

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eighty-First Session
April 5, 2021**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:02 a.m. on Monday, April 5, 2021, Online. 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/App/NELIS/REL/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Rochelle T. Nguyen, Vice Chairwoman
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Lisa Krasner
Assemblywoman Elaine Marzola
Assemblyman C.H. Miller
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager
Nancy Davis, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Keith L. Lee, representing Nevada Judges of Limited Jurisdiction
Paul C. Deyhle, Executive Director and General Counsel, Nevada Commission on
Judicial Discipline
Michael D. Hillerby, representing Nevada District Judges Association
Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice
Lee McGrath, Managing Attorney, Institute for Justice
Nicholas Shepack, Policy and Program Associate, American Civil Liberties Union of
Nevada
Jim Hoffman, Member, Legislative Committee, Nevada Attorneys for Criminal
Justice
Dayvid Figler, Private Citizen, Las Vegas, Nevada
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public
Defender's Office
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's
Office
John T. Jones, Jr., representing Nevada District Attorneys Association
Matthew Christian, Assistant General Counsel, Las Vegas Metropolitan Police
Department
Nancy Savage, Assistant City Attorney, City of Henderson
Corey A. Solferino, Lieutenant, Special Operations Bureau, Legislative Liaison,
Washoe County Sheriff's Office
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Mike Pavlakis, Private Citizen, Carson City, Nevada
Richard S. Staub, Private Citizen, Carson City, Nevada
Steve Dover, Chair, Legislative Committee, Nevada Land Title Association
Tiffany Lewis, Administrative Services Officer IV, Division of Health Care
Financing and Policy, Department of Health and Human Services
Annemarie Grant, Private Citizen, Quincy, Massachusetts
Tonja Brown, Private Citizen, Carson City, Nevada

Chairman Yeager:

[Roll was taken. Committee rules and protocol were explained.] We have three bills on the agenda today. We are going to take Assembly Bill 43 first, then we will go to Assembly Bill 425. We will wrap up with Assembly Bill 414. I will now open the hearing on Assembly Bill 43.

Before I hand this over, I want members to know there is an amendment on the Nevada Electronic Legislative Information System that I proposed that essentially replaces the bill with more concise language. Hopefully, you all got the email message that I sent yesterday. Keith Lee will discuss the bill as amended.

Assembly Bill 43: Revises provisions governing judicial discipline. (BDR 1-393)

Keith L. Lee, representing Nevada Judges of Limited Jurisdiction:

The Nevada Judges of Limited Jurisdiction are the justices of the peace and municipal court judges in the state of Nevada. Assembly Bill 43 was brought by the Assembly Committee on Judiciary on behalf of the Nevada Supreme Court at the request of the Nevada Judges of Limited Jurisdiction (NJLJ) to address some procedural concerns that the NJLJ has had with the Commission on Judicial Discipline. A proposed amendment was submitted by Chairman Yeager [Exhibit C], the essence of which deletes the bill in its entirety and requests that the Nevada Supreme Court study and make recommendations concerning the procedural and subjective statutes and rules of the Commission on Judicial Discipline and to report back to the Legislature.

Because of the time constraints of this session and the complexity of the issues raised in Assembly Bill 43, the NJLJ has consulted with the Chairman, as well as Chief Justice Hardesty. After that consultation, they agreed this is a better way to go with respect to this bill. We believe this study committee will provide an open and public forum to examine the procedural substantive statutes and rules of the Commission on Judicial Discipline, will allow interested parties to spend more time discussing the issues, and will arrive at some recommendations that can be brought back to the Legislature.

With that, I will answer any questions you may have. We urge the Committee to consider and adopt the amendment and proceed forward with the study. I might add one final thing. This study committee would not be new. We had a similar study committee that began in 2006 or 2007 at the request of then-Chief Justice Robert E. Rose. As a result of that study committee—which we characterized as the "Article 6 Study Committee"—recommendations were made to the Legislature in the 2009 Session, which were subsequently adopted in Assembly Bill 496 of the 75th Session.

Chairman Yeager:

I will confirm that I have discussed this amendment with Chief Justice Hardesty to make sure the Court was not going to be offended or opposed to the amendment. Justice Hardesty is okay with the amendment and welcomes the opportunity to look further at this issue in the interim. Do we have any questions from Committee members about the amendment? It is straightforward, and I do not see any questions. I will open testimony in support of A.B. 43.

Paul C. Deyhle, Executive Director and General Counsel, Nevada Commission on Judicial Discipline:

My testimony will be very brief. At Chairman Yeager's request—by virtue of the anticipated deletion of the bill in its entirety and its replacement with a conceptual amendment for the Supreme Court to study and make recommendations concerning procedural and substantive statutes and rules for the Commission on Judicial Discipline—I prepared a much lengthier presentation. However, in light of the deletion of the bill and the conceptual amendment, I only have a few statements.

Although I will not be discussing them, I would like to thank Chairman Yeager for allowing the exhibits submitted by the Commission to be part of the record with respect to this bill and any subsequent study that may follow [[Exhibit D](#), [Exhibit E](#), and [Exhibit F](#)].

In accordance with the principle of separation of powers, if the Nevada Supreme Court decides to undertake such a study as contemplated by the conceptual amendment and to establish another Article 6 commission as it did in 2006, the Commission will fully participate in that process as in the past. I believe another Article 6 commission, if deemed warranted and necessary by the Supreme Court under the circumstances, would be the most appropriate mechanism, if not the only mechanism, by which to fairly and adequately represent the interests of not only the judiciary and the Commission, but also, most importantly, the public. They are the very people the *Nevada Constitution* has empowered the Commission to protect, while at the same time giving due regard to the vast body of judicial disciplinary jurisprudence and precedent that has existed and developed throughout this country for decades.

Notwithstanding whether another Article 6 commission will be empaneled by the Supreme Court, there will be certain undertakings planned by both the Commission and the Nevada Supreme Court over the next two years. I believe it will go a long way in addressing and attempting to close the rather large divide that currently exists between the Commission and the relatively small number of limited jurisdiction judges. These undertakings will present many opportunities for professional and honest dialogue between the Commission, the judiciary, and the public, as well as a greater understanding of the issues and challenges faced by all concerned. For example, the Commission is in the process of revising its procedural rules that were adopted by the Supreme Court in the 1970s, which have not in large part been revised since 2003 when the Commission adopted them from the Supreme Court pursuant to a constitutional amendment. This process will be fully transparent with the bench, bar, and public being given the opportunity to comment on the revised rules and to submit proposed changes, much like the Supreme Court undertakes revisions of its own rules.

Additionally, the Supreme Court recently advised me that the Court is planning to revise the *Nevada Code of Judicial Conduct*, which, as you know, the Commission enforces. They asked if we would participate and provide input into that process, to which the Commission enthusiastically agreed as it has in years past. This will be another opportunity for the bench, bar, and public to weigh in on the proposed changes to the code in a fully transparent manner.

The Commission has some proposals of its own and looks forward to presenting them before the judicial council. Public interest and advocacy groups, state and national media organizations, bench and bar associations, and others will, hopefully, begin to address the large rift between public expectations and a judiciary that faithfully complies with the law and code of judicial conduct, and respects the fundamental rights of litigants—as they are commissioned to do—and the judiciary's expectation not to be brought up on public charges or discipline for their discretionary decisions on the bench.

In conclusion, if these efforts prove to be productive—and I am cautiously optimistic that they will—it is the Commission's hope that the 2023 Legislature will not have to entertain another bill such as [A.B. 43](#). As it relates to the Commission, you have its assurance that it is and will be fully committed to these endeavors in the months and years ahead.

Chairman Yeager:

Is there anyone else in support of [A.B. 43](#)?

Michael D. Hillerby, representing Nevada District Judges Association:

I would like to echo the comments from Mr. Lee in support of the bill with the proposed amendment. The district judges want to be on record in support of the bill with the proposed amendment.

Chairman Yeager:

Is there anyone else in support? [There was no one.] I will close support testimony and open testimony in opposition. [There was none.] I will close testimony in opposition. I will open neutral testimony. [There was none.] I will close neutral testimony. Mr. Lee, do you have any concluding remarks on [A.B. 43](#) as amended?

Keith Lee:

No. I have no closing comments other than to urge you to adopt the amendment as has been proposed, so we can move forward.

[[Exhibit G](#), [Exhibit H](#), [Exhibit I](#), and [Exhibit J](#) were submitted but not discussed and are included as exhibits of the hearing.]

Chairman Yeager:

I am going to close the hearing on Assembly Bill 43. Before we move to the next bill, this is deadline week and things will be moving quickly. For the record, under Rule 57 of our Assembly Standing Rules of the 81st Session, with the approval of the Speaker or by unanimous consent to waive the 24-hour waiting period, we can take final action on the bill after the close of the hearing. I am pleased to report that I have the consent of the speaker to waive Rule 57 with respect to Assembly Bill 43, which we just heard. Given that, I am looking for a motion to amend and do pass A.B. 43.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 43.

ASSEMBLYWOMAN NGUYEN SECONDED THE MOTION.

In the past, we have done a roll call vote, but we have lots of bills to get through this week, so I will try to do this in a different way that should speed things up. Before I take the vote, which is going to be a voice vote, I want to ask for a show of hands of anyone on the Committee who intends to vote "no" on the measure. I do not see any "nos" so I am going to take a voice vote, and I will confirm we do not have any nos. Unmute yourselves and the motion is to amend and do pass Assembly Bill 43. All those in favor, please signify by saying "yea." If there is anyone opposed, please say "nay." I do not hear anyone opposed.

THE MOTION PASSED. (ASSEMBLYWOMAN KASAMA WAS
ABSENT FOR THE VOTE.)

The motion carries by all who are present. That is one less bill we will have to work session. Look for the bill to hit the Assembly floor once we have a formal amendment, and we can report it out of Committee.

We will now move to Assembly Bill 425. I will open the hearing on Assembly Bill 425. Before I turn this over, I want Committee members to know there was an amendment posted this morning on the Nevada Electronic Legislative Information System for the measure [[Exhibit K](#)]. I believe it was offered by the public defenders' offices, and it is a friendly amendment. Please look at it if you have not already.

Assembly Bill 425: Establishes provisions relating to the criminal forfeiture of property used in or derived from unlawful acts relating to the possession, distribution or use of controlled substances. (BDR 14-483)

Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice:

I will give you a brief introduction and then turn it over to Mr. McGrath to give a PowerPoint presentation on what forfeiture is in general. I will come back to go through the bill and then answer any questions, but first, I want to introduce Mr. McGrath and make a couple of comments.

I have been working on forfeiture reform in Nevada for several years. My efforts go back to my undertaking with Senator Greg Brower back in, I believe, 2015. I also did some work with Senator Donald Gustavson on getting this reform going. My efforts have been bipartisan, and I hope this is the time to make some substantial changes. The whole goal is to put forfeiture for small amounts into criminal cases where someone has an attorney, and they can be dealt with easier than in the current process, which is a convoluted civil case.

Mr. McGrath is a senior legislative counsel. He has been a senior legislative counsel with the Institute for Justice for ten years. The Institute for Justice has worked on forfeiture reform in 25 states at the legislative level. The Institute for Justice is the nation's leading advocate for forfeiture reform. They have reformed forfeiture schemes and statutes in many states. Mr. McGrath will go through the PowerPoint [[Exhibit L](#)], then I will go through the bill and the conceptual amendment [[Exhibit K](#)].

