MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
May 15, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:32 p.m. on Monday, May 15, 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 Michael Roberson
Senator Becky Harris

COMMITTEE MEMBERS ABSENT:

Senator Aaron D. Ford (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman James Ohrenschall, Assembly District No. 12
Assemblywoman Jill Tolles, Assembly District No. 25

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Eileen Church, Committee Secretary

OTHERS PRESENT:

Tyler Ellis, Intern for Assemblywoman Jill Tolles
Melissa Holland, Founder, Executive Director, Awaken

Kerrie Kramer, The Cupcake Girls
Chuck Callaway, Las Vegas Metropolitan Police Department
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Jennifer Noble, Nevada District Attorneys Association
Joanna Jacob, Dignity Health-St. Rose Dominican Hospital
Marlene Lockard, Nevada Women's Lobby
Kimberly Mull, Nevada Coalition to End Domestic and Sexual Violence
Wendy Stolyarov, Libertarian Party of Nevada
Maggie McLetchie, McLetchie Shell
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Sean B. Sullivan, Office of the Public Defender, Washoe County
Vicki Henry, Women Against Registry
Tonja Brown, Advocate for the Inmates; Advocate for the Innocent
Robert Hemenway, Ph.D., Agape Psychological Services
Holly Welborn, American Civil Liberties Union of Nevada
John T. Jones, Jr., Nevada District Attorneys Association
Julie Butler, Administrator, General Services Division, Department of Public Safety
Jon Sasser, Legal Aid Center of Southern Nevada
Ebru Cetin, Legal Aid Center of Southern Nevada
Kristy Oriol, Nevada Coalition to End Domestic and Sexual Violence
Robert O'Brien, Office of the Public Defender, Clark County
Amy Coffee, Nevada Attorneys for Criminal Justice
Marc M. Schifalacqua, Senior Assistant City Attorney, City of Henderson

CHAIR SEGERBLOM:
I will open the hearing of the Senate Committee on Judiciary with Assembly Bill (A.B.) 204.

ASSEMBLY BILL 204 (1st Reprint): Provides that marriage licenses and certificates of marriage may include the name to be used by each spouse after the marriage. (BDR 11-743)

CHAIR SEGERBLOM:
For the record, when you get married you can say I, husband, want to have my name changed to this; I, wife, want to have my name changed to this, and that goes on the marriage certificate. Then you can take it down and record it?

ASSEMBLYWOMAN JILL TOLLES (Assembly District No. 25):
Yes.

TYLER ELLIS (Intern for Assemblywoman Jill Tolles):
I would like to bring to your attention A.B. 204, which was introduced by Assemblywoman Tolles and others. This bill does what you said, it makes changes to marriage certificates.

One of Assemblywoman Tolles' constituents contacted her and requested that she propose a bill to simplify the process for replacing her middle name with her maiden name on her wedding day. Currently, Nevada marriage license certificates do not have a section to allow for a new middle name. Those who wish to change their middle name are required to go through the lengthy and costly name change process. This bill would add a new section that specifically states the new legal name of each person on the marriage certificate.

Section 1, subsection 8 states:

> At the time of issuance of the license, an applicant or both applicants may elect to change the middle name or last name, or both, by which an applicant wishes to be known after solemnization of the marriage. The first name of each applicant selected for use by the applicant after solemnization of the marriage must be the same as the first name indicated on the proof of the applicant's name submitted ...

To avoid abuse of the legislation, Assemblywoman Tolles amended this section at the request of Nancy Parent, Washoe County Clerk, to include an enumerated list of possibilities for new middle and last names, which includes either of their middle names, last names and last names given at birth as seen in section 1, subsection 8, paragraphs (a) and (b).

Sections 2 and 3 would make conforming changes to the marriage license certificate.

CHAIR SEGERBLOM:
Seeing no more people wanting to testify, I will close the hearing on A.B. 204 and open the hearing on A.B. 260.

ASSEMBLY BILL 260 (1st Reprint): Revises provisions relating to the crime of prostitution. (BDR 1-821)

ASSEMBLYWOMAN JILL TOLLES (Assembly District No. 25):
Assembly Bill 260 seeks to revise provisions relating to the crime of prostitution. We looked at the issue of sex trafficking, recognizing that Nevada is No. 1 in calls to the sex trafficking hotline per capita. We want to look at what were the three aspects of sex trafficking and how can we help to curb this issue in our State. You have the trafficker or the seller, you have the victim or the prostitute, and you have the buyer or the john, as the customer is often referred to. We have done more to go after the traffickers. We have done more to help the victims, and there is certainly more that we can do in that area.

In regard to illegal prostitution, we want to look at the demand side of the equation. Assembly Bill 260 addresses that demand side by increasing fines and penalties for the existing misdemeanor crime of being a customer of illegal prostitution. It also has a self-funding model to raise revenue for programs and enforcement and offers offender programs to reduce recidivism.

SENATOR CANNIZZARO:
Any study of sex trafficking and how that occurs in our communities is going to include a discussion of how prostitution plays into that. Some of the ways we can help to combat that is to ensure that if somebody is coming in and buying or purchasing illegal sex, we can actually hold them accountable and try to combat this problem.

Through the course of this bill, we had many discussions about how we could ensure that if somebody was arrested and convicted of prostitution, which is a misdemeanor, there would be a diversion program as well. That is included within the language of A.B. 260 to allow that process to occur. One of the things that became apparent, not only through my own personal experiences but also with Assemblywoman Tolles and her work on this issue, is that a lot of individuals who engage as buyers of illegal sex do not realize the contributions they are making to advance the sex trafficking activity that is going on in our communities.

As many of you know, I work as a prosecutor in my day job. I will say that one of my very first positions in that office was working on the juvenile vice calendar, which is anyone under the age of 18 who was arrested for

prostitution. Originally, I had the idea this was something that was voluntary. Maybe there is not a reason for us to even necessarily criminalize it.

When you work in that field, you get a better idea of exactly how this works. I cannot tell you that every case I worked on started with a young child—more often than not they are female, but not always female. They would find themselves in a bad situation, find someone who was willing to tell them what they wanted to hear and give them what they wanted, and slowly over time they became involved in prostitution. Very rarely was it voluntary and very rarely was it not also accompanied by a lot of violence and a lot of compulsory selling of that individual. When Assemblywoman Tolles told me a little bit about the bill she was sponsoring, I offered my own insight into that and agreed to help be a cosponsor on this.

I do think that this is an area where we struggle to address the problem. Assembly Bill 260 is definitely going to allow us the tool to get at the individuals who are perpetuating this market by saying that if you are somebody who is going to buy illegal sex, you are going to be held accountable for that.

In A.B. 260, I would note for the Committee, this is still a misdemeanor offense for a first offense. Obviously, with the diversion program they are allowed one chance to enter into that program and to engage in the educational components of that. Upon completion, their case would be dismissed. There would be a record that is kept but solely for the purposes of ensuring that if that individual is arrested and convicted for a subsequent offense, he or she cannot reenter the program. Then the bill provides for graduated penalties after that.

This is a good combination of some of the things we have been discussing all Session long, which is how do we get at the things in our communities that we really should be targeting and seeing a decrease in while also balancing them with appropriate penalties and diversion programs for first-time offenders.

MELISSA HOLLAND (Founder, Executive Director, Awaken):
I support A.B. 260.

CHAIR SEGERBLOM:
Do you have expertise?

MS. HOLLAND:
Yes. Jen Robinson and I cofounded an antitrafficking organization seven years ago out of Reno. For probably eight years I have been monitoring the demand side of trafficking and the antitrafficking movement to see what is effective in curbing human trafficking. The demand part of the bill addressing the john schools with the rehabilitative component are all right on target with what is being done out there.

