MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-Ninth Session
May 9, 2017

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 1:34 p.m. on Tuesday, May 9, 2017, in Room 3142 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:

Assemblywoman Olivia Diaz, Chairwoman
Assemblyman Nelson Araujo, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Skip Daly
Assemblyman John Hambrick
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman James Ohrenschall
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Nicole J. Cannizzaro, Senate District No. 6
Senator Michael Roberson, Senate District No. 20

STAFF MEMBERS PRESENT:

Carol Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Julianne King, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Barry Gold, Director, Government Relations, AARP Nevada
Susan Merriwether, Clerk-Recorder, Carson City
Dena Abeyta, Chief Deputy Clerk and Election Administrator, Douglas County
Joseph P. Gloria, Registrar of Voters, Clark County
William C. Horne, representing Marsy's Law for All, Las Vegas, Nevada
Steven Wolfson, District Attorney, Clark County District Attorney's Office
Paul G. Cassell, Ronald N. Boyce Presidential Professor of Criminal Law, S.J. Quinney College of Law, University of Utah
Kristin L. Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Robert Roshack, Executive Director, Nevada Sheriffs' and Chiefs' Association
Michael Giurlani, President, Nevada State Law Enforcement Officers' Association; and representing Peace Officers Research Association of Nevada; Las Vegas Police Protective Association; and Nevada State Law Enforcement Coalition
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers
Kerrie Kramer, representing The Cupcake Girls, Las Vegas, Nevada
Marlene Lockard, representing Nevada Women's Lobby; and Las Vegas Police Protective Association Civilian Employees
Cory Hernandez, representing Tu Casa Latina, Reno, Nevada
Austin Slaughter, Legal Assistant, Latin Chamber of Commerce Nevada, Inc.
Kelvie Malia Stamm, Private Citizen, Las Vegas, Nevada
Annette Scott, representing SAFE House, Henderson, Nevada
Ed Williams, President, Log Cabin Republicans of Nevada
Liz Ortenburger, Chief Executive Officer, Safe Nest, Las Vegas, Nevada
John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada

Chairwoman Diaz:
[Roll was taken. Rules were explained.] I will open the hearing on Senate Bill 117, which is a proposal to increase accessibility at the polls for certain voters. Senator Settelmeyer is here to present this bill.

Senate Bill 117: Revises provisions relating to election accessibility. (BDR 24-547)

Senator James A. Settelmeyer, Senate District No. 17:
Senate Bill 117 comes about from personal experience. I remember being in line on the first day to vote in the last election. A family was trying to get up to vote. They were helping the mother out of the car. She was about 90 years old. It took quite a while. I assisted them to get out of the car and into the elevator. I walked up the stairs to the front of the line. I then walked down the long corridor of the hall to the other stairs going down the back end of the building. I walked down those stairs, around the street corner, and to the front of the road where the end of the line was. I was 30 minutes into Election Day. In my community, everyone turns out to vote on Election Day.

The son comes and sits in the line with me as well. All of a sudden, the father comes back and says, "Hey, Son." He used that term, and his son was about 55 years old. The father said, "We had to load her back up. She just can't wait that long." I said, "What do you mean 'wait that long'?" She needed to wait until the son got up to vote. They let her stay up there, but the head elections official was not there to allow her to slip in the front of the line. Only the head elections official has the authority to pull someone out of line. That seemed very problematic to me.

The concept came forward by trying to look at it. Luckily, with the elections procedures in the Senate, our committee analyst looked into it. Interestingly enough, only one other state has this concept. I think it is Minnesota. This bill allows for the creation of a separate line for those individuals who might be infirm, in a wheelchair, or lack the physical ability to stand in line that long. Realizing that probably means a longer time frame for those who can stand, I am still okay with that.

Secondarily, the election board must allow an individual who physically cannot wait to move to the front of the line. That would give all elections officials authority, rather than just the head elections official. In that respect, I have no individuals to come up and testify for or against it; just those who wish to testify in that capacity. I can take questions at this time.

Chairwoman Diaz:
Are there any questions from the Committee?

Assemblywoman Bilbray-Axelrod:
I wanted to thank you for bringing this forward. I worked at the caucuses. Up comes the van with everyone coming from the senior living home. There would be a huge line in the sun. I made the decision—even if I was not supposed to—to let them come to the front. It is a good, commonsense measure.

Assemblyman McArthur:
One of the things in this bill is a line for the elderly. Is there an age limit?

Senator Settelmeyer:
No, there is not. That may mean that able-bodied people have to wait longer. I am okay with that.

Assemblyman McArthur:
I am fine with it too. I just wonder if some people will decide that they are elderly and want to jump the line.

Senator Settelmeyer:
My overall opinion is that if someone is 70, 80, or 90 years old and wants to hop in front of me in a particular line, I think they have earned that right.

Chairwoman Diaz:
I will start taking testimony in support of S.B. 117.

Barry Gold, Director, Government Relations, AARP Nevada:
The right to vote and the ability to vote are very important to older adults. They are the strongest and highest percentage of voters in this country, and always have been. This bill is a great opportunity to give them the access to vote. I think it is a great idea. How horrible would it be if one of us could not vote because something had happened to us, and we could not wait in line that long? On behalf of the 336,724 AARP members as of April 30, we strongly support this bill and urge you to pass it.

Susan Merriwether, Clerk-Recorder, Carson City:
The clerks are very much in favor of this bill. We currently try to assist when it is possible, and we hope that other voters in line will help and allow for the elderly and disabled to cut in front of them. I know there are not problems in Carson City, but I believe this will really help clarify everything.

Dena Abeyta, Chief Deputy Clerk and Election Administrator, Douglas County:
I am the Chief Deputy Clerk and Election Administrator for Douglas County where Senator Settelmeyer was waiting in line all that time to vote. He is correct. If an election worker becomes aware that there is someone who needs assistance or is unable to stand in line, they will let them move to the front of the line. Unfortunately, it is only when they become aware. We support this bill, and we look forward to implementing a separate line for anyone who would self-identify as needing to be in that line, has different abilities, or is unable to stand. Douglas County supports this bill and hopes that it passes.

Chairwoman Diaz:
Is there anyone else in support of S.B. 117 in Carson City? Seeing no one, we will go to Las Vegas.

Joseph P. Gloria, Registrar of Voters, Clark County:
The language in this bill proposes to enter into statute a process that Clark County already has in place. We strongly support passage of this bill.

Chairwoman Diaz:
Is there anyone else in support of S.B. 117? Seeing no one, we will take testimony in opposition. Seeing no one, we will go to neutral. Seeing no one, does Senator Settelmeyer have any closing remarks?

Senator Settelmeyer:
I think our clerks do a phenomenal job. I think this bill tries to give them a little bit of aid and clarity in the potential creation of a separate line to facilitate those individuals who need more assistance. If you look at the statistics, Douglas County has the largest percentage of individuals in that category.

Chairwoman Diaz:
If my grandparents were around, they would say, "I better know better." With that, I will close the hearing on S.B. 117. I will now open the hearing on Senate Bill 447. This is a proposal to revise statutes governing absentee voting.

Senate Bill 447 (1st Reprint): Revises provisions relating to absentee voting. (BDR 24-1125)

Senator Nicole J. Cannizzaro, Senate District No. 6:
Senate Bill 447 (1st Reprint) provides greater access to the polls for those with physical disabilities. Much like Senator Settelmeyer's Senate Bill 117, this measure is another step forward to help those with physical disabilities fully participate in the voting process. Nevada is considered a "no excuse" absentee voting state, meaning Nevada—like 27 other states and the District of Columbia—does not require a voter to state a reason for requesting an absentee ballot.

Even though the popularity of early voting in Nevada is significant—well over 50 percent of Nevada's voters voted early—the use of the absentee voting ballot is still very popular. In 2012, 85,670 Nevadans, or 8.4 percent of all voters, voted using an absentee ballot. In 2014, 37,227 Nevadans, or 6.7 percent of all voters, voted absentee. During the latest election cycle in 2016, 6.4 percent of Nevada voters, or 72,195 people used an absentee ballot.

Of these tens of thousands of voters, it is hard to know what number of them has a physical disability. I think we can all agree that a person with a physical disability should have the easiest access to an absentee ballot as possible. This is why the Senate Committee on Legislative Operations and Elections requested S.B. 447 (R1).

This came out of a request from a constituent in northern Nevada who expressed that even though he could request an absentee ballot, it was still very difficult for him to obtain that ballot, turn it in, and remember to request the ballot every year. This is one way the Legislature can make it a little easier for those who have a physical disability or are elderly to be able to access those ballots. I think that is an important function of what the Legislature should be doing. We should be facilitating easier access to the polls.

What does S.B. 447 (R1) do? Currently, Nevada law allows a registered voter, who is at least 65 years of age or has a physical disability or condition that substantially impairs his or her ability to go to a polling place, to request an absentee ballot for all elections that are held during the year the voter requests an absentee ballot. Also under existing law, a registered voter who, because of a physical disability, is unable to mark or sign a ballot or use a voting device without assistance may request the county or city clerk issue him or her an absentee ballot for each election that is conducted during the year immediately succeeding the date the request is made to the clerk.

Sections 4 and 16 of S.B. 447 (R1) change these provisions to allow a registered voter who is at least 65 years of age or has a physical disability to submit sufficient written notice to the appropriate county or city clerk requesting that the registered voter receive an absentee ballot for all elections at which he or she is eligible to vote. Upon receiving such a request, the voter will be issued an absentee ballot for each primary and general election that is conducted after the date the written request is submitted. The measure specifies that if the county clerk receives a request, he or she must also inform the city clerk, and if the city clerk receives the request, he or she must inform the county clerk.

For all other voters, sections 2 and 13 of S.B. 447 (R1) permit any registered voter to request an absentee ballot for all elections held during the year he or she requests the absentee ballot. This eliminates the need to request an absentee ballot for each election during the cycle. One request will suffice for the entire year for that voter for all of the primary and general elections held in that calendar year after the request.

Senate Bill 447 (1st Reprint) also makes a few housekeeping changes to ensure this expanded absentee ballot request process works smoothly. First, the bill clarifies the definition of "sufficient written notice" and specifies that a written request for an absentee ballot may be made by mail or via an approved electronic transmission. Second, the bill clarifies existing provisions relating to the written statement of a person who, at the request of the registered voter, either marks or signs an absentee ballot or assists the voter in marking and signing his or her absentee ballot. Finally, S.B. 447 (R1) provides that if a requestor of a permanent absentee ballot becomes inactive or is removed from the voter rolls at some point after the request is made, the county clerk shall no longer mail that voter an absentee ballot.

If S.B. 447 (R1) is approved, Nevada will join the states of Arizona, California, Connecticut, Hawaii, Minnesota, Montana, New Jersey, Utah, and the District of Columbia that offer this permanent absentee ballot status.

During the Senate hearing, there were concerns. Originally, this bill was limited to individuals with a physical disability. There were some concerns that the elderly population may fall within this same category, so this bill was expanded to allow that as well. As someone who represents a large elderly population in Senate District No. 6, I think it was a wonderful expansion of this bill to make it easier for those individuals to participate in elections. This will help to improve our absentee ballot process. With that, I am happy to take any questions.

