MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
May 4, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Monday, May 4, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Becky Harris, Senate District No. 9
Senator Mark A. Manendo, Senate District No. 21
Senator Mark A. Lipparelli, Senate District No. 6

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Terri L. Miller, President, Stop Educator Sexual Abuse Misconduct & Exploitation, Las Vegas, Nevada
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
John T. Jones, Jr., representing Nevada District Attorneys Association
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada
Steve Yeager, representing Clark County Public Defender's Office
Brian Rutledge, Chief Deputy District Attorney, Clark County District Attorney's Office
Bruce Nelson, Chief Deputy District Attorney, Clark County District Attorney's Office
George Assad, Private Citizen, Las Vegas, Nevada
Sandy Heverly, Executive Director and Victim Advocate, Stop DUI
A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Jesse Lujan, Private Citizen, Las Vegas, Nevada
Leonard Marshall, Lieutenant, Las Vegas Metropolitan Police Department
Natasha Koch, Captain, Executive Officer, Nevada Highway Patrol, Department of Public Safety
Scott F. Gilles, Legislative Relations Program Manager, Office of the City Manager, City of Reno

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Brian Vasek, Legislative Extern, Clark County Public Defender's Office
Michael G. Alonso, representing Nevada Trust Companies Association
Gregory E. Crawford, Co-Manager and Professional Trustee, Alliance Trust Company, Reno, Nevada
L. Scott Walshaw, Consultant, Premier Trust Company, Reno, Nevada
Ann Rosevear, President and Chief Trust Officer, Dunham Trust Company, Reno, Nevada

Chairman Hansen:
[Roll was called. Committee rules and procedures were reviewed.] Today we have three bills, and we are going to start by having Senator Harris present Senate Bill 192 (1st Reprint).

Senate Bill 192 (1st Reprint): Revises provisions relating to sexual conduct between certain persons. (BDR 14-731)

Senator Becky Harris, Senate District No. 9:
I am here to present Senate Bill 192 (1st Reprint) which revises statutory provisions concerning sexual offenses committed by school employees or volunteers to cover a broader range of both offenders and victims.

The bill is a bit lengthy primarily because it inserts parallel language into several sections of the *Nevada Revised Statutes* (NRS). The new language in section 2, subsection 3, paragraphs (k) and (l), adds to our current list of sexual offenses and reads as follows: "(k) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540," and "(l) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550."

I am now going to tell you what this bill is not because there is some misconception with regard to this bill. This bill is not trying to interfere with relationships at the university level. This bill is an attempt to protect students who have not yet received their high school diploma and are attending concurrently in a community college or a university. As we go further into the bill, please let me know if you have questions. However, please realize that we are not reaching into the university system with regard to students' sexual conduct. This bill really is a little more narrow in scope, dealing with students who are still part of the Nevada K-12 school system.

It may be simplest to explain how the newly added language functions in the bill by breaking it down section by section. Sections 1 and 12 add these offenses

to the list of those that require lifetime supervision and lay out the conditions of that supervision. Sections 2 and 3 add these offenses to the list of offenses that require a psychosexual evaluation as part of a presentence investigation. The results of the investigation will determine whether the offender can be granted probation or a suspended sentence. Section 4 adds these offenses to the list of crimes requiring victim and witness notification regarding the offender's release during the trial phase and upon final disposition.

Section 5 prohibits the sealing of an offender's records for these crimes. Section 6 requires registration as a sex offender and sets out the conditions for parole or probation. Section 7 makes a person who is guilty of these offenses a Tier II sex offender. Section 9 provides an enhanced penalty for repeat offenders or a person who offends against a child under 14 years of age. Section 13 adds these offenses to those for which the Department of Corrections must conduct an assessment concerning the risk to reoffend, which the State Board of Parole Commissioners must take into account before granting or revoking parole.

Finally, sections 10 and 11 expand current law to cover employees or volunteers to protect more students. They do this by providing that the offender no longer need be a person in a position of authority, but can simply be an employee or volunteer and will be guilty of a category C felony for engaging in sexual conduct with a person up to 18 years of age instead of 16 years of age, which is what it is currently. Recently, we had a high school principal accused of inappropriate relations for touching students. That is part of the reason for changing the language to include 17 and 18 years of age.

I believe we need to provide a safe and secure school environment here in Nevada. I do not think we should distinguish between an authority figure and any other school employer or volunteer who commits a sex crime against a student. The impact is devastating and the scars the victim bears can last a lifetime. Most children see virtually any adult as a person of authority. While I understand some adults might exert more influence over a vulnerable student, I do not think the distinction is warranted.

That concludes my presentation. I worked very hard with all of the stakeholders on this bill. Both of the public defenders' offices as well as the American Civil Liberties Union (ACLU) came in neutral. We worked very hard to address some of the concerns they had, and the bill passed out of the Senate unanimously.

Chairman Hansen:
Is there a loophole in the law that this bill is closing? Obviously sexual conduct between a principal and a student has been against the law long before the introduction of this bill.

Senator Harris:
It is making a mandatory requirement that anyone who is convicted as a sex offender is registered. Up to this point, for teachers and other employees who have been convicted, it has not been mandatory for registering as sex offenders.

Terri L. Miller, President, Stop Educator Sexual Abuse Misconduct & Exploitation, Las Vegas, Nevada:
I am a mother of four grown children and a grandmother of twin grandsons. I have been working in Nevada and nationally to protect students from sexual misconduct by educators for nearly 30 years. I am the mother formerly from Pahrump who lobbied here in Nevada in 1997 for the legislation that criminalized educator sexual misconduct against our students.

I handed out a pamphlet to each of you (Exhibit C) and there is an insert (Exhibit D) inside the pamphlet. I would like you to take the insert out and place it in front of you. As I speak of the many cases that I will present in my testimony, I think the numbers in the insert will prove to be very tragic.

I want to thank Senator Harris for taking the lead and bringing S.B. 192 (R1), which is a vitally important bill, before you. Three Clark County School District teachers were arrested just last month for sexual offenses against their students. A lawsuit against the district and administrators from a Henderson high school became public knowledge April 30, 2015. That case involved a freshman boy and a female teacher. An article in the *Las Vegas Review-Journal* regarding the lawsuit noted, "Because of the defendants' acts, according to the complaint, the teenager attempted suicide in February 2014 'and suffered extreme emotional distress.'" In these cases, children as young as eight years old have suffered and will live in a state of coping with emotional distress for the rest of their lives.

I still remember the day I learned there was a sexual predator at Pahrump Valley High School in the spring of 1983. My children would one day attend that school. I assumed that it was just a matter of a phone call to the principal and the teacher would be fired. Instead, it took 13 years to find justice for the 60 former students who came forward through my own investigation. Six of them claimed to have been raped. In 1996, that teacher was sentenced to five years to life in prison for the sexual assault of one of those students.

He was paroled in August 2012 and is a registered sex offender for the rest of his life. To this day, I wonder how many of those children could have been spared had someone acted sooner. It is unfathomable that this many years later we are still seeking justice for the children who have come or will come after. A Tonopah principal and a Nye County school psychologist have been arrested for child sexual abuse in recent years.

In 2002, I learned that teachers convicted of sexual conduct with students were not required to register as sex offenders. I came to the Legislature in 2003 and have come back every session since then. Coincidentally, it has taken me nearly as long to mend this flaw in the law requiring these child predators to register as it took to bring that despicable teacher to justice. It just should not be this hard. [Continued reading from written testimony (Exhibit D).]

I have provided a copy of the Sex Offender Registration Notification Act (SORNA) report (Exhibit E). You can find it on the Nevada Electronic Legislative Information System (NELIS). You will find the information that I referred to in my testimony on pages 9 through 12. By neglecting to require sex offenders convicted of engaging in sexual conduct with students to register, Nevada is out of compliance with the Adam Walsh Child Protection and Safety Act of 2006. That is my understanding and what I have been told by representatives of SORNA. [Continued reading from written testimony (Exhibit D).]

Once again, I cannot express to you how important this bill is. I have been working at this for 12 years. This loophole needs to be closed. I want to thank Senator Harris and all of the cosponsors of S.B. 192 (R1) for your heroic effort to protect all students enrolled in secondary school by raising the age of protection to 18 years of age. This is exactly what I had in mind in 1997 when I asked former Senator Mike McGinness to protect our schoolchildren. While Senator McGinness fought valiantly to protect all high school students and minor-aged college students, our legislators did not include our 18-year-old students in the passing of Senate Bill No. 122 of the 69th Session, which has inequitably left a vulnerable population easy prey for those who seek to betray and abuse. For obvious reasons, it is not hard to consider protection of high school students who are 18 years of age. However, here is why we must protect 18-year-old high school students attending college or university. One of my very bright piano students attended the College of Southern Nevada High School. When she graduated, she received her high school diploma and her associate's degree. Since we permit our high school students to attend college or take university courses, we must also look out for their well-being. [Continued reading from written testimony (Exhibit D).]

For the safety of our children and on behalf of survivors of educator sexual abuse, I ask you to pass S.B. 192 (R1) without delay. Thank you for the privilege to speak with you today and for your devoted service to the citizens of Nevada.

Chairman Hansen:
Thank you for the many years of desperately attempting to bring this to our attention. It is people like you who make our world go around.

Assemblyman O'Neill:
I want to thank you very much for bringing this forward, Senator Harris. For the last few years of my time with the Department of Public Safety, I was Division Chief for the Records and Technology Department that housed the sex offender registration unit. We often talked about this loophole and why teachers were not included. I tried to bring this to the attention of the executive side but had difficulties for a variety of reasons. I give you my full support. My question is, would you accept an amendment allowing me to be a cosponsor of this bill?

Senator Harris:
It would be my pleasure.

Assemblyman Nelson:
I have one clarifying question. I understand the portion of the bill that says if a child has not graduated from high school yet or has not received an equivalency, but is still 18 years of age, he is covered. Is any student in high school covered? Are there any age restrictions?

Terri Miller:
Right now, the statutes only protect students 14 through 17 years old. The statute that pertains to the students attending college recognizes the protection of 16- and 17-year-old students. We are looking to protect the high school students who are attending college courses at community colleges or universities.

Assemblyman Nelson:
I do understand that. What about the ones who are 18 years old but still in high school? There may even be some who are 19 years old. Is there an age limit? If a student was 19 years old but in high school, would it apply to him?

