

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

**Seventy-Third Session
March 2, 2005**

The Committee on Judiciary was called to order at 8:10 a.m., on Wednesday, March 2, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst

René Yeckley, Committee Counsel
Judy Maddock, Committee Manager

OTHERS PRESENT:

Joe Guild, Legislative Advocate, Represents the Motion Picture Association of America Incorporated
Mike Ebright, Division of Parole and Probation, Nevada Department of Public Safety
Gary Peck, Director of ACLU of Nevada in Las Vegas
Frank Adams, Executive Director with Nevada Sheriffs' and Chiefs' Association
Mick Gillins, Officer, Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Kurt Davis, Sergeant, Carson City Sheriff's Office, Carson City, Nevada
Michelle Youngs, Washoe County Sheriff's Office, Reno, Nevada; and representing the Nevada Sheriffs' and Chiefs' Association

Chairman Anderson:

[Called the meeting to order and roll was taken.]

Delivered to me this morning is a bill for Committee introduction. It's requested on behalf of the Nevada Supreme Court authorizing senior municipal court judges to serve in any municipal court regardless of whether he is a resident of the city in which he serves. This is BDR 1-528 relating to municipal courts authorizing a senior municipal court judge to serve in any municipal court in the state regardless of whether he is a resident of the city in which the municipal court has assigned his location. Existing law provides that under certain circumstances the judge must be a resident of the city. This deals with a Supreme Court rule, but there is a small conflict with that and they've asked us to have a small hearing on this particular issue.

- BDR 1-528: Revises the provisions governing the service of Senior Municipal Court Judges. (ASSEMBLY BILL 157)

ASSEMBLYWOMAN OHRENSCHALL MOVED FOR COMMITTEE INTRODUCTION OF BDR 1-528.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED. (Ms. Buckley was not present for the vote.)

Chairman Anderson:

[Referred to Assembly Bill 124]

Assembly Bill 124: Prohibits operation of audiovisual recording function of device in motion picture theater. (BDR 15-644).

Joe Guild, Legislative Advocate, representing the Motion Picture Association of America Incorporated:

I am here to in support of A.B. 124. [Distributed **Exhibit B**.] There is a one-page explanation, a fact sheet, put together by the Motion Picture Association of America on what theatrical camcorder piracy actually is. There is a full color handout explaining the process by which a pirated movie gets into distribution. We are talking about a situation that results in a loss to the movie industry of hundreds of millions of dollars in this country every year and billions of dollars worldwide if you total it all up. It is not a small thing that we are asking the Committee to consider here by creating a crime which doesn't exist in Nevada for pirating a movie with a recording device in a movie theater.

Ironically it is a crime in Nevada to counterfeit, in other words, take something that has been recorded surreptitiously and then reproduce it and distribute it. This Committee considered that about three sessions ago and the Legislature passed a bill making it a crime to counterfeit things. Not just movies but clothing, jewelry, and all kinds of things. It is not a crime in Nevada to actually undertake the act of pirating. This didn't become a problem in the motion picture industry's mind until the last five or six years. Since that time with the advent of some really sophisticated recording and replication devices, it has become a problem. Twenty states and the District of Columbia, or 21 jurisdictions, have made this a crime. The bill you have before you is substantially the same bill that has been passed in all of those jurisdictions. There are a couple of articles, one from *Time Magazine* last year, the other from the *Los Angeles Times*, explaining in a vernacular way how this is done, the kind of people that are involved in this piracy, and why from an industry's point of view this is a big problem of great concern.

With that Mr. Chairman, I'll go through the bill. Section 1, subsection 1, describes the crime and says, "It would be unlawful for a person to knowingly operate an audiovisual recording function of any device in a motion picture theater while the motion picture is being exhibited." A question came up recently, "Well, what about if we had a birthday party of a bunch of kids at the showing of Shrek and somebody wanted to take a picture of all the kids in the theater?" Obviously, under this first section of subsection 1, that would not be

a crime. We are talking about the situation where once the movie starts somebody turns on a very sophisticated recording device and actually replicates the movie in its entirety, while the movie is being played. The bill contemplates for a first offense, a misdemeanor. This Committee well knows that is up to six months incarceration and no more than a \$1,000 fine. For the second offense or any subsequent offense, one to four years as a Category D felony and no more than a \$5,000 fine.

[Joe Guild, continued.] The problematic section of Section 1 is subsection 3, and I would like to spend a little time explaining why this immunity section is important and what it contemplates. Subsection 3 would provide immunity to a theater owner, employee, et cetera, for a reasonable detention, in a reasonable manner, of any person who has suspicion of engaging in this act. I think it is important to focus very carefully on what we are talking about, the words for instance. "The owner of the theater may detain in a reasonable manner, for a reasonable length of time, if they believe in good faith that this law is being violated for a very limited purpose of informing a law enforcement agency of the circumstances."

