

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

**Eightieth Session
February 19, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:02 a.m. on Tuesday, February 19, 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:

Assemblyman Michael C. Sprinkle, Assembly District No. 30



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Corey A. Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office
Robert B. McBeath, President, Network of Nevada and Southwest Medical Associates
Tony Alamo, Medical Director, Independent Physician's Association Networks Nevada
Bennett Mitchell, Associate Medical Director, Southwest Medical Associates
K. Warren Volker, Chief Clinical Officer, HealthCare Partners
Catherine O'Mara, Executive Director, Nevada State Medical Association
Michael Hillerby, representing Renown Health
Susan L. Fisher, representing the Nevada State Society of Anesthesiologists; the Nevada Orthopaedic Society; and Elite Medical Center
Matthew Sharp, representing Nevada Justice Association
Patrick Leverty, President, Nevada Justice Association
James Stewart, Private Citizen, Sparks, Nevada
Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Matthew J. Walker, representing Reno-Tahoe Airport Authority; and the Howard Hughes Corporation
Greg Ferraro, representing Nevada Resort Association
Chase Whittemore, representing Las Vegas Sands Corporation
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
Alanna Bondy, representing Nevada Attorneys for Criminal Justice
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department

Chairman Yeager:

[Roll was called. Committee protocol and rules were explained.] Good morning everyone. We have three items on the agenda today. We are going to hear our presentation first, and then we are going to take the two bills out of order. We will do Assembly Bill 115 first and then Assembly Bill 100 after that. We will start with the presentation.

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

It is a privilege to showcase some of our agency's highlights ([Exhibit C](#)). Our mission statement is that we are dedicated to preserving a safe and secure community with

professionalism, respect, integrity, and the highest commitment to equality. Our vision statement further exemplifies our mission statement and focuses us on our daily responsibilities when we are interacting with the public, both in a detention setting and in an operation setting out in the field. Our core values are pride, professionalism, respect, integrity, dedication, and equality. Our motto is "Commitment to Community," and it is written on all of our vehicles.

Washoe County [page 4, [Exhibit C](#)] contains the cities of Reno and Sparks. Some of the smaller communities that are also represented are Incline Village-Lake Tahoe, Wadsworth, Vya, and Gerlach. For those of you who do not know where Gerlach is, it is about 100 miles northeast of Reno and is the gateway to the Black Rock Desert and the Burning Man Festival. All roads through Washoe County lead to Burning Man and the Black Rock Desert. We have resident deputies stationed in Gerlach to respond to those rural communities. Our population is currently about 500,000—just shy of a half million. It is roughly a quarter of the size of Clark County. We were founded on November 25, 1861, and we are the second-largest county next to Clark County. We patrol roughly 6,600 square miles, all the way to the Oregon border, south to Carson City, west to California, and east to Storey County.

Just seven short weeks ago, Sheriff Darin Balaam [page 5] was sworn in as the 27th person elected to serve as the sheriff of Washoe County. Sheriff Balaam is a 21-year veteran of the sheriff's office. He had a four-year hiatus when he retired as the assistant sheriff under Sheriff Mike Haley's administration. His platform is committed to some of the pressing issues that face this Committee on a daily basis, like providing mental health services, providing both pre- and post-detention services for those offenders in our communities who need those assets, combating sex trafficking in our community, and working with Washoe County residents to ensure neighborhoods are safe, diverse, and have the ability to thrive. He is a big proponent of community-based policing principles.

The Sheriff's Office [page 6] provides law enforcement services for the unincorporated areas of Washoe County. If you look at a snapshot of Reno, the McCarran loop goes around Reno, and we generally look at it that everything outside of the McCarran loop is ours. It is a little bit more diverse than that—there are pockets here and there—but there are roughly ten different districts to which we provide patrol services on a daily basis. We respond to approximately 60,000 calls for service annually. We provide the only adult detention facility for pretrial detainees and sentenced misdemeanants within Washoe County. We have an authorized strength of 421 commissioned personnel, 283 civilians, and about 56 intermittent hourly employees, a lot of whom are retired law enforcement.

We monitor about 422 dedicated volunteers [page 7] in our citizen programs through the Citizen's Emergency Response Team, Citizen's Homeland Security Council, and our search and rescue programs. We could not thrive or operate without the work of our volunteers in the community, and they do provide great assets to us. We have an annual operating budget of about \$119 million and an additional \$5 million in restricted grant funding. We are

divided into three bureaus: Administrative, Detention, and Operations. About 50 percent of our assets are dedicated to our Detention Bureau.

Our sheriff [page 8] is an elected official who serves a four-year term. Sheriff Balaam was just sworn in as sheriff on January 7, 2019. Our undersheriff is also our chief financial officer, a sheriff-appointed position, and our three chief deputies overlook the Administrative, Operations, and Detention Bureaus. The rank of captain is the highest commissioned rank within the sheriff's office that you can test for through Human Resources. The other positions are appointed at the will and direction of the sheriff. Our captains oversee the patrol divisions. We have two captains assigned to the Detention Division, one for the operations side, and one for the services side. We have 15 lieutenants, 44 sergeants, and 352 deputy sheriffs.

Our staffing levels [page 9] have remained somewhat stagnant over the last few years as we continue to put more on the backs of our law enforcement officers. We are working with the Board of County Commissioners to increase our staffing by 40 positions over the next four years, trying to add a strength of ten annually to address some of these issues. We continue to pass laws and regulations and policies and to do training that requires our officers to do more with less. We are at the critical infrastructure point now where we cannot require them to do any more without getting more assistance. In the interim, after the 79th Session, we had the National Sheriffs' Association come in and do an audit of our courts, the district courthouse, and our detention staffing levels. They found that we were grossly understaffed due to some of the programs and all that we are required to do on a daily basis for the detention facilities. We are working with the National Sheriffs' Association and the Board of County Commissioners to address some of those shortcomings.

Regarding our demographics [page 10], this is a statistic that I am progressively prouder of. We are working with Human Resources to be more diversified, and this is a very good representative sample of what the Washoe County demographics look like currently. Right now, our commissioned workforce is about 80 percent male and 20 percent female. That is huge considering just a few short years ago our female officers were less than 7 percent. We have really campaigned to go out and reach those areas that will make law enforcement more appealing to women and to welcome them to our workforce. Our workforce is now 82 percent White, 10 percent Hispanic, 2 percent African-American, 3 percent Asian, 1 percent Native-Hawaiian or other Pacific Islander, and 1 percent American Indian and Alaska Native.

Our Administrative Bureau [page 11] is divided into different divisions. Chief Deputy Tim O'Connor oversees that bureau. There is the background investigation unit; they conduct all of the preemployment investigations for our entire agency, including our commissioned staff, volunteers, and civilian staff. Our Civil program goes out to serve all of our emergency temporary protection orders, evictions, civil processes, and till taps within Washoe County. Our Community Engagement Office monitors our social media platforms and our Public Information Office, and works with our Sheriff's Community Work Program. They monitor those inmates who are sentenced to do community service out of custody.

Our front desk is staffed seven days a week from 7 a.m. to 8 p.m. to take some of the load off the officers in the field for reports that can be made online, or they can come into the sheriff's office and file reports for those crimes that are not necessarily pressing in nature, not crimes in progress, like cold burglaries, destruction of property, and non-injury accidents, and things of that nature. Our Office of Professional Integrity—some of you might know that as Internal Affairs—conducts our internal oversight regarding use of force, pursuits, and any complaints made against our officers in the field. Our Records Division is continually doing more with less. They are going to be in charge of implementing our new National Incident-Based Reporting System (NIBRS). The Federal Bureau of Investigation (FBI) previously required Uniform Crime Reporting data submitted to them monthly. We are switching, and they are shutting down that database. We are one of three agencies in the state that is seeking state accreditation for NIBRS to report those statistics moving forward. Then there is our Research and Development (R&D) Unit, which I am currently chairing, and our Training Division.

Our Training Division [page 12] is responsible for conducting all of our training for law enforcement officers. There are certain annual trainings mandated by *Nevada Revised Statutes* Chapter 289 and the *Nevada Administrative Code* required for our officers to complete. Those are weapons qualifications, emergency driving, arrest and control procedures, Less Lethal certification, legal updates, and I could go on and on and on. They monitor all of that training for our commissioned and noncommissioned staff. They also monitor our field officer training programs for both the detention facility and the Operations Bureau. When our officers come to us from the academy, they embark on a several-week field officer training during which they are shadowed in different phases and have to pass phase boards in order to progress to the next level. Before they are released to work on their own, we give them approximately 8 to 19 weeks of training, depending on the assignment.

