

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Ninth Session
April 12, 2017**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:08 a.m. on Wednesday, April 12, 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:

Senator Aaron D. Ford, Senate District No. 11
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblywoman Dina Neal, Assembly District No. 7



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Wesley K. Duncan, First Assistant Attorney General, Office of the Attorney General
Tonja Brown, Private Citizen, Carson City, Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Eric Spratley, Lieutenant, Intergovernmental Services, Washoe County Sheriff's
Office
Lisa Smyth-Roam, Ph.D., Supervising Criminalist, Biology Unit, Forensic Science
Division, Washoe County Sheriff's Office
Jodi Tyson, Board Member, Rape Crisis Center, Las Vegas, Nevada
Kristin Erickson, representing Nevada District Attorneys Association
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual
Violence
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Robert L. Langford, Private Citizen, Las Vegas, Nevada
Lisa Rasmussen, Legislative Committee Co-Chair, Nevada Attorneys for Criminal
Justice
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
John J. Piro, Deputy Public Defender, Clark County Public Defender's Office
John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's
Office; and representing Nevada District Attorneys Association
John Ocegüera, representing Innocence Project
Michelle Feldman, State Policy Advocate, Innocence Project
Kate Hickman, Chief Deputy Public Defender, Washoe County Public Defender's
Office
Ted Bradford, Private Citizen, Yakima, Washington
Mike Cathcart, Business Operations Manager, Finance Department, City of
Henderson
Jennifer Noble, representing Nevada District Attorneys Association
Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General
Susan D. Hallahan, Chief Deputy District Attorney, Family Support Division,
Washoe County District Attorney's Office
Karen Cliffe, Chief Deputy District Attorney, Clark County District Attorney's Office

Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services,
Department of Health and Human Services
Keith L. Lee, representing Nevada Judges of Limited Jurisdiction
David Cherry, Communications and Intergovernmental Relations Manager, City of
Henderson
Anne K. Carpenter, Major, Deputy Chief, Division of Parole and Probation,
Southern Command, Department of Public Safety

Chairman Yeager:

[Roll was called and Committee protocol was explained.] We are going to start with the work session and then decide the order of the bill hearings.

Diane C. Thornton, Committee Policy Analyst:

Assembly Bill 122 was heard in Committee on February 13, 2017.

Assembly Bill 122: Revises provisions related to the State Board of Examiners awarding compensation to victims of crime. (BDR 16-305)

Assembly Bill 122 authorizes the State Board of Examiners to award compensation to victims of crime who were domiciled and physically present in Nevada during the 6 weeks preceding the date of the crime.

There is one amendment to this measure and the mock-up is on the following pages ([Exhibit C](#)). Assemblywoman Benitez-Thompson and Kimberly Mull, Nevada Coalition to End Domestic and Sexual Violence, proposed an amendment. The amendment strikes the word “resident,” replacing it with “person.” The definition of victim is changed to include any person harmed by the acts listed in the bill regardless of whether the person is a resident of this state or a citizen of the United States. Lastly, a victim of a crime that occurred in this state who is not a resident of this state may apply for compensation from the State Board of Examiners.

Chairman Yeager:

I am looking for a motion to amend and do pass Assembly Bill 122.

ASSEMBLYWOMAN JAUREGUI MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 122.

ASSEMBLYWOMAN MILLER SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Pickard:

I just want to put on the record that section 2, subsection 1, paragraphs (c) and (d) pertain to the point I made when this bill was heard. I believe we should compensate all victims of crime. I do not think the circumstances of their situations should necessarily exclude them from that. I understand that in working with the sponsor there were some concerns with that. I will continue to support the bill, but I would like to see that in the future if this is ever reconsidered.

Chairman Yeager:

Is there any other discussion on the motion? [There was none.] We will now take the vote.

THE MOTION PASSED UNANIMOUSLY.

By special assignment, we will give the floor statement to the Majority Floor Leader, Assemblywoman Benitez-Thompson.

Diane C. Thornton, Committee Policy Analyst:

The next bill is Assembly Bill 133, which was heard in Committee on March 24, 2017.

Assembly Bill 133: Revises provisions governing landlords and tenants. (BDR 10-339)

Assembly Bill 133 provides that a request for emergency assistance by a tenant does not constitute a nuisance. In addition, it prohibits a landlord from taking adverse action against a tenant who has called for emergency assistance, including evicting, imposing a fine, or taking any other punitive action.

Assemblyman Elliot T. Anderson has proposed an amendment provided on the following page ([Exhibit D](#)). The amendment clarifies that the bill only applies to evictions based solely on a call for emergency services. It also clarifies that nothing prevents local governments from abating nuisances discovered on a call for emergency services.

Chairman Yeager:

Assemblyman Anderson, would you like to make any comment on the amendment?

Assemblyman Elliot T. Anderson:

Just a note regarding paragraph (d) of the proposed amendment: it is not broad enough. It should say, "taking any action against a landlord or tenant." Paragraph (d) may have to be reorganized into a different section than is proposed. This is a mock-up from the Nevada State Apartment Association. With that, they are in support as well as the local governments.

Chairman Yeager:

Is there any other discussion on the bill? [There was none.] I will take a motion to amend and do pass Assembly Bill 133.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 133.

ASSEMBLYMAN PICKARD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblyman Anderson.

Diane C. Thornton, Committee Policy Analyst:

Assembly Bill 235 was heard in Committee on March 9, 2017 ([Exhibit E](#)).

**Assembly Bill 235: Enacts the Uniform Commercial Real Estate Receivership Act.
(BDR 3-714)**

This bill enacts the Uniform Commercial Real Estate Receivership Act to establish provisions governing the appointment and powers of a receiver for real property that is used for certain commercial purposes and any personal property related to or used in operating that real property.

There are two proposed amendments to the measure. Alex Ortiz, Clark County, and Michael E. Buckley, Fennemore Craig, P.C., proposed an amendment. First, the amendment deletes the word “file” and replaces it with “record.” Second, the amendment clarifies where a copy of the order and legal description must be recorded. Assemblyman Anderson proposed a conceptual amendment requiring the Supreme Court to promulgate rules to provide for the ethics and independence for receivers and to prevent self-dealing by a receiver.

Chairman Yeager:

I will take a motion to amend and do pass Assembly Bill 235 with both amendments.

ASSEMBLYMAN ELLIOT T. ANDERSON MOVED TO AMEND AND
DO PASS ASSEMBLY BILL 235.

ASSEMBLYMAN WATKINS SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Elliot T. Anderson:

I did discuss the amendment with Chief Justice Michael Cherry. He said that the Nevada Supreme Court would be agreeable to promulgating rules.

Chairman Yeager:

Is there any other discussion on the motion? [There was none.] I will now call for the vote.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Daniele Monroe-Moreno.

Diane C. Thornton, Committee Policy Analyst:

Our final bill on the work session today is Assembly Bill 324, heard in Committee March 30, 2017 ([Exhibit F](#)).

**Assembly Bill 324: Revises provisions relating to document preparation services.
(BDR 19-1091)**

Assembly Bill 324 expands the definition of “document preparation service” to include a person who, for compensation, assists a client in preparing all or substantially all of a federal or state tax return or a claim for a tax refund, excluding a certified public accountant who is licensed in this state or a financial planner who is subject to certain state requirements. The bill removes the exemption from the registration requirements for an enrolled agent who is authorized to practice before the Internal Revenue Service.

The bill requires a person who registers as a document preparation service to pay an application fee of \$50 and a renewal fee of \$25 every year upon the expiration of the registration. A person who provides document preparation services is prohibited from advertising or representing himself or herself as a paralegal or legal assistant, which implies that the person is operating under the direction and supervision of an attorney.

Assemblyman Flores proposed two amendments. The first is a conceptual amendment exempting an attorney authorized to practice law in another state, possession, territory, or commonwealth of the United States or the District of Columbia who is practicing immigration law. A mock-up is on the following page. The amendment does the following:

- Provides for the Secretary of State to account for the receipt of fees and the use of the fees to pay for expenses related to administering the document preparation services program.
- Revises the definition of “document preparation service” to include a bankruptcy petition preparer and an enrolled agent authorized to practice before the Internal Revenue Service.
- Clarifies that the application fee is nonrefundable.
- Changes the time period the application must be completed from 6 months to 120 days before it must be denied.

Chairman Yeager:

I will take a motion to amend and do pass Assembly Bill 324 with both amendments.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 324.

ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Pickard:

I am concerned about the conceptual amendment regarding an attorney authorized to practice law. I recognize the intent; I am just concerned that that might fall afoul of the Nevada rule. If someone is doing this in Nevada and providing legal advice, he or she still needs to be a licensed attorney in Nevada. That said, I understand the intent and I will support the bill.

Assemblyman Wheeler:

I support the intent of the bill, but I cannot get my head wrapped around the fees. I believe that could come out of the Office of the Secretary of State's current budget. For that reason, I will be voting no on this bill.

Chairman Yeager:

Is there any other discussion on the motion? [There was none.] I will now call for the vote.

THE MOTION PASSED. (ASSEMBLYMAN WHEELER VOTED NO.)

I will assign the floor statement to Assemblyman Edgar Flores.

I want to go over the order in which we will take the bills today. We will start with Assembly Bill 55 and Assembly Bill 97. We will have a joint hearing on those two bills. After that, we are likely going to move on to Assembly Bill 444, followed by Assembly Bill 414, Assembly Bill 358, and wrap up with the final two bills on the agenda. At this time, we will formally open the hearing on Assembly Bill 55 and Assembly Bill 97.

Assembly Bill 55: Revises provisions relating to evidence collected from and the reimbursement of payment for forensic medical examinations of victims of sexual assault. (BDR 15-387)

Assembly Bill 97: Revises provisions relating to evidence collected from forensic medical examinations of victims of sexual assault. (BDR 15-538)

Senator Aaron D. Ford, Senate District No. 11:

I am here today to address Assembly Bill 97 and the Nevada rape kit backlog. A rape kit consists of evidence that is gathered during a medical forensic examination following a sexual assault. As a result of sexual assault, the survivor's body becomes part of the crime

scene. When the survivor reports the sexual assault to the police, the survivor can choose to have a doctor or nurse photograph, swab, and conduct a very invasive examination of their body for DNA evidence that the attacker left behind. It is a lengthy process that can take upward of six hours to complete. The evidence is then collected and preserved in a sexual assault evidence kit, more commonly referred to as a "rape kit."

I know that this description is graphic and uncomfortable, and it was meant to be. Without understanding what this process sounds like, you can never understand how large of an injustice it is to survivors of sexual assault when the evidence goes untested. This examination can be a painful process for survivors of sexual assault. Once that evidence is collected, it is imperative that it is processed in a timely and expeditious manner. So far, our state has been derelict in its duty to support survivors of sexual assault. Across the nation, thousands of rape kits were never submitted for testing. Without this testing, DNA and other evidence linking cases and helping identify criminals goes unused, untested, and sometimes is even lost.

Assembly Bill 97 is the culmination of a long journey to bring forth legislation that strengthens and speeds up Nevada's system to process sexual assault forensic evidence kits. By requiring law enforcement to submit the kit to a forensic laboratory for testing within 30 days of receiving it, survivors of sexual assault will have a better chance of getting the justice that they deserve. Through mandating a reporting structure on the status of untested and tested sexual assault forensic evidence kits, our state will be able to hold all parties accountable. In my view, this legislation is integral to the future of our state, the safety of our communities, and the security of all Nevada families.

At this time, I would like to hand over the rest of the presentation to my cosponsor Assemblywoman Teresa Benitez-Thompson to give an overview of the bill. I ask for the Chairman's indulgence because I will need to leave this Committee to get back to hearings in the Senate. I trust that the rest of the bill's presentation will be in good hands with Assemblywoman Benitez-Thompson and my good friend Wesley Duncan.

Chairman Yeager:

I understand that you have a busy schedule this week, so you are excused. I would invite the Committee members to follow up offline with any questions for Senator Ford.

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27:

I am going to allow Mr. Duncan to make some comments. What I will do is circle back and walk through consensus language that we have been working on. What we realized was that efforts that are combined and resources that are placed together so that they can be leveraged could move things in an expedient, efficient way, which parties acting alone cannot do. I have been a member of a working group committee that has done an extensive amount of work over the interim. While there are only a couple of us sitting here, there are a good number of people who have given their time, resources, energy, and mental talent to be able to craft the consensus language I will walk you through.

Wesley K. Duncan, First Assistant Attorney General, Office of the Attorney General:

It is hard to imagine that just over two years ago there were nearly 8,000 untested sexual assault kits across the state. I am proud to come before you today to say that Nevada has made great strides in this effort to get through the untested sexual assault backlog. Some of these kits date back to the mid-1980s. They have been waiting to be tested on dusty shelves. The efforts of the working group, our law enforcement partners across the state, and a bipartisan effort to address a problem that has plagued the state for over 30 years makes me proud that I am the vice chair of that working group and to be here on behalf of the Office of the Attorney General (AG).

As we present this bill today, we are aware that April is Sexual Assault Awareness month. It is important to zoom back for a moment when we talk about sexual assault kits and DNA swabs to address the victims in the state. To tell them that, first and foremost, we realize that behind every untested kit, behind every DNA swab, there is a person, a victim, a survivor. That person has a compelling and often violent story of why that evidence was taken in the form of an untested sexual assault kit. I want to assure the victims and survivors who may be listening to this hearing, who may read about this hearing, or who may be a part of this process at some point as we test these kits that we will dedicate the efforts as a state, as law enforcement partners, and as legislators in a bipartisan fashion, to address this kit. We will hold their attackers accountable for the crimes that they committed.

With the culmination of these efforts, this bill is about victims and survivors. We are here to present this bill because of them. Their stories, their victimization, are the reason we are here. Their victimization gives voice to this initiative to continue to go forward to test these kits and bring justice to them. It is important to take a step back and realize that there is a person behind each and every one of these kits. The message should also be sent to the perpetrators of these crimes who have not been held accountable yet that we will hold you accountable. Law enforcement will investigate these crimes, and local district attorneys across our great state will come after and prosecute you. We will have justice for the victims in this state.

As of the middle of March, in southern Nevada there were a total of 6,473 kits that were untested. There have been 2,456 kits sent out for testing. There are 984 kits that have been completed, meaning that they have been tested and run through the system. There have been 213 Combined DNA Index System (CODIS) entries. There have been 58 hits from those CODIS entries, representing about a 27 percent hit rate. A "hit" means that someone's DNA was already in that system. I am happy to report that there have been 8 arrests and 11 search warrants that have been generated from that.

In northern Nevada, there have been about 1,179 total kits. There have been 216 kits sent to be tested. Those represent all of the rural jurisdictions across the state. There have been 57 kits completed. There have been 20 CODIS entries and 8 CODIS hits. Eight out of 20 means you are looking at an almost 50 percent rate.

Assemblywoman Benitez-Thompson will go through the bill and talk about the language. It is consensus language. I want to note that Assembly Bill 55 was the bill that came out of the Attorney General's untested sexual assault kit backlog working group. The culmination of these two bills represents countless hours trying to put forward good policy on this issue. The one difference the Attorney General asked me to highlight for the Committee on A.B. 55 versus A.B. 97 is that in our bill it was our hope that kits that were sent to crime labs in the state would be tested within 180 days of receiving that kit. That language is not in A.B. 97. The Attorney General's Office, the working group, and Attorney General Laxalt all believe that is the best policy to test those kits going forward. There are some jurisdictions, Arizona for example, that test their kits within 15 days. He also understands the legislative process and understands the different financial considerations and concerns that are present in a 120-day session.

I also want to express my gratitude to all of the members of the working group—the legislators, the Rape Crisis Center, call centers, victim advocates, prosecutors, and detectives. It is the culmination of 50-plus members working hard to address an issue that needed to be addressed long ago; it is going to be addressed today.

Assemblywoman Benitez-Thompson:

Uploaded to Nevada Electronic Legislative Information System (NELIS) for the Committee is amendment 3255 ([Exhibit G](#)), which is the consensus language. The mock-up that you see is what I am going to be walking you through and to which you will be able to refer. Section 1 amends Chapter 200 of the *Nevada Revised Statutes* (NRS) to require a law enforcement agency to submit a sexual assault forensics evidence (SAFE) kit to the applicable forensic laboratory responsible for conducting a marker analysis not more than 30 days after receiving the kit. This amendment excludes from this requirement any SAFE kit that is associated with a victim who has either "Chosen to remain anonymous; or indicates that he or she is not a victim of sexual assault." Those will be pulled out of the process.

This section is important and meaningful because, as Mr. Duncan said, at the outset of this process there were over 8,000 that had not been tested. Not only that, but we did not have a formalized way to track them or to know what existed and what did not. We knew that some jurisdictions kept spreadsheets and could pinpoint the number of kits that were untested in their custody at any given time. We knew that other law enforcement agencies were literally popping open old evidence boxes and going through files, pulling out kits at random. The hope is that with knowing that they have to be submitted within 30 days, these kits are not somewhere collecting dust, that they are indeed getting to a lab. The victim advocates on the committee played a huge role ensuring that there was sensitivity to victims in this language, as they are the fundamental people who get to decide, through self-determination, if and when they state they are a victim and whether they want to remain anonymous or not have their kit submitted. For those reasons, we made sure that this amendment includes those two things.

Section 1 also states that a forensic lab that receives a SAFE kit "shall" test the kit and include the DNA profile obtained from the genetic marker analysis in the state DNA database and CODIS. Section 1 requires each forensic laboratory that receives a SAFE kit from a law enforcement agency to submit an annual report to the Legislature. These reports are to include the number of kits that were tested, the number not tested during the preceding calendar year, and various other data on the timeline for the testing procedures of the kit. What those are grabbing are three specific points in time: when the kit was submitted, when it got to the lab, and when the lab reported the information to the law enforcement agency.

Section 2 makes conforming changes to language in NRS Chapter 200. Section 3 is deleted by the amendment. The reason for that is because there was contemplation about where the reports would go and what was going to be happening with the subcommittee. You see those pulled out. Section 3.5 amends NRS Chapter 217 so that "The compensation officer may order the payment of compensation . . . To a county in whose jurisdiction a sexual assault was committed for the reimbursement of costs associated with a forensic medical examination of a victim of sexual assault that are paid by the county. . . ." The county may be reimbursed for the cost of up to "10 forensic medical examinations, or \$10,000, whichever is less, each fiscal year." Section 4 is making various technical changes to the bill.

Assemblyman Pickard:

Both bills originally had the 180-day requirement in it, but when you dovetailed the two in A.B. 97, you dropped that. I am wondering why you dropped that.

