MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
June 2, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:04 p.m. on Friday, June 2, 2017, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

GUEST LEGISLATORS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblyman Ozzie Fumo, Assembly District No. 21
Assemblyman William McCurdy II, Assembly District No. 6
Assemblyman James Ohrenschall, Assembly District No. 12
Assemblyman Michael C. Sprinkle, Assembly District No. 30
Assemblyman Steve Yeager, Assembly District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Connie Westadt, Committee Secretary

OTHERS PRESENT:

Bryan Nix, Victims of Crimes Program, Department of Administration

Don Soderberg, Director, Department of Employment, Training and Rehabilitation
Andres Moses, Eighth Judicial District Court
The Honorable James W. Hardesty, Justice, Nevada Supreme Court
Jim Berchtold, Legal Aid Center of Southern Nevada
John J. Piro, Deputy Public Defender, Office of the Public Defender, Clark County
Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety
Chuck Callaway, Las Vegas Metropolitan Police Department
Jennifer Noble, Nevada District Attorneys Association
Sean B. Sullivan, Office of the Public Defender, Washoe County
Wendy Stolyarov, Libertarian Party of Nevada
Alex Ortiz, Assistant Director, Department of Administrative Services, Clark County
Jeff Fontaine, Executive Director, Nevada Association of Counties
Kristy Oriol, Nevada Coalition to End Domestic and Sexual Violence
Brigid Duffy, Director, Juvenile Division, Office of the District Attorney, Clark County
Holly Welborn, American Civil Liberties Union of Nevada
Jack Martin, Director, Department of Juvenile Justice Services, Clark County
John T. Jones, Jr., Nevada District Attorneys Association
Michelle Feldman, Innocence Project
Ted Bradford
Lisa Rasmussen, Nevada Attorneys for Criminal Justice
Juanita Clark, Charleston Neighborhood Preservation
Corey Solferino, Washoe County Sheriff's Office
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association

CHAIR SEGERBLOM:
I will open the work session on Assembly Bills (A.B.) 23, 122 and 514.

ASSEMBLY BILL 23: Authorizes the Division of Parole and Probation of the Department of Public Safety to establish and operate independent reporting facilities. (BDR 16-170)

ASSEMBLY BILL 122 (1st Reprint): Revises provisions related to the manner in which the State Board of Examiners awards compensation to certain victims of crime. (BDR 16-305)

ASSEMBLY BILL 514: Authorizes the Division of Parole and Probation of the Department of Public Safety to provide money for transitional housing for indigent prisoners released on parole under certain circumstances. (BDR 16-1230)

PATRICK GUINAN (Policy Analyst):
I have work session documents summarizing A.B. 23 (Exhibit C), A.B. 122 (Exhibit D) and A.B. 514 (Exhibit E). No amendments were offered for any of these bills.

SENATOR CANNIZZARO MOVED TO DO PASS A.B. 23, A.B. 122 AND A.B. 514.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SEGERBLOM:
Is there any public comment?

BRYAN NIX (Victims of Crimes Program, Department of Administration):
I know the Committee has already passed A.B. 122, but we were unable to testify at that bill's previous hearing. We have no objection to the bill. We submitted an unsolicited fiscal note of a couple million dollars, but that is not a concern to us. My concern is that, by removing the residency requirement, this bill also opens us to claims from all over the world, as Las Vegas is a major tourist destination. We do not have the ability to interpret a Chinese medical bill or a French medical bill. We do not want to pay foreign bills; we want to pay Nevada doctors.

CHAIR SEGERBLOM:
We read your letter. I appreciate your coming to us, and I apologize for not hearing you at the earlier hearing.

I will open the work session on A.B. 421.

ASSEMBLY BILL 421 (2nd Reprint): Revises provisions relating to corrections. (BDR 16-1058)

MR. GUINAN:
I have a work session document (Exhibit F) summarizing the bill and describing a friendly amendment proposed by the Las Vegas Metropolitan Police Department.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 421.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SEGERBLOM:
I will open the work session on A.B. 472.

ASSEMBLY BILL 472 (2nd Reprint): Establishes policies for reducing recidivism rates and improving other outcomes for youth in the juvenile justice system. (BDR 5-918)

MR. GUINAN:
I have a work session document (Exhibit G) summarizing the bill and describing an amendment proposed by the Division of Child and Family Services.

SENATOR DENIS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 472.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SEGERBLOM:
I will open the hearing on A.B. 207.

ASSEMBLY BILL 207 (2nd Reprint): Revises provisions governing juries. (BDR 1-648)

ASSEMBLYMAN OZZIE FUMO (Assembly District No. 21):
This bill would revise the way we pick juries in Nevada. Under *Nevada Revised Statutes* (NRS) 6.045, we use NV Energy and Department of Motor Vehicles records. We would like to go back to the original method of picking juries, which involved Department of Employment, Training and Rehabilitation (DETR) records and voter registration.

DON SODERBERG (Director, Department of Employment, Training and Rehabilitation):
Initially, Employment Security Division testified in the Assembly Committee on Judiciary in opposition to A.B. 207 because we did not want unemployment insurance information being used in this way. However, we worked with Assemblyman Fumo and found a way to be helpful and still adhere to the federal government's strict rules on unemployment insurance data and the use of DETR funds.

As I understand from a conversation with Assemblyman Fumo, an error was made in processing this bill. The Assembly Committee on Judiciary amended the bill with Amendment No. 394 on the Assembly Floor, which has us cooperating with local jury commissioners and courts with a couple of restrictions that prevent us from violating any U.S. Department of Labor recommendations. The amendment that was actually put into the bill was incorrect.

CHAIR SEGERBLOM:
Is it the first revision of the bill you want?

ASSEMBLYMAN FUMO:
Yes. That is the way it came out of Assembly Judiciary.

CHAIR SEGERBLOM:
We can amend the bill to return it to the earlier revision.

SENATOR HARRIS:
I notice in the bill that you require the jury commissioner to keep a record of name, occupation, address and race of each juror. What kind of data are we currently capturing about jurors?

ASSEMBLYMAN FUMO:
I believe Clark County is already collecting that same data. I am not sure about Washoe County.

ANDRES MOSES (Eighth Judicial District Court):
We are neutral on A.B. 207. We are supportive of any efforts to improve the jury process. I want to make the record clear that we rely on self-reporting for information about jurors' race, gender and so on. We have a questionnaire they can fill out over the phone, online or in person when they check in.

CHAIR SEGERBLOM:
I will close the hearing on A.B. 207 and open the hearing on A.B. 130.

ASSEMBLY BILL 130 (2nd Reprint): Revises various provisions relating to guardianships. (BDR 13-524)

ASSEMBLYMAN MICHAEL C. SPRINKLE (Assembly District No. 30):
This is one of several omnibus bills that came out of the Commission to Study the Administration of Guardianships in Nevada's Courts.

THE HONORABLE JAMES W. HARDESTY (Justice, Nevada Supreme Court):
This is the final guardianship bill of the package of bills presented to the Legislature this Session. Although it is the final bill, it is an extremely important piece of legislation that addresses a number of different issues. It has been thoroughly vetted by the Assembly Committee on Judiciary and the Assembly Committee on Ways and Means. We recently discovered a drafting error; for that reason, we have a small amendment (Exhibit H). We did not want to have petitions and the various attached materials published in newspapers.

I would also like to add some clarification on a bill that has already been passed by this Legislature, Senate Bill (S.B.) 433.

SENATE BILL 433 (2nd Reprint): Revises provisions relating to guardianships. (BDR 13-487)

We are trying to get the recording fees to match up to the same time period and would like the start date of the increase in recording fees to be October 1 rather than July 1. This would have all the increases start at the same time.

JIM BERCHTOLD (Legal Aid Center of Southern Nevada):
I head up the Legal Aid Center's guardianship efforts. We are in full support of this bill.

CHAIR SEGERBLOM:
I will close the hearing on A.B. 130 and open the hearing on A.B. 326.

ASSEMBLY BILL 326 (1st Reprint): Revises provisions relating to reports of presentence investigations and general investigations. (BDR 14-1117)

ASSEMBLYMAN WILLIAM MCCURDY II (Assembly District No. 6):
Existing law authorizes the Division of Parole and Probation of the Department of Public Safety to include in the presentence investigation (PSI) report any information it believes may be helpful in sentencing or granting probation or in correctional treatment. Existing law also requires the Division to disclose to the prosecuting attorney, counsel for the defendant, defendant and the court the factual content of the PSI report and the recommendations of the Division.

