

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

**Eightieth Session  
February 18, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 9:04 a.m. on Monday, February 18, 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](http://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  
Linda Whimple, Committee Secretary  
Melissa Loomis, Committee Assistant

**OTHERS PRESENT:**

James W. Hardesty, Associate Justice, Nevada Supreme Court  
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada  
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas  
Metropolitan Police Department  
Eric Spratley, Executive Director, Sheriffs' and Chiefs' Association  
Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office  
Jennifer P. Noble, Chief Appellate Deputy District Attorney, Washoe County District  
Attorney's Office; and representing Nevada District Attorneys Association  
Michelle Feldman, State Campaigns Director, Innocence Project  
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  
Amy Coffee, Private Citizen, Las Vegas, Nevada  
Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice  
Alanna Bondy, representing Nevada Attorneys for Criminal Justice

**Chairman Yeager:** [Roll was called and protocol explained.] We have two bills on our agenda this morning, and I will be presenting both of them. At this time, I will hand the meeting over to our Vice Chair, and see all of you on the other side of the table.

[Assemblywoman Cohen assumed the Chair.]

**Vice Chairwoman Cohen:**

We are going to go out of order and open the hearing on Assembly Bill 112.

**Assembly Bill 112: Revises provisions governing the Advisory Commission on the Administration of Justice. (BDR 14-589)**

**Assemblyman Steve Yeager, Assembly District No. 9:**

Assembly Bill 112 revises provisions governing the Advisory Commission on the Administration of Justice. I thought it might make sense before we dive into the bill itself to give a brief history of the Advisory Commission on the Administration of Justice. The reason I have Justice Hardesty with me is because this last interim he vice-chaired the Advisory Commission and I had the pleasure of chairing the Advisory Commission. I know that in the past, Justice Hardesty has chaired the Advisory Commission on multiple

occasions, so he has a little bit of historical perspective that I do not have on the Advisory Commission. This last interim was the first time that I served on the Advisory Commission. On my flight here last night, I was able to look at a little history of the Advisory Commission on the Administration of Justice. For those who do not know, it is an interim committee that meets between legislative sessions, and it was initially enacted in the 1995 Legislature. At that time, it had a different name. It was called the Advisory Commission on Sentencing. In the 2007 Session, there were some changes made, and the Advisory Committee on Sentencing was renamed as the Advisory Commission on the Administration of Justice.

As you can see A.B. 112 in front of you, page 2 gives you a sense of all the different members who are on the Commission. I believe we currently have 18 members. For our Committee, our own Assemblywoman Lisa Krasner served on the Advisory Commission this past interim, as did I. If Committee members have questions about the other individuals who were serving, I can answer them. You will note from the membership list that some of them are department heads or elected officials, so membership may change depending on who fills those spots. Other appointments are made by various bodies or organizations.

Before I get into the meat of the bill, I want to give a high-level overview. Over the years, the Advisory Commission is the place during legislative sessions where what I call "unresolved criminal justice issues" were referred. Over time, the Advisory Commission was increasingly tasked with more and more in terms of responsibility and subcommittees. I think that is why we have the bill today because in this last iteration of the Advisory Commission, we sat down and decided, Wow, there is a lot here, and it is really hard to take a deep dive with this much responsibility given in statute.

Before I go through the heart of the statute, I want to turn it over to Justice Hardesty to weigh in on some of the history of the Advisory Commission and perhaps give a high-level overview of some of the things that we looked at in the last interim.

**James W. Hardesty, Associate Justice, Nevada Supreme Court:**

To add to the history provided to you by Assemblyman Yeager, when the 1995 Legislature adopted so-called "truth-in-sentencing" statutes, it included as part of that bill the Advisory Commission on Sentencing with the expectation that the Commission would monitor, on an ongoing basis, the effect of the major criminal justice changes that were made under the title of Truth in Sentencing in 1995. The Commission met in two interim sessions thereafter, and not a lot of recommendations—and certainly none that I would consider to be material—occurred. For probably three interims—six years—the Commission did not meet at all. In 2007, I raised this issue with the Legislature and pointed out that the Commission was there for the purpose of monitoring our criminal justice statutes, their effectiveness or ineffectiveness, in the various issues that exist in the criminal justice system, and requested that the Legislature modify the Commission and its makeup and reinstitute it so that it would begin doing the functions that were originally contemplated when truth in sentencing was enacted. Thus, the amendments in 2007.

As Assemblyman Yeager has pointed out, since that time, the Commission has met every interim, but increasingly, the Legislature would take unresolved criminal justice issues and then, increasingly, unresolved issues that were unrelated to criminal justice and passed them on by amending the advisory commission statute and requiring the Advisory Commission to tackle issues that were really getting further and further outside the wheelhouse of what was originally contemplated when this Commission was established. I served as chair on three separate occasions and have served as vice chair on two separate occasions. I think the thing that was frustrating from my standpoint was that while the Commission was formed—you can see that there are quite a number of people who sit on it—the Legislative Counsel Bureau, for budget reasons, would place constraints on the number of meetings that could be conducted during the interim session, so you were presented statutorily with an enormous agenda and then limited to perhaps no more than four, or a maximum of five, meetings during the course of the interim and then expected to prepare a report on everything from deoxyribonucleic acid (DNA) to pick-your-favorite topic that is in the statute. The statute contained a number of duplicative activities. The Commission was required to study the juvenile justice system, but for many of you who have served before—and I am sure many of the newcomers—are aware there is a juvenile justice commission also established independently of this Commission. So there was a lot of crossover. I have encouraged the chair and the Commission in the past to try to return the focus of this Commission to its fundamental purpose, and that is to study criminal justice issues and make recommendations in that area.

I think this past interim was the single most productive effort made by the Advisory Commission since I have been associated with it and had the privilege of serving on the Commission. There are a lot of reasons for it—much has to do with the support that the Commission received from the Crime and Justice Institute and the fact that Nevada was named by the Pew Charitable Trusts and the U.S. Justice Department's Bureau of Justice Assistance as a justice reinvestment state. We were able to conduct far more meetings than we had done in the past in order to develop a number of recommendations and a substantial report. While reasonable people can disagree about the nature of the recommendations, which I am sure this Committee will spend a lot of time with during the session, it is a significant change in approach, and it fully assesses where we have been based, upon existing data, which has always been a troubling problem for the Commission.

We had requested a Sentencing Commission, which you will hear about. Assemblywoman Krasner served on the Sentencing Commission, and I believe Assemblyman Fumo did as well. It was intended to separate some of these issues so as to focus on sentencing issues in the Sentencing Commission and to have the Advisory Commission focus on criminal justice issues. This bill would return to that goal, simplify the process a bit, and narrow the agenda so that it could actually be achieved and be productive for the Legislature in future sessions.