KERRIE KRAMER (The Cupcake Girls):
We support A.B. 260.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
We support A.B. 260.

ROBERT ROSHAK (Executive Director, Nevada Sheriffs' and Chiefs' Association):
We support A.B. 260.

JENNIFER NOBLE (Nevada District Attorneys Association):
We support A.B. 260.

JOANNA JACOB (Dignity Health-St. Rose Dominican Hospital):
We support A.B. 260.

MARLENE LOCKARD (Nevada Women's Lobby):
We support A.B. 260.

KIMBERLY MULL (Nevada Coalition to End Domestic and Sexual Violence):
We support A.B. 260.

WENDY STOLYAROV (Libertarian Party of Nevada):
We concur with Amnesty International that the best way to protect sex workers is to legalize as much as possible and regulate rather than penalize. I would be happy to send you the report from Amnesty International.

We agree that human trafficking is a major issue, and we are happy to see any measures taken to tamp it down. We are not convinced that this bill does not punish sex workers who are engaging in consensual acts with their clients.

ASSEMBLYWOMAN TOLLES:
I would be remiss to not acknowledge everyone who has been so helpful in contributing to this final product of this bill. There have been many stakeholders from all sides including the public defenders who had their additions, the district attorney's office, the behavioral health services and the community at large. I just want to go on the record to say how appreciative I am of all the support behind this.

CHAIR SEGERBLOM:
Seeing no more people wanting to testify, I will close the hearing on A.B. 260 and open the hearing on S.B. 474.

SENATE BILL 474: Repeals provisions governing sex offenders which were originally enacted for purposes of the federal Adam Walsh Act. (BDR 14-1068)

SENATOR SEGERBLOM:
Senate Bill 474 as originally written would repeal the Adam Walsh Act which was passed by this Legislature in 2007. However, in the interest of trying to pass something, I have asked the Legal Division to draft a conceptual amendment. Mr. Anthony can describe it and then we will go forward with the hearing on that amendment.

NICK ANTHONY (Counsel):
Before the Committee is a conceptual amendment (Exhibit C) that our office prepared for the Chair. The conceptual amendment would delete the entirety of the bill and replace it with portions of statute that would make the law revert back to how it existed prior to A.B. No. 579 of the 74th Session, only as to the retroactivity portions.

As written, the law goes back to 1956. This conceptual amendment would lay out two different processes. Those convicted on or before July 1, 2008, would be under the so-called "old system," and then those convicted after July 1, 2008, would be under the "new assessment system."

SENATOR SEGERBLOM:
In 2007, based upon a congressional law called the Adam Walsh Act, the Nevada Legislature passed its version, which became effective on July 1, 2008. We passed it because we only meet every two years, and the Legislature met

right after the national Adam Walsh Act was passed. We passed the most onerous law in the Country. In fact, we still have probably the worst law in the Country. Most states have never enacted the Adam Walsh Act. The ones that have enacted a law much less serious than ours.

Since 2008, there has been litigation, and A.B. No. 579 of the 74th Session has never actually been implemented. It has been on hold. My biggest concern is the retroactivity. I can see if you pass a law that people are on notice if you plead guilty to this crime, here is what the penalty is going to be, here is what you are going to do for the rest of your life. Those people who pleaded guilty in 1956 or 1966 or 1976 or 1986 or 1996 or 2006 had one interpretation of what that guilty plea meant. When we passed the Adam Walsh Act, it retroactively said "Oh by the way, even though you are a Tier 2, now you are going to be a Tier 3, even though you have passed the agreed-to condition where you could over time show that you were rehabilitated and come off the registry." The Adam Walsh Act said that certain crimes could never come off the registry; though there was no Internet at the time of the conviction, now they are going to be on the Internet. Even though you could live next to a school, now you cannot live next to a school. It was incredibly unfair. Many people pleaded guilty to crimes not appreciating the fact of what they were pleading guilty to.

I have asked Senator Pete Goicoechea to be a cosponsor of this amendment, and he has agreed to do that so I do have Republican support. All the bill does is say those people who had pled guilty or were convicted of a sexual offense prior to the enactment of the Adam Walsh Act be treated under the old system. This means they are allowed to show that they are or have been rehabilitated. It is a tiered system. You can come down the tiers over time; at some point, you can even come off the system, depending on your performance and the crime you committed. It is really a much fairer way to go. I believe that this will enable the State to benefit financially. Maybe the Nevada Supreme Court will be able to finally accept the bill as passed in 2007.

MAGGIE MCLETCHIE (McLetchie Shell):
Senator Segerblom mentioned that this bill as amended would allow the State to move forward with enforcement, and I think that is true. I have been litigating these issues since 2008 and have successively gotten injunctions each of the three times the State has tried to enforce A.B. No. 579 of the 74th Session. This amendment would go a long way to curing some of the logistical and constitutional problems.

In addition, because you are not applying it retroactively to people who were convicted before 2008, you will save significant sums of money.

When the Adam Walsh Act was enacted in 2008, the likely increase in Tier 3 offenders, which are supposed to be the worst of the worst, would have jumped from approximately 200 to approximately 3,000. That is over a 1,000 percent increase in the number of Tier 3 offenders. The problem with that is the people being reclassified were people who the State had already evaluated and determined not to be a risk to public safety. Yet, we were going to reclassify everybody and throw them in the most dangerous bucket.

As somebody from the Division of Parole and Probation explained, that increase in Tier 3 offenders does not mean there will be more serious sex offenders prowling the streets; Tier 3 no longer means highest risk to reoffend. The Tier system would no longer be tied to actual risk to reoffend, but there would be a huge increase in the number of people classified as Tier 3, which would create huge fiscal impacts to enforce. The Department of Public Safety had to go to the Interim Finance Committee and ask for over $500,000 as an emergency measure. Not only would enforcing A.B. No. 579 of the 74th Session cost a lot of money, it would have, if it had been enforced, created a needle-in-the-haystack problem by adding all the people in who were not actually dangerous, having committed crimes like statutory rape in 1961. People would have gotten lost in the shuffle. The people we needed to pay most attention to who were most appropriate for the registry would be mixed in with nondangerous people.

In terms of the litigation, as Senator Segerblom mentioned, I have been litigating this case in some form or another since 2008. There are a number of legal issues, almost all of which are tied to retroactivity. One of the big problems with the Adam Walsh Act and its retroactive application was by going back to apply to people whose crimes were committed as far back as 1956, there was not a way to correct an error in the application. Therefore, if somebody was not really supposed to be on the registry, there was no process in place.

It should be noted that once somebody's picture is up on a Website and he or she is labeled a sex offender, even if the State takes that picture down, there are private entities that download that data and keep it. You create a huge problem for people who are misclassified. That is a bell you cannot unring.

Allowing this law to not be applied retroactively would cure many of those legal issues that I have been litigating in some form or another since 2008.

CHAIR SEGERBLOM:
Can you tell us the current status of the litigation?

MS. MCLETCHIE:
In 2014, I had a stay in place in the Nevada Supreme Court based largely on ex post facto issues. The Nevada Supreme Court dissolved that stay but in so doing, they did not say that I did not have valid grounds; they said that the factual record had yet to be developed. That is because the preliminary injunction temporary restraining order stay that I got was before discovery had even happened. The State had started enforcing A.B. No. 579 of the 74th Session, and I quickly filed an emergency action in district court and in the Nevada Supreme Court. The Nevada Supreme Court said we are not going to keep this stay in place because we do not know enough about the facts. The State did not start trying to enforce A.B. No. 579 of the 74th Session until May or June of 2016. On July 1, 2016, the Nevada Supreme Court granted me a stay.

