MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 2, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:09 p.m. on Thursday, April 2, 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 Tick Segerblom
Senator Aaron D. Ford

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senatorial District No. 7
Senator Pat Spearman, Senatorial District No. 1

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Cassandra Grieve, Committee Secretary

OTHERS PRESENT:

Meg Garvin, Executive Director, National Crime Victim Law Institute
Kristy Oriol, Nevada Network Against Domestic Violence
John T. Jones, Jr., Nevada District Attorneys Association
Chuck Callaway, Las Vegas Metropolitan Police Department
Sean B. Sullivan, Office of the Public Defender, Washoe County
Steve Yeager, Office of the Public Defender, Clark County

Andres Moses, Eighth Judicial District Court, Clark County
Vanessa Spinazola, American Civil Liberties Union of Nevada
The Honorable James Hardesty, Chief Justice, Nevada Supreme Court
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
Rebecca Salazar, Program Manager, Victims of Crime Program, Department of Administration
Greg Cox, Director, Department of Corrections
Jackie Muth, Deputy Director, Department of Public Safety
Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety
Julie Butler, Chief, General Services Division, Department of Public Safety
Nancy Wojcik, Administrator, Division of Field Services, Department of Motor Vehicles
Ron Knecht, State Controller
James Smack, Chief Deputy Controller, Office of the State Controller
Kara Jenkins, Administrator, Nevada Equal Rights Commission, Department of Employment, Training and Rehabilitation
Elisa Cafferata, Nevada Advocates for Planned Parenthood Affiliates
Marlene Lockard, Nevada Women's Lobby
Brock Maylath, President, Transgender Allies Group
Kent Ervin
Lora Myles
Rana Goodman, *The Vegas Voice*
Dan Roberts, *The Vegas Voice*
Jonathan Friedrich
Deane DeLaCruz
John Radocha
Bob Robey
Julie Belshe
Susan DeBoer, Office of the Public Guardian, Washoe County
Sally Ramm, Elder Rights Attorney, Aging and Disability Services Division, Department of Health and Human Services
Desiree Ducharme, Supervisor, Office of the Public Guardian, Clark County

Chair Brower:
We will open the meeting with Senate Joint Resolution (S.J.R.) 17. I am in receipt of a proposed amendment from Jeff Kaye (Exhibit C).

SENATE JOINT RESOLUTION 17: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Senator Michael Roberson (Senatorial District No. 20):
Senate Joint Resolution 17 provides an expanded list of much needed and long overdue rights to victims of crime. As members of the Senate Committee on Judiciary, we are aware of existing constitutional provisions requiring Nevada law to provide some rights to the victims of crime. Indeed, portions of chapter 178 of the *Nevada Revised Statutes* (NRS) set forth a number of protections for crime victims and witnesses. However, more needs to be done out of respect for those who suffer daily due to the effects of crime to ensure the voices of these people are heard and their needs recognized.

This important resolution is modeled after a set of victims' rights found in the constitution of the state of California known as Marsy's Law. Marsy's Law is named after Marsalee (Marsy) Nicholas, a beautiful, vibrant University of California, Santa Barbara, student, who was stalked and killed by her ex-boyfriend in 1983. Only a week after Marsy was murdered, the family walked into a grocery store after visiting Marsy's grave and were confronted by the accused murderer. They had no idea he had been released on bail.

Their story is typical of the pain and suffering the family members of murder victims have endured. They were not informed because the courts and law enforcement, though well meaning, had no obligation to keep them informed. According to the Marsy's Law for All advocacy group, while criminals have more than 20 individual rights spelled out in the U.S. Constitution, the surviving family members of murder victims have none.

The least we can do here in Nevada is to adopt the many important provisions of Marsy's Law in the Nevada Constitution. Senate Joint Resolution 17 proposes to add a new section to Article 1 of the Nevada Constitution and delete existing provisions of Article 1, section 8 concerning victims' rights. The proposed new section, section 23, provides an expanded list of the rights set forth in Marsy's Law. Some key rights listed in S.J.R. 17 are:

> (a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process. (b) To be reasonably protected from the defendant and persons acting on

> behalf of the defendant. (c) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant. (d) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant ... .

Victims will have the right:

> (g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings ... .

Senate Joint Resolution 17 guarantees a victim has the right:

> (l) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody. (m) To restitution as provided by law. (n) To the prompt return of property when no longer needed as evidence. (o) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority ... . (p) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

Senate Joint Resolution 17 further states,

> 6. At the regular session of the Legislature immediately following the approval and ratification of this section by the people, the Legislature shall provide by law that: (a) All persons who suffer losses as a result of criminal activity have the right to seek and secure restitution from the persons convicted of the crimes ... .

and,

> 7. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section … .

Language similar to this bill was recently added to the constitution of the state of Illinois. The bill enjoyed bipartisan support in the Illinois legislature and was overwhelmingly passed in November by more than 78 percent of the popular vote.

We are fortunate to have here today one of the Country's victims' rights experts. Meg Garvin will further testify on S.J.R. 17.

Meg Garvin (Executive Director, National Crime Victim Law Institute):
The National Crime Victim Law Institute is based in Portland, Oregon. I am a clinical professor of law at Lewis & Clark Law School. As a lawyer, I have worked for victims' rights for over 12 years. I am a victims' advocate and a constitutional lawyer and scholar.

I worked for the public defense while in law school. Following law school, I focused my work on the constitutional rights of all individuals. This choice led me to realize there are two individuals pulled into the criminal justice system. One individual, the defendant, is pulled into the system by his or her own doing. Defendants are pulled into the system, and they have rights.

The other individual, the victim, is pulled into the system by the defendant's doing. The victim is pulled into the system by not any doing of his or her own, yet victims have *de minimis* rights.

Over the last 30 years in this Country, substantial work has been done to advance the rights of victims and to ensure procedural justice for everyone involved in the criminal justice system, whether that be the defendant or the victim and both of their families. Transparency in procedural justice is critical to a fair system.

That advancement work has involved Nevada. Over the decades, great work has been done in Nevada, including a constitutional amendment affording rights to victims—but those are very few rights. Experience across the Country has led us to understand the few rights listed in the Nevada Constitution are insufficient to protect survivors.

Recent peer-reviewed studies done by mental health professionals show when victims are pulled into the criminal justice system and not afforded rights or afforded rhetorical rather than meaningful rights, they actually suffer increased posttraumatic stress symptoms. If we afford survivors meaningful rights in the system, they engage more with the system and are more likely to report crime.

There are two proposed amendments to S.J.R. 17. I will address the Barry Duncan Amendment (Exhibit D), which demonstrates of the amount of collaboration in the last 72 hours between public defense advocates, the prosecutor's office, victim advocates and other allied professionals in the community who work with survivors.

Section 23, subsection 1, paragraph (a) discusses a victim's right to be treated with fairness. There is specific language about the scope of the fairness, but a victim is to be treated with fairness and respect for his or her privacy and dignity. The import of this right, which is a new articulation in the Nevada Constitution, is the foundational right of procedural justice. Fairness in the criminal justice system is owed to the defendant, but it is also owed to the victim. Victims' rights are about transparency and treating people with dignity, which are basic human rights.

Paragraph (b) is the right to be reasonably protected from the defendant and persons acting on behalf of the defendant. Victims who do not feel safe engaging with the criminal justice system do not report crimes, or once they report crimes, if they do not feel safe going through the process, they will not continue to engage the process. This right helps promote engagement.

Chair Brower:
This is an important issue, but with a crowded agenda, I want the Committee to make comments as we go through each paragraph instead of waiting until the end of testimony.

Senator Ford:
Please clarify the scope of paragraph (b). Are you talking about after a defendant has been convicted and released from prison, or are you talking about the defendant during the trial?

Ms. Garvin:
The scope of all the rights listed in S.J.R. 17 is during the criminal justice process: pretrial, during trial and through parole or probation. This right is critical. The outreach to victims by defendants or perpetrators and their family members can verge on chargeable witness tampering, which can be intimidating and result in victims disengaging from the system.

