

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eightieth Session
February 15, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:10 a.m. on Friday, February 15, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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:

None



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Sandra Douglass Morgan, Chairwoman, Nevada Gaming Control Board
Patrick J. Conmay, Chief, Investigation Division, Department of Public Safety
Ryan Miller, Deputy Chief, Investigation Division, Department of Public Safety
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
David Cherry, Government Affairs Manager, City of Henderson
A.J. Delap, Government Liaison, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's
Office
John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public
Defender's Office
Janine Hansen, State President, Nevada Families for Freedom

Chairman Yeager:

[Roll was taken and protocol explained.] We have one presentation and one bill today. We will start with the presentation from the Nevada Gaming Control Board. We have with us today Chairwoman Sandra Douglass Morgan and Mr. Michael Morton. Welcome to the Judiciary Committee.

Sandra Douglass Morgan, Chairwoman, Nevada Gaming Control Board:

It is an honor to be here today to provide you with an overview of the Nevada Gaming Control Board. You should all have the Board information packet and this information is available online ([Exhibit C](#)). It is given to agencies around the world that want to learn more about our gaming regulatory structure, our leadership, and guidance on gaming regulation.

If you turn to page 4 ([Exhibit C](#)), you will see that the Board's reputation is based on our philosophy, which is that gaming—when properly regulated—can thrive and be an important contributor to the state's economy. We understand the need for a balance between our rigorous standards for the gaming industry while giving them the flexibility to innovate and expand so that gaming will continue to be an economic driver in our state.

The Board is charged with protecting the integrity and stability of the industry through in-depth investigative procedures, licensing practices, strict enforcement of laws and regulations, and holding gaming licensees to very high standards. We are responsible for not only protecting Nevadans, but the millions of visitors to Nevada as well.

An overview of the Board and the Nevada Gaming Commission can be found on page 6. Chairman Yeager, I am sorry; I did not know if you wanted me to go through this. I am happy to take questions as I go along, but it is whatever you prefer.

Chairman Yeager:

Go through the presentation for now and we will hold the questions to the end. I think that makes the most sense.

Sandra Douglass Morgan:

You will see that we have a two-tiered system. I am the Chairwoman and the Executive Director of the Gaming Control Board. It is a three-member board and we are the 24/7, day-to-day gaming regulators. The other member is Terry Johnson, who has been with the Board for six years, and we have a third position that is currently vacant.

The five-member Nevada Gaming Commission is a part-time Commission, and they set policy for the Gaming Control Board and for the state. The chair of the Gaming Commission is Dr. Tony Alamo, and those members are John T. Moran, Deborah Fuetsch, and retired Judge Philip Pro. There is currently one vacancy on the Gaming Commission.

When the Board believes discipline is appropriate against a licensee, it acts in a prosecutorial capacity, and the Commission acts in a judicial capacity to determine whether or not discipline or sanctions can be imposed. In other instances, the Board—in conjunction with the public and the gaming industry—and the Commission can actually recommend regulation changes. Those regulation changes are ultimately the responsibility of the Commission to consider and approve.

Typically, the Board operates in two areas: *Nevada Revised Statutes* (NRS) Chapter 463, which regulates the licensing of gaming, and the Nevada Gaming Commission's regulations. An overview of the history of gaming regulations can be found on pages 9 through 11 ([Exhibit C](#)). Page 12 provides a visual depiction of the Nevada gaming regulation organizational structure.

As you can see, the Board, the Commission, and the Gaming Policy Committee are all appointed by the Governor. The executive secretary serves as both the clerk and the parliamentarian of the Board and Commission, and assists both bodies with calendaring and conducting all meetings as well as other administrative matters.

The Gaming Policy Committee was also created by statute under NRS 463.021. It is a 12-member committee which meets at the call of the Governor to discuss matters of gaming policy. It is composed of one member of the Assembly, one member of the Senate, one member of a Native American tribe, one member of the Gaming Control Board, and one member of the Gaming Commission. There are six others appointed by the Governor: two from the general public, and a combination of gaming licensees, both nonrestricted and restricted. I will discuss the distinction between those later. The Committee's recommendations concerning gaming policy are advisory; however, it provides a public

forum for the Governor, gaming regulators, and the public to discuss gaming policy in our state.

If you turn to page 14, ([Exhibit C](#)), you will see an overview of our administration division. This division supports the operating divisions of the Board, such as human resources management, training, facilities, contracts, purchasing, accounting, budgeting, and records retention. Additionally, professional standards, also known as internal affairs, and the Board's administrative hearing officers, are assigned to this division.

The economic research section also falls within our administration division. This division is responsible for forecasting gaming, tax, fees, and revenues. These forecasts are presented to the state's Economic Forum as part of the State General Fund revenue projection process. This section also prepares a legislative report, which takes into account net incomes and assessed values of licensees. They also perform research projects at the request of the Board, the Nevada Legislature, and the Governor. The most recent release that was issued by this economic research section was issued a couple of weeks ago, which reflected that approximately \$146 million was wagered in the state's 200 sports books for this year's Super Bowl. The chief of that division is Ms. Jaime Black, and she manages approximately 50 employees.

An overview of our audit division can be found on page 16. This division is primarily responsible for auditing Group I casinos throughout the state. The definition of a Group I casino is based upon a gross gaming revenue threshold that fluctuates in accordance with the consumer price index. For 2019, that threshold is \$6.5 million.

The audit division audits larger casinos that gross over \$6.5 million, and they have a 2- to 2.5-year cycle. The primary objectives of the audit division are to determine proper reporting of gaming, entertainment revenue, and whether the casino is in compliance with all applicable gaming and live entertainment laws and regulations.

