

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

**Eightieth Session  
March 1, 2019**

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:04 a.m. on Friday, March 1, 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](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Susie Martinez, Assembly District No. 12  
Assemblywoman Michelle Gorelow, Assembly District No. 35



**STAFF MEMBERS PRESENT:**

Diane C. Thornton, Committee Policy Analyst

Bradley A. Wilkinson, Committee Counsel

Cheryl Williams, Committee Secretary

Melissa Loomis, Committee Assistant

**OTHERS PRESENT:**

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

Summer Wharton Merrill, Private Citizen, Yerington, Nevada

Lisa T. Rasmussen, Attorney, representing Nevada Attorneys for Criminal Justice

Daphne Lee, Private Citizen, Las Vegas, Nevada

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

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

Sam Toll, representing Libertarian Party of Nevada

Tonja Brown, Private Citizen, Carson City, Nevada

Ben Lieberman, President, Alliance Combating Distracted Driving, Chappaqua, New  
York

Lea Cartwright, representing American Property Casualty Insurance Association

Amanda Gualderama, Regional Government Affairs Director, Sentry Insurance  
Company, Sacramento, California

Paul J. Enos, Chief Executive Officer, Nevada Trucking Association

Justine Nikoleit, Private Citizen, Las Vegas, Nevada

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada

Maurice White, Private Citizen, Carson City, Nevada

Janine Hansen, State President, Nevada Families for Freedom

Jude Hurin, Administrator, Division of Management Services and Programs,  
Department of Motor Vehicles

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

**Chairman Yeager:**

[Roll call taken. Committee procedures were stated.] We do expect courtesy and respect in our interactions with each other. Sometimes we do not agree on the policy behind bills, and that may happen today. Please make sure that we are respectful to one another when we disagree. We will be doing the work session first, followed by the two bills in their order as they are listed on the agenda. I am going to turn it over to Ms. Thornton to take us through the work session document.

**Assembly Bill 9: Revises provisions governing justice courts. (BDR 6-491)**

**Diane C. Thornton, Committee Policy Analyst:**

Our first bill today is Assembly Bill 9. This bill revises provisions governing justice courts. It was sponsored by the Assembly Committee on Judiciary on behalf of the Nevada Supreme Court, presented by Judge Melissa Saragosa and Judge Camille Vecchiarelli ([Exhibit C](#)).

This bill revises the proper venue or place of trial for small claims actions where the amount claimed does not exceed \$10,000 by adding possible venues for such actions. Such small claims actions may be tried in the township where the defendant resides, does business, or is employed at the time the cause of action arose or at the time the complaint is filed. Additionally, in cases involving injury to the person or property, small claims actions also may be tried in the township where the injury occurred. Finally, in cases involving a contract to perform an obligation, small claims actions also may be tried in the township in which the obligation is or was to be performed. There were no amendments for this measure and no opposition to the bill.

**Chairman Yeager:**

At this time, Committee members, I would be looking for a motion to do pass Assembly Bill 9.

ASSEMBLYMAN DALY MOVED TO DO PASS ASSEMBLY BILL 9.

ASSEMBLYMAN WATTS SECONDED THE MOTION.

Any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

I am going to assign the floor statement to Vice Chairwoman Cohen.

**Assembly Bill 43: Increases the number of district judges in certain judicial districts. (BDR 1-498)**

**Diane C. Thornton, Committee Policy Analyst:**

The next bill on work session is Assembly Bill 43. This bill increases the number of district judges in certain judicial districts. It is sponsored by the Assembly Committee on Judiciary on behalf of the Nevada Supreme Court. Justice Hardesty and the judges from those districts testified on behalf of this bill. It was heard in Committee on February 27, 2019. This bill increases the number of district judges in the Second, Fourth, and Eighth Judicial Districts ([Exhibit D](#)).

There is one amendment to the bill. This amendment was proposed by Andres Moses, Assistant Court Administrator, Eighth Judicial District Court; Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts; and John McCormick, Assistant

Court Administrator, Administrative Office of the Courts. The amendment revises the number of district judges for the Eighth Judicial District who are not judges of the family court from 38 to 32 and for district judges for the Eighth Judicial District who are judges of the family court from 29 to 26.

**Chairman Yeager:**

At this time I would be looking for a motion to amend and do pass Assembly Bill 43.

ASSEMBLYWOMAN NGUYEN MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 43.

ASSEMBLYMAN ROBERTS SECONDED THE MOTION.

Any discussion on the motion?

**Assemblywoman Miller:**

I will be voting to send it out of Committee, but I am still working on my decision for the floor.

**Chairman Yeager:**

Great, thank you, Assemblywoman Miller. I should note for members as well, if you are in a position where you might change your mind from what you vote in Committee to what you vote on the floor, it would be very helpful if you could give me a heads-up before we get to the floor. I want to make sure we know where all the votes are. You can always reserve the right to change your mind. There is no requirement that you vote the same way, but if you could let me know, it would be helpful. Thank you for that, Assemblywoman Miller.

**Assemblywoman Tolles:**

I have a question about the process for myself and I think it might be beneficial for everyone in the room: by voting this out, does the bill then go to the Assembly Committee on Ways and Means, or does this bill go directly to the floor where we would vote on the bill?

**Chairman Yeager:**

That is a good question. What happens with this bill, and any other bills, once we vote it out of Committee, it will be reported to the Assembly floor, it will be read out of Committee, and at that point, likely, on this bill, Assemblywoman Carlton will move that it be re-referred to the Assembly Committee on Ways and Means. That decision is made on the floor. Typically, if there is a fiscal note that affects the state, it would be referred there. But we almost never send it directly there; we will report it to the floor first and our respective leadership can make the decision. My guess on this bill, it will go to the Assembly Committee on Ways and Means and it will have to resolve the fiscal note in some manner. Once it comes out of the Assembly Committee on Ways and Means, it goes back to the floor, and we would all have an opportunity at that point to vote on it as an entire body.

**Assemblyman Fumo:**

I, too, will be voting it out of Committee, and I reserve my right just in case something changes. I had a question. I know that Washoe County and the rural counties had already worked it out with the counties, but I was not sure if Clark County had. I believe they were still working on the negotiations. If you could refresh my recollection, what would happen if the county does not? If we approve this bill and the Legislature passes the bill but the county cannot come up with the funds to do that, how would that stand? Would it be in the future that they would receive the extra judges?

**Chairman Yeager:**

Good questions. My recollection from Clark County was that they were not opposed to the bill. Originally the bill asked for 15 judges in Clark County, and I believe a compromise was struck with the county, which was 6 judges. I think the county is supportive of that. You ask a good question in terms of the county piece of the bill. Obviously, if this bill goes to the Assembly Committee on Ways and Means, the state will figure the fiscal part, and those judges would come on board according to the timeline, which I believe is the 2020 election, and the county would then be in a position where they would have to resolve that on their own in terms of what their obligations would be, in terms of courtroom space and staffing. We cannot as a body tie the county, but that is how the process would go.

And then, of course, this goes over to the Assembly Committee on Ways and Means, and I believe there was also to be a county fiscal note put on the bill. I would anticipate they would have further discussion about that in the Assembly Committee on Ways and Means.

Any further discussion? [There was none.] Again, the motion is to amend and do pass on Assembly Bill 43.

THE MOTION PASSED UNANIMOUSLY.

I will take the floor statement on Assembly Bill 43. We will now move on to Assembly Bill 107.

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

**Diane C. Thornton, Committee Policy Analyst:**

Assembly Bill 107 establishes provisions relating to the electronic recording of certain custodial interrogations, sponsored by the Assembly Committee on Judiciary. The bill was heard in Committee on February 18, 2019 ([Exhibit E](#)).

This bill requires each law enforcement agency in this state to adopt detailed, written policies regarding the electronic recording of custodial interrogations that are conducted in a place of detention and to make such policies available to all enforcement officers employed by the law enforcement agency and for public inspection during normal business hours. Any such policies must be adopted by a law enforcement agency, including the circumstances in which

all or a portion of a custodial interrogation is not required to be electronically recorded. Each local law enforcement agency in this state must collaborate with the district attorney of the county in which the local law enforcement agency is located regarding the contents of the policies required to be adopted.

There is one amendment ([Exhibit E](#)) proposed by Chairman Yeager; Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; and Michelle Feldman, State Campaigns Director, Innocence Project. This amendment removes "local" before law enforcement agencies and the definition of "local law enforcement agency" on page 3, line 45 of the bill, thereby using the definition of "law enforcement agency" throughout the bill.

**Chairman Yeager:**

Before I take a motion, I want to explain the amendment. You may remember at the hearing, there were a couple of ideas that were put forth. One was by the sponsors of the bill. They thought there was a reorganization that was needed in one of the sections of the bill. In further looking and analyzing that, we came to the conclusion that there does not need to be a reorganization. It did not make sense. The sponsors are agreeable with that, so they essentially withdrew their request for that minor reorganization.

You may also remember a neutral testimony we heard from Mr. Eric Spratley about the word "local" law enforcement and how this may apply more broadly if we left that word in there. So the solution we did was to take out the word "local" so that law enforcement agency is defined in the bill and will not capture some of those smaller agencies that we had some concerns about that do not do these types of interrogations. I think both of these amendments were agreeable to the sponsors of the bill.

With that being said, I will take a motion to amend and do pass Assembly Bill 107.

ASSEMBLYMAN WATTS MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 107.

ASSEMBLYWOMAN TORRES SECONDED THE MOTION.

Any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

I am assigning the floor statement to Assemblyman Fumo for Assembly Bill 107. The next bill is Assembly Bill 126.

**Assembly Bill 126: Enacts provisions governing the procedures for changing the name of an unemancipated minor who is in the legal custody of a child welfare agency. (BDR 3-402)**

**Diane C. Thornton, Committee Policy Analyst:**

Assembly Bill 126 enacts provisions governing the procedures for changing the name of an unemancipated minor who is in the legal custody of a child welfare agency. It is sponsored by Assemblywoman Bilbray-Axelrod and was heard in Committee on February 26, 2019 ([Exhibit F](#)).

This bill revises provisions governing the procedure for changing the name of an unemancipated minor who is in the custody of an agency that provides child welfare services. The measure sets forth the steps the attorney must take if there is not verified consent of each parent stated in the petition. If the attorney submits proof satisfactory to the court that notice cannot be personally served on a parent, the court may order the attorney to publish notice in a newspaper of general circulation in the county and serve notice and a copy of the verified petition by registered or certified mail. If the petitioner files a motion seeking waiver of such notice, the court may waive the requirement to provide notice if it is in the best interest of the minor. The court must make an order changing the name of the minor as requested in the petition if: the court determines that the name change is in the best interest of the minor; the verified consent of a representative of the agency that provides child welfare services is stated in the petition; or the verified consent of each parent is stated in the petition.

If an objection is filed, then the court is required to hold a hearing. The order must be recorded as a judgment of the court, and the clerk must transmit a certified copy of the order to the State Registrar of Vital Statistics. Finally, a petition to change a name of an unemancipated minor in the legal custody of an agency that provides child welfare services may be filed in an action for divorce, child custody, the establishment of parentage, the termination of parental rights, or the emancipation of a minor.

There is one amendment ([Exhibit F](#)). This amendment was proposed by Alex Ortiz, Assistant Director, Clark County Department of Administrative Services. This amendment removes the requirement that a representative from the child welfare agency provide verified consent to an attorney representing an unemancipated minor in the legal custody of an agency that provides child welfare services to file a petition to change the name of the minor.

The intent, according to Mr. Ortiz, is that the requirement is removed because the authority does not lie with the agency, but rather with the parent, the child's attorney, or the court of appropriate jurisdiction.

**Chairman Yeager:**

I will take a motion to amend and do pass Assembly Bill 126.

ASSEMBLYWOMAN BACKUS MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 126.

ASSEMBLYWOMAN PETERS SECONDED THE MOTION.

Any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

The floor statement goes to Assemblywoman Bilbray-Axelrod since it was her bill, and I will list Assemblyman Watts as a backup. Next will be Assembly Bill 134.

**Assembly Bill 134: Revises provisions governing privileges. (BDR 4-694)**

**Diane C. Thornton, Committee Policy Analyst:**

Assembly Bill 134 revises provisions governing privileges. The bill was sponsored by Assembly members Backus, Krasner, Munk, Spiegel, et al., and was heard in Committee on February 26, 2019 (Exhibit G).

This bill expands the privilege for confidential communication between a victim of certain crimes and a victim's advocate by revising the definition of "victim's advocate" to include a person who works for a program of a university, state college, or community college within the Nevada System of Higher Education or a program of a tribal organization that provides such assistance.

Chairman Yeager has proposed an amendment (Exhibit G) to change the effective date from October 1, 2019, to July 1, 2019, to take into consideration the Nevada System of Higher Education academic calendar with the August start date of the fall semester.

**Chairman Yeager:**

I will take a motion to amend and do pass Assembly Bill 134.

ASSEMBLYWOMAN TOLLES MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 134.

ASSEMBLYWOMAN HANSEN SECONDED THE MOTION.

