MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
May 25, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:05 a.m. on Thursday, May 25, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman Ira Hansen (excused)
Assemblyman James Ohrenschall, Vice Chairman (excused)

GUEST LEGISLATORS PRESENT:

Senator Aaron D. Ford, Senate District No. 11
Senator Pat Spearman, Senate District No. 1
Senator Nicole J. Cannizzaro, Senate District No. 6

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Devon Isbell, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Kevin Higgins, Justice of the Peace, Sparks Justice Court; and representing Nevada Judges of Limited Jurisdiction
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office
Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence
James R. Sweetin, Chief Deputy District Attorney, Clark County District Attorney's Office
Samuel Martinez, Chief Deputy District Attorney, Clark County District Attorney's Office
Brandi M. Planet, representing Dignity Health-St. Rose Dominican
Marlene Lockard, representing Nevada Women's Lobby
Kerrie Kramer, representing The Cupcake Girls
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Nadia Hojjat, Chief Deputy Public Defender, Clark County Public Defender's Office
Kristy Oriol, Policy Coordinator, Nevada Coalition to End Domestic and Sexual Violence
A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Misty Grimmer, representing Nevada Resort Association
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce; and representing The Chamber, Reno-Sparks-Northern Nevada; and Nevada Federation of Independent Businesses
Alexis Motarex, Government Affairs Coordinator, Nevada Chapter, The Associated General Contractors of America, Inc.
Bryan Wachter, Senior Vice President, Public and Government Affairs, Retail Association of Nevada

Lorne Malkiewich, representing U-Haul International, Inc.
Austin Slaughter, representing Las Vegas Metro Chamber of Commerce

Chairman Yeager:
[Roll was called and protocol was explained.] We have four bills on the agenda today, and we will take them out of order. We are going to start with Senate Bill 368 (2nd Reprint). At this time, I will go ahead and formally open the hearing on S.B. 368 (R2), which revises provisions relating to criminal procedure.

Senate Bill 368 (2nd Reprint): Revises provisions relating to criminal procedure. (BDR 14-113)

Senator Aaron D. Ford, Senate District No. 11:
Thank you, Chairman Yeager and members of the Committee; it is great to see you this morning. I have written comments that I was going to go through, but I am going to ask that you allow me to be a little nontraditional with this presentation. I want to cut to the chase for you and explain to you what I was trying to do with this bill.

If you have ever watched *Law and Order*, you have heard them say, "You cannot use that—that is fruit of the poisonous tree." What they are talking about is evidence that a cop or a district attorney wants to use against a defendant in court when that evidence was obtained unconstitutionally or illegally. You were unconstitutionally stopped, Assemblyman Pickard, for no reason at all while you were walking down the street, and the police found a crack pipe in your pocket. They want to use that crack pipe as evidence, but they had no reason to stop you in the first place. The courts protect you through the Fourth Amendment, when it says that cops cannot stop you for no reason because there is a constitutional prohibition against unreasonable searches and seizures. Police have to have a reason to stop somebody; they cannot just be walking down the street.

For 50 years or so, that "fruit of the poisonous tree" doctrine has evolved and it has included certain exceptions. Let us say they would have inevitably found that crack pipe because you happened to pull it out and started smoking on it afterwards. If the police would have inevitably found the evidence, then they can still use it in court. There are other exceptions that have evolved as well.

Last summer the U.S. Supreme Court issued a ruling that said they were going to change this "fruit of the poisonous tree" doctrine such that if a cop unconstitutionally stops someone for no reason—he did not have a constitutional reason to stop the individual—they can still use the fact that they have a warrant against the person to justify the stop. That, to me, sounds ridiculous. That, to me, sounds unfair. That, to me, sounds like it gives rise to the opportunity for people to have their Fourth Amendment right to be free from unreasonable searches and seizures violated and then justifiably violated. It can be said to have been justifiably violated if you happen to have a warrant out against you.

Now, when people hear the word "warrant," they immediately jump to the worst kinds of warrants out there. You have a warrant for your arrest because you murdered somebody or because you burgled a house or something. Let me give you an example of what Justice Sotomayor said in her dissent in this case. She happened to talk about Ferguson, Missouri. She gave the example of Ferguson, Missouri, having 21,000 residents with 16,000 of them having warrants out for their arrest. Some of those warrants related to your grass being too high, jaywalking, and other minor offenses that you sometimes just forget about. You forget to pay a parking ticket and you have a warrant out for your arrest on a parking ticket. The question becomes: Do we want to continue to provide the same protection that cops and district attorneys have operated under for 50 years? Do we want to restore that to what it was just one year ago? I think the answer to that is yes. This bill was brought in an effort to do exactly that.

To be sure, there are other problems that come up with unconstitutional searches and seizures and the ability to stop someone without having a reason to do so. We do not have to get into those unless the questioning gets to that point. The bottom line is that everyone on this dais—and all of your constituents—should be able to feel free to walk down the street without worrying about being stopped by the police when they are not doing anything wrong. That is why I brought this bill.

I brought this bill because the Nevada Supreme Court, after 50 years, instituted the fruit of the poisonous tree doctrine. Our state Supreme Court, in *Torres* [*Torres v. State of Nevada*, 131 Nev. Adv. Op. 2 (2015)], reiterated that that is the state law in our state as well, that you should feel free to walk down the street without being unreasonable searched and seized—but it had to reverse itself because of a U.S. Supreme Court case [*Utah v. Strieff*, 579 U.S. 136 S. Ct. 2056 (2016)]. Some of you may wonder how we are going to change the law when the U.S. Supreme Court has spoken. There is a general rule of law that says states can always provide more protections for citizens than the *United States Constitution* requires—that is a baseline. We can do this and we can do it in a way that shows our citizens that we protect not just the Second Amendment, not just the right to vote, not just the First Amendment, but also the Fourth Amendment, which says citizens should be free from unreasonable searches and seizures.

When I initially brought the bill, there was a lot of opposition from law enforcement and the district attorneys because they did not want to go back to what they had been doing for 50 years. I worked with Senator Cannizzaro, who is a district attorney, and we found a compromise. She would allow me to proceed with the concept that I came up with if we were to make a procedural change. Currently, if a district attorney is told that he or she cannot use evidence, they have to make a motion in court. That motion is called a motion to suppress. Typically, that motion to suppress takes place in justice court as opposed to district court. The district attorneys would prefer that kind of motion to be taking place in district court, not in justice court, because there are different standards of proof associated with moving your case forward through the various courts. We agreed to a compromise where the motion would be made in district court and the motion would be made in writing. That, to me, seemed to be a fair exchange because it does not ultimately deprive

the defendant of the right to suppress the evidence; it just does it later in the process and it does it with more of an opportunity for the district attorney and/or the criminal defense attorney to work out the issue and try to get it addressed. That was the compromise we came up with. We would allow the restoration of the 50-year-old rule related to unreasonable searches and seizures in exchange for a motion to suppress being brought in district court, in writing.

That is what the bill does, Chairman Yeager, and I ask for your support. I think you will hear from the district attorneys who are here supporting it. You are now going to have opposition from the public defenders. They initially supported the idea; now they do not because of the compromise. You will also hear, I learned today, from a judges' association that also disagrees with the proposition I am putting forth. I wanted to lay it out to you the way I just did so the Committee could understand where my heart is on this. This bill is an effort, again, to preserve our Fourth Amendment right to be free from unreasonable searches and seizures. I am happy to answer any questions you may have.

Assemblyman Elliot T. Anderson:
I wanted to direct your attention to section 1, subsection 4(e), which talks about a person being aggrieved by a seizure. Are you contemplating the traditional Fourth Amendment standing analysis to bring a motion as to property, or is that something else?

Senator Ford:
No, it is the exact same standard that existed before the *Strieff* case in the U.S. Supreme Court, and before *Torres*, which was the Nevada Supreme Court case that was overruled. Senate Bill 368 (2nd Reprint) does not look to augment anything that existed prior to the *Strieff* decision out of the U.S. Supreme Court.

Assemblyman Elliot T. Anderson:
I just wanted to clarify because "aggrieved" might mean more than one thing to different people, so I just wanted to make sure we had a clear record that it is just the traditional Fourth Amendment standing analysis to bring a motion to suppress for property.

Senator Ford:
Yes, it is.

Assemblywoman Krasner:
How do you get around the *Terry* stop on this one? Would *Terry v. Ohio,* 392. U.S. 1 (1968) allow for police to do that search if they thought that the person might have a weapon?

Senator Ford:
The *Terry* stop approach is the standard of reasonable suspicion, which S.B. 368 (R2) does not address. If the police have reasonable suspicion to stop someone, then that is something that is constitutionally permitted. I am talking about a context where police do not even have reasonable suspicion to suspect someone of a crime. I am talking about a situation where a person is walking down the street, minding their business, looking a certain way, acting

a certain way, but not acting suspiciously. A reasonable suspicion perspective says that a *Terry* stop would not apply, but the police still stop them and they still search them, and they happen to find some paraphernalia or they happen to find a warrant because the person had a parking ticket that was three months old and they forgot to pay it. That is the problem that this bill addresses. If the stop is unconstitutional in the first place, as Justice Sotomayor says, two wrongs do not make a right. Just because it turned out there was a warrant out for you does not mean that the unconstitutional stop should be ruled constitutional as a result.

Chairman Yeager:
Are there any further questions for Senator Ford? [There were none.] Thank you for the presentation, Senator Ford. I will open it up now for testimony in support of S.B. 368 (R2). If anyone would like to testify in support, please make your way to the table. It does not look like there is anyone coming to the table in Las Vegas so, Mr. Jones, we will take your testimony here in Carson City.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
I am here on behalf of the Nevada District Attorneys Association in support of S.B. 368 (R2). I want to start off by thanking Senate Majority Leader Ford and Senator Cannizzaro for working with us on this bill. I am sure many of you are reading portions of this bill and wondering why the Nevada District Attorneys Association is in support. Our association did start off adamantly opposed to this bill, but through the process of negotiations, we have come to an agreement that both parties can support. The crux of our support lies in section 1 and section 3 of this bill, which state that motions to suppress evidence should only be heard in district court.

I want to take you back to the beginning of session when we had our criminal justice day, when we came to present to you about how the criminal justice system works in Nevada. If you recall, felony and gross misdemeanor cases start off in justice court. A justice of the peace initially has jurisdiction over that case to determine whether there is probable cause that a crime was committed and that the defendant was the one who committed it. If a justice of the peace makes that determination, then the case is transferred to the district court where the trial ultimately occurs. The Nevada District Attorneys Association's position is that any motion to suppress should be held in the district court where the trial is to occur.

I do understand, and the public defenders have submitted to you a U.S. Supreme Court case, *Grace v. the Eighth Judicial District Court of the State of Nevada*, 375 P.3d 1017 (2016), saying that justices of the peace do have both express and implied authority to hear motions to suppress (Exhibit C). Just as S.B. 368 (R2) is legislatively overriding the *Streiff* decision of the U.S. Supreme Court, we are seeking a legislative override of the *Grace* decision of the Nevada Supreme Court. Both sides are getting something that they like in this bill.

It is the position of our Association that the role of the justice of the peace at the preliminary examination is limited specifically to deciding whether, based on the evidence presented, probable cause exists to hold the defendant to answer in district court. The issue of a defendant's guilt or innocence, or any specific defenses that might be presented, are irrelevant at a preliminary hearing. In other words, the Association is opposed to preliminary hearings becoming mini trials. The case law is clear that preliminary hearings are not mini trials—and they are not expected to be mini trials—but what we have seen in our jurisdictions is preliminary hearings increasingly becoming mini trials where we are testing defenses and dealing with motions to suppress.

I know people are going to come up here and say that a judge cannot just ignore blatantly unconstitutional evidence if that comes before them. I want to make two points with respect to that. One, district attorneys take oaths to uphold the *U.S. Constitution*, so if blatantly unconstitutional evidence is being presented, there are ramifications for district attorneys. Senate Bill 186 of the 78th Session, sponsored by Senator Brower, added *Nevada Revised Statutes* (NRS) 41.0393, which says that if a district attorney acts in a vexatious, frivolous way or in bad faith, then a court may award attorney's fees to that defendant. I would submit to you that a district attorney who is admitting blatantly illegal evidence in a preliminary hearing is subjecting themselves, potentially, to an award of the defendant for attorney's fees. There are provisions in statute to keep district attorneys from just blatantly admitting evidence that violates someone's rights. Typically, however, what we see in these Fourth Amendment cases is much grayer. When we talk about issues in this gray area, it is our position that those cases should be litigated in district court.

The second point I want to make is that justice courts are not without remedy in terms of what they see as unconstitutional violations during a preliminary hearing. They can always release the defendant. If they are so offended by the evidence that the state is presenting at a preliminary hearing, a justice of the peace may release the defendant. If they are so offended by the evidence, justices of the peace can determine what weight to give that evidence in terms of the preliminary hearing. If they want to give evidence no weight, then they can do that, as long as they make the finding. What we are talking about in this bill is specific motions to suppress in justice court.

There are other issues that the Nevada Supreme Court has said are beyond the jurisdiction of the justice of the peace. I want to point out to you the issue of whether a prior conviction is constitutionally valid. That is not the role of the justice of the peace to decide, so if I have a case that is enhanced by a prior conviction, the question of whether or not that prior conviction is constitutionally valid is left for the district court. Further, competency is another issue that is not for the justice court. There are issues of constitutional import that are inappropriate for a justice of the peace to get involved with. This is not unique in our system in Nevada.

With that, Chairman Yeager, I am available to answer any questions. Again, we are in support of this bill. I want to thank Senate Majority Leader Ford and Senator Cannizzaro for working with us.

Assemblyman Pickard:
Thank you, Mr. Jones. I appreciate the clarity of your response. I think you answered my question, but I want to make sure I am clear on something, as I do not practice in this area of law. If, as Senator Ford suggests, I am walking down the road with a crack pipe—for the record, I would not—what are the boundaries of the motion going to be? As I understood it, prior to the U.S. Supreme Court decision, if there was a drug deal that went bad and police were investigating it and I am in the neighborhood, that might give reasonable suspicion for the stop. If I am just walking down the Strip and there is nothing going on and the police just happen to see me—and for whatever reason they are concerned—so they stop me. I do not have to talk to them, so if they decide to push that a little bit further, and then they find out I have a warrant, would that not be grounds—even with the U.S. Supreme Court decision—to contest that? Help me understand where that boundary is.

John Jones:
The *Strieff* case, just like every other case based on the Fourth Amendment, is one based on "reasonableness." The *Streiff* decision itself outlined three standards that a court is to look at with respect to whether or not a search is reasonable. One of those factors is the flagrancy of the police misconduct. If you are literally just walking down the street—even with the *Strieff* decision—and there is no other articulable fact that an officer can say you were doing wrong, then I think that under the *Strieff* decision that evidence is going to be suppressed. I hope that answers your question. Again, the Fourth Amendment has always been and is still based on reasonableness. When you look at the *Strieff* decision, what the U.S. Supreme Court did is a balancing test between the violation of the Fourth Amendment and the cost of the exclusion of the evidence. The outcome was that the costs were too high in this case to exclude the evidence. As I said earlier, when we deal with Fourth Amendment violations, there is rarely a big, bright line. We are always dealing with shades of gray with respect to search and seizure.

Assemblyman Pickard:
As I understand it then, this law does not really reset anything, it just clarifies where we are and makes it easier for the court to make the determination based on the evidence presented at the motion. Am I correct?

John Jones:
I would say S.B. 368 (R2) just makes clear that the *Torres* decision by the Nevada Supreme Court is the law in this state. I think that is the best, most succinct way to put it.