Assembly Bill 326 requires that the Division include in the PSI report information relating to the defendant's affiliation with a criminal gang before the defendant is sentenced. In addition, the bill requires that if the criminal gang membership or affiliation is disputed by the defendant, the Division must provide that information before the defendant is sentenced.

The goal of A.B. 326 is to give those charged with criminal gang activity the ability to challenge that charge. Gang members receive enhanced penalties in sentencing. Once a person has been charged with gang membership, there is no avenue to overturn the charge. This bill gives an opportunity to correct the report.

I could easily have gone down the wrong path growing up in Historic West Las Vegas like many of the friends I grew up with. I can understand the desire to have the ability to dispute this charge. We want to make our system more fair and equitable.

CHAIR SEGERBLOM:
Having grown up in Boulder City and been on juvenile probation, I can appreciate the fact that we both survived.

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):
We have a conceptual amendment to offer. We do not have it in writing because we just came up with it about five minutes ago. This will address some of the district attorney's concerns. We want to strike the last sentence of section 1, subsection 2 of the bill, which starts, "If such information is disputed by the defendant ... ." The court already has an existing standard that would be used to decide these issues. To make this clear, we will take that language out.

What remains of the bill, then, is a procedure whereby when it is obvious there is a dispute about gang membership, we can get that information sooner. That helps sentencing happen quicker. What happens now is if the defendant shows up and disputes gang membership, the court has to continue sentencing and give everyone 30 to 60 days to get substantiating documents, while the defendant stays in our local county jail. This bill says if you have a reason to believe there is going to be a dispute, you should provide that information when you provide the PSI report.

In every PSI report, there is a section called "Gang Activity or Affiliation." This section might say, for example, "The defendant denied that he is a member of a gang. According to the Las Vegas Metropolitan Police Department (LVMPD), he is a confirmed member of the gang." It is clear that there is going to be a dispute at that point, and dispute means delay. If we could get that information sooner, we could get it figured out at the sentencing, which would increase efficiency.

Another problem is that if the PSI report says the person is a gang member and he or she is not, there is no way to fix that after sentencing. The Nevada Supreme Court has said the court cannot fix the PSI report because the Court loses jurisdiction. It is very important to get it right before sentencing because the prison uses gang membership for classification. We want to make sure we have the information up front and accurately so we treat people fairly and help the efficiency of the criminal justice system.

CHAIR SEGERBLOM:
Senator Cannizzaro is nodding her head affirmatively, so that tells me you have a good issue here.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):
We are in support of A.B. 326 and can answer any technical questions you might have.

SENATOR CANNIZZARO:
When this information is given to the Division, do the investigators get the field interview (FI) cards or anything like that? Do they have access to this information so they can provide it with the presentence investigation report? The worry I have is if they do not, we would still have to come to court and subpoena it.

ASSEMBLYMAN YEAGER:
What happens now is if we show up at sentencing and there is a dispute, the court typically issues an order for the LVMPD to produce the cards. I do not know what the process is to ensure the information gets into the PSI report. If you feel we are missing something, we could add in a mechanism there to say that the LVMPD is authorized to hand that material over if there is a dispute.

NATALIE WOOD (Chief, Division of Parole and Probation, Department of Public Safety):
When the Division writes a PSI report, typically the investigator will flat out ask the defendant, "Are you a member of a gang?" We then note the defendant's assertion with the note, "Per defendant." If we have outside sources like the LVMPD say the person has known gang affiliations, we write, "Per the LVMPD, the person is a known gang member." We do not have FI cards. The information is usually relayed to us verbally when we contact the different agencies, and we will disclose the source of the information in the PSI report.

SENATOR CANNIZZARO:
My opinion is that this information should be provided ahead of time. I am familiar with the delays that can occur because then we have to go and seek out this information, and often it is unnecessary.

I like the bill; I think you are doing a good thing. If there is a dispute, we should have that information. When the PSI report states that the defendant denies being part of a gang, we do not get any additional documentation, and I think the bill calls for that additional documentation. I would like to see a mechanism

by which we can get that documentation at the time of sentencing so we can present it to the court at that date.

ASSEMBLYMAN YEAGER:
Maybe the LVMPD can help. What happens now is the investigator calls the LVMPD, and the LVMPD reports on the information on the FI cards. We could require the LVMPD at that point to provide the FI cards to the Division. That might already be allowed under law. My understanding is most of these are in an electronic database, so I would think it would be possible to send the information from the LVMPD to the Division. If for some legal reason it is not possible, we could authorize it in this bill if necessary.

CHAIR SEGERBLOM:
We are in a time crunch, so if you want that provision in the bill, you need to ask for it today.

MR. PIRO:
The question came up in the Assembly about whether defendants sometimes deny gang membership to get a lighter sentence. The PSI report follows the defendant into prison. People who are gang members generally do not deny it because they do not want to be misclassified and put into prison with members of a rival gang. People who dispute gang membership are usually confirmed by the information on the FI cards. The LVMPD will sometimes classify people as gang members solely because they are in the company of friends or relations who are gang members. This bill will speed up the process on the front end so we do not have to wait an extra 3 weeks after we have already waited 60 days to sentence someone.

CHAIR SEGERBLOM:
It is important to get it right. As you said, it is going to follow them the rest of their lives, and that is not good.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
We are neutral on A.B. 326.

I should explain that we use FI cards not just for identifying potential gang members but for a multitude of things. If officers get a suspicious person call, find someone creeping around the neighborhood at 2:00 a.m. but cannot determine that a crime was committed, they may do an FI on that person to get

the information. If a crime is reported the next morning, we have a potential suspect. There are cases where officers stop a car with six people in it, three of whom admit to being gang members. The passengers who deny being gang members might be listed on the FI card as people who hang around with gang members. When someone is identified on an FI card as a gang member, that card goes to our gang intelligence unit, which reviews the information to see if it meets the criteria to classify the person as a gang member. When that happens, we contact folks via registered letters to let them know that they have been classified as gang members. They then have the opportunity to prove to us they are not gang members and get their names removed from the system. It is possible there are cases where someone was listed as a gang member on an FI card in error, but the gang unit vets those out.

With that being said, it is my understanding that we get requests for FI cards to back up information when a PSI report is challenged. I do not know how often that occurs, and I do not know what the impact might be if we made that mandatory. Those FI cards are now done digitally; in the past, they were done on paper and filed, and not all of those paper FI cards have been transferred to the digital format. Depending on how old the card was, it might have been purged.

My primary concern as we venture down this road is that when we create this system where we have to authenticate this information, we create a situation where people are staying in our custody longer while this process is vetted. This in turn has a fiscal impact and a jail bed impact on the Clark County Detention Center.

I fully agree it is important that if allegations are made in the PSI report, they need to be verified.

SENATOR HARRIS:
If I understand, you send registered letters to individuals who have been identified as gang members. How many of them respond?

MR. CALLAWAY:
I am not sure. I will find out from the gang unit. I should also mention that if the alleged gang members are juveniles, we pay home visits and try to meet with their parents. If they are adults, we reach out to them by mail.

My experience as a police officer is that most of the time, gang members are proud of their membership. They tell us, "Hey, I'm a gang member, these are my homies." They may be afraid to say they are gang members during sentencing because they may fear it will cause them to get longer sentences. Often, however, they have tattoos that identify their gang, and they will readily tell you, "Yes, I'm a member of this gang." They are proud of it.

JENNIFER NOBLE (Nevada District Attorneys Association):
We had come here to oppose this bill. However, just before the hearing began, we talked to Assemblyman Yeager and were able to arrive at an agreement. The conceptual amendment described by him brings us to a position of support. Without it, we had some critical problems with being able to put on a minitrial at sentencing. We are not going to be able to do that. If we take away that quantum of proof and do not put any onus on the district attorney to prove gang affiliation at sentencing or depart from the highly improbable or suspect evidence that has been accepted by the Nevada Supreme Court as the standard at sentencing, we are in support.

SEAN B. SULLIVAN (Office of the Public Defender, Washoe County):
We want to register our support for this important measure. As you have already heard, A.B. 326 streamlines the process for sentencing. The PSI report is a critical document that follows offenders through prison, parole hearings and postconviction proceedings. These documents are critical, and they need to be accurate.

WENDY STOLYAROV (Libertarian Party of Nevada):
We would like to register our support for this measure. We believe it raises the standard for evidence in Nevada, and we urge you to support it as well. We preferred the language before the amendment, but we still like the bill.

