MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
March 15, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:03 a.m. on Wednesday, March 15, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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 James Ohrenschall, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
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:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Skip Daly, Assembly District No. 31

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Erin McHam, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada
Robert S. Uithoven, representing National Rifle Association
Randi Thompson, representing Nevada Firearms Coalition
Lynn Chapman, State Vice President, Nevada Families for Freedom; and representing American Legion Auxiliary
Sherry Powell, Founder, Ladies of Liberty, Reno, Nevada
Noah L. Jennings, Private Citizen, Carson City, Nevada
John Wagner, Carson City Vice Chairman, Independent American Party of Nevada
Janine Hansen, State President, Nevada Families for Freedom
Ryan Gerchman, representing United Veterans Legislative Council
Gene Green, Private Citizen, Carson City, Nevada
Diana Loring, representing One Pulse for America
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Tonja Brown, Private Citizen, Carson City, Nevada
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Deputy Public Defender, Clark County Public Defender's Office
Eric Spratley, Commissioner, Advisory Commission on the Administration of Justice
Jennifer Noble, representing Nevada District Attorneys Association
Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office
Lisa Smyth-Roam, Supervising Criminalist, Biology Unit, Forensic Science Division, Washoe County Sheriff's Office

Chairman Yeager:
[Roll was called to and Committee protocol was explained.] I want to mention that today is Veteran's Day here at the Legislature. I want to take a moment to welcome any veterans that are here and to thank all veterans, current and past, for their service. On the Assembly Committee on Judiciary, we have two veterans of our own: Assemblyman Anderson, who is a Marine Corps vet, and Assemblyman Wheeler who was in the Air Force. I want to take a point of personal privilege in case my brother is watching to thank him for his service. He is a major in the Marine Corps and has been on active duty since 1995 with multiple tours of duty in Afghanistan and Iraq.

We will begin with our work session today and then take the two bills in order. I will turn it over to Ms. Thornton, committee policy analyst, to take us through the work session.

Assembly Bill 148: Increases the penalty for notaries public and document preparation services that fraudulently provide legal services or advice. (BDR 19-756)

Diane C. Thornton, Committee Policy Analyst:
We are starting with Assembly Bill 148, heard in Committee March 8, 2017 (Exhibit C). This bill increases the criminal penalty for a notary public who violates the restrictions on advertising his or her services or the prohibition of using certain terms on an advertisement if he or she is not a licensed attorney from a gross misdemeanor to a category D felony for a second or subsequent offense that causes irreparable harm. If a person willfully violates the provisions governing document preparation services, he or she is guilty of a gross misdemeanor unless the offense results in irreparable harm to a client, in which case the violation is a category D felony. There were no proposed amendments for this measure.

Chairman Yeager:
I am looking for a motion to do pass Assembly Bill 148.

> ASSEMBLYMAN THOMPSON MADE A MOTION TO DO PASS ASSEMBLY BILL 148.
>
> ASSEMBLYMAN FUMO SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN ELLIOT T. ANDERSON WAS ABSENT FOR THE VOTE.)

I will assign the floor statement on Assembly Bill 148 to Assemblywoman Jauregui.

Assembly Bill 177: Revises provisions relating to domestic violence. (BDR 3-210)

Diane C. Thornton, Committee Policy Analyst:
Assembly Bill 177 was heard in Committee on March 10, 2017, sponsored by Assemblyman Sprinkle (Exhibit D). This bill authorizes the court, if the adverse party fails to appear at a hearing on the application for the extended order, to grant an extension of time and set a date for a new hearing; order service by publication in the same manner as the Nevada Civil Rules of Procedure; and grant the extended order on the date of the new hearing. This bill authorizes service of the application for an extended order and the notice of hearing by publication if so ordered by the court. This bill requires the temporary order to remain in effect until the date on which the new hearing is held.

There is one proposed amendment for this measure. The amendment:

- Allows for the continuation of the temporary order for up to 90 days by the court if the adverse party has not been served and fails to appear in court and the applicant has been unable to serve or can show that the adverse party has been advoiding service.

- Allows the court to set a new hearing date to be held within 90 days.
- Allows the court to continue the temporary order and set a date for a new hearing to be held within 90 days if the adverse party fails to appear on the new hearing date.
- Clarifies when the temporary order expires.

Chairman Yeager:
I will entertain a motion to amend and do pass Assembly Bill 177.

> ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 177.
>
> ASSEMBLYMAN WATKINS SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement for Assembly Bill 177 to Assemblyman Fumo.

Assembly Bill 229: Revises provisions governing domestic relations. (BDR 11-701)

Diane C. Thornton, Committee Policy Analyst:
Our next bill is Assembly Bill 229, heard in Committee on March 10, 2017 (Exhibit E). This bill authorizes two persons, regardless of gender, to be joined in marriage. The bill makes conforming changes to the provisions. There are two amendments to this measure. Assemblywoman Spiegel is requesting to add Assemblyman Brooks as a cosponsor of this bill. Secondly, Kimberly M. Surratt, Attorney, Surratt Law Practice, PC, proposes to delete "Maiden name" from section 2 of the bill.

Chairman Yeager:
I will take a motion to amend and do pass Assembly Bill 229 with both amendments.

> ASSEMBLYMAN THOMPSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 229.
>
> ASSEMBLYWOMAN TOLLES SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Hansen:
I will be voting no, as I believe this conflicts with the current Nevada constitutional provision. I am also not convinced that it is a finalized issue on the federal level, with a 5-4 Supreme Court decision.

Assemblyman Pickard:
I agree with the sentiment of my colleague, Assemblyman Hansen. I will be voting yes on this because it addresses the equal protection issues we face in family law all the time.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN AND WHEELER VOTED NO.)

Chairman Yeager:
I will assign that floor statement to Assemblyman Thompson.

Assembly Bill 239: Enacts the Revised Uniform Fiduciary Access to Digital Assets Act. (BDR 59-687)

Diane C. Thornton, Committee Policy Analyst:
Assembly Bill 239 was heard in Committee on March 9, 2017 (Exhibit F). This bill enacts the Revised Fiduciary Access to Digital Assets Act to establish provisions to give certain fiduciaries and other designated persons the legal authority to manage the digital assets and electronic communications of deceased or incapacitated persons. The measure also gives custodians of digital assets and electronic communications the legal authority to deal with a fiduciary or designated recipient of a person holding an account with the custodian. There are no amendments for this measure.

Chairman Yeager:
I will accept a motion to do pass Assembly Bill 239.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS ASSEMBLY BILL 239.

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will take the floor statement on Assembly Bill 239.

At this time, we will formally open the hearing on Assembly Bill 118.

Assembly Bill 118: Revises provisions governing the issuance of permits to carry concealed firearms. (BDR 15-572)

Assemblyman Skip Daly, Assembly District No. 31:
I appreciate being here on Veterans Day at the Legislature and thank the Chairman for scheduling this bill on this day. I first became aware of this issue during the 2014 campaign when I knocked on a constituent's door and spoke to a dad. He went and got his 18-year-old son who was active duty military and was not able to get a concealed carry weapons (CCW) permit in the state of Nevada, even though the United States government had provided him

a firearm. I talked to the young man and told him I would put forth a measure to address that. I filed it and the Legislative Counsel Bureau (LCB) worked on it, but I did not win the election in 2014. No one else picked it up in 2015, so when I was lucky enough to be reelected in the last election cycle, I brought this bill forward again.

It is a two-section bill and fairly straightforward. As you know, there are no simple bills so I will shy away from using that language. Essentially, it makes a very narrow change to existing and remaining requirements in order to qualify for a concealed carry permit. All of the other requirements remain the same under this provision, with the narrow exception of ages between 18 and 21 if you are active duty military or were honorably discharged before the age of 21. That is the provision on section 1, subsection 3, which states those two issues. Under section 1, subsection 4, the operative language is, "The sheriff shall deny an application or revoke a permit if . . ." and with the new language under paragraph (k), "Has been discharged or released from service . . . under conditions other than honorable conditions . . . ." Section 1, subsection 7 states "An application submitted pursuant to this section . . . ." They have to comply with all paragraphs (a) through (e). The new paragraph (f) states that if you are under 21 you must provide proof that you were honorably discharged or are still in the military. Section 2 says, "This act becomes effective upon passage and approval." This bill is fairly straightforward, but I would be happy to answer any questions you may have.

Assemblyman Elliot T. Anderson:
Generally, I do not have a problem with this bill at all. I have more confidence in the live fire training in the United States military than I do in what we require. In that regard, my biggest issue has always been about safety and ensuring we have people who understand that guns are not a joke; that they are something to be treated with respect, not like a toy. You have more than accounted for that. I want to ask about one technical provision you have in here. It talks about someone being discharged before they are 21. I am not sure who is discharged before they are 21 and has an honorable discharge. Can you help me understand what that is trying to address?

Assemblyman Daly:
Where I was coming from was in anticipation of a change in current conditions. Most enlistments are for more than three years; they do not have the two-year enlistment anymore. A person getting in at 18 and out at 20 with an honorable discharge is usually not the case. The language there says, "discharged or released" in anticipation of someone that could be released under an honorable circumstance; we would not want to eliminate him or her. It might only be a small number of people. That is the only explanation I found to address that.

Assemblyman Elliot T. Anderson:
I am not sure about the terminology "honorable conditions" and what exactly that means. It does not say honorable discharge. Is that meant to be inclusive of more than just an honorable discharge?

Assemblyman Daly:
I am not sure of the terminology the military uses regarding "condition" versus "honorable discharge." If there is a technical difference there, I am not aware of it. We want it to be "discharged from the military on an honorable basis." What that means, we can explore more. If "condition" does not meet the standard we are looking for, we should make that change.

Assemblyman Wheeler:
I cannot believe I did not think of this legislation myself. My question is based on Assemblyman Anderson's question. Maybe I can clear that up a bit. You can receive a discharge, such as a general or medical discharge, under honorable conditions, no conditions, or dishonorable conditions. I assume this is what this bill addresses when it says "honorable conditions." At the end of the Vietnam War, a lot of people were discharged prior to the expiration of their contract because the war was over and they were sending people home. They received general discharge under honorable conditions, later upgraded to honorable discharge. I believe that the bill does address it, but if you would like to involve me in this, I would love to get with LCB to make sure that those people are represented as well. You can receive a medical discharge under honorable conditions when you are 19 years old.

Assemblyman Daly:
I am open to have anyone interested work on the bill so we can get it right. I appreciate the explanation, and I hope that brings some clarity. On that point, I think we would rather be more broad than more narrow. If they have met the condition honorably and are under 21, within that narrow range we should have it be as inclusive as possible. I am surprised someone did not pick this bill up as well, since it was already drafted and ready to go, but I am happy to be able to present this bill today. I think it is a reasonable measure and crafted in a way that should meet muster.

Assemblyman Ohrenschall:
Is it commonplace in other states to provide this to members of the military?

Assemblyman Daly:
I do not know what they do in other states. I assume there might be someone who could answer that question for you. This was brought to my attention by my constituent in the 2014 campaign. I was at least looking to address it in Nevada.

Assemblywoman Miller:
Because I have received so many emails and phone calls on this issue, I want to give you an opportunity to address some of those concerns. One is that since we have 18-year-olds that are still in school and 18-year-olds that are adults, can you clarify that this does not allow 18-year-olds in high school to bring guns to school?

Assemblyman Daly:
As I said at the beginning and will be clear about it now: this is a narrow exception to all of the other existing rules you must comply with in order to apply for and receive a concealed carry permit. The exception for an 18-year-old requires them to be active duty military or discharged in the honorable condition. Nobody else can get it, so if you are still in high school or college, you must be 21: the same as going to get a drink or gamble, although I know there is a measure that might change that. It is very narrow with the concealed carry as to the conditions that must be met.

