large sums of money gambling can explain this to us. We are reasonable. We may be officers, but we are also citizens and we can see what is happening. We understand that our main role is to stop drug traffickers and seize the proceeds funding the organizations. Rarely, if at all, do we treat people with disrespect, yell at or argue with them. It is unprofessional and at LVMPD, we do not operate that way.

Senator Kihuen:

How do you handle a situation where there is a language barrier and the person cannot communicate as effectively? Let us say someone cashed a check and has \$2,000 to \$3,000 cash in his or her pockets and does not speak English. How do you handle that?

H. Adrian Sandoval (Las Vegas Metropolitan Police Department):

That amount of money is considered a small amount and is not something we would consider looking into, in terms of seizure. We are not looking for the average citizen having just cashed a check. As far as a language barrier, a lot of us on the Task Force speak at least a conversational amount of Spanish. If there is a large language barrier, we have resources at LVMPD to get a translator to our location or available on a language line.

Senator Kihuen:

I know that many times people get nervous when pulled over and can start talking too fast or sweating. Sometimes, an officer is suspicious that someone is doing something illegal. In a situation like the one I brought up, what if a person does not speak English, gets nervous and has more than a couple thousand dollars? Let us say you do take the next step and suspect that this person is involved in some type of illegal activity; how do you determine if this person is really involved in illegal activity?

Mr. Sandoval:

It is the totality of the circumstances. It is not just nervousness. We build a case and start with the idea that money is not illegal, it is innocent and we work our way from there. In the situation you presented, most likely that person would have a paycheck stub or bank statement. He or she would have a lot of things showing that that money was legally obtained. We would not go much farther than that, even if there is a high amount of nervousness.

Senator Kihuen:

I am looking at NRS 179.1165, subsection 1, which says, "except as provided in subsection 2, property that is subject to forfeiture may only be seized by a law enforcement agency upon process issued by a magistrate having jurisdiction over the property." Subsection 2 says:

A seizure of property may be made by a law enforcement agency without process if: (a) the seizure is incident to: (1) an arrest; (2) a search pursuant to a search warrant; or (3) an inspection pursuant to a warrant for an administrative inspection; (b) the property is the subject of a final judgment in a proceeding for forfeiture; (c) the law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or (d) the law enforcement agency has probable cause to believe that the property is subject to forfeiture.

It sounds like the law says that you can basically take property from someone for any reason. Am I wrong?

Mr. Sandoval:

Our mission is to curtail narcotics activity. That is our Department's focus. Through the years, we get training and gain experience focused on narcotics

smugglers. Those people not only transport narcotics but also have different means with which to transport the proceeds back to wherever the narcotics originated from. I can only focus on the narcotics aspect, and as far as probable cause goes, we are establishing probable cause that the money in question does have some nexus to narcotics activity.

Senator Kihuen:

As a nonlawyer, that is my perception of NRS. Based on my interpretation, it seems to me that you can take somebody's property for almost any reason. I am just trying to get clarification. I know all police officers confront difficult situations every day and put their lives in danger at every stop.

Chair Brower:

The officer must have probable cause to believe the assets in question are connected to criminal activity. That means the officer can seize it; it does not mean government can keep it. That is another phase we will get into.

Senator Hammond:

One charge that came out of [Exhibit C](#) as well as some of the testimony from supporters of the bill was about those who are not necessarily charged with anything but had their assets seized. When you charge people who are acquitted, the civil case is also most likely dismissed, and their property is returned. What about those never charged; what happens to those assets?

A.J. Delap (Las Vegas Metropolitan Police Department):

The details beyond initial arrest are better handled by the DA.

Chair Brower:

We have fully flushed out what happens with respect to the officers when they come upon the property to be seized. It now moves over to the lawyers to figure out how to deal with that in accordance with the statutory scheme.

Mr. Moreo:

The officers will seize the money and submit it to the DA's Office for purposes of forfeiture. What we will do then is contact the officers to find out if there has been any follow-up investigation and whether the person the money was seized from has provided any additional evidence. We then file the complaint against the money, serve that person and wait for the person to come to court. If he or

she can show that the money is legitimate and not the proceeds from an illegal activity, we return the money.