Any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Backus. Our final work session bill today is Assembly Bill 222.



**Assembly Bill 222: Revises provisions relating to specialty courts. (BDR 14-842)**

**Diane C. Thornton, Committee Policy Analyst:**

Assembly Bill 222 revises provisions relating to specialty courts. It is sponsored by the Assembly Committee on Judiciary and was heard in Committee on February 27, 2019 ([Exhibit H](#)).

This bill revises provisions relating to a defendant's eligibility for participation in certain programs in specialty courts. The bill provides that a defendant with mental illness or intellectual disabilities is not eligible for assignment to the program if the offense committed is a category A felony.

In addition, the measure removes the language in the statute—that was found unconstitutional by the Nevada Supreme Court—regarding the eligibility for assignment to the program of defendants who are veterans or members of the military. The removed language required the stipulation by the prosecuting attorney before the court may assign to the program a defendant who committed a violent offense or who has previously been convicted of a violent felony. Lastly, the measure provides that a defendant who has committed a category A felony is ineligible for assignment to the program.

There are two amendments to the bill ([Exhibit H](#)). With the first amendment, Chairman Yeager proposed making the bill retroactive for a defendant to be eligible for participation in certain specialty court programs. In addition, he proposed changing the effective date from October 1, 2019, to upon passage and approval. With the second amendment, Assemblywoman Backus proposed deleting subsection 1(b) in section 2 of the bill, thereby eliminating the disqualification based on previous assignment to the program.

**Chairman Yeager:**

At this time, I will take a motion to amend and do pass Assembly Bill 222 with both of the amendments listed on the work session document.

ASSEMBLYMAN EDWARDS MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 222.

ASSEMBLYMAN FUMO SECONDED THE MOTION.

Any discussion or questions on the motion?

**Assemblywoman Krasner:**

I want to thank all the men and women who are veterans and who serve and protect our country and keep us safe. I will be voting yes to get the bill out of Committee; however, I do hope that everybody will continue to work together with law enforcement and the district attorneys to make this bill the best bill possible.

**Chairman Yeager:**

Any additional discussion or questions on the motion? [There was none.] The motion is to amend and do pass Assembly Bill 222 with both amendments.

THE MOTION PASSED UNANIMOUSLY.

I am going to assign the floor statement to Assemblywoman Nguyen. Thank you, members, for being on time and getting us through the work session quickly. We will now move on to our first bill listed on the agenda today.

I am formally opening the hearing on Assembly Bill 189. This bill revises provisions relating to warrants for the search of a person. I invite Assemblywoman Martinez to the table. Please feel free to invite anyone up with you if there is someone else to present. We will let you get through your presentation of the bill and then we may have some questions for you. Welcome to the Assembly Committee on Judiciary.

**Assembly Bill 189: Revises provisions relating to warrants for the search of a person. (BDR 14-958)**

**Assemblywoman Susie Martinez, Assembly District No. 12:**

Good morning, Chairman Yeager and members of the Committee. I would like to thank the Committee for consideration of this bill. While I was canvassing in Assembly District 12 in 2018, I spoke to my constituents on various issues that I knew would impact their day-to-day lives.

One of these constituents approached me—and in that conversation the issue of body cavity searches was brought up. In doing my own research, I was dumbfounded to learn that in the state of Nevada there are no laws requiring law enforcement to specifically request a body cavity search when obtaining a search warrant.

I realized that something had to be done. That is why I am sponsoring Assembly Bill 189. Existing law authorizes the issuance of a search warrant to search a place, or person, if any property was stolen or embezzled, if the property was intended to be used as a means of committing a criminal offense, or if the property consists of any items or constitutes any evidence to show that a criminal offense has been committed or that a particular person has committed a criminal offense.

Assembly Bill 189 prohibits a law enforcement officer conducting a search of a person pursuant to a search warrant from performing a body cavity search unless the search warrant contains specific authorization from the magistrate who issued the warrant to perform a body cavity search. Section 1 of the bill states that the search warrant must contain reasons that explain the necessity of a body cavity search by law enforcement. Additionally, section 1 defines what the term "body cavity" means with respect to males and females as well as provides a definition of what a body cavity search entails. Section 3 of the bill makes these amendatory provisions applicable to a warrant issued on or after October 1, 2019.

We have laws in place that specify how, when, and what property may be searched under a search warrant. We have laws in place that dictate how an officer may enter a house during a search and under which circumstances they can search the home. Knowing all that, protections should be in place when it comes to a law enforcement officer conducting a body cavity search on a human being, especially the most private parts of a human body. Assembly Bill 189 seeks to address that problem by requiring a law enforcement officer performing a body cavity search to have a warrant that contains specific authorization from a magistrate to conduct a body cavity search.

Mr. Chairman, this concludes my remarks. I appreciate the Committee's consideration of this bill and I urge the Committee to support A.B. 189. Thank you.

**Chairman Yeager:**

Thank you, Assemblywoman Martinez. At this time I am going to open it up for questions on Assembly 189. We will start with Assemblywoman Cohen.

**Assemblywoman Cohen:**

I think any one of us who watches TV and watches cop shows knows about drugs sometimes being hidden in body cavities. What are other types of crimes that occur—where someone might hide something there—what else are they possibly hiding besides drugs?

**Assemblywoman Martinez:**

To be honest with you, I am not aware of what they would be hiding. I would assume the obvious, drugs.

**Assemblywoman Cohen:**

Thank you.

**Chairman Yeager:**

If you do not mind, Committee, we will go to Assemblyman Roberts because he obviously has some experience in law enforcement in his career. Maybe he can shed some more light on the subject.

**Assemblyman Roberts:**

First, I would like to make a comment. Thank you for bringing this bill forward. It is best practice policy for most major police departments. At the Las Vegas Metropolitan Police Department, where I worked, it was our policy for the last 10 years—we changed it to reflect exactly what you were trying to do with the *Nevada Revised Statutes*, so I commend you for that.

To answer Assemblywoman Cohen's question, narcotics are primarily a lot of the things that are hidden; however, there have been weapons that have been smuggled into the jail up to and including firearms for which we have gotten a search warrant and retrieved. That is why it is so important in a corrections environment to do those. That is really where we see it. Very rarely in the field would we request a body cavity search unless they are a narcotics

courier. Every once in a while you run into that. To answer your question, that has been my experience.

**Chairman Yeager:**

I would like to add to that as well. I have seen cases, as a first step rather than authorizing a body cavity search, where a judge might by a warrant authorize an X-ray because that would tend to tell officers, particularly if there is something metal, that there is something being hidden. I have seen that as a first step, but obviously your bill does not cover that scenario. I have seen that in the field where we will take the first step before actually doing the search.

**Assemblywoman Backus:**

I had a question because I thought double about this definition of a body cavity search—meaning the touching of a body cavity. I wanted to clarify and make sure that if there is a pat down—for example, of the inner thigh area that may commonly happen at the airport after you go through security—I wanted to find out if that is how broad this definition is intended to be.

**Assemblywoman Martinez:**

Are you asking if this is going to cover the airport as well?

**Assemblywoman Backus:**

No, I was asking with respect to the pat down—that commonly happens with the reverse hand down the inner thigh area. It does have the word "touching." Is the implication that there must be touching of the body cavity for it to be precluded?

**Assemblywoman Martinez:**

Just to clarify what we mean by cavity, we are talking about when they go inside, probing.

**Assemblywoman Backus:**

Let me specifically refer you to page 2, section 1, subsection 2, paragraph (b): "'Body cavity search' means the touching or probing of a body cavity of a person, regardless of whether or not there is actual penetration of that body cavity." When I first read it, I did not think anything of it, but unfortunately, I get popped when going through security at the airport. And they do this inner thigh check, and I think this could go under that definition, but I was not sure if this was the intent of this piece of legislation. I just wanted to define it. It was not specific to the airport, it was just that type of pat down.

**Assemblywoman Martinez:**

From what I understand, the airport has their own separate rules. This is not the same thing.

**Assemblywoman Backus:**

I am sorry that we are missing each other. My concern is the touching, because it is how the definition is; it is not just necessarily probing or going inside the body cavity—it does go broadly as touching. I do not know if Assemblyman Roberts may be able to add on to that, if that is something that could possibly be a problem.

**Assemblyman Roberts:**

I think Director Callaway may be able to give you a current practice on the department policy.

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

Originally, I came in as neutral on this bill and do not intend to change my position because it is our practice, and we do have a policy that a body cavity search would require a search warrant. However, looking at the language, I do see the concern that was raised by Assemblywoman Backus, specifically with just the word "touching." It is highly possible that on a pat down in the field, you might inadvertently touch someone in one of these areas listed—you might touch someone's rectum, for example, during a body cavity search, but that is not probing. I think that is the distinction. The issue of the pat down at the airport, a pat down in the field that an officer conducts for officer safety, if the word "touching" was removed and "probing" was left in, I think it would resolve that, in my personal opinion.

**Chairman Yeager:**

Thank you, Director Callaway. I am going back to Assemblywoman Backus.

**Assemblywoman Backus:**

My intention was not to fully remove that. It was just for some clarity because I think in a situation where touching could be inappropriate—just depending on how the policy is—that is a touchy subject. I am not advocating for it, I was just thinking how broadly it could go and there may need to be some clarification.

**Chuck Callaway:**

As was stated by Assemblyman Roberts, typically in the field if we had, for example, a case like a trick roll where property was stolen and then hidden inside a body cavity, that person would be taken into custody and transported to the jail and the medical folks at the jail would assist with that search. The officer would stand by while the medical folks assisted with retrieving the property once the search warrant had been obtained. I do not believe the way this is worded would necessarily impact how we would do business, but I do think it is sufficient to get it on the record that the intent is not a pat down but rather an actual probing with trying to enter the body cavity.

**Chairman Yeager:**

Thank you, Director Callaway. That is the way I read the bill. I think if we are talking about something that is incidental to some other kind of search, I do not think that would implicate the prohibition here. I am comfortable with that word and I believe this mirrors the statute in Washington State, and they have not had any issues with it. We can continue to talk about that as we go forward on the bill. I will talk with Assemblywoman Martinez to see what her preference is, should we bring this bill to a work session. But I think, for clarity and for the record, I would read this as an intentional touching or probing and not just something incidental such as an airport pat down.

**Assemblywoman Miller:**

In the spirit of this current question that we are discussing, what it brings to mind for me is—I mean, further than the Fourth Amendment issue—we are looking at a human dignity issue. There is touching, there is probing, but what about an incident where an officer would not touch the person at all—maybe in a bend over, squat situation, and where it could be an actual visual—would that be covered under this bill? I do not know whom I am asking, legal or the bill sponsors, but that is my concern because that could be an issue. In the nature of this bill, I would feel that should have a warrant, because an officer can say, Bend over, spread them, show them, squat, and cough, whatever.

**Assemblywoman Martinez:**

I think it depends on how the language is interpreted. To me it is probing when we do a cavity search.

**Assemblywoman Miller:**

Okay, so I would still, as an officer, then be allowed to tell someone to bend over, spread them, cough, and go in there yourself. Can I direct someone to probe themselves?

**Assemblywoman Martinez:**

I am not aware that they are allowed or if that is in the law.

**Assemblywoman Miller:**

Okay.

**Chairman Yeager:**

Just to get legal in on this, I am going to turn this over to Mr. Wilkinson to touch on that subject a little bit and perhaps talk about what this bill does not apply to.

**Bradley A. Wilkinson, Committee Counsel:**

Thank you, Mr. Chairman. No, it would not apply to just some type of visual inspection. That would not be implicated in the bill. Not to get too far into the weeds, but typically this is not a scenario that would be involved in a correctional institution. For example, for someone going into detention, because those kinds of searches are not done, a warrant is not required for those. Some states have heightened protections and actually do require a warrant, but under most circumstances that is not a situation where a warrant is required to conduct a search.

**Assemblywoman Miller:**

I understand that. Thank you. But I am also considering the fact that I am not speaking in terms of in prison or custody. I am going in the nature of the bill. We know most of our officers do not do that and this is not something, from what I heard last night, that has really been an issue here in Nevada, but we cannot predict that one obscure incident when something occurs.

**Chairman Yeager:**

Assemblywoman Miller, I would invite you to connect with Assemblywoman Martinez and talk about a way forward on this bill, and I will certainly leave it up to Assemblywoman Martinez if she wants to keep the bill as is or make any amendments. I am not sure if you wanted to say anything else or do you want me to keep asking questions.

**Assemblywoman Martinez:**

I can work with Assemblywoman Miller. We can fix it.

**Chairman Yeager:**

Okay. Fantastic.

**Assemblywoman Krasner:**

I have a question for legal counsel. In looking in section 1, subsection 2(b) which says, "Body cavity search' means the touching or probing," in relation to the touching, does this affect *Terry v. Ohio* [392 U.S. 1 (1968)], which allows for law enforcement to do a brief pat down frisk which would be a touching? Is the intent of the bill to overrule *Terry*? Your thoughts on that, please.