Senator Ford:
I understand the declaration of rights is important enough you want them in the Nevada Constitution. These rights already exist in Nevada's laws: a statutory right to be free from assault, from battery, etc. I understand you want to raise victims' rights to the level of a constitutional protection, but that level is where words are even more important.

Knowing words at the constitutional level are even more important, what does it mean to say "reasonably protected from the defendant"? When can someone say a right is being infringed upon? If the defendant is trying to assault the victim again, then I understand that situation. What if the defendant is on the same street? Has the victim's right been violated in some regard? How is "protected" defined when you are talking about the constitutional right to be protected from a defendant?

Paragraph (a) states to be free from intimidation, harassment and abuse. Paragraph (b) talks about being reasonably protected. Protected must be different from intimidation, harassment and abuse because different words are being used.

The words "fairness" and "respect" are not usually used in the constitutional context. These words seem vague. How does one enforce those terms? This is a State constitutional right, and we are responsible for ensuring these rights. How do we do this?

Ms. Garvin:
There are ongoing conversations between the interested parties on that regard. Generally speaking, constitutional language is broader than statutory language. The term "fairness" is a generalized right in the U.S. Constitution and has been interpreted by the courts. We can talk through the legacy of each of those words, because some of them already have specific legal meanings.

These same rights exist in state constitutional amendments across the Country. Thirty-three states have these constitutional amendments. More than half of those states have something similar to S.J.R. 17. We can look to law from other jurisdictions that inform what those words mean.

Those words do not mean a victim can automatically say someone cannot walk down the same side of the street as the victim. There are civil protection orders for that situation. Those words do mean a victim can ask a judge during release proceedings to specifically consider the right to protection.

Senator Ford:
What does "protected" mean? Protected from what? The language seems too vague. Constitutional language may be broader, but I am concerned about not knowing what this language truly means. How is a defendant to know he or she is in violation of someone's constitutional right to "protection"?

Ms. Garvin:
Your concern is important to the conversation. These rights are about procedural rights. The defendant is not criminally liable for violating these. These rights are not about creating new criminal conduct on behalf of the defendant. These rights are to be held by the victim throughout the criminal process; they are not rights against the defendant.

For example, the defendant who assaulted me has served time for that crime. I am at the release hearing. With these constitutional rights, I have the right to ask the judge to specifically consider that the defendant and I go to the same gym, no matter what the prosecutors say. Those are the kinds of situations to which these rights speak.

As we go through S.J.R. 17 and its proposed amendment, Exhibit D, I will pause on the points that are significant changes from the Nevada Constitution.

Paragraph (c) relates to protection that is a specific consideration of safety at bail. Paragraph (d) ensures confidential information is not disclosed, which is a specific way of ensuring protection.

Paragraph (e) is the right to refuse an interview or deposition request. Defendants do not have a U.S. constitutional right to discovery from a nonparty. It is well-settled U.S. constitutional law that there is no affirmative right by a

defendant to interview or depose. Victims are often subject to interviews and deposition pursuant to rules. Paragraph (e) gives victims the right to refuse or consent. It is an important clarification of law because we have seen intimidation occur.

Paragraph (f) discusses the right to reasonable notice and to reasonably confer with the prosecuting attorney with regard to certain events. Paragraph (f) is a portion of rights about victims having a voice—not a veto—in the criminal justice system.

The criminal justice system has evolved in such a way that victims often feel their case is purely the state versus the defendant with the fact they were raped or beaten being irrelevant. The right to know and confer is simply the right to be a part of the process, to be informed.

Paragraph (g) also provides the right to be notified and present at certain proceedings. It is important for many survivors to witness justice in action.

Paragraph (h) is the right to be heard, which is the third prong of the basic due process rights of notice, presence and fair hearing. The premise of victims' rights focuses on the ideas of: let me know, let me confer, let me be present and let me be heard.

Senator Ford:
Is it correct to say these rights are not against the defendant but are procedural?

Regarding the right to reasonable notice and the right to reasonably confer in paragraphs (f) and (g), and then the right to be heard in paragraph (h), does the State then have a burden to send a letter to a victim under circumstances where these rights arise?

Are we saying the State has to find the victim or the victim's family as per paragraph (d)? What do these rights of reasonable notice mean, and what burden does it place on the State to afford those rights?

Ms. Garvin:
Yes, the State will have an obligation to notify the victim—who is generally a witness in the case anyway—of proceedings.

This obligation is specifically spelled out further in S.J.R. 17 with what is known as a Marsy's Law notification. A Marsy's Law notification informs victims of their rights from the beginning. It lets victims know they have these rights, and since one of the notices is of hearings, then there is a notification requirement. Notification can be a letter or a phone call. Victims' advocates in most jurisdictions already let victims know of these procedures.

Paragraph (i) discusses timely disposition. No one wants a slow judicial process; it is not good for the State, the community, defendants or victims. This right, however, does not impede a defendant's or State's right to prepare for trial. It is an additional consideration for the court if there is unreasonable delay.

Chair Brower:
What does the right to timely disposition mean?

Ms. Garvin:
It means unreasonable delays should not happen. A case in the state of Arizona had 17 continuances with *de minimus* basis. Some continuances were from the defense and some were from the prosecution. The victim asserted her speedy trial right which motivated the judge to question the delays. In that situation, the court granted a 30-day continuance but no further continuances.

Senator Ford:
How does this example relate to a defendant's right to a speedy trial?

Ms. Garvin:
Defendants have a U.S. constitutional right to speedy trial, as well as a State statutory right. Each set of rights are similar in language and do not conflict with each other. The defendant can move the trial forward.

Chair Brower:
Generally, defendants have a right to demand a trial within a number of days of indictment.

Ms. Garvin:
Paragraph (j) describes the right to provide information to the individual conducting the presentence investigation report (PSI). This ensures that information presented to a judge in a PSI is as holistic as possible. Paragraph (j) ensures the PSI reporter knows what happened to the victim and what the

victim thinks about the crime. Paragraph (j) essentially guarantees another opportunity to provide accurate information to the judge.

Paragraph (l) requests the victim be informed of the outcome of the trial, which is a basic right. Where is the defendant, now perpetrator, located? When is the perpetrator's release? Has the perpetrator escaped? Safety planning may need to be done.

Paragraph (m) is about timely restitution, which is a critical piece in conjunction with a paragraph (r). Paragraphs (m) and (r) are both about restitution and the fundamental premise that victims should not carry the financial burden of their own victimization.

One should not pay to be assaulted. One should not pay to be a survivor. Does this mean we will have debtors' prisons? Does this mean it will place an undue burden on defendants who cannot afford to pay? No.

Paragraphs (m) and (r) represent an order to the right to restitution, the right to a reasonable payment plan that is then adjudicated and subsequently guarded by the court. Paragraph (m) ensures a restitution order is put in place; if money is collected, paragraph (r) ensures the money goes first to the victim.

Paragraph (n) is about the return of property after it is no longer needed, which is a commonsense provision. Paragraph (o) is the right to be informed of postconviction proceedings and to be provided information, ensuring a level of specificity. Despite conceptions from television, victimization does not end at trial; victimization continues, and victims want to know what happens with their perpetrators.

Paragraph (p) is about the safety of the victim and the victim's family after the parole process, which is akin to the earlier provision, but paragraph (p) is during parole.

Paragraph (q) discusses Senator Ford's earlier question about informing victims, which is the Marsy's Law notification card. The card specifically informs victims of their rights and amends this provision into the Nevada Constitution.

Defendants have their Miranda rights and are informed of those rights—which is the correct thing to do. Victims have certain rights, too, and they should be

advised of those rights. The Marsy's Law notification card can be produced in a myriad of ways. I understand victims are already given informational guides. The Marsy's Law language can be wrapped into existing guides. Implementing the Marsy's Law notification card is not a significant burden; it allows an awareness of a victim's constitutional rights.

That concludes the predominant affirmative rights S.J.R. 17 adds to the Nevada Constitution. Section 23, subsections 2 through 7 are procedural, although the conversation regarding subsection 2 is ongoing.

Subsection 2 is designed to ensure victims have independent standing to assert their rights, even though they are not a party to the criminal case. This means there are times when the prosecutor's priorities align perfectly with the victim's priorities. Other times, however, the prosecutor has a job to do that does not align with the victim's needs.

