MINUTES OF THE MEETING
OF THE
COMMITTEE ON JUDICIARY

Seventy-Eighth Session
March 13, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8:01 a.m. on Friday, March 13, 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 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 Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman Erven T. Nelson, Vice Chairman (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Janet Jones, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Chandni Patel, Intern for Assemblywoman Irene Bustamante Adams
Benjamin Lublin, Private Citizen, Las Vegas, Nevada
Lise-Lotte Lublin, Private Citizen, Las Vegas, Nevada
Gloria Allred, Attorney, Allred, Maroko & Goldberg Law Offices, Los Angeles, California
Kristy Oriol, representing Nevada Network Against Domestic Violence
Daniele Dreitzer, Executive Director, The Rape Crisis Center, Las Vegas, Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
John T. Jones, Jr., representing Nevada District Attorneys Association
Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
Jolene Dille, Intern, Progressive Leadership Alliance of Nevada, and representing the National Association of Social Workers, Nevada Chapter
Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice
Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada
Mark B. Jackson, District Attorney, Douglas County District Attorney's Office
Steven Wolfson, District Attorney, Office of the District Attorney, Clark County
Christopher J. Lalli, Assistant District Attorney, Office of the District Attorney, Clark County
Wesley Duncan, Assistant Attorney General, Office of the Attorney General

Chairman Hansen:
[Roll was taken and Committee protocol was explained.] Since there is a great deal of interest and at the request of Assemblywoman Bustamante Adams, we are going to begin with Assembly Bill 212. We want to remind everyone this bill is about changing the statute of limitations in Nevada on sexual assault, and we need to keep the testimony focused in that area. With that, Assemblywoman Bustamante Adams, if you are ready, please come up.

Assembly Bill 212: Eliminates the statute of limitations for sexual assault. (BDR 14-1062)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:
Thank you for the opportunity to bring forth Assembly Bill 212. The genesis of this bill was a call from a constituent whose wife had been sexually assaulted some years ago. You will hear from them later. He spoke to me very eloquently about how hard it was for some victims to report this type of crime and how horrible it would be to have an assailant go free just because the victim was too traumatized to come forward within Nevada's four-year statute of limitations on reporting this type of crime. Today, our presentation will consist of historical background on the current law, a broader picture of what other states are doing in regard to this issue, and then personal testimony from my constituents, who drove from Las Vegas last night to be before you today.

Let me give you a quick background on this statute. The statute of limitations for prosecuting sexual assaults depends on certain circumstances; there are different rules for children, assaults committed in secret, and persons under a disability which is outlined in section 4 of this bill. In a situation involving an adult that would not be covered by one of those special situations, there is no statute of limitations if the victim reports the crime within four years. That is the barrier in Nevada and our challenge today. This four-year statute was enacted in 1997. During that hearing, Assemblywoman Jan Evans proposed a seven-year statute of limitations, and during the process there was an amendment to remove the statute of limitations completely. In reading the minutes of the enrolled version of the bill, the statute of limitations was removed, but only if the report was filed within four years of the alleged crime. My understanding of the arguments on removing the statute of limitations in 1997 was that crimes reported years later would be hard to prosecute and may invite false reports. I have to disagree, and here is why: Prosecuting a crime reported several years after the fact is difficult, but I do not see the difference between reporting it 4 years, 10 years, or 40 years later. I do not see how a shorter time limit will stop false reports.

Nevada law enforcement will be testifying later in this presentation; you will hear directly from the people who are the end users in this area. Clearly, a prosecutor will have to use his or her judgment on whether to prosecute sexual assault reports years later, but that is the process now. Therefore, I do not agree with the argument used in 1997. Removing the statute of limitations will be a way to seek justice in those instances when the assault is reported years after the crime; a successful prosecution is still possible.

When my constituent approached me regarding this bill, I was surprised to learn how many other states allowed victims of sexual assault an unlimited period of time to file a complaint and seek prosecution. My intern, Chandni Patel, who is a junior at the University of Nevada, Las Vegas, studying political science, will share data with you regarding what other states' statutes of limitations are. While working on this project together, she has taught me a lot, especially that even if you have a soft voice, it does not mean you are irrelevant, and that everyone should have an opportunity to be heard. [Written testimony was also provided (Exhibit C).]

Chandni Patel, Intern for Assemblywoman Irene Bustamante Adams:
According to the Rape, Abuse & Incest National Network, an American is sexually assaulted every 107 seconds. Ninety-eight percent of the perpetrators will never spend a day in jail or prison. This has become such a pressing issue that 26 states either do not have a statute of limitations on sexual assault or have revoked it, while a number of others have just begun the process. In numerous states, such as Utah, Kansas, and Tennessee, to name a few, this is a bipartisan effort with both chambers of the legislature seeing the need for change and voting unanimously to pass the measure. [Ms. Patel continued to read from written text (Exhibit D).]

With that, I conclude my testimony, and I am open to any questions that you might have.

Chairman Hansen:
Thank you. Are there any questions for Ms. Patel at this time?

Assemblyman Gardner:
Where did you find your facts on the various states that have no statute of limitations? I could only find one, which is Delaware.

Chandni Patel:
I received my information from the Legislative Counsel Bureau as well as the website <www.motherjones.com.>.

Assemblywoman Bustamante Adams:
I would now like to introduce my constituents, Ben and Lise Lublin, who will give their personal testimony.

Chairman Hansen:
Before we hear their testimony, I would like to call a recess. I just received all of the testimony and have reviewed what is going to be covered today. I would like to talk with Assemblywoman Bustamante Adams for just a minute. We will stand in recess [at 8:09 a.m.] until call of the Chair.

[The meeting reconvened at 8:14 a.m.]

Chairman Hansen:
I have talked to the bill's sponsor, and some of the testimony names a specific individual as committing a specific crime. In the interest of fairness, and as this is not a trial but a hearing regarding whether or not we should extend the statute of limitations beyond its existing four years, I am going to ask the people testifying to call him "the perpetrator" and not use his specific name. You can certainly tell the entire story, but I do ask that you redact the specific name of the individual. Please proceed, Assemblywoman Bustamante Adams.

Assemblywoman Bustamante Adams:
Thank you, Mr. Chairman. At this time, I would like my constituents to give their personal testimony, beginning with Mr. Benjamin Lublin.

Benjamin Lublin, Private Citizen, Las Vegas, Nevada:
I thank you for hearing my testimony regarding this important issue. Sexual assault and rape is a matter I hold close to my heart and a subject that needs to be addressed. I come before this Committee to urge you to abolish the statute of limitations for sexual assault. It is a small change for you to make eliminating the four years, but a great change for victims.

As you know, the statute of limitations only allows four years for a victim to report their sexual assault. The most common misconception is that a victim is prepared to call the police and file a report within minutes after he or she has been raped. Most victims are in disbelief, they are ashamed, scared, paranoid, and at times suicidal. According to the Department of Justice, a woman is three times more likely to suffer from depression after an assault, 6 times more likely to suffer from post-traumatic stress disorder (PTSD), 13 times more likely to abuse alcohol, 26 times more likely to abuse drugs, and 4 times more likely to contemplate suicide.

However, not all these numbers and words can give you any personal insight to what a rape victim has to deal with when he or she decides that they are finally ready to speak out. I watched my wife, who was under the impression that she had a bad reaction to alcohol, fall apart when she found out it was really a methodical and devious plan to assault her. I watched her cry in disbelief, and I watched her slide into depression and anxiety. She was always a calm and cool person who changed into a woman who felt distant from me. Things she found funny did not make her laugh anymore. She changed. With support and help from friends, family, and me, we worked with her to become strong again. I honestly believed that we would have our day in court, where she would look her assailant in the eyes and let him know that he did not get away with it; he would be held accountable. However, that was not the case, because I found out that there was a statute of limitations. This confused me. I have always had a strong belief in the justice system, and I believed that if someone raped you, your wife, daughter, or son, then that monster would be held accountable. Instead, the law allows the predator a get-out-of-jail-free card and the ability to create new victims. The law should be in place to empower victims; instead, it deters them from coming forward. When my wife decided to come forward and tell her truth, she was called a whore, a slut, a tramp, and they said she got what she deserved, "I bet he raped her good."

The culture we live in not only makes fun of sexual assault victims but also tells them to be silent. When I told my mother that Lise-Lotte, my wife, was going to come forward and tell the world publicly that she was assaulted, my mother told me to keep it in the family. She said, "Do not let everyone know what happened." My mother was worried about exposing our children to what society had to say. I wondered why my mother would think this way; she was a strong woman. Then it hit me: My mother comes from the old school, the school where we are programmed by society to stay silent and to keep quiet about rape.

Rape is neither glamorous nor subtle. It is a brutal attack. This is an act that psychologically alters the victim's mind and permanently changes the person's life. Part of the reason I hold this matter close to my heart is because as a child I was sexually assaulted at the age of thirteen. Through my therapy and the devotion of my wife, I was able to take this horrible experience and change it into a positive by working with Assemblywoman Bustamante Adams to introduce a bill to change the statute of limitations. I am here in front of this Committee to tell you what sexual assault looks like. It has taken 25 years for me to come forward publicly and talk openly about my assault. I have not told anyone outside of my wife and my therapist, and I have decided to share this with you because I have never felt more strongly about supporting an issue before.

The impact of rape on families, siblings, neighborhoods, and the community is far more severe than you would expect. The statute of limitations does not take into account the time that might be necessary for a victim to come forward. It took me 25 years to speak out. How many countless victims will come forward only to be silenced and discouraged by the statute of limitations?

Chairman Hansen:
Thank you sir, we do have a question for you.

Assemblyman Wheeler:
You gave us some statistics on alcoholism, suicide, et cetera. In this Committee, we are looking at raising the statute of limitations. To me there is probably nothing more abhorrent than violence against a woman except violence towards a child. Do you believe or have any studies that would show by raising the statute of limitations that these statistics would go down and that we would see a lessening of suicide and alcoholism from these victims?

