

THE SECOND DAY

CARSON CITY (Saturday) August 1, 2020

Senate called to order at 11:50 a.m.

President Marshall presiding.

Roll called.

All present.

Prayer by Senator Pat Spearman.

Lord, make me an instrument of Your peace. Where there is hatred, let me sow love; where there is injury, pardon; where there is despair, hope; where there is darkness, light, and where there is sadness, joy.

O Divine Creator, grant that I may not so much seek to be consoled as to console; to be understood, as to understand; to be loved, as to love. For it is in giving that we receive; it is in pardoning that we are pardoned, and it is in dying that we are born to eternal life.

Prayer of Saint Francis of Assis.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

MOTIONS, RESOLUTIONS AND NOTICES

Pursuant to Senate Standing Rule No. 53, Senate Majority Leader Cannizzaro has authorized Senator Harris to use remote-technology systems to attend, participate, vote and take any other action in the proceedings of the Senate and the Committee of the Whole.

Senator Cannizzaro moved that the following person be accepted as an accredited press representative, and that he be allowed the use of appropriate media facilities: KRNVT-TV; Ben Margiott.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 1.

Bill read second time and ordered to third reading.

Assembly Bill No. 1.

Bill read second time and ordered to third reading.

Assembly Bill No. 2.

Bill read second time and ordered to third reading.

Assembly Bill No. 4.

Bill read second time and ordered to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senate Joint Resolution No. 1.

Resolution read.

Remarks by Senators Brooks, Kieckhefer, Hansen, Pickard, Goicoechea, Settelmeyer, Hardy, Hammond, Ratti, Spearman and Seevers Gansert.

SENATOR BROOKS:

Senate Joint Resolution No. 1 proposes to amend the *Nevada Constitution* to eliminate the current requirement for the Legislature to impose a tax on the net proceeds of minerals extracted at a rate not to exceed 5 percent of the net proceeds. It proposes to eliminate the appropriation of a portion of those proceeds to each county and, instead, impose a 7.75-percent tax on the gross proceeds of minerals extracted during a calendar year beginning on or after January 1, 2023. It authorizes the Legislature to provide for taxation of mines and mining claims and the proceeds of all minerals extracted in the State. The proposed amendment requires the majority of the members of each House to pass any provision that enacts or amends a law providing for taxation of mines or mining claims or the proceeds of minerals extracted in a manner that generates or increases public revenue. In addition, the amendment requires a vote of at least two-thirds of the members of each House to pass the bill to reduce the rate of the tax or provide an exemption from the tax on the gross proceeds of minerals extracted by a certain class of taxpayers or imposed on a type of mineral.

Finally, the proposed amendment provides that 50 percent of the proceeds of the tax on the gross proceeds of minerals extracted in the State must be accounted for separately in the State Treasury and used exclusively to fund a program to make payments for eligible persons domiciled in the State. The use of the remaining 50 percent of the proceeds of the taxes is not restricted by the proposed amendment.

This resolution is effective upon adoption. If the resolution is adopted by the Legislature during this 32nd Special Session, it must also be adopted by the next Legislature and approved and ratified by the voters in a general election before the proposed amendments become effective.

SENATOR KIECKHEFER:

There are many different things to say about this resolution, but ultimately, this is bad tax policy.

SENATOR HANSEN:

My district comprises of 38,000-square miles that includes the two poorest counties in the State, Mineral and Esmeralda Counties. Elko, Humboldt and Lander Counties are doing well, but Mineral and Esmeralda Counties do not have any significant mines and have economically suffered. For the first time since I have been an elected official, two major mines in Esmeralda County are on the verge of a dramatic turnaround for their economy. One is a lithium mine; the other, a gold mine.

These mines take years of investment and effort to find and map the ore body and gain the ability to attract capital to develop the mine. This Legislature passed protections from arbitrary changes in the tax structure in the *Nevada Constitution*. Our State has been able to develop the most extensive mining industry in the United States. Nevada is one of the leaders in the production of gold. If this constitutional protection is removed, it will create uncertainty and hinder our ability to attract that level of investment for these industries.

In the 1950s, the Legislature passed another provision in the *Nevada Constitution* that said we would not tax warehouse items. The Freeport Act allows, encourages and protects people who build warehouses and store things knowing the tax structure cannot be arbitrarily changed in the next Legislative Session.

This bill is an extreme measure. I do not know of any business that is taxed on its gross income like this. This resolution will absolutely destroy mining in Nevada.

The *Nevada Constitution* should provide a certain level of trust. When there is an industry that waits 10 and 15-plus years before profits are realized, it makes sense for investors to invest at those levels. They can be assured protection and a reasonable return on their investment. That is what will be destroyed if we take this provision out of the *Nevada Constitution*.

I fear all of rural Nevada will end up like Mineral and Esmeralda Counties, desperately poor and struggling to maintain basic facilities, civil government and schools. When you visit those

areas, there is a feeling of depression. If this resolution passes and is on the ballot to change our *Constitution*, Elko, Winnemucca, White Pine, Lovelock and rural Nevada will be destroyed. The irony is when tax policy is based on current levels of production and assumes these changes will not alter those current levels of production, you are kidding yourself.

In United States history, when tariff policies were bumped from 20 to 50 percent to generate "x" amount of dollars, there was a drop-off in revenue. People stopped importing goods. When tariffs went back to 20 percent, people started coming in. Tax revenues became greater under a lower rate than that of a higher rate. You will see the same, exact thing here. Projections basing future tax revenues on "x" amount of production in the mining industry will reduce State tax revenues and kill these mining industries who have been the backbone of the State of Nevada.

I encourage my colleagues to think carefully about what you are doing. Granted, this will not impact Clark County much, but it will destroy the rest of the State. I pray Esmeralda and Mineral Counties and its surrounding areas get mines with that level of investment and boom once again. Thanks to the mining industry, I am seeing a resurgence in Goldfield, Esmeralda County, what was once one of the largest cities in Nevada.

This resolution will drive investors out, shut down mines and impoverish the State of Nevada's rural areas. Think hard and careful. This resolution is a terrible idea, terribly worded and not thought out well. This will reduce tax revenues from mines, not increase it, and will devastate rural Nevada.

Madam President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 12:03 p.m.

SENATE IN SESSION

At 12:06 p.m.

President Marshall presiding.

Quorum present.

SENATOR PICKARD:

I appreciate my colleague from Senate District 14 and his passion for his constituents. Mine do not exactly feel the same way. We have a gravel pit nearby and a gypsum mine. They do not produce much, and one is closed.

It astonishes me we careen down the path so quickly and how few experts have been involved in this discussion. I focus on due process. Due process is notice and the right to be heard. Not only is this a fundamental piece of our *Nevada Constitution* but also in our Country. Due process has been the genesis of civil-rights improvements and for new legislation in the last 50 years. The notion we do not do anything to our neighbors without talking to them first has been sorely lacking in this process.

I do not mind if we revisit how we tax mines or any other industry in the State. Nevada has one of the most convoluted and complex tax systems in the Country, and it makes it difficult to figure out how best to do this. We should never look at our neighbors and say they do not matter. That is what we are doing with this. We are not taking the time to talk to the mines and industry experts, nor giving our staff the time they need to investigate. How many times did our Fiscal staff tell us they did not have the information or the data? Regardless, we are barreling down this road. I cannot imagine a world where this is acceptable, where we do not care how this affects other people.

After the last Special Session, a couple of teachers in rural Nevada thanked me for helping them keep their jobs. That makes it real for me even though they are not in my district. Last regular Session, we rewarded a couple of colleagues from our past. Senator Weiner commented when she was first elected, Senator Raggio said we were elected by our parties, but now, we represent the State of Nevada. Have we lost that entirely? Do we not care how our decisions might negatively affect others?

When we listened to the testimony, lobbyists on each side spouted their regular speech. The one group of people who resonated with me most were those who would be personally affected if this resolution passes. At what point do we stop and say this is important for us to take the time and do it right, rather than just ram it through?

I urge my colleagues to consider how passing this affects the lives of people living in these areas. Their lives will be obliterated. Their dreams and futures will be gone, and they will either have to leave or submit to a life of poverty. We seem so cavalier about it. I encourage my colleagues to push the pause button and do this right. Let us get everyone to the table and figure out the best way to do this. Do not thrust this down the throats of people who have had no opportunity to give their input. That is just wrong.

SENATOR GOICOECHEA:

No industry can sustain a tax on its gross no matter what the industry is. The mining industry is subject to international market pressures on their product, which they cannot control. It is not like any other commodity that would slowly go up or down. They are subject to huge pressures. Today, gold is at \$1,944. When we started the year, it was around \$1,200. This fluctuation in an ounce of gold is huge.

There is no doubt that Senate Joint Resolution No. 1 will destroy mining in Nevada. No industry can support 7.75 percent of its gross. I do not care what business you are in. You cannot take it off the top. There is a significant difference in the different industries.

I am asking the Body to not destroy rural Nevada, the Nevada I represent. We have been mining for 150 years. We are used to the chicken and the feathers. It is chicken today and feathers tomorrow. There is a mining company running today. All of a sudden, market whims cause layoffs, and it is gone.

Getting the net proceeds of mines and gross tax on mining is a tough lift. It is not done in an afternoon like we did yesterday. Counties are concerned about the proposed language in this resolution and what it would do to their budgets. All I could tell them is we are doing our best to hold it off.

I believe there are rational people in this Body who are not willing to destroy rural Nevada. We will impact other base-metal mines like gypsum, diatomaceous earth, silica. Southern Nevada is dependent on aggregate. Gravel, for instance, will not work to take 8 percent off the top and send it to the State first. Do you realize what an 8-percent increase of aggregate costs will do to construction and the building industry in southern Nevada? It will be huge.

Be careful as we talk about that old adage, "the Goose with the Golden Egg." I fear this resolution will kill that goose. These gold reserves will not rot in the ground. They can be mothballed until it is advantageous to mine them. I can see the mining industry developing these projects and just turning the key off. Revenues will not come forward to be taxed at 7.75 percent of the gross. I ask this Body to reject Senate Joint Resolution No. 1. It is not only wrong but also absurd.

SENATOR SETTELMAYER:

The concept of special session is supposed to be about an extraordinary occasion. The CARES Act will pay for this Special Session, like the last one. This has nothing related to COVID.

We gavelled in for the 32nd Special Session 30 hours ago and are, now, trying to push out a major policy change that will affect the State of Nevada as a whole, especially rural Nevada. As my colleague from Senate District 19 said, we have to look at how this affects minerals on the margin. Copper is not mined on a 7.7-percent margin. Copper works on a 2 to 3-percent margin. Lithium and gypsum are the same way. Gravel sales do not work on that margin. The costs of those projects the Legislature appropriates and the citizens of the State of Nevada pay for will increase. The gravel that needs to be hauled in, the dirt or the fill material needed to build up a floodplain will increase the cost of a home, someone's mortgage or their rent. Within 30 hours, we cannot calculate the devastating effects this resolution will have across the State of Nevada.

Gold does not rot. It is about those precious minerals worth so much they just might be able to figure out this margin. Minerals not only exist in Nevada but also in South America. They are mining in Canada and other countries. If the margins are not profitable, mining will go to

other countries where environmental concerns and safeguards are not the same as the United States of America, and this will further destroy the environment.

We need to think about all of these factors before rushing to pass this resolution. As we rush it out, there would be another bill to contemplate changing the constitutional publishing criteria. Under Article 16, Section 1, a bill needs to be published for three months. This is in relation to who would be elected for the next Session and hear this bill a second time. We have to change that rule. Early voting starts in October, and it would not meet the criteria. To justify what is being done today, we are basically changing the *Nevada Constitution* in a backwards way. Fundamentally, this is not an extraordinary occasion.

SENATOR HARDY:

During the hearing on this resolution, no one made a comment or gave testimony in favor of Senate Joint Resolution No. 1. I hope, anticipate and invite a meaningful, bipartisan agreement that recognizes this has not been well-received by the people of Nevada and should not pass.

SENATOR HAMMOND:

Like my colleague from Senate District 16, I also believe this is bad policy. This does not meet the litmus test for special session regarding COVID-19. It does not meet the litmus test for due process or for Legislators finding ways to improve the lives of Nevadans, especially in an economy we are trying to get up and running.

There are a couple of industries doing well during this pandemic. We have been told in testimony this industry tends to do well when other parts of the economy are not. Here we are hurting it, and I cannot put an increasing number of people on unemployment.

For these and many other reasons, especially the due process part, it is a bad resolution.

SENATOR RATTI:

I want to start with a minute on process. There have been many comments about the time we have had to vet this. The framers of the *Nevada Constitution* made changing the *Constitution* a multi-stepped process. This is the first step of a lengthy process. When we are back in February, there will be ample opportunity to dig into the details of this effort, just like we do with a constitutional amendment.

Ultimately, the voters will decide. If the citizens of Nevada are unsure about the decisions we have made in this process, they will be able to vote whether passing this resolution is a good idea. From a process standpoint, there will be more than enough opportunities to have this fully vetted. Mining has had a special place in the *Nevada Constitution* for decades. For one reason or another, we never get there, but I reject the notion that we have not had conversations about mining that give people an informed starting point, as recently as the last Special Session.

I believe this is COVID-related. Coming out of the 31st Special Session, we did some good work and built a bridge to February. It will be a monumental task for the State to balance its budget. We will come into that Session with the highest revenue base we have ever had for a budgeting process and with the most significant decreases in available revenue. The delta between those two will force challenging decisions. We either have to make meaningful cuts to the basic services we provide our constituents in education, healthcare, transportation, the outdoors, everything we do as a state, or we will have to raise revenues.

The constitutional amendment process is a lengthy process. If we do not act now, mining and mining revenue will not be part of a meaningful conversation to address COVID-related effects, and a significant dip in our revenue will affect Nevada's ability to remain fiscally sound. This resolution puts another option on the table for February, to have a good conversation as to whether changes to mining and its special protections in the *Nevada Constitution* should be made. Nevadans are counting on us to ensure all of the options are on the table.

The last thing is the comments about devastating rural Nevada. I am of and from rural Nevada. This is where my roots are. I have family members who have worked the mines and live in rural Nevada. I would not take a vote that I believed would devastate rural Nevada. I would not do it.

To my colleague from Senate District 19, there are rational people in this Body. This sets a starting point and allows for a legislative process. Not all of the details should be in the *Nevada Constitution*. If all of the details were in the *Constitution* and there are unintended

consequences, we, or future Legislators, believe should be adjusted based on new information or changing State trends, it becomes challenging.

This resolution sets up a process that allows the Legislature to create a companion bill, a common process, with a constitutional resolution that gives the public additional answers. We can look at how to hold counties harmless and still have the resources needed to fund and take care of their schools and local governmental needs. If there is anyone in this Body who believes I will be voting for something that devastates local government budgets, you have not been listening to me for the last couple of years.

There is conjecture what a future Legislature may or may not do. This resolution opens the door for the Legislature to include mining and how we fund both State and local governments in the conversation. This sets a minimum so we make the statement it is time for mining to pay its fair share. This is the starting point of the conversation, and it gives this Body the opportunity to decide how we make this work. I support this resolution today and urge my colleagues to support it as well. I look forward to working with you all to figure out what that policy could look like.

SENATOR SPEARMAN:

I want to look at this through a different lens. The International Renewable Energy Agency put out a report in terms of what direct and indirect jobs are available associated with renewable energy and fuel. For geothermal, China has 2,500; Brazil has zero; the United States has 35,000, and the European Union, which is 28 countries, has 23,000.

The lens I want to look through is the new-energy economy. Several of us were part of the Energy Committees in the joint meeting when Governor Bill Ritter talked about new energy, economic opportunities available to states like Nevada. California is the only state in the United States that has more geothermal than Nevada, yet we use less than 10 percent of ours.

In January, I had the opportunity to go to the European Union as part of the National Conference of State Legislatures Energy Task Force. We had the chance to talk with the Energy Cabinet. They noted that although Nevada has several renewable energy resources, our State has not tapped into them all. I agreed.

We looked specifically at geothermal, which has been my emphasis since 2015. Geothermal is not a function of mining. It is an energy resource. If we pass this resolution, we can have a serious conversation about geothermal energy and what it means to the economic diversification of Nevada. We always talk about it. From 2008 through 2011, everyone agreed Nevada should diversify. As we move away from a catastrophic economic event like this, or the housing crash, we forget we are supposed to diversify, and we go right back to a couple of industries.

I support this resolution looking through the geothermal lens, which is appropriate, not a mining lens, but as a part of energy so we can move forward. In 2017 and 2018, we had an opportunity to get a nod from the Energy Department for the Ford Observatory Research for Geothermal Energy. In 2017 and 2019, the geothermal bills that came out in Legislation were closely associated with us trying to compete. After 28 states, it came down to a choice between Nevada and Utah. Unfortunately, Utah got it even though their geothermal resources were less than ours.

Fallon has developed much of their geothermal resources and coupled them with solar. Pahrump has a great amount of geothermal energy. There are a number of opportunities to look at geothermal as an energy resource as opposed to a mining resource. Coming out of this particular economic crisis, geothermal is one way we can advance lucrative jobs. Geothermal energy is in the heart of the earth. It is not going away. We need to develop it.

I am going to support this resolution for a broader conversation and not have a knee-jerk reaction as to whether we can move into a more diverse economy where mining is included in the conversation. We can finally look at what this could look like in the new-energy economy. Researchers estimate by 2030, six out of ten jobs in the United States will be from renewable energy. This can be true for Nevada as well. Let us move in that direction.

