MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
May 10, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:31 p.m. on Wednesday, May 10, 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 Don Gustavson
Senator Becky Harris

COMMITTEE MEMBERS ABSENT:

Senator Aaron D. Ford (Excused)
Senator Michael Roberson (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Elliot T. Anderson, Assembly District No. 15
Assemblyman James Ohrenschall, Assembly District No. 12
Assemblyman Justin Watkins, Assembly District No. 35
Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Tonja Brown
Sean B. Sullivan, Office of the Public Defender, Washoe County
John J. Piro, Office of the Public Defender, Clark County
Jennifer Noble, Nevada District Attorneys Association
Lisa Smyth-Roam, Ph.D., Supervising Criminalist, Biology Unit, Forensic Science Division, Washoe County Sheriff's Office
Chuck Callaway, Las Vegas Metropolitan Police Department
Kimberly Murga, Director, Forensic Laboratory, Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Robert Langford
John T. Jones, Jr., Nevada District Attorneys Association
Kevin Burns, United Veterans Legislative Council
Ryan Gerchman, United Veterans Legislative Council
Mark Stevens, Municipal Court Judge, Department 1, Veterans Treatment Court, City of Henderson
Ken Roberts
Richard Carreon, President, Nevada Veterans Association
Kelly Crompton, City of Las Vegas
Christine Adams, Vice Chair, Northern Nevada DUI Task Force
Anne Carpenter, Deputy Chief, Division of Parole and Probation, Department of Public Safety
Kristy Oriol, Nevada Coalition to End Domestic and Sexual Violence
David Cherry, City of Henderson

CHAIR SEGERBLOM:
I will open the hearing of the Senate Committee on Judiciary today with Assembly Bill (A.B.) 268.

ASSEMBLY BILL 268 (1st Reprint): Authorizes certain persons to file a postconviction petition to pay the cost of a genetic marker analysis. (BDR 14-638)

ASSEMBLYMAN JUSTIN WATKINS (Assembly District No. 35):
It is important to note that in the original version of A.B. 268, as well as the first reprint we are talking about today, most of the language is existing law with some additions for this particular carveout.

CHAIR SEGERBLOM:
We had a similar bill, so we know the issues, and if you want to just give us a summary, we would take that.

ASSEMBLYMAN WATKINS:
Okay, I will. I have worked with the Nevada District Attorneys Association (NDAA) and with law enforcement on this bill. We do not have consensus, but they have been of great assistance to me.

Starting my presentation (Exhibit C), if someone is convicted of a felony today and wishes to have DNA tested postconviction in an appeal, he or she must petition the court. This is in *Nevada Revised Statutes* (NRS) 176.0918. The petition must include the information shown on page 2 of Exhibit C in the second bulleted area. The individual petitioning for the DNA test must meet a certain standard to show that if the evidence is tested and found to be favorable to the defendant, it would overturn the conviction.

On page 3, Exhibit C, NRS 176.09183 requires additional information. One of the important parts of this statute is that the Nevada Department of Corrections (NDOC) charged with paying for the DNA test if the person who petitioned for the test is incarcerated and indigent, and the results prove that person to be wrongfully convicted. Based on practice, almost every person who petitions the court will meet these qualifications. If the results are not favorable to the petitioner, the inmate is charged for the test, so the State becomes a creditor, having to continually follow up with the inmate if he or she gets a sum of money. It can be a cumbersome process.

What A.B. 268 does, page 4, Exhibit C, is allow people postconviction, incarcerated or not, to obtain a DNA test of any evidence they choose as long as they are willing to pay for it. In addition to the aforementioned information required to be submitted by the petitioner on page 2, Exhibit C, there must be included a preference for a laboratory to conduct the test if the person does not want the State to choose the laboratory. The NDAA and law enforcement have asked that there be some time before the implementation of this bill for this provision. If the State does not have a contract with an independent testing laboratory, then if the results are not favorable and if an outside lab identifies someone else, our State or local laboratory would never know those results. Because of this, the NDAA and law enforcement requested that they have until July 2018 to create some of these contracts. In the bill, it says that if the State

has contracts with at least two out-of-state laboratories, the petitioner must pick either the State or one of the out-of-state laboratories. If there are not contracts with those laboratories, the petitioner can choose any laboratory he or she wants, and the State will just not get the results.

One of the other concerns is that the State will incur a fee to transfer the evidence from the State's laboratory to whatever out-of-state laboratory is selected. We put in a provision for that scenario where a transfer fee can be tacked on to ensure that the State is not paying any portion of this test. This is truly intended to be incumbent on the inmate.

CHAIR SEGERBLOM:
Is this in conjunction with the Innocence Project? Second, what about the poor guy who cannot afford to pay for his DNA test?

ASSEMBLYMAN WATKINS:
The idea behind this bill came out of the 2015-2016 Advisory Commission on the Administration of Justice during public comment. This was not a unanimous recommendation from that Commission. Regarding the poor guy, if you look at page 5 of Exhibit C, you can see the current law on the left and A.B. 268 changes on the right. Nothing in the bill would change the access to justice under current law for people who are indigent. If they cannot pay for it, they still have access to have the DNA test, but they must prove to the court all the factors they must prove today—that it is exculpatory and that it would otherwise turn over their conviction. If you are going to ask taxpayers to fund the test, I believe it is okay to ask the petitioners to jump over some hurdles.

There are some constitutionality concerns. Are we going to provide better access to justice for people who have money than for people who do not have money? For the sake of argument, let us say that does not already happen.

CHAIR SEGERBLOM:
That is, unfortunately, the nature of the justice system.

ASSEMBLYMAN WATKINS:
I agree with you. What we put into this provision, which may be for the first time in NRS, is unique. Most statutes say the bill is severable, which means that if any one provision of the bill is found to be unconstitutional, the remaining parts survive. That is part of our founding documents. This bill, A.B. 268, says

the opposite. If any one provision of this bill is found to be unconstitutional, the whole thing is unconstitutional, and we would revert to what is on the left side of page 5 of Exhibit C under current law. It is unique, but I found other statutes in other states that have done this sort of provision, and it works. I am not saying the bill's constitutionality will not be challenged; certainly, it will, but I feel confident in my limited practice in appeals work to say we have provided access to justice for the indigent and to the people who have money. In civil court, there are times when we will waive certain fees for the indigent, but they must prove some things first. This is similar to those situations.

SENATOR HARRIS:
Regarding the choice of labs in A.B. 268, as I read section 1, subsection 3, paragraph (d), it says the petitioners will indicate whether or not they prefer to have a specific forensic laboratory conduct the test. Does that mean they can pick whatever lab they want to have the genetic testing done? That is pretty open. Is it your intention that they can use any lab in the U.S.?