We provide large-scale training exercises with our regional partners. After the October 1, 2017, shooting, and after large-scale incidents, people contact our training department to do needs assessments for facility structures and active shooter training. We provide 22 district court bailiffs to the Second Judicial District Court, and we work with the civilian staff and the six other agencies that work within the district court environment to provide our active shooter protocol. We conduct large-scale training exercises in order to make sure everyone is prepared when and if that day ever comes.

Administrative highlights for the R&D Division include Senate Bill 176 of the 79th Session, the "body camera bill," with which you all are probably familiar [page 13]. We had successful project deployment of approximately three weeks ahead of our mandate. It was a huge undertaking for the infrastructure to be put in place on the back end for these cameras to be able to upload to the cloud and to have that evidence data available for our local public defenders and prosecuting attorneys. We currently have 164 body-worn cameras deployed in the field for all of our operations folks and those who are uniformed and have routine contact with the public in this position. The Washoe County Sheriff's Office is unique in the sense that we are the only agency, to my knowledge, in Nevada that hires

Category 1 law enforcement officers for both detention and the operational settings that they need. What that means is that our detention officers are trained to perform out on the streets. When the sheriff declares an emergency—when we have fires, floods, or other things—we can put the jail on a lockdown environment and pull those resources out to the field where they are desperately needed. We need a surplus bank of cameras to issue to our corrections staff when they are out working in critical emergencies or in a contracted capacity for special events. We did this in regional cooperation with the cities of Reno and Sparks. It is nice for the Evidence Section because all prosecutorial cases that are coming through Washoe County from the three largest agencies—Washoe County Sheriff's Office, Reno Police Department, and Sparks Police Department—all have the same infrastructure with the Daxon camera and the Evidence.com account where our evidence is up in the cloud.

These statistics from our Records Division [page 14, ([Exhibit C](#))] are here for your reference if you are wondering what we process annually. Some of these things affect concealed weapons permits. Last year we processed over 7,000 permits. That is not 7,000 granted; it is 7,000 applications for permits. We currently have an approximate 85-day turnaround time from the time of application to the time of approval. There are other statistics that are just specific to our agency alone as far as internal investigations with fingerprint requests, criminal history requests, the Adam Walsh Act and sex offender registration, a little bit about NIBRS, and then some of the other administrative things that happen out of our Records Division statistical data.

In our Administrative Bureau [page 15], our Community Engagement Office is huge in connecting us with social media and addressing some of those stereotypes that seem to exist with law enforcement. It is a great means by which to connect with the community and get community feedback. They do a wonderful job monitoring all of our social media assets.

Our Detention Bureau [page 16] is headed by Chief Deputy Jeff Clark. It encompasses our Alternatives to Incarceration Unit, our Second Judicial District Court bailiffs, court transportation, Detention Response Team, Inmate Management Unit, and our programs for our inmates who are currently serving their time in custody. There is more statistical data about how many court transports we do on a yearly basis. They continue to rise. We have about a nine-mile trip from the sheriff's office to the different area courts where we have to transport those people. We try to do our misdemeanor court via video arraignments; it does not always work. Sometimes we do have to transport, but we conduct about 19,000 video arraignments yearly. Our average daily population is also continuing to rise. Right now we are stuck at about 1,123 on a daily basis, and that is fairly consistent throughout the year. We used to see our numbers go down in the winter and up in the summer, but they are currently remaining pretty constant across the board. Our average length of stay is going up significantly to about 15 days for the current offenders.

Our jail [page 17] was first opened in 1988 with a capacity of 448 beds. We have gone through a couple of revisions, and our current capacity is up to 1,301. That is the worst-case scenario. That is when our classification unit looks at some areas and double-bunks some areas where we do not really suggest double-bunking and tries to keep the environment in the

detention center healthy and not overcrowded. We do not like to get to 1,301 if at all possible. We average about 22,000 bookings per year.

I hit on some of our detention highlights [page 18]. We have Category 1 officers; we do not hire correctional officers. They are then able to come out and assist in the law enforcement function outside of the confines of the jail. These are some of the events when we would pull them out to assist us: fire—with the amount of snowpack that we have in the Sierra this year and the concern we have for the upcoming fire season—and flooding.

Our Operations Bureau [page 19] is headed by Chief Deputy Greg Herrera. This unit heads our Civil Division; Investigations; Patrol; Major Accident Investigation Team; Marine 9, our boat unit up in Lake Tahoe; Motors Division; our bomb squad, Explosive Ordinance Disposal; Extraditions, our hostage negotiation team; K9 unit; Northern Nevada Interdiction Task Force; Northern Nevada Regional Intelligence Center (NNRIC); RAVEN, which is our helicopter unit or Regional Aviation Unit; Regional Gang Unit; Search and Rescue; and Special Weapons and Tactics. Our Operations Bureau is very busy because they do all of the fun stuff within the sheriff's office.

Here are some highlights from our Traffic Division [page 20]. I put an asterisk next to the five deputies because in February of last year, we had one deputy who was promoted and two deputies whose positions were transferred back to patrol for staffing and budgetary reasons. Our unit is usually much larger than that. It currently sits at six: five deputies and one sergeant. They do a lot of work for a six-man unit. They issued over 10,000 citations last year, 291 non-injury accidents, 43 DUI accidents, and 5 traffic fatalities. Our Motor Unit is our main investigators, along with a few others, so normally when there is a major accident investigation, our Motor Unit is identified as having to investigate most of those crimes. There were 349 DUI arrests, which were 18 percent from drugs and 82 percent from alcohol. On Thursday, we had a bill in the Senate Committee on Growth and Infrastructure, Senate Bill 23. We currently do not test for drugs in all of our DUI samples. If the officer has reason to believe there are drugs aboard and that alcohol was also there, we will request a test through the district attorney's office. However, if they have a DUI investigation for alcohol and the results come back 0.09 percent or higher, they do not test for drugs unless specifically requested by the district attorney.

Last night when I landed in Reno from Las Vegas, and this morning when I was coming down to Carson City, the Search and Rescue Unit had been out all night doing searches [page 21]. This is their busy time of year. People get lost or stuck. They get in remote areas and Search and Rescue is continually busy. It is commanded by a sergeant and a deputy who manage over 400 volunteers for various areas in the department. They have an Air Squadron, a Special Vehicle Unit, and a Hasty Team. They coordinate all of those emergency rescues. Last year alone they had 544 missions: 348 were lost, missing, or injured persons; 18 were evidence searches; and 178 plane crashes, evacuations, and miscellaneous searches. Combined, they had almost 20,000 hours of volunteer services—or about \$1.3 million savings for the annual budget for the sheriff's office—in our Search and Rescue Division.

Our NNRIC [page 22] is not a fusion center, but it tries to act like one. It is a regional collaborative effort between the agencies in northern Nevada to put out information, work cases, and use data-proven techniques to effect crime and traffic safety. They meet weekly and talk about some of the hot topics that go across jurisdictional boundaries.

Some of the statistics for our Forensic Science Division [page 23] currently include 42 full-time employees, 5 intermittent, and 1 volunteer. It is directed by civilian Director Kerri Howard. We used to have a commissioned staff officer in there, but we have civilianized most of those positions. We basically have scientists working for us in this division. We no longer have deputy investigators. The Division has a \$4.6 million budget, and we contract with 13 counties in central and northern Nevada. We provide forensic science services to about 80 user agencies on the back end. Eighty percent of services we provide are for interests outside of the Washoe County Sheriff's Office.

Some of you may remember Dr. Lisa Smyth-Roam, who testified on the sexual assault kit bill, Assembly Bill 97 of the 79th Session. When she was looking across the state for the unsubmitted sexual assault kits, she found 1,126 of them. Through A.B. 97 of the 79th Session, we were able to outsource 1,027 of those to the FBI and a contract forensic laboratory. We have about 79 percent of the kits tested and 488 kits entered into the Combined DNA Index System, or CODIS [page 24].

Our Community Engagement Office [page 25] works with our community partners. We have a "Warrant Wednesday" on social media. It is amazing what people will do. We have officers out in the field looking for people all of the time but cannot find them. When we put a Warrant Wednesday on a specific person, social media blasts with where that person is. It has been a very effective campaign. We also make a lot of donations. As much as I do not like the relaxed grooming standards within the professional community, we do a "No Shave November" through April where we pick a charity of the month. Officers can donate \$50 for the month to have a groomed beard. They donate those funds to charities throughout northern Nevada. Last year alone we donated over \$66,000 to local charities.