Additionally, the audit division periodically performs cash counts to ensure the casinos have sufficient funds; they analyze annual financial statements to monitor the entities' continuing financial viability; they prepare reports for the Board and for the Commission to determine and ascertain certain key details of certain transactions. They also monitor the performance of all casino games in the state.

The chief of the audit division is Mr. Kelly Colvin. His team has approximately 90 employees. Fifty percent of them are designated certified public accountants (CPAs), and the professional staff have either passed the CPA exam or are in the process of satisfying that requirement.

If you look at page 19, you will see an overview of our enforcement division. By statute, all employees of the Gaming Control Board are peace officers; however, the enforcement division is the 24/7 day, swing, and grave operation of the Gaming Control Board. They are responsible for conducting criminal and regulatory investigations. They investigate and

arbitrate disputes between patrons and licensees. Their investigations range from simple violations that may involve a patron believing that a machine malfunctioned, all the way to detailed, complex, multijurisdictional investigations in conjunction with other law enforcement agencies such as the Federal Bureau of Investigation or the Internal Revenue Service. This division is also responsible for processing and conducting background investigations and registering all gaming employees who work in the state of Nevada.

The enforcement division is led by Chief Karl Bennison and he currently has 91 sworn peace officers and 29 clerical staff located throughout the state. This division is the only one that has offices in five cities in the state: Las Vegas, Carson City, Reno, Elko, and Laughlin. These peace officers have either a college degree or a background of education in law enforcement experience. They are also Peace Officer Standards and Training-certified. They carry firearms, they are required to complete a gaming academy and field training program, and they are able to conduct covert operations into criminal activities involving gaming.

The enforcement division also makes recommendations to the Gaming Control Board regarding potential candidates for inclusion on the list of excluded persons, which has historically been referred to as the "black book." They also conduct, inspect, and approve new games, chips, and tokens.

An overview of our investigations division can be found on page 21. A strong investigations division is very imperative to ensuring that we continue to be the international leader in gaming regulation. This division ensures that every single licensee or applicant is subject to an extensive investigation of personal background and financial activity to verify suitability. Agents further investigate and analyze activities of all privately held companies seeking a gaming license or registration in the state of Nevada. They also produce detailed reports used by the Board and the Commission as a basis for licensing and approval recommendations or decisions.

The investigations division is led by Chief Mike LaBadie. He heads a team of approximately 85 personnel; 65 of whom are actual investigative agents who have college degrees in business or financial discipline, criminal justice, or an extensive law enforcement background. This division has offices in Las Vegas and Carson City.

Included in this division is the applicant services and agency liaison. This liaison provides and receives all application forms and ensures that each application is properly completed and all required fees are collected. They also respond to requests from other governmental agencies around the world. The division registers and investigates individuals who bring patrons to Nevada casinos for junket programs, and they monitor all semiannual reports on key employees submitted by nonrestricted gaming licensees.

I mentioned that the investigations division can review and analyze financial activity for privately held companies. Within this division is our corporate security section. This section monitors, investigates, and analyzes registered publicly traded corporations and their subsidiaries involved in the Nevada gaming industry. Any entity traded on a public

exchange regardless of where—United States, Japan, or the United Kingdom—is subject to review by this corporate securities section.

These investigators prepare highly detailed reports used by the Board and the Commission so that we can make the proper licensing recommendations and decisions. They also review and evaluate audit and audit licensees' compliance plans, such as due diligence for their vendors and contractors. They monitor the publicly traded corporations' activities, and they handle special projects including debt analysis, litigation reviews, and financial liability and viability. They also monitor foreign gaming reporting, not only for the Board and its agents in Nevada, but also for their operations in other jurisdictions in the United States and around the world.

The overview on the tax and license division can be found on page 24 ([Exhibit C](#)). Their responsibilities involve Group II casinos, so when I mentioned the audit division earlier, it involved Group I casinos, grossing \$6.5 million or higher, and Group II casinos grossing \$6.5 million or lower. They, too, have an audit cycle that is similar to 2 to 2.5 years. They have approximately 22 employees and this tax and license division is led by Chief Dan Douglas. The tax and license division has three sections: collections, compliance, and licensing.

The collections section collects, deposits, and distributes gaming taxes, fees, penalties, interest, and fines. The compliance section performs reviews on Group II casinos. They conduct reviews of all manufacturers, distributors, slot route operators, operators of intercasino-linked systems, and mobile gaming operators. The licensing section issues all gaming licenses approved by the Commission. They are also tasked with maintaining our database for all licensees, including owners, key employees, and any conditions that may be placed on those licenses.

This section employs various means for gathering audit evidence. It can include anything from covert observations of casino practices and procedures to interviews with casino personnel on a periodic basis to confirm that the casinos are actually complying with their own internal procedures.

The overview of our technology division can be found on page 26. This division is the primary point of contact for new gaming innovation introduced in the state of Nevada. It is a very important part of the Board—as are all of the sections—because of the gaming industry's growth in utilizing new technology for gaming activities. This department is led by Chief Jim Barbee. He has approximately 26 employees in his division. They range from engineers, information technology auditors, and technicians. He also oversees the gaming technology lab in Las Vegas, which houses machines so they can test new equipment.

The fundamental role of this division is to review all the technology used directly in the conduct of gaming activities. This division reviews and makes recommendations to me, as Chairwoman, for approximately 2,000 new and modified gaming devices and associated equipment each year.

This division also assists technology innovators to ensure that they understand, when they are coming to Nevada, what Nevada's regulatory structure is with regard to new technology devices. They also support our enforcement division, whether it be in regard to a patron complaint, such as someone saying that a machine did not operate properly. They also assist the investigations division during the licensing process by providing data acquisition and analysis services.

If you turn to page 29, you will see selected data and information about the Gaming Control Board. We currently have 2,895 licensees as of June 30, 2018. There are 443 nonrestricted licenses and you will see that those are broken down into Group I and Group II. There are approximately 144 Group I licensees and 299 Group II licensees as of June 30, 2018.