Terri Miller:
No, we contemplated up to the age of 18 with the normal June graduation. Once the student graduates, the statute would no longer apply. We have not

contemplated going beyond the age of 18. We can look at that traditional model and perhaps adjust it as necessary looking at the extended high school graduation.

Assemblyman Nelson:
It might make sense in the future for a child who has been held back and turns 19 years of age; it would protect them too. That is not part of this bill.

Terri Miller:
There are many states that do not limit the age of protection in this type of legislation. Personally, I would be happy if the legislation simply covers all students enrolled in secondary school so they all would be protected. There are five states that do not limit the age of protection at all. Ohio is one of those states. Actually, Ohio's sexual battery law was one of the statutes that I used to model our legislation after in 1997. They have a sliding scale of penalties based upon the age of the victim and if there is substantial bodily harm. The penalty would be higher in those cases, and if the child is younger, the penalty is also higher. If you are a 35-year-old college student, you would be protected under the sexual battery law. They also define every position of trust imaginable. Children are not just being harmed and sexually violated by educators. Wherever children are present and participating in extracurricular activities, the potential for sexual predation is very real. Little League coaches, scout leaders, and others are defined in Ohio's sexual battery statute.

Chairman Hansen:
I am very disturbed by your handout (Exhibit D) and seeing these kind of numbers is shocking. What exactly is the definition of educator sexual misconduct?

Terri Miller:
Sexual misconduct is defined as any sexual harassment, sexual molestation, or sexual assault. It is a very broad-ranging term, but it covers all forms from the grooming process, which is sexual harassment, right on through to sexual assault.

Chairman Hansen:
Senator, maybe you can answer this one. I assume that once these people are on the registered sex offender list, school districts have a policy not to hire them. I want to make sure that this actually solves the problem.

Senator Harris:
That is my understanding. Clark County and Washoe County School Districts would be in a position to answer your question since they make those

decisions. As I understand it, throughout the nation where there is no requirement to register as a sex offender, teachers who have been involved in inappropriate behavior with children may still be hired. This bill is to put people on notice through the mandatory registration.

Assemblyman Ohrenschall:
Thank you both for bringing this bill, which is on a very important issue. I am a parent and whenever things like this happen, I am very troubled by it. I was lucky enough to graduate high school when I was 17 years old. Some of my classmates did not graduate and had to continue on until they were 18 years old. I am looking at section 10 and just want to make sure that I understand it correctly. If there is an 18-year-old student who is in his or her senior year and becomes friends with a school bus driver who is not in a position of authority over him or her, and they become romantically and sexually involved, that school bus driver can be prosecuted and subjected to lifetime supervision.

Senator Harris:
That is correct.

Assemblyman Ohrenschall:
For almost all things in Nevada, 18 is the age of majority with the exception of drinking alcohol and running for office with the Legislature. For those, you must be 21 years of age to do. I am wondering what the thought is to extend it to 18 years of age, which is the age of majority and the age of consent.

Senator Harris:
The bill contemplates protecting children who are in secondary school. For example, I have a daughter who was born in April. To say that she would be protected until April but not until she graduated from high school does not seem to be clear public policy. We looked at graduation of high school as an end date recognizing that we are going to capture some kids who turn 18 and are at the age of majority before they graduate from high school. We would like to extend the protection until graduation from high school.

Assemblyman Ohrenschall:
I understand your logic and, as a parent, I agree. The part I am concerned about is removing the position of authority because you may have that situation with the school bus driver or maybe they did not even meet at school. Yet the person would be subject to possible prison time and lifetime supervision. I am just concerned about the removal of the position of authority. Certainly, if the person is in a position of authority, that is horrible. However, I am worried the law might catch people in situations that perhaps we did not mean to catch.

Senator Harris:
I can appreciate your concern that perhaps the scope may be a little bit more broad than you would like. However, we were hoping that by removing position of authority, we would address volunteers who might come into a K-5 situation and have access to children through volunteer programs. We do not want it to be so overly broad that we are overinclusive. However, it should be broad enough that we can make sure that anyone who would have access to children in our school system could be required to register if there is inappropriate contact with our school children.

Assemblyman Ohrenschall:
I agree with you regarding the younger children. It is just the combination of the 18-year-old and the dealing with position of authority causes me a little concern.

Assemblyman Thompson:
If there is an 18- or 19-year-old student enrolled in the school district, does this specify to the school where the relationship may have built? Say the bus driver drove for an elementary school. Is it really that broad? If they met out in the community, and the person has a school-related profession, they would be subject to this?

Terri Miller:
The scope of this bill is to protect students enrolled through secondary school. With regard to the older students, I was a student who graduated at the age of 17. My sister and brother graduated at 18 years of age. Students who may be 18 or 19 years of age might even be special education students. They may have attended preschool before kindergarten which would make them an older graduate. Students with disabilities, who may be older graduates of secondary school, are one of the most vulnerable populations. There is an expert on our board of advisors who has done research on students with disabilities. You can find her reports on our website. Many of those students would be of an older age by the time they graduate. We want to make sure those most vulnerable students are especially protected.

Chairman Hansen:
Our legal counsel is going to answer Mr. Thompson's question.

Brad Wilkinson, Committee Counsel:
Mr. Thompson's question is actually addressed on page 14 of the bill. Section 10, subsection 1, paragraph (c) says, "Engages in sexual conduct with a pupil who is 16, 17 or 18 years of age and: (1) Who is or was enrolled in or attending the public school or private school at which the person is or was

employed or volunteering; or (2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer, is guilty of a category C felony and shall be punished as provided in NRS 193.130." Therefore, if it were a school bus driver, it would have to be in the context of performing his or her duties.

Chairman Hansen:
With Senator Harris's permission, we should amend this to include all secondary students. Why would we limit it to the age of 18? As was pointed out, special education students may be 19 or 20 years old but still in a secondary school. Should we not protect them from predators? That does not make sense to me.

Senator Harris:
That would be wonderful, and I will accept that amendment. Thank you, Chairman.

Assemblyman Ohrenschall:
I have a question for legal counsel. It is a follow-up to Mr. Thompson's question on section 10. If I understand section 10 correctly, an 18-year-old student who attends Las Vegas High School could meet a school bus driver or a wrestling coach outside of school. It is someone who is not in a position of authority and has not had any contact with the person at the school. They develop some type of consensual relationship outside of school. Because of the fact that the school bus driver or wrestling coach is employed at that school, they may be subject to the felony prosecution and lifetime supervision under section 10 even though there was no position of authority and they never met the student at school. Is that correct?

Brad Wilkinson:
That is correct. That is the way it is under existing law now and the way it would be under the bill.

Assemblyman Ohrenschall:
Except now it would extend to an 18-year-old student.

Brad Wilkinson:
That is correct.

Chairman Hansen:
Are there any further questions for Ms. Miller or Senator Harris? Seeing none, thank you both for your testimony this morning. Is there anyone who would like to testify in favor of S.B. 192 (1st Reprint)?

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:
On behalf of Attorney General Adam Laxalt, I am here to register our support for this bill.

John T. Jones, Jr., representing Nevada District Attorneys Association:
We are here in support of S.B. 192 (R1), and we do want to say thank you to Senator Harris for bringing this measure forward.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I am here today in support.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:
Ditto.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We also support the bill.

Chairman Hansen:
Is there anyone in Las Vegas who would like to testify? Seeing no one, is there anyone else here in Carson City? [There was no one.] Is there anyone who is in opposition? Seeing no one, is there anyone in the neutral position?

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:
I am here in the neutral position. I have provided a document (Exhibit F) for display on NELIS. It is a proposed amendment which I have briefly discussed with the sponsor this past Friday. We have not fully agreed on the language yet, but it contains some proposed language. Assembly Bill 49 (1st Reprint) will increase this type of felony from a category C to a category B. We were really concerned with these two bills crossing each other's houses.

While we are extremely concerned with the type of predator this bill seeks to address, we were a little concerned with the breadth of the bill, and that has been vetted a little bit this morning. Our proposal would be to add an age differential of five years. Therefore, for the 16- through 18-year-old individuals, the person over the age of 21 must be at least five years older than the other person. We are concerned about the scenario that has been discussed where two people, who have no knowledge of each other in the school environment, meet outside of the school environment making that older person susceptible to the category B felony and lifetime supervision. We do think our amendment will continue to narrow this bill and get at who the predators truly are.

Steve Yeager, representing Clark County Public Defender's Office:
I wanted to let the Committee know that I had some concerns as the bill was originally was released, as did Mr. Sullivan from the Washoe County Public Defender's Office. We worked with Senator Harris to address some of those concerns. After those concerns have been addressed, we are in the neutral position on the reprint of the bill. We would be happy to answer any questions.

Chairman Hansen:
Is there anyone else in Carson City or Las Vegas who would like to testify in the neutral position on S.B. 192 (R1)? Seeing no one, do you have any last-minute comments, Senator Harris?

Senator Harris:
Thank you to the members of the Committee for your time today. I urge your support and look forward to working with you.

[Documents presented but not discussed were: "Selected Cases of Public and Private Schools that Hired or Retained Individuals with Histories of Sexual Misconduct" (Exhibit G), "Federal Agencies Can Better Support State Efforts to Prevent and Respond to Sexual Abuse by School Personnel" (Exhibit H), and "Educator Sexual Misconduct: A Synthesis of Existing Literature" (Exhibit I), all submitted by Terri Miller.]

Chairman Hansen:
We will close the hearing on Senate Bill 192 (1st Reprint), and open the hearing on Senate Bill 245 (1st Reprint).

Senate Bill 245 (1st Reprint): Revises provisions concerning drivers of vehicles involved in accidents resulting in bodily injury to or the death of a person. (BDR 43-558)

Senator Mark A. Manendo, Senate District No. 21:
I certainly appreciate the Chairman and Committee members for hearing Senate Bill 245 (1st Reprint). The crime commonly referred to as leaving the scene is defined in *Nevada Revised Statutes* (NRS) 484E.010 as failing to comply with the duty to stop at the scene of a crash involving death or personal injury. The current penalty for that crime is 2 to 15 years in prison with probation as an option. Oftentimes, the charge is dismissed in a plea bargain. I submit, for your consideration, S.B. 245 (R1), which addresses this inequity by mirroring the penalties for felony driving under the influence (DUI) causing death or serious bodily harm. Rarely a week goes by, and sometimes only days, without some horrific crash involving a person who chooses to flee the scene after causing this level of carnage. Usually, these offenders leave the scene due

to having warrants and/or alcohol or drugs on board. They know that if they are caught after leaving the scene, this will most likely allow them a more lenient penalty.