Assemblyman Watkins:
Part of your testimony struck me in that there are ramifications for district attorneys who knowingly—or let us use a gross negligence sort of standard—violate constitutional rights of the accused and that there are ramifications for that. Do we have any examples, in recent history, of any district attorney having any ramifications placed upon them for violating any rights—constitutional or otherwise—of anybody that is being charged?

John Jones:
The words used in the statute, from S.B. 186 of the 78th Session, were "vexatious, frivolous or in bad faith." It is a new statute. I am not aware of anybody yet even seeking any awards under this statute, but I would argue that is because district attorneys typically act in appropriate ways. That is not to say that we are not taking positions that a defense attorney disagrees with, or even maybe that a judge ultimately disagrees with, but they are not vexatious, frivolous, or in bad faith. In other words, we have an articulable reason why we are making or taking that particular stance.

Assemblyman Watkins:
Before the 2015 statute came into place, however, I guess the only remedy for somebody who felt that their constitutional rights had been violated by a prosecutor would have been to sue the state or the county. Are you aware of any of those instances happening in the recent past? I ask because something gave rise to the 2015 legislation. I am trying to get to the heart of what that something was.

John Jones:
I am not aware of any, Assemblyman Watkins. I know that Senator Brower did have his reasons for bringing that bill forward, but I would leave that for him to articulate.

Chairman Yeager:
I do not have S.B. 186 of the 78th Session in front of me, but it was my recollection that that bill did not apply to any defendants who had free legal counsel who were deemed indigent. I just wanted to put that on the record. I think the remedy in that bill was only available to those who had paid out of pocket to retain private counsel. Is that your recollection as well?

John Jones:
That is correct.

Assemblyman Elliot T. Anderson:
I was thinking about the same thing that you already mentioned. You mentioned that a justice of the peace could determine the weight of evidence in any way that he wanted. That got me thinking: as a district attorney, do you have the right to appeal a finding of weight after a preliminary hearing? Is that a reviewable decision?

John Jones:
There are ways that we could have that decision reviewed.

Assemblyman Fumo:
Mr. Jones, you and I discussed this a little bit yesterday and you know how I feel, but I just wanted to put it on the record. The Clark County Detention Center is at critical mass. The fact that a justice of the peace—as the initial gatekeeper when this case goes forward at a preliminary hearing—cannot weigh that evidence, I think the district attorney's office is taking away their ability to weigh that evidence and judge the case. Although justice court can release the person, as you said, most of the time they will not do that because there are

other factors involved too. A justice of the peace has a legitimate motion to suppress; if the state feels they could make the wrong decision, they can appeal it up to the district court. With the jails being so full, having this first opportunity for a justice of the peace to make that decision, I think, is critical. I would support the bill if your amendment were not there.

John Jones:
Assemblyman Fumo, you surprised me because I thought you would have the first question with respect to this bill. My argument is that our current practice actually extends peoples' stay in detention because we are arguing the same issue twice. In other words, a defendant would make a motion to suppress in justice court. Oftentimes judges do give us opportunities to brief the issue, prolonging a defendant's stay in justice court, only for us to then go to district court and relitigate the same issue. What we are trying to do is just streamline the process. The judge that hears the trial should be the one to determine whether the evidence is constitutionally sufficient to be heard at trial.

Again, I think our Supreme Court has stated many times that the justice of the peace is limited to determining probable cause, that defenses and those types of issues are best left for trial. Again, I cannot stress this enough. Preliminary hearings are not trials. They should not be trials, and it is our position that they are becoming mini trials, which is prolonging peoples' stay in jail and making an inefficient system.

Assemblywoman Krasner:
I think you touched on my question, but could you extrapolate a little bit for me as to why you think constitutional issues should be heard in district court?

John Jones:
I think I have been arguing a few reasons why. First, it is for judicial economy and efficiency. I think having a motion to suppress heard in one particular court—the court that is actually going to hear the trial—is the most efficient way to do things. Having two separate judges who could have two separate opinions on the same issue—we are talking about trial and justice courts—is inefficient. Second, preliminary hearings are not mini trials. They are not meant to be trials; they are just where the state makes some showing that evidence exists to have the defendant answer to the actual charges in district court. Again, I want to point out *Marcum v. Sheriff, Clark County*, 451 P.2d 845 (1969), which says a full and complete examination or exploration of all facets of a case is reserved for trial, and a trial is held in district court. That is where the full and complete review of the case should be held.

Chairman Yeager:
Committee, we are going to move on to additional testimony in the interest of time. Mr. Jones, I want to thank you again. Is there anyone else in support of S.B. 368 (R2)?

Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada:
I prepared this statement before being aware of the amendment. I still generally support this bill, and I will share my statement with the Committee.

The Libertarian Party of Nevada believes that all people have the Fourth Amendment right to be secure in their property and persons from unreasonable searches and seizures. As Americans, the right to privacy is one of our most essential and treasured principles.

Utah v. Strieff fundamentally altered police officers' incentives. They now have no reason not to search anyone in dehumanizing and frequently racially-motivated fishing expeditions. The state has no right to strip its citizens of dignity and bodily autonomy without probable cause, and implicit bias and racial profiling do not qualify.

We would strongly advise the state of Nevada to refrain from tasting the fruit of the poisonous tree. It may no longer be legally tainted, but it remains ethically and morally tainted. We would like to thank Senator Ford, Assemblyman McCurdy, and the other cosponsors for bringing this bill forward. The Libertarian Party of Nevada supports it and urges you to do the same. However, I will note once again that we are not entirely happy with the amendment.

Chairman Yeager:
Thank you for your comments. Is there any additional testimony in support of S.B. 368 (R2)? [There was none.] Is there anyone opposed to the bill? Please come forward. If there is anyone in Las Vegas who is opposed, please go to the table as well. I do not see anyone in Las Vegas so we will start up here in Carson City.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
It feels very strange to be up here opposing this bill. I will say that we were initially in support of S.B. 368 (R2), prior to this amendment being put on this bill.

I want to give the Committee some history on this amendment and what it looks like. This amendment is an attempt by the Nevada District Attorneys Association to get something that they have been trying to get from this Legislature for years. In 1969, with the 55th Legislature in session, on Assembly Bill 641 of the 55th Session, this Legislature found that justice courts did have the power to hear and suppress evidence. Issuing NRS 189.120 at that time, the legislative history demonstrated that justice courts have the power to suppress unlawfully obtained evidence. The district attorneys tried to take that power away in 2007 with Assembly Bill 65 of the 74th Session, and again in 2015 with Assembly Bill 193 of the 78th Session.

Being unable to win those battles in the Legislature, the district attorneys sought to go to the Nevada Supreme Court. Just last year they took *Grace v. the Eighth Judicial District Court* to the Nevada Supreme Court where a district court judge bit on their motion to not allow justices of the peace to suppress evidence (Exhibit C). There, again, the district attorneys lost that battle, and the Nevada Supreme Court recognized that the justice courts had power to suppress illegally obtained evidence.

Why is that important? Although Mr. Jones stated several times in his testimony that preliminary hearings are not mini trials, they do serve an important function, and that is to test the evidence prior to taking somebody to trial. Senate Bill 368 (2nd Reprint), on its own prior to this amendment, is a good bill but what would happen is that people will wait longer to get unlawfully obtained evidence suppressed. With the scenario that Senator Ford suggested with Assemblyman Pickard walking down the street and being found with a crack pipe on him, we would not be able to suppress that evidence at the justice court level. Assemblyman Pickard would ostensibly sit in jail longer waiting to go to district court. Then, if it did not get suppressed at the district court level, he would have to hope that the Nevada Supreme Court would do the right thing and suppress that unlawfully obtained evidence while sitting in prison for that conviction.

This amendment seeks to prolong the period of time that people are sitting and waiting in custody. The amendment is not going to speed up the process. It also allows the district attorneys to have two bites at the apple while taking away a chance for a defendant to challenge the evidence. Let me elaborate on that. We do have a chance to have that evidence suppressed at a preliminary hearing now, under current law. If we win that motion to suppress, the district attorney has the opportunity to appeal that to the district court. It is not something that just goes away. It is not like a not guilty verdict; they have another chance to take on that evidence. What they are trying to do is take that chance away from the defense, to get rid of a case before a case lasts too long and before it ruins somebody's life. Sometimes we can cure the ills that were done prior to a preliminary hearing at that stage, by suppressing that evidence before somebody has to deal with the expense, the length of time in jail, and all of those other things that a trial brings up.

This amendment would hurt criminal defendants in the long run, and it would take away from the ruling that was just made last year. It would be a third attempt by the Nevada District Attorneys Association to take this power away from justice courts. I also want to say that S.B. 368 (R2) without the amendment is good law.

Chairman Yeager:
Mr. Piro, may I clarify something? You are saying "without the amendment." Are you referring to your amendment that you proposed? I just want to make sure the record is clear. Which amendment are you referring to when you say "the bill, as amended?"

John Piro:
We did propose an amendment (Exhibit D), and I am sorry that I did not bring that up. I think our amendment would be a fair solution. I am talking about the proposed amendment that came out of the Senate side. Right now, our amendment is standing as an unfriendly amendment. Our amendment, though, balances the need to have motions to suppress in writing while also allowing the justice courts to still decide those things.

Justices of the peace are lawyers. They are duly elected. They do take the same oath that district court judges take to uphold the law, and under our rules of evidence, they are not allowed to consider unlawfully obtained evidence. Again, this bill, with the amendment that came from the Senate side, brings up a conflict in the statutes.

I would urge the Committee—and I hate to say this—to not support this bill without either removing the amendment that came from the Senate side or allowing our amendment that at least allows motions to suppress to be heard in justice court but requires they be made in writing rather than orally. It also allows the parties a chance to respond, which I think is a fair compromise in this case. I think we will be doing a grave injustice to the gains that were made from *Grace* and to defendants in the state of Nevada if we are to not allow motions to suppress to be done at the justice court level.

I want to say just one more thing. Yes, the proof to bind a case up in justice court to district court is less—which benefits the district attorney. However, the proof on a motion to suppress is not less. That is not different proof. It is the same standard of law, so it is not being suppressed on a lesser standard of proof. It is being suppressed on the same standard that any judge in any court would use.

Assemblyman Fumo:
Mr. Piro, can you speak to the fact that not only will this amendment fly in the face of what the Nevada Supreme Court has already done, but also, if a case gets dismissed by a justice of the peace in justice court, does the district attorney's office not have another avenue they can go by way of grand jury to get the case forwarded to district court as well?

John Piro:
I want to make sure I understand your question correctly. Are you saying that they would be able to indict a person based on that?

Assemblyman Fumo:
Yes.

John Piro:
They may be able to do that, but they would also have to bring up, during that indictment process, that there was evidence suppressed and other things of that nature.

Assemblyman Fumo:
However, they do get the second bite at the apple. Does the defense have that opportunity once it is bound up?

John Piro:
We do not.

Chairman Yeager:
We will go ahead and take some additional testimony up here in Carson City.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
I agree with everything that was stated by my colleague, Mr. Piro, and I do not relish being up here in limited opposition today to S.B. 368 (R2). I have certainly had conversations with Senator Ford and all of the other stakeholders concerning section 1. We cannot support S.B. 368 (R2) with section 1 being within the language. We could support it if that section was removed or if this Committee decided to adopt the unfriendly amendment proposed by the Clark County Public Defender's Office (Exhibit D).

John Jones made a comment that I wanted to briefly touch upon about prior convictions. He said that a justice of the peace would not consider the constitutionality of a prior conviction, and that was the basis of his argument. I respectfully disagree with that. I think there are times when justices of the peace are tasked with looking at the constitutionality of a certain piece of evidence, even a prior conviction, to see if there are constitutional infirmities. If something is blatant on its face, then the justice of the peace is not going to simply just kick it up to district court and say, Go ahead, file that motion to strike the prior conviction in district court. They are going to look, based upon other Nevada Supreme Court cases like *Koening v. State*, 672 P. 2d 37 (1983) and *Pettipas v. State*, Nev. 794 P. 2d 705 (1990), to see if that prior conviction satisfies constitutional muster, so I simply disagree with that argument. I think that the justice of the peace has a duty to look at evidence and see if it satisfies constitutional muster. Looking at the *Grace* decision, when read together in conjunction with NRS 48.025 and NRS 47.020, the *United States Constitution* and the *Nevada Constitution* give the justice courts the right to suppress illegally obtained evidence during a preliminary hearing.

For that, we simply cannot abide by the amendment contained in section 1. We could support it if our amendment was adopted or section 1 was simply removed from the bill. With that, I agree with everything that Mr. Piro said, and I will leave it at that.

Chairman Yeager:
We have a couple of quick questions.

Assemblywoman Krasner:
You are talking about a justice of the peace. In many counties here in Nevada the justice of the peace is a person who did not attend law school. Do you think that the justice of the peace, at that lower court level, can hear the constitutional issues and fairly decide on constitutional issues?

Sean Sullivan:
In my 14-year tenure as a Washoe County deputy public defender practicing in front of justices of the peace—who may be lay justices of the peace who have not gone to law school—particularly in Sparks Justice Court—I believe, based upon my practice and my tenure, that they are competent and able to look at constitutional issues. That is a duty that they must assume when they take the oath. They take the same oath that the district court judges do, to uphold and defend the *Nevada Constitution* and *U.S. Constitution*. I do think that they are fully capable and confident to look at these constitutional issues and decide if there are constitutional infirmities within evidence that may be presented by the state.

Assemblyman Pickard:
I am just curious. From a practical standpoint, if this bill were to go through as amended today, are you suggesting that this would preclude a justice of the peace from making a ruling at all on the evidence? Assemblyman Fumo just helped clarify this a little bit, but my understanding is that a justice of the peace is going to determine whether there is sufficient evidence to move forward. Would this preclude them from hearing the evidence on, not a formal motion to suppress, but would they be precluded from making a ruling on that basis anyway?

John Piro:
As I understand your question—and I just want to make sure I get it right—would this preclude them from ruling on that evidence?

Assemblyman Pickard:
Would this preclude them from considering whether the evidence was properly obtained in the context of a preliminary hearing?

John Piro:
Yes, it would preclude them from doing that.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
I am also apprehensive to be up here in opposition to this bill. I strongly supported it on the other side; in fact, it was an American Civil Liberties Union of Nevada scorecard bill. We cannot support the second reprint because of the Nevada Supreme Court case that was fought very hard to fight for suppressing certain evidence in preliminary hearings.

The *Utah v. Strieff* case, however, was a stain on Fourth Amendment jurisprudence. In the words of the U.S. Supreme Court Justice Sonia Sotomayor, "This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong." The legislative goal of this bill, though, has now turned from reinstituting the exclusionary rule and restoring its teeth—which is aimed at restoring a situation that would have prevailed if the government had, itself, obeyed the law. Allowing such evidence in a preliminary hearing is, in our eyes, contrary to the ultimate goals that Senator Ford was trying to achieve.

This body has looked at this issue multiple times: in the 74th Session and the 78th Session. Justice courts have express, inherent authority to suppress under NRS 189.120, which expressly envisions the appeal of suppression orders made during a preliminary hearing. That is seen in the laws in our books, currently, in the state of Nevada. Looking at *Strieff* again, the failure to apply the exclusionary rule to evidence seized under the circumstances in *Strieff* and in preliminary hearings will encourage the police to engage in random stops, in the hope of finding an outstanding warrant that will then be used as justification to engage in a search that would otherwise be impermissible.