Chair Brower:

Are those funny-looking cases something like State v. \$50,000?

Mr. Moreo:

Yes. They are large sums of money where the DA files on those cases. Those are cartel cases in which the claimant has to show that it is a legitimate source of money. If the person does that, we return the money. If he or she does not do that, we proceed with the case, which means going to trial.

Chair Brower:

Explain the parallel proceedings that I alluded to earlier. You have initiated the civil forfeiture case; meanwhile, criminal charges have been filed. How do the two cases work in parallel going forward?

Mr. Moreo:

On the criminal side, the DA's Office and the police are trying to prove beyond a reasonable doubt that the defendant is guilty of a crime. On the civil side, we are trying to prove that the seized money is proceeds from illegal activities. If we cannot do that, the money goes back to the claimant.

Chair Brower:

At that point, it is alleged illegal activity because there has been no conviction in the criminal case. What happens to the civil forfeiture case if, in the criminal case, the charges are never filed, dismissed or there is an acquittal?

Mr. Moreo:

If there is an acquittal or no charges are filed, the money is returned because of the fact that we can only seize and forfeit that money if we can prove that it has come from an illegal activity. If the defendant is not found guilty of a crime, there is no way the money could be proceeds of a crime. If there is no charge, we cannot seize or forfeit that money because no crime was committed.

Chair Brower:

If no charges are filed, there is a dismissal of the charges or an acquittal. Is that the end of the hunt as far as the seizure goes? Is that a matter of law or practice by the office?

Mr. Moreo:

That is the policy in southern Nevada. When we do seize the money, we have to follow guidelines with what happens to that money. I heard comments about parties being thrown and things like that; but you are well aware that a few years ago, those strict guidelines were put in place. Seventy percent of the money we seize in southern Nevada goes to the Clark County School District, so we do not even control that. Every bit of the seized money is accounted for. At the end of the fiscal year, the School District figures out what 70 percent of that money is so it can get it. It is not all for the LVMPD.

Senator Hammond:

As far as jurisdictional policy, does each county have this policy on what happens when no charges are filed, or is there a dismissal or an acquittal? Is this policy determined by county or police jurisdiction in regard to what happens to the money that is seized? Are you aware of any case in which somebody was not charged due to a dismissal or acquittal and the money was kept?

Mr. Moreo:

I do not know what the other counties do. All I know is the policy between LVMPD and the DA's Office as to what we do in southern Nevada. I do not know of any cases where we have kept the money after a case has been dismissed, charges were not filed or there was an acquittal.

Senator Hammond:

I think you answered that the policies are county by county

Chair Brower:

Legally, right or wrong, despite no charge, a dismissal or acquittal, the civil asset forfeiture case could continue. It would seem to be the better practice to not continue it because the DA is likely to lose it if defendants can show that they were never charged, the cases were dismissed or they were acquitted.

Mr. Moreo:

Legally, we could keep going forward, but we do not do that.

Senator Kihuen:

Since every county has its own policy, if S.B. 138 were enacted, would it put all the counties on the same page?

Chair Brower:

Yes, but it would do a lot more. The debate is whether we want to gut the current scheme and institute the new one offered by this bill.

Mac Venzon (Deputy Chief of Operations, Reno Police Department):

In regard to the scenario about a forfeiture proceeding that is pursued absent an arrest: I ran an interdiction team at the Reno Police Department. My team was working a train interdiction where they came in contact with a young lady who had about \$330,000 in her sleeper car. There were a lot of indicators that made the detectives suspicious.

Eventually, we learned that this lady had been paid \$5,000 to transport the money from New York City to northern California with the intent to deliver it to a narcotics distributor. That money was seized, and she was allowed to go on her way as we were unable to prove that she had participated in a crime, absent her admission as to what she was carrying the money for. The forfeiture proceedings were sent through in which we tried to locate to whom the money belonged. If that person could prove or show reasonable cause to have the money, absent a criminal nexus, the money would have been returned.

