MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
March 23, 2005

The Committee on Judiciary was called to order at 8:11 a.m., on Wednesday, March 23, 2005. Vice Chairman William Horne 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
Mrs. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Oceguera
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:

Ben Graham, Legislative Representative, Nevada District Attorneys Association
Ron Dreher, Government Affairs Director, Peace Officers Research Association
David Kallas, Executive Director, Las Vegas Police Protective Association; and representing the Nevada Conference of Police and Sheriffs, and the Las Vegas Police Managers' and Supervisors' Association
Gary Peck, Director, American Civil Liberties Union (ACLU) of Nevada
Rose McKinney-James, Legislative Representative, Clark County School District, Nevada
Michelle Youngs, Sergeant, Washoe County Sheriffs Office; and Member, Nevada Sheriffs' and Chiefs' Association
Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Nevada; and Member, Sheriffs' and Chiefs' Association
Bryan Nix, Coordinator, Nevada Victim of Crime Program
Vic Schulze, Deputy Attorney General, Office of the Attorney General, State of Nevada; and President, Community Coalition for Victims' Rights

Vice Chairman Horne:
[Meeting called to order. Roll called.]

Assembly Bill 155: Revises criminal penalties for misdemeanors and gross misdemeanors. (BDR 15-2)

Assemblyman Anderson:
I requested A.B. 155 to clarify a minor ambiguity in the law involving overlapping penalties in misdemeanors and gross misdemeanors. Existing law classifies crimes as felonies, gross misdemeanors, and misdemeanors, and provides penalties for such. Under Section 3 of this bill, the current penalty for a misdemeanor is "imprisonment in the county jail for not more than 6 months, a fine of not more than $1,000, or by both fine and imprisonment..." Under Section 2 of this bill, the current penalty for a gross misdemeanor is imprisonment in a county jail for not more than a year, a fine of not more than

$2,000, or both jail and fine. That's because there is no minimum term of imprisonment and no minimum fine for a gross misdemeanor. A person could be convicted of a gross misdemeanor that would otherwise be classified as a misdemeanor and receive a punishment such as five months in jail. Assembly Bill 155 corrects this overlapping penalty by providing that a gross misdemeanor is punishable by a jail term of more than six months but not more than one year. A fine for a gross misdemeanor must be more than $1,000 but not more than $2,000.

[Assemblyman Anderson, continued.] These changes are not intended to affect the current application of criminal law in Nevada, but only to correct this overlapping penalty and prevent unnecessary confusion in the law.

Ben Graham, Legislative Representative, Nevada District Attorneys Association:
We have worked on sentencing structures for the last 10 to 15 years. I agree with Chairman Anderson that trying to explain this system with regard to classifications of crimes is rather confusing. However, we've adjusted. Both the prosecution and the defense bar work with the gross misdemeanor and misdemeanor structures.

Assemblyman Carpenter:
Why couldn't you work with it the way the bill wants to change it?

Ben Graham:
If this branch of government wants to change it, we'll follow.

Vice Chairman Horne:
Is anyone else in favor of, neutral, or against A.B. 155? [No response.] I'll close the hearing on A.B. 155.

Assembly Bill 207: Makes various changes concerning peace officers. (BDR 23-684)

Assemblyman Anderson:
I requested A.B. 207 to clear up what I consider to be an inequity concerning peace officers and their personnel files.

Ron Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:
I request your support of A.B. 207 and the amendments (Exhibit B) you will be hearing. Assembly Bill 207 provides clarification to *Nevada Revised Statutes* Chapter 289, our state's bill of rights for peace officers.

[Ron Dreher, continued.] The professional peace officers of Nevada believe that the Nevada Legislature has recognized that the rights and protections provided in NRS 289 are due process rights. The statute, in essence, finds and declares that effective law enforcement depends upon the maintenance of stable employee/employer relations between professional peace officers and their employers. However, we have discovered that certain parts of NRS 289 have subjective meanings and need to be clarified.

In addition to those misunderstandings, no penalty exists for violating this statute. Assembly Bill 207, with your support, should help resolve the discovered problems and should eliminate the misunderstandings. The proposed amendments to A.B. 207 have been handed out to you. Assembly Bill 259 sponsored by Assemblyman Conklin and co-sponsored by Assemblymen Anderson, Horne, Gerhardt, and Denis will be presented as an amendment to this bill. Assembly Bill 207 and the amendments being presented to you this morning have the support of the professional peace officers of our great state and the majority of the Nevada Sheriffs' and Chiefs' Association.