Lee McGrath, Managing Attorney, Institute for Justice:

I am a senior legislative counsel for the Institute for Justice. Thank you for the opportunity to conceptualize what Assembly Bill 425 wisely does. I will walk through a very short presentation on ending civil forfeiture and replacing it with criminal forfeiture. After I have completed these few slides [page 1, [Exhibit L](#)], I will turn it back to Ms. Rasmussen, who will apply it specifically to what you are facing in this bill and what is happening in Nevada. I would like to give you the big picture of what forfeiture is, and then dive into the weeds, and there are lots of weeds when it comes to forfeiture [page 2]. I will suggest the differences between seizure and forfeiture. I will also talk about the different types of people who face this issue: the suspect and the innocent owners, such as the suspect's wife, girlfriend, a parent, a rent-a-car company, or a creditor. I will dive into the differences between civil forfeiture—the kind you have in Nevada—and what this bill proposes: a streamlined approach to criminal forfeiture. I will briefly talk on the facts as they relate to illegal drugs, the dual jurisdictions between what you have established in criminal law and forfeiture processes and what the federal government establishes. Then I will spend a few minutes talking about myths and realities.

Here is the big picture [page 3]. Crime should not pay. Everyone who testifies today and those who are involved in this issue do not want crime to become economically viable and a more attractive exercise. It is perfectly legitimate for the state of Nevada to engage in disgorging the fruit and instruments of crime. The money, the vehicle, all of this should be seized and, if a person is convicted, be forfeited. This is a "how" question, a "process" question. This is a question of whether Nevada should continue to use civil forfeiture or move—as this bill suggests—to a criminal forfeiture process.

By way of definition, let us make clear that there are two different functions involved here: one very little and one a lot [page 4]. The little one is the act of seizure. This bill hardly touches seizures. Seizure is taking possession of property believed to be associated with crime. It is the work of police officers, highway patrolmen, and sheriffs. It happens out on the street. Once again, this bill hardly changes any of Nevada's laws. What the bill focuses on is the work of prosecutors, defense attorneys, and others engaged in litigating ownership

and the transfer of title. Civil prosecutors in Nevada today do this type of litigation in courtrooms and in their offices as part of plea bargains. That is the difference between seizure and forfeiture.

Let us turn to the different people involved [page 5, [Exhibit L](#)]. There is the suspect and then an innocent owner-claimant who has had no association or involvement in the crime. It could be the suspect's spouse, parent, a creditor, the Bank of Nevada, or a rent-a-car company. Inside this bill are proposals on how to change the process of forfeiture associated with the suspect, as well as the process associated with innocent owners and secured creditors. Those are two different people.

Here is the thrust of what we are talking about today [page 6]. Civil forfeiture is a two-track process. If I am driving through Nevada and get stopped and arrested, my person goes into the criminal justice system, but my vehicle and my cash go into the civil system. In contrast, if I am driving through Nebraska, North Carolina, or New Mexico and get stopped, I face a one-track process in which my person goes into the criminal justice system and so does the question, the litigation, associated with my vehicle. It all happens in a streamlined, single process in the criminal jurisdiction after I am convicted. This is the thrust of A.B. 425: to move from civil forfeiture to criminal forfeiture.

On that point, you may have heard about some of the funny names that occur in civil forfeiture, like *Laase v. 2007 Chevrolet Tahoe* [776 N.W. 2d 431 (Minn. 2009)]. By contrast, *in rem* jurisdiction is unique to civil forfeiture. It does not happen in criminal forfeiture, *in personam* jurisdiction [page 7].

Additionally, there are questions about Nevada's jurisdiction versus the federal government [page 8]. In areas of controlled substances, there is dual jurisdiction. In particular, the federal government teams with Nevada law enforcement in a program called the "Equitable Sharing Program." There are adoptions, and there are joint task forces. This bill proposes changes in adoptions, but not in joint task forces.

When does civil forfeiture make sense [page 9]? It makes sense in admiralty law. It makes sense when the suspect is beyond the jurisdiction. It makes sense at the Port of Los Angeles or the Port of Boston or somewhere along the Great Lakes where the shipper, the person who is the suspect who is violating state or federal law, is beyond the jurisdiction. Admiralty law is perfectly fine to use in civil forfeiture when the suspect is beyond the jurisdiction.

When does civil forfeiture not make sense [page 10]? Civil forfeiture does not make sense when Nevada gains personal jurisdiction. On the highways and byways of the state where an arrest occurs, I submit that the rationale of using civil forfeiture disappears because the state has gained personal jurisdiction through the arrest of the suspect.

Turning now to some of the myths and realities of forfeiture, one of the great myths is that civil forfeiture is used exclusively as a tool against international drug cartels [page 12]. It certainly is used against members of international drug cartels, but that is not exclusive. The

median seizure of cash in Nevada is not hundreds of thousands of dollars wrapped in plastic and hidden in the panels of 18 wheelers, but instead, it is \$908 [page 13, [Exhibit L](#)]. This is the median seizure of cash in Nevada. That, surprisingly for a Western state, is less than the national median of \$1,300. We are talking about a relatively small amount.

A second myth is that Nevada and other states that use civil forfeiture provide sufficient due process [page 14]. I suggest that they do not. Bifurcating the person in criminal prosecution and the property in civil forfeiture is not an efficient process.

What do we know about that [page 15]? We know that most owners do not engage in the civil process. There are many reasons they walk away. One is that the litigation costs often exceed the value of the seizure. Even if you were as innocent as Mother Teresa, if you only had \$908 seized from you, it would be irrational to hire a private attorney to help you get back your \$908. Additionally, since it is in civil court, there is no public defender. *Gideon* [*Gideon v. Wainwright* 372 U.S. 335 (1963)] only applies to criminal court. What are the results? There are many defaults in civil court related to litigating the transfer of title of property; ownership transfers to the state without judicial oversight.

Another common myth is that forfeiture is an effective tool to get drugs off the street [page 16]. The Institute for Justice has recently published research by Brian D. Kelly that it has had no effect on drugs or crime [page 17]. Even common sense, beyond the academic study, suggests that Nevada's laws, like the laws of most states, do not focus on seizing drugs. The incentive that exists is to seize cash.

Lisa Rasmussen:

I will go through the sections of the bill. I will also go through the conceptual amendments submitted by the public defender's offices as contemporaneously as possible. The amendments are friendly but limit the bill somewhat and set some additional limitations.

Sections 4, 5, and 6 of the bill are the definitions. Section 8 defines the scope of the bill. This is where we have substantial changes in the conceptual amendment from the public defenders. This would be limited to seizures related to the transport, sale, and trafficking of controlled substances not in your possession. We will come across this in other places, but it would be limited to—this is actually section 9—a \$5,000 or less value of the items seized. That covers sections 8 and 9.

In sections 12 and 13, the bill discusses the mechanisms of forfeiture. Section 14 discusses how forfeited items are received. Section 17 is protection for people when money or items are seized. Section 19 discusses the crux of the bill, which is that it only applies if a criminal case is filed. If no criminal case is filed, the seizure and subsequent forfeiture by the state are going to remain a civil proceeding. If someone is stopped on the interstate on their way to Utah and \$15,000 is seized from their car but there is no arrest, this bill does not apply. It only applies when there is a concurrent criminal case.

Section 20 identifies the procedures of the bill. The procedures will include an additional allegation in the criminal complaint that will say, "Count 1, trafficking a controlled substance; count 2, forfeiture of \$4,500." That allegation will be litigated at sentencing or in the plea agreement. Any time after sentencing, a judge will make a decision as to what should happen with the \$4,500. It will circumvent the cumbersome process of the state filing a civil complaint. In Las Vegas, it is generally done by the Las Vegas Metropolitan Police Department (Metro). Instead of a person appearing in a civil case litigation, it would be a streamlined process contained within the criminal case. Section 21 also outlines that process.

Section 22 identifies instances where substitute forfeiture applies. Section 24 contains provisions against excessive forfeiture. Section 25 has to do with the disposal of property and how it is liquidated. Section 27 protects the innocent owners that we have been talking about. Sections 30 and 31 talk about what is prohibited and what the state cannot do. Section 33 maintains there is still an annual report.

Let me go back to the conceptual amendment [[Exhibit K](#)]. As I mentioned, it will be limited to items with a value of \$5,000 or less. It only applies to the transportation, sale, or trafficking of a controlled substance. In the conceptual amendment, we changed the burdens to be consistent with current burdens. Currently, the state has a burden of clear and convincing evidence to prove a forfeiture. In the original bill, we had—for some reason—"a preponderance," but we changed the standard back to clear and convincing, which is to be consistent with the existing standard. That would make this bill consistent with civil forfeiture. Regarding an innocent owner or a defender who is establishing that the seizure is excessive or that they are an innocent owner or that the money was derived from lawful proceeds, such as their paycheck that they just cashed, that burden is a preponderance of the evidence.

I have hit the highlights of the conceptual amendment and have gone through this bill piece by piece. Now I want to tell you how it actually plays out. Some letters in support of this bill were submitted that also talk about some of the numbers [[Exhibit M](#) and [Exhibit N](#)]. From the fiscal year of July 2019 to June 2020—the most recent fiscal year from which we have reporting—there was a total of \$4 million seized and a total of about \$3 million forfeited in the state of Nevada. If you go back one fiscal year, those numbers are \$6 million and a little over \$3 million. There is a lot of money seized in this state, but a lot of it comes from big cases with a federal joint task force. This bill does not interrupt or impede Metro's ability to work with the joint task force and its federal partners. The local law enforcement agencies in Nevada have a formula for money sharing with their federal partners. They get part of the money the feds seize, and the feds get part of the money the state seizes. This does not impact that. In any case, that would be over \$5,000, and the civil process would remain the same.

I have worked in the past with Metro to see if we could come to an agreement, but I have not been able to get them to agree to any change on the current forfeiture. The current forfeiture scheme is broken because it does not address all of these small amounts that are seized and subsequently forfeited when someone does not have the resources to appear in a civil case to

litigate whether they should have their money back. It is much easier to do this in the context of a criminal case. If someone pleads guilty, most of the time they do not have an explanation for the money, and the money will be seized or forfeited in the context of the criminal case. In some instances, where someone can establish that the money has nothing to do with the drugs they have been alleged to have trafficked, they can have the money returned. It is a much simpler process. It is exactly what we have been doing in federal court for over 20 years. I practice in both federal and state court, and it is not complicated. It is simpler to do it in the criminal case when the person already has an attorney.

The public defender's office requested the cap of \$5,000, and I think that is a reasonable start so that people can understand that this is not a complicated process. It is not going to create an undue burden on either the state or the public defenders' offices.

Lee McGrath:

The \$5,000 cap relates to representation by public defenders in the conceptual amendment.

Assemblywoman Nguyen:

Thank you for bringing this bill again, since this is the second time. I am sure you have been here before. I know this is something you have been working on during the interim and have been engaging outside community groups in. Have you taken into consideration any of their changes to this bill? It appears that some of the law enforcement agencies are not willing to work at all. Is it correct that there is no middle ground or room for compromise? I see you have the support of other outside community groups. Are there any substantial differences other than the cap? Have you tried to be accommodating for law enforcement even without their participation?

Lisa Rasmussen:

The bill is different from last session's in that it only applies to drug cases. Last session, it applied to all cases. In the past, I worked substantially with Metro to come up with a scheme that pleased them, but at the end of the day they said they were not going to support any of it. This session, I attempted to reach out to the law enforcement agencies that have indicated they are in opposition—and are likely to speak today—and they had no interest in talking with me or working with me on any proposed revisions or amendments.