This unconscionable criminal behavior is not uncommon and it is not limited to Clark County. This behavior occurs all over the state. There have been cases in Henderson, Fernley, Carson City, Reno, Sparks, Boulder City, and Pahrump. Minutes before the hearing in the Senate on this bill, a 14-year-old girl named Danielle was run down on her way to school in Las Vegas. Witnesses said the driver ran into her at a high rate of speed, sending her flying 200 to 300 feet before she landed on the roadway, causing her substantial injuries. The driver fled the scene and the police were not able to locate him for many hours. The driver has a pending DUI case and his mother said that she could tell he had been drinking. When he arrived home and passed out on the couch after running down this little girl, so much time had passed that he could not be charged with DUI. He is currently facing only a lesser penalty for duty to stop. The entire time we were in the Senate hearing, the police were searching for the driver. Of course, he benefited from his flight from the scene.

Mr. Chairman, I believe we even have a member of this Committee who was involved with a hit-and-run. Assemblywoman Seaman, was that just before the start of session?

Assemblywoman Seaman:
Yes, it was just before session started.

Senator Manendo:
Thank God that there was no bodily injury and that you are alive and able to serve your constituents. Sadly, too many times, it turns out like the gentleman who was found hours after he was hit. He was found lying in the bushes in front of a convenience store. He had been lying there dead for hours and the person who ran down this gentlemen just took off.

Today we have victims, law enforcement, friends of victims, and other concerned citizens who will provide testimony in support of S.B. 245 (R1). We have representatives from the district attorneys' offices who will answer any technical questions. We also have law enforcement to answer questions. I appreciate the Committee's time for allowing me to present this bill.

Assemblyman Ohrenschall:
I wanted to thank Senator Manendo for bringing this bill. I know how passionate you are about traffic safety issues. It is good to see you in front of this Committee, Senator.

Brian Rutledge, Chief Deputy District Attorney, Clark County District Attorney's Office:

I am the head of our vehicular crimes unit, which deals with the felony DUIs and the felony leaving-the-scene crimes. Something we have seen more and more is if the drunk driver's vehicle is still operational, he or she tends to flee the scene. The way the statutes are currently set up encourages drivers to flee the scene. The entire point of the duty to stop is to get people to stop at the scene of an accident, call 9-1-1, allow people to get medical care for their injuries, and investigate the accident. Because the penalties are so much lower for fleeing the scene than they are for committing a DUI, we are actually encouraging people to flee the scene. This bill is a chance to fix that problem.

We had a case where Jairo Navarro-Garcia and Francisco Lorenzo were working at a car wash trying to make a living. A man who had been drinking all day, according to his girlfriend, backed over them and caused substantial bodily harm and fled the scene. If he had stayed, he would have been facing two felony DUI counts of 2 to 20 years. By fleeing, he only faced one count of leaving the scene, which is 1 to 15 years.

In another case, there was a traffic jam on Interstate 215 in Clark County. A person driving at a high rate of speed plowed into all of the cars that were slowed down preparing to exit the interstate off-ramp. Manuel Diaz was driving with his wife, Gwendolyn. Manuel was killed and Gwendolyn was seriously injured. Numerous other people in other cars caught in this chain reaction were hurt. The driver got out of his car, walked over to the Diaz's vehicle, looked inside, saw how badly they were injured, and took off running. He ran off the freeway and hid in people's backyards for 12 hours before coming out. By that time, there was no alcohol left in his system. We could not even charge him with DUI. Instead, he faced one count, which was probationable.

Recently, we had a case where Michael Grubbs was pushing his granddaughter in a stroller. A driver with a prior DUI came off the roadway and was passing on the shoulder. He hit and killed the grandfather and sent the granddaughter flying in her stroller and landing on her face, causing substantial injuries. The driver is only facing one count of leaving the scene of an accident because of the way the statutes are written.

In another case, Angel Velasquez, an 18-year-old who was a member of the Las Vegas Metropolitan Police Department's Explorer Program, was driving his motorcycle down the street. An impaired driver pulled out in front of him, resulting in Angel's death. The driver fled the scene and was not caught for over five hours. When they caught him, he was still impaired. However, he claimed that he was sober at the time of the accident and he had drunk and

done drugs after the accident. The way the law is currently written, that is a defense. You can claim you became impaired after you fled the scene. We could not convict him of a DUI in that case. He only received a charge for leaving the scene.

There are a number of other cases. I have a list of 30 here with me, but I am not going to go through any others. The point is very simple. It does not change the law of leaving the scene at all; it only changes the penalties. It makes it the same as a felony DUI. There are two aspects that make it the same. The first is that it changes it from a charge of 2 to 15 years to a charge of 2 to 20 years. That is not the most important part, however. The most important part is, for every victim you cause this harm to, there is a separate count.

I mention that because the public defenders have proposed three amendments. The first amendment would not gut the statute. We agreed to it, and it is already included in what is in front of you today.

The public defenders have proposed two other amendments which would obliterate what we are trying to do. The first would remove the part indicating that there is one count per victim. In many of these DUI cases, like the case where a man on marijuana and a huge quantity of methamphetamine drove onto the sidewalk during rush hour, hitting three people at a bus stop, he killed a grandmother and a little girl. He also hit a baby who, thankfully, was not substantially harmed. He fled the scene because he knew he was impaired. If the proposed changes were in effect, he would have only been facing one count by leaving the scene, whereas he is facing two counts for the two different people he killed. You should not reward someone by cutting his possible penalty in half when he flees the scene. That is why it is important that the public defenders' amendment not be included.

The second amendment would change the actual law itself by putting in a requirement that we not only prove that they harmed people and left the scene but they were also the sole proximate cause of the accident. For instance, in the case where a pedestrian was killed by a drunk driver, people at the bar said the driver had been drinking for six hours after his shift working as a bartender. He drove down the street hitting a pedestrian and sending the pedestrian into the bushes. We do not know when the person died. It did not appear he died instantly, but there is no way to tell because the driver fled the scene and left the man to die in the bushes. He was not discovered for several hours later. Under the proposed amendment, that may not even be a crime in Nevada. I thought I would bring up those two amendments beforehand because I know they will want to discuss them.

What we are proposing with this bill is not a change to the law. What the law is for fleeing the scene would remain identical. All we are doing is making the penalties identical to DUIs so that it is no longer a benefit to people to flee the scene of an accident.

Bruce Nelson, Chief Deputy District Attorney, Clark County District Attorney's Office:

I would like to briefly address the proposed amendments by the public defenders, and I think Brian has hit on several of them. There are a couple of things you need to be made aware of. The best way to look at them is with a couple of hypothetical examples.

Right now if a person runs into a pedestrian, it may be impossible to determine where that pedestrian was when he got hit. When a car hits a person, you cannot really reconstruct a collision in the same way you can if a car hits another car. Let us say the drunk driver takes off and gets caught the next morning and says the person who was hit was not walking in the crosswalk. That would be a defense to leaving the scene under the public defenders' proposed amendment. It would take the charge down from a felony to a misdemeanor because there is no other witness. The only other witness is dead and was left in the roadway.

The second example would be if there is a collision in an intersection, and the drunk driver takes off and gets caught the next day. His defense is that the light was green and the other guy's light was red. Under the proposed amendment, simply by claiming that, the case changes from a felony to a misdemeanor. That is why the amendment regarding proximate cause should be rejected.

With regard to the amendment striking out the number of victims, to my knowledge, leaving the scene of a collision is the only crime in Nevada in which victims do not matter. If somebody shoots three people, they are charged with three counts of murder. If they defraud six people, they are charged with six counts of fraud. However, if they are involved in a collision and leave, they only get charged with one count of leaving the scene regardless of how many people are hurt or killed. In fact, if they run into a car and run over someone while leaving, they still only get charged with one count of leaving the scene of a collision.

The Nevada Supreme Court made the purpose of this law clear recently when they said leaving the scene of a collision does not begin until after the collision. It does not matter whose fault it is. The point is, when you are involved in a collision you must stop at the scene and stay there to render aid. Right now,

if a drunk driver stays at the scene after hurting or killing three people, he gets three counts of DUI. If he leaves the scene, he gets one count of leaving the scene. I would urge the Committee to adopt the bill as written and to reject the amendments of the public defenders simply because they would gut this law and take us back to a worse position than we are in currently.

Assemblyman Araujo:
This may be just a clarifying question. As I read the language, it almost seems as if we are extending the period of time that someone could be punished for a hit-and-run that causes bodily injury. I just wanted to make sure the language is specific to folks who are under the influence of alcohol or drugs.

Brian Rutledge:
This bill makes no change to the underlying substance of the leaving the scene or duty to stop law. It all remains the same; it just changes the penalties.

Assemblyman Araujo:
I want to make sure we are specifically addressing folks under the influence of drugs or alcohol in this bill.

Brian Rutledge:
When people leave the scene and can stay away and hide from police long enough, we cannot prove whether or not they were under the influence of drugs or alcohol at the time of the accident. In the bus stop case, where they fled in a vehicle and on foot and then hid in a closet in someone's apartment, the police were able to get the defendant into custody in a short enough period of time. We were able to get a blood draw and prove that he was under the influence of marijuana and methamphetamines. Most of these crimes involve people under the influence, but we cannot always prove that, which is the point of the bill. For someone who is under the influence and causes an accident, he faces a DUI if he stays at the scene. If he flees, he is only facing leaving the scene of an accident. If the penalties are the same, it does not benefit him to flee. That is what we are trying to do here. As it stands now, if you are under the influence and you hurt someone, you benefit from leaving the scene if you can avoid the police long enough for the toxins to clear.

Assemblyman Elliot T. Anderson:
Under existing law, there is already a pretty substantial penalty for leaving the scene of an accident. I am wondering how raising the penalty will actually clamp down on this. Perhaps an ad campaign would get more people to stop. Maybe people do not know that they have to stop. What I am getting at is how is this bill exactly going to stop people from leaving the scene of an accident?

