MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
May 26, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 4:05 p.m. on Thursday, May 26, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblywoman Debbie Smith, Assembly District No. 30

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bryan Fernley-Gonzalez, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Bridgette Zunino-Denison, Bring Bri Justice Foundation
Lauren Denison, Bring Bri Justice Foundation
Elliott Sattler, Washoe County District Attorney's Office
Jayann Sepich
Ken Lightfoot, Chair, Board of Directors, Secret Witness of Northern Nevada
Tim Kuzanek, Captain, Governmental Affairs, Washoe County Sheriff's Office

Renee Romero, Director, Forensic Science Division, Washoe County Sheriff's Office
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Michelle R. Jotz, Detective, Las Vegas Police Protective Association Metro, Inc.; Southern Nevada Conference of Police and Sheriffs
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Lisa Rasmussen, Nevada Attorneys for Criminal Justice
Juanita Clark, Charleston Neighborhood Preservation
Janine Hansen, Nevada Eagle Forum
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Tonja Brown
Florence Jones

CHAIR WIENER:
I will open the hearing on Assembly Bill (A.B.) 552.

ASSEMBLY BILL 552 (2nd Reprint): Revises provisions related to the collection of biological specimens for genetic marker analysis. (BDR 14-539)

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):
This bill is one of the more important issues I have been involved with this Session. The bill relates to DNA collection from persons arrested for felonies and other sexual crimes. This bill was amended on the Assembly Floor today to correct a couple of provisions. I will advise you of those corrections so when you receive the bill, you will be aware of them.

Under Nevada law, defendants convicted of a felony, or certain other specified offenses, must provide DNA samples for analysis and storage. Persons may not share or disclose certain information regarding another person's DNA as shown in my presentation (Exhibit C), page 2. Violators will be guilty of a gross misdemeanor and may be in prison for up to one year and/or fined $2,500. Assembly Bill 552 gives broader collection authority and increases the penalty for information misuse, Exhibit C, page 3. That is an important provision. We want to ensure people know there are serious consequences if they break the law regarding the way DNA information is used.

Assembly Bill 552 requires the arresting law enforcement agency to collect an arrestee's DNA by cheek swab upon arrest for a felony or sexual offense. Felony arrestee DNA will be analyzed, and genetic profile information will be entered into the Combined DNA Index System (CODIS) operated by the Federal Bureau of Investigation (FBI). Misdemeanor offender DNA will be held in a separate storage area until conviction or acquittal. That is an important piece of this. We want to ensure people arrested for misdemeanors, if they are sexual offenses, are included in this legislation. It is a two-tiered situation where that information is not entered until they are actually convicted.

The DNA taken from misdemeanor sexual offenders will not be analyzed or entered into CODIS until a conviction or guilty plea is obtained. A court will determine whether misdemeanor lewdness or indecent exposure offenses warrant DNA collection, Exhibit C, page 3. People arrested for misdemeanor sexual offenses are not at the same level as other offenses that warrant the same level of concern about what it may lead to in the future. The court has the opportunity in those cases to make that decision. When a person is arrested without a warrant, DNA collection will not be submitted for analysis until a court determines probable cause existed for the arrest.

Assembly Bill 552 increases the penalty from a misdemeanor to a felony with potential additional imprisonment for unauthorized sharing or disclosure of another person's DNA information.

A person whose DNA profile has been included in the data bank may request expungement of the records from CODIS. The request for expungement may be made if the conviction upon which the DNA collection was based was reversed and the case was dismissed. It may be requested if no charges from the arrest are filed within ten years after the arrest or the arrest on which the DNA collection was based has been resolved by dismissal, nolle prosequi, successful completion of a preprosecution diversion program, a conditional discharge or acquittal. The Central Repository for Nevada Records of Criminal History, Records and Technology Division, Department of Public Safety, must request expungement within 90 days after receipt of a valid request.

The more difficult challenge to deal with regarding the DNA issue was the funding. Funding is a big issue right now. We included a provision allowing counties to apply for and accept grants and donations for the costs associated with DNA analysis. For each person convicted of a misdemeanor, gross

misdemeanor or felony, the bill requires an administrative assessment of $2.50 in addition to the fees or fines already imposed to defray the cost of DNA collection and analysis. We originally required so much per $10 of fees or fines, but the court asked for a flat amount. The court has asked us to round the amount up or down to an even amount. Dealing with 50 cents is harder for the courts. I am happy to amend that language to a flat amount of either $2 or $3 so it is easier for the court to collect the assessment.

Today on the Assembly Floor, we amended the language in the bill back to a cheek swab. The bill had been changed so the specimen could be taken through a blood draw. A cheek swab is less invasive and less onerous.

There was a second piece of the amendment. We went back to the same rules being applicable if a person is eligible to request expungement. There is one more change regarding the CODIS system. If a specimen was taken and placed into CODIS by mistake, a good faith effort must be made to comply with all the same laws pertaining to the removal of that information from CODIS. If the specimen is not adequate or not usable, this bill allows law enforcement to request another specimen if all the other rules are met in the beginning for that arrestee.

CHAIR WIENER:
If a person is eligible to request expungement, we cannot take another specimen. Is that correct?

ASSEMBLYWOMAN SMITH:
If a person is still in the system and you are eligible to get another specimen from that person, you may do so. If that person is not eligible for a second specimen because of the other criteria, you cannot get another sample from him or her.

CHAIR WIENER:
You talked about rounding the $2.50 assessment up or down based on the request of those who would collect this flat fee. Do you have an estimate of how much money would be raised? Would it cover the costs?

ASSEMBLYWOMAN SMITH:
This program will not be effective until money is accumulated to begin running DNA samples. I am content to start with $2 if that is what we want to do. The

fees will accumulate until there is enough money, or through gifts and grants, to start running the DNA. This is a tenuous situation when you add to court assessments.

CHAIR WIENER:
Once the seed money is there, do you anticipate this would be able to sustain itself?

ASSEMBLYWOMAN SMITH:
If you look at the number of arrests and the fines associated with that, we should be able to sustain it once it is up and running.

I brought this bill forward after the death of Brianna Denison. I have worked with the Denison family to bring this legislation. When law enforcement was looking for the person who killed Brianna, there was a backlog of DNA. There was not sufficient money to run the DNA samples. Many people donated money to help fund running and checking the backlogged DNA. This is a perfect example of how tragic it was that there were possibilities, but law enforcement could not run those samples because there was no funding. I hope we can move this legislation and begin raising money to adequately take care of scientific evidence we collect. I look forward to accomplishing that in this State.

Jayann Sepich lost her daughter and has done extraordinary work all over the Country. She is a wealth of information about DNA and the significant part it plays in finding bad people and exonerating innocent people. Releasing innocent people from prison because of DNA is another benefit to this legislation. Thirty states this year may have completed this legislation.

