MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
April 24, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 9:06 a.m. on Wednesday, April 24, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Senate District No. 7
Senator Dallas Harris, Senate District No. 11
Senator Melanie Scheible, Senate District No. 9

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Lucas Glanzmann, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice
Olivia Yamamoto, Chair, Nevada Youth Legislature
Brooke Maylath, President, Transgender Allies Group
Jennifer P. Noble, Chief Appellate Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association
Sherrie Scaffidi, Director, Transgender Allies Group
André C. Wade, State Director, Silver State Equality
Kyera Sanders, Member, Human Rights Campaign, Las Vegas, Nevada
Mark H. Fiorentino, representing Gender Justice Nevada
Serena Evans, Policy Specialist, Nevada Coalition to END Domestic and Sexual Violence
Elisa Cafferata, representing Planned Parenthood Votes Nevada
Vivian Leal, Member, Indivisible Northern Nevada; and Member, Human Rights Campaign, Reno, Nevada
William Ledford, Director of Advocacy, Lutheran Engagement Advocacy in Nevada
Odalys Tiscareno, Member, Human Rights Campaign, Las Vegas, Nevada
Roxanne C. Okeke, Legislative Intern, Human Rights Campaign, Las Vegas, Nevada
Alyssa Cortes, Regional Organizing Lead, Human Rights Campaign, Las Vegas Nevada

Chairman Yeager:
[Roll was taken. Committee protocol was explained.] I will open the hearing on Senate Bill 286.

Senate Bill 286: Revises provisions relating to aggregated sentences and eligibility for parole. (BDR 14-293)

Senator David R. Parks, Senate District No. 7:
I am here to present Senate Bill 286, which revises the way certain prison sentences are aggregated. For those who are unfamiliar with aggregated sentences, they allow inmates with two or more consecutive sentences to add the minimum and maximum terms of each of those sentences together to come up with one total minimum and one maximum sentence.

Any sentence credits the inmate might receive can then be deducted from his or her single aggregated sentence. This system simplifies the computation of sentences and credits for the purpose of parole eligibility and sentence expiration.

The Nevada Legislature began moving toward aggregated sentences in 2009 with Assembly Bill 474 of the 75th Session, and we completed that process in 2013 with Senate Bill 71 of the 77th Session. However, some additional work remained to be done. Although the intention of the 2013 legislation was to allow inmates who had consecutive sentences imposed prior to 2013 to opt in and have their sentences aggregated, the language was not quite right, and, thus, was open to more than one interpretation. It is issues such as this that S.B. 286 seeks to remedy.

Section 1 of S.B. 286 clarifies the portion of the statute I have just described. It also makes a technical change to clarify that a person who is sentenced to death or life without the possibility of parole will not be considered for parole on any other sentence that might be part of an aggregated sentence. Also contained in section 1 are provisions requiring that sentence enhancements imposed by a court must be aggregated in providing that different cases may be aggregated. This provision will not impact a large number of inmates, but there are some who are serving consecutive sentences for crimes committed at different times spanning different sentence credit laws to whom this provision would apply.

Section 2 goes on to provide the method by which the Nevada Department of Corrections (NDOC) is to aggregate sentences that were imposed under different credit laws, and specifies that once these sentences are aggregated, all future credit earnings will be applied against the maximum term of the current credit law. This goes back, again, to the 2013 law and addresses NDOC's denial of several inmate requests to aggregate sentences based on an interpretation of the law by the Attorney General. For this reason, section 2 also allows NDOC to review previously denied requests under this scenario to disaggregate and then reaggregate sentences for multiple cases. Section 2 also provides that aggregated sentence laws cannot be the basis for inaction related to credits an inmate might have received had his or her sentence not been aggregated.

Finally, section 3 sets forth the effective date for this bill. That concludes my remarks. I would be happy to answer your questions.

Chairman Yeager:
I know there have been several aggregation bills throughout the last two sessions, and you have been a part of those. At a high level, what is this bill seeking to do that was left out of the prior aggregation bills?

Senator Parks:
I think the bills created some confusion, and the hope here is that this bill will provide a guidance and the ability for NDOC to substantiate how it has computed these credits and aggregated terms.

Assemblywoman Cohen:
Can you please give me an example using actual sentences? I just need an example to understand how aggregation works.

Senator Parks:
It works quite simply. I will use a simple example: a person is for sentenced for a burglary as well as an armed robbery. The burglary carries a sentence of 2 to 5 years; the armed robbery carries a sentence of 5 to 10 years. Typically, it takes a year an individual to be sentenced and begin serving his term in prison. At that time, he has a credit for time spent—let us say, in Clark County Detention Center—of 1 year. What would happen, typically, is the inmate would serve a 1-year term in prison before he would be eligible to go to a parole hearing. He goes to that parole hearing, and since he has only been in prison for a very short period of time, he, more likely than not, would get "dumped," and would not be granted the parole hearing for the burglary charge. In that case, he serves a longer time. Then, he must complete one sentence before he can start the second sentence. What it does is extend the amount of time an inmate typically spends in the prison system.

Aggregating it takes the 2 to 5 years and the 5 to 10 years and adds them together to get 7 to 15 years. What would happen is that the inmate would have served 1 year in Clark County Detention Center, and then an additional 6 years in the prison system before he would go to a hearing on his parole. Given what he has done in prison, he may be granted that parole at the 7-year point. We have certainly seen activity that has shown that many inmates much prefer to have an aggregated sentence than to do their sentences individually. I hope that explains, in summary, what would happen. Of course, if he is a model prisoner, he has probably also gained credits for education, programs, or work.

Chairman Yeager:
I do want to mention to the Committee that I think one of the benefits of aggregating sentences is that the victim is a little more clued in on what is actually happening. One of the problems we had with consecutive sentences is that someone would come up for parole eligibility for their first sentence—and if the victim had been notified, he or she would have a chance to be there too—but the person may really have one or two more sentences to do so he or she was not actually getting out of prison. I think aggregation is a way to make the sentence structure more understandable, both for the defendant and for any victim of the crime who may be interested in that process. That has been one of the benefits: eliminating the confusion about some of the sentencing structures we have. I will open it up for testimony in support.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
We support this measure.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
This provides clarity to everyone involved. In Washoe County they discuss aggregation at the sentencing hearing, so the victim and all parties know very early on what the status of the case is.

Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice:
We support this bill. There is a lot of confusion when it comes to computing aggregation, and we believe this will go a long way toward easing the problems that currently exist.

Chairman Yeager:
Is there any opposition testimony? [There was none.] Is there anyone here in neutral? [There was no one.] Senator Parks, do you have any concluding remarks?

Senator Parks:
I guess I would be remiss if I did not also give a shout-out to the former Chair of the Nevada Board of Parole Commissioners, Connie Bisbee. She is now retired, but she put a lot of effort into this. This bill has been ten years in the making.

Chairman Yeager:
I will now close the hearing on S.B. 286. I am now going to open the hearing on Senate Bill 97 (1st Reprint).