Chairman Yeager:
To follow up on that, the way I read the bill is that this allows a select segment of the population to get a CCW that is not now eligible. Any other restriction that is currently in law on where you can carry a gun when you have a CCW would continue to apply to these folks. Is that your understanding?

Assemblyman Daly:
Absolutely. All other restrictions that apply would be in place. All of the other training requirements and conditions in order to receive a CCW, other than the age limitation for that narrow group, would still apply.

Assemblyman Hansen:
There is a huge irony in this. We can draft 18-year-olds, put them on the front lines with M60 machine guns and driving tanks, but we still have restrictions on their ability to own a handgun and have a CCW. While we are poking fun at 18-year-olds, we also have an expectation in wartime. They have proven themselves time and again. It is almost frightening to think of the number of 18-year-olds who were on the beaches of Iwo Jima with the United States Marine Corps. I would swear we had this exact bill last session, did we not?

Assemblyman Daly:
Apparently it was not done last session.

Assemblyman Hansen:
Really, I thought for sure we had it. Well, I am completely supportive of it. I would even go beyond that. The record clearly shows that with CCW holders across the United States the number of gun incidents that involve them is the lowest of all people who hold firearms. They are the safest group in the country. I would like to see this expanded to allow all 18-year-olds, perhaps out of high school, the same opportunity. It seems odd to me that we would draft them into the military and deny them what is essentially a Second Amendment right.

Assemblyman Thompson:
I have a question about those who are issuing the CCWs. I appreciate that the 18- to 21-year-olds will be properly trained. Can you share with us the issuance process to ensure that we are just giving this ability to those who are in the military versus those who are not?

Assemblyman Daly:
That is the part I went through when I was explaining the bill. In order to get the CCW, a person has to apply to their local sheriff's office. All of the information and various things that must be submitted when you apply are in section 1, subsection 7: name and address, a complete set of applicant's fingerprints, a front-view colored photograph, et cetera. If you are under 21, you must show an honorable discharge or active military. If you do not show that, then subsection 4 states, "The sheriff shall deny an application or revoke a permit if . . . ." The new one is paragraph (k), which says they must be able to show the honorable discharge or that they are active duty or the application will be denied. All of those things are covered. You have to show that you are qualified, and if you cannot, that is one of the reasons the sheriff could deny the application.

Assemblyman Thompson:
Where is the trigger in the event that the person is dishonorably discharged? Where is the trigger of notification to revoke the CCW?

Assemblyman Daly:
I believe that would be covered in subsection 7, paragraph (f) when you apply. If you are less than 21, the sheriff will look and see if you meet all of the qualifications. If the applicant does not provide the paperwork showing they are qualified under the age of 21, that would be the trigger. The same as if I did not give them my fingerprints, address, or show that I had received the training.

Assemblyman Elliot T. Anderson:
I think what might be called for with Assemblyman Thompson's question is to put some specificity in the documentation required. The military has a common access card. It is no longer just a military identification card (ID); it has a chip in it. That would show clearly that someone is a military member. It is only issued by the military. Since it has a chip, it is very difficult to fake. As for someone who has been discharged, if you keep that provision, some specificity as to checking the DD Form 214 (Certificate of Release or Discharge from Active Duty) will give people guidance as to what qualifies. Although we have a veterans ID indicator on Nevada driver licenses, it does not specify whether you were discharged honorably or not. You should add a technical amendment to this measure specifying the military common access card and the DD Form 214, which specifies discharge status.

Assemblyman Daly:
If that would be agreeable to the Committee, I do not think that is unreasonable. I actually think we need to give guidance to the sheriff. There are 17 different sheriffs in the state and they all may have different levels of scrutiny. The only thing I would mention is that if we specify something in existence now, we would have language stating "or equivalent" so we do not have to keep coming back to the statute every time the military changes the forms.

Assemblyman Elliot T. Anderson:
Language in the line of "an identification card issued by the United States military" would cover that. I would be shocked if the DD Form 214 ever changed, but I take your point.

Assemblyman Daly:
I agree. A little guidance is not out of line and would be useful.

Assemblywoman Cohen:
I have a question about a small subset of people. I understand how people who are trained in the military have the best firearm training available. I am concerned about having someone who enlists, goes in for training, is injured before receiving firearms training, and is still honorably discharged. Do we have any safeguards to make sure that they have the training they need before being issued the CCW?

Assemblyman Daly:
Even though they have their military training, they would still have to meet the training requirements as if they were not in the military and go through all those procedures in addition to serving in the military. The only thing that changes by their military status is the age requirement. None of the other requirements are changed.

Chairman Yeager:
Seeing no other questions, we will now open up the hearing for any testimony in support.

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:
As a veteran myself, I can address Assemblyman Anderson's first question about what constitutes honorable conditions. My son was a military veteran. On his thirteenth jump, about a year and a half into his service, he broke his back. At that point, he was discharged under honorable conditions and received a medical discharge. I am happy to say that he did recover from that, came out number one in the Highway Patrol academy, and went on to have a successful career in law enforcement until he was hurt in the line of duty. A few of the Assemblymen have asked about what kind of training we get. When it comes down to carrying and firing weapons, we all have very good training. In my military career, you could not vote at 18. We had large protests throughout the United States in 1968, 1969, and 1970, when we did get the right to vote at 18 because we were in the military. This bill reinforces the fact that when you are 18 and have gone through this training and taken your oath to uphold the *United States Constitution* and defend the United States, you should be treated as an adult. It is important to note that what Assemblyman Daly is doing will give these veterans the right to carry at the point when they are 18. If they receive discharges under general or medical conditions and they are honorable, they deserve that right.

Robert S. Uithoven, representing National Rifle Association:
We are here to support A.B. 118, which would expand the list of those eligible to apply for and receive a concealed carry permit to include applicants 18 years of age and older who are currently serving in the military or have been discharged or released under honorable conditions (Exhibit G). Under this legislation, qualifying persons will still have to comply

with existing state and federal laws pertaining to carrying concealed firearms just like any concealed carry licensee. Military members risk their lives every day to protect the freedoms that we revere and practice, including the right to bear arms. We thank the bill sponsor for bringing this forward, and we ask for your support.

Randi Thompson, representing Nevada Firearms Coalition:
To the Chairman's opening point about being respectful, I am respectfully supporting Assemblyman Daly's bill. I actually ran against him, so I am glad to be here in support of his bill.

Lynn Chapman, State Vice President, Nevada Families for Freedom; and representing American Legion Auxiliary:
I am a ten-time president of the American Legion Auxiliary. I want to start today by saying thank you to my father, who is currently 90 years old and a World War II veteran. He graduated from high school a year early and had two other brothers who were already in the war and behind enemy lines. At the age of 17, he talked his mother into letting him join the service and promised that he would not go overseas or be killed. He was the youngest of four kids. His mother died a month later, after he had joined the service. He was an orphan at 17. Of course, he went overseas. When he was honorably discharged, he was only 19 1/2. There are people who can go into the service and come out before they are 21 years old. I belong to Duby Reid, American Legion Post 30 in Sparks. Duby Reid, real name Gilbert, was a World War I soldier. He was the first person from Sparks to be killed in World War I. We honored him by naming our building after him. He was only 19 years old when he died. He gave his all. I cannot see why we do not allow young men and women, 18 to 21 years old, the chance to apply for their CCW if they have gone through all the classes, through the military, and are honorably discharged. Please vote yes.

Sherry Powell, Founder, Ladies of Liberty, Reno, Nevada:
I usually do not testify in these hearings, but I can tell you exactly how this happens. My son was an early graduate of Carson High School. He enlisted in the military in January of his senior year. He did not turn 18 until September. My son was enlisted and serving at the age of 17. The bottom line for me is I am a little offended that anyone would question it if you have not served. He went over and fought for your country. He continued his service later as one of the managerial staff for the Division of Forestry. Not only did he protect you overseas, but he also protected you here. If you have ever seen a fire from your home, know this: my son was not only on the front lines over there, but he is also on the front lines here. He was an expert shooter by the age of 12. As far as I am concerned, he has earned the right to carry a firearm, with or without a CCW. Concealed carry requirements are nothing compared to the requirements of the military, and I have taken both.

Noah L. Jennings, Private Citizen, Carson City, Nevada:
[Read from prepared testimony (Exhibit H).] Many of you know me from seeing and speaking to me around the building as a correspondent for the *Elko Daily Free Press*. What you may not know is that I am also a proud soldier of the Nevada Army National Guard.

On August 11, 2015, I turned 17. That same day, I walked into the office of Sergeant First Class Ted Ziegenfuss and placed my enlistment packet, complete with the signatures of my mother and father, on his desk. One month later, on September 11, 2015, I raised my right hand and repeated the Oath of Enlistment. I went through basic training at the United States Army Military Police School (USAMPS) at Fort Leonard Wood, Missouri, in Echo Company, 795th Military Police Battalion. Six months after leaving, I returned home to serve my state in the 485th Military Police Company.

Part of being an MP and graduating from USAMPS is taking the Military Police Oath. In doing so, I swore to assist, protect, and defend my fellow soldiers, service members, their family members, and all civilians entrusted under my care. As military police officers, we often serve as everyday law enforcement. Being activated in state, many of our soldiers put themselves out there in the community in the same way that civilian law enforcement does. Whether it is through riot control, on the streets of Las Vegas during New Year's, or even this weekend. The only difference is civilian law enforcement is protected by the national Law Enforcement Officers Safety Act (LEOSA). Military police officers who do not meet the conditions prescribed by the Department of Defense to get an ID compatible with LEOSA do not have the ability to carry.

If we are out there, working as law enforcement, putting ourselves in danger to assist, protect, and defend just as the civil authorities do, I believe we deserve the same protections they do.

Furthermore, we live in an increasingly dangerous world. The military actually encourages service members not to project their service on social media and other venues. The reason? Because terrorist organizations are beginning to utilize social media to find and target service members and their families. Now, anyone who joins should be proud of their service and be able to post without fear of an attack on them or their family, but the reality is that we cannot track down every extremist who may threaten our people. The solution? To give us the ability to protect ourselves.

Each day, thousands of men and women under 21 go to work wearing the uniform of our nation, with the flag on their shoulder. These are my brothers and sisters, and many cannot be here today because they are working to defend our freedom. In combat zones, we are allowed to carry our weapon to protect ourselves. Please give us the same abilities at home. Thank you for your time and your service to this state.

John Wagner, Carson City Vice Chairman, Independent American Party of Nevada:
I am a veteran. I was in the United States Army a few years ago, it would be fair to say. At that time, we used the M1 Garand rifle, which is no longer used by the military. I also had the privilege to shoot a bazooka, which I know is not a weapon you can carry concealed. The training you get through the concealed carry training class is very good. You learn the law, and you have to prove that you can shoot. You have to get a renewal every so often as well, going through the same process. The training is extensive. As far as 18-year-olds are

concerned, when I was 18 and still in high school, we were allowed to bring rifles into school. We had to store them because we had picture day. I used to get on the bus, go up the hill, and go shooting and rabbit hunting. Things are a lot different now. I think 18-year-olds who serve in the military deserve this.

Janine Hansen, State President, Nevada Families for Freedom:
We are pleased to support Assemblyman Daly's bill. We have supported this in the past. In fact, our organization has supported the expansion of concealed carry laws since the '90s. We are thankful that this body has seen fit to expand our right to keep and bear arms to law-abiding citizens who help to keep our communities safe. As we have heard, they do help to keep our communities safe, and we are appreciative of this bill.

Ryan Gerchman, representing United Veterans Legislative Council:
We are here to support this bill. To answer a question that was put forth by the Assemblywoman, there is something called entry level separation (ELS) that is used when a commander is unable to make a judgment based on time. They may not have had enough time to determine whether this young man or woman is good to go or not. If they have not had enough time to determine their character and make a relevant discharge whether honorable or dishonorable, then they may give that ELS. If they have had enough time to give that discharge type, then they will use their best judgment and give either an honorable or a dishonorable discharge. In that sense, we may benefit from the commander's judgment in the discharge.