The difference between a nonrestricted gaming license and a restricted gaming license is that in order to be a nonrestricted gaming licensee, you have to have 16 or more slot machines or any number of slot machines in conjunction with a gaming device; a live game; a race book or sports book pool; a slot machine route; an intercasino-linked system; or a mobile gaming system. If you fall within those categories, you are deemed to be a nonrestricted licensee. Restricted licensees have 15 or fewer devices or games on their property. We have 1,961 restricted licensees.

If you turn to page 31, you will see an overview of our slot devices and table games. There are approximately 144,796 slot devices at nonrestricted locations with multidenominational games being the most popular. We have 18,961 slot devices at restricted locations, and a total of 6,035 table, card, and counter games.

On page 32 ([Exhibit C](#)), you will see an overview of our gaming revenues. Statewide for fiscal year 2018, there were revenues in the amount of \$11.8 billion. Of that, \$7.5 billion is from slot devices, and \$4.3 billion is from games and tables.

Our taxes and license fee collections can be found on page 33. The gaming industry in Nevada produces a substantial portion of the overall revenue to the General Fund. The Board and Commission are the taxing authority on behalf of the state for those revenues and fees. Generally, the largest share of gaming taxes are generated from the tax on the gaming revenue, also known as the "house win," with other fees and taxes associated with equipment placement and live entertainment.

Gaming fees on gross revenues are applied monthly on a graduated rate schedule. It is 3.5 percent on the first \$50,000 of gross gaming revenue, plus 4.5 percent on the next \$84,000 of gross gaming revenue, plus 6.75 percent on gross gaming revenue exceeding \$134,000. I have a breakdown of those licensees by tier if you are interested: For the 3.5 percent tier, there are 118 licensees; 4.5 percent tier, 86 licensees; and for the 6.75 tier, 238 licensees.

You also see collections broken down by county and then based on the type of tax. The distribution of those tax collections is reflected on page 35 with 95 percent of those going to

the General Fund, \$1.3 million going to problem gambling, and a little under \$44 million going to schools and counties.

That concludes our presentation and overview. We are happy to answer any questions.

Chairman Yeager:

Thank you very much for your presentation. Before I open it up to others, I have a couple of questions. Some of us on this Committee had a chance to go to the University of Nevada, Las Vegas gaming lab a few weeks ago. It was an interesting experience for us and I have wondered how the gaming lab works. Is there a partnership with the Board, do they interface with the Board in some way, or are they completely separate in terms of what they are doing there?

Sandra Douglass Morgan:

I am unaware of any type of memorandum of understanding or an agreement between our lab where we actually test devices versus a gaming lab. I will tell you that the Board works not only with our higher education institutions, but with anyone who wants to partner or learn more about us and our activities.

Chairman Yeager:

As a follow-up to that, we learned of casino dominos that were developed in the gaming lab. I assume when that gets developed, it goes through whatever the normal mechanism is at the Gaming Control Board to make sure it is vetted and approved before it actually lands in a casino. When we went there, they told us that it was in one casino in Las Vegas—the Plaza Hotel and Casino—that was offering it as a table game. Are you able to give us a sense of what the process would be when someone brings a new idea to the Board? How does the Board look at it? How long does it take to get something approved and actually on the casino floor?

Sandra Douglass Morgan:

I will give an example. We had a board meeting on Wednesday and there was a new development—what they called a "video game gaming machine"—that was being proposed here in Nevada. This applicant had a couple of machines in different jurisdictions. With a new concept—especially if it involves technology—they will present it to our technology division and see what type of license they would potentially need. That is one process they go through to make sure that the game is properly vetted with respect to making sure it is paying out properly and making sure we understand how the game works.

The other route would be ensuring that the person is fit to be licensed, so the Board and the Commission, with regard to the person who wants to put forth the game or actually have a license, has a finding of suitability. I cannot give you an exact time line because it really depends on how the game is functioning, if it is functioning properly, and if it is being successful on its test runs. All those factors come into play. I can tell you that the investigations division will be looking at the person and the technology division will look at the game and the testing. Hopefully, it all comes together by the time it comes to the Board.

Chairman Yeager:

I had one more question and it is perfectly fine if you do not want to answer it. I just wondered if you had any thoughts on the Department of Justice reinterpretation of the Federal Wire Act and how it might affect Nevada in terms of online gaming and interactive gaming that we have in the state. I know there is some ambiguity in terms of how that is going to be applied and interpreted. I do not know if you have any comments on it or if it is too early. If you do not want to say, I fully understand.

Sandra Douglass Morgan:

Just for the record, there was a decision by the Department of Justice in 2011 and that decision was reversed, for lack of a better term, earlier this year. We are reviewing that decision and I have definitely been in contact with the Office of the Attorney General about it, but we are confident that our regulatory scheme is solid. We are still reviewing the effects of that decision, as I am sure plenty of other states and licensees are as well.

Assemblywoman Cohen:

I was wondering about some burgeoning areas in Nevada. Are there areas of the state where we are seeing more and more growth with gaming? Wendover has always been kind of a little spot, but are there other places like that where you are seeing more growth that would be surprising to those of us who usually stay around Las Vegas and Reno?

Sandra Douglass Morgan:

There is new ownership for a property in Wendover, and I know they are definitely making some improvements there. I am basing this on my tenure on the Gaming Commission that I had for about six months prior to this. I know that the Board is always working closely with licensees in the industry to ensure they have the flexibility to expand, but also are still within our control. A lot of the growth—just based on the numbers—is mainly in southern Nevada, but we want to encourage and ensure that even the restricted locations throughout Nevada are able to thrive.