ASSEMBLYMAN WATKINS:
That is not my intention. If you look at that passage, it says "subject to the provisions of subsection 5," and if you look at subsection 5, it states that if the political subdivision has a contract with two or more private forensic laboratories, the petitioner must choose either the State or one of those two private labs. This gives the petitioner a choice of three laboratories. If the State has not contracted with at least two private laboratories by July 2018, then it is my intention to open it to the entire world.

SENATOR HARRIS:
I saw that there are no minimum standards for the lab to maintain to do the testing. Are you open to including some minimum standards for a laboratory to qualify under this bill?

ASSEMBLYMAN WATKINS:
It does require that any laboratory has to meet the FBI minimum standards, which is in section 3, subsection 3, paragraph (b), subparagraph (3), in existing law.

SENATOR HARRIS:
How many U.S. labs qualify with that type of designation?

ASSEMBLYMAN WATKINS:
I have no idea. Based on testimony with our rape kits that also require those standards, there are a number of laboratories, many of which are not backed up with tests needing to be done. Those are more expensive, though. If an inmate can afford that, it would be his or her prerogative.

SENATOR HARRIS:
What is the range of fees for what a lab can charge? At what point is the State obligated to provide those services to someone who meets the qualifications to petition for the test and who is also indigent?

ASSEMBLYMAN WATKINS:
The cost depends on the test. It can be as low as $80 or into the hundreds of dollars. To your second question, the indigent does not have choice of laboratories so long as the State does not have a preference. However, if we are going to ask people to pay for their own DNA tests, they should have a choice of laboratories.

SENATOR HARRIS:
It sounds like we have people who can afford to pay and who can use a lab of their choice to have DNA tested, and we have indigent individuals who are going to rely on the taxpayer who may not get their test done for a year or two years, depending on the backlog. We know that forensic testing is a critical issue both here and in other states because of the backlog with the sexual assault kits.

ASSEMBLYMAN WATKINS:
That is correct. The positive of this bill is that when you look at those two columns on page 5 of Exhibit C, there are going to be a lot of people who would otherwise qualify under current law to get a test done who will be there through the Innocence Project, a GoFundMe or through a family or friend to obtain the money to get the test done. I think this helps solve the backlog. My colleagues in law enforcement may have a different opinion on that, but if there was a test that I believed could set me free that would cost $80, I would try to scrounge up all I could to get the test done at the laboratory of my choice. The more people who choose to elect this, the less there are in the State backlog.

If the State does the test, we would increase the state laboratory's volume, which would be a good thing so they could hire more people. As opposed to the

rape kits, this is money the lab would be getting back. From a policy perspective, it is important that defendants have the same right to the same physical evidence as the prosecutors.

SENATOR HARRIS:
So it is a job creation bill.

ASSEMBLYMAN WATKINS:
I think that is correct.

SENATOR HARRIS:
How do we ensure that money is paid and makes its way to the police departments or laboratories so there is not a hang-up in NDOC or somewhere else?

ASSEMBLYMAN WATKINS:
That is a concern. The petitioner has to pay the money before any test is ordered. I did not provide for a specific channel for how that money flows through because that is not provided for now, and I did not want to micromanage the courts.

One criticism that NDAA and law enforcement has of the bill is that they want proof the current system is broken or whether this bill seeks to solve a problem that does not exist. We know some people in the State were innocent and put away for some time. The system may have worked for some of them, but we cannot know the system is broken if we do not provide access to this type of physical evidence.

SENATOR CANNIZZARO:
The Innocence Project has been able to do a lot of good work. Certainly there have been people incarcerated for a long time before we had access to these types of tests. The Innocence Project does not review claims where DNA testing cannot prove innocence. For example, in a sexual assault case with a victim and a defendant where the defendant says at trial that he did have sex and he admits that it was his DNA swabbed from the victim, but he says she agreed to have sex, so it is an issue of consent. Under your bill, if the defendant wanted to pay for the DNA test and it comes back with the defendant's DNA or if the DNA comes back with someone else's DNA, neither of those test results change the case. Why would we be allowing for individuals who even the

Innocence Project would not take? Why would we reopen a case if the test results would not change the outcome?

ASSEMBLYMAN WATKINS:
In your example, arguably, the DNA test could change the case. We had a case in Reno where a woman confessed to a crime and went to prison for more than 35 years, and it was a DNA test that exonerated her. Are we going to have some DNA tests that are fruitless? We probably will, just like the investigators may do some DNA tests during their investigations that are fruitless. If we want to promote confidence in the criminal justice system, I do not see the harm in allowing the defendant the same access to physical evidence as the investigators and prosecutors. Most appeals from a criminal conviction, especially based on DNA, are going to have to do with ineffective assistance of counsel.

SENATOR CANNIZZARO:
In your example, where there is on appeal a claim of ineffective assistance of counsel based upon the idea that DNA was not tested, why cannot there just be a showing that there is some nexus between this test and what happened in the case? We are even going above and beyond what the Innocence Project does. For anybody who practices in this field, these are not where the DNA is make or break; this is not where DNA makes a difference. I have some hesitation with saying we are going to completely change the standard and say there is no standard as long as you pay for it. It is really not about paying or not paying for it; it is about justice. If we are talking about that, we should be talking about cases where this is really going to make a difference because that is what instills confidence in the justice system.

When there is no proof that the defendant did not have access to DNA testing at trial or if it was not done, or even if the defendant asked the attorney to do it and the attorney refused or failed to do so, why cannot we require at least that much?

ASSEMBLYMAN WATKINS:
Access to justice does not have a single lens through which people look. If the public is told that the defendants have access to all the same physical evidence as the prosecutors and the investigators, I think confidence in the system would grow, not only from the inmates but from the general public. The standard we would propose to instill on the defendant is not the same standard that is put on

the other side. Why is it that the investigators do not have to go to the court and petition to show the relevancy of why they want the test, but the defendant would have to? If we are going to have equal access to justice, it truly should be equal.

SENATOR CANNIZZARO:
The problem with that is that the burden lies with the State, not the defendant. There are many things in the criminal justice system where the State is not under certain obligations to do things a certain way or provide a showing because we have to do that. It is not because we have to come to court and say we want to test the DNA to see if it could potentially show that the defendant committed the crime. The State has that burden already to prove a case beyond a reasonable doubt, which in many cases, requires the presentation of DNA evidence. At the heart of this, for me, is that in cases where DNA is not the make-or-break factor and we do another DNA test, at some point, the litigation has to end for the victim.

The second example on the Innocence Project Website is self-defense: there are two individuals in a fight with a knife and someone comes to help the victim. The defendant is found with the knife, confesses and is identified by many individual witnesses. The DNA comes back showing a mixture of blood from the defendant and the victim. If there is another sample tested and it shows a third individual, this is opening the door for that defendant to come back and say he was wrongfully convicted. He can then change his story and ask to reopen the case, bringing victims in and rehashing everything, even though there were multiple witnesses and the defendant confessed and was holding the murder weapon in the first place.

These are the kinds of cases where I hesitate to say we should allow someone to ask for a DNA test just because he or she wants to pay for it. At some point, the victim does not deserve to be dragged back into court.