Assembly Bill 207 clarifies due process rights for peace officers. Our goal is to eliminate past problems encountered with certain administration representatives when representing professional peace officers covered by Chapter 289. For the most part, law enforcement administration within the state of Nevada operates appropriately. Assembly Bill 207 provides that, in addition to a written notice:

- A verbal admonishment must be made on the record prior to initiating an interrogation or hearing where the officer must answer questions related to allegations of misconduct.
- It provides that compelled statements cannot be used against the officer in any subsequent criminal investigation.
- It provides for up to two representatives in any interrogation or hearing.
- It allows for digital recordings.
- Upon written authorization of the peace officer, it allows for reviewing and copying of internal affairs files by the peace officer or representatives when the peace officer appeals a recommendation to impose punitive action.
- It allows the agency, at the officer's request and expense, to provide a copy of the requested files.
- It provides for penalties for violating any provision of NRS 289.

We have requested that Section 1 of the bill itself be deleted.

Section 2: Under NRS 289.060 subsection (3)(b), paragraphs (1) and (2) would require that a verbal admonishment be given to the officer, on the record, at the time of the interview, interrogation, or hearing, by the agency conducting the

interrogation. This admonishment would require the officer to answer questions related to the misconduct and state that failure to do so may result in charges of insubordination. Further, it would state that no statements could be used against the officer in any subsequent criminal investigation. This is called the Garrity Warning. *Garrity v. New Jersey* [385 U.S. 493 (1967)] was a 1967 [United States] Supreme Court case that provided certain due process rights to peace officers who were compelled to provide involuntary statements. Currently, a written notice is given to the officer prior to the interrogation or hearing. However, the written notice is usually given to the officer several days in advance. This change would require the agency to provide written and verbal notice to the officer. We have had at least two agencies object to admonishing officers at the time of an interview that their statements were being compelled. The problem with failing to verbally admonish the officer at the time of the hearing is that it could be argued that the officer gave a voluntary statement, and, therefore, waived the protections afforded to him under *Garrity*.

[Ron Dreher, continued.] The amendment to this bill is as follows: "Immediately before the interrogation or hearing begins, inform the officer orally on the record...."

Vice Chairman Horne:
That language in your amendment would be inserted at Section 2, subsection 3(b)?

Ron Dreher:
Yes, it would be inserted in subsection 3(b) after the word, "orally."

Vice Chairman Horne:
Then paragraphs (1) and (2) would remain?

Ron Dreher:
Yes, they would remain as written by LCB [Legislative Counsel Bureau].

Assemblyman Carpenter:
What types of recordings are done at these hearings? Do you have a court reporter? What kind of a record is made?

Ron Dreher:
It's usually a tape recorder, a microcassette.

Assemblyman Mortenson:
This is an investigation of potential wrongdoing. Isn't an admonishment telling somebody he's done something wrong?

Ron Dreher:
The admonishment that's given on the record is a notice that says, "It is alleged that you may have done X wrong, which is a violation of policy Y." The admonishment would be compelling them to answer questions regarding that misconduct truthfully. Any statements they made could not be used against them in any subsequent criminal proceedings.

Section 3 that deals with NRS 289.080 would allow for more than one representative to be present with the peace officer. The current language has been interpreted by certain administrative representatives to allow for only one representative, or one attorney, to be present on behalf of the individual. Usually in an administrative hearing or interrogation, or subsequent interviews or hearings, there are several administrative representatives sitting across the table from the involved officer and the representative.

The goal of this language is two fold: one is to provide for the playing field to be more even; the second is to be able to provide on-the-job training to new representatives. The representative has a duty to properly represent the individual and can be held accountable for improper representation. Limiting the officer to one representative may subject the Association to liability. The amendment to A.B. 207 is simply to take "one or more representatives" out and replace it with "up to two representatives." We would delete the last sentence, "Such representatives may include one or more lawyers."

Vice Chairman Horne:
With the deletion of that last sentence, would one of those representatives still be able to be an attorney, if the officer so chooses?

Ron Dreher:
That is correct. We also want to put on the record that it is not our intent to make someone wait until they have the two representatives of their choice. It is our understanding, currently and in practice, that when an employee is noticed for discipline, the Garrity Warning that is given in written notice already says that you have the right to representation of your choice. It is not our intent to delay the hearing even further by saying, "Now you get two representatives of your choice."

Assemblyman Carpenter:
Would striking that language about "lawyers" preclude you from having a lawyer?

Ron Dreher:
When we were defining "representative," within that word we mean lawyer. If that language has to be put back in we would.