At the time of the *Strieff* decision, the entire state of Utah had approximately 180,000 outstanding warrants on the books. In 2015, the City of Las Vegas alone had 120,000 outstanding warrants on the books; 44 percent were for minor traffic offenses or failure to pay a fine. The City of North Las Vegas reports that they serve 1,000 warrants a month and that people of color have more warrants than any other group.

We do support this bill, S.B. 368 (R2), as it was originally written, but we are opposing it today based on the revisions that were made in section 1 and section 3 of the bill.

Kevin Higgins, Justice of the Peace, Sparks Justice Court; and representing Nevada Judges of Limited Jurisdiction:

I am the chief justice of the peace in the Sparks Justice Court. I am also here today on behalf of the Nevada Judges of Limited Jurisdiction—that is the association that represents the 93-plus municipal judges and justices of the peace in the state of Nevada.

I think you have heard from various testimonies that the justice court is the gatekeeper. We consider ourselves the gatekeeper of the cases that should go up to district court. Our function is to make sure only those cases based on sufficient evidence go up there. I have rarely had formal motions to suppress filed in my court. I think maybe that is a different practice in other courts, but I also think that the rules of evidence and the *Constitution* apply in justice court during preliminary hearings. The recent *Grace* case says that, and I do not think I can consider illegally obtained evidence in making a decision of whether to bind somebody over for trial. The process of having a motion to suppress filed would bring those issues to the front. People could litigate them; they could be briefed and those issues decided quickly. I think if somebody is sitting in jail, it is more important to decide those issues quickly and as soon as possible and, if there is illegally obtained evidence, to release them from custody.

We have avenues with which to follow up on this. The district attorney has various options to go back up to district court. There is a process called information by affidavit; you basically file a motion in district court that says that you disagree with the justice court's decision. If the district court agrees with you, they can file the information just as the complaint was, regardless of what the justice court decided down below. As a prosecutor, I did this more than once when I disagreed with a justice of the peace when he would not bind a case over; I filed the application for information by affidavit and the district court judge—not always, but sometimes—agreed with me.

Another avenue is the grand jury. In the *Grace* case, a writ was filed. I think the *Grace* case is important because it points out that the motion to suppress is based upon the rules of evidence in Nevada, as well as the *U.S. Constitution* and the *Nevada Constitution*. I took an oath to apply those in deciding evidence. Potentially, if the Legislature eliminates a formal motion to suppress, I do not think it resolves the issue. I think the unintended consequence is going to be that during preliminary hearings I will have a defense attorney say, "Your Honor, that is great; however, this case is based upon a stop where the state never articulated the reason for the stop, the officer never explained why the stop was made, and we are asking you not to bind over because there is no proof it was a constitutional stop." As a justice of the peace, I think I have to make a constitutional decision in that case.

In all fairness, not every justice of the peace agrees with me on this. I talked to two or three justices of the peace yesterday afternoon, after we became aware of this. There are many who think constitutional issues should be reserved to district court and that they should not be hearing motions to suppress. I disagree. The limitations of justice court have been batted back and forth for years. We know we are a court of limited jurisdiction. This body—the Legislature—decides what our jurisdiction is: what kind of cases we can hear, what our civil authority is. Preliminary hearings are a creation of the Legislature. They are not constitutionally mandated; they are a legislative function to screen the cases appropriately that should go up to district court.

I do not think whatever decision we make in these cases is constitutionally binding on the district court; I think these issues can be revisited in district court. The defense can revisit the issue; the state can revisit the issue. I think the function of the justice court should continue to be to screen the cases and not bind over inappropriate cases.

I wholeheartedly agree that these motions should be made in writing. I have had motions come up orally during preliminary hearings, "Move to suppress, Your Honor." "On what basis?" I ask. Clearly, counsel knew about this before the hearing started, so judges should not have to consider these because I think the rule requiring a written motion on a motion to suppress applies in justice court, and I will not consider it.

Those of us who are involved in the criminal justice process know the whole system is based on continuances. The statute says, right now, that once somebody is arraigned there should be a preliminary hearing within 15 days. I cannot tell you the last time I had a preliminary hearing within 15 days. They are continued for many reasons: for discussion, for discovery,

for negotiations, for waiting for the blood evidence. The whole process works on continuances happening over and over again. I think there is plenty of opportunity to write a written motion, and the defense is going to have to articulate a constitutional reason why the evidence should be suppressed.

I would hope that if I was ever accused of a crime—and the question was whether I get out of jail now or I get out of jail six months or a year from now when the district court hears the case—I would prefer that issue to be heard now, the question resolved, and maybe I get out of jail. I think it is important. I think I have an oath to apply that and I think the Supreme Court's argument in *Grace* is that is a constitutionally required function.

Several states have completely changed the way they do preliminary hearings. Oregon's preliminary hearings are completely based on hearsay evidence—the officer comes in and he reads his report, and the judge makes a decision based entirely on hearsay. It is a much more streamlined process, and I think that is a discussion that we could certainly have in the future if we want to change the way we do preliminary hearings. However, without changing the rules of evidence and our obligation to the *Constitution*, I think those issues still have to be resolved. Maybe there will not be a motion to suppress but I do not think that resolved the underlying question.

I would be happy to answer any questions the Committee has. Again, just as the other witnesses, I am reluctantly appearing here today, but I think I ought to represent my association.

Chairman Yeager:
Thank you, and for the lawyers on the Committee, it is not often we have a chance to ask a justice of the peace some questions of our own. Have you had a chance to take a look at the amendment that was proposed by the public defenders? If so, I would like to get your thoughts on it. If that amendment were to be adopted, would that change your position on the bill in any way, or would it stay the same?

Judge Higgins:
I have not had a chance. I only became aware of the amendment yesterday afternoon. I think, from what I heard from testimony, that it would resolve our issues.

Chairman Yeager:
I will not hold you to that. I will give you a chance to look at that amendment and digest it.

Assemblyman Watkins:
I listened to your testimony and I agree that preliminary hearings are statutorily created, but if we are going to ask a justice of the peace to hear evidence, then I have a hard time understanding how we are going to ask the same judge to ignore the *Constitution*. If this bill were to pass in its current form, what would be the process for you if a constitutional issue were in play in regards to the Fourth Amendment? Would you have to stop the hearing and

direct the parties to go to the district court? Would you hear other parts, or would you stop the entire hearing? Where would you go as a justice of the peace?

Judge Higgins:
I believe I can speak for myself, but I know other justices of the peace disagree with me about this. At the close of evidence, I think the defense attorney would tell me that I could not bind the case over because it was clear from the testimony, during cross-examination of the officer, that he did not have a valid constitutional reason to stop Assemblyman Pickard on the street to find something in his pocket. I think I would be told that I could not bind the case over on unconstitutionally obtained evidence.

If it were I, I would not stop and ask the district court to make that decision. The preliminary hearing is a much lower standard; it is probable cause—may a person have committed the crime? The U.S. Supreme Court says it is slight or marginal evidence, it is not proof beyond a reasonable doubt, and any inferences are drawn in favor of the state. It really is just a gatekeeping function, but I think my oath and what the Supreme Court has said about the *Constitution*—and the rules of evidence applying in justice court—I am going to have to make a constitutional decision on that. I think the unintended consequence is going to be that the state is not going to be advised of the motion to suppress issue until the middle of the preliminary hearing. If the state is aware of a motion prior to a hearing, they will have witnesses in court to cover the issue. If the state is not advised of that, there is the chance they would come to the preliminary hearing with only the witnesses on the very narrow bind-over question, but not have witnesses available on a potential question of constitutionality.

When I was a prosecutor I wanted to know everything in advance; I wanted to know what was going on when I walked into court. I cannot speak to that, however; that hat came off my head a long time ago. I would want to know in advance, but I think I now have to decide the issue. I think the argument will be that I cannot consider the stop because there was no reason to search the Assemblyman, and I would be asked to not bind over. There is a chance I would not bind it over. Now, district court could disagree with me, and I think there are avenues that relieve that. I hope I answered your question, Assemblyman Watkins.

Chairman Yeager:
I do not see any further questions. Thank you, again, for your testimony.

Assemblyman Elliot T. Anderson:
Is there anyone here from the Attorney General's Office? I had a question about the letter that was sent in (Exhibit E).

Chairman Yeager:
It does not appear that there is anyone here. I would invite you to follow up with them offline. I know there was a letter submitted by the Attorney General that is on the Nevada Electronic Legislative Information System (NELIS). Is there anyone else in opposition to the bill? [There was no one.] Is there any neutral testimony?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I am neutral on the bill for two reasons, which I will explain. I am leaning towards support with the compromise bill that the District Attorney's Office and Senator Ford agreed upon. I also appreciate the many discussions Senator Ford has had with us regarding this bill, and looking at it from a law enforcement perspective, we certainly support the intent of what he is trying to do. We are very sensitive to the need to increase and maintain public trust, building relationships with the community—obviously illegal stops on our citizens erode that trust. At the Las Vegas Metropolitan Police Department, we train our officers about the exclusionary rule, and officers in the field know that if they make an illegal stop the evidence will be suppressed. That has been taught for years. When I went into the academy in the late 1980s, it was taught. That is not going to change.

As the District Attorney's Office spoke about, there are often gray areas in these cases. The case that resulted in the Supreme Court decision was a case where an officer saw someone who looked very young and who appeared to be intoxicated. When the officer approached and stopped the person, the person presented an identification card—I believe it was a California driver's license, if memory serves me correctly—and that identification card showed that they were actually over 21 years old. The officer went a step further because the fact of the matter is that people lie to the police. The officer ran the license through a computer to determine if it was valid or if the person was, in fact, over 21 years of age, and I think that is where the distinction and the gray area comes in. Theoretically, once the officer is presented with the driver's license, one could say that the officer has no further reason to detain that person, and detaining them past that point to run the license or verify information has now stepped into the realm of an unlawful stop.

I think unlawful stops are very rare. I know our men and women in uniform are out there every day with the intent of protecting the public and upholding justice, not with the intent of conducting illegal stops on the citizens in our communities. I think it is very rare that those stops are done intentionally, where an officer says, I am going to go out today and just stop somebody for no reason. I think 99 percent of the time it falls into that gray area.

The other reason that I am neutral is because I believe most of this bill falls within the realm of the courts; how a motion to suppress evidence is made and where that motion is heard is not really on the law enforcement side of things. It belongs to the courts. With that, I would be happy to answer any questions.

Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office:
We come to the table neutral today, based upon the amendment provided by Senator Ford. I want to thank Senator Ford for working with us and addressing some of our concerns.

I wanted to start off by reading our mission statement. The Washoe County Sheriff's Office is, "Dedicated to preserving a safe and secure community with professionalism, respect, integrity and the highest commitment to equality." Our vision statement:

> . . . strives to ensure public safety by building trust and creating partnerships within the diverse communities in which we serve. We will promote the dignity of all people supported by our words and actions through our open communication while fostering an environment of professionalism, integrity, and mutual respect.

Our field training officer program and our academy are based on the tenets of lawful interactions with our public. Our officers act in good faith and ensure their transaction is lawful, based upon whether it is a call for service, reasonable articulable suspicion, or probable cause. Should an officer act in bad faith and outside that scope of the Fourth Amendment, the exclusionary rule has applied, will apply, and will continue to apply.

Chairman Yeager:
Is there anyone else who is neutral on the bill? [There was no one.] Senator Ford, I invite you back up to make concluding remarks.

Senator Ford:
I do not think it is a secret that one of my passions is criminal justice reform and making sure we have a fair criminal justice system that works for everybody. While the opposition may have been here saying that they were reluctant, I am back up here now saying that I feel sick. Contrary to the statement that legislative goals have changed with this bill, they have not. The legislative goal remains exactly the same. When I brought this bill, I never anticipated that there would be opposition to the original form because all I was saying with this bill was that we were going to continue to act like we have been acting for 50 years. That is all I am doing: restoring a law that has been in place for 50 years, that what you find from an unconstitutional stop is suppressed. It is an effort on my part to simply restore to your constituents their Fourth Amendment right to be free from unreasonable searches and seizures. I presented that argument to those who opposed the bill, and they were unpersuaded. They opposed the bill, and I began to look for a compromise, for a way to proceed with protecting the constitutional right under the Fourth Amendment, and at the same time appease what the opposition was in that regard.

I do not practice in this area of law so, Assemblyman Fumo, I have the utmost respect for your experience here because I viewed this as a simple trade. We are trading a constitutional protection under the Fourth Amendment for a procedural process in the courts on how we enforce that protection. That is what I viewed this as, as getting back to where we have a Fourth Amendment right to be free from unconstitutional searches and seizures, and the only thing we are changing is what the procedure looks like to assert that right in court.

Clearly, I am wrong about that. I think there is a lot of discussion going on back and forth that has me wondering if this is really the fairest trade. I have to place myself, at this juncture, at your mercy. I have to punt this decision to your Committee because if what I have brought before you right now is something that this Committee determines to be insufficient for the purposes of moving this ball forward, then I completely defer to you.

The amendment Mr. Piro brought is indeed unfriendly (Exhibit D), and it is because I gave my word to a colleague that I would not accept amendments on this bill. It is not because I disagree with the notion of drafting and filing a motion in justice court, but my word is what I gave to my colleague, and I am attempting to keep my word. Again, I am at your mercy at this juncture. Chairman Yeager, do with the bill as you see fit: if it is an amendment killing it, I do not know what else you could do. Again, I do not want the rhetoric on the court process to minimize what this bill was really about, which is a constitutional protection that we were trying to restore to your citizens.

Chairman Yeager:
Thank you, Senator Ford, for the presentation this morning, and thank you for your work on this measure. I know it is a delicate balance here, and we appreciate your efforts. I will go ahead and close the hearing on S.B. 368 (R2). I believe Senator Spearman has been waiting very patiently in the back, so we are going to go next to Senate Bill 488 (1st Reprint).

Senate Bill 488 (1st Reprint): Revises provisions relating to sexual offenses. (BDR 15-1086)

This bill revises provisions relating to sexual offenses. Thank you for your patience, this morning and welcome back to the Committee.

Senator Pat Spearman, Senate District No. 1:
Thank you, Chairman Yeager. I just received a really good education in criminal justice reform, so the wait was not in vain. I am here this morning to present S.B. 488 (1st Reprint), which revises provisions relating to sexual offenses.

According to federal law, human trafficking offenses are separated into two categories: commercial sex acts and involuntary servitude. Commercial sex acts are sex trafficking that is induced by force, fraud, or coercion, or in which the person who is induced to perform such an act has not attained the age of 18 years. Involuntary servitude is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services using force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

According to the National Conference of State Legislators, approximately 293,000 children in the United States, mostly girls aged 12 to 14 years, are at risk of being exploited and sex-trafficked. An estimated 70 to 90 percent of youth victims of sex trafficking have histories of sexual abuse. According to the Nevada Department of Public Safety, in 2015 there were 165 cases of commercial sex acts and 2 cases of involuntary servitude that were not subsequently cleared. Based upon data and the finding that the state of Nevada is one of the states most affected by human trafficking, the Governor issued Executive Order 2016-14 to establish the Nevada Coalition to Prevent the Commercial Sexual Exploitation of Children. The Governor serves as chair of the coalition, and the Administrator of the Division of Child and Family Services of the Department of Health and Human Services (DHHS) serves as the co-chair. Among other duties, the

coalition is required to prepare comprehensive, statewide strategic plans with recommendations to address federal law related to sex trafficking. The coalition must also provide an annual report on or before October 1 of each year.