Brian Rutledge:
An ad campaign would not be very useful because if we are going to be honest in the ad campaign, we would say if you are drunk and you hurt people, you should flee the scene. That is what the law is right now; it encourages people to flee the scene. There was talk on the Senate side that perhaps the penalties should be higher than they are because you want to encourage people to stay. We need to make it so it is not a lower penalty for leaving the scene than it is for the underlying DUI because as the law sets forth now, it does benefit the person who flees. You cannot deny that people face lesser penalties if they flee the scene. I do not know what ad campaign we could run unless we lie.

Assemblyman Jones:
I completely get the idea that we want to disincentivize people from fleeing the scene. Let us say there is a minor traffic accident and two people get out and talk. The police do not always arrive quickly on the scene, and perhaps one of the parties involved in the accident leaves the scene. If the party that stayed on scene claims bodily injury, could the party who fled be caught up in something like this?

Brian Rutledge:
What you just described would be a misdemeanor charge of leaving the scene of an accident and not a felony. This bill only addresses the felony for leaving the scene.

Assemblyman Jones:
The language simply says bodily injury and people can claim soft tissue injuries. It does not say serious bodily injury; it just says bodily injury. Are you sure that would not catch them?

Brian Rutledge:
Yes, I am sure. Since it is a criminal statute, we have to prove the case beyond a reasonable doubt. The state has the burden of proving it. With what you just described, there is no way that we could prove that beyond a reasonable doubt. We would file it as a misdemeanor. Every time someone makes a claim, it is not always something prosecutable by a district attorney because of our burden of proof.

Assemblyman Elliot T. Anderson:
It is already a category B felony with a penalty of 2 to 15 years, which is pretty substantial. My second question is what is the idea behind not granting probation? I feel like we have a lot of costs for people we jail, and these people are not violent even though they were involved in a serious accident. What is the purpose of keeping them in jail while they are awaiting trial?

Brian Rutledge:
Penalties on this are substantially lower than they are for DUI. This is the only crime of this type in which the victims do not matter and the person who is responsible is not being charged for each person who is harmed. The reason we have it as a nonprobational offense is because a felony DUI is a nonprobational offense, and we want to make the penalties identical so that there is no incentive.

Assemblywoman Diaz:
My concern stems from individuals who might not be driving under the influence. Someone may have an accident and just freak out. I think it is human nature that makes us handle different situations in different ways. As I read this language, a person would be facing 2 to 20 years in prison because of fleeing the scene.

Brian Rutledge:
There could be a theoretical case where that may happen. If the person only stayed at the scene and called for help for the injured person, he would not face any charges whatsoever. I have not seen that in every single case since I took over this unit. We see a significant number of these cases each year. If they are caught for a timely blood draw, the person has been impaired. Many people freak out about accidents, but they stay and call 9-1-1. It is the impaired drivers who flee the scene.

Assemblyman Ohrenschall:
Regarding the nonprobational provision you are proposing, you are expanding it from a category B felony and a 2 to 15 year sentence to a 2 to 20 year sentence making it nonprobationable. Is it true that most people convicted of DUI do not usually have a violent criminal history? Also, regarding recidivism, is it true that most people charged with DUI are not usually seen back again? I wonder if you have any data or statistics on this. As Assemblyman Anderson has pointed out, we only have limited space in our facilities and we are looking at scarce resources. We do want to save those for the most violent criminals.

Brian Rutledge:
If by violent you mean non-DUI violence, I have not seen anything to say that people who commit armed robberies are more or less likely to drive impaired. However, I believe that DUIs are a violent offense, and I think most people who have been seriously injured or killed by a drunk driver would agree that it is a pretty violent offense.

I recently prosecuted a man whose first DUI caused substantial bodily harm. However, the one I was prosecuting him for was his seventh felony

DUI offense. After his first, he went on to get six more. There is plenty of recidivism. In our specialty courts, where we provide treatment, we have over 430 participants. Every single one of them has at least three DUIs. The DUI statute might be the most recidivist of all. I cannot think of any crime where we get as much recidivism as we do with DUIs.

Assemblyman Ohrenschall:
There is a very high recidivism rate. Is that what you are saying?

Brian Rutledge:
Yes, extremely high.

Bruce Nelson:
According to statistics, a person drives impaired 80 times for every time he is caught for DUI. Even a first-time DUI is very likely a recidivist; he simply has not been caught yet.

Assemblywoman Fiore:
This is a very interesting bill. In the case where the person hit Assemblywoman Seaman's car and ran, she chased him down and caught him. He was not drunk. I know of a few instances where people have been in minor traffic accidents and they left the scene. One case was of a young high school student. She was not supposed to be in the area where her boyfriend was. She rear-ended a car and then left the scene. We figured out later what happened. Therefore, the instances that I have seen were not involving drunk drivers. If you do catch the person, how are you going to prove he was drunk if he was not?

Brian Rutledge:
You cannot prove it. If the person leaves the scene and is gone long enough that we cannot get evidence of his drinking, we cannot prove the DUI charge; that is why we are proposing this bill. When I spoke about not having seen cases where they were not impaired, I was only talking about the felonies. Certainly, there are a lot of misdemeanor hit-and-run cases that do not involve impairment. Within the first three months of the year in Clark County alone the total was over 700 instances of leaving the scene. Almost all of them were misdemeanors. It is the felony cases where people are substantially injured that we see involvement of intoxication. That is all this bill is addressing. It is not addressing those other hundreds of misdemeanor cases of leaving the scene, and whether or not the person was impaired.

Assemblywoman Fiore:
Are you okay with the language in this bill changing it from bodily injury back to serious bodily injury?

Brian Rutledge:
I do not know what you mean by changing it back to serious bodily injury. The hit-and-run statutes have always been about bodily injury. I would oppose adding a requirement of serious bodily injury. If someone is injured in an accident, you are supposed to stop and render aid. That is the entire point.

Assemblywoman Seaman:
I think you already answered my question. In my case where I had no bodily injury, it would still be a misdemeanor, correct?

Brian Rutledge:
That is correct.

Chairman Hansen:
Thank you both for your testimonies this morning. Senator Manendo, is there anyone else you would like me to call on to testify?

Senator Manendo:
I believe there are victims and victim advocates in Las Vegas. There may also be some others from law enforcement.

George Assad, Private Citizen, Las Vegas, Nevada:
I am here in support of the bill, and I will be very brief. I support the previous statements. As a former Clark County district attorney and a judge, I have witnessed this situation many, many times. The intent of this bill is to disincentivize people from leaving the scene. In essence, you want people to stay and render aid. I would almost be in favor of supporting those who think the penalty should be increased. It only makes common sense that people should be given a reward of some sort for staying and rendering aid. The current status of the law encourages people to leave the scene and avoid any penalties of any serious nature.

Sandy Heverly, Executive Director and Victim Advocate, Stop DUI:
I want to thank you for giving us the opportunity to share our views and support of S.B. 245 (R1). I also want to thank Senator Manendo for sponsoring this bill on the behalf of the thousands of innocent victims of DUI and leaving the scene. In our opinion, leaving the scene of death or injury is nothing less than a willful, cowardly, despicable, and heinous act. It should be addressed

with much harsher penalties as described in Senate Bill 245 (R1). As a victim advocate, I have worked with thousands of traffic crash victims in Nevada and across the country over the last 30-plus years. I have seen firsthand those who have suffered additional physical and emotional trauma due to the offender leaving the scene, thereby escalating the victimization.

Hit-and-run victims and their families struggle with how someone could abandon their loved one while they lay injured or dying and not render any semblance of aid or human compassion. How do you do that? How do you leave human beings to suffer and die on the street? It is beyond most human comprehension. Try to imagine anyone that you love and care about in that scenario as they are injured, alone, terrified, and helpless. It is hard to imagine listening to the screams of your broken and bloody children lying in the street. I certainly have not come to terms with that experience of the alcohol-impaired driver who chose to run, leaving my four young children, my husband, and me severely injured, and leaving my critically injured mother to burn alive. That was more than 30 years ago; however, that horrific scene remains as vivid today as it was then. That experience does not define or control me. It does, however, inspire me.

So many crash victims have expressed their heartache and frustration to me for similar situations. Upon learning the charge for this inhumane behavior was dismissed, or the offender was given probation, has exasperated their victimization on many levels. So many have said, if only that person would have stayed, or called for help, or tried to render some semblance of aid, maybe the injuries that my loved ones sustained would not have escalated and they could have possibly survived.

Last year, rarely a week went by that we did not hear about one or more of these horrific crashes with the perpetrator choosing to flee. It saddens me to say, but it appears to be becoming the behavior of choice in many of these situations. To hear the scared defense for this crime is truly repugnant and offensive to me. I can guarantee you the victims that these perpetrators left were truly terrified. Oftentimes, we learn later the suspect had warrants and had been drinking or using other drugs, and then chose to run, leaving his or her victims helpless, hoping to avoid the harsher penalties of a felony DUI. If found, he or she would be arrested, and charged under the current statute which permits plea bargaining and/or probation.

We believe the penalties in the current statute inadequately address the severity of this crime and that is why S.B. 245 (R1) is before you today. We also believe the lack of significant sanctions for this crime encourages the behavior. Crash victims, the general public, law enforcement, emergency responders, local

and state representatives, and our media who cover these crimes are sickened and disgusted by these offenders being afforded such leniency. Please know we clearly understand that this Committee does not have the ability to legislate a conscience to these imposters of humanity who are morally bankrupt and choose to leave their victims to suffer and die in the street without so much as a call to 9-1-1. You certainly have the authority to raise the bar of accountability with more stringent sanctions for those who do not possess that level of simple human decency. We encourage you to do so. I want to thank Senator Manendo for sponsoring this bill on our behalf, and thank you Committee members for listening to our concerns. I respectfully request your favorable consideration of S.B. 245 (R1).

Chairman Hansen:
Ms. Heverly, thank you very much for your testimony. It is interesting because we rarely get to hear from the victims. In fact, we always have people who seem to think the criminals are often the victims. You helped enlighten us with the fact that there are a lot of folks on the other side of this who need protection as well. I understand it must be horrific to repeat these sorts of things, but it really has been for our benefit this morning.

Assemblyman Elliot T. Anderson:
My question is for Judge Assad. We are hearing about the lack of the significant sanction but as I read current law, it is already a 2 to 15 year charge and a category B felony. That is the second most serious felony that you can have. The only thing that would be higher is a category A felony, which would be for crimes like intentional murder, et cetera. Why is this penalty not serious enough as it is in current law?