Let me clarify that the \$5,000 cap is the amount of the seized contraband. This bill will only apply to \$5,000 or less in value or actual cash. I do not know if that changes law enforcement's position on it, but it is my position that it will give us a good start on the bulk of cases. As Mr. McGrath noted, the median seizure is \$908; many of the seizures are less than that amount. We are trying to make it a fair process for people to have someone who can answer their questions, to give them advice, and to say that this is what will likely happen to that money. Right now, if it is a public defender case, they cannot address the matter because it is a civil proceeding and outside the scope of their charter. If someone has retained me to represent them in their criminal case, I can answer their questions because I understand both procedures. There is a whole population of people who do not have any level of representation. Even with the \$5,000 cap, it will cover the bulk of the cases.

What I did not talk about is the cost to Metro because they now have an attorney who files the civil cases. They pay a \$270 filing fee and wait until the criminal case is over. Then we go back to the court where the person pled guilty and say that we want the money. This could all be done in the criminal case.

Assemblywoman Nguyen:

Can you briefly describe how this process works in the federal system? Are there more due process protections there than in our own state system? By allowing this bill to go forward, it sounds like it would increase due process protections for innocent people.

Lisa Rasmussen:

In the current federal process, an indictment is filed that alleges a crime or two. It also has a third allegation of forfeiture that will say something like, "The government is seeking to forfeit two firearms and \$2,500 in cash." That forfeiture allegation when they were arrested notifies the criminal defendant that the government is seeking to forfeit these items. During the course of litigating the criminal case, a plea agreement is often put on the table where the defendant is given an offer to plead guilty to X, Y, and Z, and that usually includes the forfeiture. The government is saying that they expect them to forfeit the two guns, maybe because they are a felon in possession or they were using the guns unlawfully. It is an extra paragraph written in the agreement pursuant to the terms of the plea that the person will forfeit the items. On the day of sentencing, the judge imposes the sentence and issues a one-page forfeiture order that matches exactly what is in the plea. It is a very simple, streamlined process. There are instances where it can become complicated if it is hundreds of thousands of dollars, but that would not apply to this bill since we are talking about a \$5,000 cap.

Assemblywoman Nguyen:

The due process that is built into that is that you have an attorney the entire time.

Assemblywoman Marzola:

Section 25 of the bill states that the forfeiture is of real property or personal property. Is cash considered personal property?

Lisa Rasmussen:

Yes, cash is considered property. We describe property and assets in the context of forfeiture law and seizure, so cash is personal property. It is something you have ownership of. A car is something you have title to, but cash has an ownership element to it.

Assemblywoman Marzola:

Regarding section 25, subsection 2, I understand that some of the cash you get goes to restitution and liens. Paragraph (c) says for expenses that the local law enforcement agency may have spent on the seizure, and paragraph (d) says the same about the office of the prosecutor. When you go to subsection 3(a), it says that some of the proceeds will go to the Department of Public Safety for the purchase of equipment to be used by state or local law enforcement agencies. Do you know what types of equipment that would be?

Lisa Rasmussen:

The current forfeiture scheme that we have in Nevada allows the seizing agency—in Las Vegas it is usually Metro, but it can be Henderson or North Las Vegas—to keep a portion of the money seized or the liquidated value of what was seized for purchasing law enforcement equipment, which is guns and other tactical items. Mr. Christian can also answer that if he is going to testify in opposition. It allows them to buy equipment that goes to their police force training. That money is currently allowed by statute, and this bill does not change what they are allowed to keep.

They are also currently allowed to claim an expense related to the seizure and the forfeiture. That expense is the civil litigation of the forfeiture and the overhead they incur by filing a civil case, including the filing fee and the expense of having an attorney litigate it. This bill would decrease that amount. What remains is what goes to the General Fund and the school fund. This bill, at least on these small-level amounts under the conceptual amendment, would decrease the overhead law enforcement is incurring for their reasonable expenses. It does not alter their ability to maintain a certain portion of it for their equipment and things they are allowed to lawfully purchase.

Assemblywoman Summers-Armstrong:

A statement was made about innocent people who get caught up in this. You mentioned rental car companies. Please expand on that.

Lisa Rasmussen:

This is what often happens, especially on highway interdiction cases: Someone will get a rental car from Los Angeles to Salt Lake City and will be stopped by the Nevada Highway Patrol. A pound of methamphetamine is located in the door or bumper of that rental vehicle. There may also be some money. In a case like this, if that money is seized and is less than \$5,000, the money and the rental car can be seized because they are instruments of the crime, but the owner of the rental car agency would have the ability to come to the proceeding and say that it is his rental car, that he owns it, and he is not a drug trafficker. Their interest would be protected. That is what it generally targets.

Assemblywoman Summers-Armstrong:

Would that also apply if I had allowed a friend or family member to use my vehicle and its value was over \$5,000? Would I be able to come to the criminal proceeding? Would the proceeding include, not only the criminal charges, but also the seizure? Would I be able to tell them it is my car, and they did not have the right to use it in this criminal activity? Can I get my car back? Will I have to defend myself in a civil suit in this current situation?

Lisa Rasmussen:

In the scenario you are talking about, when they value a car over \$5,000, that would remain in the civil forfeiture process. You would absolutely be able to go to the civil case and say that you are an innocent owner and that you had no idea your neighbor was going to drive drugs across town. This has nothing to do with you. You would be protected, but you would be required to hire a lawyer to do it. The same is true in this bill. As an innocent owner and

third party to the criminal proceeding, you would be able to do it on your own in either case, but you would also have the ability to hire a lawyer and to say that this is your car. With the cap of \$5,000, if the value of that car is over that, it will remain in the civil procedure. You, as an innocent owner, will not have an attorney appointed for you in either case.

Assemblywoman Krasner:

I am trying to understand. Is the concern of the bill that drug dealers and drug traffickers will not have a free public defender to defend them in court?

Lisa Rasmussen:

No, that is not the concern. Anyone who is eligible for a public defender or appointed counsel has appointed counsel in any criminal case. The concern is not that they will not have a lawyer. It is that, in these small amounts that are seized, people lack the ability to hire a lawyer. No lawyer would tell you that they are going to charge you \$500 an hour to recover your \$1,200 in cash. You could not get through filing an answer to a complaint for less than the money you are trying to litigate. There is a basic rule that we have that we do not spend more money litigating what is at issue than it is worth. That would be bad advice.

What this does is simplify these small-level seizures and forfeitures and puts it all in one place where it is easier and saves everyone money. It saves the state and law enforcement money, and at the end of the day, more money goes to the General Fund than is currently going from these small-level seizures and forfeitures.

Assemblywoman Krasner:

I thought you said these cases currently go on a bifurcated track where there is a civil and a criminal proceeding, and that the purpose of this bill is to turn it all into one streamlined criminal proceeding. Drug dealers and traffickers do not currently have the assistance of counsel under *Gideon v. Wainwright*. Am I right?

Lisa Rasmussen:

Everyone has counsel in any criminal case if they cannot afford it. By moving the forfeiture proceeding in low-level forfeiture matters into a criminal case, it guarantees they also have counsel for the issue of whether the money should be forfeited.

I think the answer to your question is that it gives people counsel. I do not want you to think they do not have counsel if they are not entitled in the criminal case. They are always entitled under *Gideon v. Wainwright* to counsel in a criminal case if they cannot afford it. This allows the additional due process of having a lawyer to litigate with them the additional layer or element of a criminal case, which is the seizure of the money or the item of value.

In federal cases, it is part of the criminal case. In Nevada, we have an archaic scheme where we have a whole separate civil procedure, and most people are not able to afford to come to the table. This allows them the additional due process of having their lawyer help them in the criminal case with these low-level seizures and forfeitures.

Lee McGrath:

In order to get a public defender, the suspect needs to be indigent. There are economic caps in Nevada and other states regarding who qualifies for a public defender. In this case, if the suspect does qualify because he is indigent, the public defender would be available to represent him in both the criminal as well as at the civil, the forfeiture consideration.

Assemblyman Orentlicher:

One could imagine civil forfeiture in nondrug cases. Are we not addressing that because almost all the action is with drug seizures?

Lisa Rasmussen:

In last session's iteration of this bill, it addressed all crimes where we typically see forfeiture come into play. It kept the current scheme for the crimes that allow forfeiture and seizure in Nevada. We limited it this year in part because most of the crimes where we see seizures and forfeitures are related to drug crimes. It covers it even with the \$5,000 cap, which is an additional limitation. It still covers the bulk of forfeitures and seizures in Nevada. There are some murder cases that have forfeitures associated with them. There are also some fraud cases that have forfeitures associated with them. We decided that this iteration of it this session would start small and target the controlled substance cases where the bulk of them reside and to limit the amount.

Assemblywoman Hansen:

When I look at the amendment, it is a little confusing. I know these are not the amendments that you brought forward, but they are friendly amendments from the public defenders. The issue is the cap, which we just addressed. There is also the caseload. They are on board with the intent, but the caseload and the majority of these cases are under \$5,000. Did I hear you correctly on that?

Lisa Rasmussen:

That is correct. The bulk of the cases are less than \$5,000. There is another tier that is less than \$15,000, and then there are the outlier cases, but those are generally federal cases that would not be implicated by this bill. I know that the alternate public defender in Washoe County opposes this bill because he perceives that it will create work for them [[Exhibit O](#)].

One of the reasons I agreed to the conceptual amendment that the public defenders from Clark and Washoe Counties proposed on the \$5,000 cap is that it somewhat mitigates their concerns about additional caseloads. At the same time, it captures the bulk of the people who have low-level amounts seized from them. There may be a lawful purpose for having that money, like they may have just cashed their paycheck, or their mom may have just given them \$1,000 for their birthday. It allows the additional due process for people who cannot afford counsel. I agreed to that cap because I thought it was workable for the public defenders. They will find that it does not require much extra work. It is an extra allegation in the complaint and an extra element that you resolve in a plea agreement, just as you would restitution. The judge then makes the decision at sentencing. It is hard for people who have

never had experience with forfeiture and seizure to understand that it is not that complicated when we are looking at this bill.

Assemblywoman Hansen:

To me, it appears that the streamlined process in this bill makes sense, but the argument lies in the parsing of the funds because it is going to shift some of the funding around. To get around the funding situation, it seems like we have a system that we may possibly all agree with. It is getting into the money issues which sometimes throws legislation off the rails. Would that be a correct assumption?

Lisa Rasmussen:

I do not think this will have any appreciable impact on funding in terms of expense for the public defenders' offices. They are welcome to submit what they think the fiscal impact is to the Committee. Last session, with a similar bill that was much broader, Metro submitted a fiscal note because they thought it was going to require extra work for them. This bill takes work off their shoulders and decreases their expenses and increases the amount that, at the end of the day, goes to the General Fund and the school fund. I cannot predict what other people might assess.

Assemblywoman Hansen:

I appreciate that. It seems like a process that is streamlined and makes sense. I hope we can eventually get there.

Assemblyman O'Neill:

Mr. McGrath, I think you stated in your presentation—and I may not have caught it quickly enough—but what other states have gone to this process of criminal actions in their forfeitures?

Lee McGrath:

Besides the federal government that uses criminal forfeiture—one of the ways it takes title to property—three other states have adopted this process. Those would be New Mexico in 2015, Nebraska in 2016, and North Carolina has had it for a long time since North Carolina never had civil forfeiture on issues of drugs. When it adopted its forfeiture process in the 1990s, North Carolina went right to criminal forfeiture and did not codify the civil process.