Victims may want higher bond at a release hearing or may want their perpetrators to come home. There are survivors who do not want their perpetrators held. Section 23, subsection 2 gives victims standing to speak their mind. It does not change the calculus of the judge. It is a voice, not a veto—in which the victim has independent standing.

We have found this language to be necessary even though a statutory standing for victims should be obvious. Defendants have constitutional rights. For some reason, a victim has never had legal standing, so explicit standing is the only way to achieve a voice. That is the reason for subsection 2.

Subsections 3 and 4 are the focus of great ongoing collaboration between interested parties because some language in the proposed amendment, Exhibit D, was stricken from the original bill. These subsections outline what victims are allowed with their standing; we do not want to create a lawsuit opportunity for damages with this language.

Subsections 3 and 4 limit what a victim can do with his or her rights, but these subsections need work in order to make sure no one is sued; we do not want to see civil damages imposed as a result of using this language.

Subsection 5 states victims' rights do not disparage other rights; they do not supersede another's existing rights. Subsection 5 speaks to what the court can

do at sentencing to broaden who is listened to and what can happen at parole proceedings.

Senator Ford:
The second sentence in subsection 5 states, "A court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant." To name any person harmed by the defendant is a broad statement. How is harmed defined when you are talking about who this right is afforded to under this constitutional amendment?

Ms. Garvin:
It is already at the court's discretion to hear from anyone at sentencing. Subsection 5 does not touch preexisting discretion of a court to hear from anyone. When judges choose to hear from someone at sentencing, the information provided must be relevant. Subsection 5 does not touch that analysis. Regarding the sentence you quoted, I have no comment on what it achieves differently than that in Nevada's Judicial Branch.

Senator Ford:
Is it correct that many of these rights are already in statute? Is it correct S.J.R. 17 puts these same rights into the Nevada Constitution?

Ms. Garvin:
Some of these rights are in statute but not in the Nevada Constitution. There is a significant cultural difference between statute and constitution. In this case, statute and constitution do not differ because this is judicial commenting on judicial discretion, which is why the word "may" is used.

Using the word "may" is an encouragement to the judiciary to use its discretion to broaden to whom it listens; it is not a directive. The court could already broaden to whom it listens; by adding this section to the Nevada Constitution, the Legislature encourages a broad application of court discretion.

Senator Ford:
Can you tell me how the other 33 states handle this language? How do other states handle the definition of "any person harmed by the offender" and the broadness of "harmed?"

Ms. Garvin:
The term victim, defined in subsection 8, has generally been interpreted similar to tort law, which is direct and proximate harm. For the defendant's action, the question is whether the harm would have happened and how foreseeable the harm was, so …

Senator Ford:
The bill says "any person harmed." That indicates harm to any person. The language does not say to the victim or the victim's family; it says, "any person harmed."

I envision a situation where a person feels badly for a friend harmed by the defendant. This person—who is any person—wants to assert constitutional rights at a procedural level by requesting the judge hear his or her thoughts at sentencing.

Ms. Garvin:
The word "harmed" has come to mean direct and proximate harm from defendant's conduct. There is caselaw on what "harm" means. That said, this section is still within the judge's discretion, so the friend could ask the judge to listen to him or her—that is already there. This section asks the court to go through an analysis to determine whether the friend was harmed and if so, for the judge to exercise discretion in listening to that individual.

If the judge determines not to listen to the individual, there is no impact on the defendant, the victim or the victim's friend.

Chair Brower:
The bigger problem is not with the discretionary provision in subsection 5, where the court has discretion, but with subsection 1, paragraph (h), which provides a right to be heard.

In my experience, the prosecuting office has the discretion to decide who is a victim and who is to testify at the sentencing hearing. Under most models, the court has the right to expand that, but subsection 1, paragraph (h) gives anybody defined as a victim the right to show up—which is not at the judge's discretion.

Ms. Garvin:
Correct. The rights are attached to the term victim, which is defined in subsection 8 as a person who has suffered direct or threatened physical, psychological or financial harm.

Chair Brower:
Regarding the cultural difference between constitution and statute, there is no difference with respect to the binding effect either one has on a judge. If the Legislature says "shall," the judge has to do it. That is no less binding or enforceable than a constitutional provision.

Ms. Garvin:
It is correct to say when the Legislature says "shall," the court must; if the court does not, it is in dereliction of duty. There is a cultural difference between statute and constitution and a difference with regard to the hierarchy of law. Something imbedded into the constitution takes priority if it butts up against a statute.

Chair Brower:
If the Legislature puts any of these rights—these "shalls"—into statute, are they not just as binding on the court as if they were put into the constitution?

Ms. Garvin:
Correct, they are as binding—but they are not as weighty. Rights in statute do not carry as much weight as constitutional rights, either culturally or within the hierarchy of law. The hierarchy of law holds: constitution, statute, rule.

Chair Brower:
The hierarchy of law holds if there is a conflict.

Ms. Garvin:
Yes.

Chair Brower:
But nothing in the constitution conflicts. I will pick subsection 1, paragraph (h) as an example. Subsection 1, paragraph (h) goes into statute. Nothing in the Nevada Constitution conflicts with it. Subsection 1, paragraph (h) in statute is just as binding on the court as if it were in the Constitution.

Ms. Garvin:
That is correct; however, victims' rights in statute have not had a tremendous impact on the procedural justice in this Country.

Chair Brower:
Shame on those judges.

Ms. Garvin:
Absolutely. While statute has not had a tremendous impact, the elevation to constitutional amendment with specificity has had an impact.

Chair Brower:
Subsection 8 is the crux of the problem with S.J.R. 17. Subsection 8 defines victim very, very broadly. Very broadly. A victim is defined as "a person who suffers direct or threatened physical, psychological or financial harm as a result of the commission or attempted commission of a crime or delinquent act."

The core definition is a person—any person—who suffers direct or threatened physical, psychological or financial harm as a result. I do not know if the psychological aspect can be limited. How do we say to someone who lives in the same apartment building with 500 people where a burglary was committed that he or she has not suffered psychological harm because of the commission of that crime? How do we answer that?

Ms. Garvin:
It has been answered elsewhere with the foreseeability test, which has resulted in constraints. There have been those who tried to apply this language too broadly. The language is similar to the federal language under Title 18 USC section 3771, adopted in 2004.

An example of applying the language too broadly is a case where the parents of someone shot and killed claimed to be victims of the sale of the gun to a juvenile. The court denied this, saying it did not meet the foreseeability test. The decision is drawn similarly to tort law where there has to be direct causation. This means the defendant had to have actually done the crime and the claimant would not have been harmed but for the conduct, followed by the foreseeability that the claimant would have been harmed by that conduct.

Chair Brower:
I appreciate ongoing negotiations. Would a potential fix to what might be an overbroad definition simply say a victim is the person or persons named in the criminal complaint or representative thereof?

Ms. Garvin:
From a victims' advocacy perspective, that does not work. It is far too narrow.

Chair Brower:
In order to present the case, the victims are sometimes listed as Victim X or directly by name. Why is the case list not the list of proper victims?

Ms. Garvin:
That list leaves a large amount of discretion in the prosecutor's hands about what charges are brought. This means the prosecutor keeps that discretion despite a victim's rights. A prosecutor's charging decision dictates whether someone is a victim.

Chair Brower:
I understand, but we need to live with that reality. The prosecution has the discretion to bring charges. If the prosecution decides not to bring charges, then there are no victims. If the prosecution has that right, it seems logical the prosecution, by bringing charges and listing the victim, decides who the victims are.

Ms. Garvin:
The challenge comes with numerous victims. If there are ten victims and the prosecution decides it can prove its case quickly with five victims, it will let the other five victims fall to the side. This happens routinely with child pornography and identity theft cases. For example, it is apparent that four of the victims have a case, but the fifth victim is *de minimus*. The fifth victim will not be named in the indictment, even though there is evidence. That is one challenge.

The second challenge occurs when, if only listed in the charging document or the plea negotiation, there is a quick determination that someone is not a victim. Politics could also be involved with the prosecutor determining who is a "good" victim and who is a "bad" victim based on how and if a case can be won.