I have not specifically seen one community that is growing. There is a lot of growth in Laughlin in southern Nevada, which is definitely a separate community. It is getting its own feel. I hope that answers your question, but I am happy to provide any numbers on growth by specific regions.

Chairman Yeager:

Are there any other questions from Committee members? [There were none.] I will ask one more. I notice that you have a vacancy on the Gaming Commission and the Gaming Control Board. Is there any sense of when those might be filled?

Sandra Douglass Morgan:

Unfortunately, Chairman, I do not know, as that is the decision of the Office of the Governor.

Chairman Yeager:

Okay, I thought that is what you would say. I will offer one last chance for questions from Committee members. [There were none.] Thank you for joining us here this morning.

I am going to open the hearing on Assembly Bill 45.

Assembly Bill 45: Creates the Nevada Threat Analysis Center and the Nevada Threat Analysis Center Advisory Committee in the Investigation Division of the Department of Public Safety. (BDR 43-348)

Patrick J. Conmay, Chief, Investigation Division, Department of Public Safety:

Assembly Bill 45 is intended to set forth responsibilities and duties for the Nevada Threat Analysis Center (NTAC), also for the Nevada Threat Analysis Center Advisory Committee. Captain Ryan Miller is here with me and he is the deputy chief of the Nevada Department of Public Safety, and Lieutenant Andrew Rasor is the current director of the NTAC.

You will hear this morning that the language of the bill talks about creating NTAC, but NTAC exists as an entity today and has for a while. They will cover that in the presentation ([Exhibit D](#)). The only other thing I wanted to say is that we were contacted yesterday afternoon and even this morning by people who have indicated they have some recommendations or suggestions for amendments. I believe each of them will talk to you later, but I wanted to let you know before we got started. Even though the presentation was prepared and will outline things the way the bill is written, we are completely open to everything we heard today as far as suggestions for amendments. Our intention is to create something that is good and acceptable to all the people involved. I just want to let you know that as we go into the presentation.

Ryan Miller, Deputy Chief, Investigation Division, Department of Public Safety:

As Chief Conmay said, I am going to provide a little more detail on the bill. In order to do that, I think we have to back up a little and talk about the history. I apologize if you are familiar with fusion centers. I will try to be brief and go through it, but I think it is important to understand what fusion centers are—as Chief Conmay said, the NTAC does exist—and what this bill hopes to achieve.

Fusion centers are essentially part of a national effort to share information between local, federal, state, tribal, and private sector partners—threat and public safety information. It came out of the 9/11 Commission, which reviewed the 9/11 attacks and some of the things that occurred leading up to those. What they basically determined was that there were a lot of different federal agencies that had information on the terrorists but they were not talking. Not that it would have necessarily changed anything, but had they been talking, they might have been able to put more pieces together before something bad happened. What they did was make some changes on the federal side to make the federal agencies share information and talk to each other about the different things they know.

At the same time, they recognized that the federal footprint is a fairly small footprint overall. They recognized the need for state and local entities to be involved as well as private sector entities to be able to share information from the local level that might be threat information. What was born out of that was this idea of fusion centers, being a place generally within a state—some states have more than one, which we do—that information can come, be vetted and shared, not only with national or federal partners, but also with local partners, and at the same time federal information—threat information—can come down and be shared with local partners also.

The Nevada Threat Analysis Center has existed since 2008. I know the bill talks about the creation, but again we will get more into the purpose of the bill. The Nevada Threat Analysis Center was created in 2008 by then-Governor Gibbons. It was initially housed within the Nevada Office of Homeland Security. It was funded via the State General Fund and the U.S. Department of Homeland Security grant program funds provided to the Homeland Security Office of the state, as well as the Homeland Security Office grant funds from the federal government.

Over that year, it was determined that there needed to be a law enforcement component based on the duties that fusion centers do. Governor Gibbons made a decision to combine the resources that were at the Homeland Security Office with resources from the Department of Public Safety's investigation division. That was done because the resources exist and there were always some statutory obligations that fit into some of those duties that the fusion center needed to take care of. He combined those resources and then he put NTAC under the supervision of the Department of Public Safety's investigation division.

Since that time it has operated with the existing funding that we had through the General Fund as well as ongoing Homeland Security grant funds. There have been a number of executive orders related to NTAC from prior governors related to their duties and that all ties into where I am going with this.

It is important to note that NTAC is one of 79 federally recognized fusion centers in the United States. There are two here in this state; the other one is the Southern Nevada Counter Terrorism Center (SNCTC) in Las Vegas. The Nevada Threat Analysis Center essentially has responsibility for 16 of the 17 counties. We work with the Northern Nevada Regional Intelligence Center at the Washoe County Sheriff's Office, but we also work with the SNCTC on all matters related to Nevada.

Getting to the meat and potatoes of this bill, this bill enhances the current statutory authority and identifies primary responsibilities in the Nevada law. Again, we have been doing this for over ten years, but this codifies everything and puts it into Nevada law.

It establishes things that are confidential, the disclosure of which would potentially jeopardize ongoing investigations, public safety, and homeland security. What I mean by that is when we share information with other states, other fusion centers, other law enforcement agencies, even with private sector partners, that threat information is oftentimes

sensitive information. For instance, we might get information from the federal government that identifies a vulnerability to a critical infrastructure. We may need to share that with those critical infrastructure partners that we have throughout the state so that they can identify whether or not they have that vulnerability and maybe there has been an intrusion or something like that. In order to do that, we also do not want to make that public because it would jeopardize an ongoing criminal investigation and might make them even more vulnerable than they already are. It is particularly so with private sector partners because they have intellectual property they want to protect. If they are going to share information with us and open up to us about that, we have to be able to protect that information.

Again, this would help protect some of that information. We do believe that it is protected as it exists right now with various federal laws, policies, and case law, but this would really help codify it, make it very clear, and prevent us from potentially having to litigate every tiny issue that comes up, which would be very expensive.