Assemblyman O'Neill:

Ms. Rasmussen, it is easy to quantify the value of currency, \$5,000 is \$5,000. What about when the individual has \$3,000 and is driving a 2005 something or other with 10,000 miles on it that can probably be sold for \$3,000 or \$4,000 on the used car market. Do you combine those two, and you are now in excess of \$5,000; does it remove it; or are we just talking cash? That is what I am confused about, since everyone keeps talking about cash. There are other things, such as the value of firearms or the value of property or real property.

Lisa Rasmussen:

The answer is that this will come down to prosecutorial discretion. If the prosecutors and the state believe that the collective value exceeds \$5,000, which would be the intent of this bill as amended, they would have the option to not bring the additional allegation in their criminal complaint to their criminal indictment and to say to Metro or the seizing agency that they will have to file this as a civil complaint. They would probably look at Kelley Blue Book value when determining the value of a car, doing what most of us would do. That would be, at some point, the prosecutor's decision whether the collective value was over \$5,000.

Chairman Yeager:

We have time for one more question before we move on to testimony on the bill. Are there any other questions from Committee members? I do not see another question, so we will take testimony on the bill and come back for concluding remarks. At this time, I will open testimony in support of Assembly Bill 425.

Nicholas Shepack, Policy and Program Associate, American Civil Liberties Union of Nevada:

Forfeiture was originally presented as a way to cripple large-scale criminal enterprises by diverting their resources. Today, aided by deeply flawed federal and state laws, many police departments use forfeiture to benefit their bottom lines, making seizures motivated by profit rather than crime fighting. For people whose property has been seized through civil asset forfeiture, legally regaining that property is notoriously difficult and expensive with costs often exceeding the value of the property. The total value of the property seized each year is increasing.

Americans across the nation agree that civil forfeiture systems undermine property rights and are fundamentally unjust. Working-class Americans are disproportionately harmed by this system, as Justice Clarence Thomas recognized when he said, "Forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings." Previously, Justice Thomas said these same groups are often the most burdened by forfeiture.

The need for forfeiture reform is recognized across political and ideological spectrums and throughout the nation. Both national Republican and Democratic Party platforms of 2016 called for civil forfeiture reform, and recent polls showed that 84 percent of voters oppose this practice. This bill is one step in that direction. It is very targeted in a form that will help to ensure innocent people are not caught in the forfeiture process. Moving to criminal forfeiture, we can streamline this process and add much-needed clarity. We hope, with the passage of this bill, we will set the stage for more sweeping reform in this area in the future, and we ask for your support of this piece of legislation.

Jim Hoffman, Member, Legislative Committee, Nevada Attorneys for Criminal Justice:

The Nevada Attorneys for Criminal Justice (NACJ) supports Assembly Bill 425. As a society, we are coming to realize the negative effect that fees can have on poor people in the criminal justice system. In context, from traffic tickets to inmate wage deductions, the

Legislature is finally starting to address the ways mass incarceration and predatory fees drive poverty, and poverty drives mass incarceration and predatory fees.

Forfeiture is another example of this dynamic. Wealthy people accused of crimes are able to hire counsel to litigate forfeiture, which makes sure it is only done when fair and necessary. The poor people accused of crimes cannot afford to hire counsel, depriving them of one of the most basic protections our system has. In turn, those defendants, or the innocent third parties who actually own the seized property, are less likely to prevail in their cases. Any amount of money is a large amount for people in poverty, and cars are vital for people who need to get to work. A deprivation of property here is a serious thing, and we need to ensure we provide counsel so that it only happens when warranted. Assembly Bill 425 is a good first step in that direction, and the NACJ supports it.

Dayvid Figler, Private Citizen, Las Vegas, Nevada:

I am a private practitioner. I was a public defender and a contract attorney previously. Currently, I also serve on the Pro Bono Project Advisory Council for the Legal Aid Center of Southern Nevada.

This is a good measure. It is actually a modest measure. With all the exceptions and the caps, it is very focused. Ultimately, it serves the purpose of more access to justice, which every member of this Committee is interested in. Through my various roles, it is something I am very interested in. Having done both civil forfeitures and criminal matters involving the same case, I can testify that, while the civil forfeiture provisions are not difficult to learn, they are arduous. In my capacity as a private attorney, it creates additional fees that I am required to pass on to my clients because of the nature of the arduous work that is part of the criminal proceedings in these limited cases that would be a savings to them. As a result, it would increase their access to justice as well. For both indigent and private individuals, it is a good bill. For the overall purpose of streamlining the process, the provisions are a very easy way for criminal practitioners to acclimate to be able to do this. It will be hard in the beginning since it is something new, but I trust that my colleagues in criminal law would be able to acclimate this much faster than if they were required to take on the arduous civil process. I support the bill.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

We are testifying today in support with the acceptance of our proposed amendments. The reason we put forth these amendments was that we are supportive of changing the predatory process of civil asset forfeiture. For those who have been here for quite some time, in 2017, Senator Donald Gustavson brought forth Senate Bill 358 of the 79th Session, which brought to the attention of the Legislature that the national attention we were getting from Deputy Lee Dove in Humboldt County was making Nevada a laughingstock because of the injustices that were happening across the Interstate 80 corridor (I-80). Ms. Rasmussen is right that most civil attorneys will not take on a case to get \$1,000 to \$2,000 back. It is not worth the person's time if the attorney is going to charge \$350 to \$400 an hour to work on that case.

This is going to provide some equity in civil asset forfeiture with the limitations of crimes being limited to crimes where people are actually profiting off selling, transporting, and possession with intent to sell drugs. Keeping the cap at \$5,000 will assure that a public defender is not appointed to a case where a person has a lot of resources. If someone is driving a Maserati and dealing drugs, they should not have access to the public offender's office. This will keep people from being bullied in the civil process.

For the opposition that may testify, as they did last session, that the civil proceedings are easy, they are not. Nobody would go into a civil case without counsel. If you did, the civil lawyers on this Committee know that that process is arduous and hard. We are looking forward to civil forfeiture being reformed this session, and we are thankful we can support it with the amendment this session.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:

First, I want to clarify for Assemblywoman Hansen that my office does not join in the letter proposed by the alternate public defender's office. We are in support of this bill. We support the legislation to streamline and reform our forfeiture laws. We appreciate Ms. Rasmussen's dedication to these efforts to reform our process. According to the Institute for Justice, Nevada has earned a "D-" in our forfeiture laws because of the need to reform them, to create a higher bar for forfeiting property with a conviction, to protect innocent third-party owners, and to ensure the forfeiture proceeds do not just go to law enforcement agencies that do not deter criminal conduct, but rather is rife with potential abuses.

In *Timbs v. Indiana* [586 U.S. __ (2019)], Justice Clarence Thomas included in his concurring opinion, "This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses." We appreciate the protections that are included in this bill and would note that it is extremely difficult for our clients to navigate when going through the civil process on their own. It is arduous and frustrating, especially for those who had just withdrawn money to pay rent or who have just received a settlement. We acknowledge that this will increase our workload. We are unable to determine how much at this time and do not believe it is appropriate to guess and speculate what that would be. We appreciate the bill and urge your support.

Chairman Yeager:

Is there anyone else in support? [There was no one.] I will close testimony in support, and I will open opposition. I believe we have three people to testify in opposition.

John T. Jones, Jr., representing Nevada District Attorneys Association:

I have with me Matthew Christian of the Las Vegas Metropolitan Police Department and Nancy Savage of the City of Henderson. We are here in opposition of A.B. 425.

I will start out by saying that, in order for an officer to seize assets in the first place, the officer must be able to articulate a nexus between a felony and the assets being seized by the

law enforcement officer. That is required by statute in *Nevada Revised Statutes* 179.1164 and Nevada case law.

There are two elements that must be met in a forfeiture case. The first is a felony, and the second element is a nexus between that felony and the assets that were seized. It is a misconception that law enforcement officers run around seizing assets without linking those assets to a crime. I want to further state that we have talked about forfeiture for the last few sessions and made substantial changes to our forfeiture laws during the 2015 Session. Mr. Piro spoke of some issues along the I-80 corridor. Those issues were brought to the forefront of the 2015 Legislature, and that is what led to the changes that took place in 2015. Law enforcement agencies were active participants in those changes and ultimately supported them.

I want to briefly address the notion that we have been unwilling to work with Ms. Rasmussen on this issue. The first time law enforcement heard from Ms. Rasmussen, with respect to A.B. 425, was last Thursday when she sent us an email asking if there was anything we could do on this bill. I personally had not heard from Ms. Rasmussen during the interim regarding this issue. I want to say that the current system—the one we put in place after the 2015 Session—does take into account due process. It requires that the civil forfeiture lawsuit be stayed while a criminal case is pending. The civil case, which must be filed within 120 days of the seizure, will be stayed pending the outcome of the criminal case. I want to make that clear. If the defendant's criminal case is denied or dismissed, the seized property is returned. If a criminal conviction is secured, either through a plea or a trial, the defendant still has a right to challenge the forfeiture during the civil forfeiture process. All of this is to say, the 2015 changes the Legislature made, and law enforcement agreed to, tied our civil forfeiture process to the criminal case.

We should remember that the purpose of forfeiture law is that crime should not pay. Seizure and forfeiture allow a law enforcement entity to make sure crime does not pay. The notion that crime does not pay leads us to the first issue with this bill because crime can pay under provisions in Assembly Bill 425. For example, crime can pay in increments of \$200 or less. Assembly Bill 425 prohibits law enforcement from seizing any amount under \$200 no matter the nexus between the funds and criminality. Because this prohibition is tied to the criminal case, I do not believe that I, as a prosecutor, would be able to ask a defendant to forfeit the illegal gains as part of the criminal case. And yes, Metro does have a policy that they will not proceed with forfeiture if it is a small amount, but that does not prohibit me, as the prosecutor, from having the defendant forfeit the illegal gains as part of the criminal case. Section 10 of A.B. 425 would allow crime to pay.

Section 25 pays arrears to a victim from these gains, or liens would potentially allow crime to pay. We all agree that ensuring victims are paid is a noble goal, but if the defendant gets credit for using illegal funds to pay a victim or lienholder, as section 25 would allow, crime would pay under A.B. 425.

Finally, section 28 defines an innocent owner as an heir of the defendant who has property seized. This section seems to permit the defendant's heirs to come in and take the property back even if the defendant is still alive and is convicted of the crime. There is no ability with an innocent owner, as heirs are defined in this, for us to say, "Hey, these gains were made illegally." Potentially, crime pays for heirs under Assembly Bill 425.

I highly doubt the proponents of the bill think crime should pay. I am not imputing them in that way at all. What I am saying is that this bill has some significant issues. It creates some confusing language and duplication of processes. The reason is simple: this bill is trying to place a civil process into criminal law. The two procedures do not fit well together. One of the biggest procedural issues we have with this bill is that it creates a separate statutory scheme for narcotics cases. If you are involved in sex trafficking, credit card fraud, racketeering, or other types of financial crime, the current statutory process would apply. Assembly Bill 425 would not change the forfeiture process for these defendants. However, if you were charged with a narcotics-related offense, the new statutory scheme would apply. The different rules for seizures and forfeitures, depending on whether the incident is narcotics-related as the underlying crime, would create significant confusion and duplication of efforts and may require significant recordkeeping or accounting processes that are done by both law enforcement and the district attorney's office.