Assemblywoman Benitez-Thompson:

The reason why is because we know that there are large jurisdictions that are out of compliance with that right now. We have some jurisdictions that are taking, on average, 220 days to process the kits. A piece of that is the backlog in sending these to the labs. It is moving. We are asking for the reports to ensure that it continues to move, but they are done incrementally. The kits are being sent out in batches of—I cannot remember how big the batches are.

Wesley Duncan:

The batches will continue to increase as we get closer to the end of 2018. The batches started in the 100s, now they are in the 500-range. Because many jurisdictions across the country are addressing untested sexual assault kit backlogs and there are only a finite number of labs able to do the outsourced testing, they are experiencing somewhat of a backlog. We continue to push out as many kits as we can that those labs will accept. As noted in my testimony, the Attorney General wanted to push for that 180 days because he felt it was an important policy goal that jurisdictions should put the money forward to do this for the dignity of the victims, again, understanding the constraints that are present.

Assemblyman Pickard:

I appreciate that. I agree that that is a good policy decision to make. Maybe there could be a carve-out for the period during the catch-up. Once they are caught up, you could require that. I am sure you contemplated that, so I am wondering why it was chosen to drop it altogether.

Assemblywoman Benitez-Thompson:

That is something we can look at in the future. The other consideration in the conversation with the Attorney General's Office was regarding the unfunded mandates and the realization that the state might not be able to contribute in as meaningful a way as we want to with General Fund dollars to the local levels to process these. We are working mostly off of federal grant dollars. We were also sensitive to the fact of not having an unfunded mandate that would be generated from the time frame that would cause the local law enforcement jurisdictions to hire more staff to meet that time frame. There was a lot of conversation around how a very specific time frame might cause law enforcement to prioritize these kits over other kinds of kits. We want these kits tested, they are going to be tested, the language says they "shall" be tested, but we never wanted to put law enforcement in the position of saying, Our labs are backlogged, and we have to prioritize this SAFE kit over other evidence that might be more pressing at that moment. Let it be noted for the record that 180 days is the gold standard. As we move forward, as the committee continues to work together, those that go over 180 days will not go unnoticed.

Assemblyman Watkins:

It makes me proud to be a member of this body to see this kind of effort come forward. In catching up with the existing backlog, it was my understanding that the labs in the state did not have the ability to catch up and we had to send kits to out-of-state labs. What is the availability for sending kits to other labs? As a second part of that question, what is the turnaround for a lab from the day they receive it to the day they get results back to us?

Wesley Duncan:

As a fellow attorney, I will say to your last question that it depends, because of the number of kits that many of these labs are receiving. They are trying to turn around these kits as quickly as they can. To give you a flavor of the time frame, we started sending kits out last year—2,400 from the Las Vegas Metropolitan Police Department (LVMPD)—and there have been roughly 1,000 kits completed. That is dependent upon the number of kits the labs are receiving and how fast they are able to turn those around. There are only a certain number of labs that can do the work to ensure that they are in compliance with Federal Bureau of Investigation (FBI) standards and all of the different things that come into effect.

Crime labs have finite resources in our state, and there are active cases still going forward: everything from a fingerprint on a burglary case, to an active sexual assault kit, to murders, and more. Those cases are prioritized because they are moving through a system with a guarantee to a speedy trial and different things that have to take place. It would take many more personnel to be in the labs to create the infrastructure and build out the labs in order to test all of those kits and not outsource and send them. That is why the kits are being outsourced.

The LVMPD Forensic Laboratory had a policy that said they were going to test all of these kits before this bill even came forward. Washoe County's desire is to test all of these kits as well, again recognizing the resource gap that does exist.

Assemblywoman Benitez-Thompson:

If you would, please look to page 2 of the mock-up, lines 30-33. One of the data points that we are capturing is the date that the sexual assault forensic evidence kit was submitted to the forensic laboratory and the time from that to when the genetic marker analysis was entered into CODIS. We are looking not just at the big picture of beginning to end—of how long it is taking—but at each step along the way. We can then better identify where the slow-downs are, where there are kinks, and be better able to address those in the future.

Assemblyman Watkins:

Thank you for both of those answers. I guess my question is more elementary than even that. To what number of labs do we have access? What number of labs are available in the country that we are not using but could if we had more resources? What number of kits can be tested by labs in the state; what is our capability?

Assemblywoman Benitez-Thompson:

I cannot quantify the total number of labs available. We could do a count on all of the labs. What I can tell you is that the lab we contracted with was done purely on an economic basis. We got the best bulk rate from them. We have a finite pool of grant dollars that we are able to apply toward the backlog. To be honest, we were looking for the biggest bang for our buck. That is why the lab we have in place presently was chosen. We got the best deal, and that meant the ability to test the most kits.

Wesley Duncan:

To give you an idea, if you are sending each kit one at a time or piecemeal, it could be up to \$1,200-\$1,500 per kit. With Bode Cellmark Forensics laboratory that LVMPD partnered with, they are offering testing for \$675 per kit. Washoe has partnered with Sorenson Forensics in Utah. With the finite resources from grant money and settlement money that the Attorney General's Office was able to put forward, we wanted to be able to maximize those dollars to get through those kits. If we went with the \$1,200-\$1,500 a kit, it would literally double the price of trying to test these kits. That was also taken into account, to be good stewards of the resources that we have and to get through the testing of the backlog.

Assemblyman Hansen:

This is my fourth term on this Committee, and I was chair last time. We have heard from the public defenders, the defense attorneys, law enforcement, and the American Civil Liberties Union, who are all always here. How did this happen? I am almost embarrassed hearing this come forward. This did not become an issue until the United States Senate race. What in our policy in the past allowed something of such a serious nature to not be addressed by this body? Now that we have this huge backlog, who should be hanged, drawn, and quartered, because all of these perpetrators are still out there?

You said there was a 27 percent hit rate on these things. Rapists are walking around right now who should be incarcerated but instead are victimizing more people. Did we drop the ball as legislators? Somebody involved in this process dropped the ball big-time for this many kits to be sitting there, only for it to be exposed through a United States Senate campaign. I am looking forward to and support the bill 100 percent, but I am asking how did this happen in the first place?

Assemblywoman Benitez-Thompson:

You are right; this was a big ball drop. There is no other way to put this than it was a complete failure over many different jurisdictions. We as legislators cannot say that we did not have something to do with it. We have a chance with this legislation to right a wrong. We have a chance to make sure that this backlog never happens again. We have a chance to put rapists who are out there reoffending behind bars.

The issue is so important that it rises above politics. It has been an issue that a lot of people have committed to getting done, regardless of what is happening. I first learned about the issue in July 2015. I believe it was reporters for one of the national outlets who started making cold calls across different law enforcement agencies and asking, "How many of these do you have?" Some departments could quantify them; some could not.

We realized immediately that we needed to take action. The working group came together very quickly. Federal dollars and grants started flowing out to allow the states to begin working quickly. This bill is coming on the back end of some very good work, but it is important for us to enshrine it and embed these measures in NRS.

Assemblyman Hansen:

I agree completely. When I was sitting in Chairman Yeager's seat, I would have loved to have had the opportunity to address this. I wish we had jumped on it two years earlier. At this point, let us move forward. I am 100 percent behind this.

Wesley Duncan:

This was something that the Attorney General had identified before he was elected. It was a priority when we took office. One month after he took office, this working group was formed. He was the chairman of that group. We were able to identify federal funds. Our Office was first able to apply for those funds in 2013. We used settlement funds from our Office on behalf of the Bureau of Consumer Protection. The Interim Finance Committee approved the use of those funds to start testing those kits.

When you have an enormous problem like we have, it is a natural inclination to automatically assign blame. The working group in the Attorney General's Office, instead of trying to point fingers, was looking for solutions, and they found them. Here we sit just over two years later. There is \$8 million that has been made available to fund the testing of these kits. We continue to work on policies, and this bill is a culmination of those efforts. It is important to look forward to ensure that this does not happen again.

Assemblyman Hansen:

Three cheers and a shout-out to Attorney General Laxalt for getting on this.

Chairman Yeager:

To give credit where credit is due, former Vice President Joe Biden brought this issue to the forefront nationally. I believe that is where much of the federal grant money came from to help us alleviate this backlog.

Assemblywoman Tolles:

I want to express my appreciation for the AG's Office coming together with leadership to bring this forward and collaborating on this important effort. I continue to be astonished at the numbers we are talking about. Each one of those numbers, each one of those kits, represents a victim. Not only that, but a victim who had the courage to come forward. We know that is typically a very small percentage. What we are talking about is a much larger issue. This is one small step in addressing it. I want to express my appreciation for this effort and how important it is. I would like to drill down a bit further into those numbers, just so I can better understand the situation we are looking at. At the beginning, Mr. Duncan expressed that we have 984 kits in Clark County alone, is that right?

Wesley Duncan:

In southern Nevada, there were 6,473 kits identified. There were 1,179 kits in northern Nevada. The 984 number that you cited is the number of kits that have been completely tested out of the 6,473 in southern Nevada. There have been 2,456 of those kits sent for testing, and 984 have been completely tested.

Assemblywoman Tolles:

Of the 984 that have been tested, we had 58 hits. Is that because the remainder of those were a one-time offense or closed cases? Could you help me understand what these numbers are telling us in terms of the offenses out there?

Wesley Duncan:

Not every kit that is tested is going to yield a DNA profile; that is the first point. Of those 984 kits, 213 yielded a DNA profile. Those 213 profiles are entered into CODIS. Of those 213, only 58 matches were already in the system. That is a 27 percent hit rate. That is what that is capturing.

Assemblywoman Tolles:

Out of that, we have 8 arrests and 11 search warrants. Are these older cases that are being reopened? I just want a better understanding of the process for these victims and appreciation for the justice we are seeking.

Wesley Duncan:

The 8 arrests and 11 search warrants I cited are cold cases. We generally can talk about all of these cases as cold cases because there has been time that has passed. We will continue to get more CODIS hits in. Another huge part of this that will fall on local sheriffs' offices, detectives, and district attorneys is to notify victims with dignity. Some victims may not want to reopen this chapter of their life. Some may want the justice they have been seeking for all of these years. There are many important pieces to that.

We have seen in other jurisdictions that some of these profiles that come back are serial offenders who may be behind bars in other jurisdictions. It is a nuanced process because of the human dynamic and trying to be sensitive to the victims; there are a lot of different layers here. Law enforcement is doing a commendable job of being sensitive in this process. Our local district attorneys across the state are doing a wonderful job. It has been a group effort to try to tackle this problem. That will be the next phase of this project—the investigation and prosecution of these cold cases.

Assemblywoman Tolles:

I appreciate the efforts to go back. It is a worthwhile process. I truly appreciate the intent of this bill going forward to expedite that process. As Assemblyman Hansen pointed out, it can often lead to stopping someone before they repeat these behaviors and we see more victims down the road.

Wesley Duncan:

The victim advocates in this process have been amazing as well. I want to ensure that I did not leave them out of that. We are here because of the victims.

Chairman Yeager:

Perhaps you could provide some of those numbers in writing, either to the committee secretary or in an email. I know I am a visual person. With a lot of numbers, it would be helpful to have them in writing if you are able to do that.

Assemblywoman Miller:

We are all so happy that this is being brought forward and bringing attention to this issue. I am feeling frustration for the victims. When we say, "rape" there is a certain picture people get in their mind. For the sake of clarity, do these rape kits include children who are brought into the hospital or doctor's office by a parent and tested and who may still be subject to the abuse? When we say "rape kits," does this include child victims of molestation?

Wesley Duncan:

I do not know if we can quantify or identify every victim, but the kit is done by a sexual assault nurse examiner. These are done any time there is an allegation of any type of sexual assault. It could be any type of victim—male, female, or child. There could be a whole host of people who subject themselves to the testing—the DNA swabs and the very invasive nature of that. That evidence is stored in a kit, and that kit is used as evidence for whatever type of crime. If there is a sexual assault of a child, there can be a sexual assault kit prepared.

Assemblywoman Miller:

Is it all sexual assaults and rapes?

Wesley Duncan:

It is in any situation where a sexual assault nurse examiner took, tested, and compiled that into a kit. I do not know the breakdown of who the victims are.

Assemblywoman Miller:

I just wanted to know that it was included. I am not concerned with the numbers.

Assemblywoman Krasner:

I attended several of the meetings that were held on the working group for the rape kit backlog. This is wonderful, much needed, and long overdue. Will this cover all of the backlogged kits? Some went back 30 years. Will this capture those?

Assemblywoman Benitez-Thompson:

Yes. If you look at the language of the bill, it separates the kits into two different groups. Kits that were in evidence prior to January 1, 2015 are considered the backlog cohort. Whatever exists and has not been submitted before January 1, 2015 is considered the "backlog." Moving forward is what we are considering current kits. The reporting we have included is looking at the backlog as well as the current kits. When we talk about backlog and when you look at the language, it includes anything in evidence and on hand before January 1, 2015.

Chairman Yeager:

I know that part of catching up with the backlogs is relying heavily on federal grant money to do that. I am concerned by indications coming out of Washington, D.C., that some of the budget might be cut from the United States Department of Health and Human Services, which funds the Violence Against Women Act of 1994 and ultimately funds these grants. Do you have insight as to whether that federal money will still be available in the future to help us catch up with the backlog?

Wesley Duncan:

You mentioned the Violence Against Women Act. The grant funds do not come out of the Violence Against Women Act. It is a United States Department of Justice grant to address the issue. We took a comprehensive approach at the AG's Office. We applied for the federal funding. The Las Vegas Metropolitan Police Department applied for the New York County District Attorney's Sexual Assault Kit Backlog Elimination Grant Program for about \$2 million. We then used settlement funds to the tune of \$1.7 million to provide a comprehensive approach.

The federal government and jurisdictions across the country are aware of this issue. I remain optimistic that there will continue to be funding present to try to address this issue because of the public safety nature. We are trying to bring serial offenders in while also bringing justice for victims. I would hope that it would remain a priority for the federal government. I have not heard that the federal government is going to nix funding for these untested kits.

Assemblywoman Jauregui:

I am still in disbelief of the numbers. In the report that will be submitted to the Legislature each year, I know it will include the number of kits submitted and tested, but can it also include the number of hits, the number of people already in jail, and the number of convictions as a result of that? Would that be possible so that we could see the progress?

Assemblywoman Benitez-Thompson:

That is something we can look at. We were trying to capture definitive time frames, saying if a kit had not been submitted, tested, and entered into CODIS within a year. Those were the data points we were capturing because if it is not happening in that time frame, there is a problem. The back end of it takes more time. If we did have a consideration for that, which is not a bad idea, it would have a different timeline referring to what action has been taken since the previous year. I do not imagine that this working group is going away because there is a lot more work to be done, more grant funding coming around the victim notification, and good work that will continue to be done. We will find a place to capture those numbers.

Wesley Duncan:

I have to recognize our grants unit who are present—Ms. Tanaka and Ms. Grey. They continue to apply for these grants as they come up. We want to continue to push all the resources that we can to tackle the issue. It is going to take a while. It is a multipronged approach. The first objective that we are working on right now is to get through the backlog, and then the prosecution and investigation of the cases will come next.

Chairman Yeager:

Is there anyone who would like to testify in support?

Tonja Brown, Private Citizen, Carson City, Nevada:

I strongly support this bill. I would like to touch on something that has not been brought up yet. For those who are awaiting trial and who maintain their innocence, this is beneficial to them. For every day that an innocent person serves in jail or prison, the real perpetrator of the crime is out there. You have listened to the statistics. Those who are in jail and prison have become victims of the system themselves. When you do not have the DNA testing done and it has been waiting, as we heard, 30 years, the real perpetrator is out there committing more crimes. We strongly support this bill.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

We are here in support of the bill. We want to thank Assemblywoman Benitez-Thompson and the Attorney General's Office for the extensive dialog they had with us, the meetings that took place, really looking at what our labs do taking into account the fiscal impact. We support the bill with the amendments presented by Assemblywoman Benitez-Thompson. As was stated, we are dedicated at LVMPD to testing all kits in our possession. It is not a matter of if; it is a matter of when.

We have 60 full-time personnel at our lab. I was hoping to have our lab director, Kim Murga, here today, but she is unfortunately out of the office. She is the expert in that area who could have answered specific questions as to the kits. It is a priority for us. In addition to testing sex kits, those folks who work in our lab have to prioritize the testing of other DNA evidence, homicide evidence, and various other types of evidence. We believe that the removal of the 180-day period gives us the flexibility to prioritize our resources in that area. We appreciate that amendment.

Eric Spratley, Lieutenant, Intergovernmental Services, Washoe County Sheriff's Office:

I am here in support of A.B. 97. I have our lab experts here if there are any technical questions regarding this. We did work with Assemblywoman Benitez-Thompson, Mr. Duncan, and the AG's Office to end up with this good public policy in the amended version of A.B. 97. I do not want to open some long hearing regarding this, but I would like to dispel some of the concerns raised here today. These are not all sexual predators that are hidden away.

I have here some similar writing utensils [holds up a variety of pencils]. These are four distinct writing utensils, but two are similar. These [pencils] represent sexual assault kits where there is evidence in the kit. This one is "Uncle Billy" who did something to a child or an adult at a party. We know who this is. The local police department that collected this kit into evidence knows who this person is: Uncle Billy admitted to it and is in prison for it. This one is the boyfriend at the party. (I am saying males because statistically males are the offenders.) This [pencil] is a known person who went to trial and was found guilty as well. These are known people. This one might be a predator. (According to statistics, every 98 seconds there is a sexual assault in America. This has happened twice in the length of my testimony here.) These are the ones that need to take priority. These are going to keep coming in, and we want to make sure these take priority.

That is where these backlogs come from. The local agencies did not submit these kits related to known offenders. There may be one unknown perpetrator in the backlog, and that is who we want to get. They did not need to submit the ones where the agency said they know who it is and the case was adjudicated, not only because of the cost or because the victim does not want to, but because we know that the DNA matches to that person. What we might have is that the offender who we know and is in prison may have done this repeatedly prior to being caught. We want to get to the root of what his DNA is, if this has happened and there are other sexual assault kits in the nation that match this known offender. We think of the case as closed in the local jurisdiction, but there might be more victims out there.

It is our priority at both labs to make sure these kits get tested. Not all of these kits are at our lab. It is not the labs that are holding onto these kits; it is the police agencies. We love the amended version of this bill because it takes out the 180 days. If you say, Within 180 days you will test this, and this bill passes into law, all of those kits, all of these pencils, come to our doorstep and we only have 180 days to get them through the system. We simply do not have the people. We would be doing a disservice to the people in America who are being sexually assaulted. If there is a predator out there, it is then brought into the mix. We want to be strategic about the way we do these, and we are moving them forward as fast as we can without impacting the current and future victims that are assaulted every 98 seconds in America. With the amended version, we will continue to move these kits through as quickly as we can.

