MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
May 3, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:31 p.m. on Wednesday, May 3, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

GUEST LEGISLATORS PRESENT:

Assemblyman Elliot T. Anderson, Assembly District No. 15
Assemblywoman Shannon Bilbray-Axelrod, Assembly District No. 34
Assemblyman Ozzie Fumo, Assembly District No. 21
Assemblywoman Amber Joiner, Assembly District No. 24
Assemblywoman Dina Neal, Assembly District No. 7
Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Jon Sasser, Washoe Legal Services; Washoe County Senior Law Project; Legal Aid Center of Southern Nevada
Lauren A. Pena, Legal Aid Center of Southern Nevada; Civil Law Self-Help Center
Ron Sung, Nevada Legal Services
Chuck Callaway, Las Vegas Metropolitan Police Department
Marlene Lockard, Las Vegas Police Protective Association Civilian Employees
Corey Solferino, Washoe County Sheriff's Office
John T. Jones, Jr., Nevada District Attorneys Association
Michael Giurlani, President, Nevada State Law Enforcement Officers Association; Nevada State Law Enforcement Coalition
Wendy Stolyarov, Libertarian Party of Nevada
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Kimberly Mull, Nevada Coalition to End Domestic and Sexual Violence
Susan L. Fisher, Nevada State Apartment Association; Nevada Rural Housing Authority; Nevada Housing Alliance
Graham Lambert
Charles Cullison
Sean B. Sullivan, Office of the Public Defender, Washoe County
Lennora Valles, *Cannabis Nurses Magazine*
Weldon Havins, President, Nevada State Medical Association
Illona Mager
Gerard Mager
Vicki Higgins
Thomas Pitaro, Pitaro & Fumo
Dustin Marcello, Pitaro & Fumo
Barrie Lynn
John Muran
Michon R. Eben, Cultural Resources Manager, Reno-Sparks Indian Colony
Jay Carter
Frances Tryon, President, Hillside Cemetery Preservation Foundation
Michael Dyer, Director, Nevada Catholic Conference
Lois Kelly
Scott F. Gilles, City of Reno
Garrett D. Gordon, City View Terrace, LLC
Steven T. Polikalas, Commonwealth Heritage Group, Inc.

Vinton Hawkins, Conservation Resources; Commonwealth Heritage Group, Inc.
Emile Brooks

CHAIR SEGERBLOM:
We will open the hearing on Assembly Bill (A.B.) 107.

ASSEMBLY BILL 107 (1st Reprint): Provides for the sealing of records relating to eviction under certain circumstances. (BDR 3-689)

ASSEMBLYWOMAN SHANNON BILBRAY-AXELROD (Assembly District No. 34):
You have my written testimony (Exhibit C). The purpose of A.B. 107 is to provide for the automatic sealing of eviction case court files if the summary eviction is dismissed or denied or if the landlord fails to timely pursue the action.

Under current *Nevada Revised Statutes* (NRS), tenant-tracking services can obtain eviction case files. For a fee, these services will provide the records to prospective landlords, who use the records to deny rental applications. In many cases, eviction cases filed against tenants are settled out of court or not ultimately pursued by the landlord. Requiring eviction case court files to be sealed, unless the landlord prevails in an action for a summary eviction, will protect tenants who have not actually been evicted from having action taken against them based on inaccurate information.

JON SASSER (Washoe Legal Services; Washoe County Senior Law Project; Legal Aid Center of Southern Nevada):
We worked on A.B. 107 with courts in Clark County, homeowners' associations and real estate professionals' associations.

SENATOR HARRIS:
In section 1, subsection 2, paragraph (b), subparagraph (2), sub-subparagraphs (I) and (II) of A.B. 107, I understand what "circumstances beyond the control of the tenant" and "other extenuating circumstances" mean. Do you intend something beyond that?

MR. SASSER:
The first part of the bill provides for automatic sealing of records, and the second part for sealing by stipulation. Senator Harris is referring to the part in which tenants may file motions to set aside sealing of an eviction record if the case file is in the best "interests of justice and those interests are not

outweighed by the public's interest in knowing" about the content of the court file, the court can consider certain factors. If someone were injured on the job, was laid off and then evicted for nonpayment of rent, it would be up to the court to seal the records.

LAUREN A. PENA (Legal Aid Center of Southern Nevada; Civil Law Self-Help Center):
You have my written testimony (Exhibit D). The Legal Aid Center of Southern Nevada works with the Las Vegas Justice Court Administration. We have submitted a letter (Exhibit E) in support of A.B. 107 from Judge Melissa A. Saragosa, Las Vegas Township, Department 4, Clark County. The fiscal note was removed from the bill.

RON SUNG (Nevada Legal Services):
You have my letter (Exhibit F) in support of A.B. 107.

CHAIR SEGERBLOM:
We will close the hearing on A.B. 107 and open the hearing on A.B. 132.

ASSEMBLY BILL 132 (1st Reprint): Provides for enhanced penalties for committing assault or battery against certain civilian employees and volunteers of certain governmental entities. (BDR 15-111)

ASSEMBLYMAN ELLIOT T. ANDERSON (Assembly District No. 15):
Assembly Bill 132 provides for enhanced penalties for assault or battery against certain civilian employees and volunteers of law enforcement agencies. According to an October 2016 report for the National Conference of State Legislatures titled "Enhanced Penalties for Classified Personnel," 42 states include peace officers as a protected class for enhanced penalties. In Florida, law enforcement officers include the staff of the Florida Department of Law Enforcement. In Virginia, law enforcement staff include any full-time or part-time employee of a police department or sheriff's office responsible for the prevention or detection of crime and enforcement of penal, traffic or highway laws.

In Nevada, assault and battery of certain persons and whether a deadly weapon was used in commission of the crime qualifies for enhanced penalties. Protected persons include law enforcement officers, health care providers, school employees, sporting event personnel and officials, and taxicab drivers or

operators. In Nevada, other protected persons include police; firefighters; jailers, guards or other correctional officers; justices; judges; or home-visit employees.

Sections 1 and 2 of A.B. 132 provide that "officer" includes certain civilian employees and volunteers in law enforcement agencies and the class of person for whom enhanced penalties for assault and battery apply. The employer of a protected volunteer must have policies that require the volunteer to interact with the public, perform tasks related to law enforcement and wear identification, clothing or a uniform identifying him or her as working or volunteering for a law enforcement agency.

CHAIR SEGERBLOM:
Did this bill come to you because there is an assault and battery issue on these workers?

ASSEMBLYMAN ANDERSON:
According to the Department of Justice, there were about 8,800 law enforcement employees in Nevada in 2013. Of them, about 3,400, or 39 percent, were civilians. They included investigators, crime analysts, community outreach personnel, dispatchers and phone call takers, fleet managers, forensic technicians, intelligence analysts, parking enforcers, code enforcers and public information officers.

Many of these personnel take many of the same risks as do traditional police officers. They are on crime scenes in harm's way. Code enforcers are included because of the dangers of the squatter problem as are firefighters, who often deal with folks who may not be happy to see them.

CHAIR SEGERBLOM:
Is the enhanced penalty automatic, or do courts or district attorneys have discretion to ask for it?

ASSEMBLYMAN ANDERSON:
It is an enhancement, so if a person falls under the category, it would be at the discretion of the prosecutor to charge the crime, not the judge.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
The Las Vegas Metropolitan Police Department (LVMPD) has approximately 1,500 civilian employees and more than 470 volunteers. These people go into

the field every day, and many wear uniforms similar to police officers. Our patrol service representatives wear a uniform that could easily be mistaken for an officer's uniform. Our crime scene investigators also wear uniforms and have been the victims of battery or assaults several times.