**Assemblyman Yeager:**

I want to clarify one thing that Justice Hardesty said. It was Assemblywoman Tolles who was on the Sentencing Commission, and Assemblywoman Krasner on the Advisory Commission.

I want to take you through the bill, but, before I do that, I want to acknowledge several people who serve on the Advisory Commission—Director Chuck Callaway with the Las Vegas Metropolitan Police Department; Chairman DeRicco from the State Board of Parole Commissioners; Director Dzurenda from the prison; our former Attorney General Paul Laxalt and our new Attorney General Aaron Ford served on the Commission; and Chief Wood from the Division of Parole and Probation. These are some of the people who have served with us, and I wanted to acknowledge them because this Committee has had a chance to hear from them. The Advisory Commission does not have any bill draft requests, so when we get to the end of our meetings, we essentially do a work session and we make recommendations that then need to be picked up by individual legislators or by committees. This particular recommendation that resulted in Assembly Bill 112 was unanimous out of the Committee, so we did not have any dissenters in terms of the recommendation. What you have in front of you is an Assembly Judiciary Committee bill, so I chose to pick this idea up out of the Advisory Commission.

Section 1 is mostly staying intact. The only addition is on page 3, section 1, subsection 9, which essentially says that if you are on the Commission and you are a state employee, your employer has to allow you to serve on the Commission without having to take vacation time. Sometimes we have an issue where members had a difficult time being able to make meetings because of their employment situation. I will note that with 18-plus members, it can be somewhat difficult to try to find times when everyone can meet, but I think we did a good job, as most of the meetings were 75 to 85 percent of the Committee members.

If you go to section 2, you will see a number of deletions of duties that have been assigned to the Commission for quite some time and, as Justice Hardesty mentioned, duties that were not really in the purview of the Commission or we were not able to touch on those in a serious way. Section 2 essentially leaves it to the discretion of the chair to decide which issues to take up between legislative sessions. I think it makes a lot of sense, because largely the issues that the Advisory Commission takes up are driven by what is going on and usually starts with the Legislature. The chair is voted on by the members of the Commission. Historically, it has been a member of the Assembly, a member of the Senate or, as Justice Hardesty had mentioned, he may be the only non-legislative member who has chaired on a couple of occasions.

The bottom of page 5, section 2, subsection 4, gives the Advisory Commission a couple more months to prepare their comprehensive report. It had been September 1 in statute for quite some time, but I think it had also been quite a few interims since we were able to prepare that by September 1. We wanted to give our staff a little more time to prepare the final report. You might be wondering where the final report is from this last interim. We met very late into this year—I think our last meeting was January 11—so they are still working on the final report, and I hope to have that to you soon. It just tells you the amount of work that goes into that report.

Section 3, subsection 4 looks to be new language but really is not. This subsection 4 duty, dealing with the sexual assault forensic evidence kits, was given to the Commission in the

79th Session by Assembly Bill 97 of the 79th Session. That legislation created a subcommittee. We decided, Why not have the entire Advisory Commission look at that issue? In addition, that responsibility does not go into law until January 1, 2021, so the Commission has not yet been looking at that issue but will be.

You will see some deletions of a "Subcommittee to Review DNA" in section 4. That subcommittee did meet in the 2014 Interim and I was proud to chair it, but I do not think those duties are properly in front of the Advisory Commission anymore at this point. The remainder of the bill are a series of deletions and repealing mostly of subcommittees. As Justice Hardesty said, most of these subcommittees are duplicative. There is already a juvenile justice subcommittee and the medical-use-of-marijuana subcommittee was created after that statute was enacted in the 2013 Session but, as you all know, there are various commissions, including the one formulated by the Governor, that are looking at that issue. The real idea here was to align the statute with what happens in practice. In practice, there was really no way for us to assign multiple subcommittees and have multiple meetings because of staffing issues and scheduling issues.

**Assemblywoman Tolles:**

You have done amazing work. I followed along this interim, and it was a yeoman's task. I can appreciate the need for consolidating, especially some of the areas that are duplicative. Some of these clearly fall under the Sentencing Commission or the subcommittee for juvenile justice, or Interim Finance Committee, for example. Do all of these areas that are being deleted fall under some other sections? For example, section 2, subsection 2, "Evaluate the effectiveness and efficiency of the Department of Corrections and the State Board of Parole Commissioners," or further down in subsection 3, "Evaluate the effectiveness of specialty court programs," or section 4, "Evaluate the policies and practices concerning presentence investigations and reports made by the Division of Parole and Probation." These are all very important, and you touched on some of the others that fall under other commissions. I want to make sure that those are not falling to the wayside and that someone is still evaluating those particular areas on a regular basis during the interim.

**Assemblyman Yeager:**

I think the best way to explain it is there is not necessarily a separate group or committee that would evaluate it but, as part of the Advisory Commission, almost always the first few meetings are much like we do here, such as our presentations from the Board of Parole Commissioners and from Parole and Probation. There are many members who just do not do this on a daily basis. I anticipate that no matter who is chairing, it is going to be the same.

In terms of evaluating the effectiveness or making changes in those areas, it would simply be up to the chair to decide, likely based on the prior legislative session, if it is something that needs to be dug into a little deeper from the Commission. Of course, I will note that in statute right now, the directors of those agencies are members of the Commission as well. To technically answer your question, they do not exist elsewhere, but I envision that the Advisory Commission would still obtain information from those agencies and then have the

ability at the chair's discretion to dig deeper into those issues if there are issues that need to be looked at in the interim.

**Assemblyman Daly:**

I understand where you are going about giving some discretion to the chair on the question you just answered. Is there a similar commission to look at civil proceedings, at least keeping those things moving along? I know there are some rules in place—I have talked with the Justice about it—but I do not know if there is a similar commission.

**Justice Hardesty:**

There is not a similar commission on civil practice. There is a statute, and also the Supreme Court has authority, to establish rules for the processing of civil cases. The Supreme Court has recently approved complete modification of all the rules of civil procedure that go into effect March 1. It was quite an undertaking and will substantially streamline the civil process.

**Vice Chairwoman Cohen:**

Would you give us more detail about the status of the DNA testing and the rape kits in section 3, subsection 4?

**Assemblyman Yeager:**

I would direct Committee members to Assembly Bill 97 of the 79th Session. There were a number of protections enacted in terms of how we store, process, and communicate with individuals about sexual assault forensic evidence kits. Part of A.B. 97 of the 79th Session had a delayed effective date, because essentially what that legislation did was task the Office of the Attorney General to create some kind of database which would essentially keep information about the kits, how many were left to be tested, how many had not been tested, and allow the victims a chance to be able to opt in or opt out of getting information. That provision is not active until January 1, 2021, to give the Attorney General's Office some time to set it up and also look at grant funding for it.