**Bradley Wilkinson:**

I think the answer to that is no. It would have to be a touching of a body cavity. I think the Chairman was explaining basically how that works. A stop and frisk would not without it being some incidental touching as opposed to a natural search, and it also has to be a body cavity that is being touched. No, I do not think that would be implicated at all.

**Chairman Yeager:**

Do we have any other questions? [There were none.] Assemblywoman Martinez, I want to thank you for presenting the bill, and at this time I am going to open it up for testimony in support of Assembly Bill 189.

**Summer Wharton Merrill, Private Citizen, Yerington, Nevada:**

It is my first time here. I am not representing anyone other than myself. I probably would not have picked this as my first opportunity to come and testify. I know body cavity searches make us squirm, and I understand why, obviously, but I am here because I feel it is important. I just wanted to share with you why I think it is important to support Assembly Bill 189.

I am a mother of four and a part-time legal assistant ([Exhibit I](#)). In my work I am routinely confronted with various aspects of the law, and it has been really interesting for me to see how the law enforcement and the judiciary system work together. I am happy to report that most of the time those forces combined to work for good and to protect and to serve our citizens and our communities. However, recently I came across something I simply could not reconcile and still cannot reconcile. I think it is a huge flaw in our system and in our laws. The consequences of that flaw are devastating and unsettling as a citizen, mother, and especially as a woman. Currently in Nevada there are no laws that require law enforcement

to specifically request a body cavity search when obtaining a search warrant of a suspect. Police can submit a request to search the person of a suspect and upon approval see that a body cavity search is carried out.

In my work, I reviewed many search warrants. What I find to be very troubling is we are so particular when it comes to dwellings and cars. When I am procuring a search warrant for a home, I have to list the address, sometimes a physical description—the house is red, it is on the northwest corner of this intersection—information such as what can be searched, closets, drawers, papers that can be read, personal effects—this is all typically listed in a search warrant with concerns to a dwelling. With concerns to a car, you have a physical description, the make, the model, license plate number, it states whether or not you can open a glove box and look around or if you need to open the trunk. These are all things that are routinely included in a search warrant for a dwelling and cars. For people we have the term "the person," and that to me is troubling. I do not feel that that is specific enough, and I do not think it provides a certain level of scrutiny that a body cavity search requires.

I understand that it is considered "best practice" amongst law enforcement to dictate that you do request a body cavity search specifically. However, best practices do not provide any legal recourse in the instance where the best practice is overlooked or omitted or abused.

I do not think I need to explain to you how invasive a body cavity search is. Any woman who has been to an obstetrician/gynecologist or any man who has gone under an extensive physical examination can attest to the fact that it is somewhat humiliating and makes you extremely vulnerable. It is not an experience that one enters into lightly. And that is under the best circumstances. I cannot imagine being submitted to those same circumstances and being subjected to that level of invasiveness and vulnerability without the approval and protection of the highest levels of oversight that the law has to offer.

I love this state and I love this country and I recognize what a privilege it is for me to be here today to speak in front of you—again, this is my first time. This is not something I normally do, but this is something I feel strongly about. The women and the people of Nevada require more protection than what we currently have. I would like to compel you to at least think about what I said today, and think about the treatment you would like to receive if you were in that situation—the level of oversight and protection that you would want for yourself, for your family, and for your loved ones. Please vote accordingly. I appreciate your time, and thank you for listening.

**Chairman Yeager:**

Thank you for your testimony. We do have a copy of the letter you submitted ([Exhibit I](#)) as well and it has been uploaded to the Nevada Electronic Legislative Information System, so members or members of the public, you can find the letter there if you want to review her comments. You did a fantastic job for your first time testifying. Good job, and feel free to join us here in the Assembly Committee on Judiciary whenever you would like.



**Summer Wharton Merrill:**

Thank you. I am willing to answer questions. I do not have a legal background but I am happy to answer whatever you would like to throw at me.

**Chairman Yeager:**

Do any members have any questions or compliments? [There were none.] We do not have any questions, but we do have your information on your testimony with your telephone number and email address. If questions do arise, we will reach out to you. Thank you.

We will take additional testimony in support of Assembly Bill 189. Let us go down to Las Vegas first.

**Lisa T. Rasmussen, Attorney, representing Nevada Attorneys for Criminal Justice:**

I am testifying on behalf of the Nevada Attorneys for Criminal Justice. Nevada Attorneys for Criminal Justice supports this bill.

**Daphne Lee, Private Citizen, Las Vegas, Nevada:**

I am a lifetime Nevadan. I just wanted to say that I support this bill. I think it is important to reinforce the idea of getting a search warrant and protecting our Fourth Amendment rights. Thank you so much.

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

Good morning, Chairman and members of the Committee. We strongly support this legislation which provides strong protections for the most intrusive of governmental intrusions on our privacy.

I just want to quickly quote *Schmerber v. California* [384 U.S. 757 (1966)], which addressed blood tests in DUI cases. "Search warrants are ordinarily required for searches of dwellings, . . . and no less could be required where intrusions into the human body are concerned . . . . The importance of informed, detached, and deliberate determinations of the issue whether or not to invade another's body in search of evidence of guilt is indisputable." We strongly encourage you to support this legislation and move it forward.

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

We also urge you to support this bill. I would just echo the statement that came before me, and I especially appreciate the statements from Summer Wharton Merrill, our first supporter here today. Thank you.

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

We are in support and we think all the selling points have been made.

**Sam Toll, representing Libertarian Party of Nevada:**

I am a Gold Hill native. I am echoing the concerns that have been put forth earlier suggesting that and trying to visualize myself having to console my daughter should she be subjected to something like this without due process. There are plenty of opportunities from a law enforcement safety standpoint to protect themselves and to keep themselves safe.

**Tonja Brown, Private Citizen, Carson City, Nevada:**

We strongly support this bill. Thank you.

**Chairman Yeager:**

Is there anyone else in support of Assembly Bill 189? [There was no one.] Seeing no additional support, we will now move to those in opposition. Is there anyone here in Carson City or in Las Vegas? [There was no one.] Is there anyone neutral? [There was no one.] Assemblywoman Martinez, would you like to come back up and give concluding remarks?

**Assemblywoman Martinez:**

Thank you again, and as you can see, there was no opposition because this is very important. Hopefully you will consider this bill. Thank you for your time and your support on the bill.

**Chairman Yeager:**

We will now close the hearing on Assembly Bill 189 and open the hearing on Assembly Bill 200. Assembly Bill 200 revises provisions relating to the use of cellular devices while driving. I will invite our sponsor, Assemblywoman Gorelow, up to the table as well as anyone else you might like to bring with you to present the bill. I did want to let Committee members and members of the public know there is a proposed amendment ([Exhibit J](#)) on Nevada Electronic Legislative Information System (NELIS) that makes some changes to the bill in its original form. If you have not had a chance to look at that amendment, I imagine it will be covered in the presentation as well.

**Assembly Bill 200: Revises provisions relating to the use of cellular devices while driving. (BDR 43-845)**

**Assemblywoman Michelle Gorelow, Assembly District No. 35:**

Here with me today is Mr. Ben Lieberman, and we are here today to present Assembly Bill 200 for your consideration. This bill will provide for field tests for evidence of illegal handset use by motorists involved in serious collisions ([Exhibit K](#)).

The intent of this bill is to allow a police officer to field test a driver's phone after he or she is involved in an accident that causes death or serious injury to an individual to determine if the driver was texting or swiping their phone screen.

Here is the problem. In 2016, distracted driving claimed the lives of 3,450 Americans, according to the National Highway Traffic Safety Administration (NHTSA). In Nevada, between 2011 and 2015, 517 people died in crashes caused by lane departures. While lane departures can be caused by a variety of distractions, the Department of Transportation called

talking and texting while driving the most alarming distraction. The National Highway Traffic Safety Administration states that texting and driving is five to six times more dangerous than drunk driving.

According to research by the American Automobile Association, 67 percent of drivers admit to texting and driving—even though 41 states have laws banning the use of handheld devices while driving. It is not having much effect, and we believe we are not treating the new national epidemic correctly.

In the state of Nevada there were over 52,000 crashes in 2018, yet we have no idea how many of those drivers were using their mobile devices. In the light of the fact that NHTSA finds that one out of six drivers are using their handsets, clearly we have a problem with detection.

Using a phone requires cognitive, manual, and visual attention from drivers, meaning their attention is not where it should be—which is the road. According to the Department of Transportation, using a cell phone while driving reduces the amount of brain activity associated with driving by 37 percent. Texting means a driver is not looking at the road for an average of nearly 5 seconds per text, which, when driving at 55 miles per hour, is the same as driving the length of a football field blindfolded. Also, according to the Department of Transportation, the risk of crashing while texting is 23 times higher than when driving while not distracted.

So we are addressing the problem. It is the use of the phone while driving that is a crime. How can we address the deadly issue of distracted driving without violating someone's privacy? The Cellebrite company was approached about creating software with the ability to detect physical usage without the ability to access or display personal content. The Textalyzer takes about 90 seconds and detects physical typing and swiping on the device. The software cannot get at content because it requires much more sophisticated software, hardware, and time. The issue with accessing phones at the scene of the crash has historically been linked to an inability to separate physical phone usage, which is against the law while driving, from the content on the phone, which is private.

Before we delve more into the issues, please let me dispel some myths about both the technology and the legislation. Here are some facts and fictions regarding the field test for distracted driving ([Exhibit L](#)):

- Fiction: Law enforcement will use the Textalyzer to randomly target motorists. Fact: The Textalyzer is only used at crashes in which serious injury and/or death has occurred.
- Fiction: The Textalyzer technology allows for access to all personal information contained within the phone. Fact: The Textalyzer is not designed or programmed to retrieve personal content, and could not access the content even if desired.

The phone never leaves the motorist's hands. The Textalyzer will use operating system logs and analyze them to provide a clear indication of whether illegal typing or swiping occurred.

- Fiction: The Textalyzer is not needed because law enforcement can retrieve the same information from phone records. Fact: Phone records provide a mere sliver of information.

It is like a breathalyzer that only detects tequila. Even a simple email would not show up on a phone record, nor would most other popular driving distractions like social media, selfies, browsing on the Internet or playing games. Those examples all get bundled under the category of "data" which could be anything like a weather alert or Facebook running in the background. Ironically, phone records provide more personal information than a Textalyzer, because phone records provide names, numbers, and even locations. Alternatively, in roughly 90 seconds, the Textalyzer can generate a report illustrating typing and swiping without any of the other personal information I just mentioned.

- Fiction: The Textalyzer will erroneously report legal hands-free phone usage as illegal. Fact: The Textalyzer reports typing and swiping and differentiates between legal Bluetooth, voice activation, and steering wheel commands. Again, it reports the physical typing and swiping.
- Fiction: Education programs alone are enough to solve the distracted driving epidemic. Fact: We as a nation just spiked to a 50-year high in crashes and fatalities in the United States and, per Zero Fatalities, Nevada had 331 fatalities in 2018, an increase of 23 percent from 2017, and the sixth straight year of increases.

Cars are being built better. They are equipped with more safety equipment and drunk driving is down. Pedestrian deaths are also down. Let us connect the dots and think about what is the newest phenomenon over the last decade. It cannot be the cars—it must be the drivers. Is it a coincidence crashes have increased on par with the dependence on smartphones? Common sense dictates that is the reason, but we would like to know the real answer. Drunk driving was reduced by understanding the problem, implementing effective legal deterrents and creating a social stigma. Education alone is not the answer. Like drunk driving, sure, we will need education, but we also need legislation and enforcement. It is a three-legged stool, and a stool missing a leg is worthless. Unfortunately, because we cannot identify the problem, we are missing legislation and enforcement.

Now about the constitutionality, the most important part:

- Fiction: The proposed legislation is unconstitutional.

As to the fact, I can go into details as to why the *Riley* decision [*Riley v. California*, 573 U.S. \_\_\_\_\_ (2014)] is not controlling here; however, we have worked with stakeholders and others who have voiced their concerns and have amended the bill language to require a police

officer to obtain a warrant at the scene of the crash if the driver does not voluntarily allow the officer to check their phone. Also, it is current practice of the Legal Division of the Legislative Counsel Bureau to review bill draft requests for issues of constitutionality. If the Division discovers a problem, they would have told me that the bill contains provisions that may be unconstitutional. However, I have received no such correspondence from the Division stating there was an issue with the constitutionality.

Currently, it is difficult for a peace officer to determine whether a crash is caused by distracted driving or another issue. This bill will help us determine the scope of the problem and better address it by authorizing a peace officer at the scene of a crash which results in serious injury and/or death to request access to a person's handheld, wireless communications device if the officer has reasonable suspicion to believe the driver was using the device at or near the time of the crash. It also provides a deterrent—similar to existing DUI laws—to use these dangerous distractions while operating a car, which can quickly become a deadly weapon when a driver is distracted.

We have listened to the concerns of the Committee and other stakeholders since the release of the bill and we are working to alleviate concerns. We have amended the bill to include language that would require a peace officer to obtain a warrant if the driver who is suspected of texting and driving did not voluntarily provide the police officer with their phone. In addition, the conceptual amendment ([Exhibit J](#)) eliminates the penalty of license suspensions for not providing the phone. I should note, though, that according to the Department of Motor Vehicles (DMV), they were expecting over 16,000 license suspensions under the original draft.