"One Agency, One Team, One Family" [page 26] is unique in the sense that we are a large agency but small enough that we still know each other. We communicate both at work and in the community; we engage in a lot of things. It is nice to represent the sheriff's office when we are out doing the Reno-Tahoe Odyssey, the Tough Mudder, working an honor guard detail, or working Burning Man. We really do interact with each other, and we have a family atmosphere.

The line-of-duty deaths [page 27] have already risen since Director Chuck Callaway of the Las Vegas Metropolitan Police Department gave his statistics a couple of weeks ago. There have been 17 deaths: 8 by gunfire, 6 by automobile, and 3 others. Some of these statistics hurt us in our recruiting campaign. I still believe law enforcement is an extremely noble profession. I encourage everyone to join, including my daughter who just got out of the Air Force. We would like other people to answer the call and come work with us.

Some of the things that we do—and I want to invite our legislators—are just outside of these doors at the State of Nevada Peace Officers Memorial between the Supreme Court building and the Office of the Governor [page 28]. May is National Law Enforcement Officers' memorial month, and May 15 specifically for the memorial in Washington, D.C. It is a moving and extremely powerful ceremony. We invite all of you to come out and be our guests at the ceremony.

If there are any questions, please contact me directly. You have my contact information [page 29].

Chairman Yeager:

That is valuable information that you have supplied. I noticed in the outreach portion that you talked about the citizens' program. Is that equivalent to a citizens' police academy? Could you give us more detail about that program?

Corey Solferino:

Our citizens' core program includes all of our outside programs, like our Community Emergency Response Team that we activated during the Lemmon Valley flood. Citizens go through training through our Community Engagement Office to get certified. We receive federal funding to certify citizens to provide services from road closures to many other services. I cannot even speak to all of the things they do.

Chairman Yeager:

Does the Washoe County Sheriff's Office have something equivalent to the Las Vegas Metropolitan Police Department's Citizen Police Academy that is fairly involved?

Corey Solferino:

I wish I could say that we do. We previously had one, but ended up running a regional academy with the cities of Sparks and Reno. For budgetary shortfalls and other things it takes to deploy in the field, it was discontinued. I have not seen it in several years. Sheriff Balaam might want to reintegrate that back into our agency since it is very valuable for the public to walk a day in our shoes.

Chairman Yeager:

Are there any other questions?

Assemblywoman Torres:

You mentioned that there is a lot of effort by the Washoe County Sheriff's Office to diversify the department. I wonder what those efforts are. I was also wondering how those demographics have shifted. Looking at it, it looks like there is still a lot of work to be done.

Corey Solferino:

We have been working with human resources and the university to more actively engage in our communities. Some of the pictures you saw throughout the presentation were booths that we operate, or pay for, at different events throughout Reno and the Washoe County area.

We have a limited travel budget to recruit outside of Washoe County, but we will attend different university functions at California State University, Sacramento, and San Francisco State University to try to attract women through price points and quality of life. One of the things we have done with Human Resources is to go to specific divisions outside of criminal justice. We used to only focus in on the criminal justice departments, but we want people from all walks of life: engineers, English majors, and political science majors. I want the criminal justice people, but I want to diversify and not just look at those majors. We try to get more involved with our community and recruiting efforts through social media and attending different community events to spearhead those efforts.

Chairman Yeager:

Are there any additional questions? I do not see any at this time. You can feel free to reach out with your questions directly to Mr. Solferino. At this time, we will open the hearing on the second bill on the agenda, Assembly Bill 115. We have with us Assemblyman Sprinkle to present the bill.

Assembly Bill 115: Provides a privilege to an organized committee of certain groups of physicians to refuse to disclose certain information. (BDR 4-556)

Assemblyman Michael C. Sprinkle, Assembly District No. 30:

We will start with Assembly Bill 115. Primarily, I will have a number of individuals come up and dive into this bill to give you a far better presentation. In essence, what the bill does is expand the definition of an organized committee to include a partnership, association, or other group of at least two physicians formed for the purpose of rendering health care and that has the responsibility of evaluating and improving the quality of care rendered by the parent organization. It removes the word "or" from section 1, subsection 1, paragraph (e); removes a comma and inserts an "or" in section 1, subsection 1, paragraph (f); and makes some other changes. This gives some overview of certain specific individuals within our medical professions, and some members of UnitedHealthcare will present the bill more fully.

Robert B. McBeath, President, Network of Nevada and Southwest Medical Associates:

I am currently the president and chief operating officer of OptumCare Nevada and Southwest Medical Associates. We are one of the largest multispecialty medical groups in the state and represent over 400 physicians and advanced practice clinicians. We have the responsibility of caring for over 350,000 patients in the southern Nevada market, and we do that through approximately 35 clinical facilities across the Las Vegas Valley. We are an integrated, ambulatory delivery system. In addition to our medical clinics, we also have urgent cares, ambulatory surgical centers, home health divisions, nursing pools, clinical pharmacies, and cancer centers.

We strongly support this proposed bill to allow the medical group practices to conduct internal quality and peer review to ensure we are providing the highest level of quality care and patient safety to our patients in a proactive manner. The inclusion of the medical group practices into this statute and thus extending the privileged protections afforded to the committee members and the work product is essential to encourage the participation of

physicians in this important quality assurance activity. The value of this process has been widely recognized for years.

Federal law, through the Healthcare Quality Improvement Act of 1986, gives comprehensive legal immunity to those who participate in peer reviews. Additionally, all states—except New Jersey and the District of Columbia—to some degree, have extended privileged protection to the disclosure of peer review information and the committees' work product. Nevada is no different. It has afforded these protections to hospitals, ambulatory surgical centers, health maintenance organizations, home health services, mobile clinics, rural clinics, and ten additional entities that include our entities of higher education, like the School of Medicine, and medical societies.

This bill would logically add the medical group clinic practice to the defined list of entities that can conduct quality peer reviews under this statute. This addition is very important to ensure that the highest quality of care and patient safety is being provided to our patients and is consistent with the intent of the original statute, *Nevada Revised Statutes* (NRS) 49.117, and is a highly logical extension of its scope.

Tony Alamo, Medical Director, Independent Physician's Association Networks Nevada:

I have been newly hired by OptumCare as the medical director of the Independent Physician's Association for the state of Nevada. My responsibilities are for over 220 doctors under private contract caring for nearly 14,000 Medicare Advantage patients in our state. Today I testify regarding the peer review process, not because of my current employment—which has only been 15 months—but rather because of my personal past experience working in the private sector for over two decades running a four-provider primary group practice in Henderson, Nevada. During those 23 years, I was chief of staff at Sunrise Hospital in the early 2000s, and in the late 2000s, I was chief of staff at St. Rose Dominican Hospitals-San Martin Campus, a brand-new hospital in the southwestern area of Las Vegas. I was able to see firsthand the peer review process work in those hospital settings.

I was also privileged to see peer review in a completely different profession used to improve the quality of operators. Assemblyman Roberts would be aware of this. My 20 years of being a tactical physician for Special Weapons and Tactics, or SWAT, under search and rescue for the Las Vegas Metropolitan Police Department, from which I am newly retired. After every mission the SWAT officers debrief in the form of critical peer review. If they thought any of those debriefs would potentially put them in legal harm's way, those reviews would never have happened, and the operators would not have been better for it.

The difference between a medical student and a physician is one day. At the end of June, they are medical students, but on July 1 they become doctors—interns and residents. The knowledge of medicine is something that occurs throughout an entire career. Learning from one's peers or having intervention through education or collegial counseling is critical to the improvement and enhancement of the quality of that physician. At the end of the day, if you

do not offer some peer review privilege that has already been offered to so many different entities—Dr. McBeath named them—it is a missed opportunity to have peer review occur.

It does not make for better doctors if they do not undergo the peer review process. In fact, it pulls them into the underground. It can get them terminated, but they simply get rehired in another clinical delivery organization without professional improvement.

At the end of the day, what this bill does is expose another group of doctors to the tools that make them better, which increases quality of care. We cannot have enough quality care in the state of Nevada.

Bennett Mitchell, Associate Medical Director, Southwest Medical Associates:

I am a family medicine physician, and I have been with Southwest Medical Associates for 24 years. I have practiced medicine for 40 years. I am the Associate Medical Director for Quality as it relates to quality assurance. I am certified for peer review by the American Board of Quality Assurance and Utilization Review Physicians, and I am a fellow of that same organization.