Specific language defining victim has been included in subsection 8 in an attempt to not leave this to adjudication later. Other constitutional amendments do not define victim.

Chair Brower:
If we acknowledge that much of S.J.R. 17 is already in statute and the Committee is here to make changes to statute, then we have the capability of making whatever changes you recommend to our statutes, including a statutory change. If you think a change is necessary, why a constitutional change?

Ms. Garvin:
History. History shows us statutory changes are inadequate.

Chair Brower:
Are statutory changes inadequate because judges do not follow the law?

Ms. Garvin:
That is part of it. Judges do not always follow the law. Culturally, people do not abide by statutes in the same way. We could take a poll in this room asking how many know their statutory rights as defendants versus how many know their constitutional rights. There is a significant cultural weight difference.

Additionally, when two rights compete with each other, victims are the only human beings in the criminal justice process who do not have constitutional rights. The defendant has constitutional rights …

Chair Brower:
Let me offer an explanation for why—and I am engaging with you for the sake of discussion, because as Senator Ford said, this is a very serious issue and we want to get this right—victims have many rights under various state laws.

In the course of a criminal prosecution, the state is not seeking to do anything to the victim as it seeks to do to the defendant. The state seeks a fine, imprisonment, death. The whole point of the criminal prosecution is the state, on behalf of the people, seeks to punish the defendant. As important as the victim is to that process—and we are sensitive to the rights of that victim—the victim is not the subject of the proceeding in the same way the defendant is.

Ms. Garvin:
Historically, postadoption of the U.S. Constitution, the criminal justice system constituted the victim in the courtroom with rights, prosecuting the case and asking at sentencing what the victim wanted by way of punishment or restitution. We started to gradually move away from that system; the evolution away from that resulted in this utter eclipse of the victim's voice in the criminal justice system and the rise of the office of the public prosecutor. In that evolution, the victim became a piece of evidence by practice in a case.

Chair Brower:
You use the term utter eclipse. There are victims' rights in the Nevada Constitution, and statute holds the right of the victim to be present and heard at sentencing. It is hard to describe that as an utter eclipse.

Ms. Garvin:
Those rights came back into being specifically because of the victims' rights movement. The moment of full eclipse was in the 1970s. After that, the result was passage of statutes and early versions of constitutional amendments to bring victims back into the process.

Chair Brower:
Is Nevada turning its process around and coming back from the total eclipse?

Ms. Garvin:
Yes, but Nevada has not come back full swing yet.

Senator Ford:
I have a specific question about persons in custody in subsection 8. The proposed amendment, Exhibit D, changes "an" offense to "the" offense. Can a person in custody be a victim? If a person in custody is battered while in jail and the perpetrator is prosecuted, do these same rights benefit that person as well?

Ms. Garvin:
Yes. If an incarcerated person is raped, he or she has these rights. That edit in the amendment does this.

Senator Ford:
Subsection 8 reads, "The term does not include a person in custody ... ." I want to be certain this subsection does not negate the rights of the convicted person if that person were a victim of abuse in jail.

Ms. Garvin:
A person in custody has access to these rights specifically because of the edit.

Kristy Oriol (Nevada Network Against Domestic Violence):
We support S.J.R. 17. I submitted written testimony (Exhibit E), but I want to highlight a few points.

Navigating the legal system and determining rights for a victim is very daunting and, at worst, terrifying and can lead to revictimization the more times a victim is not aware of his or her rights. After a traumatic event such as sexual assault or abuse by an intimate partner, victims often find themselves in a state of crisis where information is being thrown at them by attorneys, victim advocates, family members and even the abuser's family members.

Having worked with victims, I can say it is almost impossible for victims to hear you when they are still in that state of crisis. Having the Marsy's Law notification available puts necessary information in a single location where victims can locate it when they are ready to be aware of their rights.

Expanding this guarantee of rights to families of victims is important. Nevada has the sixth-highest rate in the U.S. of men killing women. Nevada has ranked in the top ten of this list for a long time. Losing a daughter, a mother or a sister is traumatizing enough. This bill allows families to stay involved with the prosecution of the defendant. Victims deserve to have these rights at a constitutional level.

John T. Jones, Jr. (Nevada District Attorneys Association):
It important to discuss victims' rights in the Legislature and equally important to get the language right. Proponents of the bill have worked readily with the Nevada District Attorneys Association, law enforcement and others to make sure the language is right. Sponsors of the bill agree S.J.R. 17 is a work in progress, and our support is contingent upon that work progressing.

We are generally supportive of each concept in the bill, but the language needs work. The Committee's questions mirror our own concerns, such as when can—or should—a victim be heard. The definition of some of the terms needs work as well as the issue of the standing of the victim. We are still working with the bill sponsors on this language.

Chuck Callaway (Las Vegas Metropolitan Police Department):
We are neutral on S.J.R. 17. We support victims' rights and any legislation that encourages victims to report crime. We are neutral on whether such laws should be left in statute or be placed into the Nevada Constitution.

I have concerns with the proposed amendments, Exhibit C and Exhibit D, particularly with subsection 1, paragraph (q), which requires law enforcement to distribute a card to "all crime victims." My concerns are of a logistical nature.

Officers already carry a multitude of cards: a driver exchange card, trespass card, Miranda card, human trafficking information card, domestic violence card and red notice card, which is an informational card for victims. To add another card—the Marsy's Law card—to this list is yet one more thing officers have to carry and hand out.

The concern comes with the term "all crime victims" and, as Chair Brower pointed out, the definition of victim in this joint resolution is broad. This broadness may be problematic for law enforcement in determining who is a victim. In a bar fistfight with both parties striking each other, both people are victims and both people are suspects. Who do we give the card to?

What happens if the victim refuses to cooperate with the police or does not want to prosecute? Are we to force the card into the hand of somebody who does not want to cooperate with the police or someone who does not want to prosecute? What happens if a drunk driver hits a bus full of passengers? Is the officer to take a significant amount of time to get on the bus and hand out a stack of cards to each particular person on the bus?

What happens if a shooting takes place in a hotel lobby on The Strip? Would the officer have to hand out a card to each person in the hotel who heard shots or witnessed the incident or who maybe feels psychologically damaged by what occurred? The bill's language is vague and creates logistical concerns for our officers in the field.

Such rights in the Nevada Constitution create liability for our officers. Will the constitutional rights of a victim be violated if an officer forgets to give out the card or refuses to give the card to those who claim they are victims?

To make the situation better for law enforcement, the officer should only be required to give information to the person who actually files a police report with the law enforcement agency. Victim information guides are given out by law enforcement when victims file reports. This guide has a list of various entities that provide assistance, such as victim advocacy, victim witness assistance and other groups. We can give victims a link to the State Website where a list of their constitutional rights can be located rather than having officers hand out a card that has subsection 1, paragraphs (a) through (q) listed.

Sean B. Sullivan (Office of the Public Defender, Washoe County):
We are neutral on S.J.R. 17. Our concerns were vetted and raised by the Committee. Most of the paragraphs in the bill are already codified. Judges already review bail considerations under *Nevada Revised Statute* 178.4853. Judges already take into consideration danger to the victim, the victim's family or the community at large as well as the likelihood of additional criminal activity or other risk factors.

Subsection 1, paragraph (h), which gives the victim standing at any criminal proceeding, is too broad. Giving the victim standing in any criminal procedure may cause further unnecessary delays, not only for the defendant but also for the victim and all parties in the proceeding.

The definition of victim in subsection 8 is too broad. The victim impact statement, codified in NRS 176.015, affords the victim and the victim's family the right to be heard and designates when they can be heard, particularly at sentencing.

Steve Yeager (Office of the Public Defender, Clark County):
I appreciate the discussion about how this bill interplays with existing constitutional rights.

A proposal in front of the Hawaii legislature said "No right in this section shall be construed to supersede the constitutional rights of the offender." The proposal did not pass, but such a clause would establish the hierarchy of the constitutional rights of the accused if in conflict with a victim's rights.