Benjamin Lublin:
I think that is a great question. I know that we have other people who are sounder in the statistics department. What I gave you was from the U.S. Department of Justice from 2003, which is the most recent statistics they have. When you start looking things up online or try to get information from different areas, it is not very easy.

Assemblyman Wheeler:
Thank you very much, and thank you for coming forward.

Chairman Hansen:
Thank you for sharing your story with us this morning. Take as much time as you need.

Lise-Lotte Lublin Private Citizen, Las Vegas, Nevada:
[Crying] Good morning Mr. Chairman and the members of this Committee. I am Lise-Lotte Lublin, a native of Nevada. I am a graduate of the University of Nevada and an educator. My story began in 1989 when I trusted a man who I never believed would put a drug in my drink without my knowledge so that he could use my body for his sick, disgusting pleasure. He insisted that I have two drinks, and within a few minutes, I became dizzy and disoriented. He asked me to sit with him. As I sat, he began stroking my hair and talking to me. This was the last moment I was conscious. My next memory was waking up at home.

In November of 2014, my husband informed me that several women had accused my assailant of drugging and sexually assaulting them. When I reported the facts to the police, they took my statement and referred me to Detective Shane of the Sexual Assault unit, Las Vegas Metropolitan Police Department (LVMPD). Detective Shane informed me that the statute of limitations prevented him from pursuing any investigation of this crime. I sat in Detective Shane's office and cried as I realized no one would be able to help me. I will never see justice, and I did nothing wrong. If I had any idea of what had happened, I would have filed a report 25 years ago. When I told my family about the oddness of my visit with my assailant and that I could not figure out what happened, I did not suspect he would have hurt me. I now understand that the law prevents the victim in my circumstances from seeking justice, and when I needed the judiciary system to support me, I am stuck with, "You should have reported it sooner." Why would the law want to prevent me from seeking justice? I do not understand what purpose it serves to limit the period in which a victim has to report a sexual assault. I see no other purpose than to protect an assailant. Who is protecting the victim? When the nature of a sexual crime is to dominate and overpower a victim, it is difficult for a victim to feel safe when exposing details of the assault when we feel we have lost power over our body and feelings.

My assailant has assaulted over 30 women, and he continues to walk free. He has methodically planned and refined his routine for drugging and assaulting women. I have read statements online from women who have described situations where he had rendered them unconscious before he sexually assaulted them. When he is finished, he kicks them out the door, or he has a driver take them home so the girl can second-guess what has happened to her. The law is on his side because the drugs will prevent them from remembering a clear picture of the assault, and he only has four years to wait before he is free and clear of any charges. How do you justify this assailant walking free? Because women were too scared to report the truth about their situation? They needed time.

Sexual assault is a crime that causes long-term damage. Reporting the violation is extremely difficult to do and cannot be tethered to a time limit. This law needs to be changed to allow victims the opportunity for healing and justice. No one expects a veteran to recover from PTSD within four years. I feel that I have the strength to be here today and talk to you because I believe you will understand and you will empathize with the victims of sexual assault. Changing this law protects us, and I know you want to protect us, because it is the right thing to do. If your mother who nurtured you, your wife who supported you, or your daughter who you swore to protect, were standing before you and they had been assaulted, you would understand their pain and your choice would

be simple. A vote to abolish the statute of limitations is what we need. Please give me and other countless victims a day in court. You have the power to help us. I urge you to use that power for the greater good, and the good is to empower victims so they can become survivors.

Chairman Hansen:
Thank you very much for your testimony this morning. I see no questions. Assemblywoman Bustamante Adams, who would you like to have testify next?

Assemblywoman Bustamante Adams:
That concludes our portion of the testimony. Several people want to come up in support of this bill.

Chairman Hansen:
Ms. Allred, are you next? It is a great honor to have you here at our Committee today. Thank you for taking the time to be with us.

Gloria Allred, Attorney, Allred, Maroko & Goldberg Law Offices, Los Angeles, California:
Thank you very much for allowing me to testify in support of A.B. 212, which will eliminate the statute of limitations for criminal prosecution of rape in Nevada. Currently, the statute in Nevada is four years, but only if a police report is filed within that time.

I have been practicing law for almost 40 years. During that time, I have represented thousands of rape and sexual assault victims in many states in the United States. I currently represent many survivors who allege that this celebrity perpetrator raped or sexually assaulted them in Nevada. [Ms. Allred continued to read from written text (Exhibit E).]

Chairman Hansen:
Thank you, Ms. Allred, for sharing the stories of those four victims. Mr. Araujo has a question for you.

Assemblyman Araujo:
Thank you, Ms. Lublin, for sharing your powerful testimony with us today. It was good to hear your perspective. I know it takes a lot of courage to step forward and share your testimony. Ms. Allred, in your expertise, do you know if there is any data on the states that do not have a statute of limitations, and how many cases are reported after four years?

Gloria Allred:
I do not have that information with me today, sir. I will say though, even if the statute of limitations for criminal prosecution is changed, which would be a very significant change, it does not mean the cases will be prosecuted. It will still be within the discretion of the prosecutor to look at the evidence and determine if it is possible, in their wise opinion, to prosecute a case and prove it beyond reasonable doubt in a court of law.

Assemblyman Gardner:
Ms. Allred, you mentioned that you have represented thousands of clients who have been in similar situations throughout the country. Do you know of any studies regarding how difficult it is to prosecute some of these cases 20 to 25 years after the fact?

Gloria Allred:
Probably the most accurate answer would come from district attorneys, who I know are here today. The District Attorney of Clark County, for example, will be testifying today. I do think it is fair to ask the question regarding whether there will be false reports. I do think that the district attorney will look for evidence to support a case. It is more likely that a rape will not be reported to law enforcement than a false claim of rape is reported. This is because many alleged victims fear being victimized again by the criminal justice system or the civil justice system. They fear reporting, especially if it is against a high-profile figure. Of course, this law will benefit all alleged rape victims, not just those victimized by a celebrity. I think the district attorneys are in a position, as is law enforcement, to screen out false claims. I think it is highly unlikely that a victim will make a false claim and undergo the rather rigorous criminal justice process and the cross-examination. Making a false claim to law enforcement is also a crime. I would advise victims to seek a private attorney before going to law enforcement.

Assemblywoman Diaz:
How difficult is it to prove 20 to 30 years after it happened? In my mind, when you report it sooner rather than later, the evidence is easier to secure for the case. I am just wondering how difficult it is to prove after that amount of time has lapsed.

Gloria Allred:
I would concur with what I think is your underlying statement, which is that it would be better for rape and sexual assault victims to report earlier rather than later. Sometimes victims will come to me and say, I have no evidence. I tell them that their testimony is evidence; they are the complaining witness. Let us not undervalue, let us instead value the fact that you have testimony that you

are going to give under oath after you swear to tell the truth, the whole truth, and nothing but the truth, so help you God. That is evidence; will it be enough evidence? Possibly. Maybe you will have needed to go to the hospital and had a rape kit done. Maybe you told others at the time, such as members of your family or a close friend, or possibly a therapist, rabbi, or priest. There is a lot to look for, such as photos of you and the perpetrator together. In the testimony that I have provided, there are photographs of the victim and the perpetrator in this case. I have not held them up because that will identify the perpetrator that I have been talking about, and the Chairman asked me to be kind enough not to identify the perpetrator. I would ask alleged rape victims not to try to be their own attorney and say, I do not have enough evidence, I do have evidence but it has been too long, or I did not do this, or do that. Take your complaint to law enforcement, make the report, and then law enforcement and the district attorney's office can then tell you, I am sorry, we do not have enough evidence to proceed with the prosecution, or we do.

Lise-Lotte Lublin:
This is exactly what happened to me. When I realized what happened, I thought, it has been 25 years. What difference does it make if I say anything? A good friend of mine, who is a police detective, said it does not matter. You need to go to the police and file a report. You need to state what happened to you regardless. I felt like there was no chance. I would not be able to make a difference, but I am sitting here today. I am trying to make a change.

As an educator, I see my students suffering every day from things like this, and they are too afraid to talk about it. They fear people will laugh and not believe them. Some kids have told me that their parents do not believe them. There is no possible way you can understand how long it takes to be able to have the courage to say, I want to do something about it. I am 48 years old, and I am educated. I have a master's degree. It took me two and a half months to go into the police department when I realized what happened 25 years ago because I was scared. When I had to send a petition to everyone on my Facebook, I was scared and did not send it. I told my husband that I had done everything and the petition was ready. I could not push the button because everyone was going to know. Those on my Facebook are just family who understand, care, and support me. I would never have dreamed that they would have come forward and supported me. I thank every single one for being here, because I really thought it was just going to be my husband and me.

Gloria Allred:
I have one last point. The Chief of Police of the Los Angeles Police Department (LAPD), Charlie Beck, recently said publicly that he wants to know what crimes are being committed in the City of Los Angeles. I am paraphrasing, but it is

definitely the essence of what he said, which you can find online. Even if it is too late for the case to be prosecuted, he wants victims to come forward. I took one victim of the same perpetrator I have discussed today to the detectives of the special victims unit of the LAPD and they interviewed her in a very sensitive, professional way for 90 minutes. Later the district attorney said it was too late to prosecute, which we knew. However, that was the Chief of Police's invitation; he wants to know what crimes have been committed. If there is insufficient evidence or it is too late to prosecute, it still may help the police department and they would have a record. If others report more promptly after the alleged rape, then the police would know that there is more than one alleged victim. We need everyone to report, whether or not they think the crime can be prosecuted. If there is no statute of limitations for criminal prosecution of rape and sexual assault in this state, victims will be encouraged to report.