I have worked with quality assessment and quality review for the past 20 years within the organization. I also work with UnitedHealthcare in their peer review process. We do not have peer review within our organization, but I do participate with peer review through UnitedHealth. All of the peer review issues that come to the surface will go to UnitedHealth and we, as a committee, review those cases. If we were able to have peer review within our organization, we could have a better look at the care we are providing and allow our staff and physicians to participate more in ensuring we are providing the care we are expected to give. As it stands now, an issue becomes one primarily if a patient has a complaint. That is how the majority of issues come to the surface. We would like to be able to have our staff empowered, our physicians empowered, to understand that it is their duty to report more of what we do so we can improve the quality of care without having to wait until it gets to be an issue at the patient level. Having peer review within the organization would make a significant improvement in how we provide care.

K. Warren Volker, Chief Clinical Officer, HealthCare Partners:

I am the chief clinical officer for HealthCare Partners. I am also here in my role as the current chief of staff at Centennial Hills Hospital Medical Center, and I am also on the board of trustees for the Valley Health System. For the past 14 years, I have been serving in that capacity on peer review for the Valley Health System.

I am here in support of Assembly Bill 115 along with the other doctors. To give you some background, HealthCare Partners is 340 providers, the majority of whom are physicians, and an affiliated network of over 3,000 physicians through contracts. Our practice, our medical group, is made up of 64 clinics throughout southern Nevada. We run urgent cares, home health, and we also have a very large presence in Nye County and Pahrump. We also have a clinic in Mesquite. We care for just over 300,000 Nevadans who call HealthCare Partners their medical group of choice. We see almost one million patient visits a year.

We are passionate about quality and transparency. Currently, we do not have that without a peer review process. I think that is what we need to instill this morning. Every other organization other than medical groups has a process of peer review. I have seen peer reviews work. I have seen peer reviews over my 14 years increase quality, but it also does not necessarily protect physicians; it protects patients. It also protects those who receive substandard care or quality. Without this in place, it is difficult for anyone involved with care of a patient to come forward. Sometimes patients themselves are reluctant to come forward when there are issues with quality or substandard care. We are passionate about the highest level of care. With my colleagues in Carson City and Las Vegas, I would like to support the bill and answer any questions you may have for me or the others.

Chairman Yeager:

I am familiar with the concept of how this works, but perhaps not the nuts and bolts. When you go through the peer review process, are there documents or reports that are generated? Please explain what the peer review process looks like and what is generated from the process.

Bennett Mitchell:

The first thing we do whenever there is a concern or issue is to go to the documents. It is all about the documents. If there is a patient-care issue, we pull the documents. Everything is objective and has nothing to do with anything other than what is in the documents. That is reviewed several times by different individuals who are involved in the review process. Questions are asked, and it usually boils down to one or two questions. The individual, group of individuals, or the system process that needs to be addressed is required to respond back in writing. That is reviewed. If all of the questions are answered, then a decision is made based on a standard that we use to determine whether there is minimal deviation from the standard of care, moderate deviation, or significant deviation. Once that is decided, there is a decision made as to what level that falls within and the corrective actions that are required. That is the process we use.

Assemblywoman Nguyen:

I understand the benefit of the peer review, but I do not understand the lack of transparency and the need for this privilege of secrecy after the reviews are completed. Please explain the intent behind that.

Bennett Mitchell:

Can you repeat the question?

Assemblywoman Nguyen:

I am curious about what appears to be the lack of transparency and not being able to see the results of the peer review. What is the intent behind that?

Robert McBeath:

Essential to the success of the peer review process is the participation of the physicians and the reviewers, and the people who are presenting the actual information to review.

Without those protections in place, there is a disincentive for the actual participation of the members of the peer review committees and the people putting forth the information. That has been widely recognized as the reason why this has to be in place: to encourage the process to go forward. It is almost a better-good-for-society argument.

Tony Alamo:

From a hospital point of view, it is a function that is already in place. It is recurrent. We have lots of evidence from the other entities—there are 16 of them that participate—that there is an enormous benefit to the quality you get from the doctor. The knowledge of medicine is a process and not an event. As you go along, you learn from these things, but in a hospital setting, if it is not protected, there would be no incentive for anyone to participate, including the physician who needs the help. We are not reinventing the wheel; it already exists. We just want to add the tool to more doctors.

Warren Volker:

I want to echo what has already been stated. Dr. Alamo and I can attest to the process of peer review and the success in the hospital setting. I am currently involved in peer review, and the key to it is to have the peer review committee be peers. When there are substandard issues, which does happen, it is usually brought forward by the patient, the patient's family, or collaborative caregivers. The physicians themselves know that if the issue is ongoing, there is a place to go. Right now in our outpatient medical group setting, we do not have that established. The key is to know where to go when there is something substandard or the quality is not there. Having this in place will allow the recognition of a committee and a place for those involved to go.

Assemblywoman Nguyen:

If this is instigated by patients or their families, do they learn the results of these peer reviews?

Bennett Mitchell:

There is feedback to the patient or family. Primarily, what we want the patient and family to know is that corrective actions have been taken. One of the things that is most significant in the review process itself is for us to be able to determine whether it is an individual issue or if there is a system or process issue. Without the detail that we would get from being able to ask questions of everyone involved, we miss an opportunity to find system issues. If we are not able to address system issues, we get a chance to repeat it again with another set of providers.

Chairman Yeager:

There are no more questions, but we will give you a chance at the end to give closing remarks. We may have more questions by then. We will open it up for testimony in support. Please make your way to the table. It does not look like we have additional speakers in Las Vegas but we do have folks here.

Catherine O'Mara, Executive Director, Nevada State Medical Association:

I am here in support of Assembly Bill 115. Nevada physicians support the inclusion of physician associations and practices into the already existing structure of peer review. Peer review allows for an objective evaluation of the quality of a system or physicians' performances by their medical colleagues. It allows a setting that is professional, candid, and confidential. The setting allows us to review errors in order to provide education and to make system improvements that will ultimately improve the standard of care to the benefit of Nevada patients. We encourage you to support this bill.

Michael Hillerby, representing Renown Health:

I am also here in support of the bill. I believe others have adequately made the arguments in support.

Susan L. Fisher, representing the Nevada State Society of Anesthesiologists; the Nevada Orthopaedic Society; and Elite Medical Center:

We support this measure. We echo everything that the others have said.

Chairman Yeager:

I do not see any questions. Is there anyone else in support? Seeing no additional support, we will take opposition testimony at this time. I do not see anyone coming to the table in Las Vegas, but we have individuals here in Carson City.

Matthew Sharp, representing Nevada Justice Association:

We are opposed to Assembly Bill 115. Let me first point out that nothing precludes a doctor, just like any other business, from exercising quality control. Pharmaceutical companies exercise quality control. It is part of being safe. The issue here is whether the quality control should be given a cloak of secrecy. We think the lack of transparency in medicine is a problem. We heard about how successful peer review processes are. The fact is that we do not know because they are cloaked in secrecy. We do know that 250,000 people a year die from medical errors. It is the third-leading cause of death in the United States. The idea that it is successful is inconsistent with the statistics. There have been experiences that members of our organization have had in which doctors who repeatedly commit medical errors are brought to peer review and nothing is done. The question that you have to ask as a Committee is why the doctors' groups should be given a cloak of secrecy.

We will back up to the policy reasons that these types of statutes are passed in the first place. Take a hospital; they have peer review processes. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) is an independent body that sanctions hospitals and allows them to do business, and that comes in to review those processes. It is the same with ambulatory surgical centers. You can see from a policy reason why the University of Nevada School of Medicine would be given some protection. Again, there is a process in place to provide objective oversight and analysis. Here you have a group of doctors who get together and decide to create a quality review committee that is secretive. We can have a doctor who we know is giving improper medical care, or have a process in place that we know provides

poor medical care, but, as a patient, you do not get to know what happened because it is secretive. There is no justification in this bill for that level of secrecy for a medical group.

The proponents of the bill mentioned that one reason to justify secrecy is that people will not be on these committees otherwise. I do not see how that correlates to a medical group where they are all members of the same group. This is not a reason for support. When a doctor goes to a peer review committee, he knows who is on the committee because the group is having the proceeding. This bill does not accomplish any of those tasks. If the idea is to protect the reviewers in some way, this bill does not do that. From our view, transparency in medical care is critical. It is critical not only for the safety of the patient at large, but it is also critical for you to be able to make an educated decision about the person who is treating you. These types of bills that cloak medical care in secrecy are not effective.

Patrick Leverty, President, Nevada Justice Association:

I will just echo what Mr. Sharp said.

Chairman Yeager:

I have a question from a practical standpoint. What we are probably talking about here is litigation and when litigation happens because of a lack of appropriate care. In the context of litigation, what does this privilege do? For example, if you have a case and are making a claim that there was medical malpractice, how exactly would this shield you?

