MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
May 3, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 9:03 a.m. on Wednesday, May 3, 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 Becky Harris, Senate District No. 9

STAFF MEMBERS PRESENT:

Brad Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager
Erin McHam, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Cathy Erskine, Executive Assistant/Policy Analyst, Office of the Lieutenant Governor
Kevin Lyons, Member, Northern Nevada Entrepreneurship Task Force
Ashley Clift-Jennings, Member, Northern Nevada Entrepreneurship Task Force
Bryan Murray, Chief, Enforcement, Securities Division, Office of the Secretary of State
Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office
Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General
John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Kimberly Murga, Director, Forensic Laboratory, Las Vegas Metropolitan Police Department
Michael Whellhan, Manager, Spring Mountain Youth Camp, Clark County Department of Juvenile Justice Services
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office
Lisa Smyth-Roam, Ph.D., Supervising Criminalist, Biology Unit, Forensic Science Division, Washoe County Sheriff's Office
Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence
Daniele Dreitzer, Executive Director, The Rape Crisis Center, Las Vegas, Nevada

Chairman Yeager:
[Roll was called and Committee protocol was explained.] I will now formally open the hearing on Senate Bill 32 (1st Reprint).

Senate Bill 32 (1st Reprint): Makes various changes to provisions governing securities. (BDR 7-417)

Cathy Erskine, Executive Assistant/Policy Analyst, Office of the Lieutenant Governor:
This bill was developed under the guidance of the Lieutenant Governor's Northern Nevada Entrepreneurship Task Force. For those who do not know, the Task Force is composed of two regional groups charged with addressing the needs of entrepreneurial and startup communities throughout the state. One of the goals is to identify legislative priorities that will help sustain, strengthen, and grow an environment where Nevada's entrepreneurs and startups can thrive.

This bill is simple and straightforward. Section 5, subsection 11 clarifies existing language to make clear that if a security that is exempt from registration under Nevada law is sold, then the sale, too, is exempt from registration. I realize that may sound a little redundant, but the point here is to ensure the statutory language is clear and more easily understood by the layman.

Additionally, section 5 of the bill raises the number of purchasers who may buy exempt securities in any consecutive 12-month period from 25 to 35. This change brings Nevada in line with the federal standard outlined in Rule 505 of Regulation D and other surrounding states such as California, Arizona, New Mexico, Washington, and Texas.

Kevin Lyons, Member, Northern Nevada Entrepreneurship Task Force:
I am a startup founder and served on the Task Force of the Lieutenant Governor. This issue came up when I was talking with one of the best startup lawyers I know. I said, "What are the blue sky rules in Nevada for securities?" He said, "I do not know." That is because the statute, as written, is slightly confusing between a sale versus an offering. In working with the Secretary of State's office, we were able to nail it down to changing one word and clarifying everything. We are excited about how it turned out—a very simple, clean fix. It should solve the problem for lawyers in state and out of state.

Ashley Clift-Jennings, Member, Northern Nevada Entrepreneurship Task Force:
Some of the things we look for are simple, low-hanging fruit that we can tackle for the startup and business ecosystem in Nevada. This is one of the simplest ways we could make things a little bit easier for folks. We are happy with how it turned out.

Assemblyman Elliot T. Anderson:
Was there a problem that came up that led to this that was specifically identified by the Entrepreneurship Task Force? Do you have an idea of what kind of transactions would be exempted now? Can you give me any idea of that since I am not familiar with securities?

Kevin Lyons:
There are two aspects to a securities sale. There is the offering—I have this security and I am going to tell people about it. Then there is the sale—the transaction itself. The way the statute was intended, and the way that the Secretary of State's office was interpreting it, is that both of those are exempt—they are not separate things. In reading this statute, it was not as clear. The changes that we made were to clarify that the statute read the way that it

was being interpreted by the office, and ensuring that it would continue to be interpreted the correct way by anyone reading the statute in the future.

Assemblyman Elliot T. Anderson:
It sounds like you are trying to mitigate risk, is that correct?

Kevin Lyons:
Yes, and to eliminate confusion.

Assemblyman Ohrenschall:
I do not practice in this area, and I am not very familiar with securities. Could you walk me through how this will help improve the startup climate? It sounds great, and I am all for it if that is what it does, but I am not sure I entirely understand.

Kevin Lyons:
The simplest way to think about it is that any confusion or friction—extra steps that get in the way between the startup formation, the funding, the team building, and the growing of that company—creates problems. In a larger discussion about these issues, one of the questions that came up was, "Is it as easy to invest in California startups as it is to invest in Nevada startups?" In looking at the law, especially when we had outside people from California think about it, it was not clear. The Secretary of State's office was very clear that, "Yes, we are interpreting it that way. The sale and the transaction are the same." That could be clarified. We spent about an hour on this with their office and came to the conclusion that all we need to do is change one word, and then it reads as clearly as the interpretation.

Assemblyman Ohrenschall:
If this passes, do you think that there might be more capital investment coming to Nevada that would have gone to other states, like California?

Kevin Lyons:
It is one of those important steps. It makes it very clear that startups here are not scary or different.

Ashley Clift-Jennings:
Securities are a confusing topic and, unless you are an attorney who works specifically in securities, it is hard to understand. Even as we were working through language with the Secretary of State, it was hard to get our minds wrapped around what would be the simple fix. What is happening in Nevada, especially in northern Nevada, is that you are seeing a ton of investors from the Bay Area come to vacation in Tahoe. We are seeing a ton of people with potential capital to burn, but we are unable to capture that. This is one of those things

that makes the process simpler, easier, and creates less friction so those people are not turned off to Nevada as a place to invest. A lot of those investors are currently going to Salt Lake City, Utah; Boise, Idaho; Austin, Texas; or some of these other tier-two startup cities to invest. We are trying to capture that deal flow in Nevada.

Assemblywoman Krasner:
Regarding section 5, it increases the maximum number of purchases from 25 to 35 during a 12-month consecutive period. Is that purchases by an individual in regard to a stock purchase agreement for a startup that has not gone to the National Association of Security Dealers Automated Quotations (NASDAQ)?

Kevin Lyons:
That is the number of purchasers of securities in that company. Thirty-five is the standard number—it is the California number and the federal number. That is why that change was made.

Assemblywoman Krasner:
That would be private individuals within the startup company itself?

Kevin Lyons:
That is correct.

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

Bryan Murray, Chief, Enforcement, Securities Division, Office of the Secretary of State:
I would first like to thank the Lieutenant Governor and his staff for reaching out to the Securities Division as they worked on the provisions of this bill. It is the position of the Securities Division that the amendment represented in section 5, subsection 11 will not change the scope or application of this particular securities exemption. Otherwise, we are neutral on raising the maximum number of investors from 25 to 35. We know of a number of states that do have the limit up to 35. The Uniform Securities Act and some other states are set at 25, and some even at 15, so there is some variety there. While this bill, if passed as amended, is increasing the Main Street type of investor who may invest in an unregistered security, it is our belief that this particular exemption is most often utilized for a limited offering by companies that know or have connections to their investors, as the exemption does not allow for general solicitation. Furthermore, the bill does not take away the Securities Division's enforcement provisions as it relates to fraud. We can still enforce the fraud components of *Nevada Revised Statutes* (NRS) Chapter 90. Finally, the fiscal note previously submitted by the Secretary of State would not apply to this. It had applied to sections 1 through 4 of the original bill.

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. [Waived.] We will formally close the hearing on Senate Bill 32 (1st Reprint). I will now formally open the hearing on Senate Bill 169 (1st Reprint).

Senate Bill 169 (1st Reprint): Revises provisions relating to sexual offenses. (BDR 15-472)

Senator Becky Harris, Senate District No. 9:
This bill makes changes to the law in areas related to sexual offenses. With your permission, I would like to give you a section-by-section summary, weave in a bit of context, and then answer any questions members may have.