In that case, I detailed some of the issues that I was talking about with people, for example, who were convicted of the constitutionally infirm and now-repealed infamous crime against nature statute or people who technically had adjudications withheld, which means that they did not actually have legal convictions. I briefed these issues before the Nevada Supreme Court and added more detail, including errors in letters that were going out to people who had court orders relieving them from registration and people who were very concerned for themselves, more importantly for their families, if their pictures went up on the Website. On July 1, 2016, a day after I filed my emergency brief, the Nevada Supreme Court granted me a stay. That case is currently at the Nevada Supreme Court and involves ex post facto contract clause issues, equal protection issues and, more importantly, due process issues with regard to the retroactive application.

CHAIR SEGERBLOM:
The biggest issue is that because of the Adam Walsh Act, a lot of people who were Tier 2 or lower in our system because of the Adam Walsh Act, were reclassified to Tier 3, which is the level of most serious crimes. It means a

person is on the Internet and also means that person can never come down, right?

MS. MCLETCHIE:
Yes. People who have been previously classified as a Tier 1 or Tier 2, with a low or moderate level of likelihood to reoffend, were going to be classified as Tier 3, which is supposed to be the most dangerous of all offenders. Those people have no ability to appeal their reclassification if there is an error and no way to petition for termination from registration.

CHAIR SEGERBLOM:
I think we heard testimony earlier in the year that there are about 2,500 individuals who this classification would apply to.

MS. MCLETCHIE:
The Department of Public Safety—I think this was testimony to a recent Advisory Committee to Study Laws Concerning Sex Offender Registration that the Attorney General chairs—said that Tier 3 would have been 241 people before implementation of the Adam Walsh Act; because of the retroactive application, it would have increased to 3,068, a very significant increase in the number of Tier 3. This again creates a needle-in-the-haystack problem because the truly dangerous people get lost in the shuffle.

VICE CHAIR CANNIZZARO:
In other states that have enacted provisions like this, have any of them enacted it in this fashion where they have not applied them retroactively?

MS. MCLETCHIE:
A number of states that are deemed to be compliant with the Sex Offender Registration and Notification Act (SORNA), but that is only a list of 17. A number of states have affirmatively rejected SORNA—Arizona, California and Texas—because of legal concerns as well as concerns about cost. In addition, a number of states have held SORNA to be unconstitutional under state law grounds, and the Sixth Circuit Court of Appeals recently found Michigan's enactment of SORNA unconstitutional.

With regard to the retroactivity issue, the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) sent somebody to Nevada to testify at the Advisory Committee that I mentioned earlier. At that

committee meeting it was pointed out that because our law was passed so early and so quickly with the Legislature under the mistaken belief that the federal government could tell the State what to do, which it cannot, there are a number of ways in which our law goes further. First, it subjects juveniles to Website notification, the other bill pending deals with juvenile offenders, and the second way in which the Nevada law goes too far is retroactivity in applying to people currently outside the criminal justice system.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
We support S.B. 474.

SEAN B. SULLIVAN (Office of the Public Defender, Washoe County):
We support S.B. 474.

VICKI HENRY (Women Against Registry):
I am here to tell you a little bit about our organization and some family stories. Right now, according to the National Center for Missing and Exploited Children, there are 859,500 men, women and children registered across the Nation. That affects 2.5 million family members. Those are the ones that we represent due to the things that they experienced by supporting a loved one on the registry.

I wanted to tell you a little bit about my personal story. I was baptized by fire with this issue as my son, who was in the military, was adjudicated for possession and distribution of child pornography, a noncontact, nonviolent offense. In our state, he is a Tier 2, but he has to register every 30 days for the rest of his life. That occurred when he was at the age of 21. He is 31 years old now.

There was a well-meaning teacher who thought she could keep the kids in her class safe. She printed out some profile pictures of some registrants and put them on the board around her classroom. One of the girls looked at one of the pictures, then looked at another girl and said, "Isn't that your dad?" The girl was destroyed over that and so was the teacher because that is not what she meant to happen.

Charles and Gretchen Parker were from South Carolina. A couple had car problems in front of the Parker's house one day. Gretchen went out to see what she could do to help, and then her husband went out to help. The couple took

the Parkers inside and shot and stabbed them to death. Her because she was home, and him because he was on the registry and had been on the registry for ten years. That story made national news. They were just trying to be of help, and he had not reoffended. This is the type of thing that our families go through: opening the front door and somebody trying to come through the door after you because you are "one of them," a child getting beat up or a home being burned.

A man called into our support line and stated he was very depressed. I talked and listened to him for over two hours. As we hung up he said, "You probably saved my life tonight."

Our Women Against Registry (WAR) families are the reason that I traveled here today from Missouri. When asked if they would like to testify in person or in writing, the majority declined. As you know, it is due to the public shaming and life-altering fallout. When WAR initially reached out to the registrant families in this state, they began to respond. The phone conversations that I had with them were very apprehensive, like "Is this for real?" They were fearful that this was a kind of trap, some kind of vigilante foolishness or just more hopelessness. One person called us in shock that there was an organization out there that would be so bold as to stand up for sex offenders. His wife had opened the letter, looked at the brochure we sent with the letter, handed it to him and started crying, and I cried with them. Another person was so excited and talking so fast that I had to ask that person to slow down and take a breath. The individual was that excited.

We are a nationwide organization, and we are all about educating. We have to educate the public. We have to educate the media because the media does the fearmongering, and that is documented by some academics.

TONJA BROWN (Advocate for the Inmates; Advocate for the Innocent):
We support S.B. 474.

ROBERT HEMENWAY, PH.D. (Agape Psychological Services):
I am a psychologist in the Reno area and have been working with sex offenders and their families for many years. I actually came today in support of S.B. 474 before it was amended. I am disappointed that it has to be amended. It was a good bill that had some good things in it for sex offenders. I like the fact that it had suggested progressive relief from the registry over a five-year period. I

thought that was an excellent approach to this, especially given the data with regard to the rehabilitation of sex offenders. Unfortunately, that is not going to happen.

My clients are confused with the changing laws because every so many years the laws change, and they affect everybody. This is going to be better for some people. I believe people convicted before 2008 are going to have some relief from the Adam Walsh Act at least. However, it is going to create a dual system that will have all the old-school sex offenders and new-school sex offenders. It will be difficult for Parole and Probation and clinicians to keep the difference in mind.

It is important to point out that the Adam Walsh Act is not retroactive past 2008, it is retroactive to 2008. Since it has not been passed yet, it has not been allowed yet. We will have a huge number of people who have been convicted during the time the law was not in effect. That will now be in effect for them, which is a psychological issue for me, but it is also a legal issue at some point.

I am also concerned with the concept of risk assessment. Under the Adam Walsh Act, risk assessment is dropped entirely. Tier levels are based on crimes, not on risk. The public is disenfranchised from information that it had under a risk assessment system. Some of the worst offenders, the most likely to reoffend, will now be the least tiered level and some of the worst offenders will be the worst tiered up.

The problem I find with the Adam Walsh Act or A.B. No. 579 of the 74th Session is that it tends to treat the tiers as though they are not risk or state that the tiers are not risk assessment, but then treat them as though they are. Because a Tier 3, even though it is not a risk assessment, must report 4 times a year instead of once a year. The law punishes him or her for being a Tier 3 even though we say it is not a risk assessment, it treats him or her as if it was. The public is very concerned about risk. Now we are telling them "Well, it was a risk assessment last month, this month it is not a risk assessment." So Tier 3 used to mean high risk, now a Tier 3 does not mean high risk. How are we going to convince the public of that?