BRIDGETTE ZUNINO-DENISON (Bring Bri Justice Foundation):
I am Brianna Denison's mom. Three years ago, my biggest fear while raising my children came true. While Brianna was home from college on winter break, her sweet life was taken from us. The impact this has had on my family, her friends and me is everything you could have imagined as a parent and so much more.

You have all experienced your child, a friend or spouse being missing for a couple of hours. Your mind begins to wander to horrible thoughts. You feel a tremendous sense of relief when you realize they are safe. That relief never came for me. The fear only grew. For a month, all I felt was overwhelming pain and panic. Was she hurt? Was she cold or hungry? Was she alive? Then, we

found out the truth, and I realized both that I had lost my baby girl forever and that she had died afraid and suffering.

My son, Brighton, not only lost a sister, he lost his only sibling and the family unit the three of us had created together. After the death of my husband, my children's father, our lives changed drastically. We were faced with the challenge of no longer having a traditional family. Together with my parents and my brother, we set out to raise my children the best way we could. Consequently, Brianna and I were very close. Her leaving for college was challenging for me. I was much more emotionally dependent on her than I had realized. We made it work with phone calls, texting and seeing each other as often as possible. We were settling into being apart.

While I would never wish this on my worst enemy, it gives my family and me the unique perspective to speak on behalf of many today. Assembly Bill 552, Brianna's Law, allows DNA to be taken upon felony arrest. This law would allow law enforcement to take a cheek swab at the time of arrest when fingerprints and mug shots are taken. The law states DNA can be taken upon conviction, which is months or even years after the crime has been committed. Many times a criminal is released on bail and is free to commit other crimes until conviction for the first felony. Then, DNA can finally be taken, sent to CODIS and matched to other crimes.

The man who murdered my daughter was arrested in 1996 on a felony charge. If Brianna's Law had been in effect at the time, he would have been swabbed and his DNA put into CODIS. After his first reported rape in December 2007, they would have matched him to the prior crime, and his identity would have been known. Brianna was murdered in January 2008. If Brianna's Law had been in place, it is possible she would be alive today. There are countless stories of people who would likely be alive today had this law been in place.

Nevada has a U.S. Senator, Harry Reid, who is the Senate Majority Leader in Congress, and a promising new Governor, Brian Sandoval. It is time to come to the twenty-first century and continue to become a leading state by updating the protection of our citizens. We should get on board with the other 25 states that have passed this kind of law. If this law is not passed, we will see repeats of the same horrible crimes that could have been prevented. Let us take the spotlight off these murderers and rapists and turn it toward catching them sooner rather than later. How do we tell the next parents that the person who

just murdered their child is not in the database because that person could not be tested for past crimes?

LAUREN DENISON (Bring Bri Justice Foundation):
I am Brianna Denison's aunt. I am here in spite of the overwhelming grief and loss our families have suffered. There is no personal gain considering Brianna is gone. This bill is critical to protecting future victims and preventing violent crimes.

We are inspired and motivated by the love and support of this entire State. The importance of this bill may have originated because of Brianna, but it is now much bigger than she. This bill was inspired by her, but it will benefit our entire State. This is about improving our response to these violent crimes and providing law enforcement better tools to get offenders off the street sooner rather than later, which will make our communities safer.

We were amazed by the level of support we received from the day she disappeared. There were dedicated search volunteers and donations for the backlog that included children having penny drives at their elementary schools and larger corporation donors. People from all over the State have spoken through their actions. This is a powerful statement from the public reacting to the need for Brianna's Law.

Some have suggested it is our intention to have DNA taken upon birth. This is not true. Taking DNA upon felony arrest at the time of a mug shot and fingerprints makes the most sense. For the past two years, we have worked with the Attorney General, law enforcement and crime laboratories to craft a well-thought-out bill that addresses concerns of many areas. I urge you to see the need for this legislation and be aware of the lives it will save.

ELLIOTT SATTLER (Washoe County District Attorney's Office):
I prosecuted James Michael Biela for murdering Brianna Denison and the sexual assaults he committed against two other young women in our community. I know the importance of this issue. I would like the Committee to keep in mind that one of the main things this legislation will do is help law enforcement identify those people who may have committed crimes before they are released. In *United States v. Pool,* 621 F.3d 1213 (9th Cir. 2010), one of the main issues addressed was once the defendant is arrested and probable cause has been found, the defendant does not have a right to hide from previous crimes the

defendant has committed. Often, DNA samples will have been collected, and we do not know to whom they belong. That was the case with Mr. Biela.

If a perpetrator left DNA at a crime scene, we would be able to run that against CODIS once that perpetrator is arrested. We would be able to discover whether there are outstanding crimes this defendant has committed. A court would want to take that into consideration before releasing a person on bail or before setting the amount of bail. For these reasons, it is important to pass this legislation.

I will talk about some of the cases the opponents to this bill will address. I was amazed at the hearing in the Assembly Committee on Judiciary about some of the representations made regarding cases out there and the propositions for which those cases stand.

As a prosecutor, I take an oath to support and defend the U.S. Constitution. I have no doubt this law will be upheld against any constitutional challenge. The United States Court of Appeals for the Ninth Circuit oversees Nevada, California, Oregon and a number of other states. In *Pool,* the Ninth Circuit said a federal law, almost identical to the bill before us today, is constitutional. People have said we should wait and see if that case goes to the United States Supreme Court. I see no reason to wait. The court controlling this jurisdiction on Fourth Amendment of the United States Constitution issues has said this law is appropriate.

Friedman v. Boucher, 568 F.3d 1119 (9th Cir. 2009) is a Nevada case. The Ninth Circuit said the collection of an offender's DNA was inappropriate. The court said that because there was no law in place authorizing it. We are trying to overcome that hurdle. In *Pool,* it is clear the court made the distinction because there was a federal law in place, and in *Friedman* because there was not a State law in place.

We are asking this body and the Assembly to enact a law allowing Nevada to be the twenty-sixth or twenty-seventh state with this kind of law. Federal law was decided by a district court judge, *United States v. Mitchell,* 681 F. Supp. 2d 597 (W.D. Pa. 2009). If someone argues we should consider *Mitchell,* this would allow one district court judge—a trial judge in Pennsylvania—to say the Ninth Circuit, the controlling court in Nevada, is not appropriate. That would be inappropriate.

I understand there is an amendment (Exhibit D) proposing to include "Nolan's Law" in A.B. 552. That law has nothing to do with what we are talking about today. As I read the proposed amendment, it would confuse the issue. I ask that you not consider Nolan's Law or amend the bill in any way.