Section 1.3 of the bill requires each law enforcement agency that receives a sexual assault forensic evidence kit to establish a program to track the sexual assault kits and to provide access to the program to victims and agencies. Section 1.7 requires a law enforcement agency to submit sexual assault kits to a laboratory in order to conduct genetic marker analysis no later than 30 days after receiving the kit; test the sexual assault kit no later than 180 days after receiving the kit; and submit reports annually to the Subcommittee to Review DNA of the Advisory Commission on the Administration of Justice and to the Legislature.

The original version of the bill required a statewide tracking system. We have not backed away from that, although you do not see that in the current language in front of you. In consultation with the Office of the Attorney General and other stakeholders, the state of Nevada currently has a grant of about $585,000 to develop a tracking system for rape kits. Were we to put that language in, I am told we would interfere with the grant—as well as interfere with the subcommittee working group that they have—to look at the best way for law enforcement to interface statewide with regard to tracking these sexual assault kits. It is not that there is no intent to have a statewide tracking system; it is that all of the stakeholders have a different vision of what that statewide program might look like. It might not be one program administered statewide; it may be a series of cooperative agreements between law enforcement entities throughout the state to provide access to any victim. I want to make it very clear for the Committee that we are not backing away from that. Because we are still working out what the best process is for Nevada, the "statewide" language was taken out of this bill by amendment by the Senate Committee on Judiciary.

Sections 2 through 7 expand on the prohibition on public disclosure of a sexual assault victim's name to include a victim of sexual conduct committed by employees, volunteers, or contractors of various child welfare and juvenile justice entities, as well as the Youth Parole Bureau. Section 8 provides that a person 25 years of age or older who is in a position of authority as an employee, contractor, or volunteer of an agency which provides

foster child welfare services, a department of juvenile justice services, a foster home, or a Youth Parole Bureau and engages in sexual conduct with a person who is between 16 but less than 18 years of age who is under the care, custody, control, or supervision of the agency, department, or Bureau is guilty of a category C felony.

There were some questions among the different stakeholders as to whether the technology actually existed to track those sexual assault kits. While I am not endorsing any particular group or entity, this is an example of what tracking sexual assault kits can look like from a particular vendor [Senator Harris referred to a website (Exhibit C).] That is for the working group to figure out. I just want to show you an example of what that technology might look like. If somebody was a victim of sexual assault, they would be able to log on to tracking software and see that the kit is in the medical facility or was collected at the medical facility. Another email is an opportunity to find out that it is in the possession of law enforcement but has not yet been submitted to the lab. They will get notice when it is in the laboratory, when lab processing is complete, when tracking is complete, and then they will get some conclusions.

In this example, which is not a real case, male suspect DNA was obtained, but there was not a hit in the Combined DNA Index System (CODIS). This idea of a tracking system with the technology to be able to track these kits is very meaningful to victims of sexual assault. They are able to log in at their convenience and find out where in the system their sexual assault kit is. We can shine some light on when the kits are received and tested so that we are not going to run into the backlog problems that we have had and are beginning to address. This bill would allow us to get caught up and move forward in a productive way and ensure that we are testing these kits the way that we need to.

Assemblywoman Miller:
Could you explain why, in section 8, subsection 1 of the bill, it states, "Except as otherwise provided in subsection 2, a person who: (a) Is 25 years of age or older." It is my understanding that this section is referring to any staff or volunteer that works with the youth. Why is there an age minimum?

Senator Harris:
I am going to call up Brigid Duffy from the Clark County District Attorney's Office to walk you through that issue. We had a variety of stakeholders who wanted to weigh in on this. It is a compromise between the public defender's office, the district attorney's office, as well as Senator Segerblom's intent that we be respectful of the proximity of the ages between individuals who might be engaging in a sexual relationship in terms of ascribing liability.

Brigid J. Duffy, Director, Juvenile Division, Clark County District Attorney's Office:
As Senator Harris alluded to, the answer really is the art of compromise out of respect for the process in place at the Legislature. I sat down with the concerned parties and asked what they would like to see to get this very important piece of legislation for our children passed.

The real issue around the 25 years of age or older is that children can be on probation or parole in our state until the age of 21. Our employees within parole and probation for the state and county start at age 21. There was some concern that we could be criminalizing sexual contact between two 21-year-olds or close to 21 because they would be off of parole at 21. Within our youth shelters, like Child Haven in Clark County, children there are usually out of those shelters by the age of 18. That is not an issue for that facility, but kids could also be in foster homes until 21 if they are on parole or probation as well. It was part of the compromise in order to keep this piece of legislation going.

Assemblywoman Miller:
I completely understand the art of compromise. I just have a problem as a professional who works with children. I see the line as professional and recipient. When I first started working in the schools at 22 years old, not as a teacher but as the director of programs, I was working in a situation where I was in an alternative high school. Those students were 21 and I was 22, but the line was completely clear that I was the professional and they were the students. In schools, we do not say that it is okay for 22-year-old teachers and 18-year-old students. The youth in these programs have been traumatized, are vulnerable, and have already gone through some very horrific things. These staff should be protecting and keeping the kids safe. I do not feel that it is condonable or understandable for any reason. You are the professional, you are the staff, and the onus is on you.

Senator Harris:
I could not agree more. In the original draft of the bill, it was 21.

Assemblywoman Miller:
Does there need to be an age? A professional is a professional, and an employee is an employee.

Senator Harris:
There was a concern on the part of the Judiciary Committee that we would be setting individuals up to have to register on the sex offender registry. There was a lot of discussion in the Senate Judiciary Committee around what this should be. Ultimately, it was decided at 25. I am open to any suggestions.

Assemblywoman Miller:
I noticed that it says, in section 1.7, 180 days. We had another rape kit bill that came through on the Assembly side where we had tried to amend it down to 120 days. Can you speak to that? Is that something that the system would only allow for?

Senator Harris:
Other stakeholders are going to give you some perspective. I have no problem with it being 120 days. I understand it increases the cost to the county in terms of the turnaround time for testing the kits. That is a policy decision the Legislature is going to have to make. As I understand it, the bill you heard on the Assembly side also had the 180-day time frame and you amended it in Committee, as is your prerogative, to the 120 days. I am open to that.

Assemblywoman Cohen:
In section 1.7, subsection 1, there is reference to a "noninvestigatory sexual assault forensic evidence kit." I do not know what that is. Can you get into that section and the next couple of lines down?

Senator Harris:
I am going to call on the Attorney General's office (AG) to clarify that, as it is their terminology.

Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General:
To the extent that I need to be corrected by the district attorneys, I will be happy to defer to them. My understanding is that a noninvestigatory kit is a kit that is submitted by a victim, but they do not yet intend for the kit to be tested or to proceed with any criminal matter.

Assemblywoman Cohen:
Would that be someone who has been to the hospital and the investigators think something has happened?

Senator Harris:
I understand there are circumstances in which you have a reluctant victim who may get him- or herself down to the hospital to get the test done but wants to put more thought into whether he or she is emotionally ready to proceed with any kind of criminal matter. I think that is how we came to that language.

John T. Jones, Jr., Chief Deputy District Attorney, Legislative Liaison, Clark County District Attorney's Office; and representing Nevada District Attorneys Association:
Senator Harris and Mr. Kandt are both correct. When a victim presents him- or herself at the hospital, they are given a range of options as to how to proceed with the sexual assault kit. One of those is a "remain anonymous" exam. The full exam is conducted, but the victim does not, at that time, have to turn over any personal information about him- or herself. The hospital will then keep that kit for a period of time. If the victim presents himself or herself during a period of time with identifying information, it is at that point that it becomes a forensic kit that will be submitted to law enforcement authorities. If the victim does not present himself or herself in that period, then the kit is destroyed.

Assemblywoman Cohen:
When we are talking about children in state care and people in the schools, can you get into what positions of authority would be so we have that on the record?