I was disappointed when I got here. I am sorry that we did not get to go forward on S.B. 474 as it was originally written, as I read it for the last few

weeks. I am hopeful that we can continue to change the law with respect to the legality and with respect to the data that comes in from research that we have about how to treat sex offenders. There is much we can do in the future, and I hope we will continue in that direction.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
I want to echo the testimony of Ms. McLetchie and Ms. Henry. We have been battling this at the ACLU of Nevada since A.B. No. 579 of the 74th Session passed in 2007. We would have preferred the original version of S.B. 474 that would have repealed the Adam Walsh Act in its entirety. Repealing the retroactivity provisions from statute will provide much-needed relief to thousands of Nevadans at risk for significant liberty deprivation. I believe Ms. McLetchie said that as many as 2,500 individuals will be moved from Tier 1 and Tier 2 to Tier 3 status. We find this to be a clear constitutional violation of due process rights and of the ex post facto clause.

As Ms. Henry shared, many of these individuals served their prison term decades ago. Most are compliant with the terms of their supervision. They have completed their prison term, they completed the terms of their supervision, and they are not currently on the registry but may be subject to being on the registry again. Senate Bill 474 as amended will maintain the status quo for those individuals pre-2008 which puts into place better due process protections from our perspective, such as allowing a person to challenge the tier assignment, basing this on a risk assessment tool, having an individualized approach when discussing terms of supervision and allowing that person to eventually get off the registry after 15 years under certain circumstances. For these reasons, we support the bill as amended.

One more thing as far as the caselaw and Senator Cannizzaro's question is that most of the cases have been found to be unconstitutional under the ex post facto clause based on the retroactivity provisions. We would be glad to send you an At A Glance sheet that shows all of the litigation that has happened throughout the Country.

VICE CHAIR CANNIZZARO:
If you have that documentation and we could get it, we might be able to put it on the Legislative Website so people can see it.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
I am here opposing the conceptual amendment to S.B. 474. Our Association has supported attempts to reform the Adam Walsh Act in the past. We supported S.B. No. 99 of the 78th Session, which made some changes to the adult portion of the Adam Walsh Act but mainly dealt with some of the juvenile changes that we also saw this Session as S.B. No. 99 of the 78th Session was vetoed.

We are supportive of some amendments. What the conceptual amendment to S.B. 474 does is create two separate systems. Some of the issues that have been brought up here will not be addressed by having two separate systems. If you have somebody who has been convicted of a crime prior to 2008 and somebody who has been convicted after 2008 and both are labeled Tier 3, what does that mean with respect to those particular offenders, especially if you are not aware of when their convictions took place.

What the Adam Walsh Act does in a nutshell is move us, Nevada, from an offender-based system, meaning you look at the offender and his or her risk as determined by a psychosexual evaluation, to an offense-based system. In other words, we are looking at the crime that particular defendant was convicted of.

There might be some confusion as the State makes the transition from one system to another. But at least we will all know after the Adam Walsh Act is actually enforced that if somebody is a Tier 3, the person would have been convicted of one of the more serious offenses, that being sexual assault against a child, sexual assault, those types of offenses.

But when you have a split system, it makes it less clear, and that is the concern of the Association. I will point out that we are willing to work with any stakeholders to strengthen our sex offender registration laws in this State. It is an important tool for both the public's information and keeping a tab on people who have been convicted of sex offenses.

JULIE BUTLER (Administrator, General Services Division, Department of Public Safety):
My Division houses the state's sex offender registry and has been part and parcel of this back and forth since July 1, 2008, in trying to implement A.B. No. 579 of the 74th Session.

I came here today prepared to speak about S.B. 474 in its original form. Looking at the conceptual amendment, my biggest concern would be whether it addresses all of the constitutional issues. We have been intimately involved with all of the legal issues: we have equal protection, we have due process, we have ex post facto, we have double jeopardy, and all of these have been hampering our ability to implement this law since 2008. Yet, I only heard the amendment address retroactivity, the ex post facto, so I am not sure whether that addresses all the other concerns.

The concerns that have been expressed by some others to create dual systems, in addition to being confusing for the public, will also be very difficult for my staff. If you are looking at the cutoff date of July 1, 2008, we will have to go back and tier everybody. We can do it, but it will take additional time to be able to work through that. I do not know whether that would require any sort of IT changes to our system to be able to indicate this person is under Megan's Law versus that person who is under A.B. No. 579 of the 74th Session. Furthermore, Megan's Law had some provisions for reconsideration hearings for anybody who felt he or she had been mistiered. That person could apply and challenge the tier level, and A.B. No. 579 of the 74th Session does not have those. Therefore, would we keep that going forward? Many details would need to be worked out. We are certainly willing to work with all the stakeholders as the "boots on the ground" charged with implementing this. We would definitely like to make ourselves available for any of those discussions.

SENATOR SEGERBLOM:
Would you tell the Committee how close you were to going live with the Adam Walsh Act last July?

MS. BUTLER:
We actually did go live on July 1, 2016, for about 30 minutes. We then got the emergency Nevada Supreme Court order staying us from going live. We had many obviously panicked people as we did briefly go live, and we had a mad rush to take the Website down and revert back.

SENATOR SEGERBLOM:
This meant that all those people who had been reclassified were now on the Internet, and that is where I am sure all of us had people contact us with stories that were pretty dramatic.

Even though it would be difficult for reasons that were stated, this is so important that we do not treat people who pleaded guilty to one thing based on the law to now all of a sudden change how they are going to be treated. I have had families call in panic about this.

Senator Goicoechea is a cosponsor of this amendment because he has constituents who have had this happen to them. It is not appropriate for the government to change the punishment after you have pleaded guilty to something. I would hope we could do something. Obviously, we cannot do it by ourselves.

VICE CHAIR CANNIZZARO:
Seeing no more people wanting to testify, I will close the hearing on S.B. 474.

CHAIR SEGERBLOM:
I will open the hearing on A.B. 177.

ASSEMBLY BILL 177 (1st Reprint): Revises provisions relating to domestic violence. (BDR 3-210)

JON SASSER (Legal Aid Center of Southern Nevada):
Assembly Bill 177 deals with domestic violence temporary protection orders (TPO) and the issues that are faced when there is an evasion of service by alleged perpetrators. Under statute, you get an ex parte TPO and a hearing is scheduled 30 days later. If there is not the ability to accomplish personal service on the perpetrator at that hearing, then under the statute your TPO has expired and now the person is unprotected again. There are some judges who will give you a continuance, but it is unclear whether there is any validity to that TPO during the continuance.

This bill, after it was amended in the Assembly, would allow a 90-day continuance if there is no show at the first TPO hearing. The TPO would remain in effect for that period of time if upon a showing by the alleged victim, there had been due diligence serving the adverse party or there is an actual evasion of service. It also provides for a second 90-day continuance.

What happens if somebody shows up at the property during this period? Like the current law, you are not going to arrest somebody because he or she does not have notice of the order at that point in time. However, law enforcement's

job would be to serve the alleged perpetrator and say, "There is a TPO out and there is a hearing scheduled ... please leave." If the person comes back, then he or she does have notice of the order and could be prosecuted criminally.

This was vetted with a number of folks over on the other side: Assemblyman Keith Pickard, the Family Law Section of the Nevada Justice Association. I believe it is a good bill.

