

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
May 7, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:20 p.m. on Thursday, May 7, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Aaron D. Ford

COMMITTEE MEMBERS ABSENT:

Senator Tick Segerblom (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Elliot T. Anderson, Assembly District No. 15
Assemblywoman Michele Fiore, Assembly District No. 4

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Julia Barker, Committee Secretary

OTHERS PRESENT:

Steve Yeager, Office of the Public Defender, Clark County
Sean B. Sullivan, Office of the Public Defender, Washoe County

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John T. Jones, Jr., Nevada District Attorneys Association
Chuck Callaway, Las Vegas Metropolitan Police Department
Steve Hill, Director, Office of Economic Development, Office of the Governor
Judy Stokey, NV Energy
Kerrie Kramer, Greenberg Traurig
Alex Ortiz, Clark County
John Griffin, Amazon
Jesse Wadhams, Bowhead; ArrowData
Tim Shestek, American Chemistry Council
Jonathan Friedrich
Susan Fisher, Reno-Tahoe Airport Authority
Vanessa Spinazola, American Civil Liberties Union of Nevada
Robert Dunbar
John Abbey

Chair Brower:

I open the meeting of the Senate Committee on Judiciary with the hearing on Assembly Bill (A.B.) 281.

ASSEMBLY BILL 281 (1st Reprint): Creates a statutory subcommittee of the Advisory Commission on the Administration of Justice. (BDR 14-243)

Assemblywoman Michele Fiore (Assembly District No. 4):

Assembly Bill 281 was complex as originally drafted. Now, it is relatively simple. It would contemplate changing minor traffic violations from a criminal infraction to a civil penalty. If you are cited for any traffic violation, you may be placed in jail. All of Nevada's neighboring states have civil penalties for minor traffic violations. Nevada is the only state in the Intermountain West prosecuting minor traffic violations as criminal offenses. This bill tasks the Advisory Commission on the Administration of Justice with studying the idea of changing Nevada's criminal prosecution of traffic violations to civil penalties.

Sections 1 through 46 were deleted by an amendment.

Section 47 lays out objectives and the structure of the subcommittee.

Section 48 acknowledges the Commission in statute.

Section 49 tasks the subcommittee with evaluating whether it is feasible to change minor traffic violations from a criminal infraction to a civil penalty.

Section 50 allows the chair of the Commission to accept gifts, grants or requests to carry out the objectives of this bill.

Section 51 requires the subcommittee to report to the Advisory Commission on the Administration of Justice no later than 30 days before the date of the meeting at which the Advisory Commission considers findings and recommendations submitted to the Commission by the subcommittee for proposed legislation to the 79th Session.

Section 52 sunsets the legislation on July 31, 2017.

Steve Yeager (Office of the Public Defender, Clark County):

The Clark County Public Defender's Office supports A.B. 281. We offer any services to the subcommittee should this bill pass.

Sean B. Sullivan (Office of the Public Defender, Washoe County):

The Washoe County Public Defender's Office supports A.B. 281 and offers our services to the subcommittee should this bill pass.

John T. Jones, Jr. (Nevada District Attorneys Association):

The Nevada District Attorneys Association supports A.B. 281. We look forward to participating in the subcommittee.

Chair Brower:

I will close the hearing on A.B. 281 and open the hearing on A.B. 239.

ASSEMBLY BILL 239 (2nd Reprint): Regulates operators of unmanned aerial vehicles in this State. (BDR 44-8)

Assemblyman Elliot T. Anderson (Assembly District No. 15):

I have submitted a presentation to coincide with my testimony ([Exhibit C](#)). Assembly Bill 239 is the Homeowner Privacy Protection Act. This legislation balances people's privacy with the economic and physical security of Nevada by protecting the privacy of Nevadans, providing clarity of rights and responsibilities to businesses and hobbyists, allowing law enforcement to utilize

this technology to keep Nevadans safe, and making Nevadans comfortable with this technology by providing clear rules and regulations.

Many of you have heard of unmanned aerial vehicles (UAVs). They are an exciting innovation in aircraft and technology in general with many practical applications in our lives. Like any new technology, with these innovations come less desirable uses. Because of increased technical capacities and cheap cost, we must ensure we are not only getting it done in terms of economic development, but we get it right. Nevada should be the “get it done state” and the “get it right state.” Privacy concerns must be addressed as we welcome the UAV industry to our State.

Unmanned aerial vehicles hold extraordinary potential for various practical uses, such as law enforcement and emergency first responder assistance, infrastructure inspection, wildlife and ecosystem observation, and recreation. However, UAVs also bring troubling implications for privacy and civil liberties not fully contemplated by Nevada law. In fact, Nevada is behind in homeowner privacy protection with respect to UAVs. In the past 2 years, several states have passed comprehensive legislation protecting citizens’ privacy from both private operators and government abuse. These states include Alaska, Idaho, Indiana, North Carolina, Tennessee and Texas. I have provided a comprehensive list of states considering or that have considered regulating UAVs ([Exhibit D](#)). I would note that Alaska and Texas are Federal Aviation Administration (FAA) test sites, as is Nevada. Alaska, under House Bill 255 in 2014, requires a search warrant to operate UAVs or a recognized exception to obtaining a search warrant.

Members of the public want to ensure they are secure in their homes, Slide 3 of [Exhibit C](#). Ninety-three percent of Americans and 83 percent of Nevadans are worried about UAVs being used to observe them at home. Smaller but robust numbers of citizens are also concerned about UAVs surveillance at other locations. I have provided an article from the University of Nevada, Las Vegas, titled “Nevada vs. U.S. Residents’ Attitudes Toward Surveillance Using Aerial Drones” ([Exhibit E](#)). It is evidence of why we need to ensure Nevadans are comfortable with this technology so they will accept its use in the State.