Brigid Duffy:
Position of authority will be the debated term in the criminal system. I can give you a few examples, but they would not be exhaustive. With regard to the Child Haven facility, we are talking about an individual staff member who, on a daily basis, is deciding the point system for which a child earns rewards—the ability to go on outings or the ability to stay up later.

Each staff member is making those decisions. For a parole and probation officer, we are talking about individuals who decide whether you have completed your community service, whether you stay on or off of parole, or whether you are on or off of a global positioning system (GPS) unit. These people are making the everyday decisions with regard to the course that that child's life is going to take. In a foster home, it is very similar to a Child Haven situation where a staff member would be deciding what privileges are earned, just as you do for your children. I am in a position of authority over my kids. If they do not do their chores, they might not get to go to the movies on Friday night. It is those everyday decision making things that adults have for children.

Those are some nonexhaustive examples of a position of authority. Several of you have come to me, and I appreciate the time you have spent talking to me about this section over the last few days. We talked about examples such as the individual who comes to do the landscaping at a foster home. They strike up a conversation with the foster child who is sitting in the backyard reading a book. They are just there to trim the trees and mow the grass, so are they in a position of authority over that child? Not necessarily. Could they become one? That is a factual issue for the criminal court system. We are really just talking about those people who would be making those daily decisions for a child who is in these situations.

John Jones:
I agree wholeheartedly with what Ms. Duffy said, and I want to piggyback on that a bit. Why we want to see this in there is that when you are dealing with a 16- or 17-year-old who legally has the right to engage in consensual sex and you are talking about criminalizing one party's behavior in that consensual sex, the courts have looked at that with some scrutiny. What adding the position of authority does is this Legislature is criminalizing someone using their authority to then groom or engage in sex with somebody who is subordinate to them. That is why that language is in there. That language makes this provision more statutorily sound.

Assemblywoman Cohen:
Is there any adult in the schools who is not considered to be in a position of authority? Is the maintenance person not in a position of authority? What about an assistant in the art room?

John Jones:
I am trying to think back to when I was a teacher. I would argue probably not in a school system. Children are told on a regular basis to listen to adults. I have not been a teacher for a while, but I would probably say no. The landscaper argument that Ms. Duffy gave is a great analogy; it is somebody who comes into a facility. That is at least arguable. It depends on what the kid is told with respect to the individual. A great example is that a janitor might not be, but if you have a janitor who is also a baseball coach or something along those lines and the child is on the baseball team, that could change the factors. These will be fact-specific analyses that the district attorneys, public defenders, judges, and juries will have to engage in.

Assemblywoman Tolles:
I want to say that I concur with my colleagues in regard to the concern over section 8 and the age limit being changed to 25 years of age. *Nevada Revised Statutes* (NRS) 201.540 states the age as 21 years of age or older. For consistency's sake, when we are looking at these laws across the board and how we apply them, I would also advocate to keep it at 21. Would there be a willingness to compromise back to 21 years of age for consistency's sake?

Senator Harris:
I have already told Assemblywoman Miller that we would be open to that.

Assemblywoman Tolles:
If there is any way that we can be helpful in that regard, I would be more than happy to jump in on that working group.

In regard to section 1.3, subsection 2, you alluded to this, and I hope you can expand on it a bit more for clarification. I see that in the amended language that we are looking at, subsection 2, paragraph (c) says, "Allow a victim of sexual assault to anonymously track or receive updates regarding the status and location of his or her sexual assault forensic evidence kit." I made a note that this is one of the great values of the bill. Thank you for acknowledging that victim's right and ability to track that. I am a little confused because in your opening remarks you said that there have been some changes to this tracking system in order to keep in line with the grant. Are we removing that, or did I misinterpret that? Can you clarify that please?

Senator Harris:
The only change that was made to the tracking was to take out the language "statewide tracking system" because it interferes with the grant. The anonymity stays, and we have given the Committee a great example of how we can achieve that anonymity. What happens when we are looking at how we are going to track the kits, because the Attorney General has a working group on how to best fulfill that charge throughout the state, they felt that by putting in "statewide" we could be interfering with a grant that they just received to study the issue. We are potentially limiting some flexibility in that we will ultimately have some kind of a statewide tracking system. That term means different things to different stakeholders. While we are figuring out what that process is, they wanted the flexibility to not have it mandated in statute. Ultimately, as you will hear from the other law enforcement representatives who are here to testify on behalf of the bill, everybody is committed to making sure that every victim of sexual assault has an opportunity to track his or her kit. We will get to some version of a statewide program, but it means different things to different individuals today.

Assemblywoman Tolles:
Thank you for clarifying because that is extremely valuable.

Assemblyman Thompson:
I want to go to section 1.3 and the basics. We have been talking about rape kits in our state for a very long time, so I just want some background information. Where it says, in subsection 1, "Each law enforcement agency that receives sexual assault forensic evidence kits . . . ," I would like to know how many law enforcement agencies in our state receive such kits. It goes on to say, ". . . shall establish a program to track sexual assault forensic evidence kits." Can you tell us how many are currently tracking, or is this something brand new that we will be starting?

Senator Harris:
I would call the law enforcement officers up to clarify because they have the specific knowledge with regard to that, but it is my understanding that we are not currently providing any kind of systematic tracking. That is the reason for the study group through the Attorney General; that is the reason for the grant; that is why I wanted to show you an example of how it can be done.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
We have Kim Murga, our lab director, who has been looking into this type of tracking system for quite a while now. I will let her advise the Committee on the status and progress of that.

Kimberly Murga, Director, Forensic Laboratory, Las Vegas Metropolitan Police Department:
Thank you for allowing me to listen to the discussion associated with this bill and provide testimony today. This bill is a good bill; there are a number of positive elements that are focused on the victims and receiving information. I am familiar with the grant that the Attorney General's Office received in the amount of $563,000 from the Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice. I am not familiar with any requirements of the grant that would prohibit the actual tracking system to be limited to just specific law enforcement agencies that receive sexual assault kits. I have been looking into this issue since about 2008. A system that is statewide from the get-go would be the most beneficial for all members of the state of Nevada—from the victims to the law enforcement agencies, from the prosecuting attorneys to the forensic laboratories.

Assemblyman Thompson:
I would just like to know how many law enforcement agencies that would currently include. Especially if you are dealing with a grant, you have to have some numbers of where your baseline is. How many agencies are we looking at in our state that receive the rape kits?

Chuck Callaway:
If I understand your question correctly, every law enforcement agency in the state that could investigate a sexual assault would be collecting those kits and potentially submitting them to our labs. There are 17 counties, 17 sheriff's offices, and then you have municipal law enforcement agencies. I am guessing there are around 80 agencies in the state that could potentially collect a sexual assault kit and submit those kits to a forensic lab.

Assemblyman Thompson:
As a suggestion, if we have a grant of over $500,000, we really need to come up with the exact number. When data is necessary, especially for the continuance of the grant, we are going to have to know, as a state, how many, who, and so on.

Assemblyman Wheeler:
Senator Harris, in section 8, subsection 3 it states, "A person convicted pursuant to this section is not subject to the registration or community notification requirements of chapter 179D of NRS." That is the sex offender registry if I am correct. My question is, why not?

Senator Harris:
It is the prerogative of the chair of the Senate Judiciary Committee.

Assemblyman Wheeler:
That says a lot, thank you.

Assemblyman Pickard:
With respect to section 1.3, subsection 1, it reads, "The law enforcement agency may contract with any appropriate public or private agency . . ." and goes on to the top of the next page to reference NRS Chapter 277, which is the interlocal agreement. As I understand it—this is not my practice area so I am looking for some education—that has to do only with interlocal agreements between government agencies. If we are using private agencies to meet some of the specific requirements that the state labs have, as in prior testimony, what criteria do we have to make sure that we are getting accurate results?