Assemblywoman Cohen:

How many kits do you estimate contain DNA from people who we know have already been convicted—an Uncle Billy?

Eric Spratley:

I do not know. I would invite our supervising criminalist, Lisa Smyth-Roam, up to answer that question if she has that information.

Chuck Callaway:

To add to what Mr. Spratley said, some of those kits are folks who initially wanted to press charges against their attacker, had a sexual assault kit done, and subsequently changed their minds. They decide not to press charges and move on with their lives. I am in no way trying to make excuses; I am just trying to shed some light on how a backlog occurs over the years. There are some cases where a sexual assault is reported, a kit is taken, and the victim subsequently recants their story, saying that it never happened and was made up.

In the past, we looked at fiscal cost; we have changed our mindset to now looking at getting these in CODIS so that we can catch these predators. In past decades, there was a tendency to look at the cost and prioritize on that basis. If we have the cases as Mr. Spratley described, or those cases where people recanted or decided they did not want to prosecute, some of those went on a shelf and built up over the years. We are committed now to getting them all tested.

Lisa Smyth-Roam, Ph.D., Supervising Criminalist, Biology Unit, Forensic Science Division, Washoe County Sheriff's Office:

Regarding the question as to how many of the hits actually were from known offenders, I can only speak to the number of hits we have had so far in the north. We have had eight hits. Four of the hits were of people who were already known and convicted of the crime.

Assemblywoman Tolles:

Do we keep track of the demographics of the victims in these kits? Are we keeping track of age or gender? Is that being reported anywhere?

Lisa Smyth-Roam:

The lab is not keeping track of age or gender.

Assemblywoman Tolles:

Regarding the reports that would be brought back to this body—those would be beneficial. We tend to get a picture in our minds of who these victims are, and it is important to recognize that they span all ages and genders. Over the years, I have had many conversations with male victims. It is very important that we recognize that there are both male and female victims of these crimes.

Jodi Tyson, Board Member, Rape Crisis Center, Las Vegas, Nevada:

Our executive director, Daniele Dreitzer, could not be in Las Vegas this morning but asked me to weigh in, in support of the amendment to A.B. 97. As an organization, we wish to express our deep appreciation to Assemblywoman Benitez-Thompson for accepting some requested amendment changes and for the consensus with the AG's Office.

Kristin Erickson, representing Nevada District Attorneys Association:

We would like to thank the Majority Leader and the Attorney General's Office for bringing this important piece of legislation. We support this amended version.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

We would also like to thank Assemblywoman Benitez-Thompson and the Attorney General for this bill. We are grateful for all of the work being done by the labs to help clear these cases from the system.

Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence:

We are in support of A.B. 97 as amended. From a victim's standpoint, it does not matter to us if it is an Uncle Billy, a boyfriend, or whoever it may be. We have gone through the extensive process of this kit, not an easy thing to do, and are asking for it to be tested. Just because the police might believe us and have this individual in custody, that does not mean that we do not have other individuals saying, "That is not what happened to you. Uncle Billy would never do that to you. Your boyfriend would never do that to you. You must have wanted it. You are lying." Having those kits tested does a lot more for a victim than just help with the court case; it helps us move on with our lives. It helps us reaffirm that this did happen to us. This is something that happened, and we have proof. It helps us to let people who are saying things against us know. For that reason, we ask that you pass A.B. 97 and ensure that all kits are tested.

Chuck Callaway:

I was reminded that, with the amendments proposed by Assemblywoman Benitez-Thompson, our fiscal note would be removed from the bill. I wanted to put that on the record.

Chairman Yeager:

That is important. We do have a question for you from Assemblyman Hansen.

Assemblyman Hansen:

Are these rape kits unsolved rapes? That is the impression I had. Like the example that Mr. Spratley gave, are most of these people already incarcerated? That would make my mind feel a little bit better about this whole mess.

Chuck Callaway:

They are both. With some of the kits we do not know who the suspect is, and the victim does not know who the suspect is. In some of the cases, the suspect is in custody, he has been identified and prosecuted through other means, and for whatever reason, the kit was not tested. Based on the conversations I have had with our lab, it encompasses the whole gamut. Some of them we know who the suspect is and he is in custody. Some of them we do not know. It is still important that we get them all tested.

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:

I am here to support the policy of both bills, and in particular the proposed amendment to A.B. 97. It would address the concerns we had in the fiscal note that we attached to both bills. We want to thank the Majority Leader for working closely with LVMPD on that issue and addressing those concerns, which directly address our concerns as well.

Chairman Yeager:

For the record, with the amendment there is no fiscal note on the bill, is that correct?

Alex Ortiz:

Yes, sir.

Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada:

The Libertarian Party of Nevada believes that if the state is going to assume the responsibility of administering justice, it must do so speedily and reliably. According to *The Nevada Independent* this morning, Las Vegas police only tested 16 percent of kits between 2004 and 2013. While we understand that the police would prefer to test all kits, these numbers are extremely low, and those 84 percent of untested kits represent an unfulfilled promise of protection. We should take every measure we can to help police departments achieve full testing of this type of evidence.

Sexual assault is an extremely serious crime, and we believe that the state of Nevada remains in dereliction of its duty to its citizens when numbers like these persist. We strongly support the provisions of this bill speeding the testing of these kits. This bill will also help put an end to the wrongful convictions in our state. We believe that every citizen deserves justice and accountability from the state, and we believe this bill will help them receive it. Therefore, the Libertarian Party of Nevada supports A.B. 97.

Eric Spratley:

I also wanted to put on the record that we test kits for a lot of our rural agencies as well, such as White Pine County. With the amendment in A.B. 97 we, too, would remove our fiscal note.

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

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:

We do support the policy behind this and speedily testing DNA kits, but we are remaining neutral because of legislation that this body has considered in the past and the fact that we are subjecting people to so much new DNA testing due to Senate Bill 243 of the 77th Session. The American Civil Liberties Union of Nevada has addressed this issue before this body multiple times and before the Advisory Commission on the Administration of Justice. Our board chairman is the person who brought this DNA backlog issue to the attention of that commission. My predecessor, Vanessa Spinazola, in her testimony on S.B. 243 of the 77th Session, pointed out the backlog that existed in the state. She pointed out the backlog that existed throughout the country. We are glad to see that this legislation has been brought forward, that these rape kits will be tested, and that law enforcement will focus their efforts on that.

Chairman Yeager:

Just so the record is clear, the bill you are referring to is from the 2013 Session. I would invite the presenters back up for any concluding remarks.

Wesley Duncan:

My grant analysts from the AG's Office are keeping me straight here. They slipped me a note that, through the federal grants, we do track data such as age in the police reports. The working group has been working with the University of Nevada, Las Vegas and the University of Nevada, Reno. The University of Nevada, Las Vegas is going to be collecting that information and compiling reports as well. I wanted to put that on the record.

Assemblywoman Tolles:

Do you also track gender?

Wesley Duncan:

Yes.

Assemblywoman Benitez-Thompson:

Thank you for the indulgence to allow us to come before you and present consensus language. It took time to make sure that we got the consensus language done. We felt it was important to present the Committee with a mock-up since we were dovetailing two bills. I am not immune to any deadlines, and neither is my legislation. Thank you for allowing us the time to make sure we had the language of the mock-up just right for the Committee's consideration. We know that there are other cosponsors who are going to be added onto the bill. I thank you for your support, Chairman Yeager, on that. We will be getting the list of primary cosponsors to be adopted with this amendment when it is on the work session.

[All items submitted but not discussed will become part of the record: ([Exhibit H](#)).]

Chairman Yeager:

Thank you for your work on this issue. I know it was a group effort with a lot of people involved. I want to thank Ms. Tanaka and Ms. Grey as well. I know how time consuming and tedious the grant process can be. Thank you for being involved in this matter and making this happen. Look for a work session very soon. We will formally close the hearing on A.B. 55 and A.B. 97. We will now open the hearing on Assembly Bill 444.

Assembly Bill 444: Sets forth certain requirements relating to the search and seizure of the property of an attorney. (BDR 14-1072)

Assemblyman James Ohrenschall, Assembly District No. 12:

At the Grant Sawyer Building in Las Vegas, I am very privileged to have two of our state's most able practitioners to help me copresent this bill. I have Lisa Rasmussen and Robert Langford in Las Vegas.

Let me set out a brief scenario: if you are lucky, you never have to go into an attorney's office and talk to an attorney. Most of us do, for many different reasons. Maybe we want a will drawn up. Maybe we have been wrongfully terminated and we want to discuss that case with our attorney, and what we think were the incorrect actions of our employer. Maybe there is a child custody dispute and things have gotten very acrimonious and bitter between the parties. That is something we would want to talk to our attorney about.

When we talk to our attorney, we know that under our law the communications about the subject of our case is privileged. There are certain communications that the law considers sacred, such as the attorney-client privilege, the priest-penitent privilege, the privilege between a husband and wife when they discuss certain matters. Assembly Bill 444 aims to ensure that when a client talks to an attorney, regardless of what happens to that attorney in the future, even if they are subject to a criminal investigation, those privileged communications will stay privileged.

Robert L. Langford, Private Citizen, Las Vegas, Nevada:

The first thing this bill does is protect the integrity of any prosecution that may arise out of the fruits of the search warrant. If I am a prosecutor, and I was for seven years, I am concerned that any evidence—specifically attorney-client files—may be scooped up as a result of our search warrant, and that those that have nothing to do with the subject of the search be protected. Later on, there is a cry from the defense attorney in that particular case that the attorney-client privilege was invaded by the search warrant scooping up all of the other evidence. The first thing this bill does is to protect the integrity of other prosecutions that are going on from that particular case, that is, if we are talking about a criminal defense attorney.

If it is not a criminal defense attorney, then certainly, if I have gone in to talk with an attorney about my employment case, I do not want that somehow being seen. I may have said some things about my employer; I may have disclosed some things about myself that I do not want to be public. That comes back to how important the attorney-client privilege is. We think that those kinds of privileges are supremely important, and that is why they are protected by statute as well as hundreds of years of jurisprudence.

For instance, if you go in to talk to a doctor, you want to fully disclose everything you possibly can so that you can get the best treatment. It is the same thing when talking with an attorney. This protects the privilege, it protects the future prosecutions that prosecutors may have if they are looking for a particular kind of evidence, but in the course of that they scoop evidence from other cases. They are protected. They can say, We did not have anything to do with that, we did not look at that, and it was screened before we got it, so they are protected themselves.

Lisa Rasmussen, Legislative Committee Co-Chair, Nevada Attorneys for Criminal Justice:

The Nevada Attorneys for Criminal Justice support this bill ([Exhibit I](#)) for all of the reasons Mr. Langford stated. We think that it is well drafted, and it provides appropriate examples of when it may not be possible for law enforcement to narrow their search. It has exceptions that are appropriately drafted. I would add that nobody is trying to accuse law enforcement of being overzealous in their search, but this bill protects the prosecution from other cases that would be tainted by evidence that could be seized in a search warrant. It encourages drafters of search warrants and judges issuing them to consider the least restrictive means possible to obtain the evidence they are looking for. Not only criminal defense lawyers could be the subject of it. It could be lawyers who are practicing in the trusts and estates context. It may be that there is a search warrant executed because there are trust funds that have gone missing. In looking for those documents, law enforcement would have no need to search client files—billing records would be the object of the search. It is very important that we address the issue.

It has come up recently in Las Vegas with some high profile cases, where attorneys were themselves the subject of search warrants. As Mr. Langford indicated, it is not that it is an attempt to protect attorneys; it is an attempt to protect the privilege that we hold dear. That privilege is no different from doctor-patient or priest-penitent. It is something that is highly regarded to the extent that it survives the death of a client. These are important things, and the bill works hard to protect them. It also has appropriate exceptions and exemptions for law enforcement when the situation is appropriate.

Assemblyman Wheeler:

When a search warrant is served and information that is ancillary to the warrant is found, that is not admissible in court anyway, is it? It is not released to the public. If it is not within the scope of that warrant, it cannot even be brought into court, is that correct?

Assemblyman Ohrenschall:

I would expect that it would not be admitted, but the goal of this bill is to try to make sure that something that is not subject to that warrant or investigation that is attorney-client privileged would not be compromised. That is the goal of this bill.

Lisa Rasmussen:

I think I can give a good example of the problem it could create. If a law office is searched and all of its files are taken, there may be a focus by the law enforcement search on falsified course certificates for solicitation defendants, to use a recent example. All of the files are taken. That lawyer was also working on some murder cases. The prosecuting office would then have access to all of the files, not just the files that were the subject of the allegedly falsified certificates of completion, but the murder files as well. The problem here is that the prosecutor is also prosecuting that murder case. If I am the lawyer who later takes over that murder case, I am going to say, The prosecutor now has the entire file, including attorney-client privileged information, and they should no longer be in a position to prosecute that case. Now it has to go to somebody else to prosecute.

This bill seeks to create a special unit of people who look at the information if it is taken by search warrant and separate those people from the people who would otherwise be prosecuting the case. You cannot give the secret thoughts of a lawyer on how a lawyer is going to defend a case to the person who is prosecuting the case. That is really the scope of people and the scope of issues that this bill addresses.

Assemblyman Wheeler:

I appreciate what you are saying. The way I understand it, and this may be from 40 years ago, when a search warrant is executed by an investigating officer and there is ancillary information found such as what you said regarding the murder cases that were being tried separately from the case being investigated, the investigating officer cannot forward that to the prosecutor because it is not germane to the search warrant. That is the way I understand it; am I wrong?

Lisa Rasmussen:

You may be right, but that is not actually what happens in practice. What is happening in practice is law enforcement is recording jail telephone calls. Defense counsel is getting recorded telephone calls of our conversations with our clients from the state in discovery. Law enforcement is not separating that out; they are giving everything to the state. Unfortunately, that is what is happening.

Robert Langford:

To answer your question, yes, within the scope of the search warrant. The scope of the search warrant in these cases is all of the client files, and they are going through those to determine which ones actually have evidence. The question then becomes, "What happens to the other files?" The entire purpose of this bill was to protect the attorney-client privilege. If you are an individual who has seen this information but you are not under the attorney-client privilege, you can be compelled to testify to that.

Let us take it out of the criminal context to look at a civil case. The other side finds out that law enforcement may have looked at these files. The other side, the adverse position, through subpoena, could compel the police department to disclose what was in the other files. That is why this is necessary to protect the attorney-client privilege. It keeps all of the files for a time within the attorney-client privilege. After it has been determined which files are actually evidence, those are then disseminated to law enforcement more fully.

Chairman Yeager:

I did confirm with legal that this bill is patterned off of the federal guidelines when it comes to search warrants on attorneys' offices. That is where most of the language came from.

Assemblyman Pickard:

How are we changing the present paradigm? What is the shift? I do not practice in this area, but what comes to mind is all of the protections on attorney-client-privileged material anyway. We will let the district attorneys talk about how this will work in practice. The attorney who is putting together the case is the one who needs to look at the information

to determine whether it is germane to the case, or at least someone with that kind of experience. We have a team that does sexual crimes, and we have a different team that does misdemeanors. We end up with people who understand what they are looking for to determine whether it is germane to the case who would then be excluded from reviewing that material. How would this change the practical application of their work?

Assemblyman Ohrenschall:

Putting these guidelines here as to the specificity the warrant must require and putting them into statute will help make sure that attorney-client privilege is not compromised. The team of individuals will consist of a team of neutrals who do not have a horse in the race, just as you in your family law practice would not want an adversarial attorney on those issues being able to examine all of your files. This bill, as patterned after the federal guidelines, will provide a lot of clarity and will lead to less compromise.

Robert Langford:

For instance, the prosecutor is looking for falsified certificates of completion of a particular rehabilitation or counseling program. That is what the prosecutor wants to see. The search grabs 50 files. Maybe five of the files have, or would have, that kind of document in it. The prosecutor can tell other attorneys what he is looking for. They can then go through it under the attorney-client privilege and see which file in particular has those five documents and turn them over to the prosecutor. He would merely have to communicate exactly what he is looking for to those people. The other 45 files would then be protected. In the criminal context, that means those other 45 criminal defendants have no argument about whether the prosecutor may have seen their file. It just did not happen.

Assemblyman Pickard:

You have given us a very specific example where an attorney could say, I am looking for five documents. I would suspect that the attorney would not know what he is looking for going into it. He does not know there are five documents and he does not know where they are placed. The investigating officer is probably clueless as to the details. The officers just want to gather it all so they can look at everything and find where the evidence is. When we are talking about giving it to a neutral party or someone who does not practice in that area, if I were looking for evidence in one of my cases, I do not want somebody who does not handle my kind of cases looking for it because a lot of that is intuitive. They can look at a document and know that it is relevant. How does this differ from the rules that are currently in place?

Robert Langford:

I would say this is much different because it is a search warrant. In a search warrant, you have a specific item that you are looking for. You have to articulate what that particular item is. It is different from discovery where you think there may be something and you want to go into it. In this case, where you have a search warrant, you are saying, "I have probable cause

to believe that this specific item, which is evidence of a crime, is located in the files of attorney X." It is more specific than, "I do not really know what I am looking for and will intuitively know it when I see it." It is a much different scenario when you get to the point of requesting a search warrant.

Assemblyman Elliot T. Anderson:

I appreciate the thought behind this bill. It makes sense to try to avoid breaching that and having a conflict of interest when the state is also engaged in litigation. Something you said raised alarm bells for me when you mentioned an example in regard to a certificate of completion. In that case, there were allegations of systematic fraud on the court. In that instance, if someone were going to be engaged in systematic fraud on the court, would it not be likely that he or she would also destroy evidence?

Robert Langford:

In the particular case we are talking about, yes, there was systematic fraud. That was what the attorney pled guilty to. There is always the chance that evidence can be destroyed. What this protects is the quick accumulation of evidence after a valid and properly executed search warrant with time to go through and find specifically what is being looked for. It is no different from just getting a search warrant and executing the warrant. Evidence can be destroyed then. In fact, I think that has happened in another case. What we are doing here is not impeding the ability to get the search warrant; it is more about what happens after the search warrant is executed.

Assemblyman Elliot T. Anderson:

I am more worried about the requirement that a subpoena could be necessary. Part of the idea behind search warrants is the surprise to ensure that you do not have the loss of evidence. I would appreciate your assuaging my concerns about the loss of evidence.