This bill would also provide criminal penalties for unauthorized disclosure of the confidential information because, again, it would jeopardize public safety. It establishes the NTAC Advisory Committee which would allow us to have closed meetings under certain circumstances. Again, the Advisory Committee does exist; it has existed for some time. One of the challenges that we have is that we want to be able to share threat information with those partners. Currently, we do not have a mechanism to close the meeting to discuss specific threat issues, which then makes it very ineffective to go over those issues with them. It actually inhibits the information-sharing process. Part of what this bill does is it codifies the NTAC Advisory Committee but also identifies that we can hold a closed-door meeting under certain circumstances. Our intent is not to hold closed-door meetings. Our intent is to hold open-door meetings. But should those issues arise where we need to close the meeting, we would be able to do so.

It is important to note that this does not create any new financial responsibilities. As I said earlier, we have received General Funds and Homeland Security grant funds since 2008. We compete for these grants every year and we continue to receive them. With that I can turn it back over to Chief Conmay to wrap it up.

Pat Conmay:

As I stated earlier, I am sure there will be a few questions. We are happy to answer those questions. We are aware that there are people who have some ideas about amendments and we are completely open to that.

Chairman Yeager:

Thank you for your presentation, and thank you for being open to working with some of the individuals who have concerns. We always appreciate that.

Assemblywoman Nguyen:

I obviously have some concern specifically with section 6, subsection 1 and section 8, subsection 3 mostly as related to discovery, and I know you said you would be open to that.

I know the American Civil Liberties Union and the Clark County and Washoe County Public Defender's Offices also had some concerns. I just wanted to make sure that was on the record, so you knew that we had concerns about some of the disclosure. I understand there are sensitive investigations that are ultimately helping public safety, but I have also seen how some of these things get manipulated in other contexts.

Pat Conmay:

I am aware that language specifically is an area of concern for some people. We have already had some preliminary conversations. I believe there is a proposed amendment. I have not seen it yet, but this language was actually taken from another existing Nevada statute. It was copied verbatim in an effort, I think, to be consistent. If we eliminate the language that talks about discovery and subpoena, I do not think we have any issue with that. I am not sure that we even invented that language for this purpose. We have already had preliminary conversations and I believe we are going to be able to prepare an amendment that will take care of those concerns.

Assemblywoman Nguyen:

I know sometimes there are situations where there are *in camera* reviews, so some of that sensitive information is not disclosed.

Pat Conmay:

I have been doing this for 46 years and I know that too. I frankly believe that is the best way to go about that process. We are completely open to that.

Assemblyman Roberts:

I spent the last ten years working with SNCTC. Actually when you guys stood up NTAC, I was involved in those conversations with the Office of the Governor. Does this do anything to preempt the primary status of SNCTC? Will SNCTC remain in place?

Pat Conmay:

Yes, there is no intent at all to transfer primary designation from one to the other. We understand population size and needs. Frankly, we have a person assigned to SNCTC. We interact with them every day. We have no intentions of changing the structure of things at all.

Assemblyman Roberts:

Fantastic. I know in southern Nevada it is a 24-hour operation. You guys are limited with your time. There is a much bigger footprint down there.

Pat Conmay:

Absolutely.

Assemblyman Roberts:

I noticed the makeup of your board. Was there any thought of having someone from southern Nevada—perhaps the sheriff could appoint someone from southern Nevada—to be

on your NTAC Advisory Committee just so they are aware of what is going on between the two fusion centers?

Pat Conmay:

Yes; in fact, when we stood the committee up initially we made that invite. The information we got back was there was a concern about the inability to go into a closed session to protect confidential information, so representatives from southern Nevada declined to participate at that time, but we would welcome them.

Assemblyman Roberts:

So are you going to fix some of that portion to make it where they are more comfortable to be involved in that?

Pat Conmay:

That is precisely the intent of this bill: to have the ability, when certain criteria are met, to go into a closed session and alleviate those concerns, not only of the participants from southern Nevada but of private sector partners and others. That is the intent of this bill.

Assemblywoman Torres:

What is the purpose? If we already have this in place, why are we adding onto it now into the statute? What went on that makes this bill necessary?

Pat Conmay:

The purpose is to create some oversight. We have an operation but it is not in statute. The Advisory Committee that we created in order to provide some direction and oversight is not in statute. One purpose is to ensure that everyone knows this activity is going on and there is some oversight. The second and more substantial reason is to get into statute the NTAC and the Advisory Committee in order to provide a provision that enables them to hold a closed session. You cannot just say we are going to do that.

Assemblywoman Torres:

It seems to me that it has been working rather well in recent years. I am not understanding why now?

Pat Conmay:

It is just for those reasons, in order to enable it to conduct some business in a fashion that we are not able to do now. If, for example, the NTAC Advisory Committee were to say, You know what, we have to close this meeting because we need to talk about this sensitive topic, then that would create some problems with the Open Meeting Law and we cannot designate that authority unless the entities exist in statute. Hopefully, I am saying that correctly, but that is what we are trying to do.

Assemblywoman Cohen:

Can you talk more about the work with the private sector partners and where they are coming from—the tech sector, gaming, that type of thing?

Ryan Miller:

We have partnerships with a variety of public sector partners like gaming, energy, schools, et cetera. We work with various services that are provided by the public sector—the critical infrastructure—most oftentimes private sectors like power, water, those types of things. We have relationships with those individuals through our fusion center liaison officer program, and we share information as we get it and need to between the entities.