JAYANN SEPICH:
August 31, 2003, was Sunday of Labor Day weekend. My family woke up to a beautiful day. We were planning a backyard barbeque. Our house was full of out-of-town guests and family, and other family members were on their way over. At 2:15 that afternoon, the phone rang, and our lives were shattered with just six words, "Have you spoken to Katie today?" I provided you with a handout (Exhibit E). Katie was our incredible first-born daughter. She was 22 years old. She was vivacious, outspoken, joyful and loving. She was pursuing her master's degree in business administration. Her roommate was on the phone saying no one could find her. She had gone to a friend's house the night before, and she and her boyfriend had gotten into an argument. She decided to walk home, which was approximately five blocks away in a safe neighborhood. No one had seen her since.

Her roommate explained to us they had called all her friends. They had called the hospitals, and there was no sign of Katie. A few agonizing hours later, our worst fears were realized. When Tracy reported Katie missing to the police, they realized the body that target shooters had found in an old city dump—the body of a woman who had been severely beaten, raped, sodomized and set on fire—was our Katie.

It has been almost eight years since that day, and I still do not have words to describe the agonizing pain. I still cannot explain to you what happened to our family. We were plunged into a pit so deep, so dark and black we thought there would be no joy, smiles or laughter ever again.

After we buried our daughter, we turned our attention to finding out who could have done this. We needed justice, but more than anything, we wanted to stop this man from doing this to anyone else. The detective in charge of our daughter's case told us Katie had fought so hard for her life that the skin and blood of the man who had taken her life were underneath her fingernails. He explained that a DNA profile had been extracted from that skin and blood and uploaded into CODIS. I commented to Detective Jones this man was such a monster that surely he would be arrested for something else, and they would

swab his cheek and put his DNA into that database. We would know who did that to our daughter, and we would stop him from doing it again. Detective Jones told me that is not how it works. He said it is illegal to take DNA from someone when they have been arrested. We have to wait until we have a conviction.

I was stunned. I knew when people are arrested, their fingerprints and mug shots are taken. I could not understand why this was not being done because I understood the scientific power of DNA. At that point, all I knew of our criminal justice system was what I had seen on television. I started researching. I had to find out why we were not doing this. I found cases and case studies showing how lives could be saved if we did take DNA samples when a person is arrested. It is important to take DNA on arrest and not wait until conviction. When I discovered the lives that could be saved, I became passionate about this issue.

Chester Dewayne Turner lived in California. Over a period of 15 years, Turner was arrested 21 times without ever being convicted of a crime that would allow his DNA to be taken. At the end of that 15 years, he was finally convicted of rape, and law enforcement took his DNA. During that 15 years, he had raped and murdered 12 women. Two months after his first felony arrest, he raped and murdered the first woman. Any one of those 21 arrests would have stopped Turner from raping and murdering these women. I will read the names of those murdered women I furnished you, Exhibit E, page 7.

Turner has been convicted of raping and murdering these 12 women. Two of them were pregnant at the time Chester Turner killed them. Every one of these 12 women had a mother who had to bury her daughter. These are lives that could have been saved with a cheek swab.

To make matters worse, a man named David Jones was wrongfully convicted of two of these murders and served 11 years in prison. After Turner's DNA was matched to these 12 murders, David Jones was released from prison with the apology of the court. One cheek swab after the felony arrest could have saved 13 lives—I count those two babies—and prevented a man from spending 11 years wrongfully convicted and in prison.

A study commissioned by the City of Chicago followed eight convicted felons. Had their DNA been taken on their first felony arrests, 60 violent crimes,

including 53 rapes and murders, would have been prevented. A study prepared by the Office of the Governor of Maryland found 20 violent crimes that could have been prevented if DNA samples had been required upon arrest for just three individuals. In Colorado, the Denver District Attorney's Office released a study of 47 violent crimes that would have been prevented if DNA had been collected upon felony arrest for just five individuals.

After discovering these cases, our family went to the New Mexico Legislature in 2006. Katie's Law, New Mexico Statutes, Chapter 29, Article 3-10, was passed and requires that DNA be taken upon arrest for certain felony crimes. Katie's Law went into effect at midnight on January 1, 2007. One hour and 14 minutes later, at 1:14 a.m., the first felony arrestee was brought in, and his cheek was swabbed. It matched a double homicide. That man's name was James Musacco, and he has since been convicted of both of those murders.

Since then, New Mexico has had 197 matches in its arrestee database. One of those was about the rape and murder of an 11-year-old girl named Victoria Sandoval. She was raped and murdered in her own bed in her own home on Halloween night. Shortly after she was murdered, an 18-year-old neighborhood boy was questioned and arrested for her murder. He knew so much about the crime scene the authorities were convinced he had been there when she was murdered. His DNA did not match. He was jailed and held for two and a half years undergoing competency hearings. His name was Robert Gonzalez, and he was mentally challenged. Israel Diaz was arrested for burglary two and a half years after Mr. Gonzalez was jailed. Under Katie's Law, his cheek was swabbed, and his DNA matched that found at the rape and murder scene of the 11-year-old girl. The authorities investigated and discovered that Israel Diaz and Robert Gonzalez could not have known each other. Robert Gonzalez was released from jail after two and a half years.

Israel Diaz was less than 48 hours away from being deported because he was an illegal immigrant. The burglary charges were being dropped. If we had DNA upon conviction, they would not have gotten a swab from Israel Diaz. They would never have made that match. It is quite possible Robert Gonzalez would have been convicted for a crime he did not commit. One cheek swab found the murderer of an 11-year-old girl and released an innocent man from jail.

Arrestee DNA exonerates people. In New Mexico, three men who were arrested for rape and murder have been exonerated through arrestee DNA. This is as

important as finding the right people—finding those who are innocent and exonerating them.

The opponents of this bill will tell you that taking DNA upon arrest is a violation of civil liberties, an invasion of privacy. This is not true. Before I began working on this, I visited with genetic scientists who actually designed the CODIS system. I asked them if DNA should be taken upon arrest. Dr. Arthur Eisenberg, Chair of the Department of Forensic and Investigative Genetics, University of North Texas Health Sciences Center, said they designed the system to protect privacy.

We are not putting DNA into a database. We are putting a DNA profile into a database. There is a world of difference. The DNA strand has over 3 billion markers. One of those markers says I have blue eyes, and one says I have brown hair. Thirteen of these markers go into the DNA profile. These 13 markers were specifically chosen because they have no genetic information. Dr. Eisenberg asked if I knew what a 33 rpm record looked like. He told me when you look at that record, you can see the bands where there is music. When you put the needle down, that is where the music is played. You can also see the spaces in between the bands of music, where there is no information. The markers they have put into this database are markers with no genetic information. One marker does have information, and that is gender. He specifically wanted gender to be in the database.

The DNA profile in the database has no potential to disclose private medical or genetic information. It is important this is understood. Furthermore, Exhibit E, page 8 shows what is in the DNA profile. There is a lab identifier. The number 0012152 is a specimen identification. The numbers are the markers I talked about. Most markers have two numbers, and that is why there are more than 13 numbers.