Senator Harris:
The labs that are selected for DNA testing have to meet certain criteria so that we are not at risk of receiving poor quality lab results. Our state labs are overutilized, and there are going to be some staffing requirements. That is one of the reasons we have a backlog on DNA testing in this state. The arrangement to be able to send sexual assault kits out to independent labs for testing provides quicker results and allows victims to have that closure that they need. That is potentially a piece of how we are going to solve this very complicated problem.

Assemblyman Pickard:
That was the substance of the testimony before, and I recognize that. One of the concerns was that if we are going to try to alleviate the backlog, we are going to need to bring in private testing facilities. We have to set specific criteria. My concern is the interlocal agreement language may not give us enough to set those criteria properly. I am not saying we are in danger; I am sure the people who are responsible for doing this are going to make sure those criteria are set. I am just wondering if that is something we should put into statute or provide some language to allow for the responsible department, and if there are different departments responsible, that they all share the same criteria.

Senator Harris:
I am going to let Mr. Callaway answer that because he deals with that already. I believe we are using an independent lab to help with some of the backlogged kits currently in our possession.

Chuck Callaway:
You are right, and that is one of the concerns we have with the current language in the bill. My plan was to come to the table later and provide testimony. The 180-day requirement is on the agency, it is not on the private lab or vendor. In the cases where we would send these off to a private lab, that private lab says they will get them done, and two or three months go by and they are not done, the penalty or requirement of the law is on the law enforcement agency. That is a concern. Sometimes the private labs may be out of state. I will let Director Murga speak to the one we are currently using. My understanding is it has not been a flawless process. There have been some bumps in the road in the current system we are using to try to get the kits tested. I will let Director Murga speak to our current relationship with the lab that is doing some of the testing for us—she can speak to some of the issues that we have faced.

Kimberly Murga:
We are currently using the primary vendor Bode Cellmark Forensics, located in Lorton, Virginia, to address the 6,473 untested sexual assault kits that we audited in southern Nevada. Our laboratory is responsible for all of the kits in southern Nevada. Traditionally, we test about 105 sexual assault kits per year in-house. Looking at 6,400 is a huge number, and we have leveraged utilizing an external forensic DNA laboratory to help bridge that testing gap to get us where we need to be today. When using private DNA laboratories, our laboratory needs to indicate the quality and performs a full review of all of the kits that come back. We actually train members of the vendor laboratory to perform the analysis and testing to comply with our own protocols and procedures. Every single kit is reviewed. We ensure that the quality is as good as something that we would generate ourselves.

However, utilizing an outside laboratory is only a temporary means of success. Vendor laboratories compete for the almighty dollar, and there are a lot of agencies with backlogged sexual assault kits. The resources are limited, as far as outside laboratories, to what exists. The idea is to enhance our own resources internally to beef up the appropriate amount of forensic lab DNA analysts needed in order to maintain pace with all of the current kits, which is what this bill is about with the 180-day turnaround time. The goal is to transition from outsourcing and actually bring all of those testing capabilities internal within our own laboratory.

Assemblyman Pickard:
My concern is the language "any appropriate public or private agency." Rather than beat this too badly, maybe we could tweak the language to suggest that the Department, the AG's office, or someone create or adopt through appropriate regulation criteria for establishing the requirements for that contract. We can put that 180-day requirement within the contract and build penalties into that. There are many ways we can approach this, but with the language as it exists, I see a potential gap.

Brett Kandt:
Perhaps there is a bit of confusion. Section 1.3 of the bill does not address testing—it addresses tracking. The language provides that a law enforcement agency that is required to have a tracking system for their kits may contract with any appropriate public or private entity for that tracking function. For instance, a private entity could be this sak.track-kit.us website (Exhibit C) that Senator Harris used as an example today. The reason the language was included to allow for interlocal agreements was to provide law enforcement agencies with the maximum amount of flexibility to determine whether they might want to contract with another law enforcement agency to perform the tracking of their kits for them.

For the Committee's benefit, I would like to provide you with the background on the grant and the project that has already been referred to. This is our Sexual Assault Forensic Evidence Inventory Tracking and Reporting Program Initiative that was funded with over $500,000 in grant funding that my office obtained from the United States Department of Justice. The period for this project is January 1, 2017, through December 31, 2019, which comports with the proposed effective date of section 1.3, which would be January 1, 2020. The whole purpose of this initiative is to research the tracking systems that may be available, conduct a feasibility study to determine what the best option is for Nevada for our law enforcement agencies to track our kits, and then to come up with an implementation plan to follow that best option and implement it in our state.

The language that was amended into the bill in the Senate as it currently reads was designed to accommodate the existing initiative and afford the state the maximum amount of flexibility in determining how we best track these kits to fulfill the purpose of keeping track of them and getting them tested in a timely manner. I can tell you that at this point in the initiative, we are in the process of contracting for a program manager that has expertise in this field. We will proceed with our efforts to study the available systems and come up with a feasibility study and recommendations that will be taken to our sexual assault kit working group, of which everybody up here is a stakeholder.

To clarify once again, that language deals with a tracking system, not with the testing of the kits.

Assemblyman Pickard:
Thank you for that clarification. I will try to read the bill more carefully next time.

Brett Kandt:
This is why our office has concerns that if you go back to the original language of the bill, which mandated a statewide tracking system administered by the Department of Public Safety, that would supplant our project.

Assemblyman Watkins:
I am looking at sections 8 and 8.3. Section 8.3 is black letter law that currently exists that we are touching just a bit to bring in the language "position of authority," which I think makes sense. We have differences between proposed section 8 and 8.3—one dealing with our juvenile justice system and one dealing with our schools. We are in a tough place in Nevada with age of consent at 16 and how to criminalize behavior that would otherwise be legal. My thought was, as Mr. Jones testified about, to grooming. That makes sense to me about why we would criminalize something that would otherwise be legal as grooming. Is there an existing legal definition of what grooming is?

John Jones:
I believe there is a definition of grooming, but I cannot think of it off the top of my head. Last session we put allowing expert testimony to explain to a jury what grooming is in statute. I cannot think off the top of my head where that is in statute, so I will get back with you offline.

Assemblyman Watkins:
If we were to look at sections 8 and 8.3, then what we are proposing to criminalize would seem to be someone in a position of authority who uses that authority to obtain a sexual relationship with somebody under that authority, so long as they do not get married.

Senator Harris:
Or as long as they are not already married.

Assemblyman Watkins:
I know you have a tough lift here, Senator Harris. It seems to me that we need to come up with a consistent definition of what that grooming would be and make sections 8 and 8.3 consistent. I do not see the language that there has to be a nexus between the authority and the sexual relationship, only that there was actual contact between the two—that their job brought them into contact with each other—not that there was actual use of the authority to obtain the sexual relationship.

John Jones:
That is correct. We would just have to show that this particular defendant had some authority over the child and that the defendant and that child engaged in sexual relations. That is what we would have to show under this statute. There is no requirement that there be a nexus between the authority and the sexual contact. What we are saying is that no one who is in a position of authority over a child should engage in sexual relations with that child.

Assemblyman Watkins:
Maybe I am not reading that right then. If it says that the person must have authority over that specific child, I read that differently. It says if somebody is in a position of authority as an employee of an entity that provides services for children and they come into contact, that is sufficient. I think that is slightly different from what you just testified to.

John Jones:
You are correct; I apologize. You have to be in a position of authority in the school. If you engage in a sexual relationship with a child, that is the illegal conduct. You are right, there is no nexus required between the authority and the child.

Assemblyman Watkins:
Let me run a scenario by you. Somebody was held back in school and does not graduate until the age of 19. One of his friends, whom he went to high school with, graduated two years ahead. Now 22, that friend starts working for the Clark County School District at a different school; not the one that the person who is still 19 is in. They engage in a sexual relationship. That would qualify under section 8.3, right?