As I said before, this is not the end. I was not born or raised in Nevada but came here after I retired. After looking at a couple of issues my first Session, I learned that the constitutional process takes about five years. Let us start an academic conversation rooted in science with an eye toward Nevada's economic future, void of personal prejudices in relation to what industries

should or should not be taxed. It is not the end. This the beginning of a five-year conversation. I will support this resolution.

SENATOR BROOKS:

I want to address some issues brought up in the Chamber today by my peers. I want to start by expressing how much rural Nevada means to Nevada, to all of us and to me personally. My family comes from—and half of it still lives in—rural Nevada. My great-grandfather and two of my grandfathers are laid to rest in rural Nevada. My family has worked in mining in rural Nevada. Early in my career, I worked as an electrician for a mining operation.

From a tax-policy standpoint, it is ridiculous we would want to put any business out of business or take any taxpayer or employer out of the equation. That is not the intent, not the intent to hurt my family, friends and neighbors in Nevada. Using my colleague's example about us representing all of Nevada, I believe everyone takes that to heart. I know I do.

It was mentioned this resolution could devastate the budgets of rural counties. This is not about regionalism, not about north versus south or rural versus urban. This current economic crisis has made it crystal clear if the rural counties do not succeed, urban counties will end up paying for it. This is not a rural-versus-urban conversation. This is a conversation about all of Nevada.

Speaking to time, the gives us three years to have this conversation. Based upon our current global economy, 25 percent of our gross domestic product has vanished. This is five times greater than the Great Recession, twice as much as the Great Depression. The economic crisis across this planet is unprecedented in modern times.

We need to start talking about diversifying revenue and raising revenue so we can provide the services every Nevadan demands and deserves. If we do not start this conversation now, we are already behind. Timing is critical.

Some say other businesses or mining itself should never be taxed on the gross. Several states in the United States and several countries tax on gross mining revenues. Alaska taxes 35-percent gross for fossil fuels pulled out of their state, in addition to corporate income tax, other fees and property taxes. Neighbors to the west of us in California, to the east of us in Arizona and to the north of us in Wyoming tax the gross on minerals extracted from the earth. We can discuss what the better tax policy is. The myth is we do not tax on the gross in this State, yet some of the members in this Body voted affirmatively to tax on the gross from industries within our State. The myth that other states and countries do not tax on the gross for minerals is not true. Let us have the conversation about the best policies moving forward from a place of reality. Let us look around the Country and the world to see what other places are doing.

This proposed amendment gives the Legislature the ability to set those tax rates. My peers are 100-percent right that some minerals are different than other minerals. Some minerals have a higher gross-to-net ratio. Some minerals are more profitable, and some minerals are more volatile. Not only does this proposed amendment give this Legislative Body, and those in 2023, the ability to have that conversation about specific tax rates, reductions and exemptions but also the ability to determine how and who receives those dividends from a change in mining revenue.

I know every Legislator from both parties on both sides of the aisle cares deeply about all of Nevada. I trust this Body to make those decisions and look forward to having the conversations on how to best implement this constitutional amendment, if adopted.

SENATOR SEEVERS GANSERT:

I appreciate all of the comments my colleagues made from both sides of the aisle. I agree, we care about all Nevadans. In Clark County, the major industry is gaming. In the rural counties, it is mining. In Washoe County, there is some gaming, some technology, some logistics and a variety of other things. Rural counties, however, are 100-percent dependent on mining and the industries that support mining. This is how they make their money. It is one thing to talk about an industry, but when you start talking about families and how they support themselves, the personal impact of this resolution would be devastating.

Once this process begins, a resolution cannot be changed, and the clock starts over. We learned from Fiscal staff that in 40 percent of the mines, expenses are greater than the revenue. Cross them off; they will be out of business. We could not get an answer from Fiscal, but once this tax rate is added, several mines will not be able to remain running. Maybe they only

do development and sit on the mines, or maybe they continue the homework to be able to open a mine. We heard approximately 30,000 families are at risk. They live in counties supported by mining along with the different business and indirect jobs that result from mining. We can theoretically talk about this resolution, but in reality, the numbers will affect Nevada families.

Some colleagues talked about taking this out of the *Nevada Constitution*, but it is still in the *Constitution*. We are just changing what it looks like, but it is still in the *Nevada Constitution*. One of my colleagues mentioned concerns about certain counties subsidizing other counties. If you are concerned about urban counties subsidizing rural counties, this resolution will trigger more of that when rural counties have tough times.

Although we are all concerned about families, we can do better than Senate Joint Resolution No. 1. This is destructive to rural counties. The governments of rural counties were mentioned. We look at governments to provide certain services. When I look at legislation potentially detrimental to families and their ability to make a living and support themselves, I cannot support this legislation. It is not theoretical. If the resolution passes, 40 percent, if not more, of Nevada's mines will not be able to operate. Their expenses will be greater than revenues.

Let us think through this clearly. The resolution process is not flexible. While there may be a trailer resolution to this later, we do not have it today. The uncertainty this resolution proposes to rural counties is too difficult.

Roll call on Senate Joint Resolution No. 1:

YEAS—13.

NAYS—Goicoechea, Hammond, Hansen, Hardy, Kieckhefer, Pickard, Seevers, Gansert, Settlemeyer—8.

Senate Joint Resolution No. 1 having received a constitutional majority, Madam President declared it passed.

Resolution ordered transmitted to the Assembly.

Madam President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 12:43 p.m.

SENATE IN SESSION

At 3:41 p.m.

President Marshall presiding.

Quorum present.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee of the Whole:

Senate Bill No. 2—AN ACT relating to peace officers; eliminating the prohibition on the use of a peace officer's compelled statement in a civil case; revising provisions regarding when a law enforcement agency may initiate an investigation into the alleged misconduct of a peace officer; revising provisions relating to the reassignment of a peace officer who is under investigation; authorizing a peace officer or representative to inspect certain evidence and submit a response after the conclusion of an investigation; revising provisions requiring the dismissal of civil and administrative proceedings against a peace officer under certain circumstances; and providing other matters properly relating thereto.

Senator Cannizzaro moved that the bill be referred to the Committee on the Whole.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Cannizzaro moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering Senate Bill No. 2 and any other matters as outlined in the Governor's Proclamation, with Senator Cannizzaro as Chair and Senator Ratti as Vice Chair.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 3:46 p.m.

Senator Ratti presiding.

Senate Bill No. 2 and any other matters as outlined in the Governor's Proclamation considered.

The Committee of the Whole was addressed by Senator Cannizzaro; Senator Pickard; Senator Settelmeyer; Senator Hansen; Senator Ratti; Senator Hardy; Gary Peck; William Ledford, Director, Advocacy for Lutheran Engagement and Advocacy of Nevada; Steve Grammas, President, Las Vegas Police Protective Association; Holly Welborn, Policy Director, ACLU of Nevada; Shannon Williams; Sergeant Troyce Krumme, Vice-Chairman, Las Vegas Police Managers and Supervisors Association; Leslie Turner, Director, Progressive Leadership Alliance of Nevada; Mass Liberation Project of Las Vegas; Holly Ramella; Wesley Juhl; Maria Nieto, State Coordinator, Mi Familia Vota, Las Vegas; J.D. Klippenstein, Executive Director, ACTIONN; Nissa Tzun, Cofounder, Forced Trajectory Project; Carol Luke; Ron Dreher, Assistant Director, Reno Police Protective Association; Aluna Feffler; Bera Miller; Emmanuela Gore; Erika Minaberry; Lilith Baran; Mark Nash; Shyla Summers; Brandon Cassinelli; Lalo Montoya, Political Director, Make the Road Nevada; Marie Haaf; Nia Banks; Randy Case; Liliana Trejo-Vanegas; Annette Magnus, Executive Director, Battle Born Progress; Madeleine Williams; Annemarie Grant; Marcos Lopez, Community Engagement Director, Americans for Prosperity Nevada.

SENATOR RATTI:

We will open the hearing on Senate Bill No. 2.

SENATOR CANNIZZARO:

The bill before you, Senate Bill No. 2, revises provisions from Senate Bill 242 of the 80th Session. Nevada is fortunate to have the most professional, compassionate and hard-working law enforcement and first responders in the Country. Our tourism-based economy requires our law-enforcement community to be true ambassadors of our State. They are tasked with many challenges from both outside visitors and members of our own communities who rely on their quick and professional response.

Nevada, and at least 15 other states, include in their statutes what is commonly referred to as the "Peace Officers Bill of Rights." It provides much-needed protections for members of law enforcement to successfully do their jobs. We have recognized these rights in Nevada since the early 1980s and have built upon them over the years. These provisions are an acknowledgement

of our appreciation and gratitude for the wonderful work of our first responders. It shields our peace officers from unreasonable treatment and accusations.

I sponsored Senate Bill 242 of the 80th Session. It received considerable attention and endured many long hearings and negotiations before we honed in on agreeable language to appropriately revise certain rights of peace officers. In substance, the bill addressed general management and labor relations concerns so peace officers could be treated fairly through the process of employment issues. Much work went into Senate Bill 242 of the 80th Session, and it was the result of many comments from the public and constituents who reached out to give their opinions on the bill. I note this was only intended to get at labor disputes with officers and their management. It was not intended to be a "work-around" of anything else or impact other protections we have in law for the citizens in our communities.

Since the 80th Session, we identified the need to revisit some of the provisions in Senate Bill 242 of the 80th Session and make timely and appropriate adjustments that reflect not only the needs of our hard-working peace officers but also the public they protect.

Senate Bill 242 of the 80th Session passed out of the Senate with unanimous support and nearly unanimous bipartisan support in the Assembly. Just because it was overwhelmingly supported by the Legislature does not mean we cannot revisit these policies when concerns arise or we obtain additional information from constituents in our community. Senate Bill No. 2 is an example of just that, an effort to balance and legitimize worker protections and ensure accountability and transparency for our law-enforcement officers to build trust with the communities they serve.

Section 1 of this bill eliminates the prohibition of using a peace officer's compelled statement in a civil case against the peace officer without his or her consent. Existing law authorizes a law-enforcement agency to conduct an investigation of a peace officer in certain instances. This includes investigating a complaint or allegation that the peace officer has engaged in activities resulting in punitive action. Unless the alleged misconduct is a crime punishable pursuant to State or federal law, a law-enforcement agency is prohibited from conducting such an investigation if the activities of the peace officer occurred more than one year before the date of filing the complaint or allegation. Senate Bill No. 2 proposes that law enforcement must commence an investigation within a reasonable period of time after the filing date of the complaint or allegation with the law-enforcement agency. The bill prohibits a law-enforcement agency from conducting an investigation if the complaint or investigation is filed more than five years after the activities of the peace officer occurred. The bill eliminates the prohibition on a law-enforcement agency from reopening an investigation unless the agency discovers new material evidence, and it eliminates the prohibition on reassigning a peace officer during an investigation without the peace officer's consent.

Currently, a law-enforcement agency must allow the representative of a peace officer who is the subject of an investigation to inspect certain evidence in the possession of the law-enforcement agency. After the conclusion of the investigation, if the peace officer appeals a recommendation to impose punitive action, the peace officer, or his or her representative, may review and copy the entire file concerning the internal investigation.

Senate Bill No. 2 modifies this practice to provide that after the conclusion of an investigation, if a law-enforcement agency intends to recommend punitive action be imposed, the agency must notify the peace officer and give him or her a reasonable opportunity to inspect any evidence in the possession of the agency and submit a response. The agency must consider this response before making a recommendation for punitive action. If the agency recommends punitive action and the peace officer appeals this recommendation, the peace officer, or his or her representative, may review and copy the entire file concerning the internal investigation. The intention is the response and consideration from the agency would be part of the record and included for any appellate purposes.

Finally, current law provides if an arbitrator or court determines evidence obtained during an investigation of a peace officer was in violation of the peace officer's rights, the arbitrator or court is required to dismiss, with prejudice, the administrative proceeding or civil action. Senate Bill No. 2 revises that. It requires the arbitrator or court to exclude such evidence if it may be prejudicial to the peace officer and dismiss the administrative proceeding or civil action, with prejudice, if the evidence was obtained by a law-enforcement agency in bad faith. While there

is no statutory definition for "bad faith," Black's Law Dictionary defines "bad faith" as dishonesty or belief or purpose, and thus, the concept of bad faith in this provision would refer to evidence obtained by an improper motive or an attempt to evade the provisions of this Chapter.

I urge your support of this critical bill. This bill is straight-forward, timely and much-needed in these ever-changing times. The bill is reasonable, provides an appropriate level of accountability and affords protections for both our citizens and our hard-working peace officers.

SENATOR PICKARD:

To provide a better understanding as to why we are doing this, looking at section 1, subsection 5, why was this section put in the bill in the first instance, and why, now, does it need to be removed?

SENATOR CANNIZZARO:

Subsection 5 was originally part of Senate Bill 242 of the 80th Session, codifying what is referred to as a "civil Garrity protection." It relates to statements of a peace officer. Senate Bill 242 of the 80th Session ensures accountability and transparency for our officers, yet the idea of inconsistent testimony of peace officers and how it is offered to the court has come up. Originally, this bill referred to those statements being reviewed *in camera* by the court and used in a civil case. While there are certain protections that apply to common law, this section was causing consternation about whether we knew if an officer had an inconsistent statement and how it applied. This section was removed in an effort to provide further transparency.

SENATOR PICKARD:

I do not see the term "inconsistent statements" used. By deleting this section, would it make any statement, made at any time, eligible for use in a civil action?

SENATOR CANNIZZARO:

The Rules of Evidence would still govern any civil case and apply to any arbitration. This has to do with inconsistent statements compelled by an officer. Other evidentiary concerns could be raised in the course of a civil case that might preclude that evidence. In the circumstance of this bill, if the statement comes in, it would be left to the court to determine. The statement would come in, nonetheless, without this particular parameter. The reference to the inconsistent statement deals with the *in camera* review by the court, which is reflected in the last few sentences of that stricken section.

SENATOR PICKARD:

If they are a named party in the civil suit, it would be a statement of a party opponent that would come in.

What is the rationale for moving the one year to five years in section 2, subsection 1?

SENATOR CANNIZZARO:

With respect to section 2, subsection 1, there originally was a request for a statute of limitations, inasmuch as it applied to punitive action not related to a criminal action on the officer's part, included in Senate Bill 242 of the 80th Session. For example, one of the concerns was if sexual harassment were to occur, one year had passed and no investigation had occurred, the statute of limitations may prohibit such an investigation.

We wanted to ensure the opportunity to investigate. The balance you see in the language presented in Senate Bill No. 2 recognizes law-enforcement agencies should not have the ability to come in late, after the fact, and want to investigate an officer when they were aware of a complaint and knew it should have been investigated. A reasonable standard of five years is put on the back end. Five years after reasonable notice gives ample opportunity to investigate the complaint and the officer. After five years, an officer should not have a management/personnel issue where a supervisor wants to reach back in time and attempt to bring a complaint forward when no diligent effort to conduct that investigation was originally made. Senate Bill No. 2 not only recognizes that complaints must be investigated in a proactive manner but also ensures officers their law-enforcement agencies cannot unreasonably go back in time and bring up past complaints.

There were conversations with respect to Senate Bill 242 of the 80th Session that related to the concept of laches. This codification recognizes that and imposes a duty placed upon law-enforcement agencies to conduct diligent and timely investigations.

SENATOR PICKARD:

That makes sense, and I can support it.

Section 2(3)(c) says, "If the law-enforcement agency concludes that the police officer did not violate a statute, policy, rule or regulation, the law-enforcement agency shall not reopen the investigation unless the law-enforcement agency discovers new material evidence related to the matter." As I remember the discussion, this was to prevent or dissuade using investigations as a punitive harassment.

Why is it important we pull that out, given the testimony on the potential abuse before?

SENATOR CANNIZZARO:

When you look at section 2 in total, this section was stricken as well as the one-year statute of limitations. When we talked about an appropriate timeframe, one of the concerns that came up was potentially a year or more could pass before an investigation could take place. Sometimes, there is not enough information to properly pursue an investigation or additional evidence surfaces to warrant reopening an investigation. That language was included to address the one-year timeframe. It is stricken in this portion of the bill. You will find language in Senate Bill No. 2 in section 2, subsection 1, to balance both the reasonableness and timeliness of an investigation and address the back end of five years. Since that language changed and is no longer a one-year time limit, the portion in (c) in statute, as it exists now, has been stricken.

SENATOR PICKARD:

Just to confirm, the bill says, "Any such investigation of a peace officer must be commenced by the law-enforcement agency within a reasonable period of time ..."

You are saying that language satisfies the protection so a law-enforcement officer is not subjected to repeated investigations even though there is no material evidence that has been discovered. Is that correct?

SENATOR CANNIZZARO:

What you see in the original language in the bill was the one-year time limitation, which is a short period of time. One of the concerns that came up in discussions and negotiations for Senate Bill 242 of the 80th Session was that within that period of time, a law-enforcement agency may conclude an officer did not violate a policy. By way of example, let us say there was potentially a sexual-harassment allegation, and the investigation within that one year concluded. There was no evidence to support that allegation. Subsequently, the law-enforcement agency determines there was no evidence of sexual harassment. The one-year time limitation passes and subsequently additional evidence comes forward. As originally written, Senate Bill 242 of the 80th Session would have imposed that one-year time limitation. A balance was struck to define how the misconduct would be addressed.

That language is stricken in this bill, and it is included in Senate Bill No. 2. It requires the law-enforcement agency to conduct an investigation within a reasonable period of time after the date of filing the complaint, but it may not do so if more than five years has passed. The time limitation protects the officer from multiple, repeated investigatory attempts. There are additional protections in the bill for officers that prohibit law-enforcement agencies from continuing to violate officers' rights by conducting improper investigations and gives remedies for that.