George Assad:
This is not a bill that is in search of a problem. It is a problem that needs to be addressed. The bill does so by increasing the penalty by five years. More importantly, it makes it nonprobationable. To answer the question you asked earlier regarding bail, the defendant is always entitled to bail. Even someone charged under this new bill would be entitled to bail. The purpose and the rationale behind the bill is to create an incentive for people to stay. As mentioned earlier, an ad campaign, along with this bill, would go a long way to do that. The rate of recidivism with DUIs and people leaving the scene is very, very high. By making it nonprobationable and not allowing the sentence to be suspended, it gives the judge leeway at sentencing to impose the appropriate sentence. It is not a severe penalty; it is a bill trying to create an incentive for people to do the right thing, such as staying at the scene and rendering aid. That will all be taken into consideration by the prosecutor at the

time of charging and by the judge at the time of sentencing or during the plea bargaining process.

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:
A vehicle operated by an impaired driver is a lethal weapon. Every 53 minutes, someone is killed by an impaired driver on America's roadways, and every two minutes, someone is injured. Ms. Heverly spoke about accountability, and that is why this piece of legislation is so important. It brings accountability; that is why we support it.

John T. Jones, representing Nevada District Attorneys Association:
We are here in support of S.B. 245 (R1). I want to thank Senator Manendo for bringing the bill forward. This bill removes the incentives for impaired drivers to leave the scene. That is all this bill does. Anybody who is liable for this crime today will be liable for the crime tomorrow. It does not change the elements at all. It just removes the incentive for impaired drivers to leave the scene.

A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I am speaking on behalf of the Las Vegas Metropolitan Police Department, the Nevada Sheriffs' and Chiefs' Association, and the Washoe County Sheriff's Office. We are in full support of this measure and we appreciate Senator Manendo bringing it forward.

Assemblyman Ohrenschall:
Looking at section 2 of the bill, it is currently an existing category B felony for leaving the scene of an accident where there is bodily injury. We are keeping it a category B felony but changing the charge from a 2 to 15 year sentence to 2 to 20 years and making it nonprobationable. Do you know if any other jurisdictions make leaving the scene of an accident where there is bodily injury a nonprobationable felony? We have heard that a lot of folks do not have a prior rap sheet. I am wondering of you know if any other jurisdictions that take that discretion away from the sentencing judge.

Brett Kandt:
I do not know.

John Jones:
I do not know. Brian Rutledge may know but I cannot promise you he does.

Jesse Lujan, Private Citizen, Las Vegas, Nevada:
I am an 18-year law enforcement officer. I am also the son of the victim of a hit-and-run DUI driver. First, I want to thank the Committee,

Senator Manendo, and Sandy Heverly for allowing me to speak on behalf of my family and many other victims who are not able to speak for themselves.

On behalf of the family of Robert Lee Lujan, thank you for allowing me to enter testimony about the facts and circumstances surrounding his death and the prison sentence the subject was given in this incident. My father, Robert, was killed on July 20, 2014. He was 57 years old, and it was just nine days prior to his 58th birthday. He was a father, a husband, a son, a brother to nine siblings, a nephew, and an uncle with more than 170 nieces and nephews. He was working on the roadway for his own business, Lujan Saw Cutting, on West Sahara Avenue near Arville Street. My father was cutting an asphalt patch in the roadway with a thousand-pound walk-behind saw when he was struck and killed by a DUI driver. There was less than one foot left that needed to be cut when he was struck. My father was killed on impact, but his body was thrown more than 70 feet from the point of impact. I was assured by detectives that he was killed instantly. However, being an 18-year police officer with more than my share of witnessing deaths of all kinds, I doubt this was the case. The driver fled the scene on foot only to be followed by witnesses who led the police to the suspect. My father was left in the roadway to die like a dog while the suspect simply ran away.

Over 150 people attended a vigil for him the next night and over 500 people attended his funeral. Saying he was loved by so many people would do him justice. The suspect in this case was sentenced to the maximum limits the law currently allows, which is 6 to 15 years for leaving the scene of an accident causing death, and 8 to 20 years for DUI causing death. These sentences were allowed to run concurrent. I am in full support of making the statutes mirror each other and raising the maximum limit to 20 years. I am grateful that you are allowing me to express my thoughts on this bill.

I do not understand why DUI drivers who kill innocent people are given breaks. The suspect basically got a two for one plea deal. Why are they allowed to have concurrent sentences and potentially only do eight years in prison? My father, like so many other innocent people, was not given any breaks. There are no do-overs, no good-byes, no holidays, and no graduations. Milestone life events that people take for granted simply stop in the blink of an eye. There are no letters home or care packages sent out. The only visitation is at the gravesite with the biggest question simply being why? Why is it if a person commits a robbery and a person dies, they are charged with murder? Why is a crime involving property and death given a larger penalty? Although robbery is seen as a property crime, every innocent victim is robbed of their

lives, and the families of victims are robbed and victimized again and again, day after day, at any given moment. The average DUI driver commits the offense 80 times before they are caught the first time. That means they make the choice to get behind the wheel 80 times, knowing that those actions could change the lives of those they victimize.

Thank you, Senator Manendo, for spearheading this effort to change the laws and increase the penalties. Nothing anyone can do will ever bring my father back. You lawmakers have the power to make people stop and think about their actions if the penalties are harsh enough. My family does not want to see the DUI driver spend 100 years in prison or an eye for an eye. We simply want the peace of knowing that just maybe the patriarch of our family did not die in vain and because of you, and through my words, other families may have peace in knowing they are a little bit safer on the roads.

Chairman Hansen:
I am sure I speak for the Committee in saying that we appreciate you taking the time to educate us from the victim's perspective. Sometimes we approach this in such an academic way that we overlook that. Thank you for your testimony.

Leonard Marshall, Lieutenant, Las Vegas Metropolitan Police Department:
I am the lieutenant in charge of our hit-and-run detail at LVMPD. I will keep this short and sweet. As stated earlier, all of these cases are serious bodily injury cases where the suspect is almost always impaired to some extent, and that is why they are fleeing. My detectives tell me that on the misdemeanor cases, usually after they realize they will only get a citation for the misdemeanor hit-and-run, they almost always indicate that they were impaired and that is one of the reasons they fled the scene.

Also, earlier you asked about the other jurisdictions. We do not know the answer, but we will find out and get back to you.

Chairman Hansen:
Seeing no further questions, thank you both for your testimony. We will come back up to Carson City.

Natasha Koch, Captain, Executive Officer, Nevada Highway Patrol, Department of Public Safety:
We are here in support of the bill.

Scott F. Gilles, Legislative Relations Program Manager, Office of the City Manager, City of Reno:
The City of Reno supports this measure and thanks the sponsor for bringing it forward.

Chairman Hansen:
Is there anyone else who would like to testify in support of S.B. 245 (R1)? Seeing none, is there anyone who would like to testify in opposition?

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
We are here in opposition to the bill. We did reach out to Senator Manendo a few times to address our concerns. We certainly appreciate his time and attention in addressing our concerns. As a collective body, we are sympathetic to the victims' testimony. However, we want to address our concerns specifically with section 2. If it is okay with the Committee, I would like to make some brief comments concerning our opposition, and then turn it over to Mr. Yeager for some brief comments as well, followed by Mr. Vasek, who has a presentation. He also has facts and figures that he has been researching concerning this issue.

The Committee should already have our proposed amendment (Exhibit J) and memorandum (Exhibit K). Our chief concern regarding the bill is with section 2, subsection 1, where it says, "The driver of any vehicle involved in an accident on a highway or on premises to which the public has access resulting in bodily injury to or the death of a person shall immediately stop his or her vehicle at the scene...." The concerns that we have with this is the word "involved."

I had a case last year involving a multiple-car accident. There were three cars involved and there were bodily injuries but it was soft tissue damage. My client, who was involved, did not cause the accident. He obviously knew he was involved in a vehicular accident, but he did not cause the injury. He was in the middle car and the accident was caused by one of the other victims. He did not readily know that the other two people had soft tissue damage. In fact, they refused medical attention at the scene. The other parties sought medical or chiropractic treatment thereafter. My client also suffered injuries with cuts, scrapes, and bruising. Therefore, technically he was also a victim. He fled the scene and they found him at his place of employment. He was trying to work and was denied access because of his injuries. Ultimately, the police found him in the parking lot and he was subsequently arrested, charged, and convicted of felony leaving the scene because it fit the definition in the statute. He was involved in the accident, but he did not

cause the accident. There was bodily injury and he was looking at serving 2 to 15 years. He was able to get probation simply because the judge was able to see he had little criminal history, was gainfully employed, pled to the charge, and was extremely remorseful. He did not know that he caused that soft tissue damage. Quite frankly, he did not understand the law. He admitted to the judge that he fled and that was wrong.

The other issue I want to make clear is under current law, bodily injury is not readily defined in NRS. Substantial body harm is defined in NRS 0.060. It says, "Unless the context otherwise requires, 'substantial bodily harm' means: 1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or 2. Prolonged physical pain." That should be the definition in NRS 484E.010, to which section 2 applies. Bodily injury can mean scrapes, bruises, cuts, soft tissue damage, and things that may not be readily present. It is not readily defined in the statute. People involved in accidents may not know the other driver is suffering from bodily injury.

I do not know why drivers on the roads do the things they do. We all drive these roads, and every morning when I get behind the wheel to drive from Reno to Carson City, I am always cognizant of the fact that drivers do not always make good choices. People who are involved in accidents do not always make good choices. They make a split-second decision to flee the scene. Should they stay? Absolutely, but many times they flee the scene.

From the proponents of this bill, the premise is that the driver is always impaired with drugs or alcohol. I disagree with that. It is simply not the case. It may be the case in some areas, but it is not always the case that the person is impaired. There may be a young, 18-year-old, impetuous driver who just panics. There may be a person who may have immigration consequences, and they may feel like they have to flee because of those consequences. A person may have a speeding ticket that went to a warrant, and they do not want to be arrested for that warrant. These are not good choices to flee the scene, but that is the fact of the matter. It is not always a person who is impaired or driving under the influence. If the proponents of the bill want to mirror the penalties of DUI, which is contained in NRS Chapter 484C, we should also mirror the statutory elements of DUI. It seems to me that if we adopt the changes in section 2 of the bill, we are affording more protections to people who drive under the influence and cause substantial bodily harm or death than people who merely flee the scene of an accident.