Matthew Sharp:

Let me give you a case-specific example that we had a number of years ago. We had a doctor who committed medical malpractice to many members within the Clark County community. That particular doctor had dozens and dozens of complaints filed against him in medical clinics and health maintenance organization settings. We do not know what the entity did in response to those because it was a secret. Part of it goes to what the actual knowledge of the entity was that allowed this particular doctor to practice on its behalf. We do not know because it is a secret.

As to this specific case, you would get the complaint, but the responses to the complaint and how it was investigated you would not know. That was considered to be the proceedings of the committee. In a case where a doctor is using an improper surgical technique, you would get the complaint that someone was hurt, but you would not know what the committee did or what the effect of that report was. That is the way this privilege works. No other health care entity gets this benefit. When drug companies, for example, have an adverse event during which a drug is taken and something bad happens, that adverse event and the response to the event are fully discoverable and have to be reported to the federal government. It comes back to transparency.

Assemblywoman Hansen:

I am curious how it works with other professionals. Are attorneys peer reviewed if there is an issue? Are their dealings confidential? What about police officers?

Matthew Sharp:

Let me speak about attorneys. If a law firm has a quality improvement committee and someone is evaluated for poor performance, no, that is not secretive. I do not know about police officers and whether it is secretive or not. I know, generally speaking, in a health care setting outside of a hospital or institutional setting, the quality improvement process is not cloaked in secrecy.

Assemblywoman Hansen:

I sat on a jury involving a malpractice case, and it did not appear that there was any trouble with discovery. The attorney for the plaintiff was able to present to us a day's worth of medical information, processes and such, to build their case. Does this impede your ability to do that?

Matthew Sharp:

It is obviously case-specific. In the example I gave you, the peer review showed that the institution had sanctioned this doctor for bad conduct 11 times. Obviously that is highly relevant information that should be presented to the jury to show it was not an isolated incident. It is the quality of the evidence. There is no question that what occurs in a peer review process is relevant evidence for a medical malpractice case. The policy that the Legislature is deciding about is a hospital setting where it is privileged, so no one knows.

Chairman Yeager:

Are there any more questions?

Assemblywoman Nguyen:

We have heard from the proponents of the bill that the family members can initiate the peer review process. They are told if it is a system error or that it is being addressed. Is that information that you are able to find in potential litigation cases? Can you get that information?

Chairman Yeager:

I am going to stop you for a moment. We are having an issue with our recording equipment. Everyone please hold tight for just a minute. Do not go too far, and we will have a short recess [at 9:08 a.m.].

We are back to order [at 9:13 a.m.]. We have the issue resolved. We were in the middle of asking and answering a question, so Assemblywoman Nguyen please restate your question.

Assemblywoman Nguyen:

The proponents mentioned that, as part of the peer review, they are told at the end whether there has been corrective action taken or if it was a system error. Are you given that information as part of discovery or subpoena?

Matthew Sharp:

My experience is that patients are not given that information. Oftentimes, they are not even told that a complaint has been filed to peer review. In answer, we would get nothing from the proceedings from the committee. I can give you an example of how it would work under this proposed language. If Dr. Leverty and I run a clinic and a patient comes to me and complains that Dr. Leverty is doing something improper, Dr. Leverty and I convene a quality review committee. Although we conclude that he was doing something wrong, everything that happens in our committee is privileged, everything. The patient comes to me and asks what I found out, but I cannot tell him; it is privileged. There is an absolute cloak of secrecy that takes place within these quality review committees because the proceedings are privileged.

Assemblyman Edwards:

I have been surprised to find that there are confidential protections that can be pierced, depending on the circumstances. You are saying that this is an absolute cloak of secrecy that can never be pierced. Are there no other provisions in the law that could pierce that? If there is a public health issue or if the individual involved is going to hurt himself or someone else, other cloaks of confidentiality and privileged information can be pierced. Are you saying that this is so impregnable that it cannot be?

Matthew Sharp:

That is what I am saying. Part of the problem is within the bill. You do not see the entire context of what it is that is being privileged. If you refer to NRS 49.119, it is the general rule of privilege. It says, "A review committee has a privilege to refuse to disclose and to prevent any other person from disclosing its proceedings and records and testimony given before it." Any and all of the proceedings are absolutely privileged. There are no public care exceptions that I am aware of. There has never been one recognized by the Nevada Supreme Court, so, in my view, the scope of this privilege is absolute.

Assemblyman Edwards:

Can we get legal counsel to weigh in on that?

Bradley A. Wilkinson, Committee Counsel:

Can you restate what you are specifically referring to?

Assemblyman Edwards:

Does this bill actually make the proceedings so absolutely secret that a court would not be able to pierce it if there was a legal case? Is there any other way to find information that would be pertinent if there were public health issues for the rest of the community or something that a person absolutely must know? In a lot of confidential proceedings that I have been familiar with, there is almost always a way to find out the information if you really need to.

Matthew Sharp:

So that we are clear, this bill does not change the scope of the review committee privilege. That privilege exists today. A hospital running a peer review committee would have an absolute right not to disclose anything, and could prevent any of its members from disclosing any of the proceedings or testimony before the committee. That exists. What this bill does is expand the cloak of people who would be able to use this review committee privilege. We think that does not make sense. In general, we have an objection to the review committee privilege, but the scope of that privilege is not subject to this bill.

Brad Wilkinson:

What Mr. Sharp is saying is accurate. The privileges set forth in NRS 49.119 are as he stated, and that applies to proceedings involving review committees. I do not know if there are any circumstances or set of facts that you could come up with where some of the information that was discussed in that context would otherwise be discoverable, but, as far as the scope of the privilege, it is how it exists in law and this expands it to an additional group. I do not know of any circumstances where that information could be discovered through some other means.

Chairman Yeager:

I do not see any other questions. Is there anyone else who is in opposition to A.B. 115? Is there anyone neutral? Seeing no one, we will close the neutral testimony. I invite the presenters to come up and make closing remarks before we close the hearing.

Robert McBeath:

With regards to the question about public health reporting, as a condition of licensure with the Board of Medical Examiners, there is a significant list of requirements, required reporting events that deal with a patient death, reporting of sexually transmitted diseases, and other things on a very long list. The fact that a peer review committee exists does not supersede the requirement for a physician to report any of those adverse issues. It is a condition of his continued medical licensure in this state.

I am not an attorney, but as I understand the peer review committee process, it does not prevent any of the normal discovery process of any underlying facts of any case or event. The normal processes are still in place.

The confidential peer review process is meant to promote quality in patient safety. It is not designed to enhance a litigant's position in a civil suit. This internal review is meant to promote quality and safety. The fact that it exists today, without this privilege, no quality review committees will be formed. We are subsequently left with the status quo. That is why I think the support of this process is regarded as a very important way to ensure, in a proactive manner, the enhancement of the quality of the care we provide our patients.

Tony Alamo:

I want to address a couple of the statements made by the prior gentleman, one of which was when he brought up that there is a third party in hospitals, JCAHO. Yes, that is

a governmental body that oversees the policies and procedures of hospitals. It does not imply that there is a JCAHO representative sitting in the peer review process doing a deep dive on any particular case and determining if something is malpractice, egregious or not. It is about policies and procedures in place in the hospital.

The other thing is that the patients own the charts. That is completely discoverable. It is the patients' charts, whether it is hospital charts or office-based charts. Those belong to the patient, and he can get those at any time.

Absolutely any wrongful death because of medical errors—I do not know the numbers—is awful. At the end of the day, he is trying to correlate that these are happening because of peer reviews. Frankly, it is really the opposite. I wonder what the number would be without peer review.

Bennett Mitchell:

The importance of peer reviews is to allow deep analysis of the cause of a problem. Without the peer review process, you do not oftentimes get a chance to determine if it is a system issue or not. If you do not recognize system issues, they will be repeated over and over again. It allows you to analyze your processes to see if that is involved in the issue. In the end, it is always going to come down to whether there is an individual involved. If we do not have a process to allow us to look at the details of all of the issues, which happens in a peer review committee, then too many incidents will be passed over without a deep analysis. It is very important that we are allowed to do that.

Assemblyman Sprinkle:

As with any bill that I bring forward, I am happy to work with everyone on this bill to find consensus or agreements to the issues that have been raised today. I think it has been a good conversation, and I want to give the assurances to this Committee that I will continue to actively work on this bill.

Chairman Yeager:

At this time I will close the hearing on A.B. 115. We will take up our next bill as soon as everyone who was just here for the last bill clears the room.