John Jones:
Yes, it would, and there is a reason for that. We had the exact same situation last session with slightly different facts. It was a case where we could not file charges against the teacher because that person was at one time in a position of authority over the student, but then the student transferred schools and a sexual relationship developed. We changed this last session to make sure to include that anybody who is in a position of authority in a school and has a sexual relationship with a child is subject to this law.

Assemblyman Watkins:
If we were criminalizing the behavior of grooming, we would want to make the nexus to say that the authority must be over that specific person. I agree that we do not want any of this, and from my perspective, it should be easy for someone in a position of authority to behave himself or herself. I just have this theoretical or philosophical conundrum with the age of consent and what we are criminalizing. We should be criminalizing grooming. If we are, then we should say that the alleged offender should have authority over the person who they engaged in sexual conduct with.

John Jones:
If I am remembering correctly, we had something similar to that in the statute. It might have been worded differently, but a prior Legislature changed it to the verbiage that you see now. In fact, when we made those changes we got rid of the position of authority language that we are now trying to add back. We were there and a prior Legislature changed it. The position of the Nevada District Attorneys Association is that we are comfortable with the language as is. As a public policy, we want to make clear that teachers and administrators at schools should not be having sexual relations with students who are in schools. Period.

Assemblyman Watkins:
If you find a definition for grooming that currently exists, that would be very helpful for the Committee.

Senator Harris:
While you were talking, I was searching through NRS. I do not see a definition of grooming in the Nevada statutes for which we would have to look out.

Assemblyman Watkins:
I did not think so either. That is part of the problem. We are attempting to define a crime in all of these different spots and we are going to end up with something inconsistent. I thought the last one was inconsistent when I looked at it, but I may be wrong. Under section 8, they would not be registered as sex offenders; under section 8.3 they would be.

John Jones:
With respect to the difference with sexual registration, that is correct. That was again through the process of negotiation between the parties. We are here to support the bill as written. With respect to grooming, that was a word that I used to help explain the relationship and how a person would use the position of authority to groom a child. It is not in the statute, so I do not know if we would need to define it with respect to this. Grooming is my word that I used to describe the relationship.

Assemblyman Watkins:
That is specifically why I called you up. As I am wrestling with this idea that we are in a state with the age of consent at 16, how can we criminalize behavior that we otherwise give them authority to engage in? The answer I came to when you mentioned the word was because of grooming. When you have authority over somebody whose brain is not fully developed, then they cannot really stand up to it and are susceptible to that. I agree with that. We do not define that anywhere, and if it is a crime, we should.

John Jones:
With respect to section 8 especially, when we are dealing with kids who are in the child welfare system and the juvenile justice system—as I am sure that Ms. Duffy, when she gets to her presentation in full, will articulate—we are talking about kids who are extremely vulnerable. That is why section 8 is so important.

Brigid Duffy:
On section 8, I do not want to get too down the road and make this totally about grooming. Just to give you a picture, on Child Haven's campus we have plenty of children who are sexual abuse victims; we have plenty of children who have been trafficked or exploited sexually by pimps and panderers. Some of these behaviors can be more like "spontaneous" consensual behaviors versus long-term grooming. To narrow that down in section 8, I would not like to see that done, because there could be more of that spontaneous sexual contact between 16- and 17-year-olds and employees on campus. The adult really should be in

control of whatever urges they may have because we are dealing with traumatized children whose brains have not fully developed yet and who are being taken advantage of for whatever urges these employees may have. The grooming gets too far away from the intent of section 8 for the kids I am talking about—our parolees, our probationers, and our kids in foster care.

Assemblywoman Tolles:
Thank you for indulging all of our questions. The answers are helping us to make this even stronger as we all share the goal of protecting children.

In line with Assemblyman Watkins, I shared some of those same concerns. It is true that we do not have grooming specifically defined. It is my understanding that Pennsylvania does have a definition for grooming. I would be happy to do more research and provide that offline. My question has to do specifically with section 8, subsection 3, back to the point that was made earlier that this is removing them from the registry. As I read it, "A person convicted pursuant to this section is not subject to the registration or community notification requirements of chapter 179D of NRS;" does that apply to all of Chapter 201, not just the individuals outlined by this bill, but also any teacher who is having sex with people?

John Jones:
It is our intent to make only the new crime not subject to registration and community notification. Section 8 is not subject to community notification and registration. However, sections 8.3 and 8.7 would remain subject to registration and community notification.

Assemblyman Elliot T. Anderson:
Ms. Duffy, when we talked about this yesterday, I had looked at this sort of like Assemblyman Watkins did, that this was sort of like a grooming thing. Since you mentioned that some of this contact is spontaneous, do you think that there is a difference in culpability between spontaneous conduct and somebody who has planned it out and took a job to groom a child?

Brigid Duffy:
No, I believe they are adults who took on a job to deal with the most vulnerable children in our population, and they should be held to the same standards and accountability. They are preying on our kids who have suffered extreme trauma.

Assemblyman Watkins:
How do we reconcile if somebody was to prey on one of those children to the point of getting married before they engaged in sexual conduct? Would that be okay?

Brigid Duffy:
Section 8, subsection 2 is the marriage provision. That was placed in there through the Legislative Counsel Bureau. I guess it was an important policy piece at that time. I agree that grooming could lead up to the course of that marriage. That grooming could now be,

"Now that you are 16, with your parents' consent, we can get married so we can have that sexual contact." That could happen; the law would allow that to happen.

John Jones:
You cannot engage in sexual relations with a child prior to being married. You would be covered by this statue and other statutes. The reason that language made it in here is because you do see it throughout some of the sexual offense crimes contained in the NRS. There is the exception that if you are married, it is not applied. I have a feeling that that is where it came from.

Chairman Yeager:
I will take my concerns offline about the grant and why we cannot put in the bill that it should be a statewide system. With respect to the sak.trak-kit.us website (Exhibit C), are you able to tell me if this particular software is set up in a fashion that there would be one actor in the state who would input information, or is that set up in a way that each local government would input its own information with respect to tracking kits?

Senator Harris:
I cannot speak to that because I have not been in contact with this particular vendor. It is just a vendor that I found to illustrate that the technology actually exists. There was a question among law enforcement agencies as to whether there was even technology to be able to effectuate this. The answer to that question is yes, there is. How they do their licenses, I am not sure. My intent is for this ultimately to be a statewide system of tracking. The law enforcement agencies can come up and talk to you about their piece of it and why they want the flexibility and how they view this would work. I would imagine that like most software, it can be an umbrella or it can be an integrated piece that the different agencies can use. The working group with the Attorney General's office is very concerned that what the Legislature decides could supplant the grant and we would be worse off than we are currently.

Chairman Yeager:
I am mindful of that. I do not want to do anything that would jeopardize those funds. Going back to section 1.7, it has an exception for certain kits where this bill would not apply. Section 1.7, subsection 1, paragraph (a) says "Has chosen to remain anonymous;" and that certainly makes sense. My question is about paragraph (b): if someone "Indicates that he or she is not a victim of sexual assault." What is that intended to cover? We may have a scenario where someone reports a sexual assault, goes through the process of having the examination done, and at some point during or after that process says, "I am not a victim of sexual assault." Is this exception intended to cover that scenario? Would that kit be excluded from testing if someone, after the testing is done, says that they are not a victim of sexual assault, or was that intended to cover something else?

Brigid Duffy:
That was intended to cover credible recantations. Perhaps you have a scenario where somebody is vindictively trying to say that a sexual assault occurred when, in fact, it was consensual sex. We can call up members of law enforcement because they have more experience with it than I do. There are times that a woman will have a sexual assault kit taken, and then come back to say, It was actually consensual; I was not a victim of sexual assault. It is to give them the flexibility so that we do not have an action being brought forward on their behalf on the part of the state that they do not want.

Chairman Yeager:
The way that section is written now, the kit would have to be submitted within 30 days by the law enforcement agency to the laboratory. Let us assume that happens within 30 days and sometime during this process the victim comes forward and recants. Do you envision a mechanism to pull that kit back; or once it gets to the laboratory and starts that 180-day clock, would you anticipate that kit is going to be tested? Does the recantation have to happen before the kit is submitted to the lab, or could it happen afterward?