Senate Bill 97 (1st Reprint): Prohibits use in a criminal case of certain defenses based on the sexual orientation or gender identity or expression of the victim. (BDR 15-559)

Senator Dallas Harris, Senate District No. 11:
I am here to present Senate Bill 97 (1st Reprint). First, I want to offer a little bit of a primer on the differences between self-defense in Nevada and the "heat of passion" and "provocation" defenses in Nevada. In Nevada, heat of passion and provocation are synonymous. This doctrine is premised on the assumption that one who kills while in a highly emotional state may not act from a place of intent or cruelty, but rather, the conduct is a result of a temporary excitement by which the control or reason was disturbed. Courts sometimes characterize the difference as acting due to anger or emotion, not evilness. In Nevada, a defendant can use a victim's provocation as a defense to intent-specific crimes if the provocation consisted of a serious and highly provoking injury sufficient to excite an irresistible passion in a reasonable person or an attempt by the victim to inflict a serious personal injury on the defendant.

As to self-defense in Nevada, in short, it is not legal if it is not reasonable. Nevada law permits people to fight back in self-defense in a multitude of crimes ranging from assault and battery to home invasions, and attempted murder. Self-defense is lawful when a person has a reasonable belief that the aggressor poses an immediate threat and he or she inflicts no more

force than necessary to resist the aggressor's threat. Homicide in Nevada is justifiable only if it is a reasonable injury to repel an imminent threat of death or substantial bodily harm.

I will now give you a little background on the "gay panic" and "trans (transgender) panic" defenses as they have appeared throughout the nation since the 1960s. Since the 1960s, the gay and trans panic defenses have appeared in court opinions in approximately one half of the states, despite the fact none have been published in Nevada. This fact is largely attributed to the lack of an appellate court for many years in our state. Rather, defendants have used concepts of gay and trans panic in several ways in order to reduce a murder charge to manslaughter or justifiable homicide. First, defendants have relied on gay and trans panic defenses to support a defense theory of provocation. Specifically, defendants argue that the discovery, knowledge, or potential disclosure of a victim's sexual orientation or gender identity was a sufficiently provocative act that drove them to kill in the heat of passion.

I do not like to be dramatic, but I am going to repeat that one more time: Defendants argue that the discovery, knowledge, or potential disclosure of a victim's sexual orientation or gender identity was a sufficiently provocative act that drove them to kill in the heat of passion. That is absolutely ridiculous. That is just absurd.

Defendants have used that defense to support a theory of self-defense as well. Here, defendants argue they have a reasonable belief they were in imminent danger of serious bodily harm based on the discovery, knowledge, or potential disclosure of a victim's sexual orientation or gender identity.

Senate Bill 97 (1st Reprint) bans controversial defenses that seek to partially or completely excuse crimes such as murder and assault on the grounds that the sexual orientation or gender identity of the victim is provocation enough for the violent reaction of the defendant. Gay and trans panic legal defenses reflect an irrational fear and bigotry toward the LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) community, and corrode the legitimacy of prosecutions.

To be clear, S.B. 97 (R1) does not preclude a full, factual context from being presented to a jury or fact finder. Instead, S.B. 97 (R1) states that an alleged state of passion or provocation is not objectively reasonable if it resulted from the discovery of one's sexual orientation or gender identity. However, the fact that a person is gay or transgender may be relevant in some other way. Similarly, a person's attitude toward gay, transgender, or questioning individuals may also be relevant to show context. It just cannot be used as an excuse to the crime. Many jurisdictions, including Nevada, allow the history, circumstances, and individual characteristics of the defendant and victim to inform a jury's understanding of the gravity of the provocation in the context in which it occurred. I would now like to turn it over to Senator Scheible.

Senator Melanie Scheible, Senate District No. 9:
I want to get into the specifics to understand when this kind of statute would come into play and how it would affect a criminal prosecution and a criminal defense. There is a chart on

the Nevada Electronic Legislative Information System (NELIS) (Exhibit C) that gives an example I am going to walk through to help you understand how this statute would come into play.

As a hypothetical, let us say two individuals meet at a gay bar. One of them is a man, one of them is a transgender woman, and the man does not know the woman is trans. They start talking, they are having drinks, they are becoming friendly, and they decide to leave together. As they are leaving this bar together after a few drinks—perhaps they have some mutual friends there, perhaps they do not—they are on their way to the car, and the conversation turns to the woman's identity. She reveals she is transgender, and the man becomes so enraged, so disgusted and angry, that he beats her until she literally dies.

That situation is when a defense of the heat of passion or provocation would be appropriate. Heat of passion and provocation are only defenses to murder. What this bill would do is say you can still bring a heat of passion defense or a provocation defense. Both the prosecutor and the defense would be allowed to bring in all of those surrounding facts. However, when it comes time for the jury to determine whether or not there was sufficient provocation to make this a justifiable homicide, the law would already instruct them that—whatever kind of rage, feelings, or emotions the victim's sexual or gender identity produced in the defendant—it is not a defense to homicide. That is not a justifiable reason for killing the other person. Whereas most of the law gives the jury the latitude to apply the law with the instruction of a judge, here, the judge is empowered to tell the jury, before they even get to that point of their analysis, that whatever they think about how this person reacted to the victim's sexual or gender identity, it is never a factual basis to find that provocation or heat of passion existed to commit a justifiable homicide. That is what section 1 of the bill does.

Section 2 of the bill addresses self-defense. Self-defense claims are a little bit broader than heat of passion or provocation claims, because they apply to more than just murder. They can apply to an assault or a battery. Let us stick with a battery. We can use the same context, but what happened is not that the man became so enraged that he killed the trans woman, but he simply shoved her and she fell and broke her arm. A case in which we are likely to have self-defense is one where the woman is doing something threatening, so let us say she was also yelling at him at the same time. She was calling him names; she was telling him he was wrong or hateful for rejecting her after learning she was transgender. All of those facts can still come in underneath this law. All of those facts can be presented to the jury. The jury is then empowered to make the factual determinations about whether or not the man felt threatened by the woman's presence, words, or actions. However, the law will tell the jury they are not allowed to consider whether the man was threatened by the woman's gender identity. As a matter of law, that is not a reason to act in self-defense.

That is what this law does; it says jurors still remain the finders of fact, and judges still instruct them on the law. When it comes to applying the law to the facts, judges—as they do every single day—instruct the jury on how to apply the law and, where it might be relevant, they say, "If anybody has suggested the victim's sexual identity, orientation, or gender identity has caused this reaction in the defendant, the law applied to those facts does not

equal sufficient provocation or justified self-defense." That is sections 1 and 2. That is what they say.

I want to point out a couple of reasons why I think this bill is appropriate in Nevada and in general. When it comes to taking matters of fact and matters of law and codifying any kind of determination that something is or is not reasonable, sound, or allowable, we have to be very cautious, but this is something we already do. We have already identified in Nevada law that voluntary intoxication is not a defense. Voluntary intoxication is not a fact that should lead a jury to determine that somebody was incapacitated and acted in self-defense. This is not true in Nevada, but other states identify different fact patterns they exclude from provocation defenses, diminished capacity defenses, or self-defense defenses, including crying babies and finding your spouse in bed with somebody else. It is common in the United States to remove fact patterns such as those from the discretion of a jury. The reason for that is to prevent people from playing on bigotry and prejudice in order to justify violence against members of a particular minority and an oppressed community.

That, I think, is one of our primary responsibilities as lawmakers: to protect those people at the outset before we end up in court having to litigate whether or not somebody's identity—the fact that somebody is transgender—is a reason to be fearful of them. We are all smart enough. We are all experienced enough. I hope we are all bold enough to put into statute that it is not a reason to be fearful. With that, I will turn it over to Chair Yamamoto.