For instance, I've had a discussion recently about what is reasonable. It would be unreasonable in my mind if a very forceful detention occurred, an assault. For instance, a handcuffing by an employee of a theater of a person suspected would be unreasonable, because that employee would not be trained in that kind of activity. I would call that an assault. What we are talking about here is limited immunity for the theater owner, et cetera, from civil liability. So that if in the example I just gave you, the person who thought they were unreasonably detained and assaulted sued the theater owner, a jury of that theater owner's peers would conclude—I would say if I were representing the plaintiff in that case—that situation was unreasonable, and therefore the theater owner should not have any immunity. But a reasonable detention, I think the reason it is worded this way, it is left up to a jury to make a decision if the theater owner is sued in a civil judgment. The reason that's important is that without such immunity, theater owners, it seems to me, would be reluctant to detain anybody. If somebody gets out of the theater and they've got the movie recorded, the deed is done. That CD gets to the factory where they enhance it digitally and make it almost movie quality, and then hundreds of thousands of those CDs get distributed in a very short period of time.

Finally, in subsection 4, federal, state, or local government agencies or officials who are gathering information in the course of investigating criminal activity are not prevented from doing this sort of thing. We have a definitional section at the end defining what an audiovisual recording function is and what a motion picture theater is. With that Mr. Chairman, I would be happy to answer any

questions from the Committee. I would say prior to that, the representatives of the Nevada Sheriffs' and Chiefs' Association have asked me to inform the Committee that they have indicated their support to me of this bill. They have no problems with it and they would be happy to answer any questions later on if the Committee had them. In the interest of moving this along, they've said I could indicate their support to the Committee on their behalf.

Chairman Anderson:

Mr. Guild, I want to clarify something. When I look at Section 1, subsection 5(a), "a function which is capable of recording a motion picture or any part thereof," I heard in your earlier testimony that it would be the entire film you were talking about. If I had a cell phone which has a camera function as part of it, I can sit in a theater and if there was a section of the movie that I thought was particularly important and I took a picture, I would be in violation, because this particular device does meet the requirements? Right?

Joe Guild:

I would agree with your assessment and interpretation of the words "or any part thereof." Yes, you would be in violation. Now, it becomes the question for a district attorney. Would that go as far as prosecution and arrest and everything else? That's another question, I think. We created a broad brush statement in the criminal law. That gives law enforcement and prosecutors some latitude to at least bring some judgment to bear on who is actually going to be charged with and prosecuted for a crime. With that said, I don't mean to imply that maybe you wouldn't be arrested and prosecuted, but I think your assessment is correct.

Chairman Anderson:

Then let me bring it back to another point that I think you made. On page 2, Section 1, subsection 3, lines 21 to 28, you have said that we've given the theater owner and employees a limited civil liability protection. Do they then have the right, after they have informed law enforcement agencies of the circumstances, to come take my cell phone away from me? I am curious as to how that is going to be treated. Is that employee protected or not?

Joe Guild:

If I understand the question, I think that employee is protected because, as I understand it, if you look at the first part of subsection 3, there is a reasonable good faith belief that there has been a violation of subsection 1. In other words, an actual recordation, if you will, of the movie while it is going on and there can be a detention. But how do you prove whether the person with the camera device in their cell phone has actually violated the section? What you do is you turn it on during the detention and see if part of the movie has been shown, if

it's been recorded. If all you were doing was using the cell phone to make a phone call, you would not have operated the camera device. The device itself will show that. A camcorder is easy. You don't bring that in there to make a call to grandma. This is the conundrum. When I pull out the cell phone in the theater and I make the call, there is a real easy way to prove whether I have recorded something. You play it back.

Chairman Anderson:

Now you've taken me out of the theater and taken my phone away from me. I'm now giving him liability or protection? What I am trying to figure out is, does he have a responsibility to inform the police that he is going to be doing this and is that what gives him civil liability of protection?

Joe Guild:

Yes.

Chairman Anderson:

Or does he have civil liability of protection from the fact that he walked over and grabbed me and said you have a phone in your hand and you're taking a photo?

Joe Guild:

No. The condition in the statute that gives the immunity from liability is detention on line 18, "for the purpose of informing the law enforcement agency, if it is a reasonable detention for a reasonable length of time." So, in your hypothetical situation, that would be an unreasonable detention, and if law enforcement was not called, I would say that the theater owner, because of the action of their employee, was subject to civil liability. You're talking now about an assault because the person has been touched. You're talking about a potential theft of property or certainly a constructive retention of property in an unreasonable way. That is why I think this has been relatively carefully crafted. There are triggers here. It has to be reasonable; it has to be for a reasonable length of time, and it can only be for the purpose of informing law enforcement. That's really important because we don't want untrained people, who have no contemplation of the Fourth Amendment implications, for instance "search and seizure," dealing with this detained person. We want a trained law enforcement person to come in and do the investigation, et cetera.

Assemblyman Horne:

I have a couple questions first and will expound more on what we just got through talking about on the civil liability in the area of timing here. On line 23 and 24 of A.B. 124, "after the employee informs a law enforcement agency and

while awaiting the arrival," I can think of a situation where the detention occurred before the law enforcement was informed. It seems to be outside that scope a bit, you may not have one intent. Generally you walk in on a person doing this recording and you are going to take action, generally before you make the phone call. Then you are going to detain them and then make the phone call. I think this language permits that civil liability only after you make the call first and then make the detention. You see what I'm talking about?