The goal of A.B. 132 is to give all of the LVMPD employees and volunteers the same level of protection as cab drivers, dental assistants, sports officials or soccer coaches. There has been a rise in attacks on police officers for whom our other employees may be mistaken. The LVMPD recently had a case in which a volunteer doing handicap parking citation enforcement was assaulted.

SENATOR HARRIS:
Is your intent to capture as many law enforcement people as possible whose attackers qualify for the enhanced penalty?

ASSEMBLYMAN ANDERSON:
Yes, within the categories specified in section 1, subsection 1 of A.B. 132. People must be in uniform or performing the specified tasks.

SENATOR HARRIS:
The bill states the protected personnel must "wear identification." If they are not in uniform, are you talking about a badge or identification worn around their necks?

ASSEMBLYMAN ANDERSON:
The intent is just to ensure the public knows these people are doing law enforcement and firefighting functions.

SENATOR HARRIS:
The reason for my question is the Office of the Secretary of State recently asked the Senate Committee on Finance for a budget for uniforms, which was denied. Will those staff members be captured in A.B. 132 while they are doing investigations in the field?

ASSEMBLYMAN ANDERSON:
Only if they are doing the exact functions specified in the bill. I do not know what the law enforcement functions of the Office of the Secretary of State entail. If workers have peace officer status or are enforcing laws, that qualifies under the bill.

SENATOR HARRIS:
In lieu of uniforms, they will have to wear badges. Will their identification be visible on their persons, or will they have to pull something out of their pockets to display?

MR. CALLAWAY:
The intent is the person be readily identifiable as a volunteer or civilian employee of a law enforcement agency. In a case in which the identification was in question, the prosecutor could not seek the enhanced penalty.

ASSEMBLYMAN ANDERSON:
The term in question is in section 1, subsection 1, paragraph (c), subparagraph (7), sub-subparagraph (III), "wear identification, clothing or a uniform." The language speaks for itself.

SENATOR FORD:
Can people wear identification on a lanyard round their necks?

ASSEMBLYMAN ANDERSON:
Correct, you can wear a lanyard or a badge.

CHAIR SEGERBLOM:
What about flashing identification in your wallet?

MR. CALLAWAY:
Under current NRS, simple battery on a police officer is a gross misdemeanor offense. If plainclothes officers are working undercover and assaulters do not know they are officers acting in their official capacity, there could be questions about whether the officers are readily identifiable. A prosecutor could look at that case and say, "No, this guy was in civilian clothes, and the person who assaulted him didn't know he was a police officer. The officer never identified himself and wasn't wearing a badge or insignia" and could not press charges. The same applies here. If there were a question as to whether the person was not readily identifiable, the prosecutor would not charge the enhanced penalty.

ASSEMBLYMAN ANDERSON:
If an assaulter is on notice, he or she should get the enhancement. If not, it is unfair to charge with the enhancement.

MARLENE LOCKARD (Las Vegas Police Protective Association Civilian Employees):
Las Vegas Police Protective Association Civilian Employees supports A.B. 132.

COREY SOLFERINO (Washoe County Sheriff's Office):
The Washoe County Sheriff's Office supports A.B. 132.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
The Nevada District Attorneys Association supports A.B. 132.

MICHAEL GIURLANI (President, Nevada State Law Enforcement Officers Association; Nevada State Law Enforcement Coalition):
The Nevada State Law Enforcement Officers Association and the Nevada State Law Enforcement Coalition support A.B. 132.

WENDY STOLYAROV (Libertarian Party of Nevada);
The Libertarian Party of Nevada believes increasing criminal penalties for potential assaults or battery is against a wider category of civilian employees and law enforcement volunteers violates equality under the law and is counterproductive to successful community policing. Many individuals are already frightened to interact with law enforcement because a single misunderstanding or mistake may have tremendous, potentially life-ruining consequences. Expanding the category of people with whom such interactions is weighty risks frightening communities into not reporting crimes. Fears of increased penalties may decrease cooperation from the marginalized in society, including sex workers, undocumented immigrants or minorities profiled under the new federal regime should they become visible.

The bill is so exceedingly broad it could create a wedge between citizens and State representatives. This is not conducive to the quality of life or work. While we respect and appreciate the work of these employees and volunteers, assaulting them is no worse than assaulting a member of the public. Is it government's role to decide some lives are more valuable than others are? No.

Assembly Bill 132 may have consequences similar to a Louisiana law passed earlier this year that made resisting arrest a hate crime. On face value, these laws protect officers, but they also foment an atmosphere of mistrust that may result in lower rates of crime reporting. Tensions between officers and those they protect make both less safe.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
It is important people are wearing something that identifies them, but it must be within the course and scope of their duties. You cannot be a parking ticket writer, then after your shift go to a bar, get in a fight and then assert you have protected status.

ASSEMBLYMAN ANDERSON:
Provisions talk about performing tasks related to the listed occupations, which addresses the concern of Mr. Piro. I cannot think of a distinction between providing this kind of protection for taxi drivers and for the at-risk workers identified in the bill.

CHAIR SEGERBLOM:
We will close the hearing on A.B. 132 and open the hearing on A.B. 133.

ASSEMBLY BILL 133 (1st Reprint): Revises provisions governing landlords and tenants. (BDR 10-339)

ASSEMBLYMAN ELLIOT T. ANDERSON (Assembly District No. 15):
Assembly Bill 133 prevents adverse actions against tenants requesting emergency assistance. This is a commonsense measure. Imagine being at home when a criminal act occurs and you or your family needs emergency services and you cannot call for assistance for fear of being evicted. The bill provides that requests for emergency assistance by tenants do not constitute a nuisance. It prohibits landlords from taking adverse actions, including evictions, or imposing fines or other punitive actions against tenants who call for assistance.

Assembly Bill 133 makes two substantive changes relating to landlords and tenants living in manufactured home parks. Sections 1 and 2 define emergency assistance as that provided by police, firefighters, rescue services, emergency medical services, etc. The sections also prohibit landlords from taking adverse actions against tenants for requesting assistance if it is believed an emergency response is warranted or criminal activity may have occurred.

Sections 1 and 2 of A.B. 133 provide local governments or political subdivisions may not take adverse actions against landlords because of requests from tenants for emergency assistance. Tenants, landlords or district attorneys may bring civil actions for violations of these provisions to seek injunctive relief,

actual damage, reasonable attorneys' fees and costs, and other legal or equitable relief deemed just by the court. Other provisions clarify the bill only applies to evictions based solely on calls for emergency services.

Landlords are not prohibited from taking any necessary actions to abate nuisances on properties discovered during requests for emergency assistance. The bill does not authorize breaches of rental agreements. Nothing prevents local governments from abating nuisances discovered during the emergency response. Sections 4 and 5 provide requests for emergency assistance do not constitute nuisances.

Assembly Bill 133 will particularly help domestic violence victims who sometimes become caught in a cycle and end up recanting or not pressing charges. The least they should have to worry about is getting kicked out of their homes because they called the police.

CHAIR SEGERBLOM:
You used the word "solely." In employment law, there could be a mixed motive and other issues, and that was the tipping stone in the case.

ASSEMBLYMAN ANDERSON:
I look at this on a claim-by-claim basis. Let us say I am a landlord trying to seek a claim for a nuisance on grounds proceeding from a call for emergency services. If I discover a legitimate nuisance that leads to liability, under NRS, I am not seeking to get in the way of that because of the emergency call. My intent with the bill is to stop that from being a barrier based on the call.

CHAIR SEGERBLOM:
Do you know of cases in which landlords said, "You called the cops, so I'm going to evict you"?

ASSEMBLYMAN ANDERSON:
That has happened in several other states after nuisance ordinances were created. To my knowledge, it has not happened in Nevada, but we should get ahead of and take care of the problem.

CHAIR SEGERBLOM:
People do not fire you because you are a woman. They fire you for some other reason, but it is really because you are a woman. Sometimes there are mixed motives when you get to court and there is a different burden of proof.