Section 3, subsection 4—we are asking that the Committee leave as written. This allows for the peace officer and the representative to make a digital recording of the interrogation or hearing. Subsection 5 allows the officer and the representatives, with written authorization from the officer, to obtain, at the officer's expense, a copy of an appealed recommendation of discipline. The amended language would read as follows:

> "After the conclusion of the investigation, the peace officer who was the subject of the investigation or, upon written authorization from the peace officer, any representative of the peace officer may, at the expense of the officer and if the peace officer appeals a recommendation to impose punitive action, review, and copy the entire file concerning the internal investigation, including without limitation, any recordings, notes, transcripts of interviews, documents, and electronic recordings contained in the file."

Vice Chairman Horne:
You add "upon written authorization from the peace officer." Is this request going to be at the expense of the officer? This seems to be something they should be entitled to.

Ron Dreher:
As a compromise to this legislation, we are agreeing to do that.

Vice Chairman Horne:
These changes to A.B. 207 are basically going to be recommendations. Our bill drafters will write the language, so if the [amendment] is adopted it may not be verbatim to what you have.

Ron Dreher:
I understand.

The next section would amend NRS 289.080 to specify the role of a representative. NRS 289 is silent on the role of a representative or an attorney. Some administrative representatives in our state have advised the officers' representatives that their role in an internal affairs hearing, or in any subsequent hearings, is to remain silent and not to advocate or speak on behalf of the officer. The amendment statutorily defines what the representative's role is:

"The role of a representative/attorney chosen by the peace officer is to provide assistance to the peace officer. The representative, on behalf of the peace officer, will be allowed to explain an answer or refute a negative implication resulting from questioning during the interrogation interview and any subsequent hearing."

[Ron Dreher, continued.] I need to put on the record that the role of a representative is not to interfere with the investigator's role in an internal affairs hearing. It is merely to point out and/or to object when issues like going outside the boundaries of the investigation occur. It is not to impede the interviewer's investigation. The provision under NRS 289.080 would be where this language would go.

Section 4, subsection 2, would provide a "fruits of the poisonous tree" punitive element to NRS 289, where currently no punishment exists. In other words, if a violation of NRS 289 is determined by the parties, the evidence obtained improperly may be excluded and could not subsequently be used against the officer. Our amendment is to delete Section 4, subsection 2 language as you see it in the current bill and add this language: "Evidence obtained in violation of a provision of NRS 289.010 to 289.120, inclusive, may not be used in an administrative proceeding or civil action against a peace officer." This would allow the courts, the arbitrators, and the internal affairs hearing boards, to exclude that portion of that investigation from being used against the officer in subsequent punitive recommendations.

Vice Chairman Horne:
I have a little concern in that area. Usually the "fruit of the poisonous tree" doctrine would exclude a prosecutor from using illegally obtained evidence, but that wouldn't extend to other parties. In this amendment it seems to extend the doctrine to a civil matter that an alleged victim of an officer may bring forth.

Ron Dreher:
It is not our intent to do that. Our concern is violations of NRS 289 when an internal affairs hearing is conducted. For instance, proper notice was not provided, or a notice of misconduct regarding one allegation was given and yet during the interview the talk turned to something entirely different. Going outside the boundaries of the investigation would be a violation and currently is a violation of NRS 289. We're asking that this language be put in merely to clarify that only the violation would be excluded from being used against that person in any subsequent punitive recommendations.

Normally what happens in an internal affairs investigation is an officer receives notice of an investigation. A meeting is scheduled and an interview is

conducted. At the conclusion of that interview with the principals, a recommendation for discipline is made by the internal affairs investigator. It is then presented back to the department. Usually a supervisor will recommend discipline back after reviewing everything. The officer makes a determination at that point whether or not to accept discipline or to appeal. It is in that appeal phase, when the documents are reviewed, that wrong doing or any violations of NRS 289 could occur. If the officer appeals, it usually will go to some form of appeal hearing or a pre-disciplinary hearing. As representatives, we would put on the record that violations of one of the sections of NRS 289 occurred. When the evidence is presented at that pre-disciplinary hearing, we would ask that the review board determine if violations were sustained. Then that portion, and only that portion, could not be used against the officer when they are determining discipline. It wouldn't have an impact on a third-party claim. That's not the intent of this.

Vice Chairman Horne:
I will make sure I get something from Legal to relieve my concerns.

Ron Dreher:
The professional peace officers in Nevada thank the sponsors of both bills and request the Committee's support and passage of A.B. 207 with all the amendments presented.

Assemblyman Carpenter:
What happens in situations where there is all kinds of publicity and police officers are accused of wrong doing? How does this law we're talking about fit into such a situation? If another party brings an action do they have to start over?