Joe Guild:

I think his point is well taken. If I understand the question, what you are saying, Mr. Horne, is there's actually another trigger I didn't talk about. That the civil liability immunity only can apply in the circumstances where the person has informed the law enforcement agency and is awaiting the arrival of the law enforcement agency in a reasonable length of time. Am I understanding the question correctly?

Assemblyman Horne:

Not quite. If I'm the plaintiff's attorney, and I am reviewing the reports on what happened and there's been a level of conduct that all occurred before law enforcement was ever called. I think that would take them outside of this statute because this happens after he informs law enforcement. That's what I was thinking.

Joe Guild:

I agree. Let me see if I can explain my understanding of this, this way. The employer or owner sees the act occurring and immediately detains the person in a reasonable way. If the very next action that the theater owner takes is not a call to law enforcement, I think everything is unreasonable at that point. Therefore, there is no immunity from civil liability.

Chairman Anderson:

Make sure that specific statement is included as part of the record.

Assemblyman Horne:

As for my second question, Mr. Guild, on line 25 to 29, it deals with the level of burden that a plaintiff will have. You use clear and convincing evidence, where in most civil matters that burden is a preponderance of the evidence. What is your rationale for such a high burden?

Chairman Anderson:

Let me help the Committee for a second, Mr. Guild. The difference is between preponderance of the evidence and clear and convincing. Ms. Yeckley, do you

want to explain this to the Committee so that we have a short refresher for a second?

René Yeckley:

The difference between preponderance of the evidence and clear and convincing evidence is that, generally, preponderance of the evidence is the greater weight of the evidence. It's superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue, rather than the other. This is the burden of proof that's used in most civil trials and, on the whole, is the more likely than not standard. I'm basing part of this answer on *Black's Law Dictionary*. Whereas clear and convincing evidence is a higher standard. Clear and convincing evidence requires that it's highly probable or reasonably certain. This is the higher standard of evidence that is used in the civil cases and it doesn't rise to the level of the reasonable doubt standard that is used in the criminal cases.

Chairman Anderson:

And clear and convincing is backed up in *Devencenzi v. Cassinelli*, 28 Nev. 222, 234 (1905).

Joe Guild:

I've worked with Ms. Yeckley before and I am always impressed with her analysis. Can I give my tort professor's definition of clear and convincing versus preponderance? He drew a football field on the blackboard, and put a 50 yard line in the middle. He put a dot on the right side of the 50 yard line, he put a dot at the 75 yard line, and he put a dot at the goal line and he said the dot on the 50 yard line, or just past the 50 yard line, is preponderance. The dot at the 75 yard line is clear and convincing. The dot on the other side of the goal line is beyond a reasonable doubt; there was a goal scored

To answer Mr. Horne's question, the reason, I believe, is that we are giving immunity here in statute; therefore, there should be some protection to the theater owner. In my mind, however, if that is the sticking point, I don't think it's a deal killer, if that helps.

Assemblywoman Buckley:

I'm wondering, Mr. Guild, why you just didn't use the same standard as set forth, for example, on the shoplifting statute, which is tried and true. Why reinvent something else which has different interpretations and has to be tested. Why not just pick the same thing as set forth in NRS 597.850, which says, any merchant who has reason to believe that the merchandise has been wrongfully taken...is presumed to have reason to believe it's been taken, if someone

observed it being taken. They then can detain and there's immunity unless the circumstances are unreasonable. Why not just stick with something tried and tested?

Joe Guild:

This bill came about from a model act, if you will, that the Motion Picture Association of America had devised and has, as I said in my opening remarks, passed in 21 jurisdictions. Obviously every one of those 21 jurisdictions didn't pass that model word for word. If the Committee decided that a better fit for Nevada law was the standard set forth in NRS 597.850, I couldn't argue with that Ms Buckley, frankly, because it is our tried and true Nevada law. This is how the bill came out because this is basically how it went in to the bill drafter, but again, I can't take exception to what you're saying, in good conscience.

Chairman Anderson:

Ms. Buckley, has your issue been answered? [She acknowledged yes.]

Assemblyman Carpenter:

What about the theater owner that lets somebody come in and copy these motion pictures? It looks like there is a lot more money to be made out there on the black market than there is just showing them to the local patrons in Elko.

Joe Guild:

That contemplated hypothetical would obviously be a crime under our statutes. Once the theater owner allowed that to happen and the minute that the pirated device left the theater, it would be subject to the counterfeiting law and the copyright laws. There's a civil lawsuit there; there's plenty of protection there I think. It's a good question because it contemplates a larger situation. The interesting thing about this camcorder piracy is that a relatively unsophisticated person with a device that you can go buy at Best Buy for about \$350-\$800 can create a situation where they can make potentially tens of thousands of dollars, if not a lot more. That's the person we are trying to get at with this limited statute.

Chairman Anderson:

Let me reinterpret Mr. Carpenter's question, from a different point. Part of this question is that you're not increasing the liability of the theater owner to make sure that he is looking out for the best interest of the Motion Picture Association of America. He doesn't have an increased obligation to protect the motion picture industry than he already has. Would that be a fair statement?

Joe Guild:

Yes.

Chairman Anderson:

So he's not required to have somebody out there patrolling the aisles to make sure that he doesn't have his camcorder or cell phone on.