We should notice what is not in here. There are no names or social security numbers. There is no identifying information whatsoever. When the crime scene data matches these markers exactly, the state is notified of a match. There is a specimen identification number and a case identification number. At the state level, the laboratory goes to a separate database to find out to whom that belongs. In other words, a separate database says specimen identification 0012152 equals a particular person. That only happens after a match is made. Then, the laboratory reanalyzes it to ensure no mistakes were made. Only then

can it notify law enforcement to use the DNA profile as an investigative lead. If it is determined that person will be prosecuted, a court orders another specimen from the person. It is reanalyzed, and that is what is used in court. It is a specific system that must be followed.

This DNA profile is mine, Exhibit E, page 8. I had my DNA profile analyzed. I could stand on the corner and hand it out to anyone who wanted it. It would not give them my social security number or my home address. There is no private information in here. There is no privacy violation.

It is a federal offense to tamper with CODIS, which is included in this bill. Since the inception of the DNA databases, there has never been a breach or misuse of the CODIS database.

Opponents say that taking DNA upon arrest violates the presumption of innocence. We take fingerprints. We take mug shots. More protections are included in the DNA system than in the fingerprint system. Fingerprints become part of the permanent arrest record. The DNA profile does not. The DNA profile only exists in the very bowels of that computer system and is only available to law enforcement after a match is made to crime scene DNA.

The federal government requires that states have a provision for expungement, or DNA profiles cannot be uploaded to the national database. The DNA profiles only exist on that national database and on the state database. These databases are offline, secured by FBI firewalls and security systems. Federal regulation requires that expungements be absolutely thorough and there are penalties for not doing so. The Office of the Inspector General of the United States Department of Justice conducts periodic and random audits to ensure these regulations are followed and that expungements are thorough. These audit reports are available for inspection online if you are interested.

While our family was fighting so hard for Katie's Law to be passed in New Mexico and around the Country, we got a startling phone call. This shows how important DNA upon arrest can be. My daughter was murdered August 31, 2003. Three months after she was murdered, Gabriel Avila was arrested in New Mexico for burglary. We did not have Katie's Law at that time, so they could not swab his cheek. Consequently, three and a half years after she was murdered, he was convicted of burglary, his DNA was taken, and a match was made. An investigation started after that match was made. My daughter's ring

was found in his truck. They found that the tires on his truck exactly matched the tire tracks left by her body. Faced with this evidence, Gabriel Avila confessed and pled guilty. He is serving 69 years without the possibility of parole. Had we had Katie's Law, he would have been identified three months after the murder rather than three and a half years. During that time, he was free and living in Mexico. Twelve murders very similar to my daughter's occurred in the town where he lived in Mexico during that same time. They do not take DNA in Mexico, and we do not know if he committed those murders. We will never know. However, we do know the power of arrestee DNA to identify these perpetrators sooner.

Courts have upheld arrestee DNA. The Virginia Supreme Court upheld its arrestee DNA statute in *Anderson v. Commonwealth,* 274 Va. 469; 650 S.E.2d 702 (2007). The Ninth Circuit has upheld arrestee DNA.

Opponents will tell you the European Court of Human Rights found that the British DNA law violates international law by taking DNA upon arrest. They are not telling the whole story. The European Court of Human Rights found that it is a violation of human rights to take DNA and fingerprints upon arrest without a provision for expungement if that person is found not guilty. Federal regulation requires us to have that provision for expungement. We are meeting those requirements.

Opponents say this bill is too expensive. In my daughter's case, had they identified her killer three months after she was murdered, over $200,000 in investigative costs would have been saved. That is the amount spent between the time they could have identified my daughter's killer and the time he was actually identified 3.5 years after she was murdered. It has been documented that over $200,000 of additional costs, not just regular salaries, were spent investigating my daughter's case alone. The state of New Mexico spends $225,000 per year for its whole arrestee DNA program.

A study was done under the auspices of the United States Department of Justice finding that for every $1 invested in DNA, taxpayers eventually save $90. It saves more money than it costs. There are costs of not taking DNA upon arrest. Those costs are lives. I remember these women who could have been saved. One cheek swab could have saved 13 lives. What are your children's lives worth? I can tell you what my daughter's life was worth to me. What about David Jones, who spent 11 years in prison wrongfully convicted?

What were those 11 years worth to him? Twenty-five states have passed similar legislation. The most recent was last week when Illinois passed its law. Congress has mandated that DNA be taken upon arrest for all federal crimes. The DNA is truth. Truth not only solves crimes, but prevents crimes and saves lives.

When states choose not to pass this law in the months and years to come, we will know the names of those who could have been saved. In Nevada, we know one of them, Brianna Denison. Her life probably could have been saved with this law. To me, that is a burden I am not willing to bear. If this law is passed, we will never know the lives that will be saved because those people will go on living. Their families will never have to experience the pain and suffering of burying a much loved child. To me, that is a tremendous blessing.

KEN LIGHTFOOT (Chair, Board of Directors, Secret Witness of Northern Nevada):
We have solved 34 murders with tips to our organization. We support this bill. From my 32 years in law enforcement, in working murder cases it is all soft money. You cannot put your finger on it, but this will save lots of time and money for your local governments and investigators who have to investigate these horrific crimes.

TIM KUZANEK (Captain, Governmental Affairs, Washoe County Sheriff's Office):
I support A.B. 552 for a number of reasons. Most law enforcement officers in northern Nevada have been affected by the Brianna Denison case. We are trying to move forward with a program we know works for us from an investigative perspective. Because of television, the public has come to expect a certain level of investigative process when we prosecute criminals. The public expects us to do a professional job and have the tools and ability to do that job. I ask this Committee to consider that in addressing this bill.

As it relates to DNA and the challenges of getting appropriate and strong public policy through the legislative process, we have worked together many times to find the right language and means to accomplish that goal. My goal is to find the right language and the right means to make this work for us as a community. Everything connected to this provides investigators with the ability to do the best possible job we can under extremely difficult circumstances.

I support this bill and ask you to support it.

RENEE ROMERO (Director, Forensic Science Division, Washoe County Sheriff's Office):
We support this bill.

CHUCK CALLAWAY (Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):
We support A.B. 552. We had suggestions regarding the policy aspect of this bill to help our laboratories because the Las Vegas Metropolitan Police Department (LVMPD) has the largest forensic laboratory in the State. Along with Washoe County, our laboratory collects DNA and processes evidence. It is important the language in the bill be functional for our agency. We are happy this version of the bill addresses the fiscal impact. In past legislative sessions, I had to testify in opposition to the bill because there was no method of funding. It would have been a hardship on our agency to have an unfunded mandate. I am happy to support this bill.

CHAIR WIENER:
Regarding your concerns for the logistics and laboratory work, please explain why you are okay with it now.