Slide 4 of [Exhibit C](#) has a picture from an Apple Store. You can purchase a small UAV for approximately the cost of an iPad mini 3. This is a clear and present issue we need to handle.

Section 23 of A.B. 239 deals with definitions. Law enforcement agencies are treated differently from other public agencies. Unmanned aerial vehicles will be defined as aircraft in *Nevada Revised Statutes* (NRS). Provisions will apply under NRS 493. Under the general definition of an aircraft, UAVs can arguably be considered aircraft. This makes it explicit and provides clarity for businesses. This bill looks like it has been heavily amended because originally, it created a new chapter of NRS. When I asked the Legal Division to include UAVs in the definition of aircraft, a new chapter of NRS was created. This caused angst in the Assembly. I was willing to redefine UAVs explicitly as an aircraft.

Section 18 is the first bit of new language. It prohibits the weaponizing of UAVs and operating a weaponized UAV.

Chair Brower:

You said weaponizing?

Assemblyman Anderson:

Yes. Lethal or nonlethal weapons attached to a UAV are left for combat zones, not a civilian environment. A person in violation of section 18 will be guilty of a Category D felony. If the weapon is discharged, it becomes a Category C felony.

Section 18.5 deals with critical facilities. Persons may not operate a UAV within a 500-foot horizontal distance or a 250-foot vertical distance of a critical facility without written consent of the facility owner. A UAV cannot be operated within 5 miles of an airport unless the person has consent of the airport authority or the person has a waiver or exemption pursuant to FAA regulations. Violation of this section is punishable by a misdemeanor.

Chair Brower:

Is there a definition of a critical facility included in section 23?

Assemblyman Anderson:

Yes, section 23, subsection 2. I was initially focused on the government implications of UAV use. When the bill came forth, I was approached by a number of people including Nevada utility companies, the American Chemistry Council and law enforcement. They explained there was a clear and present issue with people flying UAVs to drop contraband in prisons. The Department of Corrections testified to that. The Metropolitan Police Department has told me it

is concerned about the security of electrical grids and other critical infrastructures listed in section 23, subsection 2.

Section 19 is a provision regarding trespassing. A UAV flying less than 250 feet over a property may be considered to be trespassing over the property. The owner of the property may file a cause of action for trespass against the owner or operator of the UAV only if he or she has warned the trespasser. However, if a UAV were to fly over 250 feet, it would not be considered trespassing. That provision was included to ensure businesses would be able to operate in Nevada without drawing liability. It would be easy for the advanced models of UAVs to log altitude, so there would be clear and conclusive proof that the vehicle was over 250 feet.

Chair Brower:

This is an interesting and novel area of the law. What is the law in Nevada with respect to a property owner's elevation of property rights?

Assemblyman Anderson:

The U.S. Supreme Court case, *U.S. v. Causby*, 328 U.S. 256, 66 S.Ct. 1062 (1946), was a Takings Clause case dealing with a government taking property. The U.S. Supreme Court stated property owners had a right into the immediate reaches of their property that has never been specifically defined as a certain altitude. Because it is a Fifth Amendment case, I do not know that it is directly applicable to this area of law. If the federal government does come back with anything more explicit, this bill contemplates that provision would apply in the conforming sections under A.B. 239, section 24.6. That is existing law in NRS 493 requiring courts to harmonize State law with federal law.

At some point, a homeowner's property right does not attach to the airspace, and the U.S. airspace takes over in the scope of FAA regulations. Under the Tenth Amendment of the Nevada Constitution, we have a right to regulate property rights in Nevada. The only reason the bill included a specific altitude was to ensure businesses have a way to comply with statute while allowing people to defend property against encroachments from vexatious hobbyist aircraft people.

In a trespassing action, unless there is property damage, you would more than likely have nominal damages. Even troubled damages would be next to nothing. The transaction costs of bringing and starting an action would most likely

preclude any real You would not see many lawsuits filed because of transaction costs.

There are several exceptions to section 19. It will not be considered trespass if the UAV is lawfully in the flight path for landing at an airport, airfield or runway; the UAV is taking off or landing; the UAV is under the lawful operation by a law enforcement agency or FAA-licensed business exception that does not interfere with reasonable use of real property, and is in the scope of a lawful business activity. This resulted from consultation with operators such as Amazon and land surveyors concerned this would create liability. I have been clear that I do not wish to make it impossible for businesses to operate UAVs in Nevada. I have taken 10 to 20 meetings with concerned industries to make sure this section is tight and would allow clear rules so businesses would not accidentally trigger liability.

Chair Brower:

You mentioned Proposed Amendment 6998, but it sounds like the amendment you referenced is in the bill. Are you talking about the amendment from the Assembly incorporated into the first reprint or a new amendment?

Assemblyman Anderson:

I have submitted Proposed Amendment 6998 ([Exhibit F](#)) that was drafted in consultation with Clark County. The original bill stated law enforcement was exempted from liability. The proposed amendment adds the public agency definition to that exemption.

Senator Ford:

The Chair's question about air rights reminded me of a lawsuit waged over a decade ago. The Nevada Supreme Court determined air rights go up to the sky. The caselaw you referenced deals with curtilage around a house. The Chair's question was about air rights. You have a 250-foot cap in terms of liability to trespass. Could we get some clarification about the air right issue from either you or the Legal Division?