EBRU CETIN (Legal Aid Center of Southern Nevada):
We represent survivors of domestic violence in family court, and we have seen instances of evasion of service by the adverse party. We had a client who was held captive and tortured for days. She had to move out of state because she could not effectuate service on the adverse party who was almost homeless and could not be found. She had to move for her own protection. We have also seen instances where the applicant was so desperate to get the adverse party served that he or she had to put loved ones in danger to effectuate service.

This legislation supports the notion that both parties to a restraining order would have their rightful day in court. This bill would prevent valid restraining order applications from being dismissed because of the lack of service within such a short period of time that is provided right now. We are in support of A.B. 177.

KRISTY ORIOL (Nevada Coalition to End Domestic and Sexual Violence):
Living in an abusive situation is the most dangerous time for a victim. We know that over 70 percent of homicides occur after a victim has left, and protection orders are one key component to keep victims safe. We support A.B. 177 to reduce one burden in effectuating service on our victims.

MS. NOBLE:
We support A.B. 177.

CHAIR SEGERBLOM:
Seeing no more people wanting to testify, I will close the hearing on A.B. 177 and open the hearing on A.B. 376.

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

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
I submitted a conceptual amendment (Exhibit D) to A.B. 376. The Assembly tried to find consensus, and we are working on that consensus. We are close, but if you look at the conceptual amendment, I think we are very close to agreement with the prosecutorial bar on almost all of the points. What that amendment does and what the gist of what is left of A.B. 376 boils down to is what "forthwith" means. I looked at the online dictionary for the definition of forthwith, and it says immediately, without delay. That is how I understand forthwith.

In practice, it is not always so easy to make that happen. If you have been arrested and are in custody and the criminal complaint you are hoping to answer to may be keeping you in custody, as opposed to getting in front of a judge and getting the ruling on a warrant or bail, it matters quite a bit whether forthwith means immediately, without delay or means 72 hours, a week, a week and a half or 2 weeks. Assembly Bill 376 as amended tries to establish some clarity as to what we are going to put into the timeline.

The amendment gets rid of the word forthwith and says that the rule will be that within 72 hours after someone is arrested, excluding Saturdays, Sundays and legal holidays, a complaint needs to be filed unless there is an extension of up to 72 hours, excluding legal holidays, for good cause. Then there is a final possibility of one more extension of 72 hours for good cause shown. It does ask that if an extension is requested, that counsel would be appointed.

ROBERT O'BRIEN (Office of the Public Defender, Clark County):
This bill is attempting to create consistency in Nevada law about how long someone may be held in custody without being charged with a crime, without being appointed an attorney and without being able to address his or her bail or release status.

The conceptual amendment is a significant compromise from what Assemblyman James Ohrenschall originally proposed. We kept working at it with the prosecutorial bar and with people who had concerns about it in an attempt to ultimately try to reach consensus. We are not completely there, but we have taken some large steps to get there.

Traditionally, in Nevada courts within 72 hours of arrest, someone who is in custody is brought before a judge, and a complaint is filed by a prosecutor or

city attorney informing the person of what he or she is going to be charged with. In some occasions, the prosecutor may decide not to charge that person or may need additional time to charge them.

This hearing is very important in terms of having a chance to have an attorney appointed and to potentially address being released from custody. In the rare instance, there are times when the prosecutor, for whatever reason, is not prepared to file a complaint, which brings the definition of the word forthwith into account.

The conceptual amendment actually increases the time allowed for prosecutors to have an extension of time to file a complaint if they need it. At the 72-hour hearing where the majority of complaints are filed, those would proceed as normal under this bill. Where a prosecutor needs additional time for good cause, the judge may grant an extension of up to three more days. If that is still not enough time and the prosecutor has good cause for another extension, he or she can receive another extension of up to three more days. For the person in custody this will be difficult, but at the same time the importance for the prosecutors to obtain additional time is why we got to the compromise measure.

CHAIR SEGERBLOM:
Is there a constitutional right to be charged within a certain number of hours or days?

MR. O'BRIEN:
The right to be charged does potentially fall under the right to a speedy trial, but deadlines in Nevada are set by *Nevada Revised Statutes* (NRS) 171.178. Section 1, subsection 3 of the bill requires that within 72 hours of an arrest, excluding nonjudicial days, someone who is in custody must be brought before a magistrate to be informed of the charges, to have an attorney appointed and to address potential release or bail. However, section 1, subsection 4 is what we are dealing with in the amendment. It is the second step in that hearing. Subsection 4 is where the prosecutor would say whether there were charges being filed against the person. Those two sections essentially operate together to start the criminal process in Nevada for someone who has been arrested.

This amendment also ensures that in order to grant an extension, the judge or the magistrate would appoint an attorney to make sure that the person could

address his or her custody status and properly address the question of good cause.

CHAIR SEGERBLOM:
Therefore, at the first meeting within 72 hours, the prosecutor can just say verbally here is what happened, and here is why you are being held. In this bill, a written complaint would be required?

MR. O'BRIEN:
No. As it is written right now, the process of charging someone with a crime cannot move forward in Nevada without a written complaint. We are essentially a notice-pleading state. The prosecutor in Nevada does have to put the defendant on notice by filing the charges against them. Procedurally, what is really happening is once the police have arrested someone, the police have stated what crime they think has been committed, and that is submitted to a city attorney or a prosecutor. They then move forward by starting the court process by filing the complaint.

CHAIR SEGERBLOM:
I am not clear. So current law says that it has to be done within 72 hours, but you say that is not done?

MR. O'BRIEN:
No. We are saying that in the majority of cases, it is filed with a 72-hour hearing. The issue comes up when the prosecutor is requesting an extension to file the charge. At that point, from the perspective of people who are in custody, they are being held in the jail, do not know whether they will be charged with a crime, have no ability to address their release and do not have an attorney. In the majority of cases, that complaint is filed. There are some cases where the prosecutor will choose not to prosecute, and there are some instances where the prosecutor will request an extension of time.

Subsection 4 and the definition of forthwith is what the bill is attempting to deal with. Forthwith is the definition of when the prosecutor must file the written complaint against the person to charge him or her with a crime. We are trying to establish clear deadlines and clear procedures for how and when someone should be charged with a crime.

SENATOR GUSTAVSON:
I understand where you are going with this bill and maybe why you are going in this direction. I have a question about a person who is arrested. They take him down and do all the procedures and everything else and put him in jail. The district attorney has 72 hours to file a complaint or charge him with something. In the meantime, is it possible for this person to be released on bail or get out of jail? I am thinking about people who may be arrested by mistaken identity and have no idea why they are there. They are told they are being charged with this, but it will take 72 hours or 3 days before they can find out or get out on bail. I just have a concern. It probably does not happen in that many cases, but it probably does happen that a person gets arrested and locked up for three days, cannot get out, and he or she has not done anything wrong.

MR. O'BRIEN:
The answer to your question is a little bit complicated, but I will try to break it down. There are several hearings. The bail or release of someone is first established at a 48-hour review. A judge reviews the police report and sets a bail amount. That is the traditional way that it happens. Occasionally, a judge, after reviewing the arrest report, will decide to release the person. However, you are also correct that a more complicated case, where someone might say "I'm not actually that person," needs someone to explain to a judge that the officers made a mistake, here are some extenuating circumstances or here are the reasons why my bail should be lower. That would traditionally occur at the 72-hour initial hearing that is set up right now. Most of Nevada courts operate with having the 72-hour hearing set up. The limit to this bill and what it is attempting to address is what happens when the normal procedure does not happen, and that person is not charged with a crime.

In the example you have given, people would be left in custody. They would not be able to challenge any of the details against them because they do not know what crime they have been charged with. They would not be able to make an argument for their release, and they would not have an advocate. There would be no attorney to speak for them.