ASSEMBLYMAN ANDERSON:
I am not trying to be unfair to all parties; I am trying to zero in on a specific problem. It will be up to the courts. However, when a nuisance claim is made based on repeated emergency calls, that needs to end.

MR. CALLAWAY:
The LVMPD supports A.B. 133 to protect domestic violence victims from being evicted after they call us. The bill does not intend to protect people who are nuisances or misusing the 911 system. We have had apartment complex neighbor disputes in which people call 911 on each other out of spite. When people use 911 to get even with neighbors, we hope landlords can evict them.

MR. SOLFERINO:
The Washoe County Sheriff's Office supports A.B. 133.

MR. SASSER:
Washoe Legal Services and the Legal Aid Center of Southern Nevada support A.B. 133.

KIMBERLY MULL (Nevada Coalition to End Domestic and Sexual Violence):
The Nevada Coalition to End Domestic and Sexual Violence supports A.B. 133. Across the Nation, victims of domestic violence are being penalized by our legal system and even evicted for calling for help when they fear for their lives and those of their children. In Nevada, even though we are one of the deadliest states for victims of domestic violence, the Coalition was appalled to find out about a rural landlord who lists calls to police as a reason to evict.

Victims should not have to consider possible homelessness before calling 911 if they feel their lives are in jeopardy. Domestic violence is the No. 1 reason women become homeless in this Country. Victims should not be punished when neighbors call on their behalf if they think victims' lives are in jeopardy.

SUSAN L. FISHER (Nevada State Apartment Association; Nevada Rural Housing Authority; Nevada Housing Alliance):
The Nevada State Apartment Association, Nevada Rural Housing Authority and Nevada Housing Alliance were initially opposed to A.B. 133. However, we are now neutral after Assemblyman Anderson addressed our concerns and tweaked language to protect landlords when emergency calls reveal nuisances.

ASSEMBLY ANDERSON:
As Ms. Mull pointed out, Nevada has one of the highest domestic violence death rates. It is common sense that if you call the police, you ought not to have to worry about eviction when a crime is being committed against you or your children. No one likes police attention in their neighborhoods, but we need to ensure victims are protected from being killed.

CHAIR SEGERBLOM:
We will close the hearing on A.B. 133 and open the hearing on A.B. 135.

ASSEMBLY BILL 135 (1st Reprint): Revises provisions relating to prohibited acts concerning the use of marijuana and the operation of a vehicle or vessel. (BDR 43-598)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):
Assembly Bill 135 involves prosecutions for DUI involving marijuana. With me are two second-year medical students at Touro University, Charles Cullison of the U.S. Air Force and Graham Lambert of the U.S. Navy. They will explain the science of the bill. Assembly Bill 135 removes the ability to prosecute a driver for a marijuana metabolite everyone agrees does not cause impairment.

GRAHAM LAMBERT:
The bill updates statute with some of the latest scientific facts concerning marijuana. You have our package on the medical toxicology of drug abuse (Exhibit G). Delta-9-tetrahydrocannabinol (THC) and 11-hydroxy THC, hydroxyl, are psychoactive compounds of marijuana. The nonpsychoactive compound in marijuana is THC carboxy. *Nevada Revised Statutes* 484C.110 allows for testing of blood and urine for the three compounds. Urine testing cannot test for THC or hydroxyl, just carboxy. Carboxy stays in the body long after the psychoactive effects have worn off. Seventy-six days after use, it can still be detected.

CHARLES CULLISON:
Blood, and not urine, testing should be the method by which Nevada presumes someone is cognitively impaired while operating a vehicle under the influence of marijuana. Only blood accurately shows levels of THC and hydroxyl. Only the City of Henderson's toxicology laboratories look for hydroxy, while every State lab has the ability to test blood for THC and hydroxy.

MR. PIRO:
The allowable nanograms per milliliter levels are too low in NRS and need to be raised. The bill will allow technicians to look for compounds that show impairment, rather than just showing someone has used marijuana. Opponents of the bill argue it will prevent employers from using urinalysis to weed out workers using drugs. That is unfounded. The bill deals solely with DUIs.

SEAN B. SULLIVAN (Office of the Public Defender, Washoe County):
The Office of the Public Defender, Washoe County, supports A.B. 135 because testing of blood is accurate and testing of urine is not.

CHAIR SEGERBLOM:
Does the bill raise the threshold of detectable marijuana?

ASSEMBLYMAN YEAGER:
No, it keeps the THC and metabolite levels the same. The bill is a first step in prosecuting people for psychoactive metabolites. The bill does two things: disallows urine tests for DUI prosecutions and removes the ability to prosecute for a nonpsychoactive metabolite that stays in the body for a long time.

CHAIR SEGERBLOM:
Jessica Williams of Lovelock was convicted of DUI marijuana based on blood or urine tests after she killed six teenagers. She is in prison for 20 years.

ASSEMBLYMAN YEAGER:
I do not know what metabolite she was prosecuted for versus for impairment. The jury found she was not actually impaired, yet convicted her under the per se level because she exceeded levels specified in NRS. I do not know if it was THC or metabolite.

CHAIR SEGERBLOM:
Based on current scientific knowledge, could an enterprising lawyer try to get Williams released?

ASSEMBLYMAN YEAGER:
If that argument has not already been raised, to the extent her prosecution was based on a nonpsychoactive metabolite, a lawyer could certainly make a motion before the court. The bill is not retroactive.

CHAIR SEGERBLOM:
Did you look at having a rebuttal of presumption similar to that of Colorado? A certain level indicates intoxication, but a defendant can prove otherwise with different evidence.

ASSEMBLYMAN YEAGER:
Yes, we considered that but went with the bill as written.

SENATOR HARRIS:
We do not have set standards for the nutritional content of marijuana edibles. What kind of consumption leads to the two or five nanograms blood level? What kind of impairment do those levels generate?

ASSEMBLYMAN YEAGER:
Your questions are hard to answer because we do not have a lot of scientific research about that. When the two- and five-nanogram levels were set, they were the minimum levels that could be tested for with the technology of the time. Any consumption in close proximity to driving will exceed two and five nanograms of THC. Metabolite only develops when THC is processed by the body.

Whether that level truly impairs a driver is a hard question because it depends on his or her metabolism, weight and experience with marijuana. We lack studies correlating marijuana consumption with impairment.

SENATOR HARRIS:
How will individuals who want to be responsible drivers know when it is safe to drive after consuming marijuana?

ASSEMBLYMAN YEAGER:
My advice is that someone who has consumed marijuana should not get behind the wheel for a long time because he or she will test over the limits. Until we can address those levels with scientific research, we cannot solve the problem. Nevada essentially has a zero-tolerance policy for DUI marijuana. Assembly Bill 135 seeks to exclude people who consume marijuana and drive days later. That is the metabolite level we are removing from prosecution.

SENATOR ROBERSON:
Nevada voters decided we are going to legalize a drug that is illegal under federal law. Many bills this Session encourage the socialization of marijuana. Yet at the same time we are saying, if you have any amount of marijuana in your system, you cannot drive. We cannot test to determine whether you are truly impaired, but to be safe you should not drive for how long—hours, days, weeks? As a policymaking body, we are sending different signals. That is why many were opposed to Question No. 2 on the November 2016 ballot because that does not make sense.

The Legislature is encouraging the use and sale of recreational marijuana to residents and tourists because we want the tax money and many people believe marijuana should be legal. Now, A.B. 135 says, "We are going to test you if we think you're impaired. You may or may not be, based on our test, yet you are going to be in a lot of trouble if you test for any amount." How does any of this make sense?

ASSEMBLYMAN YEAGER:
You hit the nail on the head when it comes to marijuana regulation. It is in a very different category than anything else the State has dealt with. To ensure we are moving in the right direction, we need to keep the zero-tolerance policy. Arbitrary levels are set in NRS for schedule I controlled substances. If you exceed those levels, there is a per se presumption in favor of impairment.