Assemblyman Anderson:

At some point, the U.S. navigable airspace starts. At that point, the FAA has jurisdiction. I do not believe it is practical for a homeowner at a certain height to say he or she owns all of the sky above his or her property. At some point, he or she does not have a property right, but I do not know at what point that is. It

would be impractical for a homeowner's property right to extend up to the stars because we would not be able to fly anywhere without trespassing on someone's land. There is an end to that property right, but I cannot give you a specific height. A specific height in the bill ensures we do not trip up businesses trying to use UAVs in the State. With that section, you would also have to warn the person who is overflying over his or her property. In most overflight cases, there will not be liability because of the warning requirement. This section gets into preemption issues, but we are solid on that because we can regulate property rights under the Tenth Amendment. Should that property right be further clarified by federal law, the bill contemplates harmonizing Nevada law with federal law by a constitutional direction from the FAA.

Chair Brower:

This is a novel, uncharted area of the law, and we could go on with hypotheticals—which I would encourage the Committee to do. We want to get this right. Is a scenario of a UAV hovering over a sporting event such as the Silver Bowl contemplated? If so, how does this bill deal with it?

Assemblyman Anderson:

I direct you to section 19. I would stick with the rule when getting into hypotheticals because that is what will matter if such a situation were to be litigated. The first two lines of section 19 say, "A person who owns or lawfully occupies real property in this State may bring an action" Under your hypothetical, a person is occupying real property—Sam Boyd Stadium—so the owner of a UAV would need to obtain permission from that lawful owner.

Chair Brower:

Practically, if an unauthorized vehicle was hovering above Sam Boyd Stadium below the 250-foot threshold, the owner of the Stadium would be stuck with that until he or she could determine the owner of the UAV and file a lawsuit, but only for a second such offense. Where does the 250-foot threshold start? Does it start from the ground or from the top of the stadium? If some of these issues have not previously surfaced, we can talk about it later.

Assemblyman Anderson:

In that hypothetical, the 250-foot threshold would start from the ground because that is where real property rights start. The 250-foot threshold is an exemption for businesses. As far as a UAV hovering above a stadium over 250 feet, I point you to other parts of the bill where that hypothetical could be

utilized. The law in NRS 493 deals with doing tricks over populated areas. In A.B. 239, section 24.4, if the person operating the UAV were being irresponsible and flying dangerously or recklessly, there would be criminal liability for the operator. The owner of the stadium could have recourse through that section if the flying was more than an overflight. Other options to consider under this bill deal with your hypothetical.

Chair Brower:

Other laws deal with unauthorized filming of a sporting event from a UAV, just like the law that deals with an unauthorized person filming an event in a stadium.

Assemblyman Anderson:

I cannot speak to that. It is not contemplated by A.B. 239.

Section 20 of the bill deals with homeowner protections from the government. It abrogates the plain-view doctrine for the curtilage of a residence for aerial observation by a UAV. A warrant is required for any UAV surveillance of a place a person has a reasonable expectation of privacy under the Fourth Amendment or curtilage of a residence, which is stronger than Fourth Amendment law. Under trespass law, curtilage is protected. This would tie it up for the plain-view doctrine. The U.S. Supreme Court case *Florida v. Riley*, 488 U.S. 445, 109 S.Ct. 693 (1989), was a messy decision with a four-to-four concurrence. That case was decided in an era of naked eye observation from fixed-wing aircraft. It is my argument that with much more capable technology, we should have a stronger rule to tie up that area and give people comfort with this technology. Eighty-three percent of Nevadans are concerned about implications to privacy. This would only apply to a residence or backyard of a residence, known as curtilage. Of course, curtilage is more than a backyard, but it would be tied specifically to the home. Images, photos or recordings taken by a law enforcement, public or federal government agency in violation of section 20 will not be admissible as evidence in State court and may not be used to establish suspicion or probable cause. That is the existing exclusionary rule.

Slide 11 of [Exhibit C](#) talks about the exceptions to that warrant requirement. I recognize that law enforcement needs the tools to protect us, so we developed these exceptions. In August 2014, I surveyed every peace officer agency to determine how each would employ UAVs. I built in these exceptions to ensure that A.B. 239 would not let criminals off on technicalities, allowing germane

and important law enforcement use to go on and admitting any evidence innocently obtained without abuse of the technology.

Section 20, subsection 3 includes exceptions. Paragraph (a) is the exigent circumstances, hot pursuit doctrine. No warrant would be required if a law enforcement agency has probable cause that a person has committed, is committing or is about to commit a crime, and there is no time to get a warrant. Paragraph (b) makes written consent an exception. Paragraph (c) is an important exception because one of the most sought-after uses of UAVs for law enforcement is search and rescue because UAVs are exceptional tools to use. They can go into small, tight areas, drop off supplies to stranded hikers, give information about search and rescue attempts, and operate cheaper than helicopters.

A hypothetical is a law enforcement agency on its way to Red Rock Canyon on a germane search and rescue mission flying over someone's house and picking up evidence. That is an exception under this bill because the mission is being conducted for the purpose of a search and rescue operation. The bill contemplates that the evidence gathered during that mission would be admissible under this exception and a warrant would not be required.

In section 20, subsection 3, paragraph (d), I created an imminent threat to life or safety exception, which is not contemplated under the Fourth Amendment. It is important that this bill does not stop law enforcement from keeping people safe. If there is an imminent threat to life—whether there is a probable cause of a threat to life—law enforcement would file a declaration within 2 business days of executing the mission so all evidence obtained from a UAV mission would be admissible. It would need a warrant or legal opinion before saving a person's life. If an agency is saving someone's life and picks up evidence, a warrant is not required for evidence to be admissible. The requirement of a declaration within 2 business days would ensure a record is kept and the exception does not swallow the rule.