Subsection 1, paragraph (h) talks about a victim having a right to participate or be heard at any proceeding. Clark County handles approximately 40 to 75 cases a day. We probably already spend too much time in court; I am concerned we will have to add resources if implementing paragraph (h) results in extended court calendars.

Andres Moses (Eighth Judicial District Court, Clark County):
We are neutral on S.J.R. 17. We are generally supportive of victims' rights.

The Eighth Judicial District Court is a high-volume court, and we are concerned about the practical implications of this bill. The sections of major concern regarding victims having standing and having the right to be heard in any proceeding have already been noted in testimony.

We suggest those sections be examined further and perhaps include some elements of judicial discretion to allow the judge to limit when the victim can and cannot speak.

Vanessa Spinazola (American Civil Liberties Union of Nevada):
We oppose S.J.R. 17 as a constitutional amendment. Many of these rights already exist in statute; elevating them to a constitutional level will conflict with the rights of the accused. This issue has been discussed already. There will be litigation in the criminal context whether the defendant is sitting in jail or having his or her trial delayed.

We are concerned about the phrase "timely restitution" in both proposed amendments and are not sure what it means. What is timely for the victim may not be timely in a death penalty case. We have people who have been on death row for 30 years. Does that mean that person would receive the death penalty at an earlier date? Does that mean we take away rights of appeals? When we elevate these rights to a constitutional level, we have conflicts.

Nevada Revised Statute 217.220 has a number of exclusions for who is considered a victim. One of the exclusions is undocumented immigrants. If you are a noncitizen, you cannot access the Fund for Compensation of Victims of Crime. Statute also exempts those who do not cooperate with law enforcement, prisoners or coconspirators. There are five statutory exemptions for victims.

There was discussion earlier about constitutional rights trumping statute, but I am concerned those exemptions, as part of Nevada law for such a long time, will present problems.

Finally, if we include immigrants, the Marsy's Law notification card needs to be translated into a language victims can understand. In the state of California, the Marsy's Law card is translated into 17 different languages.

Senator Segerblom:
Do you know if penalties given to criminals are higher in states that have these constitutional amendments?

Ms. Spinazola:
I do not know the answer to that question. Putting victims' rights into state constitutions is a new concept and its application is still being worked out in the courts.

Chair Brower:
We will close the hearing on S.J.R. 17 and open the hearing on S.B. 454.

SENATE BILL 454: Revises provisions relating to criminal justice. (BDR 14-559)

The Honorable James Hardesty (Chief Justice, Nevada Supreme Court):
As the Vice Chair of the Advisory Commission on the Administration of Justice, I had the pleasure of serving on the Commission with Senators Segerblom and Brower. Senate Bill 454 can be divided into four primary parts, each part unanimously adopted by the Commission. I will approach each part separately.

The first part of S.B. 454 addresses the recommendation of the Commission that there be a uniform pretrial risk assessment tool. Section 1 of S.B. 454 reflects testimony the Commission took during its hearings on risk assessment tools used by the Division of Parole and Probation (P&P) of the Department of Public Safety. Provisions in section 1 do not apply to the assessment tool used by P&P. In the Commission's assessment, the tool in section 1 should be used pretrial by a justice of the peace or a district court judge to determine if a defendant should be released on recognizance (ROR) or be given a bail release.

The second part of S.B. 454 is a general concept to transfer and centralize collection responsibilities for obligations owed by defendants in criminal cases to

the Office of the State Controller. Dating back to 2010, the record is replete with evidence that the collection capability and collection success of fines, fees, administrative assessments and restitution have not been what they need to be.

Over the years, the Commission has explored ways to centralize the collections coming from a criminal judgment of conviction and place those assessments in a central location. The State can do much more to advance the interest of victims of crime and to collect from defendants in criminal cases if it has a centralized collection effort of these fines, fees and restitution for victims.

The Division of Parole and Probation, by default, has been assigned the problem—the responsibility—of collecting restitution. The P&P is not—and should not be—a collection agency. The P&P is a supervisory agency. The Commission fully recognizes P&P is not equipped to collect restitution.

In its research, the Commission learned many defendants avoid paying their restitution because there is no follow-up once their supervision period is over, either as a result of the expiration of their probation or parole period. This is not the fault of P&P. Many times, the probationary period is shorter than the amount of time that would exist under a judgment of conviction to collect that judgment.

The provisions in S.B. 454 ask the State Controller to collect this money. The bill does not change how that money is used. The P&P relies on the collection of these fees to help pay its budget. There is no suggestion in this bill that P&P would not continue to rely on those monies. In fact, the expectation is more money will be collected, so the budget of the Division of Parole and Probation will be enhanced by those collections.

The third part of S.B. 454 that I need to address is the suggestion or implication that this bill changes the prison's banking or collection operation of administrative assessments and the utilization of those funds for inmates' use while in prison. That is not the intent of S.B. 454, and I want to make it clear that idea was never discussed by the Commission.

The fourth and last item of S.B. 454 has to do with driver's licenses or identification cards. For a number of years, the Commission has recommended the Legislature instruct the Department of Motor Vehicles (DMV) to issue driver's licenses to inmates being released on parole or who have served their

terms. Identification provided by the DMV is not adequate for defendants to use for a variety of needs, including housing, cashing checks, getting jobs, etc.

Yet again, the Commission unanimously recommends the Legislature require the DMV to issue a duplicate driver's license to the defendant when released. I recognize a potential fiscal impact, but it is time to address and fix this issue. We cannot continue to release inmates without proper identification since it merely sets inmates up for failure. This is an important policy issue for the Legislature to address once and for all.

Returning to the first part of S.B. 454, in the Commission's study of this subject, the Final Report of the Advisory Commission on the Administration of Justice, January 2015, pretrial risk assessment is one area greatly concerning the Commission.

We posited the question to all of the limited jurisdiction judges in the State: What pretrial risk assessment tools do you use? The response had only some limited jurisdictions using pretrial risk assessment tools—and none of those tools were consistent.

I have provided a white paper from the Conference of State Court Administrators (Exhibit F). The white paper supports the evidence that pretrial risk assessment tools are used to effectuate the release of defendants from jail pending trial.

With the bail system, the wrong people are let out and the wrong people are kept in. If you are a drug dealer, you can make bail and get out of jail in no time. If you are a single mom with three kids and no job and you cannot make bail and you cannot get ROR, you sit in jail. What is the point of such a system?

The risk assessment tool assures a correction in that kind of problem and provides the judge with a valid assessment of what circumstances should be used before someone is released. The Commission also proposes the Nevada Supreme Court, by court rule, establish those risk assessment tools. That section 1 purpose is consistent with recommendations of the Commission.

To go back to the collection of administrative assessments, I want to emphasize the Commission recognizes the State Controller as a good place to move this responsibility. The Commission also recognizes in order for the State Controller

to be successful in this new task, resources and equipment will be necessary. I suspect the State Controller's Office does not have those resources available.

If the Senate Committee on the Judiciary finds fiscal issues with S.B. 454, I urge the Committee not to limit the Legislature's consideration of the bill. At a minimum, the Commission would like to see the Legislature pass provisions dealing with the pretrial risk assessment tool and DMV identification.

Senator Segerblom:
I support the recommendations found by the Commission, of which I am a part. When the Commission learned about the different risk assessment tools used throughout the criminal justice system, it did not make sense to have so many—some tools had not been updated for decades. I was also shocked to learn the DMV was still not providing the identifications as presumed.

Brett Kandt (Special Assistant Attorney General, Office of the Attorney General):
Sections 10 and 12 were recommendations from the Commission's Victims of Crime Subcommittee, consisting of victims' rights advocates and chaired by former Attorney General Catherine Cortez Masto.

Section 10 deals with confidential records in the custody of the Department of Corrections (DOC). A victim of crime includes not only the actual victim but the victim's family and loved ones.

Most felony prosecutions are handled by a county district attorney's office, and those offices continue to inform victims of the status of their criminal cases through initial appeals. Once an appeal reaches the federal level, the Office of the Attorney General (AG) handles the matter and the district attorney is minimally involved. The AG's Office does not have much information regarding the victim or the victim's family and whether these people desire to know the status of the appeal.