Ron Dreher:
Under the current Garrity Warning you're compelled to answer. Any statement you provide cannot be used against you in any subsequent criminal investigation. Currently, if a party makes a criminal complaint against a peace officer it would not go to internal affairs, for the most part. After it has been investigated it would go to either the city attorney or the district attorney, who would then make a decision at that point whether or not to prosecute. That's all public record.

The difference between a criminal investigation and the internal investigation is during an internal affairs investigation it is a compelled statement. In a criminal investigation, the officer, like any other citizen, has Fifth Amendment rights not to even answer a question and they cannot be compelled. The *Garrity* decision basically distinguished between a compelled statement where a party was told,

"You have a Fifth Amendment right to remain silent, but we're going to compel you to answer this question under threat of insubordination." The officers in that case were terminated and the United States Supreme Court said that we have the same rights as any other citizen when it comes to a criminal proceeding. Because of the importance of getting police officers' testimony on the record, regarding areas of misconduct, the employer has the authority to compel us. We are held to a different standard and don't mind being held to a different standard. We want the criminal protections so if you make a statement, it can't be used against you in a subsequent criminal investigation.

[Ron Dreher, continued.] NRS 289 narrowly defines the administrative sections. It also says that I, or any other peace officer, cannot refuse to do our job as peace officers. If we're involved in a criminal investigation we have to provide a statement of what occurred. That statement can be used because it is a public document. This is the provision that allows the employer to do their job, to investigate administrative findings, administrative allegations, or third party allegations when somebody files a complaint against a peace officer for rudeness, misconduct, or for whatever. There are times when a criminal investigation is done first.

Paralleling that is the internal affairs investigation. That's how the system currently works. All we're doing with A.B. 207 is defining it a little more specifically because of problems we've encountered over the years. People don't understand the difference between an administrative investigation, which is what this is, versus a criminal investigation.

Detective David Kallas, Executive Director, Las Vegas Police Protective Association; and representing the Nevada Conference of Police and Sheriffs, and the Las Vegas Police Managers' and Supervisors' Association:

We are in support of A.B. 207. We understand that officers are held to a higher standard and that they need to be accountable for their actions. This ensures officers their due process rights and that they'll be entitled to receive information that will assist them in any appeal of punitive action that has been taken against them by their employer.

We do have some amendments to the bill (Exhibit C). They are incorporated into a similar bill [A.B. 259] regarding revisions to NRS 289. Section 2, subsection 2, provides for access and articulates the process in which an officer, who has received or will be receiving punitive action, can begin review of the information that was used to make the determination of the punitive action that would be taken against him in order to determine whether they want to file an appeal.

[David Kallas, continued.] Section 2, subsection 3, relates to what happens to information unlawfully obtained by a law enforcement agency during the course of an interview or investigation of an officer who is the subject of an allegation. I know you had some concerns about the portion of the language that related to being used against him later on in a civil proceeding. I think we all know that the standard of evidence in a civil proceeding is different than in a criminal proceeding, but any information that's acquired illegally is still illegal. We would believe, even if the language was allowed to remain, that certainly a court could determine whether information that was illegally obtained could be used in a civil proceeding. We would ask that that information and that language remain in the bill.

Section 5 under NRS 289.010 seeks to define what an "administrative file" is. Because of the differences in the varied agencies throughout the state, some agencies may have four or five files in which they place documents related to punitive action or other information about an employee; some agencies may have two; and some agencies may have one. In order to have an umbrella under which to define what files derogatory information, or any information about an employee can go into, we determined to use the broad-based term "administrative file." We'll be using the same standard so that the employees understand where the information can be contained and where they may go to seek that information.

Section 6, subsection 3, seeks to further clarify information about an officer placed in a file, and that it would be in "any" administrative file maintained by the law enforcement agency.

Assemblyman Anderson:
What do you perceive to be the difference between "an" administrative file and "any" administrative file?

David Kallas:
Sometimes employers may refer to one file as "an" administrative file being a single file and alleging that the information contained about the officer is in that file, and only in that file. We have been involved in an appeal process during which information that had been purged from the administrative file, the personnel file, was discussed during the course of the hearing. Subsequently, one of the representatives of the employer left the room and came back with a document that supposedly had been purged from the personnel/administrative file, and showed it during the appeal process. That information was subsequently used against the officer. We determined there was more than one "administrative file." We are just trying to ensure that "an administrative file"

was any file contained by the agency and have the language consistent with other terminology contained in NRS 289 that discusses any files.

Assemblyman Anderson:
The addition of the "y" is like "must" or "shall." It can make a huge difference.