Chairwoman Diaz:
I recall the frustration of my own constituents having to continually request the ballot and have the mail ballot be sent to them. This bill would ensure that they got it for every election without having to continually request it or have the process get muddled somewhere. For example, they did not request it and did not get it, so they are upset because they think that something went awry. This ensures that they are continually enrolled to receive a mail ballot without them having to continually request it until they either become inactive or their registration is cancelled by the clerks. Is that accurate?

Senator Cannizzaro:
This bill would allow for that process for anyone who is over the age of 65 or has a physical disability. If those individuals request an absentee ballot, they will continue to receive an absentee ballot for every primary and general election until they fall off the voter rolls, which means that they are not voting in elections or have passed away. Otherwise, they would continue to receive the absentee ballot and would be required to update their address to continue to receive this ballot should they move.

Other voters would have to request an absentee ballot for each election. That includes primary, general, municipal, and statewide elections. If someone who is an ordinary individual and does not otherwise fall into the over 65 years old or disabled categories requested an absentee ballot, they would receive an absentee ballot for every primary and general election for that calendar year. After that calendar year, they would have to renew that request, so individual voters who request absentee ballots would not continue to receive them over any period of time; it would just be for that one year.

Chairwoman Diaz:
Are there any questions from the Committee?

Assemblywoman Bilbray-Axelrod:
I was just curious if the ballots would be forwarded? I anticipate some of our older population may be moving into an assisted living home or a different group home for disabilities. Would these be forwarded within that time?

Senator Cannizzaro:
This would continue to follow the same process if someone were to move prior to receiving their absentee ballot, in terms of forwarding. I certainly think that there might be some individuals in the room from the individual counties who might be able to verify that. I am happy to follow up on that and get you an answer.

Assemblyman Elliot T. Anderson:
I like the idea of this, because I know that a number of my constituents have had the same issue. Following up on that forwarding issue, if the ballot is forwarded, would the ballot be inappropriate, because they live in different districts?

Senator Cannizzaro:
That is absolutely correct. If someone moved to a different district, their ballot would not be valid for that particular election for which they are receiving that absentee ballot. I do not know the exact answer to the question of how the forwarding works. I am happy to get the answers to both of your questions. I think there may be someone here who has a better insight into how that process works.

Assemblyman Elliot T. Anderson:
When the clerks come up, I would appreciate it if they could address that. It may be as simple as a technical correction to ensure that, should the ballot be forwarded, there is some way to get that notice back to the clerks in order to ensure that people are voting in the right districts.

Assemblyman Daly:
I have technical questions. I know the part that was added in sections 1 and 2 about a written communication requesting the ballot. I know that is language that is moved from another section of the bill, so it is existing language. Can that be done by any written document or a handwritten note? Is there a form they are supposed to use? Is that contemplated?

Senator Cannizzaro:
I believe there is a process already in place for the clerks that requires sufficient written notice. I can follow up to ensure that is the case, because I do not believe that it would be a handwritten note. I think there is a process they have in place for that to occur.

Assemblyman Daly:
I have a similar question the clerks may be able to answer, which is also existing language moved to another spot. There must be a process. I was going to ask about that. My last question is on section 3, subsection 2 language that is struck out. Maybe it is put someplace else. The deleted language says, ". . . but only for his or her own use." I was wondering why that is left out. If I remember correctly, there is language in the bill that says other people can help them if they are blind or disabled, but there has to be some documentation of that. I did not know if there needed to be follow-up language that says, "except as provided for" or something. Maybe the clerk can answer that as well. I was curious about that language being left out.

Senator Cannizzaro:
Because we were restructuring how the absentee ballots worked, some of the language was moved to a different section of the bill. If someone is aiding with filling out a ballot, there are still provisions that require them to provide the proper documentation, as well as for the voters to make sure the right voter is actually receiving that absentee ballot. Those portions were moved to different parts of the bill, so the entirety of the section would make more sense overall.

Assemblyman Daly:
I wanted to make sure that we got some of that on the record. We are not opening this up. We have protocols that we are following. All of the safeguards that were there are still there.

Chairwoman Diaz:
Are there any further questions? Seeing none, we will open it up to testimony in support of S.B. 447 (R1).

Joseph P. Gloria, Registrar of Voters, Clark County:
I am here to testify in support of the bill. There are a large number of disabled and elderly voters who annually receive a notice from Clark County that gives them an opportunity to request a mail ballot. Putting this into the language gives them an opportunity to be able to file for that mail ballot for successive years.

I will answer some of the questions. There is language in the bill in section 5, subsection 4, paragraphs (a) and (b) that instructs Clark County not to send out a ballot if a voter becomes inactive. That can happen for several different reasons. If the electronic registration information center check that we run on our voter registration rolls through the National Change of Address (NCOA) or any mailers, such as the voter registration card that goes out to any voter, comes back indicating a change of address, or the mail comes back undeliverable, that would put them on an inactive list. It would require us to send out a card that can be forwarded that asks them to update their address and send that information back to us. We would update the address, and they would continue to receive their mail ballot. I am sure the Office of the Secretary of State could put a regulation in place so we can monitor the voters who have a mailing address that they choose to have their ballot sent to. We will need to do some maintenance in that respect to make sure that they are updating their information leading into every election. Clark County is in support of the bill. I would be happy to answer any questions.

Assemblyman Elliot T. Anderson:
What would happen in the instance when someone moves mid-year? They vote in the primary in one district and then go to the other. Would that be able to be accounted for to ensure that they are in the correct district with the ballot they have?

Joe Gloria:
There are checks in between elections where we run a NCOA to double-check the addresses. We do this in an effort to maintain a nonprofit postage rate here in Clark County and to keep the rolls clean. There are opportunities where we will send a notice. If it comes back, we would be sending a notice to that voter to update their address. At the beginning of every election year, we proactively send out a form to these voters and give them an opportunity to update their address. However, if they were to move and not notify us in between elections after we have run that check, there would be an issue. It is up to the voter to make sure they update that address with us.

Chairwoman Diaz:
Thank you, Mr. Gloria. We will continue to take testimony in support of S.B. 447 (R1).

Susan Merriwether, Clerk-Recorder, Carson City:
The county clerks already send an absentee notice to those voters. Having this in place will help the county clerks assist them with that. I also wanted to share that absentee ballots cannot be forwarded. When we have an address on file, and the voter is no longer at that address, the ballot will come back undeliverable or with a yellow sticker indicating a new address.

Dena Abeyta, Chief Deputy Clerk and Election Administrator, Douglas County:
We are in support of this bill. Personally, coming from Oregon and Colorado, I am really in support of this bill. I am really excited to see some permanent mail-in options for our voters. The clerks submitted a couple of amendments that were implemented, and we are really grateful that Senator Cannizzaro has been great to work with.

Assemblyman Daly asked about the sufficient written notice and what forms are accepted. What is accepted is in statute. The sufficient written notice is basically the information that has to be provided by the voter when they request the ballot. It can be a piece of paper where the voter writes, "Please send me a ballot to this address for this election. Here is my name and date of birth." They then sign it. The Secretary of State's Office offers a form, and each county offers a form as well. There are many options for voters to make that request. The form would have to be updated, and a voter would have to self-identify as disabled. We can check their age to make sure that they are at least 65 years of age. We hope this bill passes.

Barry Gold, Director, Government Relations, AARP Nevada:
We are very glad that this bill is here. Any way that we can increase the access and options for people to vote is a good thing. We are glad that people with disabilities are included and that the bill uses the age of 65 and not the word "elderly" because many of us in our sixties have not considered ourselves elderly as of yet. One-third of our members are under the age of 65, so on behalf of the 224,000 members who are 65 years old and older, and the 112,000 members under the age of 65, we urge you to support this bill.

Assemblyman Oscarson:
Since the last time you were here at the dais, has that number changed?

Barry Gold:
I am sure that it has. I will find out and let you know.

Chairwoman Diaz:
Is there anyone else wishing to testify in support? Seeing none, we will go to opposition. Seeing none, we will go to neutral. Seeing none, does Senator Cannizzaro have any closing remarks?

Senator Cannizzaro:
Thank you for hearing S.B. 447 (R1). If there are any more questions, I am happy to get the Committee more answers on this important bill.

Chairwoman Diaz:
With that, I will close the hearing on S.B. 447 (R1). I will now open the hearing on Senate Bill 491 (1st Reprint).

Senate Bill 491 (1st Reprint): Makes various changes relating to mechanical voting systems and mechanical recording devices. (BDR 24-491)

Senator Nicole J. Cannizzaro, Senate District No. 6:
It is a pleasure to be here today to introduce Senate Bill 491 (1st Reprint), which is intended to assist counties with populations under 100,000 to acquire new voting machines. Many of Nevada's rural counties have unique struggles, and the ability to pay for new voting equipment is sometimes limited. That is basically the crux of why S.B. 491 (R1) is important. We are seeking to provide some additional avenues for smaller counties to be able to obtain voting equipment that is up-to-date and loaded with the newest technology, so they are able to access those machines without having to worry about whether they can pay for it.

Nevada's election equipment is aging and has far exceeded its useful lifespan. I had an opportunity to look at the newer voting equipment that was on display a couple of weeks ago, and it was pretty cool. The voting machines used in Nevada today are based on late-1990s, early-2000s technology. Fortunately, from a security standpoint, we have been very lucky. There have been no reported breaches of voter secrecy, and our accuracy testing has ensured the smooth recording and verification of votes. However, there is a legitimate concern with regard to the actual mechanical functioning of the machines, and we simply cannot continue to use the computerized voting machines that are 15 to 20 years old. Eventually, their reliability will become questionable.

In January 2014, the bipartisan Presidential Commission on Election Administration (PCEA) issued a report and recommendations relating to the voting experience in America with particular focus on voting machines and voting technology. The Commission, which included former Clark County Registrar of Voters Larry Lomax among its members, issued the following stern warning, citing an impending crisis in U.S. elections regarding the state of our voting machines:

> Well-known to election administrators, if not the public at large, this impending crisis arises from the widespread wearing out of voting machines purchased a decade ago, the lack of any voting machines on the market that meet the current needs of election administrators, a standard-setting process that has broken down, and a certification process for new machines that is costly and time-consuming. In short, jurisdictions do not have the money to

> purchase new machines, and legal and market constraints prevent the development of machines they would want even if they had the funds.

A 2015 report from the Brennan Center for Justice titled "America's Voting Machines at Risk," also depicts a rather troubling scenario. The report noted "While it is impossible to say how long any particular machine will last, experts agree that for those purchased since 2000, the expected lifespan for the core components of electronic voting machines is between 10 and 20 years, and for most systems it is probably closer to 10 than 20." The report went on to say, "The majority of machines in use today are either perilously close to or exceed these estimates. Forty-three states are using some machines that will be at least 10 years old in 2016."

Here we are, two years after the issuance of that report and over three years after the Presidential Commission report, still discussing how we can get new voting machines into the hands of our Nevada counties. Fortunately, there is a bill draft request from the Assembly Committee on Ways and Means that proposes to appropriate money for this purpose; however, we do not know at this point what that bill will ultimately look like. What I do know is that S.B. 491 (R1) is an attempt, separate and apart from whatever appropriation is made, to make voting machines more accessible to our rural counties.