Joe Guild:

Exactly, it has become a crime in other states, and what the theater owner does is put a sign at the entrance to the theater saying, "Use of a camcorder or other similar device for recording any portion of the movie that you are about to see is a crime." Just like the bad check notices you see. That probably solves more than 90% of the problem.

Chairman Anderson:

Would there be an appetite then from the motion picture industry to require that as part of the statute, so theater owners would be required to put this notification forward?

Joe Guild:

I don't see how we could oppose that.

Chairman Anderson:

There might be some theater owners who might be a little concerned about that issue.

Joe Guild:

There might be and I obviously can't speak for the theater owners because I'm representing a different client. We have requirements in our law, in different areas, that various proprietors of business display signs of a certain type and certain kind. The statute actually says what the sign has to say, so it wouldn't be unprecedented in our state to do that.

Assemblyman Oceguera:

I would suggest that we eliminate [subsection] 3 and add the section from the shoplifting statute. I think it would answer most peoples' questions.

Chairman Anderson:

You want to eliminate [subsection] 3 in its entirety. When we come to the work session, that would be a good discussion to have. [Chairman Anderson explains bill and proceedings to student group.]

Joe Guild:

If the desire of the Committee is to amend subsection 3 out of Section 1, what I was understanding or seeing was some sort of consensus coming out of the

Committee. Would we be able to put in the standards set forth in NRS 597.850, so we do have a statutory standard in this area?

Chairman Anderson:

Mr. Guild, when we take this to work session it's the chair's intention that we would be looking at the suggestions from Ms. Buckley and Mr. Ocegquera relative to the requirement of signage at the theaters that we're going to utilize the protection of this and to be picking up the other statutes. Ms. Yeckley, from Legal, will draft those along with Ms. Combs, in terms of trying to make sure when we go to work session on the bill what's to take place. I think we have a feeling where we may be heading. Of course, we are going to include you in the discussion.

Assemblyman Horne:

I have a concern changing this just to the shoplifting statute. I think this crime, whatever the potential loss, is typically greater than with shoplifting. That would concern me if we redid that.

Chairman Anderson:

I think that's a good work session question.

Chairman Anderson:

Mr. Ebright I presume you're going to tell us you are neutral on the bill and that you're concerned about the penalty of the bill.

Mike Ebright, Acting Deputy Chief, Division of Parole and Probation, Nevada Department of Public Safety:

Yes, Mr. Chairman we are neutral. I'm here to briefly state that we see this as a very small impact if somebody is convicted that second time and placed on probation for the Category D felony. In and of itself we feel that this is going to have very minimal impact. It's only when we take this bill in addition to the bill that you are going to hear in a little while and all the other ones that we start to see the sticks building up on the camel. We just want to make sure that you're aware that there's a very minor fiscal impact to us anytime we add new crimes to the statutes, but we feel this one is very minimal.

Chairman Anderson:

We note that on the face of the bill there's a fiscal impact to the state yet you consider it to be minimal. [Mr. Ebright agrees.] You're going to tell Ways and Means that they don't need to take it, if we are happy enough to get it out of here.

Mr. Ebright:

I'm not sure I can guarantee it, but I know I can present the same information to them.

Gary Peck, Executive Director, American Civil Liberties Union (ACLU) of Nevada in Las Vegas:

I appreciate the opportunity to speak to A.B. 124. I really wasn't here initially to speak to A.B. 124; I did want to speak to the stun gun bill, but listening to testimony I really do feel obligated to weigh in at least on Section 1, subsection 3 of the bill, in support of the comments of Assemblywoman Buckley and others. We oftentimes are on the same side as the Motion Picture Industry of America, particularly with respect to free speech issues and we certainly have no problem with piracy and counterfeiting laws and aggressively enforcing those. I have a lot of problems with the idea that we're going to carve out some special protection for folks in a movie theater who are going to apprehend and hold people.

The Chairman and other members of the Committee know that we've had all kinds of problems in hotel casinos with security guards who apprehended people, hold them, and question them. It raises myriads of civil rights and civil liberty issues. While it's all well and good to have the term reasonably incorporated into a bill, everyone knows those terms are exceedingly elastic and exceedingly complicated. This is sort of a crime, I guess, and I'm a little perplexed. Somebody's sitting in a movie theater videotaping and making unauthorized audio and videotapes. I'm not sure why the movie theater operator can't go and call the police and have the police come and apprehend the person. If there is some compelling need to put the ability to apprehend people—to instantiate it in law—then I certainly think it ought to be instantiated, at least in the same way that our shoplifting laws read. There shouldn't be any special immunity.

The standards should be a preponderance of the evidence. If the jury says that someone was unreasonably apprehended and someone was unreasonably detained by the preponderance of the evidence, well then it's a civil rights violation and that's what it should be, a civil rights violation. Particularly, 90 percent of the problem can be addressed by posting notice on the wall of the movie theater. Thank you very much.

Chairman Anderson:

Mr. Peck, I'm of the opinion that the Committee had reached that very conclusion. Let me close the hearing on A.B. 124. Let me indicate to the members of the Committee that we're going to be looking at the Nevada shoplifting standards and consider requiring signage. We'll be looking at the

questions of preponderance versus clear and convincing. Let's turn our attention to Assembly Bill 123.