This particular provision that you are looking at in section 3—although it is a duty of the Advisory Commission—is not going to actually be looked at by the Advisory Commission until the 2022 Interim. We did not hear presentations in the interim about how that is coming along, so I do not have an update for you now. I anticipate that this Committee is going to hear some additional legislation down the road on the sexual assault forensic evidence kit, so hopefully we will have an update for you. The importance of putting this into the statute was to make sure there is an oversight body that has some legislators looking at this issue once that system gets established and is operational.

It is a good way of punting the question. It is a little too early to answer it, but we should be in a position in the next couple of interims to provide a better update.

**Vice Chairwoman Cohen:**

Has there been any consideration given to the Commission to have some of its own bill draft requests (BDRs)?

**Assemblyman Yeager:**

There has been consideration of it, but there has been a trend to limit the BDRs rather than increase the number of BDRs. I do not think it is likely that the Commission will get its own BDRs. The system that we have now works nicely. It is up to members to decide to run with them. We do not always get consensus on bills, and I think you will see some individual members deciding they want to bring some bills anyway, even though there was not a consensus. As for now, I do not think we will get our own bills. If the chair can limit to a couple of different topics, then hopefully whoever the chair is, or the other legislators, will be able to run with those ideas during the session.

**Justice Hardesty:**

When the Sentencing Commission was created, it got its own BDR in statute. The Judiciary Committee might consider dedicating a BDR in this Commission as well. I recognize the chair's response and agree, but I know that in the Sentencing Commission, there was a specific BDR set aside so that that Commission could tender a BDR for modifications to sentencing legislation.

**Assemblywoman Hansen:**

You mentioned The Pew Charitable Trusts and Nevada being named a reinvestment state. Would you clarify what significance that is for our state?

**Justice Hardesty:**

When I was chief justice in 2015, I learned of the Justice Reinvestment process. It is a process that is funded by The Pew Charitable Trusts and the Bureau of Justice Assistance, which is a division of the Department of Justice. Each year, they select one state in the country to dedicate staff and pay the cost for that staff to do a deep dive into the state's criminal justice systems in order to determine what trends are occurring in that state and really assess the effectiveness or ineffectiveness of the state's criminal justice statutes, policies, practices, and procedures.

In 2015, I had asked then-Governor Sandoval and the leadership of the Legislature to join with me to make an application for The Pew Charitable Trusts and the Bureau of Justice Assistance to consider naming Nevada as a justice reinvestment state. The Governor agreed, as did the legislative leadership. We signed a letter making an application, but unfortunately we were not selected for that interim. In the spring of 2018, I was contacted by Len Engel, who was the head of the Crime and Justice Institute which provided the staff the expertise and the research necessary to support a state who had been selected as a justice reinvestment state, to see if Nevada might still be open to this possibility. After speaking with Chairman Yeager, Governor Sandoval, and the legislative leadership, we reinitiated an application. We were competing with Colorado, Tennessee, and New Mexico; and Nevada was selected.



That was a game changer, as you will see from the report that is issued and from the recommendations that are made.

As I said before, reasonable people will be debating those recommendations as they come before you, but for the first time, Nevada has detailed, data-driven statistics that were provided through this effort. Beginning in approximately the first of June or the middle of June, the Crime and Justice Institute staff came on-site into Nevada, into the offices of the Department of Corrections, Parole and Probation, and I believe that up through January 11, 2019, had contributed almost 9,000 man-hours of effort to study Nevada's criminal justice statistics, trends, and data. From that information, for the first time, the Commission had data-driven decision-making that could really help us assess where we were and where we should go. This legislative session, this Committee will have the benefit of that work and will be deliberating and debating those recommendations.

The Justice Reinvestment effort has been very successful in a number of states. Of particular note to us was Utah, which was just four years ago and already has a history of some of the recommendations that their legislature collaborated on and agreed to pursue. The other thing that is important about this is, to the extent that this Legislature would consider adopting those recommendations and putting them in place, the Advisory Commission and the Sentencing Commission would be charged going forward to monitor whether the projections and the expectations that are debated in this session would be worked out and how transformative they were.

This is a dramatic shift from where we were in 1995, until truth in sentencing, in a number of areas. A lot of work needs to be done going forward, but we now have some very sound information through hard work and enormous cost. I cannot even quantify the number of hours that the state of Nevada received by being selected as a Justice Reinvestment state. Many times members of the Commission would debate anecdotally, but this data shows us what the trends are. The bottom line for this Legislature is, you are facing a prison population increase that will cost the State of Nevada upwards of \$800 million. This proposal would curtail that significantly, according to the Crime and Justice Institute, and save as much as \$645 million over the next ten years.

**Assemblywoman Hansen:**

Our gratitude goes to you. Our jobs are made easier with accurate data, and we appreciate you, the former Governor, Chairman Yeager, and those involved for facilitating the ability for us to be able to have access to this data. Thank you so much for that clarification so we can really understand what was behind it.

**Justice Hardesty:**

I am not sure your job has been made easier; you are going to have a lot of fun this session.

**Vice Chairwoman Cohen:**

Are there any other questions? [There were none.] Is there anyone in support of A.B. 112?

**Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:**

I was appointed to the Advisory Commission on Administration of Justice (ACAJ) during the 2016-2017 Interim. I served as the inmate advocate in the last interim. My legal director, Amy Rose, took over that position so I could serve on the Sentencing Commission with Assemblywoman Tolles under Justice Hardesty's leadership.

The depth and breadth of the work of the ACAJ is enormous. We struggle to meet deadlines and thoroughly debate important issues of criminal justice policy. It is also very duplicative. When I first started at the ACAJ, I was surprised and kind of puzzled that the Commission had a juvenile justice subcommittee, but there were not any juvenile justice administrators appointed to the Commission. At the time, there were also four or five different task forces, working groups, and different organizations that were looking at juvenile justice policy that had administrators who were there working in the trenches every day with the youth. I felt that was a more appropriate place for debating those issues of juvenile justice.

Likewise, I think that the Board of State Prison Commissioners is the appropriate oversight for the Department of Corrections, so by proceeding with this and cleaning up what we look at on that Commission, I think it is very important so that way we can dive deep into issues such as the Crime and Justice Institute's Justice Reinvestment Initiative, look at that data, and really make some sound decisions so we can advise this body more strongly.

I also want to say thank you very much to the staff of the Advisory Commission and to the Sentencing Commission. Without them, we would not be able to meet those deadlines that are hard for us to meet. I want to encourage you to support this.