Gene Green, Private Citizen, Carson City, Nevada:
I am a CCW holder. I was not going to speak, but I wanted to address one issue. Every CCW permit has to be signed by a sheriff within the applicant's district. If a sheriff were to sign a CCW without the correct legal conditions being met, he or she would be committing a felony. He or she would be felonious at that point. I do not think there is a sheriff in this state who would consider something like that. They do not just blanket their signature on CCW permits. They look at every single one. I also want to ditto the statements of the people before me.

Assemblyman Pickard:
I do not know if someone in support can answer this or if I should defer to legal counsel, but I am wondering about reciprocity. We have constant fluctuation in reciprocity. It seems to me that last session, we expanded reciprocity. I am wondering if this would affect those who might or might not get reciprocity.

Chairman Yeager:
If anyone who testifies at some point has information on that, feel free to make a comment. Otherwise, we will connect with Mr. Wilkinson later. Is there anyone else who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition?

Diana Loring, representing One Pulse for America:
We represent the 78,000 advocates nationwide dedicated to obtaining life-saving gun reforms by closing the "passion gap" with pro-gun activists.

When do we reach maturity? Is it at 18, 25, or 30? Based on research from the National Institute of Health (NIH), the Massachusetts Institute of Technology (MIT), and Issues in Science and Technology, the consensus of neuroscientists today agree that brain development likely persists until the mid-20s and sometimes into the 30s. Let me explain why they believe this. Our brains develop from back to front, and the last part to fully develop is the prefrontal cortex. That is where a majority of what is called "executive functions" occur. Executive functions help us assess risk, regulate our emotions, think ahead, and set goals, all of which are still developing in 18- to 20-year-olds. Researchers also talked about impulse control—the ability to maintain self-discipline and avoid impulsive behaviors. They pointed out that the ability to make the right decision is often a struggle, but it does improve as we move into our 20s. Although we may consider 18-year-olds adults and extend them certain rights, their cognition, ability to assess risk, and their maturity continue to develop.

So when do we reach maturity? Federal and state governments may have given us their view. In Nevada, to have a CCW, you must be 21 years old. To become a police officer in Nevada, you must be 21 years old. You have to be at least 21 years old in America to buy a handgun from a licensed dealer. You have to be 21 years old in America to buy and drink alcohol. On November 18, 2016, the United States Department of Defense (DoD) released DoD Directive 5210.56. It allows commanders who hold the rank of lieutenant colonel and above in the Army, Navy, and the Marines, and commander for the Navy and the Coast Guard, to grant the authority to carry private defensive weapons. Only commanders of units, installations, or other organizations may approve these permits. Each permit holder must be individually approved by the commander involved. They may not carry if they are under the influence of alcohol or other substances, and they must not be subject to any past or pending personnel actions. The permit will be approved for 90 days and is subject to renewal pending another review. Of course, they are to attend and pass CCW training in the state that they are based. Finally, even the Department of Defense says personnel authorized must be 21 or older.

The United States Military may be a unique institution, but it is also a microcosm of society as a whole. I read these words the other day from a veteran who said, "Being in the military does not presuppose maturity." Therefore, based on our testimony, we are opposed to A.B. 118.

Chairman Yeager:
Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position?

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We stand neutral on this legislation. I do have some answers to a couple of questions, if I may. With regard to the question asked by Assemblyman Ohrenschall, currently out of the 29 states whose concealed weapons permits Nevada recognizes, 10 of those states do issue permits between the ages of 18 and 21.

Assemblyman Ohrenschall:
Those ten states that do issue CCW permits to young men and women between 18 and 21, is it contingent on their military or veteran status, or is it open to anyone who qualifies?

Robert Roshak:
In looking at these, the majority of them indicate military service. There are a couple of states that have different concealed weapons permits. North Dakota has a Class I and Class II. One is used to assist citizens of that state to have their permits recognized in other states. The other one is a lesser requirement only recognized in that state.

Assemblyman Hansen:
My understanding is that of all the CCW holders in the state, there has not been a single gun crime committed by anyone who holds a CCW. Can you elaborate on that at all?

Robert Roshak:
I have not heard of anything, but I have to admit to not working directly with a law enforcement agency. In discussions with our membership, CCW carriers have never been an issue with regard to firearms violations.

Assemblyman Hansen:
Mr. Callaway, did you have any thoughts on that?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I am not aware of any specific cases where a CCW permit holder used their firearm to commit a crime. We have had some cases where someone had a charge of driving under the influence (DUI) and subsequently lost their CCW permit based on some other criminal offense that was unrelated to the carrying of CCW.

Assemblyman Hansen:
In other words, nothing involving firearms? Do we know how many CCW holders there are in the state of Nevada at the moment?

Robert Roshak:
A report that came out from the Department of Public Safety, dated March 1, 2017, said the total number in this state is 116,268. The report then breaks it down by each sheriff's office.

Assemblyman Hansen:
For the Committee, that shows that over 116,000 have not committed any gun crimes, in spite of the fact that they are active gun participants. It is a positive reflection on that whole program.

Chairman Yeager:
I would note that these men would only have statistics related to the prosecution of crimes. I do not know whether anyone could say definitively that crimes have not been committed.

Assemblyman Pickard:
Do you know if changing this is going to change the rules for reciprocity in other states for Nevada CCW holders?

Robert Roshak:
One thing I need to clarify is that Nevada does not practice reciprocity; we practice recognition. As far as the state of Nevada goes, we are not concerned if the state of New Mexico does not recognize us. As long as their standards meet ours, we will recognize them. With regard to changing this, I do not see where it would impact the concealed weapons holder over the age of 21. If someone were 18 to 21, I would strongly advise that individual to check with whomever manages it in the state they are traveling to just to see where they stand.

Chairman Yeager:
Mr. Roshak, did you have any other testimony you would like to give?

Robert Roshak:
On behalf of the Nevada Sheriffs' and Chiefs' Association, I appreciate the conversation with regard to vetting the discharge qualifications. That concern was brought up. If someone goes into the military and breaks their leg in the first two weeks, they may be out on a medical discharge under honorable conditions. It seems like there has been some clarity with that.

Chuck Callaway:
We certainly support the idea that our men and women in the military be able to apply and receive a CCW permit, but we are neutral because we believe this is a policy issue for this body. There should not be any fiscal impact; if so, the numbers would be relatively small. The person who applies for the permit pays for the processing. One note on our process for the Las Vegas Metropolitan Police Department is how we would vet those people. If someone applied for a CCW, and as part of their application they submitted their DD Form 214 showing that they were discharged from the military, our background investigators (when they do the fingerprints and criminal history background) would be making a phone call to our friends in the military to verify that the DD Form 214 is valid and accurate. That would suffice for us to determine if they met the qualifications.

Chairman Yeager:
Is there anyone else who would like to testify in the neutral position? [There was no one.] At this time, I would invite Assemblyman Daly back to the table to make any concluding remarks.

Assemblyman Daly:
I appreciate the discussion. There were some good questions, and we got some of the information out on the table. With your indulgence, I would invite Assemblymen Anderson, Wheeler, and I hope someone from the Nevada Sheriffs' and Chiefs' Association to discuss this further so we can get a couple of the issues and language satisfactory for everybody. I think some of the testimony cleared up some of the issues, but we want to make sure.

Chairman Yeager:
[A letter in support of A.B. 118 from the Libertarian Party of Nevada (Exhibit I), and a letter in support of A.B. 118 from the Stillwater Firearms Association (Exhibit J) were submitted but not presented.]

At this time, we will formally close the hearing on A.B. 118. We will now open the hearing on Assembly Bill 268. This bill will be presented by our own Assemblyman Watkins.

Assembly Bill 268: Authorizes certain persons to file a postconviction petition to pay the cost of a genetic marker analysis. (BDR 14-638)

Assemblyman Watkins, Assembly District No. 35:
I am honored to present Assembly Bill 268. I am going to go out of order from what may be typical by talking to you first about what the current law is. Let us work off of the original bill and none of the amendments you have seen so far, because that will help us understand where we are at and how we came to this bill. When you look at the original bill, you see quite a bit of blue text, which would make you believe that there are a lot of procedures I am instituting for postconviction petitions. That is not entirely accurate. The bill had to be written that way for various reasons.

When we look at current law, you will see that many of those requirements you see in the bill already exist [slide 2, (Exhibit K)]. Under the *Nevada Revised Statutes* (NRS) 176.0918, you will see that under postconviction, a felon may petition the court for genetic marker (DNA) analysis if the petition meets the requirements. The way to look at these requirements is that there are two major factors that must be met in order for a petition to be granted by the court. The first factor is they must show this evidence is material. The second factor is that it is exculpatory. Not only is this relevant evidence, but the relevant evidence has so much weight to it that if this evidence had come to light, they either would not have been prosecuted in the first place or the jury would have found the other way. This is current law.

You will see this included in the blue text of my original bill, but the text of my bill is in addition to or as an alternative to these. In current law (slide 3), the court will order the DNA test after a hearing in which they have made specific findings as to the materiality and the

exculpatory nature of the potential evidence. Finally, if the evidence comes back favorable, and the person is incarcerated and indigent, the bill is then charged to the Department of Corrections. If those three items are not met, perhaps they are incarcerated, indigent, and the results are not favorable, then they have a bill to pay. The state, in effect, becomes a bill collector or creditor to try to get money out of an indigent, incarcerated felon.

I want to make clear to the Committee something that may not have been clear previously. This bill is a recommendation that came out of the Advisory Commission on the Administration of Justice. We heard from Justice Hardesty that of the seven recommendations that were made, there was unanimous approval of all of those by every member of the Commission. That is not accurate. As it pertains to this recommendation, there was one member dissenting, the District Attorney, and one abstention, the Attorney General. With that in mind, I want everyone to be aware that this was not unanimously approved, and I am sure we will hear from some people today who are in opposition to this bill. As part of the history of this, this was the one recommendation that was recommended by a member of the public and adopted by the Commission without those two votes.

What A.B. 268 does (slide 4) is to allow a convicted felon to apply for a postconviction petition of DNA evidence if they are willing to pay for it. It has all the same requirements of the current law, with the exceptions of proving materiality and proving exculpatory nature. The petition must still include what evidence you want to be tested, the identification of the test that they want, and any prior tests must be noted. Section (d) on slide 4 is part of my amendment (Exhibit L), which I will address in a moment.

On slide 5, you can see the differences. In current law, we have material and exculpatory nature that must be shown in the petition. There is nothing in the law that requires the court to have a hearing, but they are typically going to have a hearing because they, by law, must have specific findings as to the material nature of the evidence and why it is potentially exculpatory. They have discretion as to whether or not to order the test in the first place. The payment is by the Department of Corrections if it meets those three requirements. If it does not meet the requirements, then either the inmate pays if they have the ability to pay, or the state becomes a creditor.

Under A.B. 268, current law stays. You can still petition the court. You can still go through those hoops if that is what you want. Alternatively, if you are willing to pay for it, you do not have to show materiality, you simply file the petition. You can choose a laboratory of choice under my amendment, about which we will talk. No hearing is required, and I do not believe there would be a hearing by the court unless there was an objection from the prosecuting attorney as to the minimum requirements of the petition. For instance, under my amendment, if they picked a laboratory that the prosecuting attorney believes is not properly accredited, then they could do an objection to the petition, and the court could hold a hearing as to whether or not that laboratory should be chosen. Assembly Bill 268 requires that the payment be made before the test is ever ordered. The money is deposited in the court, the court issues the payment, and then the test is conducted.

In talking to the stakeholders in this issue, I have found that I have opposition on both sides. One opposition is on behalf of the petitioners. That is, they found there was some distrust within the state-run laboratory; they wanted the option to take these tests to any laboratory of their choice, and they felt they might get quicker results if they were to do so. On the district attorney side, I also received opposition on a number of points, the first being that there is already a backlog in the laboratories on evidence that is critical to trials that are about to go forward. If we are to add in a significant number of tests that may not be material or exculpatory, we are burdening the system for something that is a waste of time.