Olivia Yamamoto, Chair, Nevada Youth Legislature:
This is the Nevada Youth Legislature's seventh proposed bill since its creation in 2007. The members of the Nevada Youth Legislature chose this bill to be its bill for this session out of 19 bills. Last year, a freshman from my own high school was murdered by his father because, as the father put it, he would rather have a dead son than a gay son. Giovanni Melton, I wish you were here to see how hard we are fighting to protect kids just like you. Your mother, Veronica Melton, submitted testimony in support of this bill, and that can be found on NELIS (Exhibit D).

According to the Pew Research Center, the LGBTQ community is more likely to be a target of hate crimes than any other minority group. This suppression is further perpetrated by the gay and trans panic defenses—defenses used in American courts right now to justify the murder of or other brutal acts toward LGBTQ persons because of their sexual or gender identity. One of the most infamous examples is the story of Matthew Shepard, a 21-year-old college student who, after making a pass at two men in a gay bar, was beaten, pistol-whipped, tied to a fence, and left to die. In court, Matthew's murderers claimed they were in a state of "homosexual panic."

An LGBTQ person does not need to make a pass in order to be blamed for their own death. In California, 14-year-old Brandon McInerney shot fellow openly gay classmate Larry King execution-style in front of their teacher and classmates because, two days earlier, Larry had asked Brandon to be his "valentine." I could go on and on, baring the details of every time

our justice system has failed us by accepting blatant and disgusting homophobia and transphobia as a reason to murder or brutalize an LGBTQ person.

Senate Bill 97 (1st Reprint) calls for the banning of gay and trans panic defenses under heat of passion and self-defense. The American Bar Association has called for the banning of this defense, but only California, Rhode Island, and Illinois have fully gone through with passing that ban. Let Nevada be the next state to take a stand against this unjust and antiquated defense. Speaking from purely logical terms, this defense holds no psychological claims, as homosexuality and homosexual panic were removed from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders.* By upholding this defense, we are telling LGBTQ individuals that their lives are worth less than others and their sexual orientation or gender identity—something they cannot control—is to blame for their deaths.

It is alarming and terrifying that so few people are even aware of the existence of this shameful defense. We are so passionate about this topic because it is a matter of, who is next? It could be your LGBTQ family member or friend. It could be me. Do not let one more person be blamed for their own death, or for who they are, or for who they love. Thank you to all of those who are listening, and I truly hope you can find it in your hearts to make this bill a reality for the LGBTQ community and for justice to prevail.

Chairman Yeager:
I will now open it up for questions from Committee members.

Assemblywoman Miller:
As you said, not many of us know about this, and it is quite shocking to hear this could be a defense. Historically, in this country and in this state, we have worked so hard to define certain acts as hate crimes that specifically target certain persons because of a certain identification, classification, or group they belong to. When it comes to our LGBTQ community, acting against them because of that identification or membership is a hate crime. So I guess I am conflicted in understanding how we are in a time and place in which this specific hate crime would be a justifiable defense. Would you, in your legal opinion, justify that? I just want to call it what it is because, to me, if you react that way toward a person after finding out something about them you did not realize, that does not come from a shock; it comes from a deep-rooted belief system, fear, or hate you possess. We have all had people of every gender approach us or flirt with us and most of us say, "No thank you," and move on with our day. To have that kind of reaction, to me, is a really deep-seated reaction. For me, I would classify that as a hate crime. Would you as well?

Senator Harris:
Yes, I would. That is not my legal opinion, however, clearly any action that fits these fact patterns is derived from hate. I appreciate your question/comment because it really brings up what makes this salient for me. It is not just that I am an LGBTQ person; it is also the idea that I am African American. Currently, if someone were to harm me, they would probably make any excuse except for the fact that I am African American because that is an

aggravating factor. You do not want to be charged with harming someone because of who they were when it comes to that part of my identity because you might get a stiffer sentence. There is no opportunity to say, "Well, she is African American, so I was a little more scared," and maybe bring it down now from murder to manslaughter. That is just not a thing. This, too, should not be a thing. It should only be an aggravating factor and not one that can mitigate your actions. So I look forward to that day, and we all have a chance to play a part in that.

Senator Scheible:
I take great pride in being the first prosecutor, to my knowledge, to take a hate crime to trial. I have asked around, and I have not found another one in Nevada. It is important to note that I lost because hate crimes are incredibly difficult to prove. I think something we sometimes forget is, when you are prosecuting a case or going through a criminal trial, the facts develop. We might not have all the facts when we charge somebody. They might just be charged with battery with substantial bodily harm, and if I, as a prosecutor, have not charged the hate crime upfront, there is nothing in the law to prevent the defendant from bringing up the exact same facts that would have made it a hate crime—had I known when I first authored the charging document about the circumstances—to argue "That is why I was scared," or "That is why I pushed, hit, or shot her." I think it is important that we identify facts we think are aggravating—things that make a crime worse rather than better—and put into law that they can be used as a sword, but not as a shield.

Assemblywoman Miller:
When it comes to hate crimes against religion, race, or immigration status, we know they are hard to prove. As Senator Harris said, we can use all kinds of other excuses. Even if the true intent was because of your color, I can dance around that a lot. However, in the example you have given—a case in which two people went out, started to get physical, and then on the way out of the bar one individual then disclosed their LGBTQ identity—to me, that seems to be the literal best-case scenario to prove a hate crime. Am I off?

Senator Scheible:
The lawyerly answer is, it depends. It is important to acknowledge that minorities of sexual orientation or identity are a little bit different than racial and religious minorities. Those people might not want to tell the police that is what happened. After they just got beat up for revealing they were transgender, they might not want to reveal to a police officer that is what just happened. They might come into my office for a pretrial conference and still not want to tell me they are transgender because that is what just got them beat up in the first place. We might be getting a whole lot of "I do not know. I do not know. I was drinking," up until negotiations fall through, a preliminary hearing is held, and we are finally getting ready for trial, and that is when the disclosure comes out and they say, "Okay, we were actually getting kind of physical, and I told him I was transgender." That is a real thing that could happen.

Assemblywoman Cohen:
I believe this has been vetted through the American Bar Association, and it supports the intent of this bill. Do you have any understanding of what it takes to get the American Bar Association to make a proclamation such as this and come to consensus?

Senator Harris:
I do not. I imagine it is a very arduous process given how large the American Bar Association is. Not only do they have other sections that are difficult to get to speak with one voice, but to get the entire association to come together and speak with one voice, I am sure, is a much formalized process. To be honest, it is not one I was involved with, I just imagine it is as large of a bureaucracy as can be.

Assemblywoman Cohen:
Using your example of the situation in which two people leave a bar and someone reveals they are transgender and gets beat up or killed for that, I understand that cannot be a defense; it is not self-defense. I also understand the person who comes home and finds their spouse in bed with someone else cannot use it in that respect. However, when it comes to sentencing, is there any ability to say, "Look, I did not leave my house that day looking to murder someone?" How does that play in?

Senator Scheible:
I think that would be like any other factual situation. We are assuming, now, that someone has been convicted at trial as opposed to a negotiation. They always have the ability to bring up anything they want during the sentencing process. They would have been convicted under the appropriate statute having either not been enhanced for a hate crime or not having been mitigated by provocation or self-defense. At that point, there really are no limitations on what someone can argue at sentencing, and this would be no different.