In a few minutes, you will hear the heart-wrenching testimony of one of the victims of this hideous act. Senate Bill 488 (1st Reprint) was amended in the Senate to make revisions to strengthen Nevada's laws relating to sex trafficking and to improve the quality of services to victims of sex trafficking, pursuant to *Nevada Revised Statutes* (NRS) 201.300.

Section 1, as amended in the Senate, expands the list of crimes to provide that a person is also guilty of sex trafficking if he or she facilitates, arranges, provides or pays for the transportation of a person to or within Nevada for the purpose of engaging in unlawful sexual conduct or prostitution, or if that person is a child engaging in certain acts relating to pornography involving minors; if the person advertises, sells, or offers to sell travel services that facilitate the travel of another person to Nevada with the knowledge that the person is traveling for the purpose of engaging in sexual conduct with a victim of sex trafficking, soliciting a child who is a victim of sex trafficking, or engaging in certain acts related to pornography involving minors; or travels to or within Nevada for the purpose of engaging in sexual conduct with a victim of sex trafficking with the knowledge that the victim is being compelled to engage in sexual conduct, prostitution, or certain acts relating to pornography involving minors.

Section 2 of the bill will assist victims of sexual trauma who are eligible for Medicaid by requiring DHHS to develop a Medicaid service package called the Sexual Trauma Services Guide. We know, historically, that people who have been in involuntary servitude frequently pay the price over and over again in their lives. We have not done enough, I do not believe, to help victims once they are liberated from that, to get back on their feet and to live a good quality of life. This bill provides for that. The information contained in the guide must be posted on the Department's website and be made available in writing upon request.

Finally, section 3 requires DHHS to hold periodic informational meetings to coordinate the efforts of key stakeholders to improve services for victims of sex trafficking and achieve the goals of the statewide strategic plan developed by the coalition.

I urge your support for this very important piece of legislation that will strengthen our laws concerning sex trafficking and will improve the quality of services to victims of sex trafficking. Recently in the Senate, I believe we heard an Assembly bill that would extend the time for which victims of sex trafficking could sue the perpetrator [Assembly Bill 145 (2nd Reprint)]. I believe S.B. 488 (R1) is a companion bill because, in my opinion, anyone who engages in this type of conduct—especially with a child. . . . I am just glad I am not God. With that, Chairman Yeager, I would like to turn the microphone over to Ms. Mull, who will tell you what it feels like and how much you have to struggle just to get over those heinous acts.

Chairman Yeager:
Thank you for your comments. Ms. Mull, please go ahead.

Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence:
I am here today in support of S.B. 488 (R1). At the beginning of session, at the first meeting of the Women's Legislative Caucus, afterwards Senator Spearman approached me and I shared a little bit of my story—30 seconds worth. She asked me what we really need in this state regarding sex trafficking. I honestly thought she was talking about next session.

Every year since 2011, states have been awarded a rating from Shared Hope International, which is the leader in policy relating to domestic minor sex trafficking. It is based off of several factors. States are scored on different laws and policies relating to different factors. In 2011, Nevada had an F; as of 2016, I am happy to report that we have a B-. We have made a lot of progress, especially compared to every other year. One area that we have a zero in—and have had, and continue to have—is sex tourism. That was what I felt was one of the main needs in Nevada, especially and probably because it related most specifically to me.

If you will bear with me, I am going to read from here on out so I can get through this. As I testified before this Committee in 2015, while touring the National Center for Missing and Exploited Children in Washington, D.C.,—which serves as the central repository in the United States for information relating to child victims depicted in sexually exploitive images and videos—I learned that the unit had reviewed more than 132 million images and videos since it began in 2002. Their focus is to assist federal and state law enforcement agencies and prosecutors with child pornography investigations, plus help law enforcement identify victims so that law enforcement can locate and rescue them from exploitative situations. These images include children from all around the world, including many in the United States and, most likely, images of myself between the ages of 11 and 13 years old, being sexually abused by multiple men. They are still floating around in cyberspace, and they are still being traded.

The notion that sexual exploitation is solely the result and responsibility of those partaking in the picture-taking or physical abuse is beyond me. Maybe it is because members of normal society can hardly wrap their minds around the act itself; the public cannot see how the abuse is fueled by those who only view child pornography. It is a dark world in its systems and hierarchies. The majority of those engaged in these clubs, rooms, societies, et cetera, participate in what is known as "pic for pic." In essence, it means, "I will trade you a picture of child pornography that I own for a picture that you own." This allows the members to screen for law enforcement and to see if new buyers have what they call "quality" images. Unfortunately, this fuels a cycle of violence because an image that is easily obtained by a new child pornography viewer is going to be old, out of date, and most likely already owned by other members. In my case, I became the way for one individual to have new photos that he could trade. Over time, it progressed and he went from trading pictures to trading me.

Not every member of these groups physically rapes you. Some watch. Some bring their own children so they can watch. Some facilitate, some organize, some transport. Some watch from webcams, some in the room. Some pay to ship victims to other events and some—like one individual in my case—drove across the country from the Nevada-Utah area to "meet" me. Let me be clear: in cases of both adult and child sex trafficking, those in this dark world who participate in and, specifically, those who facilitate sex tourism encourage the commercial sexual exploitation of children and adults and create incentives for traffickers and facilitators to increase profits. This furthers the underground nature of trafficking offenses by interfering with detection of trafficking crimes that are disguised as legitimate travel services, legitimate transportation or advertising other than the crimes that they actually are—trafficking.

Many people continue to believe that sex tourism only exploits children and victims overseas, but it is fueling demand for children and adult victims here in the United States, and specifically here in Nevada. Federal law already criminalizes child sex tourism, which is defined to include arranging, inducing, procuring and facilitating the travel, with knowledge that the traveler is traveling through interstate commerce or foreign commerce for the purposes of engaging in illicit sexual conduct, and the arranging was done for commercial advantage or private financial gain. Many states including Alabama, Alaska, Hawaii, Louisiana, Missouri, New York, Tennessee, and Washington, have expanded upon this to also protect adult victims who fall prey—not only to pimps—but also facilitators of their victimization. This is why it is so crucial for Nevada to join them with S.B. 488 (R1) and recognize that as a society, it is not only the stereotypical pimp or the individual locking girls in their basement who are traffickers. Those who facilitate, advertise and make arrangements for victims are more than bystanders; they are traffickers.

I am haunted every day by other children who are in those pictures with me. What happened to them? Did they make it, are they functioning, are they even alive? How are people still trading our pictures online? Please help me and others like me to take one more step to protect children and adult victims of sex trafficking by holding all involved in the process accountable. It is hard to express what it feels like to know that you have been bought and sold, but I can tell you that when survivors like me speak out, it is not because we want people to feel sorry for us or feel pity for us; it is because we want our stories to mean something. We need them to mean something. We need to know that what we went through—and continue to go through—when we share our stories matters. We need to protect those who come after us. Please help us today and vote S.B. 488 (R1) out of Committee favorably. Help stop another young girl from having to sit in this chair ten years from now.

Chairman Yeager:
Thank you for sharing your testimony this morning, Ms. Mull. Senator Spearman, did you have anyone else you wanted to present before I open the hearing up for questions?

Senator Spearman:
I think there may be others who want to come up and testify, and I just want to say thank you to the district attorney's office and to the public defenders for working with us to try to get this bill as good as we can and not waste one more year without protecting some of the most vulnerable members of our community. With that, I will step back, unless you have questions now.

Chairman Yeager:
I think we do have some questions or comments. I am not sure to whom they will be best addressed to, but we will go through the list and make that determination.

Assemblyman Watkins:
I have two questions, but I will try to be quick. The first one is a little more technical in nature. Section 1, subsection 2(a), subparagraph (6) says it would be a crime to travel "to or within this State by any means for the purpose of engaging in . . ." any of the prior paragraphs. The thought occurred to me, and I think that this is correct, that this would be a low standard that is not applied to any other crime. Travel is not a crime; you could travel to the state of Nevada for the intent of murdering somebody, but if you land in the state and do no other furtherance of that act, I do not think you would be guilty of attempted murder. If the intent truly is if you buy that plane ticket and jump on the plane with the idea of, "You know what? I think I am going to go engage in illegal prostitution or child pornography," but then you land in the state and you do nothing else, you would be guilty of this crime.

Senator Spearman:
Is that your question?

Assemblyman Watkins:
That is the question. Is that the intent?

Senator Spearman:
The intent is to make sure that all of the elements and all of the processes, all of the steps that these monsters do, are captured in law.

Assemblyman Watkins:
I appreciate that, and everybody wants that, but how far back can we go in time? If a person wakes up in the morning with the intent in their mind, have they now committed a crime? Is buying the plane ticket the crime? Where do we go in that chain? These monsters have these ill intents from the moment they wake up in the morning, but we cannot just go in and start arresting people for thoughts in their minds. We do not do that as a society. We do it based on actions, and buying a plane ticket is not a crime. Where do we balance constitutional protections and freedom of thought?

Senator Spearman:
I am not an attorney and I do not play one on television. I will not pretend to know the technical answer, but I will say to you that I worked on this bill along with Ms. Mull. To use your example, if someone gets on a plane with the intent to go and commit murder, getting on the plane is not a crime but the murder actually is. The consideration for the severity of the punishment would include the act of consciousness, would include premeditation, and that is what section 1, subsection 2(a), subparagraph (6) is addressing.

Assemblyman Watkins:
Ms. Mull, I received your email yesterday with many of your thoughts, and I really appreciate everything that you provided to the Committee in preparation for this hearing. What are your thoughts in regard to why everybody thinks Nevada is the epicenter for human trafficking? Do you think it is because, as some people describe, we are a house divided? We have prostitution that is legal in some areas and not legal in other areas. Do you think it would be better if it were illegal throughout the state? Do you think it would be better if it were legal throughout the state, or do you think that has no influence whatsoever on the fact that it is such a problem here?

Kimberly Mull:
Are you asking for my personal opinion? I believe that the perception from everywhere outside of Nevada is that prostitution is legal everywhere in Nevada. I think that causes a lot of issues. I know girls, personally, who still work in the lifestyle in Las Vegas and Reno and think that they are perfectly fine. Their pimps tell them it is legal here, and they do not even know that they are breaking the law until they are arrested. They are victims because they are being trafficked, but I think that also incites with buyers as well, who are also fueling that cycle. The studies that I am aware of in the state have shown that most buyers, or at least a large percentage of buyers of commercial sex in Nevada, are actually Nevadans. I believe they probably already know what the law is.

Personally, I feel that prostitution should be illegal; there should not be legalized prostitution. I feel that there is plenty of evidence from places such as Denmark—which has decriminalized prostitution as a country—to show that even though they have decriminalized prostitution they have four times the number of trafficking victims as Sweden—even though Sweden's population is 40 percent larger than Denmark's. This notion that, if we make it legal we make it better really just makes it so that traffickers do not have to hide and victims are less likely to be noticed as victims. If they are alongside other girls, people are not going to be asking the questions that they need to be asking to know that. That is my personal opinion.

Assemblywoman Jauregui:
I wanted to thank you for bringing the bill forward because this morning I read that, despite us having a B- now, Nevada still ranks eleventh in human trafficking and our case numbers are actually increasing. I read in the article this morning that, in 2015, we had 133 cases and

last year we had 166. I appreciate this bill, I want to thank you for bringing it forward and, contrary to my colleague, I think we do need to have stricter laws on those people who are coming to Nevada to commit crimes against a vulnerable population.

Assemblyman Pickard:
I agree. Thank you for bringing the bill and, Ms. Mull, I am constantly amazed at your bravery. There were two points where I think—even though I am very supportive of the bill in general—the language seemed to be really broad. I think we need to at least get on the record the bill's intent. We talked about travel already. The other concern I have is under section 1, subsection 2(a), subparagraph (4) where we are talking about a person who provides or pays for transportation, and the language uses "or." Any one of these will apply, "Causing the person to enter any place within this State in which prostitution is practiced, encouraged or allowed . . . ." That is really broad language, "any place." I wonder if you could articulate what the intent is for me. If they happen to drop someone off at a street corner completely unaware that it is a spot where prostitution takes place—I am thinking about someone who is not familiar with the Las Vegas Valley—this language might ensnare them. I want to make sure we are clear, on the record, what you intend by this.

Senator Spearman:
We went back and forth for two or three weeks trying to figure out how to get the language to a place where it would work. As you heard Ms. Mull say, the ways in which these people operate are usually under the radar because they generally follow what society considers to be "acceptable." The question about an unaware taxicab or Uber driver was raised when we were looking at the language. The crux of the problem is whether an individual knows. For the purposes of prosecution, I will go back to the example of someone who commits murder. Here is a more recent example: Two days ago in Manchester, England, a horrible crime was committed, and the brother of the coward said he knew that his brother was going to do this. He did not know when and he did not know where. I believe the authorities there are considering charges against the brother. The crux is, does the individual know?

Assemblyman Pickard:
I appreciate that, and I think that would be appropriate, but that is not what the language says. I am now looking specifically at the beginning of subparagraph (4), which only says "Facilitates, arranges, provides or pays for the transportation . . . for the purpose of causing a person to enter any place within this State in which prostitution is practiced . . . . This is a functional aspect; if the person merely facilitates or provides the transportation, if they are completely unknowing—and the Uber driver is exactly the one I was thinking of—now they are ensnared by this without any knowledge that this was going on in reality.

I am really concerned, and ultimately I am concerned about the constitutionality of this bill in that respect. I would hate to see this bill go down simply because the language was overbroad. I am wondering if maybe, through the process here, we can tighten it up and make the language so that it is defensible.

Senator Spearman:
As I said before, this was a part of our ongoing discussions. I would argue that whenever I go to a store there is usually a sign that says the store prosecutes shoplifters to the fullest extent of the law. I am not bothered by that, because I am not going in to shoplift—I really am not. If something were to fall and I picked it up and I put it back on the shelf but the camera did not see me put it back on the shelf, I think that it is plausible that they would understand that this was not a conscious act to commit a crime.

I want everybody on the Committee to understand that Ms. Mull said she was 11 years old. If an Uber driver takes an 11-year-old to their grandmother's house or something like that, that is fine. If, in the course of the investigation, the officers or the detectives find that this was part of the process, that there indeed is another element associated with this crime, if the Uber driver is part of the process, then they know. You only find that out during the investigation, so the language in this bill is not trying to cast a broad net that would ensnare innocent people; it is trying to make sure that we capture the people who are involved in the process. This bill seeks to capture not just the people taking the pictures, not just the people who are trading the pictures, but also the people who actually get the victims to where they are exploited.

Assemblyman Thompson:
I want to change gears a little bit and go to section 2, subsection 1, where it says that DHHS, "shall develop a Medicaid service package called the Sexual Trauma Services Guide. . . ." Is this a package with things that a 12- to 14-year-old would need, or is it merely a guide that says you can call this place, you can go here, et cetera? I just want to be clear on that. I may also have a follow-up question.

Senator Spearman:
This section is not either/or; it is both/and. Many of the victims who are liberated from the world of sex trafficking literally have nothing, no one, and no place to go. In conversation with DHHS, they actually suggested the idea that since this is available—but a lot of the victims do not know it—the act of giving that information to them and then helping walk them through the steps to obtain the services that they qualify for is part of the package. It is part of the guide. It is part of the entire schematic, if you will, to bring those victims back to the place where a decent quality of life is actually possible and they can see themselves moving forward.

Assemblyman Thompson:
In your opening statement, you mentioned that a lot of sex trafficking victims are preteens or teenagers. Is the guide something tangible or is it literally a web link or something? You have to realize that for teens and preteens, their world is more centered on electronics. You are also going to have to look at confidentiality and privacy because victims oftentimes do not want people to know. Is there going to be a link to those services or do they have to go to an office to physically pick up a package? Can you help me understand this?