I think my amendment (Exhibit L) addresses both of those issues. In allowing a petitioner to choose a laboratory of their choice, whether it is in or out of the state, we lessen the burden on the state laboratory, we lessen the burden on the judiciary by not having hearings on every single petition, and we move some of the petitioners from the current system (on the left of slide 5) to the right. Why would you go through all of those hearings to prove materiality if you have the money to pay for the test? You would shift from the left column of this slide to the right column, because it is easier. It may not increase the number of tests that are requested, it just eases the burden on the judiciary in getting that done. It may provide for an ease on the laboratories as well because they are choosing to have the DNA tested at a laboratory outside of the state.

There were amendments that were presented to me, neither of which I am considering friendly at this point. I am working with all stakeholders and will continue to do so after this hearing. The first one is from the Nevada District Attorneys Association (Exhibit M). I did not consider this amendment friendly because it required proof of materiality and proof of a potentially exculpatory nature, or at least a requirement to explain how it could be exculpatory. I do not see that system as dissimilar from the current system. There would be no real purpose to the bill if I were to require those two elements on a petition. The second amendment was from Tonja Brown. It pertains to the appeal rights of the petitioner. I have not had the opportunity to speak with Ms. Brown, although she has reached out to me. It is not due to her inactivity; it is due to my schedule that I have not had the opportunity to speak with her. I believe that the appellate rights of a petitioner, if the petition is denied, are in line with all other appeal rights and to dictate a separate line of appeals would create confusion in the judiciary.

Assemblyman Elliot T. Anderson:
I do not have any questions because I considered this as a sitting member of the Advisory Commission. What I said then was, What is wrong with finding out the truth? Our justice system is supposed to be about doing justice. This Committee will potentially consider a death penalty repeal bill among a number of things. This is one of the things that ensures our system is fair. Regardless of our actions on these other measures, it is important for us to know the truth of what happened. It is foundational for anyone who has any respect for it.

I hope that when stakeholders come up on this bill, whether in opposition or in favor, that the opposition does not center on opposition to finding out the truth. I do not see how anyone could be against this on a conceptual level. We have many stories nationwide about innocent people being on death row and the Innocence Project is able to get them off of death row. This is one of those things that will give more people confidence in the justice system, and that is good for all of us. I have always said it is good to have a strong defense bar and a strong prosecutorial bar just so people have confidence in the system. All sides of the system need to work together. This is one of those things that gives people confidence. As we look at our justice system today, we do not always get that respect from people. When we do things like this, it sends a message that we want to lock up horrible people, but we want to make sure we do not get any innocent people. I applaud you for carrying this for the Advisory Commission.

Assemblyman Watkins:
I agree with the sentiments. It is good policy if we create a system in which, if we only find one out of a thousand, it is worth doing. If there is one person in jail who does not belong there out of a thousand, and this gets to the heart of that, then it is worth doing. Everybody has been more than willing to discuss this bill with me and has been very respectful in the dialogue. I look forward to continuing to work with them. I hope that we will have a consensus on this. The bill, with my amendment, addresses a lot of the concerns of both sides.

Assemblyman Pickard:
I believe you said that under current law, the Department of Corrections becomes a creditor if the petitioner cannot pay for it. Under your proposal, this would be completely on the shoulders of the petitioner regardless. Is that correct?

Assemblyman Watkins:
Both systems would continue simultaneously. Not all petitioners are required to pay for their test. You can still go through the old system if you are indigent or otherwise. If you think you have such a strong case that you can clear the hurdles of materiality and exculpatory nature of the evidence, then you can go through that process. When I said that the state becomes a "creditor," I did not mean it in a true legal sense, but in essence we are. We have a bill that needs to be paid by somebody who does not have the ability to pay that bill and is incarcerated under our care. Whenever they get some money deposited, we grab a little bit. That takes resources. Here, if they chose the procedure I am proposing in A.B. 268, all that goes away. They pay it up front.

Assemblyman Pickard:
When you talk about removing materiality as a threshold, arguably, some may use this as a means to delay or bring an unmeritorious claim in order to fill up time in the system. My question goes to that of appeal. You mentioned it, but I am not clear. Would this add another thing that a petitioner who brought an unmeritorious claim could add to delay execution of the sentence by yet bringing an appeal on what was otherwise an unmeritorious question?

Assemblyman Watkins:
If I understand your question correctly, I will respond this way: We are dealing with postconviction already. This statute only applies after the person has already been convicted and incarcerated. By the nature of this section of the NRS, we are on appeal. While we are on appeal, could somebody order a thousand different DNA tests on a bunch of immaterial things? They could. The thing about that is, they are already incarcerated so what is the delay? They are paying for it so it is not a burden on the taxpayer.

Assemblyman Pickard:
If it helps to clarify, I was thinking in death penalty cases, where the sentence has not been carried out. It might add yet another delay to the process, which we hear about all the time.

Assemblyman Watkins:
There are so many different avenues for potential appeals to delay execution in a death penalty case that I do not think this moves the needle any further.

Assemblywoman Krasner:
I agree with your premise that we do not want innocent people to be in jail. The majority of prisoners are indigent, are they not? Do you have any data on how many prisoners in Nevada are actually indigent?

Assemblyman Watkins:
I do not have the statistics on that, but through my discussions with stakeholders, my understanding is that most prisoners are indigent. I think that is more of a reason to bring this bill than not. Under the current system, an indigent person can file a petition and if they convince the court there is enough evidence to proceed with the test and the results are unfavorable, they will never pay for it. Theoretically, that indigent incarcerated person is supposed to pay for it, but they cannot, so the state becomes the creditor. They follow this inmate around the whole time and whenever money is deposited into his prison account, they take a little bit, until that test is paid for. That is a burden on the judiciary. That is a burden on the Department of Corrections to try to collect against someone who is uncollectable.

Assemblywoman Krasner:
I am wondering how huge of a burden on the taxpayer this will be? Do you have any data on the proposed fiscal note or tax increase this will require since the majority of prisoners are indigent and incapable of paying?

Assemblyman Watkins:
I believe the exact opposite of what you are saying is true. This will save taxpayers a significant amount of money because indigent incarcerated felons can currently petition the court for DNA review. If the results are unfavorable, they are supposed to pay that but they cannot. Under my bill, that system still exists, but if they can pay for it, they get it. Rather than having a bunch of people go through the current system of petitioning the court, holding a hearing to determine the exculpatory nature of it, and the burden on the judiciary, we do not have that. They simply say, Give me the money and send it off for the test. In that system,

you will have fewer hearings on DNA petitions and you will have fewer situations where the Department of Corrections is attempting to collect on an inmate who does not have the means to pay. That is the burden on the taxpayer.

Assemblywoman Cohen:
We have organizations like the Rocky Mountain Innocence Center that have been trying to help wrongly convicted people for over 15 years. Has there been any word from organizations like them regarding whether they will be of assistance covering the costs of DNA testing for prisoners?

Assemblyman Watkins:
I have not heard from them, but based on my experience in the legal world, I would think that they would champion this bill. If the inmate does not feel they are getting a fair shake from the court on what is material or exculpatory, they could simply raise funds to get the test done. These tests are on the order of hundreds of dollars, not thousands of dollars. They certainly would not be against it. This gives them another avenue while not removing the current one.

Assemblyman Ohrenschall:
I am proud to be a primary cosponsor of this bill. I think back to my former colleague, Assemblywoman Lucy Flores, who worked very hard on this issue. I am glad you are picking up the baton. I am looking at the Innocence Project's website. According to them, there have been 349 exonerations and 149 alternative perpetrators identified. To me it is heartbreaking to think that there might be innocent people at our Department of Corrections (NDOC) facilities who, because of their indigence, cannot afford to have the exoneration or have the real perpetrator found. There can be a cost to providing indigent inmates with this analysis, but there is also a cost to housing innocent people who do not belong in an NDOC facility. That is something the taxpayers carry the burden of anyway.

Assemblyman Watkins:
This bill does not provide any extra access for indigent inmates. If A.B. 268 passes, an indigent inmate must still prove materiality and exculpatory nature, which is the current burden of proof. That is why I wanted to talk about the current law first. There is no application process under A.B. 268 for an indigent client to have a test done without paying for it. The idea behind that is if you are going to ask the taxpayer to bear the burden of the test and you are indigent, we need to know that is a good investment. The way you prove that it is a good investment is by proving materiality and exculpatory nature. This bill does nothing to change that procedure.

Chairman Yeager:
I would also note for the record that there is no fiscal note for this bill, for either the state or local governments.

Assemblywoman Tolles:
If I understand correctly, this is available to all felons. We are not distinguishing between categories; it applies to anyone who has been convicted of a felony, is that correct?

Assemblyman Watkins:
That is correct. I will point to something that none of the members may have seen but I have heard from a stakeholder: this does not require the felon be incarcerated. They could be out of jail and choose to pay for it. I am okay with that. If they want to pay for a test to prove that they were innocent and have a crime removed from their record, I think we should support that.

Assemblywoman Tolles:
How many inmates go through the petition process on an annual basis? How many do you anticipate would take advantage of this? I would like an idea of how the caseload would vary for the labs.

Assemblyman Watkins:
I do not have data on how many of these petitions are filed under the current law. I anticipate that providing the relief sought in A.B. 268 would significantly increase the petitions. The standard under current law is very high. Materiality and exculpatory proof are really high. While there may be thousands of these petitions filed, I would bet that there are very few granted. This would change that quite a bit and could increase the backlog on the state laboratories. There is nothing in this bill that requires them to prioritize these cases any differently than they currently prioritize their backlog. They prioritize the most important evidence that is about to go to trial first. This does not change that. The only other thing I could think of to address that is to provide the petitioner with an estimate from the lab as to how long it would take to process their evidence. If the petitioner thinks that is too long, then they could choose another lab. I am open to those types of conversations. The one thing I am not open to is creating a system for the petition that maintains the high standard of evidence.

Assemblywoman Tolles:
Have you already determined what that fee would be? Is it possible that in determining the amount of that fee, it will be increased in order to help cover the burden of the additional backlog on the labs?

Assemblyman Watkins:
The fee is currently up to the court. We do have a DNA processing fee. Some of the stakeholders that have come to me from the laboratory are worried about the petitioner choosing to go to another lab because they have extra steps they must go through to ensure the chain of custody is maintained. There is nothing in this bill that prevents them from including that fee and sending that to the court for approval. This bill requires that the fees

be paid up front. When the petition is requested and the petitioner selects a lab in Fresno, California, I think it is okay for our lab to say we have a transfer fee of $45 to compensate them for whatever costs are incurred. Can the court decline that? Sure, but the courts always have the power to do that.

Assemblyman Hansen:
One of the principles of our legal system goes back to Blackstone's formulation, "It is better that ten guilty persons escape than that one innocent suffer." I have always been interested in this concept. I hate the idea of somebody being incarcerated who was not, in fact, guilty of a crime. Anything that helps exonerate them and improves the process I would be in favor of. Under the current system, how many people in Nevada have gone through the full process and been found not guilty by a DNA test?

Assemblyman Watkins:
I am aware of one that recently occurred in Washoe County. A woman was in prison for quite a bit of time. The DNA evidence was exculpatory, and she was released.

Assemblyman Hansen:
Even a single case is great to me. In an odd way, it is a positive thing in that our system is good at not convicting innocent people. If this can improve the process, I am all for it.