Assemblywoman Peters:
I think it is fitting that today is Denim Day, on which we acknowledge you cannot use someone's attire to excuse sexual assault. I think this scenario we are talking about comes from the same kind of toxic social culture of sexual orientation and expectations of sexual intimacy. This is a world where it is more justifiable for you to kill somebody in an act of passion than to say, "No, thanks. That is not my thing. Sorry, I am just not into that." We live in a world where that cannot be the expectation. We have to change that, and I admire you, Chair Yamamoto, for bringing this forward, especially as such a young person who is making waves of change in our social culture and the expectations around how we engage with each other. I just really want to thank you for bringing this forward, and I am not looking forward to hearing the excuse for using this in any case.

Chairman Yeager:
At this time, I will open it up for additional testimony in support.

Brooke Maylath, President, Transgender Allies Group:
Let me share with you a brief story of Gwen Araujo, who was murdered in 2002 by four young men who went to trial. The circumstances surrounding her murder were that she had physical, intimate contact with two of the four young men, and afterwards, there were questions as to whether she was transgender. A month later, at a different party, they came across Gwen and the questions started coming forward again. They physically dragged her into the bathroom, ripped off her clothes, and discovered she still had a penis. They started beating her there in the house. They dragged her out to a car, drove her up to the foothills of the Sierras—she was not dead yet—bashed her skull in with a shovel, and buried her in a shallow grave. At the trial, two of the four used a transgender panic defense as a way to be able to mitigate the charges against them, reducing the charges from second-degree murder to manslaughter. All four defendants are now out of jail.

The social ramifications to a defense such as this are that it is has worked, and it tells the members of the LGBTQ community that we are repugnant, that we are worthy of murder, that we are lesser of a human to be able to have contact with other people. That resonates throughout our world. It also signals to heterosexual cisgender people that we are so repugnant that we are worthy of killing. That cannot be the case in this country. It is unjustifiable. I urge you, for the sake of society, for the sake of humanity, to please pass this law.

Jennifer P. Noble, Chief Appellate Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:
We are here today in full support of S.B. 97 (R1). The suggestion that violence of any kind is justified against a human being because of their sexual orientation or gender identity has no place in a courtroom.

Sherrie Scaffidi, Director, Transgender Allies Group:
[She spoke from (Exhibit E).] As a long-time resident of Nevada, I am testifying today to express my sincere hope that you will act on behalf of the best interests of your LGBTQ constituents by voting in favor of S.B. 97 (R1). The use of gay and trans panic defenses is incompatible with Nevada law to provide protection to victims of bias-motivated crimes. The use of these defenses reinforces prejudice, intolerance, noncompassion, and lack of self-control and respect toward people of the LGBTQ community.

To think that I am a threat to someone just because I am transgender is ludicrous. If in a casual situation, I compliment someone in a nonthreatening way, that encounter evolves into a private sexual encounter, and that person then realizes I am transgender, is it logical to believe that person was so traumatized that he or she loses all self-control and decides that I should be eradicated from the face of the earth? Is my life worth less than other persons' lives just because I am a transgender woman? I would certainly hope not. I am not an ideology, a curiosity, or a fetish. I am just a woman who wants to live my life in safety, peace, and harmony, with respect—just like everyone else. I urge you to please pass S.B. 97 (R1).

André C. Wade, State Director, Silver State Equality:
I am the state director for Silver State Equality, a Nevada-based statewide LGBTQ civil rights program affiliated with, supported, and managed by Equality California and Equality California Institute—collectively, the nation's largest statewide LGBTQ civil rights organization. I am here today in support of S.B. 97 (R1), which seeks to eliminate the irrational and offensive gay and trans panic defenses. These defenses are used in three different ways to reduce a murder charge, which you have already been briefed on. It is nothing more than an attempt to use the victim's sexual orientation or gender identity to not only justify a perpetrator's violent crime, but to appeal to others' irrational fears and hatred toward LGBTQ persons and ask them to excuse the crime, which can result in unwanted acquittals and sentence reductions.

Nevada is better than this. Our laws should not validate violence against LGBTQ people. They should not be based on myths or biases toward LGBTQ people. We should be strengthening our current hate crimes statutes, not excusing hate crimes because the victims were of a particular identity. This is why it is critical that we pass S.B. 97 (R1) and why I am asking for your support today. We are very supportive of the Nevada Youth Legislature's taking on such an impressive bill that was inspired by an unfortunate incident last year in Nevada. In 2013, the American Bar Association House of Delegates passed a resolution urging federal, tribal, state, local, and territorial governments to take legislative action to curtail the availability and effectiveness of these gay and trans panic defenses.

Kyera Sanders, Member, Human Rights Campaign, Las Vegas, Nevada:
The very logic of a gay/trans panic defense is asinine. Sexual orientation or gender identity or expression is no reason to react violently. If such an intricate piece of your identity is seen as a threat, when can you ever be considered nonthreatening? When are you not committing a provocative act? If any other protected class minority were to be so openly assaulted, it would simply be called a hate crime. Please pass S.B. 97 (R1).

Mark H. Fiorentino, representing Gender Justice Nevada:
We are here to speak in favor of the bill. Jane Heenan, the Clinical Director of Gender Justice Nevada, could not be here to testify in person. I just want to draw your attention to Jane's testimony (Exhibit F). It is far more articulate than I could be on this subject, but I am here to reconfirm support for the bill.

Serena Evans, Policy Specialist, Nevada Coalition to END Domestic and Sexual Violence:
We are here in strong support of S.B. 97 (R1). Sexual violence affects every demographic in every community, including LGBTQ people. In my submitted testimony through NELIS (Exhibit G), there is a whole section that includes statistics, but I will not go through that at this moment. For LGBTQ survivors of sexual assault, their identities and the discrimination they face surrounding those identities often make them hesitant to seek help from police, hospitals, shelters, or rape crisis centers—the very resources that are supposed to help them. When they do, imagine the horror of hearing the defense ask the jury to find that a victim's sexual orientation or gender identity is to blame for the defendant's violent reaction, often

including murder. When the perpetrator claims the victim's sexual orientation or gender identity not only explains, but excuses his or her loss of self-control and subsequent assault, by fully or partially acquitting the perpetrators of crimes against LGBTQ victims, these defenses imply that LGBTQ lives are worth less than others.

Senator David R. Parks, Senate District No. 7:
I would like to commended Youth Legislator Olivia Yamamoto and her fellow Youth Legislators for bringing this bill forward. I am fully in support of it.

Elisa Cafferata, representing Planned Parenthood Votes Nevada:
Planned Parenthood has been working diligently to provide appropriate care to LGBTQ patients. Specifically, we have several initiatives to put more into making sure we are providing the full services that our trans patients need. What we find often for these folks is that if they just have a cold, they just need antihistamines; they do not need to have a whole rundown of their personal decisions, their life, and their transition. We make sure to provide that culturally competent care. As we go along, we are learning more and more about the importance of the social determinants of health. The things that happen to our patients outside of our health centers really have a huge impact on their overall health and well-being. That is why we are here advocating on behalf of our patients and our activists. We urge you to pass S.B. 97 (R1).