Robert Langford:

That is put in the declaration. One last thing I would note is that this is not much different from what is required to get a tap on a telephone where you have to show that you have exhausted certain other manners of trying to get that particular kind of evidence. It is very similar to that. It works well in the federal side, as has been pointed out by Chairman Yeager.

Chairman Yeager:

Is there anyone who would like to testify in support?

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

We are in support of A.B. 444 because it does provide that level of protection for the attorney-client privilege, which we determine as sacred. It is important in society to protect sensitive information in attorney files just as we would in doctor-patient files, there being regulations already in place for those scenarios. We do want to protect the mental impressions and thoughts of the attorney contained within these files. We believe this provides a good mechanism for doing so.

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:

We would be in support as well for the reasons stated by my associate, Mr. Sullivan.

Tonja Brown, Private Citizen, Carson City, Nevada:

We support this as well.

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

John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office, and representing Nevada District Attorneys Association:

In Clark County, where I think this issue is coming from, we have issued approximately ten search warrants on attorneys' offices. In every one of those, the attorney himself was the subject of the investigation, not the clients of the attorney. I want to make that clear. Law enforcement already takes into account the issue of privilege with respect to the search warrants that are issued. We do have what we call "privilege teams" gathered at the site who are independent of the investigation and of the affiant of the search warrant themselves. Those privilege teams review any documents and turn over those that are not privileged to the investigative team. If there is a question of privilege, the magistrate that signed the search warrant is given those documents to determine whether they should be turned over as part of the investigation. Most of what is contained in this bill is already done.

I do have some concerns with respect to section 5 where it says, "A district attorney or the Attorney General," instead of just alluding generally to law enforcement, the Attorney General, or a district attorney (DA). When you talk about the privilege team, it could be all law enforcement, it could be attorneys and law enforcement. In many instances, it is a combination of both. When you specify what it should be, I worry that it ties law enforcement's hands. The Clark County District Attorney's Office is neutral on this bill.

Assemblyman Elliot T. Anderson:

Do you think the bill adequately provides against the risk of destruction of evidence?

John Jones:

That is a great question. We are concerned that if you delay the process, you do leave open the opportunity for someone to destroy evidence. When we have worked with an attorney's office in the past when a client is the subject of an investigation, we generally work with that attorney and come to some sort of resolution as to how law enforcement will get the documents. When the attorney himself is the subject of the investigation, we go through the search warrant process.

Assemblyman Pickard:

Could you elaborate a bit on my question to the presenters? What does this change in terms of your process?

John Jones:

Both police officers and the Clark County District Attorney's Office take investigation of attorneys and the potential privilege issues that that would involve very seriously. We already have privilege teams. We try to be as specific as possible with respect to the particular evidence we are looking for. It does not change much. A concern of mine would be that it does state specifically who the privilege team would be, where we would like to leave that more open-ended because it does change depending on the investigation.

Assemblywoman Krasner:

You said that you already have teams that do this. Warrants are still conducted pursuant to the Fourth Amendment and the terms specifically in the Fourth Amendment. What are you concerned about as far as evidence or protocol that might tie law enforcement's hands?

John Jones:

In section 5 it states, "A district attorney or the Attorney General shall ensure that any property seized . . . is reviewed to determine whether the attorney-client privilege applies . . ." That is a little different from how we do it now. There are some instances in which my office might be involved in the determination of whether privilege applies. In the vast majority of situations, it is an independent group of detectives or law enforcement investigators who make that determination. They are trained, and if there are any questions, these documents are then turned over to the magistrate who issued the warrant itself to make the final determination.

Chairman Yeager:

Is there anyone else who would like to testify in the neutral position? [There was no one.] I would invite the presenter back up for any concluding remarks.

Assemblyman Ohrenschall:

I do not believe there is anything in A.B. 444, if enacted, that would delay any investigation. The law office would still be under the element of surprise once the search warrant is issued and executed. This provides clear guidelines to protect that attorney-client privilege. If it were your child custody case, your employment discrimination case, your bankruptcy case, or your criminal case that is in the attorney's office and not subject to that, none of us would want that reviewed by attorneys from the other side.

Robert Langford:

Just because you call something a particular name does not mean that it, in fact, has that characteristic. Calling something a "privilege team" does not mean that that team can assert attorney-client privilege. That is something that is created by law and by the State Bar of Nevada. If you are a law enforcement officer independent of anything and you look at the files, you do not enjoy attorney-client privilege. In fact, you can be compelled to testify about the contents of that file at a later time. You cannot go into court and say, "I do not have to answer that on the grounds of attorney-client privilege." Merely having a team that

you call a "privilege team" who goes through, looks at the files, and determines whether there is evidence in it that would fall under the search warrant does not mean that is protected. That is what this bill is designed to do: to create a team of attorneys or others who would have attorney-client privilege to look in those files and could not be compelled to testify in court as to the contents of the file.

Chairman Yeager:

We will formally close the hearing on Assembly Bill 444. At this time, we will open the hearing on Assembly Bill 414.

Assembly Bill 414: Requires the electronic recording of interrogations under certain circumstances. (BDR 14-600)

John Oceguera, representing Innocence Project:

My job today is to give you our batting lineup, if you will. From the Innocence Project, we have the State Policy Advocate, Michelle Feldman. We would also like to have Kate Hickman from the Washoe County Public Defender's Office, Cathy Woods' attorney, who represented her in a false confession exoneration. We also have someone in the audience, Ted Bradford, who was wrongfully convicted of a rape in Washington State. We would like to have you hear his story, if that lineup pleases you.

Chairman Yeager:

We will hear from those individuals and then open it up for questions.

Michelle Feldman, State Policy Advocate, Innocence Project:

The Innocence Project is a national organization that works to exonerate wrongfully convicted people with DNA evidence. We also work with our local partners, including the Rocky Mountain Innocence Center, which covers cases in Nevada, Utah, and Wyoming, on policy issues that prevent and address wrongful conviction.

False confessions are a leading contributor to wrongful convictions nationally. Here in Nevada, they played a role in two of nine wrongful convictions overturned. You will hear from Kate Hickman who represented Cathy Woods—an exoneree who was wrongfully convicted based on her false confession. Recording interrogations is a safeguard against wrongful convictions stemming from false confessions. It deters illegal or coercive behavior in the interrogation room that could lead to a false confession. It can also alert investigators, judges, and juries if a suspect has a mental limitation or another vulnerability that can make them more susceptible to false confessions. It also protects law enforcement because it deters against frivolous claims of officer misconduct, it provides the strongest possible evidence, and it reduces motions to suppress statements and confessions.

Nationally, 22 states require recording of certain custodial interrogations. In 2014, the United States Department of Justice issued a policy that federal law enforcement agencies, including the Federal Bureau of Investigation, have to record interrogations for all crimes. In Nevada, we worked with former U.S. Attorney Thomas P. Sullivan to survey

law enforcement agencies on their practices. We contacted 39 agencies, and we heard back from 26 of them. The good news is that every agency that we heard back from said that they record interrogations in some form, but there was not a consistent practice. Some of them recorded for all crimes; others for only the most serious crimes. Some of them allowed officers to have discretion over when they can record. Only five agencies said that they had a written policy on the practice. This bill would ensure that there is a consistent practice to record custodial interrogations for homicides and felony sexual assaults.

Sometimes we hear concerns about costs. This bill would allow for audio only recording if audio/visual recording is not feasible. You can purchase a tape recorder for \$30, and even a digital video recorder retails for about \$50. To better understand the cost associated with recording interrogations, the Innocence Project surveyed agencies in Massachusetts and Wisconsin, which have required recording interrogations for over a decade. We got responses from about 100 agencies. All of the agencies said that costs were not a burden. Most of the smaller agencies used handheld digital video cameras. In terms of storage, they did not have to purchase additional storage. They could use their existing computer servers or burn the recordings onto DVDs. There are cost savings to be realized in the long term because there are fewer lawsuits from officer misconduct allegations, there are fewer motions to suppress statements and confessions, and there are fewer lawsuits based on wrongful convictions.

Another concern we sometimes hear is that law enforcement does not need a mandate through the legislature—they should be able to voluntarily adopt best practices. As our survey showed, that has not resulted in a consistent, statewide practice here in Nevada. Without a law, there is also no enforcement mechanism. There is no legal consequence if the officer turns off the tape or decides not to record. This bill would have a jury instruction if the officer failed to record, unless they can prove there was a good cause exception that applied.

With other police practices, we have been able to achieve reforms through voluntary adoption. For example, with eyewitness identification, we worked with law enforcement here to ensure that they had policies that were based on science. The reason we could do that voluntarily is because you have a constitutional right to have a reliable identification. The defense attorney can say to an officer in court, You did not use these best practices; therefore the identification was not reliable and should be suppressed. You do not have the same constitutional right to a recorded interrogation. In fact, you do not even have a constitutional right to a reliable confession. It is based on voluntariness. The court does not look at whether the confession was reliable, just if it is voluntary. The Supreme Court of the United States has told states that it is up to them to determine what is admissible in terms of reliability and to determine whether interrogations should be recorded. We think this bill is a good balance. It sets minimum standards to record custodial interrogations for the most serious crimes. It also allows agencies flexibility to decide how they record and to adopt their own policies.

Kate Hickman, Chief Deputy Public Defender, Washoe County Public Defender's Office:

I was involved with Cathy Woods' case after the Innocence Project got involved. We litigated getting her a new trial and, ultimately, a dismissal of the charges against her. I do not know how familiar everybody is with the Cathy Woods case, so I am going to give you a brief overview of what happened to Ms. Woods and how having a nonrecorded confession played a part in her wrongful conviction.

The murder occurred in 1976. Michelle Mitchell was kidnapped from her car, and her body was later found in a garage. Her throat was slit, and her hands were bound behind her back. For three years, the case went unsolved. During the time when the police were looking for the perpetrator of that crime, they were looking for a man. It was indicated that the crime was sexually motivated. There was a footprint found near the scene that appeared to be a larger male footprint. For those three years, prosecutors and investigators were looking for a male perpetrator.

In 1979, Ms. Woods was involuntarily committed to a mental institution in Shreveport, Louisiana. She was schizophrenic, she had auditory delusions, she had thought disorders, and she was actively psychotic at the time. At that mental institution, she wanted her own room with no roommate. When they told her she was not dangerous enough for her own room, she admitted to killing a girl named Michelle in Reno. That statement led the doctor who was treating her to contact detectives in Shreveport, Louisiana, who then contacted detectives in Reno, Nevada. Two detectives from Reno went to Shreveport with the elected district attorney where they interrogated Ms. Woods.

We know that everything that Ms. Woods said in her confession was false because she was not the person who killed Michelle Mitchell. She admitted to it. Somewhere in that confession, whether from Ms. Woods or from the police, there came an idea that she was a lesbian and that this was motivated by Michelle's rebuke of her sexual advances. Ms. Woods is not homosexual; she is heterosexual. It is unknown if that was suggested by the detectives or by Ms. Woods. She was unable to name the color of the car. The detectives asked her to tie a rope in the same manner that Ms. Mitchell's hands were bound—she was unable to tie a rope at all.

At the time she was interviewed she was hearing auditory delusions, she did not make sense, and she was actively mentally ill. There was an intern doctor working with Ms. Woods who suggested that she was not competent to be giving the testimony to police officers at that time and suggested that she needed a lawyer. The detectives were able to go over her head and consult with her supervising doctor who allowed the interrogation to take place.

Ms. Woods was convicted; she was convicted more than once. She was convicted twice because her case was overturned in the Supreme Court of Nevada and she was tried again. She was sentenced to life without the possibility of parole. She was placed in custody when she was 29 and she was released when she was 64 years old. While she was in custody, she was assaulted, she attempted suicide, she was subject to electroconvulsive therapy, and she was mentally ill during the entire time she was in custody. She continues to suffer from mental illness.

When the Innocence Project was able to get involved, Cathy was not the person who sent her information to them. She had a friend in custody who was able to write to the Innocence Project and get the DNA testing going for her. There was a cigarette butt found underneath the body. There were other items that were tested for DNA. One of the interesting things is the rope that was used to bind the hands was tested for DNA. There was an unknown male DNA profile on it. It matched a man in Oregon. Detectives went up and talked to him. It turns out he was a juror on the case and they handled the rope with their hands so his DNA had gotten on it. The cigarette that was found came back to DNA that was unknown at the time and involved with other homicides in California which were nicknamed the "Gypsy Hill" murders. It is believed there were seven other women around the same time who were murdered by the same person. That person was identified when he was transferred from the Nevada prison to Oregon on a case that he committed while he was on escape status. He was able to escape from prison, went up to Oregon, and committed another crime. When he was transferred from Nevada to Oregon, his DNA was taken, placed in CODIS, and he was a hit on the DNA—both in Reno and in the Gypsy Hill murders in San Mateo County, California.

The powerful impact that a recorded confession would have had in Cathy's case is that is the only thing that tied her to this crime. There was no physical evidence; there was no forensic evidence. People saw a large man, approximately six feet tall, they believed to be giving Ms. Mitchell a "bear hug" at the time that she was kidnapped. Cathy does not meet that description at all. She is a small woman. Her shoe is not the same size as the man they believed they saw. Another witness described seeing a man running from the scene who had blood on his hand. He was described as a large male. That did not fit the description of Cathy.

Her confession, through the police officers who were able to testify, was powerful enough for her to be convicted. When the police officers testified to the jury, they said Ms. Woods did not appear mentally ill, did not appear to be suggestable, did not hesitate, and she did not reflect any of the things we know made her susceptible to a false confession. They did not see the mental illness in her. They did not see the suggestibility. They did not see that she got every single detail, including the color of the car and the inability to tie a knot in a rope, incorrect. The detectives' ability to come and testify, "She told us this," without a jury hearing it from her was incredibly damaging to her and played a huge role in her being convicted of a crime she did not commit and spending 35 years in the Nevada prisons.

Chairman Yeager:

We heard another bill earlier in the session and some information about the Woods case was shared. I think the testimony was that, at the time that Ms. Woods was convicted, the death penalty was not an option because it was in that period where it had been ruled unconstitutional by the U.S. Supreme Court. Can you confirm if that was the case; whether the death penalty was sought against Ms. Woods?

Kate Hickman:

That is correct. At the time the murder occurred, the death penalty was not an option so it was not sought against Ms. Woods.

Chairman Yeager:

She received the maximum sentence that was allowed at the time. Was it life without parole?

Kate Hickman:

That is correct; it was life without parole.

Ted Bradford, Private Citizen, Yakima, Washington:

[Supplemented with prepared testimony ([Exhibit J](#)).] I am here to testify in support of Assembly Bill 414. I was wrongly convicted of rape in Washington State in 1996 and spent 10 years in prison. I was released and spent an additional four years on the sex offender registry while awaiting a second trial because I falsely confessed to a crime that I did not commit. It was overturned by DNA in 2007. For whatever reason, the state of Washington decided to retry me in 2008 for the same crime. I was finally exonerated in February 2010 after a close to 15-year struggle trying to clear my name.

Most people do not understand why someone would confess to a crime that he did not commit. I have struggled with that question myself for years. I cannot speak for other people who have gone through what I have, but for me it was the only thing I could do to get myself out of the situation. I was in a police station in a small room with three detectives over a nine-hour period of relentless accusations, threats, and promises.

It is difficult to talk about that day sometimes. Most days I do not revisit what I have been through. It is difficult but important for me to share this information with you today in the hope that nobody else has to go through what I went through. I lost ten years of my life, and I lost my marriage. I missed out on raising my two kids who were just babies at the time I was wrongfully incarcerated. I missed out on a lot and they did too. If Washington State had had a law like this in 1996, I wonder what my life could have been like. I wonder if this would have even happened.

As for the whole day that I spent with these detectives, I was under a high-pressure interrogation. You would not believe the tactics they used on me. None of it was recorded. There was no video or audio. The only time they chose to record anything was after I had given up and agreed to make a statement. They told me repeatedly, "You are not leaving this room until you tell us the truth." I had been telling them the truth. I told them repeatedly,

"I did not do this. You have the wrong guy." I was called a liar repeatedly. They told me that they did not believe me. It was intense. If they did have something like this bill in Washington at that time, I do not think I would have had to live through the last 20 years of my life. Things would have been different for me.

They did not record anything on video, but they did record the last 40 minutes of the interrogation on audio. It was the only evidence linking me to this crime. When it came time for the trial, my belief was that there was no way they could convict an innocent person. Throughout that day with the detectives they kept telling me, "We know you did it. We are going to test the biological evidence at the scene, and it is going to prove that you did this." I saw that as my only hope. In my mind, I knew I did not do this crime. In my mind I thought, If I just make this statement, get out of this small room, and am free from this for now, they are going to test that and it is going to prove my innocence. Unfortunately, that did not happen at that time. It took almost ten years before DNA science caught up and proved my innocence.

Recording the interrogation could have prevented this. I am glad you are taking action to ensure that other innocent people do not have to go through what I did.

Chairman Yeager:

Thank you for being here this morning, Mr. Bradford. I know that was not easy to share with the Committee. We are sorry for the lost years of your life, but we do appreciate your being here and giving us some context to Assembly Bill 414.

I do not know if any of the other members have seen the TV show *Making a Murderer*. There was a recorded confession of a young man. Without making any conclusions, it was eye-opening to be able to see the confession in a visual and audio sense, rather than hearing it come from somebody. I would invite the Committee to watch that show in their free time. I think it is about 12 hours total. It is riveting, so make sure you set aside an entire day to do it.

Assemblyman Ohrenschall:

My question has to do with page 2, section 1, subsection 2, paragraph (a). Why choose that the electronic recording would begin after the *Miranda* rights have been read? Often we hear that there are statements made long before those *Miranda* warnings are read, or that they are read after the person is in custody. Why not require that the electronic recording begin either at the moment the defendant is detained or at the initial contact? I believe there is some case law in *Missouri v. Seibert* 542 U.S. 600 (2004) that talks about how bifurcated interviews violate *Miranda*. Why not have it start prior to that?

Michelle Feldman:

Section 1, subsection 2, paragraph (a) says, "Begin recording not later than the time when the person who is being interrogated is advised of his or her" *Miranda* rights. The definition section defines "custody." This bill is specific to custodial interrogations and it defines that as someone who is under formal arrest, or if a reasonable person believes that their freedom

of movement is restrained to the point that they cannot leave. It sets the minimum at *Miranda* rights, but as soon as somebody would believe himself or herself not to be able to leave the situation that the recording would start. Ideally, we would want to start it earlier as you said, but the problem is that we then get into requiring witness interviews to be recorded. Somebody could come in voluntarily, and police say they want to question the person about a case as a witness and then they turn into a suspect. All of the 22 states that require recorded interrogations pertain specifically to custodial interrogations, starting when the person was or would have believed himself or herself to be in custody.