MS. WOOD:
We are neutral on this bill.

Our concerns are not necessarily with gang information. We share the importance of that being accurate and relayed appropriately. The Division is the appropriate conduit to relay that information. Our concern is with the 180 days, which basically expands the Stockmeier decision. We allow the individual to come back up to 180 days.

The Division submitted a fiscal note for A.B. 326. While I understand this is a policy Committee, we are concerned about restitution. Would there be any potential delay in payment of restitution if the PSI is being questioned up to 180 days after sentencing? Those are our concerns.

CHAIR SEGERBLOM:
Were those concerns raised in the Assembly Committee on Ways and Means?

MS. WOOD:
Yes.

CHAIR SEGERBLOM:
I will close the hearing on A.B. 326 and open the hearing on A.B. 291.

ASSEMBLY BILL 291 (1st Reprint): Revises provisions relating to reports of presentence investigations and general investigations. (BDR 14-1076)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
This bill is similar in many ways to A.B. 326 in that it tries to make sure the PSI report is right.

This bill parallels A.B. 326 in providing a way, with many safeguards, to correct an error in the PSI report. Let us say your nephew was arrested for embezzling money from his employer. He was prosecuted and convicted of a felony, and now he faces sentencing for this felony. The PSI report incorrectly notes that when he was arrested, he had a loaded gun on him when in fact he did not.

CHAIR SEGERBLOM:
So this bill allows you to amend the PSI report.

ASSEMBLYMAN OHRENSCHALL:
Yes, if the client's attorney, the prosecutor and the judge agree within 180 days after a judgment of conviction. It provides a safety valve.

ASSEMBLYMAN OHRENSCHALL:
There are two proposed amendments, one from Clark County (Exhibit I) and one from the Nevada Association of Counties (NACO) (Exhibit J). They are friendly to the extent that they do not kill the bill.

SENATOR HARRIS:
I have a question for Clark County. You brought two bills to deal with how we are going to pay for PSI reports. Now that we are going to be establishing a process to fix a PSI report if it is incorrect, what is that going to do to your staffing requirements? What are the additional responsibilities going to be on the staff that have to prepare them?

ALEX ORTIZ (Assistant Director, Department of Administrative Services, Clark County):
I believe that is more of a question for Ms. Wood.

We brought forth S.B. 9 previously. What is left of S.B. 9 now is the ability to go into an agreement with the Division to speed up the process for us.

SENATE BILL 9 (1st Reprint): Revises provisions relating to presentence and general investigations and reports. (BDR 14-437)

SENATOR HARRIS:
Right, because you want to be able to take this on perhaps at some point in the future.

MR. ORTIZ:
There is no assumption of duties in our bill anymore. It would just be us working with them and working through the process. I can go through the amendment, Exhibit I, if you would like.

MS. WOOD:
We are neutral on A.B. 291. We have seen the amendment by Clark County, and we do not have any concerns about it. Previously, we voiced a concern on the 180 days because the PSI reports are now delivered to court 14 calendar days in advance for the purpose of correcting mistakes. The fiscal note we submitted is the service level we anticipate. There is no statistical data on how many reports would be returned to us. That is a guess. Our fiscal note is based on our internal operational knowledge, and we anticipate we would need one staff person in the north and one staff person in the south to accommodate this request. That is what we are asking for.

Another bill on this topic is S.B. 8.

SENATE BILL 8 (1st Reprint): Revises provisions relating to presentence and general investigations and reports. (BDR 14-439)

Our concern is staffing. You can have State staff for Clark County, but will there be State staff for the northern and the rural counties? I cannot hire and fire these individuals. You would have to go into the agreement knowing that it is permanent. There is no going back. I cannot hire people in a short timeframe. It takes six months to a year, and then training must be added to that.

CHAIR SEGERBLOM:
Have you talked to NACO about that?

MS. WOOD:
Yes, NACO is aware of our concerns.

One more issue would be from a legal standpoint. The Division is being tasked per the NRS with providing PSI reports to the courts, thereby ensuring that these reports are consistent, fair and equitable statewide. That would be a concern we ask you to consider.

JEFF FONTAINE (Executive Director, Nevada Association of Counties):
Our proposed amendment, Exhibit J, would authorize the counties to assume the duties of preparing PSI reports. This is something that was included as part of S.B. 8, which this Committee passed some time ago. The amendment also adds another provision that requires a county that intends to assume the duties of preparing PSI reports to notify the Division in writing by March 1 of any odd-numbered year, and that the county may not assume the duties before July 1 of the same year in which the notice was given.

We spoke briefly with Ms. Wood before the hearing, and I understand her concern about the possibility that a county might notify the Division that it intended to take over the duties and then not do it. I want to make it clear on the record that this would be a one-time deal. In other words, a county that decided it wanted to write the PSI reports could not return the duty back to the Division. This is not an opt-in, opt-out situation. This is no different than any one of the other cost assessments the counties pay to the State to provide State services, whether it is child protective services, public health inspections or indigent legal services, where the county has the option to take those services over instead of paying a cost assessment to the State.

CHAIR SEGERBLOM:
Is it your position that it does not cost the State any money?

MR. FONTAINE:
That would be my position. If the county assumed the duties of writing PSI reports, it would not cost the State anything. I could be wrong.

CHAIR SEGERBLOM:
We do not want to add anything to A.B. 291 that would cause it to go south. That is the only problem with the late date. If you are saying on the record that it does not cost any money, then we will accept your word.

MR. FONTAINE:
This is no different than the provision in S.B. 8 that this Committee passed previously. I do not recall a negative fiscal note to the State as a result of this provision.

CHAIR SEGERBLOM:
What happened to S.B. 8?

MR. FONTAINE:
It is still in the Senate Committee on Finance.

CHAIR SEGERBLOM:
Assemblyman Ohrenschall, what is your opinion on these two amendments? You said you do not oppose them, but is there anything we need to be careful about?

ASSEMBLYMAN OHRENSCHALL:
I would like to try to help both parties if I can, but I am up in the air about both amendments.

CHAIR SEGERBLOM:
It is kind of late in the game. We do not have to accept them.

ASSEMBLYMAN OHRENSCHALL:
Because it is late in the game, I will leave it to your discretion. In terms of both bills, A.B. 291 and A.B. 326, the ability to correct an error in a PSI report is

very important, and there are other important things in A.B. 291 in terms of the clarification of what should be in a PSI report.

CHAIR SEGERBLOM:
If we can get bipartisan support for the bill, we will go with it.

MS. STOLYAROV:
We support this bill.

MR. SULLIVAN:
We support A.B. 291.

CHAIR SEGERBLOM:
I will close the hearing on A.B. 291 and open the informational presentation on A.B. 97.

ASSEMBLY BILL 97 (1st Reprint): Revises provisions relating to evidence collected from and the reimbursement of payment for forensic medical examinations of victims of sexual assault. (BDR 15-538)

ASSEMBLYWOMAN TERESA BENITEZ-THOMPSON (Assembly District No. 27):
Thank you for hearing this presentation on A.B. 97 while you wait to receive the bill from the Assembly.

This bill deals with fixing the process of getting rape kits tested so we never have a backlog again. It appropriates $3 million in general funds that will be divvied out to Washoe County and Clark County by the Office of the Attorney General (AG) and interlocal agreements to ensure there is funding in place to support the timelines we are laying down.

CHAIR SEGERBLOM:
Did this bill go through the Assembly Committee on Ways and Means?

ASSEMBLYWOMAN BENITEZ-THOMPSON:
Yes.

ASSEMBLYMAN YEAGER:
I submitted Proposed Amendment 5243 (Exhibit K). Some of the language of that amendment came from another bill. If that is added into this bill, it will be

the omnibus sexual assault kit bill that includes all the different pieces that were out there in various other bills.

KRISTY ORIOL (Nevada Coalition to End Domestic and Sexual Violence):
We are in full support of A.B. 97.

CHAIR SEGERBLOM:
I will open the hearing on A.B. 395.

ASSEMBLY BILL 395: Revises provisions governing juvenile justice. (BDR 5-853)

BRIGID DUFFY (Director, Juvenile Division, Office of the District Attorney, Clark County):
I would like to ask if Mr. Piro or Mr. Sullivan could be at the table. Portions of this bill are more defense-oriented and parts are prosecutorial. We all came together and created this bill.

CHAIR SEGERBLOM:
Was this bill the product of an Interim Committee?

MS. DUFFY:
No. Parts of A.B. 395 have already passed through both Houses as S.B. 470, S.B. 472 and S.B. 473.