The DUI issue is virtually the same for prescription drug users. It is a little different because we do not set legal levels of prescription drugs but make prosecutors prove impairment beyond a reasonable doubt. We have many more studies on the effects of alcohol. My hope is in future Sessions we have good data on which to base policy because it is unfair to prosecute unimpaired defendants. The same impairment levels apply to medical marijuana users, which is different for prescription medicines.

LENNORA VALLES (*Cannabis Nurses Magazine*):
I am opposed to A.B. 135.

WELDON HAVINS (President, Nevada State Medical Association):
I am a professor of health law at Touro University and a practicing physician and attorney. The Nevada State Medical Association supports A.B. 135. Urine cannot be tested for impairment. To have per se levels in NRS of inert urine metabolite is inappropriate. The bill corrects that. The science is just not there to establish a higher level, and the bill does not address that.

ILLONA MAGER:
In 1996, my son was killed in a THC-involved car accident. I was among four families that lobbied for the per se law. I volunteered with Mothers Against Drunk Driving and sat in on trials in which DUI drivers were given probation and no prison time for killing people. Jessica Williams killed six teenagers who were picking up trash in the highway median. Six families that day learned their children were dead after sending them out healthy. We have not heard the voice of victims here today. The government needs to provide public safety. My husband and I support A.B. 135 because we do not want to see innocent people in jail. However, we do want to see drivers guilty of impairment jailed.

MS. STOLYAROV:
The Libertarian Party of Nevada supports A.B. 135 because urinalysis is ineffective in detecting intoxication.

GERARD MAGER:
My son was killed at age 17 by a driver under the influence of marijuana. Assembly Bill 135 has been touted as one of the top five DUI marijuana bills in the Country. The conviction of Jessica Williams was upheld by the Nevada Supreme Court three times. She killed six people, she was impaired and she belongs in prison. The metabolite levels of two and five nanograms are appropriate, as is removing urine testing. However, Nevada must maintain public safety and for once be at the top, instead of the bottom, of a list.

MR. JONES:
The Nevada District Attorneys Association supports A.B. 135 because keeping the two- and five-nanogram limit is an important priority for us. The Rocky Mountain High Intensity Drug Trafficking Area's September 2016 publication, *The Legalization of Marijuana in Colorado: The Impact, Volume 4,* was produced

by a collaboration of federal, state and local drug enforcement agencies that monitor marijuana-related issues. There has been a significant increase in marijuana-related traffic accidents and deaths since Colorado legalized recreational marijuana in 2013. This Committee needs to move cautiously with respect to marijuana and driving.

While there are questions about impairment and metabolite levels, law enforcement is generally comfortable with the two- and five-nanogram levels. With respect to the metabolite name change, the one listed in A.B. 135 shows recent marijuana use. That metabolite metabolizes quickly so laboratories can be confident in predicting recent use.

VICKI HIGGINS:
Medical marijuana advocates have been requesting protections for patients since the Seventy-seventh Legislative Session. Some people are uncomfortable with the two- and five-nanogram levels. My research shows that 12 hours after taking marijuana medicine, patients had a much-greater level than two and five nanograms. I can use marijuana for months yet still not test at those levels.

MS. VALLES:
I oppose A.B. 135 because there is no provision for medical marijuana patients. The two- and five-nanogram levels were set by a Wellness Education Cannabis Advocates of Nevada member who advocated medical marijuana. I am confused about why those numbers are still being used. I would like a baseline for patients, so we do not have to deal with the same issues as will recreational users. Patients who consume, ingest and use topical marijuana will test over those limits. We need protections, exemptions or provisions in A.B. 135.

ASSEMBLYMAN YEAGER:
In sponsoring A.B. 135, I wanted to make sure we are being smart in regard to public safety, knowing we do not yet have good scientific data.

SENATOR ROBERSON:
To clarify my position, I do not have a problem with the bill to the extent of the zero-tolerance policy and law enforcement's support of it. My concern is the other bills this Session that are trying to socialize the use of marijuana when we know users are going to drive and potentially endanger other people.

VICE CHAIR CANNIZZARO:
We will close the hearing on A.B. 135 and open the hearing on A.B. 136.

ASSEMBLY BILL 136 (1st Reprint): Revises provisions governing bail in certain criminal cases. (BDR 14-708)

ASSEMBLYWOMAN DINA NEAL (Assembly District No. 7):
I will show a video in which a Texas judge arbitrarily raises a young woman's bail simply on the basis of her response to his question. Permissive language in section 1 of A.B. 136 allows an evidence risk-based tool (Exhibit H) to be used to set bail. We do not need arbitrariness in how bail is set. We need to ask additional questions when setting bail, such as can defendants afford it? Section 2, subsection 11 provides those other questions. The bill does not change the law. It ensures there is at least some conversation around the ability of suspects to pay bail.

When I originally approached the bill's issues, I wanted to get rid of bail in its entirety. There was too much consternation around that, so we changed the word "shall" to "may" when judges impose bail. Nevada Supreme Court Justice James W. Hardesty is trying to make imposition of bail nonmandatory in that Court.

Section 2 of A.B. 136 lays out flight risk factors and conditions that can be imposed to mitigate the risk of failure to appear in court. In section 3, after defendants appear before magistrates, the court may not solely rely on the bail schedule. The bill makes magistrates ask the questions in section 2.

SENATOR FORD:
Was the video from Harris County, Texas?

ASSEMBLYWOMAN NEAL:
Yes.

SENATOR FORD:
The *Houston Chronicle* recently had an article about a study that found the Harris County bail system violates the constitutional rights of poor misdemeanor defendants. The arbitrary determination of bail is a timely subject of discussion in this State.

ASSEMBLYMAN OZZIE FUMO (Assembly District No. 21):
You have my proposed amendment (Exhibit I) to A.B. 136. In Clark County, bail is set without asking the pertinent questions, Exhibit H. Nevada has three bail statutes, NRS 178.484, NRS 178.4851 and NRS 178.4853. The proposed amendment provides an easy "flow chart" for judges to follow when setting bail.

THOMAS PITARO (Pitaro & Fumo):
Nationwide, a number of jurisdictions are being sued in state and federal courts for arbitrary imposition of bail. Bail laws are unclear as to what needs to be done. The proposed amendment, Exhibit I, defines bail and sets out priorities courts should use in imposing it. It is a fundamental proposition of constitutional law that bail is a right in the State, except for murder. How do we get to that point?

The bill defines bail four ways as on page 3 of Exhibit I. First, as an own recognizance release with no conditions or payment for low-level cases. The second is a bond unsecured by the magistrate, in which a monetary amount is imposed. Magistrates say, "I'm going to release you on an unsecured bond. If you do not appear in court, you are responsible to pay the court back." That bail method is the most common and widely used in federal courts. The third method is the unsecured bond with nonfinancial conditions, which are listed in the proposed amendment, page 3 of Exhibit I. A fourth is a secured, financial bond issued by the bail bondsman. It is the most restrictive condition. A judge may add conditions to a bail bond.

In the proposed amendment, Exhibit I, section 1, subsection 1 is existing law on conditions of bail and what applies to murder cases. Bail has two components, risk of flight and danger to the community or individuals which must be considered before releasing suspects on bond. The constitutional framework is, with the risk of danger, the court has to find that using the legal standard of clear and convincing. The risk of nonappearance, i.e., flight, must be found by the judge using a lesser standard, the preponderance of evidence. Section 1, subsection 8, paragraphs (a) through (l) on page 5, Exhibit I, are nonfinancial conditions courts can consider when releasing a defendant with an unsecured bond. The DUI and domestic violence portions of A.B. 136 are unchanged in the amendment due to their safety aspect.