Vivian Leal, Member, Indivisible Northern Nevada; and Member, Human Rights Campaign, Reno, Nevada:
When we were looking at which bills we would support, we were shocked by this bill because the fact it is needed was a surprise and an education for us. We were delighted, however, that this bill was coming from the Youth Legislature. As you know, part of the mission of Indivisible Northern Nevada is to help ordinary citizens learn how to amplify their voices in their state legislatures and in public conversation. It was a joy to us to have the next generation leading the way in a way we are still struggling to teach the generation before them. We are fully in support of this bill.

William Ledford, Director of Advocacy, Lutheran Engagement Advocacy in Nevada:
I represent all of the Evangelical Lutheran Church in America (ELCA) churches in Nevada. The Lutheran Church has a social statement on homosexuality that allows churches in our denomination to have varying positions on these issues. However, under the umbrella of loving our neighbors, violence against trans people and gay people is completely unacceptable and not a defense in any way, shape, or form. I am so thankful for this bill. I share the sentiment of reading this bill and being shocked it even needed to be a thing. It has been the greatest personal privilege of mine to be able to support this bill. Our organization and the ELCA church is in support of this bill.

Odalys Tiscareno, Member, Human Rights Campaign, Las Vegas, Nevada:
I am a proud Nevadan who was born and raised here in Las Vegas. I am a part of the LGBTQ community, and I have many dear friends who also identify, including my best friend. If my gay best friend or any fellow LGBTQ Nevadan was murdered and the

perpetrator was able to get a lesser sentence because of the gay and trans panic defense, it would be incredibly wrong and unjust. I can only imagine the pain and frustration the families would feel. Although the LGBTQ community has made strong headway throughout the years, there are still many disputes as to what should and should not be allowed. People who are homosexual face barriers placed upon them by the political system and society. Specifically, here in the United States, there are numerous ongoing arguments. Now S.B. 97(R1) is being voted on, and I am here using my voice and raising awareness for my family and friends in favor of banning the gay and trans panic defenses which institutionalize prejudice against the LGBTQ community.

Roxanne C. Okeke, Legislative Intern, Human Rights Campaign, Las Vegas, Nevada:
Members of the LGBTQ community deserve to feel safe and protected in their own local communities. Identifying as LGBTQ should not be a justification for someone assaulting you or getting a reduced sentence. Yet, in a Yahoo! [Finance] article published in January of 2018, according to the Williams Institute at the University of California, Los Angeles School of Law, gay panic and trans panic have been used as defenses in court cases in approximately 25 states across the country.

Nevada State Youth Legislator Olivia Yamamoto brought the story of Matthew Shepard, a 21-year-old gay college student who was violently beaten for making a pass at his attackers. How many more deaths do we have to witness? How many more stories like Matthew's must we hear before we say, enough is enough? Having members in my own family who identify as LGBTQ, I do not want any of them to end up in a situation such as this, in which, at the most vulnerable point in time, they are deemed less than human and their attackers get away with a crime such as this. Instituting this bill into Nevada law would ensure these protections for LGBTQ members in our community.

Alyssa Cortes, Regional Organizing Lead, Human Rights Campaign, Las Vegas, Nevada:
The Human Rights Campaign (HRC) has more than 3 million members and supporters nationwide, including 55,000 in Nevada. Senate Bill 97 (1st Reprint) is a vital measure that will ensure victims of violent crimes and their families obtain equal justice regardless of sexual orientation or gender identity. We urge you to swiftly pass this important legislation. As an advocate for LGBTQ individuals, HRC believes a perpetrator's realization of a victim's actual or perceived sexual orientation or gender identity should never be available as a legal defense for violent crimes. The National Coalition of Anti-Violence Programs reports that hate-motivated homicides of LGBTQ individuals has steadily risen since 2012, increasing by 86 percent between 2016 and 2017. In short, gay and transgender panic defenses send the destructive message that LGBTQ victims are less worthy of justice.

Chairman Yeager:
At this time, I will open it up for opposition testimony.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:

The Washoe County Public Defender's Office is opposed to this bill. It is the position of our office that if this were to become law, it would undermine fundamental principles of our criminal justice system and unnecessarily supplant well-established rules of evidence that balance principles of relevance and due process rights of accused persons.

Justice is supposed to be blind. One of the most recognized symbols of our criminal system is Lady Justice: the female sculpture that is most commonly portrayed throughout the United States as a blindfolded individual carrying a sword and a set of scales. Since the 16th century, Lady Justice has worn a blindfold, which represents objectivity; justice should be meted out objectively, without any fear or favor, regardless of money, wealth, power, status, or identity. Blind justice is impartial.

The right to due process is enshrined in the Sixth and Fourteenth Amendments to the *United States Constitution* and analogous in state constitutional provisions throughout the United States. This includes the right to confront, cross-examine, and compel the attendance of witnesses. These rights are integral to ensuring the single fundamental right of criminally accused persons to present a defense.

The right to present a defense encompasses the presentation of any evidence that shows an accused person either did not commit the crime, or his or her actions were excused, justified, or mitigated in some way. Where the law allows an affirmative defense, mitigation, or justification, it reflects what has been enshrined in the law, and that conduct that may otherwise be considered worthy of punishment may be excused or considered less blameworthy. Some defenses such as defense of self or others, necessity, and duress, are such fundamental precepts that they are universally understood to afford context and justification for otherwise unlawful conduct. Other defenses and forms of mitigation reflect enormous advances in our understanding of human psychology and brain development. Regardless of why a criminal or violent act may have been committed, proof of guilt beyond a reasonable doubt is always required.

What this bill does is categorically limit a common-law defense to first-degree murder: the heat of passion defense. The typical example is when a husband comes home to see his wife in their marital bed having intercourse with another man and kills either or both of them because he was in the heat of passion—enraged and upset. It does not excuse or justify the killing, but it would allow the jury to consider the facts and still convict that individual of another form or degree of murder, such manslaughter.

It is a hallmark of our criminal justice system that it is the jurors who are able to go through the evidence and testimony in order to reach their decision of whether to convict, acquit, or find someone guilty of a lesser penalty. Because categorical prohibitions of defenses do not evolve through well-considered case law, we are concerned this will negate the pursuit of truth. What would occur is that this would have to be mechanically applied by judges without regard to the trial's truth-seeking function.

Outside of the courtroom, the tragic circumstances that were discussed by the supporters should justifiably give rise to outcry. I am absolutely saddened to hear the belief of the individuals who have come before us in support of this bill, who believe the law, as currently written, finds their lives are less worthy. Are the situations that were presented to this Committee repugnant? Absolutely, yes. I think we can all agree they are repugnant. However, we are concerned that, by starting to label based on class and status, this starts to lay the framework to allow us to chip away at legal defenses, which is a very slippery slope. What are we going to litigate against based on popular opinion? We should not reject or accept a defense on that basis. Are we going to argue that self-defense should be based on gender or ethnicity?

If a prosecutor believes a criminal act was motivated by sexual orientation, we already have an enhancement in statute. Harming people because of their race, sexual orientation, national origin, religion, or disability is deemed a hate crime under Nevada Law. It also counts as an aggravating circumstance. The law, as currently written, does not allow an accused individual to get out of jail without punishment. If someone uses this defense, they would not be found innocent at trial. The jury would weigh the evidence, and if found in favor of the defense, the verdict could be for a verdict other than first-degree murder, such as manslaughter. If they do not find in favor of the defense, an accused would be convicted of murder. Also, if the defendant were to use this defense, it is very possible the prosecutor would have information to be able to satisfy the elements necessary for that enhancement.