SENATE BILL 470 (1st Reprint): Revises provisions governing the release of information relating to children. (BDR 5-347)

SENATE BILL 472 (2nd Reprint): Revises provisions governing registration and community notification of juveniles adjudicated delinquent for committing certain sexual offenses. (BDR 5-345)

SENATE BILL 473: Excludes juveniles from increased penalties for certain sexual offenses. (BDR 15-346)

The language in sections 1 through 24 of A.B. 395 is taken verbatim from those three Senate bills, which were the Interim Committee bills. I will focus on the parts of A.B. 395 that are unique.

Sections 25 to 35 deal with funding for front-end services for each of the judicial districts for juvenile justice services. These sections were discussed in the Assembly Committee on Ways and Means.

Sections 1 through 15 are the same as S.B. 472, which addresses the Adam Walsh registration for juvenile sex offenders.

Section 15 is record-sharing and is the same as S.B. 470.

Section 24 is creating a carveout for juveniles who are charged with open and gross lewdness in the presence of a minor and is the same as S.B. 473.

Sections 25 to 35 of A.B. 395 are unique. That is the funding portion for juvenile justice services. Many of you have heard me talk about The Harbor, which is a juvenile assessment center in the Eighth Judicial District. We have served 1,367 children there since October 17, 2016, to divert them from the juvenile justice system. Of those 1,367 kids who have been brought in on first-time misdemeanors or on gross misdemeanors and felonies that we have reduced through the District Attorney's Office, only 38 have escalated into the juvenile justice system.

I believe all the law enforcement partners are in support of the funding portions of the bill in order to get us some diversion services.

SENATOR HARRIS:
If I understood you, A.B. 395 is an amalgamation of three bills, and the only difference is the funding mechanism. Is that right?

MS. DUFFY:
Yes. Those other three bills have all passed both Houses.

MR. PIRO:
We are in support of A.B. 395. This measure will go a long way to providing a mechanism for those who made mistakes when they were younger to not be subject to community notification for a long portion of their lives. It also provides a mechanism to protect victims from offenders who have done what would be classified as aggravated sexual offenses. Those people would still be subject to registration and community notification. This bill strikes a good balance between protecting youthful offenders who made grave mistakes but

have reformed and protecting the community from youthful offenders who made very serious mistakes and have not reformed at all.

HOLLY WELBORN (American Civil Liberties Union of Nevada):
We strongly support this legislation.

MR. SULLIVAN:
We also support this important measure.

JACK MARTIN (Director, Department of Juvenile Justice Services, Clark County):
I want to address just the latter part of the bill, since the first part has passed out of both Houses. Clark County strongly supports A.B. 395. We also want to remind the Committee that the best investment in juvenile justice we can make is at the front end.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
We are in support of A.B. 395.

VICE CHAIR CANNIZZARO:
I will close the hearing on A.B. 395 and open the hearing on A.B. 414.

ASSEMBLY BILL 414 (1st Reprint): Requires the electronic recording of interrogations under certain circumstances. (BDR 14-600)

ASSEMBLYMAN STEVE YEAGER (Assembly District No. 9):
We have talked a lot this Session about transparency, efficiency and good government. This bill accomplishes all of those goals. The purpose behind recording interrogations at police departments is to make sure our criminal justice system is transparent. Recording interrogations protects officers from allegations that they are making things up, and it protects individuals who have been wrongfully accused. It is hard to imagine why we would want to deprive a jury of a video recording, which is the best evidence of a confession we could possibly obtain, so a jury could make the determination of what the person's words and body language mean.

This bill seeks to put into statute that if you are charged with murder or sexual assault, and only those two crimes, and you are being interrogated at a physical place of detention, meaning a police station or a jail, the interrogation must be recorded in a video fashion, or audio if video is not feasible.

CHAIR SEGERBLOM:
Would this also cover comments that were made during that interview?

ASSEMBLYMAN YEAGER:
Section 1, subsection 2, paragraph (a) indicates that recording must begin not later than the time when the person is given the Miranda rights. The idea here is that the entirety of the interrogation would be recorded. That is one of the problems we have sometimes now. Allegations are made that we did not record the whole interrogation, just part of it. If we get into a dispute on the witness stand where the officer says the defendant said one thing and the defendant denies it, we put the jury in the impossible position of having to decide who to believe.

We have been talking a lot this Session about body cameras and how critical they are. Why would we not want to have a camera in the interrogation room? Instead of the jury having to guess, they can actually see and hear what happened.

The intent of the bill is that the entire interrogation would be recorded from the moment the Miranda rights are read to the moment the interrogation is complete, so that everyone in the system would have the advantage of essentially being right there in the room.

CHAIR SEGERBLOM:
Will suspects be told they are being videotaped?

ASSEMBLYMAN YEAGER:
Yes. Section 1, subsection 3, paragraph (a) states that a recording is not required if the suspect requests it not be recorded and that request is made in writing. If the suspect does not want it to be recorded, it will not be recorded, as long as that request is in writing.

MICHELLE FELDMAN (Innocence Project):
The Innocence Project is a national organization that works to exonerate wrongfully convicted people. We work with our colleagues at the Rocky Mountain Innocence Center, which takes wrongful conviction cases in Nevada.

Recording interrogations in their entirety is a safeguard against false confessions, which are a leading contributor to wrongful convictions and played

a role in about 28 percent of DNA exoneration cases nationally and 3 cases in Nevada. Last week, *ProPublica* published an article about the wrongful conviction of a man named Fred Steese in Las Vegas. He was wrongfully convicted of murder in 1992, partially based on a false confession he made during an unrecorded police interrogation. Mr. Steese is intellectually disabled. He was interrogated for five hours and had been deprived of sleep. He finally signed a confession that he committed this crime. He served 20 years in prison until a high court ruled that he was innocent, and the real perpetrator was never brought to justice.

Another case is Cathy Woods, who was exonerated in 2015 after spending 35 years in prison for a murder in Reno that she did not commit. She had schizophrenia, and while she was housed in a mental hospital, she told one of the staffers that she killed a woman named Michelle Mitchell. She was interrogated by police and admitted the crime, but she also said blatantly false things that made it clear she had a mental illness. However, none of that was recorded. All the jury heard was the police officer's version of the events. In 2014, DNA testing proved she was innocent. That DNA was matched to a convicted serial killer named Rodney Halbower who went on to kill two more women in California. Had the interrogation been recorded, Ms. Woods might not have been convicted, and the two subsequent murders might have been prevented.

Recording interrogations prevents wrongful convictions stemming from false confessions because it deters the use of coercive or illegal interrogation techniques that can lead to a false confession. It can alert investigators, judges and juries if a person has mental illness or other limitations that make him or her more likely to falsely confess. It also benefits law enforcement because it substantiates authentic confessions, reduces motions to suppress statements and confessions, and protects officers against claims of misconduct.

Assembly Bill 414 would require recording of custodial interrogations in places of detention for the most serious crimes: homicide and sexual assault. There are six exceptions for commonsense things, like if the equipment malfunctions, the suspect refuses to be interrogated or the officer had no way of knowing the suspect could have committed one of these crimes. If the law is violated, the only consequence is a jury instruction. The bill specifically states that you cannot suppress a confession because it was not recorded. There should not be any fear that a valid confession will be thrown out because it was not recorded.

This is a much more mild remedy than in many other states, which presume inadmissibility of unrecorded statements.

CHAIR SEGERBLOM:
Do other states have similar laws?

MS. FELDMAN:
Yes. There are currently 23 states that require recording interrogations. In Texas, the legislature just approved a law we expect the governor to sign, so that would make it 24 states. Nevada could be No. 25, putting it in the first half of states to do this. All federal law enforcement agencies are required to record interrogations for all crimes. This is a very widespread practice. Given that Governor Brian Sandoval just signed a body camera bill requiring recording of police interactions in the field, it only makes sense that you would require recording in interrogation rooms, which is one of the most vulnerable situations a person can be in.

We have gotten pushback from law enforcement and prosecutors here in Nevada, which is surprising to us because we work collaboratively with law enforcement in most other states. This year, we passed laws in New York, Kansas and Texas that were supported by the prosecutors associations and the law enforcement community. Those groups recognized that having a standard, uniform practice throughout the state of recording interrogations really creates the best evidence possible and backs up police claims. In Texas, the law is much more severe than this one and requires suppression of unrecorded interrogation. We met with the LVMPD, the Washoe County Sheriff's Office, the AG's Office and the Nevada Sheriffs' and Chiefs' Association in December 2016. We asked them for their concerns, and we never heard anything from them. They told us they thought the bill was reasonable, and we did not hear about their opposition until they testified against the bill at its hearing in the Assembly Committee on Judiciary.