Senator Spearman:
When someone who is 11 or 12 years old is liberated, they are then placed into a safe place, usually with social workers and a number of wraparound services that help them try to get back their life. Within that process, there are certain services that they are eligible for, but not everybody may know about. As a part of that process then, DHHS will have a packet or brochure that will say these are some of the things that you are eligible for, but the other thing that they will do is they will assist the victim in applying for and walking through the services to the greatest extent possible. Those who are underage will still be in a different type of environment than an adult.

For an adult, what you are really talking about, again, is educating the victim that the guide is part of what he or she is eligible for and this is how to go about applying. As I said, it is not an either/or, it is a both/and. Yes, there will be a written document. Yes, there will be something on the website, but there will also be procedures in place whereby employees of the Department can assist those victims with getting their life back on track.

Assemblyman Thompson:
Just to make it totally comprehensive, a big part of it has to be on the other end at the Department—whoever needs to be trained around this—because it looks like this is built around trust. A young girl is not going to trust adults. It has to also work on the end of the Department as well, instead of just saying, "Here is a brochure," there has to be some training if this is truly going to be effective. Just words of thought.

Senator Spearman:
Thank you, Assemblyman Thompson.

Assemblywoman Krasner:
Senator Spearman and Ms. Mull, I just want to thank you for bringing this important bill to protect children who are trafficked. We have to do everything we can to protect children, so thank you. Ms. Mull, you are so brave. Thank you so much for continuing to share your story with people who might not understand how real this is, and to people who maybe are in the room or watching on a video who can say, "Wow, look how brave she was. I can be brave and come forward too." Thank you for bringing this important bill to protect children.

Assemblywoman Cohen:
Thank you both for bringing the bill and being here today. I have a couple of questions having to do with hypotheticals. The first one—and I have mentioned this before during session so I just want to make sure we have covered this—is what happens when you have a head trafficker who has minors working for him, and the minors are facilitating some of the trafficking? Where does the minor fall under this?

Senator Spearman:
That is beyond my pay grade, and I will punt to someone who works in that area to tell you what will probably happen.

Assemblywoman Cohen:
My other question, and I think I may have mentioned this in 2013, is I know that we have people who come to work at the legal brothels. I had a client years ago who worked at the legal brothels every once in a while and she had a husband who kind of cajoled her into prostitution. He did not force her; he just was a scummy guy who pushed her along. I am especially looking at the amendment from the Nevada District Attorneys Association (Exhibit F) with the word "inducing." Where does a guy like that fall into this? He really did not make her, he did not force her, he did not traffic her, he just said, "Oh, honey, the bills are due; you really need to go do this." Is someone like this going to fall into this and end up doing time because of being a jerk and being a scumbag? How do you see someone like that playing into this bill?

Senator Spearman:
Again, I am not an expert in the law so I will not even attempt to answer the question. It would be my hope that if that scumbag was caught, that they would begin digging a special hole for him. I would just leave that to the experts though. I do not know the technical answer to that.

Assemblywoman Cohen, you bring up a good point. Part of wrestling with how to punish people that do these sorts of things is very difficult. They typically do things that people consider normal so as not to draw attention to themselves, but at the same time, they know exactly what they are doing. In some places, the language in the bill may seem very broad, but we really need to make sure that the guilty are prosecuted to the fullest extent of the law. Additionally, there is plausible reason to believe that persons who are innocent are innocent. We are really just trying to capture all of these steps.

Chairman Yeager, with your permission I would like to ask Ms. Mull to walk you through the steps of these crimes so you understand why we wrote the bill the way it was, and we have desperately tried, with all of the stakeholders, to make sure that it was something that everyone could agree with. If she can just walk you through the steps, you will understand why the bill is written the way it is, even with the amendments.

Assemblywoman Cohen:
Before you do that, I just want to put something on the record. While I certainly think that in my hypothetical scenario there is a special place in hell for that husband, I do not know if there is a special place in our prison system for him. I think we are dealing with people who are sometimes horrible people, but that does not mean that what they are doing is illegal. I just want to make sure we are putting that out there and that the language we are using is precise, to allow it to get at exactly what we want it to get at.

Kimberly Mull:
We are going to have district attorneys and defense attorneys speak about different aspects of this. As the Senator said, we have tried to work with everybody to make arrangements in the bill that will satisfy the stakeholders. I am not really sure that there is a way to walk everyone through every aspect of why this bill is written the way it is.

Assemblyman Watkins asked about a person who has traveled or is intending to travel to Nevada but has not actually done anything yet. I am the wrong person to talk to about that, because I wish to God that the man who traveled from the Nevada-Utah area to Texas when I was 13, that someone would have done something before it happened and not after. For that reason, I am a little jaded on that viewpoint.

I definitely feel that there needs to be clear intent. The last thing we want to do is to arrest people because they are completely oblivious to what is going on, but if someone knows or should know, then I think there is an intent aspect present, and I think that is what should be covered under this bill. My personal intention—and I believe the intention of most people in the process—was to make sure that those who are actively engaged in all aspects of trafficking are covered. The language and ideas were scripted from other states' laws. We are unique in Nevada in the respect that we do have legalized prostitution, and we made some tweaks with respect to that. From the research that we have done, other states have not had constitutional issues with these laws.

As far as husbands pushing wives or significant others into work in legal brothels, we do have pandering laws. Pandering is also a domestic violence issue under Nevada statute, although it is important to recognize that the federal and United Nations definition of trafficking includes, "force, fraud, or coercion." Coercion can include someone saying, "Hey, baby, we have to make rent this month. I hate to do this to you, and I would never ask this, but if you will sleep with my friend Johnny, he will pay our rent and cover it." So she does it that one time. The next month he comes back and says, "Hey, baby, I hate to do this to you, but construction has been slow and I do not have money to cover rent. I would hate for us to get put on the streets, so I need you to sleep with Johnny again." She says, "I am not a whore and I am not doing that." He tells her, "Well, you have already done it once so you are going to do it again." That is how the cycle starts. Before you know it, your husband or your boyfriend is now your pimp. Although it may seem like it was a small incident or just pushing, that is how the cycle starts.

No little girl grows up thinking that she wants to be a prostitute one day. None of us think that; it is something that happens to you and no matter whether you are a child or you are an adult, the more we can recognize as a society that there are individuals along that way who are making those little pushes, the better we can protect victims. It is coercion and it is fraud, not just force. The more we are able to step in and the more we are able to stop the abuse at the beginning, then the more victims we will be able to protect.

I realize that I did not really walk you through the steps of how the bill was written or how it was done. I think you are going to hear from more people today—some for the bill, some against—but that is the heart and the intent behind the bill and the heart and intention of why I feel the way I do, and those we worked with feel that this is an important piece of legislation.

Senator Spearman:
Chairman Yeager, I might add that when the bill was heard in the Senate, Mr. Vassiliadis testified that all of the airlines now have training for their employees so they can recognize when a passenger may be, unwittingly, a part of a sex-trafficking ring. Sex trafficking is not something that is localized. It is something that other industries recognize they have to do something about to help the victims of this crime. I urge your support, and I will step back, unless there are other questions from the Committee.

Chairman Yeager:
Thank you, Senator Spearman. I hate to do this because I know other members have questions, but at this point, we just have to move on. We have two other bills to get through today, so I will invite members to take questions offline. I will now open the meeting for testimony in support of S.B. 488 (R1). We have a number of people signed in to testify in support and I will ask, out of respect for others and the other two bills we are going to hear, to keep your comments as brief as possible.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
I am here on behalf of the Nevada District Attorneys Association in support of S.B. 488 (R1). I have two individuals with me down in Clark County: the Chief Deputy District Attorney of our Special Victims Unit, Jim Sweetin, and Chief Deputy District Attorney Sam Martinez, who handles these cases specifically. I do not know, Chairman Yeager, if you would like them to answer Assemblywoman Cohen's questions with respect to the husband-wife situation, because I know we are pressed for time.

Chairman Yeager:
That would be fine. We can go down south and take testimony, if you want to address the points that were raised. Again, I would just ask you to please keep your comments brief.

James R. Sweetin, Chief Deputy District Attorney, Clark County District Attorney's Office:
I will try to address Assemblywoman Cohen's issues. Mr. Martinez is also here; he knows these issues much better than I do, and can potentially give the Committee specific examples. Assemblywoman Cohen had a question about a situation where a husband or another individual was in some way talking to a victim of potential sex trafficking or prostitution, and suggesting to her to perform some sort of sexual act. Under the statute, that would essentially be an inducement. If there is force involved, that ultimately becomes sex trafficking. If there is a lack of force, then it is pandering.

I wanted to mention Assemblyman Watkins' question about section 2, subsection 2(a), subparagraph (6). I can understand where one would think that this statute might be criminalizing successive thoughts in the head, but it is really much more than that. There are many statutes in the law that are set up that essentially punish the actions leading up to a crime. The reason for that is we do not want the ultimate crime to happen. We see that in

conspiracy to commit murder, where individuals meet with each other to talk about potentially doing something that never happens. The crime occurs at the time they plan it. In our luring statute, we also have individuals who reach out to children many times—in a typical case—and talk to them about coming to meet them at some location. They might never have an intent to actually meet with the child, but the actual crime itself is making that call.

In this paragraph, we are talking about an individual who is traveling with the purpose of engaging in sexual conduct. There is an additional caveat in that statute with knowledge that such a person is compelled to engage in such sexual conduct or prostitution. I would submit that the only situation in which you are going to be able to prosecute this is when you have an individual who somehow communicates that he is clearly interested in having sexual conduct with an individual who is being submitted to him. He knows about that, there are conversations that document his intent, and then he takes the extra step of coming to the location to do this very thing. I think that is the conduct that this particular statute is criminalizing; it is not just sort of buying a plane ticket—as you indicated—but I can certainly understand where you might feel that way in an initial reading of the bill.

There was also a question about section 1, subsection 2(a), subparagraph (4)(II), that talks about a person who enters any place within the state in which prostitution is practiced. I can understand that a reading of just that portion of the bill would cause concern. It sounds as if an individual who just walks into a place without knowledge of this particular activity and they really are not culpable, but if you continue reading the statute, you see that it says "prostitution is practiced, encouraged, or allowed for the purpose of sexual conduct or prostitution in violation . . . ." Therefore, this language describes a situation where the person is not just innocently walking in; in order to violate that statute it would have to be demonstrated that the person actually had this purpose or intent of sexual conduct or prostitution.

Chairman Yeager:
Mr. Sweetin, could you address Assemblywoman Cohen's question? She had a question about whether other minors or juveniles would be prosecuted under this bill if they were involved in the trafficking of another minor or juvenile at the behest of the trafficker. Would they be wrapped up in prosecution under this bill?

James Sweetin:
We talked a little bit about gray areas. In the course of a police investigation or prosecution, you must determine who are the victims in a case and who are the perpetrators in a case. Is it possible that a juvenile would be a perpetrator in a case like this? Yes, that is possible. Is it possible that they might be prosecuted as a juvenile? Yes, that might be possible, but you would have to look at the totality of circumstances to make that determination of whether they are being coerced into this lifestyle or whether this is a conscious decision by them to go forward.

Chairman Yeager:
I do not want to hold you to that. That sounded like a pretty lawyerly answer, but was the answer: perhaps? What I heard you say is that there is not a categorical exclusion. The only reason why I really ask is that over the course of the last few sessions I know there has been a shift in this Legislature to make sure that juveniles who are being trafficked are no longer treated as criminals, but treated as victims. I just wonder how that interplays here, with that generally being the intent of the Legislature.

James Sweetin:
I think the legislative intent, essentially, is to stop the criminal conduct and to punish it. I would submit that that is the Legislature's intent in creating any law. I will tell you that in the prosecution of these cases, the Clark County District Attorney's Office embarks on a victim-centered approach. We endeavor to understand who the victim is in these cases, and it is never our intent to further victimize that individual. I think that through the legislation that we have, we have to have lines drawn in regard to criminal activity. If someone has the mens rea and is going forward with a particular criminal activity, then they might potentially be culpable. These cases, as we have talked about, these gray areas are many times very gray in regard to who the actual perpetrators are and who is being forced to conduct themselves in a manner that might be consistent with a perpetrator.

Chairman Yeager:
Mr. Martinez, did you want to add anything?

Samuel Martinez, Chief Deputy District Attorney, Clark County District Attorney's Office:
Just very briefly. Thank you for this opportunity. There was a question regarding the language of "causing" versus "inducing," in section 1, subsection 2(a), subparagraph (4). "Causing" suggests, as Mr. Sweetin was saying, that we do not want cases going all the way through the commission of a crime. The goal of this law is to prevent children—and adults—from having to go all the way through and being sexually victimized. That is why we have NRS 201.295, which defines "induce" as, "to persuade, encourage, inveigle, or entice," and is the precursor for NRS 201.300. When you have a trafficker or a pimp who is encouraging a minor using words of encouragement or making promises—making a particular victim feel comfortable in engaging in this horrific conduct—we do not want the horrific conduct to take place. That is why the crime is complete when the inducement takes place.

Subparagraph (4) (I) says, "Causing the person to engage in prostitution." I think the word "causing" suggests and maybe creates a loophole where the state or the prosecution would have to prove that a sexual act actually occurred. Very rarely, if ever, is there going to be a "John" and a victim caught in the very act. Oftentimes when undercover operations take place, the act stops before anything happens and the victim reports what occurs prior with the pimp, as far as the encouraging and things of that nature.

Section 1, subsection 2(a), subparagraph (5) (II) says, "Soliciting a child who is compelled. . . ." Again, as the law stands in Nevada right now, when we are dealing with children under the age of 18, there is no force, fraud, or coercion element required for the state to prove that a child has been trafficked. All that the state has to prove—and I agree with this wholeheartedly due to the nature of children—is encouragement, persuasion, or enticement. This section suggests—and I believe it is inconsistent—that soliciting a child who is compelled to engage in sexual conduct that is inconsistent with how the law currently is. That is why we believe, at the District Attorney's Office, that the compelled and the causing language should be consistent with what is currently the state of the law, which is inducing.

John Jones:
If I may piggyback off Mr. Sweetin and Mr. Martinez, the Nevada District Attorneys Association has proposed an amendment (Exhibit F) to S.B. 488 (R1) and I believe it has been accepted by Senator Spearman. I just wanted to point out to you that in *Ford v. State*, 127 Nev. Adv. Op. 55 (2011), compel is defined in the same case as to "cause or bring about by force, threats, or overwhelming pressure." Going to Mr. Martinez's point about why we do not want to use "compel" with respect to children, nowhere else in the sex trafficking statute does it require any type of force showing with respect to children.

There is also another amendment sponsored by the Nevada Coalition to End Domestic and Sexual Violence. I do not know if they want to speak to their amendment, but I do believe it has been accepted as friendly by the sponsor.

Chairman Yeager:
I do not want to make anyone do any additional work but, particularly for those of you who prosecute these cases, I think it would be helpful if you could provide the Committee some examples of real-life scenarios that you intend to capture by the language added to the bill. Perhaps you could include some examples of the hypotheticals you have heard today that are not intended to be captured by that language. I think that would be helpful for the Committee to better understand the intent of the language.

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

Brandi M. Planet, representing Dignity Health-St. Rose Dominican:
We submitted a letter in support of S.B. 488 (R1) (Exhibit G). I wanted to briefly note for the record that Dignity Health has invested more than $1 million to develop and implement its survivor-led Human Trafficking Response Program. As such, it supports all efforts that help victims of sex trafficking; especially those that will help ensure the victims get necessary services.