Assemblyman Ohrenschall:

In those 22 jurisdictions, have there been any challenges as to whether that is compliant with the precedent?

Michelle Feldman:

I am not sure. I do know that defense attorneys have challenged if a recording was not done. Defense attorneys say that a reasonable person would have believed himself or herself to be in custody: they were in a room with police officers, and they were being questioned. The court looks at the totality of circumstances to determine if it was a custodial interrogation. There have been Supreme Court rulings on what a custodial interrogation is versus a noncustodial interrogation. I am not aware of specific challenges regarding whether noncustodial interrogations should be recorded. What we have found is that once police start recording custodial interrogations, they like it so much that they start doing it for suspects even before it is a custodial interrogation. Once we start having that minimum standard, it really grows from there.

Assemblyman Fumo:

Mr. Bradford, I want to thank you for your testimony. I cannot think of anything worse than having your liberty taken away for something that you did not do. Thank you for having the moral courage to come up and tell your story.

I want to echo the sentiments of Assemblyman Ohrenschall. I looked at the definition provided in section 1, subsection 6, paragraph (b), subparagraph (2), which states, "... a restraint on a person's freedom of movement of the degree associated with a formal arrest and a reasonable person, in view of all the circumstances, would have believed that he or she was not free to leave." Why are we throwing the burden on the person being interrogated; why not the custodial officer? He knows that as soon as that person is not free to leave he should be turning on the recording with any words that are spoken. You have people who are not sophisticated enough to know that they are free to leave. They are not sophisticated enough to know that they have the right to remain silent. I would be in support of this bill if it were changed so that as soon as the person is not free to leave, law enforcement has to turn on the recording upon any statement.

Michelle Feldman:

The definition of custody does say "There is a restraint on a person's freedom . . ." and a reasonable person "would have believed that he or she was not free to leave." I understand what you are saying. We are happy to look at that definition and clean it up. Typically, we have used this language in response to law enforcement concerns that they would have to record all interviews with all witnesses or people who have not risen to the level of formal arrest. We are happy to look at that.

Assemblyman Fumo:

We are giving law enforcement an out by looking into that person's subjective mind. Law enforcement knows they are not free to leave. Law enforcement knows they should be turning on that recording. I would be more supportive of it if the language was a little clearer.

Chairman Yeager:

The situation in most law enforcement agencies now is that they are wearing body cameras as well. Typically, the body camera footage would record from the beginning of the interaction, often including the transport to the police station. Those cameras are still rolling in the car. That is another option for recording as well. I do not think that is contemplated by this bill, but I wanted to have that on the record. There is some additional legislation this session related to body cameras that will probably be coming over from the Senate at some point.

Assemblywoman Cohen:

Can you go into subsection 4 a little deeper for those of us who do not practice in criminal court and do not understand how exactly that would work in a criminal trial court?

Michelle Feldman:

That section talks about the remedy for not recording. The bill lists a number of good cause exceptions. We do not want this to be a "gotcha" to law enforcement. If there is an equipment malfunction or the suspect refuses to speak under those circumstances, we believe that there should not be a consequence because those are sensible reasons not to record. What that section says is that it is still admissible if you did not comply with the law, but if the prosecutor does not show by a preponderance of evidence that one of the good cause exceptions applies, then the court would have to give a jury instruction. It has not been defined exactly what the instruction would be. That is something that the courts decide after we pass a law like this. The gist of it would be that the law is to record interrogations in these situations and law enforcement did not do that. The jury can weigh that when assessing the reliability of the confession. Something to that degree is typically what we see.

Assemblywoman Cohen:

Is the jury going to weigh that? They are given both sides and allowed to weigh that? They are actually charged with weighing that?

Michelle Feldman:

Yes, that is correct. The jury instruction would notify them that the law was not followed. Typically, that includes language that they are to weigh that in light of the circumstances surrounding the confession. It is something that the court will have to come up with—the jury instruction that is right for them.

Chairman Yeager:

I can add to that. That is how a cautionary instruction would work. The jury still does get the evidence, but in deciding how to weigh that evidence, they would get an instruction letting them know that they can consider that it was not recorded. The evidence itself would not be kept from the jury the way I read the bill.

Is there anyone who would like to testify in support?

Tonja Brown, Private Citizen, Carson City, Nevada:

We support this bill. I would like to add to something that was touched on: in section 1, subsection 2, paragraph (a), to remove the words "not later than" and replace them with "at the time." I would also possibly take out "is advised of his or her rights pursuant to *Miranda v. Arizona* 384 U.S. 436 (1966)." The reason for that is that when a person is suspected of a rape, a victim sees the individual, and they are not really too sure. Under the guise of civil protective custody, the individual will be picked up and then questioned without being Mirandized. That will be used against them at trial. Paragraph (a) should say, "begin recording at the time." Other areas could apply—civil protective custody—to get information out of them that may or may not be true and be used against them at trial. If it is not recorded, you do not know what has happened. I am in support of this bill.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

I do not have much to add other than about what my colleague, Ms. Hickman, has already testified. This is a very important measure. The Washoe County Public Defender's Office is in complete support of A.B. 414.

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:

We, too, are in support of this measure. We would like to thank the bill sponsors for bringing this forward. With the advent of technology, this does not form an undue burden and allows for a more thorough vetting of the evidence. We would ask that the Committee fully support this bill.

Wendy Stolyarov, Legislative Director, Libertarian Party of Nevada:

The Libertarian Party of Nevada believes that A.B. 414 is a commonsense protective measure, improving outcomes for both suspects and law enforcement. Interrogations can be extremely long and incredibly stressful, sometimes leading to false confessions and wrongful convictions. We believe that this bill will provide suspects with better recourse and protect them from abrogations of justice; give judges a fuller understanding of the context surrounding any given case by providing them with recordings of interrogations; and protect law enforcement by reducing frivolous allegations of misconduct or unjust treatment.

Sunlight is the best disinfectant, and we believe that increasing transparency in interrogations is both logical and compassionate. The Libertarian Party of Nevada is therefore happy to support A.B. 414. We also agree with Assemblyman Ohrenschall and the Innocence Project regarding section 1, subsection 2, paragraph (a).

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:

It is with a degree of remorse that I come today in opposition to this bill. For the most part, I support the language in the bill, and I believe our agency is in compliance. I do have a couple of technical issues with the language that I will raise in a minute.

To take you back a few years would be relevant to this bill. At the time, Rebecca Brown was running the Innocence Project in Nevada. We worked very closely with her regarding witness identification, to the point where she came to the Las Vegas Metropolitan Police Department (LVMPD), met with me personally, toured our facility, looked at our policies and practices, made recommendations of how we could improve, and we subsequently did change our policy to reflect her recommendations. Ultimately, she said that our policy was a model policy for witness identification that the Innocence Project would use when pushing their agenda across the country. Unfortunately, that did not happen with this issue. I was approached last year by the Innocence Project, who stated that they wanted to bring a bill to the Legislature.

The Innocence Project and LVMPD are on the same page. We want to put the right person behind bars. We do not want somebody innocent behind bars. The story that was told by the gentleman behind me is heartbreaking, and I have the same feelings that Assemblyman Fumo has about that. I respect the courage it took for him to come forward and tell his story. I cannot think of anything worse than to be incarcerated when you are not guilty of the crime.

It was made clear to me that the Innocence Project wanted to bring a law forward. They were not interested in working with us personally on our policy; they were not interested in trying to get compliance by agencies in the state through other means; they wanted to bring this forward as a legislative action. It has always been my position regarding best practices for law enforcement that it is a mistake to put this type of stuff into the law. It was stated in regard to witness identification that it is a science. Many of these things involving law enforcement are science. Science evolves and changes. It used to be that fingerprints were the best way to identify someone, and now we have DNA. We put things in the law in black and white; law enforcement is not black and white. I realize that the language in this

bill contains exemptions and flexibility for law enforcement. My opposition is more philosophical, not to the specific language in the bill. When we put best practices into statute, in the future—when best practices evolve and change—we have to come back before this body after two years and try to make changes to reflect those best practices, or we leave things that are not currently best practices in the law.

The concerns I have with the language as drafted are minor. On page 3, it says, "if audiovisual recording is not feasible." Who determines whether it is "feasible?" Is that the officer's decision? Can the officer say, It is not feasible for me to use audio so I am going to use video, or vice versa? Can that be challenged by the defense in court saying, It was feasible for the officer to use video, but he did not—he used audio.

I have had conversations about this bill with my detectives. My detectives told me that we do this already. The concern they have is that those cases that you have someone in the back seat of a patrol car, driving him to a detention center after advising him of his *Miranda* rights in the field. A rapport builds between the officer and the potential suspect, and they start talking. Now the person in custody confesses or tells the officer what happened, and those cases are not recorded in the back seat of a patrol car. Would that fall into the exemptions here, or would that be irrelevant? When you get the person to the headquarters to a holding room, you would have to reinterview them. The person interviewing might not have the same rapport and what was said would be lost or inadmissible at that point.

Regarding the comment made by Assemblyman Fumo, in my mind it goes back to a case I recall as *United States v. Mendenhall*, 446 U.S. 544 (1980), I believe to when a reasonable person believes they are in custody. If we reverse that to where the officer believes the person is in custody, that does an injustice to the subject. The officer may be thinking, I am not going to arrest this guy, I am just going to question him; he is not in custody yet. If I, as a citizen, have three officers standing around me with firearms, batons, and they are questioning me, in my mind I reasonably believe I am in custody. Maybe it is not an issue from a law enforcement perspective, but that reasonable person standard is important to protect the citizen who believes that they are not free to leave. Those are my primary concerns. I raised these same concerns with the Advisory Commission on the Administration of Justice during the interim when this was presented.

I wish the Innocence Project would have given us an opportunity to show that we had a model policy and work with Nevada sheriffs and chiefs throughout the state to get compliance rather than bringing forth legislation saying, We are going to force you to do this, without having that rapport we have had in the past.

Assemblyman Elliot T. Anderson:

Can you tell me what your current policies are on what happens? What is the Department's understanding of what a custodial interrogation is?

Chuck Callaway:

Our understanding of a custodial interrogation goes back to *United States v. Mendenhall*. If a reasonable person would believe that they are not free to leave—that they are being detained—or if you are questioning that person when they are detained per *Miranda*, then it is a custodial interrogation. It could even be in the field. If the officer puts someone in front of the patrol car and says, "You are suspected of robbing the bank up the street. Here are your rights per *Miranda*. Tell me what happened." That is a custodial interrogation, even though it takes place in the field.

Our department policy does not specifically say. We have our basic department policy, which covers the standard procedures for the agency. Our independent bureaus have their own independent procedures. For example, homicide or sexual assault detectives may have a different level of operation when it comes to investigation of a case. A homicide or sexual assault case is much more detailed and requires a higher level of attention than a petit larceny or burglary case. Our department policy outlines procedures such as you must have two officers present, especially when it is members of the opposite sex—a male suspect and a female officer, or vice versa. You have to be able to see the suspect in the room either through video surveillance or through a glass window. It is specific in the policy that every custodial interrogation must be video or audio recorded.

In cases of sexual assault, homicide, robbery, and other high-level cases, my understanding is that if our detectives are conducting an investigation, those cases are routinely audio or video recorded. The one you saw in the news was the young man who shot the woman in the road rage incident. The whole interrogation was captured on video by the homicide detectives, and the interrogation was questioned by the defense. There were allegations that the young man was under the influence of marijuana and should not have been interviewed. All of that was shown on the news multiple times. It is common that we video and audio record those interrogations.

Assemblyman Elliot T. Anderson:

It looks like the rubber meets the road with this bill in terms of a remedy with the favorable instruction. Right now defense counsel can already question detectives and ask, Did you record? If not, why not? Whether there is a favorable instruction required as a matter of law in this bill, the defense counsel can still ask, Did you comply with policies X, Y, and Z? If they just got rid of the favorable instruction language, would you be more amenable to this? I do not think there would be too much of an imprimatur of, You did something wrong. You could allow the defense counsel to put that out there.

Chuck Callaway:

That would be great. That direction to the jury is a concern of mine. I know the district attorney will touch more on that. My opposition is more philosophical to the process of how we got here. That being said, it is in law enforcement's best interest to record these. It protects us. If we do not do it and we do not have a valid reason why, the defense can already question it. "Why was this not audio or video recorded?" In many cases, people recant their confessions. They will say that they did the crime and later on will say that they

did not. If it is not on video, you do not have the documented proof of that—it becomes a "he said, she said," type of thing. It is in our best interest to do these. The rubber does meet the road; I just wish we had had an opportunity to work with the Innocence Project and get the state in compliance through policy that could be updated regularly when best practices change instead of codifying it in state law because of a national agenda.

Chairman Yeager:

I know that currently, highway patrol vehicles have dashboard cameras that record everything that happens from the time the sirens are activated all the way to the time when the individual is dropped off at the local jail. My understanding is that LVMPD does not have that right now. Do you know if there are any plans to implement that in the future?

Chuck Callaway:

There will never be 100 percent compliance for various reasons—people go on military leave, or people are transferred from one unit to another and they have to undergo the training. However, we have equipped 99 percent of our officers in the field with body cameras. When it comes to vehicle cameras, we have tested some of that technology in the past. We have roughly 1,700 uniformed officers in the field. Equipping our fleet of cars with dashboard cameras would be costly. At this point, we have no intention to put dashboard cameras in our cars. We believe that getting our body camera program up and running is the right way to spend our resources at this time.

Chairman Yeager:

I certainly understand that and did not mean to imply otherwise. With respect to body cameras, when the interaction with a suspect turns into an arrest and the suspect is being transported in the vehicle, is there a policy about when an officer could turn off the camera? Would the body camera stay on during the transport, or would it typically be turned off at that point?

Chuck Callaway:

Yes, department policy says that the camera is turned on when the call is assigned to the officer, and it gets turned off when the call is cleared by the officer. The entire time the officer is on that call, from start to finish, the camera should be on. As I said, 99 percent of our uniformed officers in the field have the cameras. We do have plain clothes detectives working in the field who do not wear body cameras. We have officers who may not be equipped with body cameras because they do not wear a uniform and are not responding to calls for service, such as the gang task force officers. Those officers may be transporting a suspect. In many cases with a uniformed officer there would be a camera in the car where a confession by a person in the back seat could be recorded. There may also be cases where the officer would not be in uniform and therefore would not have a body camera to do that.

Chairman Yeager:

I do not see any more questions from the Committee, so let us continue to take testimony.

Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson:

We concur with Mr. Callaway's statements regarding putting best practices into state law. We want to be more nimble and be able to change those policies. Mr. Chairman, you went down the path I wanted to go down; that is how the technology is going to work together. This bill talks about certain technology at certain times. At the Henderson Police Department, we have dashboard cameras with audio recording. There is also another bill working its way through this building that would require body cameras. We need to look at how all of this technology is going to work together. At some point, almost every interaction from A-to-Z with someone who is a suspect is going to be recorded. We need to look at how all of that technology is going to be working together. That is the reason we are in opposition.

Jennifer Noble, representing Nevada District Attorneys Association:

We support the general objective of this bill; that is not the question. We do have concerns about the language, particularly the mandatory nature of the cautionary instruction. We would like to see that become permissive. Although they have tried to codify certain exigent circumstances or other circumstances that would result in something not being recorded, it is impossible to anticipate all of those. We would like to see the judge be able to make the final call in terms of whether a circumstance merits a cautionary instruction. I can think of instances where we have folks arrested in one of our more rural areas such as Gerlach. *Miranda* is given to the suspect, the suspect invokes, and sometime during the long transfer between Gerlach and the Washoe County jail, the person reinitiates and begins to talk. We support the spirit of this bill, but with respect to fashioning a remedy when it is not recorded, we would like to see the courts have the discretion to decide what is appropriate.

Chairman Yeager:

If that section were to be stricken, would you still be opposed to it, or would that cause your position to change?

Jennifer Noble:

We would be much more amenable to it. I believe that would change our position, especially if we could make clear that in addition to the circumstances outlined in subsection 3 or any other circumstance the court deems unworthy of a cautionary instruction. That would be very helpful.

Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association:

Our main concern with the bill is simply the Legislature mandating to the agencies how they will conduct their business. That was the concern that was raised to me. All of the agencies that responded back to me said that they do record serious criminal investigations. They just feel that they should be able to have the flexibility to decide when they will or will not record.

Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General:

We are in reluctant opposition to the bill based upon some of the concerns that were raised by our criminal justice partners. It has already been testified to that recording is the standard practice. There is some question as to what this would accomplish by codifying this. I want you all to be aware, as you debate this policy proposal, that the Nevada Supreme Court weighed this same policy proposal in *Jimenez v. State*, 775 P.2d 694 (1989). I will quote from the opinion: "Defense counsel elicited testimony at trial concerning the failure to tape record the interrogation and made the point to the jury that this failure served to call into question the reliability of the detectives' testimony. The jury then had the opportunity to decide on whether to believe the detectives. The jury's determination that the detectives' testimony was truthful is sufficient to quiet concerns of reliability. Thus, we decline Jimenez' invitation that we adopt a rule requiring the tape recording of defendants' statements." The point is that the Nevada Supreme Court was concerned about eroding the role of the jury to weigh the reliability of the evidence presented. That is why it is important that the Committee consider that as you consider the same policy proposal before you today. It is within your purview to decide to go with this policy proposal, even if the Supreme Court chose not to.

In terms of in practice, why would this not change the way things work now? It would not, because at trial the detective is on the stand during cross-examination and the defense counsel says, Does your agency have a policy requiring the recording of custodial interrogations? The detective says yes, because that is the standard practice now, regardless of the law enforcement agency in Nevada. The defense attorney asks, Why did you not record in this instance? The detective then gives an explanation. Once again, it is up to the jury to weigh the reliability of the statement based upon that testimony. This proposal would not change any of that. We appreciate the fact that the Innocence Project brought this proposal to your attention for your consideration. We appreciate that they approached us, law enforcement, and other partners to discuss it. We would like to continue to work with them to address any concerns they may have.

Chairman Yeager:

Would it not be helpful for the jury to be able to hear or see the recorded confession? I understand an officer can relay the information, but would that not be the best evidence for the jury to consider?

Brett Kandt:

Certainly, but that is what the Nevada Supreme Court decided as the role of the jury—to determine the reliability of the evidence. They would most likely find the recorded evidence more reliable, but we do not know. It depends on the facts and circumstances of a particular case. That is their role as the trier of fact.

Assemblyman Pickard:

I was looking for the case citation. To which case are you referring?