I would like to go through some of the opposition and address those issues. First, law enforcement said recording interrogations should be done through adoption of policies by agencies and that many agencies have already adopted such policies. Unfortunately, policy alone is not good enough for this issue. It does not protect innocent people because officers can start and stop the tape whenever they want or not record at all, and there are no legal consequences. A defense attorney can cross-examine officers about why they did not record on

the witness stand, but that would not have much weight with the jury because the officer can say, "I'm not required to do this, and that's why I didn't record."

Without a law, there is no consistent, uniform, statewide policy. The Innocence Project surveyed agencies in Nevada and got responses from about two-thirds of them. The good news is they all said they were recording in some form. The bad news is it was not consistent. It was not clear if agencies were recording only the confession or the entire interrogation. Some of the agencies left it up to the officer to decide when to record. Only five agencies had written policies on the practice. Without a uniform statewide practice, justice depends on where a person is arrested and questioned.

This bill has very minimal requirements on law enforcement. It does not tell them how to conduct an interrogation or what kind of equipment to use. It allows for audio-only recording if you cannot obtain a video camera.

Another concern raised was that we should not put best practices in law because science can change. The Innocence Project worked with law enforcement in Nevada to adopt policies. There should not be any concern that recording interrogations is going to change as a best practice. Almost half the states and federal law enforcement record interrogations. No one has ever gone back to not recording.

Another issue raised had to do with eyewitness identification. The eyewitness identification issue is very different from the recording of interrogations. Eyewitness identification has a built-in constitutional enforcement mechanism. The U.S. Supreme Court says you have a right to a reliable identification. A defense attorney can argue that the identification procedures were unreliable because they were conducted in a way that diverged from that department's policy, and then a judge could suppress the identification based on that. There is no built-in constitutional enforcement mechanism for recording interrogation. The U.S. Supreme Court has said that the Constitution only protects against involuntary confessions, and it is up to individual states to decide admissibility beyond that.

The final concern raised is that this could be an unfunded mandate. According to our survey, every agency said it recorded in some form, which means they all have the equipment. It would not require additional expenses. You can purchase a tape recorder for $30. The bill would save taxpayer money in the long run

because there would be fewer lawsuits stemming from charges of officer misconduct and fewer wrongful conviction settlements. Cathy Woods is currently suing Clark County, and that will cost taxpayers a lot of money. This bill will help avoid those types of civil settlements.

In short, A.B. 414 would improve transparency and accountability, and it would improve public trust in the criminal justice system. Now that body cameras are required, it makes a lot of sense to require recording of interrogations.

TED BRADFORD:
I am here in support of this very important measure. I lived through the nightmare of wrongful conviction. I spent ten years in prison and another four years awaiting a second trial for the same crime. I spent 14 years total trying to clear my name and prove my innocence.

My wrongful conviction came about as the result of a false confession. I was asked by the police detectives in my city, Yakima, Washington, to come down to the station and help them with a crime they were investigating. I thought I was doing the right thing, and I went with them willingly. It was not until shortly after I arrived at the police department, when they took me to a small room and read me my rights—and at that point, I was terrified and did not know what was going on—that they made it clear I was the main suspect in this crime. And it was a horrible crime, rape and burglary. This man had broken into a woman's home and raped her, and here I was in this small room with these two detectives being accused of this crime.

I knew I was innocent, and I tried telling them, "You got the wrong guy. I didn't do this." They called me a liar. They told me, "We know you're lying to us. You need to tell us the truth," over and over. This went on for over nine hours with nothing to eat or drink. I was exhausted. They told me over and over, "You're not getting out of this room until you tell us what happened," which I had been telling them, "I didn't do it." In my mind, I thought, "Well, the only way I'm getting out of here is if I make up a story and tell them I did it." So that is what I did. I took all the bits of information they had told me throughout the day about this crime and made up a story just to get out of that room. They had told me there was evidence left at the scene that would prove I did this, and I knew I was innocent, so I thought, "It doesn't matter what I tell them. If I just make a statement and get out of this room, they will test the evidence and prove my

innocence." It did not exactly work out the way I hoped. When it came down to the trial, they said there was no evidence to be found.

So we went forward in this trial with the state having this confession that they saw as a valid confession. I knew it was false, but the jury convicted me based entirely on that false confession. I was sent to prison for ten years and continued fighting to clear my name. The Innocence Project got involved. In 2002, it fought to get the testing done. The scientific techniques finally caught up to where they could test the evidence that was found at the crime scene, and that is what finally proved my innocence after 14 years.

It is important to note that the confession was not entirely recorded. They recorded the last 30 minutes on audiocassette. The jury in my case did not see the tactics used on me by the police. It became a matter of I said, they said.

This bill is very important. It protects the innocent, not only the innocent person suspected of a crime but the innocent police officer accused of malpractice or abuse.

CHAIR SEGERBLOM:
Does the bill prevent a situation like this where investigators ask questions for eight hours before they start recording?

MS. FELDMAN:
According to A.B. 414, recording is to start when Miranda rights are or should have been read to the person. When the police officer thinks the situation rises to the level of an arrest, that is when the recording has to begin. Ideally, it should begin as soon as the person enters the interrogation room. Because sometimes there is questioning before the officer says, "Okay, there is now enough evidence for me to Mirandize you," every state begins when the Miranda rights are read.

CHAIR SEGERBLOM:
How long has this been the practice for the federal agencies?

MS. FELDMAN:
They adopted a formal policy in 2014 to require it for all crimes. If a local agency did an investigation with the FBI, the interrogation would be recorded.

Mr. Bradford's case is a good example of what happens when officers have the choice of whether or not to record. Those officers made the choice to only record his confession and not to record the hours of interrogation that went before it. That is why the law is needed. If we could do this without a law and policies were good enough, we would be more than happy to do that. But policies do not go far enough to protect innocent people.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):
I have talked to a lot of people about this bill, why we need it and why I think it is necessary in Nevada. This bill is about precluding wrongful convictions. I would not think there would be anyone who thinks it is okay for us to be seeking in a jury setting anything other than the truth. The truth is what matters. That is what matters to jurors, and it should be what matters to prosecutors and law enforcement.

I see that there is some pushback against A.B. 414. Some of the complaints have been that this is a national project. I want to assure this Committee that this is a Nevada project as well as a national project. The reason we asked the Innocence Project to testify on bills like this is because it knows what is going on in other states. Rather than us figuring out what is happening in 49 other states, the Project is the expert on this subject.

This bill is about wrongful convictions. It is about innocent people spending years and years of their lives, usually the prime of their lives, in prison for crimes they did not commit. This bill is about preventing that, and it is chilling to think anyone would be opposed to preventing that kind of injustice. In Nevada, we all have an interest in making sure people are properly convicted when they deserve to be, not convicted because law enforcement and the district attorney feel like that is what should happen. This bill sheds light on what is going on so everyone can see what happened during the interrogations. It has appropriate limitations built into it that should make law enforcement comfortable. It does not have penalties for law enforcement. It basically asks them to do what they are already doing.

I spoke with Mr. Callaway at length yesterday, and the LVMPD follows its recording policy for the most part. However, it would be false to assume that just because the LVMPD does something, all the other law enforcement agencies do it too. We do not know what the rural counties do. I do not have confidence that the LVMPD's policies are happening statewide.

This is about what Nevada needs to prevent wrongful convictions. It is a minor remedy to a huge problem of people who spend years and years in prison who should not have. I urge the Committee to pass A.B. 414.

CHAIR SEGERBLOM:
Does a person who has been wrongfully convicted automatically have a right to compensation for the time spent in prison, or do you have to prove misconduct?

ASSEMBLYMAN YEAGER:
There is nothing in the NRS about that. The person would have to bring a suit, and it would be up to the court to decide what compensation would be appropriate, if any. There have been talks over the last couple of Sessions about perhaps creating a statutory scheme for compensation for wrongful convictions, but as of now we do not have anything in statute.

CHAIR SEGERBLOM:
What is the legal standard?

MS. RASMUSSEN:
It is a difficult civil rights process. We basically get compensation for people in Nevada through a 1983 claim under the federal Civil Rights Act. A known civil right or stand has to have been violated. There are a lot of hurdles to get over. There have been conversations about trying to enact some sort of statutory per day legislation. California has done that, as have many other states, and pays $100 per day of wrongful imprisonment. In Nevada, we have people suing for $5 million and $10 million, and often they get it. They are very large numbers.