Assemblyman Wheeler:
Ms. Allred, we seem to have made the entire testimony about one alleged perpetrator and obviously, for whatever reasons, we have not heard yet about others. Can you tell us, do you have any statistics on how many overall victims come forward after the statute of limitations has run out? We do not usually make law over one perpetrator, so I am wondering overall how many do we have?

Gloria Allred:
My guess is that the rape crisis centers and district attorneys will have those statistics. My testimony today was about one alleged perpetrator; however, most rapes and sexual assaults are by other perpetrators, and this will benefit so many other victims in the state of Nevada. I generally do not represent anyone from Nevada with some exceptions, but I would venture a guess that the rape crisis center would have the answer to that.

Assemblyman Wheeler:
Are you licensed to practice law in Nevada?

Gloria Allred:
No, I am not. However, when I have a case, I petition the court to be admitted pro hac vice, as I have a spotless record in the state of California. I am also licensed in the state of New York and Washington, D.C. I have been admitted pro hac vice in many states, including recently in Connecticut, where I represented five rape survivors involving the University of Connecticut. To be clear, I am not representing those in Nevada for filing a lawsuit, but for allowing them to understand what their options are.

Chairman Hansen:
I would suspect few would challenge your credibility.

Assemblyman Gardner:
This question is for Assemblywoman Bustamante Adams. I want to make sure that if we lift the statute of limitations, it will not lead to revictimization of these victims. The women will be able to decide whether to go forward with prosecution.

Assemblywoman Bustamante Adams:
Yes, that is correct.

Chairman Hansen:
Thank you for your testimony, Ms. Allred, and it is a great honor to have you testify in our Committee today. Actually, I do have one quick question for you. If we remove this statute of limitations—you specifically mentioned four different victims—would it be your intention, if this were lifted, to submit for possible prosecution these four cases to the Clark County District Attorney?

Gloria Allred:
That would certainly be up to the alleged victims. That is something I would have to discuss with them. In addition, these only deal with the criminal prosecution. Many of them are also barred from filing a civil lawsuit. That would be a question for this Legislature at another time.

Assemblyman Elliot T. Anderson:
Can we have legal counsel answer that question? I am not sure that we can constitutionally apply it if the statute of limitations has already expired.

Brad Wilkinson, Committee Counsel:
Assemblyman Anderson is correct. That is addressed in section 5 of the bill. By its terms, this bill does not apply to crimes if the statute of limitations has already expired. We would not be reviving the statute for crimes where the statute of limitations has already expired due to constitutional reasons.

Chairman Hansen:
An unfortunate discovery. Thank you both for your testimony this morning.

Kristy Oriol, representing Nevada Network Against Domestic Violence:
I am the policy specialist with the Nevada Network Against Domestic Violence. We are here today in strong support of A.B. 212. I could not have expressed our support and the importance of this piece of legislation more eloquently than

the constituent that spoke today. I will just refer you to my written testimony, which explains our support (Exhibit F). I am open for any questions.

Chairman Hansen:
Those of you in Clark County who would like to testify in favor of A.B. 212, please come forward. In addition, Carson City testifiers please come up.

Daniele Dreitzer, Executive Director, The Rape Crisis Center, Las Vegas, Nevada:
We are here in strong support of A.B. 212. [Submitted letter of support (Exhibit G).] Ms. Allred's testimony regarding various victims, as well as the constituents that spoke, showed the Committee how critical this bill is.

Victims regularly call into our hotline asking questions regarding filing a report, even if the assault happened when they were children. Many of them are now in their 20s and 30s. It is a very empowering experience for a victim to have the opportunity to attempt to seek justice. We certainly recognize and explain to these people that having a lack of evidence from an incident that happened so many years ago can have an effect on the ability to prosecute. Just the opportunity to report the crime, to name the perpetrator, and see if there is a way that things can move forward, is a strong and empowering experience for victims.

I would also ask the Committee to take into consideration the many reasons people do not come forward. It often can be a family member who was their perpetrator, and now he or she recognizes that the perpetrator may have access to the next generation of family members. At that point, the victim says, Now I have to say something because I am trying to protect the next generation. However, the victim may have lost the opportunity because the statute of limitations prohibits it. Another common scenario is, the perpetrator could be the uncle and the victim waits for the grandmother to pass away because she does not want the grandmother to go through the trauma. There are so many different scenarios and situations that we see and hear on a regular basis. The elimination of the statute would offer a potential remedy for these victims.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are here today in support of A.B. 212. Studies show that sexual assaults often go unreported for a variety of reasons, which have already been stated. It is a very serious crime, and we do encourage victims to report these crimes. We want to get an accurate picture of what is occurring in our community. We want to know the hard numbers of what types of crimes are occurring, and it helps us when victims have the ability to come forward. As was stated

earlier, we also want to know when someone has been previously accused of a crime of this nature and now they are being accused again. This helps us to see a pattern when investigating these cases.

John T. Jones, Jr., representing Nevada District Attorneys Association:
You have heard some powerful testimony this morning. We are here in support of A.B. 212. I want to thank Assemblywoman Bustamante Adams for bringing this piece of legislation forward. There are a couple of points I would like to make. One is that victims do not always act in the same way with respect to traumatic events such as these. Oftentimes we have cases reported after victims find out they are not alone. My second point is that the prosecutors have to prove these cases beyond a reasonable doubt in court. Just because you remove the statute of limitations, it does not mean we will automatically obtain a conviction. The defendant would have every other trial right available to them.

Chairman Hansen:
This law was visited back in 1997 when there was an attempt to push it beyond four years. Do you have any idea why it has not previously been pushed beyond four years and why it has not been addressed until now?

John T. Jones, Jr:
Unfortunately, I cannot answer that question. I do know that last session we increased the statute of limitations to 35 and 40 years, if the crime was committed in a secret manner on juveniles. There have also been successful attempts in the past to increase the statute of limitations of various other crimes.

Assemblyman Wheeler:
I know there are other statutes where the statute of limitations does not start until you know about the crime. Does NRS Chapter 171 have any provision for situations such as suppressed memory, et cetera? I know there are some felonies that, for whatever reason, you do not know about the crime but maybe 20 years later you find out about it, and that is when the statute of limitations begins. Is this particular one like that?

John T. Jones, Jr:
The way I read the statute, it is four years, period. With juvenile crimes, such as when the victim is under the age of 16, there is a secret manner exception. For adults, it is four years. If a victim is unconscious and does not know what occurred, there would be no remedy after the four-year statute of limitations.

Assemblyman Thompson:
At what time in the investigative period is the alleged perpetrator acknowledged or named? You want to be sure that the crime is substantiated before the person is named.

John T. Jones, Jr:
If the perpetrator is known, they would be named at the time the police report is filed. In some instances, the victim does not know the perpetrator.

Chairman Hansen:
Mr. Lublin mentioned that he had been a victim himself. How many of the victims are male?

John T. Jones, Jr:
Unfortunately, I do not have that statistic with me. I can consult with my colleagues and get an answer for you later.

Chairman Hansen:
We focused mainly on women, but there are other victims as well, and we do not want to leave them out of the concerns being expressed here today.

Eric Spratley, Lieutenant, Legislative Services, Washoe County Sheriff's Office:
I am here in support of A.B. 212. I thank Assemblywoman Bustamante Adams for bringing this bill forward for the protection of the victims in our state. As Director Callaway stated, no matter what happens with this bill, we hope that the victims in this state will come forward and file a report for these crimes committed against them. As you have heard in testimony today, reporting these crimes continues to help us in the law enforcement realm and the prosecution as well.

Assemblyman Gardner:
Do we know of any studies or statistics regarding perpetrators who are prosecuted 10, 15, or 20 years after the alleged crime? How many of those prosecutions are successful and how hard it is to prosecute? I am trying to calculate how much of a benefit we will be giving the victims with this bill.

John T. Jones, Jr:
As with most cases, time does not necessarily help a case. Some cases can still be quite strong after a period of time has gone by, especially if there is video evidence or some other type of corroboration of a testimony. I do not have specific statistics, but I can ask our sexual victims unit what their experiences have been and report back to you.

Assemblyman Ohrenschall:
Is it true that a lot of these statutes of limitations were adopted by state's legislatures long before the wonders of DNA technology?

John T. Jones, Jr:
That is correct. We do have resources available to us today that could potentially help build a case even after a number of years have passed since the occurrence. It does not mean that those resources are available in every case or that the evidence will be present in every case. It at least gives us the ability to evaluate a case and determine if we can prove it beyond a reasonable doubt.

Chairman Hansen:
Are there any further questions? [There were none.] Does anyone else wish to testify in favor of A.B. 212?

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We would like to go on the record in support of this legislation.

Brett Kandt, Special Assistant Attorney General, Office of the Attorney General:
I am here to express our support of A.B. 212. Regarding the question about the incidence of rape or sexual assault among males, according to the Rape, Abuse, and Incest Network, about 3 percent of American men or 1 in 33 have experienced an attempted or completed rape in their lifetime. About 2.78 million men in America have been victims of sexual assault or rape.

Chairman Hansen:
Are there any more questions for Mr. Kandt or Mr. Roshak?

Assemblyman O'Neill:
Mr. Chairman, can I ask Assemblywoman Bustamante Adams to come back up for a question? I apologize for calling you back up, Assemblywoman, but we have been talking about sexual assault victims and giving them the exemption from the statute of limitations. There were conversations about child abuse victims who do not come out until years later, but they only have the limitation to 35 years. Would you consider an amendment on children who are not sexually abused but physically abused being included in this bill? Do you think there would be value in that?

Assemblywoman Bustamante Adams:
Yes, I would be open to the conversation.

Chairman Hansen:
Is there anyone else in Carson City who wishes to testify in favor of A.B. 212?