Section 20, subsection 3 subparagraph (e) is a state of emergency or disaster exception. If the Governor declares a state of emergency or disaster, law enforcement may use any evidence obtained during that state of emergency in court.

In section 21, a public agency may operate a UAV after registering it with the Department of Public Safety. The UAV must be operated according to the regulations adopted by the Department. Public agencies may not use UAVs for the purpose of law enforcement. However, the bill contemplates if an agency is using it for the purpose of its germane mission, it is not using it for the purpose of law enforcement and any obtained evidence would not be barred from court. While we do not want public agencies encroaching on law enforcement's mission, evidence could be admitted if it were found during the course of a mission. I want to ensure public agencies would not be using this as a law enforcement agency.

Chair Brower:

I am not sure I follow you. Section 21, subsection 1 says a public agency must not operate a UAV for the purposes of assisting a law enforcement agency. Help us out with the definition of a public agency in this context.

Assemblyman Anderson:

Section 23, subsection 7 defines public agency as "an agency, office, bureau, board, commission, department or division of this State or a political subdivision of this State other than a law enforcement agency."

Chair Brower:

Why would we not want these governmental agencies assisting law enforcement?

Assemblyman Anderson:

The definition is separate to begin with because there is a transparency measure ensuring the public knows what the government is using UAVs for in section 22. However, law enforcement is not required to register and have that transparency measure because there are occasions when law enforcement will need confidentiality about resources and assets, particularly when protecting us from terrorism.

On the exclusionary provisions for public agencies, anything picked up in violation of language in section 21, subsection 2 is not admissible under the exclusionary rule. However, an agency would not be in violation of the section if it is using a UAV for purposes other than assisting a law enforcement agency. Let us say the Department of Wildlife is monitoring ecosystems and happens to pick up evidence. That would not be a violation of this section. I know there

were questions about that on the Assembly side, and I wanted to be forthright with how I anticipate that working. It is what a public agency is using UAVs for. If the agency was deputized and operated UAVs because of the law enforcement agency, section 21 states that evidence would not be admissible.

Chair Brower:

What is the public policy reason for not allowing law enforcement to deputize assets of other government agencies if there is a law enforcement need?

Assemblyman Anderson:

It depends on the definition of deputize. This bill does not contemplate whether a law enforcement agency is operating and has taken over the flight of an aircraft. This is when the UAV is under the direction of a public agency. I want that requirement because law enforcement is trained on Fourth Amendment law procedures and policies to balance constitutional rights with safety of citizens. That ensures we have trained law enforcement operators cognizant of rights and responsibilities of Nevadans and law enforcement.

Section 22 is a transparency measure. It is a sunlight measure giving Nevadans confidence in our rules and procedures to ensure they accept this technology. I want nothing more than for this technology to prosper. That transparency measure will allow the Department of Public Safety to promulgate regulations for UAV operations including fire services, emergency medical services, protection of critical facilities, and search and rescue operations. That is not limited. We leave that up to the regulatory body and wide open so public agencies can utilize this technology for a variety of uses.

Sections 22.5, 24.2 and 24.6 make various changes to existing law. Section 22.5 adds sections 18 through 22 of this act to NRS 493.010, or Uniform State Law for Aeronautics which has been on the books since 1923 and not challenged on constitutional grounds for regulation of aviation.

Section 24.2 deals with the general rule that UAV flight is lawful unless specifically prohibited by sections 18 to 22.

Section 24.6 states provisions of this bill defer to federal laws and regulations within the scope of federal constitutional authority. Even though a situation is aviation-regulated, states can still regulate it. Under the Tenth Amendment, states can regulate trespassing, property rights, state law enforcement agencies

and tort law dealing with aviation. Nevada law does that. This provides intent that if the federal government constitutionally regulates this area, it would have control via the supremacy clause.

Section 24.4 is existing law. The law prohibits tricks, aerobatics, low-level flying or dropping an object over a heavily populated area or public gathering. After discussions in the Assembly, we realized if we wanted Amazon to operate, the drop standard would need to be changed. This bill shields Amazon or similar UAV operators from liability. If a company has a delivery service, there would only be a drop prohibition if the drop was reckless. I realized under law, an argument could be made that model aircraft operators could face liability if they were operating in an urban area. I made the law more clear. Say you have a model aircraft operator-hobbyist in a park, he or she would have sanctity under the law and not face any liability.

Section 24.8 makes changes to NRS 493.130, which already prohibits a person from operating an aircraft while intoxicated. This also prohibits being under the influence of a controlled substance or operating a UAV in a reckless manner endangering the life or property of another. That is punishable by a gross misdemeanor. This section makes conforming changes.

Getting back to the hypothetical about Sam Boyd Stadium. Even if trespassing liability would not accrue because the UAV was over 250 feet, the operator of the UAV would be liable if the UAV were being operated in a dangerous or reckless manner.

This bill is about new rules for new technology. U.S. Supreme Court Justice Samuel Alito said in *Riley v. California*, 134 S.Ct. 2473 (2014):

Modern [forms of] technology are making it easier and easier for both government and private entities to amass a wealth of information about the lives of ordinary Americans ... In light of these developments, it would be very unfortunate if privacy protection in the twenty-first century were left primarily to the federal courts using the blunt instrument of the Fourth Amendment. Legislatures, elected by the people, are in a better position than we are to assess and respond to the changes that have already occurred and those that almost certainly will take place in the future.

I have provided a section-by-section breakdown of A.B. 239 ([Exhibit G](#)).