Assemblyman Watkins:
This will provide more confidence in the system. The reality is that when somebody goes through a criminal trial, the access to DNA evidence is not equal for both sides. Most of these petitions are going to be grounded in ineffective assistance of counsel. Imagine your counsel did not request the DNA test even though you had repeatedly asked him to, or the court wrongfully declined the DNA test that would have proven your innocence. We should provide equal access to all of the evidence on both sides of the "v." If the prosecutors can test whatever evidence they want and do not need to petition the court to do so, we should allow the defense to do so as long as they are willing to pay for it.

Chairman Yeager:
I believe the name of the case you are referring to in Washoe County was the Cathy Woods case. It was in the media in the last couple of years, so perhaps we will hear more about that. There were a number of articles written about that case. That case was handled by the Washoe County Public Defender's Office as well.

Assemblyman Wheeler:
I usually do not ask about finances in a policy Committee, but I believe the Chairman opened the door when talking about fiscal notes. I noticed that there are no fiscal notes. I see no cost associated. Can someone please explain why this is a two-thirds bill?

Chairman Yeager:
Both Assemblyman Watkins and I had asked about that as well. The top of the bill indicates that the two-thirds majority is from section 1 of the bill. Under this new procedure, there is a fee charged to the petitioner. Since the petitioner has to pay the fee, under rules as construed by legal counsel, it would require a two-thirds vote.

If there are no other questions, we will invite anyone who would like to testify in support of A.B. 268 up to the table.

Tonja Brown, Private Citizen, Carson City, Nevada:
This is a wonderful bill, and I have been working on this for many years. I can clarify some of the questions you have asked as to the cost. Most people, including myself, have been involved in petitioning to have DNA testing conducted and, of course, were denied. DNA testing was never conducted after trial. For a lot of the people in prison now, DNA was not available when they were convicted 20 or 30 years ago. Technology has greatly improved since DNA has been established. We now have "touch DNA." These people are the ones that are more than likely going to be filing these petitions. I will tell you that they have supporters out there. DNA testing back then, if they had to pay for it, was relatively expensive. Now it is not nearly as expensive. There are GoFundMe campaigns, Innocence Project campaigns, and family members who can pay the cost up front. By doing so, it would get the test results back sooner, and if they were exonerated, the taxpayer would not be paying for their incarceration.

Most inmates would rather have DNA testing done outside of the state of Nevada. There would not be a problem with the backlog because they would be going outside of the state. I submitted an amendment (Exhibit N) because I have been involved with this. I have asked that section 3, subsections 5 through 7 be deleted from this bill. By having that in there, you are still trying to get the court's approval. The court at any time can say no. If we remove that from the bill, it would be saying if the petitioner files their petition, the court will just issue it and continue the process of the rest of the bill. I have also provided the most recent case I have dealing with DNA testing. It was for Mr. Edmond Wade Green, and I have submitted it on the Nevada Electronic Legislative Information System (NELIS) (Exhibit O). It is a postconviction petition requesting genetic marker analysis of evidence within the possession or custody of the state of Nevada, NRS 176.0918, filed June 20, 2016. On June 24, 2016, the judge denied the DNA testing. Mr. Green provided a list of everything that he wanted. Most people may not be aware that there was another suspect in Mr. Green's case. His name was David Middleton. Some of you may recall that case. David Middleton, back in the mid-90s, murdered two women in Reno and is now on death row. They found material evidence in his storage unit. In this petition, Mr. Green is asking to have the material that was found in Mr. Middleton's storage unit tested. Mr. Middleton was the prime suspect in Mr. Green's case. Mr. Green's petition was denied and is now procedurally barred according to NRS Chapter 34. The order provided (Exhibit O), dated June 24, 2016, states NRS 34.726 requires a postconviction petition be filed within one year after the Nevada Supreme Court issues a remittitur from a timely direct appeal. This was filed under NRS Chapter 176 but the court is referring to NRS Chapter 34.

In my amendment (Exhibit N), I ask that section 6 be deleted and a subsection 3 be added to NRS 34.726 that would read, "A postconviction petition requesting a genetic marker analysis of evidence within the possession or custody of the state of Nevada (NRS 176.0918) may be filed at any time after conviction." The courts are going to look for a way to dismiss the petition. In the Green case, they did it by going within NRS Chapter 34. That is not even mentioned in this bill.

Chairman Yeager:
If A.B. 268 were to pass, would it allow testing of the evidence that was sought in that petition you referenced?

Tonja Brown:
It would, but under section 3, subsections 5 through 7, by having the language referring to the "court," the judge can, for any reason he sees fit, deny it so no petition would be granted. If you appeal it, the Supreme Court will usually uphold the lower court's decision so no DNA testing would be conducted.

I have also added to section 1, and I think this might clarify the "court." Section 1, subsection 4, paragraph (d) (Exhibit N) reads, "If the petition meets all criteria of section 1, subsection 4, paragraphs (a),(b), and (c), then the petition must be approved by the court, and the court holds no discretionary input regarding approval." If a petitioner files this, as Mr. Green did, he has identified everything he wants tested. I have also provided documentation of David Middleton being the suspect of the murder for which Mr. Green was convicted (Exhibit O). The DNA was supposed to have been tested. Mr. Green never got DNA testing done. He is asking for it now. They found hair that did not belong to the murder victims. Mr. Middleton is also suspected of killing other women throughout the country.

Chairman Yeager:
If you could, please limit your comments to this bill.

Tonja Brown:
With regard to the information we have provided, I know that during the hearing of the Advisory Commission on the Administration of Justice, all law enforcement was against this bill. Justice delayed is justice denied. If we have to go through an appeals process, if they are indigent, or pro se, and they have to file it themselves, their case is going to sit there approximately three to five years. I received a letter from a justice some years ago, and that timespan is customary. When the appellate court was being considered years ago, that was brought up to Justice Douglas, who could not even answer how long it would take. I am going by the letter I have received from a Nevada Supreme Court justice. It will take three to five years. That is three to five years to get an answer on whether or not this district court judge was wrong in denying the appeal. Let us eliminate those sections, take the court out of it and go directly to testing. You file it, get it done, and perhaps you get out and back to your family and loved ones.

Chairman Yeager:
I would let the members know that the documents Ms. Brown referenced are available as an exhibit on NELIS. I had a chance to look through those and it was very thorough, so thank you for that. Any additional testifiers in support of A.B. 268?

Sherry Powell, Founder, Ladies of Liberty, Reno, Nevada:
I am not a fan of inmates, but I have reviewed this bill and Ms. Brown's documentation. As far as backlog on rape kits and DNA kits, it is not because we have an overwhelming amount of crime. It is that the backlog was allowed to occur in the first place. I do not know how many of you know who Brianna Denison was, but in the case of those DNA kits, Marc Klaas came up here to protest because those backlogs were allowed to occur under an administration that should have had them done. For me, I support this bill because it gives me comfort in knowing that I will not be trying to enhance prosecutions, charges, or sentencing to an innocent person. Not only that, but if the person is innocent, it gives us the means to determine that a predator is still out there and we need to make sure that that predator is caught. I am an activist for the rights of victims of crime. I am working diligently with Marsy's Law and Assemblywoman Krasner's Assembly Bill 145. I support the death penalty. My compassion for inmates is minimal. Most people who are convicted lack the funds to get a proper defense or they just accept a plea bargain. In the state of Nevada, over 90 percent of all cases, especially violent crimes, are plea bargained. That is just the facts. Allow an inmate to pay for it at his own expense, and if he is innocent, let him go and let us look for the real perpetrator. If he is not, he will be in the database and maybe we can get rid of a few more crimes that are on the docket.

Chairman Yeager:
Thank you for your testimony. Anyone who was here in 2013 remembers Brianna's Law, Senate Bill 243 of the 77th Session, brought forward by the late Senator Debbie Smith. The discussion that was had on that bill is pertinent today as well. The point was made that DNA can be used both to convict and to exonerate. That is to be remembered in the context of this bill as well.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
I stand in support of A.B. 268. To be clear, oftentimes public defenders, such as myself, are called as witnesses in these types of postconviction proceedings. We do support this measure because we feel it promotes a sense of fairness and integrity within our justice system. It was an excellent question from Assemblyman Hansen about how many are exonerated. Our office was proud to work on the Cathy Woods matter. Maizie Pusich was the chief public defender on that case and Ms. Woods was exonerated by DNA from a cigarette butt that was found near the crime scene. That was only after she had spent over 30 years in prison. This is an important measure, and we wholeheartedly support it.

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:
We, too, are in support of this measure. It is pertinent to say *The Guardian* reported that in 2015, there were three exonerations a week on average in America. Most of the Committee members who are also lawyers know the in-depth work that goes into those

serious cases. There are a lot of other cases that fall through the cracks. People may still be innocent and yet they are sitting in jail or prison. One of my worst fears as a public defender is to have Barry Scheck or someone from the Innocence Project come behind me and say, Why did you miss this piece of evidence or this part of the case? This measure will go a long way in providing some comfort in allowing people, who have the means, to get the testing done.

Chairman Yeager:
Is there anyone else who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition?

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I want to thank Assemblyman Watkins for taking the time to listen to our concerns and the ongoing talks we are having to try and address those concerns. As a matter of clarification, I am a member of the Advisory Commission on the Administration of Justice and I did vote against this proposal, primarily because it was raised in public comment. The Advisory Commission never had a chance to fully vet it, it was never discussed, we never received presentations about it, we never learned about the efficacy of the current system, and we never received statistics or numbers as to how many people may be incarcerated who have untested evidence. Based on those facts, I did vote against this at the Advisory Commission. I tried to pull the minutes from the Advisory Commission from the meeting on November 1, 2016, but they are not yet available.

I want to be clear that in law enforcement we want to put the right people behind bars. We do not want to put innocent people behind bars. We share the same goal as the Innocence Project in that regard. It is not our goal to put somebody who did not commit a crime behind bars and cost the taxpayers money while the real criminal is still running around committing additional crimes. As to the reasons I am concerned with this bill: we do currently have a backlog in our lab, and there are several other bills this session that would put a mandate on sexual assault kits, in particular, to have them completed within a certain time frame. The lab currently says we would have to hire an additional seven staff members at a cost of $500,000 per year on average for us to complete those within the time frame. We are committed to testing all sex assault kits that we have in our custody.

Chairman Yeager:
I want to clarify the testimony you just gave regarding additional positions. Is that just for the sexual assault kits backlog, or does that also include other types of cases where there is a backlog?

Chuck Callaway:
That is based on what my lab feels they would need to accomplish that which is in those two or three bills that would require a specific time frame for testing the current backlog we have on sexual assault kits. I did not submit a fiscal note on this bill because the lab, frankly, tells me they are not sure what that fiscal note would be. Even though the defendant in this case

would pay for their own testing, and could choose to have that evidence sent to a private lab somewhere, there are still resources used and costs on our part. We have to find the evidence, categorize it, inventory it, and prepare it for shipment to a private lab. We have to maintain chain of custody, and we cannot guarantee that once that evidence leaves our hands there is a continuous chain of custody. With a private lab, we do not know what their processes and procedures are. There could be multiple people involved in the testing process. How do we ensure that a proper chain of custody is maintained?

To the second issue, how do we collect the fee? The Assemblyman has assured us that the fee would need to be paid up front before any testing would commence. The way I read the bill, it is not clear. The court collects the fee, and then do we have to try to collect the fee from the courts? Would we be expected to complete the test because the court has collected the fee, even though our department has not yet collected the fee? There are some concerns about the vagueness of paying for it.

It is more of a philosophical thing, but to me, if the indigent person has to follow the old process but somebody who has money can pay to have any evidence tested, is that fair? Is there disparity there? If I am in prison and indigent, I have to follow the old process where the courts can review my petition and determine if the evidence I am suggesting be tested is relevant to the case, whereas the person in the cell next to me who happens to have money can pay to have anything tested in regard to the case. I do not know if that is a fair system.

Finally, I would just make a recommendation that if this is truly something that the Advisory Commission should delve into, during the interim the Advisory Commission could get down in the depths on this and get some more statistics and background and provide something more moderate. The current system can be improved upon to ensure it is more fair, but at the same time we do not open the floodgates to possible fishing by anyone who can pay for a test to try and blanket request to have evidence tested.