This language is not being stricken unilaterally. It was offered in conjunction with the one-year time limitation. The balance is, now, a little different to allow time for investigation and to address the new material and evidence pieces.

SENATOR PICKARD:

As I read this, section 3(4)(a) is removing the ability for the peace officer to inspect the physical evidence or audio records. I am assuming this does not preclude their ability to obtain this information in discovery if a complaint is filed. Is that correct?

SENATOR CANNIZZARO:

The language in section 3, subsection 4, strikes those elements of prior to conducting an interview or interrogation, inasmuch as it relates to a peace officer, or their representative. It originally would have allowed an officer to inspect all of the evidence prior to giving his or her statement.

The language in Senate Bill No. 2 allows the officer, or their representative, to inspect that same evidence. If there was punitive action, the officer would be given an opportunity to respond. It requires the ability to review that evidence before issuing the response and before punitive action is taken. That officer's response would be part of the record for the punitive action.

This section of the bill provides for transparency and accountability while balancing the rights of officers. If an officer was questioned about an action he or she had taken, under the provisions of Senate Bill 242 of the 80th Session, the officer would be permitted to have a law-enforcement representative with them prior to any questioning by the agency. As originally written, they would be able to inspect any and all evidence and statements of anyone who provided them to the law-enforcement agency regarding the alleged infraction.

We still want to make sure officers are able to review the evidence prior to any punitive action being taken. We want officers to give accurate accounts, to the best of their recollection. Inasmuch as we get witness statements during the course of a criminal investigation, we want the officer to be able to give that statement. Subsection 9 is a balancing of that. The officer would be permitted to see the evidence, review it and issue a response in conjunction with their statement and in conjunction with all of the physical evidence before punitive action is taken. When the law-enforcement agency makes a determination to take punitive action, they are required to consider the officer's response, and that response becomes part of the record. There still exists within NRS 289, and the remainder of this subsection, the ability to appeal that decision and have access to that discovery as well.

SENATOR SETTELMEYER:

When this bill passed out of the previous Session, there was discussion on the definition of "law enforcement agency." The definition of "law enforcement agency" has become problematic for nontraditional entities, such as boards of county commissioners and others who employ someone to help keep the peace during meetings. Now, it has led to a situation where those individuals need more training than is necessary. They are not full law-enforcement officers and are only there to keep the peace.

Does Madam Chair have the ability to contact or discuss this bill with the Nevada Sheriffs' and Chiefs' Association to try and address this situation? A letter was sent over a year ago about this problem. There might be an opportunity to amend it and fix this problem.

SENATOR CANNIZZARO:

I have not heard any concerns about the definition of a "law-enforcement agency," but I am happy to take a look. The "law-enforcement agency" definition was meant to include those individuals who fall within a Peace Operations Specialized Training certification but who were not falling under the definition of "law-enforcement agency." While they had all of the same duties and training as what you would commonly refer to as a "law-enforcement agency," they were not falling under that. I would be happy to address this concern offline, but I have not heard any particular questions about "law-enforcement agency." It was not my intention to address that piece of it in this bill.

SENATOR HANSEN:

Having sat on the Judiciary Committee when Senate Bill 242 of the 80th Session was heard during last Session, and I know there was a considerable amount of give-and-take between the Majority Leader and Chairman Yeager in the Assembly and a great deal amount of behind-the-scenes work, what is the compelling reason why we need to have this now? Has there been a special case or something since *sine die* that necessitates hearing this in Special Session?

SENATOR RATTI:

Just for clarification, this bill came out of Government Affairs.

SENATOR HANSEN:

I withdraw my question.

SENATOR HARDY:

For those of us who know an attorney but are not one, when I read "... this bill eliminates the prohibition on the use of a peace officer's compelled statement in a civil case ...," does this take away a peace officer's Fifth Amendment protection?

SENATOR CANNIZZARO:

This pertains to a civil case. The Fifth Amendment of the *United States Constitution* is the right against self-incrimination and provides for Miranda warnings before a compelled statement may be given by a defendant. The Fifth Amendment of the *Constitution*, as applied to the states by the Fourteenth Amendment, the Miranda decisions and its additional case law would still apply to an officer, but only inasmuch as it refers to a criminal case and a criminal investigation which this does not apply. Those are two separate things. If an officer were to commit a crime, he or she would have all of the same rights as any individual accused of a crime would have afforded under current law in the *Constitution*. This particular provision within NRS 289 applies to civil cases. The Fifth Amendment right against self-incrimination does not apply to civil cases or to NRS 289.

SENATOR HARDY:

Could the peace officer be compelled to testify against himself or against his own benefit in a civil case under this proposal?

SENATOR CANNIZZARO:

Two examples of Senate Bill 242 of the 80th Session and the worker protections law-enforcement officers should have the right to have a law-enforcement representative present prior to questioning and the language from the law-enforcement agency that orders, rather than requests, the officer to make a statement to enable the officer to have a representative with them prior to giving their statement.

Our law-enforcement officers must give statements in the course of a disciplinary action from their employer to maintain their job. If their employer orders it, they would have to give a statement. If someone is a party to a civil case and they are asked for a deposition or give a statement or be called as a witness, they would typically need to do so as party to that civil case. This section is referring to statements where they are compelled to give them. Those statements would technically not be admissible in a civil case. If the statements were inconsistent, a judge would be able to review them *in camera*. This would allow for a peace officer's statement to be utilized in a civil case. The Rules of Evidence would still apply, as any other witness's statement in any civil case.

SENATOR RATTI:

We will now open the hearing to those in support of Senate Bill No. 2.

WILLIAM LEDFORD (Director, Advocacy for Lutheran Engagement and Advocacy of Nevada):

Any legislation supporting common-sense reform for our law enforcement and keeping in favor for the people they serve and protect, we support.

SENATOR RATTI:

We will now open the hearing to those in opposition of Senate Bill No. 2.

GARY PECK:

This particular bill has been an obsession of mine since it passed last Session. Senate Bill 242 of the 80th Session is the most toned-deaf, policing bill I have seen enacted in Nevada in 25 years. It is time to stop with this is a "worker protection" bill. I worked for a public employee union. I get what union representation means. Officers have Garrity rights, and they have the

Police Officers Bill of Rights. Police have qualified immunity, and they have collectively bargained contracts. They have a level of rights, due process and substantive, that no one else in this Country has. Senate Bill 242 of the 80th Session was an utter abomination, an embarrassment and bad policy. To somehow suggest that all we are trying to do is "balance" things is ridiculous and out of touch with reality.

The fact this passed unanimously last time in the Senate and with three "no" votes in the Assembly, and nary a word from the Attorney General or the Governor, is disgraceful. I say this after being enthusiastic about Assembly Bill No. 3. This is the "yang" to the "yin" of Assembly Bill No. 3, and it is unfortunate.

By the way, this was announced at the last minute. I do not see the language of the changes being made, but I believe Senate Bill 242 of the 80th Session should be repealed in its entirety. I am opposed to this version.

STEVE GRAMMAS (President, Las Vegas Police Protective Association):

I am a police officer and a proud member of the Public Safety Alliance of Nevada. I am speaking in opposition to this bill, but I want to thank the Legislative Body who worked on Senate Bill 242 of the 80th Session from the start to the now finished product. I supported the bill that was approved in 2019, and I still support that bill as it is currently written. I am voicing my concern in opposition to the proposed changes.

In the 2019 Legislative Session, over the course of many months, unions worked with Majority Leader Cannizzaro to pass the protections in NRS 289. There were several hearings, meetings, sit-down conversations and negotiations that took place. During the 2019 Session, we sought protections for police officers, and when it came time to vote for passage of Senate Bill 242 of the 80th Session, almost every person in State government supported it. Citizens wanted law enforcement to have more accountability, and Senate Bill 242 of the 80th Session did just that as it relates to fair treatment and due process for officers who are employed by a law-enforcement agency.

Internal investigators on police agencies would routinely violate the rights of peace officers with no real consequences or actions. Imagine if a person was accused of a crime where they had their right to an attorney and their search and seizure rights violated, and there were no enforcement actions to these violations. NRS 289, in its current form, provides such remedies and guarantees rights to fair process for police officers when being investigated. Now, under National scrutiny, this Body is about to undo, in one day, what took months of work and compromise to complete.

People have claimed Senate Bill 242 of the 80th Session made it impossible for employers to hold bad officers accountable. I have yet to hear of a case where a bad officer was unable to be disciplined or fired because of these protections brought forth. Knowing the public's concern, I sat down with Sheriff Lombardo and negotiated fair concessions to the bill that were presented to the Legislative Body. It appears this is no longer about holding officers accountable to a standard the department supports. I ask this Body to vote against the changes to Senate Bill 242 of the 80th Session and give it the proper forum it deserves in the up-and-coming Legislative Session of 2021.

HOLLY WELBORN (Policy Director, American Civil Liberties Union of Nevada):

I ask for the Committee's grace as I navigate this language we are just now seeing. The history on this bill is important. During the 2019 Session, I worked on some of these negotiations and concessions. There were many conversations back and forth, and it was clearly an incredibly political process. One of the negotiated provisions was the ability to obtain all of the evidence when a civil case is filed. This is, now, repealed here. I understand this is a Special Session, the Committee needs to understand this new language is not what the community has asked for.

The incident in Minneapolis this May shocked the Country, resulting in uprisings across this Nation and in our community. The community has asked for the repeal of Senate Bill 242 of the 80th Session. When Senate Bill 242 of the 80th Session was first introduced, people came in numbers to testify before the Senate Government Affairs Committee. There is much pain behind the symbolism and meaning of Senate Bill 242 of the 80th Session, pain of family members and communities affected by police violence.

We oppose Senate Bill No. 2. We are reviewing this and hope to continue working on it. Written testimony will be provided for further clarity.

SHANNON WILLIAMS:

I am from Assembly District 22 and oppose Senate Bill No. 242 of the 80th Session. This bill does not contribute to or help with transparency in investigations or accountability of police officers. This does not help victims feel officers are accountable when investigating death incidents. We did so much to get Assembly Bill No. 3 passed. This bill is a slap in the face for having that previous bill passed. I am opposed to this bill. Hopefully, we can work toward more police accountability.

SERGEANT TROYCE KRUMME (Vice-Chairman, Las Vegas Police Managers and Supervisors Association):

I am in opposition of Senate Bill No. 2. The ability for an officer or a representative to inspect evidence is key. Providing officers the ability to be well-informed prior to an interview gives them the ability to provide informed answers. To assume this gives them a chance to prepare a defense is not accurate. Officers are compelled to provide a statement and required to tell the truth, or they are terminated. None of this is changed by allowing them to inspect case evidence prior to being interviewed. A five-year statute of limitations is unreasonable. Asking an employee to remember and memorialize an incident in the workplace or from a police-related call without documentation three or four years later is too difficult. The law provides there is no statute of limitations, aside administrative investigations, as a complaint would be in violation of the law. This change to five years is unnecessary. During administrative investigations, a police officer's due process rights are important when termination could result as discipline.

In Senate Bill 242 of the 80th Session, lawmakers correctly identified there were no remedies when a police department violated employees' due process rights, and they corrected that. People are looking at the remedy as stated, now, in the incorrect fashion. They see the order to dismiss as a protection for bad cops that they could enjoy in order to save their jobs, but that is inaccurate.

I formed an organization to ensure bad cops are terminated. This is what every good cop wants, along with the ability to conduct a sound investigation that produces an impeachable work product. This is what the public expects. The remedy forces agencies to provide such a product. By diminishing the remedy, agencies will no longer feel compelled to follow those rules, and concerns will eventually be cut. Please vote down Senate Bill No. 2.

LESLIE TURNER (Director, Progressive Leadership Alliance of Nevada, Mass Liberation Project of Las Vegas):

I oppose this bill. You can hear sirens in the background. I live in a Black community, and we are over-policed.

This bill's language has just been made available. When do we have time to read it and understand how this legislation will impact our community? This happens all of the time. Our communities need time to be educated on exactly what our experience will look like when this legislation passes. People say this is not a bill to protect bad cops. How do we know that? How do you know what impact this will have when you are not talking to us?

As a community, we do not have immunity, nor the privilege of impunity. There is an imbalance there. Senate Bill 242 of the 80th Session further contributes to the imbalance, tipping the scales toward the police officers' side. This problem is historical. It is not something new or something Metro or what any law-enforcement agency in Nevada does not experience. This is grounded in America's history.

Allow time for the community to be engaged in this conversation and allow our input and feedback to be considered. Due to Senate Bill 242 of the 80th Session, we cannot hold officers accountable through our civil process. I oppose this bill.

HOLLY RAMELLA:

I am from Assembly District 8 and oppose Senate Bill No. 2. This bill is being heard with no heads-up to constituents. As for repealing Senate Bill 242 of the 80th Session, Senate Bill

No. 2 is insufficient. This will create obstacles to police transparency and accountability. I would say more if I had additional time to prepare.

WESLEY JUHL:

I oppose Senate Bill No. 2. This is not a full repeal. Since Black Lives Matter protests have erupted across Nevada, it has come up again and again that our communities want Senate Bill 242 of the 80th Session repealed. It was a gift to police unions, it stands as an obstacle to transparency and accountability, and it needs to go. Black lives matter.

MARIA NIETO (State Coordinator, Mi Familia Vota, Las Vegas, Nevada):

I oppose Senate Bill No. 2. This does not help the community receive transparency and does not work toward police accountability. We testified in favor of reforms made by Assembly Bill No. 3. To address Senate Bill 242 of the 80th Session and police brutality, we need to do more. This still makes it impossible for police departments to hold officers accountable. The bill was made with no community input, and we need to uplift ... (unintelligible statement) ... act as communities and make sure their voices are amplified. We need to understand, black lives matter today, tomorrow and every day.

J.D. KLIPPENSTEIN (Executive Director, ACTIONN):

We oppose Senate Bill No. 2 as written, and we believe this moment calls for a full repeal of Senate Bill 242 of the 80th Session. Our Country needs to reimagine what policing in public looks like in general. Black lives matter, and it is time for more than just tweaks or minor adjustments. Take a step back and think about what this legislation looks like and if it responds to the moment. We need to move forward in healing and address deeply-entrenched injustices in our cities, counties, states and entire Country. We are opposed to Senate Bill No. 2 and ask you to vote against it.

NISSA TZUN (Cofounder, Forced Trajectory Project):

I am with the Forced Trajectory Project and work closely with Families United for Justice, Las Vegas, a group directly impacted by police violence in Las Vegas. We represent over 20 excessive use-of-force cases that have maimed, killed and traumatized those directly impacted. Those directly impacted have little voice, little access to resources and a lifelong relationship with trauma due to violence inflicted upon them and their loved ones.

We oppose Senate Bill No. 2. It was not heard by the community, and we were not given time to review the bill. This is clearly an attempt to right the mistakes of Senate Bill 242 of the 80th Session, but it runs short of doing that. I, and the 20-plus cases we represent, are opposed to Senate Bill 242 of the 80th Session. I am calling for the repeal of Senate Bill 242 of the 80th Session and the Nevada Peace Officers Bill of Rights. It protects criminal cops who disregard the sanctity of human life and violate civilians' civil and human rights with absolutely no remorse. The Peace Officers Bill of Rights allows for misconduct files to be sealed and kept away from the public eye. This jeopardizes public safety for all Nevadans.

Those like Mr. Grammas and others state they do not know of any cases where force was used unnecessarily and that Nevada is not Minnesota. Let me refresh your memory of the Las Vegas Metropolitan Police Department homicide victims who died from suffering a mental-health crisis or died from minor infractions, such as trespassing, minor traffic violations, like not having a light on their bike, or being labeled as a suspect by the police: Stanley Gibson, Eric Scott, Neal Purina, Trevon Cole, Joseph Justin, Rafael Olivas, Thomas McEniry, Reck Wilson, Tashii Brown, Junior Lopez, Nicholas Farah, Byron Williams and Jorge Gomez. Black lives matter. Justice for all of the victims of sponsored terrorism.

CAROL LUKE:

I oppose Senate Bill No. 2, the bill for Senate Bill 242 of the 80th Session. It seems to be completely repealed. It gives the cops a legal right to do whatever they want to our children. I have called earlier. I spoke fast because I needed to say what I had to say. My son was murdered. He was shot and killed by the Metropolitan Police Department on November 24, 2015. I have sent emails ... (unintelligible statement). I have sent a video tape ... (unintelligible statement). Our families matter. (Unintelligible statement) ... just told Jorge Gomez what happened with our son ... (unintelligible statement) ... shot and killed ... (unintelligible). Cops

need to be held accountable. No cop has ever been charged in Las Vegas for murdering our children ... (unintelligible). They had a recommendation in mind, but I was never told what it was.

The Forced Trajectory Project is doing an awesome job. I did not know they existed. They are putting us together so we know what is happening. The process is ... (unintelligible statement). They do not tell us all what to do, and my son was murdered. They could have used other things. They could have tased or maced him. He was in a blocked corner. They could have done several things to prevent that from happening. (Unintelligible statement) ... frantic. They need to completely repeal this bill and make it known to the public. I did not know all of this existed. I am going to start knowing. It is my business now. I am a voice in this community, and my son did not deserve to die.

I want to thank the Assemblywoman from District 4. She responded to the emails I sent and did so with heart. I would appreciate each and every one of you all to look at my emails. I am Carol Luke, and my son was Thomas McEniry.