I want to say one thing on whether or not the Commission should be purely advisory or if there should be a bill draft request. From our perspective, if we limited it to one bill draft request, it would be appropriate, because there are diverging interests on that Commission. Sometimes we do not all agree and every vote is not unanimous. We try to do that as much as possible, but from our perspective, as the inmate advocate, we can sometimes find ourselves in a position to not be behind everything that is moved forward on that Commission. Please consider that if you do decide to amend the bill.

**Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**

I have had the pleasure of sitting on the Advisory Commission for four or five terms. One of the frustrating things has been the short time frame in the interim to cover a wide variety of topics. I have been very vocal about the fact that it often turns into a shotgun approach where you have someone come, present on a very in-depth topic, but you receive a very little amount of information. Then you have another person come in and present about a completely different topic, and then a short time later we are asked to provide recommendations to the Legislature on issues that we have had very little information on. I think this bill will allow the chair to narrow the focus and allow us to dive deeper and to provide better recommendations to the Committee. We are here in support.

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

The Nevada Sheriffs' and Chiefs' Association (NVSCA) is a statutorily listed member of the ACAJ. I was personally appointed to that position when I worked for Washoe County representing the NVSCA for several interims, and it is a fantastic but overwhelmed commission, to say the least, and this would help alleviate that.

**Vice Chairwoman Cohen:**

Is there anyone in Las Vegas in support of A.B. 112?

**Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office:**

We come to the table in support of this. I look forward to working on the Commission in the next interim. I was at the Nevada Sheriffs' and Chiefs' quarterly meeting and was nominated to represent that entity, so I look forward to working with all of the criminal justice professionals and addressing some of those issues of our state.

**Jennifer P. Noble, Chief Appellate Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:**

We support this change. I think a narrower focus for the Commission will allow it to better dive deep into the issues facing Nevada and to provide recommendations that are based on a very thorough evaluation of the data that is out there.

**Vice Chairwoman Cohen:**

Are there any questions? [There were none.] Is there anyone in opposition in Carson City? [There was no one.] Is there anyone in opposition in Las Vegas? [There was no one.] Is there anyone in the neutral position for A.B. 112? [There was no one.]

**Assemblyman Yeager:**

I wanted to make one additional comment. The meetings of the Advisory Commission are also videotaped and archived like normal meetings of our Committee, so if you are ever interested in seeing the Advisory Commission at work, you can find those videos online. We also keep minutes just like we do here. On the Legislature's web page, if you go to "Interim Committees" you will find everything you have ever wanted to know about the Advisory Commission and more. I encourage you to do that. If any of you have any questions after this morning about the Commission, feel free to reach out to me, Assemblywoman Krasner, or any of the individuals you have heard from in the room today that know about the Commission and its work.

**Vice Chairwoman Cohen:**

I will close the hearing on A.B. 112, and open the hearing on Assembly Bill 107.

**Assembly Bill 107: Establishes provisions relating to the electronic recording of certain custodial interrogations. (BDR 14-588)**

**Assemblyman Steve Yeager, Assembly District No. 9:**

I would like to give the Committee a historical perspective. At the 2017 Legislative Session, this Committee introduced Assembly Bill 413 of the 79th Session, which dealt with recording of custodial interrogations. Ultimately, that bill made it through our house but it stalled in the Senate and did not get enacted into law. There was an appetite from stakeholders who continued to work on this issue of recording interrogations, so one of the things we were able to do as part of the Advisory Commission was to appoint an informal working group to continue working on this issue. To my right is Director Chuck Callaway, and on the phone we have Michelle Feldman from the Innocence Project. These two really spearheaded the working group. They were able to reach consensus, and the bill that you have in front of you, Assembly Bill 107, was unanimously supported by the Advisory Commission on the Administration of Justice. I want to thank the members of that informal working committee who spent extra time volunteering to try to get this right. With that being said, I will hand it over to either Mr. Callaway or Ms. Feldman, and they can walk you through the working group and the bill itself.

**Michelle Feldman, State Campaigns Director, Innocence Project:**

We are a national organization that works to exonerate the wrongfully convicted. We also work with our local partners in Nevada—the Rocky Mountain Innocence Center—on policies that prevent and address wrongful convictions. I would like to thank Chairman Yeager for continuing to push on with the issue of recording interrogations and convening a working group to look at the issue more closely and to come up with a solution. I think we did a good job of bringing all the stakeholders to the table and coming up with a proposal that ensures there is a statewide recording interrogation requirements for individuals who are suspected of the most serious crimes, but at the same time giving agencies the flexibility to adopt the policy that is right for them.

I would also like to thank Chuck Callaway from the Las Vegas Metropolitan Police Department (LVMPD), who chaired this working group and did a fantastic job—he also works with his own agency to develop an excellent model policy on recording interrogations that I think other agencies can look to to adopt; and the other members of the working group—Nevada Sheriffs' and Chiefs' Association, the Office of the Attorney General, the Nevada District Attorneys Association, the Washoe and Clark County District Attorneys' Offices, the Washoe and Clark County Public Defenders' Offices, the Nevada Attorneys for Criminal Justice, and the American Civil Liberties Union of Nevada.

We started off with the bill from 2017 and made some changes. What this version does is it requires every agency in the state of Nevada to record custodial interrogations in a place of detention for homicide and felony sexual assaults. It also lists a number of exceptions that are circumstances where recording would not be required; it is things like operator error in the equipment or if a suspect refuses to speak if they are recorded. There are 24 states now that require recording of certain suspect interrogations, and this proposal is in line with what

other states have done. From the Innocence perspective, we support recording interrogations because it is the best safeguard against false confessions that can lead to a wrongful conviction, so this is something that benefits innocent defendants but it also enhances transparency and the accuracy of evidence in the criminal justice system.

There is a drafting error in the bill, so there is one minor change that is needed. On page 3, section 1, subsection (3), paragraph (e), the provision should be the seventh exception to the recording interrogations requirement, but it got placed in the evidence retention section. That part just needs to go back up to the previous section that discusses the different exceptions to the recording requirement.

It is a great thing when all sides of the criminal justice system can come together and support legislation that benefits all sides.

**Vice Chairwoman Cohen:**

I want to make sure that you are talking about page 3, paragraph (e), the paragraph that starts: "The circumstances in which all or a portion of an electronic recording is not required to be retained . . . ."

**Michelle Feldman:**

Yes. The first sentence should start at "When the electronic recording is damaged or destroyed, without bad faith . . . ." That one should be subparagraph (7) right under subparagraph (6) on that same page. It is the seventh exception to when an interrogation should be recorded.

**Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:**

I am here in support of the bill, which came out of the working group that I chaired and that Michelle vice-chaired. After the last session, I made a promise to the Innocence Project that we would work on this during the interim and come up with something that everyone could be on the same page on. I appreciate all of Michelle's work and the working group members' work. I think that one of the key things here is that the Innocence Project and law enforcement share the same goal. We want to make sure that someone innocent does not become incarcerated or go to prison because then, the guilty person is still out there continuing to victimize people. We have the same goal, and I think this bill was well-discussed in these working group meetings and it strikes a balance between ensuring that we document these very important interrogations and at the same time not jeopardize investigations or put law enforcement in a bind logistically.

During the last session, the real issue was not the concept of recording interrogations; it was the logistics that some of the language in the bill contains.

We are in total support of A.B. 107.

**Assemblyman Yeager:**

I would like to mention by name some of the people who participated in the working group because, like the last bill, many of them have already appeared in front of this Committee, so I wanted to personally thank Jennifer Noble, John Piro, Lisa Rasmussen, Lieutenant Spratley, and Holly Welborn. There were other members as well, but I wanted to make sure I recognized those individuals who are in the room today and thank them for their work.

**Assemblywoman Tolles:**

I appreciate the amount of collaborative work done during the interim because I remember some of those technical questions from last session on this bill, and yet very much supportive of the intentions and so glad that you were all able to come together.

I had a question, as I was reading through the bill, on section 1, subsection 3, paragraph (c), subparagraph (4) which says that "The person who is being or will be interrogated," and then in sub-subparagraph (I), "Affirmatively asserts his or her desire to speak with law enforcement officers without being recorded." Do they have to sign a form? How do they express they are affirmatively asserting it? Does that have to be recorded? Is it written down, or is it part of the discussion?

**Chuck Callaway:**

The whole intent behind that was what I would call fairly rare cases where someone says, Listen, officer, I will tell you what happened but I do not want to be on that camera; I do not want the camera in my face; I am more than willing to tell you what occurred. It is not being able to lose that potential confession or that bit of information because you are required to record. That was the whole purpose behind it. Currently, I do not believe it is a bad idea to have someone sign a document saying they did not want it to be recorded, but I do not believe—I would have to look at the specific language in our current policy—I do not believe it requires that we get them to sign a waiver saying they do not want it recorded. By the same token, the officer who is conducting the investigation, knowing that we have a policy that requires it, would do an officer's report stating that, during the investigation, the person who was the subject had requested not to be videotaped. There is the requirement that we document why it was not taped, but I do not believe there is a requirement that the suspect sign a waiver.

**Vice Chairwoman Cohen:**

I was concerned about that as well. If someone recants later on, there is no evidence beyond the testimony of the officer, correct?

**Chuck Callaway:**

Yes. As I think about it, in most cases the officer in the field is wearing a body camera, and the detective would bring the subject in with the camera rolling with the intent to capture it on video. If the person were to say, I do not want the camera on, we would have that initial conversation captured where they are making that statement. I do not believe it is required that they sign a waiver saying they do not want it on. As part of the case, we would retain

the footage showing the person saying, I am going to talk to you, but I do not want it on camera.

My brother-in-law is a homicide detective, and in conversations I have had with him, I think that in most cases we would probably mention to the person that it is in his best interest if it is videotaped, and if the person insists, they might shut the camera off at that point. We would want to ensure that the person knows it is in his or her best interest that the interview is documented.

**Assemblyman Watts:**

Will people be keeping track of the reasons and instances when an interrogation is not recorded? Would that data or information be publicly available?

**Chuck Callaway:**

Our department policy requires that a supervisor approve it if it is not being recorded. If, for some reason, it is not recorded and one of these exemptions occur, the officer or detective would be required to contact his supervisor, and the supervisor would verify that one of these exemptions—for example, if the equipment is not working—we would take the person into another room where the equipment is working.

At the Las Vegas Metropolitan Police Department (LVMPD), we have a lot of resources available to us that a rural department may not have. They may only have one video camera or one recording device in a small department. If it were to occur at LVMPD, we would move the person into another room. If there is a reason one of these exemptions would occur, the detective would contact the supervisor, the supervisor would verify that for whatever one of these exemptions we cannot record the interrogation, it would all be documented and it would become part of the case. As long as it is an open investigation, that might not be made available through public record, but once the case is closed and adjudicated, then it would be subject to public disclosure or public record.

**Assemblyman Watts:**

That is very helpful, as it answered my second question around all the details of recording equipment. So the difference is between different departments or localities—it makes a lot of sense. I would like to make sure that it is incorporated so that not only in your department but across the board we can make sure that we have access to that information just to make sure that we can see into when one of these interrogations is not being recorded.

**Assemblyman Fumo:**

Would you explain why it only pertains to murders and sexual assaults and not every time a person is detained?

**Chuck Callaway:**

Even in the bill last session, it was specific to murder and sexual assault because those tend to be the two areas where the Innocence Project sees the majority of their wrongful convictions based on faulty confessions. Those are also the most serious offenses where you

can go to prison for life or face the death penalty. When you broaden it from the law enforcement's perspective to any case—for example, shoplifting—you get a guy for shoplifting, you have to make sure that you video or audio any recording. We get three million calls a year at LVMPD, and it becomes a tremendous amount of video that you are capturing and a tremendous amount of work being done. You have to take that person to a place of detention, and it becomes much more cumbersome logistically to capture a broad range. I think from the bill last session, the intent was for the very serious crimes of murder and sexual assault. I will let Michelle speak on her side of it.

**Michelle Feldman:**

All the legislation that has happened in various states pertains to only serious felonies. Some are like this bill and are only murder and sexual assault. In a couple of states, courts have required that all interrogations for all crimes be recorded, but none of the other state legislatures have passed more measures. I think Mr. Callaway is correct in that we see false confessions in really serious crimes where the stakes are very high. The good news is that in practice, we found out that once police agencies start reporting the major crimes, they tend to start recording for everything. We did a survey in 2016 of law enforcement agencies in Wisconsin and Massachusetts; they both required reporting for the most serious crimes and they have required that for over a decade. Most of the agencies that responded began recording for interrogations for all crimes because they really liked the practice and they felt that it was easier for them to prepare for trial and to just not have to rely on piecing together notes weeks and months after the interrogation occurred. This legislation is really meant to be a floor, and I think that once agencies start getting into the habit of it, they will make it more expansive than what is required under this bill.

**Vice Chairwoman Cohen:**

Perhaps it will be like the body cams that we heard are more accepted now and appreciated by the officers who are wearing them.

**Chuck Callaway:**

To that point, there are other crimes that I am sure our detectives are recording, such as abuse of a child and other serious crimes that, if the detective brings that person in who is a potential suspect, we are recording those. The intent of this bill was only to mandate and put this criteria in place for the sexual assault and homicide cases.