Assemblyman Elliot T. Anderson:
I cannot say that I disagree with you that this is not ideally fair. I do not think anyone would say this is ideally fair. The more we can do to give people who may be innocent the chance to get out is a positive thing. I want to delve more into your opposition. If a lot of these technical things are taken care of, is that something that can get you to support this bill or is it conceptual?

Chuck Callaway:
The short answer is yes. I believe that if the concerns raised by our lab as far as the impact on our resources, how the fees are collected, and the chain of custody issues can be adequately addressed, that gets me a lot closer to a comfort level where I could support this bill. Our goal is the same. We want to make sure that innocent folks are not subject to the criminal justice system, and that the person who is actually committing the crime is held accountable.

Assemblyman Elliot T. Anderson:
I can speak for myself to say that I would be willing to provide any language that is necessary to ensure the department is kept whole in terms of fiscal costs and taking care of those issues. The idea is to keep the system whole in terms of a fiscal impact. The way I envision this being used is that you have got something like the Innocence Project who reviews a case, looks at the evidence, and has the ability to raise those funds. That would be a positive way for this to take effect. I do not think you are going to have a ton of inmates who have rich relatives out there who can pay for all kinds of evidence testing. Practically, what is going to happen is you will have some level of vetting from places like the Innocence Project, universities, and nonprofits that will be able to do that. I am all for making sure that you are kept whole with this. The idea is to make it fiscally neutral for all players. I would appreciate any ideas you have in that regard to keep the state whole.

Chuck Callaway:
I am not 100 percent convinced that the current system is broken. To give a hypothetical scenario under the current system: A subject kills his girlfriend, they struggle, he has her DNA under his fingernails, he has her blood on his clothes, witnesses see him leave the residence, he is captured by police, read his *Miranda* rights, and he confesses. When the crime scene investigators come out and collect all the evidence in that case, they find a cigarette butt in the front yard of the residence where this crime took place. That process goes through the criminal justice system and this individual is ultimately convicted based on a jury of his peers hearing all the evidence brought forward in this case. Maybe that cigarette butt by the sidewalk was not tested but was collected by the forensics team. Under the current system, the convicted person says, That cigarette butt was never tested in my case. They can petition the court. The judge looks at that case and says, When I look at all the facts in this case—the confession, the blood on your clothing, the DNA under your fingernails, and the witnesses—I do not see the evidence of that cigarette butt being relevant. Under the current system, the judge looks at those facts. Let us say the opposite is true and the judge says this cigarette butt should have been tested; it was in the residence near the decedent's body. The current system has a process where that is vetted. Under the proposal in this bill, that goes out the window and now the convicted person can say, I want that cigarette butt from the front yard tested, even though it may not have any relevance to the case. I am not convinced the current system does not work.

Assemblyman Elliot T. Anderson:
We do not necessarily have to make a judgment as to whether the system is broken or not. A system does not have to be broken for us to add more to it. These issues could be dealt with in consultation with the bill sponsor. I am not sure what is contemplated to be tested, but often you have DNA that has been collected already. It is not that someone will say random things should be tested. I am not sure exactly what you are envisioning.

Chuck Callaway:
The way I read the bill, random things could be tested. If something was collected at the crime scene and the defendant believes it was not tested and should be, they can petition. There is no vetting process like what is currently in the statute.

Assemblyman Wheeler:
You mentioned something I had not thought of: the chain of custody for evidence. Back in the day, we did not even know what DNA was. All evidence that was collected had to have a good chain of custody. I have seen a lot of retrials where that chain was broken and all the evidence was thrown out. Do you see a scenario where someone sends evidence to a private lab, the chain is broken, and that evidence is forever tainted no matter the outcome of the retrial? Is that a technical problem that can be overcome?

Chuck Callaway:
It all depends on the private lab. There are accreditation standards for labs. Our lab has been accredited by multiple agencies. Hypothetically, you could have a private lab that meets the accreditation criteria, has a strong chain of custody, and responds to our lab in collecting that evidence and maintaining that chain of custody. I can see a scenario where, if the defendant can pick the lab they want to test their evidence, then they could choose a lab that does not have those standards in place. It may require the evidence be mailed, so how do you maintain that chain of custody? Those are very valid concerns.

Chairman Yeager:
I think this issue about the chain of custody and outside labs is not a new issue in the criminal justice system. It is not atypical to use outside labs. Normally what happens is there is some kind of stipulation that if the evidence is compromised in some way, it is to the detriment of the petitioner. Perhaps those are provisions that would make sense in this bill. Mr. Callaway, I want to clarify one thing you said for the record. When you started your testimony, you mentioned that in opposition to this bill, one of the issues was that it was brought to the Advisory Commission by a member of the public. I do not think you meant to say that that was the objection—it was more the fact that the Commission did not vet the issue. I want to make sure it was clear on the record that we encourage members of the public to bring ideas to us.

Chuck Callaway:
Absolutely. The point I was making was that the Advisory Commission was tasked with many areas to look at—from marijuana, to parole and probation, to presentence investigations. During the course of the interim as the Advisory Commission met, members of the public came in as in any open forum meeting and provided public comment. At the end of the final meeting of the Advisory Commission, there was a work session. Things were compiled for the Advisory Commission to consider, but the only information we got was during public comment. I voted against this item in particular because it fell into that category where all we heard was several minutes of comment from the public. Obviously, the comments of the public are very important, but I felt that in order to make an educated vote on something, I needed to hear beyond just three minutes of public comment. I needed to hear from the stakeholders.

Chairman Yeager:
Thank you for that clarification.

Eric Spratley, Commissioner, Advisory Commission on the Administration of Justice:
I am here in my position as a commissioner on the Advisory Commission on the Administration of Justice. I represent the Nevada Sheriffs' and Chiefs' Association on that Commission. I would echo all the comments from Mr. Callaway regarding the Advisory Commission and the fact that we did try to look up the minutes for that to see our vote. There were actually four or five of us that voted in opposition to this for the reasons mentioned.

Assemblyman Hansen:
I like the concept of this bill. However, it is remarkably evident that we have rarely convicted completely innocent people, at least as far as the DNA evidence goes. Of the two cases we have dug up so far, one was an unusual case where an individual confessed to a crime and then sat in prison for 30 years and was exonerated not on her behalf, but by some great work on behalf of some investigators. Considering we have tens of thousands of criminal convictions every year in Nevada and remarkably low numbers of innocent people being dragged into the system, this is a real credit to the Legislature and the process as a whole. That does not mean that I am not in favor of this bill. It is better to let ten guilty people go than to convict one innocent. If we have convicted someone who is innocent and that person can be exonerated through the DNA, it seems like a reasonable step to me. I am torn on this bill as I have respect for the process. The evidence we have seen so far indicates it is exceptionally rare in Nevada that we have innocent people incarcerated.

Chairman Yeager:
Is there anyone else who would like to testify in opposition?

Jennifer Noble, representing Nevada District Attorneys Association:
We are in opposition to this bill, but for the record, we did work with Assemblyman Watkins to try to reach a resolution in language that we could both be happy with. We have not been able to do that yet, but perhaps we can down the line. We will work with him if he would be willing to do so.

I want to start by echoing the sentiments of Assemblyman Hansen and other members of the Committee. I hate the idea of an innocent person sitting in prison. I truly do. Our job is not to do that. Our job is to find out the truth and make sure that justice is done. I want to make it clear we are all starting from the same point.

With regard to the Woods case that has been mentioned, just a little bit of background. That murder took place in the 1970s before we had the benefit of DNA analysis. Ms. Woods confessed to the crime, gave details that in the analysis of law enforcement were not available to the public, and that was what led to her conviction in that case. Our team, the Appellate team under the Criminal Division of the Washoe County District Attorney's Office, handled that case. Once DNA testing was requested, once they articulated what items they wanted tested and why, which did not take long once Eric Lerude, who is a private defense

attorney, got on the case, our office did not stand in the way of that, and we made sure that evidence was tested. I want to make sure it is clear to this Committee that we did not obstruct the testing of DNA in that instance and the statute worked the way it is supposed to.

Next, I would like to talk about the amendment we proposed (Exhibit M). If you look at section 1, subsection 3 of the bill, we have added a paragraph. Currently, the standard is that a petitioner who is seeking independent testing or testing of DNA evidence or items of evidence has to show that it is material and exculpatory. At first blush, it may look like the standard we have proposed here may be the same thing. I can tell you, as a postconviction attorney, it is not. We have changed it to the following: "Specific allegations of fact regarding the evidence requested to be tested that, if true, would establish a reasonable possibility that the outcome of the proceedings against the petitioner would have been different." There is a difference between exculpatory evidence and evidence that could have affected the trial or the person's decision to plea.

I will give you some examples. One would be a case where we had a witness who indicated he was not present at the scene. This witness testified against the defendant. If a petitioner was able to say that person was there, he drank a cup of coffee or smoked a cigarette, and that cigarette butt was collected, I want that tested. That could have been used to impeach the witness who testified, but it would not necessarily be exculpatory evidence. There is a distinction. This is actually a lower standard. It is the same standard that we use to evaluate all claims of new evidence in postconviction proceedings. We use this standard when petitioners say they have an alibi witness; we use it when they say they have a recanting victim; we use this same standard when they say the defense attorney was incompetent or pressured them into pleading; and we use it when there are allegations of juror misconduct. We do not require the petitioner prove those facts in this pleading or show any evidence, he just has to articulate some facts that, if true, would entitle him to relief. This is not a high standard to meet. It is not beyond a reasonable doubt, it is not preponderance of the evidence, and it is not clear and convincing evidence. They just have to say something that if it were true, would have changed the outcome of the case. If that is the standard we use for all of these other types of claims that are just as important to cases as a DNA result might be, why would we alter or have no standard for DNA testing?

We object to this because it removes all of the discretion from the judge and the court. It does not let us respond in any way before this is granted. What is going to happen is there will be a flood of these orders to test DNA, they are going to hit our crime labs, and they may be shipped to outside labs (my understanding is there is only one in the state of Nevada and it has two people in it). What is going to happen is that innocent people awaiting trial who could be exonerated by DNA or would have us drop the charges are going to have to wait because a defendant who is sentenced to life in prison, whose guilt was proven by DNA evidence, wants some random piece of evidence, out of the hundreds of pieces of evidence that are collected at many crime scenes, tested. Now we have people who are potentially innocent who will have to wait longer. There is a reason to have this minimal threshold. It is

not difficult to surpass. It is my job as a postconviction attorney on the prosecution side, any time I see an allegation, even if I think it is a bunch of hooey, if it meets this standard, to stipulate to a hearing and say, Judge, you have to look at this. That is our job and that is what we do.

We appreciate the effort to put the onus on the petitioner to pay. I do not think this is realistic. I have never seen a petition to proceed in forma pauperis, or as indigent, in the postconviction context denied. I have seen hundreds of these. This morning I talked to my colleague who has been doing this for 30 years. He could think of one instance where somebody was denied in forma pauperis status or indigent status in the postconviction context. I do not think we can treat petitioners who cannot pay differently than petitioners who can. There is an equal protection problem there, and it is not fair. We need to make sure we are not treating people differently simply because they cannot pay. It is going to cost money, and where is that money going to come from?

I want to end by saying we support the idea behind this bill, but the devil is in the details. Our current standard is material and exculpatory. I propose a standard that is below that. It is the standard that is used in common cases like *Hargrove v. State*, 100 Nev. 498 (1984) and *State v. Huebler*, 275 P.3d 91 (2012) and cases that those of us in the postconviction world are quite familiar with. That is the compromise we are trying to offer here, but there needs to be a standard. There needs to be some sort of vetting process, the prosecutor needs to have an opportunity to respond, and the court needs to be able to make a determination. That is what we trust our judges to do.