ASSEMBLYMAN WATKINS:
You said a lot. First, nothing in this bill is intended to revictimize a victim. The scenario you laid out of going back into court and changing stories is nowhere in this bill. All this bill does is provide for a yes or no answer on what DNA is. There are protocols in place for retrial and what standards must be met before any other evidence is going to be reheard. The courts are in the position to make that determination.

To your first statement about the burden of proof being on the State, I think that lends more credibility to my argument that, yes, it is the State's burden, so why should it have more access to data information and physical evidence than the defendant when it is the State's burden of proof and the defendant is supposed to be innocent until proven otherwise?

SENATOR CANNIZZARO:
When you say the State has more access to data, what are you referring to?

ASSEMBLYMAN WATKINS:
The investigators can obtain DNA evidence without petitioning the court before any criminal proceeding moves forward. I am not saying the defendant should have that same right prelitigation, but certainly one side should not get to dictate to the other side how they are to present their case. If the defendants have a theory of defense they want to pursue that is based on DNA results, they should have that opportunity.

SENATOR CANNIZZARO:
It seems like trial is the place for that. Do you have evidence that demonstrates defendants are routinely not allowed to test DNA evidence when requested from the court?

ASSEMBLYMAN WATKINS:
This bill does not aim for what is routine. We have a fundamental understanding of justice that says we would rather have ten guilty people go free than one innocent person be jailed, so we have to make sure there are no cracks in the system. If this bill changes the result of even 1 out of 10,000 tests, then I think it was worth doing.

SENATOR CANNIZZARO:
Why cannot we just require that a defendant say, "I wanted this tested at trial and it was not done and my counsel was ineffective for doing so." We can talk all day long about whether the current law and standard is too high or too low, but to say there is no materiality required is where I am having some reservations. I completely agree that we would rather have ten guilty people walk out the door than to have one innocent person wrongfully convicted. However, if we are saying that this is because of a theory of defense, trial is the time for a theory of defense, not to have a defendant say, "after I have been convicted, I now want to take a second crack at a different way to pursue this

case because the first time I tried this theory of defense, it did not work." Even the Innocence Project has some guidelines about what cases it takes. The Clark County District Attorney's Office has a Conviction Integrity Unit where there are standards for what types of cases are taken. When we see standards for everything else, but we are removing standards just because someone wants to pay for something, that is where my hesitation comes from.

ASSEMBLYMAN WATKINS:
I understand your concerns but from my perspective, we are not rehashing any case. We are just giving defendants access to physical evidence, and they can get tested any way they want. It does not require the court to do anything more or anything less than that. It does not require a rehearing or even a hearing. We have adequate safeguards in place to ensure the court is not overburdened with rehashing cases where DNA evidence has no materiality, and I do not see the harm in allowing someone to find out if it was his or her blood on a knife.

SENATOR CANNIZZARO:
But if we are not rehashing cases, what is the purpose?

ASSEMBLYMAN WATKINS:
There may be a time at which it does rehash a case and then, hooray for all of us for doing it because then we found somebody who was worth creating this bill for.

SENATOR GUSTAVSON:
Who will pay for this? We know the majority of prisoners are indigent. Do you know what percentage that would be?

ASSEMBLYMAN WATKINS:
I would say 99 percent.

SENATOR GUSTAVSON:
That is what I thought, so the State getting repaid for the test would be almost nil.

ASSEMBLYMAN WATKINS:
No test would be done without payment first.

TONJA BROWN:
I am an advocate for the inmates and the innocent. I can answer some of the questions put to Assemblyman Watkins. Inmates have maintained innocence. They are being denied parole until they admit guilt to the State Board of Parole Commissioners. In our case in 1988, DNA was relatively new at the time. We were told by our public defender that it was too costly, but that the district attorney's office would test it. At trial, we learned that no DNA test was done.

I have submitted two documents (Exhibit D). One is a letter of preservation dated May 5, 1989, a few months after his trial, asking to preserve DNA testing, he will pay for it and when technology advances, he would like it tested. In 1990, he filed a postconviction petition, raising the questions about the DNA. In the denial of the petition, the court left it up to him to find the lab. Another letter of preservation, Exhibit D, details what he is asking for and which laboratory was chosen for testing and analysis.

In 1996, we had raised a total of $5,000 for this test. In 1998, we finally made it into court about the DNA, but the DNA testing never took place. This is what inmates are up against. Some were incarcerated before DNA testing was available, yet now they are asking for the test. Indigent prisoners can get money on their books from their family and friends. If there is money owed on the inmate's account, they will take a percentage of money from the book.

An inmate, Mr. Green, was convicted for murdering his ex and was asking for DNA testing. There was another man who was a prime suspect in the murder named David Middleton, who is now on death row for murdering two other women. They found DNA in that storage unit of Mr. Middleton that did not match the two victims he murdered. Mr. Green was charged and convicted four months later, and the DNA has not been tested. This bill would give Mr. Green and others the opportunity to clear their names.

Some of the problems with this are that inmates are procedurally barred from doing DNA testing after the appeals process. That is what this bill will help. There are ways to get money—GoFundMe accounts, the Innocence Project, support groups and family members—that would help. It would be a small group that could not afford it.

When we have those who have been wrongfully convicted serving time in our prison system, it is costing the taxpayers a minimum of $23,000 per year. This

is if the inmate is healthy. Give them the opportunity to seek their freedom and seek their loved ones.

SEAN B. SULLIVAN (Office of the Public Defender, Washoe County):
We support A.B. 268.

JOHN J. PIRO (Office of the Public Defender, Clark County):
We support this bill. One of the things that keeps me up at night as a public defender is missing something in a case. If this could provide an opportunity to correct an injustice, I am all for it.

JENNIFER NOBLE (Nevada District Attorneys Association):
At some point, litigation has to come to an end. Victims are entitled to some closure. Consider the process we already have in Nevada, including the mechanisms for DNA testing and independent testing of evidence. During a trial, a defendant can move for independent testing or retesting of DNA. If that motion is denied, the defendant can appeal it to the Nevada Supreme Court.

We have the direct appeal process. We also have the postconviction process. Under NRS 34, not under this chapter, which is NRS 176, a petitioner can say his or her attorney was ineffective and can then file a postconviction petition for a writ of habeas corpus to have DNA tested. In this process, the petitioner is held to a very minimal pleading burden, similar to the burden of NRS 176. In 2016, the Nevada State Public Defender's Office expended $1.6 million in postconviction litigation alone.

Looking at NRS 176, the question is, what does someone have to show to get this tested? The petitioner, who is the plaintiff, does not have to prove anything, and the plaintiff has a pleading burden, which in this case is minimal. It is very basic: why "a reasonable possibility exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained."