Jolene Dille, Intern, Progressive Leadership Alliance of Nevada, and representing the National Associations of Social Workers, Nevada Chapter:
In the interest of not repeating what has already been testified, we all know there are numerous reasons victims do not come forward at the time of their alleged assault or within the statute of limitations. Currently as the statute stands, it only serves to protect the perpetrator and not the victim. As previously stated, there are times when a victim does not come forward until a next generation has potentially become victims. I want to express our support of A.B. 212 in protecting victims rather than perpetrators.

Chairman Hansen:
Is there anyone in Las Vegas wishing to testify? [There was no one.] We will now open the hearing to anyone who would like to testify in opposition to A.B. 212.

Lisa Rassmussen, representing Nevada Attorneys for Criminal Justice:
The current statute is written very liberally compared to other states. We have an almost unlimited statute of limitations if someone has filed a police report. One thing that was written in the digest of this bill was that there is a backlog in the labs for processing DNA. Anytime there is DNA involved, there has already been a police report generated. That essentially opens up an unlimited statute of limitations. What you are now talking about is allowing people to come forward years later, make an allegation, and generate a prosecution. What I would say to all of you is be careful what you ask for. I understand the victims and their heartfelt testimony, but you must also think about whether you would want to be in a position where someone is saying 35 years later that someone did this to her. I would encourage you to give that some thought and contemplate that we already have a very liberal statute of limitations.

Chairman Hansen:
Are there any questions for Ms. Rasmussen? [There were none.] Is there anyone who would like to testify in the neutral position?

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:
Our statute of limitations serve an important function in the justice system. They permit both the prosecution and the defendants to try the case before the evidence becomes stale. As more time lapses, it becomes increasingly difficult for the accused to prepare a meaningful defense. Memories are lost, witnesses die, and exculpatory evidence is no longer available. Not everyone who is accused of a crime is guilty. People are innocent until proven guilty in America. A statute of limitations provides important protections for the innocent. We understand the problems of survivors of rape. We understand the courage

required by survivors to come forward. We believe a better policy position would be to have a full discussion of sex education in our classrooms so that people, including perpetrators, are aware of boundaries and issues of consent. We will be tracking the other sex education bills during the session. Depending on what happens with those bills, we may change our position later. At this time, we are neutral regarding this bill.

Chairman Hansen:
I have a concern with the open-ended aspect of this bill. Is there a position that the ACLU has taken on what a reasonable statute of limitations may be beyond the four years?

Vanessa Spinazola:
We do not have an exact time frame. I believe a longer period of years would be preferable to an open-ended statute in this case. Unlike murder where the victim is dead, cases of rape turn into a he-said, she-said scenario, so it is very difficult to determine. There is a lot of research on how memories change over time. I could look at some analyses from other states, but at this time, we do not have a policy preference on the number of years.

Chairman Hansen:
Is there anyone else who would like to testify in the neutral position? [There was no one.] I will invite Assemblywoman Bustamante Adams to give closing testimony at this time.

Assemblywoman Bustamante Adams:
The passage of A.B. 212 will not change how detectives work the cases or how the district attorney prosecutes them, but it will allow justice to be served in the eyes of the law. In a perfect world, you could report the assault within the four years, but that is not the case. I ask you to consider removing the statute of limitations for all those victims that would be able to come forth and file a report. Yes, it would be difficult to get the evidence; that is not the point. The point is to allow them to be heard and to have their opportunity to seek justice in the eyes of the law.

Chairman Hansen:
Thank you, Assemblywoman Bustamante Adams, for your excellent presentation this morning. We will now close the hearing on A.B. 212. We will take a two-minute recess [at 9:22 a.m.]

[The Chairman resumed the meeting at 9:25 a.m.].

Assembly Bill 193: Makes various changes relating to criminal procedure. (BDR 14-911)

Chairman Hansen:
We will now open the hearing on Assembly Bill 193. Mr. Jackson, will you begin?

Mark B. Jackson, District Attorney, Douglas County District Attorney's Office:
I am the President of the Nevada District Attorney's Association. I would like to begin by having the Chairman recognize and the record reflect that there are 12 elected district attorneys present today. We have Jason Woodbury, Carson City District Attorney; Steve Wolfson, Clark County District Attorney; Michael Macdonald, Humboldt County District Attorney; Ted Herrera, Lander County District Attorney; Daniel Hooge, Lincoln County District Attorney; Stephen Rye, Lyon County District Attorney; Sean Rowe, Mineral County District Attorney; Angela Bello, Nye County District Attorney; Bryce Shields, Pershing County District Attorney; Christopher Hicks, Washoe County District Attorney; and Michael Wheable, White Pine County District Attorney. Anne Langer, Storey County District Attorney, had a vehicle break down on the way to this hearing. We are also expecting Arthur Mallory, Churchill County District Attorney.

I ask the Chairman to reserve time for rebuttal at the conclusion of the opposition testimony. I would like to introduce at this time Steven Wolfson, Clark County Office of the District Attorney, and Christopher Lalli, Assistant District Attorney, Office of the District Attorney, who will walk the Committee through the particular sections and amendments of the bill (Exhibit H).

Steven Wolfson, District Attorney, Office of the District Attorney, Clark County:
Christopher Lalli, Assistant Deputy Director, will be helping me with this PowerPoint presentation (Exhibit I). I believe that A.B. 193 is probably the single most important bill for Nevada's criminal justice system in the last 20 years. As you recognized by the support of my colleagues (Exhibit J), I think that speaks volumes for its importance.

I will begin with A.B. 193, section 1. This bill helps victims of crimes. We are fortunate to be following the last bill, where there was so much emphasis on victims. This bill will result in the savings of money, and it will help battle violent crime and protect Nevada tourist destinations. It will also bring Nevada in line with the majority of other states. Forty-seven other states have preliminary hearings and 36 of those states already do what we are asking this Committee to allow us to do. That would be to allow hearsay at preliminary hearings and grand jury presentments. This bill does not deprive criminal

defendants of any constitutional right, such as the right of confrontation or cross-examination. This bill will not cost our counties more money; in fact, it will result in a savings. This bill will not cause more felony cases to go to trial. Obviously, Clark County is where I am from, so my comments are addressed primarily to the situations in that county. There are a finite number of judges in Clark County. We can only present so many cases to the district court level for trial. Anyone who says this will cause more cases to go to district court or more trials, I do not believe that will be the case at all.

I would like to review the steps needed to have a case go to trial. It can go to trial in one of two ways. We have either a preliminary hearing or a grand jury presentment. Those are called probable cause hearings. Before any felony jury trial can be conducted, there must be a showing of probable cause at either the preliminary hearing or at the grand jury presentment. The state must show there is probable cause, and they must show that the person charged is the person who committed the crime.

Witnesses are summoned to court by a subpoena. A subpoena is a document that is a command to appear at a judicial proceeding and to give testimony in a certain matter. I have 110 district attorneys in my criminal division who issue subpoenas every day. When a deputy district attorney receives a file, they determine which witnesses they need for a preliminary hearing or grand jury presentment. Under the current status of the law, it is not uncommon to present multiple witnesses at a preliminary hearing or grand jury presentment. Sometimes five to ten witnesses can be served a subpoena and will be paid to appear in court. These would be lay witnesses as well as law enforcement officers. Many of these witnesses are local, but they can come from all over the United States and the world.

Las Vegas and Reno are international destinations; witnesses from outside the United States are common. International witnesses pose a particular problem. Thieves target the Las Vegas Strip for the international visitors every single day. Our criminals have become very sophisticated. They know that in Las Vegas, if they trick-roll or commit a crime against an international visitor, we will most likely not bring the visitor back to testify. Often, they do not want to travel back to Las Vegas two or three times.

Chairman Hansen:
Mr. Wolfson, would you define trick-roll?

Steven Wolfson:
Trick-roll is a street term for when a working girl or prostitute lures her victim to a room and then either by drugs or when the victim goes to the restroom, she will steal his money or property.

Chairman Hansen:
Thank you, Mr. Wolfson. For the purpose of the record, I thought it was important to define that term.

Steven Wolfson:
The point is, our criminals have become very sophisticated in recognizing that the Office of the District Attorney most often will not bring international victims back to Las Vegas because of the cost, and the victim does not want to travel back for a preliminary hearing and then a trial. This bill will eliminate the need for the international victim to appear for preliminary hearings. It will allow a detective or an officer with knowledge of the victim's testimony to testify what they reported. The victim will be brought back for trial, so it is not a deprivation of any constitutional right to persons accused of committing crimes.

A round trip airfare ticket from Sydney, Australia is almost $1500; from Rome, Italy it is almost $3,000. The cost involved in bringing these witnesses back is extraordinary. We would have to bring them back twice under the current status of the law. Under what we are proposing, they would have to come back only for trial.

I would now like to turn the presentation over to Christopher Lalli.

Chairman Hansen:
Before you proceed, we are discussing the friendly amendment from the Nevada District Attorney's Association, correct? You are all here to support the amended version of the bill?

Christopher J. Lalli, Assistant District Attorney, Office of the District Attorney, Clark County:
That is correct. The gist of the bill is to allow one witness to testify for multiple witnesses. That is what a hearsay preliminary hearing provides for. The effect is to streamline the preliminary hearing process. It would allow fewer witnesses to testify at the preliminary hearing. Once a case goes to trial, all the necessary witnesses would testify. This does not affect a defendant's trial rights in any way. This is a pretrial change to the procedure. It would allow the investigating detective to testify about the results of a forensic examination by using the forensic report and admitting that into evidence during the preliminary

hearing. Thus, it would not be necessary to bring the forensic examiner in to testify. The investigating detective would be able to play a recording or read a handwritten voluntary statement given by a witness in the investigation, instead of bringing the witness to court. We would still be able to subpoena and offer the live testimony of a witness if we felt it were important.