JUANITA CLARK (Charleston Neighborhood Preservation):
We support A.B. 414. I have a letter of support (Exhibit L) from June Ingram, the president of our board.

SENATOR DENIS:
What is to prohibit interrogators from forcing a suspect to sign something that says, "I do not want this interrogation taped"?

ASSEMBLYMAN YEAGER:
Theoretically, that could happen, but hopefully if it did, the defendant would let the attorney know it happened and it could be brought to the judge's attention that the signing of the waiver was not voluntary and was under duress.

SENATOR DENIS:
Senator Harris also brought up a bill to do with special education that had similar provisions. We seemed to find recordings okay in those other situations, so I think A.B. 414 makes sense.

CHAIR SEGERBLOM:
What is the penalty if you do not do this?

ASSEMBLYMAN YEAGER:
The worst thing that would happen is the jury would be instructed, and section 1, subsection 4 of the bill details what that jury instruction would be. If the officer decided not to record the interrogation, the jury would get a cautionary instruction, but they would still receive the evidence and the confession. As was stated, this is a very watered-down version of the bill. In other states, if you do not record the interrogation, the confession would be thrown out. With A.B. 414, the jury would still get to hear the evidence, and then they would get a cautionary instruction to take it with a grain of salt because it was not recorded.

MR. SULLIVAN:
We are in full support of A.B. 414. We believe this is an important measure that will help protect the rights of the accused by ensuring that all law enforcement agencies in Nevada record police interrogations for these enumerated felonies. Moreover, we believe it will protect the integrity of the entire criminal justice system by safeguarding against potential abuse by all the parties involved, and it will ensure just outcomes for the accused.

You have heard about the Cathy Woods case; that was a case my office proudly worked on. Chief Deputy Public Defender Maizie Pusich and Chief Deputy Public Defender Kate Hickman worked tirelessly to exonerate Ms. Woods in 2015. Ms. Woods later advised our office that the reason for her false confession was that she believed she would get better mental health treatment and receive a private room when she was involuntarily committed. Had her confession been recorded by the police and thoroughly examined, we fully believe the lack of veracity in her statements could have been shown to the judge and jury, revealing the depths of her mental illness through her own words.

I represented an Hispanic gentleman a couple of years ago who was charged with some very serious crimes that carried life sentences. Those interrogations went on for hours, and they were taped. During the interrogation, he told the police interrogator that he only understood about 80 percent of the questions he was asked because of the language barrier. I was able to use those tapes to show the court the critical points in the interrogation that the gentleman had trouble with because he did not understand key words and phrases. Without those tapes, I would have had to rely on the officer's memory, interview notes or written reports. We need those tapes.

There are a number of police agencies across Nevada; in northern Nevada alone, we have the Washoe County Sheriff's Office, the Reno Police Department, the Sparks Police Department, the Nevada Highway Patrol, the University of Nevada Police, the Airport Police, the Pyramid Lake Police Department and so on. I cannot definitively say all of these organizations have the same standards, policies and procedures regarding taping interrogations. They all have different standards. It is critical to implement a uniform, statewide standard of practice and procedure for interrogation of criminal suspects, even if it is only for these serious crimes, in order to protect against abuse within the system and ensure the rights of the accused are respected across the entire State. I urge your support for A.B. 414.

MR. PIRO:
I share Mr. Sullivan's sentiments in regard to this bill. This bill strikes a good balance between what is being done now and what is needed. Everyone on this Committee is a professional. You know that as professionals, we have best practices. As we have been moving forward in the criminal justice system, as it has evolved, this is another best practice. I do not know why we would not put it forward.

A lot of people, especially when we are speaking to juries during trials, do not understand why people would ever confess to crimes they did not commit. Some of you may be thinking, "I would never do that." But as Mr. Bradford said, it is not always possible for you to hold your ground. Sometimes officers jump to a conclusion and then bend the narrative to fit that conclusion. I am not here to disparage police officers or district attorneys. They have an important function in society, and they do it well, but sometimes they make mistakes. In Mr. Bradford's case, officers only recorded the last 30 minutes of the interrogation, so the jury did not see or hear the other 8.5 hours that he was

stuck in a tiny room with 2 people who kept badgering him to get their narrative across the way they wanted and get that conviction. If the jury could have seen some of that nine hours of Mr. Bradford's denials being ignored, it would have made a difference in their verdict. As lawyers, we do not get to be in that little room with suspects. We are not there for people who are untrained to withstand that kind of badgering.

MS. STOLYAROV:
We believe sunlight is the best disinfectant, and we believe A.B. 414 will further the interests of both suspects and officers in arriving at truth and justice in sentencing.

MS. WELBORN:
We are here in support of A.B. 414.

I would like to address some issues that came up. We received some inquiries from the media about whether we share the same concerns about privacy surrounding these types of interrogations that we had when discussing body camera footage. We do not have those same concerns. Body cams place the public at risk of continuous, constitutionally suspect police surveillance. We do support body cam legislation when it is narrowly tailored to address those concerns and provide sufficient safeguards, as is the case with S.B. 176.

SENATE BILL 176 (1st Reprint): Revises provisions relating to public safety. (BDR 23-666)

We have supported legislation like A.B. 414 at the state and federal level, such as recording interrogations of enemy prisoners. This bill covers a limited number of interrogations, and as Assemblyman Yeager mentioned, they only run from the time the Miranda rights are read until the end of the interrogation. It is paramount that we protect the accused from wrongful conviction. This, coupled with the limited scope of these recordings, is sufficient to address any privacy concerns we might have.

MR. CALLAWAY:
We are in opposition to A.B. 414, but I am in full support of the concept of this bill.

It is the policy of our agency to audio or video record the interrogations this bill addresses. With that being said, the devil is in the details. There are some concerns with the language in this bill. We share the same goal: we want to put the person who committed the crime behind bars. We do not want to put an innocent person in jail; we want to make sure the person who did the crime is the one who is held accountable. However, I have major concerns about codifying best practices and procedures. As you know, the LVMPD has a 3,000-page policy manual, and it is constantly evolving to reflect best practices. To put every best practice in that manual into statute would not only be cumbersome, but it would also require us to come back every Session and tweak the law.

You were told that idea does not apply in this situation because this technology does not evolve, and Ms. Feldman referred to a $30 tape recorder. I have not used a tape recorder in years, and I do not believe you can buy one in most stores today. Technology evolves. If tomorrow there is a new form of technology that is the best to utilize in these cases, we will have to come back here and change the language in the law.

Another issue is that law enforcement is not black and white. There are times when gray areas occur. Having strict statutory guidelines that say, "You will do this," even with the exceptions in this bill, cannot possibly cover every scenario in the field. I will give you one example. Say an officer is interrogating someone for murder. The officer turns the camera on, gives the suspect the Miranda rights and starts the interrogation. The questioning ends, and the camera is turned off. As soon as the camera goes off, the person says, "You know what? Why am I messing around? I confess; I did it." The officer must then say, "Hold on; let me turn the camera back on and read your rights again and get this on tape." There are always gray areas.

I also have concerns with section 1, subsection 1, where it talks about custodial interrogation in a place of detention. The definition of "custodial interrogation" in section 1, subsection 6 is "interrogation of a person while the person is in custody." That is vague. "Place of detention" is defined as "a fixed location under the control of a law enforcement agency." That could include a security office, a school room or an outdoor location such as a park. If a suspect was being interrogated in a security room in a hotel, it could be argued that it was a fixed location that was under the control of a police officer at the time of the interview.

Requiring an interrogation to be done at a location where audio or video recording is available could interfere with spontaneous utterances. We often have cases where an officer in the field develops a rapport with someone, and the person starts talking and telling what he or she did. Stopping at that point and saying, "Hold on, we have to go down to where the video equipment is and get this recorded," can take that rapport away. I know there is flexibility in the language, but I do not believe that flexibility covers all scenarios.

I also have concerns with the definition of "interrogation" in section 1, subsection 6, paragraph (d) of the bill to include "any words or actions on the part of a law enforcement officer ... ." This could create a scenario where an officer simply walks into the room and the person starts talking. By this definition, this is now an interrogation and subject to recording per this statute.