The Washoe County Public Defender's Office seeks to promote a transparent trial process and to educate the public that trials should be a search for truth through a complete and rigorous examination of all relevant evidence and consideration of any argument for acquittal or mitigation presented by the unique facts and circumstances in each case. We oppose categorical, legislative prohibitions of specific defenses.

John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:

Prior to this bill being heard in the Senate, Brooke Maylath and I met and discussed this bill. She shared her story with me about how some days she wakes up and she does not know if this is going to be the day somebody takes her life just because she is who she is. I am sorry you did not get to hear the mother of the young man who was murdered as well, because her testimony was very powerful and painful to ear. Such a young life was taken just because he was who he was. I am impressed by the Nevada Youth Legislature for trying to tackle such a weighted subject.

I will say that gay panic arguments are problematic because they seek to capitalize on unconscious bias in favor of heterosexuality. However, banning these arguments from the courtroom is not the best way to undermine the damaging effects of these arguments. The courtroom is actually the best place where these arguments should be aired and battled. There is no officially recognized affirmative defense of gay or trans panic. It has been used to bolster claims of insanity, diminished capacity—which we do not have here in Nevada—provocation, and self-defense. If we categorically ban this defense, it actually becomes

covert and, in a way, more effective. Right now, it could be out in the open. With the suggested jury instructions we proposed (Exhibit H), you can put those biases out there.

When Barack Obama got elected, a lot of people claimed we lived in a post-racial America, but we do not live in a post-racial America and everybody knows that. When you are selecting a jury, it is important to get peoples' biases out. To be honest, I want to know who is racist. I want to know if somebody has an LGBTQ bias right away. I want them to be more explicit with that because then we can get rid of them on the jury. It is the people who hide those biases from us when we are selecting a jury that are harder to deal with because they let their unconscious bias go into their decision-making process. We do not know it, and then they take it back into the jury room and make decisions based on that.

To bring up the case of Matthew Shepard, the judge in that case did categorically ban that defense, but the lawyers still subtly implied it. Thankfully, the jurors saw through that attempt and still convicted and reached the right verdict on the defendants in that case. To bring up the Lawrence [Larry] King case that was mentioned, California was the first state to actually pass a resolution on this matter in 2006. The resolution was fairly simple, and it related to a jury instruction. That case was still brought, and the lawyers, even though they were not supposed to bring this defense, still subtly brought it. Categorically banning it just puts it in the implicit section and then covert themes are used rather than bringing it out and litigating these things in the open courtroom. Unfortunately, the jurors in that case hung. Even though this law passed in California, this defense was still used in that case covertly.

So what we are saying is, it is more important to have these things out in the open, to have prosecutors bring this up, to have prosecutors talk about these things, to have prosecutors address these things in both jury selections and their opening and closing statements. Thus, I am saying the institutional actor best suited to determine things on a case-by-case basis is the jury trial system because the Legislature cannot imagine all the possible situations and cannot enact a one-size-fits-all approach, especially in criminal matters in which context is critical to fair adjudication.

In the Senate, both John Arrascada [Washoe County Public Defender] and I testified in opposition to this measure. We were asked, What is a possible scenario in which this would apply? I cannot imagine a possible scenario. That is why making a categorical law is not the best thing to do. You cannot imagine all the situations in which this would apply. In thinking about it, perhaps you have a person who is raised hyper-religious—people may object to that upbringing—and he thinks that if he has sex with or kisses a person who identifies as LGBTQ, he is going to go to hell. Then he finds out the person he was with is LGBTQ and he flips out and does something for which there is no excuse, but those facts should be aired within the courtroom.

We have brought an amendment to try to address some of the concerns with the bill (Exhibit H). If we truly want to rid society of the cultural norms that make gay panic arguments persuasive, we need to openly battle the assumptions that underlie such claims. The courtroom is the best place to do that; a defense can be raised, and a prosecutor can

expose the flaws and encourage jurors, who are seen as the conscience of our communities, to deliberate consciously on these biases that underlie our assumptions. This would eliminate covert bias and expose over-bias, which has been official because covert messages of bias are more powerful and harder to stop because it does not allow individuals to consciously correct or counter their implicit stereotype responses. It is the same reason we want implicit racial bias questions to be allowed in the courtroom. For the same reasons, we would want them to be allowed here in these types of cases.

Changing the jury box may be more effective than the legislative ban. The best way for claims of gay panic to lose their appeal, in the long run, is if the assumptions underlying these claims are exposed for what they are: false, negative stereotypes about gay and transgender people which have no basis in reality.

If our amendment were to be accepted, we would move from the opposition position to the support position. Unfortunately, the laws we have passed prior to having this hearing have not adequately protected our LGBTQ counterparts. They are subject to more violence. They are subject to things happening to them. We need to take that seriously; we just do not believe this legislation—without the amendment—is the way to do that.

Lastly, I just want to add that I do not believe Ms. Scaffidi's life is worth less than anybody else's. I do not believe Brooke's life is worth less than anybody else's. If any of my testimony here has made anybody feel less than, I apologize because that is not my intent.

Lisa T. Rasmussen, representing Nevada Attorneys for Criminal Justice:
I would incorporate what Mr. Piro and Ms. Bertschy have testified to. This is a very difficult situation for all three of us to be in. It really brings me no joy to be sitting here in opposition to this. However, as criminal defense attorneys, I think there are some things we need to point out. First of all, Nevada Attorneys for Criminal Justice strongly supports the LGBTQ community. In the past, we have actually supported legislation that enhanced crimes on the basis of LGBTQ identity, and we supported the fact that it was incorporated as a hate crime. It is a hate crime and also an aggravating factor. We supported all of that legislation because we, of all people, understand this community is probably the most disenfranchised community.

There was an amendment proposed by the Clark County Public Defender's Office (Exhibit H). When this bill was before the Senate Judiciary Committee, we had agreed with that amendment. We also had one additional suggestion for making one language change. We still support the amendment from the Clark County Public Defender's Office, and we really want to work with the Nevada Youth Legislature to make sure the intent of their bill can be passed, but in a reasonable way.

One of the problems is that everyone has a constitutional right to present a defense and have a fair trial. Trials are about seeking the truth no matter how unpopular someone's background or beliefs are. Our justice system says everyone is entitled to a fair trial and a defense. We do not judge who is entitled to a defense. By way of history, our Nevada

Supreme Court has said we cannot categorically remove a defense. They did that when we removed insanity as a defense and only had the option of guilty but mentally ill. They said "No, you have to have both. You cannot just categorically remove a defense." We do not have any precedent for categorically removing a defense.

I know the district attorney's office wanted an amendment, which was made, to remove language about diminished capacity because we do not have that defense and they were worried this might suggest we have it. However, we do have concepts of heat of passion from common law. Those are valid defenses in many situations. What the proposed amendment from the Clark County Public Defender's Office suggests is that we make changes to the way we select a jury, and we certainly agree with that. It also suggests that this concept of gay panic cannot be the sole basis of the defense, and we agree with that. It was just a minor change to the wording.