RON DREHER (Assistant Director, Reno Police Protective Association):

We stand in opposition to this bill. As an honorably retired Reno Police Officer, Major Crimes Detective, and a long-time advocate for our Nevada peace officers, I am saddened by the out-and-out attack on our professional peace officers from members of this Body, the media and the public. I am requesting you postpone any sudden changes to NRS 289, the Peace Officers Bill of Rights, until proposed changes can be thoroughly vetted in the upcoming regular Session. It is ironic that none of us have a copy of Senate Bill No. 2. I have seen the agenda, and I have tried to get that.

I ask the honorable members of the Senate, and Majority Leader Cannizzaro, to not paint the professional peace officers with the same brush as what occurred in Minneapolis. The Governor's Proclamation appears to do just that. We ask you to truly look at professional peace officers and what we have done for Nevada. We need your support. I have been working for 37 years representing officers, and for the past 20 years worked to get the Peace Officers Bill of Rights for accountability for our officers. Every citizen in the United States has due process rights. Our peace officers deserve those same rights. We do not have a choice when required to testify; we must. Our statements protect the due process of the officers. This bill changes that.

We do not need to repeal or take away Senate Bill 242 of the 80th Session. The statute of limitations section has to stay the way it is. We would appreciate that. Please leave the reassignment of peace officers during an investigation alone. We need to take this bill up in the 2021 regular Session.

ALUNA FEFFLER:

I oppose Senate Bill No. 2 for different reasons than the caller before me. This bill does not go far enough. We have not had time to read this bill. I will not take up any more of your time. I oppose this bill.

BERA MILLER:

I am in opposition to this bill and echo what other people have said before me. We have not had the opportunity to read this or know how it will impact our communities. The Police Officers Bill of Rights needs to be repealed and taken away. Police brutality is a systemic issue that has existed forever, long before Minneapolis, long before George Floyd. This keeps happening, and we need justice for the people in our communities, like Miciah Lee. Please oppose Senate Bill No. 2.

EMMANUELA GORE:

I oppose this bill and support Carol Luke. The continued protection of police it embodies and the violence it perpetuates is vile. The lack of accountability police face for killing, abusing and maiming citizens compounded with the lack of community engagement shows the complete disregard being shown to constituents whose lives are on the line every day.

Defund the police, and furthermore, we need to move toward abolishing the police. It is shown every day, and at the cost of multiple lives, they cannot do their jobs well. Vote against this bill.

ERIKA MINABERRY:

I am in opposition to this bill and in support the Black Lives Matter and anti-fascist movements. As a result of our voices being ignored, there is civil unrest. We need structural change in our communities. Instead, we keep being told, in different ways, it is okay for us to die. We asked for justice for Miciah Lee, and we were told his murder was just. For us, that is fascism. We need to be heard in this community. Yet our needs and rights are continually negotiated away in the name of finding a middle ground. I oppose Senate Bill No. 2.

LILITH BARAN:

I am speaking on behalf of directly impacted people, such as Kenneth Stafford and Miciah Lee, some of many who have experienced death by officers in our State. I live in the City of Reno where black people are killed 17.6 percent more than white. We have many officer-involved shootings. We are two years behind on most cases asking for full bodycam footage and complete police reports. These should be released immediately to families without editing.

I am not sure what people are talking about as far as painting with the same "brush." I watched Sheriff Coverley, on a video, choke someone with his bare hands and noticed this was before he was promoted to Sheriff. I am not sure what "brush" we are talking about, but I am pretty sure it is the same "brush" used by the people who killed George Floyd, Miciah Lee, Kenneth Stafford and others who are underrepresented.

We are at the bottom of mental-health services and in education, yet we are on the top in police spending as a state. It is abhorrent we continue to pay for trainings that are not working and investigations of police departments investigating themselves. You need comprehensive training by people who are mental-health professionals, doctors, lawyers, community members and people who are directly impacted. They would do a better job at training and investigating use-of-force instances. Police investigating themselves has never worked and is not currently working. They are aggressively enforcing laws and killing citizens on a daily basis without remorse and being rewarded afterwards.

MARK NASH:

I am opposed to Senate Bill No. 2. Nothing short of full repeal of Senate Bill 242 of the 80th Session is acceptable. The timing in which this language has been introduced, without giving citizens the chance to review it before submitting their testimony, is questionable. Please oppose Senate Bill No. 2.

SHYLA SUMMERS:

I oppose this bill and would like to see a full repeal of Senate Bill 242 of the 80th Session. This does not go far enough. We must hold police officers accountable for killing people, for sexually abusing people in their terror and for injuring people, not necessarily to the point of death but to the point where dealing with chronic and recurring issues prevent them from having the happy and healthy life that all citizens of Nevada deserve.

We should have more accountability for police, and this is not the way to do it. This is not acceptable. Senate Bill No. 2 is not enough. We need to abolish the police and defund them. I support Black Lives Matter.

BRANDON CASSINELLI:

I have been an officer with the Reno Police Department for 13 years. I am also a marriage and family therapist intern and work to improve the mental health of first responders and their communities alike. I am in opposition. I ask you to consider the tremendous amount of stress, trauma, family sacrifice and early death peace officers face in service to every one of you, including people of every color. On average, peace officers die 21 years earlier than their civilian counterparts of similar demographics, even when accounting for lifestyle choices. Police officers have the highest likelihood for suicide of any profession in the United States.

Stripping civil liberties away from good officers with this bill is not the same as holding bad officers accountable. If you choose to pass legislation that is ill informed and in response to identity politics generated by an angry mob, I ask who you hope to rely upon to defend you from that angry mob when the same rights are stripped away from peace officers that are

promised to the person willing to throw a flaming bottle of gasoline into a government building. Make no mistake, passing this bill means a mass exodus in police staffing, lowering of quality applicants and a loss of officers due to their being murdered alongside the consistently rising levels of first responder suicides. Please put this off until the next regular Session.

LALO MONTOYA (Political Director, Make the Road Nevada):

We are in opposition to Senate Bill No. 2. We have heard directly-impacted persons telling their stories of violent attacks from police officers. The fact police officers are allowed to use lethal force at all should mean they are held to stricter standards of accountability. Whether they are private or public, union or nonunion, officers enjoy legal protections the vast majority of workers and other industries do not.

We must keep fighting at the local level to eliminate systemic racism and police violence in November 2021. This is not enough. Please oppose Senate Bill No. 2.

MARIE HAAF:

I am calling in opposition to Senate Bill No. 2 and support a full repeal of Senate Bill 242 of the 80th Session. Earlier, a caller mentioned due process for the officers. We are missing due process for citizens who are prematurely killed in the midst of things that occur between officers and citizens.

I do not think repealing this is against officers. We need comprehensive changes to protect people as well as officers. The imbalance, where officers are given much and citizens are given less, exists. People need to have a bigger voice. This does not mean officers are bad or wrong. There is an imbalance of power we need balance.

Another caller mentioned an angry mob. People are hurting, and they need to be heard. If both sides can work together, no one will have to be angry anymore. To find a middle ground, we have to oppose this and find real solutions to fix these problems for everyone.

NIA BANKS:

I am a black person in Las Vegas. You guys will repeal Senate Bill 242 of the 80th Session fully. I oppose Senate Bill No. 2. This is Metro's way of not holding themselves accountable to the highest degree of the law. They are harming our communities. For Vegas to showcase a billboard downtown wishing "RIP" for an officer but not for the numerous victims of police brutality is nothing short of disgusting. Metro protects their men in blue and are not held accountable for their crimes. I am demanding you to stop this bill from passing and fully repeal Senate Bill 242 of the 80th Session.

You are still being demanded to release the tapes of Jorge Gomez and reopen the cases of many others killed on your watch: Byron Williams; Rafael Olivas; Keith Childress, Jr.; Sharmel Edwards and countless others we do not know about. A big spotlight is on Vegas for being the biggest hypocrite for killing black and brown lives in the name of "maintaining the safest community in the Nation." So, boom, you are on SnapCam now. Listen to us. Repeal this bill fully and have the day you all deserve.

RANDY CASE:

I am a resident of Senate District 16, and I am in opposition to Senate Bill No. 2, section 2, subsection 1. We live in a justice-delayed, justice-denied society. The Me Too movement shows justice can be achieved regardless of when evidence of misconduct comes to light.

This bill does not address directives for criminal justice and social reform, for which the Governor called this Special Session. We need to look at how, not when, police are investigated and who is investigating them. We have county sheriffs in Nevada brazen enough to say if you support Black Lives Matter, do not bother calling the police. This is not the time to empower law enforcement. Now is the time to empower the individual citizen of Nevada and keep them safe.

LILIANA TREJO-VANEGAS:

I am calling from Senate District 3 in opposition to Senate Bill No. 2. I am calling for transparency from the people meant to represent me and my community. Since this bill was just posted online with no heads-up for constituents and is not on the agenda, I have not had time to prepare proper testimony. I ask for transparency and accountability. Black lives matter.

ANNETTE MAGNUS (Executive Director, Battle Born Progress):

I am in opposition to Senate Bill No. 2. Advocates were given minutes to review this bill, and it is unacceptable. I have not had proper time to review or digest it, and I do not know what is in the bill. This is unacceptable. The community has begged you to completely repeal Senate Bill 242 of the 80th Session. This process tells community advocates that police are still the priority, and the community does not matter. That includes my organization.

Advocates are taken for granted. I have worked over 15 years in this process. There has been a complete lack of inclusion from this Body for this process, and this problem must be fixed. It is disrespectful. You need to communicate and listen to black and brown people. Fully repeal Senate Bill 242 of the 80th Session as the community has asked you to do.

MADELEINE WILLIAMS:

I am in opposition of Senate Bill 242 of the 80th Session. I demand the full repeal of this document. It is the weakest response for the calls of true justice that have been heard over the past three months and entire history of this State. You owe us more than offering to move an officer to a different area without their consent. That is the greatest possible consequence listed for a complaint in this document, and it is unacceptable. Moving someone who does not have the interest of the community to a different community will not change the fact they are clearly not qualified as an executor of justice and are only concerned with their own agenda.

You owe us so much better than this law. You need to repeal it, and you need to do better.

ANNMARIE GRANT:

I am calling in opposition to this bill. I would like to see it completely repealed, as someone who personally lost my brother, Thomas Purdy, at the Washoe County Jail. He was asphyxiated after being hogtied for 40 minutes by Reno Police. There is a veil of secrecy trying to obtain any information. The information told to families are absolute lies. These so-called "independent" investigations are not independent. If Nevada thinks they do not have their own George Floyd, they are mistaken. Their names are: Thomas Purdy, Niko Smith, Justin Thompson and Kristofer Talancon, all killed in Washoe County, Nevada, by the three local agencies.

This is why I oppose Senate Bill No. 2. I want the entire bill repealed and see some bills that hold the police accountable for killing people in crisis, especially unarmed people like my brother.

SENATOR RATTI:

We will now open the hearing to those neutral to Senate Bill No. 2.

MARCOS LOPEZ (Community Engagement Director, Americans for Prosperity Nevada):

We opposed Senate Bill 242 of the 80th Session when it was first heard. The bill was terrible. Amendments made it slightly better. I am glad to see this proposed bill addresses further concerns we had regarding prohibiting the use of peace officers' statements in civil cases.

The reality is a full repeal is not the right way to go, but keeping the bill as is, is not as well. There is a ton of bad stuff in this bill, for sure, but some things make sense, like the back pay if the investigation finds no violation. We need to change and remove every law, regulation and policy that undermines accountability and transparency. Keeping basic accountability standards for police is essential to maintaining police and community trust that supports these relationships.

We are in neutral mainly due to how this process was done. I agree with everything everyone has said so far, things like this undermine public trust and faith in our institutions. I feel the only people who can make a comment on this bill are those completely for it or against it. In public debate, you want details to matter, but if you cannot review those nuances of details, how are you supposed to make an informed decision?

Senator Brooks moved to do pass Senate Bill No. 2.

Senator Cancela seconded the motion.

Remarks by Senators Schieble, Hansen and Ratti.

SENATOR SCHIEBLE:

Since we have gone through the presentation and public comment on the bill, I want to clear up any misconceptions about the bill's content. We have been working on this for several weeks now, and it was just recently made available on NELIS and to all of us. I hope people continue to engage with us for any questions or feedback they have about the language of the bill.

This bill does not apply if a police officer is being investigated for criminal activity. This is only for violations of policy, similar to a human-resources investigation, not a criminal investigation. The ability of law enforcement to review evidence was carefully considered. This is intended to mirror the rights anyone has to face their accuser, given they are not in a criminal setting. We are trying to balance the idea you should never be punished for something without knowing exactly why you are being punished for it. At the same time, we do not always allow people to review an entire case file. They are not entitled to certain pieces of evidence before they are compelled to make a statement. I wanted to get those clarifications on the record.

This bill is responsive to some, not all, criticisms we have received since passing Senate Bill 242 of the 80th Session. It is responsive to some requests we received last year before it passed so it strikes a good middle ground.

SENATOR HANSEN:

From hearing the comments of all of the people involved, I am voting "no" on Senate Bill No. 2. This is a complicated matter. In the last Session, the fact we had more discussion than the few hours we are getting here clearly should indicate this does not belong in Special Session. It has nothing to do with COVID and nothing to do with budget issues. Once again, we are going to rush a bill through without properly getting it vetted, being able to hear from all sides or having reasonable time to digest it.

I am a strong "no" on this. I suggest this bill be voted down and brought back again in the next regular Session where it properly belongs.

SENATOR RATTI:

In the legislative process, we should never let perfect be the enemy of good. There are things in this bill that take us steps forward. I will be voting in support of this bill.

Motion carried. Senators Goicoechea, Hammond, Hansen, Hardy, Kieckhefer, Pickard, Seevers Gansert and Settlemeyer voted no.

On the motion of Senator Woodhouse, seconded by Senator Parks, the Committee did rise and report back to the Senate.

SENATE IN SESSION

At 5:22 p.m.

President Marshall presiding.

Quorum present.

REPORTS OF COMMITTEE

Madam President:

Your Committee of the Whole, to which was referred Senate Bill No. 2, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

NICOLE J. CANNIZZARO, *Chair*

Senator Cannizzaro moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 5:23 p.m.

SENATE IN SESSION

At 6:07 p.m.
President Marshall presiding.
Quorum present.

MESSAGES FROM ASSEMBLY

ASSEMBLY CHAMBER, Carson City, August 1, 2020

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bill No. 3.

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 3.

Senator Ratti moved that the bill be referred to the Committee of the Whole.

Motion carried.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Cannizzaro moved that the Senate resolve itself into a Committee of the Whole for the purpose of considering Assembly Bill No. 3 and any other matters as outlined in the Governor's Proclamation, with Senator Cannizzaro as Chair and Senator Ratti as Vice Chair.

Motion carried.

IN COMMITTEE OF THE WHOLE

At 6:10 p.m.

Senator Cannizzaro presiding.

Assembly Bill No. 3 and any other matters as outlined in the Governor's Proclamation considered.

The Committee of the Whole was addressed by Assemblyman Yeager; Nick Anthony, Committee Policy Analyst, Legislative Counsel Bureau; Senator Pickard; Senator Hammond; Chuck Calloway, Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; Senator Scheible; Senator Kieckhefer; Senator Goicoechea; Senator Washington; Senator Hansen; Senator Ohrenschall; Senator Hardy; Senator Spearman; Senator Seever's Gansert; Senator Cannizzaro; Senator Harris; Senator Parks; Carol Luke; Sarah Adler, Director, Nevada Coalition to End Domestic and Sexual Violence; Lilith Baran; Holly Welborn, Policy Director, American Civil Liberties Union of Nevada; Kendra Bertschy, Washoe County Public Defender's Office; John Piro, Clark County Public Defender's Office; Corey Solferino, Lieutenant, Washoe County Sheriff's Office; William Ledford, Director of Advocacy, Lutheran Engagement and Advocacy in Nevada; Katie Ryan, Director, Government Relations, Dignity Health, St. Rose Dominican Hospital; Eddie Ableser, Nevada Police Union; Adrienne Michelson; Robin Reedy, Executive Director, National Alliance on Mental Illness; Holly Ramella; Marlene Lockard, Nevada Women's

Lobby, Service Employees International Union Local No. 1107; Stella Kurr; David Burns, Deputy Chief, City of Henderson Police Department; Gary Peck; Lisa Rasmussen, Nevada Attorneys for Criminal Justice; Brandon Cassinelli; Steve Grammas, President, Las Vegas Police Protective Association; Ron Dreher, Assistant Director, Reno Police Protective Association; Sergeant Troyce Krumme, Vice-Chairman, Las Vegas Police Managers and Supervisors Association; Karen England; Yvette Williams, Chair, Clark County Black Caucus; Marcos Lopez, Community Engagement Director, Americans for Prosperity Nevada; Brian Green; Vera Miller; Jamie Stetson; Marisol Montoya; Desiree Smith; Elena Velapaz; Shyla Summers and Madeleine Williams.

SENATOR CANNIZZARO:

We will open the hearing on Assembly Bill No. 3.

ASSEMBLYMAN STEVE YEAGER, ASSEMBLY DISTRICT NO. 9:

It is an honor to present Assembly Bill No. 3 to the entire Senate Chamber. I wish I could be there in person, but I am close enough down the hallway.