If, after reviewing a case, we questioned the veracity of a witness and we wanted to bring that witness into court to cross-examine them under oath on the stand, there is nothing in A.B. 193 that would prevent us from doing that. It makes a more streamlined hearing.

The function of a preliminary hearing is to do two things: to establish if there was probable cause to believe a crime occurred and probable cause that the person charged committed the crime. This is done in the majority of jurisdictions in the United States. Forty-seven states provide preliminary hearings. Of those states, 36 allow hearsay at the preliminary hearings and grand jury presentments. The passage of A.B. 193 will align Nevada with the majority of states on this issue. This is constitutionally permissible. It has been challenged in other states and found to be permissible.

With respect to cost, Mr. Wolfson indicated that this is a cost-effective measure. I would like to present some insight into the Clark County District Attorney's Office. In fiscal year (FY) 2014, we spent $444,000 in witness fees for jury trials, preliminary hearings, and grand jury presentments. These figures are for all proceedings. Approximately two-thirds, or 66 percent, represent what we paid out for preliminary hearings and grand jury presentments. Over $300,000 was paid out in mileage, approximately $500,000 in airfare to bring witnesses to testify, and approximately $70,000 in lodging. In FY 2013, witness fees were over $500,000; airfare, $450,000; and mileage was over $350,000. These figures will be drastically reduced if this bill passes.

It is not just a reduction in our budget but also a reduction in costs for other organizations. The Las Vegas Metropolitan Police Department (LVMPD) would not need to send a forensic analyst to preliminary hearings. There currently is a backlog at the LVMPD's forensic laboratory. Instead of sending forensic analysts to preliminary hearings, those analysts could be at the lab working on that backlog. Currently they have to send samples to a lab in Philadelphia at a tremendous cost. Also the coroner's office would not need to send a forensic pathologist to a preliminary hearing. There is savings to the casino industry, both in Reno and Las Vegas, where security officers and surveillance operators are needed for many cases and would not have to testify at a preliminary hearing.

Mr. Wolfson has already addressed the condition of the Las Vegas Strip and the significant number of international tourists in Las Vegas. When an international visitor becomes a victim of crime, that case is often not prosecuted by our office because of the cost associated with bringing that victim back and forth to court. Yesterday, the head of our Special Victims Unit was in my office, and we were discussing whether to bring a victim from Europe in for a sexual assault case. The cost, which we ended up approving, was $4,000. International visitors stand out because of the way they dress, how they talk, how they carry themselves. Criminals prey on international visitors because they know that they are more vulnerable and that we seldom bring them back for preliminary hearings. We try to find solutions to this in Clark County. We have started a program with the LVMPD. We try to get them in front of the grand jury before they leave so that at least we can get a case started. However, this program has largely been ineffective. Assembly Bill 193 will allow us to reach these cases which until now have been unreachable. If you get the opportunity to ride down the Strip with LVMPD, you will be mortified by what you see going on in our backyard.

Steven Wolfson:
This is a victims' rights bill. In many ways, the criminal justice system discriminates against victims. One way it does that is by requiring them to relive this traumatic event multiple times. I cannot emphasize how traumatic it can be for victims of any crime, especially one of a violent nature, as we witnessed this morning by the testimony of a victim on the previous bill. This revictimization is done many times. The first time is when they have to tell their story to a police officer, then they have to give a recorded statement, and they have to appear in front of a crowded courtroom with strangers. If we allow hearsay at preliminary hearings and grand jury presentments, they will not have to testify multiple times.

Finally, A.B. 193 will help us combat violent crime. I meet with the sheriff in Clark County once a month and, oftentimes, it turns into once or twice a week to talk about the things that we have in common. What he shared with me is that violent crime is up in Clark County by about 8 percent. In addition, there is a significant increase of as much as 19 percent in robberies and assaults. Murder is up 13 percent. These are crimes against people who have to come forward and testify. Assembly Bill 193, with the amendment, allows us to combat these violent criminals in a more efficient manner without depriving anybody of any constitutional right.

Chairman Hansen:
We have a few questions for you. I hope someone will give us a brief overview of the 13 sections of the bill. Remember, this is not a financial committee. It is a policy committee, and while economic considerations, especially international tourism, are huge, we have to balance that against proper due process concerns for everyone including the ordinary citizens of Nevada.

Assemblyman Wheeler:
Preliminary hearings are an important part of our Seventh Amendment right. What bothers me about this is we have talked about the savings to the county. What about the defendant who is sent to trial because of hearsay evidence that under our current system would not be sent to trial? What about the cost to them, not just in money, but also in time, trouble, and reputation because hearsay evidence is allowed in a preliminary hearing?

Mark Jackson:
It is important to note that there is no constitutional right to a preliminary hearing; it is a statutory right that has been created. The fact that Nevada has preliminary examinations exceeds the requirements of the Fourth Amendment as recognized by the United States Supreme Court in *Gerstein v. Pugh* 420 U.S..103 (1975). The Supreme Court has concluded that although the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to a restraint on liberty, adversary proceedings are not necessary. A probable cause hearing according to the Nevada Supreme Court in a case such as *Sheriff v. Middleton* 112 Nev. 956 (1996), states that it is based upon slight, even marginal evidence that a crime may have been committed and that the defendant may have been involved in some capacity in the commission of that particular crime.

I have been doing this for almost 25 years: 10 years as a criminal defense attorney and over 14 years as a prosecutor. I have conducted, on both sides, hundreds of preliminary examinations. The statutes as they currently read, and will not be changed pursuant to the amendments to this bill under *Nevada Revised Statutes* Chapter 171, are that the defense can present evidence at a preliminary examination. In my 25 years, I have never seen a single witness or single piece of evidence presented by the defense at a probable cause determination. These hearings are very limited in scope and our Nevada Supreme Court has recognized as early as 1962, and in *Marcum v. Sheriff* 85 Nev. 175 (1969) in 1968 that a preliminary hearing is not a mini trial. It is not a substitute for trial. A full exploration of all facets of the case is reserved for trial. Our Supreme Court in Nevada recognized in 2006 that the confrontation clause does not apply to preliminary hearings.

There is no due process associated with allowing hearsay to occur. For example, a child molestation victim, a sexual assault victim, or a domestic violence strangulation victim, who has been victimized and has to pour his or her heart out, who has told an officer, perhaps that interview has been recorded. Then the officer, or the mother of the child who heard her child talk about the neighbor that molested her child, could come forward and testify on behalf of that child or victim. About two months ago in Douglas County, we had a violent crime involving a child, and the child refused to get on the witness stand at the preliminary examination. He hid behind the seats in the gallery and hugged his mother's lower leg because of the fear. I am not saying this would not have been overcome by the time of the potential jury trial. Justice is a double-edged sword, and it swings both ways. No constitutional rights are denied them by having hearsay admitted at the preliminary hearing. The sword also swings for the victims. Victims in the state of Nevada have constitutional rights under Article 1 of the *Constitution of the State of Nevada* as well as a victim's bill of rights as set forth under NRS Chapter 178.

Chairman Hansen:
To clarify for the Committee, hearsay only applies to the preliminary stage?

Mark B. Jackson:
That is not exactly true. This bill only applies to the preliminary hearing and grand jury. I believe there are 26 recognized exceptions to the hearsay rule under the current rules of evidence. There are exceptions such as present sense impression and excited utterances, which are already exceptions to the hearsay rule and could come in and be admissible at trial.

Chairman Hansen:
As far as this bill goes, we are dealing exclusively with preliminary hearings, correct?

Steven Wolfson:
Yes, and grand juries.

Assemblyman Elliot T. Anderson:
Congratulations for getting trick-roll on the record. I want to talk about hearsay, because hearsay is more than confrontation rights. We keep talking about the *Nevada Constitution*, and that is important, but Irving Younger would probably be a little concerned that we were talking about hearsay, not for the confrontation rights but for the reliability of having good evidence. I know he was concerned whether this evidence would be reliable. We want people to be there not just for confrontation but so we can parcel out the evidence, just as

we do up here. We have different sides that question our witnesses so we can get good information and make good decisions.

I am starting from a difficult place on hearsay, and I hope you can respect that. It has nothing to do with the witnesses, the victims, or the defense, but just to get to the truth of what happened. That is very important to me. I am concerned about our international visitors; I agree with you, I think it is very important that we keep our economy strong, that we protect them. This bill is drafted a lot more broadly; it would be one thing for me if you came with a bill that said we could admit hearsay for international visitors. Even then, I do not understand why you have to bring them more than once. I think that is covered under Rule 804 of the Federal Rules of Evidence, which I believe are substantially the same in Nevada. If the declarant is unavailable and you have an under-oath testimony at a prior proceeding, which I believe the preliminary hearing would qualify, would the declarant-unavailable exception to hearsay apply at trial?

Steve Wolfson:
The international person who does not want to come back would not qualify as a person who is unavailable. There are limited circumstances where you can use a person's testimony a second time, but those would not qualify.

In response to Assemblyman Wheeler's question, we still provide full discovery to the defendants and their lawyers. Even if we admit hearsay at preliminary hearings, the accused and their lawyers have all the witness statements, the police reports, the forensic evidence, and all the evidence that far exceeds what we are required to do pursuant to statute. *Nevada Revised Statutes* (NRS) 171.1965 requires us to provide a certain number of things, but in Clark County, we give full discovery. Even though the victim of a crime may not physically appear, if you accept this bill, their previously provided statement or recorded statement is provided to the defendant and his lawyer. They have the right to call witnesses at a preliminary hearing. We do not want to put an uncredible witness before a jury trial without testing that witness's credibility as well. Sometimes, we will have a child testify because we want to know how that child will testify at trial.

Assemblyman Elliot T. Anderson:
I am wondering why we have to write this bill so broadly. Why not say in cases where you have an international visitor outside of a certain mileage you can use one level of hearsay and the police report? I am concerned about how broadly this bill is written.