One of the big challenges we have had with the NTAC Advisory Committee is getting people to participate in it because of the inability to legally close the meeting and share information. When you talk about private sector partners and vulnerabilities and intellectual property, they are real hesitant to share information unless they know that information can be protected. We do share information with them. They are not currently part of the NTAC Advisory Committee but we certainly intend to make them part of that NTAC Advisory Committee. There is a provision in the bill that talks about the director of the Department of Public Safety being able to add anyone to that NTAC Advisory Committee whom he deems appropriate, and that would certainly include public or private sector partners.

Assemblywoman Cohen:

You are sharing information with the private sector partners now, but are they refusing to share information with you at this point?

Ryan Miller:

I would not say that. I believe they share information as it is relevant and as they need to. I do not think they are holding anything back. I guess I do not know what I do not know. I would say it is always a challenge with the private sector because they do not like to put their vulnerabilities out there. As long as we can protect that information, they are going to share that information with us. I see that as a bigger issue with the NTAC Advisory Committee and being able to have those meetings in the NTAC Advisory Committee where you could have those partners and have those open discussions in that forum.

Assemblywoman Krasner:

I am specifically looking at section 8, subsections 2 and 3 where it talks about certain situations when the Advisory Committee can hold closed meetings. I understand that this is sensitive information but transparency in government is so important. The public gets a little nervous when they start hearing about closed meetings and sharing information with the federal government, state government, and local government—and nobody can see it or have access to it. People get a little concerned about that, so could you extrapolate a little on that?

Pat Conmay:

The intent is to have the ability to do this in these specific areas. I can make assurances and then people will say, Oh, yeah, he is saying it, but does he mean it? The best I can do is to tell you that our intent is to hold open meetings. Every single one of the Advisory Committee meetings will be announced as a public meeting. In the event that during a certain one of those meetings there is some sensitive information that could negatively affect public safety in some way that we need to share, and we do not feel is appropriate to put out

generally because it would create a threat, then the Advisory Committee would move into a closed session of that meeting to discuss that specific topic only and then come back to the public meeting. That is the intent of this. We are not going to say every other week we are going to hold a closed meeting of the Advisory Committee. We are going to announce every single meeting of the Advisory Committee as a public meeting and then, when need be, go into a closed session of that meeting to discuss a specific topic.

Assemblywoman Nguyen:

I know that section 6, subsection 2, paragraph (a), also adds that criminal aspect where it makes it a category C felony for disclosing that information. Has that been an ongoing problem?

Ryan Miller:

I would not say that it has been a problem. I am not aware of it being a problem, but we certainly want to protect the information because it could be devastating to public safety if it got out and could compromise an ongoing investigation. We wanted to be able to hold people accountable to that if it was a deliberate release of information that jeopardized something.

Assemblyman Roberts:

Is there something already in statute making critical infrastructure confidential? If so, what other types of information are you talking about? Would it be classified? That would protect it so it would be unclassified. Could you please expound on that.

Ryan Miller:

Yes, there are some protections for critical infrastructure information. Arguably, maybe that is protected in some areas. There is other information that we would deal with. For instance, the federal government recognizes that they are seeing a certain type of bomb being made. In order to create that bomb, they are seeing thefts of a certain type of material, and so what they might send out says, Hey, you guys need to get this out to your local partners to see if they are seeing these types of thefts; where they are seeing them; are they getting suspects; those types of things. We then need that information back to determine if this is connected to these attempts to make bombs. That might be something we get that we want to be able to push out. It does not necessarily have anything to do with protecting critical infrastructure vulnerabilities in the way that existing statutes talk about it. It has more to do with criminal activity on that level. It would be more dealing with ongoing criminal activity, dealing with making bomb materials, or any criminal activity.

Although fusion centers deal with trying to mitigate and prevent terrorism, they are also talking about all criminal activity. Many of us look at the all-hazards and all-threats approach, which would include all public safety hazards. That would be kind of a hypothetical, off the top of my head, but those are the kinds of things we are seeing—this type of criminal activity, we think it leads to this, or we need to know what you have on it. Certainly, we would want to protect that information because if it were released it might compromise their investigative abilities to try to track that down.

Chairman Yeager:

Are there any further questions from Committee members? [There were none.] Thank you for presenting and I will ask you to step back from the table and we will take additional testimony. I will give you a chance to come up at the end to do a wrap-up. We will take testimony in support of A.B. 45. I do not see anyone in Las Vegas at the testimony table. If there is someone there, please feel free to come up to the table.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:

I am here in support of A.B. 45. The NTAC is the fusion center for the other counties in Nevada that are not Clark County. They are a vital partner in keeping those counties safe and all of our smaller jurisdictions safe with intelligence from that center. I heard of a possible amendment from the Las Vegas Metropolitan Police Department, and we are good and still in support with that as well.

David Cherry, Government Affairs Manager, City of Henderson:

The city of Henderson is the [second] largest city in the state of Nevada. It has its own police department and fire department, and our two public safety agencies are in strong support of this bill. We would like to see the ability for southern Nevada to coordinate with this new NTAC Advisory Committee, and if this bill will help make that a possibility, I think it will strengthen public safety for the entire state. Thank you.

Chairman Yeager:

Is there anyone else in support of A.B. 45? [There was no one.] I will now take those in opposition to A.B. 45.

A.J. Delap, Government Liaison, Office of Governmental Services, Las Vegas Metropolitan Police Department:

We are in opposition to the bill. It is simply because of some language changes that we are proposing through an amendment. We have already talked to the proponents of the bill. Specifically, we would like to see in section 7, subsection 1, paragraph (d), the four members that would be given to the Nevada Sheriffs' and Chiefs' Association to have one of those shaved off and be given to the Las Vegas Metropolitan Police Department, to the Sheriff, or to his designee to be a sitting member of the committee. We will craft some language and work with the proponents speaking to the primary nature of the SNCTC in Las Vegas. With those two changes we will find ourselves in support, if it is your pleasure to take it to a work session.