Senator Ford:

The case regarding air rights above one's home is *McCarran Intern. Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110 (2006). The Nevada Supreme Court decided a person owns the airspace 500 feet above his or her home. I wonder if by allowing trespass at 250 feet, we open ourselves up to some problems. How did you come up with 250 feet as the measure of where flying a UAV at a certain height would not be trespassing?

Assemblyman Anderson:

The 250-foot level was chosen because I am anticipating the FAA saying UAV operators could operate from zero to 500 feet. Manned and fixed-wing aircraft are in the airspace at 500 feet. Exempting people at that level ensures a UAV can fly far enough away from other air traffic, while providing some protection for property rights.

Senator Ford:

I understand your rationale but think we need to take a look at whether we create other problems by legislating an allowable trespass in what is recognized in the property of a homeowner.

Assemblyman Anderson:

This may be a question for legal counsel, but I believe *McCarran v. Sisolak* was a Takings Clause case. A lot of federal property rights cases are under the Fifth Amendment because of prohibitions on what property can be used for. It is changing allowable uses; if you do that, you need to provide compensation through a quasi-imminent domain proceeding. The way property rights come up in federal cases are through the Takings Clause of the Fifth Amendment. I am not sure that law would constitutionally apply for Nevada's right to regulate trespass in the State. That would be a question the Nevada Supreme Court would decide. I cannot imagine we could not set and regulate property rights under the Tenth Amendment.

Section 24.6 states Nevada statutes would comply if there is a constitutional pronouncement from the federal government. The federal government would control the decision if a specific number is subject to interpretation and constitutional regulation.

Chuck Callaway (Las Vegas Metropolitan Police Department):

The Las Vegas Metropolitan Police Department supports A.B. 239. Assemblyman Anderson reached out to us and the Nevada Sheriffs' and Chiefs' Association before this Session for feedback on how law enforcement envisioned using UAV technology and problems we were seeing from use or abuse of it by the public. My Fusion Center of the Southern Nevada Counter-Terrorism Center and the Association provided that information. We have been looking at and testing some of this equipment, but we do not own any UAVs as of now. We will utilize it in the near future. I understand you can never envision all possible uses for technology, so striking that balance between law enforcement use, protecting the privacy of citizens and transparency is difficult. This bill strikes that balance. We might use UAV technology for search and rescue; tactical operations where we might see a suspect's location in a residence during a hostage situation; or dropping a phone to a suicidal person we are trying to contact. There are a lot of ways this technology could be used by law enforcement.

On the other side, we are concerned about areas and problems at events with large crowds such as New Year's Eve on the Las Vegas Strip, the Electric Daisy Carnival and First Friday. There is the potential for someone to use a UAV to fly low and drop something into the crowd, potentially arming the crowd and using a UAV for some type of terrorist motivation. There was a case in the Midwest involving a gentleman in a body of water armed with a knife threatening to kill himself. Law enforcement officers were talking to this individual to try to get him to surrender, but someone was operating a UAV over the scene and distracting officers and the subject. In California, a SWAT team was in the middle of a tactical operation. A UAV was being flown inside the crime scene, taking photographs. We provided that feedback to Assemblyman Anderson, and this bill addresses those concerns.

Some people may testify that UAVs do not need to be regulated at the State level because the FAA has guidelines for law enforcement. Those guidelines are civil in nature. It says if law enforcement encounters someone doing something inappropriate, we can contact a representative of the FAA to potentially respond to that concern. But the document lists the remedy as either a warning or civil infraction, and it is not the intent of the guidelines to mix with local criminal law. There needs to be a balance to give officers in the field encountering problems addressed by this bill the teeth to take action.

While I was at the Legislature, my wife in Las Vegas said a gentleman came to our front door and asked if he could look in our backyard because he had lost his UAV in the neighborhood. My wife told him she would go look in the backyard, and the UAV was not there. He asked my wife if she could ask the neighbors if the UAV was in their backyard. When she asked him why he would not ask them himself, he said it was because a camera was attached to the UAV and he was uncomfortable asking all of the neighbors if he could look for his drone. Here is somebody flying a UAV with a camera over my backyard and the UAV crashing. These are the types of scenarios where we want a level of privacy and balance with public safety.

Steve Hill (Director, Office of Economic Development, Office of the Governor):

The Governor's Office of Economic Development supports [A.B. 239](#). We began working on the topic of UAV privacy at the same time as Assemblyman Anderson. We worked together with interested parties to reach the conclusion reflected in the bill. The William S. Boyd School of Law did a tremendous amount of work providing helpful analysis and information. There were six major issues with the original draft of this bill. Two of the issues have been addressed through Proposed Amendment 6998 [Exhibit F](#). One is the definition of a UAV as part of the definition of an aircraft. The industry felt that was important and streamlines the bill. It is important to punish behavior, not technology making that behavior possible. For example, a photograph taken by a UAV may also be taken with a cell phone on a balcony or from a helicopter. The bill recognizes that situation and does not punish the technology.

The *McCarran v. Sisolak* was a Takings Clause case in which Mr. Sisolak was prohibited from building on a piece of property which the court determined were his rights. This bill is the correct way to look at trespass by a UAV. That opinion is shared by several attorneys representing major players in the UAV industry. We worked with attorneys from New York to California on this topic. This is the direction that makes sense for determining where airspace starts coexisting with the rights of Nevadans. The issue of warrants has been discussed as has the issue of data retention. The UAV industry sees that as the core of legislation and regulation in the future. It also addresses public agency regulations and registry of UAVs used by public agencies.