Marlene Lockard, representing Nevada Women's Lobby:
I very much want to thank the bill's sponsor, Senator Spearman, for bringing this bill forward. In addition, Ms. Mull had the courage to come and bring her story forward. I think it is so important for all of us to listen because we do not understand how it happens and how all of a sudden we are dealing with this huge issue in our state. Without first-account testimony, we do not know how to craft laws to try to prevent it. With that, we are strongly in support of S.B. 488 (R1).

Kerrie Kramer, representing The Cupcake Girls:
We are also in strong support of this and would like to thank Senator Spearman and Ms. Mull for bringing this piece of legislation forward.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We would also like to thank Senator Spearman for bringing the bill forward. We strongly support it, and we agree with the comments about the courage shown by Ms. Mull in bringing this information forward. We thank them for their efforts.

Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office:
We, too, are here in support. With your permission, I would like to read a three-sentence email response from one of our counterparts at the Reno-Tahoe International Airport. Assistant Federal Security Director (AFSD) Jim Dale could not be here today but he asked me to read on his behalf. It says:

> Based upon the information in S.B. 488 (R1) and work I have been doing with Awaken in providing assistance to victims of sex trafficking aboard aircraft, I would be in support of this initiative. Additionally, I have spoken with AFSD Chris Stack, who oversees our Transportation Security Administration workforce in Reno and the current Department of Homeland Security initiatives to combat sex traffickers. We are both in agreement and support of this measure. I will forward your response to the airport authority for their informational awareness.

Chairman Yeager:
Thank you for your testimony. Is there anyone else who is in support of S.B. 488 (R1) here in Carson City? If there is anyone else in Las Vegas who would like to testify in support and has not testified yet, please make your way to the table. [There was no one.] We will now take opposition testimony for S.B. 488 (R1). If there is anyone in Las Vegas in opposition please come to the table. We will take testimony in Carson City first.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We are here in limited opposition to S.B. 488 (R1). There are many things that this bill is attempting to do that are really good and that this Legislature should do, including the designation of new crimes. Our limited opposition comes in the way that the crimes are structured and the language used.

I want to thank Senator Spearman and Senator Cannizzaro for meeting with us on more than one occasion to try to get this language right. Some of our amendments were accepted prior to this bill being passed out of the Senate committee, and then they were removed after this bill was passed out of committee. That is why we come up in limited opposition here. I think Assemblyman Pickard and Assemblyman Watkins hit the nail on the head when it comes to talking about the language being too broad, and the amendments that we had suggested imparting a specific intent that I think was necessary in this crime, because when courts look at this—or when we craft jury instructions—you are going to look at the plain language of the statute when we are moving forward in trial. Of course, no law is designed to capture the innocent, but when drawn too broadly you may capture the innocent or people that you do not intend to capture with the law.

I would like Chief Deputy Public Defender, Ms. Nadia Hojjat, who handles these cases to testify in Las Vegas. She also worked on this bill with me, along with Mr. Sullivan, Senator Spearman, and Senator Cannizzaro, to try to tailor the language to capture the people who we are actually trying to capture and make this bill a better version that will punish the truly bad actors. With your permission, I would like to let Ms. Hojjat testify.

Chairman Yeager:
Thank you and welcome, Ms. Hojjat. We will go ahead and take your testimony in Las Vegas.

Nadia Hojjat, Chief Deputy Public Defender, Clark County Public Defender's Office:
I would like to start, as Mr. Piro did, by thanking Senator Cannizzaro and Senator Spearman for working with us on some amendments to this bill. As Mr. Piro stated, we had some serious concerns with the original draft of S.B. 488 because the language is overbroad and does not include specific intent language. It really encompasses a lot of people that it does not necessarily intend to encompass. It casts a very wide net. As Mr. Piro stated, some of our amendments were removed after the bill was passed out of committee, specifically amendments relating to intent, and specifically amendments relating to placing language in the bill requiring that individuals act knowingly and intentionally. All of that language has now been stripped out of the bill. That is very concerning because I think there has been a lot of testimony so far about how broad this bill is. If we are not going to have "knowing" and "intentional" language in the bill, we are going to encompass a lot of individuals.

I wanted to address Assemblywoman Cohen's question specifically, because I thought it was a very good question about minors and whether the minors could be encompassed if there is a major trafficker and minors are working for that major trafficker. I can tell you that right now, if we have a major sex trafficker with many women who are engaging in prostitution—who are essentially being sex trafficked—that pimp often has a hierarchy within these situations. There is often one particular prostitute who will become the head henchman—there is a specific name for it, but it is not terribly polite for testimony. I can tell you that those women who started out very much as sex trafficking victims themselves—and have been induced into this lifestyle and living years and years under this emotional manipulation, physical harm, things of that nature—are now being charged. They are currently being

prosecuted. As far as whether minors can actually end up being prosecuted under this: I would say yes, absolutely, the way the language is right now. We are already seeing it happen with adult victims of sex trafficking.

Minors can be tried as adults. Just because an individual is a minor at the time that the crime occurred does not mean that they will end up being tried as a minor. There is a process by which the District Attorney's Office can certify these individuals up, and eventually a 15-year-old or a 16-year-old can end up being tried as an adult sex trafficker under the language of this bill.

Chairman Yeager:
Thank you, Ms. Hojjat, for your testimony. I appreciate it. We will come back to Carson City.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
I know time is short, so I will be brief. My concerns have already been addressed by Ms. Hojjat and Mr. Piro. I just wanted to point out one particular comment. In our country's history we have a long framework that we go by that says it is unjust to punish without proof of criminal intent. That is what we are all talking about this morning. Crimes that remove the intent, or the mens rea element, endanger the innocent. Mens rea remains important because we are creating so many new crimes in Nevada law, and as Justice Scalia once noted in *Sykes v. United States*, 564 U.S. 1 (2011):

> . . . as the volume increases, so do the number of imprecise laws. And no surprise that our indulgence of imprecisions that violate the *Constitution* encourages imprecisions that violate the *Constitution.* Fuzzy, leave-the-details-to-be-sorted-out-by-the-courts legislation . . . ."

We do not want this. We want to get it right the first time so we can truly capture the bad actors. I, too, just want to express my appreciation for Senator Cannizzaro and Senator Spearman for giving up so much of their valuable time to get it right and truly get at the bad actors with this piece of legislation. For that, we are in limited opposition. We do agree with sections 2 and 3, but we still have concerns with section 1.

Chairman Yeager:
Thank you for your testimony. Is there anyone else in opposition to S.B. 488 (R1)? [There was no one.] Is there anyone in the neutral position? [There was no one.] Before we take any closing comments, we will go to Assemblyman Anderson.

Assemblyman Elliot T. Anderson:
I have been a bit frustrated listening to the record we are creating. In reference to the Uber driver scenario, in section 1, subsection 2(a), subparagraph (4), it talks about transporting a person to the state with the "purpose of." As I understand purpose—and I can leave this to legal counsel—purpose is another way to say "specific intent." Furthermore, there is the phrase "causing." I do not think an Uber driver is causing someone to go and be in these

situations. I think this bill contemplates somebody else causing them. If the Uber driver is the pimp actually making them go, then they would be "causing" them, but if they get a click on their app and they pick up this person, their purpose is not to cause an individual to engage in this activity. In this case, the Uber driver has no idea. That is a mens rea element itself. The bill does not say, "specifically intending," but that is what that means, legally. I see knowledge requirements everywhere in this bill. I am having a disconnect, legally, with some of the testimony. I do not think it is quite right, and I think that statement needs to be clear because I think this record really was not a good one.

Chairman Yeager:
At this time, I will invite our sponsors back up to the table to make concluding remarks. Thank you, again, for your patience this morning.

Kimberly Mull:
First, I just want to thank the Committee for putting up with me today. I am usually a little more put together. Second, I wanted to point out that in the amendment that the District Attorney's Office presented to you, we did ask them on our behalf, with the Nevada Coalition to End Domestic and Sexual Violence, to include one aspect, which adds a new section to the bill amending NRS 49.2544 (Exhibit F). The amendment adds "human trafficking" to the definition of "victim." In the NRS, it lists those victims, in the state of Nevada, who have the privilege of confidentiality with a victim advocate, and currently it includes victims of domestic violence and victims of sexual assault. We want to make sure that victims of human trafficking also have that same privilege of confidentiality. When it comes to human trafficking it is so important that victims know that when they confide in someone—or they share things that are going on with them or they reach out for help—that they do have that legal right to confidentiality with the advocate. Oftentimes, it can be a life-saving measure to reach out for help and because, unfortunately, they can sometimes be prosecuted under the law. It is important that victims know they have that confidentiality and they feel comfortable enough to reach out for help when they need it. We would really appreciate it if we could also get that section added.

Senator Spearman:
Thank you, Chairman Yeager, and members of the Committee for your indulgence. I was going to say a lot more, but I think Assemblyman Anderson captured it. With respect to the amendments that were suggested and not accepted, we ran those through our legal department, vetted them carefully, and in section 1, subsection 2 it says a person is guilty of sex trafficking if he or she, "facilitates, arranges, provides or pays for the transportation of a person to or within this State for the purpose of . . . ." As I understand it from our legal team, that shows intent, and everything else in the bill points back to that. To put that in every section or subsection of the bill would really be redundant. Once we stated it in section 1 that means it is true throughout the bill. We looked at the amendments, we looked at what was suggested, we sat down and talked with the public defenders with our legal team, and we are really comfortable that the intent of this bill is captured throughout. I would encourage a positive consideration of this bill. Ms. Mull was abused from the age of 11—remember that if you have a daughter, a niece, or a granddaughter. It is time. It is time.

Chairman Yeager:
Before we close the hearing, I wanted to go to Assemblywoman Tolles for a brief comment.

Assemblywoman Tolles:
I just wanted to thank you for this work. This is difficult work. Thank you for your testimony, thank you for your fight on this. In 2017, we take seriously people who sell other people's body parts for profit, as well as everyone who contributes to that. I thank you for that. I want to concur with my colleague, Assemblyman Anderson, in his analysis of the word "purpose" and showing intent. I also want to thank Ms. Mull for the example of someone who would travel from Utah to Texas to meet a 13-year-old, after watching her in an illegally obtained pornography of a child to meet her. I would think that that would be enough evidence to show intent of traveling to go engage in illegal prostitution with a minor.

[Additional exhibits include written testimony in support submitted by Kimberly Mull, Policy Specialist for Nevada Coalition to End Domestic and Sexual Violence (Exhibit H); and written testimony in support submitted by Tess Franzen, Policy Coordinator, FREE International (Exhibit I).]

Chairman Yeager:
Thank you, Assemblywoman Tolles, and thank you Senator Spearman and Ms. Mull for being here this morning and for your testimony. I will go ahead and close the hearing on S.B. 488 (R1). At this time, I will open the hearing on Senate Bill 361 (2nd Reprint), which revises provisions relating to domestic violence.

Senate Bill 361 (2nd Reprint): Revises provisions related to domestic violence. (BDR 53-775)

Senator Cannizzaro, thank you for your patience and welcome back to the Assembly Committee on Judiciary.

Senator Nicole J. Cannizzaro, Senate District No. 6:
I wanted to share a couple of things with the Committee that I had shared with my Senate colleagues this week as well, because I think it is important to illustrate why Senate Bill 361 (2nd Reprint) is such an important piece of legislation.

Twenty is the number of people, per minute, who are physically abused by an intimate partner in the United States. Ten million is the number of men and women who are abused each year in the United States. Twenty thousand is the average number of daily phone calls made to domestic violence hotlines. Three is the number of women killed every day, on average, as a result of domestic violence. Eight million is the number of paid days of work that victims of intimate partner violence lose each year, and $8.3 billion is the economic cost, per year, as a result of intimate partner violence. Twenty-one to sixty percent of domestic violence victims lose their jobs due to reasons stemming from domestic abuse.

I think these numbers are important because, when we talk about domestic violence, I think there is probably not a person in this room that would disagree that domestic violence is wrong. I think you would be hard-pressed to find someone that would argue that we should not be appropriately tackling the issue of domestic violence. I think sometimes putting numbers and quantifying exactly how large this problem is, both from an economic standpoint and from a victim standpoint, is especially important in illustrating why it is that I brought forth S.B. 361 (R2).

I want to talk a little bit about what other states have done in relation to the employment piece of S.B. 361 (R2). At least 18 states have passed laws requiring employers to provide domestic violence leave. These laws vary significantly in different details concerning everything from how much time off, reasons for leave, whether that time is paid or unpaid, notice and paperwork requirements, and the use of any leave and how that is done with different employers. By way of example, in Colorado, if an employer has 50 or more employees, up to 3 days of leave is authorized. In Massachusetts, employees must have up to 15 days for medical attention or to secure new housing, or to attend court proceedings, and other needs related to domestic violence. In Kansas, there are laws in place that provide that employers cannot discriminate against domestic violence victims who need time off. As you can see, this is an issue that is becoming readily apparent and being addressed by a number of states.

What does S.B. 361 (R2) do? Before I give a brief summary of the contents of the bill, I would like to first acknowledge and thank those—both supporters and those who were initially opposed to S.B. 361 in its original form—who have worked with me through several versions of this bill in order to craft what is before you today. We have had a number of working group meetings in talking with employers from all across the state, small and large, to come up with a way that this bill can both serve victims and also allow employers to maintain their business. I think that is important. I will note that I am grateful for everyone who came to the table and worked very hard in this working group, because I know that they are also concerned about domestic violence and how it affects their employees. I think that this bill would not be before you today without everyone acknowledging that this is something that we do want to work on. For those reasons, I wanted to thank everyone who has been so gracious to work with me on that. With all of that said, I think that there is now some broad support for this legislation, so I do want to walk you through some of those pieces so I can illustrate exactly what we are doing with S.B. 361 (R2).

Section 1 requires an employer to provide leave to an employee who has been employed for at least 90 days, and who is either a victim of domestic violence or whose family member or household member is a victim of domestic violence. The leave requirements are as follows: an employee is entitled to 160 hours of leave during a 12-month period; the leave may be paid or unpaid, and may be used consecutively or intermittently. The reason for that is that sometimes you may need to go to a court proceeding that might not happen until the

afternoon, or sometimes it will just take up part of the morning, so we wanted to ensure that employees would be able to take part of the day off to attend court proceedings without having to lose an entire day of work. We also wanted to allow them to take it as they saw fit, either for a whole day or perhaps for just a couple of hours. That is why we have talked about it being either consecutively or intermittently.

The leave must be used during the 12-month period immediately following the date on which the domestic violence incident occurred, and leave hours may only be used for matters related to that domestic violence situation such as a diagnosis, seeking medical care or treatment, attending counseling, attending court proceedings, or to establish a safety plan so that that individual can remove themselves from the situation. I think what is important to note at this point is that one of the most difficult things about domestic violence cases—and about domestic violence situations—is that it is predicated upon a cycle of violence. That cycle of violence perpetuates and oftentimes it perpetuates because it is very difficult for that victim to remove themselves from that situation. In other instances—robbery, for example—it is not hard to walk away from a robbery scene or to show up in court or to go to the doctor and seek medical treatment if you were badly injured. For domestic violence victims, however, the perpetrator is someone who is very close to them, often someone whom they felt they could trust, someone whom they loved, and it is very difficult to remove yourself from that situation. This leave could be used to help establish a safety plan so that individual can get out of the house, change residences, or get away from the situation entirely. I think that is an important thing to note.

An employee must give an employer at least 48 hours' notice in order to use additional hours beyond those that were used immediately after the initial event occurred. We recognized that when these events occur there may not be notice to an employer, but for subsequent court proceedings or follow-up medical appointments, the employee would likely have that information ahead of time and would just have to let their employer know.