I think it is also important for me to say we understand how discriminated against this group is because we also have clients who are from the LGBTQ community. In fact, we have clients in prison for defending themselves when they were the victim of the very same kind of attack we are talking about. It is not that we do not understand there is a legitimate issue here; we just think we can work with the sponsors on making some changes that meet the goal while also balancing the fact that we need to make sure we are not taking away the rights of one group by providing relief to a different group. I hope we can pass legislation in a way that balances those rights.

I very much want to work with the Nevada Youth Legislature and the sponsors on this bill. I hope we can come to an accord on that. I thank you for allowing me to testify. This is not really a position Nevada Attorneys for Criminal Justice wants to be in because we understand the gravity of the situation, but we also need to balance the entire process and the fairness of it.

Chairman Yeager:
I have a couple of clarifying questions on your amendment, Mr. Piro. It looks as though on page 2 of your amendment, the language that would strike out section 1, subsection 2 was already stricken out through the Senate amendment. Is that correct?

John Piro:
Yes, Mr. Chairman.

Chairman Yeager:
Your amendment, then, would seek to make some changes to section 1, subsection 1, and would then seek to strike what is now section 1, subsection 2 of the bill, as well as add "Amendment 4," which is new language?

John Piro:
That is correct.

Chairman Yeager:
I will have to check with the Legislative Counsel Bureau Legal Division. I am not sure if the language under "Amendment 4" would be germane to this bill. Certainly, "Amendment 1" would, because it is modifying the language, but I will have to seek some further clarification on "Amendment 4," and whether that would be germane as defined by Legal. I will make sure to do that.

Assemblywoman Tolles:
I think everyone can agree that abuse, discrimination, and violence against anyone, regardless of their gender identity or sexual orientation, is injustice, and we should do all we can to stop it. I can tell this is hard for you to come forward in opposition. I looked back at the history of what this Legislature has done in regards to protecting people from abuse and discrimination. In 2011, Senate Bill 180 of the 76th Session included gender identity and sexual orientation in the hate crime law. We do have a protected class. Are there other examples of limitations on defenses that can be used? The example that was given in the testimony in support was that race, for example, cannot be used as a defense. One of the other members of the Committee pointed out that today is Denim Day, so what somebody is wearing cannot be a defense. A sister of a police officer once shared with me that the officer once went to arrest a man for battering his wife, and the man's defense was that his wife was on her period and that was driving him crazy. So do we have other examples of limitations we have put into law whereby a defense cannot be used for murder?

John Piro:
There are hate crime enhancements for race, gender, and gender expression. I do not believe there is a categorical ban on using race as a provocation defense. I think, in court, that would get slapped down really fast, just as I think this will get slapped down really fast. I am actually thankful we are moving toward a place in society where we have the unpopular opinion on this issue.

Assemblywoman Tolles:
As I look at your amendment, you add the word "solely" in section 1, subsection 1. My concern would be that all somebody would have to do is add something else. If they say it was for this reason and then they add something else, that would not solve the problem we are trying to solve with this legislation.

John Piro:
I agree that it is an imperfect amendment, and we are more than happy to continue working on it. However, I do believe it would still allow for the full ferreting out of all the facts, which I think the original bill would deny. I tend to disagree with the presenters of the bill that this would not close off a full ferreting out of the facts at trial. I believe this would, indeed, close those options.

I also feel as though I did not fully answer your first question. There is diminished capacity. That is no longer allowed under the law. Although, I do think that sometimes works to function as injustice as well because there are some cases in which we would certainly like to present facts regarding diminished capacity resulting from intoxication from drugs or something else, not to excuse, but to give a full and fair picture of everything that was going on leading up to the events.

Kendra Bertschy:
I would add that at the end of a trial, jurors receive jury instructions from the court. One of the instructions is that they are not to leave common sense at the door. Even if the defense discussed another circumstance, which would allow all this information to be before the jury, the jury could still find these defenses to be unreasonable justification. They would be able to use that in their determination.

Assemblyman Watts:
I want to start by saying this is more of a comment, so you do not need to respond to this. I understand the position and the people you are representing. I appreciate the legal analysis you bring. The points you made on jury selection are very important. As one of the members on this Committee who does not have a legal background, I draw on my experience as a lay person when it comes to these issues. You talked about Lady Justice and the scales of justice. As a lay person, I think discrimination tips the scales. Discrimination should never be a tool in the toolbox or a component of our laws because I think it tips the scales of justice and what is right. As somebody who was on the other side of the dais in 2011 working with members of the LGBTQ community and supporting them in guaranteeing people would not be discriminated against when looking for housing or employment or seeking public accommodations—and we were one of the first states to do that—it is unfortunate to me that we are still seeking out discrimination that has been present in our laws forever. When I look at this bill, to me, it is just another step in that direction of making sure discrimination has no place in our statutes in Nevada.

Chairman Yeager:
Is there anyone here in neutral? [There was no one.] I will invite the presenters up for any concluding remarks.

Senator Scheible:
There are two aspects I want to address that I think many of us are not familiar with: the jury selection process and the procedure for our hate crime statutes. Selecting a jury is difficult and important. It is not an exact science, but certainly, our jobs as prosecutors, defense attorneys, or civil litigators, is to ferret out discrimination and biases, whether they be biases that have a legal implication or not. For example, I had a case a couple of months ago that involved an individual who spoke very rapidly. He was really excited every time he spoke. I knew some people were going to have trouble accepting that he was the victim of a violent crime because he would have trouble focusing on telling the story. That does not have a legal implication, but I asked questions such as, "Do you know anybody—do you have a friend or a family member—who gets really animated when they are nervous? Have you

ever encountered somebody who cannot focus even though what is going on is really important?" When potential jurors told me, "Well, I think that if someone was a victim of a crime, they would be able to tell the story in a linear fashion," I used my peremptory challenge to remove that person from the jury. That is what I do as a prosecutor. That is my job. That does not have a legal implication.

What this bill does is say, if we are talking about somebody who has a bias against individuals who are transgender, we get to ferret that out, and then we get to do the second thing we do in jury selection: ask them, "Can you set aside your personal opinion and apply the law as it is, not as you think it should be?" Anybody who hates trans people or gay people and thinks they are scary, but can set that aside for the purposes of evaluating the case in front of them, would still be allowed on a jury. That is what jurors do every day; they set aside their personal opinions about whether marijuana should be legal, whether spanking your own child should be legal, or whether men should be allowed to make aggressive passes at women when they are drunk. They put aside all of that to apply the law the way it is, not the way they believe it should be. The people who get to decide the law is us, with the backing of our voters, our constituents, and science. Science tells us the gay panic defense is not real, it is not a legitimate argument, and we ought to reject it. That is why accepting S.B. 97 (R1) and passing it only improves our jury selection process. It does not stop us from ferreting out the people who are biased and people who cannot set aside their personal opinions. It allows us to do that within the context of the law.

The second thing I told you I would talk about is hate crimes. Charging a hate crime is not as simple as saying, This happened because of someone's identity—this happened to a gay person, this happened to a black person—now it is a hate crime. I will not bore you with the details of our different hate crime statutes. What we call the smaller hate crime statute, *Nevada Revised Statutes* 207.185, says that a crime that is otherwise a misdemeanor but is perpetrated because of someone's membership in a protected class will be punished as a gross misdemeanor instead of a misdemeanor. *Nevada Revised Statutes* 193.1675 is the felony hate crimes statute. It provides for an enhancement to the penalty if someone commits what would otherwise be a felony against somebody because of their orientation, identity, or membership of another protected class.