This is a new, cutting-edge technology Nevada is thrilled to be at the center of. Cutting-edge technology takes cutting-edge policy. This is new and a topic we will continue to address over the next couple of sessions in order to make sure

it is as right as we can make it. This is more than a step in the right direction. It is an opportunity for the UAV industry to know where it stands in Nevada. Officer Callaway said because of this bill, law enforcement will consider using UAVs.

The opposite of that is also true. Without this bill, law enforcement feels uncomfortable using UAVs. When we talk about the industry, we are talking about the use of UAVs by customers of the industry. Those customers need to feel comfortable in that use and know where it is correct and right to use UAVs. In order for the industry to flourish, the public needs to feel comfortable with the use of UAVs as well. There is a lot of attention paid to this industry, and if it is going to move forward, it needs a foundation of support, not a headwind of opposition. This bill offers that support and is a step in that direction.

Judy Stokey (NV Energy):

NV Energy supports A.B. 239.

Kerrie Kramer (Greenberg Traurig):

Greenberg Traurig supports A.B. 239.

Alex Ortiz (Clark County):

Clark County supports A.B. 239.

Mr. Jones:

The Nevada District Attorneys Association supports A.B. 239.

Chair Brower:

Despite the limitations of the bill, do you believe this would undermine your operations or potential for operations?

Mr. Jones:

We do not.

John Griffin (Amazon):

Amazon supports A.B. 239. Amazon had an issue with the language under the law referring to drop. Everybody has read about Amazon's plan with drones. Assemblyman Anderson worked to clarify and fix the definition. We support the language about deliveries via drone and the authorization language in section 19 about the 250- to 500-foot zone.

Mr. Sullivan:

The Washoe County Public Defender's Office supports A.B. 239. This is a new area in criminal law, and Assemblyman Anderson has been available to address our concerns.

Jesse Wadhams (Bowhead; ArrowData):

Bowhead and ArrowData support A.B. 239.

Mr. Yeager:

The Clark County Public Defender's Office supports A.B. 239. We appreciate section 20 providing some protections for curtilage when it comes to surveillance by law enforcement. Given the technology, that is a good place to start.

Tim Shestek (American Chemistry Council):

The American Chemistry Council has submitted a letter supporting A.B. 239 ([Exhibit H](#)).

Jonathan Friedrich:

My concern is the use of UAVs in homeowners' associations.

Chair Brower:

Are you in support of A.B. 239?

Mr. Friedrich:

Yes. There is an association that includes the right to come onto a homeowner's property and walk the grounds in its covenants, conditions and restrictions. I am concerned it would use UAVs to spy on people and look for potential violations. I would like to see language stating UAVs cannot be used in homeowners' associations.

Susan Fisher (Reno-Tahoe Airport Authority):

The Reno-Tahoe Airport Authority is neutral on A.B. 239. Assemblyman Anderson reached out to us early and often to share language and address concerns regarding the definition of airport. We were concerned with the original language, and we massaged the language. We are pleased with the result in that it protects our facilities.

Chair Brower:

But are you still neutral?

Ms. Fisher:

Yes.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

The ACLU of Nevada is neutral on A.B. 239. It is a step in the right direction, but we wish it went further. We are concerned about some circumstances and want data-purging provisions so surveillance could not be kept indefinitely. We also want more protection for individuals when they leave driveways.

Chair Brower:

What surveillance are you talking about?

Ms. Spinazola:

Anything gathered by law enforcement or public agencies while engaging in activities. There are not express provisions in the bill nor anything in NRS regulating what would be done with that information other than section 20, indicating a warrant would be needed for gathered evidence to be admissible in court.

Chair Brower:

We do not do that now. If a law enforcement officer wanted to videotape a residence, he or she could do that and there would be no limitation on keeping that data.

Ms. Spinazola:

Yes. A lot of this is being worked out as technology is progressing. That is part of why we are neutral at this time.

Robert Dunbar:

I have submitted testimony opposing A.B. 239 ([Exhibit I](#)). The bill does not give consequences for examples we have heard about people's privacy and UAVs coming into yards. When you asked Assemblyman Anderson about UAVs flying over event stadiums, the FAA does issue a Notice to Airmen (NOTAM) and you are not allowed to fly over an event with more than 3,000 people. For NASCAR races, you cannot fly within 3 or 5 miles of that event 1 hour before and after.

This bill does not clarify below- and above-ground electricity. This could be interpreted to include below-ground in the future.

Chair Brower:

Was there a common theme among the comments opposing this bill?

Mr. Dunbar:

The hobbyists are afraid they will lose their right to fly. Some things such as aerobatics were addressed. Bomb drops are one of them. For years, people have been doing practice bomb drops with water balloons, trying to hit power lines.

Chair Brower:

With model aircraft?

Mr. Dunbar:

Yes.

Chair Brower:

Would this bill prohibit that?

Mr. Dunbar:

No. The bill has morphed into other components, critical infrastructure being one of them. You would have to get permission to fly a UAV over or near areas with a lot of below-ground gas and petroleum gas lines under this bill.

John Abbey:

I have submitted testimony opposing A.B. 239 ([Exhibit J](#)) and a supporting document entitled "Misconceptions on Facts Surrounding the Enforcement of UAV or Drone Abuse" ([Exhibit K](#)). I have received communications about concerns of precedence being set by A.B. 239. Assemblyman Anderson has spent hours talking to me about this, and we have had spirited conversations about the areas I am most concerned about.