Assemblyman Hansen:
As prosecutors, you have unlimited access to the DNA evidence, both postconviction and during trial. Should the same opportunity be granted to the defendant and his counsel?

Jennifer Noble:
It is granted to the defendant and his counsel. During the trial process, it often occurs—and did occur during *State v. Biela,* Second Judicial District Court Case No. CR08-2605 (2008), the Brianna Denison murder—where pieces of evidence were independently tested at the trial level. I did the postconviction case in that instance and there was testimony from both labs about the quality of the evidence. That does happen.

Chairman Yeager:
You mentioned the Cathy Woods case and that your office did not stand in the way of the testing. Could you get information in terms of the existing procedure in law for this kind of testing? How often has your office opposed the requested testing under the existing statute versus stipulated or agreed to do it? I understand you might not have that with you now, but is that something you would be able to get?

Jennifer Noble:
Certainly, I would be able to get that. I can tell you that in the last six years I have been in that division, the first instance I saw come up where we did not oppose it pursuant to this statute was Ms. Woods' case. It took us all of about ten minutes to decide not to oppose it.

Chairman Yeager:
I appreciate that with the Woods case, but I would be interested to know how many of these you have been getting under the existing law and what the outcomes have been. I know there is some court involvement. I am particularly interested in your office's position as well as the Clark County District Attorney's Office. Under this new procedure as contemplated in the original A.B. 268, there is the idea that the petitioner actually has to have money to have the testing done. Do you disagree that that would act as a bar? Somebody would have to come up with the money to have the testing done. That should weed out some of these instances with an opening of the floodgates. The money has to be there to actually pay for it.

Jennifer Noble:
That could potentially happen. As an appellate attorney, I can tell you that it would be my opinion that the Nevada Supreme Court would find that to be an unfair and unconstitutional prevention of people who are similarly situated in that they are all in prison. We are punishing those who cannot pay for it or not affording them that opportunity. We are putting hurdles in front of indigent defendants that we are not putting on nonindigent defendants, of which there are very few.

Chairman Yeager:
That is helpful. In the language in your proposed amendment, particularly about what the petitioner would have to establish, you had talked about how it is different from the law now. The language in your amendment reads "a reasonable possibility that the outcome of the proceedings against the petitioner would have been different." What do you envision by the word "outcome?" As you know, most cases negotiate so early on in a case that someone is deciding to take a plea. We also have a sentencing later on where a judge will take into account various mitigating circumstances. In your interpretation of "outcome", would you include that to mean any outcome, whether it is the plea or the sentence that was handed down? Can you give a little more context on what you are envisioning and how that standard would work?

Jennifer Noble:
Yes. That could be a situation where a person's decision to plead guilty would have been affected by the evidence they are requesting to have tested. I cannot think of an instance where this might occur, but they could plead facts that would show that their sentence would have been different or that the outcome of their jury trial would have been different. It is not that it is exculpatory, but it would have impeached a key witness and created doubt in the minds of the jury.

Chairman Yeager:
That is helpful. I have a question about the language in the amendment with regard to the specific allegations. As envisioned in the amendment, it would be the petitioner's burden to show those facts. What if we had a situation where it was a rebuttable presumption? Just by bringing the petition, they establish that and it would be on the district attorney's office or the Office of the Attorney General to come and rebut that presumption. Is that something that would be workable or would you be opposed to that?

Jennifer Noble:
Just considering this now, I would be opposed to that because that would deviate substantially from the rest of our postconviction statutes and case law. Once the state has met its burden by establishing beyond a reasonable doubt that the person is guilty, the burden then shifts to the defense and they, in our postconviction proceedings, call their witnesses and we postconviction attorneys function essentially as defense attorneys defending the conviction. I would object to anything that would put the initial burden on the state.

Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office:
First and foremost, I would like to thank Assemblyman Watkins for his willingness to meet with us and discuss some of our concerns over this piece of legislation. I would be remiss if I did not say the intention of this bill is very noble. We echo the comments of those from Clark County and everyone else and do not want to put innocent people in jail. It is the perceived damage it creates in the aftermath that is troubling for our department.

According to the Department of Corrections' (NDOC) January 2017 statistical data, we currently have 14,127 inmates on average in custody. We believe there is a great potential for misuse without a proper vetting system or review board as currently exists in law. The issue the bill imposes upon the Washoe County Sheriff's Office Forensic Science Division is twofold. The potential exists to overwhelm our staff with more work in a division that is already overburdened and underfunded. Should the petitioner choose a laboratory of their choice and we are the custodian of that evidence, there are chain of custody issues that bring some concern from our department.

Secondly, we did not attach a fiscal note to this bill, as the amount really cannot be calculated. A good portion of the 14,127 inmates that are in custody are indigent and although the Department of Corrections is burdened with being the fee collector in these circumstances, we want to be able to work with the Assemblyman to make sure we can vet those procedures as to how the fees are collected. At the end of the day, someone is going to be left holding the bill, and we do not want to avoid processing a key piece of evidence just because the fee could not be paid.

I would like to introduce Dr. Lisa Smyth-Roam. She is the supervising criminalist of our biology unit. In case anyone on this panel had any questions about what is currently happening, she will be able to answer those.

Lisa Smyth-Roam, Supervising Criminalist, Biology Unit, Forensic Science Division, Washoe County Sheriff's Office:
We have a very passionate group of people that work at the crime lab. We are overworked. However, one of the concerns I had was about bringing private labs into the loop. That could definitely help. One thing that you may not be aware of is if DNA testing is performed in a private lab, they do not have access to the DNA database. In the case of Cathy Woods, we processed that case in-house. When we got an unknown male profile from a cigarette butt, we were then able to put that into the Combined DNA Index System (CODIS) and get a hit. There is more to it than we might realize. If our lab was left out of the whole process and individuals were to send evidence to a private lab, then any unknown DNA cannot go into the database. Potentially, we would not be able to send the correct person to prison. If people would go through our lab, we could contract out to a private lab and that way we would have to take ownership of the DNA results and we would have to review all results processed by an outsourcing lab. We have started that for sexual assault kit testing. For those kits that have not been previously submitted to the lab, we are working with a private lab because we do not have the capacity. We have three to four DNA analysts working on over 600 cases. You can imagine our turnaround time sucks, frankly. It is 250 days on average. When we find out court dates, we prioritize and move things up. Unfortunately, those cases that are lower priority are going to the bottom of the queue. Sixty-six percent of the cases we currently have are high crimes: homicide, assault and battery, sexual assault, or death investigations. Any time you see a crime on the news, that is coming to our lab. We serve 86 agencies in northern Nevada.

We are not a state lab; we are funded through the county. We are actually under the sheriff's budget, to clear up another misconception. We are very passionate about testing. We want justice. It does not matter to us whether we include or exclude; it is the same satisfaction. That is why we are here, to help our community. However, if we are doing something, we want to make sure we are doing it right. We do not want to miss something. Even though we do not want to take on any more work without funding, I am a little worried about sending evidence to a private lab and not having the ability to do anything about it if there is an unknown profile identified that is a viable suspect.

Assemblyman Hansen:
To one of the arguments brought up earlier, the inmates are concerned about the trust factor. You work for the prosecution side in the lab. How do you respond to that? Is there some check or balance system to make sure you are not favorable to the Washoe County District Attorney or Sheriff's Offices?

Lisa Smyth-Roam:
The best part about being a scientist is that we are looking for DNA. We do not know what the results are going to be. There is this misconception. We do work with law enforcement predominately, and district attorney's offices. That is not of our choosing; it is just the way things are. We did the Cathy Woods case, so I do not really know. We work a couple of

postconviction cases a year. Some of them are smaller where they want retesting on something that was already tested. Sometimes we will go ahead and test a sample but there might not be anything left. If there is good reason to test the case, then we are for it. It is not a problem for us.

Assemblyman Hansen:
Is there occasional sampling done to make sure your lab is accurate? Is there any outside check on your activity, an outside lab that comes in to ensure you are 99 percent correct?

Lisa Smyth-Roam:
Yes, we have an insane number of quality control processes in place. Every DNA analyst does a proficiency test twice a year. We get what looks like a case and it must be processed as you would any other case. We do not know the answers, and it must be submitted to an external vendor. They grade our test, and we have to get 100 percent. If we do not get 100 percent, there will be problems unless there is a logical explanation. That is one major thing that is done twice a year. We are also internally audited every year. The DNA section also has to meet federal requirements so we are audited every other year, externally, and every four years by our accrediting body.

Assemblyman Elliot T. Anderson:
I would like to get an idea of the costs to your lab. I have a strong suspicion that the cost of these things is going to provide that check that law enforcement is worried about. Could you shed some light on how much it would cost? To the extent you can, rope in any costs associated with the chain of custody. That would be important information for the Committee to understand.

Lisa Smyth-Roam:
I actually ran this number because of the sexual assault kit legislation. The cost for consumables, the chemicals we add to our samples, is approximately $82.91 per sample. If we process just a couple of samples, it is not too much in chemicals. That does not include our instrumentation and the maintenance and servicing that must be done annually. This does not include the cost for the analyst's time. The cost for a DNA analyst per year is approximately $120,000.

It all depends on volume. In an ideal situation, we would have enough DNA analysts that we could easily do these types of tests with great turnaround time of 60-90 days, including current cases and postconviction cases and everything else. That would be our dream situation. The problem is that we do not have any idea of how many cases we could be getting in with the new changes in this law. That is the worrying part for us.

Currently, we have sample limits. For example, in a homicide case we try to limit the amount of samples we test to 15. What we have found over the years is that you really do not need to test every single item of evidence that was collected at a crime scene. When the

crime scene investigators go to a crime scene, they are going to bring everything back because, at that point, you do not know what is relevant or not. You are just going to bring it all back, and as time moves on, it becomes more obvious what types of samples might be relevant to the case.

We do not know what results we are going to get when we test them. That is the great thing about it. The results are the results; we cannot make it up. Sometimes when we make those phone calls or send out those reports, we have law enforcement agencies that are not that happy. We do not get any results or we do not get the results we are thinking about. Sometimes we are not so useful and sometimes we are very useful. Our results are what they are. With the sexual assault kits for example, if we get 300 more kits a year, we are going to need five more DNA analysts. With those consumables, we will need at least another $800,000 annually just to cope with that level of extra kits. With this, I do not know what level this could be.

Assemblywoman Cohen:
Did you say the data that comes from the outside crime labs cannot go into the CODIS database and you cannot get a copy? How does that work?

Lisa Smyth-Roam:
That is correct, except if we have a contract with a private lab. If our lab has a contract with a private lab, then we will take ownership of any DNA results that they get and we can enter it into CODIS. In order to get a contract with a private lab, there are certain standards that they must meet. They need to be accredited to the same standards as us, which is very good. We have to do an audit or an onsite visit at that lab. We have to go out to bid to get the best pricing. We will have to have some numbers to go out to bid. We will need to know how many cases we are expecting to come back for this additional testing. We also have to technically review any case that has information going into CODIS. We would need additional people even to review them. Reviewing a DNA case can be simple if it is a nice profile with a single source with just one person who matches. Unfortunately, we do not always get those easy ones to review. Some technical reviews of one case packet can take a day or even a couple of days, depending on how complicated the case is and how many samples were processed.

Even if the outsourcing or private lab is doing the testing, we are going to have to take on some of the burden so that we can take ownership so the DNA can go into CODIS. For a profile to go into CODIS, it has to meet certain criteria. That profile has to be believed to come from a suspect and has to be relevant to the case. That is another reason that vetting and going through the evidence to say these are the relevant pieces of evidence is even more critical. We need documentation to say that that knife is believed to be the murder weapon. When we swab the handle of the knife and get a DNA profile, now we can put that profile into CODIS. If it is a cigarette butt that was away from the crime scene and they are not sure if it is related to the crime scene at all, that DNA profile cannot go into CODIS. If there is some video footage that shows a potential suspect was in that area smoking before the crime

happened, then maybe we could put that in. The details are extremely important. We want to test the stuff that will be applicable, so when we get DNA, we spend a massive amount of time going through the evidence to make sure we have not missed anything and so we can get the testing done up front.