MR. CALLAWAY:
The $2.50 assessment fee in this bill would go a long way to cover the associated costs. We submitted a fiscal note on the bill, and we hope that funding mechanism will adequately support the cost involved.

CHAIR WIENER:
It was about the funding, not something logistical about the use of the laboratories or the processing.

MR. CALLAWAY:
Yes. It was the costs of equipment for taking samples, processing samples, personnel costs and the possibility of hiring more forensic scientists because of increased workload.

CHAIR WIENER:
As the sponsor mentioned, the program would not be up and running until there was seed money to move it forward. At that point, do you feel you would have adequate staffing to address the needs based on history? How would you determine what your needs might be?

MR. CALLAWAY:
We have two people in training to do forensic work. When their training is completed, that will give us extra resources to do the processing.

CHAIR WIENER:
By the time this is up and running, will you be okay?

MR. CALLAWAY:
Hopefully.

MICHELLE R. JOTZ (Detective, Las Vegas Police Protective Association Metro, Inc.; Southern Nevada Conference of Police and Sheriffs):
I met with members of the Denison family and representatives of the family several months ago, and we appreciate their reaching out to us to address any concerns we may have had. I explained to them that funding was a concern for us. That has been addressed in this bill. We support A.B. 552. This investigative tool will not only facilitate solid prosecutions but will also help in reducing any potential erroneous arrests.

SENATOR MCGINNESS:
Do you have cooperative agreements with some of the smaller counties, like Lincoln and Nye Counties, that probably do not have the technology?

MR. CALLAWAY:
Yes. We do DNA processing and criminalistics work for Mesquite, Henderson Police Department, North Las Vegas and Nye County.

ORRIN J. H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):
We oppose this bill for a number of reasons. I will talk about constitutional issues, costs and prioritization issues and some of the efficacy of the funding mechanism. The funding mechanism is inadequate and will take funding away from other priorities. I will talk about the efficacy of this bill in terms of the real world, and I will address the exoneration issue.

The Virginia Supreme Court has upheld this law. The *Pool* case was a Ninth Circuit decision. It rested on a specific statute authorizing preconviction DNA upon release if a person was released on his own recognizance. The specific federal statute, Title 18 U.S.C., section 3142, subsection (b) and

subsection (c), paragraph (1) said specifically that a condition of being released on your own recognizance is that your DNA had to be taken. In that case, Mr. Pool objected to that. The Ninth Circuit found, with the totality of the circumstances, that specific statute was an issue. *Pool* is scheduled to be heard before the en banc panel of the Ninth Circuit Court. That case has not yet worked itself through.

Several other jurisdictions have found similar laws unconstitutional. *United States v. Purdy,* 2005 U.S. Dist. LEXIS 40433 (Neb. 2005) struck down a Nebraska law. Mr. Sattler mentioned *United States v. Mitchell.* Many other judges acting independently have found this is unconstitutional. An appellate court and supreme court in Minnesota declined to take further action on it.

In *United States v. Kincade,* 379 F.3d 813 (9th Cir. 2004), federal law allowed for the taking of the DNA, but only for people who were released or already out on parole. It is interesting that initially in *Kincade,* the three-judge panel found even that was unconstitutional. The court met en banc. There was significant discussion about the fact that the reason this was a reasonable search was that the person had already been convicted and was a supervised releasee. There is no question that a DNA taking is a search in the meaning of the Fourth Amendment. In *United States v. Kriesel*, 508 F.3d 941 (9th Cir. 2007), the court spent a lot of time talking about the fact Mr. Kriesel was already convicted and was a duly convicted releasee. For identification purposes, law enforcement could take his DNA.

I will quote from *Friedman v. Boucher*. It was a constitutional analysis. The court said, "As a preliminary matter, we note that adherence to a state statute does not guarantee compliance with the Fourth Amendment." The court went on to discuss the issue. It was Montana law, and the state tried to justify the search through that law, but it did not apply to a person in Nevada.

The most important case is a district court case set to be heard before the Ninth Circuit Court. *Haskell v. Brown*, 677 F. Supp. 2d 1187 (N.D. Cal. 2009) is the district court case and involves a preliminary injunction. This is much more on point to a statute similar to our own. This will inform us whether such a scheme would be legal in Nevada. That case will be heard and decided before the next Legislative Session.

This bill is unconstitutional. Other circuits that have determined postconviction DNA collection laws are constitutional make a distinction between people who have been convicted versus people who have not been convicted. There was a bright line that should be recognized. Even if the Ninth Circuit ultimately determines it is constitutional, it is better to wait than to pass this now, spend the money and have it found unconstitutional. The money spent would be wasted. It would be even worse to put convictions at risk because the law is invalidated.

The fiscal notes presented in the Assembly Committee on Ways and Means added up to approximately $6 million. The funding mechanism relies on criminals, most of whom are indigent. You cannot collect money from indigent people by threatening to put them in jail because our U.S. Constitution forbids debtors' prisons. If people do not pay their fines, a warrant is issued for them. They are taken into custody and thrown in jail. They get credit for time served for the fees, so the fees are never actually collected. The collection rate for these is pretty low, particularly when the crimes are felonies or gross misdemeanors. The $6 million will not be completely funded by this fee. Once the seed money is there, this will not be able to sustain itself.

When Brianna Denison's case was initially being investigated, money was put into the system, but there were still backups at the crime laboratory because they did not have adequate personnel. In my experience, cases have been negotiated down much further than they would have been otherwise, including DUIs and drug cases, which are more mundane than a high profile murder case but are no less important. Those cases were put at risk completely because the crime laboratory took too long, and speedy trial issues came up. Once this additional load of DNA comes into the system, which must be tested and placed into the system, that will remain. If the funding mechanism is not enough to fund it initially, I do not understand how it will remain in place.

The bottom line is that at some point, this money will be taken from other places. Even if we collect every last dime we are hoping to collect from every last person convicted of a crime, many other things could be done with the $6 million. The Washoe County Sheriff's Department testified in support, but the Sheriff has recently talked about the drastic results of some of the cuts he may be facing if some of these budgets go through. That includes the inability to supervise parolees properly, inability to go after misdemeanor cases and inability to investigate properly. There are many other ways to spend $6 million

that could do far more and save even more lives. We have a DNA backlog. Let us get that under control. Let us not cast a net so wide we are missing everything. Let us focus on the information we already have.

I want to talk about the efficacy. Because you have the ability to expunge if someone is ultimately not convicted, there is only a short window when you have the DNA. Along with this, we would be juggling a complex system of where you put this sample and whether it goes in this database or that database. It goes on from there. Any time you have a data entry system, it screams out for potential error. That is a scary thing when we are talking about making sure we get the right people. If we will only keep a person's DNA if he or she is convicted anyway, why not wait until he or she is actually convicted? Then we would have one simple system which would reduce errors in the rest of the system.