A problem in Clark County and probably the rest of the State is the monetary bail schedule, which has no basis in empirical data. Before he or she is arrested, the arrestee can bail out using the bail schedule. If the person goes in front of the judge, usually within 48 hours, the schedule falls by the wayside. The reason is one of constitutional dimension, the Fourteenth Amendment Equal Protection Clause. The monetary bail aspect of that is divorced from the purpose of bail. All over the Nation, courts have upheld that the Equal Protection Clause is violated when monetary bails are placed on people without considering their ability to pay it—for the poor, bail means jail. There must be a relationship between bail and the individual's ability to pay.

The Country is plagued with this scenario: a person is arrested and cannot make bail. Since there is no standard bail constitutionally, bail must be related to the ability to pay it. This goes for U.S. and state supreme court laws and local laws. A person cannot be kept in jail simply because he or she cannot pay bail. That was the situation in Harris County, Texas. There may be other conditions imposed that keep defendants in jail, but inability to make monetary bail cannot be the reason. The proposed amendment includes the evidence-based risk assessment tool, Exhibit H, which is part of the bail equation.

SENATOR HARRIS:
In section 1, subsection 8 of the proposed amendment, what happens if the defendant violates imposed conditions?

MR. PITARO:
Then the defendant can be brought back before the court for violation of bail conditions.

SENATOR HARRIS:
Is jail time a possibility?

MR. PITARO:
Yes, if the court finds contempt of court.

SENATOR HARRIS:
In order to hold someone accountable for the conditions in subsection 8 pertaining to the bail agreement, would the court have to hold him or her in contempt?

ASSEMBLYMAN FUMO:
Yes. A judge could bring someone back on a violation, impose 25 days' jail time for contempt of court or add additional conditions, such as raise the monetary bail, impose intensive supervision, or send him or her to drug or alcohol counseling. The judge could also revoke the bail and send the defendant to jail, pending a hearing on the case.

SENATOR HARRIS:
Imposing conditions that will be difficult to maintain subjects people to the same arbitrariness we are trying to avoid with the financial imposition of bail. There is a change in the proposed amendment section 1, subsection 8's language from the bill concerning firearms possession or use of alcohol and controlled substances. Why did it go from "prohibit" to "refrain"?

MR. PITARO:
That was a stylistic change. "Prohibit" has a different connotation. We do not want people drinking when they are out on bail.

SENATOR HARRIS:
In regard to the evidence-based risk assessment tool, Exhibit H, Justice Hardesty is creating, is that something new and unique to Nevada? Are there other states' assessment tools from which it was drawn? The proposed amendment says the tool will be updated every two years. What is the genesis of that, and what data is it based on?

ASSEMBLYWOMAN NEAL:
Justice Hardesty has chaired a working group around pretrial assessment for more than a year. They are coming up with their own tool, which will be new to Nevada. Some of the factors are in NRS, but the tool itself will be new. The original bill said the Nevada Supreme Court shall create the tool.

SENATOR HARRIS:
Are other jurisdictions using such a tool, or is it a cutting-edge thing for Nevada?

ASSEMBLYWOMAN NEAL:
No. Pretrial assessment tools have been around for a while but never had an application in Nevada. Bail reform has been an issue since the 1960s, with

some language in the proposed amendment, Exhibit I, based on things said by U.S. Attorney General Robert F. Kennedy in 1966.

SENATOR ROBERSON:
In A.B. 136's section 2, subsection 11, and in section 8 of the proposed amendment there is "a non-exhaustive list of non-financial conditions if the magistrate finds a person represents a risk of danger to the safety of any person in the community or risk of nonappearance ... ." There are a lot of different conditions that may be considered. Who is monitoring if the person out on bail is meeting the conditions, and if so, who is paying for the monitoring? If people are not being monitored, are we just going by the honor system?

ASSEMBLYMAN FUMO:
Those sections in the bill and the amendment are current NRS. Yes, for the most part it is on the honor system. If defendants have a no-alcohol condition but are arrested for drinking, that is how the judge would find out. No one supervises or monitors defendants unless they have been sent to an inpatient clinic and do not show up, rip off their no-alcohol patch or something like that. The court is then directly notified.

MR. PITARO:
The conditions in the bill and amendment are standard. The question is do you monitor someone by keeping him or her in jail in violation of the Nevada Constitution, or do you impose conditions you try to get them follow? With evidenced-based risk assessment tools and bail conditions, courts will start looking at what types of programs or facilities defendants will need. Judges may say, "Look, you can't drink as a condition of your bail," versus saying nothing. With the conditions, we are trying to resolve two issues at once: danger to the community and flight risk. Remember, as a constitutional mandate, the judge has to find these least restrictive conditions are necessary.

SENATOR CANNIZZARO:
In section 1, subsection 8 of the proposed amendment, most of the conditions are already in statute, and judges may impose any conditions they deem appropriate. "Maintain employment or actively seek employment," "Curfew," "Undergo medical, psychological or psychiatric treatment ..." concern me because, unlike committing a new infraction or having contact with a victim and being brought before the court, these conditions almost necessitate a probation officer to supervise the defendant. This is exhaustive.

Would the conditions be contemplated if someone is on house arrest or under intensive supervision? If you impose these conditions and, hopefully, someone abides by them, what checks are on the person if he or she is not on house arrest?

MR. PITARO:
Under NRS, there are third-party custodians monitoring prohibitions against contact with victims and ingestion of alcohol and other conditions. Defendants do not have to check in. The judge can tell someone to refrain from alcohol. If that condition is not imposed, there is no restraint.

SENATOR CANNIZZARO:
Judges must consider whether each of the conditions in section 1, subsection 8 of the proposed amendment are going to ensure community safety or that someone will return to court. Some conditions would have to be imposed in conjunction with house arrest. However, that is not in the proposed amendment, Exhibit I. Who will supervise something like curfew?

MR. PITARO:
There has been a dispute between the Las Vegas Justice Court and the Las Vegas Metropolitan Police Department (LVMPD) over house arrest. The house arrest statute is custodial for people who have been convicted or if the jail must release inmates for space reasons. There is no justice court house arrest, so through a LVMPD program, people are staying in jail two to three weeks before going on house arrest.

SENATOR CANNIZZARO:
That is the crux of my concern: we are adding things judges must consider that are not tied to house arrest. Courts are struggling to supervise those on house arrest, so will it supervise people under the new conditions? Will we rely on the honor system? The proposed amendment might exacerbate that problem.

DUSTIN MARCELLO (Pitaro & Fumo):
When crafting the proposed amendment, Exhibit I, to A.B. 136, we looked at risk factors that appeared to show potential danger to the community or flight risk. Then we wanted to give judges a nonexhaustive list to address those factors without resorting to monetary bail. Some conditions would be monitored under the current justice court supervision program. Others might have to be

done under house arrest or an honor system. They are simply tools to address any identified risk factors.

The question of who monitors people is not necessarily as important as having the conditions available for judges to use as tools to address the risk factors. Currently, if a judge identifies a risk factor, the only way to address it is set a different monetary bail figure. That does not correlate to any potential threats to the community, flight risk or the specific factor that creates the risk. It is not required of judges but simply gives them the tools to identify, let us say, a person who has a gun as a risk to the community. At the pretrial release hearing, the judge may stipulate that the defendant not possess a gun instead of bumping the bail up by $500.

SENATOR CANNIZZARO:
The Committee has a lot of discussions about whether firearms should be taken from defendants and when and how to do it, and whether law enforcement is a safe guardian of weapons. Section 1, subsection 8, paragraph (h) of the proposed amendment lists "Refrain from possession of a firearm." How do we ensure if people have firearms where they are going to surrender them, if they have indeed surrendered them, and what is the remedy if they have firearms thereafter?

MR. PITARO:
It is up to the judge to make the individualized determination. I have had situations in which a judge wants a person's passport confiscated so he or she could not leave the Country.