This leads me to my third and final issue with respect to the bill. In Clark County, the district attorney's office does not handle civil forfeiture. Matthew Christian, whom you are about to hear from, and the team at Metro handle these cases. However, this bill ties forfeitures so closely to the criminal case, my office would undoubtedly have no choice but to handle these processes, and we do not have the manpower or resources to take on this additional responsibility. Further, we fear it will slow down or negatively affect the criminal prosecution. If the goal is to get defendants public counsel for civil forfeiture matters, the bill could be narrowly tailored to address that issue. They should not rewrite our entire process to tackle one issue.

Matthew Christian, Assistant General Counsel, Las Vegas Metropolitan Police Department:

The Las Vegas Metropolitan Police Department (Metro) processes hundreds of forfeiture cases every year. The process works very well as it is. It is already a very streamlined process, and despite some of the testimony the members of the Committee have heard today, it is not complex. It is important to note that there has been no testimony today regarding a single person—especially since the changes were made in 2015—who has had property wrongfully forfeited, or any person who has not had the opportunity to make an appearance and seek their property back.

I want to make sure the process that exists today is well understood, because there seem to be some misperceptions about it. There are already so many due process protections built into the law that this bill does not add any further protections regarding these issues. Mr. Jones already mentioned that there must be a nexus before a seizure can occur. That is true. Law enforcement may not seize property unless they have probable cause to believe the property

is either the proceeds of a felony crime or it was the instrumentality used in a felony crime. Under existing law, if there is a parallel criminal case that is proceeding, the civil case cannot proceed. It must be stayed. The law already favors a streamlined process whereby, most of the time, the issue is resolved within the confines of the criminal case. For instance, under existing law, if the district attorney decides that a criminal charge has to be denied or if it is going to be dismissed, law enforcement must immediately return the property. Also, if they went to trial and the subject is acquitted, existing law already requires the property be immediately returned. Also, within the confines of the criminal procedure, there is an opportunity for the parties to settle the case. There are guilty plea agreements. In a vast majority of these cases, the issue of the forfeiture is resolved within the confines of the guilty plea agreement.

What that means is that the process is already handled most of the time through the criminal procedure, and that also means the person already has a lawyer. The person is represented in that process. Under existing law, the only time it is not that simple is when the person insists that the money is not the subject of forfeiture and some discovery is needed to determine exactly what the source of the money is. That is the only time the civil procedure comes into play.

Once the criminal case is resolved, the civil portion of the procedure will begin. How does that procedure work? We have heard some representations that the person is required to hire a lawyer. That is not true. No lawyer is required. We have had plenty of cases where the civil case proceeds, but the subject contacts us. The subject can make an appearance in the case if necessary, but before that happens, we invite the subject to provide any evidence they may have. If they have evidence that the money is birthday money, money earned at a job, or money received from some legitimate source, the money is returned. We cannot proceed with a forfeiture case unless we can prove by clear and convincing evidence that the property is the proceeds from a felony crime or the instrumentality of a felony crime. The burden is already on law enforcement to prove those things. If evidence is presented to the contrary, the money is returned.

The problem with this bill is that it makes it very complicated to have two different procedures in place. Ms. Rasmussen mentioned that she had worked with me in the past. It is true that we worked together two years ago. The impasse comes when there are two different procedures. It becomes complicated, and it is unnecessarily burdensome to have two different systems in place for the same forfeiture. That is where the impasse has always been, and this bill does not alleviate any of that. We would have one procedure used for low-level narcotics cases and a different procedure for everything else. That makes it complicated, and it is not necessary because the system in place now already affords so many protections to the subject.

I want to mention one more thing to ensure it is very clear. To the extent this bill would prevent a forfeiture from proceeding unless there is a criminal case, it is important for everyone to know that sometimes there just will not be a criminal case. There are circumstances when property is seized, and there is probable cause to believe that the

proceeds are from a felony narcotics crime, but the person is not here in Nevada, or there is an unknown person involved. There would not be a criminal proceeding. In those cases, the civil procedure allows for a notice to be provided to whomever it might be—maybe they are in another state—to make an appearance and for the forfeiture to proceed. This bill would eliminate those.

As to another point of clarity based on the prior testimony, there was a question about the federal procedure. It is true that in federal court the prosecutors can add a cause of action into the criminal complaint. What the members of the Committee did not hear is that the federal authorities also have an extra procedure they can choose from, which is an administrative procedure. They can proceed administratively, which works like the civil process we have here. They have that at their disposal as well.

Regarding the rental car example, I want to make sure it is very clear that the existing law already provides for the innocent-owner defense. If we seize property, and it is easily established that it is not the subject of the criminal proceeding who owns that property, that person is innocent, and it must be returned.

The bill also mentions the access clause. That is already an existing defense in the *Nevada Constitution*. If we seize property, such as an automobile, and the value of the automobile far exceeds the level of the crime, it would also be a constitutional violation to proceed with the forfeiture. Those protections already exist.

To conclude, we concur with Mr. Jones. This bill makes things much more complicated and unnecessarily so. There are already plenty of due process protections in place.

Nancy Savage, Assistant City Attorney, City of Henderson:

I have just a few things to add. I agree with both Mr. Jones' and Mr. Christian's comments. The statutes in place already provide for the protections that are being added at this point. What is being suggested will not expedite the case because they are all going to end up being resolved at the end of the criminal case. Typically, we do not move beyond the criminal case into the civil process once there is a conviction. In some of the larger cases this may happen, but we do not see that very often.

This bill purports to aim at the smaller drug-related cases. It has been said that these are not the big cases that involve drug trafficking organizations. However, the way drug trafficking organizations are organized is to utilize small players selling small amounts of the various drugs. I spoke with some of the narcotics detectives that we have in Henderson to see what the changes have been. There are obviously trends in what organizations are doing and the types of drugs out on the streets. For the last year—and I am from Clark County so that is what I know—we have been designated a high-intensity drug traffic area by the federal government. The reason is that Clark County has become a hub for the Mexican drug trafficking organizations from which drugs are transported from the border states, like California and Arizona, throughout the country. At this hub, most drugs being sold are through those drug trafficking organizations. When the small players are arrested, they only

have small amounts of money, but the profits for those who are not caught are going on to the organization. If we are unable to cut the profits off, the problems continue. As you know, the states are in the midst of an accelerating opioid epidemic. The drugs that our detectives are seeing come through are more often laced with fentanyl—regardless of the drug—which is a dangerous drug with the potency of 5 to 100 times morphine.

Chairman Yeager:

Ms. Savage, please keep your comments to the bill. I do not think anyone doubts the danger of the drugs that are out there, but please keep your comments to the process laid out in the bill.

Nancy Savage:

The emphasis of what I was saying was that there are no small players anymore due to the types of drugs. It sounds to me that the major concern that has brought this bill before you is for the small players to get public defenders, but the public defenders are not able to represent them in the civil forfeiture actions. You could do a targeted amendment that would allow that to occur. Most of what this bill targets is already in statute. The protections are already there. We had some questions about the innocent-owner provisions. In practice, if there is an obvious innocent owner, such as car rental or car leasing companies, those people do not have to go all the way through the forfeiture process. Those are taken care of up front. If there is proof of ownership, the vehicles or property are returned at the start. People are not being dragged along in it.

For reasons that have already been stated, we oppose the bill. We think the protections are there, and it is important to cut off the profits from drug trafficking.

Chairman Yeager:

Mr. Christian, in your experience litigating these matters in civil court—and you are just one agency—can you tell me how often the interested party whose property is at issue has representation in these cases?

Matthew Christian:

There are very few active civil cases that make it that far. An interested party may make an appearance in an actively litigated civil case if they have a private defense counsel. If they do not have a lawyer, the public defender usually advises them to make their appearance in the action itself. Before that, they can call us, and we will try to work it out. It is a civil case, so the law requires that personal service of the existence of the complaint be given to those folks. The summons comes with instructions on how to make an appearance. As I stated, it is not complicated; the person calls us. It is very rare that there is a dispute that cannot be resolved without litigation. What the person would do, and has done, is file an answer to the complaint, explain where the money came from, and it proceeds from there.

Chairman Yeager:

I understand that not all cases go to court and are litigated. That is a good point. In your experience, how often, if ever, does that person have an attorney reach out on their behalf or

talk to you once personal service of process is served on an individual? Are these usually resolved in some fashion without an attorney's involvement?

Matthew Christian:

That does not happen very often at all. It is not required to have a lawyer. We know we cannot proceed with a forfeiture if we cannot prove—and it is our burden to prove—that the money or property is instrumental. If someone presents us with evidence to the contrary, it would be wrong to proceed with forfeiture knowing we would not be able to prove it. Very rarely does a lawyer make an appearance.

Chairman Yeager:

I have a vague recollection that sometime between the last legislative session and this session there was some type of Ninth Circuit Court of Appeals opinion related to forfeiture in Nevada. I believe the Ninth Circuit Court ordered forfeited property or money to be returned to someone. I wonder if you know what that was about or have any familiarity with it? Are you able to shed light on what the opinion's concern was with the process as it existed at that time?

Matthew Christian:

I am not familiar with the Ninth Circuit Court's opinions during the last couple of years. Two years ago, the big talk was about a United States Supreme Court decision that came from Indiana. That case was about a law enforcement entity that had seized an expensive vehicle that was used to run drugs. It was a low-level number of drugs and a low-level crime. The Supreme Court clarified that the excessive fine clause in the Eighth Amendment comes into play and that must be considered by a court before proceeding with certain forfeitures. There was a lot of talk about that here two years ago, but what was lost on almost everyone, including the *Las Vegas Review-Journal*, was that the Nevada Supreme Court had already told us we needed to consider the Eighth Amendment and whether it would constitute an excessive fine. Given the number of forfeitures we do, we have had cases where property had to be returned because it would violate the *United States Constitution* and be too much of a penalty to assess a large dollar fine for a low-level offense.

Chairman Yeager:

In the interest of time, we need to move on. I would encourage those who have additional questions to contact them. I want to ensure we have adequate time to finish this bill and get through the next one as well. Is there anyone else who wants to testify in opposition?

**Corey A. Solferino, Lieutenant, Special Operations Bureau, Legislative Liaison,
Washoe County Sheriff's Office:**

We are opposed to Assembly Bill 425 in its current form. We disagree with the bill presenter's interpretation of how federal partnerships could be affected in sections 34 and 35 of this bill. We have worked with Ms. Rasmussen, specifically in the 79th and 80th Sessions, and were unable to collectively find common ground. We were not contacted regarding the legislation presented in this 81st Session.

Our partnerships with the High Intensity Drug Trafficking Area continually worked to remove dangerous contraband from hitting the streets that infiltrate the health and safety of our Nevada citizens. This task force seizes contraband such as deadly fentanyl, methamphetamine, MDMA [3,4-Methylenedioxymethamphetamine], cocaine, and black market marijuana that disrupts drug trafficking organizations and other parties that finance everything from human trafficking to domestic and international terrorism. Our task force does not seize vehicles, property, or equipment that does not have a criminal nexus. For those cases that do not have the evidence to support a criminal nexus, the stop is documented in the form of an incident report. The money is not seized, and the subject is released with no more than an investigatory detention.