At this time I will open the hearing on our second bill on the agenda, Assembly Bill 100.

Assembly Bill 100: Revises provisions governing enhancement of penalties for committing assault and battery under certain circumstances. (BDR 15-159)

Assemblyman Michael C. Sprinkle, Assembly District No. 30:

I am here today to present Assembly Bill 100. Quite a while ago, probably over a year, Mr. Stewart met with me and described situations in which private security guards were put in the position to do their job, but were physically assaulted and injured in the process. You will hear more detailed explanations about that. Initially, I thought to myself that it was horrible, but what do we need to do about it? Why would this rise to what this bill is asking

for today? As I gave it more thought, I started hearing a lot of testimony regarding the difficulty that our law enforcement agencies have in recruiting new people. As a society, we are becoming more dependent on private security to provide the public safety that we have all come to expect. Every time we walk into a shopping mall, a casino, or a business, we all have the assumption and the expectation that we are safe. While I have the utmost respect for our law enforcement community—in my other job I work with them every day on the streets—I know how stretched they are to even respond to calls. The more I thought about this, I realized that we truly are putting private security officers into harm's way. We are asking them to do that for our public safety, along with professional and volunteer firefighters, law enforcement, employees of the state or political subdivision—which would include people like social workers—Supreme Court justices, judges, justices of the peace, sports officials at sporting events, and taxi cab drivers who are already provided this protection. Yet these individuals who are expected to go out every day and be there to protect us are not given these enhanced protections.

The definition of a security guard per *Nevada Revised Statutes* (NRS) 648.016, which is stated in the bill and is important, is a "person employed as a watchman, guard, security consultant, patrol officer or in any other similar position." That is it, very broad and very ambiguous. I want you to keep that in mind, who it is that we are talking about and what they go through on a daily basis. Some of the testimony you will hear from the opposition is about penalties. This is assault and battery that ranges from misdemeanors all the way up to category B felonies. It is important to understand the enhancements and what I am asking for with this bill. What we are talking about is, as those penalties grow, they are associated with terms like "substantial bodily harm," "use of a deadly weapon," and "strangulation." I am not suggesting that a security guard—or even me as a firefighter—when simply touched, that it should be a category B felony, but I am suggesting that these individuals are being placed in very difficult positions when they go through one of these things. They are assaulted with a deadly weapon. They have substantial bodily injury, and they need those protections.

One of the relevant concerns that you will hear today that has been brought to my attention is that, with increased arrests, there is going to be an impact on the system as far as jail time. There is some concern that private security officers do not have full de-escalation training so they can prevent these violent situations to begin with. One of the ideas that has been brought to my attention is to better define whom we are talking about in this measure when we are talking about security guards.

In the end, we are expecting these individuals to step up and protect the public. It is my belief that they should be protected. I am going to turn this over to the gentleman who brought this idea to me in the beginning, James Stewart.

James Stewart, Private Citizen, Sparks, Nevada:

It is an honor and a privilege to speak to you today in an effort to explain why it is extremely important for A.B. 100 to pass. Although the statutes already protect airport employees, which I am, I am here for the sole purpose of stopping attacks on all security professionals.

I would like to tell you a little about my background and why this is so important to me. I grew up in Sparks and joined the Navy right out of high school. I came home after serving for nearly a decade and almost immediately stepped into the police academy. I had the honor of being a law enforcement officer for several years. As is customary for those who finish their careers as law enforcement officers, they go into private security or private investigations; I was no exception. I have now been in the security field for almost 15 years and I am currently a security specialist at the Reno-Tahoe Airport Authority.

Although there are negative stereotypes regarding security guards, I can tell you that, without exception, security officers are intelligent, dedicated professionals who want nothing more than to keep you and your property safe. Security officers protect people's homes. They patrol and protect casinos, sporting events, private businesses, and much more.

In my law enforcement career, I had instances where situations became physical. What surprised me was that, as a security officer, I had more of these incidents. I could tell you numerous stories where several of my security colleagues and I have had people take swings at us, spit on us, kick us, purposefully attempt to hit us with their vehicles, et cetera. I would like to say that they were only attempts, but this is reality. Although I feel lucky that I personally have not had any permanent damage, I have had coworkers who have to live with physical and emotional scars from these attacks for the rest of their lives.

When I was in law enforcement, I believe there were fewer attacks because the attacker knew the consequences of hitting or attempting to hit an officer. You could ask anyone on the street and they would tell you that they know the punishment for attacking a police officer carries an increased penalty. In several instances when I was a law enforcement officer, when I saw that things were escalating and that an assault or battery was becoming possible if time allowed, I would take a moment to remind them of the consequences of an act of violence against me. This would give them a moment of pause, a moment to cool down, so we could resolve the incident without physical violence. This had a high success rate. That is what these dedicated security officers are asking for. We are asking for a deterrent, a way to stop the attack before it happens. The change to the current assault and battery statute is the preventive measure that we desperately need. If we use this deterrent and the attack still happens, an increased penalty could keep that attacker, and others who hear of this penalty, from attacking security officers in the future.

A specific instance of an attack was when I was an armed security guard at an event downtown. A 15-year-old girl came up to me and my security partner and told us that a man she did not know was right behind her harassing her and would not leave her alone. The man, who was intoxicated, lightly pushed me on the shoulder and told us to mind our own business. We told him that he was no longer welcome at the event and that he needed to leave. He ignored us and again tried to push past us to get to the young lady. We pushed him off of us and told him again to leave. He stepped back, balled up his fist, and took a swing at me. I was able to duck the punch. Then I grabbed his arm and tried to take him to the ground. My partner also grabbed him, but the suspect kicked my partner in the knee. We got the man down on the ground and got him in handcuffs. My partner dealt with

knee pain for the rest of the time that I knew him. He could not take jobs with prolonged standing or walking because of the chronic pain due to this incident.

Although there are many more incidents, there is one last incident I want to share with you. There was a venue where we needed to keep cars moving through a street and alley. There were several security officers posted in different areas to accomplish this. One officer had a car stop to try to pick up someone, but he was blocking the road and traffic was backing up. The stop in traffic was causing other drivers to get frustrated and was putting pedestrians trying to cross the street in danger. The officer contacted the driver and tried to get him moving. The driver refused, but the officer continued trying to get the driver to move. He was given alternate places where he could pick up his passenger, but the driver began screaming at the officer and continued to refuse to move. Another officer and I heard the commotion and walked over to the vehicle. At one point, the driver exited his vehicle and quickly approached the officer with his fists doubled and threatened to hurt the officer. I called to the driver since he did not see us standing there and told him that he needed to leave before this got any worse. When the driver saw three officers, he got in his car and left. The first officer was shaken up because the driver was a large man, and he was sure that, if we had not shown up when we did, it would have gotten physical.

My last point is that, currently, the assault and battery statutes not only give additional protections to peace officers, it also protects firefighters, taxi drivers, teachers, sports officials, and other professionals. Because of the nature of our job and the frequency in which we deal with intense situations, it only makes sense to add security guards to the current list of professions that receive these protections.

Assemblywoman Cohen:

I want to make sure I understand some things about the bill. Does the security officer have to be uniformed? Sometimes we have security officers who are in plain clothes. Are they covered?

Assemblyman Sprinkle:

As I read this, and I already read you the definition of a security guard, it does not require an actual uniform in that definition. It has been brought to my attention that this might be a possible amendment, which I would be open to.

Assemblywoman Cohen:

That is the way I read the definition of security guard. What about a uniformed security guard who is off duty, going home, stops at a store, and gets in an altercation with someone, but it has nothing to do with him being a security guard?

Assemblyman Sprinkle:

I would have to refer that to legal counsel. I think about me heading home from work as a firefighter. It is the same thing because I still have on my uniform.

Bradley A. Wilkinson, Committee Counsel:

This statute requires that the person be performing his or her duty. On your previous question, there is no requirement that a security officer be wearing a uniform, but the perpetrator has to know that the person is an officer. One way to know that would be by someone wearing a uniform, but there could be other ways.

Assemblywoman Cohen:

We have a scenario—and it could be a security guard or police officer or anyone covered by this statute—in which it is after hours and he is still in uniform and someone starts a fight with him. They are in the supermarket and the other person calls him names or something like that, acknowledging he knows the man is one of these professions. Does that meet the standard to heighten the penalties?

Brad Wilkinson:

Under the statute as it reads now, no. The person has to be performing his or her duty. There is another statute that was enacted last session that makes that a hate crime. I do not have that in front of me, but under this specific statute, it would not apply.