Assemblyman Mabey:
When somebody writes a report that is a complaint, does the officer get to see the report and get to see who wrote the report, or is that done in anonymity?

David Kallas:
Generally the complaint isn't seen by the officer, even when they have access to the file in order to determine if they want to go ahead and appeal punitive action, if it's been taken against them. A complaint comes in and it will go to the internal affairs division of the individual agency. Then a determination about conducting an investigation will be made.

Assemblyman Mabey:
Would this bill change that?

David Kallas:
No, this would not change how the agencies operate. Realistically, the officer will eventually find out who the complainant is. Generally when they receive their notice of internal investigation, according to the statute, the notice is required to include information talking about the specific allegation.

To address Chairman Anderson's concerns, I would leave it to the will of the Committee. If they choose to leave it "an" or include "any."

Continuing with the proposed amendments to A.B. 207, most of the language on page 4 addresses the administrative file of the officer and what may or may not be placed in it. The important amendment is in Section 7 under NRS 289.060 which tells the law enforcement agency they must give the officer 72 hours notice before they can conduct an interview of the officer unless the officer waives this notice. The reason is twofold: first, it gives the officer time to procure representation; second, depending on what representation they intend to procure, availability of a representative for that officer [must be ascertained].

Vice Chairman Horne:
I'm concerned about going from 48 hours notice to 72 hours notice. It seems like you have representatives on hand, you know who they are, and you even know the attorneys you use in these situations.

David Kallas:
When we originally drafted this bill, we spent a lot of time with representatives of the agency to ensure that they could make sure that the officers are still held accountable, and that the officers could ensure that they had the due process rights that they believed they were entitled to. We have spoken to all the representatives of all the agencies and they are on board with these language changes.

In Section 9, the prominent change is having two representatives. The representatives could be any one of a number of combinations of a lawyer, a representative of a labor union, or another peace officer.

Vice Chairman Horne:
Mr. Kallas, on your amendment, you specifically state "two representatives." Mr. Dreher's proposed amendment says, "up to," and also in Mr. Dreher's proposed amendments he deleted the without limitations "one or more representatives" language. You have that language in your amendment. Have you two conferred? Which would you prefer?

Ron Dreher:
Yes, we have conferred. We want to clarify that a lawyer and representative are all-inclusive, and synonymous with "representative." If we have to have the word "lawyer representative" that's perfectly okay.

David Kallas:
That concludes my remarks on the proposed amendments to A.B. 207.

Vice Chairman Horne:
I want to close the hearing on A.B. 207. We need a bill introduction for BDR 16-1035 requested by the Division of Parole and Probation.

- BDR 16-1035: Provides for the assessment of a fee for offenders in community supervision. (ASSEMBLY BILL 366)

ASSEMBLYMAN ANDERSON MOVED FOR COMMITTEE INTRODUCTION OF BDR 16-1035.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

[Vice Chairman Horne, continued.] I will reopen the hearing on A.B. 207. I don't see any other people signed in to speak in favor of A.B. 207. I'm going to go to those in opposition.

Gary Peck, Director, American Civil Liberties Union (ACLU) of Nevada:
I originally came here in opposition to A.B. 207, principally based on very serious concerns about Section 1. If I understand Mr. Dreher correctly, that section has been stricken. In general, we are supportive of this bill because we believe that police officers, like everyone else, are entitled to due process rights and all the other substantive rights that the rest of us are entitled to. We don't even have a problem with there being a police officers' bill of rights which creates some special protections for them. We enthusiastically support their ability to enter into collective bargaining agreements with management that further protect them.

We do have some concerns which, in some ways, echo those of the Vice Chairman. I want to be sure there's nothing wrong with creating penalties for breaking the rules and violating the rights of officers in the course of investigations and administrative proceedings. I just want to make sure that the language is clear about the distinction between that set of proceedings and any proceedings that might be brought in a court of law by a complainant in the general public.

If I'm not misunderstanding the amendments to A.B. 207 proposed by Mr. Kallas, we do have a problem with the section that seems to indicate that the only thing that can go in an officer's personnel file after an investigation has been concluded and a disposition of that has been made, even if a complaint is sustained, is the notice of investigation and the disposition of the matter. If my understanding is correct, we absolutely would be opposed to that because we believe the information that is produced in the course of an investigation should be included in an officer's jacket so that management can better manage officers, look for patterns of misconduct, try to determine where there might be problems, and address those in an effective manner.