SENATOR CANNIZZARO:
On page 10 of the proposed amendment, why was the language concerning passport surrender stricken? You are now offering that as an example.

MR. MARCELLO:
Those stricken conditions are contained in NRS 178.484, subsections 10 and 11. We combined them with federal rules into a comprehensive list of conditions. Along with separate statues, that way it was clear, along with other conditions, to provide every possible tool for judges. If a judge says, "I feel reasonably comfortable that you have removed your firearms or haven't been drinking," that is compliance.

There are certain standards requiring written findings and preponderances of proof to prove bail violations. That strikes the balance between public safety and potential flight risk and the right to be presumed innocent pending trial. The bill is about identified, empirical risk factors which, according to studies that address those factors, judges may use to alleviate pursuant to the assessment tool being created by Justice Hardesty.

SENATOR CANNIZZARO:
In section 1, subsection 3 of the proposed amendment, "A person arrested for any public offense that is a first offense and nonviolent" shall be granted an own recognizance release. It does not specify if the offense is a misdemeanor, gross misdemeanor or felony. Does "first offense" mean first arrest, first commission of a specific crime or first time ever in the criminal justice system? The Committee has discussed what constitutes a nonviolent offense because NRS has differing definitions. The subsection provides for "an administrative own recognizance release," which occurs prior to arguments by attorneys or interviews of defendants.

MR. PITARO:
We added the latter at the request of Justice Hardesty, so a person does not have to spend 48 hours in jail.

SENATOR CANNIZZARO:
Section 1, subsection 3 of the proposed amendment does not deal with the pretrial risk assessment tool. It actually just codifies that a person arrested for any public nonviolent and first offense shall be granted an administrative release. This is irrespective of the pretrial assessment tool. We are not differentiating between misdemeanors, gross misdemeanors or felonies. What are you contemplating as first and nonviolent offense?

MR. PITARO:
When a person is booked, the jail has the offense information. The evidence-based risk assessment tool is contemplated to be filled out at booking.

ASSEMBLYMAN FUMO:
In Clark County, the jail can do an administrative release. Let us say a young man comes to Las Vegas from California and is arrested for petty theft or larceny. The administrative office of the Clark County Detention Center will run a background check to make sure it is a first offense. It gives LVMPD the

authority to release the man administratively so he can come back to court, prior to seeing a judge, rather than having to wait 48 hours to see the magistrate.

SENATOR CANNIZZARO:
I am struggling with the language in the proposed amendment that says a person arrested for a first and nonviolent offense "shall be granted" administrative release. This is not something in which the judge has the ability to make the offense determination; release would be immediate. If we are talking about a first-offense residential burglary—arguably a nonviolent offense—maybe the judge sees the burglar has ties to the community, the financial ability to make bail, a job and is someone who would come back to court. According to the amendment's language, someone arrested on a first-offense burglary would be granted an immediate own recognizance release without that questioning or assessment. The language perhaps captures individuals with whom the judge wants to have that conversation without granting release.

ASSEMBLYMAN FUMO:
The language was left intentionally broad so jails could make those decisions and judges could decree court dates requiring offenders to come back within a week to 30 days.

SENATOR CANNIZZARO:
My issue is with the word "shall" because it is maybe getting at an unintended consequence of the bill.

SENATOR ROBERSON:
Many Committee members share the valid concerns raised by Senator Cannizzaro. The proposed amendment to A.B. 136 needs more work.

CHAIR SEGERBLOM:
We will close the hearing on A.B. 136 and open the hearing on A.B. 203.

ASSEMBLY BILL 203 (1st Reprint): Revises provisions governing cemeteries. (BDR 40-723)

ASSEMBLYWOMAN AMBER JOINER (Assembly District No. 24):
Assembly Bill 203 was requested by my Reno constituents. Although most of their testimony will relate to a particular Reno cemetery, this legislation will help clarify NRS 451 relating to historic cemeteries throughout the State.

Hillside Cemetery is just west of the University of Nevada, Reno (UNR), fraternities near University Terrace and Nevada Street. The cemetery is an important historic site.

Section 1, subsection 1 of A.B. 203 provides cemetery authorities shall not "Order the disinterment and removal of human remains interred in a burial plot that is owned in fee simple ... ." One would think property law protects families with fee simple plots with deeds and assessor's parcel numbers (APN) issued by Washoe County. However, one plot owner put up a notice of disinterment for the other plots, creating a sense of urgency. The bill will clarify that property laws are very clear with regard to historic cemeteries.

Sections 2 and 3 of A.B. 203 provide definitions. Section 4 provides a third party must be involved before cemetery authorities may disinter bodies. Now, authorities can disinter with no oversight by third parties. It makes sense to have objective government entities making that decision. Section 4 also provides that all other options, including cemetery restoration and sale, be exhausted before disinterment.

In section 5 of A.B. 203, existing statute provides notice must be given one year in advance of any disinterment action. The proposed language fixes a loophole. The Hillside families were told by the property developers that a year's notice is not required because the disinterred bodies would be reburied in the same cemetery, and the law only applies if reburial is in a different cemetery.

Section 6 deals with respect for the families and ancestors in determining receptacles for the disinterred bodies. We want to prevent mass graves because there is nothing in NRS regarding reinternment receptacles. Section 7 is adapted from other states' laws. A district attorney may initiate a procedure whereby cemetery ownership can be transferred to local governments or nonprofits. There is a nonprofit affiliated with Hillside Cemetery. The provisions of section 7 do not apply to cemeteries owned by cities or counties.

BARRIE LYNN:
You have my written testimony (Exhibit J) and an information packet on Hillside Cemetery (Exhibit K). Cemeteries founded prior to 1971 are not under the jurisdiction of the Nevada Funeral and Cemetery Services Board. If someone has a problem with how those cemeteries are being managed, there is no one to hear the complaint. The term "cemetery authority" does not imply any governmental board or entity. A cemetery authority can be anyone, including a person. In Nevada, family plots were sold as real property with deeds and APNs.

I have family buried in historic Nevada cemeteries. People with plots in Hillside Cemetery were informed in summer 2016 by signs posted on the fence that the remains of their deceased relatives would be disinterred and added to a mass grave in a different section of the cemetery. A party claiming to be the cemetery authority pitched the idea as a restoration project. After a month of public outcry, the signs were removed and the disinterment was temporarily suspended.

According to NRS 451, a cemetery authority may act as the sole determiner that a facility is irreversibly blighted. There are no guidelines they must follow to demonstrate that. After determining blight, they may disinter all bodies and sell the land for another use. Before 2001, a claim of irreversible blight and disinterment order could only be obtained with the consent of the local government. In the Seventy-first Legislative Session, a bill was proposed to remove that government oversight and give the cemetery authority unilateral power. The party lobbying for that bill was the same party that posted the notice at Hillside Cemetery. In the Seventy-eighth Legislative Session, the party's attorney introduced a last-minute amendment to a Senate bill to eliminate the problem of having to file a title action on the burial plots after disinterment.

The manipulation of NRS for one cemetery has jeopardized all cemeteries in the State. Extenuating circumstances may warrant mass disinterment, but the desire to turn a cemetery into a personal real estate investment is not one of them. Assembly Bill 203 will restore balance to our cemetery laws, bring back third-party oversight and protect families with buried loved ones.

JOHN MURAN:
My family has lived in Reno since 1871. I have about 12 relatives buried in Hillside Cemetery, including people named Gould, Hymers and Muran. A private

corporation is trying to use NRS 451 to justify digging up my relatives, relocating their remains to a mass grave, taking the land my ancestors purchased fee simple and selling it for a profit. The corporation is calling this land grab a restoration.