Senator Harris:
That is for the regulators to work out those details, but in my mind, the victim would have up until the time that the test is performed—more than 30 days and less than 180 days.

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

John Jones:
I want to put our organization's formal support for Senate Bill 169 (1st Reprint) on the record. I want to thank Senator Harris and all the parties here for working on this bill. We still have some areas that need to be worked on, but we are working together collaboratively.

Michael Whellhan, Manager, Spring Mountain Youth Camp, Clark County Department of Juvenile Justice Services:
I am here in support of S.B. 169 (R1). The Department of Juvenile Justice Services and its employees are in a position of authority. They have public trust. We are to be role models and mentors to children and change their lives. We are here to protect children from types of behavior like this and see to it that it never happens.

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

Chuck Callaway:
We were in full support of the bill as originally drafted in the Senate. With the current draft, we have some concerns. I have proposed an amendment (Exhibit D) that I have discussed with Senator Harris at length. I thank her for her willingness to sit down and chat about the issues that we think are there. The amendment that I submitted would do two things. First, it

would strike out the 180-day requirement. That is already in Assembly Bill 97 (1st Reprint), which this body has passed as a 120-day requirement. It is redundant to have another requirement that is different from something this body has already passed. I would propose that be removed.

Second, it has already been discussed and I am sensitive to the fact that grant money could potentially be jeopardized, but rather than have individual law enforcement agencies be required to establish their own tracking systems, it is better for victims, the public, law enforcement, prosecutors, public defenders, and for the state in general to have one tracking system established for the entire state. With the current language of the bill, it will be 2020 before this would be mandatory. The working group is looking at research, feasibility, and best options; I would again ask why we would want to put in a mandate. The language currently says that law enforcement agencies "shall." If we are going to do research and feasibility studies, why not wait to see what that working group determines to be the best option. I believe they will say it is a state-run tracking system.

My amendment (Exhibit D) proposes to remove the 180 days, and to either remove an immediate mandate of a tracking system until the research group looks at it, or to put the tracking system back as a statewide tracking system, which is the language in my proposed amendment.

We would put the same fiscal note on the bill. We have not done that yet because the original draft in the Senate did not have a fiscal note. As the bill is currently drafted, we would put our fiscal note back on the bill, which would require approximately $1.6 million annually and for us to hire seven forensic scientists to comply. If my proposed amendment were accepted, the fiscal note would not apply.

Chairman Yeager:
I understand your position on the tracking requirement, but we did get testimony that under section 24 of the bill—the effective date—section 1.3 would not become effective for about 2.5 years. Do you read the bill with the effective date to mandate the Las Vegas Metropolitan Police Department (LVMPD) to do a tracking system?

Chuck Callaway:
No, I read it to say that, no later than 2020, law enforcement agencies "shall" establish a tracking system. I think that should be a state-established tracking system, not a law enforcement agency so that Washoe County has a tracking system, LVMPD has a tracking system, the City of Henderson has a tracking system, and so on. I will point to the testimony you have heard regarding criminal justice information sharing and the discussion that was had on the Advisory Commission. The same applies. We use Shared Computer Operations for Protection and Enforcement (SCOPE), Tiburon, and the Nevada Criminal History Repository. There has been a lot of discussion about how this system has information that one does not have and these do not communicate with those. There are currently bills to set up a subcommittee to look at that. I would caution that with the language that is currently in the bill, we are treading into territory where we are potentially

going to create multiple tracking systems that do not communicate. We should do it right; let us set up one.

Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County:
I am here in opposition due to the fact that LVMPD has put on a fiscal note. Clark County funds approximately 60 percent of the LVMPD's budget; therefore, the fiscal note that they have applied to this bill would impact Clark County to the tune of about $1 million if their fiscal impact were about $1.6 million.

Corey Solferino, Sergeant, Legislative Liaison, Washoe County Sheriff's Office:
It troubles me to come to the table today in opposition to S.B. 169 (R1) because we did support it in its original, unamended form in the Senate. However, we do echo the same concerns from LVMPD with the time requirement and section 1.3 as it pertains to each agency. Depending on how you interpret that, the Washoe County Sheriff's Office currently contracts with 80 user agencies in northern Nevada alone. Depending on when that system was tracked, from the moment that it was submitted in the sexual assault kit protocol to the time it arrived at the crime lab could literally mean that 80 different agencies could have different systems. Director Callaway spoke eloquently about this Committee and how we have addressed those issues with criminal justice information sharing across the state, and some of their inabilities to communicate with one another. We do stand in opposition at this time in those two respects—the mandated 180-day turnaround—as the 120 days was passed by this body—and the statewide system. We believe that one system should exist.

Thank you, Chairman Yeager, for allowing me to get a PowerPoint presentation ready (Exhibit E). To my right is Dr. Lisa Smyth-Roam. She is the biology supervisor for the Washoe County Sheriff's Office Forensic Science Division. I would like her to give you a brief education on some of the DNA questions that are popping up.

Lisa Smyth-Roam, Ph.D., Supervising Criminalist, Biology Unit, Forensic Science Division, Washoe County Sheriff's Office:
I thought it might be useful to give a bit of background on the Washoe County Sheriff's Office Forensic Science Division since there seems to be quite a few bills that involve us. I kept it short, but you can ask any questions, and I can go into more detail on topics in which you might be interested.

In Nevada, two labs have access to CODIS. That is the database where we input DNA profiles from crime scenes. We also put in offender profiles in the hope of getting matches to cases to help solve them. Our lab in the north is the Washoe County Sheriff's Office Forensic Science Division (WCSO-FSD), and there is a lab in the south—the Las Vegas Metropolitan Police Department Forensic Science Division.

This presentation will primarily focus on the WCSO-FSD. We actually serve 13 of the 17 counties in Nevada [slide 1, (Exhibit E)] and we have over 80 different agencies sending us evidence for testing. The biology unit consists of two different areas. We have the casework side of the house, and we have the databasing side of the house. The casework side

of the house in the biology unit consists of primary exams and DNA. Primary exams are when we do the screening. You are looking for potential biological material to forward on to DNA. Then we have the DNA casework where we process the samples for DNA testing.

In addition, we also have a databasing section. That is where we process and enter all of those who are convicted of a crime. We process their DNA and enter it into CODIS. Since the passing of Brianna's Law, we now process all of the arrestee samples and enter those profiles into CODIS.

Here is a chart [slide 2, (Exhibit E)] that shows how the people want DNA. People pretty much want DNA on all cases. In the last five years we have seen a significant increase in the amount of submissions or examination requests for DNA testing. We have 4.5 criminalists working DNA cases; that has not changed in the last several years, but the amount of submissions and requests for DNA has changed. We were doing great in the 2012-2013 fiscal year (FY), and not so bad even in FY 2013-14; we were keeping up with demand. Starting in FY 2014-15 and in FY 2015-16, we exceeded the capacity that our lab can handle in the number of cases. Each analyst can process about 50-80 cases, which is about 142 submissions. When I say submission, that means when someone wants something tested, he has to fill out a form; there might be 1 sample they want tested, or they might want 15 samples tested. Every time we get a submission, we need to do some testing on a particular case. Our average turnaround time a few years ago was 60-90 days and we were proud of that. Unfortunately, with the increase in the number of cases that we have been receiving, we can no longer offer that level of service. In FY 2015-16, our average turnaround time was 153 days. I will tell you that just by having a quick look at our average turnaround time for the current fiscal year, it is going to be in the 200-day range, just because of the volume of crimes and submissions we have been receiving this year. We have already had 77 homicide submissions come in, and this is not yet the end of this fiscal year.