I am here about public safety. My colleagues have done a good job of separating toy drones from commercial drones and the limitation process. I am concerned about public safety and law enforcement. Nobody has talked about the fire and rescue agencies that would fly these devices in a number of ways. I know a questionnaire was sent to the Nevada Sheriffs' and Chiefs' Association and other law enforcement agencies. Asking a law enforcement agency today

how it will use drones is like asking a law enforcement agency in 1985 how it would use cell phones. In 1985, nobody had a cell phone and the law enforcement position was that it did not want police officers to have cell phones because they would be on their phones every day. There were all kinds of reasons not to have cell phones. There is not a law enforcement agent, officer or deputy today who does not carry a cell phone and use it regularly. Of course, law enforcement will use UAVs for search and rescue, but the technology and FAA regulations have stopped any consideration of going beyond those functions.

The biggest hurdle in use and public safety was proposed by the FAA yesterday. It is in the middle of its rule-making process. The approval process of the FAA is close to the development and deployment curve in private companies. Robert Dunbar spoke of creating a committee. There is a group meeting regularly in northern Nevada representing factions and positions on UAV technology. That group responded to the FAA rules due a couple weeks ago.

This bill is a solution looking for a problem. What is the imminent threat posed by UAVs today? The answer was contraband in prisons. I have been in the law enforcement business for 45 years and have been in hundreds of correctional facilities. In the last 10 years, I have worked in 25 or 30 facilities. The No. 1 source of human contraband in a prison is human transfer. There have been cases of technology being used, but it is not an imminent threat to prisons to have law enforcement flying drones. There is no connection.

Chair Brower:

What problem would be caused by flying a UAV within a certain distance of a prison?

Mr. Abbey:

Mr. Dunbar covered at least one important component—the NOTAM. The NOTAM process creates no-fly zones. You cannot fly over a full stadium. That is covered by a NOTAM. When you violate that, you violate FAA rules.

Chair Brower:

Do the NOTAM and FAA rules contemplate a UAV?

Mr. Abbey:

The FAA rules cover all aircraft. The direction the FAA is going is to create different categories of drones. One of the categories is a microdrone. All of the examples given are microdrones. I am not here to talk about microdrones. I am here to talk about public safety devices. A microdrone is less than 5 pounds and has a flight time of 15 to 18 minutes. The devices I am talking about are designed for law enforcement and fire service missions such as search and rescue. A drone manufacturer has designed a drone to drop lifesaving rings into Lake Tahoe.

Chair Brower:

We have heard from the State's largest law enforcement agency supporting the bill. You are speaking from a law enforcement perspective. Who do you represent?

Mr. Abbey:

I represent the law enforcement industry as a whole. I do not disagree with Mr. Callaway and my colleagues in law enforcement.

Chair Brower:

Do you represent a particular organization or are you here on your own?

Mr. Abbey:

I am here on my own as a consultant based in Nevada who has been here for 20 years, working across the Country on public safety issues.

Chair Brower:

Do you believe this bill would impact law enforcement operational capabilities or tactics?

Mr. Abbey:

There have been a few too many lawyers in this legislative process, particularly in the area of analyzing the impacts of this bill on a word-by-word basis.

Chair Brower:

Can you give us an example? We want to drill down on the parts of the bill you believe would adversely impact law enforcement capabilities in the State.

Mr. Abbey:

The biggest area of concern is expanding Fourth Amendment rights. The U.S. Supreme Court and appellate courts have done a good job of defining the process and procedures law enforcement follows to be in the confines of the Fourth Amendment. My problem with this bill is it codifies the exclusionary rule. It takes away judicial discretion, good-faith exceptions and inevitable discovery. All of these things are ignored when you come up with a law categorically excluding evidence. A State court judge in Nevada following the wording of A.B. 239 is limited in his or her judicial discretion. That is inappropriate.

In my career, I spent a majority of my detective time in homicide and narcotics. I have probably written and executed more search warrants than anybody in this room. That was what I did in a major metropolitan area. I can tell you that getting a search warrant in 5 minutes is not accurate. I did the first telephonic search warrant in Los Angeles County, and it took more time than if I had gone back to my office and written one up. There are procedural misconceptions all the way through this process. I am thinking from the perspective of the police officer or deputy on the street and how he or she will react to this. How will that officer be able to do the job?

One of the things required in this bill is probable cause and exigent circumstances. You are taking two burdens that can be significant alone, combining them and having an exponential effect on the burden. The law enforcement drone owned by an agency has a flight time of 20 minutes. How much of that time will be used to get a search warrant to take a picture of something? We have a system that works. We have trained millions of officers, deputies and agents across the U.S., and they make mistakes. They will make mistakes whether or not this law goes into effect. We do not need further limitations on a state level to something decided in the U.S. Supreme Court.

Chair Brower:

Our law enforcement agencies and the Nevada District Attorneys Association are more sensitive to these issues than you are because they are on the ground trying to make cases. I will go back to those agencies and make sure they did not miss anything.

Mr. Abbey:

I have spent a lot of time talking to law enforcement people in this region and very little consideration has been given to the mechanics of observations and

development of reasonable cause. Title 44 of NRS covers most of the crimes talked about today. When I first started this process, I was told about drones flying down the Las Vegas Strip. I later found out that was a hypothetical. I was then told about drones looking through a second-story bedroom window and found out that came off the ACLU Website. I would like to see a more thoughtful and inclusive process taking place outside of the Legislative Building. We have companies thinking about relocating to Nevada and need to show them we are willing to take the extra step.

Chair Brower:

The Committee has received statements opposing A.B. 239 from Safa F. Egilmez ([Exhibit L](#)) and Patrick Kerby ([Exhibit M](#)).