If leave is used for a reason that is also covered under the federal Family and Medical Leave Act (FMLA), the days must be deducted from the days allowed by both this act and by federal law. If an employee is separated from employment but returns within the 12-month time period following the act of domestic violence, any unused days of leave must be reinstated. Employers are required to maintain a record of the days of leave used by each employee for a two-year period, and to make those records available for inspection by the Labor Commissioner. An employer may require documentation confirming or supporting the reasons for any leave request. The Labor Commissioner is required to prepare a bulletin setting forth the benefits and requires employers to post the bulletin in the workplace. That way, individuals who are in that workplace know that there is a mechanism for them to utilize in order to help them in these sorts of situations.

Section 4 of the measure authorizes the administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation (DETR) to request evidence from the person to support a claim for benefits. This section also prohibits the administrator of DETR from disqualifying a person from receiving unemployment compensation benefits

if the person left employment to protect himself or herself, or a family or household member from an act of domestic violence, and the person actively engaged in an effort to preserve employment.

Section 6 requires an employer to provide reasonable accommodations for an employee, as long as those accommodations do not create an undue hardship for the employer. In this section of the bill, what we want to get at is, for example, if there is someone who works at the front desk from time to time, but is in a situation that they are afraid their abuser may show up to the workplace and there is a way for that employer to move that employee to a desk that is farther back in the building to ensure that employee's safety, that is an accommodation that the employer would have to provide. We recognize that not every accommodation is going to be feasible for an employer, and that is the reason for the "undue hardship." If it poses an undue hardship, then that accommodation would not have to be made.

Section 7 prohibits an employer from conditioning employment or taking certain employment actions because the employee or the employee's family or household member is a victim of domestic violence. Again, we see that there are protections that are being put into place so that there cannot be discrimination simply because somebody is trying to address a domestic violence situation.

Section 8 starts to address some of the criminal penalties that are associated with these types of cases. Section 8 increases, specifically, the penalty for an intentional violation of a temporary or extended order for protection against domestic violence to a category C felony, and section 9 makes it a category B felony to commit a battery which constitutes domestic violence if the person has previously been convicted of a felony in this state for committing battery which constitutes domestic violence, or a violation of the law of any other jurisdiction that would prohibit the same type of conduct and that would also be a felony.

Sections 2, 3, 5, and 10, make conforming changes.

I wanted to make note of a couple of things. One of the reasons why I believe this bill is important, at least from the penalty standpoint, is that currently, if there is a violation of a protective order, it is a misdemeanor. For individuals who have been in a domestic violence situation and have gone through the process of applying for an order of protection against someone who is abusing them, they deserve to have security in knowing that they are going to be safe from their abuser. If that abuser continues to come to their place of employment, their house, continues to harass them and threaten them, then we are going to take that very seriously. These situations are not only the most dangerous for these victims—and lead to a number of homicides every year—but these are also the most dangerous situations for our law enforcement officers, and they are the most dangerous situations for employers to be involved in as well. This bill is an important step forward in ensuring that we are taking domestic violence cases seriously and properly addressing those threats.

Additionally, I think with respect to increasing the penalty if you have been convicted of a battery domestic violence, what I would note for this Committee is that that would require that you had actually been convicted three times of battery constituting domestic violence within a seven-year period. If you commit a fourth act of battery constituting domestic violence, you would currently be subject to a felony prosecution. I think that in and of itself, when you look at it, is excessive. We are not talking about somebody who gets into a fight with his or her husband or wife and slaps them once. This is somebody who is engaging in repetitive, domestic abuse, and I think that we have a duty to ensure that we are protecting those victims. I would also note that that would include if you were convicted of a battery constituting domestic violence strangulation. What I would note about strangulation is that it is one of the easiest ways to injure somebody severely or to kill them. That is an important aspect—we are not talking about somebody slapping someone in the face; we are talking about somebody who can die in a matter of moments.

I also have Marlene Lockard with me today. She is here to help testify on this bill as well, specifically with respect to the employment pieces, although we recognize that this is sort of a holistic approach to some issues that we currently see with domestic violence cases. I will also reiterate that one of the primary reasons why we see domestic violence victims—who I think are predominately female, but not always—unable to remove themselves from these very dangerous situations is because there is a lack of economic security. It is amazing to me how many times I have been with a victim and been told they could not leave because they would lose their job, or that they could not come to court because they would lose their job. They would say that they did not want to have to go to counseling or have to address the situation because they would lose their job, and their employer would not be okay with them asking for time off to address this issue. That is such a profound statement, and yet there is a solution to that; in order to give the ability for someone to remove themselves from the situation, I think that economic security piece is so important. Chairman Yeager, with your permission I would like for Ms. Lockard to illustrate some pieces from the employment part.

Chairman Yeager:
That would be fine.

Marlene Lockard, representing Nevada Women's Lobby:
I would like to thank Senator Cannizzaro for bringing this bill forward. It first came to our lobby's attention when U.S. Congresswoman Dina Titus sent legislation to us that, with your support and approval, will become Nevada's SAFE Act for women. That stands for economic security and safety of survivors of domestic violence, dating violence, sexual assault, or stalking. I have pages of testimony here that I will not subject you to. Our sponsor has done such a thorough job of presenting this very important legislation to us. It is the Nevada Women's Lobby's number one priority, and we were so grateful that Senator Cannizzaro decided to sponsor it for us. We feel it is critical that the economic protections for these victims are available so that no woman or man has to make the tragic choice of risking their safety or to protect their livelihood.

Assemblywoman Cohen:
Thank you for being here and bringing this legislation forward. I believe, Senator Cannizzaro, you said that 17 or 22 other states already passed similar legislation. Is that correct?

Senator Cannizzaro:
It is 18 other states, and they are not exact in nature to what is before you in S.B. 361 (R2). They vary across the board, but at least 18 states are considering different employment protections.

Assemblywoman Cohen:
Do we have any data about how businesses in those states are doing and what the results have been?

Senator Cannizzaro:
I do not have that data in front of me, but I am happy to work on getting it to you.

Assemblywoman Cohen:
Thank you, I appreciate that. I am sure the rest of the Committee would like to see it as well.

Assemblyman Pickard:
I like the idea of this bill, if only because I have heard the same kind of comments in a civil context. Where did you come up with 160 hours? Four weeks of leave to attend a hearing or to attend an appointment seems a little much. I am just wondering where that number came from.

Marlene Lockard:
That language came from the federal legislation, but the bill has been amended to say that an employer can allow paid time or unpaid time off. This is not a mandate of paid time in this bill. We have merged some of the paid leave bills that had been circulating in the Legislature this year, so the paid time is now included in Majority Leader Ford's Senate Bill 106.

Assemblyman Pickard:
My question was about how we came up with 160 hours, and if it is just because we are modeling or mirroring the federal legislation. Is there some substance behind that number or is it arbitrary?

Senator Cannizzaro:
That number comes from a couple of places. First, I would note that we were intending to give leave for a 12-month period. Sometimes court appearances initially occur within a few hours, but sometimes they are a few weeks later or months down the road in terms of a trial, or additional appearances may need to be made by that victim. In addition, we did not want to restrict the leave to only a few days because that would be insufficient to cover court appearances. We wanted to ensure that there was sufficient time for medical appointments. The time that it takes to get into a doctor's office, wait to be seen, be seen, make sure you can

follow up on any additional prescriptions, or if they are referred to a specialist for some reason. These situations range from minor in nature where maybe they only have one or two follow-up appointments, to individuals who are suffering from broken bones in the face and have to have surgery to reconstruct that. Different broken bones on the body can take significant amounts of time to heal. Additionally, this bill covers leave time to ensure removal from a home, which can take some time as well. That can often take up to a day or two. In addition, it includes things like counseling or victim advocacy services that might need to be utilized by the victim. We wanted to make sure that we gave a sufficient amount of time to the victim.

We initially talked about 30 days' leave, and we talked about paid time off. This bill has taken many forms, ultimately, because of the intermittent nature of when this time may need to be taken. We decided on 160 hours. If you divide that out by an eight-hour workday, it would be five days per week for four weeks, but it may be taken over the course of a year. Certainly, not every victim would use this. We wanted to make sure it was at least a sufficient amount of time to cover all of those uses for those instances where that may be needed.

Chairman Yeager:
Seeing no further questions, thank you for your presentation. I am going to invite additional testimony in support of S.B. 362 (R2) to come forward at this time. If there is anyone in Las Vegas, please make your way to the table as well. Seeing no one in Las Vegas, we will take testimony here in Carson City.

Kristy Oriol, Policy Coordinator, Nevada Coalition to End Domestic and Sexual Violence:
We want to thank Senator Cannizzaro as well as the Nevada Women's Lobby and Ms. Lockard for bringing this bill forward. I want to reiterate most of what Senator Cannizzaro said and just that we are in absolute support, especially of sections 1 through 7 of this bill. She has outlined the critical reasons why victims of domestic violence need to be able to take this time off. We have discussed a conceptual amendment with Senator Cannizzaro that would add victims of sexual assault to this portion of the statute. For all of these reasons, victims of domestic violence often need to leave work to obtain services; the same reasons apply for victims of sexual assault. We would encourage that that amendment be adopted.

We are also very supportive of section 9 of the bill. As Senator Cannizzaro mentioned, to elevate the crime of domestic violence to a felony in Nevada requires three convictions within seven years, or committing domestic violence by strangulation. These are very serious crimes. It is not simple to reach the felony level of domestic violence in this state and we wholeheartedly agree that, if this person was able to have that crime elevated to a felony, and then commits a subsequent offense after that, this should be a felony and not a misdemeanor after showing such a history of violence. We have seen such a high level of fatality in this state; we have consistently ranked number one, and in the top ten for the past decade, of women killed by men. It is simply time that we take this crime more seriously.

We do have some concerns with section 8 of the bill. I will not go into those right now because we are continuing our conversations with Senator Cannizzaro, and she has been open to our concerns. I will just say there are some unintended consequences of increasing the penalties for temporary protective order (TPO) violations. I am confident we can come to an agreement on those portions of the bill as we continue negotiating.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
I am here on behalf of the Nevada District Attorneys Association in support of S.B. 361 (R2). I want to thank Senator Cannizzaro for this complete, whole approach to combatting the domestic violence epidemic in Clark County. As you know, instances of domestic violence homicide have been on the rise in Clark County, and I think that this bill will take great strides in helping us with that epidemic.

With respect to section 9 and the third domestic violence conviction, I want to point out that prior to someone getting their third domestic violence conviction, they would have had to have gotten a first and then a second—two prior misdemeanor offenses. The penalties for the first misdemeanor offense include 6 months of domestic violence counselling, and part of the penalty of the second offense includes 12 months of domestic violence counselling. There are counselling components for the defendant who has been convicted of prior domestic violence.

Jim Sweetin is also with me down south. Mr. Sweetin is team chief of the Special Victims Unit. I will just make him available for any questions you might have specifically regarding domestic violence prosecutions, but if there are no questions, I believe I have taken up enough of your time this morning.

Chairman Yeager:
Thank you, Mr. Jones. I do not think there are any questions. We certainly have Mr. Sweetin signed in, in support of the bill, so that will be reflected on the record. Thank you for being here, Mr. Sweetin, to answer questions. We will take additional testimony here in Carson City.

Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office:
We want to thank Senator Cannizzaro for this important measure and offer our full support.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We are also in support of S.B. 361 (R2).

A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We are also in support of this measure.

Chairman Yeager:
Is there anyone else in support of S.B. 361 (R2)? [There was no one.] We will now take opposition testimony. If there is anyone in Las Vegas who is opposed, please come to the table as well. We will begin with testimony in opposition here in Carson City.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
We are here, again, in limited opposition to the bill. We are opposed to the increase in penalties in sections 8 and 9.

I agree with the comments made this morning by Senator Cannizzaro; we need to appropriately tackle the issue of domestic violence and stop this cycle of abuse. It appears to be a cycle of abuse that the offender oftentimes learned at the hands of a parent or guardian—who may have suffered the same abuse. The only way we can end this cycle is with the appropriate treatment. We created DUI court under *Nevada Revised Statutes* (NRS) Chapter 484C for a person that has reached the first-time felony level. These individuals can petition to get into DUI court, and it is a three- to five-year, intense treatment program. We should consider creating the same type of program—a three- to five-year domestic violence treatment program—on the side of domestic violence, which would really stop the cycle of abuse and get at the core issue.

The next issue I want to address, briefly, is the ex post facto issue. I think if these increased penalties were to go through, I think you are going to see a lot of constitutional challenges under the ex post facto clause. When a person enters a plea to a domestic violence misdemeanor—first offense within seven years, second offense within seven years, and then the third offense—they are always canvassed by the judge, by the defense attorney, and oftentimes they have to fill out a constitutional waiver of rights form indicating that they understand that these penalties are increasing. They are advised for a first offense what the penalties are—minimum two days in jail and a maximum six months in jail—for the second offense a minimum ten days in jail and a maximum six months in jail, and third offense one to five years in prison. They are never advised that on a fourth-time domestic battery conviction these penalties are going to increase to a category B felony and 2 to 15 years mandatory prison sentence. With that, I think if these penalties are increased, we are going to see constitutional challenges. I would ask you to consider my comments this morning and I will not take up too much of your time.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I wanted to talk about a few things that my colleague, Mr. Sullivan, has not yet covered. When we talk about domestic violence, we think of intimate partner domestic violence. In Nevada, for those in the room and the community who may not know, the definition of victim is quite expansive. It includes two roommates, a brother and a brother, a sister and a sister, a brother and a sister, a son and a mother, et cetera. These are family members who

are going through a traumatic situation and want it to stop so they call the police. The problem stops, but under our law the police have to arrest somebody. They are then thrust into the court system where they may not want to be; they just wanted that issue to stop and they wanted some help. The court system is not always the best place for people to get help.

On that note, I want to talk about point number two, the efficacy of treatment. Yes, people do go to these classes, but have we ever stopped and looked and asked if the classes are even effective in stopping the problem? If everybody is saying that we are still very high on the list, then they may not be. Maybe the Legislature might want to look at the efficacy of treatment and see if we can fix that problem, study that, or at least step back and take a cogent look at it and see if we can do better before hitting the same nail with the same hammer of increased penalties.

That being said, the third problem with expanding the increased penalties is that there are no jury trials for misdemeanor domestic violence. Where other states do have jury trials, we do not. I am not going to name names, but because lawyers advise their clients based on what the district attorneys and the judges say, domestic violence court in Clark County has become a plea factory. People may ratchet up a couple numbers before they are there, even if they would have fought the case had they had the opportunity at a jury trial.

In regards to temporary protection orders, ratcheting up the penalties on those are a little bit dangerous as well, because those who practice in the temporary protection order area—and those are tools of protection that should be used to protect victims—know that it is a rather informal process. Once these orders are issued, there is no defense to a violation of a temporary protective order. The law allows for no defense. It is a strict liability crime that we are now going to make a gross misdemeanor and a felony, without providing a defense for a violation of those. People should not be violating those because it is serious, but the process to get those things is rather informal as opposed to the process to go through a preliminary hearing, a trial, and things of that nature. To have a preliminary hearing and a trial based on a violation, without providing for a defense and basically allowing a strict liability crime, becomes rather problematic, in this country at least.

Assemblyman Elliot T. Anderson:
I do not really have a comment, substantively, on your concerns, but I did have a question as to the label that you just used. You used the phrase "plea factory." As I understand it, about 97 percent of cases plea out. Is it more of a plea factory than the rest of those cases?