Chairman Yeager:

Thank you, Mr. Delap. If those amendments are acceptable to the sponsor, could you just send something in writing to Ms. Thornton just so we have it for the work session document?

A.J. Delap:

Yes, sir, I will.

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

I really appreciate that we were able to speak with Chief Conmay and appreciate his comments regarding our concerns to the bill in its current state. Specifically, we have concerns regarding section 8, subsection 3, which is the discovery issue. As Assemblywoman Nguyen pointed out, this raises huge concerns to us regarding the constitutional implications that this would have on criminal cases if there were to be prosecutions regarding anyone involved in those meetings.

We are not looking at having access to every single document or every single meeting. It is specifically if there is a criminal prosecution, we need to have the ability to access that information in order to ensure that our client's constitutional rights are being upheld: specifically, the right to due process and the right to a fair trial. More importantly, for ineffective assistance of counsel—in order to provide effective assistance of counsel, we need to be able to ensure that we have all the information. I will not go into it too much, but I would like to start with this quote I found to explain the importance of discovery. It is contained in *Taylor v. Illinois*, 484 U.S. 400 (1988), a United States Supreme Court case, and it is contained in the dissent from Justice Brennan: "Criminal discovery is not a game. It is integral to the quest for truth, and the fair adjudication of guilt or innocence. Violations of discovery rules thus cannot go uncorrected or undeterred without undermining the truth-seeking process."

Nevada Revised Statutes (NRS) 239C.140 is the statute that Mr. Conmay was referring to that does contain a similar discovery provision. I did review the legislative intent in the minutes and unfortunately, it appears that there were no questions regarding the discovery process that occurred at that time, and for everyone's information it was Senate Bill 39 of the 77th Session.

I then also looked on what we refer to as Westlaw, a computer program where we can search for different laws throughout the different states. Specifically looking for fusion centers and how they dealt with discovery, I did find a law in Virginia Code Annotated § 52-48. It discusses the confidentiality and immunity from service of process, and states that, "No person, having access to information maintained by the Virginia Fusion Intelligence Center, shall be subject to subpoena in a civil action in any court of the Commonwealth to testify concerning a matter of which he has knowledge pursuant to his access to the criminal intelligence information maintained by the Virginia Fusion Intelligence Center." That is the closest law that I could find. When I did a search, I did not see anything specifically precluding criminal discovery, and I just wanted to provide that for the Committee's information. We are willing to work with the sponsor and are grateful that he is willing to work with us regarding this issue. We believe that we will be able to come to an agreement.

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

I am here today wearing two hats because Ms. Holly Welborn could not make it, and she did want me to make some remarks on behalf of the American Civil Liberties Union (ACLU) as

well. Our concerns lie from the public defender's perspective in the section that Ms. Bertschy brought up. We did talk with Chief Conmay about that and he is willing to work with us on our concerns. We are happy to begin to work on that subject. As Ms. Bertschy made clear, we are not seeking to find anything prior to a case being filed so we are not looking to learn about terrorists, soft targets, or anything. We would have no right to that as well. Once a criminal case is filed, we would like to have some discovery in that matter to be able to constitutionally defend our clients.

On behalf of the ACLU, Ms. Holly Welborn laid out her thoughts in the letter ([Exhibit E](#)) she submitted to the Committee. She is concerned that the secrecy sought here would interfere with transparency laws designed to hold our public service servants accountable. For example, she also indicated that things like this have been misused in the past. In 2017 officials in North Dakota used the data to investigate private citizens protesting at Standing Rock [Indian Reservation], which would seem outside of the purview. Her concerns lie in section 6, subsection 1 and section 8, subsections 1, 3, and 10 ([Exhibit E](#)). As she explained, Nevada Open Meeting Law already has close to 431 exceptions. The only other state to have an exception codified for a fusion center is Virginia. She is concerned that it would interfere with transparency laws.

I understand that litigating openness is frustrating for some agencies; however, if we want to live in a free and open society, it is part of what we do. In a government by the people and for the people, that is a function of what we do. We make sure that we hold our public servants accountable when living in an open government because we all respect liberty. With that, I will take any questions you may have.

[Proposed amendment ([Exhibit F](#)) was submitted and part of the record.]

Chairman Yeager:

Before I open it up for questions, I want to note that I was in communication with Ms. Welborn this morning. She was going to attempt to get here but I think in the interest of caution she decided to turn back. I think she is watching the hearing. I want to say hello to her and let Committee members know as well that the letter from the ACLU is uploaded to the Nevada Electronic Legislative Information System. I am not sure Mr. Piro will be able to answer questions about that letter, but are there any questions for Mr. Piro on his testimony on behalf of the Clark County Public Defender's Office?

Assemblywoman Hansen:

I have similar concerns but can see some of the validity of the legislation that is proposed. Are you able to come up with language that would satisfy the concerns of discovery due process?

John Piro:

I believe we would. If there are serious concerns about confidential information that may reveal—let us think of a hypothetical—a terrorist soft target that people are concerned about, what you can do is subpoena the information and have a court review it *in camera* to see

what can be revealed and even determine on what circumstances you can actually look at that information, if I can only go to the judge's chambers to review that information because I am not going to be emailed it or anything of that nature. I think there are protections that we could put in place and work with Chief Conmay on that to both protect sensitive information but also get the information that we are entitled to under the law.

Chairman Yeager:

Are there any further questions for Mr. Piro? [There were none.] Thank you for standing in for Ms. Welborn this morning; I know she appreciates it. Committee members, if you have questions about the ACLU's letter, feel free to reach out to Ms. Welborn. I am sure she will be back next week and she is also available by email or phone.