I want to give you an idea of what types of cases we test [slide 3, (Exhibit E)]. We test all sorts of cases. In FY 2015-16, we completed 639 submissions—just under 500 cases. Of those, we had 83 homicides, 11 attempted homicides, 4 death investigations, 109 sexual assault or sex offenses, 13 kidnappings, and the list goes on. These same 4.5 criminalists who have been working these cases are also the ones who have to review the 5,000 convicted offender and arrestee samples that are collected each year. We have been lucky enough to be able to outsource the databasing side because of grant money and because Brianna's Law was funded. Brianna's Law was very successful because it was funded. We are able to manage those offender profiles. We hope in the next couple of years we will be able to bring that in-house.

In 2015, the Sexual Assault Kit Initiative (SAKI) committee was formed to address the backlog of sexual assault kits never submitted for forensic DNA testing [slide 4, (Exhibit E)]. In northern Nevada, we identified approximately 1,179. We realized quickly that there was no way we would be able to handle it if our law enforcement agencies pulled up to our evidence section and unloaded these 1,179 kits [slide 5]. We knew we would be in a spot of bother. We decided to work with the SAKI committee and the Attorney General's Office,

and we were lucky enough to be able to secure funding for a total of $817,293. In addition, we have also reached out to the Federal Bureau of Investigation (FBI) because they have an initiative to help labs test these unsubmitted sexual assault kits. We have 245 approved for testing by the FBI for free, so that has saved us a lot of money. Douglas County Sheriff's Office kits are being sent and tested by a grant that the LVMPD has obtained.

All of these profiles that are sent to these private labs then have to be reviewed in-house. We will be reviewing 1,179 cases before anything goes into CODIS. That will be an additional job we are somehow going to have to fit into our regular day, but we are glad that we do not have to test them; that is better than having to do everything.

A lot of work goes into selecting a private lab to which to send the kits. They have to meet the same accreditation requirements that our lab has to. They have to be audited on a regular basis like we do. They have to meet the same educational requirements. Not anyone can just help us; there are only a certain number of labs out there to which we could send kits. We want to make sure that these kits are treated as they would be if they were sent to our lab. We have to go out to bid to get the best pricing, we have to write a contract that is very long but covers all of the requirements that a lab must meet, and then we have to audit them onsite and work with them so that we can have the testing we need done.

The good news is that all of these untested sexual assault kits should be covered with all of the funding that has been obtained through grant money and SAKI. What are we going to do with all of the kits we will be receiving in the future? We predict that we will get 350 more sexual assault kits coming to our lab once law enforcement agencies start to submit everything to us [slide 6, (Exhibit E)]. That is going to have an impact on everything. All of the homicides, all of the assault and batteries, everything is going to be impacted—unless we get the funding necessary for us to succeed. We want to be able to provide the community with the best service possible. We want to have a turnaround time of 120 days. We do not like having a turnaround time over 200 days, but we must have the money to do so.

My personal favorite slide shows what we would need in order to be successful [slide 7]. If we want a 120-day turnaround time, we are going to need just over $1.3 million on an annual basis. If we want a 180-day turnaround time, then we are going to need about $1.22 million annually. In addition, I have included a one-time cost for renovations. If we get the five or six extra people, I need somewhere to put them. We do not have very much space, but if we knock out walls and try to get some more areas to test kits, we could make it work. Maybe we would all get smaller workspaces, but it would be worth it in the end. We believe that $300,000 would at least make a good dent in renovations so that we could work in the most efficient manner.

Chairman Yeager:
In the last slide [slide 7], with respect to A.B. 97 (R1), there was a $3 million appropriation and 120-day testing requirement. I understand that not all of that $3 million would go to Washoe County, but according to your slide, you are anticipating to comply with the 120-day testing you will need an annual appropriation of $1.2 million, correct?

Lisa Smyth-Roam:
That is correct.

Chairman Yeager:
Part of that is a one-time $300,000 renovation fee?

Lisa Smyth-Roam:
Yes, so that would be to find somewhere to put an additional six people and make some space for them to work in the lab.

Chairman Yeager:
Does that mean that after the one-time appropriation you would be anticipating about $900,000 a year appropriation to comply with the 120-day testing?

Lisa Smyth-Roam:
The lab renovation is in addition to the $1.3 million on the 120-day turnaround time.

Chairman Yeager:
You mentioned Brianna's Law, which was Senate Bill 243 of the 77th Session brought by Senator Debbie Smith, to require that DNA must be taken from everyone who is arrested for a felony. You also indicated that because it had a funding component with it—I believe it was a $3 DNA testing fee—that it has paid for itself. I noticed that on slide 2 (Exhibit E), it looks like the delays started happening around FY 2013-14, which was right about the time that bill took effect—July 1, 2013. If it is not that bill that is causing the backup, to what do you attribute the increased delay at the laboratory? Is there something else you can put your finger on in terms of why the delay is getting longer as time goes on?

Lisa Smyth-Roam:
Slide 2 is only looking at casework. It is not looking at the databasing, Brianna's Law, or any of those samples. In FY 2013-14, you can see that the blue line is how many submissions we received in that year. That blue line starts to increase, and every fiscal year after that it increases more. By FY 2015-16, it has significantly increased. The red line is how many cases we completed. We went up a little bit because we implemented some efficiency—we have some robotics that we brought online and we had some people trained up. Now we are at our maximum. The red line has leveled off because with the same number of people we cannot do any more. Unfortunately, that blue line keeps going up because there seems to be more crime happening, so we are getting more cases submitted for DNA testing, but the number of analysts remains the same.

Chairman Yeager:
I have one more question about the interplay between Brianna's Law and this chart. We talked a bit about how a recanting victim may not have the kit tested or processed, but under Brianna's Law, the offender's profile would still go into CODIS. Assuming an arrest is made by law enforcement, there is a requirement at the time of arrest that DNA be taken. Are you going to eventually process that and put it into CODIS, unless the offender requests that it be taken out?

Lisa Smyth-Roam:
That is correct.

Chairman Yeager:
We will follow up if we have any additional questions or concerns.

Kimberly Mull, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence:
I am here today representing the sexual violence organizations throughout the state. We are joining the other stakeholders you have seen here. There are also many members of the SAKI working group in the state that are opposing the amended version of S.B. 169 (R1). Our concerns are what many of you have brought up, but our main concern is with the removal of the statewide tracking program, putting the burden on the individual law enforcement agencies. As Assemblyman Thompson brought up, data is everything. In Nevada, trying to get sexual assault statistics is extremely hard. Other than the FBI Uniform Crime Reporting, it is almost impossible to find statistics. To have 80 separate agencies having to be accountable for their own tracking systems concerns us when there is the ability to have these overseen and mandated by the state. No matter if they have been victimized in Clark County or in Winnemucca, victims should have the same rights, the same resources, and the same type of notifications available to them. When we order a pair of shoes on Macys.com, no matter where you are in the state we can track where that is at. We can see where it is at and when it will arrive. We should have that same ability with our sexual assault kits. We would like to see that. I also have the executive director of the Rape Crisis Center, Daniele Dreitzer, in Las Vegas to speak with you today about her concerns.

I want to bring up another side note with the grooming that was talked about earlier. Having grooming defined in the law is a good thing, but we have to make sure that we recognize that not every exploited child is going to be groomed, especially if a child has been a victim of sexual assault or sex trafficking in the past. When you have been a victim of that—you have had your body and things stolen from you—it can be empowering to decide who has access to you in the future. As an adult, that can be a good and empowering thing, but as a child that can lead to poor decisions and things that will lead people to take advantage of you. Especially in a hookup or Tinder culture, it could lead to some instantaneous and nondrawn-out aspects of that. It is important to make sure that we recognize that aspect. It is not always a grooming process; there could be an instantaneous aspect to it as well.

Chairman Yeager:
Before we go down to Las Vegas, I have a couple of questions. Section 1.7 of the bill talks about the exceptions and the kits that are not to be tested. I am not familiar with this process. Can someone have one of these examinations done yet remain anonymous while it is happening? Is that possible?