If the petitioner cannot meet this very low burden of pleading, the court has the discretion to deny the petition. The problem with A.B. 268 is that it removes this very low burden of pleading and takes the courts out of the equation, removing the ability of the judge to deny what we call fishing expeditions. We have people coming back in these cases year after year, including victims' families coming to postconviction hearings. Samples are tested and retested.

We have experts at the trial level and at the postconviction hearing level. These cases are litigated carefully and DNA is carefully reviewed.

The other thing to keep in mind is that even if the samples are sent to contracted labs and the testing is paid for, our labs are still going to shoulder the responsibility and personnel time of conducting technical reviews and other associated logistics. This takes time from testing our sexual assault kits, and it means that people in custody and awaiting trial who may be innocent will have to wait longer for their test results. For victims, the end becomes further and further away. In short, there are few obstacles to independent DNA testing of evidence in criminal cases. We oppose A.B. 268.

LISA SMYTH-ROAM, PH.D. (Supervising Criminalist, Biology Unit, Forensic Science Division, Washoe County Sheriff's Office):
One of the concerns for us is that we do not know how many cases the change in this law will cause to come our way. It could be minimal, and if we send it out to a private lab to test, we have to review all the data when it gets back before anything can be entered in the Combined DNA Index System (CODIS). If it is a few cases a year, it is not a big deal, but if it is a couple hundred cases a year, that will have more of an impact on our lab.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
We oppose A.B. 268. I voted against it as a member of the Advisory Commission on the Administration of Justice. We share the goal of putting the correct person in prison; we do not want innocent people to be behind bars with the real perpetrator still out on the street. The current process in place—petition through the courts and having a judge or court look at the relevance of the evidence requested—should stay in place.

This bill will put more demands on our labs. It is not a jobs bill because we cannot hire forensic scientists to work in our lab without a dedicated funding source. We do not know how many of these requests we would get, and it would not be a steady source of income we could hire from. The bill does not even clearly outline how our labs collect the fee from the courts. You could have cases where the offender pays the court and then the lab does not get the payment and must try to get it from the court. We have seen this in other situations. I know it was said that we do not have to test the evidence until we receive the money, but then you get into a situation where the court will ask why it has not gotten done. It can be problematic.

This bill does not put a limit on how much evidence could be tested, so there is a concern of fishing expeditions. If I am sitting in prison and have nothing better to do, I might ask for things to be tested and once a sample has been tested, my understanding is that it cannot be tested again. There is no limit on how often these requests can be made. There are some chain of custody and resource issues for us to gather this evidence and send it off to a private lab at the request of the offender. Then we have to follow up and verify that information. I think we have a disparate situation, where people without money are subject to the current system, which I believe is a good system, but where they have to petition the court and the judge decides whether it is relevant. Whereas the person with money gets to bypass that and go directly to testing because he or she can pay. There are no checks and balances for that person just because he or she has money.

Regarding the Middleton case, that testimony raised more concerns for me because if I am an offender who has been convicted and I can try to have evidence tested from some other offender—who was arrested and who may have had bodies inside a storage unit that may not be directly related to my case but because I think that person is a serial killer—to try and exonerate me, that expands the scope of what can be tested and the potential impact on our labs.

KIMBERLY MURGA (Director, Forensic Laboratory, Las Vegas Metropolitan Police Department):
I have 17 years of DNA experience and 21 years in the forensic arena. To outsource DNA testing can cost several hundred dollars to several thousands of dollars per sample, depending on the type of analysis requested. Every private laboratory out there has a backlog because of the sexual assault kit issue. There are grants out there and 2016 awards that have not yet been started because the private labs are overburdened. I am not sure this bill would help alleviate that pressure.

Cases that are in the backlog should not be confused with postconviction relief. Having samples tested through postconviction relief should not necessarily impact the backlog. The whole point of laboratories having contracts with private DNA laboratories is to take ownership of the data generated by those private labs to evaluate that data, ensure the quality is superior and to then enter any eligible profile into CODIS. This is an FBI requirement, and if a laboratory is used that does not have a contract with the State, any DNA

testing generated during that analysis is not eligible to be entered into CODIS. For the premise of this bill in which we are seeking to exonerate the innocent and convict the guilty, the laboratories have no mechanism to review that data generated from a noncontracted lab and then help further try and solve that case.

ERIC SPRATLEY, LIEUTENANT (Washoe County Sheriff's Office):
We oppose this bill and appreciate the spirit and intent of it, but it just will not work for our lab. If there is another amendment that comes out to address these concerns, I would point out a possible oversight in section 1, subsection 5 of A.B. 268, where it says "If a petitioner does not wish to have a forensic laboratory that is operated by this State or one of its political subdivisions," which in this case would be the Washoe County Sheriff's Office Forensic Science Division, then the person can contract with a private forensic laboratory. That is limiting because there is the potential that maybe there is a new premier and overstaffed lab in Arizona that we can contract with in the future; but that would not be a private lab, it would be a state or county lab.

Finally, I wholeheartedly agree that at some point, the litigation has to end for the victim.

ASSEMBLYMAN WATKINS:
I agree with the sentiment to not limit section 1, subsection 5 to just private labs, and I would agree to that amendment. It could be a different state's lab as long as it has a contract with our State. I think the opposition is based on some philosophical differences, which is why we could not find consensus. I do want to clarify from the testimony in Clark County that this bill does not allow for the selection of any lab if the State has contracted with at least two laboratories that would ensure the profiles were entered into CODIS. Lastly, just for purposes of intent, nothing in this bill is intended to limit the options available to our State lab or any other laboratory to prioritize its testing procedures. People awaiting trial certainly deserve priority over postconviction testing. We allow the labs to do that now, and I certainly would not want to change that.

I have a letter of support from the Nevada Attorneys for Criminal Justice to submit (Exhibit E).

CHAIR SEGERBLOM:
I will close the hearing on A.B. 268 and open A.B. 444.

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

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
This bill has to do with search warrants served upon an attorney.

ROBERT LANGFORD:
I am an attorney in private practice. Some people think this is a bill to protect guilty lawyers, but it is designed to protect those who are accused and represented by a perhaps guilty lawyer who, through no fault of the accused, happens to have files with this guilty lawyer mixed in with files that might be evidence of a crime. Assembly Bill 444 seeks to create a mechanism where attorneys not associated with the prosecution and officers not associated with investigation and prosecution are reviewing the materials determining what is the proper fruits of the search to give over after the search is completed.

SENATOR SEGERBLOM:
Instead of just being able to come grab your files, the files would instead go to an independent magistrate or someone who would look at the files and determine whether it looks like something that may be interesting or if the files are just attorney work products. Is that what you are saying?

MR. LANGFORD:
That is correct. It would be not necessarily an independent magistrate but lawyers who are independent of the prosecution or officers who are independent of the investigation.

ASSEMBLYMAN OHRENSCHALL:
This is based on the federal procedure. It would protect clients with confidential information at that attorney's office or in that attorney's possession who have nothing to do with the nature of search warrant. It protects them, but I also believe it protects the prosecutor who will now have further protections against the potential allegation that something that is privileged and unrelated to the investigation might have been divulged. I think this works both ways.