Assembly Bill 123: Prohibits use and possession of electronic stun devices under certain circumstances. (BDR 15-600)

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:

With me at the table is Mick Gillins from the Las Vegas Metropolitan Police Department, and Sergeant Kurt Davis with the Carson City Sheriff's Department; he is a certified Taser instructor. He has been Tasered and has used a Taser in the field, so he's here to answer any technical questions. Assembly Bill 123 was requested by the Nevada Sheriffs' and Chiefs' Association to bring the *Nevada Revised Statutes* in line with current technology, regarding less than lethal stun devices. Law enforcement and private industry have worked hard to develop alternative uses of deadly force in situations that require more than brute force but less than deadly force. As a result, law enforcement now has an array of less than lethal weapons that can be deployed depending on our circumstances in the field.

The private industries develop these less than lethal weapons now and have marketed these items to the public for self-defense purposes. Unfortunately, like most new technologies, stun devices can be used in an offensive manner to commit crimes against others. Crimes such as robbery, battery, and other crimes against person can be and are being committed while using the stun devices as weapons to further these crimes.

I've presented you with a package of information that covers a lot of those issues, talks a little about the stun gun and how it's used, the technology behind it, and a study done in England with the use of the stun gun in situations where crimes were committed (**Exhibit C**).

To talk a little about the bill, A.B. 123 does a number of things that will provide law enforcement with legal tools to deal with those persons that use the weapons in an offensive manner or while committing crimes. It will limit the use of the weapon to self-defense purposes only. It prohibits the possession of these weapons by persons convicted of a felony, fugitive from justice, or has been declared incompetent or insane, and a person who has been voluntarily or involuntarily admitted to a mental facility during the preceding five years. It also prohibits a minor from having such a weapon in their possession, other than their home for self-defense purposes. It also exempts law enforcement officers for the use of this weapon within the scope of their duties. The bill also defines

the electronic stun device as a device that emits an electronic charge or current that is transmitted by projectile, physical contact, or other means and is designed to disable a person or an animal temporarily or permanently. The violation of this statute will be a Category B felony, one to six years in prison, and a fine of \$5,000. The use of less than lethal devices by law enforcement have been very successful in defusing many encounters with violent individuals. Many of you may have seen or heard of encounters such as that. Situations where the use of deadly force may have to be used or where the officer may have placed themselves in a situation to where he may be injured. These devices have proven to be a valuable tool to our officers working in the street or dealing with violent criminals and inmates in jails and prisons. We further believe that citizens should have the right to possess these devices for their own self-defense.

[Frank Adams, continued.] Some states have discussed the outlawing of possession of these devices by anyone other than law enforcement. This is not the approach we feel should be taken. We believe that with the passage of this bill, it will give us the tools to deal with the inappropriate use of these types of devices. With me today is Mick Gillins from the Las Vegas Metropolitan Police Department. Mick Gillins will talk towards an amendment regarding the juvenile issue and also Sergeant Kurt Davis is here to answer any technical issues you may have.

Chairman Anderson:

[Turned the Chair over to Vice Chairman Horne.]

Vice Chairman Horne:

At this time I would ask Mick Gillins from the Las Vegas Metropolitan Police Department to speak to the amendment that he has brought forward.

Mick Gillins, Officer, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

In reviewing A.B. 123 as it came out of the LCB [Legislative Counsel Bureau] and in talking with the DAs [district attorneys], it was pointed out to us that there potentially could be a conflict between the ability of a juvenile to use a weapon under the guidance of their parent or guardian in Section [1, subsection] 3 of the bill, as this was proposed. We decided to offer an amendment. It would be at your leisure to decide whether or not you wanted to use it or not. Basically, it would make it in line with how the weapon laws for juveniles are treated now. A juvenile age 14 or older, by permission of their parents or guardian, would be able to have possession of a stun device for self-defense purposes. Keeping in mind all the rest of the language, so that if it

becomes delinquent behavior, it can be prosecuted criminally and possession also.

Vice Chairman Horne:

Did you bring that in writing?

Mick Gillins:

Yes, it is in the back of the package presented to you today ([Exhibit C](#)). I will read it on the record if you'd like me to.

Vice Chairman Horne:

I don't think it's necessary to read it on the record. It will be added as part of the record already and will be discussed in work session.

Mick Gillins:

I just wanted to make clear what the purpose of the intent with the amendment was; we were looking to give you another option if anybody had a problem with that specific type of issue. If it came up in any further Committee conversation.

Frank Adams:

Just recently, we were aware of an issue that may come before the Committee regarding the use of such devices in agriculture, ranching, and that type of thing. I understand that this bill had no desire to put any type of limitation on the use of those devices in the agricultural industry of Nevada. That is an issue that may come up.

Vice Chairman Horne:

I don't see anything in the bill that would address that. I do have questions. In [Section 1,] subsection 4, you have it down as Category B felony for this. My concern is the category level. How was that chosen for such a high level or arguably non-lethal weapon?

Frank Adams:

Mr. Chair, it is my understanding that was brought to that level because of the availability of the weapon, which is now on the market, and that this type of use of the weapon could be very detrimental to the individual it's used against. We felt we needed that deterrent to keep that weapon from being used in the commission of felonies.