**Assemblyman Fumo:**

What I am hearing is that it was cumbersome and these are the most serious crimes, but with advancing technology, are you open in the future to open it up to every time a person's liberty is at issue and perhaps recording those as well?

**Chuck Callaway:**

We are open to having that discussion, but then again, we get into resource issues. The devil is in the details, but yes, we are open to that discussion.



**Assemblyman Fumo:**

If we are only going to record it for murders and sexual assaults, why is it only at the detention facility? I have had clients who give statements in the back of a police car, clients who give statements at the scene of a crime, they give statements at their home or wherever they are actually arrested or detained. Why is it not anytime they give a statement that it is recorded and only at the detention facility?

**Chuck Callaway:**

On page 4, it says, "'Place of detention' means a fixed location under the control of a law enforcement agency." I believe that you could argue that if the detective was going to question the subject in the back of a patrol car, the patrol car is parked in the parking lot, and the detective gets in the car with the suspect, then it is a fixed location under control of the detective. Typically, when we are talking about sexual assault and homicide, the patrol officer in the field is not going to be conducting those interrogations. They are going to be done by a detective. That person is either in custody and they are going to be brought to an interview room, or if the person is a person of interest where they might be a suspect but we do not have enough evidence at that point and we invite them to come in. Obviously, any type of interview would be done in an interview room which is equipped with a camera.

The other side of the coin is like we talked about in the working group—those spontaneous utterances. You have the person in the back seat that just murdered his wife and the officer is driving him to the jail and all of a sudden he starts confessing and telling, Hey, I did this and I did that. Yes, the officer should have a body camera on at that point, but the intent was not to exclude that type of confession that is made in the back seat of a car, not to a detective who is conducting the interview.

**Assemblyman Fumo:**

Would you be open to language that said something to the effect that anytime the detainee is not free to leave, rather than only at a detention facility? If the officer knows he is not going to let the person leave and he is going to begin questioning, whether it is in the back of the police car or at the place of detention, if the person is not free to leave, perhaps it might open it up.

**Chuck Callaway:**

That sounds reasonable.

**Michelle Feldman:**

For the 24 states that require recording of interrogations, it only pertains to interrogations that occur inside of a fixed location under the control of law enforcement. That is because body cameras are not available to every agency at this point, so it is just more difficult to capture statements that are made out in the field. That being said, if there is a formal interrogation that is happening in the field, the defense attorney can then ask, Why did you not bring my client to the police station? Why did you not record this? It is the law to do it. I think that it is a tool for defense attorneys to protect against that kind of practice, if they feel that an

officer intentionally avoided bringing the suspect back to record the interrogation. It opens up some questions defense attorneys can ask about why that happened.

**Assemblyman Daly:**

In section 1, subsection 2, paragraph (b)—this is a public records question. I understand a lot of these recordings and various things are confidential for a variety of other reasons, such as ongoing investigations, et cetera. Whenever I read something that specifically makes something a public record, even though I know this is just the policy, the way our statutes are written currently is that, unless it is declared to be confidential, it is a public record, so I do not know if that language is needed. If you do make something public, I understand and what I have seen, and this is my concern, is that more than one agency takes that language and says—I forget the Latin term—if this is public, it is to the exclusion of other things being public. That is not the case. We have the statute on it specifically. I want to remind you of it when you talk to your smaller jurisdictions.

*Nevada Revised Statutes* (NRS) Chapter 239, which is the public records law, NRS 239.001 subsection 5 specifically states that "If a public book or record is declared by law to be open to the public, such a declaration does not imply, and must not be construed to mean, that a public book or record is confidential if it is not declared by law to be open to the public and is not otherwise declared by law to be confidential." By making it public in this statute does not mean that it is to the exclusion of anything else. It has to be declared confidential in order not to be. I just want it on the record that you do not intend to use that language as a defense to not give any other otherwise nonconfidential records to the public.

**Chuck Callaway:**

No. This language came in most part from another state and that, I believe, was included in the language from that other state. Our policy manual at LVMPD is public record anyway. If you came in and wanted the policy on use of force, or wanted the policy on interrogations, it would be made available to you. It is not our intent to say that because this is public, everything else is not public. If you want to strike that out, I am open to that. It was from another state's language.

**Assemblyman Daly:**

I appreciate that. I want to make sure we have it on the record. If it is in there, that is fine. I have seen other agencies try to use that as a defense to say, I do not have to give you something else because if the Legislature had wanted it to be public, they would have said. When other things have been declared public, the section I just read you was put in there to get—they still use it. They still put it up as a defense and then they get sued, and it is stupid.

**Chuck Callaway:**

If this bill were to pass as written, what I imagine we would do is probably just put the policy on our website so the public can view it 24/7. It is typically what we have done with other similar policies. We have a use of force section on our website that talks about use of force, so the easiest thing to comply with this where the public could view it 24/7 would be to put it on the website.

**Assemblyman Daly:**

I appreciate that and I do not doubt that whatsoever. I have seen agencies that try to take it and expand it.

**Vice Chairwoman Cohen:**

The Records and Fingerprint Bureau at LVMPD is wonderful to work with. They are very accommodating and helpful. I understand that it is important to have these records out there for the sake of transparency. I am somewhat concerned that we are now going to possibly have more recordings of people confessing to horrific events. Is there anything to protect the victims or their families? Can they get restraining orders? What can they do if someone's family member was killed and there is a confession that is very graphic and they do not want that out there?

**Chuck Callaway:**

The public records issue is another animal that we are struggling with. We have over \$1 million in costs just from October 1 alone in public records requests. We have put together a whole unit of 13 people and all they do is go through and redact faces and personal information so they can submit public records requests. Many times—from what our people in records and in our general counsel section say—the Nevada Public Records law is vague at times, and it is difficult to determine what a public record is and what it is not. A lot of times we err on the side of caution. When we get those requests, like the case of October 1, sometimes for very graphic information or something that we think can revictimize victims if it is released, a lot of times we err on the side of caution and we say we are not going to release it. Then we face litigation and we get sued and then the courts may say, No, you have to turn it over or not. They may side with us. It is a very challenging issue.

I have heard discussion within our department that they would like to see the state law look more like the Freedom of Information Act as far as clearly defining what records are to make it easier to make those determinations and if this is something that we should not release because it is going to have a negative impact on victims. You have to have balance between transparency and giving what is important over to the public and at the same time protecting the victims and protecting people's rights. It is a challenge. We do go through every records request and if it is something we believe should not be released, we do not. On the court side, perhaps Chairman Yeager is aware of a process that a victim can take to have one of those records sealed.