SENATOR HARRIS:
In section 4, subsection 2, paragraph (a), where it says the property is reviewed by a team of officers and attorneys, what do you mean by "team" and what do you mean by "officers"? My concern is if attorney client files are being reviewed

by someone who is not an attorney, there might be some challenges with privilege.

MR. LANGFORD:
I think it anticipates that it would be attorneys. However, in some situations, like when I have an investigator working for me, that person comes under the umbrella of my privilege. An officer could, at that point, be required to maintain the privilege of the attorney he or she is working under. I think it would still allow for police officers or other officers to engage in the investigation and help determine what is appropriate to the investigation, but they would then be under the privilege with regard to other files and not be able to disclose the contents.

SENATOR HARRIS:
Are you saying that team is a flexible term because maybe one time you would need one person and another time you would need five, depending on the size and scope of the investigation?

MR. LANGFORD:
That is correct. If this were a huge paper case, you might need many attorneys and officers. However, if it is just a couple of files, then there may only be one attorney needed.

ASSEMBLYMAN OHRENSCHALL:
I do not want to speak for the district attorney's office, but my recollection is that in the Assembly, they testified that they do have a procedure that somewhat mirrors much of what was in this bill.

CHAIR SEGERBLOM:
What was the vote in the Assembly?

ASSEMBLYMAN OHRENSCHALL:
I believe it was unanimous.

MR. CALLAWAY:
For a police officer in the field serving a search warrant, there will be no change in our protocol or procedures. This would be on the back end, when evidence or potential evidence is seized, someone would review that afterward, but on the front end, for a police officer, nothing would change.

MR. LANGFORD:
I agree. The only thing it changes is the language that has to be included and the protocol the officer has to follow. Other than that, in terms of executing the search warrant, there is no change.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
We are neutral on A.B. 444. This statute mirrors what we do in Clark County. Typically, we will have extra detectives on scene at the site of attorneys' offices. Those extra detectives will act as a review team. One set of the detectives will execute the search warrant and the others who are independent of the investigation will review the material collected by the first set of detectives for potential client confidentiality issues. Any issues those detectives find are referred to the justice who signed the search warrant for the final determination of whether the privilege applies.

CHAIR SEGERBLOM:
I will close A.B. 444 and open A.B. 286.

ASSEMBLY BILL 286 (2nd Reprint): Revises provisions relating to court programs for the treatment of veterans and members of the military. (BDR 14-872)

ASSEMBLYMAN ELLIOT T. ANDERSON (Assembly District No. 15):
I have watched veterans court progress as an idea since I was an intern in the 2009 Legislative Session when the State enacted it into law. Specialty courts are nontraditional courts designed to ensure inexpensive, speedy and accurate determinations of justice for a subset of the population with particular needs. The concept of the veterans court allows for additional rehabilitation options and incentives for veterans who perform what is asked of them by the veterans court system. It brings a public and private team together in order to serve veterans.

The first veterans court docket was held on October 14, 2009, in Washoe County at the district court level. Since then, the Eighth Judicial District Court, the Las Vegas Justice Court and the Henderson Municipal Court, among others, have established programs as well. Eligibility criteria are written in the statute. To get into court, the defendant must be a veteran or a member of the military who appears to suffer from mental illness, alcohol or drug abuse, or posttraumatic stress disorder (PTSD). The defendant's issue must also appear to

be related to military service or readjustment to civilian life, and it has to appear that the defendant would benefit from an assignment to an appropriate treatment program. Furthermore, if the offense is considered a violent offense, the district attorney must stipulate to the admission of the defendant. Although this bill reorganizes those requirements, it maintains these existing eligibility criteria.

In terms of jurisdiction, the idea is to have the public defender's office, the district attorney, the U.S. Department of Veterans Affairs (VA), the Nevada Department of Veterans Services, the veteran centers and service providers meet and discuss how to help each defendant. It is much more of a collaborative process than the traditional court process where you have parties opposing each other fairly fiercely. It is meant to help the defendant to get back on track and avoid recidivism in the long run.

Events in practice have necessitated some changes to the statute. Some justice and municipal courts have established veterans courts, although the statute does not allow for them explicitly. They have done it under the inherent power of the court but have relied on the statutory provisions to grant dismissals. Assembly Bill 286 changes the statute to make current practice explicitly legal and to get the courts operating fully under the statute and not in a pick-or-choose fashion. Some courts are not applying the nexus requirement that is in law. We need to tie this down to ensure that these laws are followed and that veterans court does not become a political football.

Furthermore, some veterans courts accepted domestic violence (DV) and DUI cases, even though NRS 176A.290 prohibits these crimes from being placed into veterans court because statute does not allow crimes which statute prohibits the suspension of a sentence or probation into veterans court. My intent is to allow people who have not been previously convicted of misdemeanor DUI or DV crimes to go into the program. This would be a onetime chance. I am pursuing this change for several reasons. Unfortunately, veterans and alcohol mix too often in the form of self-medication based upon problems resulting from military service. Veterans with PTSD can often move too quickly to violence. Without the lowest level of misdemeanors included, we are letting these problems linger without the full power of the U.S. Department of Veterans Affairs resources behind fixing the problem in the long run.

This bill still contemplates trade-offs, making it a bit tougher on people who go through the program. Misdemeanor DV cases currently involve about 26 weeks of course work for offenders. Under A.B. 286, they would have to go through a yearlong program to take advantage of the veterans court and get the conviction sealed after seven years.

Furthermore, the courts will have explicit authority to enter intermediate sanctions as a stick to keep members of the program on track, if necessary. I want to give Judge Melissa Saragosa from Las Vegas credit for that amendment as it will allow more serious crimes in the measure to ensure the safety of the community and the victim, and we can keep the defendants on track without throwing them off the program. This legislation will require offenders to do substantially more than your average first-time DUI or DV misdemeanor offender normally has to do. This is not an easy road, and those allowed in under these provisions would get one shot only. It is a way to get folks with serious issues back on track and to resolve those problems in the long run. This bill will provide both carrots and sticks to these types of defendants. In the case of violent crimes, the district attorney's office still has to stipulate for a defendant to go into the program. The risks are mitigated with this change.

I have offered to put any language from Senator Cannizzaro's bill, Senate Bill (S.B.) 449 that you heard on this subject and to amend her name onto A.B. 286 so we can move forward on this issue.

SENATE BILL 449 (1st Reprint): Revises provisions relating to court programs for the treatment of veterans and members of the military. (BDR 14-1059)

CHAIR SEGERBLOM:
Any specific difference between your bill and her bill?

ASSEMBLYMAN ANDERSON:
I think the biggest difference is the change to the nexus requirement for military sexual trauma. There may be some slight differences, but that was the big issue that stuck out.