The only other problem has to do with the confidentiality of officers' addresses and photographs. I want to make sure there's no confusion about this. If a newspaper takes a photograph of a police officer, they can obviously publish it. Also, there's a home address issue. I think there is a legitimate concern among police officers that their home addresses not be freely circulated in a way that would put their safety at risk. I have no problem with that and no problem with balancing that with the public's right to know what their police department and officers are up to. However, there have been issues with serving subpoenas on police officers. I want to be clear that this would not prohibit the agency from

releasing the home address of a police officer in a circumstance where someone is trying to serve a subpoena on that officer so that they could come and testify before a court of law.

[Gary Peck, continued.] Any officer should have the right to confront their accuser. We fully and wholeheartedly support that, and, therefore, support the notion that officers should have access to their files so that they can decide how best to defend themselves against charges they may believe were unfairly prosecuted. It is important, however, to recognize there may be information in those files that needs to remain confidential so as not to compromise the integrity and ability of the agency to conduct these kinds of investigations. I think any agency should be required to defend the position that they're going to redact some information from the file. That ought to be reviewable by a court of law. I agree with Mr. Kallas and Mr. Dreher that, under most circumstances, they should have access to everything that's in their file but, if an agency determines something ought to be redacted, they ought to have the ability to do that and then ought to have the burden of proving what they're redacting really shouldn't be released to the officers who are being investigated and disciplined. I would just ask that you keep either the hearing open or the record open so that we can submit in writing any further comments we have regarding the amendments that were proposed today. I haven't had a chance to thoroughly review them but, in general, we absolutely support the enhancement of rights for officers.

Vice Chairman Horne:
In your testimony you brought up one area of Mr. Kallas' proposed amendments which he didn't really address.

David Kallas:
It is self-explanatory. If we are to be served a subpoena due to our actions in the course and scope of our duties, then our address is going to be our department's address. No one needs to have our home address in order to serve that subpoena. We implore the Committee to leave that language in. If someone in a civil capacity wants to serve us, they would have to find us available just as they would any other citizen in our community.

Vice Chairman Horne:
Mr. Peck was talking about Section 2, paragraph 2(a) and (b) of your amendment having the potential to have complaints removed from a file.

David Kallas:
There have been many hours spent by PORAN [Peace Officers Research Association of Nevada] and all the organizations I represent and all the employer

organizations represented by Lieutenant Stan Olsen, the Executive Director of Governmental Services for Las Vegas Metropolitan Police Department, and a representative of the Nevada Sheriffs' and Chiefs' Association along with Mr. Frank Adams and Sergeant Michelle Youngs. I understand Mr. Peck's concern about management's ability to ensure that the officers aren't straying off to a site they shouldn't go to, but management has been fully involved in the discussions about these amendments. Hopefully, because they are not [speaking in opposition] they support it and agreed to this language in order to ensure that they have accountability for their agencies.

Gary Peck:
One of the concerns is that the jurisdiction of the Citizen Police Review Board is simply to review internal investigations and then make recommendations to the department. If the only thing that's in an officer's file when they request that file is the notice of an investigation and the disposition by the department, then there's nothing in the file to review.

David Kallas:
As I sit here today, I do not know of any opposition to the language as it exists. The files we're speaking of are internal affairs files that I believe the Citizens Review Board is entitled to review.

Rose McKinney-James, Legislative Representative, Clark County School District:
We have not been involved in any discussions on A.B. 207. I have comments based on a review of the measure by our general counsel. I am aware that several adjustments have been made to the bill. I will share with you some of the concerns and, to the extent that there are opportunities to discuss this further with proponents of the bill, we may find that there are areas of support.

As I understand it, Section 1 of the bill and the changes that were proffered have now been withdrawn. We have some concerns with respect to Section 2. In our view there are many ways that an employee interview could be undertaken. It is our view that this could be interpreted as a one-size-fits-all provision that may not be appropriate.

We're suggesting Section 3, paragraph 5, of the bill be deleted because the disclosure of this information is a matter of collective bargaining.

Vice Chairman Horne:
Are you talking to A.B. 207 or to the amendments?

Rose McKinney-James:
To the bill.

Vice Chairman Horne:
On Section 3, paragraph 5, you recommended deleting "After the conclusion of the investigation...."

Rose McKinney-James:
Correct. The reference here is that the language which would establish this new rule does not exclude the confidential information. That is the area of concern that we have.

Vice Chairman Horne:
That paragraph is the end of Section 3.

Rose McKinney-James:
In Section 4, NRS 289.120 already covers the remedy for the exclusion of evidence based on procedural errors and, as a result, this should not result in the officer avoiding discipline because of an error by a supervisor.