We could exonerate a lot of people if we did away with the Fourth Amendment completely and simply went door to door in cases or searched everyone with blond hair or something like that. We do not do that because we recognize there are bright lines, and certain rules must be followed. Certain rights must be protected. We have been weighing that balance in this Country and the western world for 800 years. Without those bright lines, all of a sudden we lose quite a bit. We might lose convictions in constitutional cases, but we also lose some of our freedom; and that matters.

People would potentially be exonerated in other ways. That is good when it happens. If someone is arrested, and had been arrested for similar crimes, you can get a warrant and get a DNA swab from that person before conviction. You can do that because there is something more than simply being arrested for something else; you want more information for other crimes.

CHAIR WIENER:
Section 3 of the bill discusses the differences in the process between arresting with a warrant and without a warrant. Please address that. I am particularly interested in the probable cause determination as well.

MR. JOHNSON:
To obtain a warrant, you must establish to a judge there is probable cause to arrest someone. That determination has already been done. One area of analysis that always comes with these is a Fourth Amendment analysis of "reasonable."

I teach a class for high school students who get into trouble, and I always ask them what reasonable means. They cannot answer that, and I tell them that is the right answer because it is based on the facts of that situation. It has been argued that once probable cause is determined by the judge, whether that is after arrest at an arraignment or before arrest because a warrant was issued, that is sufficient to protect their rights. Those differences are here to provide a certain modicum of protection of due process before that search in the hopes that search will later be found constitutional. The bright line should be upon conviction as opposed to whether a judge has made a probable cause determination. That is not enough.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):
The bill has several practical infirmities the Committee should consider. It is a misstatement by the proponents of the bill to say that the Nevada Supreme Court controls Fourth Amendment law. Fourth Amendment law is controlled by the United States Supreme Court, and the State of Nevada cannot enact any laws more strict than what the United States Supreme Court prescribes.

We appreciate the efforts to keep the cost reasonable and something an indigent person might be able to pay—the $2.50. Much of that will not be collected. It is such a low amount that you almost get into a situation where administering the collection costs more than the amount you are collecting.

I am concerned the Committee has not heard from Clark County or Washoe County because the bill prescribes the cost is to be controlled by the county. It is to be charged to the county where the arrest is made. The Committee might want to inquire about this.

There are several practical problems. We talk about other states that have enacted this law, but it is not this law because this law has been amended twice since it was initially drafted and introduced. It seems other states have enacted a provision that allows for the expungement of DNA upon acquittal. This bill does not say that. Section 3, subsection 12 of the bill talks about circumstances under which a person can request his DNA be removed. The bill specifies a scenario where the case is dismissed. It addresses a scenario where a person is arrested but not charged within a ten-year period for a crime. It addresses a scenario where a person successfully completes some kind of pretrial diversion. The bill does not address any scenario where a person is acquitted at trial.

The District Attorneys Association asked you to pass this bill without any additional amendments. I do not know that you can when we have these glaring deficiencies.

This bill places a burden on the defendant to request the removal. To request removal, the bill states the person must obtain a sworn statement from a law enforcement agency, which is to be submitted to the DNA or the crime registry of the state for removal. Let us assume that was the process, and that it would be easy for a defendant to get a sworn statement from a law enforcement agent. It is not that easy. However, let us assume all of that works. Nevada has no control over what happens with the CODIS database. The CODIS database is controlled by the FBI. This State and our Legislature cannot assure there would ever be any expungement from the national database. We cannot pass a law to direct the FBI to do anything.

Those are a couple of the problems. It is inappropriate to put the burden on the defendant. There is no provision in this bill to address what happens if a person is arrested and charged with a felony. For example, a person is arrested for burglary but later pleads guilty to petty larceny, a misdemeanor. That would also warrant the expungement of the information.

This casts a wide net. I understand the intent of genetic markers on people arrested for felonies and misdemeanors if they are sex-related offenses. However, it also includes anyone who is an applicant for release on his or her own recognizance. That applies to almost any small case. Technically, that also applies in even a traffic ticket because when you sign the traffic citation, you are making a promise to appear. That is a form of release. Hundreds and thousands of people are routinely called into court and are released on their own recognizance. Has anyone thought about this overwhelming number of samples we will be required to take? It is not just targeting perhaps the most dangerous people; it is targeting practically everyone.

Language describing how a sample would be taken was removed from the bill. Taking samples by cheek swabs was removed. Now, it is not clear how the sample is taken.

CHAIR WIENER:
That was restored today by amendment in the Assembly.

MS. RASMUSSEN:
The bill also says this can be outsourced to a laboratory. Each county can decide what laboratory it will outsource to. We do outsource many things. It is not effective. When people are arrested in Clark County for DUI, it takes four to six months to receive their blood alcohol level reports back. If we are having that kind of delay on blood alcohol for a standard DUI prosecution, how will we accomplish the goals of the proponents of this bill? I am not sure it would save lives if it takes that long to get the testing done. There is always a risk in outsourcing something that is so important on a constitutional level.

Mr. Callaway testified two people are in training to do forensic work. That will not be enough to deal with this volume, particularly when we include people being released on their own recognizance. That is thousands of people. We join the arguments in opposition to this bill made by Mr. Johnson.

JUANITA CLARK (Charleston Neighborhood Preservation):
We oppose A.B. 552. These tests would be taken at the point of arrest, not conviction. That would violate the Fourth Amendment.

JANINE HANSEN (Nevada Eagle Forum):
I testify with reluctance because of the compelling testimony we have heard. I am a mother, and I have nine grandchildren. We are concerned about the protection of our children and the conviction of violent criminals. My heart goes out to those who have testified.

However, we must balance things. I have studied John Adams. An issue related to the Fourth Amendment inflamed the Revolution. In 1751, an attorney, James Otis, spoke in court opposing the British practice of using writs of assistance with almost no rules attached. A home or business would be invaded to see if the person was smuggling goods and defying the tax laws. When James Otis discussed this issue, John Adams said, "Then and there the child of independence was born." John Adams wrote the constitution of Massachusetts, which became one of the foundations of the United States Constitution. He pressed for independence.

John Adams was concerned about the issue brought to him by James Otis. He wrote a strong amendment on the Fourth Amendment. Article 1, section 18 in the Nevada Constitution mirrors the federal Constitution almost exactly, except it switches around search and seizure.

As we look to balance the issues of liberty and protection from the government, we have a difficult choice. Benjamin Franklin warned, "Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety."

I try to be optimistic, but as I have seen some of the abuses of government, I have become a skeptic. I understand this would help in criminal cases to catch criminals, but as John Adams said, "It is more important that innocence be protected than it is that guilt be punished, ..." It was an important principle to John Adams to protect and defend liberty and the issues surrounding the Fourth Amendment.