Steven Wolfson:
I would be open to a discussion to narrow the scope of this hearsay bill. I would not say just international because I think most of our victims come from all over the country and it can be just as costly. If we could have a discussion about out-of-state witnesses, I think it would be better.

Assemblywoman Seaman:
Mr. Jackson, with the current law not including the hearsay rule, how many times would a child have to be revictimized by testifying at the preliminary hearing and trial?

Mark B. Jackson:
There are limited exceptions dealing with a child victim's information being given. In Douglas County, with respect to preliminary hearings, in approximately 75 percent of those cases we have to put the child on during the preliminary hearing, notwithstanding that an interview was recorded, audio and visual. In our sexual assault and domestic violence cases, it is almost 100 percent.

Assemblyman Araujo:
It appears that the state may, but is not required to, present exculpatory or inconsistent statements to the grand jury. Is that accurate?

Steven Wolfson:
We are required to provide exculpatory evidence first to the defendant and his lawyer, and then are required to present it at a grand jury presentment.

Assemblyman Ohrenschall:
Often, we have bills at the Legislature that may pass constitutional muster, but that does not necessarily mean they will be good policy. While I have many concerns about this bill, the main issue is that it eliminates the screening function served by our justice courts and by the preliminary examination. The first bill we talked about referred to laws before the technology we now have. Our justice courts in the urban areas have very qualified attorneys; it is not like in the past when we had lay people serving. My concern is that we are eliminating checks and balances and what is going to happen is that we will be flooding the district courts with issues that could have been settled at the justice court level.

When you look at indigent defendants who are not able to post a bond, this will create jail overcrowding. People will be held in jail waiting for trial and having issues with exculpatory evidence about motions to suppress resolved at the district court that could have been resolved at the justice court. We often hear

at the Legislature, If it is not broke, why fix it? I wonder what the issue is now that is suddenly bringing this bill to light?

Mark B. Jackson:
It is broken. If you look at the annotations under NRS Chapter 171 dealing with the preliminary examinations, you will see a long list of cases dealing with delays in preliminary hearings based upon the unavailability of witnesses. It can happen for many reasons, especially if the defendants exercise their rights to a preliminary hearing within the 15 days. As an example, we are required to put on forensic evidence and the criminal has a multitude of other subpoenas and conflicts with their testimony on that same date. There are also delays in preliminary hearings because of the docket. To the contrary, in the research that I have done in those states that allow hearsay, it takes care of all the issues that concern you. It does speed up the process. It is a limited process about dealing with the restraints on these liberties. However, even the U.S. Supreme Court in the *Gerstein* case said that the probable cause determination could be made on hearsay and written testimony. We are always going to look at the *Constitution*.

In regard to your comments about the ability of a justice of the peace to be able to act as a screening process, I am speaking for all of the district attorneys who are present here who are united and stand unanimously in support of A.B. 193. The most important process and function is always the charging decision by a district attorney's office. It is not our duty to seek convictions; it is our duty to see that justice is served. Once we make that charging decision, whether the case is dismissed later on or whether the person is found guilty, we cannot un-ring the bell. I spent a lot of time speaking with the district attorneys across the state. We talked about that and the importance of making the proper charging decision. We are just one step in that particular process. The burden of slight, even marginal, evidence that needs to be presented at a preliminary hearing is not even a speed bump along the way. It is a simple showing to establish that. This is truly a victim's bill. This is to prevent the victim from having to go through the process multiple times.

Assemblyman Ohrenschall:
I am looking at section 1, subsections 6 and 9, page 4, in the proposed amendment they are subsections 7 and 10, about all the evidence that is relevant to the existence of probable cause and the lack of the ability to file a motion to suppress based on that evidence. I am very concerned about the defendant's lack of ability to bring up exculpatory evidence and the lack of ability to file those motions to suppress. I question the policy decision in terms of, if that evidence is there and if there is a possible successful motion that could be filed at the justice court level, making such a delay until it gets to

district court would very likely increase our beds at the county jail until that can happen.

Christopher Lalli:
In regard to the motions to suppress evidence, if we are challenging the voluntariness of the defendant's statement, those types of motions are properly heard at the trial level for a number of reasons. The main reason is, oftentimes, it requires evidentiary hearings. A preliminary hearing and the role of a justice court is very limited. They are there to determine whether there is probable cause to believe a crime occurred.

Assemblyman Ohrenschall:
I understand, Mr. Lalli, but you have seen charges dismissed following a preliminary hearing, is that not correct?

Christopher Lalli:
I have but with respect to....

Assemblyman Ohrenschall:
Pardon me for interrupting you, but those charges would be going on to district court and to me it seems like a toll on our judicial economy and resources.

Christopher Lalli:
They are, but my point is, those types of motions require the development of a record. The proper venue is in district court where an evidentiary hearing can be held and the facts can be developed both by the defense and the state relevant to those issues. Importantly, the citizens of this state have made the decision to enact a court of appeals. You now have the ability, if the defendant or the state does not agree with the trial court's ruling, to solicit the court of appeals if you disagree with the district court's decision. From there you can take it to the Supreme Court. Therefore, there are plenty of opportunities where a defendant can challenge the constitutionality of a search or voluntariness of his statement to the police. The least appropriate place for that to happen is in a justice court where the fact relevant to that inquiry has not been developed.

Assemblyman Ohrenschall:
I think we are very lucky to have the new court of appeals, but my fear is that while that process is going on, how many beds are going to be occupied when something like this could have been resolved in justice court, as it is being done now?

Assemblyman Gardner:
It is my understanding this puts us in line with federal grand juries. The preliminary hearing is never meant to be a mini trial; it is supposed to be for the purpose of deciding probable cause. Is that the point of the bill?

Steven Wolfson:
You hit the nail on the head. It brings us in line with what they do in the federal criminal justice system and what 37 other states currently do.

Assemblywoman Diaz:
Mr. Jackson, you mentioned that this would speed up the process. My question is, it speeds up the process in whose favor? Not all defendants are created equal; not everyone has the education that you gentlemen have, and so when you rush the process and take hearsay that can be admitted into the trial later and the people do not understand what everything they are saying really means, I am troubled by this notion.

Mark B. Jackson:
Those specific incidences I was talking about, you would put on the prosecutor. Under the current status of the law, the prosecutor makes a motion to continue the preliminary hearing because they do not have witnesses who are available. The defense attorneys will typically object to those; however, the judges' hands are tied because there is a certain criteria the prosecutor has to meet. Then the judge is going to grant that continuance. This will elevate those issues, which is the number one reason for those delays, which would be to the advantage of the defendant.

Assemblywoman Seaman:
There are 36 states with this law, and there have been a few potential problems brought up here today. With your research and knowledge, do you know of any of the states that have come back to repeal this law?

Steven Wolfson:
No. To expand on Assemblyman Ohrenschall's concern that more cases will end up in the district court, I do not think that will be the case. Right now, we have about 10 justices of the peace in Clark County who hear felony preliminary hearings. They each have calendars that are a minimum of 15 preliminary hearings per day. A certain number of defendants are in custody and some out of custody. We have to settle most of our cases or our system will collapse; it is called plea-bargaining. What that means is that we can only put one or two preliminary hearings on a judge per day, right now. Additionally, I have a finite number of trial court judges who can hear these cases at trial. Right now, some of our jury trials are taking one to five years to get to trial. I do not

expect this bill to create more cases for the trial court. We only want the kinds of cases that should be considered for jury trial. The majority should be plea-bargained and settled at the justice court level. Under these new rules, that will continue to happen. Respectfully, Assemblyman Ohrenschall, I do not think that we are going to cause our jury case load to grow. It will allow us to get the important cases through to district court in a more efficient way, not rushing cases, but recognizing the rights of the victims.

Chairman Hansen:
Since this was directed to you, Assemblyman Ohrenschall, this is not an adversarial hearing as you lawyers are used to. We are simply trying to get as much information as we can. I will give Assemblyman Ohrenschall an opportunity to respond to Mr. Wolfson.

Assemblyman Ohrenschall:
My only concern is with this language, even with the proposed amendment. With the abbreviated record we may get at the preliminary examination, I see the potential for delaying that negotiation process. We all know how important the plea bargaining process is, but if vital information is not going to be able to occur at that justice court level, I see negotiations not happening, cases not resolving that should resolve and clogging up the district courts, indigent defendants sitting in jail and costing the taxpayer money when this could be resolved a lot earlier. I am afraid I have to stick to my guns; this bill has unintended consequences.

Steven Wolfson:
Mr. Chairman, could I quickly respond?

Chairman Hansen:
Actually, no. At this time we are going to go to Assemblyman O'Neill. For the audience's information, we will stop sharply at 11 a.m. today. In fact, I am guessing since I have so many lawyers in the room, we will have to extend this so everyone gets an opportunity. This is an extremely important bill for both sides. We will probably go into recess at 11 a.m., and I do not know when in the future we will be able to continue this hearing. This is one bill where we will have to spend the time and get it thoroughly vetted.

Assemblyman O'Neill:
If we are trying to model those 37 other states, and having worked under this procedure before in other states and here in Nevada under the federal system, why did you not include the ability for the lead investigator to sit at the table to help further expedite the proceedings? I am a strong supporter of this bill. I am

just curious why you did not model it completely after some of these other states.

Christopher Lalli:
That is already allowed under Nevada law.

Assemblyman O'Neill:
Allowed, but is it used?

Christopher Lalli:
We do not use it that often, but there are provisions to do that.

Chairman Hansen:
I would like to give the proponents as much time as possible to get through the actual bill. We have the idea of what we hope it will do, but we need to go through the language. Ideally, for our education, we need to go through the bill section by section.

Christopher Lalli:
Section 1 provides a number of other significant things. It authorizes justices of the peace to take felony and gross misdemeanor guilty pleas.