The concerns I have just articulated come from our general counsel from the perspective of an employer because the School District employs a number of school police who are category two officers. I am not aware of any communication about A.B. 207 being undertaken prior to the development of the bill. We are impacted by this measure.

Vice Chairman Horne:
Ms. McKinney-James, would you put your proposed amendments in writing? This is probably going to go to a subcommittee, so you and others who have proposed amendments can bring those to the subcommittee. I will now call those who are neutral on the bill.

Michelle Youngs, Sergeant, Washoe County Sheriff's Office; and Member, Nevada Sheriffs' and Chiefs' Association:
We are neutral on this bill. We would, however, like to see it in its final form. We do have concern over the definition of a "file" in the amendments proposed by Mr. Kallas.

Vice Chairman Horne:
Are you proposing an amendment or do you have a problem with it?

Michelle Youngs:
We have a problem with it. We would prefer the term "official personnel file."

Vice Chairman Horne:
Get your amendments in writing and bring them to the subcommittee.

Robert Roshak, Sergeant, Las Vegas Metropolitan Police Department; and Member, Nevada Sheriffs' and Chiefs' Association:
Overall, we're in agreement with the amendments you are taking into consideration. Also, I'd like to address the concern raised by Mr. Peck pertaining to files on investigations. They are warehoused in our internal affairs bureau and are provided when the Civilian Review Board requests them. All we keep in the personnel file is just a disposition of the finding.

Michelle Youngs:
Concerning the proposed amendments, we echo the concern about the words "any" and "an."

Vice Chairman Horne:
I'm going to close the hearing on A.B. 207 and propose a subcommittee of one. Mr. Anderson, are you interested?

Assemblyman Anderson:
I would like an opportunity to look at the amendments and make a recommendation back to the full Committee. I'll see if I can get all the interested parties together.

Vice Chairman Horne:
We're going to open the hearing on A.B. 205.

Assembly Bill 205: Revises provisions governing compensation for victims of crime. (BDR 16-1114)

Assemblyman Manendo:
I bring forth A.B. 205 on behalf of the Community Coalition for Victims' Rights. I have people in Las Vegas ready to testify and walk us through the bill.

Bryan Nix, Coordinator, Nevada Victim of Crime Program:
Assembly Bill 205 proposes a relatively minor change that would modify NRS 217.110. The Victim of Crime Program is required by Nevada law to determine the eligibility of applicants for benefits under this program. Under other provisions of NRS 217, to be eligible for this Program a victim must have filed a police report. The compensation officer who determines eligibility is responsible for determining if that victim did file a police report. The officer also determines certain essential facts of the crime to make sure the victim is eligible under other provisions of the law, such as contributory conduct or other things that may disqualify them from the Program.

[Bryan Nix, continued.] We currently have few problems obtaining police reports from police agencies throughout the state. However, we do run into difficulties when trying to obtain police records on juvenile offenders. This bill would clarify that under the law, the Victim of Crime Program is entitled to those records for the purposes of conducting its investigation. This will keep us from continually having to seek court orders in order to determine eligibility of a victim.

Vice Chairman Horne:
Juveniles' records are protected from the general public for reason. If we open that door for your investigations, how would we keep those records that are normally kept confidential from getting out?

Bryan Nix:
In Section 1, subsection 3, the last sentence of the paragraph says, "Any reports obtained by a compensation officer pursuant to this subsection are …." This language states that police reports maintain their confidentiality and must not be disclosed except upon a lawful court order. The confidentiality that begins at the police department stays with that document through the Victim of Crime Program. The document would not be disclosed without a court order. Police reports themselves are often confidential, particularly during an investigation. It doesn't change the nature of that confidentiality. It puts the burden on the compensation officer and the Program to make sure that confidentiality is protected.

Vic Schulze, Deputy Attorney General, Office of the Attorney General, State of Nevada; and President, Community Coalition for Victims' Rights:
What I attempted to do in A.B. 205 is balance two competing interests. One is the difficulty that the NRS 217 Program has in obtaining these reports in a timely manner. The other is maintaining and even strengthening the confidentiality of juvenile offenders' records. I know it is an interest of the Committee and a strong policy in state law to maintain confidentiality.

The process is lengthy for the compensation officer to get a police report when they subsequently find out that the offender is a juvenile. What they do is they send a written request to the police agency. The police agency gets the report and reviews it. If and when they find out that the offender is a juvenile, they write back to the compensation officer that they cannot release the report. The program officer sends a packet of documents to me because I serve as legal counsel to the NRS 217 Program. We have to prepare a number of court documents, send them to the court clerk's office, and file them. The documents go through both the juvenile master and the district court judge in the two largest counties. We serve either the district attorney's office or the

city attorney as part of that process. When the court grants our motion and sends the order to us we forward the order to the Program and the Program forwards the order to the police agency. Generally that process takes a couple of months.