Brett Kandt:

It is *Jimenez v. State*, 775 P.2d 694 (1989). The pages I was quoting from in the opinion are pages 696-697.

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? [There was no one.] I would invite the presenter back up for any concluding remarks.

John Oceguera:

Thank you and the Committee for allowing us to bring this bill forward.

Michelle Feldman:

I want to touch on a couple of points that could allay some of law enforcement's concerns. Just so you are aware, we did meet with the Attorney General's Office and representatives from law enforcement. This is the first that I am hearing of these concerns. To the issue of what happens if somebody is in a patrol car and the suspect confesses—this bill is only applicable in a place of detention. It says that in section 1, subsection 6, paragraph (e) that a "'Place of Detention' means any building, structure or place where persons are or may be lawfully held in custody . . . including, without limitation, a building which houses the office of a law enforcement agency." This bill clearly would not apply to a patrol car scenario.

As for the case that was cited, that was almost 30 years ago when the Nevada Supreme Court declined to require recording of interrogations. At that time, there was one state, Alaska, that required recording of interrogations. Today, nearly half of the states in the country require it. That case was also before the prevalence of technology that we have today, and it was before we understood false confessions.

This is an issue that high courts are looking at. If it is not passed through legislation, the Supreme Court would probably look at this in the future and it would likely have a much stricter consequence. In many other states, the remedy is suppression for failure to record an interrogation. This is just a jury instruction. The reason you need the jury instruction here is that there is a big difference for jurors to hear you have a policy to record interrogations and you did not follow it, versus you broke the law when you did not record the interrogations. That could help educate jurors and assess the reliability.

Finally, to the point that best practices should not be mandated: if I could do this through voluntary compliance by law enforcement, I would love to do that. As I explained before, this issue is different from eyewitness identification where the Supreme Court has said you have a right to a reliable identification and a defense attorney can argue that an agency did not follow best practices, it is not reliable, and therefore it should be suppressed. A defense attorney cannot argue that a confession should be suppressed because it was not recorded. There is no right to a recorded interrogation. *Colorado v. Connelly*, 479 U.S. 157 (1986) says that your only right is to voluntary confession to be admitted against you. That is why in that case the court says it is up to the states to deal with the issue of reliability of

confessions. The good thing is that this is not a science. It is pressing a button. No agency of the thousands of agencies across the country that I am aware of have ever gone back to not recording the interrogation once they have started. I hope that will address law enforcement's concerns.

[All items submitted but not discussed will become part of the record: ([Exhibit K](#)), ([Exhibit L](#)), and ([Exhibit M](#)).]

Chairman Yeager:

We will formally close the hearing on A.B. 414. We have three bills left. That being said, we will open the hearing on Assembly Bill 358.

Assembly Bill 358: Revises provisions relating to child support. (BDR 38-8)

Assemblywoman Dina Neal, Assembly District No. 7:

I am going to break my testimony into three parts. First, I will tell a story; second, I will get into the bill; and third, I will tell you what I learned yesterday about the \$17 million fiscal note.

I was in my district getting my car fixed when a group of young men pulled up. They were teasing another guy saying, "You need to get a license." He said that he owed child support. I am nosey, so I slid over to him and said, "What do you mean you do not have license because of a failure to pay child support?" He told me, "I do not have a license." I said, "Do you have a job?" He said no. I said, "How are you able to get a job?" He said, "I do not know. I do not have transportation unless my friends drive me around." He looked to be about 24 or 25 years old. I will not question his maturity or immaturity.

It started to make me think, Here we are doing all this work around our workforce. We are trying to remove barriers that are hurting certain communities in their ability to work. We are trying to deal with collateral consequences and barriers to employment so that we can have full access for our workforce—young, middle-aged, or whatever. I feel now as I felt then that this particular provision in law was punitive and it did not serve the purpose. If you are going to take my driver's license away for trying to pay child support, it is counterintuitive. The two did not match up.

I started looking at the application for a restricted license because I was told that they could get a restricted license. If you look at the Department of Motor Vehicles (DMV) application for restricted license, nothing in here is related to potential employment. My particular focus is the potential employment that a person is unable to achieve. Under "Section A: Drive to/From work," you need to know the route to and from work and the employer has to fill out and verify that you are working. My question is, if I am out of work, what do I do? Do I make up a business; do I fake a business? If we are going to suspend a license, we need to create some flexibility or a pathway to have a conversation. Is this going to affect my potential employment so that I can pay my arrears? If you are at least \$1,000 over, your arrears kick in and these potential suspension provisions are a part of that.

I have provided data for the Committee ([Exhibit N](#)). What I have found out is that this particular federal law [*United States Code*, Title 42, Section 666], which could not be repealed totally, became effective in 2011. The data you have in front of you is from 2012 to 2016 in regard to how many licenses were suspended, commercial and noncommercial; and how many were reinstated. At that point, I realized that it is a significant problem. If the total suspensions in a five-year period were roughly 21,000 and the total reinstatements were 7,600, somebody is not getting a license. Somebody did not reinstate it. Therefore, somebody is driving around illegally without one or he is not working. I do not understand how you get a job and fill out your I-9 without one, unless we are doing mythical job applications. If you want to fill out the rest of the paperwork that says you are hired, an I-9 requires a social security card and a driver's license. Even some applications ask you for your driver's license.

I brought this bill because I think it is an issue, and I think it is counterintuitive. Folks disagree with me on that point; they feel that this is a tool. I feel that we should be trying to promote and expand the ability of people to work. If you look at section 1, it is just a repeat of the rest of the bill. What I am seeking to do is strike out the word "shall" because they were reporting automatically—they say two or three months later—to the DMV that this driver's license should be suspended for arrears. The only thing that I could do because of the federal law is to create the "may." You "may" report. You have the discretion. If an individual's present or potential employment is going to be affected, do not suspend the license. That is ultimately what the bill does and repeats.

Regarding the \$17 million fiscal note and the conversation I got into, the explanation they had was that this is a much-needed tool. Of all the things that you are able to do—wage garnishment, tax garnishment, insurance garnishment, court order, put you in jail—the driver's license, as stated to me in a phone call yesterday, is the driver of the \$11 million that they were able to secure using the driver's license suspension mechanism. So then I said, "How much are you able to get for wage garnishment, tax garnishment, and insurance garnishment?" The response was, "I do not have those numbers." However, you know those numbers of driver's license suspension. If you can spell that out real quick, I would like to get the other numbers on wage garnishment. "Well, you know, we have a situation where folks are working under the table." When I started to look at the data, I thought, Do we have 13,000 people working under the table, not doing what they are supposed to do? At the end of the day, the question is, is it the right policy, is it a punitive policy, or is it based in some level of revenge rather than fair play and justice? I feel like a person should have their driver's license in order to go to work.

I started asking the question, "Why do you think this is good policy?" I heard a couple of things. I was upset about a \$17 million fiscal note, which is all prospective, saying the federal incentives will go away; that is not true. They said, "We are helping them to get their licenses reinstated." Therefore, my question was, "Why take them away if, on the back end, you are going to spend money to help them get them back? Are you kidding me?" That sounds like a policy that is unworkable and is actually working in the reverse. You know that the policy is creating issues, now you are doing wraparound services at the county within

a year. Now you are helping folks get the license back that you took. Then you are spending the money in an activity (probably a full-time equivalent or FTE) to help the person get the license back that you took for failure to pay child support. I feel the policy is counterintuitive. If you really want them to go to work and pay the child support, then why do you not allow them to have the freedom?

When I looked at the restricted license again, you can have a request to drive to and from work, to and from school, for medical purposes, or to and from the grocery store. I was thinking to myself, This might as well be house arrest. If I know I have to have this kind of limitation on my license for failure to pay child support, I would be thinking to myself, Why do you not just put an ankle bracelet on me? That is about equivalent to what this is. Now I have to tell you, I need this restricted license because I am going to go to work and I am going to eat. I am going to go to the grocery store. These are my punitive measures for failure to pay child support.

I am not minimizing folk's failure to pay child support. What I am trying to make sure is that we are not weakening individuals and creating a broken person and system. The reason why I am an advocate for this is because I have an ex who is on child support. I waited six years to get him on child support because he was in school. Why would I go after him knowing that he has \$5 and a nickel in his pocket? Then I am going to ask him to pay child support, knowing that he cannot do it, knowing that he would have been under Louisiana law, which would have put him—where?—probably in arrears, probably subject to penalties that he could not afford? I wanted him to get through school. I wanted him to be strong. I wanted him to have an income. I never had an intent to hurt him; I just wanted him to take care of his child.

To me, this particular provision and law hurts individuals if you have to reinstate their license to help them after taking it away. They also told me, "We are helping them find jobs." When did the Department of Health and Human Services, Division of Welfare and Supportive Services child support division become a wraparound service, where you are suddenly helping folks get a job and reinstating their license? They said, "It is not us, it is the county." No difference. The point is, money is being expended because of the first action, and the second action is the consequence of the penalty. All I want to do is get it right from the first day. Should you be suspending the license if it is going to affect somebody's employment? That is the central point and intent of my bill. It is the reason I was highly upset over a \$17 million fiscal note. I thought it was outrageous and on the borderline of ridiculousness.

Assemblyman Pickard:

I certainly understand your position from my perspective of a practitioner who deals with this on a daily basis. It is already a weak incentive; people ignore it regularly. From my perspective, when I am trying to get support, more often than not, these are not people who are in school or have the income. That you were willing to let your ex do that is laudable. From a practical perspective, the vast majority of people decide they are not going to pay, or they put it lower on their list of priorities. They pay it if they can or if they have anything

extra in their pocket, as opposed to making it a priority to support their kids first. Given that the incentive this creates is already weak and ignored on a regular basis, since there is a permit already available, they can request the permit so that they can travel for necessity but not for recreation. Is your intent ultimately to remove the incentive that is in this? I am trying to figure out where you have drawn the line.

Assemblywoman Neal:

I cannot remove the incentive. What I wanted to create was flexibility. Federal law does not allow me to remove the incentive because, if you read in the fiscal note, they are receiving incentives for the implementation of the law along with other states. I cannot remove it. What I wanted to do was provide flexibility for the folks who are seeking potential employment. People can argue and say, if you already have employment the restricted license helps you. For the potential seeker of employment, nothing in this application speaks to that. If you are saying they should call the child support division and tell them, "I am out of a job and trying to get a job. Can you figure out how the DMV can give me another kind of license?" That provision does not exist. I just want to make sure that they have a driver's license to go to work or to their future job.

This is a barrier to the workforce. I understand people need tools. I understand that folks are saying they will not pay. There is a certain point where we have to figure out, if the person will not pay and we have all these tools, we then have to ask if there are negative consequences to the folks? Maybe the light bulb comes on six months to a year from now and they want to drive, go to work, become mature, and do what they need to do. What is the process? What is the outlet? The word is "shall." The word means suspend it and take it away. We are letting them have that conversation, but where is the flexibility to deal with it on the front end. It worried me that they are already dealing with it on the back end. They are already reinstating the licenses and felt that a program needed to happen on the back end because of what was happening on the front end. It baffled me. I thought, This does not make sense; it is not logical to me.

Assemblyman Pickard:

I would love to continue this discussion offline.

Assemblyman Thompson:

I want to applaud Assemblywoman Neal for bringing this bill forward. In the interim before we started session, I reached out to the child support division because, back in the day when I worked for the Welfare Department there used to be a program called the Non-Custodial Parent Employment Assistance Program. In that program, what they would do in lieu of sending people to jail is give them the opportunity to work with a job counselor. I was going to put the bill forth, but I was assured that this was something that was in the works. I am glad you brought this forth. I hope someone from child support is here to validate and verify that this is still in the works because it has to happen. If you do not have an incentive, the bottom line is that the child and the family lose out.

Assemblywoman Neal:

Apparently, it is in the works because I asked the question, How are you working with workforce agencies in order to make this happen? If there is an extension to try to get some relief for an individual who may be out of work, what is the direct correlation between the workforce agencies who are getting the funding and dollars to do X? I do not believe she said there was, since it is being run through the county. These are things that are supposedly under a national model and a movement toward being more embracing of some of the consequences or the character traits of the individuals who may fall into this particular scenario.

We know that there are individuals for whom it is not a matter of, "I do not care about my kids." Maybe it is just a matter of how to get out of their own way in order to do the right thing for their kids. I see this policy as being punitive. They disagree with me. I want the flexibility in law so that if a person's potential employment is affected, there is a way to fix it. It bothered me that a 24-year-old guy was saying, "I do not have a license, and my friends are driving me around." I was trying to figure out how you get the license if the application does not even allow you to apply for a restricted license since you do not have an employer who can verify your employment while you are seeking employment. I guess you are saying, "Catch the bus," which we know has a delayed wait.

Chairman Yeager:

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

John T. Jones, Jr., Chief Deputy District Attorney, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:

With me is Susan Hallahan, a Chief Deputy District Attorney in the Washoe County District Attorney's Office who handles the child support caseload. Karen Cliffe is a Chief Deputy District Attorney in the Clark County District Attorney's Office who handles these matters. They can better explain our opposition with respect to this measure.

Susan D. Hallahan, Chief Deputy District Attorney, Family Support Division, Washoe County District Attorney's Office:

I have spent my entire career collecting child support for children in our community. I care about it deeply. It is not about punishment, it is not about being punitive, it is about wrapping my arms around these noncustodial parents, and helping them get rid of the barriers that they have for supporting their children. My professional passion is working collaboratively with parents to secure support for children. To that end, I work closely not only with those who have physical custody and are in need of the child support, but also with those who owe a duty of child support.

My preliminary goal in my employment is that all child support orders are right sized: they are established in the right amount, and they are modified if they are not in the right amount. By that, I mean that they are in compliance with the statutory formula and amount that people can afford to pay to support their children. My primary goal then is to ensure compliance with those orders.

My office collects and distributes in excess of \$2 million a month on 6,700 cases. We are the highest-performing child support office in this state. We collect 78 percent of the current support that is owed on a monthly basis. That leaves 22 percent of my clientele not paying for a range of reasons. Some of those reasons are that they do not want to. Sometimes they need to be encouraged to do that. Sometimes I have to use the license suspension tool as that motivation.

We focus on early intervention. We are talking to our noncustodial parents and reaching out to them. We do send income withholdings, and I do seize tax refunds. When appropriate, I take bank accounts and assets; I get insurance settlements. The majority of my clients make their payments. I have difficult clients who are reluctant to comply with their child support orders. In 1997, the federal government, as part of welfare reform, required the states to have laws in place to suspend driver's licenses for failure to pay child support. Statistics had shown that license suspension was a highly effective collection tool in the fight to support our nation's children and reduce the dependency on public assistance. Nevada already had laws in place to suspend driver's licenses when this became mandatory. These laws are in place not because I want to suspend driver's licenses and make it difficult for parents to work. After all, income withholding is my number one collection tool—I want them to work.

Even when this tool is utilized by my office, we are given great deference by the state manual to negotiate repayment plans. Currently, as indicated, if an obligated parent owes \$1,000 in arrears and is at least two months delinquent, *Nevada Revised Statutes* (NRS) 425.510 makes the suspension referral by the child support agency to the DMV mandatory. We support the change to make it discretionary. We support the change from "shall" to "may."

However, Assembly Bill 358 goes further and takes away this incredibly valuable collection tool if the suspension would be an "impediment to his or her present or potential employment." Although this bill does not define impediment, if we look at the dictionary, it is defined as a bar, hindrance, or interference. It could be argued that suspending someone's driver's license could interfere with his or her ability to work. I would note that this was addressed when originally passed in the '90s. If a license is suspended for failure to pay child support, pursuant to NRS 483.490, the obligor parent may apply for a restricted permit to drive to and from work, in the course of work, to address medical needs, and for court-ordered visitation. We do not want these parents to not be able to see their children because they do not have their driver's license.

In 1995, when this collection tool was provided to Nevada's program, legislators were likewise concerned with the negative impact of suspending driver's licenses, hence the provisions of NRS 483.490. In 2007, NRS 425.510 was also amended to require the child support agencies to meet with these obligated parents and make a good faith effort to resolve these issues prior to a hearing. We do that—we meet with these people. We ask them to enter into a repayment plan. If they cannot afford their child support, we bring it before the court and we modify it. These parties are entitled to and given due process notice, and they are given choices. Those choices are they can pay their arrears in full, they can pay the last 12 months of arrears, or they can enter into a repayment plan. It is not just one repayment plan. Maybe I do a repayment plan, you comply for a couple of months, you cannot comply on month number four, and then I can do a new repayment plan. The statute does not currently limit the number of repayment plans and negotiations I can do with my noncustodial parents to help them support their children.

John Jones:

In Las Vegas, we have Karen Cliffe, who is a Chief Deputy District Attorney (DA) in our Clark County Division.

Karen Cliffe, Chief Deputy District Attorney, Clark County District Attorney's Office:

We are in opposition to A.B. 358 insofar as it restricts driver's license restriction to cases where it would not be an impediment to present or potential employment. Our sentiments are similar to Deputy Hallahan. Arguably, the way this bill is written it would prevent all driver's license suspensions. If the intent of the bill is to eliminate driver's license suspension as an enforcement tool for child support collection, passage of this bill will achieve exactly that. In doing so, we have many concerns, one of which is the violation of the Social Security Act, 42 U.S.C. § 666. This mandates that states have laws requiring procedures authorizing the states to withhold, suspend, or restrict driver's licenses. Driver's license suspension is an enforcement tool that is utilized in all 50 states, the District of Columbia, as well as various territories. As you all know, the child support program is a federally funded and governed program. This bill possibly runs afoul of the federal mandate.

A secondary concern that we have is the actual language of the bill. It prohibits driver's license suspension where a noncustodial parent is presently employed. Here we have an individual who is employed and not paying child support. Because of their employment, we cannot use the driver's license suspension as a tool for enforcement. What are we to do with this individual? If we could briefly go over the driver's license suspension criteria, it was noted earlier that it is an individual who owed \$1,000 in arrears. It is broader than that. To have a license suspended, it includes an individual who fails to comply with a subpoena or a warrant relating to a child support proceeding. It is not just being \$1,000 or greater in arrears. There is an "and" in there and that "and" is being two months delinquent in child support payments. Third, is a failure to provide medical insurance for your children.

Going back to that employed individual, that is an individual who is employed and has failed to pay for two months and owes arrears greater than \$1,000. The removal of the driver's license suspension tool at that point leaves the agency to request a hearing and to request the possible imposition of jail time. We are hoping not to go that route. The statistics have shown that last year we sent out over 5,000 notices for suspension; 81 percent responded. That is a very high response rate. That means that we do not have additional hearings and increased requests for the imposition of jail time.