As a bit of background regarding Nevada's laws on voting machines, existing law authorizes a board of county commissioners to directly purchase mechanical voting systems and mechanical recording devices or enter into a lease with the Office of the Secretary of State for voting equipment with an option for the county to purchase such systems and devices. Senate Bill 491 (1st Reprint) provides an additional option for counties with populations of less than 100,000—currently all counties other than Clark and Washoe Counties—by authorizing the board of county commissioners of such a county to lease approved mechanical voting systems and mechanical recording devices from the Secretary of State's Office without the option to purchase.

If the state ultimately appropriates enough money to buy voting machines outright for the Secretary of State's Office, or even a partial purchase, the machines would already be owned by the state, and the option to rent would not obligate the counties to pay the full value of the machines. Under the bill, the county would agree to maintain and insure the machines for the duration of the lease agreement, but the state would retain ownership. Just like existing language authorizing the lease-purchase option, this new non-purchase option would require a two-year agreement between the county and the Secretary of State's Office with an exclusive option for the county to extend the term of the agreement for like periods of two years at a time.

Since the machines would, in theory, already be owned by the Secretary of State's Office, the rental payments under the agreement could have rather favorable terms for the county. The measure provides that the aggregate of rental payments under the two-year agreement must not exceed 10 percent of the purchase price of the systems and devices described in the agreement.

I am pleased to say that S.B. 491 (R1) is forward thinking in that it contemplates setting aside money for future voting machine purchases. Existing law provides that the rental payments from the lease-purchase option for voting machines must be deposited into the State General Fund. This bill specifies that all rental payments be deposited into a separate account in the State General Fund, and those funds be used to pay the costs of replacing aging and outdated mechanical voting systems and mechanical recording devices in the future. This would be setting up a place where we can continue to update our voting systems, so we can continue to have reliable elections in Nevada.

I would note that the language in section 1, subsection 3 is not new. As part of the amendment adopted in the Senate, *Nevada Revised Statutes* (NRS) 293B.105 was restructured, so section 1 of that statute stands alone. The new language shown in section 1, subsection 3 of S.B. 491 (R1) is the remaining portion of NRS 293B.105. Finally, throughout S.B. 491 (R1), we included the terms "mechanical recording device" and "mechanical voting systems" to ensure that we captured technology that might serve as both a voting machine and recording device in one system or operation.

With that, I would open myself up for any questions the Committee may have.

Chairwoman Diaz:
Are there any questions from the Committee?

Assemblyman Hansen:
I represent Lander, Esmeralda, Mineral, and Pershing Counties, which are all very small counties. They could lease the machines, but the Secretary of State's Office picks up the cost. I have less than 500 voters in the entire county of Esmeralda. What is the arrangement on the lease side of it? If there are 500 voters in tiny Esmeralda County, they do not want to pay $10,000 to the Secretary of State's Office. I am wondering what the arrangement is on that?

Senator Cannizzaro:
Some of the lease agreements will be drawn up on a specified county-by-county basis with the Secretary of State's Office. They currently enter into similar types of lease agreements from time to time. They provide for the payment of the entire voting machine, and these machines can be quite expensive. For the smaller counties, it is difficult to make sure they pay off the entire machine, and when it comes time for the machine to be replaced, oftentimes the machine is not paid off yet. This is an option, especially for smaller counties with smaller tax bases that do not have the money that Clark or Washoe Counties have to allocate for voting machines. This would be an option for them to structure those lease agreements in a way that works for the county and the state. For smaller counties with fewer voters, they would not need the same type of infrastructure of machinery that Clark County uses. This is just giving them another option. It is not requiring anything as part of the lease agreement except that the total amount of rental payments for that particular lease agreement cannot exceed 10 percent at that time.

Assemblyman Hansen:
It sounds great. Have any of the smaller counties approached you about it other than through NACO [Nevada Association of Counties]?

Senator Cannizzaro:
This bill came as a result of my pre-session meetings with some of the election clerks in some of the smaller counties. Douglas County and Carson City were part of it. We talked about some of the conversations they had with their counterparts in some of the rural counties. This was an overarching theme. Election machinery is becoming out of date. Oftentimes, one of the biggest barriers to that is the ability to pay for those machines. The idea behind this bill, as a result of those conversations with the clerks, is that we would try to facilitate an option in statute that might allow them to replace and maintain voting machines.

Chairwoman Diaz:
Are there any further questions? I do not see any. We will go to testimony in support of S.B. 491 (R1).

Susan Merriwether, Clerk-Recorder, Carson City:
The clerks are all in favor of this bill. The rural counties are facing struggles with the replacement of their software. I believe money is a little bit tight right now for them to update. I think that providing this benefit to their finances will help assist them with purchasing the equipment if the state funds do not come in fully.

Dena Abeyta, Chief Deputy Clerk and Election Administrator, Douglas County:
We are in support of this bill. Sue Merriwether has been nominated by all the rural clerks to represent them. As part of a team, we have been meeting quite frequently, and Senator Cannizzaro has been a pleasure to work with. She has heard our concerns. We hope this bill passes.

Chairwoman Diaz:
Is there any further testimony in support? Seeing none, we will go to opposition. Seeing none, we will go to neutral. Seeing none, does Senator Cannizzaro have any closing remarks?

Senator Cannizzaro:
I will close with saying thank you. Let me know if there are additional questions.

Chairwoman Diaz:
With that, we will close the hearing on Senate Bill 491 (1st Reprint). I will now open the hearing on Senate Joint Resolution 17 of the 78th Session, which is a proposal to amend the *Nevada Constitution* to include the rights of victims of crime. Senator Roberson is here to present the resolution.

Senate Joint Resolution 17: Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

Senator Michael Roberson, Senate District No. 20:
I am here to present Senate Joint Resolution 17 of the 78th Session, also known as Marsy's Law. It provides an expanded list of much-needed and long overdue enforceable constitutional rights to victims of crime. As members of the Assembly Committee on Legislative Operations and Elections, you are probably aware of existing constitutional provisions requiring Nevada law to provide some rights to the victims of crime. Portions of *Nevada Revised Statutes* (NRS) Chapter 178 set forth a number of protections for crime victims and witnesses. However, more needs to be done out of respect for those who suffer daily due to the effects of crime to ensure their voices are heard and their needs are recognized.

When crime victims have specific and enforceable constitutional rights, they are simply better served. Senate Joint Resolution 17 of the 78th Session will do just that. Marsy's Law is named after Marsalee "Marsy" Nicholas, a beautiful, vibrant University of California, Santa Barbara student who was stalked and killed by her ex-boyfriend in 1983. Only a week after Marsy was murdered, her family walked into a grocery store after visiting Marsy's grave. They were confronted by the accused murderer. They had no idea there had been a bail hearing or that the result of that hearing was his release. Marsy's killer was eventually convicted of murder and spent the rest of his years behind bars. The process that her family had been thrust into left them feeling hurt and re-victimized.

Their story is typical of the pain and suffering those family members of murder victims have endured. They were not informed because the courts and law enforcement, though well-meaning, had no obligation to keep them informed at the time. In 2014, Illinois passed a similar version of enforceable constitutional rights for crime victims. In 2016, North Dakota, South Dakota, and Montana passed them as well. In all of these states, Marsy's Law received broad bipartisan support and passed with overwhelming majorities on the ballot.

Last session, we worked hard to ensure that Senate Joint Resolution 17 of the 78th Session best-served Nevada and its crime victims. What the Committee has before it is the work product of months of collaboration. This collaboration included legislators on both sides of the aisle in both the Senate and the Assembly. It included district attorneys, public defenders, judges, victim advocates, the entire law enforcement community, and anyone else who was willing to come to the table.

In order for Senate Joint Resolution 17 of the 78th Session to qualify for the 2018 ballot, it must go through this session unamended. I truly believe this collaborative process led to a better resolution and has given way to the broad support we enjoy today. Paul Cassell, a professor at the S.J. Quinney College of Law at the University of Utah, is here to walk the Committee through some of the more technical aspects of the bill and answer any of your

specific legal questions. Professor Cassell is a former federal judge and has a history of over twenty years of advocating for victims' rights.

For now, I will give the Committee a brief highlight of what this resolution does. Among other rights, Senate Joint Resolution 17 of the 78th Session would give victims the right to be treated with fairness and respect throughout the criminal justice process; the right to be reasonably protected from the defendant and persons acting on behalf of the defendant; the right to be heard at critical stages of the trial; and the right to be notified of their rights as crime victims in Nevada. This resolution will give Nevada's crime victims equal rights, which is something I hope we can all support. The Committee will now hear from victims' rights experts, crime victims, victim advocates, members of the law enforcement community, and other supporters of Senate Joint Resolution 17 of the 78th Session.

William C. Horne, representing Marsy's Law for All, Las Vegas, Nevada:
Marsy's Law is a nationwide, Nevada-based effort advocating for the rights of crime victims. We are very fortunate to have individual supporters throughout the state, as well as 25 organizations representing advocates, law enforcement, labor organizations, and business groups. While our legislative intent is a focus on victims, we in no way want to infringe on the guaranteed constitutional rights of those who are accused or convicted of crimes. Rights of the accused are essential to the impartial operation of the criminal justice system. I was a criminal defense attorney, so I take these constitutional protections very seriously. With that said, we also believe that equitable protections for victims of crime are essential to the criminal justice process. Our request to this Committee is straightforward. We simply ask that the voters of Nevada be allowed to consider the protections for crime victims contained within Senate Joint Resolution 17 of the 78th Session.

To depart from my comments, I noticed some of the exhibits that were submitted by the public defender's office. As a former criminal defense attorney, one of the things that bugs me is when there is a client who has a police contact or is accused of a crime. The press will articulate the criminal history whether or not it is relevant to the particular situation. What is even more incensing is when I watch the news and there is a victim who has been killed or injured, the first thing people talk about is the criminal history of the victim. In this case, they have set out to highlight some accusations of Marsy's brother, who started this campaign. Senate Joint Resolution 17 of the 78th Session is about victims' rights and their protections in the *Nevada Constitution*. I do not know what the alleged criminal history of Mr. Nicholas has to do with protecting our victims in Nevada. I find it offensive, and the public defenders find it offensive when they are representing clients.

Chairwoman Diaz:
Just so that we make sure we stick to the policy, hopefully we can continue to articulate what the policy encompasses. I do not want to hear about how parties on either side of the aisle feel about their stances. I want to hear about the policy considerations the Committee is hearing by considering Senate Joint Resolution 17 of the 78th Session today. I want to stick to the content of the bill.

William Horne:
That is why I said my remarks. I do not believe that these handouts have anything to do with the bill. I would like to focus on the merits of Senate Joint Resolution 17 of the 78th Session as well. Clark County District Attorney Steve Wolfson is down south. I believe County Commissioner Marilyn Kirkpatrick is supposed to be there. She has not arrived yet. To my far left are former federal judge and Professor Paul Cassell from the S.J. Quinney College of Law, University of Utah.

Chairwoman Diaz:
We will go to District Attorney Steve Wolfson in Las Vegas.