[Vic Schulze, continued.] In drafting A.B. 205, I attempted to move the court order requirement from the time period before a compensation officer gets the police report to the time period after it goes to that officer and ends up in that file. Additionally, I tried to strengthen confidentiality, which is a very strong policy in this state. Under NRS Chapter 217.105, the file that's maintained by the compensation officer is confidential but there are a couple of openings in that confidentiality right now. One of those is that the file is not confidential vis-à-vis the applicant. The juvenile police report was confidential. However, upon being released to the Program and placed in that file, it is technically no longer confidential. What I've done is strengthen confidentiality. Under the language in A.B. 205, even when that report is in that file, the compensation officer cannot release that report to anybody without getting a court order. I'm hoping to strengthen confidentiality, cut out my office, the court clerks, the judges, and the juvenile masters, and get the police reports to the compensation officer a lot faster. This will save me time and the taxpayers will save money. More importantly, it will speed victims of crime getting their applications processed while at the same time maintaining that confidentiality for the juveniles.

Assemblyman Anderson:
You implied we have a higher standard in this state than other states do relative to the protection of juveniles. Are we out of line with the majority of the other states in this regard?

Vic Schulze:
No, I don't. We have a strong policy but I think we're in line with most states.

Assemblyman Anderson:
Referring to the Victims' Compensation Fund, are we fairly consistent in our application among those states that have a compensation fund? Are their investigatory procedures dramatically different?

Vic Schulze:
I am not aware that our system operates radically differently from most other states. A lot of the requirements in our statute are mandated in order to get the portion of federal monies we get.

[Vic Schulze, continued.] The standard for the juvenile master and the district court judges to grant a motion is that a motion can be granted on the request of any person who has a legitimate interest in that police report. Under NRS Chapter 217, because the compensation officer must review that police report as part of his or her investigation, obviously, we are an interested person with a legitimate interest in getting that report.

To some extent the process that currently exists is a little bit *pro forma* because when we make that request we serve a copy of the motion on the city attorney or the district attorney. They never oppose those motions. The district court judges, not getting any opposition and really not having any policy on the other side to deny the motion, grant these motions as a matter of course. If the motions are granted as a matter of course in a sort of *pro forma* process, what we're hoping to do is maintain that level of confidentiality and protect those juvenile offenders while at the same time speeding the process up and creating a more efficient process for the victim of crime.

Assemblyman Anderson:
This is a well intended piece of legislation. My concern rests with the confidentiality requirement of the compensation officer not to disclose any other information. I'm not sure A.B. 205 is clear enough for my comfort level. If we needed to remind them of their confidentiality requirement I might have a better feeling about it.

Vice Chairman Horne:
I have no one signed-in in opposition or neutral to the bill. I'll close the hearing on A.B. 205 and reopen the hearing on A.B. 155. I neglected to put a letter on the record submitted by Kathleen O'Leary, Washoe County [Nevada] Deputy Public Defender (Exhibit D) in opposition to A.B. 155. It states that:

> "The office of the Washoe County Public Defender opposes A.B. 155. We believe that the current sentencing statutes preserves judicial discretion in an appropriate way. While most cases are resolved in the sentencing range specified in A.B. 155, there is the rare case where the court, prosecutor and/or defense attorney believe that a sentence outside that range is fair and just. We do not believe that utilization of the current sentencing statute is being abused and thus this bill is unnecessary. Thank you for your time and consideration."

Stan Olsen, representing the Las Vegas Metropolitan Police Department pointed out that page 2, Section 2, paragraph 1 of A.B. 155 states, "Imprisonment

in the county jail for not more than 6 months, but not more than 1 year...." He recommends adding, "or city jail" as well as the county jail.

[Vice Chairman Horne, continued.] I will close the hearing on A.B. 155. With no more business before the Committee, we are adjourned [at 10:04 a.m.].

RESPECTFULLY SUBMITTED:

Judy Maddock
Committee Manager

RESPECTFULLY SUBMITTED:

Terry Horgan
Transcribing Attaché

APPROVED BY:

Assemblyman William Horne, Vice Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 23, 2005 Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
N/A	A		Agenda
A.B. 207	B	Ron Dreher, Peace Officers Research Assoc. of Nevada	Proposed amendment
A.B. 207	C	David Kallas, Las Vegas Police Protective Assoc.	Proposed amendment
A.B. 155	D	Kathleen O'Leary, Washoe County Deputy Public Defender	Email in opposition