The Nevada District Attorneys Association wrote a letter. We are in support of their letter. We agree that a strict reading of the proposed language may cause courts to view any suspension as an impediment, despite the availability of a restricted license. There was some discussion earlier about a restricted license. As we are all well aware, that restricted license will permit a noncustodial parent to travel to and from work. What is this bill actually accomplishing? If this individual can get to and from work, then are we just talking about the interview portion—how they get to and from an interview? That can be accomplished in numerous ways—reliance upon public transportation or reliance upon friends and family. We have individuals in this state doing this every day who cannot afford car insurance, who cannot afford a car payment, and they manage to make it to work because they have children to support. This bill is only limited to a small percentage of individuals that need to get to and from an interview, because the restricted license will take them to and from work.

As it stands, driver's license suspension is a quasi-administrative action. It is an enforcement tool that is considered prior to any other actions which may require court time. If the driver's license suspension tool is removed from the Child Support Enforcement offices, the outcome is additional court hearing and additional imposition of jail time. There are currently safeguards in place pursuant to NRS 425.510. Currently, before driver's license suspension is effectuated, we are required to have a prehearing meeting. We are also providing an opportunity for the noncustodial parent to have a hearing before the hearing master. The *Nevada Child Support Enforcement Manual* is clear: the intent is not to suspend licenses, but to enforce the payment of child support. It is used as a tool of engagement. If an employer is known, a wage withholding must be implemented prior to initiating any type of driver's license suspension.

As we all know, driving is a privilege—it is not a right. According to the DMV, there are several offenses that lead to suspension and revocation. Those offenses include failure to maintain insurance, graffiti, street racing, and failure to appear at a traffic hearing. The failure to support one's child should not be regarded with any less importance. A child support obligation should have the highest priority in a parent's allocation of income. Aside from a legal obligation to support one's children, there is a social and moral obligation. Driver's license suspension protects the public interest by having parents, not the state, bear the financial responsibility for their children. Driver's license suspension is an effective, efficient, and inexpensive enforcement tool. Without it, Nevada is at risk for reduced collections for families, loss of federal incentive funds, and an eventual decrease in state rankings. Passage of this bill is a step backward for families in Nevada.

The monetary value of driver's license suspension is evident. In 2016, just the presuspension notice of intent generated \$11,380,714, with over \$11 million last year alone. That impacted 7,383 children. At the end of the day, that is what the office of Child Support Enforcement is about. It is about families and children.

Assemblyman Elliot T. Anderson:

You would have to have some sort of idea of how many of the people who are noncompliant are not able to work because you have various other tools at your disposal, such as garnishments. Statistically, how many of those folks who have their driver's license suspended are not able to pay because they are not working? Secondly, are the restrictive licenses issued as a matter of course? Some potential problem solving on this bill could be, upon suspension of a full license we issue a restrictive license as a matter of course and say it can be used to go to interviews. Maybe that would be a potential problem-solving issue that would parcel through here.

Susan Hallahan:

As indicated before, about 22 percent of our caseload is not paying current support. The federal government expects the highest performance of a child support office to be 80 percent. That leads me to believe that there is about 2 percent of my caseload that are my "ability to work, ability to pay, and I do not want to" group, with the rest of them being those folks who have difficulty maintaining employment and maybe do not have the ability to pay. With respect to the restricted driver's license, I can only testify as to what my noncustodial parents tell me—they get the restricted license. I do not hear from them that they are not able to get their restricted license. I cannot speak as to the DMV.

Assemblyman Elliot T. Anderson:

Do you have any objection to saying they can take it to go to an interview? That does not sound unreasonable to me.

Susan Hallahan:

I would have no objection to them automatically getting a restricted permit to go to and from work, for work, or for interviewing.

John Jones:

I want to caution us not to make the exception so wide. Anybody who has followed child support in Nevada knows that we have made great strides over the last few years, increasing our rankings in relation to other states. Child support is one of the unique areas in that the better you do and the more you collect from parents who are behind, the more money the federal government gives you to reinvest into your child support programs. When we start weakening the tools that help us collect child support payments from parents who are in arrears, we are going to lower the percentage that we collect and thus, lower the amount of money we get from the federal government to reinvest in our child support programs. I caution this body when we start making exceptions to a very important tool for child support professionals.

Assemblyman Elliot T. Anderson:

To be clear, I look at this as a way to strengthen our collection because people are able to work and take care of their kids. That is where I am coming from on this proposal.

Assemblyman Thompson:

I know that you are called Child Support Enforcement, but listening to the two presenters' tone, if a person is trying to do their due diligence to pay child support, I would be afraid to come and try to resolve my situation. I just do not hear that humanistic approach. I feel like child support creates a big divide in families where the custodial parent uses it as a tool to keep the kids away from the noncustodial parent. We need to do better than that. You made statements that this has been going around since the '90s. This is 2017. We have to have a different approach. I agree that you said you have 78 percent collection, but there is 22 percent that needs to be collected. We also need to work with these families. I had to say that because the tone is way too strong.

Assemblywoman Neal referenced a fiscal note that states there are some dollars your office receives for programs. You stated that you want them to work. What are the work assistance programs that your office has?

Susan Hallahan:

I would ask Ms. Cliffe to weigh in with respect to Clark County's resources. A year and a half ago we sought and received approval to employ three full-time caseworkers through our incentive dollars that Mr. Jones referenced. I apologize for my tone; my passion sometimes bleeds through. I can assure you that I have interacted with tens of thousands of noncustodial parents and would venture to say that I am respected in that regard.

What we have done is taken these caseworkers and initiated an early intervention program so that we can reach out to them right when their case opens, from the very beginning. We can see if they need help getting employment, or if they need help getting their driver's licenses back. We offer whatever resources they need to work through how to pay through the State Collection and Disbursement Unit, how to do their income withholding, or how to do a garnishment. I have that worker come to court with me because I am going onto the next hearing. He goes out to the hallway, speaks with the parent, and asks how he can help them pay their child support. I know that Clark County also has a social worker who meets with them and can help people fill out applications for social security disability.

Karen Cliffe:

Clark County takes a holistic approach in these child support cases. We have numerous community partnerships. The largest one right now is with Goodwill Industries International, Inc. Those individuals who are facing employment barriers are paired with employment specialists who improve their resume, interview skills, help them get to and from interviews with bus passes if necessary, tools for the trade, and getting them cross-trained.

We have partnerships all over: Las Vegas Rescue Mission; Safe Nest: Temporary Assistance for Domestic Crisis Inc.; Salvation Army; the list goes on. It is about looking at what their barriers are and helping them to overcome those. If visitation is an issue, we pair with access mediation. We give them free referrals to that program whereas at family court there is a cost for a referral. We have an on-staff social work team. If the barrier is an inability to work due to medical issues, that team assists them in getting the health insurance they need and assists them in getting the social security benefits they may need. If the barrier is drug or alcohol dependency, we have specialty courts for that. If it is a mental health issue, we have a specialty court for that. Our goal is to remove whatever barrier is preventing these individuals from paying their child support. That holistic approach is taken by every member of our office.

Assemblyman Thompson:

That said, if you package your enforcement (which you came in strong on) and mention all of the great things that you do, this could be great. We were just hearing enforcement, enforcement; money, money. That is not a holistic approach.

Assemblywoman Cohen:

I have worked in this field for a long time. I have represented the payer spouse, I have represented the payee spouse, I have gone up against the DAs in this court, I have looked to the DAs for assistance in this court, and I think we need to be clear on a couple of things. There was a comment made about parents not being able to see their children. Custody and visitation have nothing to do with child support. Judges do not keep children away from their parents for not being able to pay child support. As far as visitation goes for the DAs in Clark County, it was not mentioned, but they do have a mediation program for parents who are not allowed to see their kids. I have never understood why they have that because it is not their obligation to do so, but they do.

I hear some defense for parents who are the payer spouse. These children eat every day. They need to be fed; they need to be clothed every day. I have gone into court too many times and seen a noncustodial parent say, "You cannot take my driver's license because then I cannot get to work." That same noncustodial parent has had a job for years and has not paid child support.

While I support the intent of the bill and what I am hearing about it, let us be clear—there are a lot of parents that do not want to pay child support. There are many who cannot. They do work hard and try hard. However, there are a lot who do not want to try. We have to keep the enforcement available for them.

Assemblyman Pickard:

I want to say how impressed I am with the DA's Office, even in my cases where I have objected to some of the things they want to do, that extra mile they want to go to make sure that the noncustodial parent does have an opportunity to be employed. I want to make sure that we have it on record that your office does a great and thankless job.

Chairman Yeager:

Is there anyone who would like to testify in the neutral position?

**Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services,
Department of Health and Human Services:**

I want to introduce myself as a 25-year employee of the State of Nevada. I have only worked in the Child Support Enforcement program for about a year and a half. I have been working in the social services side for the remainder of my time. In this role, I have oversight of the policy for the programs outside of the state. We have ten contracts with the county divisions. We looked at our program this year. Data is a bit difficult for us because of our system. We will be asking for the funding to get that system replaced this session. We were able to find everybody who had been sent a notification to remove his or her driver's license, which is sent months before the driver's license is actually removed.

We did receive over \$11 million, as stated, for these children. That benefited 7,383 children. We took that information, and if we were not able to use this as a tool, it did turn into a fiscal note. We would lose the federal incentives, not because that information would be taken away but because the policy change would result in us not collecting the money. We would also decrease the state share of collections, which is the amount of money that we use to run our program. We do not use General Fund dollars to run the child support program. The state share of this program is matched by the funds that come in from the families when they repay their Temporary Assistance for Needy Families (TANF) grant. If the fragile families who are relying on TANF have moved away from TANF because they receive their child support, those families are on the borderline of coming back into the TANF program. A piece of the fiscal note is putting those families back on TANF because they do not have the child support to support themselves.

Chairman Yeager:

Are there others at the table who would like to make a comment?

Nova Murray:

We are the policy team, and the county explained most of the program for you.

Chairman Yeager:

I would invite members to take any questions offline. Is there anyone else who would like to testify in the neutral position? [There was no one.] I would invite the presenter back up for any concluding remarks.

Assemblywoman Neal:

I have learned a lot coming into your Committee. It seems that folks have hardened themselves against certain realities that are affecting folks. I will bring you back to the data. Although they like the tool, there is nothing in the bill that takes away their ability to use the tool. All of these are fantasy ideas about what the bill does. I went round and round with legal on this bill for a month. We worked out what I could do, what I could not do, how it was going to affect the federal incentives, and whether we were in and out of whatever law.

All of that is fantasy. If they want to take it up with Brenda Erdoes, they can. I know for a fact that this bill does not take away their federal incentives. I do not walk into or run afoul of the Social Security Act. None of these things are true. I find it interesting because part of the opposition is to throw all of this dirt on bills. I am aware because I am good at doing it in other committees. I throw dirt on the bill in order to kill it and cause confusion and drama. I am really good at that. I like it. However, I do not feel that way when it is not based in a logical approach that we are not still dealing with the data.

What about the other 13,000 over the five years who did not get their license reinstated. There are folks, regardless of what you think and believe. I am not antifamily, being that I am a mother raising two kids, was a single mother, and raised two kids by myself. I am not antifamily. I am not anti-anything. What I want is a logical approach. I would like to move away from this emotional approach to child support, and this revenge-based pettiness approach to getting child support. I feel that if people stepped aside and said, "Okay person A and person B, let us figure out how we can get to the end goal of you supporting your kids," it would be a better approach. I feel the "may" gives them the permissive language. I am taking the choice away. What they are doing internally as a choice, I am now making it law. You will make the choice. You will have that discussion.

Part of the problem is that they do not want me in their business and they want to still be able to make the internal choice of what they are doing to support families. I still believe it is counterintuitive. If you are going to spend money, spend it on the front end. If you are doing these work programs—awesome. If you are going around spending money to help them reinstate their license, I have 13,000 other people in the past five years that you need to locate and you need to help.

Chairman Yeager:

We will formally close the hearing on Assembly Bill 358. I will turn the meeting over to Vice Chairman Ohrenschall so I can present two bills very quickly.

[Assemblyman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:

I am going to open the hearing on Assembly Bill 453.

Assembly Bill 453: Revises provisions relating to pleas in criminal cases.
(BDR 14-1065)

Assemblyman Steve Yeager, Assembly District No. 9:

I have taken this bill down from the bill as it existed to a conceptual amendment that will essentially be one sentence ([Exhibit O](#)). What we are talking about are guilty plea agreements. I have uploaded a sample of one of those ([Exhibit P](#)) to the Nevada Electronic Legislative Information System (NELIS). It is an agreement entered into between the district attorney and the defendant about what the terms of the agreement are. There has been a practice in parts of the state to do what is known as a "conditional plea."

The defendant comes to an agreement with the state. They put a contractual provision in the guilty plea agreement that says if the judge ultimately does not follow this agreement then the defendant gets to withdraw the plea and go to trial on the case.

I can tell you it is rare to have a conditional plea. In the nine years I have practiced in Clark County, we have done two of them. The reason it is rare is the district attorney has to agree to it, and it is usually for difficult cases where you really need to nail down what the outcome of the case is going to be or it is not going to negotiate. We have done those before in court. There are certain judges who do not believe that a conditional plea is allowed under the statute or under case law. Most do, but the effort in this bill is to simply add that into the statute to be expressly authorized in those very rare cases. It does not take discretion away from the judge because if the judge is not satisfied with the negotiation, the judge can simply say, I am not going to accept that, and the case would proceed to jury trial in front of that judge.

I have noted in the conceptual amendment that the defendant could mess this all up. If the defendant does something wrong before sentencing happens, then all bets are off. The district attorney gets to argue for whatever the district attorney would like. The judge can impose any penalty within law. I also put in the conceptual amendment that if the judge indeed says he is not going to follow this negotiation and allows the defendant to withdraw the guilty plea, the defendant does not go back to square one in justice court. The defendant would stay in district court and proceed to trial.

Vice Chairman Ohrenschall:

Are there any questions for Assemblyman Yeager on the short conceptual amendment to the bill? [There were none.] Is there anyone who would like to testify in support?

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:

The Clark County Public Defender's Office supports the bill as amended.

Vice Chairman Ohrenschall:

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

Keith L. Lee, representing Nevada Judges of Limited Jurisdiction:

We are the justices of the peace in the municipal courts. To the extent that justice courts are affected by amendments to *Nevada Revised Statutes* Chapter 174, we appear neutral. We have discussed this with Assemblyman Yeager, and our concern is the discretionary nature of this. As long as it remains discretionary in terms of where the program starts or how it ends, we appear neutral.

[All items submitted but not discussed will become part of the record: ([Exhibit Q](#)).]

Vice Chairman Ohrenschall:

Is there anyone else who would like to testify in the neutral position? [There was no one.] I would invite the presenter back up for any concluding remarks. [Waived.] We will formally close the hearing on Assembly Bill 453.

We will now open the hearing on Assembly Bill 470.

Assembly Bill 470: Creates a preprosecution diversion program. (BDR 14-1062)

Assemblyman Steve Yeager, Assembly District No. 9:

There was a substantial amendment ([Exhibit R](#)); I sent that to the Committee members yesterday. I hope you had a chance to read it. Essentially, what this bill seeks to do is to create something that we have not had in Nevada. It is modeled after New Jersey, which was modeled after a program in Chicago, Illinois. That is a preprosecution diversion program. At the beginning of a case, certain offenders would have a chance to participate in programming, pay a fine, do some community service, pay restitution, and be able to earn a dismissal of a case before they have to go through the criminal justice process.

You may ask yourself, Why do we need this? We have specialty courts. We have heard about veterans' court, drug court, and mental health court. We do have all of those courts in Nevada. The difference in those courts is that you have to plead guilty to something to get into those programs. In those programs, dismissal at the end is the exception, not the rule. Instead of becoming true diversionary courts they have become punitive courts. They are imposed on you as part of your sentence.

What this bill seeks to affect is a very limited subset. You can see in the bill where we are talking about first-time offenders with no prior criminal convictions of any kind other than minor traffic tickets. As you may know, those are criminal in our state, and we are trying to get those changed. It has to be someone with no record at all. There are certain offenses that are excluded. If it is a crime of violence, you cannot do this. If it is a home burglary, you cannot get into this program. If it is a driving under the influence (DUI), you cannot get into this program. We are limiting the number of people.

The bill would have originally mandated this program on the courts. There was some concern there about whether that was practical. I respect those concerns so I have made the amendment permissive; a justice court or municipal court can do this program if they want to. They are under no obligation to do it. Another difference from the original bill would have required the Division of Parole and Probation to participate and beef up the administrative necessities for this bill. I have taken them entirely out of the bill.

My vision for how it would be set up if a court wanted to do diversion is that, at the request of a defendant, a court would be able to look to see if that person is eligible. If the court wanted to allow them to do diversion, the court would work with the prosecutor, the defendant, and the defense counsel to come up with what the requirements of the diversion would be. Typically, that is going to be drug counselling, a general education

development (GED), do some community service, or pay restitution. The judge would give the offender time to complete that. As the bill is written, it would be 18 months. You get 18 months to try to complete all of this. If you completed it, your case would be dismissed, but you would never be able to do diversion again. It is a one-time only option. You could not come back in the system and ask to do it again if you got in trouble. If you do not complete the program, then you start from square one. You start to figure out what you are going to do with your case.

That is essentially the program. I do not envision that it would require any additional resources. I will note there were some fiscal notes that were attached to the bill. The City of Las Vegas in particular let me know that with the amendment, they will be removing their fiscal note. I do not think they could stay due to the late hour, but I wanted the Committee to know that. I have been working with other folks about putting this in a form where there is not opposition. I still have some opposition, but this is the right way to proceed in Nevada. We have heard about how a criminal conviction hurts you. Even to get into specialty courts now, it is difficult with a felony on your record to be able to find a job and complete those programs. The hope here is that this is a one-time shot for certain nonviolent offenders to be able to clear their records.

Assemblyman Pickard:

Are you anticipating that these diversion programs will require of these first-time offenders the same kind of rigor that we have discussed in diversion courts?

Assemblyman Yeager:

Not exactly. The specialty courts are structured in such a way as to be very rigorous. One of the issues is that you cannot get into those courts unless you enter a plea of guilty. In an ideal world, the court would be willing to sentence somebody to a specialty court as part of this diversion program. I do not know that that is realistic because the judge running the specialty court does not want to accept somebody who has not entered a guilty plea. That would be an option under the conceptual amendment. They would be able to do that.