That is a challenge we run into. For example, if someone makes a records request for something related to your criminal history or report that involved a criminal act, and that is released to a media outlet, and then down the road you are eligible to seal your record. We go through the process of sealing everything. That entity still has what they requested, so that information is still out there. I know it is another issue; I did not mean to get off track from what this bill is, but it is an important topic.

**Assemblyman Roberts:**

You talked about being open to expanding it to other types of interrogations. Not that I am an advocate for it at all, because I think it would be too cumbersome, but what about an investigative detention? Typically people are not allowed to leave for an investigative detention. Would that be something that would be cumbersome for law enforcement to have to record those kinds of interviews?

**Chuck Callaway:**

Yes. I think you are right. I think it would get into the realm of cumbersome. We are doing investigative detentions all the time on a wide variety of people for a wide variety of crimes. Maybe we have confirmed that they are the suspect, or we have probable cause but maybe we do not; maybe we stopped someone who fits the description. The officers are wearing body cameras for LVMPD, but again, we have to look at the totality of the whole state and the rural areas. Nevada is not a one-size-fits-all approach. I think this bill does a good job of balancing capturing those most serious offenses—where we absolutely need to record and document any confessions or statements given—versus just opening the floodgates and saying we need to document every time we detain someone or stop someone on an investigation.

The other side of it is, I believe that might require us then to retain that body camera footage for a longer period of time. Maybe we have not necessarily charged someone with a crime but we stop and interview them because we think they may be involved, but then the officer does not make an arrest. Later, we find out that the person was actually involved. Do we have to retain that body camera footage? I think it opens up a lot of questions logistically, and that was the issue we had last session. Some of those logistical questions kind of muddled up the intent.

**Assemblyman Roberts:**

With technology, things are going to change, and we will be able to progress in that direction.

**Vice Chairwoman Cohen:**

Are there any questions? [There were none.] Is there anyone in support of A.B. 107?

**Corey Solferino, Lieutenant, Legislation Liaison, Washoe County Sheriff's Office:**

We come to the table in support of A.B. 107. We appreciate all of the stakeholders meeting over the interim to address our concerns from the previous legislative bill that was submitted in the 79th Session. We believe this is a great compromise and appreciate the hard work of everyone involved.

**Jennifer P. Noble, Chief Appellate Deputy District Attorney, Washoe County District Attorney's Office; and representing Nevada District Attorneys Association:**

It was my pleasure over the interim session to work with Mr. Piro, with people from the Innocence Project, various stakeholders, and law enforcement to come up with this bill in its current form. It is the result of genuine collaboration between all of us. As written, it

represents what we could all agree to. I think it is important moving forward for this Committee to understand. Expanding it into anytime someone is in a custodial situation, a temporary investigative detention, et cetera, is not practical, especially for the rural areas of our state and in the instances that Mr. Callaway mentioned.

Recording interrogations is the best practice. It is something that safeguards the rights of the defendant. It helps us evaluate our case. It helps the jury evaluate the evidence, and it is in the interest of all parties to do. It is not a situation in which we do not want to record it in every instance in which someone is being questioned; it is just not practical. With that said, in its current form, the Nevada District Attorneys Association is pleased to be here in full support of this bill.

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

I would like to thank everyone who worked on this during the interim. We support this bill.

**Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:**

I was a member of the working group. This bill is the first step toward giving defense attorneys a tool to argue that an unrecorded interrogation is a violation of the law and thereby protecting innocent persons. For those reasons, we are in strong support of this legislation.

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

We are proud to be here today again in support of this bill. As indicated by the individuals before me, recording interrogations is extremely important, especially in the serious crimes. We are in full support of this.

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

We are here in support of A.B. 107 as written. I would like to bring a housekeeping matter to your attention just for a matter of correction. In section 1, right off the start in subsection 1, it says, "Each law enforcement agency" and continues on, but it never defines a law enforcement agency. Section 1, subsection 4 first addresses "Each local law enforcement agency," and then in subsection 5(d) it defines "local law enforcement agency." The two seem like they have separate descriptions.

I want to bring to your attention that there are about 125 law enforcement agencies per NRS, and NRS would define it, in NRS 202.873, subsection 2, as "Any other law enforcement agency within the State and any peace officer or employee who is acting in his or her professional or occupational capacity for such an agency." That really broadens it and takes it to agencies such as the Nevada Taxicab Authority, who has some people who perform peace officer duties, and the Nevada Transportation Authority. Those people certainly would not be investigating sexual assaults or homicides, but just in this first section, without identifying law enforcement agency, would make them have to have this policy and make it available to the public and things like that. Just a clerical issue in addressing it as a local law enforcement agency throughout the entire bill.

**Vice Chairwoman Cohen:**

Have you spoken to the sponsor about this?

**Eric Spratley:**

I just saw this and did the quick research to see if I was correct in those two separate definitions.

**Vice Chairwoman Cohen:**

Is there anyone else in support? [There was no one.] Is there anyone in opposition?

**Amy Coffee, Private Citizen, Las Vegas, Nevada:**

I submitted a letter ([Exhibit C](#)), and want to start out by saying that I appreciate the Committee tackling this. I am aware that this is something that we have been trying to get placed into law for a long time. I appreciate the work of the Committee; however, committees often compromise, and it appears to me and from talking this over with my colleagues that one could look at this bill and say it appears to give law enforcement a lot of justification for not recording interrogations rather than to encourage them to record interrogations. A lot of the language in this bill is fine, but I certainly think there are improvements that would encourage recording.

In this day and age with technology that is available, even the smallest law enforcement agency should be encouraged. I understand why you cannot mandate it in every situation, but I think it should be encouraged. With that, I think there should be a statement in this bill, preferably looking at the way the bill was written; when you look at page 2, line 13, I think there should be a statement that law enforcement shall make every effort to record all interrogations. Nowhere in this bill does it suggest that law enforcement shall try to record interrogations. It really sets out a bunch of exceptions and loopholes and a lot of reasons not to record. I think it is important that there should be an emphasis that law enforcement shall strive to record all interrogations. With body cams and recording equipment in patrol cars, it is actually very easy and is done quite often. I think it should be encouraged and should be the policy behind this, understanding that it would not be fair to mandate it in every possible situation.

Looking at some of the loopholes, I am concerned that some of these loopholes seem to swallow the bill. I think that when there is an equipment malfunction and law enforcement is going to come in later, maybe a year, two years, five years later and say, Well, we did not record this interrogation because of an equipment malfunction, I think there should be a requirement that that be documented in a report by the officer so that years later someone can question it, know that it actually happened, and know the circumstances.