The Department of Corrections routinely contacts victims and their families to provide the various notifications mandated by statute. Known as victim registrants, these people provide their personal contact information to the DOC This information is confidential by statute.

Section 10 allows the DOC to provide the confidential personal information to the AG's Office upon request for the limited purpose of notifying victim registrants of the status of litigation pending on an appeal.

The DOC shares this information with the AG's Office, allowing the victim registrant to continue receiving information on the status of the criminal appeal being handled by our Office. We can also answer questions the victim may have regarding the appellate process. The criminal justice system can be complex and confusing, particularly the postconviction appellate process. Section 10 allows us to assist victims and their families through the progression of appellate matters.

The DOC may have proposed an amendment to section 10 to firm up the issue of maintaining confidentiality. If this is so, we would consider it to be a friendly amendment.

Section 12 of S.B. 454 reflects another recommendation from the Commission's Victims of Crime Subcommittee that pertains to reimbursement for forensic medical exams. Under the Violence Against Women Act (VAWA), the cost associated with a forensic medical examination following a sexual assault cannot be charged to the victim. Nevada already meets this requirement.

Under Nevada law, the county in which the crime occurred is responsible to pay for the forensic exam. These exams can range in price across counties. It can be difficult to ensure victims in the rural counties have access to forensic exams because these exams have limited providers. Additionally, the victim usually must travel to Washoe or Clark County for the examination and, as a result, there can be confusion about which county pays for the exam.

Section 12 allows the Fund for Compensation of Victims of Crime to reimburse counties for the forensic exams conducted in a year. A portion of those reimbursements will come from a VAWA grant funding Nevada receives for services to aid victims of sexual assault, stalking and domestic violence.

The majority of states in the Country pay for forensic examinations through victim compensation programs. Section 12 brings Nevada in line with those states. Under section 12, Nevada counties have an equal opportunity to access the Fund up to ten forensic examinations or $10,000 per year, whichever is greater. That amount should cover most expenses incurred by the rural counties

and contribute to expenses incurred by Washoe and Clark Counties. Counties have limited budgets for these types of expenses, and some reimbursement to the counties is appropriate.

Mr. Yeager:
We support S.B. 454. I submitted a proposed amendment (Exhibit G). The proposed amendment allows someone dishonorably discharged from probation or parole to pay outstanding fees or restitution if it is the reason for the dishonorable discharge. After payments are made, the amendment allows that person to request an honorable discharge.

The proposed amendment allows a district court judge to do informal probation on gross misdemeanor charges for individuals who live out of state.

Rebecca Salazar (Program Manager, Victims of Crime Program, Department of Administration):
We support S.B. 454. We do not expect the bill to have a large impact on our budget. We have already amended our policies to reflect our willingness to assist the counties with forensic exam payments.

Mr. Sullivan:
We support S.B. 454. We also support the proposed amendment, Exhibit G.

Greg Cox (Director, Department of Corrections):
It is important inmates leave the Department of Corrections with identification so they can access jobs and housing upon their release. We have been working with the DMV to come up with some solutions, allowing us to meet the requirements of the bill and reduce costs on taxpayers, the DOC and the DMV.

Jackie Muth (Deputy Director, Department of Public Safety):
We are neutral on S.B. 454. We have two divisions within the Department which S.B. 454 impacts: the Division of Parole and Probation and the General Services Division.

Natalie Wood (Chief, Division of Parole and Probation, Department of Public Safety):
We are neutral on S.B. 454. In P&P, we have two types of risk assessment tools: one, actual active supervision of our offenders in the community to

determine their risk to reoffend; two, a risk and needs assessment tool for probation success probability used to assist judges in sentencing determination.

Section 18 directs the P&P to conduct a study to determine the risk of offenders to reoffend. The Division is looking at this requirement as a justifiable request; however, it must be appropriately funded. We do not have funding to facilitate such a study. If S.B. 454 moves forward, I request the P&P be adequately funded to fulfill that portion of the bill.

Regarding the collection of supervision fees, this is a policy decision. Senate Bill 454 will likely have a fiscal impact, but the State Controller's Office is better able to address those issues.

We are concerned with the issue of good time credit. The Division calculates good time credit for probationers based on whether offenders pay their supervision fees and whether or not they are employed. Good time credit needs to be considered in the required fees. There would also have to be a conduit from the State Controller's Office to the P&P so we may communicate information quickly and not exceed the statutory time requirements.

Julie Butler (Chief, General Services Division, Department of Public Safety):
We have concerns with section 17 of S.B. 454. Section 17 directs the Central Repository for Nevada Records of Criminal History, which is within the General Services Division, to collaborate with a variety of criminal justice entities within Nevada to develop recommended policies and procedures for a statewide criminal justice-sharing database. Such a database already exists and is called the Nevada Criminal Justice Information System.

Furthermore, NRS 179A.079 created the Advisory Committee on Nevada Criminal Justice Information Sharing which is mandated to meet twice a year. Membership of the Committee includes law enforcement agencies, courts, the District Attorneys Association, the Sheriffs' and Chiefs' Association and the Repository, plus legislative members, the Director of the DOC and the AG's Office. With this in mind, I question the need for section 17.

Nancy Wojcik (Administrator, Division of Field Services, Department of Motor Vehicles):
We are neutral on S.B. 454, but a fiscal note will be attached. Programming needs to be created in order for the DMV to interface with the DOC to gather

and release information on inmates who are released on a monthly basis and to disseminate the statuses of their driver's licenses.

Ron Knecht (State Controller):
I oppose S.B. 454 only because the impact on the State Controller's Office is not provided for. The intent of S.B. 454 is good. The collections of the administrative assessments made in the district courts should be centralized.

My Office first heard of this bill approximately 10 days ago which is why we oppose it. With the appropriate resources, we could support S.B. 454.

Senate Bill 454 adds to the duties of the State Controller's Office without any corresponding funding. I can detail these new duties for the Committee.

We ask this bill not be acted upon without an amendment to fully address our financial concerns. We stand ready to work with all parties to find a solution.

Chair Brower:
Please take your concerns further into detail with the bill's sponsors.

The Committee does not intend to put any additional burdens on the State Controller's Office without allocating the financial resources.

James Smack (Chief Deputy Controller, Office of the State Controller):
A fiscal note has been added to S.B. 454.

Chair Brower:
The Committee is in receipt of a proposed amendment submitted by Ben Graham (Exhibit H). We will close the hearing on S.B. 454 and open the hearing on S.B. 164.

SENATE BILL 164: Revises provisions prohibiting certain discriminatory acts. (BDR 18-59)

Senator David R. Parks (Senatorial District No. 7):
Senate Bill 164 is a cleanup bill making technical corrections to previously overlooked statutes. Senate Bill 164 revises language throughout the NRS regarding the terms "sexual orientation" and "gender identity or expression."

Over the past few sessions, the Legislature has passed a number of bills addressing both sexual orientation and gender identity. Senate Bill 164 resulted from a conversation I had with Clark County Commissioner Chris Giunchigliani, who informed me the term "gender identity or expression" was not included in statutes dealing with the Nevada System of Higher Education. From there, I asked legislative staff to review other oversights in the NRS consistent with the legislation we passed.

The one fiscal note attached is a minor amount. Senate Bill 164 brings all statutes in line and up to date with recent legislation.

Kara Jenkins (Administrator, Nevada Equal Rights Commission, Department of Employment, Training and Rehabilitation):
We are neutral on S.B. 164. Sections 2 and 3 seem to have inconsistent usage with the terms national origin, ethnicity and nationality. The Nevada Equal Rights Commission typically uses the term "national origin," but in sections 2 and 3, the terms "national origin," "ethnicity" and "nationality" seem to be used interchangeably

Chair Brower:
Please coordinate with Senator Parks to work those terms out.

Elisa Cafferata (Nevada Advocates for Planned Parenthood Affiliates):
We support S.B. 164. I have submitted my testimony for the record (Exhibit I).

Marlene Lockard (Nevada Women's Lobby):
We support S.B. 164.

Brock Maylath (President, Transgender Allies Group):
We support S.B. 164 and the effort to create uniformity and language across the breadth of the NRS.