Steve Yeager, representing Clark County Public Defender's Office:
I agree with Mr. Sullivan, and I have a couple of other comments I would like to make. Certainly, the bill has a good objective to incentivize people to stay at the scene of an accident. I am just not sure how to accomplish it in a fair manner. I have tried to think about how to really capture impaired drivers who are leaving the scene of an accident. I understand that is difficult and I do not have a good solution. We have talked about the deterrent value. If individuals know that it is a harsher penalty, they will not be incentivized to leave the scene. I have to disagree with that in a sense. I do not think the common driver even knows what the penalties are for leaving the scene of an accident.

With reference to DUIs, I think we have done a great job in this state. Everyone knows someone who has had a DUI. If you are in a situation when you are thinking about driving, you have an awareness of what the penalties of DUI are. Maybe you have a friend who tells you about it and advises you against it. They may tell you to take a taxi or an Uber car instead. They will tell you, do not drive, it is not worth it. The problem here is nobody gets in the car thinking he is going to get in an accident. No one intends to do that. For the deterrent effect, someone would have to know before the accident happens that if he leaves the scene, he will be facing mandatory prison time. If we were to enact this bill, it would have to come with some kind of public awareness component. We do not want to punish someone who really does not deserve it. As Mr. Sullivan said, there are a lot of reasons that people leave the scene of an accident.

Leaving the scene is already a category B felony with a sentence of 2 to 15 years. We have heard from some of the proponents today, and I believe that in their cases, the offenders did get prison time. I think in egregious cases where someone gets in an accident, looks in the other car, sees serious injuries, and chooses to leave, our judges will never give that person probation. I understand it is possible under the statute, but that is not the kind of person who would receive a probation sentence. Those folks are already going to prison. Of course, if there is evidence of drinking, DUI charges could be brought against them.

We certainly understand Senator Manendo's purpose for bringing this bill. It is a noble purpose, but we are a little bit concerned that we are going to catch some folks on the margins who just do not deserve a mandatory prison sentence of 2 to 20 years.

Chairman Hansen:
While this deals with impairment as the main focus, in my mind, it is even worse if you are not impaired. You have run over somebody and you take off.

At least with the impairment there is an excuse for it. If somebody takes off for the reasons that you mentioned, that should cause a greater penalty in my opinion. I do not want to get too much into the weeds, but it just seems odd that we would feel sorry for the person who has run over someone or caused some major accident, and fled the scene to avoid any consequences when there may be someone who is dying and needs aid at that time.

Steve Yeager:
I agree with that entirely. I do not think that any of us are saying that if someone runs a person over or gets into a horrific accident and flees, they should not be seriously punished. The difficulty we have with the bill is the way it is defined. You do not have to be the cause of the accident, there is no requirement that you actually know injuries occur, and bodily injury can be soft tissue and scrapes. Those are the kind of cases on the margin. If the bill was crafted in a way to say if you have obviously run someone over, you deserve a prison sentence, we could live with that. We are just more concerned for the folks on the margin.

Chairman Hansen:
Let us watch the PowerPoint presentation (Exhibit L), and then we will come back for questions.

Brian Vasek, Legislative Extern, Clark County Public Defender's Office:
We have recently conducted a survey on DUI fatality rates in the United States. Our primary sources for the survey were the Foundation for Advancing Alcohol Responsibility, the Insurance Institute for Highway Safety, the Highway Loss Data Institute, and the Nevada Department of Transportation (NDOT). My survey consisted of 34 states including the 10 most populated states, the 10 states with the most DUI fatalities per population, the 10 states with the fewest DUI fatalities per population, the 10 states with the best ten-year change in DUI fatalities, and the 10 states with the worst ten-year change in DUI fatalities. I did not include the remaining 26 states in my survey because they were not among the best or worst in any of these categories.

To start my presentation (Exhibit L), on slide 2, you will notice that I have highlighted Florida, Pennsylvania, and Delaware. Among 34 states, these 3 were unique. I will discuss the reason in a moment. In 2013, there were 10,076 DUI fatalities in the United States at a rate of 3.2 fatalities per 100,000 population [slide 3]. The ten-year change was 28.6 percent. The change from 2012 to 2013 was 2.5 percent. As you can see, Nevada was among the top third in three of these metrics and among the bottom third in total fatalities. In fact, Nevada's change in fatalities in the past ten years is

12 percent better than the national average. The change from 2012 to 2013 was actually three times the national average. All in all, Nevada's DUI fatality rate is among one of the lowest in the country.

In 2013, Florida was among the top third in total fatalities, and the bottom half in fatalities per population [slide 4]. It had a lesser change in fatalities than Nevada from 2012 to 2013, and over ten years. In 2013, Pennsylvania was among the top third in total fatalities, top third in fatalities per 100,000 population, bottom half in the ten-year change in fatalities, and just ahead of Nevada in fatalities from 2012 to 2013 [slide 5]. In 2013, Delaware was among the bottom third in every metric, despite having a year with 38 fatalities [slide 6].

Why are Florida, Pennsylvania, and Delaware unique? These were the only three states in my survey that happened to have a mandatory sentence for leaving the scene of an accident with substantial bodily harm or death. As you can see, Nevada is currently outperforming each of these states in two of the metrics, and just shy of Pennsylvania in the final metric. Preventing DUI fatalities is a multifaceted approach, but I was shocked to discover that only 3 of these 34 states had a mandatory sentence for leaving the scene of an accident. More shockingly, none of these states were doing any better than Nevada to prevent DUI fatalities.

I admit it is a little unfair to compare Florida and Pennsylvania to Nevada with regard to the total fatalities in 2013, but Nevada is still among the lowest in total fatalities when compared to states with similar populations, absent Utah. These states were among the states in my survey for being the best or worst in some of the metrics for performance. Nevada collectively outperforms nearly every one of them.

This has led me to a very simple conclusion. The mandatory sentences for leaving the scene of an accident, which is a crime of impulse, were no more or less likely to deter driving under the influence. There were three theories of punishment that we discuss most in the Legislature: incapacitation, retribution, and deterrence. I do not believe, based upon my survey, that a mandatory sentence for leaving the scene of an accident is likely to deter driving under the influence. *A Guide to Sentencing DWI Offenders*, published by the National Highway Traffic Safety Administration, agrees with this conclusion. Studies report no decline in recidivism or first-time offenders by implementing mandatory prison time for felony DUI. Why impose a similar sanction for leaving the scene of an accident absent incapacitation or retribution? Both are costly alternatives to other forms of DUI prevention.

Proponents claim that S.B. 245 (R1) is to close a loophole because the current statutes encourage people to flee the scene. However, we must look at the unintended consequences for first enhancing this penalty because when discussing this with people, and from looking at sentencing in the courts, these are individuals who panicked, and who were not thinking rationally about their behavior. This enhancement poses the potential to do much more harm than good, as my colleagues have discussed.

I would now like to discuss the victims whom proponents of S.B. 245 (R1) seek to protect with this enhancement based upon previous testimony and those who have discussed their tragedies today. From 2008 to 2012, there were 234 pedestrian fatalities in Nevada [slide 9]. There were 56 in 2008, 36 in 2009, 40 in 2010, 43 in 2011, and 59 in 2012. Sixty-five percent of these fatalities can be traced to a source unrelated to DUI, such as illegally lying in a roadway, failing to obey traffic signs, or improper crossing. Thirty-five percent can be contributed to another or an unknown source, but the data from NDOT did not discuss what these sources were, nor if alcohol was involved.

Nonetheless, these 20 accidents per year almost always make the news. There is a problem with reporting such incidents. The more we see something, the more we believe that it will occur. For instance, on the same day the *Las Vegas Review-Journal* posted this story about a shark attack [(Exhibit L), slide 10], it also posted this one about a car crash [slide 11]. Does that somehow make a shark attack more likely to occur? No, it just makes good news because of its infrequency. Five people die per year from shark attacks.

We have heard from opponents about how rarely a week goes by without a DUI fatality. Mathematically, they are correct. From 2008 to 2012, there were 363 DUI fatalities in Nevada. There were 101 in 2008, 63 in 2009, 66 in 2010, 59 in 2011, and 74 in 2012 [slide 11]. That is easily one fatality per week, but let us quickly look at those fatalities. Thirty-four percent involved a second vehicle leading to approximately 25 fatalities per year. Data from NDOT did not distinguish whether this was the driver, passenger, or someone in the second vehicle. Sixty-five percent did not involve a second vehicle. Fifty-six percent of these fatalities were the result of an overturn, leading to approximately 26 fatalities per year. Presumptively, the driver was the fatality. Twenty-six percent resulted from striking a fixed object, with approximately 12 fatalities per year. The driver was presumptively the fatality. Most shockingly, only 8 percent, or approximately four fatalities per year, were from a car striking a pedestrian. Any loss of life is tragic, but when this occurs, it is incredibly rare. By reading the news each night, you might think otherwise.

After a recent tragedy in Las Vegas, the *Las Vegas Sun* suggested that there are better ways to protect these people, but what was the most frequently cited way to prevent such loss? The best deterrent to prevent DUI fatalities is not enhancing penalties; it is getting caught. After being caught, few motorists will reoffend. A second-time DUI offender is rare. Only 2 percent of DUI arrests are recidivist, with approximately 96 percent of all DUI arrests being first-time offenders. That first contact with law enforcement is what deters criminality. That is the single greatest deterrent for any crime. I fear the unintended consequences of S.B. 245 (R1) and I urge you to reject this bill.

Chairman Hansen:
I have to admit that your statistics are all very interesting and somewhat academic. However, when you hear testimony from people like Officer Lujan or Ms. Heverly, it is very difficult not to say that your statistics are cold. Their reality is quite different, even if it is only one or two people. You can say there are only five people in a year, but for those five people it is pretty significant. Regarding the idea that we should feel sorry for people who panic and leave the scene of an accident, I am sorry, but I have no sympathy for people who panic and leave the scene of the accident when there are people potentially dying. Statistics are good but DUI fatalities are not. I am a teetotaler, and I know from my own experience dealing with many people in my business that people drink and drive a lot more than they are caught. While fatalities are one thing, accidents that are caused by DUI are a lot more than a few hundred a year. I can guarantee that.