Steven Wolfson, District Attorney, Clark County District Attorney's Office:
I have been involved in the criminal justice system in Nevada for close to 37 years. From the beginning of my career when I was a young prosecutor, my priority was helping victims and seeking justice. Even during my years as a defense lawyer, I was sensitive to the fact that the respectful treatment of victims during the handling of cases was important. Today, as the chief prosecutor for the largest county in Nevada, I am always concerned about victims' rights, and I take an active role in meeting with victims and their families on a regular basis.

I am going to veer from my notes to tell the Committee a short story. There was a horrendous double-murder in Las Vegas about two weeks ago. A man took a samurai-type sword, as was described by the eyewitnesses, and savagely murdered two totally innocent men on a random basis. That left two grieving widows. One of those widows happened to be a friend of a family member who reached out to me and asked if I would sit down with this woman to answer questions. I do this on a regular basis. I think it is my duty to sit down with victims and provide information. That is where I am going with this point. This lady came in. She is the mother of three adult children who now have to suffer the loss of their loved one. What she wanted more than anything was two things: she wanted information about the man who murdered her husband and about the case; and she wanted notifications and an ability to participate with dignity in the case.

In my experience, that is what victims want. They want to be able to participate. They want to be able to receive information about their cases and be treated with respect and dignity. I think that is the heart and soul of Marsy's Law. My office sees nearly 60,000 cases each year. It is easy for victims to become just a name in the documents and for their families to be left out of the conversation. That is not how it should be, and we can change that with Marsy's Law. This victims' bill of rights will further provide victims with information that will help them endure the frustrating and frightening process of being an integral part of a criminal prosecution. Anything we can do to ensure victims do not suffer further victimization is critical to their healing and ability to feel closure in their case. This is our duty. They need to know that they will be kept informed and that their voices matter.

Marsy's Law protects victims and guarantees their voices will be heard. Changing the *Nevada Constitution* is not something that should be taken lightly. However, making sure

that victims have as many rights as criminals is the best reason I can think of to make a change. What better way to let everyone know how important the protection of victims' rights is in our justice system than to spell it out in the *Nevada Constitution*. Let us get this to the constituents. Let us give the voters the opportunity to help us further protect victims of crimes.

I will close with these remarks. I began my career as a prosecutor, but then I was a defense lawyer for 25 years before I became the Clark County District Attorney. I have experienced both sides of the system. A common thing for victims is that they want to be treated with respect. They want to be on equal footing with the accused, and they want to have a bill of rights that will expand the list of rights they already have.

Paul G. Cassell, Ronald N. Boyce Presidential Professor of Criminal Law, S.J. Quinney College of Law, University of Utah:

I am a law professor at the S.J. Quinney College of Law, University of Utah. I am pleased to be here today to testify in support of Senate Joint Resolution 17 of the 78th Session. I know this is the second session in which it has been in front of the Nevada Legislature. It is an effort to update Nevada's existing constitutional protections to make them more state of the art.

Let me give the Committee a bit of background about my ability to testify as to the importance of state constitutional amendments. I graduated from Stanford Law School, clerked on the United States Court of Appeals for the District of Columbia Circuit and then on the U.S. Supreme Court for Chief Justice Warren E. Burger. I worked for two years in the U.S. Department of Justice in Washington, D.C., and then served for four years as a federal prosecutor. I then went back west and have been teaching law since 1992 at the University of Utah. In 2002, I became a federal judge, and I served for over five years in Utah where I had a chance to work with the Crime Victims' Rights Act, which had a lot of the same language that is contained in Senate Joint Resolution 17 of the 78th Session.

I resigned my position in 2007 because I wanted to go back to what I am passionate about: doing pro bono work for crime victims around the country. I have argued for victims all over the United States. I have even argued a case in the U.S. Supreme Court for Amy, a young victim of child pornography. I am the coauthor of *Victims in Criminal Procedure*. It is the only law school casebook on crime victims' rights. That is the background that I bring when I testify here today.

I think it might be useful for members of this Committee to know where Senate Joint Resolution 17 of the 78th Session comes from. What is the big picture here? This may be too much of a law professor's take on some of these things. Going back 200 years, it is interesting to look at how our criminal justice system first started. It was essentially a system of private prosecution. If a rancher's cow was stolen, the rancher would be responsible for apprehending the thief, taking the case through the process, and even serving as his own prosecutor. In that system, the victims were very much the center of the process. Restitution and other victim-centered outcomes were what the system was about.

As our country became more developed, large urban areas began to develop the idea that someone having self-help and going out to capture the bad guy on their own did not work. You needed police forces, prosecution agencies such as District Attorney Wolfson's, and others that developed. As those public agencies developed, victims were pushed more to the side. Around the 1960s and 1970s, America woke up and said, "Wait a minute. We have pushed victims completely off to the side of our criminal justice system."

It is interesting to look at some of the first voices that recognized that problem. I think the Women's Rights Movement was one of the first. They would look at rape cases, and they would see prior sexual history being brought in about a woman being raped that had nothing to do with the case, so they urged changes. The Civil Rights Movement was concerned about violence directed against minorities that was not being effectively prosecuted, so they began to speak on behalf of victims. That first became something that was nationally recognized. One of the dates that is prominently highlighted by the Modern Crime Victims' Rights Movement is 1982, when the President created the President's Task Force on the Victims of Crime. They concluded that our criminal justice system had lost an essential balance. The system deprived the innocent, the honest, and the helpless of its protection. They recommended a series of reforms for the state and the federal criminal justice systems, including a federal constitutional amendment that would protect victims' rights.

Defendants have rights in the *U.S. Constitution*, as they should, but there is nothing in there for victims. The Crime Victims' Rights Movement then said, "Passing a federal amendment is a daunting task. We just cannot run out and do that. Let us go to the states, put in place appropriate state amendments, and see how that works. That will make the case for going to a federal amendment." Rhode Island was the first state in 1986, Michigan was in 1988, and more and more states continued to pass constitutional amendments. In 1996, the voters in Nevada overwhelmingly passed its constitutional amendment. Thirty-five states passed what I would call "first-generation" constitutional amendments. They were based on the best information that existed. For example, Nevada passed one in 1996 to try to protect victims.

As things were investigated, a number of people began to realize that the first generation of amendments was not enough to do the job. In fact, going back to 1996, President Bill Clinton said that we needed a federal amendment, because the states were not quite providing victims with what they needed. In 1997, Attorney General Janet Reno said that while the state provisions were useful, they had not gone far enough and had failed to fully safeguard victims' rights.

In 2004, an effort was made on a bipartisan basis to amend the *U.S. Constitution*. There was a majority support for that in both the U.S. House of Representatives and the U.S. Senate. However, to amend the *U.S. Constitution*, there has to be a two-thirds majority in both the House and the Senate. Those days, like today, in Washington, D.C., it is very difficult to get two-thirds of people to agree on anything. In 2004, the federal government passed a Crime Victims' Rights Act. They said, "Alright, let's pass this statute now, and let's see how we can move forward." The Crime Victims' Rights Movement said at that point, "All right, let's move forward. Let's go back to the states, and let's take some of these

first-generation constitutional amendments that, while well-intentioned, didn't go far enough and did not provide a complete protection for crime victims." In 2008, California became the first state to pass what I would call a "second-generation" amendment. In 2014, Illinois became the next state. North Dakota, South Dakota, and Montana have done that already. In 2018, Oklahoma is going to have an amendment on its ballot. These are both red and blue states. This is not something that is done on a partisan basis; this is something that is done because it is simply the right thing to do.

Some members of the Committee may know Professor Laurence Tribe from Harvard Law School. He and I wrote an article together talking about why we need to put victims' rights in the *U.S. Constitution*. I said that within these are rights not to be victimized again through the process by which government officials prosecute, punish, and release accused or convicted offenders. These are the very kinds of rights with which the *U.S. Constitution* is typically and properly concerned: the rights of individuals to participate in all the governmental processes that strongly affect their lives.

Why should there be victims' rights in the *Nevada Constitution*? The people of Nevada have already decided that they should be there. In 1996, 74 percent of the electorate put victims' rights into the *Nevada Constitution*. However, we have learned some things in the last 20 years. When I look at the very short list of rights in the *Nevada Constitution*, I see a number of gaps, oversights, and things that are missing. I know that the people in Nevada who worked on Senate Joint Resolution 17 of the 78th Session came to the same conclusion.

Nevada's amendment back in 1996 was state of the art. It is no longer state of the art, and Senate Joint Resolution 17 of the 78th Session is a chance to make Nevada's protections for crime victims state of the art once again. It includes a long list of different rights, and I would be happy to talk about the language in each of them. I have worked with language like this when I was a federal judge. It draws on language from other states and from the federal Victims of Crimes Act of 1984, but people in Nevada have worked very carefully to craft the language so it fits comfortably with Nevada's criminal justice system. It has been endorsed by the Nevada District Attorneys Association, and we just heard the district attorney from Nevada's largest county say that this can be effectively implemented in Clark County. It has been endorsed by the Nevada Office of the Attorney General and the Nevada Sheriffs' and Chiefs' Association, which handles things from a law enforcement point of view. It provides carefully crafted language.

Let me take one more minute to address some of the objections that have been raised. I picked up a flier that says that this will lead to lawsuits against police officers and prosecutors. I am sure that came as news to District Attorney Wolfson, because he has looked at the language and does not see that being a problem. The people who are raising these objections misunderstand the way these constitutional provisions work. These provisions provide standing for crime victims to say, "Wait a minute. I have a right here. I want to be heard on this." They are entitled to enforce their rights, not to file distracting lawsuits. If you go to Nevada's neighboring state of Arizona where something like this has

been in place for 20 years, talk to Bill Montgomery, the District Attorney for Maricopa County in the Phoenix area. He will tell you that they have not had any problems like this. I read that this would get rid of dispassionate justice in Nevada. That objection makes no sense whatsoever. This proposed amendment would give a voice to victims, but not a veto. They can express their point of view. Sometimes the judge will agree with them, and sometimes the judge will not. This does not change anything about dispassionate justice. It simply provides more voices and more information for judges and others to make appropriate decisions.

I read that this would somehow limit the ability of prosecutors to present a plea bargain. That is not true at all. This simply requires that victims have the opportunity to confer with prosecutors so they can provide their point of view. The prosecutor still makes the final decision about what to do, but that final decision will be informed from having heard from people who have been dramatically affected by these crimes.

Finally, we are asked who knows what this definition of victim means. I know what it means, because I was a federal judge for five and a half years. For five and a half years, I applied exactly that same definition, which is found in the Victims of Crime Act 18 U.S.C. § 3663; it is found in the Mandatory Victim Restitution Act 18 U.S.C. § 3663A; and it is found in the Crime Victims' Rights Act 18 U.S.C. § 3771. It requires that someone be directly and proximately harmed. In 99 percent of cases, there is not even going to be a debate. A woman who has been raped is a victim. A robbery victim is a victim. It is not that difficult to figure out.

I urge you to pass Senate Joint Resolution 17 of the 78th Session. Send it on to the voters of Nevada. People can debate whether they think it is a good or bad idea. At the end of the day, all Senate Joint Resolution 17 of the 78th Session does is allow the voters in Nevada to make the decision.