I also want to note that we worked with the district attorney's office in putting this together to ensure we brought some certainty to the statutory scheme. We

also worked with victims' groups and we have some that support or are in neutral and some are against it, but we worked hard to ensure that we could all agree to the best extent possible and make this a good law.

CHAIR SEGERBLOM:
I know when you get into DV and DUI crimes, there are policy differences sometimes.

MR. JONES:
On behalf of the Clark County District Attorney's Office, we support this bill. Steve Wolfson, the District Attorney (DA), brought some stakeholders together over the Interim to deal with some of the issues we have had in Clark County with respect to veterans court. This bill is the result of those meetings. It is very similar to S.B. 449.

KEVIN BURNS (United Veterans Legislative Council):
The United Veterans Legislative Council that I chair represents a majority of the major veterans organizations in Nevada. We are trying to expand the veterans court issue right now because we are limited to Clark County and Washoe County. The issue for us is that these are basically young men and women, generally, who are getting in trouble with the legal system for the first time. This is our way of telling these veterans they are going down the wrong road, and it is time to get their act together. This is more difficult than the normal track for someone charged with a misdemeanor, such as driving under the influence. We are not trying to say we want the young veterans to be any less accountable or responsible for their actions because in fact, we do. That is why this program is generally longer than the standard conviction would be for a nonveteran offender. We are pleased with the recidivism rates to date.

RYAN GERCHMAN (United Veterans Legislative Council):
As acting vice chair of the United Veterans Legislative Council, I work closely with Mr. Burns. I support A.B. 444 as someone who has personally been through the veterans court program. It was instrumental in helping me regain my footing in life in general. I am a graduate of Truckee Meadows Community College (TMCC), and I was the recipient of the Board of Regents' Scholar Award for leadership service and engagement within my community. I began a veterans club at TMCC and was president of Wolfpack Veterans at the University of Nevada, Las Vegas.

None of that mattered the night I got my DUI. The shame and humiliation I felt and the doom I saw in my future because of this was overwhelming. Luckily, I was able to go through the veterans court program where they helped me to see that I could continue to do good things. Instead of giving up and throwing that all away, I successfully completed the rigorous yearlong program and got through it. And here I am, testifying in front of you.

CHAIR SEGERBLOM:
We have a judge in Las Vegas who will testify today. Judge Stevens, can you tell me if the VA works with your program, providing services that are free to veterans?

MARK STEVENS (Municipal Court Judge, Department 1, Veterans Treatment Court, City of Henderson):
I am speaking only as the Henderson Municipal Court Judge. We started this about six years ago. The VA is very active and attends all our sessions and briefings. The veterans centers assist us too. The key aspect to the program in Henderson are the veterans who volunteer to mentor those in the program. We have two mentors assigned to every veteran in the program to help give guidance and support. The program is intense and difficult because it is a treatment program. The intent is to avoid recidivism for public safety purposes, and it is amazing how much lower the recidivism rates we are seeing in this program versus the ordinary high-risk, high-need individuals, as much as 70 percent recidivism, I have heard. We have had 120 graduates from the program and only 5 have reoffended, which is amazing considering where they came from and the issues they are dealing with—severe PTSD, traumatic brain injuries, drug and alcohol addictions as well as other mental health issues. The success of the program speaks for itself. At the Assembly hearing, Stop DUI advocate Sandy Heverly testified in strong support of A.B. 444 because she has seen personally the success through the Henderson Veterans Treatment Court and other courts.

SENATOR SEGERBLOM:
We appreciate what you are doing. It is tragic that we cannot do this with everybody. If we can work with these individuals who are obviously in distress when they get into the system, a lot of future problems could be averted.

KEN ROBERTS:
I am a private attorney in Las Vegas, retired from the U.S. Air Force. For the last four years, I have been a special defense attorney for the Veterans Treatment Court in Henderson that Judge Stevens presides over. I have witnessed the success and the value that this veterans court has provided to the participants in the program. We are not trying to reorganize their lives; we are trying to provide them with opportunities enough so that whatever got them to the veterans court does not happen again. Thinking about the municipal courts and the justice courts, which this bill clarifies can have veterans treatment courts, these courts handle the lowest level of offenders we have. We would like to get these people the treatment they need as early in the situation as possible. We do not want to let them wait until they have multiple offenses or felony offenses. Getting treatment early on and going through a long program, sometimes more than a year if needed, is the way to get them the treatment they need.

We have the strong support of the VA hospital and center. Two representatives from those organizations meet with us every Thursday. They are there for the precourt sessions as well as the session itself. Nearly everyone in key positions is a veteran who understands what it is like to be a veteran and be in the military. That allows the participant to have some affinity with the person he or she is dealing with. I support this bill.

RICHARD CARREON (President, Nevada Veterans Association):
I support A.B. 286. I know this bill is kind of a game of whack-a-mole, where you fix one problem and another one comes up, and you then try to come up with the best compromise possible. We are all fully aware of the issues and the resistance from DV and DUI advocates on this issue. Our dedication is not only taking care of victims but also preventing victims. This is a good system to gauge what the problem areas are. We contacted National Guard units because there are some implications of this bill to their members in that if a National Guard member or reservist is convicted of a DV, he or she is than subjected to the Lautenberg Amendment, which means that person cannot handle a weapon and can no longer serve our Country. In the interest of prevention, we have gone through Nellis Air Force Base and National Guard units to come up with some sort of a prevention program to address some of the concerns. We hope that with the proper dissemination of this information, we can create a safe haven for people with situations that are escalating.

KELLY CROMPTON (City of Las Vegas):
We support A.B. 286. We have a similar program that started in 2014. Since that time we have had 118 people participate with 54 graduating, and we currently have 50 veterans in the program.

MR. PIRO:
We support this bill because this is one of the most effective court treatment programs we have.

MR. SULLIVAN:
We support A.B. 286.

CHRISTINE ADAMS (Vice Chair, Northern Nevada DUI Task Force):
With the amendments, we support this bill now that there is an ability to enhance for subsequent crimes.

ANNE CARPENTER (Deputy Chief, Division of Parole and Probation, Department of Public Safety):
I am here to testify neutral on A.B. 286 on behalf of the Division of Parole and Probation (P&P). We have admitted a fiscal note on the bill in its current version, including amendments, because this will allow the courts to grant probation to misdemeanants. We do not supervise offenders convicted of misdemeanor crimes, so this would be an unfunded mandate. The P&P Division supervises probationers who have gross misdemeanor and/or felony situations upon entry of pleas in district court.

We suggest changes where language states "court may grant probation" to say "court may grant unofficial or unsupervised probation" to misdemeanants. In those cases where participants of these programs desire to relocate outside the State during their program participation, the language "unofficial probation" or "unsupervised probation" in these cases may trigger the requirements of the Federal Interstate Compact for Adult Offender Supervision agreement.

CHAIR SEGERBLOM:
Thank you. We are working on your issues.