I think it is interesting that these are different, and I want to point out to you what the difference is. If you commit a plain misdemeanor battery—you push someone, punch someone, pull someone's hair, kick someone, you do not leave a mark, there is no substantial bodily harm, there is no deadly weapon involved—you can be brought into justice court and have a bench trial. However, if you committed that crime because of your hatred toward somebody else, it kicks it up to a gross misdemeanor, and now you are in district court. You would actually get charged with a gross misdemeanor instead of a misdemeanor. For a felony, it is different. If you are charged with a category C felony—battery with substantial bodily harm—but you did it because of your hatred toward somebody else, you do not get kicked up to a category B felony; you stay at a category C felony, but when it comes time for sentencing, the judge has the discretion to impose a penalty enhancement because of the hate crime element. These two types of hate crimes are completely different. One kicks up the

type of crime from misdemeanor to gross misdemeanor while the other is simply a penalty enhancement. Simply having a penalty enhancement is not the same as having a different crime or a new charge.
Let us say our victim is a member of two, three, or four protected classes. A jury can find a victim is a member of all four, but someone might only be penalized for one. A jury can find the victim is only a member of two of the four classes the prosecutor alleges. All of these charging decisions are separate from the theory of defense. It is important that we keep them separate. Hatred, bigotry, and discrimination are not defenses to violence, and there is no reason our law should be unclear about that.

Senator Harris:
I would first like to thank the public defender's office. I personally value their advocacy. They represent the least among us at times in which they are facing serious legal challenges, and they do such a great job. I would like our public defenders to be here, sitting at this table, trying to fight for every defense for those they defend. I truly appreciate their coming forward and doing their job. The question, then, is about us doing ours. It was said that Lady Justice is supposed to be blind. The key part there is she is supposed to be blind. That blindfold does not get put on Lady Justice by herself; we have to put it on her. Anytime we see Lady Justice pulling that blindfold up, it is our job to poke her in the eye. These things do not just happen.

To Assemblywoman Tolles' question about other defenses we have eliminated, one great example is voluntary intoxication. If you went out and chose to get drunk and then went off and did something another reasonable person would not have done, we have been very clear to say that is no excuse. This, too, should be no excuse. We are at a time in which a person's race is not explicitly something you cannot use as a defense, but thank goodness we have shamed people out of it. Clearly, from the stories we have heard today, we are not there yet with the LGBTQ defense. There are people who are not ashamed to bring that up. They will do it, and there are juries today that will allow it. I am not willing to wait until we get to the point where everyone is too ashamed to bring it up or to make that attempt. I am not as convinced as Mr. Piro that they are going to be laughed out of court now—not all the way across this country, not all the way across this state. If that is not going to happen, we have to make it happen. That is what I would hope we are doing here.

There is no prohibition on bringing up the fact the person was LGBTQ and that it played a part in your actions. We are simply saying it is not a reason to mitigate that action. You can bring it up if you would like. You can talk to the jury about it if you would like. It just will not be used to somehow suggest someone does not deserve the full punishment. If anything, it should be used to suggest someone deserves that enhancement. That will be up to the prosecution and the defense to slug it out in court.

If you have not noticed, we have a bit of tension between the branches of government. There is a question about whether we should just let the Judicial Branch handle these types of things. My answer is, yes. Their job is to interpret laws. Guess whose job it is to make them? We make the laws; the judges will then interpret them. I do not necessarily see a conflict in the way our government is designed to work. It is up to us to take this defense away. I am perfectly happy with admitting that is what I am trying to do here, and I encourage all of your support.

Olivia Yamamoto:
I will end it with a ludicrous situation that will prove the gay and trans panic defenses are just pure homophobia and transphobia masked as legal defense. The homosexual panic is just as psychologically justified as a "heterosexual male panic." If I am out and, as many women have experienced, a heterosexual male makes a pass at me, and I kill him, I would think that a lot of people would have a problem with me using a heterosexual male defense—or using any demographic factor for that matter—to blame him for his own death. This is just insanely rooted in homophobia and transphobia and does not serve any legal, justifiable purpose. I do want you to find it in your hearts to pass this bill.

[All items submitted but not discussed will become part of the record: (Exhibit I), (Exhibit J), (Exhibit K), and (Exhibit L).]

Chairman Yeager:
I will close the hearing on S.B. 97 (R1). Would anyone like to give public comment?

Serena Evans, Policy Specialist, Nevada Coalition to END Domestic and Sexual Violence:
I just want to quickly thank you all for honoring and participating in Denim Day. I know Assemblywoman Peters and Assemblywoman Tolles briefly brought this up, but Denim Day began after the Italian Supreme Court overturned a rape conviction on the premise that, since the victim was wearing tight jeans, she must have helped the perpetrator remove her jeans, and therefore consented to the act. The following day, women in the Italian Parliament came to work wearing jeans to protest the ruling. Today, we continue the tradition by wearing denim to stand in solidarity with survivors of sexual assault and to protest against destructive attitudes around sexual assault that still exist today. The Nevada Coalition to END Domestic and Sexual Violence, along with our program members and ally professionals, want to thank you for celebrating, honoring, and raising awareness on this day and for championing legislation that will increase the rights and protections for victims and survivors of sexual assault.

Chairman Yeager:
We will be starting at 8 a.m. tomorrow and Friday. Tomorrow we have three bills on the agenda. On Friday, we will have three or four bills. I hope everyone has a really great day. This meeting is adjourned [at 10:55 a.m.].

RESPECTFULLY SUBMITTED:

_____
Lucas Glanzmann
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a chart comparing certain types of defense, submitted by Senator Melanie Scheible, Senate District No. 9.

Exhibit D is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary, submitted by Veronica Melton, Private Citizen, Las Vegas, Nevada, in support of Senate Bill 97 (1st Reprint).

Exhibit E is a letter dated April 24, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, submitted by Sherrie Scaffidi, Director, Transgender Allies Group, in support of Senate Bill 97 (1st Reprint).

Exhibit F is a letter dated April 24, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, submitted by Jane Heenan, Clinical Director, Gender Justice Nevada, in support of Senate Bill 97 (1st Reprint).

Exhibit G is a letter dated April 24, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, submitted by Serena Evans, Policy Specialist, Nevada Coalition to END Domestic and Sexual Violence, in support of Senate Bill 97 (1st Reprint).

Exhibit H is a proposed amendment to Senate Bill 97 (1st Reprint), submitted and presented by John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office.

Exhibit I is a copy of an excerpt of an article from *U.C. Davis Law Review* titled "The Gay Panic Defense," by Cynthia Lee, dated December 2008, submitted by John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office.

Exhibit J is a copy of a PowerPoint presentation titled "Eliminating the use of gay and transgender panic defenses through legislation," submitted by Senator Melanie Scheible, Senate District No. 9.

Exhibit K is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary, submitted by Mackenzie Baysinger, Session Lobbyist, Human Services Network, in support of Senate Bill 97 (1st Reprint).

Exhibit L is a copy of a resolution by the Board of Directors of the National Association of Criminal Defense Lawyers titled "Concerning Categorical Legislative Prohibitions of Defenses in Criminal Cases," dated February 16, 2019, submitted by Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.