We have a challenge here: balancing the public safety and privacy. This is not the first time Nevada's legislative body has taken up this issue. We have had to debate tough issues in the past to make our roadways safer. Let us discuss drunk driving. The parallels between drunk driving and distracted driving are remarkable. I want to share with you some quotes, mostly from this body, and then I want to ask you what side of history do you want to be on? Here is the first quote from back in the day on drunk driving from state Senator James Slattery in 1969:

I rise in opposition to this bill. I think it takes freedom away from the individual, and I think these birds that do 90 to 95 miles an hour are a greater detriment and have no more control over their cars than the man that is drinking. [State Senator James Slattery, 1969].

Here is a quote from [John Oppenheimer] a supporter of drunk driving legislation in 1983:

Drunk driving is no accident, and when we can educate a large majority of driving Americans that drunk driving is not funny, then we will accomplish something.

The next two quotes are from stakeholders in opposition, one from 1981 and the other from 1983:

Something must be done to get drunk drivers off the road, but this legislation does not address the problem. We should have a subcommittee study the possibilities.

I have read the book *1984* which is a book about 'Big Brother' who thought up laws he felt would help society. This bill is the dawning of 1984. This bill is a naked attempt to legislate morality by making the law so harsh and sociologically damaging to the second parties . . . . The increasing harshness of the DUI laws is like the burning of witches in Salem—eventually people admit they are a witch in order to escape the penalties.

The next quote is by a state senator from 1983 [Assemblyman Robert M. Sader], which I find to be a particularly good comparison to the distracted driving problem we are facing now:

You will not get a drunken driver off the road until two things happen: (a) the people must understand that this is a morally offensive thing that they are doing, and (b) they must understand that there is a substantial likelihood that they will be apprehended. The latter has yet to occur in this state and will not occur simply because penalties have been increased.

Here is a beauty we found. It is an Op-Ed from *The New York Times* from June 1984 [written by Philip Linder, associate professor of English at Suffolk College]:

Last Saturday night I drove home drunk or most certainly that would have been the indication from any breath or blood test that I might have been required to take. I drove home drunk the Saturday before that, too, and the one before that, and the one before that, and what probably amounts to a fairly consistent pattern over the last 25 years, ever since I have been licensed to drive. I am convinced, based on my own safe driving record and millions of other drivers like me, that there is an equally effective method of reducing alcohol-related car accidents without resorting to such draconian measures that severely encroach the rights and liberties of the vast majority of New Yorkers of all ages who are responsible drivers and find their lifestyles threatened by such laws, regulations, and practices.

This last quote I am going to leave you with is from an expert in this field, Candace Lightner, the woman who founded Mothers Against Drunk Driving after she lost her daughter, Carrie, who was hit and killed by a drunk driver. Candace is working closely with us and she offered this quote:

Drunk driving had become the fodder of the late-night comedians, nothing more than a joke, with little or no accountability and accepted by everyone as

an everyday occurrence. I set out to change all that. And I did, despite major obstacles, especially the attitude that drunk driving was socially acceptable. We have the same problem with distracted driving. There is little or no accountability. Everyone drives distracted and it has become socially acceptable. I urge this Committee to think of the safety of their constituents, their family and friends, and find a way to implement this legislation.

We in this room have an opportunity to make difference. Which side of history do you want to be on?

**Chairman Yeager:**

Thank you, Assemblywoman Gorelow. Mr. Lieberman, would you like to give comments before we ask questions?

**Ben Lieberman, President, Alliance Combating Distracted Driving, Chappaqua, New York:**

Thank you, Assemblywoman Gorelow, Chairman Yeager, and all the members of the Judiciary Committee for inviting me here and taking the time to speak with me this past week. It has been an honor to meet with you and receive your feedback. I would also like to thank the other stakeholders who are here, whether it is in support or in opposition. I am very grateful that you care about the issue.

A few months ago, I was contacted by one of the safety councils in Nevada and spoke about the Textalyzer technology and legislation, and from there I was invited to present at the Zero Fatalities Traffic Safety Summit in Las Vegas. That was really an engaging discussion in front of roughly 500 people. Fortunately, there was a session on legislation immediately after I presented. I have been somewhat immersed with legislators all over the country, so naturally I was hanging around for that discussion. It was very touching for me, because when it came to the question-and-answer part, three or four people stepped up to the microphone and enthusiastically asked the legislators, Why are we not doing the Textalyzer here? That really meant the world to me. Assemblyman Fumo was one of those panelists.

By way of background, I started two advocacy organizations to combat distracted driving. We believe the solution entails education, legislation, and enforcement. Assemblywoman Gorelow's description that it is a three-legged stool is spot-on. Unfortunately, as we sit here today we have plenty of education, limited legislation, and even less enforcement. Therefore, not surprisingly, the problem is getting worse. But behavior can change. It improved dramatically with drunken driving, seatbelts, and cigarette smoking. It can with this as well.

During the summer of 2011, on a normal Thursday morning around 9 a.m., I was told that my 19-year-old son, Evan, was in a car crash and being airlifted to Westchester Medical Center.

Evan was home after his first year of college. He was heading to his summer job near the Bear Mountain Bridge. He was carpooling with three fellow college boys. He was sleeping in the back seat with a seatbelt on. He was not doing anything wrong.

By 7 p.m. that night, after his third operation of the day, he went into cardiac arrest. They brought him back. I was told Evan had a 10 percent chance to live through the night. The seatbelt saved his life but the force and inertia caused critical internal damage.

Evan made it through that night and 31 other nights. Being a healthy 19-year-old has its advantages in a situation like this. However, Evan had to endure 15 operations and an incredible amount of blood transfusions. The human body holds five liters of blood and Evan needed a staggering 95 liters of transfusions. That is like refilling your body 19 times in 32 days. But he was a fighter.

For a whole month, our family lived in the hospital. There is nothing in this world that can prepare a father when his critically injured child says, "Dad, I am scared." On the thirty-second day, we lost him right in front of our eyes.

That memory is no less vivid and I cannot imagine it ever will be—not just for me but for my wife and my daughters, who were 15 and 17 at the time. How do you explain what is fair in this world to them? The driver told authorities that he fell asleep at the wheel. That did not make sense to me.

To give you a little background, the crash happened on New York State Route 5 and it is by the esteemed United States Military Academy at West Point; it is an old and daunting road. It is old, windy, and thin—yet there are commercial trucks busy in both directions. I could not imagine a tougher road to fall asleep on during rush hour – or a dumber road to be texting and driving on. Texting on that road would be begging for a collision.

That brings us to the problem we learned about. People who came to visit us at the hospital were asking if the cause of the crash was texting. Honestly, during those 31 days in the hospital I could not focus on what the cause was because we had more pressing matters to deal with.

I had confidence the police would do their job, and I would focus on my job of advocating for my son's life. When I started asking questions, I learned about the problem. Here are a few things I learned quickly: We have laws that cannot be enforced, and, therefore, they are a toothless tiger. It is a grieving father's job to gather information because law enforcement cannot. In a civilized society we enact laws to protect innocent people—but that is missing in regards to this rapidly growing national epidemic. The general public is truly uninformed of how vulnerable they are. No one knows there is no protocol.

There is a chain, and it is broken, and it is broken at the very beginning. There are educators, police, prosecutors, lawyers, judges, and legislators—they do their job, and the next person does not, so it is not connected. I hope this panel does officially what I have been working



on for the last few years and that is to connect the chain and fix it where it is broken. The fact is, we are clearly broken early on in the process of identifying the behavior. I learned we have a completely dysfunctional system and it remains dysfunctional today. In Evan's case, the police never asked to see the driver's mobile phone or phone records. Actually, police are instructed to avoid inspecting the phone for privacy reasons. The police never saw that phone, nor did I.

Through my own civil lawsuit I was finally able to obtain the phone records. It took me six grueling months. Getting those phone logs had nothing to do with law enforcement. I was fortunate that I could get access. Many people cannot get records. I can explain why later if you are interested. Astonishingly, what I learned from the phone records, because I can now triangulate phone tower data, was that the phone remained in the wrecked car at the tow yard for months after the crash, just sitting there waiting to be investigated. The phone records showed texting throughout the drive and near the time of the collision, but it could not tell me anything else. We saw the Internet drawing and sending data, but that could be anything including involuntary push notifications or it could have been app use in the background or even an email. We will never know because phone records are limited. Phone records are much more limited than people realize. At first I thought an omission like this was the result of a faulty investigation, but I discovered there is no protocol for investigating distracted driving. I know that is hard to get a handle on. Common sense dictates the phone would surely be a part of an investigation.

As I became a known advocate, people started reaching out to me. I get notes and calls all the time, like this one:

My name is Kevin Sami, I just read about the Textalyzer law and wanted to reach out in support. My dad, Medhat Sami, was killed on Long Island on June 3, 2013, by a distracted driver. He was hit from behind at 58 mph while completely stopped at a traffic light. The driver's statement at the scene was, "I was daydreaming." To this day, he has not offered an explanation for his distraction or the crash. There has been no accountability and the Textalyzer law could have changed that.

Getting back to my situation: the conclusion is that the police did nothing wrong based on the current protocol.

There are some blatant problems. Distractions have gotten worse. We recently spiked to a 50-year high in crashes and fatalities. Although we have hands-free laws that were welcomed and widely praised, they cannot be enforced when damage is done unless there is an eyewitness or an unlikely confession.

Today's hands-free laws have no teeth. A piranha without any teeth is just an ugly guppy. At crashes where people do damage is the most important juncture.

I implore whatever the outcome this Committee generates to be extremely clear of what is being done and what is missing in the current state of affairs.

In New York when we had a similar hearing, a police officer testified that he has written more distracted driving tickets than any officer in New York or the country for that matter. He wrote a total of 2,000 tickets in a two-year period, and only one was written at a crash because there was an eyewitness. When an officer pulls over a texting driver, he writes a ticket, and that motorist most likely believes the officer is busting their chops. The motorist believes he can multitask. There was a time when a different motorist believed he could drink and drive, or not wear seatbelts, or smoke three packs of cigarettes a day.

No one gets in a car with the intention of hurting someone. The guy who killed my son did not start out that day saying, I am going to try to kill someone. They believe they can multitask. But if they T-bone your car—let them explain how good they multitask—it is a whole different conversation. It is pretty hard to justify the mythical multitasking after you hit someone—as opposed to being pulled over for using a device. It is an important element that is missing, and that is the essential conversation we are not having when there is a crash.

We truly believe all realistic paths lead to the Textalyzer solution where we already have a law and this is a way to enforce it. Most importantly, our goal is to truly understand the problem, implement deterrents, and create an appropriate social stigma. When I was growing up, drunk driving was a joke; now it is not a joke. Device use is a joke now—make it so it is not funny.

To give a practical example of the problem and what is missing, if a drunk driver barrels through a red light and T-bones the car of someone in this room, when the police officer arrives and determines that person is intoxicated because a protocol leaps into place, then that person is facing legal and financial issues. But more importantly, he is facing that social stigma. You know, you are a pretty bad person if you have injured someone while you are drunk.

We know that phone records are tough to acquire, but even more important, the phone records are limited, as I said. That is why this epidemic is developing into a nameless, faceless crime. It is creating a huge void and not allowing the negative social stigma for doing that illegal activity.

Here is another letter I received:

Our son was killed by a young man who ran a red light and we are fairly certain he was on his phone. This is in South Carolina. The investigation which took four-plus months has been completed and turned over to the solicitor for our area. He said it was very likely that the only charges brought against him for killing our son would be a failure to yield the right-of-way or disregarding a traffic signal. We think this is a travesty and want him charged

with a stronger charge. Do you have any advice? Please help as we are desperate and heartbroken.

I am now an advocate combating distracted driving. I have organized conferences, spoken at high schools, colleges, and Governor Andrew M. Cuomo of New York asked me to speak at two of his press conferences. I spoke at a New York State trooper safety conference in Albany where I got to speak to 250 law enforcement professionals.

When I make those public appearances, I usually begin by talking about this glaring statistic. It is my attempt to be interactive. In New York in a given year, there were 254,829 crashes. I ask the audience how many of these were reported as texting and driving. The answers get shouted out. They always come in between one-third and one-half, so their thought is anywhere between 80,000 and 125,000. It is really a trick question because I ask what was "reported" as texting and driving. They do not hear that; in their minds they hear, "What was the cause?"

The real answer is shocking. I am here because it is a shockingly low number. This is the problem. Even in their wildest expectations, people cannot give a low enough number. Out of a quarter-million crashes, the answer is a mere 64 motorists were reported as texting and driving. Not 64,000 or 640, just 64 motorists. Motorists do not get caught. The hands-free law that was designed to be a deterrent is no deterrent at all. You do not need me to point out that it is not a deterrent. Just look out your window the next time you drive more than 10 minutes. As I mentioned, at this police conference I had a rare opportunity to speak to 250 members of law enforcement, and I asked them, other than fatalities, how many here have gotten phone records at a crash? Not one officer raised their hand. There is a big misconception that this is being dealt with.