KRISTY ORIOL (Nevada Coalition to End Domestic and Sexual Violence):
We are neutral on S.B. 286, but we were glad to see the amended bill that allows for the domestic violence crimes able to be enhanced. The only way to

elevate a domestic violence crime in Nevada to a felony is with three subsequent convictions within seven years or committing domestic violence by strangulation. These convictions can often be difficult to achieve, and we want to ensure they remain able to be enhanced so victims can continue to receive justice for these serious crimes.

We would like to see the inclusion of military sexual trauma as it is in S.B. 449. One in 4 women in the military is a victim of military sexual trauma as well as 1 in 100 men, which means male victims outnumber female victims due to the larger amount of men serving in the military.

ASSEMBLYMAN ANDERSON:
On the fiscal note, this is the first I have heard that P&P supervises misdemeanants. I do not think that is correct. I ask that legal counsel give us some information. I do not think this bill should go to the Senate Committee on Finance, and I do not believe this is an unfunded mandate. This is the first I have heard this from them, and these last-minute things can kill a bill. I am not happy to hear this at the last minute because this is something we could have cleared up. I am happy to put military sexual trauma into the bill and everything else that Senator Cannizzaro wants from her bill, S.B. 449.

I have a letter of mixed support and opposition to submit from the Nevada Attorneys for Criminal Justice (Exhibit F).

CHAIR SEGERBLOM:
She is hot on this issue, and we will make sure there is no fiscal note. I will close the hearing on A.B. 286 and open A.B. 453.

ASSEMBLY BILL 453 (1st Reprint): Establishes conditional plea agreements in criminal cases. (BDR 14-1065)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):
This is a fairly straightforward bill that explicitly allows defendants and a prosecutor to enter what is called a conditional plea. The basic idea is that if the defendant and the DA enter a plea in justice court requesting that the judge do something specific, such as set a specific prison sentence or probation, and if the judge in district court decides not to follow that negotiation, the defendant would be able to undo the guilty plea and the case would be set for trial. The DA would have to agree to this; it is not something a defendant or defense

counsel could do on his or her own. Additionally, if the judge in district court rejects the negotiation, the case does not go back to justice court, it stays in district court. There is some dispute about whether this is already authorized and there is a dispute among judges whether this is an appropriate plea. In my eight years in the public defender's office, we have maybe done this twice, so it is a rare occurrence.

In the bill, section 3, subsection 4 shows the insertion of language telling the court that that kind of plea is appropriate. Another question that might come up is that the defendant has to handle his or her end of the bargain, so if he or she does something like get in trouble again, then the conditional plea language would not apply. Like any other contract, the defendant would have to carry his or her end of the bargain.

SENATOR CANNIZZARO:
There are a lot of us who think this is already available. Certainly, that clarification in law will be helpful.

CHAIR SEGERBLOM:
Never hurts to make legal what we are already doing. I will close A.B. 453 and open A.B. 412.

ASSEMBLY BILL 412 (1st Reprint): Revises provisions relating to the jurisdiction of courts over certain criminal charges. (BDR 14-601)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):
Assembly Bill 412 relates to the jurisdiction of the courts and seeks to make our criminal justice system fairer by trying to make sure that our judicial system treats similarly situated defendants similarly regardless of where they are arrested.

For example, imagine someone is arrested in unincorporated Clark County on the Las Vegas Strip at the MGM Grand Las Vegas Hotel and Casino and charged with multiple crimes, some serious and some not so serious. In that scenario, all the charges will be filed in Las Vegas Justice Court. That defendant will have one defense attorney, one prosecutor and one judge initially overseeing the case. In crafting a negotiation, everyone has a complete picture over the charges the person is facing and jurisdiction over all of his or her charges.

But if someone is arrested for the same exact charges in downtown Las Vegas on the Fremont Street Experience, that falls under the City of Las Vegas jurisdiction. In this scenario, there will be two separate cases, one in Las Vegas Justice Court for the more serious charges and the other in Las Vegas Municipal Court for the misdemeanors. Now there will be two prosecutors involved with the defendant—one district attorney and one city attorney, two defense lawyers and two judges. Neither prosecutor can tie the hands of the other, neither judge can tie the hands of the other judge, so there will be two separate proceedings that really cannot be coordinated in any manner.

The outcome for those two scenarios may be very different, and that should concern us all. This situation is confusing for defendants. If they are arrested and taken into Clark County custody, they may not even be aware of the existence of the other case. If they stay in jail on the more serious charges, they will receive a warrant in the other case and a hold will be placed on them by the county jail because the county jail will not transport a defendant to city court, despite the fact that both courts are sometimes located in the same building. The hold or warrant is problematic because it prevents defendants from getting into programs and keeps them in longer. For example, a defendant cannot be transported to inpatient drug treatment or begin probation until all holds are cleared.

I have a real-world example. A client of mine was charged with very serious charges. We went to trial in district court on felonies, and the client was acquitted. He had been in jail for almost 18 months at that point. Upon receiving that not guilty verdict, the judge ordered him released, yet he was not released because he had a companion City of Las Vegas case pending from the same conduct. Instead of being released, he was transported two floors down and faced the other charges, which were eventually dismissed, but if he were in unincorporated Clark County, this would never have happened.

This is a problem for defense attorneys too, at least for Clark County public defenders because we are County employees, not City employees, so we are not allowed to appear in the City court because it is a different jurisdiction. I cannot say we never go there, but we are not supposed to go there.

The truth is that most defendants understandably believe that when they are arrested, all of their charges will be taken care of at once, and even when you explain that there are two cases that have to be dealt with separately, it can be

frustrating or confusing. This bill, A.B. 412, is about fairness, equal justice and streamlining our criminal justice system. In case you are wondering, I was fortunate to get unanimous support from the Assembly on this bill.

CHAIR SEGERBLOM:
Why do we have municipal court?

ASSEMBLYMAN YEAGER:
That was asked in the Assembly Committee on Judiciary hearing, and I did not have a good answer except that they exist currently and I am not looking to change that. Certainly any case that would just be a misdemeanor would remain in municipal court. There are exceptions to this bill, like if your charge is based solely on a municipal ordinance, it would stay in municipal court, but the discussion on municipal court is something for the future.

MR. PIRO:
On behalf of the Office of the Clark County Public Defender, we support A.B. 412 because this is a problem we see frequently in Clark County. This solution will not only solve a lot of issues, it will also save taxpayers money. There is nothing more frustrating than if people get picked up for possession of a controlled substance and drug paraphernalia, only to take care of the case at the Clark County courts and we are not able to help them in the municipal courts. They can then go to that court and get additional fines and penalties, making it a higher hurdle to leap when it could all have been taken care of at once.

MR. SULLIVAN:
On behalf of the Washoe County Public Defender's Office, we support this bill. We also cannot go into municipal court in Washoe County, so this streamlines the process and will solve a lot of issues.