Those of you sitting in the Chamber, or those of you online, may not be able to see that I am wearing a number of lapel pins today, four of them to be exact. Since I am sure not all of you can see them, I would like to tell you exactly what they are, what they mean to me and why I chose today to wear them. The first pin I have depicts the Nevada Law Enforcement Officers Memorial. The Memorial sits right outside of this building in the Capitol Mall, and it memorializes officers who were killed in the line of duty in our State. Every year, there is a relay where runners start in Las Vegas, and that relay runs all the way up, here, and ends at the Memorial in Carson City. Runners carry a baton with the name of any officer killed in the line of duty who is going to be added to the Memorial that year. I have taken part in that relay three different times, in 2014, 2016 and 2018. I was going to take part in it this year in 2020, but, of course, COVID-19 had other plans. The relay was understandably cancelled. In the odd-numbered years, I have not been able to participate due to the Legislature being in Session. Many of us, if not all of us, have gone out on the Mall to attend, which is an emotional and moving ceremony that takes place right outside of these doors.

Too many of our officers pay the ultimate price, including the ones who were honored in the years I ran the relay, Metro's David VanBuskirk of the elite Search and Rescue Unit in 2013 and Carson City's own Carl Howell in 2015. You may have noticed the freeway we drive on every day is named in his honor. There is Metro's Charleston Hartfield in 2017, as a result of the events on October 1. I remember seeing my legislative colleagues at his memorial in southern Nevada.

Police officers often find themselves in dangerous situations, and they undoubtedly deserve our thanks and appreciation for their service to our community. They run toward danger when most of us run away from it. My younger brother is a police officer who has worked his way up from a patrol officer to a homicide detective. I talk to him often about his career, and I worry about him more than I should. When he was a patrol officer, I had a chance to do a ride-along with him to see what his daily experience was like.

The second pin I am wearing is a Metro Citizens Academy graduate pin. I applied for, and was accepted into, the Citizens Police Academy in 2018. As far as I know, I am the only sitting Legislator who has graduated from the Academy. It takes place over a few months and consists of several hours of class a week as well as field excursions. I took part in the Academy to gain an understanding of what officers face out in the field. The course includes an evening at the shooting range and a ride-along. This was invaluable for me. My ride-along was with an officer who had formerly been an acrobatic performer in Cirque du Soleil in Vegas and chose law enforcement as his second career. The Academy was an eye-opening experience and helped me understand implications of policy we, the Legislature, enact. I am a dues-paying member of

their alumni association. I am glad I participated in the program and encourage you to do it as well.

The third pin I am wearing is one that says "Black Lives Matter." I understand this phrase invokes strong reactions from some. I am not here to debate how one should interpret or react to the phrase. I am here to tell you what it means to me. To me, the words "black lives matter" is a statement of incontrovertible fact. Black lives matter, period. Does that statement mean somehow other lives do not matter? Of course, not. The words themselves indicate that we live in a country where this statement of fact is not universally accepted by all and is strongly resisted by some. To me, this is unacceptable. As a Legislator, I am going to do everything I can to make sure black lives matter just as much as any other lives. I cannot wave a magic wand and right the wrongs of our past, but I can set us up for a better future.

The fourth and final pin is one that depicts the silhouette of Dr. Martin Luther King Jr. It says the word "Dream." I wear this pin because like Dr. King, I have dreams for my Country. Dr. King's life's circumstances probably could not have been any different from mine. Nonetheless, I share his dream that someday people will be judged by the content of their character rather than by the color of their skin. Have we made progress on this front since Dr. King uttered those famous words at the Lincoln Memorial? Sometimes, I feel we have. Other times, I feel we have not come far at all or might actually be going backwards. I dream for a better future, a future where finally, and at long last, we get this right.

I wear these four lapel pins together today to signify the values they reflect are not mutually exclusive. They can and do live in the same space and breathe the same air, as all Nevadans. This fact might be uncomfortable to some, so be it.

All are invited to join us on this journey. Although some may decline the invitation, onward we must move, nonetheless. We can always do better. In that vein, Assembly Bill No. 3, which you have in front of you, is the embodiment of what we, in Nevada, can do better. If we are not moving forward, we are standing still and means we are falling behind. I am not going to let that happen on my watch.

NICK ANTHONY (Committee Policy Analyst, Legislative Counsel Bureau):

Section 1 authorizes a person who is not under arrest or in custody to record law-enforcement activity. Section 1 further defines "law enforcement activity" as activity by a peace officer acting under the color of law. A peace officer is any person having peace-officer power pursuant to NRS 289.150 to 289.360. It includes almost every type of law-enforcement officer, from local jurisdictions, to Indian tribes, to Department of Public Safety officers at the State level. They are all included in the bill.

Section 2 of the bill revises existing law to provide when a peace officer is arresting a person and the person flees or resists arrest, the peace officer may only use the amount of reasonable force necessary to affect the arrest. This is different than the current standard, which is all necessary means. This is a change in existing language to the amount of reasonable force to affect an arrest.

Section 4 of the bill prohibits a peace officer from using a chokehold at any time on another person. Additionally, it prohibits a peace officer from restricting the airway of a person who is in custody or restricting their ability to breathe. Section 4 places an affirmative duty on a peace officer to monitor a person in custody for signs of distress, requires the peace officer to take actions to place the person in recovery if they are in distress or cannot breathe, and it requires the peace officer to ensure medical aid is rendered to any person injured by use of physical force by the police officer.

Sections 7 and 12 of the bill remove and repeal existing language in existing statutes of NRS authorizing the use of chokeholds and providing for the training and certification in such. Chokeholds will no longer be allowed under the NRS.

Section 5 of the bill requires a peace officer to intervene or stop another peace officer from using unjustified physical force. It requires any supervising officer to directly order another officer to stop the use of unjustified force and requires that officer to report the use of unjustified force to a superior. Section 5 prohibits any retaliation against any officer who intervenes or reports such action. Lastly, it requires law-enforcement agencies in the State to provide training in intervention and reporting of unjustified use of physical force.

Section 6 of the bill requires law-enforcement agencies to adopt a written policy on drug and alcohol testing of a peace officer after a peace officer is involved in an officer-involved shooting, or when the peace officer's conduct results in substantial bodily harm or death to another person. This requires each law enforcement agency to adopt a written policy on drug and alcohol testing after such events.

Section 9 of the bill is a reporting requirement. It requires law-enforcement agencies to report to the Director of the Legislative Counsel Bureau, for transmittal to the 81st Legislative Session, on or before November 1, 2020, of this year. The report must include all of the information regarding traffic stops and other stops for an alleged violation of law or any other purpose. The report must include, without limitation, the ways stops are currently recorded and the period for which recordings are kept. Any information collected regarding the identity of the person stopped, the geographic location of the stop and the software used to process the identity and driver's license number of an individual during a stop must be included.

Section 8 is a technical change amending the Statutes of Nevada in relation to section 34 of Assembly Bill 236 of the 80th Session. Assembly Bill 236 of the 80th Session was a large, criminal-justice reform bill. Section 8 of this bill provides for the reduction of the maximum period of probation or suspended sentence and applies to an offense committed on or after July 1, 2020, or a person sentenced on or after July 1, 2020, which was the effective date of that section.

Section 10, following that technical change, provides transitory language for the same treatment for someone sentenced on or after July 1, 2020, but before the effective date of this bill. This allows for the person to have his probation or suspended sentence reduced accordingly with the provisions of section 34 of Assembly Bill 236 of the 80th Session.

Due to time considerations during the Special Session, section 11 of the bill provides this measure can be voted upon before the return of any fiscal notes.

SENATOR PICKARD:

In section 4, it appears we are talking about someone who is in custody. It says a peace officer shall not place "... a person who is in the custody of the peace officer in any position that compresses his or her airway ...", and it goes on. Subsection 2 is just talking about someone who is currently in police custody. Is that correct?

MR. ANTHONY:

That is correct. Subsection 1 of section 4 prohibits a chokehold on another person at any time. Subsection 2 specifically relates to when a person is in custody. It prohibits a peace officer from compressing the person's airway or preventing them from breathing.

SENATOR PICKARD:

That makes sense. My question is what happens if they are not in custody? What if they are in a fight and scrambling with a person who is resisting and the officer's life is potentially in danger, does that mean they cannot use a chokehold at that moment?

MR. ANTHONY:

Subsection 1 prevents the use of a chokehold at any time whether the person is in custody or not. Based on your hypothetical, I could see a situation where if the officer felt his or her life was in danger, that officer could utilize self-defense or justifiable homicide as a defense. This bill does nothing to those common law or statutory self-defense privileges.

SENATOR PICKARD:

You quickly skipped through section 8. As you were going through it, I did not understand the connection with the rest of the bill. Can you talk about what this change is intended to do and how it relates to the rest?

MR. ANTHONY:

Section 8 is a technical change. Since this is an act relating to public safety, it is germane to the bill and part and parcel of it. It goes back to Assembly Bill 236 of the 80th Session. Section 34 of that bill allowed a person who is under a probationary period or suspended sentence, whether completing a specialty-court program or not, to avail themselves of a shorter

period of probation or suspended sentence. I believe the bill reduced the time from 3 years to 12 months for a gross misdemeanor, 18 months for a category E, 24 months for a category C or D and 36 for a category B.

This section of the bill makes a technical change so it will appear in a reviser's note stating that on or after the effective date of this bill, which is July 1, 2020, those provisions are valid.

SENATOR HAMMOND:

I am not a police officer and did not attend the Citizens Academy. I do not know much about the term "custody." We all have an understanding of what custody is, but could you help me define when someone is in custody? Is there a universal understanding of that particular term? I do not see a definition of it in this bill.

MR. ANTHONY:

From a layperson's perspective, custody is generally when a person is under the control of another person. I would defer to our law-enforcement representative, Mr. Calloway, if he has a working definition Metro uses. From a laymen's, Webster's-Dictionary-type definition, "custody" means you are not free to move about and leave the scene.

CHUCK CALLOWAY (Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):

There were great points brought up regarding the word "custody" in section 4, subsection 2. There is case law regarding "custody" that speaks to anytime a person believes they are not free to leave, they are technically assumed to be in custody of that officer. Based on conversations I have had with Legislators about this section and the discussion in the Assembly earlier today regarding this, my understanding of the definition is as what Mr. Anthony said, custody and control where the person is being transported to the detention center. They are handcuffed and placed in a patrol car and not combative at that time. At that point, the officer has a duty to make sure they are able to breathe. If they are saying they cannot breathe or are in a position where it looks as though they are distressed, the officer must take action to put them in a recovery position, which is to sit them up or put them on their side, where they are able to breathe and, if necessary, render or call for medical aid.

This is a gray area. If an officer is fighting with someone and trying to put them in handcuffs, or if they are in handcuffs but continuing to resist, they are in the custody of law enforcement. If they are kicking and punching the officer and fighting, at that point, the officer is not in a position to put them in a recovery position. My perspective of custody is when someone is in the custody and control of the officer, being transported for booking, and not being combative.

SENATOR HAMMOND:

Under that definition, someone in custody means you want to make sure they are in your control. It does not necessarily mean they are handcuffed. Whether they are handcuffed or not, if something happens and you need to get control of them, you need to get them on their stomach to get control, does this bill allow that to happen as well?

MR. CALLOWAY:

Yes. In the example you gave of someone who is resisting arrest, the officer takes that person to the ground on their stomach. The officer is struggling to get the person into handcuffs. Once that person is under control but says they cannot breathe, or it appears they are in distress, the officer must put them in a recovery position. The officer must sit them up and, if needed, summon medical aid to address the situation.

SENATOR HAMMOND:

I want to clarify one thing you said when talking about this "gray area." This will be put into law. Is there any need to make sure we are clearer about this, or is the intent enough? As you said, it is a gray area as far as custody and what you can do when they are in custody.

MR. CALLOWAY:

The best readily example is, obviously, the unfortunate case of Mr. Floyd. I do not have all of the facts in the case, but from what was seen on television and what I heard through the

media and video I watched, it does not appear at the time Mr. Floyd was fighting with the officers. He is on his stomach and saying he cannot breathe. At that point, the officer should have been obligated to put him in a recovery position to ensure he could breathe. That is the intent of this section. It is not a case where the officer is in a fistfight with someone who is swinging, punching, kicking and trying to take the officer's gun away and the officer says, oh, excuse me, sir, can you breathe. That sounds ridiculous and is not the intent of this section.

ASSEMBLYMAN YEAGER:

In response to the Senator from District 18, I want to make sure the record is clear the legislative intent is that the individual is in the officer's control. Situations are dynamic when it comes to arrests. The intent of this section is not to prevent an officer from doing what needs to be done to get someone under their control. I agree with Mr. Calloway in terms of how that should be interpreted and read. I just want to make that clear, for the record.

SENATOR SCHEIBLE:

Is the idea in section 9 to get information from law-enforcement agencies about what kinds of data and information they currently collect, gather and store in order to develop an analysis of it later?

ASSEMBLYMAN YEAGER:

You are correct. The original draft language of this bill called for the providing of data itself. In consultation with yourself and the Senator from District 11, whom I want to thank for her recommendations, we thought a better plan would be to get a sense of what data is already out there. We want to see what programs law-enforcement agencies are using and how that data is stored. If there are limitations on our ability, or their ability, to access that data—for instance, if it is a third-party vendor with contractual restrictions, we want to know that also. We want to figure out what actionable, reliable and unbiased data might exist in a format we can easily get, rather than having officers collect it in the field.

Section 9 asks law-enforcement agencies to provide us with that information prior to next Session. Next Legislative Session, we will be able to collaborate in terms of what data is already out there, what is missing, and what we need to collect. We hopefully can work with other individuals, including academics, to make sure we are collecting the right information and it is statistically significant. We want to figure out how that analysis is going to be done to provide a meaningful product to the Legislature. The bottom line is, we want to make this as easy as possible for law enforcement. We do not want to add additional burdens to them.

I recently had a conversation with Nevada's Department of Public Safety. They collect a significant amount of information from law enforcement related to traffic stops. They offered to help if additional information is needed, and they may be able to use their portal to collect it. We want to get the information so we can make better decisions on how to collect it and how to analyze it in the next Legislative Session.

SENATOR SCHEIBLE:

To clarify, we are not asking law-enforcement agencies to provide how many traffic stops they have done between now and November 1, 2020, the period of the recordings or the recordings and names of the people who were stopped. Just tell us what you would be able to tell us.

ASSEMBLYMAN YEAGER:

You are correct on that point, Senator. We want to figure out what they have at their disposal. We are not asking for the concrete details at this point. Hopefully, we can figure out how to make this as easy as possible. When you look at the word "recording" in that section, it does not refer to an audio or video recording of the stop. We are asking to access records they have somewhere in their data processing.

SENATOR KIECKHEFER:

In section 1, subsection 3, where it refers to "recordings," defines "law enforcement activity" as "... any activity by a peace officer acting under the color of law." I apologize, this is not a subject of my expertise. I take that to mean this would be activity during a law-enforcement

officer's course of official duties, and this right-to-record does not extend into an officer's personal life's activities when they are not on the job. Is that accurate?

MR. ANTHONY:

Yes, that is accurate. It would be during a law-enforcement officer's official duties. As a law-enforcement officer, they would be acting under the color of law in their day-to-day duties.

SENATOR KIECKHEFER:

I have been contacted by one of my school districts. There appears to be uncertainty over whether the definition of "peace officer" in that section applies to school police. The way I read that definition, it does apply to school officers. Is that accurate?

MR. ANTHONY:

Yes, that is accurate. I believe school police are covered in Chapter 289. Somewhere, between 289.150 and 289.360, it refers to school police so they would be included.

SENATOR GOICOECHEA:

Section 9 says every law-enforcement agency in the State so I would assume that includes tribal police, but definitely our smaller jurisdictions?

ASSEMBLYMAN YEAGER:

I believe that is correct. We are asking for this information from every agency. Keep in mind, we are asking for their practices, as they currently exist, to collect the data. We are not asking for the actual data. One of the things we can look at in the 2021 Session is doing a broader data collection and decide which jurisdictions we are going to include. Is it going to be the larger ones? Is it going to be the smaller ones? Is it going to be tribal? We want a sense of who is using what programs to be able to make these stops. In some cases, maybe the answer will be we do not use those stops so we do not have any information to provide. In some circumstances, that would be an acceptable response.

SENATOR GOICOECHEA:

I am concerned about the smaller jurisdictions and their ability to provide the things mentioned in section 9 within 90 days, particularly "... any limitations on the history of the data collected" I am afraid you will get many blank stares from these smaller jurisdictions.

ASSEMBLYMAN YEAGER:

If smaller jurisdictions have a contract with a vendor, for instance, when they stop vehicles and run identifications or license plates, if that contract is not confidential—and it probably is not if it is with a public agency—they may be able to provide a copy of that contract, which would hopefully tell us what data is collected and what the limitations are in accessing the data.

We are trying to make this as easy as possible. To any agency listening, if you have concerns about complying with this, please reach out so we can work with you. We want to partner with you and not make this overly burdensome for anyone.

SENATOR GOICOECHEA:

It would be helpful, whether they reach out to us or if we reach out to them. As I briefly read through this text, it made me nervous. Many rural sheriffs may need assistance with this.

SENATOR WASHINGTON:

I want to commend the Assemblyman from District 9 for creating this bill. I have concerns for my family as a result of things that have occurred with the police. I have ten grandchildren, five girls and five boys. Every time they leave the house, I am concerned. Many people cannot comprehend this, but it is real. Believe me, this is real. I worry about my husband coming home safely. I worry about my grandsons, if they go on an outing, returning safely. I appreciate this bill and urge its support.

How many officers are on the streets in Las Vegas, and how much money would corrective training on chokeholds cost? If this bill passes, how soon could this possibly happen?

MR. CALLOWAY:

As to training, we recently moved the Lateral Vascular Neck Restraint (LVNR), which is similar to a chokehold, to deadly force. The LVNR cuts off the blood supply versus against the throat, an airway, and it would be prohibited under this statute. We have currently stopped training on it.