In Clark County, our office and the District Attorney's office often discuss the number of prosecutions. The Clark County District Attorney's office proceeds with about 80 percent of cases filed by the Las Vegas Metropolitan Police Department (LVMPD). It is a large number but at the same time it means that 20 percent of people are not actually being prosecuted with a crime. Those

20 percent of people that we are dealing with are at risk in this type of case. For those people who are held in custody without a chance to address their status, they could potentially lose their housing and lose their jobs. Their lives could significantly change forever, potentially, cases where it was ultimately determined that a crime was not committed.

In terms of the compromise measures here, while the language proposed essentially sets up a routine mechanism that mirrors the mechanism that 72 hours is the date when the hearing will occur and the charges will be filed, it also allows the prosecutor to make extensions. Finally, the last part of the compromise that I would point out is it was important to the prosecutors to have the last sentence, which is that there is no remedy for violating this section other than being released from custody. In plain language, it means prosecutors will charge whomever they believe needs to be charged within the statute of limitations. Someone's release from custody would not affect that.

SENATOR HARRIS:
If I am hearing what you are saying and processing it correctly, about 20 percent of people who are brought into police custody fall outside the normal process of receiving a hearing within 72 hours before a magistrate. Is that correct?

MR. O'BRIEN:
Not exactly. What I meant by the 20 percent is there are 20 percent of arrests that the prosecutor chooses not to move forward on. They may appear at that 72-hour hearing, but the prosecutor will choose not to charge them.

SENATOR HARRIS:
So what percentage of people who are brought in by the police ultimately do not make it before a magistrate in 72 hours would you say?

MR. O'BRIEN:
I would say it is a rare number. The majority of cases are brought before a magistrate before 72 hours.

SENATOR HARRIS:
So 5 percent, less than 5 percent?

MR. O'BRIEN:
I do not have a number on that. If I were guesstimating, I would say maybe 1 percent, 2 percent.

SENATOR HARRIS:
What types of crimes are these individuals being brought in for? Are they misdemeanor, gross misdemeanor-type things or are they cases that are more serious where maybe there is evidence that still needs to be collected before charges can be brought and that is why there is a delay perhaps or for whatever reason?

MR. O'BRIEN:
I would say it encompasses all potential crimes here. It does allow for crimes that are more serious. The way the compromise measure, in part, was written is that it allows up to 11 extra days—I apologize—it allows up to 8 extra days for a prosecutor to gather additional evidence that he or she needs.

SENATOR HARRIS:
So the crimes that are potentially being charged span the gamut from minor to significant?

MR. O'BRIEN:
That is correct. It could go from misdemeanor damage to property, destruction of property to a more serious crime.

AMY COFFEE (Nevada Attorneys for Criminal Justice):
I am going to reiterate some of the things Mr. O'Brien said. I want to point out that we only support the bill with the amendment. We do not support the bill if it is not amended in its original form.

I want to clarify a few things that were said a few minutes ago. For those who might not be familiar with the system, the way it works if you are arrested is that the 48-hour hearing is really a review; it is not a formal hearing where a magistrate is supposed to review charges and set bail. Just to be clear about bail, as a public defender, which I am, most of our clients cannot afford any bail of any kind. Therefore, the fact that bail is set does not in and of itself protect individuals.

At that 48-hour hearing, which is a review process, at least here in Clark County they will review a police report. Bail will get set. If you are using our existing statute, there are factors that are supposed to be considered when setting bail. None of those factors really can be taken into consideration without a lawyer who talks to a client and finds out about the client's background and ties to the community. Therefore, those are not taken into consideration when that bail is set.

We have the other program, the pilot experimental pretrial release program, that uses different factors. That program has to be run by the jail. I do not know that the program will be done in other areas, municipalities or counties.

When bail is set initially, there is no lawyer there to advocate for the client to say that the client has ties to the community or to consider all the factors that are currently in our Nevada statutes.

Further, I want to point out that this a very generous amendment. Right now, our statutes say that the prosecutors must file the complaint forthwith. This amendment statutorily gives them extra time. Forthwith generally is interpreted as around the 72-hour time. We have incorporated delays into this that they can ask for. Therefore, this is very generous for prosecutors because if they have good cause, which is all they need, they can get extra time. Keep in mind that none of this prevents prosecutors from charging people with any crime at all. The only issue is whether they should remain in custody while they are uncharged.

The district attorneys might say they need more time. Generally, the good cause that we would expect to hear is something like they might be waiting on a forensic test result or a lab report that might confirm that the crime occurred or confirm the identity of the person. Those would be things that a judge would probably find good cause if the district attorney were to come in and say "You know I am going to get that in the next day or two, and that will really help us confirm that this crime occurred," or something like that.

Why do you need this? We want to prevent a situation. This covers courts that might not have public defenders or contract defense attorneys for those that are indigent. It prevents a person from sitting in jail who has not talked to a lawyer, had no input on bail and does not know what the charges are against him or her. As Mr. O'Brien said, people could lose their jobs, their homes, everything,

and they are not represented, they do not know what is going on, they have no advocate in the system, they do not know if there is good cause to keep them in there. They have not received a piece of paper with charges against them.

It is important to us that if we are going to allow district attorneys to have extra time which they might rightfully need, having an attorney appointed is important so that the attorney can address things like custody status, the bail amount and whether this is really good cause or just delay for delay's sake. That is why it is so important that an attorney be appointed to make sure his or her rights are protected. I do not think there could be anything worse than someone being arrested, in jail, not knowing what he or she is being charged with, not having any say on the bail amount and just sitting there with nothing. It is really important for us that if we are going to allow this extra time for the prosecution, it is imperative an attorney be appointed.

I would like to further point out as part of the process, once the attorney is appointed and you have the arraignment, the individual has a right under NRS 171.196 to demand their preliminary hearing within 15 days. That is just a probable cause hearing. The State does not have to have all of its witnesses or all of its evidence. The standard is slight or marginal evidence. The prosecutor just has to show probable cause. Our statutory scheme is to move this process along. It is so important while someone is sitting in jail that we do move it along at a pace that is fair if we are going to keep people in custody. As Mr. O'Brien said, the State does not lose its case if it does not meet the timelines, we just release the person. The person is still released and could be released for a short period of time to come back to court. The person could even be released for a week, and the judge could have him or her come to court to check in.

There is certainly no detriment to the State under this amendment, under this bill, and it provides the State with statutory additional time. Should the prosecutors really need it, they have it.

MR. PIRO:
It should go without saying that the Clark County Public Defender's Office is supportive of this bill and the amendment and what it is trying to do. Senator Harris had a quick question about the number of incidents. It would be hard to quantify that number because we are not appointed, so we do not get that case or else we would be able to track those numbers. It would be hard to quantify

how often this situation happens, but it happens enough for us to have been concerned to have brought this to Assemblyman Ohrenschall's attention.

Senator Gustavson, the scenario you had posed to Mr. O'Brien is concerning. The provision of having an attorney appointed in that case is important to our office and to the Washoe County Public Defender's Office, so that there will be somebody there to advocate for that person in that type of scenario rather than being left in a jail cell without a criminal complaint, not know what is going on and wait for a court date to be heard, to be released, to get the process moving.

SENATOR CANNIZZARO:
Either Mr. Piro or someone down south can probably answer this question. I want to clarify with the amendment where it says, "An extension shall not be granted unless counsel has been appointed." For those situations where somebody is arrested, brought in, and there is not an extension and the individual is not asked to be kept in custody, let us say the State is seeking additional time but not seeking to keep someone in custody; maybe we are seeking 30 days or so to file the complaint. Would this also require counsel to be appointed in those circumstances?