Chair Brower:

So the DA's Office sued the money, served every person they knew with a possible interest in the money, notified them of a lawsuit and offered them the opportunity to claim ownership of the money as not the proceeds of criminal activity. In your circumstance, you did all of that, but nobody claimed the money?

Mr. Venzon:

Yes. I will give you a second case in relation to the Humboldt County scenario in which the investigation is not done once the money is seized. The responsibility is on the detective to continue the investigation. We had a similar example of a young man who had about \$45,000 and indicated that he was headed out West to buy a classic car and drive it back to his home. His criminal history showed a lot of narcotics-trafficking. The money was seized and the young man was sent on his way. We were able to verify that he was headed to buy a classic car, and we returned the money to him.

Chair Brower:

How was it that the Reno Police Department initially thought to talk to the man. How did you know he had all that money?

Mr. Venzon:

A series of indicators led detectives to this individual, such as last minute travel and booking and paying \$1,200 for a train ticket when it would cost \$600 to fly.

Scott Gilles (City of Reno):

Our fiscal team put together a fiscal note based on a 5-year average. It came to an average of \$200,000 per year retained by State and local governments. I do not have details of how that money was distributed, but I can look into that further.

Chair Brower:

In terms of the fiscal issue, let me suggest that talking about how much money you are going to lose is not the best argument. We need to make sure the process is right because talking too much about the fiscal impact feeds into the theory that you are seizing money for profit, which is the wrong reason.

Mr. Gilles:

The City of Reno does not have a formal position on the bill.

Mike Cathcart (City of Henderson):

Asset forfeiture is not a moneymaker. The City of Henderson segregates these funds from our other operating funds. They are used for specific purposes such as capital outlays, law enforcement and general fund purposes. We do not fund salaries with this money.

Chair Brower:

If we were to change the law as proposed in S.B. 138, it would likely reduce the amount of money being taken in pursuant to forfeitures as a fiscal impact.

Warren Hardy (City of Mesquite):

The City of Mesquite wants to associate with the testimony heard so far in regard to the process as well as the fiscal note. While the fiscal note is a concern, it is a secondary concern. Since Mesquite is a border town, this is an

important process of law enforcement and we want to make sure it is right. We think it is. It is not broken, although there may need to be some tweaks.

Nichole Rourke (Clark County School District):

The Clark County School District is the recipient of dollars processed through LVMPD from asset forfeiture. Our average revenue associated with this would be \$596,000 per year. We use those funds for instructional materials and supplies. We do not use them for any ongoing salaries.

Senator Kihuen:

What percentage of the total seized is the \$596,000?

Ms. Rourke:

I do not know. I saw the LVMPD note indicating that it was 70 percent, but we did not calculate that.

Senator Gustavson:

We know civil forfeiture is a nationwide problem that we need to deal with. We need that process and forfeiture for many reasons criminally. But civilly, we know it is wrong to make a traffic stop and take somebody's money. We proposed this bill the way it is because of problems with the process.

Chair Brower:

You suggest that the seizure of property is wrong in all cases. Is that your position, or do you believe that it is wrong when there is no evidence of a connection to illegal activity?

Senator Gustavson:

I believe it is wrong when there is no connection to illegal activity. If you have property, nobody has the right to claim that property unless you have committed a crime.

Mr. McGrath:

Crime should never pay. No one deserves the fruits from the poisonous tree. The people who are convicted of a crime should lose all their property associated with that crime. We do not want to give incentives in Nevada or any other state to illegal behavior by rewarding crime.

There are three processes being covered at the core of S.B. 138, but only one is being changed. The three processes are seizure, forfeiture litigation and what to do with the seized property. It was helpful to hear from law enforcement about what officers do in seizure. I think the Committee will benefit from understanding that law enforcement is engaged in reputable acts, only seizing property when there is probable cause. It is important to note that nothing in this bill changes the good work of the police as it relates to seizure. This bill only deals with forfeiture.