As to the second part of your question, there would be no cost involved. We would update our policy to reflect chokeholds are prohibited, and training would be unnecessary.

As to your how many officers patrol streets in Las Vegas, it varies day to day due to people leaving the agency, retiring and new hires coming in. Right now, we have about 700 patrol officers who work the streets.

SENATOR HANSEN:

The Assemblyman from District 9 and I have had several discussions on some of the new technologies. Some technologies are a little frightening, such as StingRay Technologies. The United States Supreme Court has ruled on some of those things. Is that type of technology covered under section 9?

ASSEMBLYMAN YEAGER:

It depends what information would be collected by the StingRay technology. To the extent StingRay technology will capture stops on persons or vehicle stops, which is what section 9 is looking for, we want to know if that information is there. The issue with StingRay is, perhaps, there are contractual exclusions on what information can be disclosed. At one point, a contractual exclusion on whether you could disclose you were using StingRay existed. There could be limitations. If the information is there and they can disclose its existence to us, we want to know about it. We cannot force anyone to break a confidentiality clause in a contract, at least not through section 9 of Assembly Bill No. 3.

SENATOR HANSEN:

Section 9 is limited to traffic stops. That is what I was wondering. I hope we can expand it. StingRay technology, and things like that, have enormous potential for abuse. As Legislators, this is an area we need to deal with. Contract or not, if they are spying on Americans and violating their Fourth Amendment rights, this is something we should restrict as much as we can.

SENATOR OHRENSCHALL:

I want to echo the comments of my colleague from Senate District 4 and thank the Assemblyman from District 9 for presenting this bill and working so hard on it with my colleagues from Senate Districts 9 and 12.

In section 1, there is language about a person who is under arrest versus a person who is not under arrest. The way I read this language, if someone is out alone, driving on a dark, country road and is pulled over by a law-enforcement officer, if they press the record button on their cell phone, anything recorded would be the subject of not forfeiting the right to have such recordings, property or instruments maintained and returned to him or her. It does not require another person make the recording. I want to make sure I understand the way this is written.

MR. ANTHONY:

That is correct. That is my reading as well.

SENATOR OHRENSCHALL:

I have a question about the definition of "record." The way I am reading this language, the recording would not have to be on the device's memory or uploaded to a server. It could be a livestream like Facebook Live or Instagram Live or FaceTime. If someone is broadcasting it, would this fall under the definition of "record"?

MR. ANTHONY:

Yes, that is correct. It is "... through the use of any recording device, camera or any other device capable of capturing audio or moving or still image" It is broad and fairly unlimited.

SENATOR OHRENSCHALL:

Section 4, regarding banning the use of a chokehold, would that ban be applicable in a detention facility? Would that apply to detention officers for adults or youth in a detention facility?

MR. ANTHONY:

Yes. Section 4 applies to any peace officer carrying out his or her duties is prohibited from using a chokehold. Under the definition of a "peace officer," 289.150 to 289.360 includes different types of law-enforcement officers, including correctional officers.

SENATOR OHRENSCHALL:

Director Calloway explained that Metro is eliminating the Lateral Vascular Neck Restraint by policy. If this bill passes into law, in your 30-year street experience, how do you see it changing how you and other officers handle certain situations?

MR. CALLOWAY:

I do not see this having a huge impact. The Las Vegas Metropolitan Police Department averages 3-million 911 calls a year. Last year, we responded to approximately 1.6-million calls for service. We are in physical contact with millions of people on a daily basis through the course of our job. In 2019, there were about 900 use-of-force cases in our agency, everywhere from minor, put the handcuffs on too tight, to deadly-force situations. Out of the 1.6 million-contacts and 900 use of force, our officers used the LVNR 21 times. It is a small number of times LVNR was used. In total context, our use-of-force rate is .001 percent compared to our citizen-contact rate.

This will not have a huge impact on our operations. We will remove it from our policy and train our officers in accordance with this new statute.

SENATOR HARDY:

I am looking at section 4 for the specific preclusion, common language, not gray language, not gray areas for getting someone actively resisting arrested. It says, "In carrying out his or her duties, a police officer shall not use a chokehold on another person." I do not know if there is a better way to say it, but it seems we should say it in such a way that allows for the gray area. I am uncomfortable with the "shall not use" when we have heard testimony it may actually be used in a desperate situation.

Do we have someone's opinion, a judge maybe, who is going to read this and say that is the verbiage? We are trying to get away from the chokehold, but if we try to say there is something in there that is not there, it is a gray area, and we should define it.

ASSEMBLYMAN YEAGER:

You are right. The language says what it says. I will note there is not a criminal penalty attached to this bill. We were purposeful in not doing that. The discussion we had earlier was in the situation when they are in a life-or-death struggle. There are existing statutes on the books. One, if you are acting in self-defense and kill someone, it is justifiable homicide, and the other is the traditional self-defense.

The point is if an officer uses the chokehold, which I believe this is unlikely to happen, and if a local district attorney reviewing the facts concludes the chokehold was unjustified and should not have been used, the district attorney could prosecute the law-enforcement officer just like they can prosecute anyone else for use of force. In that circumstance, the officer would be able to avail himself or herself to existing statutory defenses, such as self-defense or justifiable homicide. It would be up to a jury to decide whether it was appropriate under the circumstances. Those two concepts exist together in this statute. It is saying you cannot use a chokehold, but if you find yourself in a case where you have to use one, you will have statutory defenses if someone tries to prosecute you for use of that chokehold. I do not know if it makes sense or muddies the water even more, but my attempt was to try and have those two things exist at the same time in statute.

SENATOR HARDY:

Nobody should shoot someone. We know it happens, and subsequently officers are protected under the use-of-force guidelines. Is that the parallel you are looking at?

ASSEMBLYMAN YEAGER:

That would be a good parallel. Murder and homicide are illegal under the law, but there are circumstances where one could be justified in committing a homicide. There is a statute that lays this out, and that is justifiable homicide. If you were prosecuted for it, you could defend yourself. Once you have come down from that level, you are not allowed to commit battery on people and injure them, but in some circumstances, you are. When you or someone else is threatened with force, you have a legal privilege to do those things. To the extent someone was able to prosecute you for it, you would be able to identify the statute that allowed you to do it. A jury would consider all of the circumstances and decide whether the prosecutor proved the case beyond a reasonable doubt.

SENATOR HARDY:

Could we have a justifiable chokehold?

ASSEMBLYMAN YEAGER:

We could, Senator, but that would not be my preference. That is not what is in front of the Senate, here, today.

SENATOR SPEARMAN:

In sections 5 and 6, is there a standard definition for "fear of my life"? We have seen some extreme cases in places in other states. If someone is running away, the officer cannot fear for their life. If someone is sitting in a car, the officer cannot fear for their life. I want to make sure we have a definition that says when these things happen, and it is not limited to that, in the future, we have someone who should not be a peace officer. If they did that, we could point to law that says this is not the standard for "fear of my life." Does that make sense to you?

ASSEMBLYMAN YEAGER:

Yes, Senator, that does make sense. Director Calloway might want to interject. This conversation came up earlier today in the Assembly. Director Calloway talked about the George Floyd's case, I do not believe anyone looking at that could say there was reasonable fear. It was objectively unreasonable.

Analysis would be done to determine if the officer objectively and reasonably was in fear of his or her life under those circumstances. This is a question of fact dependent on many factors. It is easy to point out obvious cases where, yes, that person was in fear or, no, that person was not in fear. It can be difficult in those middle situations. The belief and intent behind this provision would incorporate existing case law from the United States Supreme Court about what is "fear for one's life."

SENATOR SPEARMAN:

I did not attend the Citizens Academy, but I had Military Police shoot/don't shoot training both in basic and advanced courses. Different figures would pop up, and you had to react as if you were going to shoot or not shoot. The purpose of this training was to help us determine what our responsibility was in a split second. I hear many people refer to "during that split second." Is that training a current requirement for peace officers?

MR. CALLOWAY:

In Metro, a large amount of training comes from a variety of different levels, first is in the academy where officers are taught. Supreme Court cases and case law address what an objective, reasonable officer would do if they believed they were in fear of their life or eminent fear of death or serious bodily harm. *Graham vs. Connor* is the case that outlines this objective, reasonable standard. This is taught to our officers in the academy, and they go through scenario training where shoot/don't shoot decisions have to be made. In our efforts toward de-escalation, we have found in most cases, the scenario does not require them to shoot. We look for the officer's ability to de-escalate and handle the given situation. Resorting to deadly force is the

last resort. If it is not appropriate for the scenario, they would fail that scenario, which could impact their graduating the police academy.

Upon exiting the academy, they receive field training along those lines. We have training protocols and advanced officer training, which goes through shoot/don't shoot scenarios. We base those scenarios on real-life encounters. When we have an officer-involved shooting where we believe the shooting could have been handled a better way, we incorporate it into our training so our officers understand there may be options other than resorting to deadly force.

The COVID pandemic funding might limit or put a temporary halt to this, but we are in the process of building a regional-training facility in the south. It would be available to all law enforcement in the State to use. It would be able to house the exact type of training you are talking about, the shoot/don't shoot scenarios with reality-based training with a major focus on de-escalation and alternative ways to accomplish what you are trying to accomplish without resorting to force or deadly force.

SENATOR SPEARMAN:

I want to echo some of the comments made by my colleagues. I appreciate you, Assemblyman from District 9, and those in this Chamber who worked on this. I can say as a former law-enforcement officer that people who have been trained and then do the opposite, go rogue and do things like we saw in the George Floyd case and another case in Minneapolis— we have seen this scenario more times than I would like to remember—put a target on everybody else's back. I am glad to have this Legislation to specifically identify what you do and not do, in particularly, banning the chokehold.

SENATOR SEEVERS GANSERT:

Section 6, the drug and alcohol testing requires each law-enforcement agency to come up with a policy with the requirements in subsections (a) and (b). Do they not already have drug and alcohol testing if there is a shooting or substantial harm? How do we make sure they are consistent? We mentioned there are many different law-enforcement agencies. While there are some broad requirements, will there be a review process to ensure they are consistent and that we get the information and results we need as far as having those in place?

MR. CALLOWAY:

I cannot speak for the other agencies in the State. Metro uses a vendor for random drug testing and reasonable-suspicion drug testing of our officers. In addition, we have a protocol in place for drug and alcohol testing of any supervisor who is involved in a deadly-force situation. Currently, this protocol is only for supervisors. We have not negotiated it with the unions for our line-and-file officers. If this passes, we will have to update it to reflect the changes in statute, but we are doing much of this on the front end already.

SENATOR SEEVERS GANSERT:

Regarding consistency in policies, we have many different law-enforcement agencies, and they are not under one agency. Metro is different. We have Reno Police versus Sparks Police versus Tribal Police versus school police. Will there be a mechanism to review all of these policies, or are we just requiring they be created?

MR. CALLOWAY:

Regarding consistency, there are a number of ways that can take place. The first is through the State's Peace Officer Standards and Training. Often, in training for law enforcement, it is their responsibility to standardize policies and procedures throughout the State. Through our partnerships with other agencies, we do not police in a vacuum. I work on a day-to-day basis with Washoe County, Nevada Sheriffs' and Chiefs' Association, Henderson Police Department and the North Las Vegas Police Department and often share information and policies. Many Metro's policies are used as National models across the Country and across the State. The first one that pops into my head is the Witness Identification Policy, which we worked on several Sessions ago with the Innocence Project.

It is not a far leap on our part to get consistency in the State on those type of testing procedures and policies. As far as the review goes, this Body will have to determine how you want this information reviewed, whether through a reporting process or different.

SENATOR CANNIZZARO:

To make sure I understand this correctly, the provisions of section 8 mean someone who is sentenced would be subjected to those different probationary terms. The shorter probationary times, the technical violations, all of those provisions that were in Assembly Bill 236 of the 80th Session, Assembly Bill No. 3 does not apply to the underlying sentence or the crime itself. For example, if someone pled to a burglary prior to July 1, it is a category B felony with a 1-to-10 underlying. If they were sentenced after July 1 and put on probation, they would still be subject to the same sentence, same category, but would be sentenced under a different set of probation parameters. Am I understanding this correctly?

ASSEMBLYMAN YEAGER:

You are correct. This provision does not affect the length of the underlying sentence. This provision only applies to the length of the probationary term. It does not apply to the graduated sanctions or revocation procedures listed in Assembly Bill 236 of the 80th Session. This means, if you are sentenced on or after July 1, 2020, your probation term, should you get probation, is dictated by section 34 of Assembly Bill 236 of the 80th Session. This dealt solely with the length of probation depending on the category of the crime for which you were convicted of.

SENATOR CANNIZZARO:

That is how I understood it as well. I brought up burglary as an example. We have changed some of the parameters for things that would be classified as a commercial burglary. That is how I read that.

My follow-up question under section 2 is for those people with an offense committed before July 1, 2020, but the person had been sentenced after July 1, 2020, what would the remedy be for those sentenced and placed on probation between July 1, 2020, and at the point in time when this bill, presuming it passes this Body, is signed into law?

ASSEMBLYMAN YEAGER:

There is a remedy that says if this gets passed and is signed into law, if you were sentenced in that timeframe, 30 or 40 days, you were essentially given an illegal sentence. The probation period was longer than what was allowed by section 34 of Assembly Bill 236 of the 80th Session. Those individuals, per section 10 of the bill, would be entitled to have their term of probation reduced.

We do not specify how that would procedurally work in this bill. It would depend on the judge. A judge could have the person come back to court and redo the sentence or could do an order for parole and probation shortening the probation length to the maximum allowed.

I did not want to put a procedure in this. I wanted to give judges the flexibility to determine how this provision should be enacted for those people who fall within that five-week period. This is not widespread. Several judges were applying the probation lengths that were in Assembly Bill 236 of the 80th Session as of July 1, but some were not. Those people will be entitled to relief, but how that relief is granted can hopefully be determined by that particular judge or the judicial district.

SENATOR CANNIZZARO:

That makes sense. I wanted to make sure we have it on the record. It makes sense to have people subjected to those different probation terms, but it is harder when it comes to the offenses just based on sentencing date.

I appreciate you bringing this into Assembly Bill No. 3. I believe it brings clarity for those who were sentenced. To the extent we are talking about changing probation terms to be in conformance with the intent of Assembly Bill 236 of the 80th Session, and the language in this bill, should it pass, it would not unilaterally open the door for anyone to request to be resentenced. It would apply to those who had been given probation, and this would modify their probationary term.

ASSEMBLYMAN YEAGER:

You are 100-percent correct. It would only apply to people who were first given probation. Not everyone gets that privilege. If their term exceeds what is allowed under Assembly Bill 236 of the 80th Session, section 34, they would have the right to a reduced probationary term. It

would be up to the particular judge. We could assume if a judge gave you a long probation term which exceeds what was in Assembly Bill 236 of the 80th Session, the judge will probably give the maximum probation term under Assembly Bill 236 of the 80th Session, but I do not want to presume that. This is why we wanted to leave it up to the particular judge to decide how to address these people. We are not talking about a massive number of people within that four- to five-week period. There are some who will qualify for that reduction of probationary term.

SENATOR CANNIZZARO:

I want to make sure we are talking about those who have already been sentenced to probation that would exceed that. The inverse would be true, and if someone was sentenced but their probation term was within that timeframe, this would not be a way to have the judge review that sentence and think about an entirely new sentence. Is that correct?

MR. ANTHONY:

You are correct. This would not allow someone to go back and have their probation or their suspended sentence reopened.

SENATOR HARRIS:

In section 5, the duty to intervene if excessive use of force is used, it requires the issue be raised with the supervisor. Is there anything in the bill that gives guidance as to what should be done if it is your supervisor who used the excessive force?

MR. ANTHONY:

Yes. Section 5 says if it is a person's supervisor, there is a mechanism to essentially go above the supervisor and report to the next level of command.

SENATOR PARKS:

Following up on section 5, in the Minneapolis death of George Floyd, Officer Chauvin was in a supervisory role. Two of the other officers were rookies fresh out of the police academy. One of the rookies asked Chauvin if he should turn Mr. Floyd over. Chauvin denied the suggestion. The fourth officer prohibited officers from getting involved.

Section 5 does not address this type of a situation. It says "report" misuse of force to your supervisor. What happens in a situation where it would be of immediate concern?

MR. CALLOWAY:

In looking at the language in the bill, I understand where you are going with this. In our policy to intervene, it says first the officer has an obligation to intervene when safe to do so. It is not just reporting, but it is taking action to stop the activity. For example, if an officer is hitting a person with a baton when they should not be, the observing officer should try and physically stop that. If an officer is on a person's neck, and it is safe to do so, the observing officer should make an attempt to get that officer off of that person's neck.

Reporting is a component of this. In our policy, the report can be made to any supervisor. As Mr. Anthony said, if their supervisor was involved in the activity, this language allows an officer to report above their supervisor up the chain of command.

I spent 30 years in the military before becoming a police officer. It is the same in the military as for a police officer. If you are given an unlawful order, the order is not to be followed. If a supervisor on the scene is telling you to use excessive force or do something improper under the law, you have an obligation to step up, say this is not appropriate and take action.

I do not know if that specifically answers your question regarding this language in the bill, but from Metro's perspective, that is how our policy reads and how we operate in terms of duty to intervene.

SENATOR PARKS:

I am still struggling with taking an immediate action. I am not sure section 5 adequately addresses a subordinate taking immediate action regarding another officer.