Although we appreciate some of the provisions mentioned in this bill, we remain concerned with the ability to collaborate with our federal, state, and local law enforcement partners. We echo the comments of the Clark County District Attorney's Office and Metro. We appreciate the opportunity to comment on this bill and hope we can work toward a successful resolution, but, as presently presented, are adamantly opposed to A.B. 425.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:

You have heard the logical explanations for opposition thus far, and we are aligned with that logic. We oppose Assembly Bill 425.

Chairman Yeager:

Is there anyone else in opposition? [There was no one.] I will close opposition testimony and open neutral testimony. Is there anyone for neutral testimony? [There was no one.] I will close neutral testimony. Before I hand it over to our presenter, I want to note for the record that the bill draft request for this bill was made on October 8, 2020, and the language was introduced on March 26, 2021. I do not think it should have caught anyone by surprise that we would again be considering this piece of legislation, particularly considering this is the fourth, fifth, or maybe sixth session we heard a bill on civil asset forfeiture. I will hand it over to Ms. Rasmussen and Mr. McGrath for any concluding remarks on A.B. 425.

Lisa Rasmussen:

I want to conclude with a couple of thoughts. First, we still need to have the civil forfeiture process just as the feds have because there are cases where there is no crime charged. That process has to remain. There are always going to be two processes, no matter how we do this.

The intent of adding these lower-level cases to the criminal case is to make it easier and not to send public defenders over to litigate the civil case, as was suggested by Ms. Savage, whom I have worked with in the past. Public defenders do not want to be trained to litigate civil cases. Moving this to the criminal case makes it easier, and as Mr. Christian noted, many of the cases are resolved by way of a plea, and there is nothing left to do in the civil case. We may as well resolve it in the criminal case.

As a criminal defense lawyer, I would not get up and walk out of a sentencing hearing when it came to the restitution component of that sentencing any more than I would want to say to the client that I am sorry, but they are on their own for the forfeiture. It is all an element of the crime, and it is all being brought because there is an alleged crime.

Nobody here disputes that crime should not pay. Nobody disputes that assets or cash should be forfeited if they have a nexus to the crime. None of that has changed. This is a very narrow, targeted, limited approach that we formed so we can start having the most vulnerable people have representation of counsel to relegate this additional, single element that is mostly resolved by a plea agreement. I urge your support of this bill.

Lee McGrath:

This is a rather simple process. Today, Nevada engages in a process of civil forfeiture that would make more sense if it were not a landlocked state and was engaged in the admiralty law. The current process is illogical. Tying it altogether in a simple streamlined manner as New Mexico has makes sense, and our research shows there has not been an increase in crime or drug abuse in New Mexico since 2015, when it ended its process of civil forfeiture and replaced it with criminal forfeiture.

I want to clarify one issue as it relates to the federal government. Ms. Rasmussen, the other advocates, and I are not creating any incremental protection for drug mules or members of international cartels. In fact, on page 15, line 11 [section 34, subsection 1(a)], there is a clear exception that this bill does not change Nevada's use of joint task forces with the Drug Enforcement Administration and the U.S. Department of Justice. We have made that explicitly clear.

The intent is to look at the economic impact of small seizures and how irrational it is to hire an attorney. The reality is that the current civil process produces many defaults and, therefore, people do not engage in civil litigation because they are rational. Even if they were completely innocent, it is irrational to hire an attorney to attempt to get back the median seizure in Nevada, which is \$908. I urge the Committee to recognize that this is a small change to protect people who have had small amounts of cash seized from them.

[[Exhibit P](#) was submitted but not discussed and is included as an exhibit of the hearing.]

Chairman Yeager:

I would encourage Committee members who have additional questions to follow up with our presenters or with our opposition folks, whoever might be best to answer your questions. I will close the hearing on Assembly Bill 425.

At this time, I will go to the second bill on the agenda, but the third one we will hear. I will open the hearing on Assembly Bill 414. Committee members should have received an email from Assemblyman O'Neill that is a conceptual amendment to A.B. 414 that will be discussed this morning [[Exhibit Q](#)].

Assembly Bill 414: Revises provisions governing the transfer of real property pursuant to a deed becoming effective upon the death of the grantor. (BDR 32-648)

Assemblyman P.K. O'Neill, Assembly District No. 40:

I am here to present Assembly Bill 414. If Ms. Rasmussen thought her forfeiture bill was dry and not sexy, we will now discuss the exciting part of Nevada probate law.

The intent of today's proposed legislation is basically a housekeeping effort to clean up inconsistencies within Nevada law related to the transfer upon death of real property of relatively small estates. There has been a conceptual amendment, which Chairman Yeager mentioned, that was sent to all of you last night [[Exhibit Q](#)]. It will be best if we work from that document today.

Section 1 is an effort to clear up an issue with the mechanism necessary to file a death deed, which is a tax-exempt action. Currently, the procedure requires an initial filing of an affidavit of death of the grantor at the appropriate county recorder's office after the death of the grantor; then you may file the death deed. It is that prior affidavit of death which is taxed in some counties and not in others. It is this tax that is confusing and unfair to the grantor or heir.

Section 2 decreases the 18-month waiting period currently required before beneficiaries can obtain clear title to sell real property to bring it into accordance with other probate timelines. The challenge faced by heirs is that, during the 18-month time period which allows for potential claims to be filed by possible creditors, they have to continue paying various taxes, utility bills, mortgages, and maintenance or upkeep expenses, all to maintain the value of the property they would like to dispose of. Insurance companies will not provide homeowners insurance on a house that is vacant for more than 60 days.

In conclusion, Assembly Bill 414 is our chance to clear up the language and bring the death deed transfer into conformity with other state transfer mechanisms within the state statutes.

I would like to introduce Mike Pavlakis, who will discuss section 1, and Richard Staub, who will discuss section 2. I would like to have them fully present the bill and the proposed conceptual amendment dealing with section 2, and then we can go to questions.

Mike Pavlakis, Private Citizen, Carson City, Nevada:

I appreciate this opportunity to speak with you. My intent is to present the argument in favor of passage of section 1 of Assembly Bill 414.

The need for this amendment came to my attention last year. I have been an attorney in private practice for over 40 years in Carson City. I met with a young family last summer whose father, a widower, had passed away at 75 years of age. The son and his sister came in. At the time of the father's death, he owned a house in Carson City and had a bank account that had sufficient funds to pay for his funeral expenses. The family was concerned about what to do now that dad had passed away. When they came in, I was pleased to see that dad

had executed what is called a "Deed Upon Death," a procedure that was approved by this Legislature. It is a uniform act that the Nevada Legislature approved in 2011. At that time, an exemption from the payment of the transfer tax and for conveyance was created that would take effect upon the recording of the death of the grantor. The statute says a conveyance of real property by deed which becomes effective upon the death of the grantor pursuant to this uniform act. That is where the period was. Dad had also created joint tenancy in the bank account.

I was pleased to tell the family that this was not going to be a probate case, and we do not need to go to court. What needed to happen was the death certificate had to be taken to the bank and that the death certificate would have the effect of removing dad's name from the bank account and the bank account would become theirs.

With regard to the real property, the statute provides that upon the death of the grantor, there is a death of grantor affidavit, which either or both of the children could sign and record with the county recorder. The county recorder requires the filing of a declaration of value form to indicate who is going to be responsible for the payment of real property taxes, to reflect what kind of deed it is, and what kind of property is being transferred. As a courtesy and accommodation to this family, I was pleased to prepare a death of grantor affidavit. They signed the document, and when we presented the document to the county recorder, we were told, "Sorry. The exemption you have under subsection 10 only applies, in our opinion, to the deed upon death that the father filed, and it does not apply to the death of the grantor affidavit."

The conveyance does not take effect until dad dies and we provide proof of dad's death. During dad's lifetime, and any other grantor's, the deed upon death was entirely revocable, so there was no conveyance until the recording of the deed upon death. The recorder said they were sorry, but that was their interpretation. I called the district attorney, and he said it made sense, and he would talk to the county recorder. He came back and said he had to support the position taken by the county recorder—it was November, and there was an upcoming election. We wanted to file a lawsuit and get a declaratory judgment. In my mind, it seemed to be the legislative intent that it is the conveyance that is the subject of the exemption and not the filing and recording of the deed upon death. When dad died, and there was an affidavit of death recorded, that is when it should take effect.

That is why we are here. What bothers me at this point in my career is that, if dad had had the wherewithal to create a trust and pay a lawyer anywhere from \$3,500 to \$5,000 to prepare a trust, there would have been no transfer tax because there is an exemption in *Nevada Revised Statutes* (NRS) 375.090 for transfer to and from a trust. If dad had created a will and the will had gone to probate and there was a court order confirming that, the property would be transferred to the children. Most county recorders would accept a court order and not require a transfer tax payment. It bothers me that people who can afford a trust and to hire an attorney, and people who have a will and can pay to have the will probated, do not have to pay the transfer tax. But the poor schmucks who are industrious enough to find this statute that the Legislature wisely adopted in 2011, who do not have to pay a transfer tax when they

record the revocable deed and who have limited means, are told they have to pay the transfer tax. They have a choice between paying the transfer tax or hiring a lawyer for thousands of dollars to fight it. It seems to me that is wrong, and it harms people who are in a worse position and are unable to pay. I hope this Legislature will correct that and make the law clear that recording the affidavit of death is exempt from taxation.

Richard S. Staub, Private Citizen, Carson City, Nevada:

I am an attorney in Carson City, and I am here to testify on behalf of A.B. 414, section 2. I wholeheartedly agree with the amendment [unintelligible].

As the Committee was told by Assemblyman O'Neill, we are proposing an amendment to NRS 111.689—primarily section 3 of that bill—which allows a claimant to an estate that has insufficient assets to pay claims. It allows the claimant or the estate to file a claim, action, or collection for a particular amount of money for up to 18 months. In my practice of over 40 years, I have found that people file distribution on death duties to simplify the transfer of real property upon the death of a grantor. What they are finding is, ultimately, when these people open escrow, they want to come to town to dispose of the property and go home. When opening escrow to transfer the property by sale, they are told by the title company that they have to wait 18 months to transfer the property. I have found that, in some cases, title companies have asked for 24 months. Believe it or not, I have told my clients to go to another title company. They go to another title company that does not recognize the 18-month period, and they transfer the property.

There seems to be a great deal of confusion on the part of the title companies as to how this 18-month period comes into play or if it comes into play. My position is simply that if you have a trust estate, and you are trying to resolve a trust estate, under NRS 164.025, you have the ability to file a notice of creditors' claims and publish it. It allows for a 90-day claim period. If you have a probated estate under general administration, you have 90 days. There is a notice to creditors for a summary administration of 60 days. My question is, when we dispose of an estate simplistically by using a distribution upon death, why do we have to wait 18 months? You are talking about 18 months—a year and a half. Out-of-state beneficiaries of real property have to maintain it, pay utilities, keep it insured, and in most cases, they just want to dispose of the property and go on with their lives.

That is why we are here today. We are simply trying to make the disposal of an estate consistent, whether it be by trust, death deed, or probate. Originally, we proposed just merely changing section 2, subsection 3 from 18 months to 90 days. We thought that was simple and made it consistent. We were contacted by individuals, a probate subcommittee of the State Bar of Nevada, and they asked for some additional information. They asked us to consider some additional amendments. What you have before you is a culmination of those discussions. What we agreed to do is to allow a process that does not exist in law today, and that is to provide a notice to creditors when an estate is distributed by death. It takes language from NRS 164.025, which is the 90-day notice of creditors period for a trust estate. The language you have in subsections 3, 4, 5, 6, 7, and 8 is new language that requires the

trust companies to recognize that the notice that is given here is appropriate and adequate notice under the law.