Kimberly Mull:
It is possible. That is something that we want to see done. I am not very familiar with Nevada specifically, but I can speak personally from another aspect of how it is done. You go to the hospital to have the kit done and there is paperwork—"Yes, this happened to me." In my case, I knew who did it to me and what had happened, but I did not want to press charges because I made the choice that that was not what I wanted to happen at the time. I still wanted the evidence taken. Because of that, I could sign paperwork—and we are working on paperwork in the SAKI workgroup—that says, "I choose to have my kit remain anonymous." We are holding it for a year. That gives the individual time to come back and say, "I have decided I want to move forward. I have decided that things have changed, or I have changed my mind." That gives that individual some time to decide what they want to do while keeping their name and anonymity. For some people and circumstances, that is important to them.

Daniele Dreitzer, Executive Director, The Rape Crisis Center, Las Vegas, Nevada:
I want to thank the Chairman, the Committee members, and the Legislature for the amount of dedication to the issue of the sexual assault kits throughout this session. It has been very heartening to hear the questions and thoughtfulness behind this. I want to express our appreciation for the amount of time you have all committed to this.

As Ms. Mull said, we would be in favor of the statewide tracking system. If we look at the situation we find ourselves in now, with the number of untested kits across the state that have built up, a lot of that goes back to the decision-making on the part of individual law enforcement entities. The possibility that we could implement a statewide tracking system would provide accountability that is consistent to every law enforcement entity across the state and ensure that if there were issues in smaller or larger communities there would be a statewide body that would be able to monitor and determine that and pick up on any issues so that we never find ourselves in this situation again.

Likewise for victims, people do not realize where their assault took place jurisdictionally. For example, we are working with a client who lives in Las Vegas, and was assaulted up north—I was told in Reno. As it turned out, it was in Sparks. That is somebody who, if the tracking systems were separate, would not have known which entity to look on. A statewide system takes that guesswork and background work out of the victim's hands and makes it a more consistent and easy situation for them to navigate in what is already a difficult and traumatizing situation. That is important to keep in mind.

To the Chairman's point on section 1.7: I do want to mention that we would be in favor of removing subsection 1, paragraph (b), in terms of allowing an exemption from testing for an individual who later says they are not a victim of sexual assault. We are in favor of the anonymous kits not going in for testing. The way that process works is that if an individual comes in and they want to have evidence collected at the time or shortly after the assault because they do not know for sure what they want to do but want to preserve as many options as possible, they can elect to have that kit done anonymously as long as it is an adult, as minors do not have that option; they can choose that option and have some time to process what has happened and determine if they want to move forward with pressing charges. Because we often do not know if someone's initial intent was to have a kit tested—as Ms. Mull mentioned, there are extensive consent forms as part of the kit. We do not know if someone is recanting because he or she is being pressured by the perpetrator or family members to do so, or other situations. We do not know if there are serial predators out there. This is something that has been coming forward with the testing of these backlogged kits. We do have serial predators out there. If people are pressuring a victim not to have a kit submitted, it could be because they have multiple victims and they do not want their DNA entered into the system. That is not something that we would want to proliferate or support.

I would be in favor of removing the 25 years of age requirement that is in the other portion of the bill. Working with many young adult victims, and seeing the trauma they have suffered, that age seems arbitrary. You could easily have a 23-year-old who is being exploitative and abusive toward somebody in his or her care. I do not believe that is anyone's intention.

Kimberly Murga:
Mr. Callaway summarized some of the concerns relating to this bill very eloquently, but I want to add three more points. Regarding the statewide tracking system, the whole purpose of us testing these sexual assault kits is to prosecute those who are guilty of committing these egregious crimes, clear those who are innocent and may have been charged, and many of these folks are serial offenders. So far, the LVMPD has tested about 1,000 of the 6,400 that we have in the south. We have entered several hundred profiles into CODIS, and we have had 61 hits. We expect to have an extreme amount of activity on this process over the next 18 months and acquire even more hits. A lot of them have serial linkages. By having the current language say that each law enforcement agency shall create their own tracking system, it negates the interoperability associated with investigating these cases and identifying those serial links from one statewide system, as well as coordinating with other states. These offenders will prey on victims in other states as well. That is just one more reason to have a statewide tracking system.

As Lisa Smyth-Roam indicated, the laboratories do have to be funded. Mr. Callaway said that they would add a fiscal note. I would like to indicate that in order for LVMPD to comply with 180-day testing, we need about $1.4 million annually. In order to comply with 120 days, we will need about $1.6 million annually. I can provide that information as far as the breakdown and how we arrived at that information if requested.

In regard to the two exemptions in which a sexual assault kit is taken, section 1.7, subsection 1, paragraph (b) states, "Indicates that he or she is not a victim of sexual assault." As far as the forensic laboratories, when we are processing these kits, any profile that is eligible to go into CODIS is put into CODIS. Therefore, if we have indication that a crime occurred and we obtain a male profile, we put that profile into CODIS. There are currently over 15 million profiles in CODIS, made up of genetic information related to suspects in crimes. If the laboratory never receives information that a victim later recanted their story—there are a number of scenarios to how this would come into play—the profile of that innocent person remains in that database full of suspects. It is in the best interest within this law to keep similar language so that the laboratory is informed, even if it is after the 180 days where the kit has been tested. The laboratory would always need to pull out the profile from that database.

Chairman Yeager:
You mentioned that some of these kits being uploaded to CODIS led to hits in presumably unresolved cases. Have you had any hits that have gone on to exonerate someone who had been wrongfully convicted of a crime?

Kimberly Murga:
So far, of the 61 hits that we have obtained, none of them have led to exonerations or appear to be heading down that road. However, we still have 5,000 more kits to complete. We expect to complete those by early 2019. It is not to say that is not a possibility.

Chairman Yeager:
Of those 61 hits that you have received, are those for Nevada-based cases? Are you able to give a breakdown on how many are Nevada crimes versus out-of-state crimes?

Kimberly Murga:
All of those hits are for cases that have occurred in southern Nevada. I believe we have a number of southern Nevada cases that have been linked by a few repeat offenders. A small amount of those hits are from serial linkages, and of those 61 hits, one hit to another out-of-state jurisdiction. Based upon feedback and information I have received from other agencies and forensic labs in areas around the country that have already moved through this process, we expect the number of linkages to increase, as well as the number of out-of-state hits linked to Nevada cases—where we have offenders who are offending not only throughout Nevada, but in other states as well.

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.

Senator Harris:
The good news is that we mostly agree with regard to this policy. We have highlighted that there is a problem in Nevada that very much needs to be addressed. This Committee is going to be charged with making some important policy decisions, namely whether we want to give some flexibility to the task force that has already been created to work on the best way to implement a tracking system, or if we want to mandate as a Legislature that this needs to be a statewide tracking system from the get-go. The testimony seems to be centered on that issue, and the issue of 21 versus 25 years of age. On all other material points with regard to the bill there is a large degree of consensus. We will continue to work with stakeholders and the Committee so that we can find the right policy with regard to this topic.

Chairman Yeager:
We will formally close the hearing on Senate Bill 169 (1st Reprint). Would anyone like to give public comment? [There was no one.]

This meeting is adjourned [at 10:57 a.m.].

RESPECTFULLY SUBMITTED:

_____
Erin McHam
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a link to a website and login information for a sexual assault kit tracking system, https://sak.track-kit.us/Survivor/Home/GovernorIndex, presented by Senator Becky Harris, Senate District No. 9.

Exhibit D is a proposed amendment to Senate Bill 169 (1st Reprint), presented by Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department.

Exhibit E is a copy of a PowerPoint presentation titled "The Washoe County Sheriff's Office Forensic Science Division," presented by Lisa Smyth-Roam, Ph.D., Supervising Criminalist, Biology Unit, Forensic Science Division, Washoe County Sheriff's Office.