Chairwoman Diaz:
I am going to open it up to questions from the Committee. Assemblyman Anderson has a question for District Attorney Wolfson.

Assemblyman Elliot T. Anderson:
I wanted to ask you a question on Section 23, subsection 1, paragraph (e) of the proposed amendment. It talks about refusing interviews or deposition requests. Do you interpret that section to still allow you to do material witness warrants if you have a victim? One of the reasons I supported you on Assembly Bill 193 of the 78th Session was that sometimes there is an inability to move forward with witnesses who are a bit more vulnerable and afraid to come up and speak. When I read that section, I started thinking about that. Do you interpret that to get rid of your ability to do those material witness warrants?

Steven Wolfson:
The simple answer is no. I do not see it as a problem whatsoever.

Assemblyman Elliot T. Anderson:
The other question that I had for District Attorney Wolfson is about what the District Attorney's Office does for victims now. Can you talk about what your office does now, and if you think it is adequate in terms of providing comfort to victims and making sure that their voice is heard?

Steven Wolfson:
When I was a deputy district attorney in the early 1980s, then-District Attorney Bob Miller began his champion efforts at proposing victims' rights. He carried that on all the way through his governorship. We do a pretty good job now at providing a number of these things on our own. We allow victims to provide victim impact statements. We give them, to the best of our ability, notice of proceedings and an opportunity to be heard. Victims provide input to prosecutors for purposes of whether we should plea bargain a case, but they do not control what a prosecutor does. To answer your question, we do some of these things now pretty well, but we could do better. This Senate joint resolution provides a vehicle for us to do even more. Let us allow this debate to occur next year before Nevada's voters. It will be a good debate, but I believe at the end of the day, the voters will be convinced that this will be a good thing, as it expands even more rights for our victims.

Assemblyman Elliot T. Anderson:
As you read the proposed resolution, what do you interpret this to require that you are not doing now? What will this constitutional amendment force you to do that you are not doing?

Steven Wolfson:
I do not think we provide status updates on cases as well as we could. We have thousands of cases—misdemeanors, gross misdemeanors, and felonies. I have a couple of women in the front of my office who handle hundreds of phone calls on a daily basis, because people want to know the status of their case. I do not think we do a good enough job on that. Most of the people I come into contact with crave information. Once they receive information about the case they are concerned about, they feel better. They feel more relaxed. They feel informed. I think we could do a better job at providing status updates on cases.

Victims want to be present at critical court proceedings. I have victim advocates in my office who do a good job at providing information, but there are many victims out there who do not learn about the critical hearings. I think we could do a better job, and I think Marsy's Law will require us to do a better job at providing information regarding critical court proceedings. I think we can improve on a number of the other things that are located in this Senate joint resolution.

Let me say one more thing. When I was first approached and asked to support this bill, I had some reservations. I then read the bill closely, and there are words throughout this bill, such as "reasonable notice," "reasonably hurt," and "to be informed upon request." Not every victim cares. Not every victim makes a specific request for information. I believe this law provides prosecutors with discretion and the ability to provide information, upon request, to victims.

Assemblyman Elliot T. Anderson:
Mr. Wolfson, are you familiar with the bail factors that we use now in terms of the factors that we have? We are doing some experiments with objective, evidence-based bail. Are you familiar with those factors?

Steven Wolfson:
Absolutely. I have been familiar with them for many years.

Assemblyman Elliot T. Anderson:
One of the factors, as you know, is to take the safety of the community into account already. Do you interpret Section 23, subsection 1, paragraph (c) of the proposed text to require anything additional to what is required pursuant to NRS 178?

Steven Wolfson:
I do not know that it requires us to do anything more, but I think it makes it more important for consideration for the difficult decisions that our judges have to make concerning bail. If this is part of the *Nevada Constitution*, the judges have to consider the safety of the victim and the victim's family. I think it will make the judges think even more carefully about that factor, among all of the other factors, when determining whether to set bail or to detain an individual.

Assemblyman Elliot T. Anderson:
The other question I had was in regards to reigning material. The *U.S. Constitution* would supersede the *Nevada Constitution* in terms of rights that are derived from the *U.S. Constitution*. I wanted to check in terms of how you think the interplay will be between the provisions of this resolution that require confidentiality when it might abut against exculpatory information. Can you comment on how you think your obligation will or will not change? Could it be potentially more difficult to make sure that exculpatory information is provided?

Steven Wolfson:
You ask such challenging questions. I do not think anything in this law, should it become part of the *Nevada Constitution*, will affect our obligations under *Brady v. Maryland* [373 U.S. 83 (1963)] and *Giglio v. United States* [405 U.S. 150 (1972)]. Those are such important requirements. All of the prosecutors in my office take the *Brady* requirement to provide exculpatory information very seriously. If there is a conflict, we will side on the side of our constitutional requirements and our requirements under *Brady*. I do not think anything in this bill is going to affect our obligations under *Brady*.

Assemblyman Elliot T. Anderson:
I have one last question. Whoever is on the panel can answer this one. I think that this is something that everyone can understand. Those other questions were more focused on the prosecutor's office. I would think at some level that being in court is intimidating, period. When I read Section 23, subsection 1, paragraph (a) of the proposed amendment, it says, ". . . to be free from intimidation." Is that not a subjective thing that is hard to really

understand? If I am in court, even as a witness or someone at a hearing, it can be intimidating. I am sure Mr. Cassell has seen many people who are scared to be there. Can we really protect people from being intimidated in court? It is something that is felt; it is not something objective. A bunch of people in suits and ties asking hard questions about difficult subjects, just by its nature, can be really intimidating. Can we really protect people from being intimidated?

Paul Cassell:
Can we prevent all forms of what might be broadly construed to be intimidation in the criminal justice process? No. People may be nervous when they are testifying. I think you made that point very accurately. However, there are different kinds of intimidation. Someone is intimidating someone by threatening them or sending them threatening communications. That is what I believe Senate Joint Resolution 17 of the 78th Session is aimed at.

You raise the question of what is going to happen once this language is put into the *Nevada Constitution*. You can look across the border to the west. California has had language like that now for about 9 years; Arizona has had language like that for 22 years. There have not been these kinds of problems. There has been, instead, an ability for courts to say, "Wait a minute. If this is going to be intimidating in an unreasonable way, I am going to restructure my proceedings to be fair to defendants, but fair to victims as well." District Attorney Wolfson gave a good analogy when he said that this is going to provide tools. It is going to provide tools for the district attorney's office in Clark County. It is going to provide tools for judges all across the state to try to make sure that victims are not unfairly intimidated, which is what Senate Joint Resolution 17 of the 78th Session would target.

Assemblyman Elliot T. Anderson:
Where my hesitation comes from is that it takes a long time to change the *Nevada Constitution*. Had this been put into statute, I would have no problems. My whole session has been taking things out of the *Nevada Constitution* for the reason that we cannot always adapt as quickly as necessary if there are unintended consequences. It is not that I am afraid of any of this, but we need to have a good record if we are proposing to put it into the *Nevada Constitution*. There are many cases day to day that are going to be affected by this language, and the court is going to be searching for meaning to all these provisions.

Assemblyman Daly:
I appreciate the professor giving the Committee some of the history of the evolution of our prosecution system. I am reminded that part of our criminal justice system and the evolution we have come to is not all about punishment anymore. There is an element of that, but also it is about rehabilitation. We call the prison system the Department of Corrections. There is an effort to have some rehabilitation and get people back into society as well. In subsection 1, paragraph (l), it talks about how now people have the constitutional right "To full and timely restitution." I am not opposed to people getting their restitution, but I also know that you cannot get blood out of a turnip. I also know that this session the Assembly Committee on Judiciary passed some rules and laws that said that if a person is meeting everything else he

needs to do to get out or to get a job but has not been able to pay restitution, that should not be a barrier to him getting out and being a productive part of society. When looking at subsection 2 of Section 23, victims have a standing to come and say, "I need my money or my restitution. I want my pound of flesh." I do not know if that is going to mesh very well with the corrections and rehabilitation part that we are trying to do with that language.

Paul Cassell:
It is an excellent question, and I think it has a very straightforward answer. This constitutional provision gives a victim a right to an order of full restitution. There are going to be cases where a defendant takes a million dollars from someone, and it is just not feasible to ever pay that back. What the judge would do in that situation is order the defendant to pay one million dollars. That can be recorded as a judgment in case the defendant wins the lottery or something like that. The second thing the judge does is set up a payment schedule of $100 a month, or whatever it may be. I agree with you, and I think District Attorney Wolfson can chime in as well about Nevada procedures.

I will give you my perspective from other states and the federal system. This does not say that if someone has not paid their restitution, they are going to be locked up. When I was a judge, I had cases where victims could come in and say, "Look, don't lock this fellow up. Put him on work release or something like that, so he can continue to pay restitution." I think sometimes people hear victims' rights, and they say, "This is a ploy for the law and order people to lock people up." One of the things that I think is important to understand is that there are going to be some victims who want to lock people up, and there are going to be some people who want to let them go. This is not about making sentences longer or shorter. It is about making them based on full information. A judge ought to know what someone has lost when deciding whether to award restitution. That is all this would do.

Assemblywoman Monroe-Moreno:
After working years in law enforcement, I have seen both sides of this issue. The word "reasonably" is used in this language over and over again. Who is going to determine what is reasonable for time? Would that be the victim, the district attorney's office, or the judge? Who determines the reasonable timing?

Paul Cassell:
I was a judge, and under the Crime Victims' Rights Act in federal law, there were many of the same reasonable notice requirements. At the end of the day, it is ultimately going to be up to a judge if there is some kind of dispute. That is how disputes are settled in the criminal justice system. In the first instance, there are some provisions here for reasonable notice. I think that is a direction for District Attorney Wolfson and his colleagues around the state to say, "In these circumstances, what is a reasonable way to provide notice? We need to do what we can in the district attorney's office to be reasonable and fair." They will make the decision in the first instance. If a victim does not think that is fair and wants a neutral decision maker to decide, they have standing to go in front of the judge and have the judge make a final decision.

Kevin Powers, Committee Counsel:
The Legislative Counsel Bureau Legal Division is a nonpartisan legal agency. We do not support or oppose any particular piece of legislation, viewpoint or policy. However, we provide the Legislature and its committees and members with objective legal analysis and advice.

With regard to the term "reasonable," it is legal standard that generally means what an objective, reasonable person would consider to be necessary and appropriate based upon all the facts and circumstances of the case. For example, this constitutional provision provides victims' rights in both misdemeanor cases and felony cases. What would be considered reasonable notice or reasonable participation by the witness would be governed by the nature of that crime. The standards for the victim and what they are entitled to in a misdemeanor case would generally be different compared to the felony case. It would be an objective standard, not subjective to the victim or the person who is making the initial decision, and ultimately the court. It would be an objective, reasonable standard.

I agree with Mr. Cassell that the initial determination would be made either by the prosecuting attorney, if that is the issue that is involved, or the law enforcement agency. If a victim disagreed with that determination of reasonableness, then the victim would have the right to go to court and have the judge make that determination. When a court makes a determination based on reasonableness, that is the standard the court uses in very many contexts. The courts are often charged with making the determination of what would be an objective, reasonable person, and what they would consider reasonable, necessary, and appropriate under the facts of the case.