I have never turned down a speaking engagement when asked and I have not charged a dime. I strongly believe in education and we organized a distracted driving conference that attracted people from all over the country. I am all for education. It is not an "either/or" situation.

I believe the most important thing we are working on is the legislation we are speaking about today, implementing Textalyzer technology and protocol. Imagine a crash investigation where the driver is maintaining possession of the phone the entire time, and in 90 seconds, a report is generated that details typing and swiping but avoids all personal content. It will detect usage but not content: no conversations, no emails, no contacts, and no numbers. It detects illegal usage but differentiates between legal voice activation.

Imagine how different my life would have been and imagine how it could have helped the other two families I mentioned. I get that you cannot change the damage done to my family—believe me, I get it. Nobody gets it more than me. But for victims, we can provide accountability and proper justice and give whatever peace is available. I might be selfish asking for that, but I also strongly believe as a society we are better. So much of the broken chain can be fixed. We need to understand the issue, we can put in deterrents, and we can

develop the much-needed social stigma. I absolutely believe this has the potential to move the needle in a positive direction and it is very exciting to be part of a solution.

I made a note that Assemblywoman Gorelow did not address, and that is one of the facts-versus-fiction topics for the Textalyzer, so please let me address one more issue. We also get asked, What happens when I give the passenger my phone? Will I not be cited for illegal use while my passenger uses the device? The fact of the matter is, it is a protocol issue and most people get comfortable because we err on the driver being innocent. To be direct, if both the driver and the passenger give law enforcement a statement that the passenger was using the phone at the time of the collision, then there will not be a violation.

Let me explain a little more. Yes, there is a chance perjury could be an issue, but most people are comfortable that we are not going to harm someone who is innocent. Yet, this should not affect the effectiveness of the whole protocol. Let me explain a few things: Sixty-five percent of cars are driven without a passenger, so already you have a much lower population that can even use the alibi. Think about how carpooling works—three lanes are jammed and one lane is moving. Sixty-five percent of the cars are driven alone. But also, of the remaining 35 percent, AT&T did a study stating that drivers with a passenger are 70 percent less likely to use the device with a passenger in the car for three very understandable reasons: (1) The passenger would not let them; (2) they are not bored—a major reason why someone would pick up a device; and (3) most people give the device to the passenger. That leaves us with roughly 10 percent of the population, and in that scenario, both the passenger and the driver would need to lie to the officer. Could this happen? Sure, they could beat the system. But so can the passenger with a drunk driver and auto interlock. The most important point is, even with erring on the passenger being innocent, we can effectively address about 95 percent of the population and that is a big win, especially considering we are getting zero percent now.

I have heard some misguided solutions. One example is, "they" should disable devices from working in cars, which I totally agree would solve the problem. Let us understand—there is no "they." We love the idea of devices being completely disabled in vehicles also, but it is not likely to happen. As it stands now, at best we can expect voluntary disabling.

Think about DUI, where we have definite technology that prevents a car from starting if someone is drunk—ignition interlock. It is a great idea, but it is not standard in every car. Even if legislators here tried to make this a reality, it is going to be really tough being there are no statistics on crashes caused by distracted driving. It is a vicious cycle and remains a nameless and faceless crime. We do have a law against manipulating devices today, and we need to make it work. Let us find a balance between public safety and privacy. This is not an officer saying, License, registration, and let me rummage through your phone. This is jumping through hoops to meticulously respect privacy. This is less invasive than phone records that do show phone contacts and names. For over ten years crashes and fatalities trended lower. The last two years it did the opposite.

In the past when I visited other states, there were misstatements, and I am here to clarify anything that I can. Some might say, this device will not save any lives, and my answer is, They are right. It will not save a life; a breathalyzer does not save lives. A breathalyzer does not administer CPR. I cannot imagine, still, that we would not see the improvement in drunk driving if we did not have a breathalyzer. It does not give mouth-to-mouth resuscitation, but it is an essential tool.

This is actually an effective standard to use compared to drunk driving. I have a request that I hope you will humor me with. If anyone wants to scrap this Textalyzer idea over any issues, please ask yourself: Would I tank the portable breath test over the same issue? That standard would not apply to everything, but you would be surprised at how many it would apply to.

Being in Nevada this week has been very educational. I met with every member of this Committee. I know sometimes it was a brief meeting, but it was a good system for us to explain the legislation and for you to express your concerns and make suggestions.

The bill looks a lot different now than it did at the beginning of the week, and it seems to fit even better with Nevada's framework. The bill as it was, was already constitutionally viable compared with benchmark cases such as, *Riley* [573 U.S. \_\_\_\_ (2014)], *Birchfield v. North Dakota*, 579 U.S. \_\_\_\_ (2016), and the recent *Carpenter v. U.S.*, 585 U. S. \_\_\_\_ (2018). You can read about that in the constitutional scholar report that we have provided for you ([Exhibit M](#)).

Laurence H. Tribe from Harvard Law School wrote, "If carefully framed, Textalyzer Legislation would be fully consistent with all applicable federal constitutional requirements, including those protecting freedom of speech, personal privacy, and due process of law." Despite it already satisfying those standards, Assemblywoman Gorelow amended the language and actually added the warrant requirement, which should eliminate all other doubts from those aforementioned cases. Assemblywoman Gorelow also changed the standard to implement the investigation to serious injuries and fatal crashes to alleviate the concerns about this being used at every fender-bender.

One of the challenges that we face is that the symptoms of distracted driving is one of the few areas that is not a good comparison with drunk driving, meaning you do not smell from texting or slur your speech from being on social media. Yet, we believe if we all put our heads together, between legislators, law enforcement, and advocates, we could potentially develop "reasonable suspicion" characteristics for a protocol and alleviate some of those concerns.

There were people who had concerns but were willing to work with us this week and that was invaluable. There was one specific stakeholder whose job makes him a natural opponent. He said, "I doubt I will be able to support this bill, but I will make you a promise—I promise that I will never text and drive again." We had an interesting discussion after that. I told him that I really appreciated that. What was interesting about that was that

he was affected by this, and that is why he wanted to change. That is what we are actually missing in this whole protocol, this issue: people do not know when someone is getting crippled down the block from them. They do not know how this could relate to them.

Going forward and addressing this Committee, I envy the legislators on this Committee. I am not a technology person and I am not a legislator. All I can do is force the conversation. You people have the ability to make change. You can close this gap and fix the problem. I am happy to help in any way I can.

I suspect if you are like myself, you did not know there was this gaping hole in the protocol. But now you know. Now is the million-dollar question: What are you going to do? If you do not believe in our solution, what is the solution? For your new solution, would you suggest the same for drunk driving? I am pleading with you to face the issue head on and do not kick the can down the road. This is a problem that is begging for a solution. Drivers need to worry about the lives that are in their hands and not the cell phone in their hands.

People are being crippled, maimed and killed all over the country. I know, I have enough letters from enough people to fill every seat in this room. Your seat. Maybe you do not believe this system is as broken as I know it is. One thing I know, people do not think it could happen to them. I know this mentally exists out there. Nevada is not immune. Let me read one more letter. This one came yesterday. It came from Nevada.

How likely do you think this bill will pass? My reason for asking is on April 4, 2018, my husband was walking home from his daily walk right here in our community of Desert Shores when a lady drove up on the sidewalk and took his life. He was probably less than ten minutes from home. She had no explanation as to why she came up on the sidewalk. It has taken the detective ten months to get the final report done and to the district attorney's office. There is an arraignment date set for April 18th, four days after the one-year anniversary. They stated several police officers interviewed her and determined she was not under the influence of anything. No test was performed. I have struggled with the idea she may have possibly been on her phone. Her explanation is, she blinked and he was just there. Well, I have visited the scene and no way did she just blink and he was there. I have questioned why phone records were not pulled, and I was told the only time phone records are pulled is if there is a hit-and-run. I am not saying she was on the phone, but I sure would have liked that ruled out. I am discouraged with our system. Anything I can do to help get this bill passed, I will be happy to do. I feel strongly about it. Thank you, Teresa Young.

**Chairman Yeager:**

Mr. Lieberman, we have to get to some questions regarding this bill. If you have additional letters that you have not submitted to the Committee secretary, I would invite you to do that, but I am going to ask you to wrap up your introductory comments because we have a lot of people who are interested in this bill as well.

**Ben Lieberman:**

I am sorry. I did not mean to manipulate your time.

**Chairman Yeager:**

No, that is okay.

**Ben Lieberman:**

I will wrap it up. I was on the last paragraph anyway. I apologize to everyone. I do not know the system that you have or was not given a time concern.

I truly believe a lot of the solution falls into place when this key tool is implemented. It is not an easy road. It is going to take some courageous people. I think this Committee could be the start of something special. Everyone on this Committee has the ability to leave the world in a better place. That will be something to be really proud to look back on.

I am also pretty sure of two things: One is that you may have more questions and concerns. We are here ready to address the friendly and not so friendly. I also know that I can get passionate and ramble on, so I am going to wrap it up. You have been very generous with your time to listen and take this issue under consideration. It means the world to me and my family, so thank you very much, and again I apologize for being too long.

**Chairman Yeager:**

That is okay, Mr. Lieberman. I would like to say on behalf of the Committee, we are very sorry for the loss that brings your advocacy here today. We are thankful that you traveled here to meet and spend time with us to help Assemblywoman Gorelow present the bill. In the interests of moving forward in this process, what I am going to do before I take questions, I would like to poll the audience to see where we are at. After we take questions, if you could give me a show of hands who is going to be testifying in support of the bill today. This includes Las Vegas too.

Who would like to testify in opposition of the bill? Is anyone going to be neutral? The Department of Motor Vehicles; I predicted that one. I think we are okay with time. I will open it for questions from Committee. We will need to get to the opposition testimony in the next half-hour or so. We will take as many questions as we can and then we will take supportive testimony. I have a lineup of Committee members who have questions.

**Assemblywoman Cohen:**

When we spoke in my office, we spoke somewhat about the technology, but we left the conversation with me still having some questions. I do not know if you were able to get some more information about my questions. My understanding is that the Textalyzer is hooked up to the phone and the Textalyzer is getting the information, but the information is not going anywhere outside of the Textalyzer. Correct? It is not being uploaded to the cloud, it is not being emailed or anything like that.

**Ben Lieberman:**

That will be up to the protocol that you decide. It has the ability to do either/or if you want to keep the records in the cloud. The report that it generates shows typing, swiping, and it is time stamped. If you want to keep that record in the cloud or if you want your protocol not to keep it, then that is your jurisdictional decision to make.

**Assemblywoman Cohen:**

So with that, I am somewhat concerned about the possibility of someone hacking into the system. Even if there is no intent to get more than swiping and typing, what is to keep a hacker from actually getting into the phone if they hack into the system?

**Ben Lieberman:**

Are you asking what is going into the police's individual device to get the information from the phone?

**Assemblywoman Cohen:**

That is right, if someone can hack into the system—even if the police are just looking at typing and swiping. If a hacker gets into the system, is there anything from getting the personal data from the phone that goes well beyond what they need?

**Ben Lieberman:**

The actual device cannot get the personal content. They cannot get any personal content—it can only access the iOS logs. So if someone does hack it, they cannot get any personal content.

**Assemblywoman Cohen:**

The hacking will not get them into the phone itself?

**Ben Lieberman:**

No.

**Assemblywoman Cohen:**

Okay, thank you.

**Assemblywoman Nguyen:**

I appreciate the problem that we have with distracted drivers. I think everyone here has those same concerns. However, I do have serious problems with the Fourth Amendment and constitutional issues and privacy concerns that exist here. I see so many issues flawed with this potential tool.

Just to piggyback on what Assemblywoman Cohen had said about the technology, this is emerging technology and I am concerned about being able to pinpoint the time of the accident, whether or not this can be expanded later as technology emerges. I know right now, drivers can use voice commands. How does that show up on the texting and swiping? How does the future of facial recognition software do that?



In addition to other privacy concerns or confusion, when passengers are using the phone or specifically if an accident occurs and you go back and use this technology, I can imagine the first thing everyone here is going to do if you get into a car accident is pick up your phone and swipe immediately to call 911—or some people might call family members or other people. I realize you can use this as a tool for law enforcement, but I have serious concerns. My question is, What do you know about how this technology is adapting to some of these emerging features on our phones that extend beyond texting and swiping like voice commands?

**Ben Lieberman:**

Thank you for the questions. Regarding facial recognition, fortunately you have a law that says you cannot physically touch your phone while you are driving. This is what the Textalyzer detects, so the facial recognition will not be an issue because you are not going to be typing. The voice activation, Bluetooth—anything that is legal—will not get picked up by the police report that the Textalyzer generates.

As to your other question, I understand that with new technology and adapting—the company that has been involved in this, it is what they do. They are relied on by the Central Intelligence Agency, Federal Bureau of Investigation, police throughout the world, and people in this room who have experience with the Textalyzer. If anyone is going to be able to keep up with new technology, it is them because they are working with law enforcement now.