MR. ANTHONY:

Section 5, subsection 3, is the specific language that requires an officer, if he or she observes unjustified force used by his or her supervisor or direct supervisor, to report to his immediate

supervisor's supervisor. It bounces up to the next level of review. There is a duty placed upon the officer who observes it to go up the chain of command so it would be two removed from the immediate supervisor.

SENATOR CANNIZZARO:

We will now open the hearing to those in support of Assembly Bill No. 3.

CAROL LUKE:

I am supportive of this bill. I was driving a Regional Transportation Commission bus. If we got in an accident, we had to automatically take a drug and alcohol test. (Unintelligible statement) ... police officers should be held accountable and also pass a drug test.

What is the definition of "fear for your life"? It is the ... (unintelligible statement) ... role. It is old, and people use it today to justify what they are doing. I do not understand it. When they wear a bodycam, police officers should have their supervisor or lead person load it down to observe it and see how they came to the conclusion they came to. It is not right for them to not display their drug and alcohol results. We are the ones who are suffering the consequences of their actions related to our loved ones or ourselves. It should be announced to us who has the authority to look at it. They need to be cleaner than they are today and with less cover up.

I am the mother of Thomas McEniry, who was shot and killed by the Las Vegas Police Department on November 24, 2015. As far as deadly force, my son was shot eight times. You can tase. You can mace. You can shoot in the knee or toe. I understand you are making changes now, but still, it hurts me what was done to my son.

SARAH ADLER (Director, Nevada Coalition to End Domestic and Sexual Violence):

The Coalition is testifying in favor of Assembly Bill No. 3. Our members know how important it is to have a law-enforcement response that respects the rights of the accused and the needs of the victim. For survivors of domestic and sexual violence, their fear of an unequal police response to a crime they have experienced prevents them from coming forward. For all of these victims, an appropriate response by law enforcement is critical in stopping the violence. Assembly Bill No. 3 provides transparency and accountability to improve the way law enforcement responds and increases citizen respect for law-enforcement actions. For these reasons, we support Assembly Bill No. 3.

LILITH BARAN:

I support this bill. Thank you for the care you took in addressing questions about this bill. I would like to raise concerns about reporting someone above your rank. This is not the culture police have. I worry that relying on supervisors or people above the rank of other officers will not create accountability. In 2014, Michael Brown was shot, and that was the birth of the Black Liberation Movement; I see it as a rebirth. Two days ago, we learned that Officer Darren Wilson will not be prosecuted. He is being excused as a result of him being in fear for his life. I want a clear definition of what "fear for your life" is.

We need a comprehensive plan to deal with mental-health cases. In my city, 75 percent of the mental-health cases called in are met with force and often end in death. I am not confident this bill will abolish this violence. Additional work needs to be done. I would, however, like to congratulate you in taking a small step forward.

HOLLY WELBORN (Policy Director, American Civil Liberties Union of Nevada):

I adopt my colleagues' statements and echo that this change is the bare minimum of what needs to occur to foster accountability when people needlessly die at the hands of law enforcement. After fighting this cause for over 30 years, the Former Assemblyman Wendell Williams would be proud the Legislature is finally heeding his call for change and removing chokeholds and carotid restraints from the use-of-force matrix. I find it a dispelled myth that any restraints or chokeholds will somehow bind the hands of law enforcement making the situation less safe.

The opposite is true. I submitted a report to the Committee showing police departments that adopted across-the-board limitations on use-of-force tactics substantially decreased officer-involved killings. The policies associated with the largest reduction in police-involved killings per population were policies which required comprehensive reporting. They saw a

25-percent reduction. Those that required all offices to exhaust all other reasonable means before shooting showed a 25-percent reduction. Those that banned chokehold or stranglehold restraints saw a 22-percent reduction.

Changes to use-of-force policies are safer for police officers. Safe, but adopted comprehensive changes to their policies showed a significant reduction in midlevel or serious use of force without any increase to crime rates or officer injuries.

The families in a broad coalition of people testifying today have worked tirelessly for change. We have worked as legal observers and educated protestors about their rights. Some of us, including myself, have been tear-gassed, hit with projectiles and have had guns pointed in our faces protesting for even these small, simple changes before you today.

This is a minimum we can accomplish. Please move this bill forward, consider the changes brought before you today and commit to robust reform in 2021.

KENDRA BERTSCHY (Washoe County Public Defender's Office):

We support Assembly Bill No. 3 and want to thank the Assemblyman from District 9 and other legislative members involved in bringing this important bill forward. Although the reforms included in this bill are simple, meaningful reforms enhance community safety for all Nevadans. These reforms are a start, a minimum needed for the process of changing an unjust system.

We appreciate this commitment to change and legislative leaders wanting to restore community trust in our police officers responding to those demanding justice. The death of George Floyd sparked outrage across the Nation and forced us to examine injustices within our own communities. Individuals like Miciah Lee, Jorge Gomez and Byron Williams highlight the need for immediate reform to do everything we can to protect Nevadans.

We strongly support sections 4 and 5 of the bill that completely ban chokeholds and require duty to intervene. These reforms are vital for the safety of our community members and for building trust when interacting with police. No amount of training justifies this lethal option as safe to use on our citizens. We are not the first to ban chokeholds, and it is time we join others in banning this unnecessary option. As Ms. Welborn with the ACLU stated, these reforms have proven to reduce police violence in other jurisdictions. We can no longer accept officers remaining silent when they witness misconduct.

As criminal defense attorneys and in speaking with our clients, we see the need for reform in our daily work. Section 2, the clarification regarding use of force necessary to effectuate an arrest, will help ensure our citizens that accuser crimes will be treated appropriately, fairly and with dignity. The other sections include common-sense reform and will go a long way to promote and create transparency.

We look forward to working with community activists, impacted individuals and with this Body to ensure accountability for officers who engage in this conduct or violate these reforms. This bill will help to protect our community members.

JOHN PIRO (Clark County Public Defender's Office):

Thank you for taking this first step for criminal justice reform. These are moderate reforms. (Call disconnected)

COREY SOLFERINO (Lieutenant, Washoe County Sheriff's Office):

We wanted to take the opportunity this evening to offer our comments in support of Assembly Bill No. 3 and look forward to the 81st Session to continue our conversations about public-safety concerns and officer accountability. We have an opportunity before us to have a law-enforcement renaissance in the wake of a national tragedy and lead a new generation of law-enforcement professionals on the foundations of solid principles and pillars of criminal justice. Our noble profession has worked tirelessly to integrate into our communities, to foster collaboration, understanding and mutual respect.

We are firm believers in community-oriented policing practices and holistic approaches to combat crime and traffic safety using intelligence-led policing and the integration of the regional teams and services concepts. Our prime reduction and strategies focus on long-term goals and not short-term fixes.

I hope to continue our conversations to address the mental health and substance abuse concerns that plague our State. In many instances, tragedies stem from these two scenarios. With our impending budget cuts, and the reduction of services due to the COVID-19 crisis, already scarce resources and programs will become nonexistent. The Clark County and Washoe County detention centers continue to be two of the largest mental-health facilities in the State. We have continued to provide expanded training and resources to our incarcerated population and wraparound services upon prison release. We are struggling to provide the aftercare needed to thrive, and the vicious cycle continues.

With the advent of the newly-formed Detention Services Unit and the Police Accountability and Transparency Unit, we hope to further enhance the services we provide and be excellent community stewards. I appreciate the opportunity to speak before you this evening and look forward to the public policy we can continue to create together in order to protect and defend the citizens of, and visitors to, the great State of Nevada.

WILLIAM LEDFORD (Director, Advocacy for Lutheran Engagement and Advocacy in Nevada):

We absolutely support this bill. We are tired of seeing videos of our black brothers dying on camera, begging for their lives, begging to breathe. We acknowledge this epidemic across our Country. My job is to bring a perspective of faith to bills that come through our State. I want to briefly tell the parable Jesus told of a shepherd who had 100 sheep with 1 that was lost. He left the 99 to help the 1. To read this story and say all sheep matter is missing the point. Black lives matter, and this bill is an important first step. The voters will be watching for this vote and for this Session.

KATIE RYAN (Director, Government Relations, Dignity Health, St. Rose Dominican Hospital):

We support Assembly Bill No. 3. Dignity Health is part of a healing ministry of 150,000 people dedicated to human life, liberty and justice. We are united in a belief of inherent dignity for all people. This transcends grace, religion, sexual orientation, gender identity, national origin or economic status.

We see patients every day in our emergency department who are victims of violence. As healers, we are committed to violence prevention and intervention. We believe Assembly Bill No. 3 is the right first step toward curbing unnecessary pain and death. As first responders, we value our relationship with our law-enforcement partners and are committed to do anything we can to ensure safety for all.

EDDIE ABLESER (Nevada Police Union):

We are the State-level union for Category 1 law-enforcement officers across the State, representing over 600 members throughout the Department of Public Safety, Nevada Department of Wildlife, University Police Services and Nevada State Parks. We support Assembly Bill No. 3 and thank the Assemblyman from District 9 for his diligent work on this legislation to create meaningful reforms and move public safety and our peace officers into a higher professional status throughout the State. These reforms will provide opportunities for the community and law enforcement to come together and create meaningful reforms.

We ask Senators and Legislators to consider future reforms in this vein. Profit in policing, where quotas are imposed upon law-enforcement officers across the State, creates untenable relationships within the community. Banning profit in policing will help move us in the right direction.

Our law-enforcement offices need to start recruiting officers, recruits and cadets who will represent the communities they serve. Professional law-enforcement agencies need to provide higher recruitment standards for their hiring processes. Training should not be limited to online or check-the-box training. It should be hands-on, intense, professional development for all law enforcement throughout this State.

The steps taken today are movement in the right direction. We thank you for the willingness to support and participate with other law enforcement willing to take a stand and support this.

ADRIENNE MICHELSON:

I am a data professional from Senate District 9 who has struggled to collect and assess data provided by law enforcement in southern Nevada. I support the goals this bill is seeking to achieve, but the sections surrounding data collection in this bill must be improved to ensure Legislators in the 2021 Session have the ... (unintelligible statement) ... needs to support people who are Freedom of Information Act requestors, local media, plus watchdog groups.

Recently, a reporter from Las Vegas contacted me asking if I could lend my advice on a piece they were working on. I agreed to volunteer my free time to do so. This reporter had received a Freedom of Information request from the Las Vegas Metro Police Department with 319 public requests from their office getting body-camera information in 2020. In response to this request, the reporter was given a spreadsheet—as if you need ID numbers and thousands of memos—in a PDF format. The problem was all of the relevant data Metro provided was stored in PDFs. Although I have five-years' experience in data management, this data format has been challenging to extract. So far, I have spent 20-plus hours trying to extract the memo ID, the requestor's name and address, the video ID, the length of the video requested, a calculation of how many hours there are of video and the final quote of the total cost to retrieve the video.

Neither Legislators, nor the public, have the time, staff or resources to interpret this type of formatting across all law-enforcement agencies in numerous jurisdictions. I would, therefore, respectfully ask the Senate to consider a friendly amendment to this legislation due to the challenges I have seen firsthand working with Metro's data. This amendment request is small and applies to section 9(b)(2)(III). I am asking you to ... (unintelligible statement) ... and ask how the data is distributed to requestors and in what format. It is in the best interest of the Legislature.

ROBIN REEDY (Executive Director, National Alliance on Mental Illness):

The National Alliance on Mental Illness (NAMI) and the Nevada Policy Advocacy Committee wish to register their support for the passage of Assembly Bill No. 3. We recommend law-enforcement agencies throughout the State for both the Crisis Intervention Team and the Mobile Outreach Safety Team. Peace officers frequently engage with individuals whose mental illness may not be apparent to these officers. These individuals are in particular need of the protective measures and accountability contained in Assembly Bill No. 3.

Section 4, subsections 2 and 3, require arresting officers to pay particular attention to the possibility that an individual placed in custody may be in distress, including having difficulty to breathe. Such a person may be an individual with mental illness. The distress they are experiencing is of a psychological nature, manifesting panic, or an inability to follow directives from the arresting officer. In such a case, when the officer is required to ensure medical aid is rendered as soon as possible, NAMI underscores the need to be inclusive of psychological aid as well.

HOLLY RAMELLA:

I am from Senate District 11 calling in support of Assembly Bill No. 3. While this bill does not truly address the systemic racism in police violence, it is a necessary first step. Law enforcement continues to receive increases in funding and training with little to show for it. Assembly Bill No. 3 starts the process of giving the community the ability to hold police officers accountable.

I hear law enforcement agreeing with this bill. It is important to remind everyone that when the southern Nevada community peacefully protested, and continues to protest to demand accountability, we were met by the police with tear gas and escalation tactics. I have been a victim advocate in Las Vegas for six years and know what de-escalation looks like, and that was not it.

We are paying law enforcement to protect and serve. We should be able to demand the dismissal of chokeholds and demand the ability to hold officers accountable without fear of retaliation and more violence.

As the Senator from District 1 brought up, not having a specific definition for "reasonable fear for their life" being threatened is a huge issue. The lack of this definition will allow racist officers to claim fear based on racism. We know that bias exists and impacts the way officers view specifically black people as a threat. Without a clear definition, the State will continue to

sanction the murder of black lives. Black lives matter, and I support Assembly Bill No. 3, as a start.

MARLENE LOCKARD (Nevada Women's Lobby, Service Employees International Union Local No. 1107):

As part of our Union's commitment for justice in Black communities with an unequivocal declaration that black lives matter, we are asking you to approve Assembly Bill No. 3, as a beginning, to rewrite the rules so communities of every color can thrive. As a labor union, we support our law-enforcement officers having union rights.

I also represent the Nevada Women's Lobby. As part of our mission, we believe all lives are inherently valuable and worthy of respect and dignity. We actively work to remove barriers of race, class, age, gender, religion, physical ability, sexual orientation, gender identity and expression. The Women's Lobby requests your support for Assembly Bill No. 3.

STELLA KURR:

I strongly support this bill and believe it is a good step forward. I love there is a requirement for good cops to act and intervene. Maybe if we would have had this bill in the past, the good cops would have helped Byron Williams when he said he could not breathe, instead of turning off their bodycams.

I hope more will be done to remove systematic racism in law enforcement. It has become blatantly obvious after our sheriffs told people not to call 911 when they said they would support the Black Lives Matter movement. I hope you vote for this bill and try to bring peace to our State.

DAVID BURNS (Deputy Chief, City of Henderson Police Department):

On behalf of Chief Thedrick Andres and the Henderson Police Department, we support Assembly Bill No. 3 and have submitted additional comments online. We want to thank the Assemblyman from District 9 and the Las Vegas Police Department for the work on this bill.

GARY PECK:

I want to commend the Assemblyman from District 9 and the Assembly for the way this bill has been handled. He has listened to the community, took their input, and we had a chance to review the language. The bill is not perfect, but it is an important step in the direction of long-needed police reform. We hope this will usher in robust reforms moving forward.

I unambiguously support the bill, but I have concerns about the language in the intervene-and-report provisions requiring officers who witness excessive force incidents to report those up the chain of command. The language is not precise and is vague. It is not clear if there is any requirement to make any verbal report. If there is one, it is not due for ten days, just like the written report. A verbal report should be required by the end of the shift when the incident is witnessed. The written report should be required within 24 to 48 hours, otherwise, supervisors in the department might be left in the dark about what is happening.

As for data collection, I appreciate the fact this matter is finally being taken seriously. Twenty years after the last data collection, an analysis was conducted pursuant to a bill Wendell Williams ... (unintelligible statement) ... pushed through the Legislature. This is considered a best practice by the police executives, research forums and well-respected police professionals. It requires officers to keep records. We are taking the first step toward doing what needs to be done, regular collection of data reported by officers when making vehicular and pedestrian stops. This is the only way to know what is happening with respect to biased-based policing, period, hard stop. If you do not measure it, you cannot evaluate it.

I appreciate the fact you are taking this matter up again. It is profoundly important, and it has been needed for over 20 years.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):

I want to encourage you to support and vote "yes" on Assembly Bill No. 3. Nevada Attorneys for Criminal Justice support Assembly Bill No. 3. We believe the bill could do more. It is not perfect, but it is an important first step. I applaud the Assemblyman from District 9 who is working with the community and the Las Vegas Metropolitan Police Department in advancing this bill forward today. The time is now, and now is the time for you as the Legislative Body to

be bold and enact this essential first step. Although it could do more, we wholeheartedly support Assembly Bill No. 3 and ask for your support as well.

SENATOR CANNIZZARO:

We will now open the hearing to those in opposition of Assembly Bill No. 3.

BRANDON CASSINELLI:

I am both a police officer for the City of Reno and a Marriage and Family Therapist intern. Additionally, I have been a mental health and suicide negotiator for the preceding ten years and have taken part in the advancement of community mental-health initiatives throughout my entire career.

Forgive my frankness and frustration when I tell you with confidence, I have personally saved more minority lives than probably all of the callers in support of Assembly Bill No. 3 combined. Throughout the testimony on Assembly Bill No. 3 and Senate Bill No. 2, all we have heard from those in opposition to the rights of peace officers and the supporters of putting limitations on the police are anecdotal reports of individuals who are personally upset with the outcome of an encounter with law enforcement. I will never reduce my respect for human life to invalidating the personal and emotional toll that takes place when someone's life is lost.

Do we not see the irony in the insistence of a universal reporting of goodness, innocence and noninvolvement in the circumstances that led to the harm or death of any of these individuals in the State of Nevada, alongside the constant vilification of all peace officers statewide? No amount of testimony by any egregious family member or social justice advocate will convince me that my life does not matter, none. This is prejudice in its purest form.