Assemblywoman Diaz:
I echo the sentiment that all human life is important. I think the aim is to protect everyone and make sure that aid is given. When we want our children to be ready and equipped to handle difficult situations like a fire, what do we do? We have constant fire drills telling them how to exit and how to react in a highly stressful situation. We have these mock scenarios, and we practice with our kids from the time they are in kindergarten so that they are equipped if the time comes. The thing that has been bothering me is that we do not educate enough. I do not think I have been schooled on stopping and rendering aid if I am ever in a really horrible accident. How often are we educating people before we throw the book at them? If someone is caught for a DUI right now, usually he has to go before the judge and there are certain things he has to satisfy. In the coursework, are we stressing the importance of stopping and rendering aid?

Sean Sullivan:
That is a very good point. I have not had a lot of these types of cases in the past. These are tough cases. I had that one case last year where the

gentleman received probation because there was only bodily injury and not substantial bodily harm. The judge felt it appropriate to put him on probation. As an attorney, I was shocked to see that the penalty was 2 to 15 years. I did not realize that the penalty was as high as it was for a category B felony. I think the educational component is an excellent idea. I do not think that there is enough education. When you are trying to train an 18-year-old driver who may have just received his or her driver's license, how can you train them for what would happen if they were involved in an accident? That is an excellent idea and I appreciate the sentiment. There should be more of an educational component.

Assemblyman Gardner:
We have heard a lot of crime bills, and I found one thing particularly interesting that Mr. Vasek presented. Previously, we have seen statistics that said having interactions with police officers increased the likelihood of becoming a criminal. However, now we are hearing that it does the opposite. I am wondering where that information comes from. Also, arguments are being made by some that there are good reasons to leave the scene of an accident. I do not know if that is the argument you are trying to make, but that is how it is coming across. Is that correct?

Steve Yeager:
We do not want to give the illusion that there are good reasons to leave; there are never good reasons to leave the scene. The point was that there are reasons unrelated to impairment. Certainly, some drivers are impaired but not all of them. That was the point that we were trying to make. In regard to your other question about contact with law enforcement, I do not know the answer to that. From my work as a public defender, DUI clients are a little out of the ordinary for us because we probably get more folks who never had contact with law enforcement. In order to get a DUI, you need to be at an economic level where you can actually be driving whereas many of our clients do not even have a vehicle. I am not sure statistically. My guess is that the typical DUI offender tends to be a little bit older than some of the clients we see. Perhaps for those folks who are employed and doing well, that contact with law enforcement and the penalty that comes with a DUI define the additional insurance that tends to have a deterrent effect for a lot of those individuals although not all of them. A good number of them are folks who I do not see back.

Brian Vasek:
I have worked with both adults and juveniles. We talk about first contact with juveniles, and I believe there is research to suggest that the first contact with law enforcement for a juvenile can lead to future criminal conduct.

For adults, perhaps it is different. I can say from working with kids, first contact with law enforcement is usually not a good sign for future criminal behavior.

Assemblyman Ohrenschall:
Regarding the data in the presentation, how long have Florida, Pennsylvania, and Delaware had mandatory sentences? Has there been any effect on leaving the scene of an accident where there is bodily injury since they have implemented those mandatory sentences?

Regarding the amendment proposed by the public defenders, it seems like there was pretty strong opposition from the district attorneys in Las Vegas. I wonder if you could go over it in terms of the proximate cause language versus any vehicle involved.

Brian Vasek:
I would like to briefly discuss your second question about proximate cause. Proximate cause is not a unique concept in the statute. Georgia actually has a proximate cause requirement for leaving the scene of an accident with substantial bodily harm. Georgia's data is pretty good. Proximate cause does not have to be the sole cause; it is just a cause.

Regarding the first part of your question about Pennsylvania, Florida, and Delaware, I believe that Pennsylvania has had this statute for over 20 years. Delaware has had it for approximately 17 years, and Florida since 2007. I believe there was an amendment in 2011 to add a provision for leaving the scene of an accident with substantial bodily harm. The provision says that if the accident is not related to alcohol or a controlled substance, there is not a mandatory sentence required. It really was just targeting that specific population, which is something that was discussed in this Committee before.

In terms of whether or not it has served as a true deterrent, I cannot say. I will admit that is the limit of this data. It is simply about DUI fatalities and not all DUI-related accidents. I must apologize because as a student and academic, my research can be a little cold sometimes. That is simply the world that I dwell in.

Chairman Hansen:
The purpose of the bill is not just a deterrent. It is also to add a layer of punishment for people who flee. Ideally, it would be a deterrent. However, in the absence of the deterrent factor, it does not mean that the enhancement of the penalty does not have merit.

Assemblyman Elliot T. Anderson:
Mr. Yeager, right now we have a lot of devices in the law that allow the judge and jury to figure out what happens. I think that is the point of your testimony. It is not that DUI is not serious; it is just maybe the legislators are not in the best position to figure out what is happening and what the law will do. That is why we have devices like wobblers that allow people to be treated differently for purposes of sentencing based upon the specific facts. If there was a soft tissue injury, and a kid got scared, it may be different than a third-time DUI offender who left the scene because he was drunk and did not want to go to jail again. Is there any way we can adjust this bill to keep the discretion up to the judge to throw the book at that three-time DUI offender but not at the kid who is scared? The way I read this bill, they are treated the same, and could both get a very long prison term.

Steve Yeager:
I think you are right. Every case is different and requires a different analysis. The difficulty with this bill as it is proposed is that it would not allow for probation. If I am representing someone who is faced with this charge, I will have to tell him that if you are convicted, you must go to prison for a minimum of 2 to 5 years and maybe up to 20 years. I think a happy medium would be to make this probational but leave the rest of the changes as is. Instead of a 2 to 15 year sentence, let us make it a 2 to 20 year sentence. I think the district attorneys make a good point about multiple victims. If there are multiple victims, let us allow for multiple counts. However, I think our major discomfort with this bill comes from the lack of ability to get a probation sentence. Mr. Anderson, those mitigating factors you talked about do not matter to the judge because the judge cannot give probation and must give prison. I think we could live with that.

Chairman Hansen:
From the discussions that you and I have had, I would say that all of these cases are plea bargained. Surely, in the scenario that Mr. Anderson mentioned about the young kid who leaves the scene where there were soft tissue injuries, I imagine that the district attorney would take that into consideration and have him plead guilty to a lesser charge. Is that the standard operating procedure?

Steve Yeager:
I will agree that 99.6 percent of our cases are negotiated in Clark County. I would hope that would be the case but it depends highly on the facts, circumstances, and people involved in the case.

George Assad:
With all due respect to Mr. Vasek, the bill is not intended to...

Chairman Hansen:
Judge, I am sorry, but we are hearing opposition testimony. I am going to have to stop you. I have already heard you testify as a proponent of the bill. Senator Manendo will be allowed to come back up as a final rebuttal witness. However, I cannot allow you to come back up in the opposition testimony window.

George Assad:
Will I be able to testify in rebuttal?

Chairman Hansen:
Not unless Senator Manendo would like for you to do it for him, but that is between you two. Is there anyone else who would like to testify against the bill? Seeing no one, is there anybody in the neutral position? [There was no one.] Senator, would you like the judge to do the rebuttal?

Senator Manendo:
I think if Judge Assad would like to send an email to the Committee members, that would be fine. I want to thank you, Chairman Hansen. Twenty years ago when I first landed in this building, there was a different attitude toward victims. I want to commend you on your patience and understanding toward victims of any crime. There was a time when another colleague of mine and I had many discussions about how we treat the victims who came before this Committee to testify because they were treated a little bit unfairly. Former Assemblywoman Ohrenschall and I were taken to the woodshed many times and were told this is how things are run. We disagreed philosophically that this is a public building, everyone should be treated the same, and victims should not be treated any differently. I appreciate that consideration.

I also wanted to mention something about Officer Lujan, who spoke about the death of his father. I had the honor to read his letter into the record on the Senate side. He was unable to attend, and it was quite an honor to be able to do that for his family. I had a chance to meet him a couple of weekends ago.

Assemblywoman Diaz talked about education. Whatever we can do to educate the public about DUIs, I am all for it. My first bill 20 years ago that was signed into law by former Governor Miller was a public safety bill. This is something I have been doing for a long time and will continue doing until the day I die, whether it is serving in this capacity or as an advocate. No one said that this bill was designated to decrease DUIs. We did not claim that, and I apologize if we portrayed that. We do all that we can to educate those from young to old

about what happens when you are impaired and you get behind the wheel of any type of motorized vehicle. It could even be a moped. You could hurt or kill yourself or someone you care about.

We have a certain punishment on the books if someone were to kill somebody while impaired. Maybe it is your spouse, son, daughter, grandparents, mother, father, or even your neighbor. However, if you leave the scene, you are not punished as much, which makes it an incentive to leave the scene. That is absolutely crazy. Why would we say it is okay to leave the scene, not render aid, and you get an incentive for doing that? I think this is as violent a crime as there is.

Over 20 years ago, there was an accident on the corner of East Flamingo Road and South Pecos Road. The Webb family arrived at the hospital to find their daughter, who had been in a crash caused by a DUI driver, with half her body missing because she was burned alive. Her head was so swollen they did not even recognize that it was their daughter. I will submit to my colleague, with all due respect, it is absolutely a violent crime. The only difference between a gun and an automobile is a couple thousand pounds. To that family, it is a violent, violent crime.

As always, I respect the will of this Committee, and I respect the process of the Legislature. I respect that this Committee will come to a determination on how to proceed or not proceed with this legislation. I would be glad to work with folks if need be. We have two houses, and this bill did pass unanimously in the Senate. This is a whole new ball game and I will always respect the wishes of the Committee and the leadership we have before us. Thank you for giving everyone, including our victims, their due diligence today.

Chairman Hansen:
Thank you for a well-presented bill today. We will now close the hearing on S.B. 245 (R1), and open the hearing on Senate Bill 264 (1st Reprint).

Senate Bill 264 (1st Reprint): Exempts spendthrift trusts from the application of the periods of limitation set forth in the Uniform Fraudulent Transfer Act. (BDR 10-780)

Senator Mark A. Lipparelli, Senate District No. 6:
Generally speaking, we want to make and keep Nevada a competitive place for the development of trusts. I think this bill addresses an issue that the courts and practitioners in the area struggle with at times. With that, I will turn it over to the technical experts at the table.