Assemblywoman Monroe-Moreno:
Section 23, subsection 7, says that a victim means a person who is directly affected, but you extend what a victim is. Who is included in that statement?

Paul Cassell:
This is an area where I can speak with a little bit of authority. With regard to the phrase "any person who is directly and proximately harmed," there were three laws that I worked with very often when I was a federal judge that used exactly the same language. Lawyers immediately have an understanding of what the word "directly" means and what the word "proximately" means. Directly means, what we would call as lawyers, "but for" causation. If this had not happened, then this would not have happened. This is a simple illustration: I had $100 in my wallet, and a robber took it. I have been directly harmed by that, because if he had not robbed me, I would have had the $100.

What about that word "proximate?" That is a lawyer term for "reasonable." You might be able to trace out a series of events and say, "Look, if this hadn't happened, then this would not have, and so on and so forth." At some point, we say, "Well, that isn't a proximate harm. That is an indirect or attenuated harm." This simply says that we are going to cut off the

chain of events at some reasonable level. In 99 percent of the cases, there is not even going to be a debate. It is going to be straightforward as to who was directly and proximately harmed. In 1 percent of cases, ultimately, the judge would make the decision if there was a debate.

Assemblywoman Monroe-Moreno:
What is reasonable to me is not reasonable to him or her. That might be an issue that would come forward. If there is a crime committed, I could see the mom, dad, sisters, and brothers being victims. If a crime is committed, and there are people outside that witness the crime, could they also be included as victims?

Paul Cassell:
Witnessing a crime can be a very traumatic event, but that is not the kind of thing that creates rights under this amendment. There has to be direct and proximate harm. A judge might say, "I want to hear from some of those other people, because they will provide useful information to me in making a decision." However, they do not have rights under this amendment.

Assemblywoman Bilbray-Axelrod:
With the current volume of cases you have right now, are you going to have to hire more people in order to do what this is asking you to do?

Steven Wolfson:
We do much of this now. I have a victim advocate and a victim witness division of my office where I have 20 or so employees who do many of these things right now. I think only time will tell. If I need to add a couple of victim advocates or increase or improve a process to better inform people, we will do it. We do so much of this now that it is not going to be an extremely different mandate put on my office.

Assemblyman Ohrenschall:
My question has to do with subsection 4 on page 3 where it says, "A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto." I keep thinking of a scenario. Let us say that I open a business with my best friend. Things go south, and our business fails. In closing up the business, I find that I believe my best friend has embezzled money, and that was a cause of the business failing. I go to the police or the district attorney's office, and they tell me, "Sorry your business failed. This is a civil matter. We suggest you hire a civil attorney and go after your former business partner." Given the language in subsection 4 about how a person who feels aggrieved may maintain an action to compel a public officer, do you anticipate that there could be litigation that might affect your prosecutorial discretion? Maybe someone believes they are a victim, but one of your prosecutors does not believe the case is winnable, has enough evidence, or believes it is a civil matter. There may be litigation that is going to come from that aggrieved person who believes that criminal charges should be pursued, but they are not being pursued. Can anyone discuss that?

Steven Wolfson:
I would be glad to address that. I do not believe any part of subsection 4 affects a prosecutor's discretion to bring a charge. We have total and complete discretion to determine whether to file charges against someone or not. I do not think subsection 4 applies to the prosecutorial decision on whether to bring a charge. The language in subsection 4 talks about ". . . an action to compel a public officer or employee to carry out any duty required by this section . . . ." I do not think this law addresses the prosecutor's discretion of whether or not to bring a charge.

Paul Cassell:
I would highlight one other thing too. Subsection 2 of Senate Joint Resolution 17 of the 78th Session does not alter the powers, duties, or responsibilities of a prosecuting attorney. A prosecutor has to make the hard decision of whether to file charges. If the prosecutor decides not to file charges, you cannot go in and file some action to say that the prosecutor made the wrong decision.

Assemblyman Ohrenschall:
I appreciate that answer. The way I read it, that was my concern. If a prosecutor decided not to file, someone might disagree with that. They might seek court action on that. I hope that is the way it is interpreted if it passes into law.

Chairwoman Diaz:
Are there any further questions? I do not see any. I will now take testimony in support of Senate Joint Resolution 17 of the 78th Session.

Senator Roberson:
We have a list of proponents. I know Clark County Commissioner Marilyn Kirkpatrick was going to try to be here today. I do not know if she is at the Grant Sawyer Building.

Steven Wolfson:
She is not here.

Senator Roberson:
Let the record reflect that she supports this bill and intended to be here today as a supporter. There are a number of folks here and in Las Vegas. We will have some folks from law enforcement come up now.

Kristin L. Erickson, Chief Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
We would like to thank Senator Roberson for bringing forth this very important piece of legislation, recognizing victims and all that they go through, and giving them a voice to speak during the confusing criminal justice process. We support this legislation.

Robert Roshack, Executive Director, Nevada Sheriffs' and Chiefs' Association:
We would also like to thank Senator Roberson for bringing this forward, and we totally support this resolution.

Michael Giurlani, President, Nevada State Law Enforcement Officers' Association; and representing Peace Officers Research Association of Nevada; Las Vegas Police Protective Association; and Nevada State Law Enforcement Coalition:
I am a retired state trooper, and I was a trooper for 25 years. Many people do not realize that even in law enforcement, officers are victims of crimes. I was involved in three officer-involved shootings in my career. It is a different perspective when you are standing in the courtroom, even as a police officer, and you are looking at a person who you were exchanging gunfire with a few weeks ago. You are trying to remain composed and show your internal strength to the jury to show that you can do the job and be all that we are in law enforcement. When you are sitting there, and the defendant starts winking at you, blowing you kisses, and throwing gang signs at you, that is a level of intimidation. That is a level of frustration and a level of anger. That kind of stuff is uncalled for. There are many other types of threats.

My first shooting was here in Carson City in 1994 in the Smith's parking lot. I received a death threat from that. The entire summer went by, and I had to keep looking over my shoulder until this case was adjudicated. Subsequently, the members of this gang out of Oakland, California, were brought to justice. We support Marsy's Law. We wholeheartedly support Senate Joint Resolution 17 of the 78th Session.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers:
Law enforcement is typically the first to encounter the scene. They are the first to encounter the victims. Law enforcement most assuredly supports victims' rights. This resolution is pretty basic. It deals with victim fairness, protection, safety, timely resolution of their cases, communication, and other things. How are we going to oppose that? It is time we put this in the *Nevada Constitution* to provide an open, notorious, and absolutely thoughtful response on behalf of our victims. We need to do that. We need to do that now. You are part of that process. We urge your support for Senate Joint Resolution 17 of the 78th Session.

Kerrie Kramer, representing The Cupcake Girls, Las Vegas, Nevada:
The Cupcake Girls are a resource organization that works to rehabilitate victims of sex trafficking, amongst others. We are in support of any measure that would benefit the victims and their families of sex trafficking, and oftentimes, the domestic violence that accompanies trafficking victims. We are very much in support.

Marlene Lockard, representing Nevada Women's Lobby; and Las Vegas Police Protective Association Civilian Employees:
We support this measure.

Cory Hernandez, representing Tu Casa Latina, Reno, Nevada:
I am here on behalf of the Executive Director of Tu Casa Latina. We are here in support of Senate Joint Resolution 17 of the 78th Session.

Barry Gold, Director, Government Relations, AARP Nevada:
We support this measure.

Austin Slaughter, Legal Assistant, Latin Chamber of Commerce Nevada, Inc.:
The Latin Chamber of Commerce Nevada, Inc. would like to be on the record in support of this measure.

Kelvie Malia Stamm, Private Citizen, Las Vegas, Nevada:
[Ms. Stamm read from prepared testimony, page 11 of (Exhibit C).] I am lucky to be alive. When I met my now-estranged husband while I was a Bible study teacher, I knew that he had a very checkered past, but I thought he was on his way to bettering his life. While working as a traveling notary for the state of Nevada, he began stalking me. He would assume my iCloud account to monitor my calls, texts, emails, and pictures. It got to a point where he would track me on my Find My iPhone app to find out my whereabouts. He was extremely abusive in any manner: verbally, mentally, sexually, physically, and financially.

September 2016 was when my most recent attack happened. I returned home from work to regular verbal harassment and abuse. I lay down and took a nap, only to be woken up by him punching me in my back. From there, he forced me into our truck. While I was sleeping, he was drinking, and he was drunk. While he was drunk, he was swerving all over the road, hitting me, even in our vehicle. He even momentarily left the vehicle at times. He fought strangers in the middle of the road on our travel. He pulled into a drive-through to get food, and this is where I attempted to escape him.

I ran to a nearby church to try to find anyone to help me call the police. He chased me with the truck. At one point, he did not care if he would smash into a concrete wall behind an alley where I had hid from him. He realized I would not stop running and hiding, as I had been trying to leave him for quite some time due to the extent of the traumatic abuse I was suffering. At that point, he attempted to throw me back in the truck. Before he did so, he grabbed me and repeatedly pummeled me in the face with a closed fist. He even fled the scene of the crime. Before doing so, he threatened me, my livelihood, my property, and my children. He told me that I would see him again and he was mine, among other threats. When he fled the scene, he took my purse with my money and keys, leaving me completely helpless. My face was bleeding, and I was throwing up blood. I could barely even speak. I was bedridden in a safe house, and even had injuries to my head. After being arrested two and a half months later, he was finally released on bail. He made bail within less than 19 hours.

At the next hearing, I was intimidated by his army of friends, family, and his attorney. At one point, the defense even tried to cite my lack of immediate attention to file a statement as grounds to drop the case. I did not take immediate action because I was in a safe house.

I had many things to deal with due to the robbery and the abuse. At the arraignment for his warrant for assault with a deadly weapon, he was given intensive supervision and was able to walk the streets with absolutely no restrictions. The next court date, which was supposed to be scheduled for February 7, was cancelled. The defense got a continuance due to a conflict of interest with dates, even though we all knew about these dates for a while.

The same thing happened on April 4. The continuance kept pushing back these courts dates, even though we had known about them for months. There are many sections that would benefit me as far as Senate Joint Resolution 17 of the 78th Session. I look forward to a future of not worrying about my personal safety, my estranged husband, or the army of people he brings to court to intimidate me by whispering things in the hallways, saying slurs to me, and threatening me. Senate Joint Resolution 17 of the 78th Session will also allow me pivotal notifications—things that I deserve and want to know, since I am a part of this integral prosecution process. I also wanted to let all of you know that I do not want to include my personal contact details for fear of future victimization.

Annette Scott, representing SAFE House, Henderson, Nevada:
We are 100 percent in support of Senate Joint Resolution 17 of the 78th Session. As a 20-year advocate, I have worked with every type of victim of crime. Although every case is different, what has always been consistent has been the imbalance that survivors face in the system. As advocates know, the system can re-victimize survivors. Ironically, the system would not exist without crime victims, yet crime victims are left without a voice. By supporting Marsy's Law, you are giving crime victims and their survivors an opportunity to have a greater voice, equality, dignity, and the respect they deserve.