Vice Chairman Horne:

The availability of this weapon on the market is in a different category as a firearm? Are there registration requirements, background checks, et cetera, on possessing this legal device?

Frank Adams:

No, sir. There is no requirement for registration. As part of your packet, I included a page from the Internet where you can purchase those devices (**Exhibit C**). There is not a registration requirement for that. It's just the fact that this weapon if used in an offensive manner gives that person a much greater ability to do harm to the victim.

Vice Chairman Horne:

I'll follow up on that just a little more, and maybe Legal can follow this up. Other devices or whatever may be used in an illegal fashion and an offensive manner. Maybe something just as simple as a baseball bat. Would that be a Category B felony as well? Because with a Category B, we've taken this device almost to the level of a firearm. As I said earlier, it is arguably a nonlethal weapon. Are you married to the Category B felony level?

Frank Adams:

No, sir. We're not married to that. We're looking for a tool to be able to use against those people who use the weapon offensively. We're not married to it, no sir.

Vice Chairman Horne:

That's understandable.

Assemblywoman Buckley:

The Vice Chairman talked a little about my concern. I don't have any problem, I don't think, if you use a stun gun in the commission of a crime. If someone was admitted to a mental health facility for treatment once in the last five years and has a stun gun on them, should they get a Category B felony? Is that the same level as someone using a stun gun during a robbery or an assault, which did seem like a completely different level? I have the same concern with juveniles. If a 17-year-old has a stun gun, not using it, but just has it, should that be a Category B felony? Or should that be considered an act which would be a felony if committed by an adult? You don't want the kids to have them, but it seems like we need to focus on what we are trying to prohibit. Sometimes when you lump in use with possession, it creates some anomalies that we may not want to create. Do you have any comments on that?

Mick Gillins:

I agree with you with regard to the juvenile. That's why we offered the other amendments. Being a parent of three daughters, I would like to have the opportunity for them to maybe carry some type of protection. Not to say that that's the best protection for them. Nevertheless, you wouldn't want to eliminate that ability. That's why we went that direction. With regard to the

mentally ill persons, our intent is to keep them away from people who may be more likely to use these in a harmful manner, not trying to prevent somebody from having the ability to defend themselves. That's what we're really trying to accomplish here. Past laws have indicated similar types of levels of keeping people away from things or items that could cause themselves injury or other people injury, if they get their hands on them. That's all we are trying to mirror.

Vice Chairman Horne:

A point of clarification that was brought to my attention. In NRS 202.360, where it seems that part of the drafting of this was used, the use of a firearm by someone who had already been convicted of a felony is a Category B felony. Those who have been adjudicated as mentally ill using a firearm is a Category D. In your bill here, as you use judicially declared competent or sane, would qualify as a Category B as well. There's some disparity there on that level. We might want to address that.

Frank Adams:

Yes, sir. I think we would definitely agree with that and it should be consistent with other parts of the statute.

Assemblyman Mortenson:

Mr. Chairman asked a question which I thought was very interesting and he didn't get an answer. He said that he was trying to compare the use of a stun gun with somebody who took a baseball bat and hit somebody with it. What would the category be for some blunt instrument like that versus a stun gun?

Frank Adams:

I am not familiar with that specific statute. I was just informed by Mr. Stan Olsen that it is a Category B felony, as would this be.

Assemblyman Carpenter:

In reference to cattle prods, in the first part it would be covered there, but in the second part it probably wouldn't be covered. I think for the protection of the livestock industry, we probably should have a disclaimer put in there, because I've never seen a cattle prod really injure anyone or any livestock.

Frank Adams:

Yes, sir. I think that we would definitely accept some type of exemption with regards to the use of agriculture and the cattle prod type of device. We don't want to do anything that would cause problems with our agriculture industry here. We're concerned with people using this in an offensive manner against other individuals.

Vice Chairman Horne:

Legal just reminded us that this only applies to use on people, not animals.

Mick Gillins:

You're right in regard to the device being used on the animals. Our concern was those individuals who would be transporting or carrying those devices. Any of those devices could be used on any living organism. What we're trying to identify is the group of people who would be using it specifically for agriculture and transporting it, maybe not necessarily actively using it at that moment. That was our concern in bringing that forward.

Assemblyman Carpenter:

On line 39 and 40 of A.B. 123 it does say, "disable person or animal temporarily." I think I've heard and I may be wrong, but I think sometimes veterinarians may use this device when they have to put down a dangerous or vicious animal. I don't know how that would play in this realm of things.

Frank Adams:

I'm not aware of that in the veterinary industry, but we can sure look at it and would have no objections to an exemption being carved out for those people who use those in the performance of their job. Mr. Vice Chairman, just so you might know, we do have a number of those devices for the Committee to look at. If they would like to see and if so desired we could demonstrate the use of one of those devices.

Vice Chairman Horne:

Sergeant, do you have anything to add to this?

Kurt Davis, Sergeant, Carson City Sheriff's Office, Carson City, Nevada:

In addressing Mr. Carpenter's concerns, I've never heard of this particular tool being used to down an animal. It's my knowledge that it's made specifically for the temporary incapacitation of someone who might cause harm to another individual.