MR. PIRO:
Just so I understand your question, you are saying that where we have those scenarios where we are in the morning arraignment calendar and you say the State is requesting an additional 30 days, but you are not seeking to have that person in custody?

SENATOR CANNIZZARO:
Correct.

MR. PIRO:
Then we would not be asked to be appointed in that.

SENATOR CANNIZZARO:
Therefore, this part of the amendment would only apply if we are seeking to keep someone in custody but also asking for an extension of the initial 72 hours.

MR. PIRO:
Correct.

SENATOR CANNIZZARO:
This language here does not affect the State's ability to continue to seek that out-of-custody time, such as the 30 days or 90 days where we are still conducting an investigation so long as that person is out of custody.

MR. PIRO:
That is correct.

MS. BROWN:
We support this bill with the amendment. I put in a proposed amendment to A.B. 376 (Exhibit E). Section 2 of this bill requires that the lead investigative law enforcement agency must turn over all of the evidence to the defense that had been previously provided to the prosecuting agency within 7 days prior to the preliminary hearing. The investigating law enforcement agency would be required to make one additional copy, a photocopy or photograph, of the evidence that it had previously provided to the prosecution within 7 days of the preliminary hearing. It will level the playing field. It will also prevent innocent people from being wrongfully convicted. The defense counsel can file motions prior to the preliminary hearing and be ready. It will enable them to release the innocent person, lower the bail pending, dismiss all charges and save the taxpayers money.

I have provided you some documentation (Exhibit F), so if this bill is to be amended, then things like this would never happen in which a prosecuting attorney will not turn over the evidence.

I will just briefly go over it and cite the pages under the example of a prosecutor withholding evidence in the case of Nolan Kline.

CHAIR SEGERBLOM:
Ms. Brown, I am sorry we cannot relitigate your case.

MS. BROWN:
I understand that.

CHAIR SEGERBLOM:
We got your amendment, and we will consider your amendment.

MS. BROWN:
I wanted to point out on pages 5, 8, 10, 11, 22, 23, 25, 26, 27 and 28, this was evidence that never made it into trial. Out of 20 exhibits that the prosecutor presented at trial, 8 of those were photographs. Out of in excess of 240 documents, 20 made it into trial, leaving in excess of 220 documents that did not make it to the defense. If this law existed, that evidence would have gone directly over to the defense. They would have received those 200 and some odd documents instead of the very limited number, less than 20.

MR. JONES:
We are getting close. I do want to clarify a few things here very quickly. We intertwined 48-hour reviews, 72-hour hearing and forthwith.

When a defendant is arrested, a declaration of arrest is filed. That declaration of arrest is then forwarded to a judge and within 48 hours after arrest, a judge reviews the declaration of arrest to make sure that there is probable cause (PC) on the 4 corners of that document. In other words, they are doing what we call a PC review to make sure that the officer has outlined on the document at least enough to hold the defendant on that charge. The 48-hour hearing is typically done in chambers with the judge, and no one else is present. The judge is just reviewing the declaration of arrest to make sure that there is enough on the document.

There is also what we call a 72-hour hearing. That occurs in open court with the judge sitting up in his or her black robe with parties present. At the 72-hour hearing is typically where the defendant gets the first copy of the criminal complaint, and that happens in the vast majority of cases.

When the declaration of arrest is forwarded to the judge, the declaration of arrest is also forwarded to the district attorney's office to make a charging decision. Therefore, as the judge is going through the 48-hour PC review and as we approach the 72-hour hearing, the district attorney is contemplating charging decisions.

If between the arrest and the 72-hour hearing the district attorney decides not to file charges, we do not keep the person in custody until the 72-hour hearing.

We send a notice to the jail that we are not proceeding on these charges, please release the defendant.

I also want to say that we had about 25,000 felony and gross misdemeanor submissions to the Clark County District Attorney's Office in 2015, and we denied 24 percent of those cases. In other words, in about three-quarters of the cases, we filed charges; in about one-quarter of the cases, we denied charges. When you start talking about placing unreasonable demands on the prosecutor, then we are going to start looking at filing more charges than we do now. In other words, if you are rushing us, then we are not going to engage in the detailed analysis that we go through now.

When an officer arrests a defendant, that officer is typically arresting on probable cause, slight or marginal evidence. Our screening department looks at the case with a little more scrutiny. Ultimately, is this a case that if we went to trial, we could prove it? We do not want to proceed with cases that we cannot prove beyond a reasonable doubt. That is why you see a 24 percent denial rate by our office. If you start rushing the charging decision on behalf of the prosecutor, then you are going to see our approval rate increase. That is not what we want. We do not want to send cases that we cannot prove beyond a reasonable doubt any further than our office.

We have come to an agreement with respect to some of the language where we are excluding Saturday, Sunday and legal holidays. We have also agreed with the language that release from custody is the remedy for the violation of this subsection. Therefore, as long as you exclude Saturday, Sunday and legal holidays from the analysis and make clear that release from custody is the remedy, then we are okay with that language.

We still have some hang-up with respect to the granting of an attorney to everyone in which the district attorney requests an extension of time. There are some logistical issues with this, especially in our rural jurisdictions. Say a four-code defendant case comes in, it is overly complicated, and the district attorney asks for a little bit more time to parse through the case to file charges. In that situation, the rural jurisdictions might not have four defense attorneys to appoint to these four defendants.

We have had some conversations about "if available, allowing the defendant to have access to counsel." In most of our urban jurisdictions, there are public

defenders and other public attorneys in the courtroom whom the defendant might be able to consult with. When you start using the term "appoint" and in every case in which we have an extension of time request, that could pose some problems.

Senator Cannizzaro raised a question of whether or not a defense attorney would have to be appointed if we released the defendant but still asked for more time. The way the proposed language is worded now I would say yes. An extension of time shall not be granted unless counsel has been appointed. If the district attorney is asking for an extension of time, even though we are letting the defendant out, I would argue that the plain language of the statute would say a defense attorney would still have to be appointed.

The one example I want to give you is a DUI example. Say an individual is arrested for a DUI. On scene there was some indication that the defendant was intoxicated at the time, hit a person, caused substantial bodily harm or even death but was taken to the hospital, so the officer did not have the opportunity to engage in a field sobriety test. A blood draw was taken at the hospital. Obviously, we are going to want to get the results from the blood draw prior to filing those charges. Those are the types of cases where, typically, we as prosecutors request more time.

We are talking about serious cases. We are talking about serious charges, and we are talking about a serious thing charging people with crimes. I would say that you as a Body would want us to be thoughtful in that process. That is why you should give this measure the due consideration it deserves.

CHAIR SEGERBLOM:
With the amendment, how does this change your view of the existing law?

MR. JONES:
Our amendment (Exhibit G) does clarify existing law, and we do not have the term forthwith. I think everybody will know 72 hours. In most justice of the peace courtrooms, typically, if you do not have a criminal complaint filed within 72 hours or you do not have a really good excuse as to why the district attorney is seeking more time, then most judges do release the defendant.

SENATOR HARRIS:
With all the testimony we have heard this Session with regard to how overburdened our forensic labs are, what kind of delays are we talking about for people who are waiting on blood draws and other forensic evidence?

MR. JONES:
The labs typically get the blood draws for DUIs back very quickly. I do not have an exact time, but I will reach out to the chief of my DUI team to get that back to you. When you start talking about DNA evidence or other evidence, we are talking about a significantly longer period of time. If that is the deciding factor in whether we are going to file a criminal complaint, a person would not be in custody that long. For DNA, we are talking anywhere from nine months to a year sometimes.