DAVID CHERRY (City of Henderson):
I am here in opposition to A.B. 412. The Henderson City Charter is what gives us the authority to have a municipal court.

CHAIR SEGERBLOM:
Under State law.

MR. CHERRY:
Yes, under State law. In 1971, our Charter was put into effect, giving the City of Henderson the ability to charge all misdemeanor violations of *Nevada Revised Statutes* in municipal court. This bill would strip the city attorney of jurisdiction over some cases that occur within the city limits by limiting authority we have had for more than four decades in our municipal court. The authority is found in section 2.140 of the Henderson City Charter according to NRS 266.

There are advantages to having these cases heard in municipal court, even though the defendant's conduct gives rise to felony offenses as well. Henderson has an Alternative Sentencing Division that the Henderson Justice Court does not have. This probation-type program can give defendants more services and supervisions when a misdemeanor criminal case is resolved in a municipal court instead of a justice court. Henderson has a robust drug court and veterans court, both of which are not present at justice court. This is an important point. Finally, the Henderson City Attorney's Office already works with the Clark County Public Defender's Office and our district attorneys on the coordination of cases to ensure justice is served.

CHAIR SEGERBLOM:
Do you think that the district attorney, knowing these things, will sometimes not prosecute the felony so you can stay in Henderson court and do the diversion programs?

MR. CHERRY:
I do not have enough experience to know whether that is the case.

SENATOR CANNIZZARO:
It would be uncommon to have a felony case where the State would decline to pursue a felony charge in lieu of a misdemeanor charge. This Committee heard Senate Bill (S.B.) 29, which would allow for the transfer of a case from one court to another, so if there is no felony plea, potentially in justice court, they would only be pleading to a misdemeanor and that case could be sent to a municipal diversion court under that bill.

SENATE BILL 29 (1st Reprint): Provides for the transfer of a criminal case from one justice court or municipal court to another such court or a district court in certain circumstances. (BDR 1-396)

CHAIR SEGERBLOM:
Are you saying we should hold A.B. 412 hostage and see what happens to S.B. 29?

SENATOR CANNIZZARO:
I am not recommending holding anything hostage. As a point of clarification, diversion programs have been wildly successful and serve a very good purpose. If we can transfer some of those cases in the event they would be dealt to a misdemeanor and not to those felony charges, which would be subject to prison time or formal probation through P&P, those programs could still be useful, but we would not have the issues we heard today.

CHAIR SEGERBLOM:
When he comes back up, we could ask Mr. Yeager if A.B. 412 would allow that.

MR. CALLAWAY:
Representing the Las Vegas Metropolitan Police Department, we are neutral on which court handles prosecution of these individuals. However, there could be an impact on the jail. We currently book felonies and gross misdemeanors into the Clark County Detention Center, while misdemeanors booked in the City of Las Vegas are booked into the city jail. Hypothetically, if we had a case of domestic violence occurring in the City and we discover heroin in the pocket of the offender, the person is charged with felony possession of heroin and misdemeanor battery domestic violence and transported to the County jail. Under the current system, if the court threw out the heroin charge, that person would then be released or be transported to the City for the charges there. Whereas, in this case, that person would stay in our custody pending the battery domestic violence charge, so that person could remain in our custody for several days or more which could have a fiscal impact. That is our only concern, but we want to support streamlining the criminal justice system.

ASSEMBLYMAN YEAGER:
The Assembly Committee on Judiciary, which I chair, did hear S.B. 29 this morning, and it will be on work session tomorrow. I agree with Senator Cannizzaro that it would allow in the circumstances of transfer of jurisdiction. If the only charge is a misdemeanor charge, it stays in municipal court, so we are only talking about cases where there is a companion charge that is more serious. Someone with more serious charges may not be

appropriate for a court-level diversion program because typically that court is just handling misdemeanors.

I have seen situations where a defendant serving in prison learns, upon paroling, that there is a pending hold against that individual in another court for a misdemeanor. In that case, the person gets transported to the City court to take care of a case that has been languishing for years. That problem stems from these cases being split-filed, and sometimes even the attorney does not know that has been done. If you have a chance to look at a map of the City of Las Vegas jurisdiction, it is a patchwork unlike any other. I have a hard time wrapping my head around the idea that you literally could cross the street and commit the same conduct, and you will end up with two completely different cases that result in different penalties. To me, that is an unfair way to do our criminal justice system. Assembly Bill 412 seeks to put that in line so we can all have confidence in our criminal justice system here in Nevada.

CHAIR SEGERBLOM:
If you are in the City of Las Vegas and commit a felony and a misdemeanor, does the justice of the peace handle the misdemeanor too?

ASSEMBLYMAN YEAGER:
Under the current law, the justice of the peace would only handle the felony.

CHAIR SEGERBLOM:
I know, but what is it under your bill?

ASSEMBLYMAN YEAGER:
Under my bill, yes, because those two crimes were committed essentially together since you were arrested for them together.

CHAIR SEGERBLOM:
I thought you said if it is a municipal ordinance only.

ASSEMBLYMAN YEAGER:
That is correct. If it is just based on a municipal ordinance, then a split-filing would be allowed because we do not want to take jurisdictions from the municipality to enforce its own ordinances.

CHAIR SEGERBLOM:
I will now close the hearing on A.B. 412 and open public comment.

MS. BROWN:
Of the wrongfully convicted who were exonerated through DNA, 72 percent were innocent. That was based on eyewitness identification. Seventeen percent of those exonerated through DNA evidence were convicted on false confessions.

I have been personally affected by someone being wrongfully convicted. Years ago, people believed that eyewitness identification was the most reliable evidence there was. How could a victim mistake someone for someone else? In our case, we had five defense witnesses placing the defendant in Jacks Bar across the street some 30 miles away from where the crime was being committed. If DNA had been tested at that time, it would have exonerated the defendant.

I am going to bring this forward in a proposed amendment to A.B. 376 in the future asking that when the defendant is arrested, within 7 days of the preliminary hearing, that the law enforcement agency provide to the defense the same discovery that was provided to the prosecution. In most cases, the law enforcement and district attorneys are doing their jobs, but there are times when one or two are not.

ASSEMBLY BILL 376 (1st Reprint): Revises provisions relating to criminal procedure. (BDR 14-1075)

CHAIR SEGERBLOM:
Put that in writing and submit it.

MS. BROWN:
I will, and I will present you with the documents of the suspect the police believe committed the crimes my brother went to prison for. It was all hidden and discovered years later.

CHAIR SEGERBLOM:
I will now close the hearing of the Senate Committee on Judiciary at 3:29 p.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	2		Agenda
	B	7		Attendance Roster
A.B. 268	C	5	Assemblyman Justin Watkins	Presentation
A.B. 268	D	2	Tonja Brown	Submitted Documents
A.B. 268	E	1	Nevada Attorneys for Criminal Justice	Letter of Support
A.B. 286	F	2	Nevada Attorneys for Criminal Justice	Letter of Mixed Support and Opposition