Chairman Yeager:

I want to provide clarification. I was looking at the bill itself in the digest and the beginning of it indicates that, under current law, you are guilty of a category D felony if you commit an assault on an officer. That is actually incorrect; it is a misdemeanor just for an assault on an officer. The category D felony is if you are a prisoner at the time. We will make sure that this is corrected if the bill goes forward, but I wanted the Committee members to know that the digest is inconsistent. It says that battery is a lesser penalty than an assault, but that is not the case. Assault now is a gross misdemeanor. A simple assault is not currently a felony if it is against an officer unless there is another enhancement like being a prisoner or using a deadly weapon. I want that to be clear so there will be no confusion.

Assemblyman Roberts:

My background is law enforcement and we could not do half of what we do without the security professionals. You mentioned that there could be an extra load on law enforcement or to the system. I was considering carrying a bill similar to this, but I was deterred by some of the security professionals on the Strip based on volume. It would be a misdemeanor citation in lieu of an arrest. We have a program in Las Vegas that would involve a transport.

Do you have any numbers regarding how many assaults on security professionals occur around the state or in the Reno area?

James Stewart:

I tried to find those numbers since I thought that would come up. I went to Nevada Uniform Crime Reporting, but it does not give that specific information. I have talked with several other security professionals and their groups, like American Society for Industrial Security International, to see what their appetite was for this bill and their concerns. Basically, with the others who are included—taxi drivers, schoolteachers, firefighters, et cetera—it has the

potential to have a slight increase in the beginning, but like the other professions, when the word gets out that it is an enhanced crime, it will level out.

Assemblyman Sprinkle:

I would like to see the numbers for others who are already covered in this statute from when they were first covered and if it caused a significant spike, since that is one of the concerns. This could be a legitimate concern, but if we saw the other historical numbers, it may prove that it is not much of an increase. I will research that.

Assemblywoman Nguyen:

As the law stands, if there is an assault on a security guard like someone swinging at the officer, but the punch does not connect, would that be a misdemeanor?

James Stewart:

Yes, that would be an assault.

Assemblywoman Nguyen:

If the punch landed, would that be a misdemeanor battery?

James Stewart:

That is correct.

Assemblywoman Nguyen:

We talked about escalating levels of violence. Under current law, if someone used a deadly weapon or there was substantial bodily harm, or if someone was running out of a store and a security officer stopped him, would those situations be covered by law already? Would it be an assault with a deadly weapon or battery with substantial bodily harm? Are individuals already protected no matter what their status or class at that point?

James Stewart:

That would be correct, but there is a reason that police officers are protected at a higher level. There are reasons these other professions are protected at a higher level. That also speaks to the point that security officers do more work and have more danger involved in what they do than the normal citizen, so the penalty would be higher for the same reasons as these other professionals.

Chairman Yeager:

I do not see any additional questions. I will open it up for testimony in support. Please come forward if there is anyone who wants to testify. I do not see anyone in Las Vegas, but we have one in Carson City.

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

We are here in support of Assembly Bill 100.

Matthew J. Walker, representing Reno-Tahoe Airport Authority; and the Howard Hughes Corporation:

We want to express our support for Assembly Bill 100, and we appreciate this being brought forward.

Greg Ferraro, representing Nevada Resort Association:

We commend Mr. Sprinkle for bringing this forward because we think it is essential and timely to provide a deterrent and enhanced protection for our security personnel.

Chase Whittemore, representing Las Vegas Sands Corporation:

It is interesting that the current statute provides that a provider of health care gets the same status as an officer. If you look at page 3 of the bill, you will notice that a medical student, a physical therapist, a dental hygienist student, a marriage and family therapist, and interns are all treated the same as an officer. We think it is a good idea to put security guards on the same level.

Chairman Yeager:

Are there any questions for those who testified in support? Seeing none, is there anyone else in support of Assembly Bill 100? Seeing no one, we will take opposition testimony. We will start in Carson City.

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

We appreciate that Assemblyman Sprinkle was willing to discuss his concerns with us and he has indicated that he is willing to work with us.

We are opposing this bill. I would note that there was a letter filed by the Nevada Attorneys for Criminal Justice ([Exhibit D](#)), and I believe it goes through some of the concerns we have and that we expressed. I want to note that the research I have seen regarding criminal justice and one of the reasons we are engaging in criminal justice reform federally, as well as on the state level, is that increasing the severity of punishment has been found to do little to actually deter crime. What we have are systems in place for people who are charged with a misdemeanor if someone commits assault or battery, which is punishable by up to six months in the Washoe County jail if it is in Washoe County, and up to a \$1,000 fine. They would also be responsible for restitution. If you increase it to a gross misdemeanor, that is up to 364 days in jail and up to a \$2,000 fine. He is still potentially responsible for restitution. More importantly, it also adds a fiscal impact. If this went to a bench trial, you are looking at a jury trial, which also adds an additional monetary cost.

I looked at other states to see if any across the country have added security officer to the definition of officer, and I found Tennessee Code Title 40 35-114, which says that, if it is an aggravated assault and not just an assault on a state-registered security officer, then they provide an enhancement. The way it works in Tennessee is that it is not a guaranteed increased penalty, but something for the court to consider at sentencing whether it should be a minimum or maximum sentence.

In Florida Statutes, it is annotated in subsection 784.07, and again, it is not just any security officer. It specifies that it is a person who is licensed as a security officer, as defined in their Chapter 493.6101, who is wearing a uniform and that there is at least one patch or emblem that is visible at all times that clearly identifies the agency and clearly identifies the person as a licensed security officer. What is interesting to note is that the penalty is still a misdemeanor. It moves it from assault of a misdemeanor in the second degree to a misdemeanor in the first degree. "Security guard" there is defined less broadly than our "security officer."

If you look at places like California Penal Code section 243, the way it is expanded is not for a security officer in general, but a police officer who is also acting as a security officer when off duty. However, throughout all of the other states, including the federal statutes, they specify that an officer does not include security officer.

Last session there was a bill, Assembly Bill 132 of the 79th Session, that discussed this specific statute and did expand officers to include the civilians who are working in the police departments. We did look at this last session, but I would note that when I reviewed the minutes, one of the reasons that kept coming up that session was that it is important to continue to narrowly tailor the officer definition. What we are hearing is that it is a very slippery slope when you keep adding different professions into this. You are eroding the purpose of the bill and the purpose of this enhancement.

I am not sure at this point that what we have heard really gives rise to changing the criminal statute regarding security officers. When I looked up what policies and procedures are in place regarding security officers, I was shocked to see that there is not a lot. I even looked at the Occupational Safety and Health Act of 1970, which is OSHA, where they have specific procedures in place for workplace safety. One of the things that popped up is that there really is not much there for security officers. There are no policies and procedures, so I think that needs to be the first step before changing laws.

As we indicated in our proposed amendment ([Exhibit E](#)), we are opposed. If this Committee is inclined to make some form of change regarding this statute, we believe that the definition has to be narrowly tailored as it is too broad. We want to ensure that the people are properly trained in de-escalation and they have crisis intervention training. We believe it will make the community safer if they are certified, and more importantly, that they wear a body camera. As we heard through testimony during this session, the importance of the body camera is to not only protect the community so we have more information and evidence to put forward, but officers often feel better protected since it would not be a "he said, she said" situation.

I have spoken with the other public defender's office's lobbyist, Bill Hart, and since he cannot be here, he has asked me to inform the Committee that he also opposes the bill and supports the amendment.

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

Anytime I come up here to oppose a bill, I always do it with trepidation because I do not want to minimize the struggles that other people face in their day-to-day lives. I definitely do not want to minimize the struggles that security guards face. This bill is a little overinclusive and leans to overcriminalization. Most security officers are lay people without the training that regular police officers get. They are mostly not certified, trained, or licensed, and have no de-escalation training or crisis intervention training. What we are doing is seeking to treat them as law enforcement officers even though they are not, in that regard, and they do not have the same training that law enforcement officers have.

Assemblyman Sprinkle brought up that he would like to see the study on whether the previous exceptions or enhancements that we placed in this bill actually increased deterrents and lessened crimes. I would also like to see those numbers. Possibly we should do that before creating a new law. In the Department of Justice before it changed hands, they put up fast facts about deterrents. Two things that I want to note for this Committee is the certainty of getting caught is a greater deterrent than the actual punishment, and increasing the severity of the criminal penalties does little to deter crime because most people do not know what a criminal penalty is for most things that they do. We live in a jurisdiction, especially in the south, where we talk about "What happens in Vegas stays in Vegas." If we increase these criminal penalties—most of what we see is a drunk tourist pushing a security guard when they are arguing about something or being kicked out of a nightclub—then we should talk about "Come on vacation, leave on probation," because what we are talking about is an increased criminal penalty. Moving it to a gross misdemeanor would mean the bail amounts—or trying to get out of jail after being charged—are going to be higher and the person or tourist is going to have to come back to Vegas for a jury trial as we fight this case.