**Assemblywoman Backus:**

I have seen a lot of information that this product was created by Cellebrite. Does Cellebrite have a patent on this software and/or hardware?

**Ben Lieberman:**

May I ask you a question, because I think I can give a better answer if I understand the question. Are you asking me if there is a patent because you want to make sure there are competitors for them or are you asking if they have a patent? I honestly do not know, but I suspect they do. They are fully expecting competitors and they are willing to open up their code to investigation as they do with other products that law enforcement uses.

**Assemblywoman Backus:**

I am curious if at this time there are already competitors with similar software and/or hardware that meet the definition as proposed in this bill for investigative technology devices.

**Ben Lieberman:**

They do have competitors. I approached them when we had this idea. Cellebrite deals with issues such as murder cases, drug trafficking, human trafficking, and issues like those. They have not been in this arena of distracting driving. Basically, what we said to them was, You did this hard work, and I explained what would happen to us and what the big problem is out there, and when I asked for their help, I was really fortunate that they wanted to get involved.

What they did was develop a prototype and a proof of concept that we could demonstrate to various places throughout the country. They came forward and did this with their own investment when no one had done this. No one has done this yet, but there is no doubt, just as breathalyzers have competitors, there will be competitors to this device. The company fully expects that.

**Assemblywoman Backus:**

Thank you. I know we talked about phone records and you understand that police officers can issue a warrant to get someone's entire cell phone data that will give more comprehensive information. Does this device provide the exact geolocation when the swipe or touch happened?

**Ben Lieberman:**

I am sorry, what was your question?

**Assemblywoman Backus:**

This device generates a timeline, but does it also generate an exact geolocation with respect to each touch or swipe?

**Ben Lieberman:**

If an officer got a warrant and got a phone and did not have the technology like this, it would be like, let me see your emails, let me see your text messages, and he does not see any activity. When they get a warrant and getting the phone, that is opening it up to more awkward and privacy invasion. On your second question regarding the geolocation, it does not give the geolocation.

**Assemblywoman Torres:**

Thank you for your presentation. Like my colleagues, we all have the same concerns about distracted driving. Every single person in this room would like to find a solution. I am a little concerned about this legislation and how it is criminalizing drivers. At the scene of an accident, first and foremost, the police do not always determine who is at fault at the accident. So you are at this accident and maybe you are the person who hits the vehicle—that does not mean it was your fault—and the police at the time of the accident, if someone has been injured, will then have the opportunity to get someone's information from their phone. I do not know if the information is effective. Has this device been used?

**Ben Lieberman:**

Assemblywoman Gorelow changed the standard to being a serious injury or fatal crash. Your concern that this is going to be used anywhere at any time, and also the concern about having language about reasonable suspicion and things like that, so trying to make it more of an investigative tool where it is more in line with what you are thinking of, they have been trying to address that problem. It has not been used anywhere else. It is a protocol proof of concept right now. The same process that is going on here is going on in other states. I am working with a lot people on this. I will be in New York next week because there are other

meetings with other stakeholders. The process is new and I wish it was already finished because I would like to get the problem resolved and not be doing this.

**Assemblywoman Torres:**

I am concerned that the police officers would not have probable cause necessary to look into an individual's phone to determine whether or not they have been using it. Recently I was in an accident and I remember being asked what time the accident was. It was maybe 7 p.m.; I called my mom at 7:15 p.m. I do not know if we will ever be able to pinpoint that moment. I think we need to look into those concerns as well.

**Ben Lieberman:**

I personally have been in that experience where I have had to pinpoint the time of a crash, and you can find out the time of a crash, and law enforcement in this room will probably confirm this. If you cannot determine the time of a crash, then it is not effective and then not a candidate. But you can determine the time of a crash. I was 40 miles away from where my son was killed and I could tell within a minute and a half when that crash happened. I think these are issues you can work through if you are interested in solving a problem.

**Assemblywoman Gorelow:**

This is also a tool. It is part of the investigation of an accident. If two people hit in an intersection and both of them say their light was green, we might use a traffic camera or a witness who might be able to say, No, this light was red, or, No, this light was turning red. This is just another tool in the investigative process to find out who may be at fault and why.

**Assemblyman Watts:**

I am building off of some of the questions that were previously asked. During the presentation it was mentioned, in the fact and fiction, that the technology would only display illegal activity, and I think that is where some of my concerns lie. It would be helpful to see an example of what is actually generated by the device so we could see some of the backup materials.

My concern, again, is similar to concerns brought up by Assemblywoman Torres and Assemblywoman Nguyen. We do have some difficulty determining the time of a crash and, therefore, determining what activity may have been illegal and what activity may not have been illegal; especially when we do not have a camera. Even with a minute and a half window, there is a possibility of typing and swiping that would be totally legal and permissible. My concern is someone is now having to defend themselves of committing this additional crime and trying to justify whether the typing and swiping occurred before or after the incident.

I would love some clarity—I do not know if I get it from you or if I get it from others who will come—around what are reasonable and probable grounds to believe that was the source of the distraction as opposed to something else.

**Assemblywoman Gorelow:**

Again, this is a tool to investigate a crash, and by our current law with texting and driving, we are not allowed to swipe or touch that phone at all, whether it is for the GPS, for directions, sending text messages, even when we are stopped at a stop light. I myself have been guilty of sending that quick text at a stop light. That would all be up to the investigation. If you are driving to work and that is a 20-minute drive and for 10 of those minutes we can see that you had been texting or swiping, then that would be part of the investigation—that you may have been texting and driving impaired, a distracted driver per se for that accident.

**Assemblyman Watts:**

Thank you for that and I appreciate the work that has been done in the proposed amendment ([Exhibit J](#)) to try to address some of these concerns. I see use of the handheld wireless communication device after a crash shall not be a violation. I think that is my concern. There may be an instance where you have that pattern leading up to, but let us say you have swiping and use of the phone right within that window of the crash and now it is going into the legal system to be argued about—did that happen before the crash, preceding the crash, or following the crash, in which case it is not a violation. That is where my concern is. I see that it is attempting to be addressed in the language, but I am concerned on how that plays out in the legal system when a defendant has to make that case that their use of the device was legal.

**Assemblywoman Gorelow:**

Again, it would be part of the investigative process—was there one text, were there five texts, were there ten texts? At that point, warrants could be issued for further information and what was said in the text. Honey, I just got into a car accident, or, I will be there in five minutes. Again, that information would be part of the text and that is also why we narrowed it down to just serious and/or accidents that cause death.

**Assemblyman Roberts:**

Thank you for your passion and I really appreciate trying to do something with distracted driving. It is definitely a leading cause of accidents around the country, not only in Nevada but everywhere else. Most of my colleagues asked a lot of the questions that I had. I have a question on your amendment ([Exhibit J](#)). On section 1, subsections 2 and 3, it says if the driver refuses the request of the officers to voluntarily search their phone, the officer "shall" obtain a search warrant. So if you ask consent and they refuse, this bill requires the officer to get a search warrant? They have no choice?

**Assemblywoman Gorelow:**

Yes, we are requiring if that officer wants to see those phone records, they get a warrant. They may decide not to get a warrant and may not check the phone. They do not have to check the phone, but if they want to check the phone, then they do have to get a warrant.

**Assemblyman Roberts:**

Okay, that is not the way I read it. The way it reads, if you ask for consent, then the officer is required to get a warrant. It does not say you do not get a warrant; basically it is a requirement. That is the way I read it. Maybe legal could weigh in.

**Chairman Yeager:**

I will weigh in on that. The amendment that you have in front of you was not prepared by our legal department. I think what you are reading is a potential reading of the language, but I think from Assemblywoman Gorelow's comment, that was not her intent. The intent is, if there is a refusal and they still want the phone, then they would have to get a warrant. If this bill moves forward and we decide to process this amendment, we would do a formal mock-up of it and make sure that is clear in the language.

**Assemblyman Roberts:**

Thank for your clarification, Mr. Chairman.

**Assemblyman Fumo:**

Mr. Lieberman, thank you for bringing this bill forward. We have had multiple discussions about this and I have agonized over it, but the question has been asked, and I do not think it has been answered. Maybe law enforcement can answer it. The way this bill is written, the officer can request the cell phone. Is that not already in the law? They can already ask for the cell phone, and if the person says no and the officer has probable cause to believe that the person was using the cell phone at the time of the accident, they can request a warrant. We already have this in law. It is just the technology. Would it not be better just to give this technology to the Las Vegas Metropolitan Police Department (Metro) so that they can utilize it after they get the warrant already? Nothing in this bill is new because law enforcement already has the techniques and tools that we are providing. It is just the technology of this ability to look at the cell phone.

Most cars have the black box and after an accident with serious bodily injury or death, law enforcement will subpoena that black box from the car. They can subpoena phones as well. I have had them do that already in cases that I have represented, and that is the issue I have. It seems we already have it, we just do not have the specific technology that you are promoting. It seems that once they have the phone, they have further detail they can get from it.

**Ben Lieberman:**

I do not know Nevada law; you might be right. I do not know what your policy is right now. In New York we are able to do this without a warrant because of the reasons we addressed in the report ([Exhibit M](#)). To accommodate some of the concerns, they put that in. You may be right. I cannot answer that.

**Assemblyman Edwards:**

I actually missed the word that you said when you were talking about the capturing of the geolocation. Does the technology actually identify when the car stopped?

**Ben Lieberman:**

No.

**Assemblyman Edwards:**

Okay, thank you.

**Chairman Yeager:**

Do we have any further questions? [There were none.] I am going to ask the two of you to step back from the table and I am going to open it up to additional testimony in support of Assembly Bill 200. If anyone would like to testify in support either in Las Vegas or here in Carson City, please come forward to the tables.

**Lea Cartwright, representing American Property Casualty Insurance Association:**

On NELIS and on the exhibit table you should have a letter of support ([Exhibit N](#)) from Vice President Mark Sektnan. American Property Casualty Insurance Association (APCIA) represents nearly 60 percent of the U.S. property casualty insurance market and supports the use of this technology to field test a cell phone for evidence of use at the scene of a crash.

Just this morning in the *Reno Gazette-Journal* there was an article on page 4—Washoe County cracks down on speeding and distracted driving. Between February 1, 2019, and February 19, 2019, a joint effort between the Nevada Highway Patrol and Reno and Sparks police resulted in 245 traffic stops, 119 for speeding and 68 for distracted driving. The majority of the 68 citations for distracted driving were for cell phone use. That is a two-week snapshot of a small area of our state. The ban on using your handheld device while driving went into effect January 1, 2012. That is seven years: seven years of education, outreach, public service announcements, seven years of issuing warnings, \$50 citations, and seven years of increasing crashes and motorist deaths.

You can read the support letter ([Exhibit N](#)) from APCIA online, and I, as a citizen of Assembly District No. 40, would urge your support.

**Amanda Gualderama, Regional Governmental Affairs Director, Sentry Insurance Company, Sacramento, California:**

We are in support of the bill and we echo the comments of APCIA ([Exhibit O](#)).

**Paul J. Enos, Chief Executive Officer, Nevada Trucking Association:**

We are here today to support Assembly Bill 200. It was after a lot of discussion with my board talking about the issues we have with distracted driving and, interestingly, a lot of the concerns that have been expressed by this Committee were concerns that we had with the bill. We are trying to weigh those when we talk about constitutional protections and protections of privacy, and the Fourth Amendment. How do we weigh those with highway safety?

Last year in Nevada, we had a ten-year high on fatalities on our roadways. Three hundred and thirty-one people died. Now I will say I see a bright spot. We did have a 29 percent

reduction in truck-related fatalities. We went down from 35 to 25 fatalities, and that is a good thing.

Our drivers are out there every day. That is where they do their job and they see a tremendous amount of distracted driving going on with four-wheelers. Now I will not tell you that it never happens in a truck. Even though we have federal law, we have inward-facing cameras. So safety managers can look at those drivers and see if they are on the phone or if they are eating or doing something they should not be doing while they are piloting 80,000 pounds down the road. Unfortunately, we still have folks who are on their phone. Our safety managers see this as another tool, another tool to give them to tell their drivers they are going to be able to see whether they are typing or swiping on that phone, and that does allay some of the concerns that we had. In the past we had the iOS logs where it is not going to be able to get the whole device.

I do know when there are fatalities, the National Transportation Safety Board will get those records and they will look at them. This will happen through discovery, so there is still the option to see what that driver was doing.

We do believe that with this technology, our law enforcement partners are going to use this judicially, in looking at when did that accident happen. The last thing we want is for a driver to be hit with a citation when they were using their cell phone when they were legally parked, trying to find a load or contacting dispatch. We do not want that to happen either.

We do believe when there is an accident, to be able to have this tool—and we know some of our drivers may be cited on this—but we do believe this could also release some of the liability that we have when we are out there driving with people who are on their phone, not paying attention, and run into one of our trucks. We do see this as a benefit, ultimately, towards safety in treating distracted driving like we do drunk driving, like we do with impaired driving. We think this could benefit safety and we do appreciate this bill. Thank you.