Janine Hansen, State President, Nevada Families for Freedom:

I also discussed this with the ACLU. My concerns about these issues have been in my mind for a long time. After 9/11, when Nevada was trying to put into the statute the definition of terrorism, I testified before the Legislature. Essentially, my testimony was that, with the federal definition of "terrorism," I would be a terrorist because I was an active opponent of many of the things that the government did. Because of that testimony, not only for myself but the ACLU and others, that terrorism definition in the Nevada law was modified from the federal terrorism legislation. If you look in section 2 of this bill, it talks about how the "act of terrorism" has the meaning ascribed to it in NRS. In section 3, it talks about how "criminal intelligence information" is collected by all these agencies, including the federal government. Essentially, Nevada's definition of terrorism is overridden by the federal definition of terrorism. The next day after our testimony, there were big headlines in the newspaper saying, "Janine, the terrorist." That was not really how I wanted to be identified, but nevertheless, that was what it said. That is a good example of how sometimes there is government overreach. In the United States' Patriot Act, the definition of terrorism is so broad, it is enough to encompass the activities of prominent organizations which are concerned about what the government is doing. They either might be groups such as Greenpeace, or they might be pro-life groups or even gun groups. This cuts both ways.

For instance, I found an article on the Internet this morning that said, The National Rifle Association (NRA) is absolutely right to fear the terrorist watch list. Why? It does not take much to get yourself on a terrorist watch list. It uses a poorly defined term of "reasonable suspicion" as it stands. The terrorist watch list has experienced explosive growth with over 300,000 people with no affiliation to terrorist groups being listed on it. Why does the NRA oppose using the terrorist watch list? In a civil context, the Second Amendment advocates are opposed to the importation of this list into the firearms background check system. It cannot be relied upon as justification for denial.

My sister-in-law was put on the terrorist watch list, the no-fly list. She had a terrible time trying to get herself off there. There is no good process for people who are innocent to get themselves off of these lists. There are no constitutional protections, no due process, no oversight, no process to get your name off, and there is very little transparency. With these concerns, I submit my testimony—we are all in favor of protecting ourselves against

terrorists, although you might get labeled as I was for opposing some of the things the government does. We know that in the past, the Federal Bureau of Investigation has had a list of gun activists, pro-lifers, Christians, as well as some more radical left groups considered to be terrorist threats. We all need to be concerned about just how far the government goes. I am concerned about our Fourth Amendment rights, our First Amendment rights, and Second Amendment rights with regard to what happens in closed meetings with the federal government and the state government, with no way to protect yourself. Thank you.

Chairman Yeager:

Are there any questions for Ms. Hansen from Committee members? [There were none.] Is there anyone else in opposition to A.B. 45? [There was no one.] Is there anyone in the neutral position on A.B. 45? [There was no one.]

Patrick Conmay:

I want to again assure the Committee that we are completely open to addressing the concerns that have been expressed here. I am confident that we will be able to come to an agreement and have something ready for the work session. I appreciate your time, and thank you very much.

Chairman Yeager:

Thank you again for being here this morning. Just let us know if and when you get to the point where you feel like the bill is ready to move forward and we will proceed accordingly. We will close the hearing on A.B. 45. Would anyone in Carson City like to give public comment?

Janine Hansen, State President, Nevada Families for Freedom:

I did not expect to make public comment today, but yesterday as I was leaving the building Assemblyman Fumo and I discussed his bill and I told him that I was in favor of it. I had come to listen yesterday, and I thought I would share the fact that I do share his opinion. Many years ago, when I was in college at Brigham Young University, I had a wonderful professor, W. Cleon Skousen, who had worked in the Federal Bureau of Investigation as well as being the police chief of Salt Lake City. I took constitution classes from him as well as Old Testament classes, and one of the things that impressed me was the fact that he said that incarceration is one of the worst forms of trying to help criminals and help society. I have always been interested in that issue ever since. I am interested in house arrest and ways to promote it. I think it is counterproductive when people are incarcerated for their own personal lives. If they are on house arrest, they have to be responsible for themselves. They learn responsibility. They oftentimes have to take care of themselves and their family financially. I think this is very positive in rehabilitating them in order to be able to go back out in society and be a positive member of society rather than being incarcerated where taxpayers have huge bills to pay for people with little hope of them being rehabilitated. I support his bill and I thank him for bringing it forward. I was glad to honor his request by coming up in public comment. Thank you.

Chairman Yeager:

Is there anyone else in Carson City for public comment? [There was no one.] Any other comments from Committee members? [There were none.] Committee members, I want to thank you for your attention this week. It has been a very long week. As for next week, we will meet at 9 a.m. on Monday. The weather looks pretty bad this weekend, so make sure you are checking your emails on Sunday. If the weather looks extraordinarily bad, we may have to postpone, but hopefully we are not in that situation. Monday, we are looking at having a couple of bills presented by myself and Justice Hardesty. The plan for the rest of next week is to start at 8 a.m.

The meeting is adjourned [at 9:23 a.m.].

RESPECTFULLY SUBMITTED:

Cheryl Williams
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is an information packet titled "Nevada Gaming Commission: Nevada Gaming Control Board," dated January 2019 and presented by Sandra Douglass Morgan, Chairwoman, Nevada Gaming Control Board.

[Exhibit D](#) is a copy of a PowerPoint presentation titled "A.B. 45 (BDR 43-348)," presented by Ryan Miller, Deputy Chief, Investigation Division, Department of Public Safety.

[Exhibit E](#) is a letter dated February 14, 2019, from Holly Welborn, Policy Director, American Civil Liberties Union, Nevada to Chairman Yeager and members of the Assembly Committee on Judiciary presented by John J. Piro, Deputy Public Defender, Clark County Public Defender's Office in opposition to Assembly Bill 45.

[Exhibit F](#) is a proposed amendment to Assembly Bill 45 presented by John J. Piro, Deputy Public Defender, Clark County Public Defender's Office.