Michael G. Alonso, representing Nevada Trust Companies Association:
We are here in support of Senate Bill 264 (1st Reprint). There are some other speakers who will address the bill as well. Greg Crawford is with Alliance Trust Company, and Ann Rosevear is on the board of directors for the Nevada Trust Companies Association.

The bill is pretty simple and straightforward. It is prompted by a California case that incorrectly interpreted what we believe is current law. As Senator Lipparelli said, this is a highly competitive area. Other states have said that Nevada is weaker because of the way this statute was interpreted. We are just trying to clarify what existing law is. On the Senate side, Legislative Counsel Brenda Erdoes had said that this bill is just a clarification of existing law. Specifically, *Nevada Revised Statutes* (NRS) Chapter 112 is the normal statute on fraudulent conveyances, and NRS Chapter 166 has to do with spendthrift trusts. In section 2 of the bill, the language "Except as otherwise provided in NRS 166.170," which is existing law, is being deleted. That is what we believe was misapplied. There is a difference between the normal fraudulent conveyance statute and NRS Chapter 166 on spendthrift trusts. There is a difference in the statute of limitations, which is four years versus two years. There is a difference in the standard of proof, which is preponderance of evidence versus clear and convincing evidence for spendthrift trusts, which is on purpose and has been the intent a long time. I will now turn it over to Mr. Crawford.

Gregory E. Crawford, Co-Manager and Professional Trustee, Alliance Trust Company, Reno, Nevada:
I would echo Mr. Alonso's comments that we operate in a very competitive environment attracting trust and estate business to Nevada. Our two primary competitors jurisdictionally are Delaware and South Dakota. They have used this perceived inconsistency of the statutes against us. When we attend national conferences, they raise this as an element of uncertainty surrounding Nevada law. I think the practitioners here in Nevada and the courts interpret the statutes properly, but the perceived national inconsistency does create a bit of a competitive disadvantage for us.

I would like to point out that the trust and estate business here in Nevada has grown exponentially in the last few years. It is an aspect of our economy which is really working. *Bloomberg Business* and *The New York Times* have noted Nevada trust and estate business. Annually, we have an economic impact of over $200 million to the state. It is important that we continue to remain competitive and clear up these kinds of technical issues that impact our ability to compete with Delaware and South Dakota to attract new business.

Chairman Hansen:
Your testimony is that removing this simple sentence will remove the inconsistency that you are being challenged on by other states, correct?

Gregory Crawford:
Yes. It is very clear to the people of Nevada what the intent of the Legislature is for spendthrift trusts as contained in NRS Chapter 166. It is others that are out of state that have raised the uncertainty and the perceived inconsistency between NRS Chapters 112 and 166, which is why we see this as a simple clarification of the intent of the Legislature.

Chairman Hansen:
In the absence of the passage of this bill, is the $2 million industry potentially threatened?

Gregory Crawford:
Our ability to continue to grow at the impressive rate that we have been growing over the past several years is impacted.

L. Scott Walshaw, Consultant, Premier Trust Company, Reno, Nevada:
I was the commissioner of the Division of Financial Institutions, Department of Business and Industry, for Nevada from 1983 to 2003. Presently, I am a consultant representing Premier Trust Company. I am here to present a friendly amendment to the bill (Exhibit M).

Chairman Hansen:
Was it approved by Senator Lipparelli?

Scott Walshaw:
Yes. The amendment simply makes a change to NRS 166.015, subsection 2, paragraph (b), subparagraph (2). It changes the verbiage from "an office" to "a full service office." It defines what a full service office is in the state of Nevada. It makes it clear that whoever is administrating trusts here has to be licensed as a bank or a trust company.

Chairman Hansen:
In the absence of that amendment, do you not currently have to be licensed in a certain capacity?

Scott Walshaw:
It can be construed a little differently. All it says right now is, "Maintains an office in this State." It is possible that someone could have an office that does

not administer trusts, but is merely here as a trust representative office, meaning they would solicit business but would not administer the business here.

Ann Rosevear, President and Chief Trust Officer, Dunham Trust Company, Reno, Nevada:
I am also a board director of the Nevada Trust Companies Association. I am here to provide our support for the bill and would like to echo Mr. Crawford's sentiments regarding its appropriateness and helpfulness in the competitive issues we face. I would just reiterate that in addition to the market value, we believe this will help in judicial economy. It will hopefully be something not only good for our clients but for the judiciary to be able to more definitively indicate what the applicable statute of limitations are, particularly for NRS Chapter 166, which is so important as we increase our competitiveness nationwide.

Assemblyman Elliot T. Anderson:
If we passed this bill, what would the statute of limitations be? Would it be unlimited? Secondly, why is it that people like this change? Why is it that this will help settlors? What is the reason other states have done this? Why is it that we are doing this for spendthrift trusts and not other types of trusts?

Gregory Crawford:
The types of self-sell spendthrift trust strategies that we see are very sophisticated estate planning strategies. They are enacted by people around the country who essentially get to select the governing law of the instrument strategy that they are implementing. Even somewhat subtle changes can make a big impact in the flow of business. If you are in New York City, Connecticut, or Silicon Valley, you can simply choose where to establish your trust, like we compete with Delaware for corporate entities and trust situs. If we clear up this uncertainty, it eliminates some of the national arguments against using Nevada for the situs of your trust.

Michael Alonso:
We are not changing the standard of proof or the statute of limitations. That is already in existing law. For NRS Chapter 166, which is spendthrift trusts, the statute of limitations is two years. You have to prove that there was a fraudulent conveyance by clear and convincing evidence. That is the existing law. In NRS Chapter 112, which applies to fraudulent conveyances in general, other than the spendthrift trusts, there is a four-year statute of limitations, and it is preponderance of the evidence. What we are trying to clarify is the distinction between NRS Chapters 112 and 166. A court did not see that distinction. They did not apply NRS Chapter 112, but they ended up applying California law because the court did not think it was clear enough. We are not changing the statute of limitations or the standard proof. That is existing law,

and that was done for a reason some time ago because spendthrift trusts are intended to be difficult to get to. That is the purpose of them for the settlor.

Assemblyman Elliot T. Anderson:
Can you send me the court case you spoke of? It would be helpful for me to understand what is happening.

Assemblyman Trowbridge:
To summarize this topic, what it really does is establish reciprocity with the majority of the other states. Therefore, it levels the playing field with some of our primary competitors, including California. It would be seen as allowing us to present our state and its tax advantages in the most favorable light.

Michael Alonso:
That is correct, but it is more subtle than that. We believe that it exists already, and we are already one of the top two or three states. Because the issue of whether or not the language was clear, we are trying to clarify it to maintain that level.

Assemblyman Nelson:
My question is on former Commissioner Walshaw's proposed amendment. By the way, I want to thank you for taking my questions while you were still acting as commissioner. You are proposing to change the language so that it must be a full service office. Do the other states that are competing have similar language?

Scott Walshaw:
I cannot say that the language would be identical but in most cases that I have researched, the language is comparable.

Assemblyman Nelson:
Would it keep us competitive with the other states?

Scott Walshaw:
I think that it is intended more to provide clarification for this particular chapter. We want to make sure that if there are changes elsewhere, it is clear that if you are going to allow trust administration in the state, you will have to have a full service office here or be a bank that is empowered to do trust activity. Those are the two venues or avenues that would be subject to this requirement. If you cannot administer a trust here, none of this law is going to apply to you. The object here is to make sure that if someone enters the state to conduct business under Nevada law, he must have a full service office. It was not really clear in the statute.

Assemblyman Gardner:
By changing from office to full service office, do you believe it is going to cause any issues with entrance into the trust market for other firms? I wonder if the language based on the full service office could possibly cause injury to new firms coming in or if it is just a clarification.

Scott Walshaw:
No. Existing law elsewhere in the statute requires entry to the market either as a bank that is already empowered to do business here or somebody who is allowed under law to establish a full service banking office here. If it is an independent trust company, they have to be licensed as a full service trust company in order to conduct business here or administer trusts here. Going forward, there may be changes to the law that allow out-of-state trust companies to solicit business here, but not administer trusts in the state. I think this merely clarifies what is existing law now, and if there are changes in the future, it obviously remains the same. It requires anybody that administers trusts here to comply with the requirements to gain entry to the market.

Chairman Hansen:
Seeing no further questions, thank you for your testimony this morning. Is there anybody else who would like to testify in favor of S.B. 264 (R1)? Seeing no one, is there any opposition testimony? [There was none.] Is there anyone in the neutral position? [There was no one.] Senator Lipparelli, do you have any last-minute thoughts to share with the Committee?

Senator Lipparelli:
Thank you for the opportunity.

Chairman Hansen:
With that, we will close the hearing on Senate Bill 264 (1st Reprint), and open it up to public comment. Is there anyone who would like to address the Committee? [There was no one.] Is there any Committee business to discuss? [There was none.] This meeting is adjourned [at 10:23 a.m.].

RESPECTFULLY SUBMITTED:

_____
Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: May 4, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 192 (R1)	C	Terri Miller, Stop Educator Sexual Abuse Misconduct and Exploitation	Pamphlet
S.B. 192 (R1)	D	Terri Miller	Written Testimony
S.B. 192 (R1)	E	Terri Miller	SORNA Implementation Review
S.B. 192 (R1)	F	Vanessa Spinazola, ACLU	Proposed Amendment
S.B. 192 (R1)	G	Terri Miller	"Schools That Hired or Retained Individuals with Histories of Sexual Misconduct"
S.B. 192 (R1)	H	Terri Miller	"Federal Agencies Can Better Support State Efforts to Prevent and Respond to Sexual Abuse by Personnel"
S.B. 192 (R1)	I	Terri Miller	"Educator Sexual Misconduct: A Synthesis of Existing Literature"
S.B. 245 (R1)	J	Sean Sullivan, Washoe County Public Defender's Office	Proposed Amendment
S.B. 245 (R1)	K	Steve Yeager and Brian Vasek, Clark County Public Defender's Office	Memo: The Cumulative Fiscal Impact of New Crime and Enhanced Penalty Legislation
S.B. 245 (R1)	L	Brian Vasek, Clark County Public Defender's Office	PowerPoint Presentation
S.B. 264 (R1)	M	L. Scott Walshaw, Premier Trust Company, Reno,	Proposed Amendment