**Chairman Yeager:**

Is there anyone else in support of Assembly Bill 200? [There was no one.] I will now open for opposition testimony. I invite folks to come forward. A couple of things I would like to say before we start opposition: I know there are some concerns about the original bill. If you could try to limit your opposition comments to what was presented in the amendment (Exhibit J) today. If that alleviates some of your concerns, you do not have to share all those concerns. There are a number of folks who want to testify in opposition, so if someone before you has raised a lot of the points you wanted to make, it is perfectly fine to say, "I agree," or "Ditto." Do not feel compelled to say everything. Finally, if you have more substantial written comments, please provide them to our Committee secretary and we can make sure that those are made part of the record as well. We will start here in Carson City.

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

I submitted some comments ([Exhibit P](#)) that were mostly sticking to the white paper on the constitutionality ([Exhibit M](#)) that was submitted by the proponents of this bill. I would encourage you to read that. We represent here today that the bill as written is not in fact constitutional from our perspective. That is certainly something that would have to be weighed by a court.

I have not had the opportunity to review the amendments ([Exhibit J](#)), but I do believe that in order for this bill to be constitutional, an amendment would be required, a warrant would be required. I will not dive too deeply into this for the sake of time, but the white paper proposes three different reasons why this is constitutional, and I challenge each of those. We talked to our speech and privacy project [ACLU's Project on Speech, Privacy, and Technology] at national. We have gone through and we have analyzed that pretty in-depth and we are appreciative that the bill sponsor did decide to bring an amendment forward requiring a warrant.

I do want to drive home one point. We refer to this device as a "Textalyzer." There is a lot of comparison to a breathalyzer and I want to make it very clear that the information that is obtained on our cell phones is very different than the information that is obtained through a breathalyzer test. With a breathalyzer test, you are necessarily violating a criminal act. Once they arrive on the scene, they have taken the breathalyzer test, you are there in fact guilty of an offense. It is still challengeable when you use this technology in order to determine whether someone was swiping their phone at a particular instance of time.

We also do not know enough about this technology and how it operates in order to make that conclusion. I also want to read an excerpt from *Riley*, that from our perspective I think illustrates the difference between what is contained in a cell phone.

Cell phones differ in both a quantitative and a qualitative sense from other objects that might be carried on an arrestee's person. Notably, modern cell phones have an immense storage capacity. Before cell phones, a search of a person was limited by physical realities and generally constituted only a narrow intrusion on privacy. But cell phones can store millions of pages of text, thousands of pictures, or hundreds of videos. First, a cell phone collects in one place many distinct types of information that reveal much more in combination than any isolated record.

I think that we are talking about something very different than when we are talking about a DUI situation. We are talking about the contents of a cell phone and what this device can actually extract from it. We are very concerned about the way the device functions and operates on its own. We will continue to speak with the bill sponsor. We thank her for bringing forth this legislation, and I want to also say we are very sorry for Mr. Lieberman's loss. I can certainly identify with that as an advocate and somebody who has lost someone in a DUI accident, but we certainly have to protect safety on the roads. We certainly have to



protect those interests, but it cannot be at the risk of us losing our constitutional rights. Thank you.

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

We do want to thank Assemblywoman Gorelow for meeting with us and discussing this bill and for actually attempting to amend this bill. We understand the intent behind it and in speaking with Mr. Lieberman, his loss is palpable and we understand why he has made this his cause.

It is always tough to talk about liberty when faced with that type of emotional testimony. I will say a few things. This is not quite analogous to a DUI and here is why. Driving is a privilege granted to you by the state; the state grants me no privilege to hold my cell phone and has no involvement whatsoever. So you should not be giving up your personal privacy because you leave your home with your cell phone.

Another thing I would like to bring up is that when you get in an accident, unless you have that phone in your pocket, that phone is going to bounce and hit buttons, it is going to touch, and who is to say when that touch or swipe happened. I think everyone is familiar with that common phenomenon that we term "butt dialing," when the phone is in your pocket and you call someone. You did not intentionally mean to do that, but it happens. How does this technology even account for that? It does not account for that. Those are things that we need to talk about. We also need to talk about a few other things. This legislation did not pass in New York where it was originally proposed. It is still under consideration, but it did not pass.

We are talking about untested technology. With regard to the white paper ([Exhibit M](#)) that Ms. Welborn addressed, in the beginning I think you can see a clear attempt at an appeal for authority where Professor Tribe, who is a constitutional scholar, said, Well. I have not reviewed everything here, but it seems okay on how to do a deep dive, but he did it. And we are not talking about a peer-reviewed paper; we are not talking about a paper published in a law review journal. We are talking about a white paper written by a gentleman who I would submit is not a constitutional scholar and actually writes one of his law journals, as you can see, "The Missed Opportunities of *Riley v. California*." So he is not a fan of the *Riley* decision that we talked about, which is the basis of our opposition to this. I will submit that Chief Justice Roberts, who is by no means a liberal but is a constitutional scholar, posited in the *Riley* decision [573 U.S. \_\_\_\_ (2014)], "Modern cell phones are not just another technological convenience. With all they contain and with all they may reveal, they hold for many Americans 'the privacies of life.' The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the founders fought."

As all of you know, the Fourth Amendment was the founding generation's response to the reviled "general warrants" and "writs of assistance" that we faced in Britain. So here we are and we are saying we are going to give up some modicum of liberty for temporary safety.

This is untested at this point in time and I would say that this is not the right solution to the problem, but we do need a solution. I imagine we need to continue to dig and try to find the right solution, but in our estimation this would not be the right solution to the problem. We urge you to oppose the bill at this time, but to keep working on the issue of distracted driving.

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

I echo the statements that came before me. Again, I would like to thank the sponsor, Assemblywoman Gorelow, as well as Mr. Lieberman, for meeting with us to discuss these important issues. Having been involved in several instances like the one Mr. Lieberman went through, I can absolutely understand his pain and hope that we can all acknowledge that and know that we do need to do something differently as a society. Texting and driving is an issue. There are other issues that involve driving as well. I know as a teenager I was absolutely guilty several times of driving to school while applying my makeup. Obviously, that is a distraction and it needs to be changed as well. That is something that we should be starting, I believe, in the schools. If you look at technology, this is something that is ever evolving and something that we do need to use some caution when we decide to implement that into our laws.

I have a quote from Bill Gates. I thought this is apt for this, since he is one of our leaders in technology. He says, "Technology is just a tool. In terms of getting the kids working together and motivating them, the teacher is the most important." I think that is what we have heard here today regarding this bill, and that is that we need to do something differently in order to educate our children and educate our citizens to make sure that this does change. Unfortunately, I do not believe this bill is the solution. As we heard from Assemblyman Fumo, we already have ways that the officers can obtain a warrant and have the technology in order to get the information that is needed. I would urge this Committee at this point to vote against this bill.

In regards to the comparisons that have been made regarding the DUIs, I would note that part of the issues why the breathalyzer is important and why obtaining a search warrant or seizure order as soon as possible to get the blood is different in that case than in texting and cell phone because the information that is on your cell phone stays. It does not dissipate. That is the whole purpose from the blood draws or breathalyzers because the alcohol dissipates so you do not have that information later. Here, that is simply not the case. Thank you.

**Sam Toll, representing Libertarian Party of Nevada:**

Chairman Yeager, Assembly members, thank you for your time again. I would like to echo many of the concerns, especially those from Assemblywoman Torres, brought up about the Fourth Amendment and the constitutional issues and challenges that this proposed law brings forth. However, I think most poignantly or to the point were Assemblyman Fumo's. He said there is currently the opportunity for law enforcement to basically do whatever this bill is trying to do today.

You will never hear a Libertarian say, There ought to be a law. In fact, I would suggest to every one of you as you consider the over 1,000 laws that you will be considering this legislative session, that for every law you pass—the only law I would like to see is that you would be required to take two laws off of the books. If what you are trying to do is so very important and so critical for us as a society then it should potentially supersede two others. As an eternal skeptic, I will remind you, from a technology standpoint and from the ability to glean personal information and other potentially unintended information in the future, I would remind you that back in the day we were assured by our elected leaders that the National Security Agency's ability to conduct warrantless searches on our telephone conversations would be purely limited to terrorist activities for people overseas. I think Edward Snowden reminded us of how the very slippery slope that allowing technology and allowing these kinds of innocuous opportunities against our privacy could end up. In closing I would like to thank Mr. Lieberman for coming out here and his personal story. I, too, have buried eight people courtesy of drunk drivers. I myself stopped drinking 18 years ago because of that. I think each one of us should take a moment to make little vows to ourselves to keep our darned phones on the seat and stop driving while texting. Thank you very much.

**Chairman Yeager:**

I am going to go down to Las Vegas and take testimony there. We have had a few people waiting patiently.

**Lisa T. Rasmussen, Attorney, representing Nevada Attorneys for Criminal Justice:**

The Nevada Attorneys for Criminal Justice (NACJ) is arguably a stakeholder in this issue. I know that you are time-limited so I will say, "ditto" to ACLU, "ditto" to the Clark County Public Defender's Office, "ditto" to the Washoe County Public Defender's Office, "ditto" to the Libertarian party with all these important issues. All of them have raised important issues and raised most of the things that I would comment on. I, too, want to thank Assemblywoman Gorelow for bringing this bill forward and our condolences on behalf of NACJ to Mr. Lieberman. I think that we all understand that this is an important issue and that it affects all of us. None of us wants to be killed by a texting driver, none of us wants it to happen to anyone we love. None of us wants it to happen, period.

I have not seen the amendment—they were not on NELIS when I looked. I understand that they will add serious bodily injury and death to the requirements of the crash, and I understand there will be a warrant requirement, so that brings me to Assemblyman Fumo's point of we already have all of that. Why do we need it—can Metro just use the technology?

I would really like to help and be a partner in doing something to address the problem, but one other thing that jumps out at me is that under *Nevada Revised Statutes* (NRS) 484B.165, it is not illegal or unlawful right now to tap the phone to access an app—for example, if you are using your phone for navigation and your screen goes black, you can tap it to make it come back awake. I am not sure how the technology works with that. I wish there was something else we could do to address the problem. For example, this might be the one situation where you actually hear me say we would agree to increase the fines because the penalties are really low—\$50, \$100 for a subsequent offense. This seems like it would be

more a deterrent than the proposed technology. I do not know why we need a bill to allow Metro to use the proposed technology in conjunction with the warrant requirement. I am all in favor of something that addresses the issue; I just do not think this bill is it, as sympathetic as we are to the issue. Thank you.

**Daphne Lee, Private Citizen, Las Vegas, Nevada:**

I, too, echo all the sentiments of those who came before me as well as the condolences. I have teenagers. I understand; my son's name is Evan as well. With that being said, I have very strong opposition to this bill as well, with all the concerns echoed before me. As a mother, I am thinking through my mind how this would play out.

My children use my phone all the time while I am driving. I am trying to be a good role model and to teach them not to use their phone while they are driving. I will have my children answer phone calls or text messages while I am driving. I see pitfalls and possible problems of people being accused of using their phone when it may very well have not been them; parents let their children watch videos while they are driving.

I am excited that drunk driving is down, as Assemblywoman Gorelow shared with us. But I also think that has more to do with the implementation of Uber and Lyft—it is good news that drunk driving is down, and the ACLU stated the Supreme Court has ruled that police must get a warrant to search your phone. I do find this bill to be redundant. I am concerned about the cost. I am concerned about the time to be training our officers to use this technology.

Here in Las Vegas we have pressing issues with violent crime rising dramatically. I would like to see our resources pointed towards our officers dealing with more pressing situations, but I do understand the problem and I get the sentiments. I do not agree with giving up our Fourth Amendment rights in order to possibly prosecute someone after the crime may or may not have been committed. Thank you.

**Justine Nikoleit, Private Citizen, Las Vegas, Nevada:**

I want to say that most of the questions I had have been answered and some new ones have come up. I am opposed to this bill. I think this bill sounds good on the surface, but the time and resources that would go into this would be immense along with stepping on some of our constitutional rights. I do not feel that this bill would be a deterrent. There is already a law in place that makes it illegal to text and call on the phone when you are driving.

My phone is not just a phone. It is a computer with a phone app on it. You can see why I would be apprehensive about handing it over. I do feel like the police should get a warrant before having access to it. I am urging you to vote no on this bill. Thank you.

**Chairman Yeager:**

Thank you for your testimony. If there is anyone else down in Las Vegas who would like to testify in opposition, I invite you to come forward. [There was no one.]

**Tonja Brown, Private Citizen, Carson City, Nevada:**

I want to echo what everyone else is saying. My concern is that this is new technology, and with new technology comes glitches, and we do not know what these glitches will hold in the future. I would like to remind some of you—some of you may not be aware—when the Department of Corrections implemented the Nevada Offender Tracking Information System, there were computer glitches that put false felony charges into inmates' files and it went undiscovered for five years. Based on that information, and we do not know what future this company's technology would hold, we would be opposed to this bill. Thank you.

**Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:**

I am here in opposition to this bill based on some recent news we have seen. If you search Ccelebrite this morning, you will find numerous articles highlighting how it can be bought on eBay and the data is still left on those tools. This is very concerning to us, and I will make sure that the articles ([Exhibit Q](#)) are available to all the members of the Committee.

**Chairman Yeager:**

Thank you, and I would appreciate that, and if you could submit that to our Committee secretary, we will make sure it gets posted for the Committee members.

**Maurice White, Private Citizen, Carson City, Nevada:**

I testify for myself today. While I recognize the issues around distracted driving, I must stand in opposition to Assembly Bill 200 on two specific points: First, nowhere in this bill is there a time limit or a set of parameters of exactly how much information will be gathered from these phones. In fact, this white paper ([Exhibit M](#)) that is being referred to contemplates at 15 minutes of time gathered is appropriate. I would suggest that 15 minutes is very, very long in the world of what is going on when you are driving, what is going on in your life. Literally from my couch to being on the street—30 seconds. I live here in Carson City, and I can be in downtown Reno in 20 minutes. What I was doing on my couch is absolutely irrelevant. You need to restrict this information-gathering to the point of the crash.

Secondly, this white paper report makes no reference to Nevada law. If you are going to reach into the realm of civil liberties, you must first look into what does the *Nevada Constitution* say. What do we have in the NRS, and what sort of case law should be analyzed? I have not heard any discussion about these today. If we can rectify these objectives, I could certainly change my stand on this bill. Thank you.

**Janine Hansen, State President, Nevada Families for Freedom:**

We certainly understand the good intentions that brought forward this bill. We have been touched in our lives by loss through automobile accidents. I appreciate the questions from the Committee. They were well thought out and shed much light on this particular issue.

I think one of the problems we often face is good intentions that continually encroach on our individual liberties. This is a serious concern every session of the Legislature. We must be concerned about our Fourth Amendment rights, our due process. One of the things that most

alarmed me when I looked at the original bill was seeing ourselves go in front of an administrative court with the DMV. That was just a nightmare to consider.

I did read the amendment ([Exhibit J](#)) and I think it is a great improvement, but I think there are still many unresolved issues with this. I am happy that a requirement for a warrant has been added and that it was limited to serious injury or death. I do not think that many of the concerns that were expressed earlier by people who testified and also by the Committee have been resolved. We oppose this legislation. Thank you.

**Chairman Yeager:**

Is there anyone else either here in Carson City or in southern Nevada who would like to testify in opposition to Assembly Bill 200? [There was no one.] I will open it up for neutral testimony.

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

I know it has been a long day, so out of respect for your time, I will be very quick. I just wanted to point out a couple of concerns that popped up with the amendment that I believe can be addressed when the mock-up is finished.

I am here in neutral. We are always supportive of new technology and I think there is obviously potential down the road for this to be a tool for law enforcement. But as you heard today, I think there are a lot of unanswered questions and so for the time being, I am neutral on this proposal.

However, when it comes to the amendment ([Exhibit J](#)), I wanted to point out a couple of things. On page 1, section 1, subsection 2, I believe this was already alluded to slightly by Assemblyman Watts. I am no attorney, but it appears to mix two legal terms, "reasonable" and "probable grounds." I believe it should either say "reasonable suspicion" or "probable cause." If it says probable cause, then we do not need the device. We can get a search warrant or make an arrest with probable cause. If it says reasonable suspicion, I believe that would be the appropriate word to allow for an officer to then use the device to obtain further information that then might warrant probable cause or a search warrant.

On page 2, section 1, subsection 3, there is another section of NRS dealing with digital insurance that was passed by the Legislature a few sessions ago. There is similar language to this in that section which allows a motorist to present their insurance via a cell phone to an officer. There is language in that statute that says "intentionally," and I see in this amendment "intentionally" is scratched out and omitted. I believe that is a concern because if the officer approaches a citizen and says, Were you texting? No, I wasn't. Can we use this device to verify that? and they stick their cell phone out there and there is something on their screen, some text message or some website they were on, and the officer sees that, now he is violating subsection 3 unintentionally. I think the term "intentionally" is very important to leave in the statute.

I would also point to the bottom of subsection 3, the green language, where it says, "The motorist shall be allowed to maintain possession of their device during the investigation." I believe that should read, "during the inspection of the device." Here is why I say that: Potentially we have a fatal accident, and that fatal accident may actually be investigated for several weeks. The investigation may be ongoing, but the motorist may be DUI, they may have a warrant out for their arrest, and so they may be arrested before the investigation is complete. They are transported to the Clark County Detention Center, and I am sure it is not the intent of this amendment that they would be able to keep their cell phone at the Clark County Detention Center while the investigation is ongoing.

I just wanted to point out those few things that I think can be fixed in the mock-up. I do not believe it was the intent of the people who proposed the amendment. I thank you for listening.

**Jude Hurin, Administrator, Division of Management Services and Programs, Department of Motor Vehicles:**

I would like to thank Assemblywoman Gorelow for working with us. The Department was working on an unsolicited fiscal note based on the language, but in light of the new language today, that is a moot point and we are neutral and will not be providing any impacts on an unsolicited note. Thank you.

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

We, too, come to the table in neutral in this matter. I appreciate the efforts of Assemblywoman Gorelow and Mr. Lieberman addressing this very important issue. As Ms. Cartwright alluded to, in the most recent joining forces campaign up in northern Nevada, over 50 percent of our citations were for distracted driving, so this is bringing awareness to a very important matter that is currently plaguing our state. Thank you for your time.

**Chairman Yeager:**

Anybody else in the neutral position on Assembly Bill 200? [There was no one.] At this time I would invite the sponsor and copresenter back up to the table to make any concluding remarks before we close the hearing on the bill.

**Assemblywoman Gorelow:**

We knew that driving under the influence of alcohol was a serious problem, and we enacted laws and discouraged people from driving under the influence. We know that texting and using handheld devices while driving are dangerous, and we must act now because police are not going out and getting those records.

I would like to take a moment and thank Mr. Lieberman and the other stakeholders for working with me on this important legislation. Mr. Lieberman got that phone call that every parent dreads.

Last year in Nevada, over 300 people also got that same phone call. I really do not want another Nevadan to receive that phone call. Legislators have implemented laws that now require seat belts. We have implemented laws that make it illegal to drink and drive. This is the evolution of keeping our roads safe. We know better, so please let us do better. Thank you very much, and I look forward to working with interested parties in an effort to alleviate any additional concerns that this legislation might have.

**Chairman Yeager:**

Thank you, Assemblywoman Gorelow. Mr. Lieberman, any concluding remarks?

**Ben Lieberman:**

Thank you for letting me have another opportunity to speak; I did not know I would. I will keep it quick. Some of the comments that were made, there is something I would like to clarify. *Riley* is specific to arrest. It does not say that a police officer cannot view a phone. It does not say that at all. It is an "incident to arrest;" it is very specific to the incident to arrest doctrine, which means that police at the scene, if they feel that the evidence is going to be destroyed or if the public safety is at risk, then they have a greater need to search. They try to search a phone and the Supreme Court said that incident to arrest, if you want to get content—and the keyword is content—if all legislation said, License, registration, and let me rummage through your phone, that would be a violation of *Riley*, this is specifically respecting that. I think that the comments about the constitutional scholar who wrote this were unfounded and unwarranted; his credentials are excellent, and the ability to say that one of the articles he wrote was a missed opportunity of *Riley v. California*, I think that person should read the article before they comment, because it was talking about how *Riley* could have addressed other issues.

Someone made a comment that we already have a law, so you do not need this. We obviously cannot enforce the law and that is why we are sitting here, and that is why I flew across the country.

Someone made a comment that the evidence just stays there. That is not the correct answer. Someone could wipe their phone in under one minute. Anyone who has an iPhone and has the Find My iPhone app, one of the things it can do is set the store settings.

Again, we spent a lot of time on this to try to respect the *Constitution*, to try to jump through hoops to respect everyone's privacy. There is a certain reality that people are getting hurt all over the world and the country from distracted driving, unfortunately. There is a wrestling match here because the device you are using to turn your car into a two-ton missile also holds personal data. That is the wrestling match. You have to come to a conclusion, and you have to make it happen. You cannot just say, It is a problem. There is no other way to address the problem than to look at the problem. That is the reality; it is a tough reality. It is something that is not easy to do, but if you are serious about really fixing the problem, you have to look at it.



I do not want to be responsible for any legislation that invades anyone's privacy. I do not want to bury another child and I do not want you to bury a child. Thank you.

**Chairman Yeager:**

Thank you, Assemblywoman Gorelow and Mr. Lieberman. Well, obviously, there may be disagreements about whether this is the right policy. I think we can all agree that distracted driving is a very serious issue and it is getting worse. I want to thank the two of you for bringing this forward for this Committee's consideration. I want to thank you for talking to most, if not all, the members before this morning's hearing. Thank you, Mr. Lieberman, for coming out here and we wish you safe travels back to New York.

[([Exhibit R](#)), ([Exhibit S](#)), ([Exhibit T](#)), ([Exhibit U](#)), and ([Exhibit V](#))] were not mentioned but will become part of the record.]

At this time, I am going to close the hearing on Assembly Bill 200. Now would be the time for public comment. Is there anyone who would like to give public comment, either in southern Nevada or here in Carson City? [There was no one.]

Anything else from Committee members before we talk about Monday's agenda? [There were none.] Committee members, I want thank you. It was certainly an interesting morning in Assembly Judiciary. We will be meeting again on Monday at 9 a.m. We will have two bills to be presented by two of our own Committee members, Assemblyman Roberts and Assemblyman Daly. We will see you all Monday morning at 9 a.m. I hope everyone has a great weekend. Travel safely and the meeting is adjourned [at 10:32 a.m.].

RESPECTFULLY SUBMITTED:

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Cheryl Williams  
Committee Secretary

APPROVED BY:

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Assemblyman Steve Yeager, Chairman

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

## EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is the Work Session Document for [Assembly Bill 9](#), dated March 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is the Work Session Document for [Assembly Bill 43](#), dated March 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is the Work Session Document for [Assembly Bill 107](#), dated March 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit F](#) is the Work Session Document for [Assembly Bill 126](#), dated March 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit G](#) is the Work Session Document for [Assembly Bill 134](#), dated March 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit H](#) is the Work Session Document for [Assembly Bill 222](#), dated March 1, 2019, presented by Diane C. Thornton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit I](#) is a letter dated March 1, 2019, in support of [Assembly Bill 189](#), submitted and presented by Summer Wharton Merrill.

[Exhibit J](#) is a proposed amendment to [Assembly Bill 200](#), dated February 27, 2019, presented by Assemblywoman Michelle Gorelow, Assembly District No. 35.

[Exhibit K](#) is a Section-by-Section Summary of [Assembly Bill 200](#), submitted and presented by Assemblywoman Michelle Gorelow, Assembly District No. 35.

[Exhibit L](#) is a Fiction vs. Fact sheet for the Textalyzer presented by Assemblywoman Michelle Gorelow, Assembly District No. 35.

[Exhibit M](#) is document titled "Constitutional Scholar Report and Acknowledgment" prepared by Ric Simmons, Professor, Ohio State University Moritz College of Law.

[Exhibit N](#) is a letter dated March 1, 2019, to Chairman Steve Yeager and the Assembly Committee on Judiciary from Mark Sektnan, Vice President, American Property Casualty Insurance Association, in support of [Assembly Bill 200](#).

[Exhibit O](#) is a letter to Chairman Yeager and members of the Assembly Committee on Judiciary, dated February 27, 2018, from Amanda Gualderama, Regional Government Affairs Director, Sentry Insurance Company, in support of [Assembly Bill 200](#).

[Exhibit P](#) is a letter dated February 28, 2019, to Chairman Yeager and the Assembly Committee on Judiciary from Holly Welborn, Policy Director, American Civil Liberties Union of Nevada, in opposition to [Assembly Bill 200](#).

[Exhibit Q](#) is a document titled "A Selection of Recent Media Coverage of Cellebrite," presented by Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada, in opposition to [Assembly Bill 200](#).

[Exhibit R](#) is a table titled "Nevada High School Students Who Texted or Emailed While Driving a Vehicle During the 30 Days Before the Survey-Prevalence by Race/Ethnicity and Region, 2017," submitted by Assemblywoman Michelle Gorelow, Assembly District No. 35, in support of [Assembly Bill 200](#).

[Exhibit S](#) is a letter dated May 14, 2018, submitted by James H. Grady, Chief Executive Officer, Cellebrite, in support of [Assembly Bill 200](#).

[Exhibit T](#) is a letter dated February 28, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, from Christian John Rataj, Senior Regional Vice President, State Government Affairs, National Association of Mutual Insurance Companies in support [Assembly Bill 200](#).

[Exhibit U](#) is a letter dated February 27, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, from James J. Halpert, General Counsel, State Privacy and Security Coalition, in opposition to [Assembly Bill 200](#).

[Exhibit V](#) is four letters from various groups submitted by Assemblywoman Michelle Gorelow, Assembly District 35, in support of [Assembly Bill 200](#).