Transgender persons are among the most marginalized and discriminated groups in our society. The 2014 survey "Hope Grows for Nevada Trans Health," published by Nevada's Division of Public and Behavioral Health, Department of Health and Human Services, and the University of Nevada, Reno, evidences some key statistics. The report states 66 percent of transgender folks in Nevada report verbal abuse, 37 percent report physical abuse, 50 percent report problems getting a job, 27 percent report losing a job and 18 percent report

problems with police or the judicial system based on their gender identity or expression.

These issues lead directly to a 36 percent rate of transgender people in Nevada meeting the clinical definition of psychological distress, including depression, anxiety and somatization. The report states 67 percent of transgender people in Nevada have seriously considered suicide and 38 percent have attempted suicide with the intent to die. Marginalization leads to a life of poor health and economic despair, conditions affecting all citizens of Nevada.

Uniformity of language protecting gender identity and gender expression benefits everyone in this State.

Kent Ervin:
I am neutral to S.B. 164. Nevada should stand for fair treatment of everyone in all phases of public and commercial life. The recent controversies in the states of Indiana and Arkansas are the result of a perception that state legislatures are permitting discrimination by businesses based on personal beliefs. Similar bills have been introduced in both Houses of this Legislature.

Nevada should clearly state it is open for business for everyone. This is important to our tourism industry and to our citizens. When I walk into a local business, I should not have to wonder if I will be refused service because of who I am or who I am with. Senate Bill 164 cleans up the statutes with regard to antidiscrimination language, which is great in light of the extremely broad language on religious freedom laws being proposed.

Nevada should more clearly state the importance its citizens place on prohibiting discrimination of all kinds by service businesses, large landlords and large employers. There are already carefully crafted exceptions in the statutes for small business owners, for renting one's own residence and for religious organizations and clergy.

I suggest further changes to the sections of the NRS to ensure equal opportunity and equal rights for all. To add those words into the NRS is in the State's compelling interest. Personal convictions are not a defense against charges of violating the antidiscrimination statutes.

Chair Brower:
Nevada is open for business for everyone.

Ms. Spinazola:
We support most of S.B. 164. We are neutral on section 13 which adds the aggravated murder enhancement to gender identity and expression. We were neutral on the aggravated murder enhancement last Session when sexual orientation came into statute. Freedom of speech should not be criminalized with enhancements for aggravated murder.

Senator Parks:
I will work with all interested parties to ensure S.B. 164 is a clean bill.

Chair Brower:
We will close the hearing on S.B. 164 and open the hearing on S.B. 262.

SENATE BILL 262: Revises provisions relating to guardians. (BDR 13-643)

Senator Becky Harris (Senatorial District No. 9):
Senate Bill 262 is the collective effort of many stakeholders in Nevada to provide the necessary tools for Nevada's families to make decisions concerning the care of their loved ones. No peace of mind exists for Nevada seniors or their families that their selected guardian will be able to care for them in the event they become unable to care for themselves.

If an adult child resides outside Nevada, it is even more difficult for that adult child to care for an ailing parent. Nevada statute requires out-of-state family members to have a coguardian who resides within the State.

Throughout this past summer and into the fall, many people in my Senate District came to me with their concerns and personal stories about the challenges they and their loved ones face when guardianship becomes necessary. As word spread I had concerns about Nevada's guardianship laws, more people contacted me. I found their concerns to be legitimate and widespread; these issues must be addressed.

Lora Myles is an expert in elder law and has been influential in bringing together the many stakeholders and ensuring S.B. 262 accurately reflects the various concerns about Nevada's guardianship laws. This bill is also a cleanup bill

because a handful of statutes have been collapsed into two statutes, making the law clearer and easier to follow.

Ms. Myles has submitted a proposed amendment to the Committee through me (Exhibit J). Ms. Myles will reference this amendment in her testimony because it more accurately reflects what needs to be done in Nevada.

Lora Myles:
I am an attorney with the Carson and Rural Elder Law Program. I also work with public guardians and family guardians throughout Nevada, particularly in the rural counties.

Nevada was one of the first states to pass the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Passage of this Act led the way to the submission of the bill before you today.

Section 1 of S.B. 262 as amended provides authorization for the courts to appoint as guardian a family member residing outside Nevada over a ward living in Nevada. This section is only applicable to adult guardianships. In the world of Skype, texting, email and other instant communication systems, it is no longer reasonable to restrict the appointment of concerned family members to those who reside in Nevada.

Under NRS 162A, an agent under the power of attorney is not required to be a resident of Nevada. It is rare a guardianship is necessary with an adult who has a valid power of attorney; in those rare cases, the adult's choice of agent should be considered and honored by the guardianship court in the appointment of that guardian. Senate Bill 262 creates strict guidelines for those appointments.

With S.B. 262, the person requesting the appointment must be nominated either by a power of attorney, trust, will or other document executed by the potential ward while the ward is competent. The court must determine the nonresident is the most certifiable person to be appointed guardian and no one in Nevada might be more suitable.

Nonresident guardians must present a care plan to the court detailing how they are going to provide care for their wards who live in Nevada. The nonresident

guardian must appoint a registered agent in Nevada. Further, under NRS 159.065, the guardian is required to file an appropriate bond.

Section 1, subsection 6 sets forth the restrictions that must be complied with under NRS 159.1991 to NRS 159.2029, which is the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. This Act allows the courts to communicate across jurisdictions and reach across state lines in guardianship matters.

Most of Nevada's neighboring states have passed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Combining the bill's original language with the language proposed in Exhibit J, we eliminated section 2 of the bill. We created section 7 which discusses the appointment of a guardian of a minor. Section 1 pertains to the guardianship of an adult; section 7 pertains to the guardianship of a minor.

In Exhibit J, section 3, subsection 2, paragraph (b) has been deleted. Public guardians, not professional or private guardians, are appointed by the counties. Public guardians are county employees who are bonded, insured and subject to background investigations. About 90 percent of public guardian cases are pro bono, but public guardians occasionally get clients who have assets. Sometimes family guardians, who cannot be guardians themselves, ask for a public guardian to be appointed to care for their loved ones.

By limiting the services of public guardians to only people who have little or no assets, the ability of the public guardian is limited to only serve the public as necessary. That root language removed from NRS 253 in 2007 in a hotly contested bill brought by then-Senator Bernice Mathews should not be restored.

In the proposed amendment, Exhibit J, sections 4, 5 and 6 have been removed. These sections limited the ability of public guardians to carry out their duties. These sections also prevented county commissioners, who are the employers of public guardians, from contracting with attorneys to handle public guardianship cases. These sections also prevented the public guardian from taking fees, usually less than $1,000 a year, from the resources of wards. This situation may endanger a ward's ability of accessing Medicaid. The provisionals for the public guardian have also been removed. The focus of S.B. 262 is to provide for family guardians of an adult and of a minor.

Rana Goodman (*The Vegas Voice*):
We support S.B. 262. I have submitted my testimony (Exhibit K).

Court orders we researched state that once you have a guardian, all powers of attorney are revoked. The guardian then takes over the power of attorney; the guardian becomes that person. We found that to be outrageous and nonsensical.

In our monthly newspaper, *The Vegas Voice*, we published the standard court order used by family court when appointment of a guardian is made. There was an outcry. We were asked by our readership to hold seminars to explain the situation further.

When we sponsored these seminars, we were asked questions that threw us for a loop. How did this happen? How do you become a ward when you do not ask for a guardian? Our investigation showed many of these guardians—and there are good guardians and bad guardians—troll hospitals and assisted living facilities, giving talks on how to eliminate the chore of day-to-day financial responsibilities.

These people say to the seniors, "If you are overwhelmed with your daily responsibilities and want to play golf and enjoy retirement, let us take the burden of doing your daily stuff. You go have fun." These seniors do not realize what they are getting themselves into; they think it sounds wonderful. Suddenly, these seniors have given up all their responsibilities and all the things they actually do not want to give up.

Families came to us saying, "My mother does not have any money to spend. She does not have money to even go to the hairdresser because the guardian will not release anything." That is not acceptable.

We placed a petition in our newspaper asking our readers if they realized that if they have adult children living out of state, those adult children can only be a coguardian if something happened to them. Our readers told us, no, they did not realize that. We asked our readers to sign a petition so we could ask you, our Legislators, to change this law.