SENATOR HARRIS:
I guess I am just trying to figure out why the 72-hour time frame is a problem then. Based on the testimony I have heard in the hearing today, it all seems to be quite reasonable actually, except for certain circumstances where there might be some pending evidence that needs to be collected or we are waiting for some test results. So help me understand why this does not work.

MR. JONES:
In the vast majority of cases, the 72 hours is enough. There is a small percentage of cases in which we do need more time to make the decision. That is when we go to a judge and explain either "Your Honor, the lab results are not back, I have been in contact with the lab, and they should have them within 24 hours" or something along those lines. The judge will make the decision.

We have agreed to the 72 hours with that portion of the bill. We can live with it as long as you exclude legal holidays, Saturdays and Sundays. The District Attorneys Association would be in support of that provision.

SENATOR HARRIS:
Therefore, your main concern is the appointment of legal counsel.

MR. JONES:
Yes, that is the part we have not agreed to.

Most judges, not all of them, will allow a public defender to sit in and at least argue for a defendant when we are asking for more time. One of the issues we have had is that some judges do not let a public defender do that, which is why the public defenders are seeking that provision in statute.

SENATOR HARRIS:
The public defender who is allowed to initially argue, is that the one who is ultimately assigned or is the public defender just there to assist until counsel can be appointed?

MR. JONES:
It is typically the latter. Oftentimes, the public defender's office will be appointed in that case but sometimes conflict counsel will be appointed.

MARC M. SCHIFALACQUA (Senior Assistant City Attorney, City of Henderson):
My office prosecutes all misdemeanor crime in the City of Henderson, and I am the head of the division.

I do oppose the bill as written, although I do appreciate the amendment that has been proposed. As written, the bill would be unworkable. If I could give an example, the original writing of the bill would not exclude Saturday, Sunday and legal holidays. If there is an arrest in Henderson on Thursday or Thursday afternoon, the courthouse is closed, as in many municipalities, on Friday. Saturday and Sunday certainly all courthouses are closed, and this would have required the prosecutor to file within 72 hours regardless. So if this would have been Thursday, I would have had to file by Sunday. There would be no one to file with. The amendment is welcome.

I would ask though that it be uniform throughout the section. If you notice in the conceptual amendment it excludes Saturday, Sunday and legal holidays on lines 2 and 3, but then lines 4 and 5 just say legal holidays. That would be the very small percentage of cases where you need any extra few days. We could not file charges when the court clerk's office is not open, especially in Henderson where there is not an e-filing system.

With those amendments, if accepted, that would be what I would recommend, and at that point, we should be able to comply. All defendants in Henderson are seen within 72 hours in the municipal court. It is rare that I ask for an extension, but it is important on a small percentage of cases. It would be

important to exclude the weekends and legal holidays, as we could not file charges even if we had it ready to go.

ASSEMBLYMAN OHRENSCHALL:
If one of our loved ones had been arrested and a complaint had not been filed, we would care a lot about forthwith meaning immediately and without delay. Here the amendment tries to take into account the less populous courts like Henderson that only meet four days a week. We tried to work that into the bill. On the other hand, we do not want to build in something so far out that it defeats the original intent of the statute and a complaint needs to be filed immediately without delay. That is what we are trying to achieve here by trying to clarify the timelines.

As to the line about an extension shall not be granted unless counsel has been appointed, Mr. Jones explained that very well that in most justice courts in Clark County the justice of the peace will not object if there is a deputy public defender there who wants to, as a friend of the court, try to make that argument even though he or she has not been appointed. Some justices of the peace did object and would not allow that person who has not been appointed an attorney to have an attorney try to argue for their release when a complaint has not been filed. Perhaps this would allow some possible language we could look at if the prosecutor is seeking to keep that person in custody, then the counsel could be appointed to make that argument.

I am still working with everybody. I hope I can achieve consensus on this.

CHAIR SEGERBLOM:
Seeing no more people wanting to testify, I will close the hearing on A.B. 376 and open the hearing on A.B. 356.

ASSEMBLY BILL 356 (1st Reprint): Revises provisions relating to criminal procedure. (BDR 14-1155)

MR. PIRO:
We have worked with Assemblywoman Dina Neal on this bill. This is another bill that was heavily amended after leaving the Assembly and actually received bipartisan support on the Assembly side.

What this bill seeks to do is add a section regarding subpoenas to evidentiary hearings to the subpoena power of both prosecuting and defense attorneys. That makes conforming changes.

Sometimes we subpoena documents from LVMPD that will send us a letter saying it will not come with those documents until a hearing. This gives an alternative to appear before the court. Las Vegas Metropolitan Police Department can give us those documents we had subpoenaed rather than having to appear anywhere.

Section 9, subsection 3 is regarding jury instructions. Therefore, either party may present the court with any written charge, requesting that it be given if it believes that the charge is pertinent, and an accurate statement of law whether or not the charges have been adopted as a model jury instruction. It must be given if the court believes that the charge is not pertinent or not an accurate statement of law, then it can refuse that jury instruction.

This bill seeks, in a small measure after being amended on the Assembly side, to add subpoena power to evidentiary hearings, give LVMPD the opportunity to deliver the documents in lieu of appearing if an appearance is not necessary and, in section 9, add the jury instruction regarding accurate statements of law.

MR. CALLAWAY:
I had asked our general counsel to explain in detail why this is a major concern for us. This language was put in a work session in Assembly Judiciary, and there was not an opportunity to have a hearing.

Based on my discussions with our general counsel, this proposed language adding the subpoena ability for an evidentiary hearing allows the discovery process to be bypassed so defense could subpoena evidence in a case directly to the police department when our evidence is turned over to the prosecutor. Our general counsel believes this would create a situation where we would go through the prosecution for purposes of discovery rather than the defense. They would be subpoenaing us directly and tying up our folks to meet the demands of those subpoenas. I wish our general counsel could have been here to testify, and she could have explained in better detail our concern. It is a major concern for us the way this bill is drafted.

MR. PIRO:
The subpoena measure is important in this part, and it did get bipartisan support on the Assembly side, to make sure that all the information both the police and the prosecutors have is turned over at certain points. Therefore, we are adding evidentiary hearings to the hearings we already have because sometimes we do have a discovery evidentiary hearing or a suppression evidentiary hearing. It is just adding that subpoena power in a small measure and making sure that everybody has the same information at the same time.

CHAIR SEGERBLOM:
Have you heard from Las Vegas Metropolitan Police Department Counsel Charlotte Bible and her opposition?

MR. PIRO:
I do not recall it from the Assembly hearing. I believe she was there, but there were many more measures in this bill that they were testifying on as well that have now been removed.

CHAIR SEGERBLOM:
If you could, reach out or have Assemblywoman Dina Neal reach out to her and try to clarify what it is because we have a work session on this bill this week.

MR. PIRO:
Okay.

Remainder of page intentionally left blank; signature page to follow.

CHAIR SEGERBLOM:
If there is no more testimony on this bill or any public comment, I will close the hearing on A.B. 356. We are adjourned at 3:36 p.m.

RESPECTFULLY SUBMITTED:

Eileen Church,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	5		Attendance Roster
S.B. 474	C	1	Senator Tick Segerblom	Conceptual Amendment
A.B. 376	D	1	Assemblyman James Ohrenschall	Conceptual Amendment
A.B. 376	E	1	Tonja Brown	Proposed Amendment
A.B. 376	F	28	Tonja Brown	Supporting Documents
A.B. 376	G	2	John T. Jones, Jr. / Nevada District Attorneys Association	Proposed Amendment