What I am envisioning is almost what happens now. If somebody has a felony offense in justice court and it is reduced to a misdemeanor, what happens is a series of requirements. They have to do outpatient drug treatment, they have to do community service, and they have to pay fees and fines. It is on the defendant and the defendant's counsel to make sure that is being done in an appropriate manner. That person would come before the court every 90 days to provide what is known as a "status check," to update the court on how things are going. I do not anticipate it would be as rigorous, although the court has the discretion to order whatever they would like to order. The court could say, You have a real drug issue. You need to do inpatient drug treatment, and have the offender go through that kind of rigorous treatment, but there would not be any standard built into the bill.

Ideally, we would get to a point in the future where we would have specialty courts that would accept people who have not yet entered a plea. In Clark County, I do not think we are there yet in terms of capacity.

Assemblywoman Cohen:

In section 2, subsection 2, paragraph (c), there is reference to the defendant having not "previously been convicted in this State, or in another jurisdiction which prohibits the same or similar conduct" How are we going to find out their record from a different jurisdiction or state?

Assemblyman Yeager:

In Clark County, when you get to court now, the defendant has what is called an "intake sheet." That sheet will list any known criminal convictions of the person. Typically, those are from Nevada. The district attorney would have the ability to run a nationwide criminal search through the National Crime Information Center (NCIC), which would bring in all of the additional convictions. There very well may be a scenario where, at the first appearance, the defendant says, "I would like to get into this program." Based on the sheet that is provided it looks like they qualify. I would anticipate the district attorney to request a continuation of that case by a day or two, to run that more full-fledged NCIC check to see if they have any convictions. That is the way we would learn whether anyone had any convictions nationwide.

Vice Chairman Ohrenschall:

Is there anyone who would like to testify in support?

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office:

We are in support of Assembly Bill 470. It adds a good measure that other states have used to great effect to deter those one-time people who make that criminal mistake and to put them back on the right path without getting fully involved in the criminal justice system.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

We are strong advocates of any diversionary program. We are in full support of this measure. It does allow an offender the chance to get back on the right track and seek whatever treatment they need with the aid of the court and the defense counsel, whether it is alcohol treatment, mental health treatment, or drug treatment. We are in full support of any diversionary measure. We are in full support of working with Assemblyman Yeager on A.B. 470 to bring this to fruition.

Vice Chairman Ohrenschall:

Is there anyone who would like to testify in opposition?

Kristin Erickson, representing Nevada District Attorneys Association:

This bill is not only fraught with problems, it is simply not necessary. Washoe County has 15 specialty courts that can be used for diversion already. They all have the resources and the personnel to make them successful courts. This court, as proposed in this bill, has no supervision, has no drug testing, and has no compliance checks other than once every three months. A person would have to clean themselves up once every three months in order

to be successful in this program. A great deal of the success of the specialty courts is constant contact. Daily contact when they come in and daily encouragement. As they progress through those specialty court programs the contact becomes less: weekly contact and ultimately monthly contact until graduation. They have the resources and the personnel to do this in the best way possible.

Let us look at the cost. Who pays? The defendant pays to the extent that he or she is financially able. Then who pays? I do not know. A fiscal note has been filed by both the Washoe County District Attorney's Office ([Exhibit S](#)) and Clark County District Attorney's Office ([Exhibit T](#)). The bill says the defendant is to be screened at arraignment in justice court or municipal court. In Washoe County, district attorneys (DAs) do not appear at the justice court arraignments. We are not there. They typically take all morning long. This would require a deputy district attorney to appear every morning. Because each defendant has to be screened to see if he or she is eligible for this program, it would likely run into the afternoon. We would have to be providing a DA every morning and probably a great deal of the afternoon to make this program work.

Felony and gross misdemeanor cases are concluded in district court. That is where they enter their plea; that is where they are sentenced. Felony gross misdemeanor courts have the involvement of the Division of Parole and Probation. It is the Division of Parole and Probation that investigates the restitution that is due and owing. They collect the restitution, and they disperse the restitution to the victims. Parole and Probation is not involved in this program. That would fall on the district attorneys to investigate the restitution and have a hearing, because we are not a neutral party like the Division of Parole and Probation. That would cause additional court time. We would have to collect the restitution and distribute the restitution. The DA's Office would have to take on all of those responsibilities rather than the Division of Parole and Probation. The defendant has to make a good faith effort to pay. What does that mean? The Division of Parole and Probation is not there to monitor that. If the defendant has a \$400 car payment, they make rent, and they say they have nothing left over, is that a good faith effort to pay? We do not have anyone with the defendant's budget, like Parole and Probation. We do not have anyone to check on his or her employment status or his or her bills. Are they driving around in a BMW instead of paying restitution? We do not have that information.

Let us look at section 2, subsection 3, paragraph (a). It states that all crimes based on the same transaction or occurrence go to pre-plea prosecution court. If a person is in a stolen car, crashes into a tree, and runs into a stranger's house to hide, all of those crimes go to pre-plea prosecution court. That does not make sense. Every lawyer knows that the older a case gets, the worse it gets for the prosecution. This is pre-plea, meaning no plea is entered. If they fail the court, they do not come back for sentencing; the system starts all over again. The case starts all over again. This bill contemplates an 18-month program. If a defendant flunks out a year into the program, the case starts over. You are talking two to three weeks until

a preliminary hearing, then another two to three weeks until the district court arraignment, where they enter a plea of not guilty, and another 3 to 12 months for a trial setting. That is assuming no continuances, which is an awfully big assumption. You are talking years to get to trial. The older a case gets, the worse it gets. Memories fade, witnesses disappear, and evidence is lost.

Who are the real losers in this bill? It is the victims. Do not forget there are victims. They never get their day in court, they never get to see the defendant take responsibility for their actions, and they will likely get little or no restitution. This is simply unnecessary. We have the resources and the programs in place to provide diversion court. The Nevada District Attorney's Association vehemently opposes A.B. 470.

Assemblyman Fumo:

All of the programs you mentioned in the beginning only take effect if a person enters a guilty plea first, correct?

Kristin Erickson:

Not all of them.

Assemblyman Fumo:

Which ones do not?

Kristin Erickson:

I have that in an email. I can provide that information to you.

Assemblyman Fumo:

How many of those programs result in the ultimate dismissal of a case?

Kristin Erickson:

A great deal. I would say that the overwhelming majority in Washoe County result in a dismissal.

Assemblyman Fumo:

Could you get us those numbers as well?

Kristin Erickson:

I do not know if we have those numbers. I will certainly check.

Assemblyman Fumo:

Do you represent all of the district attorneys in the state?

Kristin Erickson:

Correct.

Assemblyman Fumo:

Could you get us the numbers for the entire state as well?

Kristin Erickson:

I am not sure how many specialty courts the rural counties have, but I will check into that.

Assemblyman Fumo:

In this pretrial diversion program, the district attorney would be involved in allowing the person to get in. You mentioned a scenario where a person crashes a car, hits a tree, and runs into a house. The district attorney, according to this program, would have to be involved and agree to the defendant entering into this program. This is not a program just between the defense and the judge, is it?

Kristin Erickson:

That is not the way I read it. I read that they "shall" go to preprosecution diversion. The DAs cannot object unless it is a crime of violence or certain exclusions.

Assemblywoman Krasner:

One thing about this bill as proposed is that it allows first-time offenders to get a break. Do you ever plea bargain first-time offenders?

Kristin Erickson:

Yes, I believe the statistics are 97 percent of all cases. Especially if it is a first felony, they would rarely receive a felony conviction on their first felony. If it were something violent, of course, but we work with felonies. Contrary to popular belief, we are not out to ruin people's lives. We want to help them and keep them away from the criminal justice system as well. If we feel diversion is appropriate and they can get the help they need through that, we will recommend that. We will plea bargain to a gross misdemeanor, misdemeanor, or diversion. We have so many options available for first-time offenders.

Assemblyman Pickard:

I appreciate your position. We have an amendment that first allows the offender to pay restitution. My concern is from the perspective of that individual. As I understand this, we are talking about nonviolent offenders, people for whom this is their first encounter with the justice system. They may have done something stupid, but I think we have all done something stupid. My concern is that, as I understand the diversion programs, we require a guilty plea. We essentially require a conviction first and that goes on their record. As I have been listening to the discussion about diversion programs and the specialty courts, my question always comes back to how we incentivize a criminal defendant to stay out of the justice system once they have admitted to it? Are you suggesting the diversion programs that we have will provide them more incentive once they have pled guilty?

Kristin Erickson:

A conviction is not final until a person is sentenced. A person does not have a felony conviction unless and until they are sentenced. It is the carrot and stick approach. If they plead guilty, their incentive is to complete the program, do well, and do all they are asked to do so that their plea can be withdrawn. They will never have a conviction on their record and their plea will be withdrawn. It is important for a person going through the program to know that should they fail, there will be a consequence. If you fail, there is a possibility you could go to prison, you could go to jail, or you could get probation. If they do not enter a plea, there is no motivation other than to drag it out as long as you can because it will be another year to two years before it goes to trial. In that case, it will be extremely difficult for us to find the clerk to whom the fraudulent credit card or the forged check was given. People move and memories fade. It will be extremely difficult. There is no incentive for them if they do not enter a plea.

Assemblywoman Tolles:

That touched on where I was going with this. There is still a great deal of judicial discretion in regard to this. The judge could say, "This is not applicable for you." The DAs can be part of that process. Is that correct?

Kristin Erickson:

I would imagine the way the bill is written, the DAs would have a say, but it would require so much additional manpower on behalf of the district attorneys for us to appear. We already have the discretion to give them a program. We do that often. We have a large specialty court population.

Vice Chairman Ohrenschall:

Let us say this bill passes; is there not motivation to try to earn that dismissal and clear that record? If it is an 18-month program, that is an 18-month carrot to try to earn that dismissal to make sure you will not have anything that hurts your job chances or gives you a criminal record.

Kristin Erickson:

It is motivation if you enter a plea. You are then motivated to complete the program so you can withdraw that plea. If you do not enter a plea, you are at the same place as before you committed the crime.

Vice Chairman Ohrenschall:

Facing charges.

Kristin Erickson:

You are facing charges, but not for a couple of years. Not until you flunk out of the program are you facing charges.

Vice Chairman Ohrenschall:

You mentioned that in a program like this a person could clean themselves up every three months to show up to court and be up to a lot of bad stuff in between. If there was an arrest, I assume that would kick them out of the program. If someone got into any kind of trouble with the law, that would potentially remove him or her.

Kristin Erickson:

My experience in specialty courts is that an arrest does not always kick you out of the program. A person could sustain an arrest, it just depends how serious the offense is. They may want to give them another chance. There are many times in Washoe County specialty courts where an arrest does not automatically kick them out of the program. There are many times that people commit crimes where they are not caught. We do not know what they are doing because they are not being supervised by anyone. They are not being supervised by Parole and Probation, there is no random urinalysis, and they are not being supervised by a misdemeanor Parole and Probation unit. There is no supervision like there is in specialty courts.

Vice Chairman Ohrenschall:

Could restitution be made part of the terms of entering into a diversion program?

Kristin Erickson:

It could if we all agreed. That is the problem; sometimes the defense, the prosecution, and the victim do not agree on the amount of restitution, which necessitates a hearing in front of a judge. The state is prepared to do that; however, because Parole and Probation is not involved based on this bill, I anticipate there would be a lot more hearings. The DA's Office would have to determine the restitution.

Vice Chairman Ohrenschall:

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?

Keith L. Lee, representing Nevada Judges of Limited Jurisdiction:

We opposed this bill as originally written. In working with the sponsor, the conceptual amendment makes it discretionary on behalf of the court. We are in neutral on this bill as amended.

David Cherry, Communications and Intergovernmental Relations Manager, City of Henderson:

The City of Henderson is in the same position as was just explained. Originally, we had opposed the bill as written, but with the new language from the bill sponsor, we are in neutral.

Anne K. Carpenter, Major, Deputy Chief, Division of Parole and Probation, Southern Command, Department of Public Safety:

I am here in neutral on behalf of the Division of Parole and Probation. If the proposed amendments are made to the existing language of the bill, the impact to the Division would be minimal. The amended language proposed requires the defendant to enter a plea of not guilty before seeking to enter the program. This not guilty plea is crucial so that should one of these program participants desire to relocate outside of the state of Nevada during their program participation, these preprosecution cases would not inadvertently trigger the requirements of the Federal Interstate Compact for the Supervision of Parolees and Probationers.

Assemblyman Pickard:

Could you explain that a little more? I am not familiar with the Interstate Compact.

Anne Carpenter:

The Interstate Compact has several different trigger mechanisms. According to our interstate compact deputy, with these cases, if there is a guilty plea it would automatically trigger the agreement to take place. Therefore, the Division would have to supervise these people if they are a misdemeanor, gross, or a felony. The point is that Parole and Probation will not be involved because there is no guilty plea.

Vice Chairman Ohrenschall:

As the conceptual amendment is written, it would avoid the problem you are concerned about, correct?

Anne Carpenter:

Correct, if there is no guilty plea.

Vice Chairman Ohrenschall:

That is a key factor of this bill for you. Any other questions we may have, please take them offline. I would invite the presenter back up for any concluding remarks.

Assemblyman Yeager:

This is discretionary. The court has total discretion over whether to create the program and whether to let somebody into the program. I cannot speak to what is happening in Washoe County, but I can tell you that preprosecution diversion in any manner is not happening in Clark County. There is a huge incentive for a defendant to complete this program and have this case behind them. This would be an 18-month program. If they somehow failed, they would start the case anew. Change can be hard, but this is a program that makes a lot of sense for the folks we are looking to target.

I want to give you just one example of why I do not think requiring a plea would work in this case. Let us say you are in Clark County and you try to pass a bad check at a casino cage. You get arrested because it is a fake check. You are going to be charged with three felonies. You will be charged with burglary for entering the casino. You will be charged with forgery

for having a forged check. You will be charged with either theft or attempted theft, depending on whether you actually leave with money. You are going to have at least two felony charges, maybe three. Requiring a plea to do a program like this would require the person to plead guilty to all three felonies and then do the program. If they failed the program, they would then be going to prison on all three felonies.

I do not think any defense attorney would ever tell a client, You should plead guilty to three felonies, and then you can get to district court and maybe you can get into a diversion program. Maybe you cannot, and if you cannot, you are looking at being sentenced on three felonies.

This brings that decision point to the front of the case where that offender would say, I made a mistake. We can give them a chance to earn it off of their record. If they fail, then they can negotiate that case and do damage control. It is not fair to make someone plea to every charge when we have individual incidents in this state that can result in multiple felony charges. I would be happy to talk offline about how that happens and why it is impractical to require a plea. This is yet another tool for the courts. The hope is that we have people incentivized to do this program.

With respect to restitution, there is a provision. If you go to prison, you are not paying any restitution. It does not matter how much the judge orders you to pay, you are not going to pay it; you are never going to pay it. This program allows the offender to try to make good on those financial obligations. If the offender cannot because of financial conditions, the judge can order a civil confession of judgment, which can then be used later to collect the restitution. That is another benefit.

[All items submitted but not discussed will become part of the record: ([Exhibit U](#)).]

Vice Chairman Ohrenschall:

Therapeutic courts have been very successful. We will formally close the hearing on Assembly Bill 470. Would anyone like to give public comment? [There was no one.]

[Assemblyman Yeager reassumed the Chair at 12:27 p.m.]

Chairman Yeager:

This meeting is adjourned [at 12:27 p.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 122](#), dated April 11, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is the Work Session Document for [Assembly Bill 133](#), presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is the Work Session Document for [Assembly Bill 235](#), dated April 11, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit F](#) is the Work Session Document for [Assembly Bill 324](#), dated April 11, 2017, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit G](#) is a proposed amendment to [Assembly Bill 97](#), dated March 30, 2017, presented by Assemblywoman Theresa Benitez-Thompson, Assembly District No. 27.

[Exhibit H](#) is a letter dated April 10, 2017, in support of [Assembly Bill 97](#) to the members of the Assembly Committee on Judiciary, authored and submitted by Ilse Knecht, Director, Policy and Advocacy, Joyful Heart Foundation.

[Exhibit I](#) is a letter dated April 11, 2017, in support of [Assembly Bill 444](#) to the members of the Assembly Committee on Judiciary, authored and submitted by Jim Hoffman, Legislative Committee, Nevada Attorneys for Criminal Justice; and mentioned by Lisa Rasmussen, Legislative Committee Co-Chair, Nevada Attorneys for Criminal Justice.

[Exhibit J](#) is written testimony authored and submitted by Ted Bradford, Private Citizen, Yakima, Washington, dated April 12, 2017, in support of [Assembly Bill 414](#).

[Exhibit K](#) is a booklet titled "Innocence Project: Recording of Custodial Interrogations Briefing Book," submitted by Bianca Marquez, representing Innocence Project.

[Exhibit L](#) is a document titled "Nevada Agencies that Record Interrogations," submitted by Bianca Marquez, representing Innocence Project.

[Exhibit M](#) is a letter dated April 11, 2017, in support of [Assembly Bill 414](#) to the members of the Assembly Committee on Judiciary, authored and submitted by Jim Hoffman, Legislative Committee, Nevada Attorneys for Criminal Justice.

[Exhibit N](#) is a memorandum dated January, 6, 2017, titled "Follow-Up on Revoked or Suspended Driver's Licenses and Child Support," from Jann Stinnesbeck, Senior Research Analyst, Research Division, Legislative Counsel Bureau, submitted and presented by Assemblywoman Dina Neal, Assembly District No. 7.

[Exhibit O](#) is a proposed amendment to [Assembly Bill 453](#) presented by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit P](#) is a redacted copy of a guilty plea agreement case, submitted by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit Q](#) is a letter dated April 4, 2017, in support of [Assembly Bill 453](#) to the members of the Assembly Committee on Judiciary, authored and submitted by Jim Hoffman, Legislative Committee, Nevada Attorneys for Criminal Justice.

[Exhibit R](#) is a proposed amendment to [Assembly Bill 470](#) presented by Assemblyman Steve Yeager, Assembly District No. 9.

[Exhibit S](#) is a fiscal note to [Assembly Bill 470](#) submitted by the Washoe County District Attorney's Office, presented by Kristin Erickson, representing Nevada District Attorneys Association.

[Exhibit T](#) is a fiscal note to [Assembly Bill 470](#) submitted by the Clark County District Attorney's Office, presented by Kristin Erickson, representing Nevada District Attorneys Association.

[Exhibit U](#) is a letter dated April 11, 2017, in support of [Assembly Bill 470](#) to the members of the Assembly Committee on Judiciary, authored and submitted by Jim Hoffman, Legislative Committee, Nevada Attorneys for Criminal Justice.