Ed Williams, President, Log Cabin Republicans of Nevada:
Our organization is the oldest and largest representative of conservative lesbian, gay, bisexual, transgender, and queer (LGBTQ) allies and members. We stand in support of Senate Joint Resolution 17 of the 78th Session, as the LGBTQ community and their families are disproportionately affected by crime, particularly violent crime. We stand in support of this measure and encourage the Committee to put this matter before the voters of Nevada.

Liz Ortenburger, Chief Executive Officer, Safe Nest, Las Vegas, Nevada:
I am the Chief Executive Officer for Safe Nest, the largest domestic violence organization in Nevada. We are strongly in support of this bill. We hope it passes for the 43,000 victims we supported last year.

Chairwoman Diaz:
I wanted to thank Ms. Stamm for being brave and sharing her story with us today. Is there any further testimony in support of Senate Joint Resolution 17 of the 78th Session? Before I switch to opposition, Assemblyman Anderson has a question for our legal counsel.

Assemblyman Elliot T. Anderson:
When Assemblyman Ohrenschall asked about subsection 4, where it talks about maintaining an action and prosecutorial discretion, I believe Mr. Cassell pointed out the language in subsection 2. It says, "This section does not alter the powers, duties or responsibilities of a prosecuting attorney." I wanted to check and see if you think that that organization would be a problem. Because it says, "This section" and it is inside of subsection 2. Normally, when I see language like that, it has its own subsection. I believe that Assemblyman Ohrenschall was asking about subsection 4. That language was pointed out in subsection 2. I admit that it does not say rights in that subsection, but I just wanted to get a record on that, and if you could help us understand if that would affect all of Section 23 or just Section 23, subsection 2.

Kevin Powers:
As a standard of drafting, our office uses the term "this section" to refer to the entirety of the section. The reference in subsection 2, "This section does not alter the powers, duties or responsibilities of a prosecuting attorney" refers to all of the proposed Section 23 that would be adopted in the *Nevada Constitution* if approved by the voters. In addition, as a basic rule of statutory and constitutional construction, no provision of a constitutional or statutory section is read in isolation. Instead, all sections must be read together and harmonized. Therefore, the provision for the action to be brought by a person to enforce the rights under that section of the *Nevada Constitution* has to be read in conjunction with subsection 2, where it talks about how it does not alter the powers, duties, and responsibilities of a prosecuting attorney. In essence, subsection 2 acts as an exception to the action that is provided in subsection 4. That action cannot affect the powers, duties, or responsibilities of a prosecuting attorney.

Chairwoman Diaz:
Before I open it up for opposition, I am going to clarify that I will be strict. There should be no reference to anything that is not in the bill. We want to stick to the merits of the bill, and why it is not a good policy decision. I will open it up for testimony in opposition.

John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office:
[Mr. Piro read from a letter (Exhibit D).] It is without question that Marsy and her family, along with the lady who testified today, have experienced incredible tragedies. However, Senate Joint Resolution 17 of the 78th Session is a Trojan horse of problematic and costly constitutional changes that dramatically alter the criminal justice policy in Nevada. In relation to Marsy's family, in particular, it presents this tragic case as justification for a constitutional change. It is not just a law that can be tweaked if unintended consequences result. It changes the *Nevada Constitution*, which cannot easily be tweaked when the billionaire behind this bill leaves us here in Nevada to deal with the consequences of this law. To that end, it is important to note that there have been problems with litigation in California since this law has passed in 2008. Moreover, Montana is getting ready to deal with the fiscal and constitutional impacts. North Dakota has just let the Legislature know that they are

going to need $2 million to deal with the constitutional mandates that this bill requires (Exhibit E). How this bill does not have a large fiscal note is rather surprising.

It is important to note that Nevada has a top-rated law school with professors and members of the prestigious American Law Institute, yet the professors they bring in are from out of state and do not practice law in Nevada. The other law experts mostly do administrative and transactional work without handling the volume of cases that the people who have their boots on the ground doing this work day in and day out have. It is problematic that Marsy's Law paints the constitutional protections put in place by our country's founders, such as the presumption of innocence, as unjustified technicalities afforded to dangerous rapists, murderers, and child molesters, and conflates the term "victims' right" and "criminal justice."

A victim's participation in the criminal justice system is valuable for dignity, catharsis, and fairness purposes. However, it should not be confused with the constitutional due process protections afforded to criminal defendants and convicts by the founders of our nation and this state. The prosecution, with its immense power, and the people of Nevada are the alleged victim's voice in the criminal justice system. When adjudication has occurred, alleged victims and actual victims of crime have a strong voice in the system.

One of the other problems with Marsy's Law is it capitalizes on the concern and empathy for victims of crime while ignoring the immense fiscal, legal, and policy concerns that will result from its passage.

Finally, Marsy's story and the story of her murderer appear to present a flaw in the bail process. Despite this flaw, Senate Joint Resolution 17 of the 78th Session uses the word "bail" only once, stating that the safety of the victim and the victim's family is to be considered in fixing the amount of bail and release conditions for the defendant. Nevada currently has that in its statutes, and should we need to add an additional notice that a criminal defendant is being released on bail, I think that is an easy statutory fix. It would not be necessary to tinker with the *Nevada Constitution*.

Marsy's Law seeks to put the concerns of an individual accuser above the concerns of our justice system as a whole. Most of the provisions in Senate Joint Resolution 17 of the 78th Session will take effect before an accused is even convicted of a crime, thereby letting the accuser supplant our jury system. In a tough situation like this, I think the words of Alexander Hamilton ring true. He posited that a key function of our representative legislature is to prevent complacency to every sudden breeze of passion of the majority. That means that the Legislature must occasionally ignore the will of a strong, wealthy lobby to protect important legal and constitutional interests that have been in place from the founding of our nation. I think that time is now for Nevada's Legislature as well.

Marsy's Law is a solution in search of a problem. Nevada already has several provisions put in place by this Legislature to protect crime victim safety. No one is trying to lessen those protections. There is no bill on record this session trying to lessen any of those protections. In fact, Mr. Wolfson testified that he wants to do these things, and he does these things

already. Why do we need a constitutional amendment to tell him what to do? That is a management issue that he is saying he can do. Why do we need a law to force him to do these things?

Another problematic issue with Marsy's Law is that it wants to provide alleged victims and accusers standing to compel the police, the prosecutors, and the courts to do certain actions as seen fit by the alleged victim. Thus, it creates a constitutionally protected private right of action for the public to sue law enforcement, prosecutors, and defense attorneys trying to do their jobs on a day-to-day basis.

Marsy's Law ignores the longstanding belief that our court system should be dispassionate when handling court cases. In our justice system, prosecutors must make decisions legitimately founded on complex considerations necessary for the effective and efficient administration of law enforcement without intervention by passionate accusers seeking to intervene while being motivated by personal concerns. Senate Joint Resolution 17 of the 78th Session purports to change Nevada's criminal justice system by granting alleged victims the ability to force public officers to carry out these duties. Moreover, it allows them standing at all hearings. The alleged victim is going to be able to weigh in at every court hearing, even if it is just a simple extension of time. This delays court calendars and procedures.

I think it is important to note that there has been some talk about how the definition of "victim" is not overly broad in this, but it is. The direct and proximate relation makes this extremely broad. I want to give the Committee a clear example. Let us say that there is a Golden Knights game at the T-Mobile Arena. There are 10,000 fans there, and someone moons all the fans in that arena. There are now 10,000 or more alleged victims underneath this law who will be allowed to assert their rights at every hearing and be entitled to get a card. If they do not get what they want out of this statute, they will be allowed to file a court case to compel the actors in the criminal justice system to do certain things. It is an overly broad definition. To say it is not is an unfair representation of the language in the bill.

It allows victims to be involved prior to conviction, and that is usually before a person is even determined to be a victim at all. The criminal justice system functions to ferret out lies and the truth under the rigorous tools of cross-examination and direct examination. This bill is saying that we are going to make a decision that a person is a victim before a conviction even happens.

The real crux of the problem with the law is its constitutional nature. There are many things in this bill that would make good law as a statute. The *Nevada Constitution* is a lasting and guiding document. It was not meant to be changed by out-of-state lobbyists, people who do not even practice law in Nevada, or practitioners who do not have the caseloads that both the public defenders and the district attorneys have in this state. Other states are having problems with this law because constitutions are hard to change. They should be hard to change. We can do a smarter job of criminal justice policy.

Nevada is not the type of state that follows. It is one that leads. The *Nevada Constitution* is sacred. It should not be amended on the whim of a California billionaire and out-of-state law professors who do not practice in Nevada. Other states have fallen prey to this feel-good amendment to their constitutions, and they are paying the price. Let us be measured. Let us be thoughtful. Let us resist the temptation to pass a law solely because it feels good, but rather pass a proper law that is a product of Nevada's best legal minds.

This law was just up for debate in Idaho. Idaho rejected this law in the Idaho House of Representatives, because they saw all the problems that other states are having. Even though the law in Idaho passed out of the Senate unanimously, the Idaho House Committee put a stop to this law. Let us be smart on crime and criminal justice policy while taking the hard stance that Alexander Hamilton advised against the whims of a powerful lobby.

I urge this Committee to vote no on Senate Joint Resolution 17 of the 78th Session. By voting no, you are not voting against victims. You are voting for smart policies not crafted by out-of-town lobby groups backed by a billionaire. What is popular is not always right, and what is right is not always popular. I think Nevada can do better, and I think we can make laws that accomplish this without amending the *Nevada Constitution*. With the fate of the *Nevada Constitution* in your hands, I urge the Committee to vote no on Senate Joint Resolution 17 of the 78th Session. Do not allow this Trojan horse into Nevada.

Sean Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:
[Mr. Sullivan read from written testimony (Exhibit F).] This resolution proposes to elevate the rights of victims by infringing upon the constitutional rights of the accused. Moreover, the rights of victims have already been codified within Nevada law for a number of years; therefore, this resolution is wholly unwarranted and detrimental to criminal justice practice and procedure in Nevada. In fact, these rights are codified within NRS 178.569 through 178.5698. I would invite the Committee to look at these specific sections of the NRS. This section is even titled, "Protection of Victims and Witnesses."

More specifically, the resolution requires that the safety of the victim and the victim's family be considered. That is already done in NRS 178.4853. Within the "Protection of Victims and Witnesses" sections within the NRS, it enumerates rights that this measure seeks to adopt. It talks about the status of a case that the victim or witness may confer. It talks about the intimidation or harassment of the victims or witnesses that we just talked about. It talks about the witnesses' or victims' impounded property, how they can collect witness fees and victim compensation. It even talks about being placed in a secure waiting area at court, so they are not subject to intimidation or harassment. It talks about whether they may receive notice of the release of a defendant before trial and after he or she may be released from prison. Other areas of the NRS also talk about a victim's right to testify at the sentencing. In fact, Nevada codified the fact that a victim has the right to speak last at a sentencing. He or she gets to go after the defendant, as it is his or her right of allocution. They get to have the last word in court, and that is codified and enshrined within our statutes; so too, should the measures that this bill seeks to adopt. We should put this within the "Protection of Victims and Witnesses" codification in NRS 178.569 through 178.5698.