Assemblywoman Cohen:
With these types of labs, is there a national organization with certain standards, or can anyone who has the money start up a lab? There is a national organization that has standards that labs follow; can you briefly go into that?

Lisa Smyth-Roam:
The private labs we utilize are accredited. There are different accrediting bodies, but the major one is the American Society of Crime Laboratory Directors/Laboratory Accreditation Board. As long as they are accredited, it at least gives us a comforting feeling that they are following the same rules that we are. They are also required to meet the federal standards. Especially if we are going to enter into a contract with them, they have to meet the same federal requirements that we meet. They have to give the same level of service as what we would be expected to give. We check their audits and make sure that they are the same as us and these are the ones we recommend. There are some "backdoor" or "garage" labs out there where people try to set up their own lab, maybe in their own house. Those labs would not be the ones I would recommend to send evidence to be tested. People have to be trained. We are required to have certain education and certain classes. We are required to have eight hours of continuing education every year. So many things go along with accreditation, which is really a good thing. There are private labs out there that meet those same requirements.

Assemblyman Fumo:
My understanding is that an accredited lab is one that meets Federal Bureau of Investigations (FBI) minimum standards. Is that correct?

Lisa Smyth-Roam:
An accredited lab is a lab that meets certain standards. For our lab, the DNA section meets the federal DNA requirements and we meet our accrediting body standards, which are the international standards. There are over 400 requirements in the international standards that we meet. There are 17 different federal standards, and each has subcategories.

Assemblyman Fumo:
So you have FBI minimum standards and international standards. These standards meet blind testing results requirements. You must be tested and meet 100 percent accuracy. If we amended the bill to add language that it had to be an accredited lab the samples had to be sent to, that might alleviate some of your concerns. If I understand you correctly, you said that you contract out to a second lab?

Lisa Smyth-Roam:
We are in the process. Our first batch of cases are going to an accredited lab for testing. We have outsourced offender samples for several years now, thanks to federal grant funds that have allowed us to do so, but this is our first experience with contracting out cases and reviewing them in-house.

Assemblyman Fumo:
If you already do that, this bill could alleviate some of that. It could alleviate some of the pressure on you if they are going to the outside lab that you use already. If you accredit them, you take these samples back, and if they have a hit and they cannot put it into CODIS, they could give it back to you and you could do that. You already do that, do you not?

Lisa Smyth-Roam:
We have a contract with a lab for sexual assault kits. If we were to have a contract with a lab for other samples outside that scope, we would have to initiate a different contract. We would have to be in communication with the postconviction testing up front. We have to approve the testing before it happens. We cannot have someone call us up, say we have a DNA profile that needs to be put into CODIS, and just do it. We already have to be part of the process from the beginning.

Assemblyman Fumo:
So the answer is yes, it can be done?

Lisa Smyth-Roam:
It can be done, yes. As long as we are not left out of the process altogether.

Chairman Yeager:
In the amendment, there is a provision that the lab would have to satisfy the standards for quality assurance that are established for forensics laboratories by the Federal Bureau of Investigation. At least that is contemplated by the bill.

Let us open it up to neutral testimony. [There was none.] Assemblyman Watkins, I would invite you up to make any concluding remarks.

Assemblyman Watkins:
I would like to clear up some things that were brought up in opposition and in support. As to Ms. Brown's concern about the discretion of the court, if you look at section 3 of the bill, it provides that the court shall order the testing under two provisions. The first provision is paragraph (a), which has three requirements. Paragraph (b) simply says, if "The petition for the analysis was filed pursuant to section 1 of this act." Therefore, if they file it and pay it, it is done.

Going toward the testimony from the opposition, there was this philosophical argument in terms of indigent people as opposed to people who can afford to pay for this. I acknowledge that is a real concern. I asked the Legislative Counsel Bureau about this. They think it

passes constitutional muster. The reality of that is that if somebody is indigent and files a petition, they are asking the taxpayer to pay for this test. The taxpayer has a right to know why they want the test and what the test is going to do. What this bill does is provide the access to the petitioner that the prosecution had all along.

Let us go through the hypothetical that was presented in opposition, in which we have a murder scene with DNA on the shirt and under the fingernails of the accused and a cigarette butt out front. The DNA that we know from the fingernails and the shirt did not have to be petitioned at the court. The DNA that was on the cigarette butt, the prosecutors got to choose not to do that. The defense never had a choice as to whether or not it would be tested. Now, they could petition it before the trial. The court could then agree to or deny the petition. The reality is that the access to the DNA information is not equal on both sides of the "v." One has to get court approval and the other does not. Here, if you have the means to pay for it, then you get to have it.

In regard to how we go about collecting these fees and what those fees are going to be, I think that is slightly overstated. There is nothing in statute about that now, yet the system works. Fees are collected and fees are paid. What this does is provide for the courts to institute the same system they have for collection of fees and determination of what those fees are to be, but just have the person pay for it first.

When we go to the statements over the laboratory standards, as the Chairman noted, it is provided for in the amendment that even though the petitioner gets to choose, the lab must abide by the FBI standards for accreditation. I do not want my testimony to be mistaken at any point to say that I believe that our state laboratory is biased—I do not. I do believe that they are providing results based on science and not based on the argument of any party. That does not change the fact that some people who are incarcerated do not have that same perception. If they have a perception that it is biased against them and they can afford to pay for the test, they should have the right to do that.

Lastly, in regard to all of this, while it is not the intent of the bill, we could talk about the economic realities here. I am hearing that we have a lab that is overburdened as it is. What could potentially fix that overburdening is volume, surprisingly enough. We need to increase the volume so that the fees that they charge can accommodate the extra people they need to hire. Ironically, I think this bill solves their economic problems. It is not the intent, but I think it does it.

I welcome this continued conversation with all of the stakeholders. I hope we can find consensus on this. Again, the one thing I will not budge on is the standard the petitioner would have to meet. It is ironic that the current standard for postconviction DNA analysis is a higher standard than we use on any other appellate petition. Maybe that should be lowered and still, A.B. 268 should go into play.

Chairman Yeager:
Thank you. We will now formally close the hearing on A.B. 268. We do have one additional order of business. We have a bill draft request (BDR) introduction.

BDR 16-596—Transfers the Division of Parole and Probation from the Department of Public Safety to the Department of Corrections. (Later introduced as Assembly Bill 302.)

I am looking for a motion to introduce BDR 16-596.

> ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE BILL DRAFT REQUEST 16-596.
>
> ASSEMBLYMAN THOMPSON SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

We will now open the hearing for public comment. In the interest of time, if you could limit your comments to two minutes we would greatly appreciate it.

Tonja Brown:
I would like you to listen to the audio from the Advisory Commission on the Administration of Justice meeting from November 1, 2016, for the discussion on this. Attorney General Laxalt was opposed to the bill because it had not been vetted. Senator Ford pointed out that it was vetted in April 2016. I would also add that a lot of the people over the years have not had DNA testing because it was relatively new. In our case, we were told by the public defender we do not have the money to pay for it, the state is going to pay for it. This was back in 1988. It was never done. He had filed the petitions to get it done and was denied by the courts. This is pretty much what is happening with cases from 10, 20, or 30 years ago. These are some of the cases that are primed for resolution. They were not afforded DNA testing way back then. Now, if they are willing to pay for it, let them pay for it.

Over the years that I have attended the Advisory Commission, there have been several discussions brought up under eyewitness identification. Seventy-two of those people exonerated through DNA, through the Innocence Project, were convicted based on eyewitness misidentification. Since then, the photo line-ups have changed so it does not lead to wrongful eyewitness identification. There was also someone asking for a case study for Nevada on DNA testing. The reason we do not have any case study for those who have been exonerated through DNA is because we do not have the bill to allow them to have DNA testing. When they do petition, they are denied. This bill would resolve that. That is going back to the history of the Advisory Commission for the last ten years. I would also like to point out that this past Monday I was at the Commission on Judicial Selection, and Chief Justice Cherry even supported this bill. As far as the accreditation, I did put that into the amendment.

Back in 1995, we learned of Barry Scheck and the Innocence Project out of New York. Not knowing whether they would accept our case, I asked if there was a laboratory because we did not want to have the lab work tested in Nevada. They gave us the name of the lab they used, which were the laboratories of Dr. Edward Blake. The judge stated that we were required to find a lab and to pay for it. By the time we found a lab, it was too late because the time was tolled. These are some of the other issues that they are facing.

I strongly support this. When you are saying it is about the money, let us talk about whether it is better to let an innocent person stay in prison for a crime he did not commit because they may have to pay for it. We should just let them pay for it, get out, and on with their lives.

Chairman Yeager:
Any other public comment? [There was none.]

The meeting is adjourned [at 10:53 a.m.].

RESPECTFULLY SUBMITTED:

_____
Erin McHam
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the Work Session Document for Assembly Bill 148, dated March 8, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit D is the Work Session Document for Assembly Bill 177, with a proposed amendment, dated March 10, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit E is the Work Session Document for Assembly Bill 229, with two proposed amendments, dated March 10, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit F is the Work Session Document for Assembly Bill 239, dated March 9, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit G is a letter dated March 14, 2017, in support of Assembly Bill 118 to Chairman Yeager and members of the Assembly Committee on Judiciary, authored by Daniel S. Reid, State Liaison, State and Local Affairs Division, National Rifle Association of America.

Exhibit H is written testimony presented by Noah L. Jennings, Private Citizen, Carson City, Nevada.

Exhibit I is a statement dated March 15, 2017, in support of Assembly Bill 118, authored and submitted by Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada.

Exhibit J is a letter dated March 12, 2017, in support of Assembly Bill 118 to Chairman Yeager and members of the Assembly Committee on Judiciary, authored by J. L. Rhodes, representing Stillwater Firearms Association.

Exhibit K is a copy of a PowerPoint presentation titled "A.B. 268: Postconviction Petition to Pay the Cost of Genetic Marker Analysis," presented by Assemblyman Justin Watkins, Assembly District No. 35.

Exhibit L is a proposed amendment to Assembly Bill 268 presented by Assemblyman Justin Watkins, Assembly District No. 35.

Exhibit M is a proposed amendment to Assembly Bill 268 presented by Jennifer Noble, representing Nevada District Attorneys Association.

Exhibit N is a proposed amendment to Assembly Bill 268 presented by Tonja Brown, Private Citizen, Carson City, Nevada.

Exhibit O is material submitted by Tonja Brown, Private Citizen, Carson City, Nevada, consisting of the following:

1. A copy of a court document titled "Postconviction Petition Requesting a Genetic Marker Analysis of Evidence Within the Possession or Custody of the State of Nevada," dated June 20, 2016.
2. A copy of a letter to Edmond Green, dated April 17, 2002, from Scott W. Edwards, Attorney at Law.
3. A copy of a letter to Edmond Green, dated April 30, 2002, from Scott W. Edwards, Attorney at Law.
4. A copy of a letter to Edmond Green, dated July 10, 2003, from Scott W. Edwards, Attorney at Law.
5. A copy of an archived article from the *Reno Gazette-Journal* titled "It Could Take Years for the Appeals Process" by Steve Timko, dated September 19, 1997.
6. A copy of an archived article from the *Reno Gazette-Journal* titled "Courtwatch" by Steve Timko, dated September 11, 1997.
7. A copy of a court document titled "Stipulation and Order for DNA Testing," dated May 2, 2001.
8. A document regarding evidence analysis from David Middleton
9. A copy of a letter to Edmond Green, dated July 26, 2016, from Jeremy Bolser, Washoe County Public Defender, with copies of court documents attached.