The other thing the amendments do is in section 2, subsection 3: it requires the beneficiaries or grantees under the deed to provide the grantor's personal representative of the estate—in most cases they are one and the same—notice to the Department of Health and Human Services. This is notice that does not exist today. It also provides that the beneficiary provide notice to anyone else they know should have notice, such as an ascertainable creditor. It provides, under section 2, subsection 4, specific language for the notice, and under subsection 5, it provides that a person or entity that has a claim has 90 days to file their claim. If you do not file, it is barred, and the beneficiaries can go ahead and dispose of the property. Section 2, subsection 6, under the conceptual amendment, states that the notice to the Department of Health and Human Services given by the beneficiaries is that the property transferred by the death deed is still subject to the rights of the Department to recover any public assistance received by the grantor.

It all makes a lot of sense. It is probably a little more than housekeeping. It makes sense and brings into total conformity how a death deed estate resolution process is no different than general probate administration or the trust administration in that all notice creditors for 90 days. That is more than sufficient time for creditors, the Department of Health and Human Services, Medicaid, and Medicare to file their claims. Ultimately, we may not resolve them at 90 days, but the process goes forward to resolution.

Most importantly, under section 2, subsection 8, the title companies must recognize the provided notice. This conceptual amendment is appropriate notice under law. Pursuant to the Nevada Land Title Association's request, we added the last sentence in subsection 8, "A title company shall not be liable for claims which they are not made aware of by the beneficiaries." It protects the title companies from a claim from the beneficiaries, and a particular claim from a creditor. For example, if the Department of Health and Human Services comes forward, it protects the title companies from litigating with the beneficiary because of that claim.

We think this really needs to be put into law to clear up a lot of the misconceptions that the beneficiaries and grantees have. More importantly, the title companies will know how to apply the time frame in which a creditor has a right to file a claim against the estate of a grantor.

Chairman Yeager:

The current procedure, as you indicated, requires an 18-month waiting period, which I agree sounds like a long time. The new procedure is basically 90 days. I wonder where you came up with 90 days and what the rationale was for that particular time period?

Richard Staub:

Under the general probate administration laws, NRS Chapter 145, and the summary of probate administration and the trust estate administrations under NRS Chapter 164, all the

notice to creditor periods are 90 days, except summary administration, which is lowered to 60 days—90 days for general probate, 90 days for a trust administration. I do a lot of this type of law, and I did not see any reason the notice to creditor period of an estate that is disposed of by a distribution of death deed should be any longer than the same amount of time that is used in general administration or trust administration, which is 90 days.

Chairman Yeager:

I am trying to wrap my head around what section 1 of the bill is doing. When I read the bill, I thought if the conveyance of real property is effective upon death and is exempt from the taxes imposed under those statutes, the addition of the language we are seeking to add seems redundant. Maybe I am failing to grasp this because of the topic and the impact of the words we are adding—and you talk a little about the experience with the bank—but I am not sure I understand clearly what the issue is. Can you give it one more try to see if you can make me understand why we are adding the language in section 1?

Mike Pavlakis:

I agree that, in my mind, a plain reading of existing language is that the conveyance is what is exempt from the payment of transfer tax. If you accept the position that the conveyance does not take effect until the recording of the death of grantor affidavit, the existing language covers the situation. However, that is not the interpretation of all the county recorders. The county recorders that I have worked with, including the Carson City county recorder and many of the rural counties—I am not sure what the practice is in Clark County—even with some inconsistencies within their own offices, are taking the position that, because the conveyance does not take effect until the recording of the death of grantor affidavit, the tax is assessed at the time when the death of the grantor occurs. They are reading the statute to mean that the transfer taxes are in effect before, although they are not collected at the time of the recording of the deed upon death. Their position is that it is collected upon the death of the grantor and the filing of the affidavit, which is contrary to statute because the conveyance does not occur until the second act is committed.

It is a long way of saying that you are correct that existing law does address the issue, but it is not entirely clear to many of the county recorders.

Chairman Yeager:

That was very helpful, and I understand what we are trying to do now. I tend to agree with you that the language is clear, but to the extent that there are differences in the recorders' offices, it makes sense to clarify this. Thank you for the further explanation that helped me get there.

Assemblywoman Cohen:

You touched on working with the trust section of the bar, and I know their process for being able to support legislation takes a long time because the bar wants it sent to all sections. It is understandable that you do not necessarily have their official support, but I want to see if there are other sections of the bar that you spoke with that addressed how this may affect

their field and that might not have been thought of when discussing this with the trust section. I would like more information about that.

Richard Staub:

Kristina Kleist reached out to us early on when we got the bill draft request. We had a meeting about a week ago where she and Alan Freer, representing the probate trust section of the State Bar, presented some questions to Assemblyman O'Neill and me, and we came up with what we thought was an easy resolution by merely using the language that is in NRS 164.025, the trust estate notice to creditors. By putting this into the law—even though the original intent was just to change the 18 months to 90 days and go from there—because of their concern regarding potential rights of the Department of Health and Human Services and other creditors, we decided to make it uniform and make the beneficiaries or the grantees under the deed upon death provide the notice. It is a simple process. It provides a specific timeline for creditors and the departments to file their claims. It provides a procedure for the beneficiaries to answer those claims and if they do not, it allows the beneficiaries to dispose of the property. It gives everyone in the process a much clearer resolution of those claims and brings into conformity the treatment of a distribution of death deed as with general probate under NRS Chapter 136 and the trust administration under NRS Chapter 164.

Assemblywoman Cohen:

Was there any reaching out to any of the other sections of the bar?

Richard Staub:

We did not reach out to them nor did they contact us.

Chairman Yeager:

Are there any additional questions, particularly of Assemblyman O'Neill? I know he is intimately aware of the provisions of this bill and how this area of law works. [There were none.] I do not see any additional questions. We will take some testimony on the bill. I will open testimony for anyone in support of A.B. 414. [There was no one.] I will close testimony in support and open opposition testimony.

Steve Dover, Chair, Legislative Committee, Nevada Land Title Association:

I am testifying in opposition to A.B. 414. The Nevada Land Title Association feels there are several things in this bill that complicate matters. We are in favor of a much shorter time frame than 18 months. These notices to creditors complicate things quite a bit in such a way that section 2, subsection 8, becomes an obstacle for us. It says, "A title company that is engaged regarding the transfer of the property identified in a deed upon death must recognize that the notices provided pursuant to this section constitute adequate notice required by law." We feel that it should be changed to be, "a deed upon death may recognize that the notices provided pursuant to this section constitute adequate notice required by law." The reason we feel this way is that the change from "must" to "may" is so the title companies have the opportunity to review what has been done and make business decisions for themselves. We do not feel that we should be forced to take all the risk and financial risk involved in this by being told what we have to do. We feel we need the ability to review the matter for

ourselves, to review the things that they say have to be done. By the way, it says it is the beneficiaries under the deed that have to do all of the notices, but it is our experience that the general public very seldom is able to handle complicated matters like notifying all of the creditors. Those types of things are typically handled much better by attorneys. Leaving it to them, and then telling us we have to follow what they say they did, seems very unreasonable.

The last paragraph of section 2, subsection 8 should read, "A title company shall not be liable for claims which they are not made aware of." We asked for bona fide purchaser protection in there, which protects not only title companies, but also the purchasers of the property. This does not do that. We are open to working with them on this language. The biggest concern is the word "must" versus "may," so the title companies have the ability to review the process and determine for themselves if it has been done in such a way that we are able to insure. The results that they are trying to force upon us are going to have the opposite effect: the title companies will not get involved in the transaction at all.

That is our main complaint. We are more than willing to come to the table to discuss this. We were not invited to the table when this was originally drafted.

Chairman Yeager:

Are there any more testifiers in opposition to the bill? [There was no one.] I will close opposition and open neutral testimony. Do we have anyone who wants to provide neutral testimony?

Tiffany Lewis, Administrative Services Officer IV, Division of Health Care Financing and Policy, Department of Health and Human Services:

The Division is providing testimony in the neutral position regarding A.B. 414 as introduced regarding the impact to the Medicaid Estate Recovery Program.

This bill relates to real property upon the death of the grantor in which revisions are being made regarding the transfer taxes for the conveyance of real property, provisions governing the enforcement of claims against real property, and providing other matters of property properly relating thereto.

The bill first proposes that the death of grantor affidavits be added to exemptions from the transfer taxes when recorded. The bill then replaces language allowing proceedings within 18 months of a grantor's death, in a deed upon death situation, to language that cuts the time drastically to 90 days after publication notice, and 30 days after notice to the Department of Health and Human Services (DHHS). It does not mandate notice to DHHS in all cases, just where "the beneficiaries under the deed upon death who know or have reason to believe that the grantor received public assistance during the lifetime of the grantor." It does state failure of notice leaves the property open to claim, but 30 days after death is often not enough time for estate recovery to know the full extent of Medicaid claims on an estate or respond timely without more resources to process such notices.

The draft sample notice to creditors does not have the date of birth line, which means notice to DHHS would not be effective given that many recipients share similar names, and there would be no way to screen out notices without a date of birth. It also does not factor in qualified income trusts or that most individuals under the age of 55 do not have recoverable estates.

If notice is given and published, the property can move forward with this new title unencumbered after 90 days. Instead of providing probate as the forum for a dispute, a beneficiary can simply reject a claim and force the claiming party, such as DHHS, into filing suit against the beneficiary, which represents additional costs, including counsel's time.

The bill provides that if suit is not brought in 30 days after rejection, a claim expires forever. This is counter to the three-year statute of limitations under law relating to the right to pursue Medicaid liens. This is also counter to the court's ruling in *Ullmer [Department of Human Resources v. Estate of Ullmer]*, 120 Nev. Adv. Rep. 16, 87 P.3d 1045 (2004)], which expressly allows Medicaid to seek to secure interest in real property where there is a surviving spouse, as Medicaid would be barred by federal and state law from making a claim under this notice scheme as against the surviving spouse as laid out in the detail under law. This bill does not amend NRS Chapter 111 provisions that require recorders' offices to notify Medicaid monthly of affidavits of death being recorded.

This bill does have a negative fiscal impact to the Division of approximately \$5 million over the biennium and projected Medicaid estate recoveries following the death of a Medicaid recipient. These recoveries are expenditure offsets for the Division.

Additional issues the Committee should be aware of include the Medicaid Estate Recovery Program that allows recipients who qualify for Medicaid to enjoy the use of things like their residence during their lifetime, but when a recipient over the age of 55 passes away, Medicaid is required by federal law to seek recovery of benefits paid on their behalf. The Medicaid Estate Recovery Program is estimated to generate approximately \$3.4 million in fiscal year 2022 and \$3.5 million in fiscal year 2023 for the agency.

Medicaid estate recovery, in statute, is impacted by procedures for notice in real property, probate, trust, estate, and even guardianship chapters and transactions. *Nevada Revised Statutes* Chapter 111 already provides that county records must update Nevada Medicaid regarding joint tenancy changes due to the death of a real property owner but does not change the three-year statute of limitations on taking action after the recipient's date of death.

The bill proposing to amend NRS Chapter 111 directly conflicts with existing legal frameworks for Medicaid Estate Recovery, a program which is a mandated condition in order for state Medicaid to receive federally matched funding. For example, it sets a narrow window for making a claim against real property, which would be barred by state law as it relates to a surviving spouse despite NRS Chapter 422 explicitly laying out, per federal requirements, a mechanism for placement of Medicaid liens.