Chair Brower:

You are referring to section 17, subsection 3, which allows property to be seized at any time without a court order if the State has probable cause to believe that the delay occasioned by the necessity to obtain a court order would result in removal or destruction of the property.

Mr. McGrath:

Yes. I respect the comments from the ACLU, but the thrust of this bill is not to change seizure law in Nevada. It is to focus on the litigation stage as it relates to the civil process. The members from law enforcement in southern Nevada said they had more stringent rules and policies than State law. I would hope that as the Committee considers this bill, it recognizes that the polices being used in southern Nevada may be better than State law.

Chair Brower:

Is it your understanding that a key point of the bill with respect to the second stage of forfeiture changes the law to allow for forfeiture only upon a conviction?

Mr. McGrath:

The key point of the bill is this requirement that you have a conviction or plea agreement for forfeiture to take place.

Chair Brower:

Before forfeiture, not seizure?

Mr. McGrath:

Yes.

Chair Brower:

Is seizure the taking by the government while forfeiture permanently deprives the owner of ownership under probable cause to seize and convict to forfeit?

Mr. McGrath:

Yes. An easier way to think about that is police officers, sheriffs and the drug interdiction team are in the seizure business, which is not being changed. The lawyers are in the forfeiture business, and what happens in courtrooms is what is being changed by this bill—encouraging police to seize property while changing what the DA does in the courtroom.

In response to Mr. Munro's explanation of the somewhat complicated idea that the person goes into the criminal justice system and the property into the civil system, and the in rem proceeding, which is a suit against property: It made sense once to have these two-track systems. It made sense in navigational law and made sense in maritime law. It made sense 250 years ago when the King of England was upset that he could not get personal jurisdiction over the ship owner, so he created the legal fiction that the ship, cargo and cash had *mens rea* and could be found guilty and responsible for a crime. Civil forfeiture is based on an idea that no longer exists because law enforcement does have its hands on the suspect but still engages in this in rem exercise in civil court.

There are always the cases of abandoned property, but the core of S.B. 138 is to end the legal fiction that cash and cars are defendants with the mental state of guilt that needs to be proven. This bill creates a one-track system in which it is more simple and straightforward with greater protection and presumptions of having both person and property in one process.

The third component to consider is about fiscal notes. The Committee should ask, why is it necessary for the Legislature to allow law enforcement to keep the money? Would it not be better for all of this money to be treated like any other funds and taxes, separated so that the Legislature could consider how best to use these funds? As Legislators, it is your responsibility to raise and appropriate funds. It is a rare responsibility, and you should not abdicate that responsibility and the separation of powers between you and the Executive Branch. You and your counterparts should be responsible for establishing the priorities.

If you choose to put that money back into law enforcement's budgets, I would be happy. You could address all of these fiscal issues by taking the same amount of money, putting it through the legislative process and returning it to law enforcement. That is your unique power as Legislators. I would encourage you not to continue to abdicate that responsibility and leave it to the Executive Branch to raise for its own budgets or budgets like that of the school district. You can stop every crime and make arrests, but it is a separate question as to what you do with the money and who is responsible for deciding how that money should be used. I would encourage the Committee not to be overly confused and see that there are three separate areas of this issue.

Senator Gustavson:

I have nothing against any law enforcement officers whom we know do a great job. We know there are a few bad apples regardless of where you go. It is not to say that we are going after law enforcement officers because they are bad, it is just a law that we believe needs to be changed in this area, which is what we are asking you to do.

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Chair Brower:

I will adjourn the meeting of the Senate Committee on Judiciary at 3:35 p.m.

RESPECTFULLY SUBMITTED:

Julia Barker,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	6		Attendance Roster
S.B. 138	C	Flash drive	Senator Don Gustavson	Humboldt County Video
S.B. 138	D	1	Senator Don Gustavson	Proposed Amendment
S.B. 138	E	2	American Civil Liberties Union	Civil Asset Forfeiture
S.B. 138	F	1	Robert Fellner	Institute of Justice Nevada Report
S.B. 138	G	3	The Heritage Foundation	Issue Brief