Credence has been insisted upon from individuals who suffered the loss of their brothers, sisters, sons, daughters, fathers and mothers. For their grief, I sympathize. This does not mean I am out-and-out setting sights on minorities, with murder in my heart, every time I dress for work. Nor does it mean a use-of-force option, that has saved my life as a patrol officer, should be stripped from us, all on a whim due to media footage from another state.

STEVE GRAMMAS (President, Las Vegas Police Protective Association):

I represent over 3,500 commissioned officers between the Las Vegas Metropolitan Police Department and the City of Las Vegas. I am a proud member of the Public Safety Alliance of Nevada.

Contrary to my counterparts in the Nevada Police unit, I am in opposition to parts of Assembly Bill No. 3, specifically regarding section 4 relating to the banning of chokeholds and carotid restraints. Not one subject who passes away in police custody, passes away solely from the carotid restraint. There is usually another underlying health issue or narcotics history. They have an enlarged heart or a damaged heart due to narcotics use. A stimulant is usually on board, and that has a tendency to speed up a heartrate and aid in death. The statement a carotid restraint was the sole reason people pass away is misleading at best.

The truth is, across the Country, and potentially right now on television on a live UFC event, someone is going to be put into a carotid restraint, put to sleep and come back without any issues. Why is this? Those people do not have the above-listed issues happening inside of their body. By taking away this tool, other tools far more damaging to a human being will inevitably be used.

In section 4, subsection 2, we want everyone to understand the term "custody." Custody does not mean just in handcuffs. It means a subject who is not free to leave. Even subjects in handcuffs can be actively resistant and fight while detained. I hope the intent of this subsection is meant to capture when a subject is in custody, regardless if the subject is handcuffed or not, and is compliant, shall not be placed in a position of applied force that obstructs the airway of his or her breathing. We want to see an amendment added to capture this topic.

RON DREHER:

I appear in front of you on behalf of my role as a 26-plus-years retired officer, Major Crimes detective and representative of the Reno Police Department. As with the Public Safety Alliance and Steve Grammas, I support his comments and ask you to consider them. Please do not paint

the professional peace officers of Nevada with the same brush as those involved in what occurred in Minneapolis.

We oppose Assembly Bill No. 3. It will handcuff our professional peace officers and have unintended consequences for our officers. This legislation, in my opinion, is antipolice and in favor of criminals. Based on my many years of experience and experience working with officer-involved shootings as a detective and a labor representative, deadly-force issues and horrific murder scenes, like that of Sergeant George Sullivan who was brutally stomped to death in 1998, this legislation will tie our officers' hands. This legislation will result in officers not having the authority to do their jobs.

Our professional peace officers are not racists. We are not criminals. We do not wake up in the morning and say "I am going to kill a black, brown, red, yellow or white person because I hate them." We need to have the ability to do our job. This bill restricts our right to protect and serve. We are the first responders who protect and serve. We protect our victims and all of you because all lives matter to us. Other than the military, we are the only profession required to carry a weapon when we work. I ask you to ride along with a police officer, see what we do. There are 123 officers' names on the Memorial between your place and the Governor's Mansion. Please look at that and remember them. Please oppose Assembly Bill No. 3 and put this off until the 2021 Session

SERGEANT TROYCE KRUMME (Vice-Chairman, Las Vegas Police Managers and Supervisors Association).

We represent the Sergeants, Lieutenants and Captains of the Las Vegas Metropolitan Police Department, and the proud members of the Public Safety Alliance of Nevada. I want to give credit to the lawmakers for taking up this difficult topic. They have done admirable work. This bill has merit, but I must oppose Assembly Bill No. 3 based on a specific troublesome part. In section 4, subsection 2, the bill includes a "pin part," a portion of what should be done and what is not allowed when a person is in police custody. This law should properly define what "custody" means. It does not mean in handcuffs. It was pointed out earlier there were gray areas in parts of this law. We should not have gray areas in our law. The United States Supreme Court and the 9th Circuit Court outlines in law what custody means. I implore this Body to look at those definitions and add an amendment to outline those portions within this law.

KAREN ENGLAND:

I am in opposition to Assembly Bill No. 3. First of all, this is not COVID-related. It is disingenuous and arrogant of you to bring this up. The people are who you work for, and to do this under an emergency order is ridiculous.

I stand with patrol and police officers. It is easy for you all to say "black lives matter." I do not know how many of you have done what my husband has done for the last three years, and that is to support a black, University of Nevada, Reno student from Detroit who was in a car accident and has no family. We, as a white couple, have supported this student. It is such hypocrisy.

I want to call out the Democrats. You can say black lives matter. You can wear pins, but until you invest your money, time and emotions into black lives, they do not matter to you. Do you know what the unintended consequences are going to be? They are going to be people like me, when a crime is being committed and I try to call the police, or, like they have said, they cannot subdue someone who is trying to attack me.

I cannot believe that Nevada, of all states, would want to follow what California is doing. I am ashamed. My husband was born in Nevada and raised Battle Born. It is embarrassing you are all doing this tonight.

YVETTE WILLIAMS (Chair, Clark County Black Caucus):

I ask you to read our official public comment in the Clark County Black Caucus (CCBC) letter sent via email earlier today for a more complete perspective.

Although we understand the time limitations of this Special Session, CCBC believes Assembly Bill No. 3 does not rise to the same level of community protest and expressing their outrage in the streets of Nevada against the system of historical racism and lack of justice in Nevada's law-enforcement system. This bill falls far short of the Black community's

expectations, especially considering the passionate press conference of Governor Sisolak's commitment to address police reform less than two months ago.

We, however, take the position that any small step toward a just system is a step in the right direction. We are neutral on Assembly Bill No. 3. We support what is currently defined and do not oppose its passing. We hope you follow up with a bolder policy reform during the regular Session to ensure the rights of every Nevadan are protected. We are all depending on each of you.

CLARK COUNTY BLACK CAUCUS

August 1, 2020

MAJORITY LEADER CANNIZZARO AND MEMBERS OF THE NEVADA SENATE

RE: AB3 Public Comment

DEAR MAJORITY LEADER CANNIZZARO AND MEMBERS OF THE SENATE,

With the introduction of AB3, we can all acknowledge the systemic racism that infects our justice system in Nevada. We appreciate the efforts of AB3 but believe it does not go far enough and would like to respectfully make the following recommendations for the committee's consideration, in hopes that if they cannot be addressed during this special session, that more reforms that dig deep into the root of the problems will be addressed during the upcoming 2021 Session.

1. Officers using chokeholds and ignore the prohibition, should be put on immediate suspension without pay pending an internal affairs investigation. Departments must provide an escalated discipline process that results in termination or prosecution. Anything less does not go far enough in addressing this problem and reasonable consequences.

2. Amend reporting by intervening peace officer from 10 days to 48 hours in writing and offer more protections of that officer against potential discipline. There should be NO reason why an officer of the law does not intervene and maintain the appropriate climate of justice and protection of all citizens regardless of race.

3. Convene a Justice Commission through the Attorney General's Office to provide oversight and accountability to law enforcement that protect the rights of Nevadans.

4. Data Collection – Require medical facilities providing care to victims of police violence (in custody or not) be required reporting to the proposed Justice Commission (see above). We believe police violence should be treated as a public health issue.

5. Qualified Immunity – Law enforcement must be held accountable for their actions.

6. Public access to body cam footage should be made available to the public at no cost, as publicly supported agencies.

Finally, we believe there was a very big missed opportunity for more justice and community based policing. We realize time is extremely limited during a special session. However, we recommend that the provisions introduced in the 2019 session by Assemblyman Ozzie Fumo's (AB292) be reconsidered by Committee, regarding criminal procedures that address qualified immunity, law enforcement misconduct, data collection, public access, etc.

In closing, we recognize that this is a very difficult task before you, and ask that the decisions you make are through a lens of racial equality and justice, and mindful to the commitments made to the Black community leading up to this special session.

Respectfully,

YVETTE WILLIAMS

Caucus Chair

MARCOS LOPEZ (Community Engagement Director, Americans for Prosperity Nevada):

We love what is in Assembly Bill No. 3. What is holding us back from full endorsement is the full chokehold ban and a concern there is a lack of accommodation in testing for the legal presence of drugs in post officer-involved shootings. There is other language we feel needs to be clarified.

When it comes to the chokehold ban, we favor police using de-escalation tactics in any situation. We believe chokeholds should be available to officers as a tool, but only when deadly force has already been authorized. It is the choice between pulling the trigger and going into the chokehold. In that situation, we believe if it is possible to go into the chokehold, as opposed to pulling the trigger, officers should be allowed to do so.

We cannot support post officer-involved drug and alcohol testing in its current form. There should be clear language to distinguish between the mere presence of a controlled substance, such as marijuana that stays in the system well after impairment, and prescription drugs, which may be legally obtained and used for medical reasons.

In section 2, the language for "reasonable force" needs to be clearly defined. In section 5, the use of "unjustified physical force" before an intervention occurs needs to be clearly defined.

When it comes to traffic stop reporting, we believe this is a positive step forward, but we want specific requirements about the circumstances and demographic information collected and whether contraband was recovered, to give us a better picture of potentially disproportionate enforcement.

Other than that, the retroactive application of Senate Bill 236 of the 80th Session, we support the right to record. These are all wonderful things. Only those caveats and nuances are keeping us from fully supporting this legislation. The intent is the only reason we are not opposed and agree these reforms should be made. We are moving in the right direction.

BRIAN GREEN:

I am a resident of Senate District 14. As someone who had an Elko County School District Officer put me in a chokehold for skateboarding at the age of 15, I cannot, support Assembly Bill No. 3. It is not comprehensive enough.

Banning chokeholds, implementing drug tests and the duty to intervene are all good things to implement, but it does not go far enough. After watching the video of the murder of Miciah Lee, the officer sounded excited he could use his gun and not attempt to de-escalate.

Police should not be responding to people in a mental-health crisis. There is no amount of training to change the culture of police officers. An incremental change is not the way to go about changing systemic abuse some officers use on a daily basis while being public servants.

SENATOR CANNIZZARO:

We will now open the hearing to those neutral to Assembly Bill No. 3.

VERA MILLER:

I am neutral on Assembly Bill No. 3. I agree unequivocally with the people before me who said this bill is not enough. Banning chokeholds without a liability component does nothing. More needs to be done. Funding for police needs to be cut, reduced and redistributed into the community. The notion police increase public-safety needs to be challenged. I agree with the earlier comment that police brutality is a local issue, a systemic issue that detrimentally affects Nevadans and our Black community members. If you cannot be an officer and interact with a community member and be stressed about killing them, you should not be an officer.

JAMIE STETSON:

I stand neutral on Assembly Bill No. 3 and agree with the two previous callers. This bill does not go far enough. There needs to be more our Legislators do in terms of redistributing funds to the mental-health field. I work in the mental-health field and have watched the video murder of Miciah Lee and other videos with law enforcement in our local community behaving poorly. This disappoints me and leaves me feeling concerned about how officers are trained in de-escalation. This is an improper use of funds that could be better used by crisis and mental-health workers within schools and within the rest of our community to serve these needs.

MARISOL MONTOYA:

I am a constituent, and I was not able to get into the queue earlier. I am calling in support of Assembly Bill No. 3. Use of chokeholds needs to be banned and a clear matrix for use of force adopted. It is vital for the integrity of the justice system that officers immediately drug and alcohol test after a use-of-force incident. Victims of police violence need medical aid prioritized. At the bare minimum, the public should have unhindered access to accurate, regular collection of data about police stops. To ensure the safety of the community, mandatory intervention training to train officers to intervene if they perceive the use of excessive force by fellow officers is necessary.

Good people need to be empowered to act, however, a clear definition of "fear for life" is necessary. Assembly Bill No. 3 is a beginning, but a full repeal of Senate Bill 242 of the 80th Session is necessary for meaningful change in the community.

DESIREE SMITH:

I represent our youth, especially black youth. I support Assembly Bill No. 3. COVID is happening, but is it crazy we risk our lives going out to protest for our lives? I will continue to go out to protest and fight for my rights and the rights of my family and friends even if I am tear gassed and potentially in harm's way, such as Jorge Gomez.

It is not a crime to be black. If COVID bothers you more than systemic racism, which has been happening for years, you are the problem we are talking about. If you are embarrassed to live in Nevada and protest to pass necessary bills, you are exactly what we are talking about. Just like you told minorities to go back to their country, you can leave Nevada.

I have witnessed minimal steps toward change. This is the least we can do to start to have a police culture with more accountability and transparency. As far as racism, we need more, a ban of all chokeholds no matter how you categorize the chokehold. This is what ultimately killed Tashii Brown. We need to make it a mandatory duty for other officers to intervene when using excessive force, such as in the George Floyd incident that took place in Minneapolis. It has been said victims were intoxicated prior to their death, but we have never wanted to drug test police officers to see if impaired judgement was the reason they used excessive force on the victim.

Please consider our testimony in support of Assembly Bill No. 3. We have more work to do, but this can be a start. These police brutality victims are just not a trend. They are more than a hashtag. They are human beings and deserve justice. Black lives matter every day, not just right now.

ELENA VELAPAZ:

Saying this bill has nothing to do with the global pandemic is foolish. Historically, it has been proven there is an unfortunate impasse on communities of color when it comes to policing. To be desensitized to the lives lost due to abuse of power is to be ignorant. Not only is it biased to have police investigate themselves but also ineffective. We need to look into alternative ways for community safety. Policing issues are involved with all aspects of our community including health, homeless folks, people of color, sexual abuse cases and more. Although police reform is important for many of our targeted communities, it is also important to find effective alternatives for our future.

I want everyone in this meeting to ask themselves why the presence of jails, policing and prisons are "demented" in our society. Why do we accept this and remove ourselves from the real impact it has caused the communities of color? I, myself, have witnessed this. I have seen my father go through this process, with clear, psychological damage throughout the years. These institutions are not built for restorative purposes, but rather for punitive reasons. Not only does this punishment cause psychological torture for men and women in these institutions but also for their families who do not have the resources to obtain mental-health services. In the end, the only individuals who benefit are those in power who directly benefit from civil labor and continuous federal grants that have never been reflected in certain conditions. I want to remind everyone these certain conditions have worsened during the global pandemic and continue to affect certain populations, the majority being Black, Latino and Native American.

SHYLA SUMMERS:

I am calling in a neutral position to Assembly Bill No. 3. It is important to ban chokeholds. The bill is not comprehensive enough to protect citizens. We are at the point where citizens need protections from police; they are overzealous. They use force at every turn they can get. There is no telling why an officer may say he is at risk for his life. I do not believe banning chokeholds will result in police officers dying. You could get kicked in the groin or in the leg, which is too bad. Officers need to wear pads or a cup. We have people dying. They are not even shot, and they are killed just by following force from these officers. That is not right. If there is a ban on one type of force, the police will find another way. There is no liability or remorse.

We need comprehensive plans on how to deal with rapid corruption and brutality from the police force that is supposed to protect us.

MADELEINE WILLIAMS:

I support Assembly Bill No. 3 but concur with other callers saying this is a small first step in a long journey. Nevada has a problem with police brutality, especially where mental health is concerned. Anyone who refers to a prison or jail as a mental-health option is misinformed, to say the least. According to the Reno Gazette Journal, 2015-2017 in-custody deaths were up 600 percent. This included three police-restrained homicides, six suicides, two accidents and two natural deaths, acknowledging the natural deaths were under a Coroner's report. Some say Thomas Purdy, Jr.'s death was an accident or would have happened anyway. He was hogtied and restrained for six hours. He told nurses he could not breathe. He still died. The Reno government offered a settlement to the family, but that does not make him any more alive, nor does it make his death any less preventable. It could have been prevented.

Justin Thompson was having a mental-health episode and needed assistance. According to the police, he died because he was resisting. There is no justification for a person's death if they are having a mental-health episode and ... (unintelligible statement) ... with fingers in an aggressive action. Police attitudes toward mental-health cases tend to be overly aggressive. There are other cases of them hogtying ... (unintelligible statement) ... or attacking other people. The behavior of the Reno and Nevada police is unacceptable, and it needs to be changed. This system is untenable and does nothing for our communities. You have a responsibility to do something about it.

Senator Brooks moved to do pass Assembly Bill No. 3.

Senator Cancela seconded the motion.

Remarks by Senators Hansen and Pickard.

SENATOR HANSEN:

This has nothing to do with COVID or budget issues. After serving five terms on the Judiciary Committee, these type of bills surface frequently, and it takes a long time to work through them. This bill is being rushed, and we cannot amend it. This bill does not rise to the extraordinary requirements of our *Nevada Constitution* and does not belong in Special Session. Although I respect the Assemblyman from District 9 and believe this bill has merit, I will be voting "no."

SENATOR PICKARD:

The definition of "custody" described by Director Calloway is not the true definition of "custody." I believe we will see a problem with this. Since the next Legislative Session is only a few months away and this is something we can fix later, I will be supporting this bill.

Motion carried. Senator Hansen voted no.

On the motion of Senator Woodhouse, seconded by Senator Parks, the Committee did rise and report back to the Senate.

Senator Cannizzaro moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 8:34 p.m.

SENATE IN SESSION

At 8:36 p.m.

President Marshall presiding.

Quorum present.

REPORTS OF COMMITTEE

Madam President:

Your Committee of the Whole, to which was referred Assembly Bill No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

NICOLE J. CANNIZZARO, *Chair*

Senator Cannizzaro moved that the Senate adjourn until Sunday, August 2, 2020, at 9:00 a.m.

Motion carried.

Senate adjourned at 8:38 p.m.

Approved:

KATE MARSHALL
President of the Senate

Attest: CLAIRE J. CLIFT

Secretary of the Senate