Assemblyman Anderson:

I am with Justice Alito. Legislatures are in the best position to respond to modern technology. He disagrees with the contention that it should be left with the Supreme Court and the Fourth Amendment. It takes years to get one rule through the Supreme Court. We are in a position to take all of the evidence and make the right choice. I have worked with stakeholders from the UAV industry, law enforcement and civil liberties organizations. We have a bill that balances privacy with physical and economic security. I have been hand in glove with law enforcement since August 2014. I have been researching Fourth Amendment issues since the spring of 2014. I am confident this bill will allow Nevada to go boldly into an era of new technology and serve as a model of balancing the issues. Nevada needs to be the “get it done and get it right” state with economic development. This bill is a major step in that direction.

Chair Brower:

I close the hearing on A.B. 239 and open the work session on A.B. 97.

ASSEMBLY BILL 97 (1st Reprint): Revises provisions governing wills.
(BDR 12-505)

Patrick Guinan (Policy Analyst):

I have a work session document summarizing the bill and an amendment offered ([Exhibit N](#)). The proposed amendment was approved by the sponsor. It removes a statutory reference to NRS 239.010, clarifying records subject to the bill’s provisions under the purview of Nevada Supreme Court Rules.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 97.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on A.B. 13, A.B. 40, A.B. 45, A.B. 48, A.B. 66,
A.B. 113, A.B. 223, A.B. 224, A.B. 435 and A.B. 132.

ASSEMBLY BILL 13 (1st Reprint): Revises provisions governing support enforcement to ensure compliance with federal law. (BDR 11-373)

ASSEMBLY BILL 40 (1st Reprint): Revises provisions relating to the State Gaming Control Board. (BDR 41-352)

ASSEMBLY BILL 45: Revises provisions governing the assessment by the Department of Corrections of prisoners convicted of sexual offenses. (BDR 16-152)

ASSEMBLY BILL 48 (1st Reprint): Makes various changes relating to fraudulent acts committed against the State or a political subdivision. (BDR 14-154)

ASSEMBLY BILL 66 (1st Reprint): Revises provisions relating to justice courts. (BDR 1-492)

ASSEMBLY BILL 113 (1st Reprint): Revises provisions governing the sealing of juvenile records. (BDR 5-444)

ASSEMBLY BILL 223 (1st Reprint): Revises provisions governing certain crimes against older persons and vulnerable persons. (BDR 15-566)

ASSEMBLY BILL 224 (1st Reprint): Revises provisions governing records of criminal history. (BDR 14-977)

ASSEMBLY BILL 435 (1st Reprint): Provides for the realignment of certain judicial districts. (BDR 1-302)

ASSEMBLY BILL 132 (1st Reprint): Revises provisions relating to displaced homemakers. (BDR 2-546)

Mr. Guinan:

I have work session documents for A.B. 13 ([Exhibit O](#)), A.B. 40 ([Exhibit P](#)), A.B. 45 ([Exhibit Q](#)), A.B. 48 ([Exhibit R](#)), A.B. 66 ([Exhibit S](#)), A.B. 113 ([Exhibit T](#)), A.B. 223 ([Exhibit U](#)), A.B. 224 ([Exhibit V](#)) and A.B. 435 ([Exhibit W](#)). Including A.B. 132, the bills do not have any amendments.

Senator Ford:

In reference to the hearing on A.B. 224 when I asked Assemblyman P.K. O'Neill why three Assembly people opposed the bill, there were concerns about the fact that officers already collect DNA upon arrest, and this bill added to the level of biometric evidence. I do not share the same concerns and will be supporting the bill, but I wanted the Committee to know those issues.

SENATOR ROBERSON MOVED TO DO PASS A.B. 13, A.B. 40, A.B. 45, A.B. 48, A.B. 66, A.B. 113, A.B. 223, A.B. 224, A.B. 435 AND A.B. 132.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I adjourn the meeting of the Senate Committee on Judiciary at 2:54 p.m.

RESPECTFULLY SUBMITTED:

Julia Barker,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	2		Agenda
	B	4		Attendance Roster
A.B. 239	C	15	Assemblyman Elliot T. Anderson	Presentation. Homeowner Privacy Protection Act
A.B. 239	D	10	Assemblyman Elliot T. Anderson	Unmanned Aerial Systems' Legislation: State Comparison Chart
A.B. 239	E	6	Assemblyman Elliot T. Anderson	Nevada vs. U.S. Residents' Attitudes Toward Surveillance Using Aerial Drones
A.B. 239	F	8	Assemblyman Elliot T. Anderson	Proposed Amendment 6998
A.B. 239	G	2	Assemblyman Elliot T. Anderson	A.B. 239 Section-by-Section Breakdown
A.B. 239	H	1	Tim Shestek / American Chemistry Council	Letter of Support
A.B. 239	I	5	Robert Dunbar	Letter of Opposition
A.B. 239	J	3	John Abbey	Letter of Opposition
A.B. 239	K	3	John Abbey	8 Misconceptions on Facts Surrounding the Enforcement of UAV or Drone Abuse
A.B. 239	L	5	Safa F. Egilmez	Letter of Opposition
A.B. 239	M	3	Patrick Kirby	Letter of Opposition
A.B. 97	N	3	Patrick Guinan	Work Session Document
A.B. 13	O	1	Patrick Guinan	Work Session Document
A.B. 40	P	1	Patrick Guinan	Work Session Document
A.B. 45	Q	1	Patrick Guinan	Work Session Document
A.B. 48	R	1	Patrick Guinan	Work Session Document
A.B. 66	S	1	Patrick Guinan	Work Session Document
A.B. 113	T	1	Patrick Guinan	Work Session Document

A.B. 223	U	1	Patrick Guinan	Work Session Document
A.B. 224	V	1	Patrick Guinan	Work Session Document
A.B. 435	W	1	Patrick Guinan	Work Session Document