John Piro:
I would submit, yes. You are correct on the plea numbers. Because of the low number of attorneys to handle cases, a lot of cases do plead out more than they should. In that court in particular, it is extremely high.

Assemblyman Elliot T. Anderson:
God help us if the criminal justice system stops pleading out, because then the amount of money we would have to spend would be crazy. I will just leave it at that.

John Piro:
I would say astronomical.

Chairman Yeager:
My recollection from the hearing on Assembly Bill 193 of the 78th Session was that there were approximately 40,000 felony cases filed in Clark County. I think they hold about 150 jury trials each year. My math is not good, but I think that is less than 1 percent and maybe less than one-half of 1 percent.

There was a question about ex post facto and the constitutionality of enhancing a felony crime that has not occurred because of a prior felony crime. I wondered if you had, or could obtain, any case law that talks about that issue because I know, for instance, in the DUI context, we have an enhanced penalty for prior felony convictions, but that admonishment form that you sign does say that on there. I would just be interested if anyone knows of any authority for this particular circumstance, or if a court has weighed in on whether you can essentially create a new crime or enhance the penalty based on conduct that happened before the effective date of the statute. I am sure nobody has that information with them right now, but if someone could get me any case law, I am sure others on the Committee—including Assemblyman Anderson—would like to look at that.

Is there any further testimony in opposition to S.B. 361 (R2)? Seeing no opposition, I will now take neutral testimony.

Misty Grimmer, representing Nevada Resort Association:
I am happy to testify on this bill in the neutral position. In its original form, the bill did have provisions that were burdensome to employers, but Senator Cannizzaro and I had several meetings, her door was always open, and she was very open-minded to the concerns of employers. She addressed all of our concerns, so now we get to be part of the solution for people who are having challenges. I just want to put on the record that one of the most significant changes Senator Cannizzaro agreed to was to put this benefit under the structure of the FMLA. This is something that all employers deal with already, so it made it a lot easier for employers to address because it is a structure that is already in place and it does not create a whole, entirely different system of record keeping or anything like that.

Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce; and representing The Chamber, Reno-Sparks-Northern Nevada; and Nevada Federation of Independent Businesses:
I am also speaking on behalf of the Reno-Sparks Chamber of Commerce and the Nevada Federation of Businesses, who could not be here today. As Ms. Grimmer indicated, the Las Vegas Chamber was originally in opposition to this bill, but after working with Senator Cannizzaro the Chamber is pleased to be able to remove its opposition along with the

other groups I have mentioned. Our focus on this bill was sections 1 through 7. That was what we worked on with the Senator to address our concerns and the burdensome components on employers, but also finding the right balance to address the needs of employees when they are in these unfortunate situations. I just want to clarify, as we did in the Senate, that the Chamber had no issues with sections 8 and 9; that is out of our wheelhouse because we focus on employment issues. The Chamber is pleased to be able to remove its opposition from this bill on the second reprint.

Alexis Motarex, Government Affairs Coordinator, Nevada Chapter, The Associated General Contractors of America, Inc.:
We, too, are neutral on S.B. 361 (R2) and appreciate everything that Senator Cannizzaro has done to address our concerns. She has been a pleasure to work with. There is still one issue that we would like clarification on. I have talked to the Senator about it and she is amenable, but in section 7, subsection 1(d), it currently reads or could be interpreted that someone who commits an act of domestic violence in the workplace would be protected by this bill. I do not believe that is the intent, so we are proposing language to strike section 7(d) entirely as it is written and replace it with language that says that the act of violence is committed against an employee in the workplace of the employee. We want to make perfectly clear that we are protecting the employee.

Chairman Yeager:
Thank you for your testimony, and it is nice to see the three of you here in the Assembly Committee on Judiciary. We have ten days left and we have some new faces, so thank you for joining us this morning. Is there anyone else here in the neutral position?

Bryan Wachter, Senior Vice President, Public and Government Affairs, Retail Association of Nevada:
Today is day 110 and this is my first time in front of Judiciary, so I appreciate the opportunity. The Retail Association is now neutral on this bill. We are pleased, as well, to be able to take ourselves out of the opposition side. We would note that, with the late hour, any more substantial changes are going to make it difficult for us to maintain that neutrality with our position. As it stands now, in the second reprint, we are neutral.

Chairman Yeager:
Thank you, it was good to see you here in Judiciary. Is there anyone else in the neutral position? [There was no one.] Senator Cannizzaro, would you like to make any closing remarks?

Senator Cannizzaro:
I want to note a couple of things very quickly. With respect to the violation of the temporary protective order, I want to ensure that the Committee understands that this amendment is intended to address intentional violations. This is not an accidental, "I happened to be at Walmart and I ran into this person who I have a protective order against and I immediately walked away." This bill addresses an intentional violation where the violator is seeking someone out. That is where we are seeking to put this increased penalty. I disagree with

statements that this is a simply strict liability and that there are no defenses to this. I would note that in order for somebody to violate a protective order, they have to be properly noticed and served with that particular protective order, we have to show that there is proof of service, and for an intentional violation, we have to prove that that violation was intentional. Obviously, there has to be an actual violation of the protective order. There are defenses to this; maybe not in the same ways that there might be defenses to any number of crimes, but different crimes are defended differently, and there are definitely defenses to this.

I would also note, briefly, that I was trying to look up ex post facto laws per Chairman Yeager's request. We have certain crimes here in Nevada that are enhanceable, even based upon a prior conviction from another state. For example, a person commits the crime of burglary in another state and then commits the crime of burglary in Nevada. At the time that they were sentenced in the other state, they were not advised that if they ever traveled to the state of Nevada they may be convicted of an enhanced penalty; certainly, that does not violate ex post facto. My brief recollection of ex post facto—and I am happy to get additional information as I am sure everyone on this Committee will probably do the same—is that it definitely has to relate to conduct that occurred. We are talking about enhancing a penalty, which this Legislature does all the time. We would not be going back and saying for that previous crime that you committed, now we are going to retroactively enhance that penalty. The enhancement would only apply to a new crime that is committed. That is just my basic understanding of ex post facto; it has been a while since I have argued ex post facto laws, but in my recollection and brief research here, I do not know that this would necessarily violate that.

I am happy to continue to have those conversations, and I have spoken with Mr. Piro about some potential amendments to alleviate some concerns. We are going to try to work them out. I am hopeful that we will be able to do that in the next day or so and get those to you, Chairman Yeager. Again, I just want to thank this Committee for hearing this bill and for allowing me to be here to present with you. I am open to any questions you may have in the meantime.

Chairman Yeager:
Thank you for being here, Senator. Thank you for your patience. Obviously, as you know, time is running short, so please do try to get any additional amendments to me as quickly as you can.

[A letter in support of S.B. 361 (R2) was submitted by Aviva Gordon, Legislative Committee Chairwoman, Henderson Chamber of Commerce (Exhibit J).]

At this time, I am going to close the hearing on S.B. 361 (R2). We are going to open our hearing on the final bill on the agenda today, Senate Bill 203 (1st Reprint), which revises provisions relating to domestic corporations.

Senate Bill 203 (1st Reprint): Revises provisions relating to domestic corporations. (BDR 7-71)

Mr. Malkiewich, thank you so much for your patience this morning. I know these hearings took a bit longer than anticipated, but we are happy that you are here with us. Please proceed when you are ready.

Lorne Malkiewich, representing U-Haul International, Inc.:
We requested Senate Bill 203 (1st Reprint) through the Senate Committee on Judiciary about a year ago. I know that time is short, so I will get right to the point.

Nevada corporate laws are very good. Companies like U-Haul that incorporate in Nevada like them. They want to see that the statutes are enforced as written. With the large amount of litigation coming out of Delaware, in which two-thirds of the Fortune 500 companies are incorporated, there may be a tendency to look to those laws or other laws instead.

There is a bill-drafting problem as far as how we want the laws, as written, to apply. With this bill, we have gone into two sections and tried to clarify and reinforce some basic principles. We focused on the liability of directors and officers to take over situations, and then put in a legislative declaration that says something that we do not believe is at all controversial, which is given a choice between the plain meaning of a Nevada statute and laws of another state, that the Legislature intends that plain meanings apply.

I want to thank the members of the Business Law Section of the State Bar of Nevada, particularly Albert Kovacs and Jeffery Zucker. If you have any questions concerning the bill's language, I suggest you ask them or the representatives of the Nevada Justice Association (NJA) who worked with us to generate the first reprint. That is one of the reasons we are a little late getting over here. The Speaker and the Majority Leader were kind enough to give us a waiver to allow us to work out that language so they are now in support of the bill and, Chairman Yeager, in the interest of time, I would be glad to talk to any of the Committee members who have any questions.

Assemblyman Elliot T. Anderson:
We talked in my office and there was one question I wanted to get on the record, just to make eminently clear that there is no intent here to stop courts from using persuasive authority to help explain the plain language in our laws. Is that correct?

Lorne Malkiewich:
Thank you for that question. I would like to answer that question and just one other. There is no question that people will continue to cite Delaware law. Again, if you look at Delaware and the annotations to *Nevada Revised Statutes* (NRS) Chapter 78, you will see that there just is not a lot of Nevada case law. I think that the Legislature establishing the business court is going to help greatly in the manner in which Nevada business laws are enforced. When someone comes to court, if you have a provision that has not been interpreted in Nevada, or for which persuasive authority from Delaware, or California, or any other state is helpful to the court, it should be cited. The point of the bill is if that authority is contrary to the statute, then the statute should control over case law from another state (Exhibit K).

The other point I wanted to put on the record is that there is no retroactive effect in this bill. There are no issues that I know of, or cases that point to the need to change. This bill simply looks forward and gives our courts direction that the Legislature intends that the statutes mean what they say. These statutes are very good ones, and corporations that are incorporated in Nevada should be able to rely on them.

Assemblywoman Cohen:
You are going to have to bear with me, sir, because aside from not having a background in business law, I also accidentally left my copy of the bill in my office and I do not have my notes. As I recall when I read this bill yesterday, there was a section that had to do with the responsibilities or liabilities of the officers and the directors and whether or not they are liable if they are working in good faith and they receive bad advice. I thought that was somewhat odd because, for instance, as a regular person in your daily life, if your certified public accountant (CPA) gives you bad advice and you file tax returns based on that, you are still liable. You cannot just use, "Well, my CPA said that was correct." If your lawyer gives you bad advice, you cannot use that as a defense. That struck me as odd, but is that common in business practice?

Lorne Malkiewich:
I do not believe that we have changed the law in that area. I think one of the concerns here is personal liability. I am not sure if you are talking about the business judgment section or the constituency statute. In section 4, subsection 3, "directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." That is existing law. What we have done in clarification here is personal liability of the directors and officers is specified under subsection 7, "the trier of fact. . ."—and this is one of the things that we worked out with the NJA—"determines that the presumption. . . has been rebutted," and then the existing language, "The director's or officer's act or failure to act constituted a breach of his or her fiduciary duties. . . and Such breach involved intentional misconduct, fraud, or a knowing violation of law." This is not changing the law; this is clarifying that for personal liability you need to show those additional items.

The business judgment rule is just a starting point. If you have the presumption overcome, then you still can say that we want to undo this action of the corporation, but you do not have the personal liability. This is important, because if a Nevada corporation wants to encourage the best directors and officers to serve, one of the things we can say is that we have a statute that so long as you act in good faith and do not engage in intentional misconduct, fraud or knowing violation of the law, you will not be personally liable. That, again, is current, existing law.

Assemblywoman Cohen:
Thank you. I just received my copy and yes, it is section 4 and it is the fiduciary duty section with the new language, if that helps. Section 4, subsection 1, the new language is the fiduciary duties of the directors.

Lorne Malkiewich:
I believe this was just trying to make the language of the statute consistent with corporate law. I believe this was actually a cleanup. We were working with the members of the Business Law Section, and the previous language, "the directors and officers shall exercise their respected powers in good faith with a view to the interests of the corporation." If anything, I believe this is indicating that they have a fiduciary duty to do, so I would think this would be strengthening the law in that regard. I apologize; this was not language that I had looked at as being significant.

Assemblywoman Cohen:
Okay, thank you.

Chairman Yeager:
Are there any other questions from Committee members? [There were none.] Is there anyone in support of S.B. 203 (R1)? If so, please come to the table here in Carson City or in Las Vegas.

Austin Slaughter, representing Las Vegas Metro Chamber of Commerce:
We wanted to be on record in support of this bill.

Chairman Yeager:
Thank you for your comments this morning. Is there anyone else in support of S.B. 203 (R1)? [There was no one.] Is there anyone opposed to the measure? [There was no one.] Is there anyone in the neutral position? [There was no one.] Mr. Malkiewich, do you have any concluding remarks? It looks like concluding remarks are waived. Thank you, again, for being here this morning and for your patience.

[A letter in support of S.B. 203 (R1) was submitted by Aviva Gordon, Legislative Committee Chairwoman, Henderson Chamber of Commerce (Exhibit L).]

I will go ahead and close the hearing on S.B. 203 (R1). Is there anyone who would like to give public comment, here in Carson City or down in Las Vegas? [There was no one.] I did want to note for the record that Assemblyman Hansen is absent and excused today. As you all may remember, his son is graduating from military school and Assemblyman Hansen is away on family business.

We do not have a meeting scheduled for tomorrow; we also do not have a meeting scheduled Monday. We do have a meeting scheduled Tuesday and as of now, we have one bill. Keep an eye out for what time the meeting will start on Tuesday; it depends on how many bills we have. We are adjourned [at 11:16 a.m.].

RESPECTFULLY SUBMITTED:

_____
Devon Isbell
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a copy of a Nevada Supreme Court decision *LeCory L. Grace v. The Eighth Judicial District Court of the State of Nevada*, 375 P.3d 1017 (2016), presented by John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association.

Exhibit D is a proposed amendment to Senate Bill 368 (2nd Reprint), submitted by John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office.

Exhibit E is a letter dated May 23, 2017, in opposition to Senate Bill 368 (2nd Reprint) to Assemblyman Steve Yeager and members of the Assembly Committee on Judiciary, authored by Adam Paul Laxalt, Attorney General, Office of the Attorney General.

Exhibit F is a proposed amendment to Senate Bill 488 (1st Reprint), submitted by John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association.

Exhibit G is written testimony in support of Senate Bill 488 (1st Reprint), dated May 25, 2017, authored and submitted by Katie Ryan, Director, Communications and Public Policy, Dignity Health-St. Rose Dominican.

Exhibit H is a letter dated May 24, 2017, in support of Senate Bill 488 (1st Reprint) to Assemblyman Steve Yeager and members of the Assembly Committee on Judiciary, authored by Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence.

Exhibit I is written testimony in support of Senate Bill 488 (1st Reprint), submitted by Tess Franzen, Policy Coordinator, FREE International.

Exhibit J is a letter dated May 24, 2017, in support of Senate Bill 361 (2nd Reprint) to members of the Assembly Committee on Judiciary, authored by Aviva Gordon, Legislative Committee Chairwoman, and Amber Stidham, Director of Government Affairs, Henderson Chamber of Commerce.

Exhibit K is a document titled "Senate Bill 203 Clarifying Nevada Corporate Law," presented by Lorne Malkiewich, representing U-Haul International, Inc.

Exhibit L is a statement dated May 22, 2017, in support of Senate Bill 203 (1st Reprint) to members of the Assembly Committee on Judiciary, authored by Aviva Gordon, Legislative Committee Chairwoman, and Amber Stidham, Director of Government Affairs, Henderson Chamber of Commerce.