Dan Roberts (*The Vegas Voice*):
I present our readership responses (Exhibit L, Original is on file in the Research Library). I also submit my testimony (Exhibit M).

Ms. Goodman:
In addition to these petitions, which total over 3,600 from our readership, we also have a resolution from Sun City MacDonald Ranch community representing 4,000 of their residents who want the guardian residency requirement of the statute withdrawn. We have a letter from the Nevada Seniors Coalition asking the same thing.

These petitions, Exhibit L, are from your voters.

Mr. Roberts:
As of last night, 3,622 petitions ask the Legislature to allow an out-of-state relative to serve as guardian. These petitions favor S.B. 262.

Jonathan Friedrich:
My nominated guardian is my accountant. I have known him for over 30 years, but he does not live in Nevada. I do not want a stranger being my guardian in the event I need one. I trust my accountant; he has always been there for me and is a friend.

My one concern with S.B. 262 is section 1, subsection 5, paragraph (b), subparagraph (3). Thirty days is too short of a time, especially if the guardian lives out of state. If the guardian lives in California, it is a hop, skip and two jumps to get to Nevada. If the guardian lives in another part of the Country, it takes a little bit longer to get here. The 30-day requirement should be extended to 45 or 60 days. Other than the time issue, I support S.B. 262.

Deane DeLaCruz:
I support S.B. 262. I concur with Mr. Friedrich on the 30-day requirement. It behooves the State to remove the limit. People can live 5,000 miles away and may not be able to get to Nevada in 30 days.

John Radocha:
I am 81 years old, and I want to continue living in my home. Any guardians I may need or want are out of state. Please pass this bill so I can live in peace.

Bob Robey:
I support S.B. 262.

Julie Belshe:
Today, I speak the truth occurring in Las Vegas. I also speak in fear of potential retribution from private, for-profit legal guardians.

My parents were illegally kidnapped from their home with no knowledge they had been placed into guardianship. I am their only living child, and for days, nobody notified me of my parent's location. When I tried to expose what was going on, I received threatening letters from the legal guardian's attorney.

My parents' money was spent in a year and a half, and they were left with nothing at all. In January, they moved to a cheaper and smaller assisted living facility closer to my home. I am fully capable and willing to care for them, but have been told the chances of that happening in family court are rare to none.

My purpose here today is regarding the requirement that a guardian be a Nevada resident. It is time to allow family to take care of family, not some outsider who comes out of nowhere. The residency requirement for a family member to be a guardian must be abolished.

Moving forward, the order of importance should be: one, whomever the ward has previously named as his or her power of attorney or named as guardian; two, the executor of his or her will; and three, family. Furthermore, from my father's mouth, now I know how the Jewish people felt when being taken away by the Nazis.

In a modern-day society, is it legal to refuse a family member knowledge of what is going on before there is a knock on the door and family members are taken away?

I have a vested interest in S.B. 262 passing. Guardianship in itself strips wards of their constitutional rights. A criminal in jail has more rights than a ward.

Lives are ruined by professionals who have given into excessive power and greed—who think they are above the law. Absolute power corrupts absolutely.

"Guardianship 101: medicate, isolate, take away estate" is a very dangerous situation for all involved, especially families who suffer great distress trying to make sense of a system that makes none.

I am a Nevada resident. I saw or spoke with my parents on a daily basis. My petition for the appointment of temporary guardianship for both my parents—which I have if the Committee wants copies—states, "Purported relative exists who is a drug abuser." I assume the document refers to me as I am the only living family member. These are allegations without evidence.

Since I am the only surviving child, this indicates the for-profit guardian knew of my existence in Nevada and wrote the petition intentionally to get herself appointed without interference.

The fact a complete stranger never has to contact a family member—especially a Nevada resident—prior to petitioning the court is outrageous. More outrageous is the complicity of the guardianship court that routinely and without question accepts these claims to be true without mediation or acknowledging a family member before allowing someone to knock on my parents' door and take them for their minivacation. That such an atrocity can occur is extremely traumatic, not just for my parents but for our society as a whole.

What if something like this happened to your loved ones? Would you rest easy and just walk away? Do you know what it is like to search for your parents until finally seeing a sign posted on their door stating, "In case of emergency, contact so-and-so?" This modern-day holocaust has been swept under the carpet for long enough.

If S.B. 262 had been in place prior to my parents being illegally kidnapped, then my parents might still be in their home, like many of yours, making their own memories and not having to face being cut off from their whole family heritage. Their wedding albums, family photos and heirlooms disappeared, not to mention their monetary value, which is completely inaccurate.

Anybody who challenges a legal guardian in the family courtroom is made to look like an exploiter, addict or mentally challenged. What test is given to legal guardians for certification other than a 40-hour course in 1 week of training?

Family comes first—but not always in a family court. In a blink of an eye, a family's life can be destroyed without reasoning or reckoning. Our lives have been forever changed in the harshest manner possible without any explanation other than, "It is legal." What is legal? What grounds do these guardians have?

We need to ensure the safety of not only our loved ones but of future generations to come. Please help us make history and take the next plunge in making this a better world than when we first arrived here. Is not that our only hope—to leave the world a better place for our children and their children?

Susan DeBoer (Office of the Public Guardian, Washoe County):
We are neutral on S.B. 262 and on the amendments addressing the public guardian issues.

Sally Ramm (Elder Rights Attorney, Aging and Disability Services Division, Department of Health and Human Services):
I want to clarify section 1, subsection 5, paragraph (b), subparagraph (3). The 30 days is fungible; it can change. This is in the bill because we do not want to have a lot of people under guardianship with their guardians out of state for a long period of time. Many day-to-day decisions and situations come up where the guardians need to be involved.

We want people to have the opportunity to have their chosen guardians from out of state appointed as guardians, but we want to avoid having people under guardianship in Nevada with their guardians a long distance away. While the number of days can be changed, having a limit is an important part of S.B. 262.

Chair Brower:
Please make sure you share your concerns with Senator Harris.

Desiree Ducharme (Supervisor, Office of the Public Guardian, Clark County):
I am acting public guardian for the Clark Country Public Guardian's Office. We are neutral on section 1 of S.B. 262 and support the amendments.

Senator Harris:
We will work with all the parties to make sure everything is explained and the concerns are addressed.

Ms. Myles:
Regarding the concern about having family listed first, section 1, subsection 4 of S.B. 262 lists family members in the order of preference the court looks at in determining who is to be appointed guardian.

Regarding the 30-day requirement, the guardian has a few choices under that provision. One choice is to provide a care plan to the court stating, "I am going to leave the ward here in Nevada. This is who is going to be caring for the ward. This is the care plan that is going to help care for the ward." The guardian does not have to move the ward out of the State, nor does the guardian have to move to the State.

The guardian can move the ward out of the State within 30 days or in a time period allowed by the court. The 30-day provision is an "or" provision.

Senator Harris:
I urge the members of the Committee to pass S.B. 262 and help give peace of mind to Nevada's families.

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Chair Brower:
I will close the hearing on S.B. 262 and adjourn the meeting at 3:25 p.m.

RESPECTFULLY SUBMITTED:

Cassandra Grieve,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	1		Agenda
	B	10		Attendance Roster
S.J.R. 17	C	2	Jeff Kaye	Proposed Amendment
S.J.R. 17	D	5	Barry Duncan	Proposed Amendment
S.J.R. 17	E	2	Nevada Network Against Domestic Violence	Written Testimony
S.B. 454	F	19	James Hardesty	Conference of State Court Administrators, Evidence-Based Pretrial Release
S.B. 454	G	3	Clark County Public Defender's Office	Proposed Amendment
S.B. 454	H	3	Judicial Branch	Proposed Amendment
S.B. 164	I	1	Nevada Advocates for Planned Parenthood Affiliates	Letter in Support
S.B. 262	J	8	Senator Becky Harris	Proposed Amendment
S.B. 262	K	2	Rana Goodman	Written Testimony
S.B. 262	L		*The Vegas Voice*	Petition
S.B. 262	M	2	Dan Roberts	Written Testimony