In 2004, I was arrested, handcuffed and hauled to jail for a misdemeanor. I was arrested for petitioning at the Reno bus depot. I was later exonerated. I was inconvenient to the bus depot because I was exercising liberty. My brother, Dan, was invaded by the Internal Revenue Service with an illegal warrant. Materials were taken from his office. I saw headlines on television that night saying raids had been made all over the Country for domestic terrorists. My brother was not a domestic terrorist. He fought his entire life for liberty. He was killed in an accident some time after that, so the case was never resolved. I am sure that terrorism would be a felony.

We must be careful as we pursue these laws to ensure we defend liberty first and convict criminals second because, if we do not, we will go down the same road as Great Britain and become the ultimate surveillance society. We will lose our foundational constitutional liberties. We are on that road now. It is difficult for me to oppose this legislation because of the compelling testimony, but I must think about the future of my grandchildren to be in a country where the first and foremost responsibility of government is protecting liberty and defending the rights of individuals. That is more important than convicting the guilty.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
The emotional issue at hand is near and dear to our hearts. With a heavy heart, I am speaking against the bill. I would like to echo the comments of Mr. Johnson, Ms. Rasmussen, Ms. Hansen and Ms. Clark.

I will speak to the applicability, practicality and cost issues of this bill. Regarding the equation of DNA to fingerprint, DNA is very different than a fingerprint. The court will determine that. Both are unique identifiers, which is why it is easy to equate the two. However, a fingerprint is akin to a mug shot because it is an external way to identify a person, but DNA is different because it is the essence of who you are as a person. Fingerprints are like a photograph; your DNA is more akin to your medical records. You can find out many things about a person based on his or her DNA strand—genetic predispositions, diseases, gender, race and many other things science has not yet discovered. Because of that, the unreasonableness of this type of search will be determined by the courts.

I appreciate the expansive testimony regarding DNA and the process of how the genetic markers are created. Thirteen markers are put into the database. Notwithstanding that, it comes from the DNA which is controlled by the government. That DNA comes from a person through an invasive search. Because of that, it should have court oversight.

An arrest reflects only one officer's finding of probable cause. It is not proof of guilt, and there is no judicial oversight. That is the crux of the matter. Courts have held that following a warrant, you can compel a person to give his or her DNA sample. However, that is where the difference lies. It is important to take into consideration some other points in this bill.

Section 3, subsection 9 of the bill deals with what happens if a DNA is put into CODIS by mistake. It is not good public policy to build in for the mistakes that will ultimately happen and leave all liability off the State when the State recognizes there will be mistakes. When the State processes thousands and thousands of these annually, mistakes will happen. That burden is not fair to the average citizen. This is an unfortunate consequence of what ultimately will happen.

You heard that DNA will help exonerate people. That argument does not hold water in Nevada because Nevada has postconviction DNA relief. Last Session, this Legislature passed a law which allows people, after conviction, to submit for relief via that process. The exoneration argument from the proponents is not applicable in Nevada.

This bill, in its broader sense, will disproportionately impact minorities and communities of color because minorities and communities of color, particularly

young men, are much more likely to be arrested for a felony than their Caucasian counterparts. This DNA database would include a disproportionate representation of minorities and communities of color. That is an important by-product of this policy that merits your consideration.

A statement was made on the record regarding taking the DNA from babies at birth. A proponent of this bill said she does not support that. I want to clarify on the record I have told some members of this Committee and some members of the Assembly that is what proponents of this bill were saying. On March 30, 2010, I attended a meeting of the Advisory Commission on the Administration of Justice when the Bring Bri Justice Foundation made its presentation to the Commission with respect to this law. I will submit a copy of the minutes from that Commission meeting where Ms. Van Antwerp said, "The Foundation would like every baby tested and the DNA sample placed in a data base." I did not mean to mislead the Committee or anyone else. I got that information from a representative of the Foundation.

In the 2007 U.S. Crime Report, it was noted that Nevada law enforcement agencies arrested approximately 89,000 people for felonies per year. If you multiply that number by the $75 it would take to process those, it comes up to $6.6 million per year that would be collected from the arrests. This bill only accounts for a fiscal note of $6 million over the biennium. That is an underestimation and does not include the number of people allowed out on their own recognizance. This merits the consideration of the Committee.

The digest of the bill says that the cost, the $2.50 fee, is "used to defray the costs associated with obtaining biological specimens and genetic marker analysis." This only defrays the costs. It does not cover the costs. The costs will come from somewhere, and that is likely the General Fund over the course of the implementation of this bill if it becomes law.

Points regarding the backlog were generally made. When you increase the size of the haystack, finding the needle is much more difficult. For example, when a rape kit is not processed because you have 89,000 other DNA specimens needing processing, that is not fair to that victim of crime. That victim deserves to have the rape kit processed. That already is not happening. We already have a new backlog in the laboratories across the State. This bill would exacerbate the problem by creating many new cases per year that would have to be processed.

The expungement provision in the bill is not applicable. The State cannot compel the FBI to do anything with the data we share with them. This bill attempts to make such a law; it cannot be applied. In the minutes of the Advisory Committee meeting, Ms. Romero said that the national database is updated at least once a month, and there may be a gap when the State removes the DNA, but the federal government backs up its own information at the federal level. Even if there is a point when a person's record is expunged at the state level, if we could actually compel the FBI to delete its record from the existing database used on a monthly basis, its backup copies will never be removed. Given the multitude of other problems with this bill, we hope you support the intent of satisfying the needs of the proponents of the bill but ultimately vote no because of the practicality, unconstitutionality, cost and applicability issues.

SENATOR BREEDEN:
You mentioned 89,000 felony arrests. Where did you obtain that information? Is it broken down between Washoe and Clark Counties?

MS. GASCA:
I do not have the statistics broken down. This came from the 2007 U.S. Crime Report. That was the most recent figure I could find.

CHAIR WIENER:
I would like to have rural numbers as well and more current information.

SENATOR BREEDEN:
You mentioned $75. Is that what it costs for a cheek swab?

MS. GASCA:
That is what it costs to process the DNA itself. I am not sure what the costs are to maintain that sample in the interim when it is not yet processed. In some of these mechanisms, there is a waiting period. The counties would still be responsible for storing those samples. Even if those samples are not processed, the State must maintain those records and maintain the privacy and security of those records. When the State is responsible for ultimately what will be almost one million DNA records over the course of ten years, the State will have to ensure nothing happens to that information.

SENATOR BREEDEN:
Once DNA is tested and in holding, whether in the database or in a holding pattern, why would there be an extra charge for that? What happens once a cheek swab is taken when someone is arrested until that person is convicted? What do you do with it? It is not entered into the database until someone is convicted. Is that correct?

MS. ROMERO:
The intent of the bill is that the sample would be tested, and the DNA profile would go into the DNA database. It would not wait until conviction. Once the probable cause was established, the sample would be tested, and the profile would go into the DNA database. It would be up to the arrested individual to petition the Central Repository for expungement based on a variety of conditions.