Next, the resolution proposes that a victim should be entitled to be present at all public, criminal, juvenile, and delinquency proceedings that the prosecutor and the defendant are entitled to be present at. If this passes, this will significantly hinder the prosecutor and the defense attorneys from timely adjudicating cases, as it will have the exact opposite effect of what this resolution intends to accomplish. Let me give you an example, speaking from the Washoe County Public Defender's Office viewpoint. The Washoe County Public Defender's Office will meet and confer with a defendant at the jail shortly after arrest, usually within 72 hours, before a lower court magistrate and, at times, with the prosecutor present, to address issues such as initial appearance, custody status, and bail issues. Thereafter, our office will hold a number of pretrial and status conferences, called mandatory status conferences, with the prosecutor at court in an effort to timely resolve cases. I would hazard to guess that 90 percent of the cases are resolved this way in a timely fashion. I would submit to the Committee that both of these instances are critical stages within the criminal justice proceedings for the accused. They may be delayed or hampered if this resolution passes, particularly if a victim asserts his or her right to be present at each proceeding.

In addition, this resolution will allow a victim to assert the timely disposition of a case following the arrest of a defendant. What is their definition of "timely"? Their definition of "timely" may be different from mine, as the defense attorney. Notwithstanding this fact, under the Sixth Amendment of the *U.S. Constitution*, the defendant is afforded a fundamental constitutional right to a speedy trial, and the right to effective assistance of counsel at that trial. This fundamental right will most certainly be infringed upon by the passage of this resolution when the victim asserts that the case is not being disposed of in a timely fashion, irrespective of the defendant's constitutional rights.

Other provisions within this resolution also invade provisions of these important constitutional rights afforded to the defendant by allowing the victim to prevent the disclosure of certain information and records or to allow the victim to refuse to participate in interviews or depositions in preparation for trial. Once again, these provisions should not abrogate the defendant's fixed amendment rights to effective assistance of counsel under the *U.S. Constitution* nor diminish the state's disclosure obligations to the defense. It is critical to note that these provisions may also prevent a prosecutor from seeking a material witness warrant against an alleged victim in a criminal matter if justice so requires.

This is the very reason why my colleague and I have submitted a proposed amendment to Senate Joint Resolution 17 of the 78th Session (Exhibit G). They have not been adopted by any of the proponents or the bill sponsor, and we would hope that this Committee would consider our amendment. The purpose of these amendments is to ensure that nothing abrogates the defendant's fixed amendment rights and to still allow the state to seek a material witness warrant against an alleged victim in a case if there is a recalcitrant victim who does not want to participate or cooperate in the process and if the district attorney believes it is in the interest of justice to seek a material witness warrant against that victim.

That is why we have amended language that we would invite this Committee to consider within Section 23, subsection 1, paragraph (e). It states, "Nothing in this section shall abrogate a defendant's Sixth Amendment rights under the *United States Constitution* nor diminish the state's disclosure obligations to a defendant." This language was taken from North Dakota's Constitution when they passed their version of Marsy's Law. It continues, "Nothing in this section prevents a prosecutor from seeking a material witness warrant if it is within the interests of justice." We would ask this Committee to consider adopting such language.

If I misunderstood the arguments, I apologize. I was personally involved as one of the stakeholders for the Washoe County Public Defender's Office to craft language in the 2015 Legislative Session. My colleague, Assemblyman Steven Yeager, was the lobbyist for the Clark County Public Defender's Office and also a stakeholder. We could not reach consensus language. Some of the language we thought should have been in this resolution talked about how the rights of the defendant shall not be infringed or abrogated by such measures. We simply could not reach a consensus. I wanted to dispel the notion that there was consensus reached by all parties. There was not.

We have already heard about the term "victim" and how it has been codified for years within the NRS. This resolution attempts to expand its definition greatly. This is an overly broad definition that may encompass a number of other persons. The example that comes to mind is a person who commits a driving under the influence (DUI) that causes substantial bodily harm or death. There might be a number of motorists on the roadway who witnessed a horrific crime. There may be 10, 15, or 20 motorists that witnessed it. Studies show that people even witnessing horrific traffic accidents can suffer post-traumatic stress disorder (PTSD). Even though they are witnesses, they are not necessarily victims in the case. They would now have standing, because they have been directly and proximately harmed within the passage of the resolution.

To be clear, this resolution is a misguided attempt to elevate the rights of victims at the expense of rights of the accused, which has had disastrous consequences in other states that have enacted similar legislation. These states are now facing constitutional challenges within their state and federal court systems. They are struggling with the economic impact mandated by their own criminal justice systems as a result of passing similar legislation. We believe Senate Joint Resolution 17 of the 78th Session will have the same detrimental effect in Nevada.

There is another issue that popped into my mind as this session has progressed. There was a Senate Joint Resolution 1 that, if passed, would create a clemency board. I noticed when looking at the language from similar resolutions that have passed in other states—California, North and South Dakota, and Illinois—that they talk about clemency boards. If S.J.R. 1 were to pass, would we have to keep coming back and continue to amend the *Nevada Constitution*? Nowhere in this resolution is there language that talks about a clemency board. If other measures pass in Nevada, do we have to come back and take that

into consideration? I think we would, and then keep amending the *Nevada Constitution*. Do not pass Senate Joint Resolution 17 of the 78th Session. We can codify everything that needs to be codified within the "Protection of Victims and Witnesses" statute set forth in NRS 178.569 through 178.5698.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
We are also in opposition to Senate Joint Resolution 17 of the 78th Session for the reason stated by my colleagues. Our primary concern is that the rights of the victim will be outweighed by the rights of the accused as applied. The rights of the accused have been of paramount importance in the United States and the founding of our country. They are protected by the Fourth, Fifth, Sixth, and Eighth Amendments. The heart of these constitutional inquiries is whether and to what extent of governmental intrusion is required when a person faces potential deprivation of life, liberty, and property. We do not contest that victims are, by no choice of their own, thrust into a complex judicial system. The impact is life altering. However, many of the rights in this bill already exist in statute. Elevating them to a constitutional level will conflict with the rights of the accused. While my predecessor, the colleagues to my right, and many of the stakeholders involved in this legislation worked diligently to diminish those conflicts, we anticipate that these issues will be resolved through the courts. We are already starting to see that impact in states such as California. We are in discussions in North Dakota on some of the rights conflicts issues that are occurring there.

One case that comes to mind is *Gilman v. Brown* [814 F.3d 1007 (2016)]. It was just decided in the United States Court of Appeals for the Ninth Circuit in 2016. It came out of the eastern district of California. The lower court found that there was litigation that arose under the ex post facto clause, because defendants were subjected to Marsy's Law in parole and probation proceedings. Legislation was enacted to effectuate Marsy's Law, and it led to a reduction in parole hearings, which eventually increased the length of incarceration for certain offenders. The Ninth Circuit reversed that decision, and in our opinion, this is a Ninth Circuit decision and mandate on the slowing down of the justice system. These are the consequences of Marsy's Law.

We also share the procedural concerns of the Clark County and Washoe County Public Defender's Offices. The language "timely resolution" is vague. What may be timely to the victim may not be timely in a death penalty case, for example. The resolution for this particular conflict will be placed in the position to carry out executions at a speedier rate. How do we determine that? As to the language, "To prevent the disclosure of confidential information or records to the defendant . . . which could be used to locate or harass the victim or the victim's family," this language could be interpreted to prevent the defense counsel from even receiving a name of the victim, and therefore denying the accused the right to due process.

Finally, the right to be heard at most criminal proceedings could delay critical proceedings such as bail and parole hearings, which infringes on the accused's due process rights. We encourage the Committee to think through this and to have a model of smart justice in making these decisions. We encourage you to vote no on this resolution.

Chairwoman Diaz:
Are there any questions from the Committee? We will now take testimony in the neutral position. Seeing none, I will invite Senator Roberson back up for closing remarks.

Senator Roberson:
I want to thank you all again for hearing Senate Joint Resolution 17 of the 78th Session. I hope you will all support this resolution. I want to remind everyone that any amendments to this resolution will kill the resolution, because it needs to pass this session unamended from last session. The opponents of this resolution who testified today did not come speak with me about an amendment. I do not support the amendment. I listened to their testimony and found it a boldly disingenuous smokescreen. I do not take their arguments seriously, and neither should you. I encourage you to vote for Senate Joint Resolution 17 of the 78th Session.

[Chairwoman Diaz designated (Exhibit H), (Exhibit I), (Exhibit J), (Exhibit K), (Exhibit L), and (Exhibit M) as presented but not discussed. They will be made part of the record.]

Chairwoman Diaz:
I will now close the hearing on Senate Joint Resolution 17 of the 78th Session. I will open it up for public comment. Seeing none, this meeting is adjourned [at 3:54 p.m.].

RESPECTFULLY SUBMITTED:

_____
Julianne King
Committee Secretary

APPROVED BY:

_____
Assemblywoman Olivia Diaz, Chairwoman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C are written testimonies, presented by Kelvie Malia Stamm, Private Citizen, Las Vegas, Nevada, in support of Senate Joint Resolution 17 of the 78th Session.

Exhibit D is a letter dated May 9, 2017, to the members of the Assembly Committee on Legislative Operations and Elections, authored and presented by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit E is an excerpt from an article from *The Dickinson Press* titled "Marsy's Law cost estimated at $2M per year" by Mike Nowatzki, dated September 29, 2016, available at www.thedickinsonpress.com/news/northdakota/4126084-marsys-law-cost-estimated-2m-year. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit F is written testimony presented by Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit G is a proposed amendment to Senate Joint Resolution 17 of the 78th Session submitted by Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office and John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office.

Exhibit H is a copy of an article from CNET titled "Henry T. Nicholas III: A human tragedy" by Steve Tobak, dated August 23, 2008. This article is available at www.cnet.com/news/henry-t-nicholasiiiahumantragedy. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit I is a copy of an article from the *Los Angeles Times* titled "The two Henry T. Nicholases" by Robert Greene, dated June 11, 2008, available at http://www.latimes.com/opinion/la-oew-greene11-2008jun11-story.html. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit J is a copy of an article from *Vanity Fair* titled "Dr. Nicholas and Mr. Hyde" by Bethany McLean, dated September 30, 2008, available at http://www.vanityfair.com/news/2008/11/nicholas200811. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit K is a copy of an article from *Argus Leader* titled "Marsy's law questions ripple through South Dakota" by John Hult, dated December 4, 2016, available at www.argusleader.com/story/news/2016/12/04/marsys-law-questions-ripple-through-south-dakota/94731092/. This copy was submitted by John J. Piro, Deputy Public Defender and Legislative Liaison, Clark County Public Defender's Office, in opposition to Senate Joint Resolution 17 of the 78th Session.

Exhibit L is a letter dated May 8, 2017, in opposition to Senate Joint Resolution 17 of the 78th Session to members of the Assembly Committee on Legislative Operations and Elections, submitted by Jim Hoffman, Legislative Committee, Nevada Attorneys for Criminal Justice.

Exhibit M is a letter dated May 8, 2017, in support of Senate Joint Resolution 17 of the 78th Session to Chairwoman Diaz and members of the Assembly Committee on Legislative Operations and Elections, submitted by Kristy Oriol, Nevada Coalition to End Domestic Violence and Sexual Violence.