Chairman Hansen:
This is the amended version, not the original version, correct?

Christopher Lalli:
That is correct. That is intended to be enabling language and to apply to Clark County. In the amendment offered by the Nevada District Attorney's Association, it makes this discretionary. The reason for doing this is as a solution to jail overcrowding in Clark County. It would cut down on the length of stay for those inmates in our detention center. Currently, it takes as long as eight days between the time a person waives his right to a preliminary hearing until the time the defendant first appears in district court.

To give the Committee an example of what would occur, a person would appear for his preliminary hearing. If that preliminary hearing were waived, that waiver would be entered on the record, and in that same proceeding, the defendant would enter a plea of guilty. It would make that proceeding very efficient. It would actually combine two hearings into one. It is discretionary, not mandatory, and that would only apply to Clark County. It requires that a defendant actually be present for a preliminary hearing, and we have already discussed that it would prohibit the justice of the peace from hearing motions to

suppress. The appropriate venue for that would be in district court where the evidentiary hearings could be held.

Chairman Hansen:
Mr. Lalli, before you leave section 1, I have a question on subsection 2 of the amended bill (Exhibit H) where it says, "In a county whose population is more than 700,000, the parties may...." Is it normal to have different procedures for criminal defendants in different counties? Would this only apply to Clark County, and the other counties have a different set of rules in the *Nevada Revised Statutes*?

Steve Wolfson:
I think the simple answer is that Clark County has unique problems and unique issues that some of the other counties do not.

Assemblyman Elliot T. Anderson:
Section 1, subsection 7, says "At the examination, only evidence that is relevant to the existence of probable cause may be admitted." That section seems duplicative with the relevance rule, Rule 401 in the Federal Rules of Evidence. Can you explain to me what that phrase is seeking to do? I am concerned that the judiciary will be confused when applying it.

Christopher Lalli:
Are you reading from the amended bill or the actual bill?

Assemblyman Elliot T. Anderson:
I am reading from the amended version, and it is section 1, subsection 7, lines 17 and 18.

Mark B. Jackson:
What this does is codify what currently is existing law interpreted by the Nevada Supreme Court, which puts these limitations and restrictions on at the preliminary hearing. If it is not codified, we get other types of interpretations. Outside of Clark and Washoe Counties, there is no requirement that the justice of the peace has to be an attorney. We are fortunate in Douglas County that our two justices of the peace are licensed attorneys, but in most of the rural jurisdictions, they are not attorneys. This would clear up any potential confusion about interpretations with any of the case law that again goes back to 1962.

Chairman Hansen:
In the amendment, section 1, subsection 7, line 20, where the line is blocked out stating "that it was unlawfully acquired..." does that mean that people who

do illegal things will be allowed to bring that as evidence into a preliminary hearing?

Christopher Lalli:
We do not want a justice of the peace to consider unlawfully acquired evidence.

Chairman Hansen:
Then why are you blocking it out?

Christopher Lalli:
It is being eliminated.

Chairman Hansen:
Now you are saying that you cannot object to people bringing evidence that is unlawfully acquired?

Christopher Lalli:
You are correct.

Chairman Hansen:
That is one issue we will have to address.

Assemblywoman Diaz:
In section 1, subsection 9 of the amendment, we are requiring the defendant to be present. Can you explain this change?

Christopher Lalli:
That is to address the *State v. Sergeant* 128 P.3d 1052 (2006) decision by the Nevada Supreme Court. This amendment would address that decision.

Chairman Hansen:
Proceed to section 2.

Wesley Duncan, Assistant Attorney General, Office of the Attorney General:
Mr. Chairman, I would like to address your concern. I think what we are talking about here is the jurisdiction of different judges. Our justice court judges were elected to hear misdemeanor trials, arraignment of felonies, and preliminary hearings. In many of our courts, we are getting far afield from what these justices are elected to do. There are ethical responsibilities that prosecutors have in bringing forth cases. The point of this is that we are putting a clear line in the sand as to what the justice of the peace can do. Their statutory duties are not to be ruling on things that are meant to be handled at the district court. There defendants get to exercise all of their constitutional rights. This bill does

nothing to affect what is happening at the district court level. There are justices of the peace in rural communities who are not attorneys, and they are ruling on evidence that they do not have the legal training to do. The justices of the peace have limited jurisdiction that they are responsible for, and this bill addresses those. It does nothing with the defendant's trial rights. I just want to make that clear.

Chairman Hansen:
I do want to get to section 2; it is 10:30 a.m. with 30 minutes left today. Obviously, we are going to have a hard time getting through all 13 sections.

Christopher Lalli:
I would like to make one more point about the entire amendment. This amendment is not only based upon issues that are important to Nevada prosecutors, some of the amendments were the product of discussions that we had with the justices of the peace throughout Nevada. The language was removed based upon some of those discussions.

Chairman Hansen:
We will have to get back to that. I am a nonprofessional, and when I see somebody saying you cannot object to unlawfully acquired information being presented at a preliminary hearing, it does raise a red flag.

Christopher Lalli:
Section 2 expands the use of out-of-state affidavits under NRS 171.197. To prove the elements of an offense, many times we will need to bring witnesses to the preliminary hearing to testify that they were the owner of certain property, did not know that defendant, or did not give that defendant permission to possess the property. If the witness lives more than 100 miles from where the preliminary hearing will be held, we are allowed to use an out-of-state affidavit. Section 2 allows us to add value to the affidavit. For those offenses where value is an element, such as the theft or taking of a vehicle or theft of jewelry, we can include that information in an out-of-state affidavit.

Section 6 expands the out-of-state affidavit and value to grand jury proceedings.

Section 3 recognizes the advancement of audiovisual technology and brings that to the courtroom. Those of us who have children in college rely on FaceTime or Skype, or for those of you at the Legislature, you may communicate using these applications with your loved ones back at home. You are familiar with the reliability of these applications. It is unfortunate that our statutes have not been

able to keep pace with technology. *Nevada Revised Statutes* 171.1975 was written in 2001. That was 15 years ago, and when you think about all the technological advances that have occurred since then, it is mind-boggling. We have antiquated requirements that are just not useful in today's technology. This amendment brings the statute in line with today's technology. Section 7 does the same for grand jury presentments.

Section 10 has to do with Nevada's law regarding grand juries. Nevada law gives defendants the right to testify at a grand jury. It is unique from other jurisdictions in that regard. To give that right, meaning before a grand jury presentation concludes, Nevada prosecutors are required to give a defendant notice that the grand jury is meeting to consider charges against him. We call that notice a Marcum notice. It needs to be provided five days prior to when the indictment is returned. Defendants often challenge the sufficiency of that notice. They may get creative with the calculation of five days, or it could be that a prosecutor did not give the notice in sufficient time. It could be that the appointed attorney argues that they were not appointed to represent the defendant for grand jury proceedings, only to represent them in justice court. It could be that a defendant was undergoing a psychiatric evaluation and the argument put forth is that the defendant was not competent to make the decision to testify. If, for whatever reason, a court makes the determination that the Marcum notice was defective, the remedy is very harsh: the case is dismissed under current law. In reality, this is gamesmanship, and I do not fault the defense bar for what they do because they are doing their job. If I were a defense attorney, I would do the same thing. I have been practicing law for 21 years, and in cases that I have prosecuted, not once has the defendant gone to the grand jury and exercised this right to testify. If a case is dismissed due to the Marcum violation, prosecutors have the right to reindict. If a dangerous defendant has his or her case dismissed, the defendant is released from custody. If a person is held from another jurisdiction, he or she may be lost and extradited out of Nevada. If a person has an Immigration and Customs Enforcement hold, he or she may be deported and lost forever from prosecution. What section 10 does, if there was a problem with the Marcum notice, prosecutors are allowed to go back to the grand jury and if the defendant wants to exercise his or her right to testify, he or she is allowed to do so. The defendants' rights are not a club to be used against prosecutors.

Chairman Hansen:
Have you covered section 4? I would prefer to go section by section.

Christopher Lalli:
Section 4 indicates that hearsay is enough to make a finding of probable cause.

Section 5 is a provision that applies to grand juries. It is a rule of evidence. If you impeach a witness with an inconsistent statement at a preliminary hearing or trial, the rule of evidence in Nevada is that inconsistent statement is sustentative evidence in itself. That applies everywhere but a grand jury. This section corrects that and makes the inconsistent statement sustentative evidence in the grand juries.

Section 8 states that only information contained in the case file would be submitted to the grand jury. It clarifies that a defendant cannot deliver to us fugitive information to submit to the grand jury. We are allowed to submit exculpatory evidence to a grand jury. That usually comes in the form of information contained in the investigative record. This section prevents a defendant's attorney from saying, My client claims that this crime was committed in self-defense and requires to have that as evidence presented to the grand jury even though there is no evidence contained in the investigative record to suggest that. Or, My client says someone else did the crime. We do not want you to put that evidence in front of the grand jury even if there is no record or evidence to suggest that.

I believe that I have covered all the sections in A.B. 193.

Chairman Hansen:
Did you cover section 9 regarding finding a probable cause pursuant to subsection 1 may rest solely on hearsay evidence?

Christopher Lalli:
Yes, that section makes the finding of probable cause based upon hearsay sufficient for grand jury purposes as opposed to preliminary hearing purposes.

Chairman Hansen:
You are adding a new section. Would you cover that quickly?

Christopher Lalli:
The new section goes along with section 1. The way section 1 is written, when a justice of the peace receives a guilty plea, the charging document in justice court is a criminal complaint. That criminal complaint becomes the charging document in district court. Under current law, in district court, prosecutors are required to endorse or list all known witnesses on the information. Criminal complaints do not currently list any witness names or addresses. The added section removes the requirement of adding witness names to information so that those complaints can be used as charging documents in district court. It is just a technical amendment to procedure. The important thing to keep in mind is that defendants will still know who the

witnesses are going to be at trial. We are required to file notices of experts and witnesses in district court. In Clark County, the practice is at first appearance we present the defense a packet of discovery. At a case's onset, defendants receive information as to who the witnesses are, and that flow of discovery is ongoing through the life of the case.