Vice Chairman Horne:

Do you have any of those devices with you at this time?

Frank Adams:

Yes, sir. We do, and would be happy to let the Committee take a look at them if they so desire.

Vice Chairman Horne:

I will continue with the testimony as these are passed around. We do have Mike Ebright as neutral on this, but did you want to speak on this just for the record?

Mike Ebright:

We just wanted to state for the record that we see where this could have a fiscal impact on the Division; however, we feel it's very minor and something we feel that we could handle. We will also be presenting that same information to Ways and Means when it comes time to look at the fiscal ramifications of the bill.

Gary Peck, Executive Director, ACLU of Nevada:

I'm joined at the table by Madeline Kish who is an intern at our office. I think it's very important for members of the Committee to step back for a moment and give some consideration to the nature of the devices that we're talking about here. That was underscored in the testimony.

Tasers have become exceedingly controversial around the country. They've been the subject of lengthy exposés in *The New York Times*, *The Arizona Republic*, and network news, and the reason is, there have been 96 Taser-related deaths around the country. That is deaths where coroners have actually said the Taser was either the cause of death or a contributing factor or could not be ruled out as a contributing factor in the death.

Indeed, in Nevada we have had 3 Taser-related deaths, two here in Las Vegas. Amnesty International and even some police chiefs around the country have now called for consideration of moratoriums on Taser use until the jury is in, with respect to their safety and effectiveness track record. We are not saying that law enforcement shouldn't be allowed to use Tasers as one of the tools in their kit. We think they can be very useful devices when their use is limited to situations where Tasers are an alternative to using deadly force or when they are necessary to insure public officer safety. We are very concerned about the use of these Tasers by police officers simply as compliance tools to make the job easier. We think that is highly inappropriate.

If there is one thing that is abundantly clear at this point, it is that the safety of Tasers is in question. There are absolutely no credible, reliable, valid studies that have been done that meet scientific standards that demonstrate, even at a level of statistical significance, that these are safe devices. In fact, the United States Air Force has conducted the most recent study and they said that when they subjected...

Vice Chairman Horne:

Excuse me one moment, Mr. Peck. I want to try to stay on point here. The bill is not addressing whether or not we are going to permit law enforcement to use Tasers.

Gary Peck:

But the issue before the Committee involves the nature of the weapons and how powerful they are. They are weapons that in the view of many are potentially deadly. I understand your point Mr. Vice Chairman and we're not calling for the prohibition of use by law enforcement. We are saying there is a reason why other states have prohibited the possession of Tasers by the general public. If, in fact, they are potentially lethal devices, then it is, in our view, irresponsible and exceedingly dangerous to let them be purchased over the counter, not have any licensure requirements, no background check requirements, nor training requirements. We're just going to let people possess these weapons, which are very powerful and we believe potentially deadly by going into the Sharper Image and buying them.

With respect to law enforcement, many states around the country are beginning to look at reporting requirements for law enforcement and can certainly be a part of this Committee's consideration with respect to this bill. That is to say, the bill can be amended if the Committee so desires to include a requirement that says if law enforcement is going to equip its officers with these weapons, which are potentially deadly, they are to report to the Legislature or the Attorney General the use of those devices. Las Vegas Metropolitan Police Department, to its credit, does require officers to keep track of the use of these weapons. It would be good for the public and the Legislature and the Attorney General to know how they are being used. There's no reason not to do that. That is the reason I was trying to underscore how powerful and dangerous these weapons are. We don't oppose their use by law enforcement. We think they're a great tool to have in their tool kit, when they are used appropriately.

Vice Chairman Horne:

Mr. Peck, if you're proposing an amendment, could you put that in writing and submit it?

Gary Peck:

I'd be glad to do that Mr. Vice Chairman and send it to you.

Frank Adams:

We've presented the bill as we see it and would be amenable to any of the amendments that may come along as you see fit.

Assemblyman Anderson:

My concern with this bill is relative to, as my Vice Chair has pointed out to me, the Star Wars scenario. Some 9- or 10-year-old kid comes along, picks this up and thinks it's cool looking. It looks like just what he saw in Star Wars. How do we make sure that the parents are responsible for making sure this child doesn't zap his younger brother? What do you think we should be doing here in terms of making sure that parents are responsible? Why would we not treat it, in other words, at the same level as we do other kinds of weapons?

Frank Adams:

I think I'm going to ask Sergeant Kurt Davis to come back up and speak.

Kurt Davis, Sergeant, Carson City Sheriff's Office, Carson City, Nevada:

Sir, this is a tool like any other tool. Some people are more likely to carry this in the house than a firearm, understandably so, because it has far less potential for fatal injury. This tool, as with any other tool, needs to be treated with respect. It's pretty much up to the parents, I believe, to teach the children in the home as to what are the ramifications of misusing any tool, whether it's a screwdriver, a paintball gun with other projectiles in it, or anything of that nature.

Assemblyman Anderson:

I have a job after school and it's in a relatively dangerous neighborhood and my parent is concerned that I have a feeling of protection, when I have to walk out to the parking lot after working because of the lateness of the evening. They're not willing to arm me but they do feel that it would be good to have something to demonstrate, for my own protection. I'm clearly not in my home. How am I going to be treated by this bill now?