Section 1 also refers to a person suspected. We often have cases, especially in homicide, where we talk to persons of interest who were at the scene of a crime, but we do not know if they were involved in the murder or just a witness. Often our detectives will reach out to those people and say, "Do you mind coming down to headquarters and talking to us?" In many cases, those people come of their own free will.

CHAIR SEGERBLOM:
This bill does not require taping to start until the Miranda warning is given. I am not sure if a Miranda warning would be given in the case you suggest.

MR. CALLAWAY:
That is my point. I am not sure either. There are gray areas here. If that person was talking to a detective and said something that implicated himself or herself, the detective would issue the Miranda warning at that point. But then, to have to move the person to a new location where there is recording equipment available and start the whole interrogation over could interfere with what the person was saying.

Section 1, subsection 2 of the bill talks about no later than Miranda and no sooner than questioning is concluded. However, the proponents testified that the recording must start when Miranda should have been read. I do not see that in A.B. 414.

I believe that in those cases where the interrogation is not recorded, even if it is one of the exemptions in the bill, it will be presumed that the confession was coerced or improperly taken based solely on the fact that there is no recording. One of the exemptions in the bill is that the equipment does not work. If I am a defense attorney, I will argue, "Why didn't you call someone in to fix the equipment? Why didn't you move to another room where there was equipment? How do you know the equipment wasn't working? Are you an expert in equipment maintenance?" Just because there is some flexibility in the language, that does not cover all the problems an officer may encounter in the field.

I will not get into equipment and infrastructure costs, but it has been said in past hearings that there is no additional cost involved because the officer can record interrogations on his or her mobile phone. That is not the case. This is evidence in a serious criminal investigation, and it has to be stored forever. It is subject to discovery. It is evidence in the case. An officer cannot just record it on a personal phone.

It has been said that since all officers will be wearing body cameras, those body cams could be used for this purpose in a pinch. However, body cameras are not designed to take interrogations. They are designed to capture tactical events that occur in the field. If you see body camera footage on the news, you see that the video is shaky and the audio is not clear. When the camera is on, there is a 30-second delay before the audio starts.

Section 1, subsection 6 of the bill says you should use audiovisual recording unless it is not feasible, in which case audio recording may be used. Who determines if it is not feasible? If I am a defense attorney, I am going to argue about feasibility if you only have audio and not video recording. "If you were able to record it with an audio recorder, why couldn't you record it with a video recorder?" There are questions in this bill that are not answered.

We have worked very closely with the Innocence Project in the past, and we share the same goals. We worked with them several years ago on witness identification. Innocence Project representatives looked at our policies and procedures and made recommendations, which we incorporated into our policy. We worked with them through the Nevada Sheriffs' and Chiefs' Association to get all the agencies in Nevada on board and get a statewide policy in place that was claimed to be a national model. In this case, that did not happen. A meeting was held with stakeholders prior to the Session.

CHAIR SEGERBLOM:
In that case, former Assemblywoman Lucy Flores brought the bill first, and you met with the Innocence Project in the Interim. Are you saying you would be willing to work with the Innocence Project on this subject if this bill does not pass?

MR. CALLAWAY:
To answer your first statement, we had a policy in place prior to Assemblywoman Flores's bill. Our work with the Innocence Project had nothing to do with that bill. We worked with the Project of our own accord on that issue. The procedure for A.B. 414 was very different. There was a meeting held last year to discuss this bill, but it was made clear to us that the Project was going to bring a bill forward. There was no effort to come visit our facility and see how our detectives conduct interrogations, to look at our policy, to make recommendations and go through those same steps. It was stated that the federal government has been doing this since 2014, but then the Project said it is a federal policy. Is it a policy or a law? If a policy is sufficient for the federal government, why do we need a law for Nevada?

I would be more than wiling to work with the Innocence Project or any other stakeholders on this in the Interim and do everything I can to not only make sure the LVMPD's policy is a model policy when it comes to interrogation, but also to ensure this is a statewide effort and not just an LVMPD effort.

CHAIR SEGERBLOM:
If I understand your answer, your policy currently is to video or audio tape all interrogations, with some exceptions.

MR. CALLAWAY:
Our department policy outlines the practice and procedure for all interrogations. It includes such things as you do not leave a suspect unattended in a room, an officer of the same sex as the suspect must be in the room at all times and so on. It also says that when possible, interrogations should be audio- or video-recorded. In the homicide and sexual assault sections, standard operating procedure is for all interrogations to be audio- and video-recorded. Recently, we handled the case of a young man who shot a mother in a drive-by shooting. Almost every night, the local news programs showed the video of the interrogation of the young man, and I believe there were allegations that he was under the influence of marijuana at the time he was interviewed.

SENATOR FORD:
Did I understand you to say that your current policy is to record all interrogations?

MR. CALLAWAY:
Our current policy does not mandate it on all interrogations. It does recommend it when possible on all interrogations except murder and sexual assault, when it is mandatory.

SENATOR FORD:
The examples you gave are interesting, and I understand why you would be concerned, but section 1, subsection 4 of A.B. 414 says:

> The lack of an electronic recording of a custodial interrogation must not be the sole basis for the exclusion of evidence from the interrogation or a confession that is made pursuant thereto. If a law enforcement agency does not make an electronic recording of a custodial interrogation as required by this section, the court may nonetheless admit evidence from the interrogation.

Does that exception not address many of the concerns you have relative to the circumstances you describe where you may not have a recording device?

MR. CALLAWAY:
Yes and no. It alleviates my concern with the jury instructions and the court procedure, but it does not address my concern about the defense attorney who is going to use any reason why a video was not taken as a basis for challenging the interrogation. The unrecorded interrogation may be admissible to the jury, but if I am the defense attorney, I am still going to challenge why it was not recorded. I will plant the seed that because it was not recorded, something was amiss.

SENATOR FORD:
That is the way litigation works, though. A defense lawyer, a prosecutor and a civil attorney are all going to make whatever arguments they need to make in order to prove their cases. We cannot legislate outside of that, can we?

MR. CALLAWAY:
No, you are right, we cannot. But when we put black-and-white law that says, "You will do this, with exceptions A, B and C" into statute, you open the gate for a challenge when you fail to do those things.

SENATOR FORD:
Those types of challenges happen all the time, and it is not just based on a recording. It could be based on other interactions and aspects of the situation.

I hear what you are saying. We are not going to be able to put into law a piece of legislation that addresses every single one of your anecdotes and situations. We cannot do that. What we can do is provide some policy that protects the officer from people claiming they were abused or coerced, and it also protects actual victims like Mr. Bradford, who was wrongly incarcerated for ten years and then for four years had to stand trial for a crime he did not commit. We can avoid that with a policy that is tailored well enough to do that. I think subsection 4 encompasses a lot of that.

I will note for the record, as my colleague to my right just said a minute ago, that we have colleagues who want to put cameras in classrooms, and we are putting body cams on officers. In this day and age where cameras are omnipresent, if we can protect the integrity of the criminal justice system by ensuring those types of confessions and interrogations are being recorded, we should strongly consider doing that.

MR. CALLAWAY:
I agree with you, just as I agree with the Innocence Project, that it is a best practice to audio and video record interrogations. My issue is not with that. My issue is with the specific language of this bill and how black and white it is. If the federal government does this via policy rather than law, why is a policy not sufficient for Nevada?

SENATOR FORD:
Let us explore that for a second. The federal government, meaning the FBI or the Department of Justice, is an entity that oversees the entirety of the United States. It can institute a policy that covers all 50 states. We cannot institute a policy in 17 separate counties; in order to address all 17 counties, we need a law. So your policy-law distinction does not hold water. We cannot use that as an example of why we should not do something like this.

COREY SOLFERINO (Washoe County Sheriff's Office):
We are opposed to A.B. 414. Mr. Callaway hit the nail on the head with addressing most of our concerns. I have not had the privilege of working with the Innocence Project, but my predecessor did, and we will continue to work with the Project. This is just a difference of philosophies. We believe this matter is best handled in policy. Our policy 600.7 covering custodial interrogation requirements includes audio and video recording. That policy is more far-reaching than that proposed in A.B. 414 in that it includes all violent felonies.

I would like to get on the record that I take polite exception to my colleague from the south indicating that officers or investigators curtail the narrative to fit their needs. I do not believe that happens. People go into law enforcement to do what is right, to protect victims' rights and report the facts as presented.

SENATOR FORD:
Did any of you who are here in opposition to this bill offer amendments to the sponsor of the bill to address the concerns you have raised?