I think when you say things like "equipment malfunction," or, I did not use the equipment properly, or there was an exigent circumstance, it is very easy for someone later to justify not recording. I think a documentation requirement would force someone to put into writing the details and might narrow that to perhaps legitimate reasons. I believe there are legitimate reasons, and I believe most law enforcement officers are completely honest in doing their

job. My experience is such that it is better to have the documentation than to not have the documentation. As some of you on this Committee know, oftentimes when you are litigating these issues, it can be many years after the fact. Documenting when something does not work or there is an exigency, I think, is critical to making this law fair and fair to both sides. Law enforcement has a lot of reasons they can use for when they do not record. On the other side of the coin, I think it is only fair that someone should be able to have full disclosure and be able to question it so they know everyone is acting in a fair way.

I put a lot of things in my letter to address it, and I suggested adding a document requirement. I was concerned with the one exception on page 2, lines 35 and 36, where it says that the officer "inadvertently fails to operate the recording equipment properly." I suppose that could happen. I think it is covered by the other exceptions that there was a malfunction. I think it is a little redundant. I am concerned that this is going to be used in such a way that it could be used as more of an excuse not to record. I believe the intent of this was to encourage recording. As one of the members pointed out, one of the exceptions is that the individuals affirmatively assert their desire to speak with law enforcement without being recorded.

My experience with doing this kind of work for 26 years is that my clients do not often say, Do not record me. As a matter of fact, I do not think I have ever had that situation where someone said, Please do not record me. I think it would have to be recorded itself or documented in writing. Again, we often have to be able to go back in time and piece together what happened, which is why recording is so valuable. Just as an aside, with the use of body cams that we have in Clark County—I have had a lot of clients who want to tell me about an interaction with law enforcement, and often the body cam protects the officer. I will tell you more often than not it turns out that my clients were not exactly giving a clear description of what happened, and recording is to the benefit of law enforcement. Clients will say, This was said; that was said. This is a benefit to both sides. It gives a lot of clarity, and I really think we should be encouraging recording of all interrogations and all interviews. There is no reason why we cannot encourage it. I am again concerned that this would just give a list of exceptions to more or less discourage recording, and that is my concern with the bill.

**Vice Chairwoman Cohen:**

Would you say you support it and just feel it does not go far enough?

**Amy Coffee:**

I want to support it because I think this idea and the policy is extremely important, and I do think right now we do not have anything. I think it can be improved. I support it generally but am concerned with some of the details. I think this is so important, and again, we have nothing right now.

**Vice Chairwoman Cohen:**

I encourage you to reach out to the working group and the bill sponsor and try to see if you can come to some resolution with them.

**Amy Coffee:**

I will try to do that.

**Vice Chairwoman Cohen:**

Is there anyone in opposition to the bill? [There was no one.] Is there anyone in the neutral position?

**Lisa Rasmussen, representing Nevada Attorneys for Criminal Justice:**

I signed in neutral because I was on the committee. I want to thank everyone who was on the committee for all the progress we made and for coming to this resolution in terms of the bill that is before you. I think it is a good bill and that at a minimum you should vote for it.

I think there were areas where it could have gone a little farther. This is part of a compromise, and in every situation where parties compromise, this is what you come up with. The one thing that it does not have is a remedy. I know that some of the other states have adopted a version of this that has a remedy, for example, a jury instruction. It would provide that a jury instruction could be given to the jury to explain that a confession or a statement by a defendant was not recorded. I will also say there is nothing about this bill that prevents us from asking the court to do that. For that reason, I signed in "neutral" instead of the "for" column. I thank everyone who worked on the committee, everyone worked hard on this, and it was the result of a lot of effort on everyone's part.

**Vice Chairwoman Cohen:**

Technically, we will have you in opposition but supportive.

**Lisa Rasmussen:**

Actually, I think I am more "for" with the qualification, but okay.

**Alanna Bondy, representing Nevada Attorneys for Criminal Justice:**

I had originally signed in as support as well, but I decided to come up in neutral with Ms. Rasmussen because we share many of the sentiments with regard to the bill. I think it is a great step forward to codify some requirements for recording interrogations. There was excellent work done on the bill, but we would be open to adding some more enhancements that have already been discussed by either Ms. Rasmussen or Ms. Coffee.

**Vice Chairwoman Cohen:**

I think you are also technically in opposition but supportive. Is there anyone else in Las Vegas or Carson City in the neutral position? [There was no one.]

**Chuck Callaway:**

I appreciate the comments that were made by the people in opposition and neutral. The working group met—I think we had eight meetings—and we had a lengthy discussion on this. It was a compromise to get us further than where we have been in the past. I understand the concerns that there was no mandating here, but I would respectfully disagree with it. I believe it clearly states there is a requirement that recording takes place unless one



of those exemptions occur. It does not say law enforcement can record if they want to, but here are the exemptions. I believe this sets a premise that there is a requirement to do this. In LVMPD we already have a policy that it should be done. I am not aware of cases where it is not done, and if it is not being done, we would document the reasons why.

**Michelle Feldman:**

To add to what Mr. Callaway was saying about the bill, this is in line with the 24 other states that have recording interrogation laws. The exemptions reflect what other states have put into their law to acknowledge that there are some circumstances where recording interrogations is not possible and should not be expected. At the same time, it does require that interrogations are recorded for the most serious crimes. I would encourage in the policy world not to let the perfect be the enemy of the good, and I think this is a good bill that reflects what nearly half of the other states in the country are doing.

**Assemblyman Yeager:**

What I heard from the neutral is that they are generally supportive of the bill, but wished it had gone further. That happens sometimes in this building. We have all had that happen, and if you are new, you will have that happen to your bill. I think what we heard is that it is important to make sure we take the first step and we put this policy into our statute. For that reason, I would urge support.

I think Assemblyman Watts makes a good suggestion in looking at the next Legislature or the Advisory Commission to look at the data for when the exemptions are being applied. This Legislature certainly has the ability to come back in future sessions and decide maybe this was not strong enough or maybe we need to add to it. As Ms. Feldman said, we do not want to make the perfect the enemy of the good. This is a good first step and I would urge support.

**Vice Chairwoman Cohen:**

I will close the hearing on A.B. 107. Is there anyone in Las Vegas or Carson City for public comment? [There was no one.] The meeting is adjourned [at 10:42 a.m.].

RESPECTFULLY SUBMITTED:

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Linda Whimple  
Committee Secretary

APPROVED BY:

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Assemblyman Steve Yeager, Chairman

DATE: \_\_\_\_\_

## **EXHIBITS**

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a letter dated February 15, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, authored and presented by Amy Coffee, Private Citizen, Las Vegas, Nevada, in opposition of Assembly Bill 107.