It would disallow considerable revenue from claims for estate recovery, which pay back into the program for individuals who qualify for having used and enjoyed their property during their lifetime. The lack of the date of birth on proposed notices and expedited timeline response, including mandated litigation by the creditor—which in this case is Nevada Medicaid—where claims that are rejected, as well as no consequence for rejecting the claim in bad faith to discourage rejections related to Medicaid, are of concern. It would be extremely difficult for the agency or its upcoming vendor to turn around claims in less than 30 days, and to litigate within 30 days after that if claims are rejected.

The agency is currently finalizing a contract with a vendor to assist with Medicaid Estate Recovery functions. The request for proposals and subsequent vendor bids were based on current practices and regulations. This bill could result in the cost of services provided by the vendor increasing significantly, and the agency would not have enough budget or contract authority to cover the additional costs.

The Assemblyman has brought forward a conceptual amendment. Upon early interpretation, it appears to still have a fiscal impact for the Division. We are available to assist the Assemblyman on this bill regarding the impacts on the Medicaid Estate Recovery Program.

Chairman Yeager:

It sounds like there may have been some concerns expressed in there. I am not sure if the amendment resolved those concerns. I would appreciate it if you continued to work with Assemblyman O'Neill and his copresenters to see if the concerns can be remedied before Friday's deadline. Reach out if you have any questions.

Do we have any additional testimony in the neutral position? [There was none.] I will close neutral testimony and hand it back over for concluding remarks.

Mike Pavlakis:

Unless there are specific questions on section 1, I do not hear any questions regarding section 1, so I will give my time to Mr. Staub.

Richard Staub:

We did make a change to section 2, subsection 3, and we took out discretion on the part of the beneficiaries to determine if the grantor received any public assistance, and it is mandatory that the grantees or the beneficiaries under the death deed provide the DHHS notice in every case—there is no discretion—where a distribution upon death deed has been filed. This again works with provisions of general probate administration in the state of Nevada under NRS Chapter 136 wherein DHHS is provided with notice in each of those cases. They are allowed 90 days in general probate administration, 60 days in summary probate administration, and in trust administration, it is 90 days to file claims. That is only to file claims, not to resolve the claim. If the beneficiaries deny the claim, which in most cases they are not denied, they usually work through the claim. The DHHS and Medicaid have 30 days to file a lawsuit if the beneficiaries deny the claim. In my experience, we have not had a case where the claim was denied and we had to work through it.

This brings the death deed resolution of an estate in conformity with current Nevada law in general administration and trust administration. We are willing to work with all parties to come up with appropriate amendments. At this point, we are fine.

As for the title company questions, I do not think we have any problems with changing "must" to "may." I do not know why they want that. As for the "bona fide purchaser" language, we are well aware of that, but I have not figured out if that should be in this bill or in NRS Chapter 111.689. We will have to try to work this out between now and Friday.

Assemblyman O'Neill:

For the last nine weeks, we have talked about the little guy and trying to adjust our various statutes and procedures throughout the state to accommodate the little guy. I believe this bill, Assembly Bill 414, gives us a chance to help the little guy. With that, I will work with both the presenters and those who brought forth issues to try to address and make the necessary amendments.

I was disappointed—as you said, Chair, on your previous bill that had been out for some time—that the bill draft request specified that this bill proposal would deal with probate and estate issues, but the Department of Health and Human Services did not come forward until late Friday afternoon with their issues. Then they had a person contact us who may not have been as knowledgeable as Ms. Lewis was with the issues, which puts us at a great disadvantage considering the time limit that we are on. However, as I said, we will work with them to try to address the issues as quickly as possible and bring it back to you.

Chairman Yeager:

Please keep us updated on any progress with respect to some of the concerns we heard. I will close the hearing on Assembly Bill 414.

This takes us to public comment. We reserve 30 minutes for public comment, which is a time to raise matters of a general nature that are within the jurisdiction of the Assembly Committee on Judiciary. I will open public comment.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:

My brother, Thomas Purdy, was killed by Reno Police. The Washoe County Sheriff's Office asphyxiated him, like George Floyd was, as he begged for his life, begged for an ambulance, and begged for medical attention.

Today, I am going to talk about what happened to my brother at the Peppermill Casino because I realize that politicians like to take money from casinos at election time. My brother was assaulted when he asked for help at the Peppermill by security guards Andrew Miller, Zachary Siner, Kyle Vonkrauss, Samantha Montiel, and Russel Smith. I want to read an excerpt from the Sparks Police's so-called "independent investigation" into my brother's death, which says that during the investigation, Montiel informed investigators that she had issues with the way some Peppermill security officers treated my brother. She did not like the way Purdy was taken down the stairs and how Purdy was dropped on the ground. She

also stated that, during the incident, she was not sure how it happened, but she heard a smack and saw Russel Smith on top of Purdy.

I do not think Sparks Police expected me to actually get the video of the interview of Montiel, but what she said was that they dragged my brother down the stairs by his ankles with his head bouncing off each concrete step. The video that was provided by the Peppermill depicts Smith in the holding room at the Peppermill after the incident. At 0246 hours on the video, a female entered the holding room and then Smith stated, "You missed your opportunity. That blank boy." The female tells Smith that she went to lunch and the officer said, "F lunch, this mfer was fighting and yelling and screaming." Smith then lowers his voice and looks around the room before saying, "He is at the top of the stairs. I pulled his ass down the steps." As Smith made this statement, he pulled his arm back and was demonstrating a tugging motion. The female then walks to a nearby telephone. As the female makes the call, Smith turns away from the camera and makes another comment about his actions as he motions with his right arm. The video stops there.

At minimum, that man should have been charged with assault and battery on my brother, but nobody will be held accountable for my brother's death.

Please support bills that promote transparency and accountability.

Tonja Brown, Private Citizen, Carson City, Nevada:

I was late this morning, so I could not comment on some of the issues. I would like to comment on A.B. 414 and the Medicaid issue.

Chairman Yeager:

Ms. Brown, we have closed that bill hearing, so if you have general comments that is okay, but otherwise I ask you to send an email to the members.

Tonja Brown:

I want to touch on something Ms. Grant mentioned over this legislative session that I do not think she has brought up yet. I have seen the video from the Peppermill and from the police department. It is very tragic. What I do not get is, if you look at the video from the Peppermill, this man just sits down. He is not violent or anything. What bothers me the most is that not one individual, not the Peppermill security or the police, asked Mr. Purdy whether he was a guest of the Peppermill. Mr. Purdy was a guest at the Peppermill, where all of the assault took place. If the Reno Police or security had just asked him about it, they would have found out that he was, in fact, a guest. He would never have been arrested for asking for help. He would still be alive, I believe. I just wanted to touch on that and some other issues.

Chairman Yeager:

Is there anyone else for public comment? [There was no one.] I will close public comment. Is there anything from Committee members? I do not see anything.

We have agendas out through Thursday for 8 o'clock meetings. While we were meeting today, we revised the agenda for tomorrow, so we now have three bills on the agenda. Two of those bills deal with bail and citations. I want to let everyone know that we put A.B. 161 on the agenda for tomorrow. There is an amendment being worked on for that bill that will ask for an interim legislative study on the topic of summary evictions. That amendment is not quite ready, but I wanted to let Committee members know that they do not need to worry about reading Assembly Bill 161 and reviewing it in its entirety since there will be an amendment that seeks to give that issue to an interim committee of the Legislature. It made sense to let members of the public know, as well, in preparing for tomorrow's meeting. We will not be having a discussion on the merits or lack thereof of summary eviction with respect to A.B. 161.

With that behind us, we will see you tomorrow morning, back in this Committee. We have floor today at 11:30 a.m. This meeting is adjourned [at 11:05 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Recording Secretary

Kalin Ingstad
Transcribing Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed conceptual amendment to [Assembly Bill 43](#), dated April 5, 2021, submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit D](#) is a letter to Senator Nicole J. Cannizzaro, Chair, Senate Judiciary Committee, dated April 26, 2019, regarding the amendment to [Assembly Bill 20 of the 80th Session](#) being unconstitutional, submitted by Paul C. Deyhle, Executive Director and General Counsel, Nevada Commission on Judicial Discipline, in support of [Assembly Bill 43](#).

[Exhibit E](#) is a letter to Governor Steve Sisolak, dated March 3, 2021, submitted by Paul C. Deyhle, Executive Director and General Counsel, Nevada Commission on Judicial Discipline, in support of [Assembly Bill 43](#).

[Exhibit F](#) is a letter dated January 25, 2021, submitted by Paul C. Deyhle, Executive Director and General Counsel, Nevada Commission on Judicial Discipline, in support of [Assembly Bill 43](#).

[Exhibit G](#) is an article by Michael Berens and John Shiffman, published by *Reuters Investigates* [reuters.com] titled "Thousands of U.S. judges who broke laws or oaths remained on the bench," dated June 30, 2020, submitted by Paul C. Deyhle, Executive Director and General Counsel, Nevada Commission on Judicial Discipline, in support of [Assembly Bill 43](#).

[Exhibit H](#) is an article by Michael Berens and John Shiffman, published by *Reuters Investigates* [reuters.com] titled "With 'judges judging judges,' rogues on the bench have little to fear," dated July 9, 2020, submitted by Paul C. Deyhle, Executive Director and General Counsel, Nevada Commission on Judicial Discipline, in support of [Assembly Bill 43](#).

[Exhibit I](#) is an email dated March 4, 2021, signed by Alexander Falconi, Administrator, Scrutiny, Competence, Truth, submitted by Paul C. Deyhle, Executive Director and General Counsel, Nevada Commission on Judicial Discipline, in support of [Assembly Bill 43](#).

[Exhibit J](#) is an email dated March 9, 2021, signed by Alexander Falconi, Administrator, Scrutiny, Competence, Truth, submitted by Paul C. Deyhle, Executive Director and General Counsel, Nevada Commission on Judicial Discipline, in support of [Assembly Bill 43](#).

[Exhibit K](#) is a proposed conceptual amendment to [Assembly Bill 425](#), submitted by John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office; and Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.

[Exhibit L](#) is a copy of a PowerPoint presentation titled "Forfeiture," dated April 5, 2021, presented by Lee McGrath, Managing Attorney, Institute for Justice.

[Exhibit M](#) is written testimony dated April 4, 2021, signed by Marcos Lopez, Legislative Liaison, Americans for Prosperity-Nevada, in support of [Assembly Bill 425](#).

[Exhibit N](#) is written testimony dated April 5, 2021, signed by Daniel Honchariw, Director of Legislative Affairs, Nevada Policy Research Institute, in support of [Assembly Bill 425](#).

[Exhibit O](#) is a letter dated April 4, 2021, submitted by Bill Hart, Deputy Alternate Public Defender, Washoe County Alternate Public Defender's Office, in opposition to [Assembly Bill 425](#).

[Exhibit P](#) is a document titled "Who Does Civil Asset Forfeiture Target Most? A Review of LVMPD's Forfeiture Activities for Fiscal Year 2016," dated Summer 2017, submitted by Daniel Honchariw, Director of Legislative Affairs, Nevada Policy Research Institute, in support of [Assembly Bill 425](#).

[Exhibit Q](#) is a proposed conceptual amendment to [Assembly Bill 414](#), dated April 5, 2021, submitted by Assemblyman P.K. O'Neill, Assembly District No. 40.