Kurt Davis:

We did bring forth a recommended amendment: "That a person under the age of 14, with the approval of the parent, would be allowed to possess one of these items."

Vice Chairman Horne:

Ms. Michelle Youngs, it shows you speaking on this but do you have anything additional to add?

**Michelle Youngs, Public Information Officer, Washoe County Sheriff's Office;
and representing the Nevada Sheriffs' and Chiefs' Association:**

No, sir. I think everything has been covered. The sheriff's office is in support of this bill and I do also represent the Nevada Chiefs' and Sheriffs' Association.

Assemblyman Mortenson:

This is a little off the bill but I'm just curious how those darts are propelled? Is there an explosive charge in there?

Kurt Davis:

On this device, in particular, I don't know about other devices, has a cartridge that propels two probes out 15 to 21 feet with a nitrogen capsule.

Mr. Mortenson:

A pneumatic thing, the expanding gas pushes it out.

Kurt Davis:

Yes, sir. This nitrogen capsule here is embedded inside the cartridge itself.

Mr. Frank Adams:

If the Committee so desires, we can demonstrate without a living target the capability of this weapon.

Vice Chairman Horne:

[Committee witnessed demonstration of stun gun by Kurt Davis.] Mr. Davis, if you could explain everything that just occurred on that entire process.

Kurt Davis:

What happened was we activated the laser sight to point to the specific area of the body that we wanted the probe to go to. It hit the target and after it did, it ran the 50,000 volts, 162 milliamps, from one probe to the other, positive to negative, causing an electrical interference with the muscle inside the body, stopping the muscle, and freezing it in place.

Vice Chairman Horne:

You can continue to put and continue sending jolts, or is it just after you let off the trigger that you can never do it again?

Kurt Davis:

It runs on a 5 second cycle. If left full cycle, however, many officers will see that they have the compliance they need at that point and shut it off, as they have been asking the person that is in question to comply with their request. At most points, more often than not, they do. However, if necessary and it has been my own situation, we've had to run it twice and at the most three times for people who are chemically altered and have a chemically altered state, whether through methamphetamines or a high state of alcohol. More often than not there's no problems in so far as compliance goes. I've never had a problem with anybody saying I'm sorry, we're done here.

Assemblywoman Gerhardt:

Can we have somebody describe, who has experienced this, what it feels like; what happens to you?

Kurt Davis:

From my own experience as an instructor, we cannot expect anybody to undergo what we are asking our students to do, so I took a 5 second hit with one of these. What I experienced is your mind saying, "What's going on here?" I don't fully understand this because all the muscles are locking up; there's no pain. I've never experienced any pain with this whatsoever. Because it is such an experience that is so foreign to most people, they say, "Okay. I don't want to experience that again."

Assemblywoman Ohrenschall:

I don't understand one thing: Do those wires have to make contact with the individual who's going to be the recipient of the shock?

Kurt Davis:

Yes, ma'am. What happens is there are two probes attached to each one of these wires. Yes, one of them does obviously have to go to the person to make a muscular interaction there; however, it can work on wet grass if it's close enough. I've had that experience myself, where the probe would hit the grass and arc through across the feet.

Assemblywoman Ohrenschall:

How does it get from the gun to the person? Do you just press a button and it goes?

Kurt Davis:

Yes, ma'am. Inside here is a nitrogen capsule that pushes the barbs out, and there is an electrical charge that runs across it. It doesn't necessarily have to have this to activate; it doesn't necessarily have to be used together like this, but this is the ideal condition because it has the better effect over all.

Vice Chairman Horne:

We're going to close the hearing on A.B. 123. Any other business for the Committee?

Assemblyman Anderson:

Are you bringing it back to the Committee?

Vice Chairman Horne:

Yes, plan on bringing this legislation back to the Committee. There were some concerns in some areas, and some amendments that are going to be recommended. One is already included in your packet that was presented by the Nevada Sheriffs' and Chiefs' Association. Mr. Gary Peck also said he was going to draft up some legislation and have it submitted.

Assemblyman Anderson:

Mr. Chair, I want to make sure that the implications under NRS 41.472, which is "The imposition of liability for a parent who has such a weapon about to train those people who are utilizing," are considered in preparing for our work session on this document. That should be under consideration so that staff can show us other kinds of implications of this piece of legislation.

Vice Chairman Horne:

I think Legal can get us that information for the work session. [Vice Chairman Horne returned Chair to Chairman Anderson.]

Chairman Anderson:

[Reiterated Standing Rules of Committee regarding the use of information and staff through the Chair.] We're coming back for a work session tomorrow. We're going to put A.B. 6, A.B. 47, A.B. 55, A.B. 75, and A.B. 78 on the work session document for tomorrow.

[Meeting adjourned at 10:04 a.m.]

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

Shari Andreasen
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Judiciary

Date: 3-2-2005 **Time of Meeting:** 8:10

Bill #	Exhibit ID	Witness	Dept.	Description
	A			Agenda
AB 124	B	Joe Guild		Packet handouts for committee of articles, definitions, and diagrams about camcorder piracy
AB 123	C	Frank Adams		Packet with background information and diagrams regarding stun gun devices.