SENATOR BREEDEN:
We heard testimony that it could take months if a charge is dismissed. Would it take months for that person to have that DNA removed from the database?

MS. ROMERO:
I have not experienced that because we only put in samples from convicted offenders. We do not have an expungement policy for arrested offenders.

CHAIR WIENER:
Senator Breeden has a question about the 89,000 felony arrests. This is a statistic from the 2007 U.S. Crime Report. How would that break down between Washoe and Clark Counties? We would like more recent numbers as well. Can we get the rural numbers?

MR. CALLAWAY:
The Clark County Detention Center indicated we had approximately 26,000 felony arrests last year. We made 104,000 arrests total, but 26,000 were felonies.

SENATOR BREEDEN:
From those arrests, how many were convicted?

MR. CALLAWAY:
I do not have the information. I will find out.

MR. KUZANEK:
In preparing for this bill, we requested information from the Central Repository regarding the number of felony arrestees in the State during a five-year period. Dating back to 2005, the number reported was 28,789. In 2006, the number was 28,943. In 2007, the number was 38,661. In 2008, 28,814 and in 2009, 28,746. We used these numbers to put our fiscal impact note together for this bill.

SENATOR BREEDEN:
How many of those arrests resulted in convictions?

MR. KUZANEK:
I do not know the answer to that question.

SENATOR BREEDEN:
Can you find out?

MR. KUZANEK:
I can attempt to find that information.

CHAIR WIENER:
For clarification, Mr. Callaway, you said last year there were approximately 26,000 felony arrests in Clark County. In 2009, there were approximately 28,746 in Washoe County. Is that correct?

MR. KUZANEK:
The information provided from the Central Repository represented felony arrests for the entire State.

MR. CALLAWAY:
The information I was given came from the Clark County Detention Center. Those numbers were LVMPD arrests. I do not know if that included other areas of Clark County, such as Henderson.

CHAIR WIENER:
There are approximately 28,000 each year, except for 2007 when it was approximately 38,000 statewide. Last year, it was between 26,000 and 27,000 in Clark County. Were there 1,000 throughout the rest of the State?

MR. CALLAWAY:
I will double check our numbers.

SENATOR GUSTAVSON:
What is the turnaround time once a sample is taken until it is processed? How long does it take to get results?

MS. ROMERO:
Our turnaround time is about 60 days. We have no backlog. The convicted offender samples come into the laboratory. At the beginning of every month, we outsource them to a private vendor. That vendor sends them back to us within a month. We then perform a technical review of the data, and our data is getting into the database between 60 and 90 days. This is a continuous flow. We are using grant funding to perform that process. We have used grant funding to test all our convicted offender samples. We have never used general fund money. It is a separate process. It is important to understand when talking about these samples, there are database samples and casework samples. We have set it up so we do not allow the processing of database samples to affect the rest of the laboratory. Those are sent out to a private vendor.

MR. CALLAWAY:
I mentioned we have two forensic scientists in training. Those people will be additional personnel to our staffing level. We have eight to ten people employed in that area.

CHAIR WIENER:
What is your anticipation with those additional people as it relates to the backlog issue? Will there be any stacking?

MR. CALLAWAY:
We do have a backlog of a little over 1,000.

CHAIR WIENER:
Please give us a timeline on that as well.

TONJA BROWN:
I have been here twice trying to get Nolan's Law passed. I asked the Committee if Nolan's Law would be germane to another bill. I met with Bradley A. Wilkinson, Chief Deputy Legislative Counsel, Legal Division, and asked him

about a portion of Nolan's Law. That portion of Nolan's Law said in the event the court denies the petitioner his or her genetic marker analysis testing, the petitioner may go forward with the testing without the court's permission bearing the cost themselves, Exhibit D. This would have no fiscal impact to the State. Mr. Wilkinson said this would be germane to A.B. 552. I spoke with Bryan Fernley-Gonzalez, Deputy Legislative Counsel, Legal Division, regarding this as well. When Mr. Sattler said it is not germane, but your staff member said it was.

CHAIR WIENER:
You may propose that amendment. If the Committee chooses to support it, the bill drafters will determine where it would be added to the bill.

MS. BROWN:
Ms. Gasca talked about the bills we have regarding DNA testing. I have discussed a case where the defendant has maintained her innocence. This year, Eighth Judicial District Judge Valorie J. Vega denied DNA testing. With this proposed amendment, Exhibit D, once people are convicted, they are given the opportunity to go forward to prove their innocence. David Jones spent 11 years in prison for a crime he did not commit. Mr. Gonzalez spent two and a half years in jail.

We have inmates in prison who are innocent. We do not know how many. Please give them the opportunity to clear their names and exonerate themselves. This would lighten the burden to the taxpayers. District attorneys do not want to admit they have sent an innocent person to prison. We must have checks and balances. Let us make sure when we convict a person, it is the right person. This amendment would allow those people to go forward. They would pay for it at their own expense at no cost to the taxpayers. How much is an innocent person's life worth?

This was in bill draft request 14-1081. I would like that to be placed as an amendment in this bill. If we are going to use the DNA to convict, those who have been convicted should have the opportunity to be exonerated when DNA is available. Nolan Klein was denied numerous times to have his DNA tested. When we enacted this new law, there was hope for him, but he died.

FLORENCE JONES:
I am the mother of two perpetrators who have been in prison for 30 years. There was misrepresentation and misinformation from the representative from the American Civil Liberties Union of Nevada. The exoneration for inmates who have been convicted only occurs if the court and district attorney allow them to have their DNA tested. We would think if you claim you are innocent, you could just pay and have your DNA tested. That is not the case. The Innocence Project is working on this nationally.

Mr. Sattler said today he opposes Nolan's Law. It says that if you are in prison and you want to prove your innocence, you would be able to do so and pay for it at no cost to the State. Please consider the seriousness of the fact that we no longer worry about the people who may be innocent and who are incarcerated. We worry more about not making mistakes.

We are going to have to deal with DNA testing. I am not sure this broad umbrella is the answer. Having it for our convicted people may be adequate. I am asking you to please consider changing the responsibility of giving the court and district attorney the ultimate authority to stop people from having their DNA tested.

MS. L. DENISON:
I would like to clarify that Ms. Van Antwerp could have made the comment that the board would like to take DNA upon birth. That is not the position of the board. She spoke out of turn. That is not what our foundation stands for. She is no longer a board member.

CHAIR WIENER:
I will close the hearing on A.B. 552. The hearing is open for public comment. There being nothing further to come before the Committee, we are adjourned at 6:19 p.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 552	C	Assemblywoman Debbie Smith	DNA Collection From Persons Arrested for Felonies and Other Sexual Crimes
A.B. 552	D	Tonja Brown	Proposed Amendment
A.B. 552	E	Jayann Sepich	PowerPoint Presentation