My great-great-grandfather W.H. Gould and his wife are buried in a potter's field at Hillside. When his wife died, Gould purchased a grave lot, a piece of real property, from Wiltshire Sanders. The Gould land is fee simple with a unique APN. My great-great-grandfather John Hymers and my great-grandfather Jacob Muran also purchased fee simple grave lots from Wiltshire Sanders. The unsold lots and common areas of Hillside have been owned by several entities. When Sierra Memorial Gardens bought the common areas from UNR, the quitclaim deeds specifically excluded "any and all grave lots or parts thereof sold by Wiltshire Sanders to different individuals for burial purposes prior to the date thereof."

Sierra Memorial Gardens knows it does not own the grave lots. Yet, as the cemetery authority, it believes it has the right to move bodies and sell the land. The intent of NRS is not to give a private corporation the right to take land from owners for personal gain. Such corporations do not have the power of eminent domain. The Fifth Amendment of the U.S. Constitution prohibits governments from taking private property without just compensation. What would your reaction be if your neighbor declared himself a cemetery authority and claimed he had the right to dig up and remove something from your land that you value, sell your land and keep the profits? What happens at Hillside could set a precedent that erodes the rights of every property owner in the State.

MICHON R. EBEN (Cultural Resources Manager, Reno-Sparks Indian Colony):
The Reno-Sparks Indian Colony supports A.B. 203. You have my written testimony (Exhibit L). As cultural resources manager, I am responsible for protecting, preserving and management of Native American remains, funerary objects and traditional cultural properties. Our heritage has been passed down from ancestors buried in State historic cemeteries.

In our culture, when someone dies, there are several aspects to the transition from the physical to spiritual world. Certain rites take place at the death, during the person's journey to the spirit world and at the burial site. When the dead are placed in eternal resting places, they are to remain there. Disinterment is not

part of any consideration. Any disturbance of a burial is disrespectful to our ancestors, spirits and the living.

Several Native Americans are buried in the potter's field at Hillside, including O.C. Wheeler, whose great-grandchildren live on the Colony; Pauline "Polly" Hicks, my paternal great-grandfather's sister; and John Sides, elder and peacemaker, whose English skills provided valuable interpretations between Anglo settlers and Indians in Nevada, Utah and Idaho. His fourth and fifth great-grandchildren are here today. His elderly three great-granddaughters, Floreen Reymus Tobey, Eleanor Allen and Ann Menz, are here and have submitted a letter of support (Exhibit M) for A.B. 203.

Would you not be devastated if, after 150 years, your body was dug up so a few people could profit from the act? Nevadans must respect and honor our history and set guidelines to keep our historic cemeteries properly maintained. Our cemeteries are historic destinations that educate Nevadans, tourists, students and scholars about the stories of the dead who helped shape our beautiful State. For far too long, our Native American ancestors have been disinterred for the benefit of archaeologists in the name of science. To dig up our ancestors is to disrespect the Creator's laws.

JAY CARTER:
I am the great-great grandson of pioneers of Reno. I support A.B. 203.

FRANCES TRYON (President, Hillside Cemetery Preservation Foundation):
I support A.B. 203 because it will bring our cemetery and NRS into balance.

MICHAEL DYER (Director, Nevada Catholic Conference):
The Nevada Catholic Conference strongly supports A.B. 203.

LOIS KELLY:
I support A.B. 203.

SCOTT F. GILLES (City of Reno):
The City of Reno supports A.B. 203.

GARRETT D. GORDON (City View Terrace, LLC):
City View Terrace, LLC, consists of Reno native principals Vinton Hawkins and Steven Polikalas. They are sensitive to the concerns heard today about Hillside Cemetery.

CHAIR SEGERBLOM:
Are Mr. Hawkins and Mr. Polikalas the cemetery authority?

MR. GORDON:
City View Terrace, LLC, has the option to purchase the property from the cemetery authority, Sierra Memorial Gardens. I am speaking on behalf of the entity holding that option. Here are three aerial photographs (Exhibit N) of the existing cemetery alongside the UNR "frat row." For decades, there has been blight, students stealing gravestones at pledge parties and drinking. The potter's field is now used as a fraternity parking lot. For years, Hillside has been a dumping ground.

Going back to 1985, the property was owned by UNR (Exhibit O), which then sold it to Sierra Memorial Gardens. Then-Governor Richard H. Bryan wrote in a letter, Exhibit O, "This document provides for the purchase by Sierra Memorial Services of the Hillside Cemetery for the purpose of investigating the feasibility of developing the cemetery." There was no perpetual fund established to maintain the property. It was half-built and continues to be a blighted plot in disrepair and disrespected daily.

Mr. Polikalas and Mr. Hawkins approached Sierra Memorial Gardens about cleaning up the cemetery. In this aerial photograph (Exhibit P), the plots in green would be moved to the area in blue.

CHAIR SEGERBLOM:
Are the plots being moved or will the remains be placed in a single grave?

MR. GORDON:
Mr. Hawkins will address that question. The goal is to get a cemetery of which all native northern Nevadans may be proud. How do you create a financial mechanism to do so? The property shown in green in Exhibit P would be sold. However, in exchange, Hillside would be a cemetery of which the community may be proud.

Mr. Polikalas and Mr. Hawkins hired three companies to look at the problem. The Commonwealth Heritage Group (Exhibit O) specializes in historic cemetery planning and design. It recently received an award in Virginia for its work on projects like Hillside. The men hired another consulting group to map the cemetery for a Wikipedia-like opportunity at the reburial location. If you are walking by the cemetery with your smartphone, if you see Mr. Plumb's grave, you can click on an application and get his full life history.

I have been legal counsel for this dispute for about three years. If A.B. 203 passes and NRS 451 is changed, the rules will be changed in the seventh-inning stretch. We went to the Washoe County Health Department for a Health District permit for disinterment of human remains (Exhibit R), put together opinions of professionals and were issued the permit. So, there is government oversight of the project. It is correct that we posted notices on the cemetery fence because statute requires it but not the 800 number and Web address we included. We asked the relatives and heirs to contact us so we can work with them. We are working out a process to move the issue forward.

The problem Commonwealth Heritage Group, Inc., has with A.B. 203 is two men relying on a law have satisfied it to a T, but now all of their hard work, money and effort to obtain a permit may be voided if the bill passes. It impairs our current contracts and is retroactive application of a law. No one here has argued we have violated any provision of the law's checklists. The bill contains a constitutional takings issue: a city or county may take properties without just compensation to cemetery authorities. There are no eminent domain protections.

With regard to the fee simple title issue, the law is very clear with respect to cemeteries. A fee simple title for the purpose of a cemetery should be considered a license for an easement. San Francisco, Chicago O'Hare Airport or properties all over the Country would not exist if fee simple titles were enforced and there were no statutory schemes to disinter bodies. Caselaw is clear that we have a legal right to relocate graves in the existing Hillside Cemetery if it is done like-kind without damage or disadvantage to the relocation.

We have heard a lot about oversight, that the cemetery authority has the right to unilaterally decide the property is blighted and should be noticed and then proceed with disinterment. It is not unilateral because the Health District permit is required. Hillside does not fall under the jurisdiction of the Nevada Funeral and

Cemetery Services Board, but I would suggest that change. If restoration projects with a promise of a perpetual fund are proposed, the Board should hear the evidence and proposal and make a determination.

CHAIR SEGERBLOM:
If A.B. 203 becomes law, would the Hillside parcel ever be anything other than a cemetery?

MR. GORDON:
Our project is dead, and Hillside would remain in its present condition for 50 years.

SENATOR ROBERSON:
This troubles me greatly that you would disinter bodies. When you purchased the land, what was your intended use for it? Did you intend to eventually develop it? This is a municipal issue. The City of Reno should be more involved. I am all for business and development, but this goes too far for me. I cannot imagine your business plan involves disinterring bodies.