Chairman Hansen:
Are there any questions from the Committee?

Assemblywoman Seaman:
My question is for Mr. Duncan. While we are debating procedure with preliminary hearings, are there any states that eliminate preliminary hearings and go straight to trial?

Wesley Duncan:
Yes, there are currently three states that do not have a preliminary stage. This is because it is not a constitutional requirement. I would like to break this down. Say you have a young child who is a victim of sexual assault at the hands of an adult perpetrator. The police are called to the scene; the detective or investigator shows up and interviews the child. What commonly is done is that interview is recorded. Instead of putting that five-year-old child on the stand at a probable cause hearing, this bill will allow us to call the detective and have the recorded interview played at the preliminary hearing. Not only does the perpetrator victimize children, then the children have to tell the story to the police, then they have to attend a preliminary hearing and tell their story again to a prosecutor, then they have to go to a grand jury or preliminary hearing to tell the story again and be subjected to cross-examination at a probable cause hearing. Once they go through that, it is time for trial. The children may be subjected to a psychiatric evaluation, they might have to talk to a defense investigator, and then talk again to the prosecutor who is going to prepare the children for the case. Finally, they will go in front of 12 people they have never met before, retell the story, and be cross-examined again.

This Committee gets to make a statement regarding whether they think that is the right thing to do. This is about the victims, and we do care about the victims in this state. This Committee gets to put a price tag on what that is. I would strongly urge this Committee to pass this bill.

Assemblyman Ohrenschall:
I want to address section 8 of the original bill and the deletions on page 10 to NRS 172.145. In the 76th Session of the Nevada Legislature, the former Chairman of this Committee, Assemblyman Horne, and the current Chairman worked on Assembly Bill 269 of the 76th Session, which stated that if

a preliminary examination was held and the justice of the peace felt that there was not slight or marginal evidence in order to bind a defendant to district court and hold that defendant to answer on the charges, the case was dismissed. Then the district attorney served the Marcum notice and decided to get a second bite at the apple and go to the grand jury to try and reinstitute the proceedings. That defendant, for the first time in Nevada law, would be able to let the grand jurors know that the preliminary examination had been held and a justice of the peace had ruled that there was no slight or marginal evidence to send the case to district court. I see that you are proposing to delete that language. What is the benefit of not letting the grand jurors have that information? I also have one brief follow up, Mr. Chairman, regarding the amendment.

Christopher Lalli:
I cannot think of a case where that has had an effect on our grand jurors. Oftentimes cases are dismissed at the preliminary hearing level for many other reasons. It could be that a witness did not appear or a plethora of other reasons. The concern is that the grand jury is being fed disinformation. It creates more confusion at the grand jury level, and we believe it should be deleted.

Assemblyman Ohrenschall:
I fail to see how the fact that charges were dismissed at a preliminary hearing would be disinformation that the grand jurors should not be allowed to know about. The deletion of the existing language in NRS 173.045, subsection 2, (Exhibit H) concerns me regarding the judicial economy and resources. If we delete this language, when will the defendant and their counsel find out about witnesses? Would it not be reasonable to put a timeline in the language? Many cases need to go into plea bargain, and I see this delaying it. This would keep an indigent defendant housed at a county jail when this could be resolved earlier.

Christopher Lalli:
This is one of the provisions I am sure we can reach a compromise on. This is a technical addition that I am sure we can work out. Going back to section 8, when you go back to the reasons for probable cause here, there are only two issues at hand: whether a crime occurred and who committed it. The issue of whether a case was dismissed at the prior hearing is not relevant to that issue and that was the reason the language is being dismissed.

Assemblyman Ohrenschall:
I respectfully disagree. In the 76th Session of the Nevada Legislature, we felt it was relevant enough to put it in the NRS.

Assemblywoman Diaz:
There was a scenario posed by Mr. Duncan regarding children being victimized. We are here to represent our constituents and protect the victims. This to me is access to justice. We need to be sure that what we put into our statute will be sound for everyone across the board.

Assemblyman Elliot T. Anderson:
Section 3 does not fix your visitor problem because it allows for the use of audiovisual. I also wonder about section 5, subsection 3, and the inconsistent statement. Why is it needed when in the section above it, subsection 2, you are allowing hearsay; so under subsection 2 you allow everything. Subsection 3 seems to be duplicative.

Christopher Lalli:
Section 3 does help us with our tourist and out-of-state victims. What was your next question, I am sorry?

Assemblyman Elliot T. Anderson:
I am looking at section 5, subsection 3, speaking to the inconsistent statements of the grand jury. In subsection 2, you allow all hearsay. To me, that is wide open in subsection 2. Subsection 3 just appears to be duplicative and not needed because you are allowing hearsay of all types.

Christopher Lalli:
I would agree with you in that regard. It is duplicative, but I think it further clarifies the point, and that is why section 3 is in the bill.

Assemblyman Elliot T. Anderson:
We have it on the record now, thank you.

Assemblyman Thompson:
In section 7, I want to ask about the witness verification process. I notice that we are eliminating certification of the videographer. I understand that we are trying to advance and use more technology. You are also looking to change it from the witnesses who reside more than 100 miles instead of 500 miles. Can you explain how that verification and validation process occurs with video?

Christopher Lalli:
Right now, this provision is not used at all. It is not used because of all the procedural requirements in this section. What I can tell you with respect to witness validation is who am I right now: I can tell you I am Christopher Lalli, but I could be Jim Smorgawitz; how do you know who I am? How do we know if any witnesses are who they claim to be when they come to court? It is

because presumably a police officer has verified that person's identity. All of those checks and balances are in place in the criminal justice system. When victims are here in Nevada and interviewed by members of law enforcement, their identity is validated, and when they are testifying through video equipment in whatever state or country they are in, we would know that they are who they claim to be. It is no different if they are appearing on video or in our court.

Chairman Hansen:
Mr. Jackson, if you could hold your comment unless it is pertinent to that section of the bill.

Mark B. Jackson:
It was going back to Assemblyman Ohrenschall's question on the new section, and I thought it should be part of the record.

Chairman Hansen:
Actually, I am going to put this hearing on A.B. 193 on recess at this point. I apologize for all the district attorneys who traveled so far. We will have to have another hearing to try to get further into the bill. Obviously, it is complicated, and I would encourage both sides in the interim to work out any of the differences that were expressed today. We will have a further hearing on A.B. 193. Hopefully, in the meantime, we will be able to address some of the concerns so we can get the hearing concluded. We have been going since 9:20 a.m. and it is now 11 a.m. and we have not gotten through the first three components of the bill. In the interim, we will need to get as much on the record and give as much information to the Committee as possible so we can make an educated decision on the bill.

The hearing on A.B. 193 is now in recess. We have some committee business we need to take care of. We have two bill introductions.

BDR 40-586—Revises provisions governing trafficking controlled substances. (Later introduced as Assembly Bill 297.)

Chairman Hansen:
I will entertain a motion at this time.

> ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE BDR 40-586.
>
> ASSEMBLYMAN THOMPSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN NELSON WAS ABSENT FOR THE VOTE.)

BDR 15-914—Revises provisions governing the criminal liability of parties to certain crimes. (Later introduced at Assembly Bill 296.)

Chairman Hansen:
I will entertain a motion.

ASSEMBLYWOMAN SEAMAN MOVED TO INTRODUCE BDR 15-914.

ASSEMBLYMAN ELLIOT T. ANDERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN NELSON WAS ABSENT FOR THE VOTE.)

Chairman Hansen:
Is there any public comment at this time? [There was none.] The meeting is adjourned [at 11 a.m.].

[All items submitted on NELIS but not discussed will become part of the record: (Exhibit K), (Exhibit L), (Exhibit M), (Exhibit N), (Exhibit O), (Exhibit P), (Exhibit Q), (Exhibit R)]

RESPECTFULLY SUBMITTED:

_____
Janet Jones
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 13, 2015 **Time of Meeting: 8:01 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 212	C	Assemblywoman Irene Bustamante Adams	Testimony
A.B. 212	D	Chandni Patel, Intern for Assemblywoman Irene Bustamante Adams	Testimony
A.B. 212	E	Gloria Allred, Allred, Maroko and Goldberg Law Offices, Los Angeles, California	Testimony
A.B. 212	F	Kristy Oriol, Nevada Network Against Domestic Violence	Letter of support
A.B. 212	G	Daniele Dreitzer, Executive Director, The Rape Crisis Center, Las Vegas	Letter of support.
A.B. 193	H	Nevada District Attorneys' Association	Amendment proposals
A.B. 193	I	Steven Wolfson, Office of the District Attorney, Las Vegas	PowerPoint presentation
A.B. 193	J	Steven Wolfson, Office of the District Attorney, Las Vegas	Letter of support
A.B. 193	K	Frederick B. Lee, Jr., Elko County Public Defender	Letter of support
A.B. 193	L	Brendon Woods, Alameda County Public Defender, Oakland, CA	Letter of support
A.B. 193	M	Christopher J. Hicks, Washoe County District Attorney	Letter of support
A.B. 193	N	Steven J. Yeager, Office of the Public Defender, Las Vegas	Letter of support
A.B. 193	O	Kristy Oriol, Nevada Network Against Domestic Violence	Letter of support

A.B. 193	P	Konrad Moore, Law Office of the Public Defender, County of Kern, Bakersfield, CA	Letter of opposition
A.B. 193	Q	Jeremy T. Bosler, Washoe County Public Defender	Letter of opposition
A.B. 193	R	Lisa Rasmussen, Nevada Attorneys for Criminal Justice	Letter of opposition