As to the security officer's testimony about the man whose knee was kicked and harm was done, that would qualify for a category C penalty. It is already a penalty that we have on the books. That would be battery with substantial bodily harm.

The Advisory Commission on the Administration of Justice report is out. As this Committee knows, in America, we already incarcerate more people than every other country that does that. In Nevada, we incarcerate 15 percent more people than our neighboring states. Either we are more immoral than everyone else, or maybe our polices need to be looked at. In that regard, before we increase criminal penalties, let us see if they actually have an effect. We should do Assemblyman Sprinkle's study and see if crimes that were listed in here with increased penalties actually decreased crimes before we start enacting new laws while flying in the blind.

Chairman Yeager:

We will go to Las Vegas and take testimony in opposition, and then we will open it for questions.

Alanna Bondy, representing Nevada Attorneys for Criminal Justice:

Ms. Bertschy and Mr. Piro did an excellent job of covering most of the points. We have submitted a letter in opposition ([Exhibit D](#)).

I would like to reemphasize that we understand that the intent of the bill is that we do not want people to be harmed while carrying out their job duties or because of their occupation. We also understand that a security guard is employed in a position that inherently carries a higher risk of physical confrontation. However, unlike police officers, security officers often do not receive the training the police officers get, and they do not wear body cameras. Therefore, if there is an incident, there is no record of the incident and it turns into a "he said, she said" situation. That just creates an undesirable effect. Additionally, NRS 648.016, which defines a security officer, is extremely broad and open-ended. It leaves a lot of room for people whom we would not consider being a security officer to argue that they are a security officer.

The National Institute of Justice released an article in 2016 based on a study in 2013 in which they went into detail about how enhanced penalties are not effective at decreasing crime or acting as a deterrent. For those reasons, we oppose this bill.

Chairman Yeager:

If the amendment that was proposed was adopted, would your position on the bill still be in opposition, or would that move you to support or neutral, or would that have to be determined?

John Piro:

It is difficult to say. I still do not think it is a good policy, but if we are going to make policy, let us try to make it the best policy we can.

Kendra Bertschy:

We would agree with that position.

Assemblywoman Cohen:

I am concerned with this bill and have some issues. I understand that enhanced penalties do not necessarily work, and that we need more training and body cameras for security officers. I do not think that is going to happen. I feel like these people are still on the front lines, and I do know they are not going to be certified. Their level of knowledge on de-escalation does not equate to the amount of danger they are under in certain situations. I know there is special training if you are dealing with drunks on the Strip or whatever, and they may not have that training, but if someone wants to cause a problem, they are going to. It does not matter how well-trained the officer is because if someone wants to cause a problem, they will still cause a problem. I am really concerned about your concern about certification.

John Piro:

The reason we give police officers deference for higher penalties is because of their training and their interaction with the public. The concern here is that the exceptions are starting

to swallow the rule. When you have two lay people in a situation, we are granting increased penalties for two lay people coming into contact in a negative way. This is the most polite way that I can say that. Security officers do deal with a lot of, for lack of a better term, riffraff. They know that going into the job. It is part of what they will deal with. To give them the increased penalties, what are we trying to correct? Do we think the tourist on the Strip is going to know that it is an increased penalty if he gets drunk and pushes a security guard? Probably not. What they will be subject to is an increased penalty in our courts and an increased court process. That is our biggest concern.

Kendra Bertschy:

I agree with what Mr. Piro has indicated. I think that it is important to start with the policies and procedures and training individuals. I can indicate that my office has de-escalation training as well. It is something that one of our individuals provides, along with two different law enforcement entities. I do not know if that is something we would be able to assist with, but I do know that there are different policies and procedures that could be implemented to help all of the individuals involved. I agree with your concerns.

Chairman Yeager:

Are there any additional questions? I do not see any. Is there anyone else who was missed in opposition to Assembly Bill 100? Seeing no more opposition, we will take neutral testimony. I do not see anyone in Las Vegas, so we will come up to Carson City.

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

I am on the verge of supporting this. I am only here neutral because I wanted to offer suggestions to make this a better bill. I completely support the men and women who are out there doing security, especially in our gaming and resort corridor. We could not do our job without them. We interact with them on a daily basis.

The area where I would ask to make this bill better, and it has already been alluded to by the opposition, is to add a narrow definition of what exactly constitutes a security officer. For example, NRS Chapter 648 talks about a watchman, a guard, a security consultant, a patrol officer, and any other similarly positioned person. We have security working in apartment complexes and in stores for loss prevention. We have security folks who drive armored cars and ex-special forces teams and armored car drivers who are employed by hotels. It is a very broad category and if this body chose to narrowly define that, you could accomplish what this bill seeks to do.

I do not know about impact, but there could be an impact if we made this a gross misdemeanor since individuals would be arrested instead of getting a citation. I have previously said that there might be an appetite to provide law enforcement under certain circumstances, where a crime is not abusive to children or sexual in nature, to have discretion—even on a gross misdemeanor, and maybe even a category D or E felony—to write a citation to avoid putting someone in jail for those types of offenses.

As I said, I am on the verge of supporting this and, if it were narrowly tailored a little, I would be here in support.

Chairman Yeager:

Is there anyone else in the neutral position? Seeing no one, we will have closing remarks.

James Stewart:

In talking with Assemblyman Sprinkle earlier, there are some changes that they are asking for that make sense. I think we are going to look at these and see what we can tweak.

I want to comment about the study that they referred to that said having an increased penalty is not a deterrent. That is not my experience, and I have had decades of experience. Having that has been a great deterrent. I do not know the details of this study, but in the reality of working on the street, it has been a great deterrent.

Assemblyman Sprinkle:

In regard to looking at some of the numbers, what I was specifically referring to—and I am not opposed to finding out if something of this nature has caused deterrence—was if we have seen an increase in the burden that has been placed on local jurisdictions with these other groups once they have been included in the statute. Those were the specific numbers that I was referring to.

As I said with the previous bill, and I will say now, I am always looking to compromise and to make something better. I do not believe that I have all of the answers, and that is how I will approach this bill. I am willing to look at any alternatives that people bring forward to see if we can make it better. I found it a little disconcerting that, in the spirit of compromise, the question was asked by the Chairman that, if we went with the amendment, if opposition would be willing to change their opinion about this. What I took from that is that they probably are not, so I do not know what the spirit of compromise is there. That is the whole point of doing it. From my position, I will work with anyone to try to make this a better bill for the state of Nevada.

It was brought up that we are potentially diluting the statute. You heard about the different groups of individuals who are already covered. We cannot go back and rehear from sessions ago why those individuals or groups were chosen to be included in the statute, but we have to assume it was done for a good reason. People whom we are talking about today have the job of putting themselves in harm's way and in potential danger to protect others. I find it hard to say that they would not qualify and should not qualify for the protections that are already in place for so many others within the state of Nevada and within these statutes. It is a difficult argument for me to get over, and it is why I brought this bill to you and why I ask for your support of it.

Chairman Yeager:

We will close the hearing on Assembly Bill 100. Now is the time for public comment if anyone would like to give comment. I see no one, so we will close public comment. Is there

anything from members before we talk about the rest of the week's schedule? [There was nothing.]

The agendas have been posted for the rest of the week. Tomorrow we will start at 8 a.m. and hear two bills from the Department of Corrections. Then, on Thursday, February 21, we do not have any bills, but we have a full agenda on presentations involving marijuana. That will probably be a very full morning. On Friday, so far we have one bill and will likely have a second. We will start at 8 a.m. the rest of the week, and as I indicated, we will continue to start at 9 a.m. on Mondays for the time being. I will see all of you at 8 a.m. tomorrow morning. This meeting is adjourned [at 10:17 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a copy of a PowerPoint presentation titled "Washoe County Sheriff's Office Overview," dated February 19, 2019, presented by Corey A. Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office.

[Exhibit D](#) is a letter dated February 19, 2019, to Chairman Steve Yeager and members of the Assembly Judiciary Committee, authored by Lisa Rasmussen, Legislative co-chair, Nevada Association for Criminal Justice, in opposition to [Assembly Bill 100](#) and presented by Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.

[Exhibit E](#) is a proposed amendment to [Assembly Bill 100](#) presented by John J. Piro, Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office and presented by Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office.