STEVEN T. POLIKALAS (Commonwealth Heritage Group, Inc.):
This is obviously a sensitive issue. The notion of relocating bodies and consolidating Hillside arose a long time ago. The property was discontinued as use as a cemetery by the City in 1920, with few if any burials since then. The cemetery fell into complete disrepair. Of the many people buried there, less than 40 graves still have headstones.

SENATOR ROBERSON:
Maybe the City of Reno needs to make this right.

MR. POLIKALAS:
In 1970, Reno City Councilman Clyde Biglieri crafted the concept of consolidating the cemetery into just one parcel, Exhibit N. We relied on that public desire because, as Reno natives, we know Hillside is not much of a cemetery anymore despite being a burial ground.

VINTON HAWKINS (Conservation Resources; Commonwealth Heritage Group, Inc.):
With Conservation Resources in California, I do mitigation banking, work with many government agencies, set up endowments and preserve natural resources.

I know how to secure endowments, put easements on the grave plots and work with funeral boards to create restoration projects.

Part of the process of posting the notice was finding out if there were living relatives of the deceased. However, there was really no mechanism to do so, with no addresses and just a few names gleaned from Sierra Memorial Gardens. We tried to reach out through the Commonwealth Heritage Group Website and public notification. There was no intent to move bodies without discussions with families. The site will remain in permanent disrepair and desecrated unless a restoration project like ours is done.

SENATOR ROBERSON:
Do you live in Nevada?

MR. HAWKINS:
I live in Sacramento, California.

SENATOR GUSTAVSON:
If A.B. 203 does not pass and you are allowed to proceed with your project, looking at Exhibit P, how many graves are in the two areas?

MR. POLIKALAS:
The cemetery was never finished, so many of the plots do not contain bodies. In the photo in Exhibit N, you can see Jewish, Grand Army of the Republic and Knights of the Pythias cemeteries on land sold by a developer in the 1800s. A mass grave has never been contemplated because it is unlawful and immoral.

CHAIR SEGERBLOM:
You said San Francisco has moved bodies from cemeteries. Did they put them in a new plot, buried them all together or cremated them?

MR. HAWKINS:
Based on how long the burials were done and without the benefit of modern embalming, there is sometimes little left of the remains. They require less space.

CHAIR SEGERBLOM:
The City of Reno has improperly let the Hillside property go.

ASSEMBLYWOMAN JOINER:
It is now not under the jurisdiction of the City. Section 4 of A.B. 203 is trying to rebalance NRS 451. I agree maintenance should be at the local level, but we are here because in 2001, the developer manipulated the statute in its favor. Section 4 provides cemetery authorities may determine cemeteries are blighted and disinter bodies. This must be decided at the State level with this bill, which provides local government is the third party to make the determination. The cases would then go to city governments.

We have been told the cemetery is blighted. The nonprofit Hilllside Cemetery Preservation Foundation and affected families are taking care of the site. It is ironic that the bill's opponents argue they are not illegally taking the land. The government is not taking anything from the families, who still own the plots. The bill reiterates that and says the bodies cannot be disinterred. It is not the responsibility of the government to ensure the success of a property speculation. The disinterment permit issued by Washoe County, Exhibit R, lists only the developers' APNs, not those of the family plots. That proves the developers do not have the legal right to disinter those bodies.

CHAIR SEGERBLOM:
What about the developers' offer to make the current NRS apply to Hillside?

ASSEMBLYWOMAN JOINER:
Modern cemeteries lease plots, while historic cemeteries issued fee simple deeds. If the end result of this is disinterred bodies being dumped in mass graves, the situation will not change without the bill. The solution is to rebalance NRS 451 to its pre-2001 language so an independent third party may determine when cemeteries are blighted.

CHAIR SEGERBLOM:
If NRS is rebalanced, could the City determine Hillside is blighted and close it?

ASSEMBLYWOMAN JOINER:
Section 4 of A.B. 203 provides for that after all other options are exhausted, including possible selling or restoring the cemeteries. The developers have the option to purchase unused plots from families. As for the assertion the project is dead and they will talk to the families, we held a stakeholders meeting at the Assembly during which the developers offered the families nothing.

SENATOR ROBERSON:
We cannot let this happen because certain things like that are just not done in life. Is the City of Reno willing to help with the problem?

MR. GILLES:
I do not know. The bill will not give cities direct authority to act.

SENATOR ROBERSON:
Do you want that authority?

MR. GILLES:
We would like to be able to follow the process in the bill. District courts could use it as a tool to transfer title to cities. If that situation arises, Reno would look carefully at the property, figure out what needs and resources it has and determine what could be done, based on the City budget.

SENATOR ROBERSON:
We have been told the situation arose because the City decided in 1920 not to maintain Hillside. Is that correct?

CHAIR SEGERBLOM:
No, the cemetery was always private.

ASSEMBLYWOMAN JOINER:
The City voted to disallow burials in Hillside. However, people who own the plots can still be buried there because they own the land.

SENATOR HARRIS:
Mr. Gilles, is the City comfortable with the language of A.B. 203? If a cemetery is not cared for, section 7, subsection 2, paragraph (b) provides for a transfer of title to the city. Is Reno prepared to take on that responsibility if it comes to that?

MR. GILLES:
The Second Judicial District Court could transfer title to the City. We support the language because we could determine what upkeep would be required and accept transfer of title.

SENATOR HARRIS:
Will you help facilitate the maintenance with the nonprofit? Ultimately, what will be the status of the property? If the City does not work with the nonprofit, we are back to square one.

MR. GILLES:
The Reno City Council has not publicly delved into whether it wants that responsibility. If the Court deems it so, I do not know who will be involved in that litigation. The Council is tasked with determining how to spend its parks money and resources.

MR. CARTER:
Under NRS 451, Sierra Memorial Gardens does not qualify as a cemetery authority because it does not own all of the Hillside property.

EMILE BROOKS:
In April 1864, my great-grandparents came to Nevada Territory. They and others of my relatives are buried in Hillside.

MS. TRYON:
The Hillside Cemetery Preservation Foundation is a nonprofit that has been cleaning up the cemetery. It is not blighted, and families are repairing their plots. My volunteers and I would be happy to take over the restoration of this sacred land.

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CHAIR SEGERBLOM:
We will close the hearing on A.B. 203. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 4:08 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	2		Agenda
	B	9		Attendance Roster
A.B. 107	C	2	Assemblywoman Shannon Bilbray-Axelrod	Written Testimony
A.B. 107	D	3	Lauren A. Pena	Letter of Support
A.B. 107	E	1	Lauren A. Pena	Letter of Support, Judge Melissa A. Saragosa
A.B. 107	F	1	Ron Sung	Written Testimony
A.B. 135	G	7	Graham Lambert	"Medical Toxicology of Drug Abuse"
A.B. 136	H	1	Assemblywoman Dina Neal	Nevada Pretrial Risk Assessment
A.B. 136	I	23	Assemblyman Ozzie Fumo	Proposed Amendment
A.B. 203	J	1	Barrie Lynn	Written Testimony
A.B. 203	K	36	Barrie Lynn	Information Packet on Hillside Cemetery
A.B. 203	L	2	Michon Eben / Reno-Sparks Indian Colony	Written Testimony
A.B. 203	M	6	Michon Eben	Letters of Support
A.B. 203	N	3	Garrett D. Gordon / City View Terrace, LLC	Aerial Photographs of Hillside Cemetery
A.B. 203	O	10	Garrett D. Gordon / City View Terrace, LLC	Purchase Agreement for Hillside Cemetery
A.B. 203	P	1	Garrett D. Gordon / City View Terrace, LLC	Aerial Photograph of Hillside Cemetery
A.B. 203	Q	2	Garrett D. Gordon / City View Terrace, LLC	Company Profile of Commonwealth Heritage Group
A.B. 203	R	8	Garrett D. Gordon / City View Terrace, LLC	Washoe County Health District Permit, Disinterment of Human Remains