MR. CALLAWAY:
Some of the concerns raised in the hearing on A.B. 414 in the Assembly Committee on Judiciary were addressed by Assemblyman Yeager. The language defining "place of detention" as a fixed location was added to address the concern about the suspect confessing in the back seat of the police car on the way to jail. While I appreciated the effort to address that concern, I did not bring an amendment on this bill because I am opposed in principle to putting what I believe belongs in policy into statute. I do not believe an amendment can address that concern.

MS. NOBLE:
We are opposed to A.B. 414. We agree that it is a best practice to record interrogations. We would have loved to talk to the Innocence Project. We represent the 17 elected district attorneys in Nevada and did not hear from them or have a chance to discuss our concerns with them. In the Assembly Committee on Judiciary hearing on A.B. 414, I raised our concern about the fixed location language. I still have some concerns about that because although the Innocence Project folks were talking about interrogation rooms, that is not what the bill says. I am concerned about how this would apply to interrogations

at a school shooting, in public or private buildings, at a Walmart or somewhere like that.

SENATOR FORD:
That is an interesting and valid point. If this bill was limited to interrogations taking place in a police station, would that alleviate your concern? I am not asking you for a yes or no now, but you should think about that.

Second, there was some quibbling over the definition of "custodial interrogation." I am not a criminal lawyer, but in criminal law procedure, I believe "custodial interrogation" is a constitutional term of art. There is a definition for it in the U.S. Constitution as to when you are considered to be in custody. Is that right?

MS. NOBLE:
We have custody, a situation in which a reasonable person feels he or she is not free to leave. Then we have interrogation, which is a question or series of questions from the police designed to elicit an incriminating response. Whether an event is an interview or an interrogation can differ depending on the court's interpretation.

SENATOR FORD:
Does this bill comport with the constitutional definitions of custody and interrogation?

MS. NOBLE:
With respect to the definition of interrogation, I would suggest it does not. It is a bit more vague.

SENATOR FORD:
Would you be able to provide language to make this comport with the constitutional definition, as it needs to?

MS. NOBLE:
I would be happy to provide that.

My second point was that we have heard references to the tragic case of Cathy Woods. I would like to remind the Committee that this case took place in the 1970s before we had access to DNA testing, and the interrogation took

place in a mental hospital outside the State of Nevada. Because of that, I would say its relevance to A.B. 414 is somewhat limited.

Third, the bill includes a cautionary instruction to be given to the jury, but the content of that caution is not specified. Is it going to sound more like an adverse inference instruction?

Finally, section 1, subsection 3, paragraph (b) of the bill talks about whether an officer reasonably believes that the person "may have committed" homicide or sexual assault. Suppose officers are interviewing a suspect because they believe he is in possession of a stolen car. As they ask him questions, the officers say, "You know what? This guy sounds a lot like the guy we're looking for who is committing these murders." At what point does that interview turn into an interrogation for murder and come under the provisions of A.B. 414? I am not confident that this bill has the safeguards in place to provide for that situation.

SENATOR FORD:
I appreciate those concerns and the fact that you did not have a chance to work with the Innocence Project before the Session started. That said, this bill has been here for 115 days. Have you sat down to work with the Innocence Project to try to craft language to address your concerns?

MS. NOBLE:
We made our concerns known at the same hearing where the Innocence Project representatives were present. In response to my testimony, they responded that they thought those concerns were unfounded. I did not anticipate further discussions would be productive. We are always willing to meet with whomever wants to meet with us.

SENATOR FORD:
Here is my request. Time is of the essence. We are about to sine die, and this bill seeks to address an important goal. I request that everyone who is involved with this and who has concerns with this bill get together in short order and see what you can come up with for some language that, while not perfect and not addressing every concern or example you can come up with, is a step forward from the status quo when it comes to interrogations.

ROBERT ROSHAK (Executive Director, Nevada Sheriffs' and Chiefs' Association):
We have the same concerns you heard from Mr. Callaway and Ms. Noble. We also have a question that has not come up yet. Section 1, subsection 6 defines custodial interrogation as "any interrogation of a person while the person is in custody," and custody is defined as when a person is under formal arrest. So if I am stopped and I have handcuffs on, I am now under formal arrest. Those are some issues that need to be cleared up if this bill is going to proceed. We also have grave concerns about taking best practices and mandating them in law.

MS. FELDMAN:
I would like to touch on some of the subjects raised by law enforcement.

As Mr. Callaway mentioned, we met with law enforcement in December 2016. The AG's Office called the meeting, and I apologize that the prosecutors were not involved. We met with the Washoe County Sheriff's Office, the LVMPD and the Nevada Sheriffs' and Chiefs' Association. We brought them this bill and asked them for their input several times over several months. We heard nothing from them. The last thing we want to do is play a game of "Gotcha." We want this to be something law enforcement can work with; we want law enforcement to be able to comply with this law. We asked them to submit amendments, and Mr. Callaway did, and we accepted many of them.

Again, I want to emphasize that policies alone are not going to protect people with this issue. There is no built-in enforcement mechanism for recording interrogations. There is for eyewitness identification, which is why we could tackle that issue with voluntary adoption of policies. There is nothing to prevent an officer from starting and stopping a tape or not recording an interrogation at all if it is not in the law. Furthermore, there is no uniform practice throughout the State, which our surveys demonstrated.

Another argument was that technology evolves. I just bought a digital tape recorder at Target for $30. That is still an option. We surveyed agencies in Massachusetts and Wisconsin, both of which have required recording interrogations for serious felonies for over ten years. Many said they were using body cameras to record interrogations. That is another viable option. It is a struggle to understand that law enforcement supports a body cam bill requiring recording of an entirety of a police interaction with a civilian with virtually no exceptions but will not accept a bill that requires recording in interrogations that

have at least six good-cause exceptions, and the worst that can happen is a jury instruction.

There are 24 states that have passed laws like this. This is not out of nowhere; this bill is in line with what the rest of the Country and the federal law enforcement agencies are doing. The Nevada Supreme Court has looked at this issue and is interested in it. This is going to happen in Nevada either through this bill or via the Supreme Court. If it is the Supreme Court, it will be a lot more strict than this. In Utah in 2015, the court enacted a court rule that presumes inadmissibility for an unrecorded statement. Even for the good cause exceptions, even if you can say the equipment malfunctioned, there is still a jury instruction.

We thought A.B. 414 was a good, reasonable compromise. We wanted law enforcement to give us input; we wanted to get their suggestions to make it workable, and they told us, "We just don't want a law. We want to do it through policy." I would be more than happy to do this through policy rather than law if it was good enough, if it protected innocent people. Unfortunately, it does nothing to have a policy that an officer can break without consequences.

SENATOR HARRIS:
I do not think it has been addressed as to whether the federal policy or law referred to is actually a law or a policy. Which is it?

MS. FELDMAN:
It is a policy. As Senator Ford mentioned, a federal policy automatically means uniformity. The U.S. Department of Justice can institute a policy that covers the entire Country. Here in Nevada, we do not have that uniformity.

SENATOR FORD:
You heard my request to the opponents of the bill. I do not know what the Chair intends to do with this bill, but if it is going to pass, it needs to be in a form that gives consideration to the concerns that have been raised. I would encourage you to get with the opponents and find some language that moves the ball forward. It may not go as far as you would like it to go, but it will get us closer to the goal.

Nevada would be the twenty-fifth state to pass a law like this. We are only the second state in the U.S. to implement body cam legislation, so we are ahead of

the pack on that one. Please proceed with that, and again, time is of the essence.

MS. FELDMAN:
We are happy to work with all the stakeholders.

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VICE CHAIR CANNIZZARO:
I will close the hearing on A.B. 414. Is there any public comment? Hearing none, I will adjourn the meeting at 3:15 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	2		Agenda
	B	6		Attendance Roster
A.B. 23	C	1	Patrick Guinan	Work Session Document
A.B. 122	D	1	Patrick Guinan	Work Session Document
A.B. 514	E	1	Patrick Guinan	Work Session Document
A.B. 421	F	3	Patrick Guinan	Work Session Document
A.B. 472	G	3	Patrick Guinan	Work Session Document
A.B. 130	H	1	James W. Hardesty	Proposed Amendment
A.B. 291	I	2	Alex Ortiz / Clark County	Proposed Amendment
A.B. 291	J	1	Jeff Fontaine / Nevada Association of Counties	Proposed Amendment
A.B. 97	K	9	Assemblyman Steve Yeager	Proposed Amendment 5243
A.B. 414	L	1	June Ingram / Charleston Neighborhood Preservation	Letter of Support